Silencing the Cell Block:
The Making of Modern Prison Policy in North Carolina and the Nation

by

Amanda Bell Hughett

Department of History
Duke University

Date: July 7, 2017
Approved:

___________________________
Nancy MacLean, Supervisor

___________________________
Laura F. Edwards

___________________________
Edward Balleisen

___________________________
Christopher W. Schmidt

___________________________
Heather Ann Thompson

Dissertation submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy in the Department of History in the Graduate School of Duke University

2017
ABSTRACT

Silencing the Cell Block:
The Making of Modern Prison Policy in North Carolina and the Nation

by

Amanda Bell Hughett

Department of History
Duke University

Date: July 7, 2017
Approved:

___________________________
Nancy MacLean, Supervisor

___________________________
Laura F. Edwards

___________________________
Edward Balleisen

___________________________
Christopher W. Schmidt

___________________________
Heather Ann Thompson

An abstract of a dissertation submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy in the Department of History in the Graduate School of Duke University

2017
Abstract

“Silencing the Cell Block” examines the relationship between imprisoned activists and civil liberties lawyers from the 1960s to the present in order to solve a puzzle central to the United States’ peculiar criminal justice system: Why do American prisons, despite affording inmates expansive due process protections, continue to punish more harshly than their counterparts in any Western country? To answer this question, “Silencing the Cell Block” begins by tracing the emergence of an interracial movement to unionize imprisoned workers in North Carolina and across the nation. Inspired by robust public sector labor and Black Power organizing campaigns, inmates sought a wide range of improvements, including freedom from racism and violence, fair wages, the abolition of large penal institutions, and a voice in prison governance. It then demonstrates how lawyers’ efforts to establish due process protections for prisoners unintentionally undermined inmates’ ability to organize and secure more substantive victories. In the early 1970s, civil liberties lawyers, moved by the broader due process revolution, shielded inmates from the worst abuses behind bars by winning cases compelling prisons to institute disciplinary hearings, grievance procedures, and other procedural protections designed to curtail arbitrary authority. At first, state officials adamantly opposed such improvements. But as the prisoners’ movement garnered strength and courts threatened increased intervention, they came to embrace internal grievance procedures as weapons to defeat inmates’ more sweeping demands. Ultimately, procedural reforms allowed state
officials to convince judges that state penal institutions operated as modern bureaucracies that complied with the rule of law. By advocating for new procedural protections that offered the appearance—though not always the reality—of justice, civil liberties lawyers sympathetic to the prisoners’ cause helped make America’s severe prison practices more difficult to dismantle.
For Brendan
Table of Contents

Abstract ......................................................................................................................... iv

Acknowledgements......................................................................................................... v

Introduction ................................................................................................................... 1

Confined by Rights:
Inmates, Lawyers, and the Bureaucratization of American Prisons

Chapter 1 .................................................................................................................... 24

“Under the Gun”:
Convicted Workers and Their Keepers at Midcentury

Chapter 2 .................................................................................................................... 80

“We had the Right to Remain Silent, but We Ain’t Gonna Stay that Way:”
The Rise of the North Carolina Prisoners Labor Union

Chapter 3 ................................................................................................................... 135

“A Hazardous Enterprise”:
Civil Liberties Lawyers’ Quest for Justice Beyond the Courtroom, 1974-1977

Chapter 4 ................................................................................................................... 194

“The Beds and Bodies Game”:

Chapter 5 ................................................................................................................... 251

Rights without Remedy:
Federal Judges and the Making of the Prison Litigation Reform Act of 1996

Conclusion ................................................................................................................... 310

The Underside of Reform

Works Cited ................................................................................................................... 323

Biography ...................................................................................................................... 343
Acknowledgments

I am beyond grateful for the support I received while completing this project. Grants and fellowships from Duke University, the American Bar Foundation (ABF), the National Science Foundation, the Law and Society Association, the Gerald Ford Foundation, the William Cromwell Foundation, the Lyndon Johnson Foundation, and the University of North Carolina at Chapel Hill made my work possible. I also thank Barry Nakell, Chuck Eppinette, Jim Grant, Fred Morrison, Robbie Purner, Lao Rupert, Jacob Safron, and Linda Weisel for trusting me with their stories and personal archives.

Several scholars provided invaluable feedback on this project as grant proposals, conference papers, and early chapters. I thank Dan Berger, Daniel Ernst, Mariah Hepworth, Rebecca Hill, Elizabeth Kai Hinton, Julilly Kohler-Hausmann, Lisa Miller, Premilla Nadasen, Melanie Newport, Anne Parsons, and Heather Ann Thompson. Comments from participants in the Triangle Legal History Seminar, the Triangle African American History Working Group, the ABF Chicago-Area Legal History Workshop, the Law and Society Association Graduate Student Workshop, and the Law and Litigation in Equality Movements Workshop at the University of Wisconsin School of Law also influenced my ideas and improved my analysis.

My dissertation committee was a dream team that went above and beyond the call of duty. Laura Edwards encouraged me to think big and to avoid easy narratives. Edward Balleisen helped me hone my ideas about the past and consider their implications.
for the present. Christopher Schmidt provided crucial guidance and support during key stages of this project. Heather Ann Thompson was an unflagging supporter and attentive external reader. I thank my advisor, Nancy MacLean, most of all. She pushed me to sharpen my ideas and strengthen my analysis without ever making me feel defeated or overwhelmed. She is a model mentor, both personally and professionally. I am honored to be a part of her academic family.

At Duke, a generous community of professors and peers shaped my work. John French helped me formulate my project and craft my first grant proposals. Jocelyn Olcott provided essential feedback while I drafted my dissertation prospectus and began the research process. I was lucky to work alongside Duke students committed to supporting each other throughout graduate school. For their insightful comments, I thank Eladio Bobadilla, Scovill Currin, Ashley Elrod, Jon Free, Will Goldsmith, Tiffany Holland, Hannah Ontiveros, Dan Papsdorf, Ryan Poe, Yuridia Ramirez, Stephanie Rytilahti, Ashley Young, and Corinna Zeltsman.

My two years as a Law and Social Sciences Dissertation Fellow at the American Bar Foundation (ABF) were a dream-come-true. The vibrant intellectual community I encountered there undoubtedly made my work better. I thank Laura Beth Nielson and Robert Nelson for their feedback and for taking a chance on me. Ajay Mehrotra, Christopher Schmidt, Vicky Woeste, and Tracy Burch also provided helpful comments on my chapters in their earliest form. The other ABF fellows were both brilliant and fun: the academic Holy Grail. For their friendship and engagement with my work, I thank
Andy Baer, Ayo Laniyonu, David McElhattan, Andrea Miller, Jeffrey Omari, Emma Shakeshaft, and Matthew Shaw. They made my final years of graduate school “everything,” as Matthew would say.

Graduate school is hard, both intellectually and emotionally. I am lucky to have a wonderful support network. While I conducted research in Washington D.C., Gabriel Osborne and his family gave me a place to stay and made for excellent company. Danielle Pauk and Nikki Pickford cheered me on from the time I applied to graduate school to the day I submitted this dissertation. Erik Gellman and Katie Turk welcomed me to Chicago and made me feel at home. The ever-astute Mariah Hepworth was the best roommate anyone could ask for. Our conversations helped me cross the finish line and so much more. Lastly, I am grateful for my family members who sustained me throughout this project. I thank my parents, Gail and Dan Hughett, for their unwavering support and my brother, Brian, for reminding me to laugh, including at myself. My deepest thanks is reserved for Brendan Vincent. His patience and generosity never cease to amaze me. This dissertation is dedicated to him because without his everyday help, encouragement, and love, it never would have come to fruition.
Introduction

Confined by Rights:
Inmates, Lawyers, and the Bureaucratization of American Prisons

When inmates arrive in prison in North Carolina, corrections officials hand them a thirty-three page *Rules and Policies Manual*, an abbreviated version of the nearly four-hundred page handbook guards receive before starting their jobs. The *Manual* outlines the Department of Corrections’ (DoC) long list of expectations for the new inmates: no damaging prison property, no drugs or alcohol, no fighting, no threats, and no work stoppages, among other prohibitions. But the majority of its pages are dedicated to outlining prisoners’ rights. Inmates have the right to access the courts, to medical care, to practice their religion, to send and receive mail, to be free from cruel and unusual punishment, and to challenge disciplinary actions in semi-formal hearings. Indeed, prisoners’ rights under the U.S. Constitution shape all aspects of prison life today.

That prisoners had any rights at all would have proven baffling to government officials a century ago. For most of American history, local officials exercised vast discretionary power over imprisoned men and women. They believed that inmates sacrificed their rights when they crossed the prison gates. In North Carolina, as in most states, local officials’ unbridled control of the prison population gave rise to the

---

systematic abuse of prisoners, especially through the exploitation of their labor. During the early twentieth century, county officials carted inmates across the state in rolling metal cages. From dawn until dusk, they labored on the state’s roads and highways, eating barely enough to survive. Today, the constitutional rights of inmates regulate prison officials’ conduct, and the most shocking conditions inside prisons have disappeared. But American prisons continue to punish more harshly than their counterparts in any Western country. U.S. inmates are often incarcerated for long periods of time, granted little contact with others, and subject to long-term solitary confinement. Prisoners of color, especially African Americans, are most likely to endure such harsh practices. As of 2016, African Americans were five times as likely as whites to wind up behind bars.² How did the U.S. Constitution come to structure prison life in minute detail on so many matters while failing to dismantle such egregious core practices?

“Silencing the Cell Block” answers this question by tracing the rise of the North Carolina Prisoners’ Labor Union (NCPLU) as part of the broader movement for prisoners’ rights during the late 1960s and early 1970s, revealing how civil liberties lawyers, judges, politicians, and prison administrators in North Carolina and across the nation reshaped prison policy in response to inmates’ activism. Inspired by robust labor organizing and Black Power campaigns, the NCPLU sought to leverage inmates’ labor, which financially sustained the state’s prisons, to secure a wide range of improvements,

including fair wages, freedom from violence and racist treatment, the abolition of large penal facilities, and a voice in prison governance. The union pursued its goals through inside-the-walls organizing and, with the help of civil liberties lawyers, through constitutional litigation. By the mid-1970s, the NCPLU seemed to be succeeding on both fronts. Nearly half the state’s inmates had signed union cards.³ And in the courts, civil liberties lawyers had won cases shielding prisoners from the worst abuses behind bars by compelling states to institute disciplinary hearings, written policies, internal grievance procedures, and other accountability mechanisms designed to curtail arbitrary authority.

At first, as ensuing chapters show, state officials, long accustomed to running their penal institutions however they saw fit, adamantly opposed such procedural improvements. But as the union garnered strength and courts threatened increased intervention, they came to embrace new procedures as a weapon to defeat prisoners’ more sweeping demands. In the 1977 Supreme Court case Jones v. North Carolina Prisoners Labor Union, state officials argued that because the new grievance procedures offered a fair, institutional avenue for inmates to express their complaints, prison administrators could ban the union without eroding inmates’ First Amendment rights.⁴ Their arguments proved persuasive because the new procedures helped convince the justices that state officials were capable of governing inmates according to the rule of law


rather than personal whim. By the mid-1990s, rules that were once envisioned as ensuring human dignity and due process had become constraints of a different kind—measures that both limited prisoners’ access to the courts and curtailed their ability to organize.

My depiction of inmates’ courtroom successes as undermining their broader goals does not fit neatly into the narrative of the prisoners’ rights movement that has come to dominate postwar American history. Overwhelmingly, scholars have portrayed conservative politicians as the foil to the inmates’ cause. One narrative suggests that inmates’ radicalism sparked a conservative backlash that legitimized the adoption of harsh penal practices beginning in the late 1970s. A parallel narrative positions the inmates’ movement as the victim of a broader political realignment that includes a conservative ascendency and accommodation by centrist Democrats such as Governor and then President Bill Clinton, often referred to as neoliberals. When Republicans took control of both houses of the U.S. Congress in 1994, they passed legislation that curtailed inmates’ access to the courts as part of a larger “tough-on-crime” and anti-litigation agenda. While the timing and key actors in these interpretations differ, each is rooted

---


firmly in the realm of politics, both legislative and executive. If only conservatives had not gained power, these narratives suggest, the prisoners’ rights movement might have transformed America’s system of punishment more thoroughly than it did.  

Missing from these interpretations is an exploration of how inmates’ constitutional rights claims shaped their movement and its outcomes.  

When imprisoned men and women claimed rights under the U.S. Constitution, they drew on a legal framework with its own internal logic and structure that often took them in unexpected directions. “Silencing the Cell Block” follows the winding path of prisoners’ claims from their origins in the rights revolution of the 1960s to their inadvertent creation of today’s

---


modern penal bureaucracy, complete with a four-hundred page policy manual. In so doing, my study illuminates both the possibilities and the limitations of constitutional rights litigation as a tool for social change. Neither “hollow hope” nor magic bullet, litigation shaped American prisons in very specific ways, making them more rational, transparent, and procedurally fair.⁹

But the notion of rights that transformed American prisons was also highly individualized, making it difficult, I show, to use litigation to reach the structural inequities undergirding America’s criminal justice system. Government officials who opposed the prisoners’ rights movement easily drew on this individualized model to stymie inmates’ calls for further reforms. They learned that they could point to the state’s protection of inmates’ individual rights to block the collective action in the 1970s that threatened to radically transform America’s system of punishment. The prisoners’ rights movement, then, fell short of its goals not only because of politics but also because of the nature of constitutional law.

To illuminate these dynamics, “Silencing the Cell Block” demonstrates why prisoners filed lawsuits as well as how civil liberties lawyers, government officials, and judges responded to them. Forced to endure dehumanizing conditions, imprisoned men and women deployed a variety of tactics, often simultaneously, to improve their lives. They wrote for help to government officials, planned escapes, refused to work, staged protests, organized unions and other activist groups, partnered with individuals outside

the prison, and crafted lawsuits, among other maneuvers. Along the way, criminal justice officials and politicians contested their every move. As historian Heather Ann Thompson revealed in her study of the 1971 inmate rebellion at Attica Prison in New York, state and federal officials during the 1970s went to great lengths to crush collective organizing efforts that challenged the nation’s increasingly punitive criminal justice practices. Yet the prisoners’ movement proved resilient. When one avenue to reform closed, inmates searched for other paths. After prison officials suppressed the Prisoners Union in the wake of Jones, imprisoned activists and their allies doubled down on their litigation campaign in hopes of achieving meaningful change behind bars.

Social historians have read inmates’ lawsuits to better understand imprisoned activists’ objectives and critiques of the criminal justice system and broader American state. But this approach tells only half of the story. Lawsuits differ from other documents historians use to uncover the world of imprisoned men and women because they mobilized the state on inmates’ behalf. In filing lawsuits, some inmates wanted only to voice their frustrations with the system that confined them. Others sought to resolve individual problems or to overturn inhumane prison policies or practices. A minority

10 State and federal officials violently suppressed inmates’ protest, leaving forty-three dead. They then systematically covered up their actions. See Thompson, Blood in the Water.

hoped their lawsuits would erode their state’s reliance on imprisonment as a form of punishment. Regardless of the inmates’ goals, once their lawsuits left the prison, lawyers, government officials, and judges began the work of translating prisoners’ complaints into constitutionally actionable legal claims. My project examines this “translation process,” building on scholarship that illuminates the diverse individuals who shape the law, and in so doing reveals the tension between inmates’ ideas and legal actors’ reading of case law. 

While inmates’ lawsuits sometimes included a radical vision for the transformation of America’s criminal justice system, what the courts in the end granted was individual rights claims, shorn of that larger agenda.

That prisoners expanded their individual rights through litigation was no small achievement given the horrific prison practices that persisted into the early 1970s. Indeed, state and federal officials’ ongoing efforts to block inmates’ access to the courts underscores the threat prisoners’ litigation posed to the status quo. Inmates’ lawsuits improved the lives of incarcerated men and women by dramatically reshaping prison policies and practices. Together, imprisoned activists and their lawyer allies succeeded in the once unthinkable task of subjecting prison officials to the Bill of Rights. Yet as “Silencing the Cell Block” demonstrates, the law was—and is—capable of tolerating many forms of inequality. With the blessing of the Supreme Court, corrections officials used procedural improvements to justify new policies curtailing inmates’ ability to

organize in pursuit of broader reforms.

***

“Silencing the Cell Block” provides a composite local, state, and national perspective on the transformation of American prisons during the last third of the twentieth century. Far from an anomaly, the legal dynamics that characterized the making of North Carolina’s modern penal bureaucracy resembled those in other states. Scholars have debated regional differences in incarceration practices, with many historians arguing that slavery’s legacy made southern prisons distinctly cruel. Others have countered such claims by highlighting inhumane prison practices in the North and West. My project refocuses this debate by illuminating the governing structures that allowed local legal culture to shape all prisons, regardless of region, well into the twentieth century. In so doing, I seek to answer historians’ recent calls to investigate the shifting dynamics of federalism within America’s “compound republic,” the ambiguous institutional arrangement crafted by the framers of the Constitution to make the American state “both


15 As historian Laura Edwards notes, southern slaveholders embedded slavery within the governing structures of the new republic as a whole. Debates concerning slavery helped shape America’s distinct form of federalism, which in turn shaped the nation’s—not only the South’s—prisons. See Laura F. Edwards, “Southern History as U.S. History,” Journal of Southern History 75, no. 3 (August 2009): 533-564.
“one great nation and many relatively…small, local communities.”

Before the mid-twentieth century, local officials had broad discretion to shape prison practices, which helps explain the extreme—though not unique—racialization of imprisonment in the South. During the 1960s, the federal government took on law enforcement functions previously performed by states and localities, which eroded many regional differences in criminal justice systems. Yet power never flowed exclusively from the peripheries to the center. As Elizabeth Kai Hinton has show, the national project of crime control required building the capacities of state and local institutions such as courts, prisons, and police forces—which the federal government did through grants and other incentives. By examining the reshaping of North Carolina’s prisons, my study illuminates how state and local officials shifted their practices in response to growing federal involvement. It also exposes how state and local customs shaped the implementation of federal laws.

The federal government’s growing involvement in prison practices was tied to its expansion into the field of welfare protections, a connection that historians have largely overlooked. During the nineteenth century, Americans understood both the upkeep of

---


prisons and the provision of poor relief as part of local communities’ obligation to maintain “the peace” by providing for individuals who were dependent on the state.\textsuperscript{18}

Throughout the century that followed, the fate of prisons and welfare programs remained closely aligned. In North Carolina, for instance, the General Assembly created a unified state-level prison system in 1931, just four years before the state and federal government assumed increased control over poor relief as part of the New Deal. Similarly, in the 1960s, the Johnson administration developed the first federal grants for state prisons as part of its “Great Society” program, which further expanded the federal government’s role in securing Americans’ social safety net. The enduring link between welfare and prison policy helps to explain not only the federal government’s growing role in local punishment practices during the second half of the twentieth century but also the turn to “tough” welfare policies during the 1970s.\textsuperscript{19}

As the federal government took on new responsibilities, it also offered Americans new rights. In turn, ordinary Americans—with African Americans in the vanguard—grasped hold of the language of rights to demand the federal government work harder to

\textsuperscript{18} By ‘the peace,’ I mean the antebellum legal system in which local judges and juries issued rulings based on the perceived needs of their particular communities rather than on abstract legal principles or precedents. See Laura F. Edwards, \textit{The People and their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South} (Chapel Hill: University of North Carolina Press, 2009), 3-15.

secure their equality and security. The Supreme Court responded to their claims by creating or extending a host of new constitutional rights, including the freedom of speech, rights to be free from discrimination based on race or sex, and the due process rights of the criminally accused. Until the mid-1930s, in contrast, less than ten percent of the Supreme Court’s decisions involved individual rights other than property rights. The court devoted most of its attention to business disputes, often supporting property-rights claims by wealthy individuals. That changed, dramatically. By the late 1960s, almost seventy percent of the court’s decisions involved individual rights. The court had essentially proclaimed itself the guardian of ordinary Americans’ rights—including those of prisoners. First, in 1962, the court ruled in Robinson v. California (1962) that the Eighth Amendment’s ban on cruel and unusual punishment extended to state—rather than only to the federal—government. Next, in 1964, the court opened the door to a wide range of prisoners’ rights claims by ruling in Cooper v. Pate that inmates could sue state officials in federal court for violations of their constitutional rights.

---


“Silencing the Cell Block” reveals how the federal government’s expanded role in prison policy during the 1960s fueled a prisoners’ movement that had already begun to burn. In 1965, the U.S. Congress passed the Law Enforcement Assistance Act with the goal of developing new criminal justice standards and providing states with some funding to reach them. The ideology undergirding the act reflected racially biased midcentury liberal thinking of the kind most clearly articulated in Daniel Patrick Moynihan’s 1965 *The Negro Family: The Case for National Action*, which connected blackness to criminality.²³ Still, the act promised prison reforms that included new education and vocational training programs, improved medical care, and the protection of inmates’ new rights. While state corrections officials attempted to revise their prison policies to reflect the new goals and standards, older state customs proved difficult to dislodge, making the reform process slow and uneven. State and federal officials’ failed promises helped mobilize an inmate population already inspired by the civil rights and Black Power activism beyond the prison gates.²⁴ By the late 1960s, inmates were in full-scale rebellion. In 1967, there were five prison riots. The following year the number tripled.²⁵


²⁴ For scholarship on how civil rights and Black Power activism influenced the prisoners’ rights movement, see especially Chase, “We are not Slaves”; Chase, “Self-taught, Cell-taught”; Berger, *Captive Nation*; and Thompson, *Blood in the Water*.

North Carolina’s Central Prison, the state’s maximum-security penitentiary in Raleigh, saw a strike in April 1968 that left six inmates dead and seventy-seven injured.

From the ashes of the 1968 protest, North Carolina’s inmates formed the Prisoners Labor Union. In so doing, inmates turned against their keepers the state officials’ longstanding reliance on inmates’ forced labor to finance the state prison system. By tracing the rise of North Carolina’s Prisoners Labor Union, “Silencing the Cell Block” bridges the gap between the rich body of scholarship on imprisoned labor during the nineteenth and early twentieth centuries and the growing literature on the prisoners’ rights movement. Since the antebellum era, local and state officials across the nation had expected imprisoned men and women to work to pay for their upkeep.26 Scholars have demonstrated how after the Civil War, whites took advantage of this longstanding practice to effectively re-enslave newly emancipated African Americans by imprisoning them and then leasing them to businesses and plantations.27 Although

26 Indeed, northern states before the Civil War regularly leased inmates to private industries, leading Congress to exempt prisoners from the Thirteenth Amendment’s ban on slavery and involuntary servitude. See Rebecca McLennan, The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776-1941 (Berkeley: University of California Press, 2008).

convict leasing was abolished during World War II, North Carolina continued to use prison labor in a haunting manner. Until the late 1970s, the General Assembly depended on prisoners’ work on state roads and highways and in prison factories, workshops, and farms to help fund the state’s prison system. Not only did this budgetary system make the exploitation of inmates a financial imperative, but it also sowed the seeds of prisoners’ rebellion. By refusing to work, inmates could threaten the prison system’s viability.

Inmates’ choice to organize through unionization highlights an overlooked influence on prisoners’ activism during the 1970s: the labor movement. In North Carolina, inmates drew inspiration from civil rights and Black Power activism, but they also looked to the state’s flourishing movement to organize “public sector” workers employed by local governments and the state, among them sanitation workers, teachers, and firefighters. In the late 1960s, civil rights and antipoverty activists reinvigorated the labor movement by tying calls for unionization to racial and economic justice. By the early 1970s, the unionization rate among public sector workers had reached an all-time high. Union lobbyists in Washington D.C. believed they were on the verge of passing federal legislation to assure collective bargaining rights for all government employees.

---

28 For a rare and illuminating study attuned to the influence of the labor movement on prison organizations, see Heather Ann Thompson, "Rethinking Working-Class Struggle through the Lens of the Carceral State: Towards a Labor History of Inmates and Guards," Labor: Studies in Working-Class History of the Americas 8, no. 3 (2011).

29 Richard Freeman, “Unionism Comes to the Public Sector,” Journal of Economic Literature 24, no.1 (March 1986): 41-86; Leo Troy, The New Unionism in the New Society: Public Sector Unions the
Similar to public sector workers beyond the prison gates, inmates viewed themselves as laboring for the state. By forming their own union, prisoners hoped to attach their movement to an organizing campaign that seemed to be winning. Inmates’ unionization effort, then, underscores the creativity of those in the prisoners’ rights movement as it highlights the vibrancy of public sector organizing efforts in the late 1960s and early 1970s.

***

At the heart of “Silencing the Cell Block” is an examination of the structural and ideological problems inmates, judges, and government officials encountered when attempting to extend constitutional rights to prisoners. In 1973, inmates formed the

---

30 Scholarship on Reconstruction demonstrates the difficulties the federal government faced while attempting to enforce African Americans’ rights after the Civil War. Not only did the rights framework clash with local and state officials’ understandings of law, but the federal government also lacked the bureaucratic power necessary to enforce African Americans’ new rights. During the “Second Reconstruction” during the twentieth century, the federal government also struggled to enforce Americans’ new rights. Although the capacity of the federal government had expanded greatly since the Civil War, Americans continued to interact with the government most often through their state and local governments. For scholarship demonstrating the difficulties the federal government faced expanding and enforcing rights after the Civil War, see Laura F. Edwards, *A Legal History of the Civil War and Reconstruction: A Nation of Rights* (Cambridge: Cambridge University Press, 2015); and Mary Farmer-Kaiser, *Freedwomen & the Freedman’s Bureau* (Fordham: Fordham University Press, 2010). For scholarship that demonstrates the difficulty of expanding federal rights during the last half of the twentieth century, see Charles R. Epps, *Making Rights Real: Activists, Bureaucrats, and the Creation of the Legalistic State* (Chicago: University of Chicago Press, 2009); Lauren B. Edelman, *Working Law: Courts, Corporations, and Symbolic Civil Rights* (Chicago: University of Chicago Press, 2016); and Edward Balleisen, *Fraud: An American History* (Princeton: Princeton University Press, 2017).
North Carolina Prisoners Labor Union in part because the “rights revolution” seemed too slow in transforming the state’s prisons. Between 1968 and 1974, the annual number of constitutional rights cases contesting prison conditions or practices swelled from 218 to 8,000 lawsuits filed.\textsuperscript{31} In North Carolina, the number of cases filed per year grew from seventeen to 486 during the same time period.\textsuperscript{32} Yet judges ruled in prisoners’ favor in only two percent of the cases, and even then, as state officials, lawyers, and judges jostled over the remedies, they often blunted inmates’ victories. Then, once won, prisoners’ new rights sometimes took years—or even decades—to enforce.

The path of \textit{Bounds v. Smith} is a case in point that illustrates why inmates turned to union organizing. In 1977, the Supreme Court ruled that state prisons had to provide prisoners with “meaningful” access to the courts by establishing prison law libraries or a legal services program. Until 1989, the North Carolina Attorney General’s Office and the Department of Corrections delayed implementation of the court’s rulings.\textsuperscript{33} By forming a union, members of the Prisoners Labor Union hoped to leverage their labor power to compel the enforcement of their rights and to push for deeper reforms.

Prisoners’ struggles did not go unnoticed. “Silencing the Cell Block” extends the scholarship on cause lawyering after the 1960s by illuminating prison reform efforts of

\begin{footnotesize}

\textsuperscript{32} John Larkins to Franklin Dupree, 12 December 1972, Folder 6, Box 1, John Larkins Papers, East Carolina University (hereafter cited as Larkins Papers).

\end{footnotesize}
the American Civil Liberties Union’s (ACLU). The ACLU became involved as part of its broader attempt to “bring the Bill of Rights to bear” on government institutions such as the military and mental institutions. In 1972, after a massive protest at Attica Correctional Facility in New York left forty-three people dead, the ACLU formed its National Prison Project. The project sought to push the field of prisoners’ rights forward, especially through the expansion of inmates’ First Amendment rights to free speech and assembly. At the state level, the North Carolina Civil Liberties Union (NCCLU), in conjunction with the National Prison Project, represented union members in federal court after the Department of Corrections attempted to ban the organization. But the ACLU also recognized that litigation could never remedy all problems behind bars. Moved to action by hundreds of inmates’ requests for assistance, NCCLU lawyers worked with state attorneys and corrections officials to develop grievance procedures internal to the prison system, which they hoped would resolve many of the reasonable complaints the federal courts lacked the ability—or the desire—to resolve.


My account of the NCCLU’s focus on developing prison grievance procedures sheds fresh light on liberals’ broader pursuit of procedural reforms in the field of criminal justice. Scholars such as Naomi Murakawa have highlighted how liberals’ efforts to “perfect” criminal justice institutions by making them more “rights-based” and “rule-bound” directed attention away from the race and class inequities undergirding the rise of mass incarceration.36 “Silencing the Cell Block” tells a more complicated, indeed, tragic, story. Many of the lawyers affiliated with the NCCLU and the National Prison project supported efforts to reduce America’s reliance on imprisonment. Some even supported the abolition of prisons altogether. But they also recognized inmates’ immediate need for assistance. They focused on implementing procedural protections behind bars because they rightly believed government officials would be most open to such improvements. While such reforms could not stem the tide of mass incarceration, they did succeed in eliminating some of the worst abuses inside the nation’s prisons.37

Ultimately, “Silencing the Cell Block” is a story of how a campaign for institutional reform with strong backing and seeming promise came to be constrained by the U.S. Constitution and state and federal politicians’ indifference to prisoners’ plight.


Faced with horrific abuses behind bars, inmates and their lawyer allies reached for a powerful tool in the post-1960s era: constitutional rights litigation. Rooted in individual rights claims, the prisoners’ litigation did manage to win—at least in theory—due process protections, freedom from violence, and access to basic necessities such as food, clothing, shelter, and medical care. Yet the structural inequalities buttressing America’s unusually harsh punishment practices remained firmly intact: the disproportionate incarceration of the poor and people of color, for instance, was beyond the reach of rights claims. That would require collective action and political will to dislodge.

***

“Silencing the Cell Block” began as a social history focused on the vibrant activism inside the prisons and among a surprising array of allies in the “free world.” Struck by the grassroots energy propelling criminal justice reform in the 1970s, I wanted to understand why this movement fell short of its goals. I assumed I would find the answer by studying politics, broadly construed, in an era that witnessed the rise of a powerful conservative movement that shifted the entire political spectrum rightward. Yet I discovered in the archives that politics alone failed to explain the endurance of America’s harsh penal practices. The activists were always fighting an uphill battle against the U.S. Constitution, which channeled them into places they had not intended to go. To understand the fate of the prisoners’ movement, I learned, I had to understand how the law shaped and constrained activists’ visions of justice. I had to pay attention, as it were, to the legal construction of struggle.

My quest to illuminate the interplay between the inmates’ movement and the law
took me to archival collections, some never before consulted by scholars, in North Carolina and across the nation, where I examined the correspondence of lawyers, judges, politicians, and grassroots activists. But inmates’ own voices sit at the center of “Silencing the Cell Block.” In their quest to reform North Carolina’s prisons, imprisoned men and women filed thousands of federal lawsuits and wrote thousands of letters to solicit assistance from people in the free world. In reading these documents, I learned to treat the law as a discourse that frames and directs the actions and ideas of the people who use it. I paid close attention to how prisoners articulated their complaints, rights claims, and hopes for the future. I then traced how legal actors translated inmates’ words, often transforming their meaning in the process, to capture the messy and circuitous way that prisoners’ grievances shaped the law and the law shaped prisoners’ grievances.

The dissertation charts the transformation of North Carolina’s prisons through a largely chronologically story. Chapter One, “Under the Gun,” examines the state and federal governments’ growing involvement in prison policy, once the exclusive terrain of local authorities. During the 1960s, the federal government—through its legislative, executive, and judicial branches—began expanding prisoners’ rights and developing new standards for state prisons. But deeply entrenched customs and older legal concepts made reform uneven. This disconnect between federal officials’ promises and inmates’ reality, I show, helped give rise to the massive strike in 1968 at North Carolina’s maximum-security prison in Raleigh. Chapter Two, “We had the Right to Remain Silent But We Ain’t Gonna Stay that Way,” traces the rise of the North Carolina Prisoners Labor Union in the aftermath of the 1968 strike. It reveals how inmates drew inspiration from—and
sometimes worked alongside—civil rights and public sector labor organizers beyond the prison gates. Together, the activists developed a multiracial union that sought to leverage inmates’ labor to achieve meaningful change behind bars. Chapter Three, “A Hazardous Enterprise,” marks a key turning point in the prisoners’ story. Following the Prisoners Labor Union to the Supreme Court in 1977, it demonstrates how state and federal officials pointed to North Carolina’s recently implemented inmate grievance procedures to persuade the court to limit prisoners’ First Amendment rights to free speech and association. After *Jones v. North Carolina Prisoners Union*, corrections officials crushed the Prisoners Union with new policies that restricted inmates’ ability to organize.

Chapters Four and Five recount shifts in prisoners’ relationship to the law after the union’s demise. Chapter Four reveals how civil liberties lawyers turned to Eighth Amendment litigation to reform the prisons after the Supreme Court curtailed inmates’ First Amendment rights in *Jones*. By bringing lawsuits arguing that the increasingly overcrowded conditions inside the nation’s prisons constituted “cruel and unusual punishment,” the lawyers hoped to convince officials to adopt less costly alternatives to incarceration. Yet state leaders, influenced by the federal government’s inaction and by tough-on-crime politics, built expensive new prisons instead.

Chapter Five documents the closing of the federal courts to prisoners’ constitutional rights claims during the 1990s. Ultra-conservative members of Congress, led by North Carolina’s U.S. Senator Jesse Helms, justified the passage of legislation curtailing inmates’ access to the courts by pointing to federal judges’ ongoing efforts to reduce the number of non-actionable prisoner claims that reached their chambers. The
judges had sought to streamline the judicial process, but conservatives adapted their language—made powerful by judges’ nonpartisan status—to depict all inmates’ claims as petty and burdensome, “frivolous,” in the legal language which Helms and others on the right enlisted. Their efforts culminated in the Prisoner Litigation Reform Act of 1996, which placed nearly impenetrable procedural hurdles between inmates and the courts.

Finally, a conclusion entitled “The Underside of Reform” takes stock of the prisoners’ movement and its relationship to U.S. Constitution.
Chapter 1

“Under the Gun”: Convicted Workers and Their Keepers at Midcentury

In 1928, Dallas Cole, an inmate working on the chain gang in Carthage, North Carolina, wrote a desperate letter to the superintendent of the State Board of Charities. Working on the roads from dusk until dawn, he was not getting “half enough” food to sustain him. Each prisoner received two meals a day: “corn bread and black molasses” for breakfast and “corn bread and some kind of vegetables” for dinner. “Please ma’am, I’m begging you,” Cole wrote, “We are not asking for a hotel feast but for enough wholesome [sic] food to keep the body from starving.”

Forty years later, in 1968, Thurlow Belk made a similar complaint about life in the Southern Pines Prison Unit, where inmates continued to work on the roads. He too received just two “skimpy meals” a day, often consisting of “three small portions” of “bread, grits, and eggs.” Belk, however, felt no need to beg for assistance. Instead, he filed his complaint with the U.S. District Court for the Eastern District of North Carolina (E.D.N.C) because, as he told the judge, “such uncalled for, unnecessary, and unlawful punishment” violated his “rights under the U.S. Constitution.”

---

1 Dallas Cole to Kate Burr Johnson, Superintendent of the State Board of Charities, 5 August 1928, Folder Prisoner Complaints, 1915-1926, 1 or 2, Box 8, Subject Files 1891-1952, State Board of Social Services Records (hereafter cited as Social Services Records), North Carolina State Library and Archives, Raleigh, North Carolina.

2 Thurlow Belk v. Central Classification Committee et al., 16 August 1968, Folder Thurlow Belk, Box 2, Civil Action Case Files (hereafter cited as Civil Action Case Files), Department of Corrections Records, North Carolina State Library and Archives, Raleigh, North Carolina.
Unlike Cole, Belk had lived through the rights revolution that had helped give rise to a robust federal state charged with promoting the welfare of its citizens. During the Depression and World War II, the federal government assumed new responsibilities, such as poor relief, wartime production, and price controls, and offered Americans new rights, most notably to political and social security. It also required great sacrifices through a large-scale draft and the first income tax on non-wealthy Americans. The result, by the second half of the 1940s, was an embrace of rights language tied closely to the concept of national citizenship.³ During the next two decades, ordinary Americans—with African Americans in the vanguard—drew on the language of rights to demand the federal government work even harder to ensure their equality and security. Federal officials answered their calls, albeit in more limited ways than many social movement actors had envisioned.⁴ During the mid-1960s, before Belk landed at Southern Pines in 1967, he witnessed the passage of the Civil Rights Act and the Voting Rights Act, the dramatic expansion of federal benefits to the poor and elderly, and the creation of the first federal programs to develop prison standards and to provide grants to local and state criminal justice agencies. Belk also watched as the federal courts opened their doors to a vastly expanded range of ordinary Americans’ rights claims, including those of men and women


behind bars.\textsuperscript{5} Although Belk’s complaint resembled Cole’s, he, like hundreds of inmates in the late 1960s, turned with confidence to the federal courts rather than to state officials for aid because he understood the federal government as the primary protector of vulnerable Americans’ welfare.

Yet the federal courts struggled to respond to inmates’ claims because local officials had long exercised vast discretionary power over imprisoned men and women. Before the 1960s, the federal government left the management of inmates to local and, later, state officials. In the nineteenth century, local officials in North Carolina managed prisons according to local custom and personal whim. They viewed inmates, like recipients of local poor relief, as sacrificing their rights when they became “wards of the state.”\textsuperscript{6} During the Progressive era, welfare reformers, shocked by inmates’ treatment inside local prisons, began advocating for the creation of a unified state prison system, which North Carolina created in 1933. But they too saw inmates as people without rights. Prisons needed to be regulated by the state, reformers reasoned, precisely because prisoners lacked the rights necessary to help themselves. When imprisoned men and women began making rights claims in federal court, then, they were asking judges to flip


\textsuperscript{6} I borrow the phrase “wards of the state” from Lochner v. New York, 198 U.S. 45 (1905). In Lochner, the Supreme Court contrasted rights-bearing individuals to “wards of the state,” dependents who needed government protection because they lacked the ability to control their own fate.
more than a century of legal doctrine on its head. Inmates demanded improved prison conditions—not because they lacked rights—but because they believed they had the right to a certain standard of treatment. Understandably, federal judges approached inmates’ lawsuits with caution. Most prisoners who filed federal lawsuits in the late 1960s found their cases promptly dismissed. Indeed, the E.D.N.C. threw out Belk’s claim, noting that in most cases “the state ha[d] the supreme authority to manage its penal institutions.”

Prisoners’ rights claims also proved difficult to square with North Carolina’s longstanding reliance on inmates’ cheap coerced labor to finance its prison system and to maintain its roadways. Until the 1970s, the General Assembly largely paid for its prisons through inmates’ labor, a practice originating in the antebellum era. After the Civil War, local and state officials put inmates to work first on the railways and later on the county and state highways. Not only did this practice succeed in making North Carolina’s

---

7 Thurlow Belk v. Central Classification Committee et al., 16 August 1968, Folder Thurlow Belk, Box 2, Civil Action Case Files.

prisons self-supporting, but it also revived the state’s once-crumbling infrastructure. By the end of World War II, North Carolina had become known as the “Good Roads State,” a point of pride for state politicians who sought to attract new businesses to the region by depicting their state as modern and forward looking. When federal officials in the mid-1960s began to develop new prison standards and to extend new rights to inmates, their efforts clashed with North Carolina’s ongoing exploitation of inmates’ labor. Prison reform cost money, and North Carolina officials were unwilling to pay it. While Congress created a grant program for state and local criminal justice agencies in 1965, only a small portion of the funds went to prisons, limiting the state’s incentive to change its punishment practices.

By the late 1960s, North Carolina’s prison system, like many across the nation, was a powder keg that could explode at any minute. Inmates understood themselves as citizens with the right to protection from abuse and inhumane conditions. Federal officials, through courtroom decisions and new legislation, suggested they too believed prisoners had some rights. But meaningful change was slow to take hold. Conscious of national trends, state officials in North Carolina sought to institute reforms without expanding the prison budget or taking inmates off the roads, only leading to further

---

9 For imprisoned laborers’ role in building the New South, see Lichtenstein, *Twice the Work of Free Labor.*

frustration behind bars. In April 1968, prisoners confined to Central Prison, the state’s largest maximum-security penitentiary, reached their breaking point. Hoping to leverage their labor to win changes behind bars, the inmates went on strike. By the next morning, six inmates lay dead, seventy-seven were injured, and a new phase of the prisoners’ rights movement had begun in North Carolina.

The Self-Supporting Prison

In 1868, delegates to North Carolina’s Constitutional Convention added a provision to the state’s new constitution mandating that “all penal and charitable institutions be as nearly self-supporting as [was] consistent with the purposes of their creation.”¹¹ Largely comprised of white Unionists and free African Americans, the delegation understood this provision as reflecting both longstanding tradition and contemporary best practices.¹² During the antebellum era, local officials in North Carolina expected prisoners to pay their own jail bills. If they were unable to pay, local officials seized their property and, if they lacked property, they were hired out to the highest bidder. As Rebecca McLennan has shown, North Carolina was not the only state that forced inmates to pay for their keep. Northern states before the Civil War regularly leased inmates to private industries, leading Congress to exempt prisoners from the

¹¹ North Carolina Const. of 1868, art. XI, § 11 (superseded 1967).

Thirteenth Amendment’s ban on slavery and involuntary servitude. Firmly entrenched in local custom and in state law, North Carolina’s practice of using inmates’ labor to finance its prisons haunted reform efforts well into the twentieth century.

Local and later state officials believed they could force inmates to labor because prisoners were people without rights. During the antebellum era, imprisonment was a profoundly local enterprise. Counties maintained jails, which most often shared space with poorhouses, but judges rarely sentenced men or women there for long periods of time. If imprisoned, convicts lost their ability to provide for themselves or their dependent family members, making them burdens on their communities. With this in mind, judges usually chose swifter methods of punishment such as whippings, public humiliation, or bodily mutilations, which left their mark but allowed convicts to get back to work. For the few inmates sentenced to jail for extended periods of time, labor was expected. Even those who had some property worked alongside “paupers” on the grounds of the “county home.”

Immediately following the Civil War, white Confederates drew on the longstanding practice of forcing inmates to work to reimpress recently emancipated African Americans into servitude. In 1866, state legislators passed a series of laws

---


15 For labor at county homes, which often doubled as jails, see, for example, Dorothea Lynde Dix, *Memorial Soliciting a State Hospital for the Protection and the Cure of the Insane* (Raleigh: Seaton Gales, Printer for the State, 1848. Online by Documenting the American South. Accessed May 26, 2017. http://docsouth.unc.edu/nc/dixdl/menu.html.
attaching heavy penalties to property crimes and breaches of contract, acts they believed African Americans were most likely to commit.\textsuperscript{16} They also passed legislation enabling local judges to sentence convicts “to work in chain gangs on the public roads of the county, on any railroad, or other work of internal improvement of the state.” Rather than sending convicts to jail, judges began turning them over to local business leaders or planters who put them to work under the guise of “repairing property damage wrought by the War.”\textsuperscript{17}

During Reconstruction, the state government gained some control over North Carolina’s local prisons while also solidifying inmates’ status as forced laborers. In addition to amending the state constitution to make penal and charitable institutions “self-supporting,” delegates to the 1868 Constitutional Convention abolished all forms of corporal punishment except for the death penalty in cases of murder, rape, burglary, or arson. They also provided for the establishment of a state penitentiary, which white southerners had long opposed, viewing it as a threat to local governance.\textsuperscript{18} To clarify the penitentiary’s place in North Carolina’s system of punishment, the Republican-led General Assembly passed a bill in 1869 creating a dual state and local prison system that

\textsuperscript{16} Douglas Blackmon, \textit{Slavery by Another Name}, 55.


\textsuperscript{18} North Carolina Const. of 1868, art. XI, § 2, 6, 7. In 1846, nearly seventy percent of North Carolina’s white male voters rejected a referendum on building a state penitentiary. In numerous editorials, residents warned that penitentiaries signaled impending “state tyranny” and threatened to “transform men into slaves” by forcing them to “labor directly under the lash,” a fate many argued was “worse than death.” See John Jameson, \textit{North Carolina Gazette}, June 6, 1846, quoted in Ayers, \textit{Vengeance and Justice}, 48.
remained intact until 1933. The law required judges to send all convicts with a sentence of greater than a year to the new penitentiary site in Raleigh while county commissioners maintained control of all inmates with sentences of less than a year. In 1870, when the first 241 inmates arrived at the site of the state penitentiary, prison guards put them straight to work building the new facility.  

Work on the state penitentiary was short lived. When Democrats regained control of state politics, they began hiring out inmates to railroad companies, a practice that not only covered inmates’ expenses but also promised a profit to the state. In 1872, the General Assembly contracted with the Richmond & Danville Railroad to complete the building of tracks from the mountains to the sea. As part of the deal, state legislators promised to lease inmates under their control directly to the company in exchange for a small fee or, more often, stock. Counties soon began leasing their inmates to railroads, too. As the companies’ demand for prison labor grew, the General Assembly adjusted the state’s laws so state and local governments could lease as many inmates as possible. By 1876, not only judges but also “other county authorities” and “mayors of cities and towns” could “farm out” inmates for their crimes, including the “non-payment of fines and court costs.” Soon, the county jails and construction site for the state penitentiary lay dormant. Nearly every inmate in the state—both men and women—belonged to the railroads.  


Life was hellish for the imprisoned laborers. North Carolina, like most states in the South, gave railroad companies full control over their inmates. Unlike the slave masters of the antebellum era, such companies had few incentives to keep their workers alive. New inmates were always entering the prison system, replacing those who died. With this in mind, the Richmond & Danville Railroad provided prisoners with only minimal food, clothing, and shelter. In 1875, Rebecca Harding Davis, a prominent regional writer who observed the railroad gang at work, described the conditions prisoners endured as “squalid and horrifying.” Inmates spent their days performing grueling labor: lifting and placing 500-pound iron rails, hammering spikes through rock, shoveling hard soil to level the tracks. In western North Carolina, they blasted through mountainous terrain with dynamite and then chiseled away at stone to create tunnels for the trains. After work, they ate only beans, cornbread, and molasses. The food was so poor that a scurvy epidemic broke out in 1881. In the evenings, Davis reported that inmates were “driven into a row of prison cars, where they were tightly boxed in for the night, with no possible chance to obtain either air or light.” With inmates forced to endure such gruesome conditions, nearly twelve percent died between 1875 and 1890 and


22 Ibid., 24-41.

an untold number returned to their communities with long-lasting physical and mental wounds.\textsuperscript{24}

During the late 1880s, labor and agricultural interests united to pressure the General Assembly to send fewer inmates to the railroads, arguing that the practice both weakened the power of free labor and granted railroad companies “special privileges.”\textsuperscript{25}

To maintain the prison system’s self-sustaining status, the General Assembly began to experiment with the plantation model of imprisonment that had begun to take hold in states such as Texas, Louisiana, and Mississippi. In late 1891, North Carolina leased 8000 acres of land in Halifax County to establish Caledonia Prison Farm. Over the next decade, the state acquired three more farms to add to Caledonia, totaling 14,600 acres.\textsuperscript{26}

The state’s prison farm empire expanded so dramatically because it was profitable. As North Carolinians learned during the two decades following the Civil War, railroad company stock often turned out worthless.\textsuperscript{27} Crop prices proved more dependable. Growing mostly cotton and corn, inmates labored from dusk until dawn “under the gun” of guards on horseback, creating a scene resembling plantation life before emancipation.

\textsuperscript{24}McKay, “Convict Leasing in North Carolina,” 22-23.

\textsuperscript{25}For labor’s campaign against convict leasing beginning in the 1880s, see Shapiro, \textit{A New South Rebellion}.

\textsuperscript{26}North Carolina State Penitentiary, \textit{Biennial Report of the Board of Directors, Architect, Deputy Warden, Steward and Physician} (Raleigh, North Carolina, 1902.)

\textsuperscript{27}McKay, “Convict Leasing in North Carolina,” 56; Lichtenstein, \textit{Twice the Work of Free Labor}, 76-77.
After the harvest, farm officials sold the crops on the open market, returning the profits to the state coffers.  

While inmates’ labored in the fields, a new group of state and local leaders began advocating for a different form of prison labor. They wanted to put inmates to work building county roads “for the good of all North Carolinians.” These white, male, and middle-class leaders drew inspiration from a new forward-looking and consciously modern “progressive” reform movement sweeping the nation in the last decade of the nineteenth century. Throughout the United States, this movement manifested itself in many ways, but it arose from the distinct social and cultural environment created by the revolutions of the 1800s: the market revolution, the communications revolution, the transportation revolution, and the industrial revolution. Progressives came from all walks of life, and they participated in a variety of local movements, often tied to national and even international organizations. In North Carolina, most Progressives—regardless of race, gender, or class—shared the core belief that their state, like the rest of the South, had fallen far behind the rest of the United States in terms of its social, economic, and political development. Most white Progressives, including the new advocates of inmates’ use on the roads, shared yet another value: a commitment to white supremacy and racial

---


segregation, a belief they viewed as perfectly compatible with their broader quest for progress.\textsuperscript{31}

Drawing inspiration from a burgeoning national “Good Roads Movement” spearheaded by the U.S. Department of Agriculture, progressive state and local leaders argued that North Carolina’s poor road conditions impeded the state’s economic growth. Prior to the late-nineteenth century, counties maintained their roads by compelling all able-bodied men to work the roads for a few days each year or to pay a fine. “Good roads men” claimed such practices led to road conditions so poor that wagons struggled to transport farm and industrial products to market.\textsuperscript{32} Often farmers or manufacturers themselves, they advocated for massive road construction projects as part of a broader effort to “upbuild” North Carolina by “rescu[ing] it from the mud and mire of a neglected past.” To complete these projects, good roads men looked to the state’s largely black inmate population, who, they argued, were well suited to such hard labor because of their years of working in the fields.\textsuperscript{33}


While a few urban counties experimented with convict road gangs in the 1890s, the Good Roads Movement really gained traction after 1898 when white progressives took control of North Carolina’s government after waging a successful campaign premised on white supremacy. Once in office, progressive politicians such as Governor Charles Aycock advocated for numerous reforms in the fields of education, social welfare, and economic development while also supporting legislation solidifying Jim Crow. In 1902, state officials organized a convention on the state’s roads, leading to the formation of the North Carolina Good Roads Association (NCGRA). At the convention, good roads advocates urged county commissioners to use inmates on their road projects because they “cost less than one-half of what would have been paid to hired labor to do the same work” and were “more efficient” than free workers because there was “more regularity in the control of their labor.” Inmates, after all, could not quit their jobs.

The NCGRA’s advocacy paid off. Between 1902 and 1912, the number of counties with road gangs rose from forty-five using 675 inmates to fifty-five using nearly 2500 inmates, two-thirds of the state’s entire inmate population. By 1910, the demand for convict laborers was such that local judges, under pressure from county commissioners, began to disregard state laws compelling them to send all individuals

34 For more information about the violence and white supremacy campaign that brought white Progressives to power in 1898, see Gilmore, Gender and Jim Crow, 91-119; David Cecelski and Timothy Tyson eds, Democracy Betrayed: The Wilmington Race Riot of 1898 and its Legacies (Chapel Hill: University of North Carolina Press, 1998).

35 Proceedings of the North Carolina Good Roads Convention, held at Raleigh, February 12 and 13, 1902, 10.

36 Brown, The North Carolina Chain Gang, 32.
with a sentence of one year or more to the state prison system, choosing instead to send inmates directly to county chain gangs. To keep up, state prison officials got into business of road construction themselves. In 1911, they created their own chain gangs to labor on the roads surrounding Raleigh. By 1914, the warden of the state’s largest prison farm complained that he was left with only the “old, disabled, and weak” inmates. Everyone else was on the roads.

The Fight for State Control

By the late 1910s, the conditions in the county road camps began to draw criticism from a different set of North Carolina Progressives: individuals affiliated with the State Board of Charities and Public Welfare. Established under the 1868 state constitution, the state board remained largely inactive until 1917 when the North Carolina Conference for Social Services, a statewide network of socially minded reformers, pressured the General Assembly to fund and reorganize it. Throughout the early twentieth century, the board members advocated for new state laws designed to regulate practices in state and county road camps. Inmates, in turn, viewed state board members as potential allies and sent them hundreds of letters begging for assistance. The letters motivated the

---

37 Ibid., 33-34.

38 Proceedings of the North Carolina Good Roads Convention, held at Raleigh, March 6 through 7, 1914, 15.
state board to lobby the General Assembly for greater control of local prisons. But the localism that had long defined North Carolina’s prison system remained firmly entrenched. Not until counties temporarily halted road construction during the Great Depression would North Carolina create a unified state prison system.

Comprised of white, middle-class men and women, the state board never questioned the idea that inmates were people without rights or that they should labor for their own support. The board simply believed that prison officials needed to adopt a more scientific approach to managing inmates. Board members viewed North Carolina’s largely African American inmate population like misbehaving children who, with proper training, could become productive members of society. For African Americans, good citizenship required productive labor. Board members joined good roads advocates in supporting the use of prison labor on the roads, suggesting it helped inmates appreciate the dignity of labor. While they opposed harsh disciplinary tactics such as floggings, they did so for the same reason some people were beginning to oppose beating animals: corporal punishment failed to teach inmates how to behave; it only made them mean. To truly prepare prisoners for freedom, the Board members argued, North Carolina’s leaders needed to implement a disciplinary regime rooted in a system of privileges, incentives, and probation. Inmates’ future, they believed, was entirely in their hands.

---

39 For a comprehensive study of inmates’ experience laboring on the roads as well as the North Carolina State Board of Charities’ prison reform efforts, see Susan Thomas, “Chain Gangs, Roads, and Reform in North Carolina, 1900-1935” (Ph.D. diss. University of North Carolina-Greensboro, 2011).

40 See Howard W. Odum, “Memorandum of Discussion, Meeting of Prison Board and Commission, Raleigh, Monday, September 15, 1930,” Folder: Governor Gardner’s Commission to Study Prison
Soon after the board’s creation in 1917, its members succeeded in persuading the General Assembly to adopt a new law regulating the few road camps controlled by state—rather than county—officials. Long accustomed to managing their camps however they saw fit, state prison officials resented the law and largely disregarded it. Heralded by Raleigh’s *New and Observer* as the “most enlightened prison policy in the nation,” the law divided inmates into classes based on their crimes, instituted a small incentive wage program, limited work to ten hours a day, prevented guards from drinking on the job, and compelled state officials to create opportunities for recreational, educational, and religious activities. It also eliminated flogging as an acceptable punishment for all but the most “incorrigible” inmates, and even they could only be flogged under the watchful eye of “the prison physician or chaplain.”

State prison officials expressed outrage at the law’s passage. As inmates reported to board members during a visit to the state penitentiary, the warden told them that the new law was “one of the damndest that ever was made” and that “he”—rather than the state—“[was] the law himself.”

Recognizing that the law’s implementation would be an uphill battle, the board began giving copies of the new law to state inmates and encouraging them to write if they witnessed an infraction. Soon after, prisoners from both state and county prison camps began flooding the state board’s office with letters, signaling the pamphlets’ wide

---


42 Inmates to State Board, 6 March 1917, Folder: Prison Complaints, 1915-1929, 1 of 2, Box 8, Social Services Records.
circulation. Viewing the new law as a tool to mobilize board members, many referenced it directly in their letters. Alluding to the law’s ban on alcohol consumption, inmates from the Rocky Mount chain gang informed the board in 1924 that their guard “didn’t regard the law” because he was “drunk all time.” He “don’t know what he’s doing half the time,” they wrote, “he just carries a hickory stick and beats men on the face with it.”43 Two years later, a man from Reidsville prison camp notified the board that guards were disobeying the ban on flogging because he was “whipped without the presents [sic] of a doctor or a preacher.”44

Many letters described gruesome beatings—instances in which inmates were whipped with their “pants down till the blood [came] to a pool” and were hit indiscriminately “with sticks, shuvels, and everything that cood [sic] be used on humans or beasts.”45 But others described instances of psychological abuse that North Carolina’s largely African-American prison population endured at the hands of its all-white prison staff. Completely in control of inmates, guards amplified the practices of white supremacy common in the free world by working to make prisoners feel degraded, powerless, and less than human. One letter from a Salisbury chain gang member begged the board to intervene because guards only allowed inmates to use the bathroom once a

---

43 Inmates to State Board, 5 January 1924, Folder: Prison Complaints, 1915-1929, 2 of 2, Box 8, Social Services Records.

44 Inmate to State Board, 12 April 1926, Folder: Prison Complaints, 1915-1929, 1 of 2, Box 8, Social Services Records.

day. “It makes no difference if we do our business in our pants,” he wrote.⁴⁶ Another informed the board that a guard took his cap “and kept it four days” forcing him “to go in the sun and rain” with no protections.⁴⁷ In Brunswick County, prisoners complained that the guards feed them “on the wood pile with the dogs.” Other guards abused imprisoned women in front of men in order to underscore the powerlessness of both victims and witnesses. “Even our colored girls [get] knocked about,” inmates from the Mecklenburg County Chain Gang wrote in 1924. “Please help us. If not anything, keep the colored girls from getting whipped...We just can’t stand it.”⁴⁸

While some prisoners mentioned the 1917 law in their letters, most urged the board to act not out respect for the law but out of recognition that they were human beings deserving of protection from abuse. Many prisoners underscored their humanity by comparing their treatment to that of dogs or other animals. “The poor colored people here don’t get justice at all,” one inmate from the Salisbury chain gang wrote in 1926, “They got dogs they treats better than the colored prisoners.”⁴⁹ Others described conditions “not sanitary enough for a dog to stay in,” cruel guards “not fit to be over a lot


⁴⁸ Inmates to State Board, 14 July 1924, Folder: Prison Complaints, 1915-1929, 2 of 2, Box 8, Social Services Records.

⁴⁹ Inmates to State Board, 14 February 1926, Folder: Prison Complaints, 1915-1929, 2 of 2, Box 8, Social Services Records.
of dogs,” and prison practices designed to make inmates “feel like dogs.” Inmates argued that, regardless of their crimes, no one should be subject to such inhumane treatment. “We no [sic] that we are prisoners,” one group of inmates wrote in 1919, “but we is [sic] still human as other people.”

Inmates also urged board members to act by reminding them that they were valuable members of families and communities. A prisoner on the Southern Pines road gang told the board that he was “marrid and got one child” after describing being choked so hard by a guard that he “could not holler.” Another prisoner informed the agency that he had a wife and two little children—“a girl 7 years old a boy 3”—to whom he would “like very much to return home…again alive,” though he feared he would not make it “for the way he [was] treated.” After World War I, veterans who found themselves laboring on road gangs used their service in the military to persuade outsiders to intercede on their behalf. Men on the Forsyth County Chain Gang described eating “bread as a hard as rock” from pails that were “never clean” while laboring on the roads. “We are asking

---

50 Inmates to State Board, n.d.; Inmate to State Board, 1921; Inmate to State Board, undated; Inmate to State Board, undated, Folder: Prison Complaints, 1915-1929, 1 of 2, Box 8, Social Services Records.

51 Inmates to State Board, 28 May 1919, Folder: Prison Complaints, 1915-1929, 1 of 2, Box 8, Social Services Records.

52 Inmate to State Board, undated, Folder: Prison Complaints, 1915-1929, 2 of 2, Box 8, Social Services Records.

you for help governor. We are crying to you for help,” they wrote, “every one of us has
been in the army camp and served 2 years and some 18 months in the army.”

Savvy strategists, imprisoned men and women recognized the way their race
might shape the board’s response to their requests. Expecting skepticism, many black
inmates addressed biases head on: “I am a colored man and I know you think they all
complain,” one inmate from the Mount Olive Chain Gang wrote in 1925, but some of the
men “fare mighty bad” in the camp. Others listed white witnesses and inmates who
could back up their stories. “Go and send someone to Mr. John Holmes,” one inmate told
the board, “he is a nice white man. He will tell you just how this camp is being
managed.”

White inmates, on the other hand, used the racial politics of the board to
their advantage. During the 1920s, a small number of road camps consisted of both white
and black inmates. Technically, guards were supposed to keep the two races separate, but
they rarely did so in practice. In 1928, inmates from the Rockingham road camp, a
mixed-race camp, told the board that “us white boys are treated like dogs.” Not only did
they have to eat food that was “handed [to them] from the negros” but they had to “stay
with those negros,” too.

---

54 Inmates to State Board, 2 April 1920, Folder: Prison Complaints, 1915-1929, 2 of 2, Box 8, Social
Services Records.

55 Inmate to State Board, 1925, Folder: Prison Complaints, 1915-1929, 2 of 2, Box 8, Social Services
Records.

56 Inmates to State Board, undated, DSS-SBC, Folder: Prison Complaints, 1915-1929, 1 of 2, Box 8, Social
Services Records.

57 Inmates to State Board, 3 September 1928, Folder: Prison Complaints, 1915-1929, 1 of 2, Box 8, Social
Services Records.
North Carolina’s State Board of Charities heard the inmates’ complaints, and they fought—with little success—to expand the board’s reach into both county and state road camps. In 1921, Kate Burr Johnson, the superintendent of the Board of Charities, called on the North Carolina Conference for Social Services to launch its own investigation into prison conditions around the state. Released a year later, the conference’s report called for the State Prison Department to assume control of the county road camps, which would make them accountable to the State Board of Charities. The report also urged the General Assembly to ban all forms of corporal punishment and to increase the enforcement power of the state board by expanding its staff. The General Assembly handedly rejected all of the conference’s recommendations out of fear they would slow road construction. Only one year earlier, state legislators had passed a law earmarking $50 million for the expansion of the state’s highways.

Legislators changed their tune after the market crash of 1929 left counties without funds to finance new roads, forcing state and local officials to find a different method to support North Carolina’s inmate population. In 1931, the General Assembly passed a law transferring control of all eighty-three county road camps to the State Prison Department, which paid for inmates’ basic necessities while continuing to house them in the counties. The unification of the state prison system resolved the crisis until the State


60 McKay, “Convict Leasing in North Carolina,” 106.
Prison Department began to experience its own financial troubles. By 1933, the General Assembly had become unable to support the state’s inmate population, and legislators began searching for a way to put prisoners back to work. Prison officials urged the General Assembly to open a furniture and canning factory inside the state penitentiary, but new federal laws passed at the behest of labor unions in 1929 made the sale of prison-made goods less lucrative than it had been in the past.\(^{61}\)

Desperate to take the prison system off the state’s payroll, the General Assembly devised a plan that would haunt North Carolina’s prison policy for the next four decades. In 1933, legislators placed the State Prison Department under the authority of the State Highway Commission, a plan that allowed the state to offset the cost of its prison system by blurring the lines between the prison and highway budgets.\(^{62}\) When times were tough, legislators could use the federal funding the state received for building highways to help support its inmate population. In the minds of legislators, the plan perfectly served North Carolina’s needs. The state prison system would technically remain self-sustaining—as the state constitution required—and roads would continue to be built.

Although the creation of a unified prison system was not a policy shift of its own making, the State Board of Charities viewed it as a victory. For the first time, the board had the power to shape policy inside all of the state’s prison camps. Using the 1917 law as leverage, the board lobbied the General Assembly to develop new guidelines for prison

\(^{61}\) Hawes-Cooper Act, 45 § 1084 (1929).

\(^{62}\) McKay, “Convict Leasing in North Carolina,” 121.
governance. In 1933, North Carolina began to do away with rolling “cages” prison officials once used to house inmates, replacing them with brick facilities. The board also succeeded in persuading the Highway Commission to develop written rules regarding prison camp behavior.  

63 By January 1935, Raleigh’s News & Observer praised the state’s penal system for its implementation of “modern” policies that “kept alive the spark of hope that is within all men.”  

64 But as inmates well understood, policy did not always translate into practice. Only a month later, North Carolina’s prisons were in the media spotlight once again—this time for the state’s cruel treatment of two young African-American men. After the men “cussed” a guard, he chained them inside the “dark cell,” a “wooden structure, 4 ft. wide, 7 ft. long, and 6 ft. high” made of boards that provided “little if any air flow.” When they emerged twelve days later, their feet had frozen, leading to their amputation. Asked by members of the State Board of Charities to explain his action, the guard told them “that’s the way [they’ve] always done it in Mecklenburg County.”  

65

Prison Reform in the Postwar Era


North Carolinians, like Americans more broadly, emerged from World War II less tolerant than they had been in the past of atrocities such as those committed against the two men in Mecklenburg County. After witnessing the Holocaust and the horrors of war, a growing number of Americans demanded reforms to prison policies. Yet whether or to what extent those reforms would be rooted in a rights framework remained unclear. Until the late 1930s, courts understood the freedom to contract as the most important right, a belief that stymied many liberal reform efforts. During the Great Depression, judges began to expand their definition of individual rights and liberties, and by midcentury many were questioning whether inmates had a right to a certain standard of care. Although the question remained unanswered for decades, judges’ willingness to grapple with the problem helped fuel calls for reform. In North Carolina, reformers continued to confront the state’s ongoing reliance on prisoners’ labor. Seeking to secure North Carolina’s piece of postwar prosperity, state leaders strengthened their commitment to road building efforts in hopes of attracting businesses to the region. As in the 1930s, it was ultimately an economic shift not reformers’ efforts that brought a major policy change to North Carolina’s prisons in the late 1950s.

Americans’ calls for prison reform were shaped by broader shifts in the field of penology after World War II. Beginning in the late 1940s, a new academic field known as “corrections” emerged that engaged a wide range of social scientists around the

---

question of how best to manage those convicted of crimes. Corrections professionals extended Progressives’ efforts to rehabilitate inmates by developing a new “medical model” of corrections that understood prisoners as ill and in need treatment. Whether due to psychosis or social environment, inmates required individualized care to cope with the emotional problems that led them to participate in criminal activities. Their treatment required close evaluation, classification, therapy, and some degree of education and training to help inmates transition back into the free world. “Hard labor” was no longer an acceptable cure-all for prisoners’ problems. 

Influenced by the federal government’s expanding role in protecting Americans’ wellbeing as well as by the new field of corrections, some federal judges began to extend rights to prisoners, albeit tentatively. Before World War II, the Eighth Amendment only protected Americans against cruel and unusual punishment inside federal prisons. In the 1940s and 50s, judges began to extend the Eighth Amendment’s protection to inmates in state prisons, though the Amendment was not fully incorporated until 1962. One particularly significant case, *Johnson v. Dye* (1949), involved a man who escaped from a Georgia road gang only to be arrested in Pennsylvania. Once caught, the inmate applied for a writ of habeas corpus alleging that, if returned, he would be subject to “cruel, barbaric, and inhumane treatment at the hands of his jailers.” The district court judge denied his petition, accepting the Georgia state attorney’s argument that the Eighth

---

Amendment did not apply to the states. But the Court of Appeals for the Third Circuit reversed the decision, arguing that the right to be free from cruel and unusual punishment was a “fundamental right,” thus making it applicable to the states through the due process clause of the Fourteenth Amendment.\footnote{Johnson v. Dye, 175 F.2d 250 (3rd Cir. 1949).}

Judges at the state level also began to question whether inmates had rights. The same year the Third Circuit decided \textit{Johnson}, North Carolina’s state courts struggled to determine the rights of Clarence Lett. In 1949, Lett, a young white inmate, was working on the Richmond County chain gang when a beer truck passed by. Under his breath, he told his fellow inmates that he “would like to have [him] a case of that beer.”

Overhearing his comment, Camp Superintendent N.L. Carpenter ordered Lett “hung up” for talking while at work. For seventy hours, guards handcuffed Lett’s hands to the bars of his cell at chest level, only allowing him fifteen minute breaks every five hours to use the bathroom. The position of the handcuffs left Lett unable to sit or take the pressure off his legs, leaving them “swollen up” by the time he was finally released. Outraged no doubt in part due to Lett’s race, the county sheriff, after learning of Carpenter’s actions, asked the county magistrate to issue a warrant for his arrest for the crime of “inflict[ing] cruel and unusual punishment upon [Lett],” a reference to the Eighth Amendment of the U.S. Constitution. The Richmond County Court convicted Carpenter, but his attorneys from the State Highway Department appealed to the superior court on the grounds that “there was no such crime” as “cruel and unusual punishment.” Neither the solicitor nor
the superior court judge disagreed with the attorneys’ assessment. When the solicitor moved to change the charge against Carpenter to “inflicting serious and painful injuries upon Lett,” the judge agreed, allowing the case to move forward. 69

Superior Court Judge Susie Sharp, the first female judge in North Carolina, was anxious to hear Lett’s case. While she certainly did not view “cruel and usual punishment” as an actionable crime, she nonetheless believed Lett deserved better treatment from the state’s prisons. After listening to all the evidence, she excoriated the prison system for its “medieval practices” and declared that any inmate subjected to that kind of “torture” would surely emerge from prison with “such a contempt and hatred for constituted authority” that he would continue to commit crimes long after his release. Sharp threatened to send Carpenter to the road camps so that he could “see what it [was] like to be in the power of a prison superintendent.” Instead, she made him pay a $200 fine. The State Highway Commission, recognizing that Carpenter’s conviction threatened its control over the state’s inmates, appealed the case to the North Carolina Supreme Court. 70

Although the solicitor had rephrased the original charge against Carpenter, the Supreme Court still viewed the case as raising questions about inmates’ rights. In the majority decision, Justice A.G. Seawell asked, “What rights does a prisoner of the law

69 State v. Carpenter, 231 N.C. 229 (N.C. 1949); North Carolina’s state constitution outlaws “cruel or unusual punishment.” The magistrate’s wording suggests he was referencing the U.S. rather than the state constitution.

retain…and what rights has he surrendered to society?” The court left these questions largely unanswered, choosing instead to order a retrial on a technicality. Still, Seawell took the opportunity to reflect on the legal problem at hand. The need to sacrifice some rights, he argued, seemed “implied with the sentence,” including the “temporary surrender of…corporal freedom” and the “right to free choice.” Others remained less clear. He suggested the “mores of the people” determined what rights prisoners’ retained—and he rightly noted those “mores” seemed to be shifting. Citing the new “philosophy…[of] crime and its punishment” and the growing respect for criminal justice professionals—“the humanitarians, the criminologists, and the experienced officials working in the field of prison control” — Seawell theorized that inmates would soon have the right to be free from punishment like Lett endured in Richmond County. During Carpenter’s highly publicized retrial, the jury reimposed the $200 fine, suggesting Seawell’s hunch would prove correct. 71

Carpenter’s prosecution and the media attention surrounding the case inspired new calls for prison reform in North Carolina. In October 1949, the General Assembly passed a bill creating the “Prison Advisory Council” for the “purpose of promoting…practices consistent with the best modern concepts…directed toward the rehabilitation of prisoners.” The governor, in turn, appointed some of the state’s leading social welfare reformers to the council, including the renowned University of North

Carolina-Chapel Hill sociologist Howard Odum and former State Board of Charities Superintendent Kate Burr Johnson. As its first order of business, the council reached out to the Osborne Association of New York, the United States’ premier sociological organization dedicated to prison reform, to conduct a study of North Carolina’s prison system and to recommended policy changes. At the helm of the Osborne study was Austin MacCormick, a famed criminologist who had conducted similar studies in a number of states.

Released in March 1950, the “MacCormick Report” sent shock waves throughout North Carolina. The report excoriated the state for its “filthy road camps,” “brutal disciplinary regime,” and “outdated state penitentiary.” But MacCormick reserved his harshest critique for the very foundation of North Carolina’s prison system: its connection to the State Highway Commission. MacCormick told readers that there was “no justification for…continuing a system of prison administration which is inconsistent with the national reputation of North Carolina for progressive thought and action.” He noted that, due to the “strange financial arrangement,” there was “virtually no effort being made to rehabilitate prisoners” because the prisons were “operated with an almost exclusive view to getting as much road work as possible out of the prisoners.” MacCormick’s message was clear: North Carolina could never assume “its proper place

---


in the marked penal progress taking place in the South” until the General Assembly separated the Prison Department from the State Highway Commission.74

Despite the negative press surrounding the MacCormick Report, North Carolina legislators ignored the suggestion to separate the two departments. In 1949, voters passed a $200 million bond initiative for road building, the largest sum any state had ever devoted to road construction in American history. 75 With more inmates than ever laboring on the state’s highways, legislators warned that the establishment of an independent Prison Department would jeopardize the state’s ability to pay for both its roads and its prison system. In hope of assuaging some of MacCormick’s criticism, the General Assembly in 1951 budgeted over a million dollars to build a new women’s prison and to establish new industries within the state penitentiary for men, including a license plate and machine factory. Legislators told the press they planned to move a small number of inmates to the new industries while continuing to use the majority on the roads.76


Frustrated by the state’s inaction on prison reform, inmates went on strike. In so doing, they joined a wave of protests sweeping the nation’s prisons in the early 1950s. Although prison strikes were far from new, Americans’ calls for prison reform, coupled with inmates’ nascent rights consciousness, made prisoners bolder in the postwar era. Between 1950 and 1953, men and women behind bars launched strikes in over fifty correctional facilities.\textsuperscript{77} In North Carolina, fifty women working in a prison laundry facility refused to return to their jobs in January 1951. While newspaper reporters claimed the strike occurred due to shifts in the institution’s visiting policies, reports circulating only a few years later revealed widespread physical and sexual abuse at the facility, suggesting that the roots of the women’s anger ran much deeper.\textsuperscript{78} Then, in June 1952, nearly 150 men working in the state penitentiary’s license plate factory sat down on the job, taking ten guards hostage. Similar to the men who wrote the State Board of Charities in the early twentieth century, they demanded basic human necessities: decent food, medical care, and an end to physical and mental abuse. Worried that the strike would result in violence, Warden Robert Allen agreed to make concessions in exchange for the hostages’ release.\textsuperscript{79}


While the prisoners’ strikes amplified calls to separate the State Prison Department from the State Highway Commission, it took financial incentives for North Carolina officials to act. By the mid-1950s, advances in road-building technology reduced the number of inmates the Highway Commission needed for projects. Road camp managers began complaining that the convict labor system slowed the construction process. While many tasks required only one or two men, camp managers had to assign multiple inmates to a project to keep them busy. Short-term prisoners also struggled to acquire the skills necessary to operate new heavy machinery. Surveyed in 1954, road managers agreed they wanted to retain control of “long-term black prisoners” because they believed they were the “hardest workers,” but they urged legislators to find other work for the rest of the prison population. To back up its demands, the State Highway Commission hired a New York firm to conduct an economic study of the partnership between the commission and the prisons. Released in November 1954, the report found inmates’ labor on roads wasted far more money than it saved the state.

Convinced by the report, the governor compelled the State Highway Commission to work with the Prison Advisory Council to devise a plan to separate the two agencies. The Prison Advisory Council’s chief concern was how to finance the prison system if the


number of inmates laboring on the roads was reduced. After much debate, the council released a plan in the spring of 1956. The State Highway Commission would continue to employ as many imprisoned laborers as it required, paying the Prison Department $2.50 per day for each man. The General Assembly would also take nearly $2 million out of the state’s highway fund to improve prison industries and farming operations, which legislators hoped would eventually help sustain the prisons.  

To increase revenue, North Carolina would establish a Prison Enterprises business modeled after the federal program established under President Franklin Delano Roosevelt, which produced and sold products directly to government agencies.

When the council’s proposal was introduced during the 1957 legislative session, the General Assembly supported it with one exception: legislators demanded that, if the Prison Department ran a deficit, the money would come out of the Highway Commission’s budget rather than out of the state’s General Fund. Legislators feared that if the Prison Department failed to support itself through inmates’ labor, the state would have to dip into money saved for financing “more noble causes” such as raises for teachers and other state employees. While the Prison Department became its own state

---


agency in 1957, then, it remained tied to the Highway Commission through its budget.\textsuperscript{85} In the years that followed, as state officials worked to institute further reforms and the prison industries struggled to make a profit, the Prison Department continued to look to the Highway Commission for funds—and in return the Highway Commission requested inmate labor.

**The Great Society Goes to Prison**

The 1960s witnessed a sea change in corrections policy that reflected the broader transformation of American society. After emerging from the Great Depression and two wars, Americans’ faith in the federal government to provide for the collective good reached an all-time high. The federal courts’ slow expansion of Americans’ rights after World War II accelerated at lightening speed and President Lyndon Johnson, once in office, worked alongside Congress to develop a slew of “Great Society” programs designed to eliminate poverty and ensure “liberty and abundance for all.”\textsuperscript{86} Federal officials viewed few social issues as beyond their reach—including prison policy. In 1964, the Supreme Court opened the courtroom doors to inmates’ constitutional rights claims. The following year, Congress passed legislation to develop correctional standards and, for the first time, to provide federal grants to state and local criminal justice


agencies. Inspired by ongoing national conversations about crime and punishment, North Carolina’s governor appointed a new corrections secretary in 1965 who hoped to modernize the state’s prison system. Yet the General Assembly, long accustomed to financing its prisons through inmates’ labor, proved reluctant to provide the funding necessary to implement the secretary’s plans.

By the late 1960s, inmates in North Carolina, like those across the nation, had a different set of expectations than the previous generations who walked through the prison gates. Approximately fifty percent African American, forty-five percent white, and five percent Native American, North Carolina’s prison population had watched as the Civil Rights Movement accomplished the once unthinkable task of dismantling Jim Crow. They had also lived through the dramatic expansion of procedural rights for the criminally accused. During the 1960s, the Supreme Court ruled that individuals had the right to be free from unwarranted searches and the right to counsel. The court also demanded police inform individuals of their right against self-incrimination. While police did not always respect individuals’ rights in practice, the Supreme Court rulings nonetheless shaped Americans’ understanding of the treatment they were due. The

87 Data on North Carolina’s prison population is difficult to find before the Federal Bureau of Investigation began keeping crime statistics in 1968. For a rough sketch of the racial makeup of North Carolina’s prison population in the mid- to late 1960s, see Governor’s Committee on Law and Order, Assessment of Crime and the Criminal Justice System in North Carolina, (Raleigh, 1969), 72-79.

accused recognized that police and criminal courts in America were supposed to adhere to the rule of law, and they took that knowledge with them to prison.

In the 1960s, the Supreme Court also extended new rights to inmates. Prisoners had long written to federal judges for assistance, but judges became more responsive in the sixties. In 1962, the Supreme Court in *Robinson v. California* ruled that the Eighth Amendment’s ban on cruel and unusual punishment protected Americans against abuses by the state as well as by the federal government.\(^8^9\) Two years later, in 1964, the Supreme Court provided inmates with a new pathway to redress their rights. In *Cooper v. Pate*, the court reinterpreted Section 1983 of the 1871 Civil Rights Act to rule that inmates could draw on the statute to file lawsuits in federal court against state officials who violated their constitutional rights. Nearly a century earlier, Reconstruction era legislators had passed Section 1983 to protect newly emancipated African Americans’ right by allowing them to bypass biased state courts and file their claims directly in federal court. After Reconstruction, Section 1983 fell into disuse because the Supreme Court limited what constituted individuals’ rights, making the statute less useful than it had been in the past.\(^9^0\) When Americans’ rights began to expand once more during the mid-twentieth century, the Supreme Court breathed new life into Section 1983. In 1961, the court in *Monroe v. Pape* ruled that individuals could use the statute to challenge the unconstitutional acts of anyone “who carr[i]ed a badge of authority of a state and


\(^9^0\) See, for instance, the Slaughterhouse Cases, 83 U.S. 36 (1872).
represent[ed] it in some capacity.” Three years later, the court extended the reasoning in *Monroe* to the prisons after Thomas X. Cooper, a member of the Nation of Islam confined to the Illinois State Penitentiary, drew on Section 1983 to file suit against prison officials who refused to allow him to purchase religious materials.91

In the years following the *Cooper* decision, Congress launched a new program extending its reach into state and local criminal justice systems. During the 1964 presidential campaign, as civil rights protests captured the media spotlight, Republican Barry Goldwater ran on a platform that depicted American cities as dangerously out-of-control. He denounced the “breakdown of law and order” and promised, if elected, to appoint judges who would vigorously enforce the criminal code and rollback the rights of the accused.92 Johnson won the election in a landslide, but he nonetheless adopted Goldwater’s interest in crime control, adapting it to fit within the broader framework of his vision for the Great Society. While Goldwater advocated for the repression of crime through stronger law enforcement, Johnson hoped to address what he viewed as the root cause of crime—poverty—through a combination of new social programs and efforts to professionalize criminal justice agencies.93 In 1965, at the behest of the Johnson

---


92 For Goldwater’s “law and order” campaign platform, see Michael Flamm, *Law and Order: Street Crime, Civil Unrest, and the Crisis of Liberalism* (New York: Columbia University Press, 2005), 31-51.

administration, Congress passed the Law Enforcement Assistance Act, which for the first time provided small grants to state and local law enforcement officials for “innovative” programs. The majority of the $20 million budgeted by Congress over the next three years went to police departments in Washington D.C. But a small amount of the funding trickled down to state prisons.\textsuperscript{94} In 1966, North Carolina’s Prison Department won $10,000 to support its “work-release” program, which allowed inmates to work for minimum wage beyond the prison gates before returning at night.\textsuperscript{95}

While the grant program broke new ground, the centerpiece of the Law Enforcement Assistance Act was its creation of the President’s Task Force on Law Enforcement and the Administration of Justice. Charged with inquiring into “the causes of crime and delinquency,” the task force included nineteen government appointees and forty full time staff members. For two years, the task force members worked to develop new standards and recommendations for the fields of policing, court management, and corrections. In the process, they consulted with officials from each state and with over 250 leading researchers and practitioners in the field of criminal justice.\textsuperscript{96}

When the task force released its report in 1967, it articulated a vision for criminal justice reform heavily influenced by Daniel Moynihan’s 1965 report \textit{The Negro Family}:


The Case for National Action. Drawing on a long tradition of racially biased understandings of crime, the Moynihan Report depicted delinquency as a particular problem for African Americans. The report argued that the long history of racial discrimination, combined with “cultural deprivation,” had produced a “tangle of pathology” in black communities. To Moynihan, this “pathology” was most evident in the structure of the black family, which he argued was woman-dominated and matriarchal. Reflecting the gendered idea that men should be the heads of their households, Moynihan claimed that black wives and mothers made black men feel “inadequate” compared to their white peers. He argued that, in response, black men demonstrated “withdrawal, bitterness toward society, aggression both within the family and racial group, and self-hatred.” They also committed crimes.

While the task force, like the Johnson administration more broadly, understood poverty as the root cause of crime, it viewed “pathology” as the root cause of poverty in the black community. As a result, the task force believed that the only way to reduce crime was to alter allegedly problematic aspects of black culture. Individuals assigned to

---


100 Hinton, *From the War on Poverty to the War on Crime*, 20.
the Task Force’s Subcommittee on Corrections argued that prison was the perfect place to accomplish this task. While behind bars, corrections officials could teach African American men how to be productive, law-abiding, leaders of their households. To aid them in this endeavor, the subcommittee promoted the adoption of a new “collaborative” theory of corrections that blended the older medical model with midcentury ideas about participatory democracy and the psychological effects of racism. At the heart of the new collaborative model was the effort to “empower” inmates to “participate in their own treatment.” The subcommittee recommended policy shifts designed to increase communication between custodial staff, inmates, and treatment staff; new group therapy programs that encouraged inmates to counsel one another under the watchful eye of trained psychologists; and expanded opportunities for prisoners to participate in prison governance.  

Alluding to the Moynihan Report, the subcommittee reasoned that incarcerated black men had been “humiliated all their lives.” If prison reform was to work, inmates had to maintain and even strengthen their “sense of dignity.”

In addition to its focus on “collaboration,” the Subcommittee on Corrections emphasized “integration” throughout their work. Subcommittee consultants argued that racism and poverty, perpetuated by cultural “pathology,” alienated criminals from broader society. In order to rehabilitate them, corrections officials needed to ensure

---


102 Elmer Nelson to Daniel Glaser, 4 February 1966, Folder Daniel Glaser, Box 139, President’s Task Force on Law Enforcement and the Administration of Justice, Task Force on Corrections, Lyndon Johnson Presidential Library and Archives, Austin, Texas.
inmates’ access to “institutions responsible for assuring development of law-abiding citizens: sound family life, good schools, employment, recreational opportunities, and desirable companions.” With the goal of “integrating” prisoners back into their communities, subcommittee members argued in favor of increased vocational training and educational opportunities for inmates; incentive wages for imprisoned laborers; expanded visiting hours for families and friends; and the elimination of laws that made it difficult for individuals with criminal records to find work or housing after their release. Most importantly, they advocated for the elimination of large, dehumanizing penal institutions in exchange for small, community-based treatment centers and the expanded use of probation and parole. By helping inmates build strong ties to societal institutions, subcommittee members hoped to address the “pathology” they believed perpetuated poverty and, by extension, crime.  

In 1965, as the task force prepared its report, North Carolina’s Governor Dan Moore, recognizing the shifts in correctional practices, appointed Vernon Lee Bounds to the position of prison superintendent. While previous superintendents had risen through the ranks, Bounds was a leader of a different sort. A professor at the University of North Carolina-Chapel Hill (UNC), he was an intellectual well versed in the theories espoused by the men on the President’s Task Force. Born in Salisbury, Maryland in 1918, Bounds attended the University of Virginia after serving in the Navy during World War II. He then entered Virginia’s law school, where he became interested in the problems plaguing

---

103 Task Force on Corrections, Subcommittee Report, 15, 34-41.
the nation’s prisons. In 1952, after a brief stint teaching criminal law and administration in the University of Pennsylvania’s law school, Bounds joined the faculty at UNC’s Institute of Government as a professor in public law and government. With funding from the Institute, Bounds founded the North Carolina Training Center for Delinquency and Youth Crime in 1962, which brought him to the attention of Governor Moore.104

After the task force released its report in 1967, Bounds used its recommendations as leverage to press the General Assembly for a massive shift in the state’s corrections policy, including the further separation of the State Highway Commission from the Prison Department.105 At Bounds’s behest, legislators increased the state’s use of parole, approved new vocational training and education programs, expanded the number of prisoners eligible for work release, and changed the Prison Department’s name to the more modern “Department of Corrections.”106 In a separate bill, the General Assembly allowed the Prison Advisory Commission to provide inmates with an incentive wage of ten cents to one dollar a day.107 Finally, legislators agreed to transfer responsibility for the Prison Department’s budget deficit to the General Fund. After nearly a century, the


105 Lee Bounds to Governor Dan Moore, 5 January 1966, Folder January 1966, Box 8, State Director’s Files, Department of Corrections Records, North Carolina State Library and Archives, Raleigh, North Carolina (hereafter cited as State Director’s Files).


General Assembly also amended the state constitution to eliminate the provision compelling prisons and charitable institutions to be “self supporting.”

Although legislators supported Bounds’s plan in theory, they proved less willing to provide the budget increases necessary to implement it. After the General Assembly passed the sweeping changes to the corrections system, Bounds submitted the Department of Corrections’ largest budget request in North Carolina’s history. Legislators immediately cut it by one-third, making it impossible for Bounds to open the new education and vocational training programs or to pay inmates’ incentive wages.

When Bounds asked for additional money from the General Fund, legislators refused his request. Still hoping to implement his plans for reform, Bounds turned back to the State Highway Commission to solve his budgetary woes. While he had intended to transition all inmates off the roads by 1971, he instead increased the number of prisoners he sent to the highways with the goal of using the additional income to finance new programs behind bars. He also urged the managers of the industries inside the state penitentiary, by then called Central Prison, to “increase production to the highest possible rate.” Once hoping to make North Carolina’s Department of Corrections “a model for the nation,” Bounds found himself working inmates harder than they had before he took office.

---

108 Ibid.


110 Lee Bounds to Prison Managers, 15 December 1967, Folder Enterprises General, Box 3, State Director’s Files.
The Strike at Central Prison

By the summer of 1967, inmates in North Carolina were becoming restless. The widely reported shifts in the state’s prison policy had raised prisoners’ expectations only to let them down. Without the funding Bounds requested, he further delayed the launch of new vocational and education programs and avoided paying inmates their incentive wages. He also continued to cut costs by reducing prison staff and speeding up the pace of labor for inmates working on the roads and in the state’s prison industries. Unable to institute the major reforms he envisioned, Bounds implemented small changes to prison policy that disrupted the hierarchies of power that had long structured prison life. Meanwhile, he tightened security inside the prisons in response to growing unrest in the nation’s cities. Inmates soon reached their breaking point. They understood themselves as right-bearing individuals, a status the state seemed unwilling to recognize.

After Cooper opened the courts to inmates’ constitutional complaints, many prisoners expressed their displeasure with their treatment behind bars by drawing on Section 1983 to file cases in federal court. For many inmates, writing to the courts was old hat. For decades, prisoners had filed cases to appeal their convictions. By reading legal textbooks, some inmates became self-taught “jailhouse lawyers” with considerable expertise. They often sold their services to other prisoners for small amounts of cash or goods from the commissary. Already attuned to the law, jailhouse lawyers studied
Section 1983 after 1964 and filed cases for themselves and others in hopes of pushing federal judges to further extend their rights.\textsuperscript{111}

Prisoners’ Section 1983 cases filed in the late 1960s reflected inmates’ changing expectations for their treatment behind bars. While many prisoners’ cases continued to note bad food, inadequate medical care, and abusive guards, a growing number described instances of racial discrimination. Inmates from Odum Prison, for example, complained that guards “always let whites go first in the lunch line and gave them the best jobs too.”\textsuperscript{112} Others noted the state’s failure to live up to the promises it made in the 1967 legislation reshaping corrections policy. Central Prison inmates filed a lawsuit in late 1967 to tell the court that “none of the new programs had opened in their facility” while prisoners from Caledonia informed judges that “all this talk about rehabilitation was a lie.” Rather than being “helped,” they were being “worked like slaves.”\textsuperscript{113} Regardless of the contents of inmates’ lawsuits, they couched their claims in the language of rights, reflecting both the form of federal constitutional claims and prisoners’ growing rights consciousness. Imprisoned men from Buncombe County Prison told the court that the “cramped cells” and “rotten food” violated “their rights under the Eighth Amendment”


\textsuperscript{112} Lawyrence Gunnings et al. v. Lee Bounds, Folder Lawyrence Gunnings, Box 15, Civil Action Case Files.

\textsuperscript{113} James Grayson et al. v. Lee Bounds, Folder James Grayson, Box 14; Lennox Exum et al. v. Lee Bounds, Folder Lennox Exum, Box 10, Civil Action Case Files.
while an inmate in Central Prison wrote to the courts to demand their “right to an incentive wage.”

Judges dismissed nearly all of the inmates’ lawsuits. Although Cooper had opened the courts to prisoners’ claims, the extent of inmates’ rights remained uncertain. U.S. district courts in North Carolina, like those across the nation, tended to take a conservative approach to inmates’ cases. Judges were hesitant to interfere in prison practices, which had long been the domain of state and local lawmakers. Judges viewed only the most egregious cases of abuse as rising to the standards of an Eighth Amendment rights violations. In the U.S. District Court for the Eastern District of North Carolina, judges dismissed inmates’ cases so often that they developed a form letter to send in response to prisoners’ suits. The letter reminded prisoners that state officials were afforded “wide latitude in the conduct of prison affairs” and that the court was “not prepared to accept the role of co-administrator of prisons or to ‘second-guess’ state officials.”

Although the courts proved unwilling to mandate reforms behind bars, Bounds made cost-free changes to prison policy, some of which were not to inmates’ liking. In 1967, Bounds began working to breakup the hierarchies of power that had developed within the inmate community due to years of inattention and disregard by prison staff.

---

114 Mike Conner et al. v. Lee Bounds, Folder Mike Conner, Box 8; Benny Horton v. Lee Bounds, Folder Benny Horton, Box 17, Civil Action Case Files.

115 See, for instance, Judge John Larkins, Memorandum Opinion and Order, Mike Conner et al. v. Lee Bounds, Folder Mike Conner, Box 8, Civil Action Case Files.
In Central Prison, imprisoned men had taken advantage of a “hobby craft” program to create a booming business that illegally employed dozens of prisoners and even some guards. The hobby craft program allowed men to purchase small amounts of leather to make wallets or other goods to sell for a profit in the free world. Soon after the program’s founding in 1953, a group of men pooled their leather allotments to create what Bounds called a “leather goods empire.” Worried the men in charge of the leather goods business exerted undue influence over others, Bounds abolished the program in 1966 and sent the ringleaders to a newly established “adjustment wing” of Central Prison known as B-Block, where they were held in solitary confinement.\(^{116}\) He also worked to eliminate some inmates’ use of rape as a tool of power. Reports of rape were common throughout North Carolina’s prison system. Young men were especially at risk.\(^{117}\) Most prison facilities housed inmates in large barracks, making it easy for abusers to access their victims. To keep men safe, Bounds identified serial rapists and imprisoned them in B-Block along with the leaders of the leatherworks racket.\(^{118}\)

While Bounds instituted policy changes behind bars, he continued to work men harder and faster than they had for decades. Inmates soon began to rebel. Not only did many believe forced labor violated their rights, but most inmates were also unaccustomed

\(^{116}\) Prison Commission Executive Minutes, 17 July 1967, Folder: Prison Commission Minutes, Box 6, State Director’s Files.


to such backbreaking work. After World War II, North Carolina became increasingly urbanized, and the core of its economy moved from agriculture to manufacturing and service-oriented jobs. By 1960, nearly forty percent of North Carolinians lived in urban communities as compared to twenty-six percent in 1930. Ten years later, in 1970, only eight percent of the population worked in agriculture compared to forty-two percent in 1947. \textsuperscript{119} New inmates balked at guards’ commands to shovel rocks on the roadways or to work ten hours a day in Central Prison’s factories. By the fall of 1967, reports of inmates’ resistance were widespread. In meetings with the Prison Advisory Commission, Bounds complained of arson in the prison industries and men who threw “bolts and screws in the machinery” on the prison farms. \textsuperscript{120} On the roads, the Highway Commission reported groups of inmates who “wouldn’t get out of the truck” in low temperatures or who simply “refused to work.” \textsuperscript{121}

Bounds worried that inmates’ acts of rebellion would transform into full scale rioting, especially as unrest swept through American cities in 1967. With eyes toward the outside world, Bounds preemptively tightened prison security. Between May and September 1967, over 150 riots broke out across the United States. \textsuperscript{122} In North Carolina,


\textsuperscript{120} Prison Commission Executive Minutes, 4 April 1968, Folder: Prison Commission Minutes, Box 11, State Director’s Files.

\textsuperscript{121} “Prison Labor Report,” March 1968, Folder: Prison Labor Correspondence, Box 15, Prison Labor Reports and Correspondence Files, Maintenance Unit, Highway Commission Records.

\textsuperscript{122} Flamm, \textit{Law and Order}, 26-32.
Durham teetered on the edge of violence after a Ku Klux Klan member dressed in full regalia testified against black activists’ demand for improved public housing at a city council meeting. The following fall, protests against the police killing of a black man in Winston-Salem erupted into violence after the National Guard arrived on the scene. By the late summer of 1967, Bounds had instituted regular “shakedowns” in the state prisons, sending guards to rummage through inmates’ belongings without warning. The largest shakedown came on the evening of July 17 in Central Prison. At ten o’clock, guards moved from cell to cell, waking inmates from their sleep. Most of the things they confiscated were everyday objects: cups from the dining hall, needles and thread, extra food, earphones, and batteries. They found only a few “sharp objects” and some drugs, “mostly tranquilizers and powdered aspirins.”

Meanwhile, Bounds continued to round up “incorrigible” inmates and place them in B-Block, which was quickly becoming filthy and overcrowded. Short on staff, Bounds limited B-Block residents’ recreation to television and library books alone. They were confined to their cells for twenty-four hours a day, except for fifteen-minute showers once a week. “When problems arose,” Bounds told the Prison Advisory Commission, “chemical mace [was] used” because “sounds traveled so well it could start a riot if the men were not controlled properly.” To staff B-Block without raising costs, Bounds began hiring new trainees at two pay grades below guards’ already small salaries, sending them


to “basic training” for a week, and then placing them in the prison. The seasoned guards complained that the poorly trained men caused more problems than they resolved. They were either “too quick to deploy their mace” or “too easily intimidated” by the men they held captive. By April 1968, Bounds admitted to the Advisory Commission members that “any letters they received describing conditions on B-Block [were] probably true.”

Tensions at Central Prison soon reached a boiling point. On April 16, less than two weeks after protests over the assassination of Martin Luther King Jr. rocked North Carolina and the nation, inmates at Central Prison went on strike, hoping to leverage their labor for improvements behind bars. Just after lunch, men assigned to the prison’s license plate factory refused to return to work. Within the hour, five hundred of the facility’s nearly eight hundred inmates had joined them in the prison yard, where they divided into three groups: one white, one black, and one interracial. Four strike leaders quickly emerged from the crowd and approached Central Prison Warden Fred Briggs with a list of demands. They urged Briggs to release all the men confined to B-Block, to pay them their promised incentive wages, to prepare better food, to establish a grievance council comprised of both inmate representatives and prison staff, and to grant all the protesters immunity for their strike. The leaders assured Briggs they would not return to work until the state granted their requests.

125 Prison Commission Executive Minutes, 4 April 1968, Folder: Prison Commission Minutes, Box 11, State Directors’ Files.

126 After the strike, Lee Bounds asked all Central Prison guards to write reports concerning what happened during the protest. The North Carolina State Archives has redacted all of the prison personnel’s names, but thirty-three individual accounts of the strike can be found in the following location: Folder: Riot at Central
Already under pressure from many members of the General Assembly for “coddling” inmates, Bounds refused to negotiate with the imprisoned strikers. When he arrived at Central Prison, he commanded the guards to lock the main doors, preventing inmates from entering or leaving the prison yard. He then called for reinforcements. Armed men from local police and sheriffs’ offices soon began arriving on the scene. Prison guards from surrounding communities traveled to Central Prison, too, carrying personal weapons. Bounds ordered the men to stake out positions along the walls.\textsuperscript{127}

In the early morning hours of April 17, the prison yard erupted into chaos. While guards claimed that strikers began insulting them from the prison yard around four in the morning, inmates later asserted that guards attacked them with police dogs without provocation. Frightened, many inmates broke into the prison chapel and barricaded themselves inside. At 5am, a prison guard fired a warning shot. Strike leaders, thinking the bullet was rubber, encouraged the men to stand their ground. Moments later, Bounds ordered the guards to open fire. Bullets rained down on the inmates who were trapped inside the prison yard. When the inmates saw the first man fall, they scrambled for shelter. Once the firing stopped, they assembled along the walls with their hands up, hoping to prevent further violence. But they were too late.\textsuperscript{128} The bodies of dead, dying, and injured men littered the prison grounds.

\textsuperscript{127} Ibid.

\textsuperscript{128} Ibid.
In the strike’s wake, inmates drew on Section 1983 to file nearly forty federal lawsuits claiming that North Carolina’s guards had violated their constitutional rights. Their cases sharply contradicted the story Bounds told the press about “intransigent prisoners” and “guards frightened for their lives.” Inmates’ lawsuits described “bloodthirsty” law enforcement officials who arrived on the scene “eager for word to be given to shoot.” Prisoners informed that court that, while locked inside the prison yard, they “retreated from vicious dogs and armed guards” before being “shot like wild game.”


132 Oscar Timothy Robinson v. Otis Moore, et. al., Folder Oscar Timothy Robinson, Box 30, Civil Action Case Files.
they surrendered. 133 The strikers “begged for their lives,” one inmate wrote, but “storm troopers swarmed upon them…[and] beat them into bloody pulps with baseball bats, iron pipes, billy clubs, and blackjacks.” 134

The abuse continued once the prisoners were returned to their cells. In their lawsuits, prisoners complained of guards who took every opportunity to spray tear gas into the cramped and poorly ventilated cells, burning the men’s skin and lungs while the gas lingered in the air. 135 Inside B-Block, men described conditions so filthy that one inmate got “down on his hands and knees to beg for a broom and mop.” 136 Amid the filth, prisoners suffered gruesome injuries resulting from the strike, one “shot in both legs,”

---


134 Oscar Timothy Robinson v. Otis Moore, et. al., Folder Oscar Timothy Robinson, Box 30, Civil Action Case Files.


136 Denny Freeman v. Dan K. Moore, Folder: Freeman, Box: 10, Civil Action Case Files.
one ailing from “a shotgun blast to the hip,” and another “who had trouble seeing” after being “hit in the head with a bat.”

Each of the inmates’ lawsuits landed on the desk of Judge John Larkins of the U.S. District Court for the Eastern District of North Carolina. He threw each case out of his court. Jack Healy, for instance, filed a lawsuit after guards beat him with a baseball bat during the strike. He claimed to have “permanent and extensive head and brain damage and partial loss of sight” that would “limit his function as a normal human being for the rest of his life.” Healy noted that, after the strike, he was denied medical care. Despite his injuries, guards placed him directly in a “filthy, unsanitary 6 x 6 feet cell, shared with another inmate.” Each day, guards awoke him by spraying teargas in his “already damaged eyes” before sliding breakfast under his door “as one would feed an animal.” Despite the seriousness of Healy’s claims, Larkins dismissed his case before it reached trial. While he remarked that Healy’s injury was “quite regrettable,” he remained “unable to say” whether the “use of force” in ending the riot deprived Healy of federally protected rights. “The wide latitude accorded state officials in the conduct of

---


138 Jack Edward Haley v. Lee Bounds, 22 October 1968, Folder: Jack Haley Box: 15, Civil Action Case Files.
prison affairs” did not cease when “inmates provoke[d] or participate[d] in a disorder,” Larkins concluded. 139 Prisoners’ rights had clear limits.

***

Judges Larkins’s unwillingness to intervene in Central Prison’s treatment of its inmates after the 1968 strike underscores the staying power of antebellum legal ideas that granted local officials broad discretion over imprisoned men and women. During the century following the Civil War, reformers and inmates worked to regulate and improve prison conditions, first through state law and later through federal legislation and lawsuits. But the antebellum underpinnings of North Carolina’s prison policy remained difficult to dislodge. Reformers struggled to combat the state’s longstanding reliance on inmates’ forced labor to pay for its prisons and roadways, a practice that made prisoners’ exploitation a financial imperative. Meanwhile, lawyers and judges remained uncertain whether or how to conceptualize inmates as rights-bearing individuals, a status long contrary to prisoners’ status as wards of the state. Influenced by the broader rights revolution at work beyond the prison gates, inmates across the nation had grown impatient with government officials’ inaction by the late 1960s. Crushed during the strike in 1968, the prisoners in North Carolina would regroup—this time to create their own labor union.

139 Judge John D. Larkins, Memorandum Opinion and Order, Jack Edward Haley v. Lee Bounds, 7 November 1968, Folder: Jack Haley Box: 15, Civil Action Case Files.
Chapter 2

“We had the Right to Remain Silent, but We Ain’t Gonna Stay that Way:”
The Rise of the North Carolina Prisoners Labor Union

In December 1972, not long after Wayne Brooks landed in prison on a burglary charge, he wrote to Norman Smith, the staff attorney for the North Carolina Chapter of the American Civil Liberties Union (NCCLU), with a strange request. Brooks wanted to know if Smith would be willing to represent a labor union comprised entirely of prisoners. He noted that the NCCLU had “recently been attempting to expand the rights of prisoners in the field of due process, religious freedom, and racial discrimination.” But to Brooks, “the most important right” for inmates “was the right to unionize.” Once unionized, Brooks reasoned, prisoners could utilize their collective power to ensure corrections officials “respected all their rights.” They could also help navigate everyday problems inside prison through a “union grievance council” that included both inmates and guards. Brooks believed the union model would work inside prison because inmates “worked for the state” like public sector workers employed by the government in the free world. In fact, Brooks told Smith he had just started a new job in the Central Prison factory that supplied the state’s license plates.¹

While Smith left the letter unanswered, Brooks nevertheless pursued his idea. One year later, in 1973, he helped organize the North Carolina Prisoners Labor Union

¹ Wayne Brooks to Norman Smith, 17 December 1972, Folder Prisoner Requests, Box 7, American Civil Liberties Union of North Carolina Papers (hereafter cited as NCCLU Papers), Rubenstein Library, Duke University, Durham, North Carolina.
(NCPLU). In so doing, Brooks and his fellow inmates joined a nationwide movement to unionize prisoners. During the 1970s, inmates in eleven states formed unions, but few were as large or as long lasting as North Carolina’s. At the NCPLU’s peak in 1975, over half the state’s inmates had signed union cards. Through unionization, NCPLU members hoped to secure a wide range of improvements, including fair wages, improved medical care, freedom from racism and violence, and the abolition of large penal facilities. Led by a multiracial board of directors, the NCPLU had a three-part strategy for achieving inmates’ goals. First, its members published newsletters and wrote editorials to educate the public and impact state law. Second, the NCPLU drew on the skills of self-taught “jailhouse lawyers” to file lawsuits in federal court that sought to extend prisoners’ rights under the U.S. Constitution. Finally, the prisoners hoped to leverage their labor to bargain collectively with prison staff. By forming their own union, prisoners turned North Carolina officials’ longstanding practice of relying on inmates’ labor to finance the state prisons against them. NCPLU members recognized that the prison system would cease to function without their work on the state’s highways and farms and inside its laundries, factories, and workshops.

In forming their union, Brooks and his fellow inmates looked to the vibrant public sector organizing campaigns happening beyond the prison gates. While scholars have illuminated how civil rights and Black Power organizing inspired activism behind bars,

---

they have largely missed the way the labor movement shaped inmates’ strategies and tactics. During the late 1960s, antipoverty organizations like Martin Luther King, Jr.’s Poor People’s Campaign mobilized thousands of workers who labored for state or local governments by linking calls for unionization to broader issues of economic and racial justice. As a result, public sector union membership reached new heights in the early 1970s—including in North Carolina, which along with Mississippi was one of two states that banned unions from bargaining with government employers. Such repressive labor laws failed to deter inmates and other workers, however. The nationwide success of public sector unions in the early 1970s seemed to ensure that such laws would eventually be overturned. Indeed, by the mid-1970s, the American Federation of State, City, and Municipal Employees (AFSCME) and other public sector unions seemed well on their

---


---
way to winning a "Wagner Act for public employees," which would have guaranteed all public sector workers the same rights as those in the private sector.\(^5\)

In North Carolina, prisoners understood themselves, like public sectors workers in the free world, as performing labor that kept the state operating. They decided to organize by forming their own public sector union in hopes of tying their movement to an outside campaign that was winning, even as others faltered. And, at least some unions appeared willing to share their success with men and women behind bars. In 1973, the state chapter of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) provided the Prisoners Labor Union with start-up funds.\(^6\)

State officials in North Carolina fought hard against public sector unions comprised of both free and imprisoned workers. They viewed labor’s challenges to the status quo as part of a larger breakdown of “law and order” that began with the rise of civil rights activism after World War II. Beginning in 1968, state officials, as part of their broader quest to “get tough on crime,” used newly available federal funds to strengthen their criminal justice system and to target left-leaning labor and civil rights activists. They succeeded. By 1974, North Carolina had the highest incarceration rate in the nation and a number of high-profile activists behind bars.\(^7\) Yet rather than quashing organizing


\(^6\) Wilber Hobby to Deborah Mailman and Wayne Brooks, 6 June 1973, Folder NC Prisoners’ Union 74-77, Box 1, T.J Reddy Papers (hereafter cited as Reddy Papers), University of North Carolina-Charlotte Special Collections, Charlotte, North Carolina.

campaigns, activists’ entanglement with the criminal justice system turned their attention to North Carolina’s harsh prison practices. Many activists continued to organize inside prison, creating strong ties between imprisoned activists and those on the outside. Thanks to these activists-cum-“political prisoners,” national organizations such as Angela Davis’s National Alliance Against Racism and Political Repression made North Carolina’s criminal justice system a primary target of their organizing efforts during the mid-1970s. The outside attention, in turn, provided inmates with the cover they needed to form their union without the fear of immediate and violent reprisals from prison staff. The activism of inmates and their allies challenges recent political science scholarship suggesting that America’s carceral state was “built up outside the public eye” and faced little resistance. In North Carolina and across the nation, activists in the 1970s pressured state officials to defend prisoners’ right to organize and to protect the human dignity of the incarcerated.

**Laboring for the State Behind Bars**

---

When North Carolina’s inmates formed the Prisoners Labor Union in 1973, the state depended on their labor to help finance its prison system. After the Department of Corrections (DoC) separated from the State Highway Commission in 1957, the General Assembly began allocating funds to the agency directly from the state’s General Fund. But the funding almost always fell short of the DoC’s needs. Long accustomed to financing the state’s prisons through the Highway Commission, legislators regularly denied Prison Superintendent Lee Bounds his full budget request. In the late 1960s, Bounds’s budgetary woes only increased as white voters embraced “law and order politics.” With the rehabilitative philosophy of corrections beginning to fall out of favor, the General Assembly proved especially unwilling to pay for upgrades to prison facilities or new programs for the incarcerated. To compensate for the shortfalls, Bounds developed a complicated scheme that filled in the budget’s gaps using income generated from prisoners’ labor. Forced to endure long, hard workdays, inmates continued to demand the incentive wages and vocational and education programs promised them during the 1967 reorganization of the DoC. By 1973, the prisoners’ frustration while laboring for the state helped give rise to the North Carolina Prisoners Labor Union.

In December 1968, Bounds submitted a $48 million budget to the General Assembly, an $18 million increase from the previous fiscal year. Its contents reflected a

---

9 This would not always be the case. As the incarceration rate skyrocketed in the 1980s and 1990s, the number of inmates began to outpace the number of prison jobs, forcing the General Assembly to allocate a growing percentage of the corrections budget directly from the state General Fund. Today, many inmates do not work behind bars. As a result, those prisoners who do labor have substantially less leverage than they did in the early 1970s.
shift in Bounds’s penal philosophy. Once an outspoken advocate of rehabilitation programs for all inmates, Bounds grew increasingly preoccupied with “incorrigible” inmates after the April 1968 strike at Central Prison. In interviews with the press, he argued that new programming should focus first and foremost on young offenders who had the greatest chance of turning their lives around. Many adult inmates, he came to believe, were simply incapable of reform.\(^\text{10}\) For the “youthful” offenders held by the DoC, Bounds asked for additional funding for a wide range of job training and education programs. He also requested continued funding for the rehabilitation programs previously instituted in the state’s medium- and minimum-security facilities. Yet the vast majority of the additional $18 million in Bounds’s budget went to strengthening security at maximum-security facilities such as Central. Bounds sought funds for the installation of television surveillance devices on Central Prison’s cell blocks, one hundred new guards, new watchtowers, and the removal of visual impediments that made it difficult for prison staff to watch inmates in the yard. He also called for the construction of three new prison facilities, which he hoped would enable him to remove the remaining medium-security inmates from Central Prison, leaving only maximum-security prisoners behind.\(^\text{11}\)

Explaining his budget to the press, Bounds admitted that “the riot had forced [him] to

---


\(^\text{11}\) Department of Corrections Proposed “C” Budget, August 1, 1968, Folder Commission on Corrections Files, Box 12, North Carolina Prison Director’s Subject Files (hereafter cited as Director’s Subject Files), Department of Corrections Records, North Carolina State Library and Archives, Raleigh, North Carolina.
rethink every plan and every assumption [he] had [previously held].” His earlier plans were focused on the “long-range development of the system,” he said, “but time was snatched away [from him] in April.”

The following May, the General Assembly offered Bounds only $29 million from the General Fund, a $1 million decrease from the previous year. Legislators increased the State Bureau of Investigation’s budget by nearly $12 million, however. The General Assembly’s budgetary priorities reflected white voters’ embrace of law-and-order politics during the November 1968 presidential campaign. Republican Richard Nixon had won North Carolina by forty percent of the vote, followed closely by Independent George Wallace’s thirty-one percent. Referencing civil rights protests and urban unrest, both candidates had expressed their distaste for “lawlessness” on the campaign trail. Upon accepting his party’s nomination in August 1968, Nixon promised the electorate that he would restore “order and respect for law.” Wallace spoke in harsher terms. He vowed to shoot arsonists and looters first and ask questions later. “We don’t have riots in Alabama,” he said at a rally. “They start a riot down there, first one of ’em to pick up a brick gets a bullet in the brain, that’s all. And then you walk over to the next one and say, ‘All right, pick up a brick. We just want to see you pick up one of them bricks, now!’” Fearful of being accused of “coddling” criminals, the General Assembly

---

financed many of Bounds’s requests for heightened security measures, but it did so at the expense of rehabilitation programs, both new and old. Legislators cut nearly $3 million from previously established vocational and education programs and denied funding to the new program for youths.  

Bounds responded to the budget cuts by deepening his reliance on prison labor to finance the state’s prisons. From 1933 to 1957, the State Prison Department was a subsidiary of the State Highway Commission, forcing the prison system to rely almost entirely on inmates’ labor on the state’s roads for funding. After the two agencies separated in 1957, the General Assembly began providing funds directly to the prisons, but legislators continued to expect prison staff to rely on prisoners’ work to make ends meet. Doing so was a delicate balance because Depression era laws passed at the behest of labor organizations restricted private businesses’ use of prison labor and the sale of “prison-made” goods across state lines. In 1957, North Carolina, like most states in the nation, responded to this restrictive legislation by passing a “state-use” law that limited the sale of prison-made goods to state and local government agencies. The legislation

---

15 While he received funding to build one of the three facilities he proposed and to complete minor upgrades to Central Prison’s security system, the General Assembly denied Bounds funds to expand the Corrections Department’s staff, and it cut previously allocated funding for rehabilitation programs. Commission of Corrections, 10 June 1969, Folder Commission of Corrections, Box 11, Director’s Subject Files.

also required those agencies to give preference to products made by prisoners that were of comparable quality to those produced by private companies.\(^17\) In effect, the state-use law required Bounds to engage in an elaborate shell game in which he extracted money from other state and local agencies in order to supplement the DoC’s income. He accomplished this task by putting inmates to work through the work release program, for North Carolina Prison Enterprises, and—most importantly—on the roads.

The work release program contributed the least to the prison budget but it was by far the most desirable work assignment for inmates. Designed by Bounds in 1957 while he worked for the University of North Carolina at Chapel Hill’s Institute of Government, it was on the cutting edge of rehabilitation programs.\(^18\) The work release program allowed “honor-grade,” or well-behaved, inmates to work in private industries outside the prison during the day for pay starting at minimum wage. The prison system would then extract money for board, food, and transportation from their wages. If inmates had families or had to pay restitution to victims of their crimes, the prison system deducted money for those expenses, too. If not, prisoners could save the additional cash. While Bounds had billed the program as an opportunity for prisoners to learn new skills they could put to use after finishing their sentences, work release also served the needs of the prison system by offsetting the cost of inmates’ imprisonment. Recognizing the benefits,


\(^18\) In fact, North Carolina’s work-release program served as the model for a federal work release program created in 1965. See “Federal Work Release Bill Based on NC Place,” Raleigh News and Observer, July 20, 1965.
the General Assembly expanded the program every year after 1957. By 1969, 1500 inmates were on work release, nearly twenty percent of the inmate population. Few, however, learned valuable skills. Most employers saw the program as a means to hire prisoners for low wages to do jobs few others wanted to do. Work release inmates picked tobacco, processed chicken, served as janitors in government buildings—including in state mental institutions—and burned trash in city dumps, among other tough jobs. The program’s resemblance to late-nineteenth century convict leasing practices was not lost on state officials. In 1966, a deputy attorney general issued a regulation banning those convicted of “murder, rape, arson, manslaughter, or attempted rape” from participating in the program, citing an 1876 law prohibiting the “farming out” of inmates convicted of the those crimes. With its funding on the line, the DoC took the issue all the way to the North Carolina Supreme Court, which ultimately allowed such inmates to remain on work-release. The court argued that, unlike convict leasing, work release allegedly served a “rehabilitative” function.19

Although they worked dirty jobs, inmates fought to participate in work-release programs. It was the only form of prison labor that allowed inmates to make some money and to support their families. Other imprisoned laborers were not so lucky. One thousand of the state’s “gun-grade” inmates, those with disciplinary infractions, worked without

pay in prison factories and on farms. In 1957, the General Assembly established North Carolina Prison Enterprises. With $2 million in start-up funds, prison officials established a license plate, furniture, and metal working factory in addition to upgrading its farming, canning, and livestock operations at the Odum and Caledonia prison farms. The General Assembly intended for Prison Enterprises to be self-sustaining. It sold products to state and local agencies, placing money from the sales back in Prison Enterprises’ coffers to cover its expenditures. Any additional profits went to the prison system’s general budget.

During the late 1960s and early 1970s, Bounds tried to further expand Prison Enterprises in order to increase its profitability. As a result, it made little money for the prison system because most of the additional funds from the sale of prison-made goods went toward capital costs. Between 1968 and 1973, Prison Enterprises opened a sewing and tailoring business, a paint plant, and a print shop as well as enlarging its furniture-making factory. By 1974, for instance, the combined sale of goods and services from Prison Enterprises totaled more than $16 million. It made a profit of over $1 million, all of which Prison Enterprises invested in purchasing new equipment and supplies.

20 Department of Corrections Proposed “C” Budget, August 1, 1968, Folder Commission on Corrections Files, Box 12, North Carolina Prison Director’s Subject Files.


The most profitable prison industry remained what it had been since the early twentieth century: highway labor. Although the prison system became an independent agency in 1957, it remained dependent on funding from the State Highway Commission. After the two agencies separated, they negotiated a contract in which the Commission continued to use inmates on the roads, paying the prison system $2.50 per day for each man. Over the next decade, as the focus on rehabilitation raised corrections cost, the DoC pressured the Highway Commission to utilize more inmates on the roads at a higher price. In 1966, the agencies settled on a contract requiring the State Highway Commission to take 2500 inmates, nearly thirty percent of state’s inmates, for the next two fiscal years. In turn, the commission would pay the DoC six dollars for each gun-grade inmate, seven dollars for each medium-custody inmate, and nine dollars for each honor grade inmate. Because the DoC estimated that the cost of housing each inmate at approximately four dollars per day, prisoner’s labor on the roads brought in substantial funding for the prison system.

Bounds detested working inmates on the roads, despite its profits. He viewed it as a necessary evil to keep the prison system afloat until North Carolina Prison Enterprises began to bring in enough additional funding to supplement the DoC budget from the General Assembly. After the 1968 strike, Bounds worked inmates in the prison factories

and farms at breakneck speed in hopes of removing all inmates from the roads by 1971. The prisoners at Central had to work especially hard because, during the strike, they caused $42,000 in damage to the state’s license plate factory. To make up for the loss, Bounds increased the workday by thirty additional minutes at Central. Although he assured the Prison Advisory Committee that this was only a “temporary adjustment,” he explained that the budget was simply “too tenuous” and the prison conditions “too volatile” to lighten the men’s workload.24

Inmates throughout the prison resented having to participate in hard labor. Writing to the American Civil Liberties Union of North Carolina in 1969, one inmate noted that “things had not gotten better” since the April 1968 strike. In fact, they were “far worse.” Not only did many of the strikers remain on lockdown at Central Prison, but all the other inmates also had to “put up with longer, harder workdays.”25 The DoC also continued to deny workers on the roads and in the state’s factories and farms the incentive wages they had been promised by the 1967 General Assembly.26 Rather than pay inmates a dollar a day, Bounds and the Prison Advisory Committee had chosen to invest the money in North Carolina Prison Enterprises. To make matters worse, the DoC regularly denied honor-grade inmates’ applications to participate in the work-release


25 John Lassiter to Norman Smith, 2 January 1969, Folder Prisons, Box 2, NCCLU Papers.

26 “Prison Commission Executive Session,” 26 July 1967, Folder Prison Commission Minutes, Box 6, State Director’s Files.
program in order to fulfill its contract with the State Highway Commission. As part of the 1968 contract, Bounds had promised to prioritize the “road quota” over all other forms of prison labor.  

By 1970, frustrated inmates had begun flooding lawmakers’ offices with letters demanding their “right to an incentive wage” and the end to “slave labor” in North Carolina. Prisoners working on the roads also started to engage in acts of sabotage. State Highway Commission reports complained of inmates who “refused to work in the rain or the cold,” who performed a task “so poorly that it had to be redone,” or who simply “walked off” or “sat down” the moment guards turned their backs. Bounds and the prison staff began to fear that another uprising was eminent. “We know our work keeps this godforsaken prison system running,” one anonymous inmate wrote to Bounds in September 1970. “What’s to prevent us from shutting this operation down?”

Laboring for the State in the Free World


30 “To Lee Bounds,” 3 September 1970, Folder Highway Labor, Box 3, State Director’s Files.
In the free world, workers employed by the state and local government were asking the same question. Labor, civil rights, and antipoverty activists in North Carolina were hard at work organizing public sector employees in the late 1960s and early 1970s. Their activism was part of a nationwide, multiracial “poor people’s movement” focused on eliminating both racial injustice and poverty. Both issues had undergirded much African-American activism since the Great Depression. But, as historian Gordon Mantler has shown, the late 1960s “witnessed the nation’s most concerted effort to address them explicitly.” By 1968, the federal government had distanced itself from President Johnson’s War on Poverty, which promised to eliminate economic insecurity for all. But the genie was already out of the bottle. In North Carolina, activists drew inspiration from their involvement in War on Poverty programs to mobilize a broad coalition of poor people and their allies. At the helm of the movement were African-American activists who believed that the only way to eliminate poverty was to bolster their community’s political and economic power. To help them accomplish this task, they set out to

31 Gordon Mantler, *Power to the Poor*, 3-5.


33 This perspective was inspired in part by Malcolm X’s 1965 black nationalist political strategy that called for black activists to take control over political, economic, and social institutions in the black community. On Malcolm X’s formulation of community control, see Michael C. Dawson, *Black Visions: The Roots of Contemporary African-American Political Ideologies* (Chicago: University of Chicago Press, 2001), 97-105; For a discussion of young black activists’ turn to community control in North Carolina, see William
unionize low-income workers in the public sector, the fastest growing employment sector in the nation. Inside the state’s prisons, inmates drew inspiration and borrowed tactics from the organizing campaigns beyond the prison gates.

For many activists, organizing North Carolina’s workers was especially important and symbolic because the state had such a long history of repressive labor practices. As one activist later recalled, “If you won in North Carolina, you could win anywhere.”

For generations, North Carolina’s business and political leaders had fought unionization in the hope of attracting new industries to the state. Their efforts worked. In the 1960s, North Carolina had one of the lowest rates of unionization in the country, and it ranked forty-fifth in per capita income. The state’s harsh labor practices extended to the public sector, too. In 1959, in response to the International Brotherhood of Teamsters’ attempt to organize the Charlotte Police Department, the General Assembly enacted a law banning

---


35 Jim Grant, interviewed by author, 2 February 2015, Wilson, North Carolina, interview in author’s possession.


37 Chafe, Civilities and Civil Rights, 17.
public sector workers from bargaining collectively with their employers and from joining “any union affiliated in any way with a national or international union organized for collective bargaining.” With the 1959 law in place, public sector labor organizers faced an uphill battle.

But they remained undeterred. In late March 1968, local activists began organizing Charlotte’s largely African-American sanitation workers after Martin Luther King Jr. called them to action as part of his broader “Poor People’s Campaign,” which sought to build an “army of the poor” to pressure the federal government to secure “jobs or income for all.” Earlier that month, King had helped call attention to a sanitation workers’ strike that had begun the previous February in Memphis, Tennessee. On his way back to Memphis to support the workers, King stopped briefly to give a talk in Charlotte. His assassination just one day after he arrived back in Memphis only added fuel to public sector workers’ organizing efforts. In early April, nearly 20,000 people flocked to Memphis to take part in a silent march, pressuring the union to strike a deal with the workers. Inspired by the victory in Memphis and by King’s legacy, sanitation workers throughout the nation mobilized during the summer of 1968, including in Charlotte.


39 Mantler, Power to the Poor, 90.

40 Ibid., 90-121; Timothy Minchin, Fighting Against the Odds: A History of Southern Labor Since World War II (Gainesville: University of Florida Press, 2005), 110-112.
Serving as the key point person for the organizing campaign in Charlotte was James Grant, an antipoverty activist who would go on to help organize North Carolina’s prisoners. Born and raised in Connecticut, Grant signed up to become a Volunteers in Service to America (VISTA) worker in Charlotte after finishing his PhD in chemistry at Penn State University in 1967. A product of President Johnson’s War on Poverty, VISTA sent young people to poor communities across the nation to assist with local antipoverty efforts. As a teenager, he had become interested in left-leaning politics after reading communist newspapers he delivered to a Jewish neighborhood on his paper route. During college and graduate school, Grant joined the civil rights and labor movement. He viewed VISTA as an opportunity to devote his full attention to the work. In choosing to come to North Carolina, Grant, an African American, was prepared to deal with a heightened degree of racial discrimination, but he had underestimated the level of poverty he would witness in Charlotte. Many poor African Americans, he recalled in a later interview, lived in one-room “shanties” with dirt floors and no running water. Moved by the suffering he saw during his work with VISTA, Grant decided to stay in Charlotte, taking a job as a reporter for the Southern Conference Education Fund (SCEF) after he finished his year of service. While working with SCEF, Grant became increasingly involved in anti-Vietnam War and labor organizing.41

In June 1968, with the help of Grant, Charlotte’s sanitation workers formed their own local union that, in keeping with state law, was unaffiliated with a national union.

41 Jim Grant, interviewed by author.
Two months later, the union went on strike as part of a broader upsurge in public sector labor activism. Between 1953 and 1959, there were no public employee work stoppages in North Carolina; between 1959 and 1968, there were fifteen, five of which occurred in 1968 alone. Since the law prevented the sanitation workers from negotiating a binding contract with their employers, the union intended to strike until municipal officials agreed to meet workers and negotiate an unwritten “agreement”—a tactic prisoners later adopted. The union’s plan worked. After a month of trash piling up in the streets, Charlotte Mayor Stanford Brookshire agreed to grant the workers a fifteen percent raise, overtime pay, and a reduction in hours. The union’s victory garnered news throughout the state: public sector workers had won a contract in the one of the most anti-labor states in the nation.

After the sanitation workers’ strike, Grant moved eastward with Ben Chavis, a fellow activist who would also go on to help organize the prison. Born and raised in Oxford, North Carolina, Chavis attended the University of North Carolina at Charlotte. In 1965, while a freshman, he became the statewide coordinator for Dr. Martin Luther King Jr. and the Southern Conference Leadership Conference (SCLC.) Three years later, in 1968, Chavis met Grant while attempting to start a chapter of the Black Panther Party in

---


Charlotte. Chavis then joined Grant in organizing the city’s sanitation workers. After his graduation, Chavis became the field officer for the United Church of Christ’s Commission for Racial Justice (CRJ) and moved back home to Oxford, where he took a job as a teacher in the public schools. Together, Grant and Chavis helped student activists across eastern North Carolina mobilize, focus their demands, and build community support for their cause. In the early 1970s, the two men spent much of their time organizing in Wilmington, where blacks and whites continued to clash over the integration of the city’s public schools.  

Further west, the sanitation workers’ strike inspired African-American cafeteria workers at the University of North Carolina at Chapel Hill (UNC-Chapel Hill), North Carolina A&T University, and the University of North Carolina at Greensboro (UNCG) to organize. On campus, students involved in civil rights organizations such as the Black Student Movement joined the workers in support of their cause. In February 1969, food workers at UNC-Chapel Hill went on strike after the university administration dismissed a list of their written demands. The following March, workers at North Carolina A&T and UNCG mobilized with the help of student activists. The cafeteria workers were not the only public sector workers on the move in the South. In early 1969, nearly 500


African-American workers at a public hospital in Charleston, South Carolina garnered national media attention after walking off their jobs.\footnote{Minchin, \textit{Fighting Against the Odds}, 112.}

In 1969, workers in North Carolina celebrated a partial victory after the U.S. District Court for the Western District of North Carolina (W.D.N.C.) overruled part of the state’s repressive public sector labor law. The W.D.N.C. decided in \textit{Atkins v. City of Charlotte} that public sector workers were allowed to join—although employers did not have to recognize—unions committed to collective bargaining. The previous year, in 1968, the Charlotte Fire Department had brought the case to court after city officials began firing firefighters affiliated with the International Association of Firefighters. The W.D.N.C. declared the city’s actions, and the labor law undergirding them, a violation of workers’ First Amendment right to freedom of association. Yet the court found “nothing unconstitutional” about the state’s ban on public sector bargaining. While the court suggested workers might someday be able to persuade the General Assembly to dismantle the ban, it reminded workers there was “nothing in the United States Constitution which entitles one to have a contract.”\footnote{\textit{Atkins v. City of Charlotte}, 296 F. Supp. 1068 (W.D.N.C. 1969).}

Although city and state officials could still legally refuse to recognize a union, the ruling in \textit{Atkins} allowed public sector workers in North Carolina to utilize the resources nationwide labor unions had to offer. After 1969, organizers from AFSCME, the largest public sector union in the nation, stepped up their efforts to mobilize workers in the state.
Many teachers, cafeteria workers, firefighters, police officers, and sanitation workers joined AFSME and then leveraged the union’s power to demand improved wages and working conditions. In the four-year period between 1969 and 1973, there were twenty-one work stoppages in the state’s public sector, more than in the previous two decades combined. And by 1974, over thirty percent of North Carolina’s full-time state and local government employees were organized into unions or employee associations.

The tide seemed to be turning against North Carolina’s repressive public sector labor practices. By the early 1970s, North Carolina and Mississippi were the only two states that banned collective bargaining between government employers and workers. Rather than suppressing public sector unions, the majority of states passed legislation in the 1960s explicitly allowing government workers to negotiate formal contracts with their employers. Between 1959 and 1966, twenty-two states adopted laws allowing public sector bargaining. Ten more followed suit in 1968 and 1970. In other states, constitutional amendments, court decisions, and opinions of state attorneys general reversed earlier restrictions on public sector bargaining. Despite some labor-friendly state politicians’ best efforts, proposals to allow public sector bargaining in North Carolina consistently failed. In 1970, Democratic Governor Robert W. Scott appointed a commission to study “employer-employee relations.” Ultimately, thirteen of the commission’s seventeen members recommended legislation that would permit public

---


sector organizing and would grant each employer the discretion to recognize the unions. For the next four years, pro-labor legislators introduce such legislation in the General Assembly. Each time, it died in committee before coming up for a vote.\textsuperscript{50}

Nonetheless, most workers were confident the days of North Carolina’s repressive labor laws were numbered. At the federal level, AFSCME and the American Federation of Teachers believed they were on the cusp of winning a “Wagner Act for public sector unions,” which would extend collective bargaining rights to all state and local government workers. As historian Joseph McCartin notes, even labor’s foes seemed resigned to the fact that labor would win this prize. By the early 1970s, the dramatic upsurge in public sector union strikes had convinced many federal politicians that the nation was in need of a law regulating relations between workers and government employers. In 1973, Rep. William Lacy Clay of Missouri, at the urging of AFSCME, introduced sweeping legislation seeking to extend collective bargaining rights to all state and city workers, to mandate all workers pay fees for representation in organized workplaces, and to offer limited strike rights to public sector employees.\textsuperscript{51} In North Carolina and across the nation, public sector workers expected the legislation would pass.\textsuperscript{52}

\footnotesize
\textsuperscript{50} Haemmel, “Impasse in North Carolina,” 190-214.


\textsuperscript{52} Jim Grant, “The Organized Unorganized,” 135.
From behind the prison gates, inmates watched as public sector workers’ movement garnered strength. AFSCME never won its “Wagner Act for public workers.” A 1976 Supreme Court decision limiting the federal government’s ability to regulate labor relations in the public sector sealed its fate.53 But during the early 1970s, government employees’ organizing efforts seemed destined for success—even in North Carolina. While laboring on the highways and in state-owned factories and farms, prisoners began to link their struggles to those of public sector workers outside the prison. Both groups, after all, kept North Carolina running.

**Behind Bars and in the Streets**

Many prisoners had the opportunity to meet the activists who helped organize public sector workers outside the prison. In the late 1960s, state officials in North Carolina began to draw on newly available federal funding to strengthen their criminal justice system and to target labor and civil rights activists. Their efforts succeeded. North Carolina’s incarceration rate began to rise and, by 1974, it was the highest in the nation.54 The State Bureau of Investigation (SBI) also arrested and imprisoned a number of high-profile activists, including Chavis and Grant. Yet state officials’ efforts failed to stop labor activists from organizing. Once behind bars, they joined the state’s already politicized inmate population in developing new prisoner organizations and in


54 Mark Pinsky, “Justice in North Carolina is Once More Old South,” *New York Times*, March 9, 1975
establishing crucial connections between imprisoned activists and those in the free world.

Much of the funding North Carolina used in its attempt to quash labor and civil rights activism came from the 1968 Omnibus Safe Streets and Crime Control Act, an outgrowth of President Lyndon Johnson’s Task Force on Law Enforcement and the Administration of Justice. After the task force released its final report in 1967, the Johnson administration sought to expand the grant program established under the 1965 Law Enforcement Assistance Act to help states meet the standards proposed in the report. As drafted by Johnson’s Department of Justice (DoJ), the Safe Streets Act included a categorical grant program modeled after those affiliated with War on Poverty. The U.S. attorney general would have broad discretionary power to develop standards for the grants. Then, the Office of Law Enforcement Assistance (later known as the Law Enforcement Assistance Administration, or the LEAA) would distribute the targeted grants directly to local and state criminal justice agencies.55

Southern conservatives and northern Republicans flatly rejected the administration’s bill, fearing respectively that the categorical grants would spawn more of the same “radical” experiments associated with the War on Poverty and would shore up Democratic political power in the North. Together, they worked to restructure the bill to increase state leaders’ control over the funds. In the House, Republicans on the Judiciary Committee authored an amendment—known as the Cahill Amendment—that called for

---

the use of block rather than categorical grants to distribute the funds. The block grants empowered governor-appointed state planning agencies to determine how best to allocate LEAA funds in their states. After the Senate approved the amendment, Johnson, under pressure to appear “tough on crime” before the upcoming election, signed the Safe Streets Act in June 1968, calling it “more good than bad.”

After President Johnson released the first set of block grants in August 1968, North Carolina’s state planning agency, known as the Law and Order Committee, put its share of the funds to work cutting down on protests and “chaos” in the streets. The committee approved the purchase of seventeen high-powered rifles, twelve shields, thirty canisters of tear gas, two new police cars, and “assorted riot gear.” It also commissioned a task force to “upgrade the state’s laws related to rioting and civil disorders.”

Comprised almost entirely of law enforcement officials, the task force recommended a series of laws that expanded the ability of the police to search and detain individuals participating in so-called “riots,” which they defined as unauthorized gatherings of three or more people. Although the American Civil Liberties Union of North Carolina called the report an “offensive affront to the U.S. Constitution,” the General Assembly passed all of the task force’s recommendations in 1969.


58 Governor’s Committee on Law and Order, Proposed Legislation Relating to Riots and Civil Disorders, (Raleigh: North Carolina State Press, 1969), viii; Minutes of the Regular Meeting of Board of Directors of...
During the early 1970s, North Carolina used much of its federal criminal justice funding to strengthen the SBI and to improve communications between state and local police departments. And after Republican Richard Nixon won the presidency in November 1968, state officials had an unprecedented amount of federal funding to spend. Once in office, Nixon made good on his campaign promise to “get tough on crime” by working with the U.S. Congress to dramatically increase the LEAA’s funding. In 1970, Congress budgeted $268 million to the program, nearly four times the amount dedicated to the LEAA the previous year. With their share of the funds, North Carolina officials purchased new equipment for the state’s crime lab, developed a high-tech “offender database,” and hired and trained hundreds of new police officers.

State officials’ efforts to “get tough” had clear results. Although the state did not keep standardized arrest statistics until 1975, the growing backlog of criminal cases in the state’s courts suggests that the arrest rate—especially for nonviolent crimes—was growing. In the superior courts where the most serious crimes were tried, the number of pending criminal cases increased by 37.8 percent between the end of 1968 and the end of 1970. In the district courts, where traffic and less serious crimes were tried, the number of


Pending criminal cases increased by 55.7 percent during the same two-year period.61 To be sure, the crime rate, as calculated by the Federal Bureau of Investigation (FBI), was continuing to rise in North Carolina, as in the rest of the nation. But between the end of 1968 and end of 1970, the indexed violent crime rate increased only 5.5 percent in North Carolina while the indexed property crime rate increased by only 37.2 percent.62 Unless state judges and other court officials had dramatically slowed or changed their courtroom practices, North Carolinians were increasingly being charged with crimes untracked by the FBI, such as drug-related offenses, drunkenness, disorderly conduct, rioting, fraud, and traffic violations.

The influx of new detainees, many of whom had participated in protests and riots, shifted the dynamics behind bars. By May 1970, Bounds complained to the Raleigh News and Observer that “young drug offenders and radical political activists” were “disrupting the North Carolina penal system.” He noted that these new inmates rejected attempts at rehabilitation, seeing them as both unnecessary and paternalistic. Many even viewed themselves as “superior” to prison staff. Worse yet, Bounds feared the new inmates were “riling up” the long-term prisoner population by encouraging them to be hostile to the

---

61 Robert Morgan, “Our Problems in the Criminal Courts,” Folder 90 Delay, Background Material, Box 60/229, Robert Morgan Papers (hereafter cited as Morgan Papers), East Carolina State University Special Collection, Greensville, North Carolina.

62 Indexed violent crimes include murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault. Indexed property crimes include burglary, larceny-theft, and motor vehicle theft. During this same two year time period, North Carolina’s population actually decreased by 1 percent, which rules out the idea that crime rates were increased as the population increased. Table for North Carolina Total, All Crimes, 1960-1968, Federal Bureau of Investigation Unified Crime Reporting Statistics, accessed 5 April 2016, https://www.ucrdatatool.gov/Search/Crime/State/StatebyState.cfm
While Bounds struggled to manage the changing prison population, the SBI began targeting two of the state’s most well known “troublemakers”: Grant and Chavis. Throughout the spring of 1970, the SBI carefully followed their activities, referring to them as “black militants” and “outside agitators.” On May 15, police pulled over two of the men’s associates, Walter David Washington and Theodore (Al) Hood, for violating curfew only to find seven sticks of dynamite, two rifles, and a pistol in their vehicle. Police arrested Hood and Washington, charging them with breaking the Federal Gun Control Act. After posting bond, the two men fled to Canada. Already suspicious of Grant and Chavis, FBI and SBI officials, working together because Washington and Hood were charged with a federal crime, assumed that the two activists were behind the escape.

While still on the run in Canada, Washington and Hood cut a deal with federal prosecutors in exchange for testimony against Chavis and Grant, whom they claimed they had helped escape. In December 1971, police arrested both men. Pushed further, Hood and Washington testified that Grant, along with two other VISTA volunteers, had participated in the burning of a whites-only stable in Charlotte in 1968. Thanks to the


64 Civil Intelligence Bulletin, North Carolina State Bureau of Investigation, 14 May 1970, Folder SBI Reports, Box 176, Scott Papers; North Carolina Bureau of Investigation intra-bureau correspondence, Intelligence Section to Director, 15 May 1970, File No. CI-102, Box 176, Scott Papers; John Christopher Schultz, “‘Going to Hell to Get the Devil’: The ‘Charlotte Three’ Case and the Decline of Grassroots Activism in 1970s Charlotte, North Carolina,” (PhD Diss., University of Georgia, 1999), 169-171.

65 Schultz, “Going to Hell to Get the Devil,” 172.
new testimony, just days after his arrest on “aiding and abetting” charges, Grant was charged with arson. Three months later, in March 1972, the FBI and SBI found two more recently convicted teenaged men willing to testify against Chavis in exchange for lighter sentences and, in one case, a minibike. Relying on the two men’s stories, law enforcement officials charged Chavis and nine other activists with the burning of a grocery store during unrest emerging from a school boycott in Wilmington in 1971.

Locked in Central Prison while awaiting trial, Grant and Chavis encountered a politicized inmate population anxious to mobilize. In September 1971, the inmates, like the nation, had watched as prisoners at Attica Correctional Facility in New York had staged a massive strike that resulted in the death of ten guards and thirty-three inmates. Before Governor Nelson Rockefeller ordered guards to open fire, the inmates had presented prison officials with a sweeping list of demands that inspired further prison activism across the United States. The prisoners requested fair wages, legal representation, improved medical care, the right to form labor unions, freedom of religion, and freedom from mail censorship in addition to amnesty and safe passage to a “non-imperialistic” country. By the time Chavis and Grant arrived at Central, Corrections Superintendent Lee Bounds had already expressed concern to the Prison Advisory Committee that inmates in North Carolina were “planning their own Attica-

---

66 Ibid., 157, 169-200.


type situation.”

Channeling the inmates’ energy, Grant and Chavis began organizing behind bars. Before the United Church of Christ posted Chavis’s bond in January 1972, he founded the United Black Prisoners’ Freedom Movement (BPFM), which advocated for better food, increased visiting hours, a fairer distribution of desirable jobs between white and black inmates, fair wages, and a greater say in prison governance. In July 1972, Chavis and the BPFM worked with outside activists to plan a protest that would take place both behind bars and outside the prison. During the upcoming North Carolina Black Political Convention, a conference dedicated to expanding black political power in the state and nation, activists planned to march to Central Prison to protest the state’s repressive criminal justice practices. Meanwhile, Chavis would lead a “passive rebellion” inside the prison. The SBI closely watched as the plans developed, issuing daily updates to local law enforcement, the governor, Superintendent Bounds, and the state attorney general.

On July 22, over one hundred men and women gathered outside Central Prison to protest prison conditions and to demand the release of Chavis and Grant. State officials breathed a sigh of relief when the inmates did not launch a protest of their own. But the next day, unrest broke out at Odum Prison Farm. Led by African-American inmate John Hill and seven others, fifty-five inmates stopped work and declared themselves “in

---

69 Commission of Corrections, 23 October 1971, Folder Commission of Corrections 2, Box 11, Director’s Subject Files.

allegiance with the United Black Prisoners’ Freedom Movement.” They submitted a list of complaints to prison staff that included “forced slave labor,” “unfit and unhealthy” meals, a lack of proper medical care, “solid-sheet-steel beds” that caused “aches and pains to their joints,” mail censorship, and racial discrimination by guards “designed to introduce racial tension and conflict where none existed.” Bounds responded with tear gas, later transporting the strike’s leaders to Central Prison’s solitary confinement wing, where they encountered many of the men who participated in the 1968 protest.\footnote{John L. Hill, et. al, v. V.L. Bounds, 28 July 1972; R.L. Turner to Martin Peterson “Writ Filed by John Lee Hill, 6 July 1972, Folder Hill, Box 16, Civil Action Case Files (hereafter cited as Civil Action Case Files), Department of Corrections Records, North Carolina State Library and Archives, Raleigh, North Carolina.}

While at Central Prison, Grant also worked to direct outside activists’ attention to conditions behind bars. His friends and colleagues expected nothing less. In fact, SCEF continued to pay Grant’s salary knowing he would continue to organize while imprisoned.\footnote{Jim Grant, interviewed by author.} Soon after Grant’s conviction, his friends affiliated with VISTA and SCEF formed the North Carolina Political Prisoners Committee (NCPPC) with the goal of pressuring state leaders for his release. In his letters to the members of the NCPPC, Grant encouraged the activists to turn their attention to conditions inside Central rather than to fight for him. He told the group that the state’s prison practices were “dehumanizing” and that the “demands of the state’s inmates” should be included in all of the NCPPC’s printed material. Without fail, Grant reminded those who wrote to him that he was “one of many” and perhaps “the least endangered” person inside Central Prison. The media
attention surrounding his case prevented prison officials from treating him too poorly. Others were not so lucky.\textsuperscript{73}

Grant succeeded in linking the fight against poor prison conditions to his case. In late 1972, the NCPPC contacted activist and University of California, Los Angeles Professor Angela Davis to speak at a rally designed to draw attention to the “state’s political prisoners and inhumane prison conditions.”\textsuperscript{74} Davis was a powerful ally. In 1970, thousands of activists had mobilized on her behalf after she was charged with assisting Jonathan Jackson, the brother of famed prison activist George Jackson, in his takeover of a California courtroom. Jonathan had hoped to negotiate the freedom of George and the two other “Soledad Brothers” after they were accused of killing a white prison guard. After Davis’s arrest, more than 200 local and sixty-seven foreign committees formed to demand her release.\textsuperscript{75} Known throughout the world, Davis’s talk attracted nearly 2000 people in Charlotte. The crowd listened as she called them to mobilize against repression and abuse both “behind bars and in the streets.” Linking the struggle for political prisoners to prison conditions, Davis warned that “political repression [would] continue until the entire system is uprooted and [came] crashing

\textsuperscript{73} Jim Grant to Vicky Reddy, 12 August 1972; Jim Grant to Barbara Brokamp, 13 August 1972; Jim Grant to William Hobby, 2 September 1972; Jim Grant to William Finlator, 12 August 1972, Folder Letters of Support, Box 1, Reddy Papers.

\textsuperscript{74} Frye Gaillard, “Sponsors of Angela Davis Concerned Over Impact, 8 December 1972, Folder 9 Clippings, Box 1, Reddy Papers.

\textsuperscript{75} Bettina Aptheker, \textit{The Morning Breaks: The Trial of Angela Davis} (Ithaca: Cornell University Press, 1997).
In June 1972, Davis was acquitted of all charges, but she remained committed to fighting inhumane prison conditions and political repression, especially in North Carolina. In May 1973, Davis formed the National Alliance Against Racism and Political Repression (NARPR) with the goal of channeling the nationwide activism surrounding her case toward other criminal justice issues. Davis and the NARPR singled out North Carolina for special focus. Speaking to the massive audience that mobilized to support her case, Davis called North Carolina a “laboratory for racism and political repression” and urged activists to target it. The NARPR argued that the state’s use of its criminal justice system to crush labor and progressive organizing represented the wave of the future—unless activists mobilized to stop it. Davis later noted that the NARPR saw “a direct relationship between a victory over repression [in North Carolina] and diminishing the ability of every other state to consolidate its repressive apparatus.” In the years that followed Davis’s talk in Charlotte, the NARPR proved a crucial resource for the prisoners’ rights movement in North Carolina, helping to advertise its goals and attract


77 Michael Hannigan and Tony Platt, “Interview with Angela Davis,” Crime and Social Justice, no. 3 (Summer 1975), 31. Thanks to David Stein for alerting me to this source.


outside support.

**The Rise of North Carolina’s Prisoners Labor Union**

In December 1972, as Angela Davis prepared to speak in Charlotte, the state’s prisoners joined a growing number of imprisoned men and women throughout the United States who were attempting to unionize. In North Carolina, the strong ties between prisoners and free world activists provided inmates with the protection they needed to organize without fear of violent reprisal from prison staff. It also helped inmates recruit outside organizers to assist them in building their union. Working together, union organizers outside and inside the state’s nearly eighty prisons recruited new members and battled Department of Corrections’ officials who were determined to suppress their movement. By the summer of 1973, nearly a third of the state’s inmates had signed union cards—and the number continued to grow.

North Carolina’s prisoners were not the first group to form a union. Inmates in California organized a union in the wake of a nineteen-day strike at Folsom Prison in November 1970. Yet their efforts were hampered by ongoing clashes with black nationalist activists behind bars. In the early 1970s, the California Prisoners Union (CPU) organizer Willie Holder identified four principles undergirding the organization: “1. Accepting labor issues as primary 2. Presenting a ‘non-political’ overt posture 3. Establishing viable locals which represent every ethnic-racial segment of a particular prison and 4. Maintaining an intensive sensitivity to the threat of opportunism.” As historian Dan Berger has shown, the first two principles conflicted with the ideas held by
black nationalists who understood racial discrimination as undergirding the prison system and who adopted an overtly political tone. Within two years of its founding, the CPU splintered, with black nationalists forming the United Prisoners Union. 80

Despite the organization’s troubles, the CPU circulated a newsletter beginning in 1971 that made its way into the hands of Wayne Brooks, a white jailhouse lawyer confined to North Carolina’s Central Prison. Intrigued, Brooks sent a letter to the CPU in December 1972 asking its members to send a union representative to his state. Brooks was a prolific jailhouse lawyer and a committed anticapitalist almost singularly focused on reforming the state’s prisons. Born in Florida in 1931, he spent his early adulthood moving between his home state and North Carolina. Along the way, he racked up at least five charges for aggravated burglary, one of which landed him in Central Prison in 1972. During his first year behind bars, he filed twelve lawsuits, often jointly with other inmates. A self-educated lawyer with considerable expertise, Brooks’s lawsuits encouraged federal judges to expand their definition of prisoners’ rights, especially those under the Eighth Amendment. Drawing on Section 1983 of the 1871 Civil Rights Act, he filed suits regarding his lack of access to toiletries, disrespectful guards, and inadequate medical care, among other complaints. 81

80 Berger, Convict Nation, 185-187.

81 Jim Grant, Chuck Eppinette, and Robbie Purner, interviewed jointly by author, 21 May 2015, Durham, North Carolina, interview in author’s possession; see also Folder Brooks, Wayne, Box 3, Civil Action Case Files.
Brooks believed the timing was right for inmates to form a union both because “government workers were winning” their fight and because North Carolina’s Department of Corrections was making changes to its labor practices that strengthened prisoners’ hand. At the request of Prison Superintendent Lee Bounds, the General Assembly passed legislation in 1971 designed to slowly phase out the use of inmates on the state highways. In July 1973, the final group of inmates was slated to “come off the roads,” meaning that the Department of Corrections would lose the regular financial support it received from the State Highway Commission. The General Assembly, however, refused to increase the DoC’s budget to make up for the impending revenue losses. Instead, it demanded Bounds once again speed up production in the state’s prison industries. As July 1973 neared, it became increasingly clear to Bounds and other prison officials that the funding gap would be more difficult to close than they had originally anticipated. With money already tight, the entire prison system’s budget would be jeopardized if inmates went on strike or engaged in work slowdowns.

As Brooks waited for representatives from the California Prisoner Labor Union to arrive in North Carolina, he also contacted the left-leaning, Durham-based law firm Rowan, Paul, Keenan, and Galloway, with whom he had already been in touch concerning conditions at Central Prison. Following the CPU’s model, Brooks wanted to

---

82 Wayne Brooks to Norman Smith, 6 June 1973, Folder Prison, Box 22, NCCLU Papers.

create an outside office for the prisoners’ union to coordinate activities behind bars while shielding inmates from possible retaliation from prison staff. The lawyers put him in touch with Debbie Mailman and Chuck Eppinette, two white activists willing to help. A recent graduate from North Carolina Central University School of Law, Mailman had just joined a law practice with the goal of focusing on social justice issues. Eppinette, an antiwar activist from Raleigh, was her first client. Sentenced to a year in prison for draft evasion, Eppinette was out on bond while Mailman appealed his case. To Mailman, Eppinette was the perfect fit for the new position with North Carolina’s nascent prisoners union. If his appeal failed and he faced prison time, he could simply keep organizing behind bars.  

Mailman and Eppinette helped Brooks raise a small amount of money to get the union up and running. They received their largest contribution from the North Carolina branch of the AFL-CIO, the parent organization of AFSCME. In early 1973, Mailman worked with Brooks to craft a letter to Wilbur Hobby, the organization’s president. In it, they situated the inmates’ struggle within the broader context of the labor movement, calling prisons the “final frontier” of public sector organizing. Although the AFL-CIO never took a public stance on prisoners’ efforts, Hobby, who was also engaged civil rights and antipoverty activism, responded by sending Mailman a check for $1,000 and a

---

84 Chuck Eppinette, interview with author, 25 September 2014, Durham, North Carolina, interview in author’s possession.
note wishing her luck and asking her “to keep him informed of the union’s progress.”

While Mailman and Eppinette continued to establish the union’s outside office, Brooks began recruiting inmates. He first reached out to fellow white jailhouse lawyers Frank Strader, Donald Meriwether, Vernon Rich, and Donald Morgan. Together, the men crafted a short flyer to advertise their new organization, which prison guards quickly confiscated. Titled “we had the right to remain silent, but we ain’t gonna stay that way,” a slogan borrowed from the California Prisoners Union, the flyer noted that the union’s primary purpose was to build a “state-wide, unified, multi-racial prisoners union at every prison in North Carolina” to work “efficiently and dedicatedly” toward improving the state’s prison system. “Through collective strength,” the flyer suggested, prisoners could compel state officials to “respect [inmates’] rights.”

Prisoners in other states were organizing unions, too. By late 1973, prisoners in at least forty-four institutions spread across nine other states had, or were working to establish, a union. Prisoner union members from New York, Ohio, Massachusetts, Washington, Minnesota, Wisconsin, Oregon, Delaware, and Rhode Island regularly contributed articles to The Outlaw, the newsletter of the California Prisoners Union. In

---

85 Wilber Hobby to Deborah Mailman and Wayne Brooks, 6 June 1973, Folder NC Prisoners’ Union 74-77, Box 1, Reddy Papers.

86 “We had the right to remain silent, but we ain’t gonna stay that way,” Folder Central Prison, Box 1, Legal Correspondence, State Department of Corrections Records (hereafter cited as DoC Legal Correspondence), North Carolina State Library and Archives, Raleigh, North Carolina.

87 Virginia McArthur, “Inmate Grievance Mechanisms: A Survey of 209 American Prisons,” Federal Probation 38, no. 41 (1974), 44. This study only surveyed 209 individual prisons, which suggests that the number of inmate unions may have been more than nine.
Washington and Massachusetts, prisoner unions even won recognition by prison staff. At Walla Walla Prison in Washington, the union and guards agreed to a power sharing arrangement that last three years. At Walpole Prison in Massachusetts, Corrections Commissioner John O. Boone, a leader in the field of prison reform, granted the prisoners union, known as the National Prisoners Reform Association, the same collective bargaining rights afforded the state’s other public sector workers. Angered by Boone’s willingness to work with the union, Massachusetts’s prison guards launched a strike, walking off the job. In response, the National Prisoners Reform Association, aided by civilian volunteers, ran the prison for four months. The union established a dispute-resolution board, elected men to observe the three cell blocks, and ran the hospital and prison industries. No violence ensued. During the second month, the Massachusetts Supreme Court ordered the prison guards back to work. But the union continued to run the institution for two more months until Boone, under pressure from the governor, asked state police to retake the institution.88

Keenly aware of the situation unfolding in Massachusetts, state officials in North Carolina did everything in their power to stop the union from organizing. In November 1972, voters elected the Republican James Holshouser as state governor, the first Republican to hold the office since Reconstruction. Committed to “restoring order” in North Carolina’s prisons, Holshouser demoted Lee Bounds from his position as prison superintendent. In his place, Holshouser appointed David Jones, a high-school educated

TV appliance storeowner who had worked on the governor’s campaign. Before his appointment as prison superintendent, Jones had never been inside a prison, an insult to Bounds, who had dedicated his life to corrections reform. In February 1973, Bounds resigned, citing “irreconcilable differences” with Jones.89 With Bounds gone, Jones got to work upholding his promise to “shake up” the state’s prison system and to no longer tolerate any “messing around” on the part of inmates or guards. He soon implemented new rules limiting inmates’ free time, increasing the workday, and curtailing the rehabilitation programs in the state’s maximum- and medium-security prison facilities.90

Jones’s new rules made labor organizing even more risky than it had been in the past. Signing a union card—let alone recruiting others to do so—was an act of bravery. Prisoners risked punishment by hard labor, solitary confinement, limited visiting hours, or delayed parole. Eppinette recalled once arriving at Caledonia Prison Farm to pick up signed union cards only to find the young inmate he was supposed to meet locked inside the warden’s office. While the warden looked on, the inmate, clearly shaken, told Eppinette that he was no longer interested in participating in the union or meeting with Eppinette. But as they walked out of the office, while the warden looked away, the inmate pulled a large stack of union cards out of his jacket and handed them over to Eppinette. “See you next week,” he said.91


90 Ron Aldridge, “Ex-Salesman Makes Prison System Hop.”

91 Chuck Eppinette, interview with author.
Many wardens transferred inmates when they discovered them organizing for the union. Yet this form of punishment had unintended effects. As prisoners moved throughout North Carolina’s prison system, they spread the word about the organization. Through individual conversations, men recruited new union members and asked them to sign a union card, which Eppinette and Mailman delivered to and picked up from the state’s prisons. Meanwhile, Eppinette and Mailman continued to communicate with the cadre of jailhouse lawyers at Central Prison about the next steps for their group.  

By May 1973, Jones told the Prison Advisory Commission that he feared the union had members in at least twenty-five of the state’s seventy-eight prisons.

Tensions grew in North Carolina’s prisons during the summer of 1973. In late May, prison officials received word that inmates were planning a system-wide strike. The following month, a group of thirty interracial inmates at Odum Prison Farm refused to work. Blaming the situation on “outside agitation” and “union organization,” the Regional Supervisor F.L. Sanders left Raleigh for Odum Farm, fearing the strike would spread across the river to Caledonia Farm if not immediately stopped. Once on the scene, Sanders compiled a list of sixteen “known union agitators” who were “influencing or trying to influence others.” Leading the way were three black inmates, Ronnie Avery, Charles R. Smith, and James O. McLamb, who encouraged other prisoners to “refuse to do any farm work after July 1 when the road quotas were to be cut…unless minimum

92 Ibid.

93 Prison Advisory Commission, 17 May 1973, Box 2, DoC Legal Correspondence.
wages were paid.” Sanders responded by transferring each of the men to Central Prison’s solitary confinement unit.  

Despite prison officials’ effort to repress the union, the organization continued to grow.

In August 1973, however, the union experienced a devastating setback. Using the funds they had raised for the union, Eppinette and Mailman had hired a formerly incarcerated young man to help them manage the union’s outside office. Soon after, the man stole the union’s money, tossed the signed union cards in the trash, and fled the state. The union would have to start from scratch and ask prisoners to sign new union cards, a difficult task given guards’ heightened concern about union activity. For Eppinette, the young man’s actions underscored the difficulty of working alongside imprisoned or formerly imprisoned men and women. While some leftists in the 1970s glorified inmates as political prisoners wrongly locked up behind bars, activists like Eppinette and Mailman who worked side-by-side with imprisoned people recognized shades of gray.

Most of the inmates inside North Carolina’s prisons committed crimes, some of which were horrific, and many continued to engage in illegal activity after their release. But to Eppinette and Mailman, inmates, regardless of the length or the content of

---


96 For a discussion of radicals’ glorification of prisoners see Cummings, 13-14; and Marie Gottschalk, The Prison and the Gallows, 165-197.
their rap sheets, were human beings who deserved fair treatment. They knew they faced a hard road ahead, but they were committed to continuing the journey.  

**Enforcing Rights through Collective Strength**

After the young man fled with the union’s money, Eppinette and Mailman had trouble raising funds to re-launch the organization. But in October, they met the union’s saving grace: Robbie Purner, a former Duke seminary student who volunteered with the Southern Coalition on Jails and Prisons, a Nashville-based organization dedicated to advocating for prisoners’ rights and alternatives to incarceration. Beginning in the fall of 1973, Purner worked with Brooks and the union’s other leaders to raise money for their cause and to focus their organization’s goals and strategies. With Purner’s assistance, the inmates developed a plan designed to influence state politics, to expand the federal courts’ definition of prisoners’ rights, and to reshape power dynamics behind bars—all while maintaining close ties to outside activist organizations.

Purner was not religious—she entered seminary to pursue her interest in religious history—but she was inspired by many Christian organizations’ dedication to prison reform and compassion for imprisoned men and women. At Duke, she began volunteering with Offender Aid and Restoration (OAR), a religious non-profit that matched inmates with mentors. While working with OAR, Purner met Wayne Brooks, who encouraged her to participate in the prisoners’ union. By early 1974, Purner had

---

97Chuck Eppinette, interview with author.
taken over much of the correspondence and coordination required by the outside office. She also began organizing for the Southern Coalition on Prisons and Jails, which was in the process of establishing branches throughout the South. With the Southern Coalition, Purner applied for and received a fourteen thousand dollar grant to finance the prisoners’ union through the Durham-based Suruban Partners, a faith-based organization dedicated to social justice. Once Purner had the funds in hand, she began working with Brooks to formalize the union. Dedicated to the idea of participatory democracy, Purner viewed herself as a facilitator rather than a leader of the organization. She strongly believed that inmates rather than outside activists should run the union.

The first order of business for the fledgling union was to elect a board of directors. Hoping to avoid the racial tension plaguing the California Prisoners Union, Brooks and the other white jailhouse lawyers at the union’s helm decided to divide the board seats based on the racial composition of North Carolina’s prison system. In early 1974, the union held its first election. Six board seats went to white inmates. Two seats went to Native American inmates. And four seats went to black inmates—including John Hill, who had led the 1972 strike with Chavis’s United Black Prisoners Freedom Movement at Odum. The group elected Wayne Brooks as union president.


99 Robbie Purner, interview with author, 3 December 2014, recorded via telephone, interview in possession of author.

100 “Goals of the North Carolina Prisoners’ Labor Union,” September 27, 1974, Folder NC Prisoners’ Union 74-77, Box 1, Reddy Papers.
course of the next six months, the newly formed board of the North Carolina Prisoners Union crafted a formal declaration of the organization’s purpose, goals, and strategies. Purner transported the drafts of the documents back and forth among the state’s various prisons, allowing each board member to comment on the drafts.  

Echoing the letters inmates sent to the State Board of Charities at the turn of the twentieth century, the union’s primary purpose was to urge state officials to “treat them…as human beings.” In the document outlining the union’s goals, the inmates noted that “the convict and ex-convict” were treated by the state as if they were “less deserving of human respect and dignity”—often solely because they were “poor or members of racial minorities.” While the union “did not deny that society [had] a right to punish by imprisonment for law violations,” the inmates believed the inhumane conditions and practices inside North Carolina’s prisons exceeded the punishments imposed on them by the courts. The union argued that men and women should be sent to “prison as punishment” not “for punishment” [emphasis in original]. Through their “collective strength,” the union intended to “remov[e] those ‘correctional’ practices…in conflict with just constitutional and social interests of all persons.”

Together, the board of directors outlined a series of long-term and short-term goals for their movement. First and foremost, the prisoners demanded “an end to employment without reasonable compensation, wages…or benefits.” They recognized

---

101 Robbie Purner, interview with author.

that “prisoners’ labor earn[ed] huge profits and sav[ed] much money for the state of North Carolina.” Citing the 1967 law enabling the state to pay inmates up to one dollar per day, the inmates sought “just compensation” for their labor. They also asked for the same benefits afforded free workers, including workers compensation in case of on-the-job injuries, social security, and unemployment insurance. Next, the union sought “an end to brutal treatment on the part of prison staff.” The prisoners described being “beaten, gassed, and kept in physically unliveable [sic] ‘lock-ups.’” They also emphasized the mental anguish many inmates experienced as a result of the “deep contempt” with which guards treated prisoners—contempt that was “brutally felt” and “deeply resented” by the inmate population. Guards’ efforts to block inmates’ communication with their families and friends only exacerbated the sadness and helplessness prisoners experienced, especially imprisoned women kept from their families. Many of the prisoners’ other demands were more specific: improved medical care, access to law libraries and legal services, and expanded due process protections during disciplinary and parole hearings.103

While the majority of the union’s goals focused on improving conditions behind bars, some extended beyond the prison. Inmates sought the elimination of capital punishment and an end to the construction of high-rise maximum-security prisons. The union “oppos[ed] prison construction in general,” but they believed maximum-security facilities were particularly isolating and inhumane. They also demanded significant

---

103 Ibid.
changes to North Carolina’s sentencing practices. The union wanted the General Assembly to eliminate “indeterminate sentencing,” a relic of the Progressive era that allowed prison officials to keep men and women imprisoned until they were sufficiently “rehabilitated.” They wanted full restoration of all of their rights after their release, including their right to vote. Most sweeping of all, the union sought “an end to discriminatory sentences based on economic or racial background.” While the union recognized that the disparities in sentencing reflected the “social and economic prejudices within society at large,” they remained committed to working toward changing the over-incarceration of the poor and people of color.\(^\text{104}\)

The union developed three core strategies to help inmates achieve their goals. First, the union intended to influence lawmakers by “direct[ing] outside members of the union…to appear before the legislature to prove more complete information about prisons and the treatment of prisoners.” They also planned to “educate the public” through “the news media, union newsletters…and public speaking engagements.” The union believed that because prisoners best understood prison life, they should have a say in the development of prison policy.\(^\text{105}\) In one flyer advertising their union, the inmates highlighted recent failed efforts in the North Carolina General Assembly and in Congress.

\(^{104}\) Ibid.

\(^{105}\) Ibid.
to pass a “bill of rights for prisoners.” With its help, the union believed, the bill of rights would both better reflect inmates’ needs and have better luck in passing.\textsuperscript{106}

Next, the union intended to “retain attorneys” and utilize the expertise of jailhouse lawyers such as Brooks to pursue their objectives through the courts.\textsuperscript{107} In so doing, the union intended to take advantage of a 1966 shift in the Federal Rules of Civil Procedure allowing “similarly situated” individuals to file lawsuits together. Most cases before 1966 consisted of an individual plaintiff suing an individual defendant. But “class actions”—as the new type of suits were known—enabled inmates to collectively challenge conditions and practices that impacted large groups of prisoners spread out across the state’s dozens of correctional facilities. In 1974, the union established a “legal committee” headed by Brooks and his fellow Central Prison inmate Donald Morgan. Each month, the two men placed an ad in the union’s newsletter asking inmates to mail them their legal complaints. Brooks and Morgan then evaluated the claims, grouped them together, and filed class

\textsuperscript{106} “We had the right to remain silent, but we ain’t gonna stay that way,” Folder Central Prison, Box 1, DoC Legal Correspondence. Beginning in late 1970, the American Civil Liberties Union began advocating for a “bill of rights for prisoners,” which would have guaranteed inmates a wide range of First Amendment and due process rights. Such a bill of rights would have helped make inmates’ rights clear during a moment when the law related to prisoners was in flux in the federal courts. During the 1971 General Assembly, the American Civil Liberties Union of North Carolina lobbied for a prisoners’ bill of rights in their state. See Gary Evans, “Lambeth Among Advocates for Prisoners’ Rights,” The Thomasville Times, 23 December 1970; “Legislative Recommendation of the North Carolina Civil Liberties Union,” Folder Legislative Program, Box 19, NCCLU Papers. In 1973, liberals, led by members of the Congressional Black Caucus, introduced a number of bills into Congress that would have established a federal bill of rights for prisoners and standards for state correctional systems. See H.R. 2583, Omnibus Penal Reform Act, 93\textsuperscript{rd} Congress https://www.govtrack.us/congress/bills/93/hr2583; H.R. 3690, Prisoner Treatment Act, 93\textsuperscript{rd} Congress, https://www.govtrack.us/congress/bills/93/hr3690; H.R. 4188, Prisoner Rights Act, 93\textsuperscript{rd} Congress, https://www.govtrack.us/congress/bills/93/hr4188.

\textsuperscript{107} Goals of the North Carolina Prisoners’ Labor Union,” September 27, 1974, Folder NC Prisoners’ Union 74-77, Box 1, T.J Reddy Papers.
action lawsuits they hoped would encourage federal judges to expand prisoners’ rights law and to order sweeping changes to the state’s prison policies.\textsuperscript{108}

Finally, the union sought to “collectively bargain with prison administrations and administrators.”\textsuperscript{109} For the board of directors, collective bargaining was essential because neither the courts nor the state or federal legislative branches appeared willing—or able—to transform prison policies as thoroughly or swiftly as the union desired. Since the late 1960s, the federal courts had expanded inmates’ First Amendment rights to free speech and religion, their Fourteenth Amendment right to due process, and their Eighth Amendment right to be free from the cruelest forms of punishment. Yet, as union members pointed out, federal judges were not “sitting in state prisons” making sure guards enforced their rulings. Inmates complained that prison officials often “disregarded their rights,” choosing instead to “act however they pleased.”\textsuperscript{110} Moreover, major prison reform legislation, introduced during the era of “tough-on-crime” politics, seemed unlikely to pass. By leveraging their labor, union members hoped to force prison officials to respect their rights and to treat them with dignity. Collective bargaining rights, the union argued, would allow inmates to “police the prison from the inside.”\textsuperscript{111}

\textsuperscript{108} See, for example, Wayne Brooks, “Complaints?” \textit{NC Prisoners’ Labor Newsletter}, vol. 1, no. 3 (March 1975-April 1975) Folder Corrections, Box 347, Holshouser Papers.

\textsuperscript{109} “Goals of the North Carolina Prisoners’ Labor Union,” September 27, 1974, Folder NC Prisoners’ Union 74-77, Box 1, T.J Reddy Papers.

\textsuperscript{110} “We had the right to remain silent, but we ain’t gonna stay that way,” Folder Central Prison, Box 1, DoC Legal Correspondence.

\textsuperscript{111} Wayne Brooks to North Carolina Political Prisoners Committee, 4 February 1973, Folder North Carolina Prisoners Union (undated), Box 1, Reddy Papers.
Once the union secured their right to bargain collectively, the inmates planned to make one of their first orders of business the creation of a grievance council modeled after those used by labor unions in the free world. Comprised of both prisoners and prison staff, the council would “address issues affecting individual inmates as well as the prison population as a whole.” The union recognized that the federal courts were ill equipped to deal with everyday problems behind bars. The grievance council could “swiftly address problems” and “develop resolutions agreeable to both prisoners and prison staff.” With the council in place, the inmates hoped tensions between inmates and prison staff would be reduced. Prisoners argued that, with the union in place, prison staff would uphold the council’s decisions because, if not, the union could strike.  

By the summer of 1974, the union had fully recovered from its setback the previous year. In fact, over half of the state’s eleven thousand prisoners had signed a union card. The board of directors called on their members to contact a wide range of organizations about their cause, including Angela Davis’s National Alliance Against Racism and Political Repression. In so doing, they hoped to build support for their movement outside the prison. In their letters, the inmates tied their activism to the broader fight against the state repression that had entangled activists such as Jim Grant and Ben Chavis. Writing to the Charlotte-based North Carolina Political Prisoners’

112 Ibid.
Committee, Brooks, for instance, urged the group to see inmates’ union organizing as “one piece in the collective battle to make North Carolina safe for all oppressed people.”

The union’s strategy worked. On July 4, 1974, the North Carolina Political Prisoners Committee worked with the National Alliance Against Racism and Political Repression to host a massive march in Raleigh. Supporting the prisoners’ union was a key focus of the event. Designed to “tear the mask of liberalism from the face of North Carolina” and to “focus the attention of the world on the crimes of North Carolina against its people,” the march attracted labor unions, civil rights and black power groups, and feminist organizations from across the United States. By the most conservative estimates, 4500 attendees participated in the event.

Gathering at Memorial Auditorium for an opening rally, the protestors listened as the speakers decried the state’s repression of labor and civil rights activism and its draconian criminal justice policies. North Carolina still had the highest incarceration rate in the United States. It also had the harshest death penalty laws. By early 1975, North Carolina’s prisons held more than half the condemned prisoners in the nation. Before the march began, Rev. Ralph Abernathy, a close associate of Martin Luther King Jr., reminded the audience that “North Carolina [was] one of the most, if not the most,

---

115 Wayne Brooks to North Carolina Political Prisoners Committee, 4 February 1973, Folder North Carolina Prisoners Union (undated), Box 1, Reddy Papers.

repressive states in the nation.” As the march made its way through Downtown Raleigh, the protestors made one crucial stop: they took a moment to stand outside Central Prison “to show support for the union organizing inside.”117

***

Two months later, in September 1974, Thad Eure, North Carolina’s secretary of state, signed the prisoners’ articles of incorporation, making it an official non-profit organization.118 Influenced by labor and civil rights activism outside the prison, inmates in North Carolina had taken action into their own hands to form the Prisoners Labor Union. As the prisoners well understood, changes to the state’s prison practices would take more than federal court decisions or new legislation. Inmates needed to fundamentally restructure the relations of power behind bars, and they believed the state’s ongoing reliance on prisoners’ labor to finance the prison system gave them the leverage they needed to accomplish this task. As 1975 began, the leaders of the North Carolina Prisoners Union were optimistic. Nationwide activist organizations such as the National Alliance Against Racism and Political Repression had linked prisoners’ organizing efforts to their struggles beyond the prison gates. The broader movement to organize public sector workers also seemed to be thriving. Collective bargaining rights,


118 Article of Incorporation of North Carolina Prisoners’ Labor Union, Folder NC Prisoners’ Union 74-77, Box 1, Reddy Papers.
the prisoners thought, were within their reach. Yet just two years later, the union—and
the broader prisoner unionization movement—would crumble, not through a violent
retaking of the prison but through the machinations of the American legal system.
In February 1972, Donald Morgan, a future board member of the North Carolina Prisoners Labor Union, requested assistance from the North Carolina chapter of the American Civil Liberties Union (NCCLU). The issue at hand, Morgan explained, was one of “utmost importance” to the men confined in Raleigh’s maximum-security prison. Each night, noisy trains passed by the facility, preventing the inmates housed nearest to the tracks from sleeping for “more than an hour at a time.” To Morgan, this situation represented “a clear violation” of the Eighth Amendment’s ban on cruel and unusual punishment and mandated a federal lawsuit. Yet Norman Smith, the NCCLU’s sole staff attorney, remained unconvinced. During a NCCLU board meeting, Smith used Morgan’s letter to illustrate a dilemma he regularly encountered when responding to inmates’ requests for aid. On the one hand, he recognized that Morgan had identified a “real and pressing problem” inside the prison. “Sleep deprivation can drive a man mad,” he acknowledged. But on the other hand, Smith did not believe that “any federal judge in their right mind” would view the noisy trains as infringing on inmates’ constitutional rights. According to case law, prison practices had to “shock the conscience” in order to qualify as an Eighth Amendment rights violation, a high bar to reach in an era when some

---

1 Donald Morgan to Norman Smith, 6 February 1972, Folder Prisoners Letter, Box 6, American Civil Liberties Union of North Carolina Papers (hereafter cited as NCCLU Papers), Rubenstein Library, Duke University, Durham, North Carolina.
Prisoners in the United States lacked clean water, let alone an uninterrupted night’s rest. “We need to figure out a third way,” Smith explained to the Board. “How should we handle inmates’ complaints that are neither petty nor rights violations?”

Prisoners’ rights lawyers were not the only legal professionals grappling with the question of how best to respond to inmates’ complaints. By the early 1970s, federal judges found themselves inundated by inmates’ self-filed, or pro se, lawsuits contesting prison conditions or practices. But the federal judiciary lacked the legal authority to resolve the vast majority of the inmates’ claims. Between 1968 and 1974, the number of constitutional rights cases contesting prison conditions or practices increased by more than 3000 percent. Many judges, including Supreme Court Chief Justice Warren Burger, noted the suits often described “meaningful problems” behind bars, but the federal courts dismissed all but two percent of inmates’ cases for failing to outline an issue judges believed federal law could address or remedy. To make matters worse, many inmates waited months, or even years, to learn their cases had been dismissed because the litigation process was painfully slow. The rise in inmate lawsuits corresponded with a broader national upsurge in the federal litigation rate that left the courts constantly

2 NCCLU Board Meetings, 12 March 1972, Folder Board Minutes, Box 7, NCCLU Papers.

backlogged. With judges overwhelmed by their workload, civil liberties lawyers worried that even inmates’ unambiguously actionable claims would go unresolved.

This chapter examines how prisoners’ rights lawyers responded to the legal and institutional problems raised by inmates’ grievances during the 1970s. Recognizing that the federal courts lacked the ability to address the full range of inmates’ concerns, prisoners’ rights lawyers worked alongside federal judicial officials, state attorneys, and prison administrators to develop grievance procedures internal to prison systems. By the mid-1970s, such procedures had garnered widespread support because they appealed to a variety of stakeholders, albeit for different reasons. Judicial officials believed the procedures would reduce their caseloads by resolving inmates’ problems before they reached the courts. State attorneys and prison administrators hoped the procedures would limit prisons from liability in the two percent of inmate-filed cases judges agreed to hear. And prisoners’ rights lawyers viewed the procedures as a means to improve life behind bars for the vast majority of inmates who had troubling grievances that fell short of constitutional rights claims.

Implemented in 1974, North Carolina’s inmate grievance procedures, like those in most states, succeeded in addressing many inmates’ complaints and in catalyzing some reforms. Yet much to the surprise of the NCCLU, the procedures also eroded federal

---

judges’ willingness to protect inmates’ First Amendment rights to free speech and association, rights both civil liberties lawyers and their imprisoned clients viewed as crucial to the success of the prisoners’ rights movement. In 1975, the NCCLU agreed to represent the recently organized North Carolina Prisoners Labor Union in federal court after the state Department of Corrections (DoC) promulgated new rules prohibiting inmates from soliciting others to join the union, attending union meetings, and sending or receiving bulk mailings concerning the union. In a surprising decision, the U.S. District Court for the Eastern District of North Carolina ruled in favor of the inmates. But the next year, the Supreme Court reversed the decision in Jones v. North Carolina Prisoners Labor Union, a ruling that marked the return of the “hands off” doctrine that once defined the court’s relationship to prison administrators.5 During the case, state attorneys, aided by the U.S. Solicitor General’s Office, argued in part that because the new grievance procedures offered a fair, institutional avenue for inmates to express their grievances, prison administrators could ban the union without fully eroding inmates’ First Amendment rights.6 Their argument proved persuasive, I suggest, because the procedures helped convince the court that prison administrators were capable of governing inmates according to law-based rules rather than personal whim. Civil liberties lawyers had

---

5 As my first chapter demonstrates, federal courts before the 1960s believed inmates lost the vast majority of their rights when they crossed the prison gates. In 1964, however, the Supreme Court under Chief Justice Earl Warren opened the courtroom doors to prisoners when it ruled in Cooper v. Pate that inmates could sue state officials who violated their constitutional rights under Section 1983 of the 1871 Civil Rights Act. In Cooper’s wake, the federal courts responded to inmates’ petitions by expanding prisoners’ constitutional rights, largely under the First, Eighth, and Fourteenth Amendments.

helped design the procedures to resolve those inmate complaints that judges did not recognize as constitutional violations, but state and federal attorneys wielded them to roll back federal courts’ oversight of inmates’ constitutional rights, too. Within days of the ruling, DoC officials instituted new policies making it nearly impossible for inmates to organize. By 1978, the North Carolina Prisoners Labor Union had collapsed.

Civil liberties lawyers’ struggle to address inmates’ complaints during the 1970s highlights the limitations of the rights revolution that swept the nation after World War II. Emboldened by Supreme Court cases that created or expanded a host of new constitutional rights for Americans, inmates made all sorts of claims on the federal government. But the legal and institutional constraints placed on federal judges made it difficult for them to respond to the full range of inmates’ problems. By the early 1970s, civil liberties lawyers recognized these difficulties not only in the field of prisoners’ rights law but with the federal litigation process as a whole. Despite years of civil liberties and civil rights litigation, problems of discrimination and arbitrary authority continued to plague social institutions such as schools, police forces, and workplaces. Realizing federal lawsuits were not enough to end the abuses within such institutions, lawyers began to work with professional managers and other partners to develop new law-based mechanisms to make institutions more accountable to the people they served.\(^7\)

These lawyers’ quest to find solutions beyond the federal courtroom, then, stands in contrast to much scholarship in postwar U.S. social history, which often depicts the creation and enforcement of new federal rights as the ultimate victory for social movement actors. Only when conservatives rose to power after 1968, this scholarship suggests, was the promise of the rights revolution curtailed. Yet as civil liberties lawyers understood, reforming institutions required more than the expansion of Americans’ constitutional rights, which addressed only a portion of the everyday injustices individuals faced. To resolve problems inside prisons beyond the Constitution’s reach, civil liberties lawyers turned to inmate grievance procedures.

The threat of federal litigation, for all its limitations, undergirded the success of prison grievance procedures. In North Carolina and across the nation, state attorneys and prison administrators implemented grievance procedures with the goal of insulating prisons from liability in federal lawsuits. Civil liberties lawyers worked alongside these

---

government officials to make the procedures as fair as possible. The Supreme Court, however, used the procedures, once in place, to legitimize the constriction of federal judges’ oversight of prisoners’ rights. This use of grievance procedures complicates scholars’ understanding of what political scientist Sarah Staszak has called “the politics of judicial retrenchment.” Most scholarship has depicted efforts to scale back federal judges’ authority as a purely partisan endeavor. Conservative Republican politicians and GOP-appointed judges, this scholarship suggests, worked to roll back the rights revolution unleashed by the liberal Warren Court. But the history of prison grievance procedures suggests that some well-intentioned liberals helped lay the groundwork for retrenchment by participating in the development of systems of legal oversight internal to American institutions.9 With prison administrators seemingly able to police themselves, federal judges no longer felt as obligated to oversee the protection of prisoners’ rights as they had in the past. Yet with the threat of federal intervention reduced, prison administrators felt free to reshape the grievance procedures to better reflect their managerial desires, among them the elimination of the North Carolina Prisoners Labor Union.

9 For scholarship depicting efforts to roll back the rights revolution as a conservative endeavor, see Thomas F. Burke, Lawyers, Lawsuits, and Legal Rights: The Struggle Over Litigation in American Society (Berkeley: University of California Press, 2002); William Haltom and Michael McCann, Distorting the Law: Politics, Media, and the Litigation Crisis (Chicago, IL: University of Chicago Press, 2004); Steve Teles, The Rise of the Conservative Legal Movement: The Battle for Control of the Law (Princeton: Princeton University Press, 2010). Alternatively, Sarah Staszak notes that judicial retrenchment was not always a partisan issue, and the animating forces behind entrenchment were far from homogenous. Liberal lawyers and Democratic politicians initially supported many of the mechanisms, such as alternative dispute resolution, that removed many Americans’ claims from the federal Courts. They did so not as a means to constrict Americans’ rights but as a means to streamline the functioning of judicial institutions. See Sarah Staszak, No Day in Court: Access to Justice and the Politics of Judicial Retrenchment (New York: Oxford University, 2015).
The ACLU National Prison Project at the Federal and State Level

NCCLU attorney Norman Smith turned to his executive board for help with Donald Morgan’s complaint because, he explained, the ACLU National Prison Project staff provided little advice for dealing with issues “beyond the reach of the U.S. Constitution.”

Founded in 1972, the National Prison Project swiftly became the leading public interest law firm devoted to expanding and defending prisoners’ constitutional rights. In addition to handling cases of their own, the National Prison Project staff helped ACLU affiliates address prisoners’ rights concerns in their states by providing pleadings, advice, and occasionally a personal appearance in court. ACLU affiliates took on the role of responding to the requests for assistance emerging from their states’ prisons and jails.

As Smith quickly learned from reading the dozens of inmate letters that arrived at his office every week, the concerns of the Prison Project often differed from those of imprisoned men and women. The ACLU’s mission was to defend the Bill of Rights and, like all of the organization’s branches, the Prison Project focused on big questions of constitutional law and took only those cases that had the potential for widespread—rather than individual—effects. Yet in their letters to the NCCLU, the vast majority of inmates outlined personal problems or issues seemingly unrelated to constitutional law. To truly

---

10 NCCLU Board Meetings, 12 March 1972.

11 “A Prisoners’ Rights Project Kit for the American Civil Liberties Union,” June 1972, Folder 5, Box 1089, American Civil Liberties Union Papers (hereafter cited as ACLU Papers), Mudd Library, Princeton University, Princeton, New Jersey.
assist inmates, Smith ultimately concluded, civil liberties lawyers needed to pursue both constitutional rights litigation and institutional reforms.

The ACLU National Prison Project grew out of civil liberties lawyers’ broader effort to “bring the Bill of Rights to bear on all public institutions.” Fueled by the energy of the civil rights movement and the groundbreaking cases of the Warren Court, ACLU lawyers in the late 1960s began searching for new avenues to extend Americans’ individual rights. Many turned their attention to what leaders of the New York Civil Liberties Union referred to as “enclaves” of bureaucratic power: public institutions that “steadfastly denied the Bill of Rights applie[d] to them,” including the military, schools, the welfare system, mental hospitals, and prisons. The New York-based law professor Herman Schwartz viewed prisons as the ultimate “enclave.” Not only were they “out of sight and out of mind,” but they were also still largely beyond the purview of the courts. In 1969, he began representing prisoners in the state penitentiary at Attica, a role that ultimately led to him serving as an intermediary between inmates and prison administrators during the 1971 strike. In Virginia, the Law Students Civil Rights Research Council founder Phil Hirschkop also started taking prisoners’ cases. In 1971, Hirschkop won Landman v. Royster, the first significant case challenging a broad range of prison conditions, in the Supreme Court.12

After the strike at Attica Prison underscored the need for comprehensive prison reform, the ACLU began the process of consolidating the work of Schwartz and

---

Hisrchkop into the National Prison Project. In November 1971, Schwartz convened a National Conference on Prisoners’ Rights in Chicago with the goal of working alongside like-minded academics, former inmates, grassroots activists, and lawyers to develop new theories and tactics for addressing prisoners’ issues. At the conference, Schwartz laid out what would become the Prison Project’s agenda for nearly the next decade. Drawing on his experiences during the Attica strike, he highlighted the need to challenge the “arbitrary authority” prison administrators wielded over inmates through due process and First Amendment litigation. Joined by representatives of the NAACP Legal Defense and Educational Fund, Schwartz urged lawyers to build on recent victories in the field of welfare rights to compel prison administrators to provide inmates with formal disciplinary hearings, complete with notice, an impartial tribunal, right to counsel, and a written decision based on rational reasoning.\(^\text{13}\) The lawyers believed that, by forcing prison administrators to explain their actions, they would be less likely to make decisions based on personal prejudices. Yet it was the expansion of inmates’ First Amendment rights that lawyers viewed as most essential to the process of improving life behind bars. They suggested that inmates required the right to free speech in order to inform outsiders of conditions inside prisons and to read about new developments in prisoners’ rights law. They also needed an expanded right to association in order to organize themselves, which

\(^{13}\) Specifically, the lawyers wanted to build on *Goldberg v. Kelly*, a 1970 case in which the Supreme Court ruled that the Due Process Clause of the Fourteenth Amendment requires an evidentiary hearing before a recipient of certain government welfare benefits can be deprived of such benefits. See *Goldberg v. Kelly*, 397 U.S. 254 (1970).
would in turn help prisoners pressure administrators to respect their rights. Someday, NAACP Legal Defense Fund lawyer Stanley Bass remarked, inmates might even win the right to unionize. “As workers,” he argued, “they are entitled to representation.” To make that dream a reality, lawyers planned to build “step-by-step” on earlier First Amendment cases extending prisoners’ religious freedom.¹⁴

Not everyone at the conference was pleased with the civil liberties lawyers’ strategy. Many more radical conference attendees, especially those focused on prison abolition rather than reform, argued that litigation would ultimately make imprisonment more acceptable in the eyes of the American public. Schwartz held his ground, highlighting the immediate needs of inmates. Joe Paris, a former Attica inmate and leader of the Young Lords Party, a Puerto Rican nationalist group, suggested that “reform through the courts may be unrealistic” because the courts might “wind up legitimatizing” the system under attack. Lewis Steel of the National Lawyers Guild questioned in particular the ACLU’s focus on due process litigation, calling it “misplaced.” Similar to Paris, he argued that such litigation “tends to legitimate the prison power structure.” Schwartz acknowledged his colleagues’ critiques, even conceding that lawsuits would not result in “fundamental changes” to the criminal justice system. But he noted that lawsuits did “effect some meaningful changes,” especially for the thousands of men and women

¹⁴National Conference on Prisoners’ Rights, 1971 November 5-7, University of Chicago, Sponsored American Civil Liberties Union Foundation Committee for Public Justice and the Playboy Foundation, Folder 1, Box 1089, ACLU Papers. Some of the earliest prisoners’ rights cases extended inmates’ First Amendment right to freedom of religion. Members of the Nation of Islam often brought such cases to gain access to copies of the Koran. See Toussaint Losier, “…For Strictly Religious Reasons’: Cooper v. Pate and the Origins of the Prisoners’ Rights Movement,” Souls vol. 15, no. 1-2 (Summer 2013), 19-38.
already confined to the nation’s prisons and jails. Schwartz urged others to continue their
fight to transform America’s system of punishment and reduce the incarceration rate
through grassroots organizing and political advocacy. In the meantime, he intended to
litigate with the goal of improving prisoners’ lives as swiftly as possible.\footnote{National Conference on Prisoners’ Rights, 1971 November 5-7, University of Chicago.}

Despite the criticisms, the National Prison Project moved forward, formally
opening its doors in the spring of 1972. In April, the NCCLU Board of Directors invited
Schwartz to serve as the keynote speaker at their annual meeting, where he outlined the
project’s priorities and its relationship to state affiliates. The National Prison Project
worked on two levels, he told the meeting attendees. First, its staff litigated cases they
hoped would establish positive precedents, especially in regard to inmates’ access to the
courts, due process rights, and First Amendment rights to assembly and free speech. In
these cases, they often welcomed the assistance of attorneys affiliated with local ACLU
chapters because the National Project employed only four staff lawyers. Second, the
project provided assistance to state affiliates working to assure that corrections officials
upheld already established prisoners’ rights, such as bans on particular practices and
conditions that federal judges had recently deemed “cruel and unusual.” In determining
which cases they should accept, Schwartz noted that the prison project relied heavily on
local affiliates, which were asked to screen inmates’ letters from within their state.\footnote{Annual Conference Minutes, 12 April 1972, Folder Board Correspondence, Box 37, NCCLU Papers; See Also Alvin Bronstein to David Hunter, 4 January 1973, Folder 5, Box 1089, ACLU Papers.}
Norman Smith and members of the NCCLU Board invited Schwartz to speak at their annual meeting because few of them were familiar with the field of prisoners’ rights law. None of them had joined the ACLU out of concern for inmates. Yet by the early 1970s, prisoners’ problems became impossible for them to ignore. Almost all white men in their thirties and forties who came of age during the height of the Red Scare, the NCCLU’s leaders cared most of all about protecting North Carolinians’ First Amendment rights to free speech and assembly. In 1968, two lawyers in Chapel Hill founded the ACLU chapter after the General Assembly passed legislation banning all individuals deemed “radical” from speaking on the state’s college campuses. Soon after the chapter began operating, though, the 1968 strike at Raleigh’s Central Prison, which left six inmates dead and seventy-seven injured, drew the NCCLU’s attention to civil liberties concerns behind bars. Worried about reports of abuse after the strike, the NCCLU signed a petition supporting a grand jury investigation into the protest and its aftermath. Inmates, in turn, recognized the NCCLU as a possible ally and began sending letters to the organization requesting further assistance.

By 1972, the NCCLU received nearly seventy-five letters from inmates each week, most of which left the Smith and the board unsure how to respond. With few other

---


18 I discuss the 1968 strike at Central Prison and its aftermath in my first chapter.

places to turn for help, inmates wrote to the NCCLU regarding all aspects of prison life, from the lack of milk for their coffee to uncomfortable living quarters to inadequate healthcare and clear physical abuse. The NCCLU took all inmates’ complaints seriously, often responding to them with heartfelt and detailed letters.\(^{20}\) But the lawyers struggled to determine which complaints judges might recognize as rights violations. The field of prisoners’ rights law was rapidly evolving while the lawyers were attempting to evaluate inmates’ claims. Before the mid-1960s, federal judges considered inmates “slaves of the state” who forfeited most of their rights when they crossed the prison gates.\(^{21}\) By the early 1970s, the work of civil liberties lawyers such as Schwartz and Hirshkop had resulted in the extension of a wide—and expanding—range of constitutional rights to imprisoned men and women. Each week, the National Prison Project sent the NCCLU an update regarding shifts in prisoners’ rights law, but with a limited number of volunteers and a large and varied caseload, few NCCLU attorneys had the time to study the updates closely and to craft the novel legal arguments needed to push the field forward.

Even in light of the rapid evolution of the field, NCCLU lawyers believed that “the great majority of inmates’ applications [were] frivolous,” as Smith told the board in 1973. In calling prisoners’ complaints frivolous, Smith and his colleagues meant that, in their opinion, most inmates’ petitions failed to state a legally actionable claim under the

\(^{20}\) See in particular the correspondence of Daniel H. Pollitt from 1971-1975, Folder 6-11, Box 46, NCCLU Papers.

\(^{21}\) My first chapter details the evolution of prisoners’ rights law during the early to mid-twentieth century. For judges’ reference to inmates as “slaves of the state,” see Ruffin v. Commonwealth, 62 Va. 790, 796 (1872).
U.S. Constitution, not that the grievances lacked merit in moral or ethical terms. As the NCCLU lawyers well understood, constitutional rights violations were difficult to prove. Recognizing the federal courts were unlikely to provide inmates with the assistance they sought, the NCCLU left the vast majority of prisoners’ complaints unaddressed.

Although the group realized that litigation was never going to solve all of inmates’ problems, the lawyers viewed the expansion of prisoners’ constitutional rights as crucial nonetheless. As board member Dan Pollitt explained, constitutional rights gave inmates “a degree of power in an institution designed to make them feel powerless.” Pollitt believed the NCCLU’s willingness alone to take prisoners’ cases would make prison staff think twice before abusing imprisoned men and women. Regardless of cases’ outcomes, each lawsuit drew outside attention to prison practices and compelled corrections officials to answer for their actions. When an inmate filed a suit, the prison administrators named as defendants had to meet with a staff member from the Attorney General's Office to file depositions in response to the charges.22 Moreover, Pollitt hoped the organization’s work would persuade Corrections Superintendent Lee Bounds to proactively institute and enforce new policies and practices designed to curtailed prison staff’s discretion.23 Pollitt and the NCCLU leaders recognized that without oversight

22 See, for example, Attorney General Robert Morgan to Prison Superintendent Lee Bounds, 6 December 1973, Robert Morgan Papers (hereafter cited as Morgan Papers), Box 18, Folder General Correspondence, East Carolina University Special Collections.

23 Dan Pollitt to Norman Smith, 13 December 1972, Folder Smith Correspondence, Box 64, NCCLU Papers.
from individuals outside the Department of Corrections, prison staff had few incentives
to treat prisoners fairly.

Inmates and prison staff understood the power of constitutional rights litigation,
too. Many of the letters the NCCLU received from prisoners in the early 1970s
complained that guards denied them access to the legal texts they needed to file their own
federal lawsuits. In June 1972, Schwartz wrote to Smith and urged him to file suit
against Bounds in order to force him to put in a “decent law library.” Smith and the
NCCLU Board agreed, launching the organization’s first major prisoners’ rights case.

Nearly a year later, in March 1973, Smith filed an amicus curie brief in Smith v. Bounds,
a pro se case brought by a well-known jailhouse lawyer denied access to a legal text by a
prison guard. Drawing on Younger v. Gilmore, a 1971 Supreme Court case compelling
prison administrators to provide inmates with “meaningful access to the courts,” Smith
argued that law libraries were necessary to make Younger a reality. Without access to the
texts inmates needed to file their cases, Smith claimed, their ability to access the courts
would be “worthless.”

In January 1974, Judge John Larkins of the U.S. District Court for the Eastern
District of North Carolina ruled in favor of the inmates and the NCCLU, mandating

24 See in particular Wayne Brooks and to Norman Smith, 2 February 1972; Wayne Brooks to Norman
Smith 12 November 1972; Donald Morgan to Norman Smith, 23 March 1972; Bobby Smith to Norman
Smith, 6 June 1972, Folder Prisoners Letters, Box 23, NCCLU Papers.


26 Norman Smith, Brief of the North Carolina Civil Liberties Union, Smith v. Bounds, Folder
Miscellaneous correspondence, Box 140a, NCCLU papers.
corrections officials develop a plan to provide prisoners with a law library. Although the state attorneys immediately appealed the decision, imprisoned activists, especially those affiliated with the North Carolina Prisoners Labor Union, celebrated the decision. Since the union’s founding in 1974, its leaders had compiled inmates’ grievances and filed their own cases in federal court. In the wake of Judge Larkins’s decision in Smith, Donald Morgan, a Prisoners Union Board Member, wrote to Norman Smith to congratulate him on a victory he believed “would surely help [the union] craft stronger cases.”

Smith thanked Morgan for the “kind note,” wishing him the “best of luck” even as he remained unconvinced that litigation was the best way to resolve the majority of inmates’ woes. The Prisoners Union hoped to eventually address individuals’ complaints through a grievance mechanism similar to those utilized by unions in the “free world.” While supportive of the union’s effort, Smith and the NCCLU Board worried it would struggle to win the recognition it needed to put such a mechanism in place. At best, the union had a long fight ahead of it—but inmates needed assistance immediately. The 1968 strike at Central Prison and later at Attica had demonstrated to the NCCLU how even seemingly minor grievances could raise tension behind bars to the point of violence. Hoping to improve conditions, the NCCLU began searching for solutions beyond the courtroom to resolve inmates’ grievances.


29 Norman Smith to Donald Morgan, 18 January 1974, Folder Prison Libraries, Box 95, NCCLU Papers.
Prisoners’ Rights Claims, Court Backlogs, and the Threat of Federal Lawsuits

Civil liberties lawyers were not the only group of legal professionals searching for ways to address inmates’ problems outside the courtroom. By the early 1970s, federal judges and members of their staff had also begun advocating for new processes to resolve inmates’ grievances left unaddressed by constitutional rights litigation. Since 1964 when the Supreme Court ruled in *Cooper v. Pate* that prisoners could sue state officials who violated their constitutional rights, the number of inmate petitions that made their way to the courts had skyrocketed.\(^{30}\) Judicial districts that included a large number of inmates bore the brunt of this increase. The U.S. District Court for the Eastern District of North Carolina, for example, oversaw sixty-two of the state’s eighty prisons. As a result, by 1973, over thirty percent of the court’s docket consisted of inmates’ complaints regarding prison practices and conditions while, nationally, such complaints comprised on average fifteen percent of courts’ caseload. One Eastern District Court judge went as far as to suggest that he might as well “move [his] office to Central Prison.”\(^{31}\) Overwhelmed by inmates’ claims, judicial officials in the early 1970s began advocating for the development of inmate grievance procedures to resolve prisoners’ complaints from within the prisons, a goal shared by many prisoners’ advocates and prison administrators.

---

\(^{30}\) My first chapter discusses the opening of the federal courts to inmates’ claims challenging prison conditions and practices. For a discussion of *Cooper v. Pate*, see Losier.

The dramatic increase in judges’ overall caseload in the 1960s and early 1970s exacerbated their frustration with the large number of inmate lawsuits reaching their chambers. Between 1968 and 1980, the number of civil lawsuits filed in federal court more than quadrupled. In part, the rights revolution gave rise to the “litigation explosion.” Encouraged by the growing rights conscious among Americans and enabled by Warren Court decisions opening the federal courts to new claims, more people than ever filed civil lawsuits asking federal judges to protect their individual rights. As political scientist Sean Farang has shown, the changing nature of American politics also fueled the rapid rise in the litigation rate. When the political landscape became more polarized after 1968, members of the Congress increasingly chose to enforce new legislation not through capture-prone federal agencies but through federal lawsuits filed by private citizens.  

Political polarization made the appointment of new federal judges difficult, too. While the number of federal lawsuits grew, the size of the judiciary remained largely the same during the 1970s, at least until Democrats won control of both the presidency and the Congress in 1976. As a result, judges witnessed their workload expand dramatically. By 1974, for example, the judges who served the U.S. District Court of Eastern North Carolina handled three times the number of cases they had reviewed in 1965.  

To make matters worse, the creation of the modern class action suit made many of the cases federal judges handled more labor intensive than they had been in the past. As

---

32 Farang, 3-19.

we saw in the first chapter, the U.S Judicial Conference amended the Federal Rules of Civil Procedure in 1966 to create the modern class-action lawsuit, which made it easier for large groups of people to bring suit against a defendant who injured all of them in the same or similar ways. Americans increasingly drew on this legal tool to address claims that might have otherwise evaded legal enforcement.\textsuperscript{34} While beneficial to the public as a whole, class actions raised difficult questions for judges that they had to answer before the real litigation process could even begin. What constituted a class? Did the named plaintiffs accurately represent the class? Was there a legal remedy that could address the needs of the often far-flung members of the class?

Prisoners’ claims also proved difficult and time consuming for judges to evaluate, especially after 1972. That year, the Supreme Court ruled in \textit{Haines v. Kerner} that lawsuits filed by inmates were subject to "less stringent standards" than those filed by lawyers, which meant prisoners' complaints did not have to follow the normal format for legal pleadings.\textsuperscript{35} In \textit{Haines}’ wake, judges had to conduct close readings of inmates' cases to determine whether they contained a legally actionable charge. This was rarely an easy task. Inmates with limited literacy and legal skills filed the majority of lawsuits, and they often buried actionable claims beneath pages of narrative. By the 1980s, magistrate judges processed most inmates’ lawsuits. But in the early 1970s, this task largely fell on

\textsuperscript{34} Farang, 144.

\textsuperscript{35} Haines v. Kerner, 404 US 519 (1972).
the shoulders of district court judges because the role of magistrate judge, a position first created in 1968, was still ill-defined and subject to debate.\(^{36}\)

Many judges, especially those who were part of the new cohort of “strict constructionists” appointed by President Richard Nixon, viewed the rise of prison litigation as a symbol of everything wrong with the federal court system. Chief Justice Warren Burger, appointed by Nixon in 1969, played the leading role in popularizing this vision. Using prisoners’ rights claims as his prime example, Burger suggested that Americans had become too reliant on the federal courts to solve their problems. Not only did the U.S. Constitution limit Americans’ individual rights, Burger argued, but also the federal courts lacked the capacity to respond to all Americans’ lawsuits, as evidenced by growing case backlogs. Once in office, Burger made it his mission to streamline the federal litigation process by pushing many civil cases out of the federal courts. In part, he hoped to accomplish this task by encouraging the modernization of state courts to make them more appealing venues for civil litigants. He also advocated for the creation of new mechanisms to resolve Americans’ grievances outside the courtroom.\(^{37}\)

In February 1971, Burger organized the National Conference on the Judiciary in Williamsburg, Virginia to forward his goal. At the conference, Burger called on the


\(^{37}\) For a brief discussion of Chief Justice Warren Burger’s efforts to “streamline” the judicial process, see Crowe, 250-254.
Federal Judicial Center, an education and research agency of the federal courts, to form a committee to investigate the causes of and solutions to the federal courts case backlogs. Chaired by Harvard Law School Professor Paul Freund, the committee released its findings in December 1972. In its study, the committee blamed backlogs in part on the high number of prisoners’ cases filed in federal court. To reduce the numbers, it argued for the creation of a “non-judicial federal institution”—a bureaucratic agency of sorts—charged with investigating and assessing prisoner complaints. “This institution,” the committee wrote, “would have a staff of lawyers and investigators and a measure of subpoena and visitatorial powers. It would investigate complaints, respond to them, and where possible, try to settle in-prison grievances by mediation.” The commission envisioned that, if the institution failed to resolve the issue after three months, a prisoner could file his or her case in federal court. The paper trail from the investigation would follow the case, providing federal judges with findings they could use to evaluate the inmates’ claims.38

In an era marked by mounting calls for “small government,” the committee’s suggestion for the creation of a new federal agency to address inmates’ complaints gained little traction.39 But Burger expressed support for the principles undergirding the


39 Even lawyers from the ACLU National Prison Project expressed concern about the creation of the agency. With conservatives controlling the Executive Branch, they worried the agency would be used to stymie rather than resolve inmates’ grievances. Alvin Bronstein to Herman Schwartz, 20 December 1972, Folder 7, Box 1089, ACLU Papers; Herman Schwartz to Alvin Bronstein, 20 December 1972, Folder 7, Box 1089, ACLU Papers; The ACLU’s concern about the creation of a new federal administrative agency
committee’s idea. He suggested “some non-judicial body based at the state rather than the federal level might help reduce the caseload. Such an institution could remedy valid grievances and expose spurious claims before they reached the courts.”

One week later, Burger expanded on his idea to the National Conference on Christians and Jews. In his speech, Burger recommended the implementation of state prison grievance procedures modeled after those used by labor unions to resolve their grievances with management. “With proper grievance procedures in a large industrial operation,” he said, “the hour-to-hour and day-to-day frictions and tensions can be carried up through channels and either guided to a proper solution or dissipated by exposure. This, in essence, is what every penal institution must have.”

Burger noted that such procedures would be easy to implement because some prisons in Washington D.C. were already experimenting with internal grievance mechanisms. The mechanisms to which Burger referred, however, were not designed to reduce inmates’ federal lawsuits. Instead, prison reformers in the wake of Attica had advocated for inmate grievance procedures to lessen tensions behind bars and to quicken the pace of reform. In November 1971, the Office of Economic Opportunity’s Office of

---

is consistent with liberals’ broader turn away from placing enforcement power with administrative agencies in the post-1960s era. See Farang, 7-10.


41 Warren Burger, Speech to the National Conference on Christians and Jews, 18 November 1972, Folder Corrections, Box 49, Box General Correspondence 1968-1972, LEAA Papers.

42 Ibid.
Legal Services (OLS) awarded a grant to the newly formed Center for Correctional Justice to “develop alternative strategies for resolving inmates’ grievances concerning the correctional system.” With the funding, the center experimented with various forms of grievance procedures in Washington D.C.-area prisons. In a May 1972 report, the center argued for the creation of inter-prison councils comprised equally of inmates and corrections staff who would respond to prisoners’ complaints. The participation of both parties was necessary, the center claimed, because it eliminated the adversarialism that encouraged prison staff to delay the implementation of federal court orders. While the authors underscored that the federal courts must remain open to prisoners’ grievances, they suggested that “non-judicial grievance committees comprised of inmates and guards provided both faster solutions than are possible through litigation and solutions that are more enforceable because they are not imposed on corrections administrations and inmates, but are created by them through collaboration and negotiation.” Attica haunted the pages of the center’s report. In arguing for inter-prison grievance counsels, the center warned that, if states failed to take action, “tension would inevitably rise to a breaking point.”

---

43 OLS to Michael Keating, 1 November 1971, Folder Corrections, Box 54, Box General Corrections General, LEAA Papers.

44 Linda R. Singer, Virginia McArthur, and Alan Schuman, “The Center for Correctional Justice—A Way to Resolve Prisoners’ Grievance?” The Prison Journal vol 51, no 2 (May 1972), 37-42. In viewing client participation and legal aid in the form of arbitration as a means to avoid violence, the center’s report echoed values that first emerged in liberal legal circles during the 1960s. In response to the racial unrest that swept through urban communities in the mid-1960s, the Office of Economic Opportunity (OEO) funded the creation of “community justice centers” designed to mediate disputes between low-income, largely minority residents and their landlords, employers, caseworks, family members, or with whomever they had a grievance. OEO staff reasoned that low-income residents’ lack of access to legal assistance contributed to
By the early 1970s, some state corrections officials had also begun to experiment. In 1970, the American Correctional Association included the implementation of “some form” of grievance procedure in its list of best practices, suggesting, like the Center for Correctional Justice, that the procedures would reduce tensions behind bars. The argument proved only partially persuasive to corrections staff. When Burger gave his speech before the National Conference of Christians and Jews in 1972, only eight states had instituted grievance mechanisms of some kind. In the two years that followed, that number expanded dramatically—largely because correctional officials came to view grievance procedures as a means to protect themselves against inmate lawsuits. In a series of articles published in *Corrections Magazine* between 1972 and 1973, prison administrators suggested that grievance procedures could both reduce the number of inmate lawsuits and, by demonstrating compliance with prisoners’ rights law, the potential for liability should those lawsuits succeed. As a bonus, one of the articles

urban rioting. As with prison grievances, they viewed many residents’ complaints as easily solvable through mediation as opposed to costly and time-consuming litigation, which they believed delayed their clients’ access to justice. Staffed by legal aid lawyers, community justice centers worked with low-income residents to provide speedy—and legal—solutions to their problems in order to lessen tensions in the nation’s cities. By the late 1960s, some public interest law firms began to follow the OLS’s lead. In 1968, for example, the ACLU launched an “urban initiative” with the goal of proving legal services to “the people most overlooked by our nation’s legal system.” See Office of Economic Opportunity’s Office of Legal Services, “Community Justice Centers”; “Legal Aid for Urban Communities”; and “Access to Justice for the Poor,” Folder 10, Box 26, Daniel Meador Papers, University of Virginia Law School Special Collections, Charlottesville, Virginia. Between 1978 and 1980, Daniel Meador served as the Assistant Attorney General for the Department of Justice’s Office of Improvement in the Administration of Justice. Meador had these papers because the Carter Administration sought to revive the “Community Justice” model.

45 Singer and Keating, 368.

46 Herman Smith to McNeil Smith, 3 November 1973, Folder 226, Box 9, McNeil Smith Papers (hereafter cited as Smith Papers), Southern Historical Collection, University of North Carolina, Chapel Hill.
suggested, the procedures might reduce inmate activism by providing prisoners with an outlet for their complaints.\(^{47}\)

The articles in *Corrections Magazine* only hypothesized that grievance procedures would shield prison administrators from litigation. In late 1973, the U.S. District Court of the District of Maryland issued a ruling that seemed to support the authors’ claims. In *McCray v. Burrell*, Judge Edward Northrop ruled that the federal court could stay an inmate’s lawsuit until he or she presented the complaint to the newly established Maryland Inmate Grievance Commission. In effect, Northop’s decision gave prison administrators the opportunity to handle inmates’ problems before they reached the court. In justifying his decision, Northrop noted the “toll” the “meteoric rise” in prisoner petitions had taken on the “already heavily taxed resources” of the courts. Although he conceded that federal judicial intervention had remedied “the worst examples of retrogressive American penology,” he suggested that the time had come for judges to “take a careful and critical look” at recent interpretations of federal law that had forced courts to accept “all but the most patently ridiculous complaints from state prisoners.”\(^{48}\)


Creating the North Carolina Inmate Grievance Commission

Word spread quickly within the Fourth Circuit Court’s district about Northrop’s decision in *McCray*. In North Carolina, the news spurred Herman Smith, a magistrate working for the U.S. District Court for the Middle District of North Carolina, to take action. Frustrated by the number of prisoner cases that landed in his court, Smith wrote to judges, politicians, and public interest lawyers across the state to advocate for the creation of an inmate grievance commission. He claimed the grievance procedures could serve a “vital rehabilitation function” for inmates “unaccustomed to respecting authority.” But he also suggested that the development of grievance procedures could encourage the courts to become “less involved” in prison administration, especially in light of the *McCray* decision. Maryland’s Inmate Grievance Commission, he noted, “cut the state’s court filings by prisoners down by two-thirds.” Encouraging the adoption of Maryland’s model, Smith included a copy of the statute creating Maryland’s Commission in each letter.”

Smith’s letters received mixed responses. The Fourth Circuit Court of Appeals Judge Braxton Craven warned that exhaustion requirements like those established in

---

49 Herman Smith to State Attorney General Robert Morgan, 5 December 1973, Folder Corrections, Box 56/104, Robert Morgan Papers, East Carolina State University, Greenville, North Carolina; Herman Smith to Norman Smith, 5 December 1973, Folder Norman Correspondence, Box 121, NCCLU Papers; Herman Smith to McNeil Smith, 5 December 1973, Folder 226, Box 9, Smith Papers; Herman Smith to Braxton Craven, 5 December 1973, Folder Correspondence, Box 7, Craven Papers; Herman Smith to Franklin Dupree, 5 December 1973, Folder Corrections, Box 32, Franklin Dupree Papers (hereafter cited as Dupree Papers), Southern Historical Collection, University of North Carolina, Chapel Hill; Herman Smith to Governor James Holshouser, 5 January 1974, Folder Corrections, Box 221, Correspondence 1974, James Holshouser Papers (hereafter cited as Holshouser Papers), North Carolina State Library and Archives.
McCray had the power to “destroy Section 1983,” the federal statute that allowed inmates to sue state officials who violated their constitutional rights. More fundamentally, Judge McMillian of the U.S. District Court for the Western District of North Carolina contested Smith’s claim that prisoners’ lawsuits burdened courts. “If courts can’t be burdened with the constitutional problems of individual people, what do they exist for?” he asked. Yet NCCLU attorney Norman Smith supported Herman Smith’s plan. Smith approached the NCCLU Board in January 1974 to suggest the organization reach out to State Senator McNeil Smith, a longtime NCCLU member, and State Attorney General Robert Morgan to help them craft legislation to form a North Carolina Inmate Grievance Commission.

Although he found the claim that grievance procedures could serve rehabilitative purposes “laughable,” Norman Smith supported Herman Smith’s plan because he believed a grievance commission might help resolve inmates’ complaints that the U.S. Constitution could not address. He also worried that federal judges lacked the resources or the desire to wade through the sea of inmates’ claims in order to make meaningful changes behind bars. As someone who litigated regularly in North Carolina’s federal courts, Smith was all too familiar with the case backlogs and long delays plaguing the courts. He made his ideas clear during the January 1974 NCCLU board meeting. "The federal courts and our offices are... overburdened with handwritten applications by prisoners for relief from various conditions of confinement," Norman said. “Most fall

50 Craven to Smith, 21 December 1973, Folder Correspondence, Box 7, Craven Papers; McMillian to Smith, 3 January 1974, Folder 226, Box 9, Smith Papers.

51 Smith to Dan Pollitt, 13 December 1973, Folder Smith Correspondence, Box 64, NCCLU Papers.
short of outlining a valid legal complaint, but court personnel must...give each complaint a certain amount of individual attention. As a result, those very few cases that are promising often seem to elude the necessarily limited judicial scrutiny." An inmate grievance commission, he argued, would “assure inmates swift resolution to their grievances, no matter how minor.”

After the NCCLU Board voted to support the creation of an inmate grievance commission, Norman Smith brought State Senator McNeil Smith with him to meet Attorney General Robert Morgan, who endorsed the bill with only minor additions. Morgan supported the bill on both ideological and practical grounds. A conservative Democrat and outspoken opponent of federal court intervention into state affairs, he viewed the establishment of an inmate grievance commission as a means to reduce the number of prisoners’ lawsuits that made their way to court. He also hoped to reduce his staff’s workload. The Attorney General’s Office had to respond to each lawsuit an inmate filed in federal court, a task that required a great deal of time. Jacob Safron, the only assistant attorney general working on prison litigation between 1968 and 1973, often worked nights and weekends to get the job done. During the meeting, Morgan agreed North Carolina should establish a commission similar to that of Maryland. But, in hope of ensuring the commission successfully reduced litigation, he suggested the addition of language to the bill that codified and strengthened the *McCray* decision. The amended

---

52 Board Meeting Minutes, 27 January 1974, Folder Board Minutes, Box 61, NCCLU Papers.

53 Jacob Safron, interviewed by author, 22 September 2014, Raleigh, North Carolina, interview in author’s possession.
bill, supported by both Norman Smith and McNeil Smith, stated that “no court shall be
required to entertain an inmate’s grievance within the jurisdiction of the
Commission…unless the complainant has exhausted the remedies [provided by the
Commission.]”54

Endorsed by the NCCLU, the Inmate Grievance Commission bill passed with
bipartisan support on May 7, 1974. Its final form mirrored Maryland’s bill, with the
exception of Morgan’s amendments regarding judicial review. As in Maryland, the North
Carolina commission became a separate agency under the director of the Department of
Social Rehabilitation and Social Control, who also oversaw the Department of
Corrections. Inmates submitted their grievances directly to the commission, which
consisted of five members appointed by the governor. After an initial review of the cases,
the commission referred inmates’ complaints to one of the eight examiners located across
the state who then conducted hearings at the prison, complete with witnesses and fact-
finding. The commission submitted the results of the hearings to the director of Social
Rehabilitation, who had the opportunity to modify or reject the commission's
recommendations.55 McNeil Smith explained to a fellow attorney that “the strength of the
bill [was] the Commission's semi-autonomous nature." Prison officials and the

---

54 McNeil Smith to Robert Morgan, 18 February 1974, Folder 226, Box 9, Smith Papers. This amendment is odd because state legislation cannot dictate the jurisdiction of federal courts. Fred Morrison, the first director of the commission, suggested during an interview that Morgan may have requested this change in hope that federal judges, who also wanted to reduce prison litigation, would allow North Carolina to handle inmates’ complaints as the legislation dictated. Morgan may have also been attempting to make the judicial review process clear in hope that federal judges would feel more comfortable compelling exhaustion.

Commission, he hypothesized, would “be force to find solutions...through collaboration and negotiation.”

The day after the bill’s passage, the Raleigh *News and Observer* published an article about the Inmate Grievance Commission highlighting its bipartisan support and the NCCLU’s involvement in its development. Two days later, Norman Smith received an irate letter signed by four jailhouse lawyers affiliated with the North Carolina Prisoners Labor Union informing him that they planned to file a federal lawsuit challenging the provisions of bill. The inmates criticized Smith for “selling them out” by failing to advocate for inmate participation on the commission. In an argument resembling that of the Center for Correctional Justice, the union members claimed that “the only way to cut down on litigation and implement lasting change behind bars” was to empower inmates to bargain themselves. “WE want change and WE want to be responsible for it,” one inmate wrote. Moreover, the inmates claimed, the exhaustion requirement uncut their ability to file class action lawsuits because each inmate had to file an individual complaint with the commission. If the commission resolved some inmates’ grievances while leaving others unaddressed, the inmates reasoned, jailhouse lawyers would struggle to craft lawsuits attacking what they perceived as widespread, structural abuses. Filed before the commission was staffed, the union’s lawsuit primarily

56 Smith to Holder, 12 May 1974, Folder 229, Box 9, Smith Papers.


58 Wayne Brooks and the NCPLU to Norman Smith, 2 February 1974, Folder 8, Box 23, NCCLU Papers.
challenged the constitutionality of the exhaustion requirement upheld in *McCray*. The inmates reasoned that, if they won their case, the state would dismantle the commission because it could no longer restrict the number of lawsuits reaching the federal courts.59

Norman Smith’s response to the union was apologetic yet firm. “In a perfect world,” he wrote, prisoners would be able to serve on a grievance commission overseen by an individual unaffiliated with the DoC, “but the political environment makes this impossible.” Smith told the inmates that if they served on the commission, “corrections [staff] would reject [their] suggestions at all costs.” He suggested that if inmates wanted to see “even minor changes” behind bars, non-inmates needed to control the process “for the time being.” Smith extolled the benefits of the commission as it was outlined in the bill, suggesting that because corrections staff “maintained the appearance of controlling the reform process, they would be more likely to implement changes than they have been in the past. The commission, Smith hoped, would create swift changes through a non-adversarial process.” 60

Despite the inmates’ criticism, the NCCLU watched with excitement as Governor James Holshouser worked to staff the new commission before the bill became effective in July 1974. To fill the position of director, Holshouser approached his legal counsel Fred Morrison, who for years had led bible studies inside the state’s prisons through the


60 Norman Smith to Wayne Brooks, 20 March 1974, Folder 8, Box 23, NCCLU.
Jaycees, a leadership training and civic organization for young adults. The impetus for his volunteer work was deeply personal. Morrison’s parents struggled with drug addiction and spent years in and out of jails and involuntary rehabilitation centers. The horrors he witnessed while visiting his incarcerated parents instilled in him a lifelong concern for men and women behind bars. Although Holshouser had also offered Morrison an open seat on the North Carolina Court of Appeals, he accepted the less prestigious position of director of the North Carolina Inmate Grievance Commission, later remarking the position was his “calling.”

In taking the position, Morrison understood that he faced an uphill battle to gain the support of the state’s inmates. Once in office, he set out to accomplish this task. To fill the other four positions on the commission, Holshouser selected a bipartisan group: Rev. Leon White, chairman of the North Carolina-Virginia Commission for Racial Justice; Elizabeth Suval, professor of sociology at North Carolina State University; Walter T. Johnson, a black attorney in Greensboro; and Edgar Gurganus, a Williamston attorney and former chairperson of the State Corrections Board. At the group’s first meeting, Morrison commented that his first priority was to establish trust between the commission and the Prisoners Union. In the weeks that followed, he traveled around the state to visit the union’s leaders and to listen to their grievances. Morrison made a point

61 Fred Morrison, Prison Fellowship Ministries Newsletters, March 1976, Folder Central, Box Reading File, Grievance Commission Papers; James Holshouser to Fred Morrison, 23 May 1974, Folder Correspondence, Box Correspondence May 1974, Holshouser Papers; Fred G. Morrison, Jr. interviewed by author, 25 September 2014, Raleigh, North Carolina, interview in author’s possession.

to get to know the rest of the inmate population, too, often attending special events at the prisons. In 1974, Morrison and his wife spent Christmas Day at Central Prison. He also responded carefully to each letter sent to him by an inmate, even when the person’s grievance seemed minor. Many imprisoned men and women developed personal relationships with Morrison, sending him regular letters to which he always responded.\textsuperscript{63}

Due in part to Morrison’s outreach efforts, inmates flooded the commission with complaints. By January 1975, the commission had received over 2000 requests for assistance and had conducted over 150 examinations.\textsuperscript{64} Most problems, Morrison found, could be handled through a quick phone call to the warden overseeing the prison where the complaint originated. In a November 1974 article in the Raleigh \textit{News and Observer}, Morrison noted that the commission sided most often with the administrators in cases pitting inmates against prison staff. But, more often than not, both sides left feeling better about the situation at hand. Morrison explained that the commission’s most important role was “facilitating conversations” between inmates and guards. Before the commission’s creation, prisoners rarely received explanations for guards’ actions or prison policies. By giving prisoners a voice and allowing them to ask questions, Morrison

\textsuperscript{63} Scrapbook File, Grievance Commission Papers. More generally, see the thousands of personal letters written by Morrison to inmates in the Inmate Grievance Commission Papers.

\textsuperscript{64} Fred Morrison to James Holshouser, 24 January 1975, Folder Governor, Box Director’s Correspondence, Inmate Grievance Commission Papers.
thought the commission had succeeded in diffusing tensions between inmates and prison administrators.65

The North Carolina Prisoners Union and the Grievance Commission Under Attack

Although North Carolina’s Inmate Grievance Commission seemed to be functioning as planned, Morrison believed there was still more work to do. Since he read all the letters inmates sent to the commission, he quickly learned which policies and practices inmates found most detestable. In December 1974, he worked with the other commission members to develop ten policy changes he thought would address some of the prisoners’ most common complaints. Most of the suggestions were relatively minor, including extending visiting hours by fifteen minutes, granting inmates an extra roll of toilet paper each week, dimming the lights at night, and providing earplugs to the prisoners who slept next to the train tracks. Yet David Jones, the director of Social Rehabilitation and Social Control, rejected all but one of the suggestions; he agreed prisoners should be allowed to shower at least once a week. Appointed by the Republican Governor James Holshouser in 1973, Jones had promised to crackdown on inmate activism and to ensure that “law and order reigned” behind bars.66 Throughout his tenure, his relationship with Morrison, who he privately denounced as a “bleeding heart liberal hell-bent on letting inmates run the prison,” deteriorated, jeopardizing the effectiveness


of the Inmate Grievance Commission. Meanwhile, Jones did everything in his power to break North Carolina’s growing Prisoners Labor Union, a move that ultimately landed his administration in federal court.

For more than six months after the establishment of the Inmate Grievance Commission, Jones kept his personal frustrations with Morrison’s politics quiet. But the situation changed in March 1975. That month, Jones, faced with extremely overcrowded conditions in the state’s correctional facilities, went before the General Assembly to propose a $100 million dollar prison construction plan that would double North Carolina’s holding capacity. In response, Morrison launched a statewide speaking campaign to argue against Jones’s plan. Speaking before dozens of Jaycee chapters, church groups, and women’s organizations, Morrison told his listeners that, rather than investing in prison construction, the General Assembly should “re-evaluate its criminal justice and prison programs to determine if…other methods might be more effective.” When the General Assembly subsequently chipped away at the budget proposal, Jones blamed Morrison for the failure and lambasted him in local newspapers. Morrison

67 David Jones to Jacob Safron, North Carolina, Assistant Attorney General, Folder Correspondence, Box 1, Civil Action Case Files (hereafter cited as Civil Action Case Files), North Carolina Department of Corrections Records, North Carolina State Library and Archives, Raleigh, North Carolina.


69 Fred Morrison, Address to the High Point Jaycees, 22 March 1975, Folder Director’s Correspondence, Box 1-1981, Grievance Commission Papers.

70 In one interview, Jones colorfully referred to Morrison as a “humgator,” a creature with “the brain of a hummingbird and a mouth as wide as an alligator’s.” Ned Cline, “Under the Dome: State Budget
responded to Jones’s hostility by mailing a copy of the Inmate Grievance Commission’s policy suggestions to local newspapers, a tactic that drew public attention to Jones’s unwillingness to institute even minor reforms behind bars. Livid, Jones called for Morrison’s dismal.\footnote{Daniel C. Hoover, “Jones Rejects Reform Issues,” \textit{Raleigh News and Observer}, 1 May 1975.}

Carolina Correctional Center for Women went on strike to protest working conditions in the facility’s industrial laundries. The strike lasted for five days until local police and prison guards advanced on the women, physically dragging them back inside their cells. In public interviews, Jones blamed the strike on “liberal outside agitators,” but privately he feared that the union was at work. “I’m not going to tolerate it,” he told the North Carolina Corrections Board, “not as long as I’m secretary. When a person has committed a crime…he doesn’t have the right to organize.”

After the June 1975 strike, Jones cracked down on the Prisoners Labor Union. The previous March, Jones had issued a memo banning Robbie Purner and Chuck Eppinette, the two activists who ran the union’s outside office, from visiting any of the state’s prisons. In early July, Jones went a step further, promulgating new rules prohibiting inmates from soliciting others to join the union, attending union meetings, and sending or receiving bulk mailings concerning the union. By promulgating these new guidelines, Jones reasoned that he could stop the union from recruiting new members, and he could justify disciplining inmates who participated in union organizing. Jones told

---


74 Paul Horvitz, “18 Injured Here in Prison Riot,” *Raleigh News and Observer*, 17 June 1975; Board of Corrections Minutes, 12 July 1975, Box 1, Board of Corrections Minutes, Department of Corrections Papers, North Carolina State Library and Archive, Raleigh, North Carolina.
prison administrators to “be on the lookout” for any form of union activity and to report it directly to him.\textsuperscript{75}

Union leaders responded by turning to the NCCLU for help in defending their organizing efforts. In July 1975, its board of directors agreed to take the union’s case. Norman Smith saw Jones’s actions as a clear violation of the First Amendment right to free speech and assembly, rights the National Prison Project had long prioritized in its litigation campaign. In preparation for the suit, Smith reached out to Prison Project Director Alvin Bronstein, who offered to review the NCCLU’s legal brief and asked Smith to keep him updated as the case evolved. For help writing their brief, Smith turned to Deborah Mailman, a young lawyer and ACLU member who had helped organize the union.\textsuperscript{76}

In their case filed in August 1975, Mailman and Smith argued that the union members’ right to free speech and association should be upheld because their activities did not interfere with prison operations. In making this claim, the lawyers relied on
\textit{Pell v. Procunier}, a 1974 Supreme Court case stating that “a prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system.”\textsuperscript{77} While crafting their brief,

\textsuperscript{75} David Jones to Prison Staff, “Union activity,” 7 July 1975, Box 2, Legal Correspondence (hereafter cited as DoC Legal Correspondence Papers), Department of Corrections Records, North Carolina State Library and Archives, Raleigh, North Carolina; W.L. Kautzky to Staff, “Inmate Union,” 9 June 1975, Folder NC Prisoners Labor Union v. Jones, Box 142, NCCLU Papers.

\textsuperscript{76} NCCLU Board Minutes, 9 July 1975, Folder NC Prisoners Labor Union v. Jones, Box 142, NCCLU Papers.

Mailman and Smith worried the union’s emphasis on collective bargaining might sour their case since North Carolina state law banned public sector workers from formally bargaining with their employees. To avoid raising issues regarding the union’s status, the lawyers chose to describe it as a “reform organization” committed to working “legally and peacefully” to implement changes behind bars. The lawyers also noted that the DoC allowed the Jaycees and Alcoholics Anonymous to meet and distribute literature in the state’s prisons. Claiming the union was no more a danger than those groups, the lawyers argued the union should be afforded the same rights. To remedy the DoC’s indiscretions, Smith and Mailman asked the court to issue an injunction against the DoC’s unconstitutional acts and to compel them to pay the union $100,000 in damages.78

To help prove the union did not interfere with prison operations, the NCCLU turned to Inmate Grievance Commission Director Fred Morrison, who had developed a close relationship with many of the union’s leaders. Since the NCCLU had agreed to take the case, Morrison had followed the litigation process closely, writing to Smith for regular updates. When Smith reached out to him to provide an affidavit on behalf of the union, he gladly agreed to help. In his testimony, Morrison claimed that he did not believe the union posed “a danger to the North Carolina Department of Correction or to the orderly administration thereof.” In fact, he noted, “it would be beneficial if the prison administration were less fearful of the prospect of an inmate organization.” Alluding to his own difficulties with Jones, Morrison suggested that “constructive change” would be

more likely to take place in North Carolina’s correctional system if prison administrators cooperated with imprisoned men and women. To support his claim, he cited his observation of inmate grievance procedures “in other states.”

In February, a panel comprised of three judges heard *North Carolina Prisoners Union v. Jones.* Smith and Mailman walked into the courtroom expecting to lose. Only one judge seemed likely to take their side. Yet in a historic decision issued on March 16, 1976, the court ruled in the union’s favor, granting them the injunctive relief, though not the damages, they had sought. The victory hinged as much on the confusing nature of the defense’s argument as it did on the strength of Smith’s and Mailman’s claims. Jacob Safron, the assistant attorney general representing Jones, argued that the DoC recognized inmates’ right to join the union. The DoC only viewed union members’ work to recruit others to join the organization as a threat to prison security. As a result, the DoC banned such activity, a policy Safron argued was in line with the earlier *Pell* decision. During oral arguments in *Jones,* Safron attempted to clarify his argument by stating that prisoners were “more than welcome” to join the Union “in their own minds.” They simply “crossed the line” when they asked others to participate. Such an argument

---


80 Note that until 1976, a panel comprised of three judges from the district and circuit courts heard all cases that challenged the constitutionality of state and federal statutes or policies. Such cases were then appealed directly to the Supreme Court.

allowed the court to bypass the question of whether inmates had a constitutional right to
join a labor union because, according to Safron, the DoC already let them do so. Instead,
the court chose to focus on the request made by the defense “to arrive at a balance
between the interest of the prisoners in associating together…and the interest of the state
in maintaining internal security.” Citing Smith’s and Mailman’s claim that “the plaintiff’s
corporate name was a misnomer” and that the union did not seek “permission to operate
as a ‘true’ labor union,” the court decided that “there [was] not one scintilla of evidence”
to suggest that the union posed a danger to North Carolina’s prison system, so the union
deserved the same treatment as other inmate organizations. 82

The union and their lawyers took little time to celebrate their victory because they
knew they had a bigger fight ahead of them. They were sure the state would appeal, and
they worried the Supreme Court would reverse the district court’s decision. 83 Even the
three judges who had recently ruled in the union’s favor had begun to rethink their
decision. During the February trial, the judges had asked Smith to send them a copy of
the union’s articles of incorporation, which outlined the organization’s goals. Perhaps by
design, the articles arrived at the court only three days before the decision’s
announcement. Upon reading the text, the judges discovered that Article III clearly
outlined the union’s plan to seek reform “through collective bargaining with the prison
administration,” a tactic that conflicted with Smith’s and Mailman’s description of the


83 Norman Smith to Wayne Brooks, 28 March 1976, Folder Jones v. North Carolina Prisoners Union, Box
143, NCCLU Papers.
organization. “In retrospect, I have the feeling that we were perhaps put upon by the
counsel for the plaintiff at oral argument,” Judge Franklin Dupree told Justice Algernon
Butler, “if we had before us the information that we do now, I have a feeling that the
outcome [of the case] would have been different.”

Four days after the decision’s announcement, Smith’s and Mailman’s prediction
came true when Jones announced he had no intention of recognizing the union and that
he planned to appeal the case. While the State Attorney General’s Office prepared a
writ of certiorari to the Supreme Court, Jones crafted new methods to stymie the union’s
organizing efforts. In April 1976, he issued a new rule mandating that only “approved”
inmate organizations could access meeting space. When the union applied for approval,
he promptly denied its request. Prison staff also continued to block the union’s outside
organizers from attending prisons’ visiting hours. When the Supreme Court agreed to
hear the union’s case in August 1976, the inmates hoped for relief from Jones’s
escapades, but they braced for the worst.

Meanwhile, the relationship between Jones and Morrison worsened. When Jones
learned Morrison had filed an affidavit in support of the Prisoners Labor Union, he was
furious. He responded by writing to the governor, the state attorney general, and key state

84 Franklin Dupree to Algernon Butler, 17 March 1976, Folder NCPLU v. Jones, Box 78, Dupree Papers.
1976.
legislators asking them to defund the Grievance Commission. To justify his suggestion, Jones relied on recent developments in the *McCray* case to argue that the commission “no longer served its purpose.” In April 1974, not long after the union had filed its own case challenging the commission’s legality, the Fourth Circuit Court of Appeals overturned the provision in *McCray* allowing federal courts to stay inmates’ lawsuits while they exhaust state grievance procedures. Four months later, in August 1975, the Supreme Court agreed to hear the case but the Fourth Circuit left the provision intact in the meantime. In June 1976, however, the Supreme Court revised its decision to review the case, meaning the Fourth Circuit’s decision stood and the exhaustion of state grievance procedures was no longer required for inmates to file constitutional rights claims in federal court. In line with the union’s predictions, Jones argued in his letters that since the Inmate Grievance Commission could no longer stop inmates from filing lawsuits against prison officials, the agency should be abolished. The state of North Carolina, he suggested, no longer had any incentive to work alongside the commission to address inmates’ complaints.

The State Attorney General’s Office disagreed, remarking that at the very least the commission signaled the DoC’s compliance with the American Correctional

---

87 Burrell v. McCray, 426 U.S. 471 (1976). I suspect that the Supreme Court decided not to hear this case because the Congress was working on a bill, sponsored by Gerald Ford’s Department of Justice, which would have amended Section 1983 to compel inmates to exhaust their administration remedies before filing suit in federal court.

88 David Jones to James Holshouser, et al., “Updates on Grievance Procedures, 12 August 1976, Folder Inmate Grievance, Box 449, Correspondence 1976, Holshouser Papers."
Association’s best practices guidelines. The dismantlement of the commission, Assistant Attorney General Jacob Safron remarked, would “practically invite litigation.” Yet the Fourth Circuit Court of Appeals’s decision in McCray, upheld by the Supreme Court, nonetheless further eroded Jones’s willingness to work alongside Morrison and his commission. While imprisoned activists resented the court’s earlier practice of forcing them to utilize the grievance procedures before filing their lawsuits, it did provide an incentive for DoC officials to meaningfully address prisoners’ complaints, especially in light of recent decisions expanding inmates’ rights. In McCray’s wake, Jones took a more combative stance toward the commission, barring it from releasing policy recommendations and attempting to cut its funding. But when the Prisoners’ Union case went to the Supreme Court, the commission became one the DoC’s greatest assets.

**Jones v. North Carolina Prisoners Labor Union**

After the Supreme Court announced it would hear the Prisoners Labor Union’s case, Smith and Mailman began working alongside National Prison Project staff to sharpen their arguments. The lawyers believed the stakes were high. “This case is one of the most—if not the most—important cases in the history of prisoners’ rights law,” Bronstein told Smith. While the lawyers had succeeded in expanding prisoners’ right to

---

89 Jacob Safron to David Jones, Grievance Commission, 15 August 1976, Box 3, DoC Legal Correspondence Papers.

90 Nat Walker, “Morrison Unhappy Over Panel Budget,” (Date and Newspaper not listed); “Cut in Prison Program Given Criticism,” Durham Morning Herald, 16 September 1975, Scrapbook File, Grievance Commission Records.
free speech during the previous decade, they had experienced less luck in convincing judges to extend inmates’ right to free assembly. As federal judges regularly reminded them, imprisonment, after all, required major restrictions on prisoners’ associational rights. By the mid-1970s, project staff viewed prisoners’ labor unions as only a pipe dream. Yet the district court’s decision in the union case renewed their hope that the extension of inmates’ associational rights was on the horizon.91

Ultimately, the core of the lawyers’ brief echoed the district court’s finding: the union did not threaten prison security and thus should be afforded the same First Amendment rights as other organizations behind bars. To support their position, Smith, Mailman, and the National Prison Project lawyers recruited corrections experts familiar with prisoners unions and inmate-led prison reform groups more generally to testify that such organizations did not cause problems and, in some cases, helped change bad prison policies. In addition to Morrison and others, the superintendents of corrections in Rhode Island and Delaware—states that recognized prison unions—submitted affidavits noting that unionization had not led to rioting in their states. Powerfully, the Rhode Island superintendent of corrections, when asked if he would abolish the union if he could, responded that he “didn’t believe so.” While the superintendent said he “certainly didn’t

---

“get along” with the union, he admitted that its members had “suggested changes that had benefited” both inmates and prison administrators.”

In their Supreme Court brief, Smith and Mailman also cautiously moved away from their earlier claim that the union was an unfortunately named “reform organization” rather than a formal labor union. As in their district court brief, Smith and Mailman assured the justices that the inmates were not seeking collective bargaining rights, only the same associational rights offered prison groups such as the Jaycees. The lawyers downplayed the union’s goals, claiming that “in many ways, the term ‘union’ [was] inapposite” since the organization was most importantly, “if not primarily,” a means for prisoners “to bring their legitimate desire for change” to prison administrators within the “pre-existing legal order.” They went on to assure the justices that most of the union’s goals were not “work-oriented” but rather concerned “reform more broadly” since “most prisoners work at ill-defined and generally degrading jobs.”

While Smith and Mailman worked on crafting the union’s case, North Carolina state attorneys developed their own arguments. And they too had outside assistance. In December 1976, the U.S. Solicitor General Robert Bork successfully petitioned the Supreme Court to file an amicus curie brief to participate in the oral argument on behalf of David Jones and the other named appellants. The United States had “direct and

---

92 For the various drafts of the argument, see Folder Jones v. North Carolina Prisoners Union, Box 143, NCCLU Papers; Deposition of James Mullen, Folder NC Prisoners Labor Union Briefs and Depositions, Box 143, NCCLU Papers.

immediate interest” in the case, Bork explained, because inmates were also attempting to unionize inside Federal Bureau of Prison (BoP) facilities. Like Jones, BoP Director Norman Carlson adamantly opposed prisoners’ efforts. To stop them from organizing, Carlson had enforced a “strict prohibition against all forms of union activity.” In the petition, Bork noted that Carlson’s ban was “quite similar” to the “regulatory scheme” issued by Jones.94

Writing for the U.S. Government, Acting Solicitor General Daniel M. Friedman, who had recently replaced Bork, introduced a novel argument in his amicus brief: prison administrators’ ban on the union did not violate inmates’ First Amendment rights because the Inmate Grievance Commission provided prisoners with an “effective” outlet to inform corrections officials of their complaints. At the heart of Friedman’s brief was his claim that the district court had failed to grant proper deference to the “expert judgment” of corrections officials who alleged the union threatened prison security. To bolster prison administrators’ professionalism, he underscored that the grievance procedures instituted in North Carolina, which were similar to those used in the federal prison system, were “fair” and bound by clear rules. Prison administrators, Friedman implied, could be neutral arbitrators in disputes between inmates and guards. Lacking statistics from North Carolina’s Inmate Grievance Commission, Friedman drew on data from the federal prison system to demonstrate that prisoners received relief in approximately one-fourth of all grievances filed in 1975. “A union grievance procedure would be a no more

efficient or effective means of securing relief than the present system,” Friedman told the court. In fact, he noted that a union might actually make prisoners’ grievances more difficult to resolve. While corrections professionals oversaw the procedures, Friedman suggested that inmates, who “behave with greater emotion and fewer inhibitions when acting as a group,” would be quick to resort to violence if their demands went unmet.  

In contact with the Solicitor General’s Office since August 1976, the North Carolina State Attorney General’s Office’s brief largely mirrored the one submitted by Friedman. To support the claims regarding the effectiveness of the Grievance Commission, Corrections Superintendent David Jones, who had recently submitted a budget proposal attempting to defund the agency, described in his affidavit the “good work” the commission had done since its creation in 1974. “The commission has improved life for both guards and prisoners,” Jones said. Seemingly drawing on earlier comments made by Morrison, he went on to call the commission a “safe outlet” for prisoners and guards to “discuss their differences.” Jones highlighted the “neutrality” of North Carolina’s commission, noting it was an independent agency under the broad umbrella of the Department of Social Rehabilitation and Social Control. Jones suggested that, in reality, the union members had no real plans to work alongside prison administrators. Instead, they sought to destroy the prison system. If the court allowed the

---

95 Ibid.
union to operate, Jones argued, “work stoppages and mutinies” would be “easily foreseeable” and “riots and chaos” would be “almost inevitable.”

During oral arguments in *Jones* in April 1977, Safron and Kenneth Geller, who represented the United States, both chose to focus primarily on the potential dangers posed by prisoner unionization, offering inmate grievance procedures as one way to avert disaster. Safron, emphasizing the union’s effort to obtain collective bargaining rights, raised the specter of violence behind bars. Referring to the district court’s claim that not “one scintilla” of evidence proved the union threatened prison security, Safron asked the court if it expected prison administrators to “await a catastrophic incident” before banning union activity. Geller chimed in to remark that if the district court’s decision were upheld, “it may lead to serious breaches of prison security.” Yet such problems could be avoided, Safron and Geller told the court: inmates could rely solely on the state’s “effective” grievance procedures to address their problems.

Three months later, in June 1977, the Supreme Court announced its decision in *Jones v. North Carolina Prisoners Labor Union*: the union lost its case. Only Justices Thurgood Marshall and William Brennan dissented. Worse yet, the court’s ruling dramatically expanded the deference afforded prison administrators who curtailed inmates’ First Amendment rights. In the free world, government officials who sought to

---


limit individuals’ First Amendment rights could only do so if they could prove such actions were absolutely necessary. The court viewed the right to free speech and association as “fundamental rights,” and as such they could only be limited if a “compelling government interest” was at stake. In federal court, the burden was on government officials to prove such stakes existed. In Jones, however, the court flipped those rules for First Amendment cases involving inmates. The ruling placed the burden on plaintiffs to disprove the predictions of correctional officials who claimed the recognition of prisoners’ First Amendment claims would threaten prison security. Writing for the majority, Justice William Rehnquist noted that the district court’s decision was flawed because “the burden was not on appellants to show affirmatively that the union would be detrimental.” Rather, he argued that the court should have deferred to corrections officials because the plaintiffs failed to demonstrate that the officials’ concerns were “unreasonable.” As one National Prison Project lawyer later commented, Jones in essence made “deference to prison administrators a virtual principle of decision” in inmates’ First Amendment rights cases.

The belief that prison administrators were unbiased professionals capable of determining when and whether to uphold inmates’ rights undergirded the court’s decision. Drawing on arguments made by Safron and Friedman, Justice Rehnquist referenced North Carolina’s Inmate Grievance Commission to prove the case “barely


implicated” prisoners’ First Amendment speech rights. He suggested the DoC policies banning the union had “merely affected one of several ways” inmates could “voice their complaints to, and seek relief, from prison officials.” Even without a union, inmates could secure “remedial action” through North Carolina’s “presumably effective” grievance procedures. The fact that inmates preferred union grievance procedures, Rehnquist noted, did not “convert the prohibitory regulations into unconstitutional acts.” In effect, Rehnquist suggested that the district court should not have questioned prison administrators’ decision to curtail inmates’ First Amendment rights. As evidenced by the grievance procedures, administrators were not seeking to silence inmates or to treat them unfairly. Instead, as professionals, prison administrators simply sought to dictate the best means for imprisoned men and women to voice their concerns.  

In the first NCCLU board meeting following the defeat, Norman Smith and Deborah Mailman expressed “shock” regarding the surprising turns within the Jones case. Safron and Geller had won their case against the NCCLU in part by turning the inmate grievance procedures—a mechanism the civil liberties lawyers had hoped would improve prisoners’ lives—against them. When the NCCLU began collaborating on the grievance mechanism with North Carolina’s attorney general, the lawyers viewed it as a means to address inmates’ complaints falling short of constitutional rights claims. Never did the NCCLU lawyers imagine that the Supreme Court would later use the mechanism to limit the federal courts’ oversight of prisoners’ constitutional rights too. Moreover,

---

David Jones’s willingness to embrace the grievance procedure in order to defeat the union left Smith “appalled.” Since the feud between Morrison and Jones began in the spring of 1975, Jones and his staff had fought the commission, refusing to implement its recommendations or working to undermine its authority. Yet faced with the prospect of sharing power with organized prisoners, Jones changed his tune and sung the praises of the Inmate Grievance Commission in his affidavit.

The Supreme Court was not unaware of Jones’s distaste for the Inmate Grievance Commission, despite his positive assessment of the agency in court. As part of their case, Smith and Mailman had submitted a newspaper article detailing Jones’s effort to starve the agency through budget reductions. Yet the Supreme Court had its own vested interest in the procedures. Chief Justice Warren Burger, after all, was an early advocate of using grievance procedures as a means to remove prisoners’ claims from the federal courts. And in part, Jones accomplished this task, albeit in a way that Justice Burger never anticipated. Safron and Friedman successfully used the procedures to legitimize their call for the federal courts to reduce their oversight of prisoners’ First Amendment claims. In a concurring option in Jones, Burger praised the “enlightened correctional administrators” who implemented grievance procedures that allowed inmates “to register their complaints with penal officials and obtain non-judicial relief.” In a footnote, Justice Burger noted that, as an added benefit, “the development of grievance procedures” had

101 NCCLU Board Minutes, 6 August 1977, Folder Board Minutes, Box 17, NCCLU Papers.

appeared to slow “the rate of growth of federal prisoner petitions filed in federal district courts.”103

After Jones, it did not take long for the Department of Corrections to crush the Prisoners Labor Union. The day following the ruling’s announcement, Jones reissued the rules prohibiting inmates from soliciting others to join the union, attending union meetings, and sending or receiving bulk mailings concerning the union. He also permanently banned all “known union organizers” from visiting the state’s prisons. 104 Many union members continued to organize. Wayne Brooks, the union president, suggested they charter a new organization called National Offenders Movement on Repelling Enslavement (NO MORE), which left collective bargaining off its written list of demands. With the financial help of the Prison and Jail Project of North Carolina, an affiliate of the Tennessee-based Southern Coalition on Prisons and Jails, the union also maintained an outside office with a staff person who worked part time on prison affairs. But by early 1978, the union had collapsed. 105 While Jones did not explicitly ban inmates from organizing, it placed limits on prisoners’ First Amendment rights that made organizing exponentially more difficult than it had been in the past. Without the ability to solicit others to join the union or to use the mail to send union material, prisoners


104 David Jones to staff, Prisoner Union, 20 August 1977, Box 2, DoC Legal Correspondence Papers.

struggled to organize across the state’s nearly eighty penal facilities. While inmates launched protests in individual prisons in the decades that followed, North Carolina never again witnessed the coordinated and widespread activism that swept its prisons in the early 1970s.

Prisoner unions in other states seem to have followed the path of North Carolina’s union. By 1980, *The Outlaw*, the national journal for prisoner labor unions, stopped publication, and few prisoners’ rights advocates mentioned inmate unionization as a possible means to implement meaningful changes behind bars. In states such as Rhode Island and Delaware where corrections administrators once recognized inmates’ unions, prisoners—either by choice or by force—eventually modified their goals, no longer representing themselves as unions but as reform organizations. Without robust First Amendment rights to free speech and association, prisoners unions simply lost power vis-à-vis prison administrators. In *Jones’s* wake, prison administrators had few incentives to cooperate with inmate organizations.

***

In his dissenting opinion to *Jones*, Justice Thurgood Marshall expressed shock at the court’s willingness to take such a “giant step backwards” in its conception of prisoners’ rights. He excoriated his fellow justices for allowing fear of the unknown to shape their interpretation of the law, and he warned that their deference to prison

---

administrators would result in the continued erosion of inmates’ constitutional rights. Addressing the court’s capitulation to administrators’ claims that inmate unions would lead to violence, he reminded the justices that “freedom is sometimes a hazardous enterprise” and that “the Constitution requires the State to bear certain risks to preserve our liberty.” Marshall agreed with the court that “the realities of running a penal institution” were “complex and difficult” and that corrections officers possessed “considerably more professional expertise in prison management than [did] judges.” But for him, administrators’ expertise did not justify the deference the court afforded them. Marshall suggested that prison officials would always be “less responsive than a court” to inmates’ “constitutionally protected interests” because their “business [was] to maintain order.” Moreover, he noted, schools and cities were also complex institutions but the court had few qualms about questioning the actions of principals, mayors, city councilmembers, or law enforcement personnel. Marshall argued that the court’s blind deference to prison officials in Jones was a slippery slope: “If the mode of analysis adopted in today's decision were to be generally followed,” he wrote, “prisoners eventually would be stripped of all constitutional rights, and would retain only those privileges that prison officials, in their ‘informed discretion,’ deigned to recognize.”

Contrary to Marshall’s prediction, inmates never lost their First Amendment rights after Jones. But their First Amendment rights did cease to expand. Reflecting on the trajectory of prisoners’ rights law in 1981, National Prison Project Attorney Elizabeth

Alexander listed *Jones* as a key case marking the Supreme Court’s turn away from decisions “expanding the possibilities for prison litigators.” She noted that, after *Jones*, “the principal role of the Supreme Court” became “to halt the doctrinal expansion of prison law.” In the field of First Amendment law, *Jones* delineated the outer limits of inmates’ rights to free speech and assembly. After 1977, prisoners’ rights lawyers largely stopped taking cases intended to increase such rights. Instead, they chose to bring suits enforcing the First Amendment rights inmates had secured in earlier years. That decision seemed to reflect a broader moderating shift in the National Prison Project’s goals in the late 1970s. While many of the project’s cases prior to *Jones* focused on expanding inmates’ ability to advocate for themselves, later cases primarily asked judges to create and enforce new rules regulating everyday life behind bars.  

*Jones* signaled that the Supreme Court was less willing to question prison administrators’ decisions than it had been in the past. Corrections officials in North Carolina got the message loud and clear. In the years following the ruling, Jones and the DoC staff further weakened the power of the Inmate Grievance Commission, leaving prisoners without a union or an effective grievance mechanism. As the NCCLU attorneys and the prisoners’ union understood, state officials’ willingness to implement grievance procedures rested in part on their fear that the federal courts would take action on inmates’ claims. They had vested interest in addressing prisoners’ grievances before they

---


109 Although, as I describe in my next chapter, the district courts remained willing to question many prison administrators’ decisions.
reached the courts. Yet with the Supreme Court no longer expanding prisoners’ rights, corrections administrators had few reasons to cooperate with the commission. In 1979, Jones succeeded in reducing the commission’s budget by half, resulting in the elimination of six of the eight examiner positions. Two years later, in 1981, Morrison resigned after Governor James Martin appointed an outspoken opponent of prisoners’ rights to the commission and the General Assembly introduced legislation seeking to eliminate the commission’s status as a semi-independent agency. The outspoken opponent of prisoners’ rights took Morrison’s place.\textsuperscript{110}

After Jones, the North Carolina Department of Corrections began to erode the strength of an agency that helped persuade the Supreme Court that prison officials were capable of protecting inmates’ rights and addressing their grievances without bias. Indeed, the DoC’s implementation of grievance procedures ultimately served to justify the court’s deference to prison administrators on issues regarding prisoners’ rights. Scholars such as political scientist Naomi Murakawa have demonstrated how efforts to make law enforcement agencies more “rights-based” and “rule-bound” during the mid-twentieth century obscured the deeper structural inequalities undergirding America’s criminal justice practices as legislators and judges focused on whether agencies treated individuals “fairly.”\textsuperscript{111}


\textsuperscript{111} Naomi Murakawa, \textit{The First Civil Right: How Liberals Built Prison America} (New York: Oxford University Press, 2014), 17-18. Other scholars have also noted how seemingly neutral legal processes
But the fate of North Carolina’s prison grievance procedures paints an even
darker picture. The implementation of new policies and practices designed to make
prison administration less arbitrary resulted not in increased concern for enforcing
inmates’ procedural rights but in increased deference to corrections officials. Ultimately,
grievance procedures failed to address structural inequalities or to ensure the protection
of prisoners’ rights. Yet undeterred by their setback in *Jones*, civil liberties lawyers
adjusted their tactics, turning away from the First Amendment and toward the Eighth
Amendment’s ban on cruel and unusual punishment.

—

Chapter 4


Inmates in North Carolina were left without their union in the wake of Jones v. North Carolina Prisoners Labor Union. But they still had access to the courts, and in the late 1970s constitutional rights litigation remained a promising tactic. Even as the Supreme Court began to curtail inmates’ rights, prison litigation at the district court level was becoming broader and more sweeping. In January 1976, Judge Frank Johnson of the U.S. District Court for the Middle District of Alabama broke new ground when he ruled in Pugh v. Locke that the “totality of conditions” within his state’s prisons were a violation of the Eighth Amendment’s prohibition against cruel and unusual punishment. To remedy the problem, Johnson issued a set of minimum standards that regulated everything from the size of inmates’ living space to the number of times each week inmates could shower.¹ Prisoners and their lawyers in North Carolina, like those across the nation, soon filed lawsuits of their own in hopes of building on the Pugh decision.

This chapter examines the way state officials in North Carolina responded to the threat of such lawsuits after the fall of the North Carolina Prisoners Labor Union in 1977. It begins by illuminating the strategies of the lawyers who litigated Eighth Amendment cases challenging inhumane prison conditions and policies in North Carolina and throughout the United States. Beginning in the early 1970s, prisoners’ rights lawyers such

as those affiliated with the American Civil Liberties Union’s National Prison Project challenged prison conditions with the goal of reducing the number of men and women behind bars. The lawyers hoped that by drawing attention to the abusive conditions inside prisons, their lawsuits would encourage state leaders to rethink their reliance on imprisonment as a form of punishment. But even if state leaders remained indifferent to inmates’ plight, prisoners’ rights attorneys hoped the high cost of meeting new prison standards would prove persuasive. The lawyers sought to convince federal judges to impose remedies to constitutional rights violations that were so expensive to meet that state leaders would adopt less costly and more humane alternatives to incarceration such as probation or parole.

Yet rather than rethinking their corrections policy, state officials built new prisons in an ongoing effort to avoid lawsuits based on overcrowded or unsafe conditions. Between 1977 and 1983, the North Carolina General Assembly dedicated over $85 million to prison construction, more money than the state had spent on prison building during the previous half century combined, even after accounting for inflation.² Worried about seeming “soft” on crime, state officials poured money into the prison system, building new facilities at breakneck speed during a moment when an economic recession already made the state budget tight.³ The lawyers could do little aside from watch as


North Carolina expanded its prison empire. While their lawsuits convinced many judges that “cruel and unusual” conditions and practices existed behind bars, there was never a clear answer as to how best to resolve the issue. State officials capitalized on this uncertainty, choosing to remedy Eighth Amendment rights violations through prison construction rather than by rethinking their approach to punishment. By the early 1980s, the lawyers had given up on their hope of reducing the prison population through litigation, settling instead for the creation of new standards that eliminated the worst conditions behind bars.

State officials had such a heavy hand in the remedial process in part because the U.S. Congress and the executive branch proved unable and, in some cases, unwilling to take a firm stand against inhumane prison conditions during the late 1970s and early 1980s. As Gerald Rosenberg demonstrated in *The Hollow Hope*, the federal courts struggled to effect meaningful change without support from the other two branches of government. On the campaign trail, Democrat Jimmy Carter advocated for sentencing reform and community-based alternatives to incarceration. Once in office, however, his corrections policy goals clashed with his administration’s focus on reducing the federal

---


bureaucracy and cutting back on regulations. Carter’s plans also encountered pushback from members of Congress fearful of costly federal interventions into their states’ prison systems. Despite prison reformers’ high hopes, the Carter administration ultimately confined its fight against “cruel and unusual” prison practices to the federal courts, where the Department of Justice (DoJ) intervened on a limited basis in cases challenging Eighth Amendment rights violations behind bars. Yet after the Republican President Ronald Reagan took office in January 1981, the DoJ instituted new rules hobbling that program, too, leaving the executive branch with neither “a carrot” nor “a stick” to improve the lives of imprisoned men and women. Left to their own devises, state legislators responded to the threat of prison litigation in the way least likely to jeopardize their careers: by financing new prisons.

The federal government’s inaction regarding the problem of abusive prison practices during the late 1970s and early 1980s underscores the importance of examining criminal justice policy at the state level. Recent scholarship has highlighted the federal government’s role in encouraging states to adopt punitive laws and practices beginning in the mid-1960s with President Lyndon Johnson’s embrace of the “War on Crime.”^5 An investigation of North Carolina’s evolving punishment practices tells a more complicated story. Between 1978 and 1986, the federal government did not offer states funding for

---

prison construction. Nor did it support the development of prison standards or a robust prison litigation program. Indeed, North Carolina’s prison building boom began during a moment when the federal government remained largely neutral regarding how states should punish their citizens.\(^6\) State officials, in an effort to appear tough on crime, made the choice to build prisons rather than to reevaluate sentencing practices—and they did so at great sacrifice. North Carolina began expanding its prison system right as a recession and mounting calls for lower taxes reduced the state’s revenue.\(^7\)

Ultimately, state officials in North Carolina built new prisons in reaction to Eighth Amendment rights litigation rather than in response to federal incentives. They could have made other choices. By challenging the state’s inhumane prison practices in the federal courts, prisoners’ rights lawyers sought to manufacture a crisis and then encourage state officials to respond to it by reducing their prison population. But as the lawyers recognized, constitutional rights litigation was an imperfect tool for addressing the deep-seeded problems undergirding North Carolina’s criminal justice policies. Through the litigation process, lawyers could uncover individual rights violations, but they only had a limited ability to shape how the states remedied them. By complying with the new standards issued by the federal courts, state officials could avoid the hard work

\(^6\) During this period, the federal government adopted increasingly harsh sentencing laws for federal crimes, but sentencing guidelines for state crimes remained the prerogative of state judges and legislators. Until the mid-1980s, the federal government offered states few incentives to adopt harsh sentencing laws.

of rethinking their punishment practices—work that would have taken collective action. Faced with federal lawsuits, North Carolina’s leaders built new prisons that—at least in theory—protected inmates’ constitutional rights but that also allowed mass incarceration to thrive.

**Decarceration through Litigation: The American Civil Liberty Union’s Strategy**

Civil liberties lawyers launched their attack on the nation’s prisons during a moment when the power of litigation to reshape public institutions seemed to be expanding. Beginning in the wake of *Brown v. Board of Education* in 1954, the federal courts, especially at the district court level, demonstrated a growing willingness to participate in the reorganization of public institutions and to develop creative remedies to redress individual rights violations. By the early 1970s, federal judges even showed signs they might be willing to develop remedies that not only eliminated rights violations but that also addressed the structural inequalities undergirding them. In 1971 in *Swann v. Charlotte-Mecklenburg Board of Education*, the Supreme Court upheld a program mandating busing to eliminate segregation in the Mecklenburg County Schools. As part of the decision, the court affirmed that judges had “broad” powers to redress past wrongs, including through the development of remedies that chipped away at deeply entrenched race and class biases. Civil liberties lawyers took heart in such decisions. During the late

---


1960s and early 1970s, they crafted sweeping lawsuits and advanced creative legal arguments in hopes of fundamentally transforming the nature of punishment in America. In the process, they created legal precedents that, for better or worse, went on to shape prison litigation for the next three decades.

In 1969, lawyers affiliated with the NAACP Legal Defense and Education Fund filed a lawsuit against the Arkansas Department of Corrections that played a crucial role in the development of the ACLU National Prison Project’s legal strategy. In *Holt v. Sarver*, the NAACP described prison conditions and practices that federal district court Judge Jesse Smith Henley called “torture.” Inmates lived in large, filthy barracks where sixty inmates shared one bathroom. Imprisoned “trustees” maintained order through extortion, threats, and violence. When inmates failed to follow rules, guards punished them with the “Tucker telephone,” a device that sent electric shocks through their genitals. Inmates rarely had full meals, let alone access to rehabilitation, education, or job training programs. After nearly a year of harrowing testimony, Judge Henley declared Arkansas’s entire prison system—the “totality of its conditions”—in violation of inmates’ Eighth Amendment right to be free from cruel and unusual punishment. He then compelled Arkansas state officials to remedy the situation, leaving it up to them to decide how best to eliminate the rights violations.10

After its founding in 1972, the ACLU National Prison Project, the nation’s leading organization devoted to prisoners’ rights litigation, saw *Holt* as an opportunity.

---

The project lawyers hoped to bring similar Eighth Amendment cases challenging the “totality of conditions” in other prison systems. The lawyers believed that by conducting extensive discovery, their findings would cause a public outcry that would convince state officials to rethink their reliance on imprisonment. They also hoped to persuade federal judges to play a greater role in the remedial process. The lawyers wanted judges to craft detailed remedies that either forced state officials to reevaluate their sentencing practices or that made improvements to prisons so costly and cumbersome that they would choose to adopt alternatives instead. To be sure, the project lawyers also sought immediate relief for the men and women forced to endure inhumane conditions behind bars. But when litigating prison conditions in the early 1970s, the Prison Project was playing a long game—one it hoped would end in a dramatic reduction in state officials’ use of imprisonment as a form of punishment.\footnote{Alvin Bronstein to David Hunter, January 4, 1973, Folder 5, Box 1089, ACLU Papers, Mudd Library, Princeton University, Princeton, New Jersey. See also Margo Schlanger, “Civil Rights injunctions Over Time: A Case Study of Jail and Prison Court Orders,” \textit{New York University Law Review} 81 (2006), 560; Schoenfeld, 166-167.}

In 1974, Prison Project lawyers believed they had found a judge who might be willing to craft the remedies they desired: Judge Frank M. Johnson of the U.S. District Court for the Middle District of Alabama. Earlier that year, local lawyers had filed \textit{Pugh v. Locke}, a case challenging conditions throughout Alabama’s prison system. As in Arkansas, the state’s prisons were in disarray. The facilities were filthy, overcrowded, and dangerous. But the Prison Project thought Johnson would craft a creative and far-reaching remedy. Appointed to the bench by President Dwight D. Eisenhower in 1955,
Johnson was accustomed to controversial, labor-intensive cases. In addition to making several landmark rulings that helped end Jim Crow in Alabama, Johnson had helped restructure the state’s mental institutions after issuing a landmark decision in *Wyatt v. Stickney*, which held that people involuntarily committed had a constitutional right to treatment. At the invitation of the inmates’ lawyers, the Prison Project successfully petitioned Johnson to serve as an amicus curie in the case.12

Working alongside lawyers from both the U.S. Department of Justice and the University of Alabama’s School of Law, Prison Project staff attorney Michael Myers and executive director Alvin Bronstein developed an unprecedented argument in *Pugh*. The lawyers hoped to build on Judge Johnson’s 1971 ruling in *Wyatt* to argue that prisoners, like individuals confined to mental institutions, had a constitutional “right to treatment.” For inmates, the lawyers claimed, “treatment” consisted of rehabilitation programs such as drug and alcohol addiction services as well as education and vocational training courses. Once prisoners had a right to treatment, they believed, lawyers could leverage criminology and sociology research that questioned the ability of large penal facilities to rehabilitate inmates to compel states to adopt alternatives to incarceration.13

---


13 Inmates and other reformers who worked closely with prisoners were skeptical of lawyers’ “right to treatment” arguments. They believed prison officials would use the argument to force prisoners to accept medical care or to participate in programs that they preferred to avoid. See Yackle, *Reform and Regret*, 85-92.
Much to the lawyers’ chagrin, Judge Johnson signaled early on in the litigation process that their “right to treatment” argument went too far. Back at the drawing board, the lawyers developed a new legal framework predicated on prisoners’ “right to protection.” First imagined by University of Alabama Professor George Taylor, the new framework proved successful and went on to play a key role in shaping future prison litigation. Taylor and the ACLU lawyers highlighted the prevalence of inmate-on-inmate violence within Alabama’s prison system, arguing that it violated prisoners’ Eighth Amendment right to be free from cruel and unusual punishment. In their pleadings, they described how rapes, stabbings, and beatings had become commonplace behind bars. Rather than intervening to prevent the violence, prison guards looked the other way. The lawyers argued that since inmates were under the state’s care, they had a fundamental right to be protected from abuse, be it at the hands of prisoners or guards. To remedy the problem, the lawyers urged Johnson to order “fundamental changes” to the state’s criminal justice system, including a dramatic reduction in the prison population.\(^\text{14}\)

In January 1976, Judge Johnson ruled in favor of the plaintiffs, calling Alabama’s prison system an “abomination.” In his groundbreaking decision, Johnson declared that inmates did indeed have a right to protection. His remedies also marked a new direction in prison litigation. While Johnson declined to compel state officials to make the fundamental changes the ACLU sought, he issued a set of “minimum standards” with which the state had to comply in order to avoid being held in contempt of court. Written

---

\(^{14}\text{Ibid.}\)
with the help of the plaintiffs’ lawyers and representatives of the American Corrections Association, the standards regulated nearly every aspect of prison life. To protect inmates’ safety, Johnson ordered the state to eliminate overcrowding, provide at least sixty square feet of living space for each inmate, create a classification system that separated inmates according to their crimes and behavior, and remove all but minimum-security prisoners from dormitory-style cells, among other requirements. Johnson’s standards also regulated the day-to-day life of inmates. They dictated how often inmates should be allowed to shower, receive visitors, exercise, and write letters. Moreover, they mandated programs that gave inmates the opportunity to rehabilitate themselves. Each inmate was to be given a job and to have access to “meaningful” educational and vocational training. Johnson gave prison officials six months to remedy the procedural issues and one year to fix the structural problems with the prison facilities. “Lack of state funds,” Johnson told the officials, would not excuse any “failure to comply.” Indeed, Johnson warned state leaders that he would hold them “personally liable for monetary damages” if they missed the deadlines. Although Alabama Governor George Wallace appealed Johnson’s decision, the Fifth Circuit Court of Appeals largely upheld the decision in the spring of 1977.\footnote{Ibid.}

prison conditions in their home state. Prior to Pugh, the definition of “cruel and unusual punishment” remained relatively vague. While Holt had made clear that horrific instances of torture and abuse were unacceptable, Judge Henley had granted Arkansas officials extensive power to decide how to make their prison system “humane.” In contrast, Judge Johnson took a firm stance on what constituted cruel and unusual punishment. His detailed “minimum standards” set the bar. Anything falling short violated the Eighth Amendment.

Within days of the Pugh decision’s announcement, letters from inmates requesting copies of the new standards poured into the office of the North Carolina chapter of the American Civil Liberties Union (NCCLU). As the inmates quickly recognized, North Carolina’s prisons failed to meet Judge Johnson’s minimum standards. With the highest incarceration rate in the nation, North Carolina’s prisons held over 14,000 inmates in a system designed for 10,000 people. The vast majority of the prisoners were housed without regard for their age or crime in large barracks-style dorms. Guards readily admitted that they refused to enter the dorms after dark, leaving inmates to run the prisons at night. With little oversight and tensions running high due to overcrowding, violence was commonplace. In 1976, one in ten prisoners was the victim of a beating, stabbing, or rape. As in Alabama, vulnerable inmates—ones who were

17 See Folder Prison and Jail System, Box 4, American Civil Liberties Union of North Carolina Papers (hereafter cited as NCCLU Papers), Rubenstein Library, Duke University, Durham, North Carolina.
young, seemingly weak or effeminate, or who willingly testified on behalf of the state—often feared for their lives.  

In September 1975, four jailhouse lawyers made their move. Alluding to the ACLU’s “right to protection” argument in *Pugh*, they filed a lawsuit, later known as *Bolding v. Holshouser*, that complained of dangerously overcrowded conditions inside prison dorms that prevented guards “from being able to observe or protect prisoners from physical or mental anguish.” In January 1976, the U.S. District Court for the Western District of North Carolina, recognizing the case’s potential merit, assigned it to Allen Wellons and Russ Brannon, two young attorneys from Asheville. The following month, the men wrote to the NCCLU to ask if the organization would be willing to sponsor “a case similar to *Pugh* using the “protection argument.”  

In March 1976, the NCCLU board of directors agreed to sponsor the case and encouraged Wellons and Brannon to contact Myers and Bronstein of the ACLU National Prison Project. Together, the men crafted a lawsuit resembling *Pugh*, which they hoped would convince North Carolina officials to reduce their prison population, reevaluate their sentencing practices, and adopt alternatives to incarceration. Including both male and female inmates from across the state, the sweeping class-action suit filed in May 1976 claimed North Carolina’s prisons violated prisoners’ Eighth Amendment rights due


to “severe overcrowding, inadequate administering of hearing procedures, improper classification of inmates, inadequate educational and recreation programs, and improper treatment of prisoners in solitary confinement,” among other complaints. In particular, the lawyers argued that the conditions led inmates to be in “in constant danger of violent and deadly attack,” to “face the persistent danger of rape,” and to “suffer accumulating psychological damage from the high level of mental stress and fear.” They urged the court to issue a sweeping injunction enjoining state officials from accepting new inmates or building new prisons until the facilities met standards similar to those released by Judge Johnson, a process the lawyers knew would take years and cost millions of dollars. In the meantime, they asked the court to compel the state to parole inmates until the prison population no longer exceeded design capacity.  

Inside the prison system, leaders of North Carolina Prisoners Labor Union, still awaiting the ruling in Jones v. North Carolina Prisoners Labor Union, expressed doubts about the “right to protection” argument undergirding Bolding. They worried in particular that state officials would respond to the case by creating new policies to prevent inmates from interacting with each other. While the inmates recognized the open-barrack system and lack of guards allowed violence to ensue, they also believed the conditions had

---


advantages. Inmates working to organize their fellow prisoners had little difficulty finding opportunities to discuss issues or to strategize among themselves. Members of the union often waited until after dark to make pitches for their organization and to pass out union cards. One young union member confined to Odum Prison Farm described holding weekly union meetings “after the guards left at ten o’clock every Thursday night.” Others scheduled time to meet one-on-one with prospective recruits in the evenings. In the years that followed, the union’s fears came true. State officials’ response to litigation rooted in the “right to protection” argument proved more difficult to control than the lawyers had ever imagined.

Possibilities Lost: The Carter Administration’s Failed Fight for Prison Reform

North Carolina’s Attorney General Rufus Edmisten panicked when a copy of Bolding landed on his desk in December 1976. Not only did he recognize that the state’s prisons failed to meet the minimum standards set forth in Pugh, but he also feared the Carter administration would impose new corrections standards that went far beyond those crafted by Judge Johnson. During the 1976 presidential race, prison reformers such as those affiliated with the ACLU National Prison Project had high hopes for Democrat Jimmy Carter. While campaigning, he advocated for the expansion of community-based alternatives to incarceration, and he urged state leaders to rethink their sentencing

22 Karl [no last name given] to Fred Morrison, 6 September 1975, Box 1-1981, Director’s Correspondence, Grievance Commission Papers; Mel Preston to Fred Morrison, 28 September 1976, Box 1, Grievance Commission Records.
practices. Yet once in office, Carter’s plans fell apart. Efforts to develop standards for state prisons clashed with the administration’s broader deregulatory agenda, and the U.S. Department of Justice (DoJ)’s plan to increase its involvement in prison litigation faced opposition in the courts and, later, in Congress.

While Carter campaigned during the summer of 1976, the Prison Project lawyers were especially excited about the prospect of the DoJ becoming more involved in prison litigation. As the lawyers well understood, the federal courts gave special weight to the U.S. government’s opinions. If the DoJ systematically intervene in prison conditions cases emerging from the states, it could quickly reshape the field of prisoners’ rights law.

During the Pugh case, Myers and Bronstein had worked alongside DoJ staff attorneys who were anxious to address inhumane prison conditions but whose ability to assist was limited. On September 9, 1971, the first day of the massive strike at Attica Prison, the Nixon administration created the Institutions and Facilities Section (I&F) within the Civil Rights Division of the DoJ with the goal of investigating conditions inside state institutions, including prisons, mental hospitals, and publicly owned nursing homes.23 Yet as the staff attorneys soon realized, they lacked the statutory authority they needed to initiate lawsuits against states accused of violating inmates’ constitutional rights. To participate in state prison litigation, DoJ attorneys had to join cases as an amicus curie, as in Pugh, or draw on Title III of the 1964 Civil Rights Act, which enabled

---

them to file suits against segregated publicly owned facilities. During the early 1970s, the lawyers most often brought cases through Title III. Once federal judges granted the DoJ standing, the attorneys then attempted, with mixed results, to add charges to the litigation that addressed other rights violations behind bars.24

Since the I&F’s founding, its six staff lawyers had pushed the attorney general to seek the statutory authority they needed to conduct their jobs. Pulled from other sections within the DoJ’s Civil Rights Division, the lawyers were shocked by the brutal conditions they found inside the nation’s institutions—not only in prisons but also in mental hospitals and nursing homes. With the help of the Federal Bureau of Investigation (FBI) and grassroots activists, the lawyers uncovered widespread abuse of the nation’s institutionalized citizens. At Parchman Prison in Mississippi, nearly eighty men lived in dorms designed for thirty. They shared one bathroom and one rain barrel for bathing. In New York’s Willowbrook State School for the mentally disabled, authorities discovered that one hundred percent of the residents had contracted hepatitis. Maggots crawled in the food. Two hundred men shared one toilet. And staff tied patients to their beds at night to keep them from running away.25


Disgusted, David Norman, the assistant attorney general for the Civil Rights Division, proposed legislation to the DoJ’s executive board in April 1972 designed to “confer standing on the United States” to institute civil actions where a “pattern or practice of deprivations of constitutional rights” occurred within state institutions.26 Yet the Board denied Norman’s request. Both the Federal Bureau of Prisons (BoP) and the Law Enforcement Assistance Administration (LEAA) opposed the bill.27 Norman Carlson, Director of the BoP, worried the I&F would attempt to enforce standards that BoP facilities could not meet.28 Donald E. Santarelli, the deputy attorney general in charge of the LEAA, opposed the bill as a violation of federalism, no doubt masking his fear that the I&F’s litigation program would encroach on his agency’s ability to set corrections policy.29

Nonetheless determined to root out abuses inside state institutions, the I&F staff began to explore other options. In May 1972, Deputy Assistant Attorney General Mary Lawton developed a creative new argument. She encouraged the lawyers to rely on United States v. Brand Jewelers Inc., an obscure 1970 consumer protection case from the

---


27 I discuss the origins of the Law Enforcement Assistance Administration in my first chapter. Created by the passage of the Omnibus Crime Control and Safe Streets Act in 1968, the LEAA provided grants to state and local criminal justice agencies. The funding was distributed through “State Planning Agencies,” comprised of state leaders appointed by governors.


29 Ibid.
U.S. District Court for the Southern District of New York, to seek injunctive relief against violations of state inmates’ rights. In 1970, the U.S. Attorney General’s Office sought and received standing as a plaintiff to seek an injunction against Brand Jewelers’ practice of obtaining costly default judgments against economically disadvantaged customers who purchased jewelry on credit. In Brand, the Attorney General’s Office argued that the United States was authorized to seek injunctive relief without express statutory authority against large-scale burdens on interstate commerce or, alternatively, against large-scale denials of due process. Ironically, the Brand decision relied primarily on In re Debs, the 1895 decision that enabled the federal government to send in troops to end the American Railway Union’s massive strike against the Pullman Company.\(^\text{31}\)

The I&F lawyers put the Brand decision to use even as they recognized they were on shaky legal ground. In December 1974, state attorneys in Ruiz v. Estelle, a case challenging the conditions of confinement in Texas’s prison system, contested the I&F’s ability to participate in the suit as an amicus curie or plaintiff intervener. While the federal court ruled in the DoJ’s favor, the case put the lawyers on edge.\(^\text{32}\) Soon after, in early 1976, the lawyers’ worst fear came true: state attorneys contested their use of Brand Jewelers to bring suit against the Rosewood Center, a Maryland institution for people

\(^{30}\) Mary C. Lawton to Hugh M. Durham, Legislative Program No. 557, 5 May 1972, Folder Public Accommodations, Box 58, Pottinger Papers.


\(^{32}\) Jesse H Queen to Frank M. Dunbaugh, Semi-Annual Status Report, December 31, 1975, Folder: Frank Dunbaugh, Box 92, Pottinger Papers.
with developmental disabilities. The district court judge ruled for the state, rejecting the United States’ argument for standing in the case. The I&F lawyers appealed to the Fourth Circuit. In the meantime, they were left to rely solely on Title III of the Civil Rights Act to initiate cases against state institutions.

When Carter took office in January 1977, the I&F lawyers revived their call for legislation granting it authority to bring its own constitutional rights suits against state institutions. This time, their appeals worked. When Assistant Attorney General Drew Days submitted the bill to the DoJ executive board in February 1977, the members approved it. Sponsored by Indiana Senator Birch Bayh and Wisconsin House Member Robert Kastenmeier, the Civil Rights of Institutionalized Persons Act (CRIPA) was introduced to Congress in April 1977. It faced an uphill battle in both the House and the Senate, where legislators feared the DoJ might bring cases against institutions in their home states. As CRIPA made its way through Congress, the I&F continued to used the limited tools available to it to chip away at abusive conditions inside the nation’s prisons, mental hospitals, and nursing homes.

33 Statement of Drew S. Days, III Before the Committee on the Judiciary, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, House of Representatives, Concerning H.R. 2439, The Bill to Authorize Actions for Redress in Cases Involving the Violation of the Constitutional Rights of Institutionalized Persons, 29 April 1977, Folder Justice Department of, Box 134, Peter McKenna Papers (hereafter cited as McKenna Papers), State Offices Counsel, Jimmy Carter Presidential Library and Archives, Atlanta, Georgia.

34 Opening Statement of Hon. Birch Bayh, 17 June 1977, Hearings before the Subcommittee on the Constitution of the Committee on the Judiciary, United States Senate, First Session on S. 1393: A bill to authorize actions by the Attorney General to Redress Deprivations of Constitutional and Other Federally Protected Rights of Institutionalized Persons.
While the I&F litigated cases, Attorney General Griffin Bell pursued a different avenue to expand the executive branch’s role in prison policy: the creation of new corrections standards that the states would have to meet in order to receive federal criminal justice funding. Bell’s idea was far from new. In 1971, the LEAA funded the National Advisory Commission on Criminal Justice Standards and Goals to create federal guidelines for all criminal justice agencies, including corrections. Comprised of leading prison officials, criminologists, and sociologists, the commission released a radical set of recommendations in 1973 that reflected the spirit of the moment. Its members urged federal officials to give “every priority” to the development of “non-institutional corrections programs and services” that treated “every possible offender within his community.” The commission suggested that no new institutions for juvenile offenders be constructed and that no new adult institutions be built until “an analysis of the total criminal justice system” demonstrated “conclusively” that “no other alternative” was possible.35 Surprised by the suggestions, President Nixon and LEAA officials declined to impose the new standards on state prison systems, choosing instead to “suggest” state officials use them as “models” when developing their own policies.36

A skeptic of alternatives to incarceration, Bell had complex reasons for renewing efforts to create federal corrections standards. As a former U.S. district court judge, he had regularly heard testimony about the horrors in both state and federal prisons. He


believed that prisons needed to be reformed, but not necessarily abolished, and he thought new federal standards for LEAA financing would be the quickest way to accomplish the task. Yet he also hoped that states’ adherence to the new standards would protect them from “costly” lawsuits. Rather than allowing federal judges like Alabama’s Frank Johnson to determine the constitutional standards for prisons, Bell wanted the DoJ to set the standards, which, if met by states, could be used as a defense in cases challenging prison conditions. Bell even planned to compel the I&F to use the standards when determining when to intervene in cases involving state correctional institutions.\textsuperscript{37} Bell’s standards, then, would provide a positive financial incentive for states to improve their prison systems while limiting the ability of federal judges, DoJ attorneys, and prisoners’ rights lawyers to demand more creative solutions to constitutional rights violations behind bars.

In February 1978, Bell released a series of corrections standards he had developed alongside other DoJ attorneys. Members of Carter’s domestic policy staff expressed strong reservations about his project. They feared the new standards would interfere with Carter’s ongoing effort to eliminate the LEAA as part of his commitment to “restoring faith in government” through regulatory reform. Since its founding in 1968, the LEAA had drawn criticism from liberals and conservatives alike. Although the LEAA had provided states and cities with nearly $4 billion in federal grants to update their criminal

\textsuperscript{37} Address by the Honorable Peter F. Flaherty, Deputy Attorney General of the United States before the American Correctional Association, 21 August 1977, Folder Corrections 20, Box 10, Sub Series Gutierrez (hereafter cited as Gutierrez Papers), State Offices: Domestic Policy Staff, Carter Library.
justice systems, the crime rate had continued to rise by nearly sixty percent between 1968 and 1977.\textsuperscript{38} Liberals argued that most of the funding went to the purchase of unnecessary and costly police equipment, such as riot gear, new cars, helicopters, and weapons. Conservatives, for their part, viewed the LEAA as bogged down by bureaucratic red tape. Determined to abolish the agency, Carter’s staff worried that, if Bell released the standards, states would look to the LEAA for funding to upgrade their prisons systems—which would come at no small cost. Advisors from the Office of Budget Management (OMB) warned that bringing state prisons up to Bell’s standards could cost up to $2.5 billion. The federal government would also have to pay for a massive upgrade to federal corrections facilities, a process the BoP estimated would cost at least $50 million.\textsuperscript{39}

During the summer of 1978, members of the Carter administration were particularly sensitive to proposals that might prolong the life of the LEAA because they were struggling to keep their promise to eliminate the agency. Although LEAA funding comprised only five percent of state and local criminal justice spending, state leaders and law enforcement officials—including those in North Carolina—had grown dependent on

\begin{flushright}
\textsuperscript{38} “A Critical Framework for the LEAA,” Folder LEAA, Box 880/873, Robert Morgan Papers (hereafter cited as Morgan Papers), East Carolina State University Special Collections, Greenville, North Carolina.
\end{flushright}

\begin{flushright}
\textsuperscript{39} Frank White to Stu Eizenstat, “Some Additional Notes for your Prison Standards Meeting,” 11 October 1979, Folder Prison Standards 7, Box 18, Sub Series White, Domestic Policy Staff Carter; Adrian Curtis and Joe Mullinix, “Department of Justice Federal Corrections Standards,” 10 October 1979, Folder Prison Standards 7, Box 18, Sub Series Frank White (hereafter cited as White Papers), Domestic Policy Staff, Carter Library.
\end{flushright}
the funds. Chaired by North Carolina Governor Jim Hunt, the National Governors Association’s Criminal Justice Committee lobbied Congress to maintain the LEAA grant program. The Fraternal Order of Police and other law enforcement lobbies joined Hunt’s effort, which soon succeeded. In July 1978, the Carter administration introduced the Justice Systems Improvement Act which, rather than eliminating the LEAA, simply reorganized the agency’s funding priorities. The act increased funds for “high-crime cities” but banned the use of federal funds for the purchase of hardware or the construction of new buildings, including prisons. Otherwise, the LEAA was left intact.

Quietly, members of the Carter administration worked to squash Bell’s federal corrections standards. In March 1978, as part of his commitment to regulatory reform, Carter issued an executive order requiring each proposed regulation to go through a rigorous evaluation process to examine its need, cost, and potential to increase paperwork. Although Bell’s standards were not technically regulations, Frank White, a


42 Jimmy Carter, “Justice Systems Improvement Act,” 10 July 1978, Folder 6/78-9/78, Box 117, FG 17, FG, White House Central Files (hereafter cited as WHCF—Carter), Carter Library. Since 1969, the LEAA had allocated approximately $75.5 million for prison construction to the states, not including funding for renovations and repairs. Comparatively, the LEAA provided only $21.8 million for the construction of community-based rehabilitation facilities.

key member of Carter’s policy staff, encouraged him to request that Bell subject his standards to the new regulatory evaluation process.\textsuperscript{44} When Bell received the President’s order, he knew his project was dead. The cost of the updates to BoP facilities alone doomed the standards.

In December 1979, President Carter signed the Justice Systems Improvement Act. But he did not give up on eliminating the LEAA. A few months later, in April 1980, Carter took advantage of the economic downturn following the energy crisis to submit a budget proposal that cut almost all of the agency’s funding in the name of curbing inflation and balancing the budget. Although conservative House members put up a fight to restore the funding, they struggled to overcome the powerful opposition of the administration and the House and Senate Budget Committees, which targeted the controversial LEAA as the only agency for elimination.\textsuperscript{45} With unemployment rising sharply during the spring of 1980, Carter’s proposed cuts sailed through Congress, effectively ending the LEAA’s twelve-year life.

The elimination of the agency left the federal government without a “financial carrot” to entice states to upgrade their criminal justice systems. As Attorney General Bell recognized, the agency, for all its flaws, had the potential to guide states’ corrections policies through crisis. Instead, the end of the LEAA left the process of prison reform

\textsuperscript{44} Frank White to Stu Eizenstat, “Some Additional Notes for your Prison Standards Meeting,” 11 October 1979, Folder Prison Standards 7, Box 18, Sub Series White, Domestic Policy Staff, Carter.

\textsuperscript{45} Harry Swegle to Chief Justices, Council of State Court Representatives, Court Administrators, Re President Carter, House and Senate Budget Committees Ask End of LEAA; Crucial Vote Pending in House, 4 April 1980, Folder LEAA 2, Box 15, White Papers.
exclusively to the federal courts, where judges had limited ability to address the structural inequalities undergirding states' overreliance on imprisonment as a form of punishment. Without federal standards, judges would have to shape their remedies in prisoners’ cases by looking to standards developed in earlier cases such as *Pugh* or to those designed by the American Corrections Association, an organization whose members’ livelihood depended on the nation’s continued reliance on incarceration.

**North Carolina’s Response: Prison Building**

When the newly elected Democratic Governor Jim Hunt took office in January 1977, he inherited a dilemma. The *Bolding* suit was not going away. After the U.S. District Court for the Western District of North Carolina dismissed the case in October 1976, Wellons and Brannon appealed to the Fourth Circuit Court of Appeals, which seemed likely to rule in their favor. North Carolina’s prisons were dangerously overcrowded and beneath the minimum standards issued in the Alabama case. To avoid federal intervention into the prison system, North Carolina officials had to take action. Yet Hunt, correctly reading the voters’ mood, had campaigned on the promise to “get tough” on crime. The state’s violent crime rate was rising, albeit slower than in the rest of the nation, and many North Carolinians were afraid. In 1976, polls showed that voters ranked “crime” second only to “inflation” as their biggest domestic concern.\(^46\) To retain his tough-on-crime image, Hunt embarked on a massive prison construction campaign he

\(^{46}\) *Gallup Poll*, September 17-20, 1976.
hoped would ward off future litigation as it made room for criminals. Without addressing the underlying issues leading to the state’s rising incarceration rate, however, state leaders were never able to build enough prisons to house the ever-increasing inmate population. Left without the LEAA to supplement construction costs, North Carolina, like states across the nation, spent record amounts of money building new prisons during the late 1970s and early 1980s.

State officials in North Carolina had known since the early 1970s that the prison system was in need of repair. But the Bolding litigation imbued the problem with new urgency and redirected state officials’ response to it. Nowhere was this shift clearer than in the reports issued by North Carolina’s Commission on Sentencing, Criminal Punishment, and Rehabilitation. In 1974, the General Assembly created the commission, chaired by state senator and later Charlotte mayor Eddie Knox, in response to the “steadily increasing prison population in the state.” In February 1975, the Knox commission made its first report, which focused above all on mechanisms to remove people from prisons and jails. The commission advocated for the decriminalization of an array of non-violent crimes, the liberalization of parole laws, an overall reduction of maximum sentences, and the development of an array of community-based corrections programs, which Knox called “the most hopeful long-range prospect for reducing the prison population.”

When the commission made its final report in January 1977, the tone had changed. *Bolding* loomed large in the report. Assuming the judges in the case would evaluate North Carolina’s prisons according to the standards set in *Pugh*, the report included a chart analyzing all of the state’s prison facilities in light of the guidelines. North Carolina’s prisons fell far short, leading the commission to conclude that “only immediate and drastic legislative and executive intervention” would avoid “takeover” of the state’s prisons. Rather than recommending community-based alternatives to incarceration, the report made “immediate, intermediate, and long-term” suggestions for prison construction. First, it suggested transforming unused state property, such as former training schools for delinquent children, into prisons. The commission also urged the General Assembly to purchase trailers to house inmates who exceeded facilities’ capacity. It recommended establishing a “construction section” within North Carolina Prison Enterprises, the agency that oversaw the production of prisoner-made goods, so that inmates could be employed to construct new cells. Finally, the report suggested the General Assembly budget $17 million to remodel Central Prison, the state’s maximum-security prison in Raleigh. The money would be well spent, the commission argued, because the state would “always need prisons.”

The “right to protection” argument undergirding both *Bolding* and *Pugh* shaped the commission’s suggested upgrades to Central Prison. In their report, its members noted

---

that North Carolina, like most states, had a “severe problem with inmate-on-inmate violence.” To curb it, they recommended the construction of individual cells and updates to the prison’s security system, changes in line with Judge Johnson’s standards. To help finance the updates, the commission suggested reducing funding for rehabilitation programming and making participation in vocational and educational training “voluntary rather than mandatory.” Citing sociologist Robert Martison’s famed 1974 essay “Nothing Works,” the commission argued that state dollars would be better spent on “security” than on “programming that failed to reduce the recidivism rate.”

By the mid-1970s, “control” and “incapacitation” were beginning to replace “rehabilitation” as the primary purposes of imprisonment.

Governor Hunt embraced—and extended—the Knox Commission’s tough-on-crime plan for avoiding federal court involvement in North Carolina’s prisons. In late January 1977, he gave a speech before the General Assembly to introduce a legislative package designed to “let those who commit crimes in North Carolina” know that “henceforth” they were “marching to the beat of a different drummer.” The package included new legal protections to help police officers avoid lawsuits, legislation to reinstate the death penalty for first-degree murder, and a new law to limit convicted criminals’ ability to appeal their cases. Hunt proposed mandatory minimum sentences for “habitual offenders,” drug traffickers, and individuals who committed felonies involving guns. He urged the General Assembly to expand the state court system to “speed up”

49 Ibid.
criminal trials and to fund a new program designed to help district attorneys prosecute repeat criminals. Lastly, he recommended a budget that included $59 million for the remodeling of Central Prison and for the construction of three new medium and close-security units.  

The 1977 General Assembly heeded almost all of the new governor’s requests. In addition to the full amount of construction funding, legislators allocated 782 new prison guard positions to “better secure” the inmate population. They also approved the purchase of thirty-two trailers, or “modular units,” to house inmates in overcrowded facilities. To further avoid the appearance of overcrowding, legislators required all men and women sentenced to less than 180 days to be held in county jails rather than in prisons. In a September 1977 press conference surely arranged with the federal courts and the DoJ in mind, Hunt announced the planned updates to the state’s prison system, assuring listeners that the General Assembly was making a “good faith effort” to fix the system’s flaws.  

The DoC began right away to develop plans to expand Central Prison and to meet the guidelines issued in Pugh. In December 1977, state contractors submitted a design to

---


51 This is a change from the state’s previous law that only confined people sentenced to less than thirty days to county jails. See “An Act to raise the minimum term for imprisonment in the state prison system from 30 to 180 days,” accessed 6 March 2017, http://www.ncleg.net/enactedlegislation/sessionlaws/html/1977-1978/sl1977-450.html.

52 Governor James B. Hunt, Jr to Members of the 1977 General Assembly, Folder Corrections P, Box 55, General Correspondence 1977, Hunt Papers.
newly appointed Corrections Superintendent Amos Reed that followed the campus-style approach to prison construction. To reduce inmates’ feelings of isolation, the contractors suggested building a series of small, unconnected units scattered throughout the Central Prison grounds. Reed rejected the idea. Instead, he urged the contractors to develop plans that prioritized “security over inmates’ feelings.” Contractors responded by designing a four-level structure shaped like a series of triangles with a central guard post at each point, allowing staff an unimpeded view of each cell and activity area. Inside the triangles, inmates would reside in individual cells each equipped with “a steel bed, sink, and toilet” in order to “reduce the time prisoners spent unconfined.”

Before Superintendent Reed broke ground on the new Central Prison, however, North Carolina officials realized their construction plan was unlikely to suffice for the state’s growing inmate population. After legislators passed new laws dispersing the prison population throughout the state, the overcrowding problem temporarily abated. But by the summer of 1978, the numbers were once again far above capacity. Forty-nine of the eighty prison units housed more inmates than they were designed to hold. The passage of the new mandatory minimum sentences, combined with the rising crime rate and Hunt’s calls for increased policing, had left North Carolina’s prisons overflowing. Worse, the Department of Corrections predicted that the prison population could reach as

---

high as 20,000 inmates by 1985. 54 Scrambling to avoid a lawsuit, the General Assembly allocated another $24 million for prison construction.55

For their part, Wellons and Brannon, the lawyers who filed the Bolding suit, viewed the state’s struggle to curb prison overcrowding as good news. In August 1978, the Fourth Circuit Court of Appeals remanded Bolding to Judge Jones of the U.S. District Court for Western North Carolina, reminding Jones that “when a prison regulation or practice offends a fundamental constitutional guarantee,” federal courts must “discharge their duty to protect constitutional rights.” 56 The following December, the two lawyers called a meeting of stakeholders—including representatives from the NCCLU, the NAACP Legal Defense and Education Fund, and participants from the Duke and UNC Law Schools’ legal aid clinics—to plan how best to move forward. Although the lawyers agreed Jones was not the ideal judge to hear the case, they hoped to use Bolding to “do what the General Assembly did not”: reevaluate the state’s sentencing practices and move toward community-based alternatives to imprisonment.57

The news about Bolding could not have come at a worst time for the General Assembly. North Carolina simply did not have the funds to continue building prisons at


56 The Fourth Circuit Court of Appeals was quoting Pell v. Procunier, 417 U.S. 817 (1974).

57 Norman Smith to Deborah Mailman, July 1, 1976, Folder Unmarked File 3 of 5, Box 37, NCCLU Papers; Alan McGregor to Friends, Meeting to Discuss Bolding v. Holshouser, January 19, 1979, Folder Bolding v. Holshouser, Box 121, NCCLU Papers.
such as fast pace. During the late 1970s, state legislatures across the nation felt a budgetary squeeze as rising inflation rates and voters’ demands for lower taxes reduced their coffers. North Carolina was no exception. In 1979, revenue collection for the state’s General Fund for 1980-81 was running $50 million behind initial projections, but the prison population was continuing to climb.58

To make the situation more alarming, four months after Bolding returned to the district court, the Carter administration introduced the Justice Systems Improvement Act, which included the provision banning the use of federal funds for prison building. Privately, Hunt bemoaned how the bill left “the states out to dry while the prisons overflow[ed]” He had hoped to rely on federal grants to supplement North Carolina’s prison construction budget, as the state had done in the past. In 1974 and 1975, Corrections Superintendent Reed requested and received $3 million in unused LEAA funds to add to the state’s prison building budget.60 And in 1977, state officials used North Carolina’s portion of the 1976 Public Works Bill to build two new single-cell facilities at the Odom and Caledonia Prison Farms.61

59 Hunt to Morgan, LEAA, 2 October, 1978, Folder 6, Box 51/52, Morgan Papers
61 Vetoed by Gerald Ford, the Public Works Bill was designed to create new jobs across America during the recession. After Congress overrode the President’s veto, Ford authorized the attorney general to privilege applications from states that planned to use the funds for prison construction. See An Act to Appropriate Title II Antirecession Funds Pursuant to Emergency Order Issued by the Governor, Chapter 423, House Bill 1130, 1977 General Assembly,
With federal aid unlikely, North Carolina faced a crisis. By late 1978, the inmate population already surpassed the number of new beds financed by the 1977 General Assembly. Moreover, overcrowding was causing conditions to deteriorate in Central Prison, the state’s maximum-security facility, built in 1875 to house 700 men. By the fall of 1978, nearly 1400 men occupied the prison, which the Charlotte Observer described as a “hell without fire” and “a hot, smelly, roach-ridden, dirty fortress.” Nearly 100 men slept “on mattresses on bunks in halls” because no cell space was available. According to inmates, a “climate of fear” prevailed. During 1978 alone, Central Prison witnessed thirty-six assaults with weapons and 209 assaults without weapons, not including unreported incidents. To make matters worse, the facility was short staffed, with one guard for every sixteen inmates. Corrections Superintendent Reed admitted that the facility was “not a tight ship.” Inmates described the situation in blunter terms: “This place is on the verge of riot,” one man told the Observer. “We’re just waiting for it to blow.”

By 1979, North Carolina officials had become trapped in what ACLU Prison Project Executive Director Alvin Bronstein once called “the beds and bodies” game.


63 Alvin Bronstein, A Presentation to the Midwestern Governors’ Conference, “Corrections Policy and Recent Court Decisions,” July 26, 1976, Indianapolis, Indiana, Folder Corrections Policy 7, Box 11, Gutierrez Papers.
Facing federal lawsuits, state officials, without end in sight, spent more and more money to house an ever-increasing inmate population. As they prepared for Bolding’s return to the U.S. District Court for the Western District of North Carolina, Wellons and Brannon remained hopeful that the high cost of upgrading the prison system to comply with the standards in Pugh would convince the General Assembly to reduce the state’s inmate population. North Carolina’s state leaders, however, were not yet willing to sacrifice their tough-on-crime credentials.

**Stopping Lawsuits Before They Start: Robert Morgan’s Fight Against CRIPA**

Wellons and Brannon were optimistic about Bolding in part because they believed the DoJ might participate in their case. In the spring of 1978, Representative Birch Bayh reintroduced the Civil Rights of Institutionalized Persons Act (CRIPA) after it had died in the House Judicial Committee the previous year. With “CRIPA on the horizon,” both lawyers believed the DoJ would have “no trouble” joining their efforts to challenge conditions in North Carolina’s prisons.64 State officials were less enthused by the prospect of CRIPA’s passage. With the U.S. government taking a stand against prison conditions in North Carolina, they recognized that Bolding would be hard to defeat. To avoid the DoJ’s involvement in their prison system, state leaders in North Carolina took the first step toward reevaluating their sentencing practices. But they also did everything in their power to weaken CRIPA.

---

North Carolina officials had reason to worry about CRIPA’s passage: DoJ attorneys had long had their eyes on the state’s prison conditions. Yet their efforts to stop abuses behind bars had been repeatedly thwarted by the DoJ’s inability to initiate constitutional rights cases against states. In 1972, soon after its founding, the Institutions and Facilities Section (I&F) attempted to file suit against North Carolina by drawing on Title III of the 1964 Civil Rights Act to challenge the segregation of black and white inmates at Odum and Caledonia prison farms. Recognizing that the I&F attorneys planned to use the case to address issues far beyond segregation, state officials dodged the lawsuit by swiftly integrating the prisoners at both locations. In 1977, as North Carolina’s prisons bulged at the seams, the I&F informed Governor Hunt that it intended to open a new case against the state, this time challenging segregation at Central Prison. The General Assembly’s allocation of funding to expand Central temporarily held the lawsuit at bay after legislators argued that the new individual cells would eliminate any remaining segregation. But the I&F lawyers continued to monitor the conditions. Throughout 1978, they mailed Governor Hunt letters demanding a precise timeline and strategy for the integration of the facility.65

Faced with the prospect of a DoJ lawsuit, the General Assembly passed the Fair Sentencing Act in 1979, which sought to reduce racial discrimination in sentencing and

---

lower the time individuals spent behind bars. Following a national trend, the act eliminated the state’s use of indeterminate sentencing and replaced it with a “presumptive” sentencing system. In theory, indeterminate sentencing allowed judges to imprison men and women until they demonstrated they were “rehabilitated,” as determined by a parole board. In practice, it had led to lengthy and unpredictable sentences. Judges in North Carolina imprisoned people for a particularly long time. In 1978, a person convicted of second-degree murder in North Carolina served approximately six years compared to the national average of four years. Similarly, a person convicted of rape served approximately fourteen years compared to a national average of just over three. Judges’ total discretion when imposing sentences took an especially harsh toll on African Americans. They served much longer sentences when compared to whites convicted of the same crimes.\(^{66}\)

To reduce judges’ discretion during the sentencing process, the Fair Sentencing Act established ranges of years associated with each crime. Unless judges took the time to explain their reasoning, they were supposed to sentence individuals to the medium duration of years. The act also abolished parole, instead providing inmates with one day off their sentence for each day of good behavior. Set to take effect in July 1981, the Fair Sentencing Act had the potential to decrease the prison population. But after its passage, the General Assembly, swept up in the nation’s “War on Crime,” increased the maximum

---

sentences for drug trafficking, drunk driving, burglary, and gun-related crimes.\textsuperscript{67} By 1980, the Raleigh \textit{News and Observer} predicted the new law was going to increase North Carolina’s prison population at a “catastrophic” rate.\textsuperscript{68}

Facing contradictory pressures to increase the length of sentences and to reduce prison overcrowding, Governor Hunt wrote to North Carolina’s U.S. Senator Robert Morgan in late 1978 with one request: to “do everything in [his] power to kill CRIPA.”\textsuperscript{69}

Having been attorney general of North Carolina from 1968 to 1973, Morgan had few qualms about fighting the bill. He had weathered the first wave of prison litigation during his time as attorney general and then worked to create the state’s inmate grievance commission with the goal of reducing it. When legislators reintroduced CRIPA in April 1978, Morgan represented the National Association of Attorneys General, which took the lead in opposing the bill. During Senate hearings and in letters to his constituents, he drew on the language of states' rights to argue that the bill "defied the principles of

\textsuperscript{67} North Carolina’s Fair Sentencing Act, Folder Corrections and Justice, Box 76, NCCLU Papers.


\textsuperscript{69} Hunt to Morgan, 6 October 1978, Box 51, Folder 6, Morgan Papers.
federalism" and "intruded on states' ability to manage their own institutions."\textsuperscript{70} When that approach failed, Morgan simply threatened to filibuster.\textsuperscript{71}

Morgan succeeded in delaying CRIPA until January 1979, when the ninety-sixth Congress took office. Knowing his opposition would be hard to overcome, Senator Birch Bayh reached out to Morgan to broker a deal. With the assistance of Orrin Hatch and Strom Thurmond in the Senate and Tom Railsback in the House, Morgan worked to weaken the legislation. Bayh’s initial bill provided the DoJ with wide latitude to initiate cases against state officials who violated the rights of the institutionalized. Morgan’s changes to the bill compelled the DoJ to provide states with ample opportunity to redress constitutional rights violations before filing a lawsuit. They also limited the remedies the DoJ could propose. In the new bill, the attorney general had to provide a fifty-five day notice to state governors prior to initiating a suit. In the notification, the DoJ was required to list “minimal” corrective measures, inform the state of any available federal assistance, discuss the cost of the remedial action, and give the state the opportunity to “informally and voluntarily” correct the deficiency. The attorney general also had to certify notification personally before DoJ attorneys sent it to a governor, a requirement designed

\textsuperscript{70} Statement of Robert Morgan, Civil Rights of Institutionalized Persons Act: Hearings before the Subcommittee on the Constitution of the Committee on the Judiciary, United States Senate, Ninety-Sixth Congress, First Session, on S. 10, a bill to authorize actions for redress in cases involving deprivations of rights of institutionalized persons secured or protected by the constitution or laws of the United States, Feb 9, 1979, 96th Cong. 104; Robert Morgan, "The Trouble With CRIPA," Box 51, Folder 6, Morgan Papers.

\textsuperscript{71} Richard Whittle, “Morgan’s Efforts Likely to Kill Bill,” Box 1 through 1981, Director’s Correspondence, Inmate Grievance Council Records.
to allow an executive branch appointee to curb the supposed zealousness of career attorneys in the I&F Section.\textsuperscript{72}

Morgan’s changes to CRIPA went still further. Although the bill authorized DoJ attorneys to initiate cases against all state institutions, Morgan was most concerned with the prospect of them interfering in prison practices. Joined by Thurmond and Hatch, Morgan at first suggested amending CRIPA to make it applicable only to institutions for seniors and the disabled. When that failed, Morgan sought to make it more difficult for inmates to file their own cases challenging prison conditions and policies. Drawing on his experience creating North Carolina’s Inmate Grievance Commission, Morgan worked with Railsback to propose an amendment that allowed judges to stay inmates' lawsuits for a time if states developed "fair and effective" grievance procedures and had them certified by the U.S. attorney general.\textsuperscript{73}

The idea undergirding the grievance procedures mirrored the logic of Morgan’s suggestion that the attorney general notify states before filing suits. States, Morgan claimed, should have the opportunity to solve their own problems before involving the federal courts or the executive branch. Many legislators from across the political

\textsuperscript{72} Robert Morgan to Orrin Hatch, CRIPA 12 January 1980; Robert Morgan to Strom Thurmond, CRIPA 13 January 1980; Robert Morgan to Tom Railsback, 12 January 1980, Folder 6, Box 51/52, Morgan Papers.

\textsuperscript{73} In the House, Representative Tom Railsback of Illinois advocated for an exhaustion requirement for inmates. The amendment allowing federal judges to stay inmates' lawsuits for a short period of time was largely a compromise with the demands of Railsback and his allies in the House. See Statement of Tom Railsback, Civil Rights for Institutionalized Persons: Hearings before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the Committee on the Judiciary, House of Representatives, Ninety-Fifth Congress, First Session, on H.R. 2439 and H.R. 579, Civil Rights for Institutionalized Persons, April 29, 1977, 95th Cong. 108-116.
spectrum agreed with this position. Litigation was, after all, costly and time consuming. If state officials remedied constitutional rights violations without pressure from the courts, the federal government would save time and money. Morgan also claimed that since CRIPA would give the DoJ authority to initiate lawsuits against states, prisoners would no longer need to file their own cases.\textsuperscript{74} After CRIPA’s passage, in other words, Morgan suggested the federal government could restrict inmates’ access to the courts without abridging their First Amendment rights.

In late February 1980, after a nearly a nine-year journey, CRIPA passed in the Senate and was sent to President Carter’s desk with Morgan’s changes intact. The bill picked up a surprising number of votes owing to a gruesome event that occurred earlier that month: a massive prison riot in New Mexico, which left thirty-three inmates dead and 200 injured. The riot was the bloodiest event inside an American prison since Attica. But the New Mexico riot differed dramatically from the prison strike that took place in New York nine years earlier. Unlike the inmates of Attica, the men who participated in the New Mexico rebellion were unorganized and fragmented, a change that perhaps highlighted the new limitations placed on inmate mobilization in the wake of the \textit{Jones} decision.\textsuperscript{75} The riot began on February 2 when two prisoners overpowered guards who discovered them drinking homemade liquor. Within minutes, others joined the fray, taking control of the cellblock and holding twelve guards hostage. Once in control, the

\textsuperscript{74} Robert Morgan to Tom Railsback, CRIPA, 17 November 1978, Folder 6, Box 51, Morgan Papers.

inmates holding the hostages attempted to negotiate with prison staff for improved conditions. The facility was dangerously overcrowded with 1136 inmates in a prison designed for 900 men. Many were housed in overflowing community dorms. The food was inedible, and the inmates had little to occupy their minds. The state had eliminated all educational and recreational programs in 1975. While a small group of inmates talked to prison staff, others wreaked havoc on their fellow prisoners. Men released from solitary confinement headed to the “protective wing,” which housed the mentally disturbed, men in danger of sexual assault, and those who testified for the state. After spending five hours cutting through the bars, the men dismembered, tortured, and killed twenty-three inmates inside the wing using piping, work tools, and homemade knives. Ten others died from taking prescription drugs stolen from the prison’s medical unit before police retook the facility thirty-six hours after the mayhem began.76

In the wake of the New Mexico riot, Drew Days, assistant attorney general for the DoJ’s Civil Rights Division, was thankful for CRIPA’s passage. President Carter signed the bill in May 1980. Yet privately, Days expressed remorse that the legislation was “not as powerful of a tool” as Bayh had originally intended for it to be.77 When the Institutions and Facilities Section opened in 1971, staff lawyers wanted to be able to initiate suits against state institutions in order to swiftly remedy rights violations and guide


77 Drew Days to Griffin Bell, Civil Rights of Institutionalized Persons Act, 27 May 1980, Folder DoJ Correspondence, Box 104, Subject Files of AAG Drew Days (hereafter cited as Days Papers), Department of Justice Papers, National Archives and Record Administration, College Park, Maryland.
improvements in corrections policy. But CRIPA limited the DoJ’s ability to determine how state officials resolved the rights violations inside their institutions. DoJ lawyers could only suggest “minimal” corrective measures rather than encouraging state officials to address fundamental changes to their corrections policies. Although the I&F lawyers were never as progressive as the lawyers who staffed the ACLU Nation Prison Project, they also hoped to encourage states to engage in “long-term planning” and to consider “less-costly alternatives to incarceration.”78 Under CRIPA, however, state officials had the upper hand in determining how best to address the problems in the state institutions.

Wellons and Brannon expressed disappointed at the limitations placed on CRIPA, too. By 1980, they were in dire need of the DoJ’s assistance in Bolding. Recent federal court decisions had made it more difficult—and costly—than it had been in the past to prove prison conditions and practices violated inmates’ Eighth Amendment rights. This trend culminated in 1981 with Rhodes v. Chapman, a Supreme Court case ruling that prison overcrowding alone did not constitute a violation of the Eighth Amendment. In order prove that the “totality of conditions” behind bars violated the Constitution, the court argued in Rhodes that lawyers needed to demonstrate multifaceted problems with prison systems’ conditions and practices.79 The new need for extensive evidence prolonged the litigation process and required additional staff hours to conduct discovery.

Although the 1976 Civil Rights Attorney’s Fee Award Act allowed civil rights lawyers to

78 David Norman to Hugh Durham, Legislative Program 557, June 9, 1972, Folder Public Accommodations Facilities, Box 58, Pottinger Papers.

recoup their fees if they won their case, non-profit law firms such as the North Carolina Chapter of the American Civil Liberties Union (NCCLU) still struggled to come up with the money to finance prisoners’ rights suits.

After a failed fundraising effort and inaction by the DoJ, *Bolding* fell victim to the high cost of prison litigation in the 1980s. In late 1978, Wellons and Brannon had contacted local prisoners’ rights organizations for donations to help them continue their case. Although the NAACP Legal Defense and Education Fund, the NCCLU, and the ACLU National Prison Project offered some financial support, the money quickly dissipated. Many of the inmates originally listed on the 1976 suit had been released, forcing Wellons and Brannon to spend time soliciting other plaintiffs. They also anticipated spending at least one year examining DoC records to compile enough evidence to counter the state attorney general’s motion to dismiss. Left without additional funding by late 1981, Wellons and Brannon asked Judge Jones to dismiss the case. Annoyed by the lawyers’ delay, Jones dismissed it “with prejudice,” making it impossible for the lawyers to reopen the suit.\(^\text{80}\)

In a letter to the NCCLU Director, Wellons and Brannon lamented the dismissal of their case, noting that North Carolina needed pressure to reevaluate its corrections policy “now more than ever.”\(^\text{81}\) Between 1980 and 1981, the prison population rose by


\(^{81}\) Ibid.
seven percent, adding 1100 new inmates to the state’s facilities. By the summer of 1981, North Carolina’s prisons had 2000 more inmates than they were designed to hold. Some prisoners were tripled up in cells designed for single inmates. Within the dormitories, inmates had approximately twenty-five square feet to call their own. Central Prison was more crowded than the facility in New Mexico where the February 1980 riot took place. Since 1977, the state had financed $85 million worth of prison construction, more than $100 million since 1975. Yet after Bolding’s demise, even Wellons and Brannon conceded that a “massive lawsuit” was unlikely to result in “fundamental changes” to North Carolina’s criminal justice system. “All we can hope for,” Brannon wrote, “is to improve the lives of the thousands of inmates confined now—and in the future—to the state’s prison.”

Private Lawsuits Alone: Prison Reform Under the Reagan Administration

By the end of 1981, it seemed clear to Wellons and Brannon that the DoJ would not address North Carolina’s prison conditions, at least not during the next four years. Once Republican President Ronald Reagan took office in January 1981, his Attorney General William F. Smith quietly began to institute new rules that hamstrung CRIPA

---


before the I&F attorneys even had the opportunity to fully put it to use. Reagan’s election could not have come at a worse time for the men and women confined to North Carolina’s prisons. During the early 1980s, the state opened the first facilities the General Assembly financed in 1977. Shaped by the lawyers’ “right to protection” argument, the new prisons guarded inmates against most forms of prisoner-on-prisoner violence, but they were also more isolating than the prisons of the past, a shift that often allowed guards’ abuse to go undetected. Worse yet, the inmate population continued to grow, exacerbating the already overcrowded conditions behind bars.

Soon after his appointment, Attorney General Smith, acting in accordance with President Reagan’s broader commitment to reducing the federal government’s involvement in civil and constitutional rights litigation, began to dismantle CRIPA. He ordered the lawyers in the Institutions and Facilities Section to stop using any “predetermined set of standards” to decide whether to participate in litigation, a direction that essentially told the lawyers that the DoJ would no longer be pushing states to meet the minimal guidelines provided by the American Corrections Association or Alabama’s Judge Johnson. Smith also demanded that the I&F coordinate its litigation strategy directly with the BoP. As a result, the lawyers struggled to initiate cases that sought to compel state officials to meet prison standards that BoP facilities failed to reach. Smith requested that all disagreements between the BoP and section lawyers be reported to him.
Committed to limiting federal intervention in states’ practices, Smith nearly always sided with BoP staff.  

While Smith chipped away at CRIPA, North Carolina’s prison population continued to rise. In May 1980, North Carolina’s prison population hit 15,000 for the first time. To be sure, the crime rate was rising. Between 1978 and 1980, major crimes in North Carolina, as in the rest of the nation, rose by nearly ten percent. But while the state had the third highest incarceration rate in the United States, it had only the thirty-eighth highest crime rate. Despite their overcrowded prisons, North Carolina officials continued to sentence citizens to long terms behind bars. The Fair Sentencing Act did little to reverse this trend. After it went into effect in July 1981, the act temporarily stabilized the prison population. But the state’s judges soon grew irritated by the act’s “good time” rule, which reduced inmates’ sentences by one day for each day of good behavior. Believing prisoners were being paroled too quickly, judges began to sentence a growing number of inmates above the median range encouraged by the act.

Already making national news for overcrowding, North Carolina’s prison system faced mounting pressure to change its policies after stories of abuse began to emerge from the Salisbury facility in late 1981. Opened in 1980, the medium-security prison consisted of a ten-story tower with 480 individual cells grouped in units of sixteen on  

---


86 Ibid.
each floor. Closed-circuit televisions monitored inmates’ every movement. 87 Yet while the tight security measured protected prisoners from each other, they failed to protect inmates from prison guards. In 1981, two inmates, Billy Smith and Kenneth Thompson, asked the North Carolina chapter of the ACLU for help after being severely beaten, one almost to death, while handcuffed and shackled on the floor. Later court documents revealed a culture of violence within the facility fostered by Prison Warden Robert L. Hinton and “carefully hidden from security cameras.” In the case of Smith and Thompson, Hinton had encouraged two guards to “whip their damn asses” and “whip them good” after learning the inmates had filed grievances against them. The guards obeyed, beating the two men with riot batons and metal slapsticks. The facility’s physician’s assistant who saw both of the men at the infirmary testified he had seen “plenty” of other prisoners against whom force had been used, but he “had never seen anything like those two men.” Although Hinton claimed Smith and Thompson had assaulted prison guards who were only trying to protect themselves and maintain security, his testimony failed to sway federal district court judges. Surprisingly, Hinton and the three guards ended up serving federal prison time for their actions.88


The situation at Central Prison was growing increasingly tense, too. In March 1982, three inmates armed with crudely made knives took six prison employees and two other inmates hostage in the facility’s hospital wing. In negotiations with prison officials and local lawyers, the inmates complained of racial discrimination as well as dangerous and overcrowded living quarters. By 1982, Central Prison was overcrowded by nearly 400 inmates. Claiming they feared for their lives at the hands of other inmates, the men agreed to give up the hostages in exchange for a transfer to a federal penitentiary in Petersburg, Virginia. Once they arrived at the new facility, however, state officials reneged on the deal, transporting the men back to Central. Irving Joyner, a local civil rights lawyers and ACLU Prison Project board member, expressed “disgust” with the state’s actions, warning officials that their actions endangered prison officials by eroding inmates’ faith that DoC officials would keep their promises. The Hunt administration responded to inmates’ disappointment with a one-word comment: “tough.” As a result of their taking hostages, the three inmates were prosecuted, with the leader sentenced to eight consecutive twenty-five year terms for second-degree kidnapping on top of his previous sentence for second-degree murder.89

With unrest at both the Central and Salisbury prisons, the DoJ once more turned its attention to North Carolina’s prison system. But the Reagan administration’s opposition to CRIPA constrained its efforts. Worried Attorney General Smith would

---

reject a suit based on the act, I&F lawyers opened a case in North Carolina using Title III of the 1964 Civil Rights Act. In 1982, many of facility’s old dormitory-style barracks remained segregated, despite the DoC’s promise to eliminate the practice in the late 1970s. The lawyers’ suit barely got off the ground. In addition to limiting the I&F’s ability to file its own cases, the new head of the DoJ’s Civil Rights Division William Bradford Reynolds compelled lawyers to negotiate with state leaders rather than go to trial whenever possible. After receiving a letter from Governor Hunt complaining about the new lawsuit, Reynolds asked the I&F to draft a consent decree to settle the suit. In late 1982, the lawyers delivered notification that they would drop the suit in exchange for the “immediate desegregation” of Central Prison. North Carolina’s state attorney general found even that agreement to be too much of a compromise. After negotiations, the I&F lawyers drafted an agreement simply forbidding North Carolina officials from segregating prisons “in the future.” Signed in early 1983, the decree effectively ended the DoJ’s investigation into the state’s prison practices.

With both Bolding and the DoJ’s lawsuit crushed, the Hunt administration fully embraced a “tough-on-crime” agenda, refusing to consider alternatives to incarceration. In a 1983 interview regarding conditions behind bars, Hunt told the press that the state

---


had a “$100 million prison construction program underway” to resolve the overcrowding situation. Asked whether he was concerned that North Carolina “incarcerated more people per capita than any other state in the nation,” Hunt said you could “look at it both ways.” The high incarceration rate, Hunt argued, simply meant that the state “apprehended and convicted a greater number of criminals” than other states “with an equal or greater incidence of crime.” As for other approaches, he noted that “an awful lot” of inmates had already been through alternatives. “We’ve tried those,” he told reporters. “These are hardened criminals.”92

Privately, however, Governor Hunt and members of the General Assembly remained concerned about the high cost of incarceration. North Carolina, like the rest of the nation, was facing a recession in the early 1980s. In 1983, legislators were once again anticipating a budget shortfall. Yet the price of managing the state’s prison system was skyrocketing. Aside from construction costs, the state spent $171 million to operate its prison system in 1982, almost double the budget when Hunt took office in 1977 and almost three times the budget of a decade earlier, adjusted for inflation.93 Hunt worried the high prison budget would endanger his other policy priorities, especially his 1980 campaign pledge to raise teachers’ salaries. Money for both the corrections system and


education came out of the General Fund. When the prison budget increased, the state’s schools received less.\textsuperscript{94}

North Carolina was not the only state struggling with prison overcrowding and the high cost of incarceration. Between 1978 and 1981, the number of state prisoners in America increased from 268,189 to 329,122. Moreover, thirty-nine states were involved in litigation or under court order relating to conditions of confinement in their state prisons and jails.\textsuperscript{95} With the majority of state prisons feeling a space squeeze, the Criminal Justice Committee of the National Governors Association, still under the leadership of Governor Jim Hunt, made federal assistance for prison construction its number one priority in 1981. With President Ronald Reagan in office, the committee assumed its request would be met. Throughout his campaign, Reagan had called for tough sentencing laws and emphasized the need for “vigorous and effective” law enforcement.

In 1982, the release of the Federal Task Force on Violent Crime’s report gave Hunt and the National Governors Association hope. Convened the previous year by Attorney General William F. Smith and chaired by former Attorney General Griffin Bell, the task force urged the president to seek legislation calling for $2 billion in funding to be made available to the states for the construction of correctional facilities. To obtain the

\textsuperscript{94} Hunt to Robert Morgan, 7 October 1981, Folder Correspondence 1981, Box 207, Hunt Papers.

funding, states would only have to demonstrate their need and contribute twenty-five percent to the overall cost of construction. The report contained no mention of alternatives to incarceration. The task force members were most concerned that the lack of prison space in the states would allow “substantial numbers of defendants who should be incarcerated” to receive “probation instead.” Enthusiastic about the idea, Senator Bob Dole of Kansas introduced a bill seeking $6.5 billion in federal grants for state prison construction before the report was even released.96

Yet much to the surprise of the National Governors Association, the Reagan administration opposed Dole’s bill. The president’s domestic policy and budget advisors believed that funding state prison construction would conflict with his commitment to shrinking the federal government. They argued the bill would essentially “use the federal government to raise revenue from the same taxpayer base available to states and localities to carry out a function which is essentially a state and local responsibility.” Moreover, they saw the bill as a “money pit” because there were “no criteria to establish when enough prisons” were built. Reagan’s staff hoped that by forcing the states and localities to take responsibility for the prison-overcrowding crisis, they would spend wisely, only building the prisons that were “truly needed.”97 Although the bill gained the support of some members of the DoJ, the International Association of Chiefs of Police, the National


Criminal Justice Association, and the National Sheriffs’ Association, it was not enough to
overcome the opposition of the Reagan administration. The bill died in early 1982.98

Left to tax state revenue and to borrow, state officials finally opened the new
Central Prison in September 1983, nearly two years later than originally planned. Once a
decrepit nineteenth-century set of barrack-style dormitories, the new facility was a
modern fortress designed to “protect society from hardened criminals and hardened
criminals from each other.” At each corner of the prison yard, guards in forty-foot gun
towers watched inmates’ every movement while they exercised in individual cages.
Inside the prison, cameras and monitoring systems recorded the men twenty-four hours a
day. Originally designed to hold fewer than 700 inmates, the new facility housed 1000
men in individual cells consisting of 67-square foot, triangular rooms with a thin strip of
a window, a steel sink and toilet, a metal bed welded to the wall, and a small writing
table.99 Reporters from the Greensboro News and Record described the men confined to
the new Central Prison—once the epicenter of prisoners’ rights organizing in the state—
as leading “lives of isolation.” The men had “minimal contact” with other inmates and
guards. Each day, prisoners left their cells only twice, once to exercise and later to
shower alone.100

***


100 Meredith Barkley, “Old-timers Say They Loathe the New Ways at Central,” Greensboro News and
Record, August 14, 1988.
By the early 1980s, a different kind of prison had arrived in North Carolina: one designed to facilitate compliance with inmates’ constitutional rights. The new Central Prison met every standard issued by Judge Johnson during the *Pugh* case in 1971. Inside the facility, violence—at least among inmates—had in fact decreased when compared to the previous decades. But incarcerated men and women also led lonelier lives, a shift that made prison organizing substantially more difficult than it had been in the past. Such prisons emerged as a result of state officials’ response to the ACLU’s litigation campaign. Hoping to convince North Carolina’s leaders to rethink their punishment practices, prisoners’ rights lawyers urged federal judges to impose costly new prison standards. After Carter’s election in 1976, they believed the federal government would join their fight, using federal grants and litigation to sway state policy. But ultimately, the lawyers were disappointed on both fronts. Once in office, Carter’s prison reform plans crumbled under the weight of calls for cuts to the federal bureaucracy. Left to litigation alone, the lawyers struggled to shape the remedies to the Eighth Amendment rights violations in a way that addressed the structural problems plaguing North Carolina’s prisons. As state officials well understood, prisoners’ rights and mass incarceration could coexist—if they were willing to pay the high price.

As prisoners filed into the new cells inside Central Prison, Harnett Youth Center less than forty miles away was replacing its double bunks with triple bunks and prison officials were discussing the possibility of housing inmates in bathrooms and
North Carolina’s inmate population was continuing to grow, requiring even more costly prison beds. During the summer of 1983, the Corrections Secretary James Woodson requested another $35 million for the construction of two new 500-man medium custody facilities. But for the first time since becoming governor in 1977, Hunt declined to add the secretary’s request to his proposed 1984-1985 budget. “Something has to give,” he told the corrections secretary. “North Carolina cannot continue to finance prison construction projects solely using revenue from the General Fund.”

Over the next month, Woodson and Hunt exchanged ideas as to how to solve the state’s ongoing prison crisis. Hunt suggested the use of private prisons and the possibility of holding bond referendums to raise money for prison construction, two ideas that would come to fruition in the next two decades. Woodson kept returning to a different idea. “What we really need to do,” he told Hunt, “is to make it more difficult for inmates to file such ridiculous lawsuits.” At first, Hunt demurred, noting prisoners’ right to access the federal courts. But he soon came around to the idea, calling it “perhaps the only real solution to North Carolina’s corrections woes.” It was time to do “something drastic,” he told Woodson, especially in light of the “news that had recently reached his desk”: a case filed by former North Carolina Prisoners Labor Union President Wayne Brooks had just

---

become a “major class action lawsuit” challenging the conditions of confinement in twelve of the state’s old prison road camps. ¹⁰²

Chapter 5


In November 1978, North Carolina’s archconservative Republican U.S. Senator Jesse Helms wrote to Robert Morgan, the state’s junior Democratic U.S. senator. Attaching a recent news clipping concerning *Bolding v. Holshouser*, the class action lawsuit challenging conditions in North Carolina’s prisons, Helms told Morgan that what “Congress really need[ed] to do about prison lawsuits” was to “eliminate the [federal] court’s right to the hear them.” Drawing on the same rhetoric he once used to combat efforts to desegregate schools, Helms went on to decry “activist judges” who “encroach[ed] on states’ right to manage their own institutions.” By passing legislation removing the courts’ jurisdiction over such suits, Congress could “solve the problem, plain and simple,” he argued. Besides, Helms continued, federal judges “had long felt burdened by prisoners’ cases.” Few of them “sought out opportunities to micromanage state prisons.” Congress, Helms implied, would be doing the federal judiciary a favor by eliminating prisoners’ cases from its docket.¹

Morgan filed Helms’s letter away without a response. But less than two decades later, his idea began to gain traction. In the mid-1990s, conservatives in Congress, supported by the National Association of Attorneys General (NAAG), passed a series of

laws effectively blocking inmates’ access to the courts and curtailing federal judges’ ability to remedy constitutional rights violations behind bars. Culminating in the 1996 Prison Litigation Reform Act (PLRA), the “jurisdiction-stripping” bills involving prisoners’ claims were uniquely successful. Throughout the last half of the twentieth century, a small group of conservative legislators had attempted to pass similar laws restricting the federal courts’ ability to hear cases involving a wide range of controversial social issues, including civil rights, abortion, and school prayer. Overwhelmingly, their efforts fell flat. Even the majority of politicians on the right viewed such legislation as verging dangerously close to encroaching on the separation of powers between the legislative and judicial branches. Yet as Helms’s comments suggest, advocates of the PLRA had a powerful weapon in their arsenal: decades of reports from the federal judiciary complaining that inmates’ “frivolous” lawsuits clogged the courts and impeded their efficiency. Indeed, in the 1980s, district court judges had taken matters into their own hands, developing new procedures to reduce inmate litigation. Rather than relying solely on older arguments concerning federalism and state’s rights, the bill’s supporters adapted the language of federal judges—a nonpartisan group of government actors—to advocate for it. By singling out inmates’ litigation as particularly problematic, then, federal judges helped lay the groundwork for legislation effectively shutting the courtroom doors to inmates’ claims.

Democrats proved unwilling to peer through the thin “nonpartisan” veneer of conservatives’ arguments in favor of the PLRA because many of them also supported the legislation, albeit less openly than their counterparts in the Republican Party. By the mid-
1990s, government officials from across the political spectrum agreed that prison litigation had become too costly. Due in large part to President Ronald Reagan’s “War on Drugs,” the prison population soared during the last two decades of the twentieth century. In North Carolina alone, the number of men and women confined to the state’s prisons doubled between 1980 and 1996, rising from 15,000 to over 30,000 inmates, while the broader population increased by only twenty-five percent.² This rapid expansion in the number of incarcerated individuals in the state came at a high price. Standards developed by the federal courts in the 1970s forced states to provide inmates with adequate space, medical care, and programming. To avoid federal lawsuits, state leaders either had to build more prisons or incarcerate fewer people, a choice that placed them in a bind. By the mid-1980s, two contradictory sentiments dominated American politics: the desire to “get tough” on crime and the desire to reduce government spending.³ State leaders in particular struggled to satisfy both demands since Congress under the Reagan and George H.W. Bush administrations offered little federal funding for state prison construction. But in 1994, Democrats in Congress, supported by President Bill Clinton, offered a solution


to state leaders’ prison crisis. Seeking to seize the law and order mantle from the Republicans, Democrats included over $8 billion in federal grants for state prison building in their Violent Crime and Law Enforcement Act. As the act made its way through Congress, Helms amended the bill to include the first of many laws restricting inmate litigation. Hoping the new restrictions would limit judges’ ability to impose costly rulings on states, Democrats allowed the jurisdiction-stripping bills to pass with little debate. Republicans’ success in wrapping their proposal in the nonpartisan language of federal judges provided Democrats with a convenient cover.

Republicans’ ability to draw on that language to pass jurisdiction-stripping legislation highlights judges’ wide-reaching ability to shape American politics. Historians of postwar American history are carefully attuned to the way federal court decisions shaped—and were shaped by—the political landscape. But judges’ influence extended well beyond the courtroom. As the litigation rate rose in the 1960s and 1970s, judges attended conferences and participated in working groups to debate how best to respond to the phenomenon. While engaging in these activities, they helped set the terms of the public debate concerning the proper role of the judiciary. By the late 1960s, federal

---


judges had identified prisoners’ cases as uniquely problematic and disproportionately contributing to the growing case backlogs in the courts. While most judges agreed inmates should have access to the courts, the judiciary, often with the assistance of nonpartisan research institutes such as the Federal Judicial Center, issued dozens of reports concerning the “problem” of prison litigation, especially its tendency to include “frivolous,” meaning not legally actionable, claims. In the 1990s, those reports served as fodder for the Republicans’ efforts to restrict inmates’ access to the courts.

But federal judges’ influence extended beyond their ability to shape public debate. Largely ignored by historians, judges, due to their ability to shape the rules of procedure, also had—and continue to have—broad power to determine how and whether individuals accessed the courts. In 1934, the Rules Enabling Act gave the Supreme Court centralized power to “prescribe general rules of practice and procedure” for the federal courts. In the 1970s, Congress took a more active role in shaping the Federal Rules of Civil Procedure, but district courts retained their ability to determine procedural rules at the regional level, so long as they did not directly contradict the Federal Rules or impact jurisdiction or substantive law. As the rate of prison litigation rose, many district court judges worked


6 A growing body socio-legal scholarship demonstrates that, more than simply the product of new federal laws or Supreme Court decisions, judicial retrenchment occurred as a result of shifts in procedural rules. This scholarship, like most historical scholarship, tends to ignore the actions of district courts, which retained power to shape local rules. To imprisoned men and women, as to all litigants, the district courts served as the entryway into the court system. The rules that dictated access to the courts proved crucial to litigants’ success. For judicial retrenchment through shifts in the Federal Rules of Civil Procedure, see Staszak, 79-117; Stephen Burbank and Sean Farhang, “Litigation Reform: An Institutional Approach,
alongside lawyers from state attorneys general offices to adjust the rules of procedure to reduce the amount of inmate litigation. In the 1990s, NAAG extended those changes as its members designed legislation to further impede prisoners’ access to the courts. Rather than simply the product of Supreme Court decisions and conservative lobbyists’ imaginations, many components of the PLRA were first developed by district court judges who reshaped procedural rules in an effort to manage their caseloads. 7

Federal judges’ skepticism of and frustration with inmates’ claims underscores how the long history of prisoners’ marginal legal status continued to shape their relationship to the law well into the twentieth century. Judges struggled to respond to inmates’ claims in part because they exposed the limitations of the rights revolution. 8


Once the quintessential “wards of the state” that the Supreme Court contrasted to individual rights holders in its 1905 decision in *Lochner v. New York*, prisoners had drawn on rights claims beginning in the late 1960s in hopes of forcing states to protect them against abuse. Their efforts bore some fruit, especially in the fields of due process and equal protection. But this legal tool was always ill equipped for the job. They used the framework of rights to demand a variety of improvements that in reality required collective action and political will. Unsure how—or whether—to reconcile the seeming mismatch between inmates’ status as wards of the state with their many and varied rights claims, federal judges spilled a sea of ink discussing the “prison litigation problem.” They treated inmates’ lawsuits as distinct from other constitutional rights claims, and they created mechanisms to push them out of the courts and back to the states, where most judges believed they belonged. In turn, conservative legislators seized on judges’ language and procedural innovations to rollback the limited progress inmates’ rights claims had afforded them. Ultimately, the 1973 prediction of North Carolina Prisoners Labor Union President Wayne Brooks proved correct: constitutional rights litigation alone would never serve as inmates’ “saving grace.”


9 *Lochner v. New York*, 198 U.S. 45 (1905); For a broader discussion of the legal reasoning undergirding the *Lochner* decision, see Edwards, 120-22.

Judge Franklin Dupree’s Quest to “Manage” Prisoners’ Cases

Judge Franklin Taylor Dupree Jr. was “smart as a whip.” Even those who regularly lost cases in his courtroom admitted that was true.11 Appointed in 1970 by President Richard Nixon as a “temporary judge” for the U.S. District Court for the Eastern District of North Carolina (E.D.N.C.), Dupree’s task in part was to eliminate the massive backlog of civil cases that had plagued the court since the mid-1960s. Many litigants waited as long as two years before their cases were heard.12 Once in office, Dupree took little time diagnosing the origin of the problem: the large number of prisoners’ cases, only one percent of which resolved in inmates’ favor.13 With jurisdiction over nearly sixty-two of the state’s eighty prisons, the E.D.N.C. heard the lion’s share of inmates’ complaints. During the course of his twenty-five years on the federal bench, Dupree, who became a permanent judge in 1975, worked to increase the “efficiency” of the judicial process by removing “frivolous” prisoner complaints from his court. He was not alone in this mission. Since the late 1960s, federal judges across America had singled out prisoner suits as disproportionately contributing to court backlogs. Through informal discussions, working groups, and professional conferences, judges—especially those at


13 Ibid.; For statistics concerning the number of prisoners’ suits that resolved in inmates’ favor prior to the passage of the Prison Litigation Reform Act in 1996, see Schlanger, “Inmate Litigation,” 1591-3.
the district court level—debated and developed unique procedures to handle prisoners’ cases, which set them apart from other civil rights suits and made them prime targets for conservatives’ jurisdiction-stripping efforts in the 1990s.

When Dupree joined the bench in 1970, he joined an ongoing discussion about the problem of court backlogs and judicial inefficiency, which was sparked in large part by Americans’ growing concern with crime. Since the early twentieth century, the number of cases filed in federal courts had been on the rise, resulting in periodic calls for the reform of judicial administration.¹⁴ The rising arrest rates beginning in the mid-1960s shined a different light on the problem. Already overburdened, federal judges struggled to dispose of the large number of criminal cases coming before them. In rare but well-documented instances, the accused walked free as a result of trial delays, leading to panic among the public and politicians alike that the courts were ill equipped to punish crime.¹⁵ In 1967, the Republican presidential nominee Richard Nixon made “court reform” a key part of his crime fighting agenda. He promised to appoint judges to the bench who not only were less friendly to the rights of the accused but who also would institute reforms to streamline the administration of justice. To help him accomplish these tasks, Nixon, once

¹⁴ Crowe, Building the Judiciary, 241-2.

in office, appointed Warren Burger, a long-standing advocate of judicial reform, as Chief Justice of the Supreme Court.\footnote{Crowe, \textit{Building the Judiciary}, 250-254.}

As discussed in chapter three, in 1971, Chief Justice Burger worked with the Nixon administration and the American Bar Association to host the first National Conference on the Judiciary with the goal of developing new tactics to increase the efficiency of the adjudication process. At the conference and in the reports that followed, federal judges laid blame for the court backlogs on criminals. In his opening address, Burger, echoing Nixon’s campaign appeal to the “silent majority,” warned that the judiciary was “rapidly approaching” the point where the “quiet and patient segment of Americans...[would] lose patience with the cumbersome system” that made people wait on the courts to dispose of “an ordinary civil claim” while a growing number of convicted criminals “monopolize[d] the courts.”\footnote{Warren Burger, “Welcome Address,” \textit{Justice in the States: Addresses and Papers of the National Conference on the Judiciary, March 11-14, 1971, Williamsburg, Virginia}, ed. Tom C. Clark (Washington D.C. 1971), 10-21.} Burger called on the Federal Judicial Center, the research arm of the judicial branch, to conduct a study of the growing caseloads. Chaired by politically moderate Harvard Law Professor Paul Freund, the 1972 report singled out prisoners’ petitions as particularly burdensome. Although the report claimed it was of the “greatest importance” that courts examine inmates’ civil rights suits, it noted that the number of prisoner petitions found to have merit was “particularly small, both proportionately and absolutely.” The Freund Committee recommended the creation
of administrative grievance procedures to redress inmates’ problems before they reached the courts, a solution supported by Burger and other judicial officials in the years following the report’s release.18

Dupree closely followed the discussions emerging from the conference. They confirmed his belief that prisoners’ cases caused unique problems for the courts for two reasons. First, they were so numerous. By the mid-1970s, prisoners’ lawsuits did in fact constitute the largest category of civil cases in the federal courts. From 1966 to 1980, the total number of civil cases increased by 138 percent. During the same period, prisoner civil rights petitions increased by over 5500 percent, a number that reflected the opening of the federal courts to inmates’ claims given that the nation’s prison population increased by only fifty-eight percent.19 Second, the cases often involved “frivolous” issues that were beyond the reach of constitutional law. In his correspondence with his staff, Dupree affirmed that inmates should be able to file “viable” and “meaningful” claims. Yet the large degree of legally non-actionable petitions filed by prisoners made their unfettered access to the courts problematic in his mind.20

As Dupree often pointed out, prisoners’ direct access to the courts made them unique. In the free world, barriers existed between most plaintiffs and the federal courts.

---


Most plaintiffs had to pay filing fees, and in some cases they had to exhaust state judicial or administrative remedies before submitting a federal lawsuit. Before 1980, most plaintiffs’ federal lawsuits also had to involve at least ten thousand dollars in claims. By drawing on Section 1983 of the 1871 Civil Rights Act, inmates avoided many of these hurdles. Designed to provide litigants easy access to the federal courts, Section 1983 allowed inmates to avoid exhaustion requirements. It also enabled prisoners to file cases involving any amount of money, no matter how small. 

21 Imprisoned men and women similarly avoided filing fees by proceeding in forma pauperis, which asked judges to wave fees as a result of their indigent status. 

22 Unmoved by the lack of alternative outlets for inmates’ grievances or by the danger inmates faced when filing suits, Dupree complained to his clerks that prisoners, unlike other litigants, had “nothing to lose and everything to gain” by filing lawsuits.

During the 1970s, Dupree worked alongside magistrates, law clerks, and judges from other districts with a high volume of prison litigation to develop new methods for handling prisoners’ cases. At the suggestion of Judge Albert Bryan of the U.S. District Court for the Eastern District of Virginia, Dupree instituted a new system in 1972 that

21 For example, one prisoner raised Dupree’s ire after filing a suit demanding payment of six dollars after a guard broke his radio “without due process of the law.” Franklin Dupree to John Larkins, 7 March 1971, Folder Larkins 1947, Box 90, Dupree Papers.


23 Franklin Dupree to John Larkins, 7 March 1971, Folder Larkins 1947, Box 90, Dupree Papers.
allowed a group of “pro se law clerks” to review inmates’ suits before they reached his
desk. The clerks screened the complaints to make sure they were properly filed, and they
linked them to other cases filed under the same name in order to identify “serial
litigators.” They then summarized the inmates’ often handwritten complaints and made
recommendations as to how the court should respond to them. Although law clerks
handled the intake process for a wide range of lawsuits, they had particularly expansive
power to shape the outcome of inmates’ cases due to their ability to make suggestions for
the disposition of the cases at such an early stage in the adjudication process. Dupree
justified this unique system by claiming the pro se law clerks would grow accustomed to
handling the “often unintelligible” complaints of inmates and would thus handle them
“more proficiently and consistently” than non-specialized staff, including trained
judges. 24

Three years later, in 1975, Dupree changed the local rules of procedure to institute
another suggestion of Judge Bryan’s. Writing to Dupree in 1974, Bryan noted his court
was considering the adoption of a special complaint form that inmates would be required
to submit in order to have their cases heard. Dupree liked the idea. Not only would it
prevent his law clerks from having to read prisoners’ “verbose and often
incomprehensible claims,” he thought, but it would also cut down on litigation by forcing

24 Judge Albert Bryan to Franklin Dupree, “Prisoners’ Lawsuits,” 17 December 1971; Franklin Dupree to J.
1983 Procedures,” 18 April 1979, Folder 1705, Box 94, Dupree Papers. Law Scholar Margo Schlanger’s
study of inmate litigation suggests that specialized court personnel often prove not to be good screeners of
the inmate cases because they lose interest in finding legally actionable claims. See Schlanger, “Inmate
Litigation,” 1696.
inmates to request a form from the court before they filed their lawsuits.\textsuperscript{25} With the help of his clerks, Dupree developed a complaint form that required inmates to “state…the facts” of their cases “in plain language,” including “precisely how each defendant was involved in the case.” To submit the form, plaintiffs had to swear “under penalty of perjury” that the facts were correct. In May 1975, Dupree and his fellow E.D.N.C. judges issued a new local rule mandating that all inmates’ pro se Section 1983 cases “be submitted on the court-approved form.” After the two required weeks of public comment, the new local rule went into effect.\textsuperscript{26}

Inmates in North Carolina and the civil liberties lawyers who often defended them criticized the E.D.N.C. for adopting the new form. Both groups believed the change discriminated against prisoners’ suits by evaluating them differently than other cases. Writing to the North Carolina chapter of the American Civil Liberties Union (NCCLU) in 1975, Donald Morgan, a regular pro se litigant, argued the forms were just “one more method to delay our suits, to lessen our ability to freely access the courts.” He noted that two of his most recent suits had been returned to him because he failed to use the required form, which he refused to use because he believed it prejudiced the courts against his lawsuits “before Dupree laid eyes on them.”\textsuperscript{27} NCCLU staff attorney Norman


\textsuperscript{26} Local Order 17, “Pro Se Filing Form,” Folder 1703, Box 94, Dupree Papers.

\textsuperscript{27} Donald Morgan to Norman Smith, 17 June 1975, Folder Requests for Assistance, Box 23, NCCLU Papers.
Smith’s critique went further. He questioned the legality of the forms. While the new form made inmates swear to the facts of their case, other litigants needed only to suggest they might be entitled to relief to move forward. Judges anticipated that the full range of facts and legal issues would come to light later during the discovery process and pretrial conferences. In other words, judges gave other litigants the benefit of the doubt at the early stages of the adjudication process. Alternatively, Smith suggested that by demanding inmates to swear to all the facts when they first filed the case, judges made inmates’ cases easier to dismiss.\(^{28}\) Judge Dupree would not have disagreed with Smith’s assessment, although he believed the local rule to be perfectly legal. In an early 1976 letter to a clerk, he celebrated how the “form speeded along dismissal” and “reduced discovery” in prisoners suits.\(^{29}\)

Dupree’s new method for managing prisoners’ cases was such a success that word spread to other district courts. In late 1975, the Federal Judicial Center approached Dupree about including his form in a study investigating how judges were responding to prisoner cases with the goal of proposing “procedures for the more effective handling of these cases.”\(^{30}\) To conduct the study, the center recruited a committee comprised of judges, law professors, and magistrates. Together, they solicited the views of every

---

\(^{28}\) Board Meeting Minutes, 6 September 1975, Folder Board Minutes, Box 61, NCCLU Papers. Other legal analysts later supported Smith’s claim. See Gellhorn, “State Prisoners, Federal Courts, and Playing by the Rules,” 140-6.


\(^{30}\) Alan J. Chaset, Assistant Director of Research, Federal Judicial Center, to Franklin Dupree, 16 July 1975, Folder 1703, Box 94, Dupree Papers.
member of the federal judiciary. In January 1976, the center released its first report. At judicial conferences across the nation, center officials discussed the recommendations and encouraged their adoption. After receiving additional feedback, the Judicial Center released its final report in May 1980.31

Circulated to every district court in America, the report singled out prisoners’ cases as unique and in need of special scrutiny due to the burden they placed on judicial officials. Recognizing that inmates’ lawsuits sometimes raised “constitutional questions of great significance,” it nonetheless claimed “most prisoners’ rights cases [were] frivolous and ought to be dismissed under even the most liberal definitions of frivolity.” To help judges recognize meritorious claims and swiftly dismiss others, the report made a number of recommendations. It called on state leaders to adopt administrative grievance procedures internal to prisons, and it urged state judges to show more willingness to evaluate inmates’ Section 1983 claims. Additionally, the center’s report recommended a number of procedures that district judges could institute on their own through changes to the local rules. Dupree’s intake form was included as a model for other districts to adopt. The report also suggested that courts limit the discovery period for inmates’ suits and grant state attorneys additional time to respond to inmates’ cases. To help courts decide whether “to go to the expense of bringing inmates’ witnesses to court,” the report urged courts to require inmates to file a form summarizing the anticipated testimony of their witnesses. Finally, the report suggested that courts expand the role of magistrate judges to

allow them to hear and decide prisoners’ cases if both plaintiff and defendant consented to it.\footnote{Ibid., 70, 76-77.}

In a follow-up memo published six months later, the Federal Judicial Center reported that all of the district courts had adopted “at least some” of the report’s recommendations.\footnote{Judge Ruggero J. Aldisert to U.S. District Court Judges, “Federal Judicial Center Report on Recommended Procedures for Handling Prisoner Civil Rights Cases in the Federal Court,” 17 July 1980, Folder 1703, Box 94, Dupree Papers.} At the district court level, judges such as Franklin Dupree had used their rulemaking power to create new mechanisms to manage inmates’ cases. In turn, the Federal Judicial Center’s report helped circulate individual districts’ practices and solidify prisoners’ lawsuits as distinct from other cases that came before the courts. Even nonpartisan researchers affiliated with the Judicial Center agreed that inmates’ cases required special screening. As Dupree once told a law clerk, when it came to evaluating prisoners’ complaints, the courts required “specialized tools” to “separate the wheat from the chaff.”\footnote{Franklin Dupree to J. Rich Leonard, “Prison Filing Form,” 11 April 1976, Folder 1705, Box 94, Dupree Papers.}

The North Carolina Prison Litigation Task Force

The Federal Judicial Center’s 1980 report encouraged Judge Dupree to continue “managing” inmate litigation. In so doing, he often reached out to lawyers affiliated with the State Attorney General’s Office and the Department of Corrections (DoC). While
working alongside representatives from the two agencies, Dupree couched his concern about the large number of inmate suits in the language of judicial efficiency. But the state lawyers had different motivations for working with Dupree. As lawyers who defended the state against prisoners’ lawsuits, they viewed procedural changes that created new barriers between inmates and the courts as both a means to cut down on their workload and to protect the state from liability in inmates’ cases. Working together throughout the 1980s, Dupree and the state lawyers devised new ways to make the E.D.N.C. harder to reach, laying the groundwork for the jurisdiction-stripping legislation of the 1990s.

Dupree’s most successful method for reducing inmate litigation came from J. Richard Leonard, Clerk of the Court and later Magistrate Judge. In 1979, soon after Leonard began his job as Clerk, he wrote to Dupree suggesting that the E.D.N.C. create a new rule ordering inmates to pay a portion of the filing fees associated with their lawsuits. Since the mid-1960s, the E.D.N.C. had allowed almost all inmates to proceed in forma pauperis. But Leonard, building on a system recently devised in Virginia, suggested the court determine the amount of money in a prisoner’s trust fund and then charge a portion of the fee based on his or her account. Leonard made clear that the new system was “not designed to harass or bar [inmates] from the court.” Instead, he only wanted to require inmates “to make the same sort of economic decisions about the merits of their lawsuit” as other plaintiffs.35

---

Requiring inmates to pay a portion of court filing fees would force them to make a hard “economic decision” indeed. Prisoners used the money in their trust funds to buy basic necessities from the prison commissary, including toiletries, phone cards to call their families, pain relievers for common ailments like headaches or heartburn, and the paper and stamps they needed to write letters and file lawsuits. They also bought food and spices to supplement the monotonous diet behind bars. Since the prison commissary had a monopoly on these goods, they were almost always more costly than similar items in the free world—sometimes extraordinarily so. Many prisoners’ families sacrificed to put money in their accounts. While inmates’ wages went into their trust funds, they rarely made more than twenty cents per hour, money that once deposited was also docked to pay child support or restitution to victims of crime.

Despite—or perhaps because of—the sacrifices inmates would have to make to pay the fees, Dupree embraced Leonard’s idea. He encouraged Leonard to contact Jacob Safron, the assistant attorney general who responded to most inmates’ suits, to develop a system to evaluate prisoners’ trust funds. Safron enthusiastically agreed to help, consulting in turn Ben Irons, the senior assistant to the secretary of corrections, for further assistance. Safron viewed the new filing fee plan as a way to reduce the mountain of inmate litigation stacked high on his desk.\footnote{Jack Safron to Rich Leonard, “In forma pauperis filings of inmate actions,” 1 November 1979, Folder 1772, Box 97, Dupree Papers.} Hired in 1968, just as prisoners began to draw on Section 1983 to contest prison conditions, Safron soon found himself inundated by inmates’ claims. Working long hours for mediocre pay, Safron resented the prisoners
who demanded his attention with what he often viewed as trivial complaints. \(^{37}\) Safron was far from the only state attorney who felt this way. Since the late 1960s, the National Association of Attorneys General (NAAG) had led the way in opposing the further expansion of inmates’ rights, lobbying hard against legislation that threatened to increase the number of prison conditions cases that reached the federal courts or state attorneys general offices. \(^{38}\)

Working together, Dupree, Irons, and Safron devised a plan that speeded along the dismissal of inmates’ suits. When submitting forms to proceed *in forma pauperis*, inmates had to include a report listing the balance of their trust funds for the previous six months. The clerk would then ask the inmate to pay up to fifteen percent of the money in his or her account toward the $60 filing fee. Six months after Dupree implemented the new rule by issuing a “standing order”—which required no public notice or comment—Leonard wrote a memo classifying the change as a success. Between February and June 1980, the E.D.N.C. received 132 new Section 1983 suits from inmates. Thirty-nine percent of the cases were dismissed as frivolous, a number consistent with past statistics. But thirty-one percent were dismissed for failure to comply with the new partial filing

---


fee. “It is clear from these figures that the partial payment plan had a significant impact on the work associated with the prisoner caseload,” Leonard concluded.\(^{39}\)

Recognizing that the filing fees might prevent inmates from accessing the courts, the NCCLU filed suit in Dupree’s own court to eliminate the new rule. Unsurprisingly, Dupree upheld the change, a decision affirmed by the Fourth Circuit Court of Appeals.\(^{40}\) The Fourth Circuit’s ruling in turn helped advertise the filing fee plan to other district courts in the circuit. In February 1983, Judge Dortch Warriner of the U.S. District Court for the Eastern District of Virginia wrote to Dupree to “thank” him for his work on the filing fee requirement. Warriner noted that, after implementing a slightly modified version of the “Dupree Plan,” he had “been able to avoid dealing with almost one hundred [inmate] Section 1983 cases in any substantive way.” Between thirty and forty percent of the cases “die[d]” during the “Dupree process.” Although Warriner noted “it may be possible” that some meritorious cases “never come to light” due to the new procedure, he found it a “tolerable risk.” After all, he suggested, “there are potential plaintiffs on the outside who never file suit because of some obstacle, including cost.”\(^{41}\)

But Dupree was not finished reforming the E.D.N.C.’s procedures. In late 1982, Dupree began the process of moving into the position of senior judge, which reduced his


\(^{40}\) Frank Goldsmith, then President of the American Civil Liberties Union of North Carolina, represented inmates in the suit. Evans v. Croom, 650 F. 2d 521 (4th Cir. 1981).

\(^{41}\) Dortch Warriner to Franklin Dupree, 2 February 1983, Folder 1664, Box 91, Dupree Papers.
workload and afforded him more time to pursue his passion for “case management.” He had one particular idea in mind that at first seemed counterintuitive to his allies in the Attorney General’s Office: Dupree wanted to extend legal services to inmates. Lawyers, Dupree reasoned, would dissuade prisoners from filing lawsuits that had little chance of success. Moreover, they could negotiate with DoC staff to resolve prisoners’ minor grievances before they reached the court. As Dupree recognized, North Carolina was unique in its longstanding opposition to equipping inmates with lawyers. In * Bounds v. Smith*, a 1977 case originating in Dupree’s courtroom, the Supreme Court ruled that corrections officials had to provide prisoners with “meaningful access” to the courts by providing them with law libraries or legal aid services. Most states complied with *Bounds* by creating prisoners’ legal services programs. But North Carolina’s DoC submitted a plan to open law libraries—a plan the state had yet to fully implement nearly five years after the *Bounds* decision. Disappointed in the DoC’s choice, Barry Nakell, the inmates’ attorney in * Bounds*, took matters into his own hands and opened North Carolina Prisoners Legal Services (NCPLS) in 1979 with a grant from the federal Law Enforcement Assistance Administration. After NCPLS’s founding, Nakell regularly sent articles to

---

* Bounds v. Smith, 430 U.S. 817 (1977).*

Dupree that highlighted the benefits of prisoner legal services for the judiciary. As the DoC continued to stall the installation of law libraries and inmates’ litigation rate continued to rise, Dupree became convinced that the state should contract with NCPLS to represent its prisoners.

In late 1982, Dupree invited Nakell to present before the North Carolina Bar Association’s Bench, Bar, and Law School Liaison Committee about the possibility of creating state-funded legal services for inmates. The idea sparked sharp resistance from Jacob Safron and Ben Irons, who also attended the meeting. Playing to his audience, Nakell argued that legal services would save the state “thousands of dollars” by cutting down on the many “frivolous lawsuits.” Yet Safron and Irons, citing the state’s experience with the Inmate Grievance Commission, believed the relationship between state lawyers and the NCPLS would quickly become adversarial. Surely the state attorneys also feared that with more funding and easier access to imprisoned plaintiffs, NCPLS would be able to bring successful lawsuits against the DoC. Although pro se inmate litigation created work for state attorneys, most imprisoned men and women’s lack of familiarity with legal procedures made their cases relatively easy to dismiss. Prison conditions cases brought by professional lawyers were a different story.

---

44 See, for instance, Nakell forward of Francis J. Flaherty’s “A Soft Sell on Prisoners Rights” on 4 March 1982, Folder 1705, Box 94, Dupree Papers.

45 Bar, Bench, and Law School Committee Minutes, 25 February 1983, Folder 1705, Box 94, Dupree Papers.
While resulting in no definitive policy shifts, the discussion before the Bench, Bar, and Law School Liaison Committee led to the creation of the Prison Litigation Task Force, sponsored by the North Carolina Bar Association. Comprised of Dupree, Nakell, Irons, Safron, and other interested members of the bar, the men set to work in April 1983 to “devise new strategies to separate the few meritorious prisoner claims from the thousands lacking in merit.”

With Safron and Irons staunchly opposed to Nakell’s legal services plan, the task force began work on another goal: the certification of the state’s inmate grievance procedures. As Clerk of the Court J. Richard Leonard reminded Dupree, the Civil Rights of Institutionalized Persons Act (CRIPA), passed by Congress in 1980, included a provision that allowed federal courts to stay inmates’ lawsuits for up to ninety days if state prisons instituted “plain, speedy, and effective” internal grievance procedures. For states’ procedures to qualify, either the U.S. Attorney General’s Office or a district court had to “certify” them as complying with regulations promulgated by the U.S. attorney general. As a federal judge, Dupree had the ability to certify the grievance system after he helped redesign it.

During the first three years of the task force’s work, Safron blocked the certification process. In 1981, the DoC had pressured Fred Morrison, the long-time Inmate Grievance Commission director, to resign after years of complaining he was too quick to side with prisoners during disputes. Safron had no desire to once more empower

---


the Inmate Grievance Commission to demand changes behind bars. Yet in 1985, Safron lost his position on the task force, creating opportunities for the other members to move forward with their ideas. In 1984, after seven years of legal wrangling, the Fourth Circuit Court of Appeals ruled that the DoC had produced insufficient evidence to prove it was complying with the 1977 Bounds ruling. The court remanded the case to the E.D.N.C., where Dupree ordered Safron, who represented the state, to produce evidence of compliance. Safron never filed a response.\footnote{During the interview, Safron declined my invitation to discuss the Bounds case. There is a possibility that someone higher up in the State Attorney General’s Office encouraged Safron to delay filing the response to Dupree’s orders. After all, the State Attorney General’s Office had long delayed the court’s order to fully implement its law library place. In fact, in 1977, the Attorney General’s Office cautioned the DoC against accepting funding to implement its law library plan See Amos Reed to Dr. Banks Talley, “Inmate Legal Services,” 13 December 1977, Folder Corrections R, Box 55, Correspondence 1977, Hunt papers. Regardless of fault, Safron took the blame for negligent action in 1986. See Smith v. Bounds, 657 F. Supp. 1322 (E.D.N.C. 1986).} Seizing on the moment, Dupree rejected the state’s long-standing plan to institute law libraries and instead ordered it to develop a legal services program that led four years later to a contractual agreement between the DoC and NCPLS to “provide professional [legal] advice and assistance to North Carolina inmates.”\footnote{Smith v. Bounds, 657 F. Supp. 1327 (E.D.N.C. 1986).} Outraged by Safron’s performance, which he believed led to Dupree’s new order, North Carolina Attorney General Lacy Thornburg took him off the case. Safron’s replacement, Deputy Attorney General Lucien “Skip” Capone, took his place on the Prison Litigation Task Force, too.

With legal services for inmates in the works, the task force resumed its effort to certify the state’s inmate grievance procedures. Capone and Irons proved more open than...
Safron to the idea, but they demanded concessions. Although CRIPA had passed in 1980, few states had certified their grievance commissions, largely because the attorney general’s regulations required “an advisory role for prisoners in the formulation, implementation, and operation” of the grievance mechanism.\textsuperscript{50} Dupree interpreted that requirement loosely, allowing the DoC simply to post the new procedures inside prisons and allow inmates to offer their comments to the task force.

Surely, the inmates were stunned by what they read. The procedures included a number of changes seemingly designed to suppress rather than resolve prisoners’ complaints. Under the new law structuring the state’s grievance system, the secretary of corrections, rather than the governor, appointed the people who served on the grievance board. The law eliminated all hearings and established new levels of review within the facilities where inmates were held, often forcing them to file their complaints with the colleagues of their abusers. Worse yet, the new procedures allowed DoC officials to “discipline” inmates who “repeatedly filed frivolous complaints.” Endorsed by the task force and the State Attorney’s General Office, the legislation reshaping the procedures easily passed in the General Assembly in 1987. Two year later, Dupree presided over the hearing that certified the new system.\textsuperscript{51}


The High Price of Mass Incarceration

Even as district court judges like Franklin Dupree worked alongside state attorneys to develop new procedures to reduce inmates’ litigation, they continued to issue sweeping rulings ordering reforms to prison practices and conditions.52 Most federal judges remained willing to tackle rights violations behind bars. Major class-action lawsuits during the 1970s had established clear standards governing prison facilities, medical care, and programming. During the 1980s, the rising violent crime rate led to dangerously overcrowded conditions in the nation’s prisons, making the standards set in the 1970s impossible to reach.53 In North Carolina, the dramatic expansion in the inmate population led to what state leaders had long feared: successful federal lawsuits requiring broad changes to the state’s prison practices. By the mid-1980s, state leaders were faced with two politically unpopular options. They could build costly new prisons that complied with constitutional standards, or they could run the risk of seeming soft on crime by reducing inmates’ sentences or developing alternatives to incarceration. By the early 1990s, voters expressed dissatisfaction with both solutions, encouraging federal

52 Beginning in 1980s, the Supreme Court began to issue rulings that made it more difficult for lawyers to bring the massive “totality of conditions” lawsuits that characterized the prison litigation landscape in the 1970s. But district courts continued to issue rulings impacting state correction systems, albeit in narrower ways than in the past. See Margo Schlanger, “Civil Rights Injunction Over Time: A Case Study of Jail and Prison Court Orders,” New York University Law Review 81 (2006): 550-630.

leaders to pursue a third option long advocated for by those on the far right: closing the courtroom doors to inmates’ costly lawsuits.

The first blow came in October 1984. Four years earlier, in 1980, former North Carolina Prisoners Labor Union Leader Wayne Brooks filed a lawsuit in the U.S. District Court for the Middle District of North Carolina challenging the overcrowded and dilapidated conditions inside the Union County prison facility, a former road camp built in the 1930s. The case, Hubert v. Ward, soon became a class action involving thirteen former road camps in the Southern Piedmont area. In 1984, the State Attorney General’s Office, recognizing conditions in the facilities fell far short of constitutional standards, agreed to settle the dispute. As part of the settlement, the DoC promised to eliminate the triple bunking of inmates and to bring the facilities up to the housing standards developed by the American Correctional Association. Although the attorneys for the plaintiffs hoped the state would choose to comply with the settlement by reducing the inmate population, the General Assembly instead budgeted $12 million for the construction of five new 100-bed correctional facilities.54

The State Attorney General’s Office knew the DoC was in trouble when Judge James McMillian signed the settlement agreement in Hubert in September 1985. Many of the state’s eighty prisons had conditions similar to those of the old road camps in the Southern Piedmont. Lawyers affiliated with Barry Nakell’s NCPLS were aware of that

fact, too. In July 1985, NCPLS filed *Small v. Martin*, which challenged triple bunking and other conditions at the Columbus County Unit in the E.D.N.C. Less than a year later, four inmates confined in other units joined the case, and their attorneys filed a motion to make *Small* a class action lawsuit covering forty-eight former road camps. Publicly, the State Attorney General’s Office vowed to defend the suit without settling. But Ben Irons and other corrections officials saw the writing on the wall: conditions inside the camps clearly violated the standards negotiated in *Hubert*.\(^{55}\)

During the 1986 legislative session, with *Small* looming on the horizon, the General Assembly and the state’s newly elected Republican Governor Jim Martin scrambled to demonstrate that North Carolina was making a “good faith” effort to reduce prison overcrowding. By January 1987, nine states had their entire prison systems under the control of the federal courts.\(^{56}\) Martin hoped North Carolina could avoid a similar fate, but the prison crisis tested his faith. Swept into office on Reagan’s coattails, he campaigned on a small-government, pro-business, tough-on-crime platform. In March 1986, Martin released a ten-year plan for the DoC that sought to balance his priorities. The plan called for $203 million to expand the prison system by 10,000 beds and a moderate expansion of the probation and parole system. Building on an idea touted by the


\(^{56}\) Ibid., 31.
Reagan administration, Martin suggested the state could save money by allowing private
corporations to run some of the new prison facilities.57

The Democratically controlled General Assembly balked, launching a partisan
battle over prison conditions that lasted nearly a decade. In December 1985, after the
settlement in Hubert, legislators formed the “Special Committee on Prisons” with the
goal of reviewing how best to respond to the overcrowding and the threat of further
litigation. Co-chaired by Democrat Anne Barnes in the House and Democrat David
Parnell in the Senate, the committee released a report denouncing Martin’s ten-year plan
in May 1986. It instead called for $13 million in construction funds to improve existing
facilities and an additional $2.5 million to develop alternatives to incarceration, including
the further expansion of probation, victim restitution programs, halfway houses, and new
“boot camps” designed to promote responsibility through short-term imprisonment in
military-style facilities. During the 1986 Session, the General Assembly rejected Martin’s
budget proposal and approved the committee’s plan almost in its entirety.58

Yet the Democrats’ plan treated neither the symptoms nor the cause of North
Carolina’s prison overcrowding problem. In 1981, the state’s Fair Sentencing Act took
effect. Designed to eliminate racial disparities in sentencing and the persistent problem of

57 Sally Jacobs, “Prison Crowding Plan Outlined,” Raleigh News and Observer, March 6, 1986; For the
Reagan Administration’s interest in private prisons, see in particular Statement of Allen F. Breed, Director,
National Institute of Corrections before the Subcommittee on Courts, Civil Liberties and the
Administration of Justice, Committee on the Judiciary, U.S. House of Representatives, 24 February 1983,
Folder 199999, Box 21, FG 17, FG, WHORM Files, Reagan Library.

58 Report of the Special Committee on Prisons, Final Report to the 1989 General Assembly of North
prison overcrowding, the act required state judges to sentence individuals using a grid based on their crime and prior convictions. Judges could diverge from the grid only if unique circumstances called for it, and they wrote a memorandum explaining their reasoning. The act also abolished discretionary parole, instead reducing inmates’ sentences by one day for each day they behaved behind bars. For two years, the act seemed to be working, and North Carolina’s prison population stabilized. But by 1983, it was on the rise once again. The state’s elected judges, influenced by renewed calls to get tough on crime, began sentencing individuals outside the grid’s guidelines in order to counterbalance the “goodtime” credit offered inmates and extend their time in prison. As a result, North Carolina’s prison population grew from 16000 inmates in 1981 to 17500 in 1986—and the growth showed no signs of slowing.59

By the 1987 legislative session, the General Assembly recognized the state would have to settle in Small. In anticipation of the settlement, legislators passed the “Emergency Population Stabilization Act.” Known as the “prison cap,” the act sought to avoid unconstitutionally overcrowded conditions in the states’ prisons by requiring the Parole Commission to release individuals convicted of misdemeanors and some non-violent felons whenever the population neared 18,000 men and women, the state prison system’s capacity. The General Assembly also budgeted an additional $15 million to

prison construction. By implementing the prison cap and funding additional prison construction, legislators attempted to persuade the E.D.N.C. to impose less stringent requirements under the pending Small settlement. The previous year, while North Carolina legislators watched anxiously, South Carolina negotiated a settlement in a similar case that cost the state over $200 million in upgrades.60

The General Assembly’s efforts proved unpersuasive to Judge Earl Britt, a colleague of Franklin Dupree who had been appointed to the E.D.N.C. by President Jimmy Carter in 1980. Approved by Britt in 1989, the settlement in Small called for sweeping changes to North Carolina’s prison system. In addition to forcing DoC to remain within its population capacity, the settlement required the state to replace all triple bunks with double bunks and to supervise prison dormitories at all times. Other provisions dealt with improved medical care, visitation policies, work and study programs, fire safety, dormitory designs, ventilation, medical diets, plumbing, clothing policies, and locker space. The NCPLS’s biggest victory of all involved housing space. The 1989 settlement required the state to provide fifty square feet of living space per inmate in each dormitory by July 1994.61 To meet the terms of the settlement, the General Assembly appropriated $148 million additional dollars to the DoC for construction costs and to update programming and housing standards.62

The funding was slow to resolve the overcrowded conditions inside the state’s prisons because construction could not keep pace with the growing inmate population. In 1987, it triggered the prison cap, sparking public outrage over North Carolina’s “revolving door” justice system. Between 1987 and 1990, the DoC neared its capacity six more times, resulting in the early release of hundreds of inmates. At first, the early parolees consisted largely of misdemeanants, but the state soon ran out of misdemeanants to parole, forcing the Parole Commission to turn to the state’s growing population of felons. Between 1985 and 1991, the state’s crime rate grew by fifty-six percent. Yet the prison cap created a system in which the convicted served only a small percentage of their sentences. By the early 1990s, felons served less than twenty percent of their sentences and misdemeanants served less than ten percent. As the crime rate continued to rise, many North Carolinians blamed their state’s short prison sentences.

To lengthen individuals’ sentences, the North Carolina General Assembly would have to build more prisons than they had even anticipated in Small’s wake—and they would have to do so with little to no help from the federal government. Even as Congress under the Reagan and George H.W. Bush administrations signaled support for harsh state sentencing law by passing new federal mandatory minimum sentences for drug offenders, legislators provided little funding to states for prison construction and none for the development of alternatives to imprisonment. In 1981, the Reagan administration quashed a bill by the Republican Senator Bob Dole calling for $2 billion for prison

---

construction, arguing that states were traditionally responsible for criminal justice. In 1986, the Anti-Drug Abuse Act made $230 million available to states for prison construction followed by an additional $96.6 million in 1988. But that was far from sufficient. The Small suit alone cost North Carolina nearly $150 million.

In late 1989, North Carolina Governor Martin proposed a solution to the state’s prison problem. He called for a $400 million bond referendum “to raise the prison system’s capacity to 40,000 inmates by the year 2000.” The plan received immediate pushback from both legislators and the public. During the 1990 legislative session, the Democratic General Assembly forced the governor to lower the bond initiative to $200 million. Prisoners’ rights advocates—including the NAACP, the North Carolina Prison and Jail Project, and the ACLU of North Carolina—soon united against the initiative, arguing that the creation of more prisons would do nothing to lower the crime rate. The North Carolina Prison and Jail Project circulated material listing all the other services $200 millions could provide state citizens, including wiping out half of the entire budget deficit, giving teachers a six percent raise, or decreasing the state’s high infant mortality.

---


rate. After a hard-fought campaign, voters approved the $200 million bond by less than half of one percentage point in November 1990.

The referendum signaled North Carolina voters’ growing dissatisfaction with the high cost of mass incarceration. While polls revealed that crime was the top concern of voters in North Carolina, they did not want to pay for prison construction. They were not alone. With federal lawsuits looming large, state leaders across the nation had increased spending on prison construction by 612 percent, adjusted for inflation, between 1979 and 1990. Voters were beginning to revolt. In 1990, Californians rejected a $450-million bond for prison construction, leaving its state legislators scrambling for new ways to reduce prison overcrowding. During the next decade, state leaders would develop a number of new methods for financing mass incarceration, including the development of new public-private partnerships. But far-right conservatives like Jesse Helms had a different plan: stop the federal courts from issuing the rulings that made imprisonment costly.

**Jurisdiction Stripping Efforts During the Reagan Years**

---

66 Prison and Jail Project, “Questions and Answers on the $190 Million Bond Proposal for Prison Construction,” Folder Unlabeled, Box 209, NCCLU Papers.


70 Ibid.
Ten years after his 1978 letter to Robert Morgan, U.S. Senator Jesse Helms revived the idea of stripping the federal courts of their ability to hear inmates’ cases. Writing to Frank Donatelli, an assistant to President Reagan for Political and Intergovernmental Affairs, Helms railed against federal judges who “allowed criminals to walk free” and who “bled state coffers dry” by demanding costly upgrades to correctional facilities.\textsuperscript{71} In Donatelli, Helms found a more receptive audience than he had in Morgan. During the 1980s, many members of the Reagan administration supported jurisdiction-stripping legislation designed to rollback the federal courts’ oversight of a wide array of civil rights and civil liberties issues. Couching their arguments in the language of federalism and state’s rights, advocates of jurisdiction stripping had little success in the 1980s. Their framing simply did not work. Many Republicans worried the bills were too politically dangerous. Civil rights groups were already criticizing the Reagan administration for rolling back the Department of Justice’s enforcement efforts. Only after voters began to reject prison construction bond initiatives in the early 1990s did Republicans unite behind legislation stripping some of America’s most vulnerable and politically powerless citizens of their access to the courts: inmates.

Since the nineteenth century, legislators from across the political spectrum had tried—and most often failed—to manipulate the jurisdiction of the federal courts as a means to achieve their political goals. During Reconstruction, the Supreme Court first recognized legislators’ ability to define the federal courts’ jurisdiction in a case involving

\textsuperscript{71} Jesse Helms to Frank Donatelli, 15 February 1988, Folder OA 12667, Box 52, John Roberts Papers (hereafter cited as Roberts Papers), Reagan Library.
a “libellous [sic]” newspaper publisher jailed for printing “incendiary” articles criticizing Congress. In 1868, Congress successfully revoked the Supreme Court’s ability to hear the journalist’s habeas corpus petition. In the early 1900s, Progressive legislators regularly attempted though never managed to pass new laws stripping the Lochner era federal courts of their ability to review legislation involving business regulations. After the Supreme Court under Chief Justice Earl Warren stepped in as a protector of individuals’ civil rights and liberties beginning in the 1950s, conservatives adopted the Progressives’ court-stripping agenda, seeking in particular to eliminate the federal courts’ ability to hear cases challenging Jim Crow. In seeking to dictate the kinds of cases federal judges could hear, legislators reasoned from Article III of the U.S. Constitution, which granted Congress the ability to create, and implicitly to define the jurisdiction of, federal courts inferior to the Supreme Court. Additionally, it allowed legislators to regulate the appellate jurisdiction of the Supreme Court.

A small group of politicians on the right began to call for jurisdiction-stripping legislation after the Supreme Court’s 1973 decision in Roe v. Wade made them question the Burger Court’s commitment to “strict constructionism.” As in the 1950s and 1960s, most of the jurisdiction-stripping legislation gained little traction in Congress. The tides began turning in the late 1970s. In 1979, Helms introduced a bill seeking to strip the federal courts of their ability to hear cases involving school prayer, which made it unusually far in the legislative process. A long-standing critic of the separation between

church and state, Helms attached his school prayer bill as a last minute rider on legislation creating the Department of Education, a pet project of the Carter administration. Fearing the rider would kill the legislation, the Senate, through a series of parliamentary maneuvers, added it instead to a bill involving Supreme Court procedures in hopes of appeasing Helms. Passed in the Senate by a vote of 61 to 30, the Supreme Court procedures, school prayer amendment attached, died in the House in 1980.  

Republicans took notice of the school prayer bill’s progress. In 1980, they gained control of the Senate for the first time in nearly forty years. In the House, Republicans gained thirty-five seats. Building on Reagan’s critique of federal overreach into Americans’ lives, Republican legislators introduced over thirty bills during the 1981 session designed to restrict the federal courts’ jurisdiction. While many of the bills involved older issues such as abortion and school prayer, freshman Republican House member Bobbi Fiedler of California, a state plagued by prison overcrowding, introduced a bill to strip the courts of their ability to hear inmates’ Section 1983 claims, a bill she reintroduced in 1983 and 1985.  

The 1981 session also witnessed the development of a new kind of jurisdiction-stripping legislation: bills that sought not to impede individuals’

73 Ibid.

74 A Bill to Amend Section 1979 of the Revised Statutes of the United States to Limit the Use of Civil Actions under that Section to review the Conditions of Imprisonment of State and Local Prisoners, H.R. 4427 (97th Congress), 1981-1981, 9 September 1981; A Bill to Amend Section 1979 of the Revised Statutes of the United States to Limit the Use of Civil Actions under that Section to review the Conditions of Imprisonment of State and Local Prisoners, H.R. 4412 (98th Congress), 1983-1984, 16 November 1983; A Bill to Amend Section 1979 of the Revised Statutes of the United States to Limit the Use of Civil Actions under that Section to review the Conditions of Imprisonment of State and Local Prisoners, H.R. 2612 (99th Congress), 1985-1986, 23 May 1985.
access to the courts but to limit the range of remedies available to federal judges. Amid sharp resistance to “force busing,” Republican legislators introduced bills banning the federal courts from imposing busing as a remedy for school segregation.  

The 1981 court stripping bills received widespread criticism from both legal academics and the public. None of the proposed bills became law. Yet they found some support within the Reagan administration, most notably with John G. Roberts who served as a special assistant to Attorney General William French Smith. While the Justice Department debated the legality of the court-stripping bills, Ted Olson, the Director of the Office of Legal Policy, wrote a memorandum to the attorney general arguing that the proposals to strip the Supreme Court of its jurisdiction were unconstitutional and that the proposals to strip the lower courts of their jurisdiction were legally questionable at best. Roberts, for his part, rushed to the defense of the court-stripping bills. In a twenty-seven page response to Olson, he argued the bills were in line with Article III, Section II of the U.S. Constitution, which granted the Supreme Court appellate jurisdiction “with such exceptions, and under such regulations as the Congress shall make.” Yet Roberts ultimately cautioned the administration against supporting jurisdiction-stripping legislation “at least until after the 1984 election” for “political” reasons. Roberts worried

---


the Reagan administration’s support for legislation that so clearly blocked individuals’
access to the federal courts would encourage Democrats to mobilize.77

Roberts was especially interested in limiting all Americans’—not only
prisoners’—ability to use Section 1983 to challenge constitutional rights violations by
government actors. In the late 1970s and early 1980s, a series of Supreme Court cases
made it possible for a broader swath of Americans to use Section 1983. In Monell v.
Department of Social Services (1978), the Supreme Court enabled individuals to sue
cities as well as state officials for violating the Constitution. Two years later, in 1980,
Maine v. Thiboutit allowed individuals to bring Section 1983 suits to challenge not only
the violation of constitutional rights but also the violation of federal laws. As a result, the
number of non-prison related Section 1983 suits grew.78 Robert saw this as a problem.
After receiving a letter in 1983 from Alabama Attorney General Charles Graddick that
complained of the growing amount of civil litigation in the courts, Roberts, then associate
counsel to the president, noted that the Justice Department had been looking into “several
avenues to reform Section 1983” since it “really [had] become the most serious federal
court problem.” As in 1981, however, Roberts suggested it would be “impolitic” to touch
the statute until after the 1984 elections.”79

77 John Roberts to Olson, “Proposals to Divest the Supreme Court of Appellate Jurisdiction: An Analysis in
Light of Recent Developments, October 30, 1981, Folder Judges 1 of 9, Roberts Papers.

78 Monell v. Department of Social Services of the City of New York, 436 U.S. 658 (1978); Maine v.
Thiboutit, 448 U.S. 1 (1980); Linda Greenhouse, “1871 Rights Law Now Used for Many Cases,” The New

79 John Roberts to Fred Fielding, “Letter to the President from Alabama Attorney General Charles
Graddick,” 28 April 1983, Folder Judges 2 of 9, Box 30, Roberts Papers.
After Reagan’s sweeping electoral victory in 1984, his administration got to work pursuing Robert’s plans as part of its broader agenda to reshape the balance of power between the federal government and the states. In early 1985, members of Reagan’s Domestic Policy Council formed an interagency “Working Group on Federalism” with the goal of proposing new legislative and executive actions to reverse the “evisceration of federalism as a constitutional and political principle.” A year later, the working group released its first report lamenting how the “Founding Fathers’ vision of limited national government” had given way to “an expansive, intrusive, and virtually omnipotent” centralized state. To reverse the flow of power to the federal government, the working group urged legislators to grant states and localities almost complete control over welfare programs, a shift Reagan had advocated for since his first term. The Supreme Court’s recent expansion of Section 1983, however, complicated the plan.

While federal officials were immune from much litigation, Americans could sue the state and local government officials who worked in welfare agencies. To resolve the problem, the working group proposed Congress pass legislation restricting Section 1983 by limiting its use to cases involving equal protection claims, by demanding plaintiffs first exhaust state judicial and administrative remedies, and by making local governments immune to the suits. Additionally, the group proposed placing a cap on the fees attorneys

could recuperate if they won their cases, a shift that would make them less eager to take impoverished clients’ cases.\footnote{Gene Hickok for Charles Cooper to Working Group on Federalism, “Minutes of July 17, 1986,” 28 July 1986, Folder Working Group in Federalism 8, Box 42, Bledsoe Papers; Thomas J. Madden and Nicholas W. Allard, “Advice on Official Liability and Immunity, Prepared for The Administrative Conference of the United States,” 15 October, 1982, Folder OA 07320, Box 6, Richard Williamson Papers, Reagan Library; Gene Hickok to Working Group on Federalism, Minutes of July 17, 1986, Folder Working Group on Federalism 8, Box 42, Bledsoe Papers.}

Under new leadership, the Office of Legal Policy within the Department of Justice was also interested in limiting Americans’ Section 1983 claims.\footnote{The Office of Legal Policy was an outgrowth of the Office for Improvements in the Administration of Justice, which was established under the Carter administration. It was primarily responsible for helping Reagan select nominees to the federal courts and developing legislation designed to “streamline” the adjudication process.} After the election, Reagan replaced Ted Olson with Steven Markman, an active member of the conservative Federalist Society. In addition to helping Reagan select judicial nominees, the Office of Legal Policy under Markman developed legislation designed to curtail “the large number of spurious claims brought under Section 1983.” The office was particularly—though not exclusively—concerned with prisoners’ use of the statute. While the Department of Justice during the Carter administration had advocated for legislation requiring inmates to exhaust administrative remedies before filing federal lawsuits, the Office of Legal Policy under Reagan went further, suggesting that Section 1983 be “eliminated as a basis for prisoner petitions.” Echoing Roberts, the office also supporting legislation limiting the use of Section 1983 for claims unrelated to civil rights
or equal protection, the creation of immunity for municipalities, and the placement of a cap on attorney’s fees.\textsuperscript{83}

In January 1987, the Republican Senator Orrin Hatch of Utah, a longtime ally of Helms, introduced a bill seeking to restrict Section 1983. It included many of the adjustments to the statute first suggested by Roberts and Markman, including a provision limiting its use to cases involving equal protection claims, the addition of new exhaustion requirements, and the implementation of new restrictions on attorneys’ fees. Similar to so many pieces of jurisdiction-stripping legislation before it, the bill died in the Senate Committee on the Judiciary. During the 1986 midterm election, the Democrats had regained control of the Senate, closing the door to legislation that would have deprived a broad swath of Americans access to the federal courts.\textsuperscript{84}

After the death of Hatch’s bill, Republicans tabled their jurisdiction-stripping plans. Yet calls for limiting Americans’ access to the courts continued to percolate within the Republican Party. In the late 1980s, “tort reform” advocates illuminated a new path forward for legislators seeking to restrict the federal courts’ jurisdiction. Backed by insurance companies and other big business interests, groups such as the American Tort Reform Association launched a strategic media campaign that depicted Americans’ use

\footnotesize{\textsuperscript{83} Stephen J. Markman, Assistant Attorney General, Office of Legal Policy, Statement before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Committee on the Judiciary, United States House of Representatives, 25 February 1987, Folder 456425-472999, Box 10, FG 17, FG, WHORM Files, Reagan Library.}

\footnotesize{\textsuperscript{84} A Bill to Amend Section 1979 of the Revised Statutes (42 USC 1983), relating to civil actions for the deprivation of rights, to limit the applicability of that statute to laws relating to equal rights and to provide a special defense to the liability of political subdivisions of States, 100\textsuperscript{th} Congress: 1987-1988, Jan. 20, 1987.}
of private lawsuits to hold corporations accountable for various wrongs as “frivolous” and costly. As they watched tort reform gather strength, especially at the state level, conservatives worked to tie their longstanding efforts to rollback Americans’ civil rights to the broader antilitigation agenda. They had particular success in portraying inmates’ litigation as a drain on public resources. Not only were few politicians willing to come to prisoners’ defense, but also conservatives could point to the federal judiciary—rather than simply partisan interests—to support their claim that most prisoners’ lawsuits were “frivolous.”

**The Prison Litigation Reform Act**

In 1992, the U.S. Attorney General William P. Barr published a report entitled *The Case for More Incarceration.* In it, Barr argued that there was “no better way to reduce crime” than to “identify, target, and incapacitate those hardened criminals who commit staggering numbers of violent crimes whenever they are on the streets.” But when it came to paying for prisons, states were on their own. “The responsibility for funding the construction [of prisons],” he wrote, “remains with the states.” After perusing the report, North Carolina Governor Jim Martin responded with a single word before

---

forwarding it to the state’s attorney general: “ridiculous,” he wrote. By 1992, the state’s inmate population had risen to 30,800 people, nearly double the number incarcerated in 1986. The General Assembly could not build prisons fast enough to keep pace with the growth. Nor did legislators want to do so. The early 1990s witnessed a recession that contributed to calls for reductions in government spending, especially at the state level. Capitalizing on the crisis, “New Democrats,” led by newly elected President Bill Clinton, set to work developing a crime bill that granted states federal funding for prison construction. In the process, Republicans seized on the moment, drawing on and distorting judges’ language about inmates’ “frivolous” lawsuits, to block prisoners’ access to the courts.

Since Barry Goldwater’s 1964 presidential campaign, the Republican Party had claimed the mantle of tough-on-crime politics. But after the George H. W. Bush had succeeded in painting the Democrat Michael Dukakis as soft on crime during the 1988 presidential campaign, Democrats, in hopes of winning over the “Reagan Democrats” who defected from their party in the 1980s, fully embraced calls for harsher sentences, more police, and the construction of more prisons. Democratic presidential nominee Bill Clinton stood as the standard bearer of the “New Democrats,” even leaving the national

---


87 To be sure, the state’s crime rate rose after 1990, reaching the national average for the first time in 1994. But state judges in North Carolina continued to sentence people to prison more often and for longer periods of time than did those in other states. Freeman, *The North Carolina Sentencing and Policy Advisory Commission*, 21.
campaign trail in 1992 to preside over an execution in his home state of Arkansas. The values Clinton espoused on the campaign trail trickled down to state politics. In North Carolina, the Democrat Jim Hunt won the governor’s seat after running on a campaign platform that promised in part to resolve the state’s criminal justice crisis once and for all by addressing the state’s sentencing laws and building new prisons.88

After Hunt took office in 1993, the Democratic General Assembly took up the task of reforming the state’s sentencing laws. At first, Hunt and legislators proposed stiff mandatory sentences for many offenders. But after budget estimates revealed the new guidelines could cost the state upwards of $300 million in additional prison construction funding, the General Assembly moderated the sentences so Democrats could keep their other campaign promises, including raising teachers’ salaries. Ultimately, the new sentencing laws, on the cutting edge of the larger movement for “truth in sentencing,” did away with parole and created a sentencing grid from which it was difficult for state judges to diverge. Under the new grid, violent criminals and “habitual offenders” served longer sentences behind bars—thus eliminating the critique of North Carolina’s “revolving door justice system”—while non-violent offenders and misdemeanants were largely sentenced to community-based alternatives to prison such as probation or boot camps. Passed nearly unanimously in 1993, the sentencing reform package also included a provision requiring the state’s budget office to evaluate the effect of each proposed change to the grid on the prison population, an amendment that prevented the General

88 Baer, Reinventing Democrats, 121-9; 194-209.

Republican’s unwillingness to finance prison construction through federal grants forced states like North Carolina to reckon with the high cost of mass incarceration. Between a rock and hard place, legislators chose to rethink their “lock ‘em up” strategy to meet the state’s other budgetary needs. Yet in 1994, President Bill Clinton’s Violent
Crime Control and Law Enforcement Act reduced the financial incentive for states to move away from their overreliance on incarceration. Seeking to transform the Democrats into a party of law-and-order politics, Clinton’s crime bill, passed while Democrats controlled both houses of Congress, included nearly $30 billion in funding for crime prevention, including over $8 billion in long sought after federal grants for state prison construction. Yet to qualify for the funding, states had to adopt harsh new mandatory minimum sentences for drug offenses and for an array of violent crimes.  

Recognizing Democrat’s desire to appear tough-on-crime, U.S. Senator Jesse Helms took the opportunity to introduce what would become the first of many successful bills stripping the federal courts of their ability to remedy constitutional rights violations behind bars. While legislators debated the 1994 crime bill, Helms introduced a rider modeled after legislation to curtail busing two decades earlier. Helms’s rider forbade the courts from imposing population caps on prison systems unless “crowding inflicted cruel and unusual punishment on particular identified prisoners.” It also enabled states to reopen settlements that limited prison populations every two years.  

In proposing the rider, Helms clearly had Small v. Martin in mind.

As the crime bill made its way through Congress, North Carolina’s Attorney General’s Office was in the process of petitioning the E.D.N.C. for a temporary exemption from the requirement that the state provide each inmate with fifty square feet

---

92 Hinton, From the War on Poverty to the War on Crime, 317-323.

of space. Reopening the case would make it easier for state attorneys to renegotiate the terms of the settlement. Then, after the settlement was renegotiated, the restriction on the courts’ ability to impose population caps would prevent additional litigation from gaining traction. In cases related to prison overcrowding, lawyers in the 1980s most often argued that cramped conditions impacted the inmate population as a whole. That way, they encouraged judges to issue sweeping remedies ordering states to reduce the number of men and women behind bars. By compelling lawyers to articulate the effect of overcrowding on specific individuals, Helms’s rider made class action litigation difficult to craft.

Clinton’s crime bill failed to convince voters to keep Democrats in control of the House and Senate. In 1994, Republicans gained control of both houses of Congress for the first time since the 1950s. Their success rested in no small part on the party’s “Contract with America,” a campaign document outlining the policy changes Republicans would institute if granted a majority in Congress. Crime control and tort reform were near the top of the list. The Republicans’ “Taking Back Our Streets Act” combined the two issues. At the behest of the National Association of Attorneys General (NAAG) and the National District Attorneys Association (NDAA), the act included a series of provisions building on Helms’s effort to restrict inmate litigation. By 1996, the

---


provisions had transformed into the Prison Litigation Reform Act (PLRA), which effectively closed the courtroom doors to prisoners’ complaints.

To galvanize support for the PLRA, NAAG and the NDAA launched a media campaign that distorted federal judges’ longstanding claim that most inmates’ lawsuits were “frivolous.” When judges described lawsuits as frivolous, they usually meant the claims were not legally actionable under Section 1983. NAAG and NDAA stripped the term of its legal meaning, using it instead to depict all prisoners’ lawsuits as, in the words of legal scholar Margo Schlanger, “trivial, laughable, and obviously underserving of serious concern.”96 In 1995, taking a page out of the tort reform handbook, NAAG circulated a “top ten” list of the most absurd lawsuits filed by prisoners. Among those selected were stories of an inmate filing Section 1983 claims for the right to chunky rather than smooth peanut butter, a prisoner who allegedly sued because his towels were white and not beige, and an inmate who complained that his facility closed the cafeteria’s salad bar on Sunday. Although Judge Jon Newman of the Second Circuit Court of Appeals soon exposed these accounts as “misleading” at best, conservative legislators had already read parts of NAAG’s top ten list into the Congressional Record, and representatives of NAAG had included them in a letter to the editor published in the New York Times.97

96 Schlanger, “Inmate Litigation,” 1573.

In late 1995, Republicans cut the restraints on inmate litigation from the Taking Back Our Streets Act for fear they would impede the crime bill’s progress. Instead, they introduced the jurisdiction-stripping laws in a series of stand-alone bills with titles such as the Stopping Abusive Prisoner Lawsuits Act and the Control of Abusive Prisoner Litigation Practices Act. During congressional debate on these bills, Republicans not only labeled prison litigation as laughable but also—echoing judges’ language—as a serious impediment to the efficiency of the courts. Drawing on distorted statistics developed by NAAG, Republicans portrayed prison litigation as wreaking havoc on the courts. In press releases, NAAG highlighted that the total number of lawsuits filed by inmates under Section 1983 had increased by twenty-two percent since 1980. But the organization failed to mention that the prison population had increased by sixty-two percent during the same time period. In fact, between 1980 and 1995, the number of Section 1983 suits filed per thousand inmates had declined by nearly twenty percent.98 Citing the misconstrued statistics, Senator Orin Hatch proclaimed during a senate hearing that “the vast majority of these suits are completely without merit…The crushing burden of these frivolous suits makes it difficult for the courts to consider meritorious claims.” He urged Congress to “restore sanity” to the judicial system by “imposing legitimate limits on the ability to tie the courts and prisons in knots through frivolous lawsuits.” Procedures, he continued,

---

“must be modified to quickly identify the viable prisoners claims and weed out meritless chaff.”

Senator Robert Dole introduced a piece of jurisdiction stripping legislation he was sponsoring by quoting the words of then Chief Justice Rehnquist, claiming that prisoners “litigate at the drop of a hat,” and that the law would end “inmate litigation fun-and-games.” The examples he gave of inmate litigation involved “insufficient locker space, a defective haircut, the failure of prison officials to invite a prisoners to a pizza party…and yes, being served chunky peanut butter instead of the creamy variety.” Dole continued, “The bottom line is that prisons should be prisons, not law firms.” Senator Kyl built on Dole’s comments, adding that “most inmate lawsuits are meritless” and that to prisoners “filing frivolous civil rights lawsuits ha[d] become a recreational activity.” In the House, Republican House Member Bill McCollum of Florida, a state under intense judicial pressure to relieve prison overcrowding, echoed other conservatives’ remarks: “Too many frivolous lawsuits are clogging the courts, seriously undermining the administration of justice,” he asserted.

While developing the contents of the jurisdiction-stripping bills, NAAG representatives extended many of the procedural reforms first advocated for by federal judges and instituted with the help of state attorneys general. The bills required inmates,

---


unlike other indigent litigants proceeding *in forma pauperis*, to pay the full amount of their court fees by garnishing their trust fund accounts. “Frequent filers”—inmates who had three or more cases dismissed as “frivolous or malicious”—lost the ability to proceed *in forma pauperis* altogether.  

The bills also forced inmates to exhaust internal grievance procedures before filing their lawsuits, a shift long advocated for by federal judges. Yet the bills eliminated the provision embedded in CRIPA that required state grievance procedures to be “plain, speedy, and effective.” The new bills simply required inmates to exhaust “such remedies that are available,” signaling to states that they could make grievance procedures as complicated as they liked in order to block prisoners’ suits from reaching the federal courts.  

The proposed legislation also allowed district courts to dismiss inmates’ claims, often without notice, at an earlier stage of the litigation process. Unless the court determined the an inmate lawsuit had “a reasonable opportunity to prevail on the merits,” state attorneys did not even need to file a response.

The bills also included a number of restrictions of NAAG’s own making. They prevented inmates from receiving court-awarded damages for “mental or emotional injury suffered while in custody without a prior showing of physical injury.” In effect, this provision made it impossible for inmates to file claims based on threats or poor conditions alone. If an inmate did manage to win his or her suit, the bills required any

---

101 All of the proposals discussed below were written into the PLRA see 28 U.S.C. § 1915(g) (2000). There is a special exception for situations in which a plaintiff faces "imminent danger of serious physical injury."  


financial award to be “paid directly to satisfy any outstanding restitution orders pending against the [inmate].” The proposed legislation also included a rule limiting attorney’s fees, which reduced the financial incentive for lawyers to help inmates challenge unconstitutional conditions and practices behind bars.\textsuperscript{104}

Republicans’ bills went still further. They also built on Helms’s 1994 rider restricting judges’ ability to remedy overcrowding behind bars. New proposals demanded judges craft remedies as narrowly as possible, making it even more difficult for lawyers to bring the sweeping class action lawsuits that transformed corrections policy during the 1970s and 1980s. Judges could only order remedies that extended “no further than necessary” to remove the conditions causing the deprivation of federal rights. They also had to weigh remedies’ “adverse impact on public safety” against their ability to improve life behind bars. Most importantly, the courts could not “grant or approve any relief whose purpose or effect [was] to reduce or limit the prison population, unless the plaintiff prove[d] that crowding [was] the primary cause of the deprivation of federal rights and no other relief [would] remedy that deprivation.”\textsuperscript{105}

The American Bar Association (ABA), drawing on an impact statement issued by the Administrative Office of the U.S. Courts, opposed the jurisdiction-stripping bills. But federal judges’ longstanding support for procedural mechanisms to limit prison litigation weakened the ABA’s arguments. The ABA denounced the legislation for impeding “the


ability of adult and juvenile inmates to obtain redress for the violation of their constitutional and other legal rights.” Citing *Bounds v. Smith*, the organization claimed the legislation denied inmates “meaningful access to the courts” and provided a “chilling effect” on lawyers’ willingness to take prisoners’ cases. The ABA also argued that—far from reducing the caseload for judges—the legislation would place an “undue burden” on the federal courts by forcing judges to reopen cases and to hold “extensive and time-consuming hearings” to determine whether courts had gone “further than necessary to remove the conditions” depriving inmates of their rights. Citing the Judicial Conference’s report, the ABA reasoned that if state attorneys reopened only fifty percent of the nearly 4000 prison condition settlements, the cost to the American public would be more than $95 million. By focusing on costs and judicial efficiency, the ABA played into conservative legislators’ hands. In 1996, Helms attached a copy of the Federal Judicial Center’s 1980 report on prison litigation to a copy of the ABA’s statement and mailed it to Orrin Hatch. In bright yellow marker, Helms had highlighted the center’s assertion that most prisoners’ complaints were “frivolous” as well as the center’s discussion of the cost of inmate litigation to the states.

---


After the bills proved too controversial and politically dangerous to pass independently, Republicans combined them and attached them as a rider to the 1996 budget appropriations bill. Garnering the most enthusiastic support from representatives of states facing federal intervention into their prison systems, the PLRA passed with little debate. In April, President Bill Clinton signed the Omnibus Consolidated Rescissions and Appropriations Act with the PLRA attached. After the Republican Revolution of 1994, Clinton had no intension of risking the Democrats’ new tough-on-crime image by coming to the defense of inmates. Without mention of the PLRA, Clinton called the act “a bill we can all be proud of” and one that “represents true compromise and bipartisan cooperation.”

***

Judge Franklin Dupree died while Congress debated the bills that eventually became the PLRA. While he never had a chance to comment on the legislation, he likely would have been disappointed by its passage. Dupree spent his twenty-five years on the federal bench developing new ways to dissuade inmates from filing lawsuits. He, like many judges, believed the federal courts were ill equipped to manage state penal institutions. Yet when faced with what he viewed as constitutional rights violations behind bars, Dupree never hesitated to act. The same judge who championed filing fees


and the institution of complicated administrative remedies for inmates ruled in their favor in *North Carolina Prisoners Labor Union v. Jones* and *Smith v. Bounds*, two cases on the cutting edge of prisoners’ rights law. With the PLRA in place, judges like Dupree could no longer reach many constitutional rights violations inside the nation’s prisons. Legislators had drawn on their language concerning inmates’ “frivolous” lawsuits to block inmates’ access to the courts.

From the time that inmates first began drawing on Section 1983 to file federal lawsuits in the mid-1960s, judges from across the political spectrum had viewed their complaints with skepticism. Convicted of crimes and sentenced to prison, inmates had proven themselves an untrustworthy and mischievous lot, at least according to America’s criminal justice system. Fearing that many inmates filed lawsuits for “malicious” reasons and recognizing that many of their claims fell short of constitutional rights violations, district court judges such Franklin Dupree drew on their rulemaking power to develop procedures that treated prisoners’ cases differently than the others that reached their desk. By depicting inmates’ lawsuits as uniquely problematic, federal judges eased the passage of the PLRA, which codified and extended what had already become a dual justice system: one for the imprisoned, and one for individuals in the free world.

Imprisoned men and women in North Carolina soon felt the PLRA’s effects. In 1996, after the law’s passage, the General Assembly, at the urging of Democratic attorney general and later Governor Mike Easley, repealed the state’s prison cap, recognizing that future litigation concerning overcrowded conditions would be nearly impossible to win. Drawing on the PLRA provision allowing states to reopen court
settlements, the State Attorney General’s Office moved in December 1996 to terminate the court’s jurisdiction in Small v. Martin. Hands tied by the PLRA, Judge Britt of the E.D.N.C. granted the state’s request two months later.110

In 1998, the State Attorney General’s Office also moved to end the E.D.N.C.’s nearly twenty-six year supervisory jurisdiction over the state’s effort to provide inmates with “meaningful access” to the courts, an outgrowth of the Bounds litigation. The North Carolina Prisoners Legal Services (NCPLS) protested the attorney general’s effort, arguing that the DoC might try to starve its attorneys by refusing to agree to adequate hourly compensation under the contract or that the state would attempt some constitutionally inadequate alternative to legal services. NCPLS had reason to worry. In addition to including the PLRA, Congress included a provision in the Omnibus Consolidated Recessions and Appropriations Act that prevented grantees of federal legal services funding from working with imprisoned clients. By 1996, nearly all of NCPLS’s funding came directly from the DoC. Despite NCPLS’s concerns, Britt, once more bound by the PLRA, terminated the injunction in 1999.111 Sixteen years later, in 2013, the General Assembly cut NCPLS’s budget by more than thirty percent, forcing the agency’s


When Wayne Brooks began to organize the Prisoners Labor Union in 1973, he viewed litigation as one of many tactics in inmates’ quest to transform the power dynamics behind bars. For him, litigation was powerful because it mobilized the federal government on prisoners’ behalf, sidestepping the state leaders who had little interest in reforming their state institutions. But it was also dangerous because it took the fate of prisoners’ struggle out of their hands. “WE want change and WE want to be responsible for it,” Brooks told civil liberties attorney Norman Smith in 1974.\footnote{Wayne Brooks and the NCPLU to Norman Smith, 2 February 1974, Folder 8, Box 23, NCCLU Papers.} Ultimately, Brooks’ fears came true. Drawing on the language of federal judges, Congress closed the doors to inmates’ complaints, making it difficult for prisoners to claim their constitutional rights. Already prevented from organizing, inmates were left struggling to access the courts, too.
Conclusion

**The Underside of Reform**

Anthony Michael Kerr died of thirst in the back of a prison van on March 12, 2014. Prior to his death, he had spent thirty-five days in solitary confinement where he had twice flooded his cell. A written policy at the North Carolina Department of Public Safety (NCDPS) allowed guards to respond to inmates’ “misuse of plumbing facilities” by turning off the water to their sinks and toilets. While confined to the Alexander Correctional Institution, Kerr had been disciplined nine times for “lock tampering,” a citation frequently given to prisoners who repeatedly banged on the steel doors of their cells.¹ Throughout his time behind bars, prison guards respected Kerr’s due process rights. When he arrived in prison, they provided him a handbook with all the rules. The guards notified Kerr of their disciplinary actions against him and allowed him to appeal to the Inmate Grievance Commission. But Kerr suffered from schizophrenia, making it difficult for him to separate reality from fantasy, let alone file a complaint. Locked alone inside his cell, Kerr’s rights could not save him.

Constitutional rights litigation helped shape the prison system in which Kerr died. Faced with horrific conditions behind bars, inmates and civil liberties lawyers drew on the U.S. Constitution beginning in the late 1960s to file thousands of lawsuits. Many of

their cases succeeded in extending inmates’ individual rights, especially in the field of due process and equal protection. Yet those rights did not alter the power relations inside prisons sufficiently enough to guard against Kerr’s death. His life was entirely in the hands of his keepers. Nor did the expansion of inmates’ individual rights eradicate America’s overreliance on imprisonment as a form of punishment. Today, North Carolina incarcerates nearly 37,000 people. Worse yet, state officials can—and do—often point to their protection of inmates’ rights to avoid addressing structural problems within the criminal justice system. In the wake of Kerr’s death, NCDPS staff underscored their efforts to respect the procedural rights of those in solitary confinement even as they admitted their overuse of the practice. Today, nearly fourteen percent of North Carolina’s inmates reside in solitary on any given day. Nearly twenty percent of them suffer from mental illness.²

Despite such grime statistics, the prisoners’ rights movement was far from a failure. In the face of harsh opposition from state and federal officials, imprisoned men and women achieved stunning victories. At the turn of the twentieth century, local officials governed prisons according to their own discretion, a system that led to widespread abuse. Inmates lived in squalid conditions, went without medical care, and endured gruesome punishments. As prisoners often told the North Carolina State Board

---

of Charities, they were treated “worse than dogs.” Inmates’ constitutional rights litigation eliminated the most inhumane conditions behind bars. By the early 1980s, federal judges had instituted new standards that—at least in theory—guaranteed inmates a certain amount of living space, protected their procedural rights, and ensured their access to basic necessities such as food, clothing, shelter, and medical care. Thanks to inmates’ perseverance, prisoners no longer work for twelve hours a day on the state’s highways, sleeping at night in crowded dormitories unmonitored by corrections staff. Nor do most instances of extreme abuse go unnoticed, at least not for long. While Kerr’s constitutional rights were not enough to prevent his death, they were enough to force state officials to recognize their wrongdoing. In 2015, Kerr’s family filed a lawsuit on his behalf. The NCDPS settled the case for $2.5 million.\(^3\)

But when the prisoners’ rights movement began in the late 1960s, imprisoned activists and their lawyers hoped for more than an end to blatant torture and reparations for cruelty. Inspired by Black Power and labor organizing, the North Carolina Prisoners Labor Union envisioned a system of justice in which inmates participated in prison governance. By leveraging their labor, which helped sustain the prison system, inmates sought to work alongside corrections officials to managed everyday grievances, to enforce their rights, and to advocate for the elimination of large penal institutions and racial disparities within the criminal justice system. Union members wanted to be the eyes and ears inside prisons that guarded against abuse like Kerr experienced in the

---

Alexander facility. Many lawyers affiliated with the American Civil Liberties Union (ACLU)’s National Prison Project and the North Carolina chapter of the ACLU supported the union’s goals. Heartened by federal court decisions broadening Americans’ rights and the public’s call for prison reform, the lawyers sought to ensure the union’s ability to organize by filing lawsuits seeking to expand inmates’ First Amendment rights to free speech and association. They also hoped their lawsuits would convince state officials to rethink their sentencing practices and to adopt less costly and more humane alternatives to incarceration such as probation and parole.

Yet even as the lawyers’ advocated for the union in the courtroom and pressed for structural reforms to the state’s criminal justice system, they recognized prisoners’ immediate needs. Moved by the hundreds of letters that reached their desks, ACLU lawyers pursued the creation of the Inmate Grievance Commission and other procedural reforms that they believed might provide imprisoned men and women with some relief from troubling conditions and practices, including those that fell short of constitutional rights violations. While the lawyers hoped the new procedures would be the first step along the path to broader reforms, corrections officials successfully used them, once instituted, to argue away further changes. Prison administrators were professionals, they suggested, and were capable of governing prisons according to law-based rules and regulations. What more did prisoners need?

“Silencing the Cell Block,” then, is ultimately a story about institutional reform under constraint. The lawyers affiliated with the ACLU used the tools available to them to improve the daily lives of imprisoned men and women. Yet as the lawyers recognized,
constitutional rights litigation could only do so much to aid the incarcerated, especially as “tough-on-crime” politics garnered strength during the last third of the twentieth century. The reconfiguration of America’s criminal justice system required political will and collective action, but state and federal officials opposed to the prisoners’ movement had largely succeeded in suppressing both by the late 1970s. Left to rely almost exclusively on litigation, inmates and their lawyers drew on the Constitution to compel prison administrators and state officials to reshape prison policies and practices. Together, they transformed the prison system into a modern bureaucracy that complied with the rule of law but, in so doing, they made it more difficult to dismantle.

***

Once understood as forgoing their rights when they crossed through the prison gates, prisoners today in some cases have more rights than Americans “in the free world.” Inmates’ basic liberty is curtailed, but their social welfare rights are expansive. Prisoners have a right to food, clothes, shelter, and healthcare while many of the nation’s poorest citizens struggle to access such necessities. That the prison system guarantees goods and services often denied to people on the outside is a testament to the chipping away of America’s social safety net since the 1960s.\(^4\) It is also a striking indictment of the inability of constitutional rights litigation to fully transform institutions. The notion of

rights that shaped the prison system was highly individualized, creating certain standards and guarantees for men and women behind bars, while at the same time leaving intact the systemic inequities that gave rise to mass incarceration and continue to perpetuate abuse behind bars.

Although inmates today have clearly defined social rights, those rights remain tenuous. Imprisoned men and women’s marginal status continues to shape their experiences before the law. Barred from voting in most states and unable to organize as successfully as they had in the past, prisoners struggle to protect the rights granted to them. Since the early 1990s, state and federal officials have worked to erode many of the legal protections once offered the incarcerated. Most noticeably, the 1996 Prison Litigation Reform Act dramatically curtailed inmates’ access to the courts, a right the Supreme Court bolstered two decades earlier in Bounds v. Smith. But government officials have whittled away at prisoners’ rights in subtler ways, too. As the prison population continued to grow in North Carolina, for instance, state attorneys representing the Department of Corrections repeatedly returned to the federal court to request a reduction in the amount of space prison officials had to reserve for each inmate. The 1989 settlement in Small v. Martin guaranteed each of North Carolina’s inmates fifty square-feet of living space, already a ten-foot reduction from Judge Frank M. Johnson’s 1976 order in Pugh v. Locke. Today, prisons can operate legally at thirty percent above their

---

design capacity, allowing corrections officials to sharply reduce inmates’ living space as the population rises.⁶

To guard against such erosions on their rights as well as to push for broader reforms, imprisoned men and women in the 1970s worked to build alliances with individuals on the outside. Indeed, making their struggle visible to those beyond the prison was a key part of the North Carolina Prisoners Union’s strategy. Union members wrote hundreds of letters to grassroots activists and lawyers asking for help and support. Many answered their calls. Organizations such as Angela Davis’s National Alliance Against Racism and Political Repression (NAARPR) joined the union’s cause by connecting North Carolina’s efforts to quash labor and civil rights organizing to the state’s inhumane prison practices. Civil liberties lawyers worked alongside union members to fine-tune litigation designed to expand and protect inmates’ constitutional rights. And federal officials within the U.S. Department of Justice, though never as radical as the NAARPR or the National Prison Project, advocated for the elimination of large penal facilities and the expansion of less costly and more humane community-based alternatives to incarceration. Though never a political majority, these activists and officials helped shine a light on North Carolina’s prison system, long a “closed institution” governed outside the public eye. In so doing, they sent a clear message to

---

prison administrators and state officials that abuse and punitive practices would not go unnoticed.

Foes of the prisoners’ movement recognized the importance of inmates’ outside allies, too. As state and federal officials worked to quash prisoners’ organizing efforts, they also attacked the grassroots activists and lawyers who supported the inmates’ cause. During the 1970s, as the “War on Crime” raged, the police targeted activists such as Jim Grant and Ben Chavis who challenged race and class inequalities in North Carolina. After the Republican Ronald Reagan took office in 1981, federal politicians on the right also began to chip away at federally funded lawyers’ ability to defend the rights of imprisoned men and women. The Reagan administration hobbled the Department of Justice’s Institutions and Facilities Section, which had once leveraged the federal government’s power to persuade judges to issue ruling against states that violated inmates’ rights. Not until President Barack Obama took office in 2009 would the section begin to rebuild. Meanwhile, conservatives worked to place new restrictions on federally funded legal services programs such as North Carolina Prisoner Legal Services. In 1996, after the Republicans took control of both houses of Congress, legislators banned legal services programs that received federal grants from representing prisoners. 7 Left to look elsewhere for funding, the lawyers struggled to monitor conditions behind bars, giving prison administrators fewer incentives to protect inmates’ rights.

---

Federal officials’ attack on legal services programs came during a moment when inmates’ desperately needed the assistance of lawyers. By the early 1980s, North Carolina, like states across the nation, was opening new prison facilities designed to reduce prisoners’ contact with each other, making it all the more difficult for inmates to organize. In the late 1970s, prison administrators drew on civil liberties lawyers’ “right to protection” argument, first forwarded in Pugh v. Locke, to further isolate inmates, a shift that also allowed them to suppress prison activism. Highlighting their concern for inmate-on-inmate violence, corrections officials worked with architectural firms to design new facilities that included more single cells, more solitary confinement units, and recreation areas that accommodated fewer inmates. As legal scholar Keramet Reiter has shown, prison administrators continued to search for new and better ways to control the inmate population as the decade progressed. By the early 1990s, state and federal officials had opened new “supermax” facilities such as Pelican Bay in California and the federal Administrative Maximum (ADX) in Colorado. Inside such facilities, prison administrators confined inmates in solitary units for twenty-three hours a day, often for years at a time, as part of their ongoing quest to silence prisoners’ movement.8

***

The tide has begun to turn in recent years. Americans are becoming increasingly attuned to the problem of mass incarceration and its accompanying harsh penal practices. In 2010, legal scholar Michelle Alexander’s The New Jim Crow called the nation’s

---

attention to racial disparities within the criminal justice system.\textsuperscript{9} Television programs such as \textit{Orange is the New Black} and documentary films such as \textit{13th} have turned the spotlight on America’s longstanding mistreatment of imprisoned men and women. And the high-profile police killings of African-American men, women, and children such as Eric Garner, Michael Brown, Walter Scott, Freddie Gray, Philandro Castile, Sandra Bland, and Tamir Rice, among others, have made clear beyond a doubt that our criminal justice system is desperately in need of repair.

At the urging of grassroots activists such as those affiliated with the Black Lives Matter Movement, some politicians have taken new steps toward criminal justice reform. Under President Barack Obama, the U.S. Department of Justice created new guidelines ending the use of solitary confinement for juveniles held in federal prisons, encouraging many states to follow its lead. In 2010, Congress passed a new law reducing the disparities in sentencing for crack and cocaine possession, which had disproportionately impacted people of color. In Chicago and Cleveland, Black Lives Matter activists launched successful campaigns to unseat top prosecutors who failed to pursue charges against police who killed African Americans. And even in North Carolina, the General Assembly passed a sentencing reform package in 2011 that, while not reducing the state’s

prison population, stabilized it by expanding alternatives to incarceration and by increasing programming for those on parole.\textsuperscript{10}

Inmates have also taken extraordinary risks to challenge inhumane conditions inside prisons, even as new technologies of control have weakened their ability to organize. In July 2012, nearly 100 inmates held in solitary confinement in North Carolina’s Central Prison, Bertie Correctional Facility, and Scotland Correctional Institution launched a hunger strike to protest abuse by guards and long-term cell restriction.\textsuperscript{11} Four years later, on the anniversary of the 1971 strike at Attica Prison, inmates at Central Prison and dozens of correctional facilities across the nation refused to report to their prison jobs to demand an end to free prison labor. Prison administrators responded by transferring ringleaders to solitary confinement and by placing participating facilities on lockdown, barring inmates from leaving their cells.\textsuperscript{12} Since the late 1970s, the rapid expansion of the prison population has weakened inmates’ ability to leverage their labor for change behind bars. The number of inmates outpaced the number of prison jobs, leaving many inmates without work. As a result, the General Assembly had to

\begin{footnotesize}
\begin{itemize}
\end{itemize}
\end{footnotesize}
allocate a growing percentage of the corrections budget directly from the state General Fund. Yet the recent uptick in prison activism—and the corresponding media attention surrounding it—nonetheless suggests America might be entering a new phase of the prisoners’ rights movement.

Even the Supreme Court has shown signs that it might once more be willing to tackle inhumane conditions behind bars. In 2010, a special panel of three federal court judges in northern California issued an order requiring prison officials to reduce the state’s overcrowded prison population by almost one third. The following year, in Brown v. Plata, the Supreme Court upheld the ruling. The decision came as a shock to court observers given that the Prison Litigation Reform Act requires any relief granted by the court to be narrowly drawn, extend no further than necessary, and utilize the least intrusive means necessary. Forced to address the issue, California’s leaders, unlike those in North Carolina and other states that faced similar lawsuits in the 1980s and 1990s, declined to build new prisons. Instead, they developed a “realignment” plan that transferred responsibility for many non-violent offenders from the state back to California’s fifty-eight counties, which in turn received funding to implement the plan. Unfortunately, recent studies suggest that rather than reducing the number of incarcerated men and women, the realignment plan simply shifted the problem from the state to the localities. Today, many of California’s jails are experiencing severe overcrowding.13

---

While the Supreme Court’s decision in *Plata* is cause for celebration, California’s response suggests there is still much political work to do.

“Silencing the Cell Block” serves as a reminder as the nation engages in criminal justice reform that decarceration is the best solution to the nation’s prison problem. Constitutional rights litigation will not remove men and women from prison. Nor will the building of new facilities or the devolution of control over the prison population. That is not to say that small steps forward do not matter. As the lawyers affiliated with the ACLU of North Carolina well understood, imprisoned men and women’s immediate suffering sometimes requires swift reforms that bandage over structural problems. But deep and lasting criminal justice reform demands that government officials rethink the nature of policing, sentencing, and punishment. That work will take more than constitutional rights lawsuits. It will require collective action— behind bars, in the streets, at the state capitol, and in the halls of Congress.
Works Cited

_Manuscript Collections By Repositories_

Jimmy Carter Presidential Library and Archives, Atlanta, GA:
  Annie Gutierrez Papers
  Peter McKenna Papers
  White House Central Files
  Frank White Papers

Duke University, Rubenstein Library, Durham, NC:
  American Civil Liberties Union of North Carolina Papers
  Braxton Craven Papers

East Carolina State University Special Collections, Greenville, NC:
  John Larkins Papers
  Robert Morgan Papers

Gerald R. Ford Presidential Library and Archives, Ann Arbor, MI:
  J. Stanley Pottinger Papers
  Presidential Handwriting File

Lyndon Johnson Presidential Library and Archives, Austin, TX:
  Task Force on Corrections

Mudd Library, Princeton University, Princeton, NJ:
  American Civil Liberties Union Papers

National Archives and Records Administration, College Park, MD:
  Department of Justice Papers
  Law Enforcement Assistance Administration Papers

Richard Nixon Presidential Library and Museum, Yorba Linda, CA:
  Charles Clapp Papers
  Egil Krogh Papers

North Carolina Justice Policy Center Collection, unprocessed papers, Durham, NC

North Carolina State Library and Archives, Raleigh, NC:
  Department of Corrections Records
    Civil Action Case Files
    State Director’s Files
James Holshouser Papers
Jim Hunt Papers
Inmate Grievance Commission Papers
James Martin Papers
Robert Scott Papers
State Board of Social Services Records
State Highway Commission Records

Ronald Reagan Presidential Library and Archives, Simi Valley, CA:
Charles Bledsoe Papers
Fred Fielding Papers
Edward Meese Papers
John Roberts Papers
White House Office of Record Management Files
Richard Williamson Papers

Schomburg Center for Research in Black Culture, New York, NY:
National Alliance Against Racism and Political Repression Papers

Tamiment Library and Robert F. Wagner Labor Library, New York University, New York, NY:
Periodicals Collections

University of North Carolina, Chapel Hill, NC:
Franklin T. Dupree Papers
Rufus Edmisten Paper
Sam J. Ervin Papers
McNeil Smith Papers

University of North Carolina, Charlotte, NC:
T.J. Reddy Papers

University of Virginia Law School Special Collections, Charlottesville, VA:
Daniel Meador Papers

Linda Weisel Personal Collection, unprocessed papers, Durham, NC

Interviews


Court Cases

_In re Debs._ 158 U.S. 564 (1885).
_Johnson v. Dye._ 175 F.2d 250 (3rd Cir. 1949).
Slaughterhouse Cases. 83 U.S. 36 (1872).

Newspapers and Periodicals

Asheville Citizen
The Chapel Hill Weekly
Charlotte Observer
Chicago Tribune
Corrections Magazine
Durham Morning Herald
The Durham Sun
Greensboro City News
Greensboro Daily News
Greensboro News and Record
Look
The Nation
New York Times
Newsweek
Off Our Backs
The Outlaw: Journal of the Prisoners Union
Prison Legal News
The Thomasville Times
Raleigh News and Observer
The Wall Street Journal
The Washington Daily News
Washington Post
Winston-Salem Journal

Published Federal Documents

Bayh, Birch. U.S. Congress. Senate. Hearings before the Subcommittee on the Constitution of the Committee on the Judiciary. First Session on S. 1393: A bill to authorize actions by the Attorney General to Redress Deprivations of
Constitutional and Other Federally Protected Rights of Institutionalized Persons.
June 17, 1977.


**Published Primary Sources**


Commission on Sentencing, Criminal Punishment, and Rehabilitation. *Interim Report, 1 February 1975.*


Governor’s Committee on Law and Order. *Assessment of Crime and the Criminal Justice System in North Carolina.* Raleigh, 1969.


*Proceedings of the North Carolina Good Roads Convention.* Held at Raleigh, March 6 through 7. 1914.


**Secondary Sources**


---------.


--------. “We Are Not Slaves: Rethinking the Carceral State through the Lens of the Prisoners’ Rights Movement.” *Journal of American History* 102, no. 1 (June 2015): 73-86.


Feeley, Malcolm M. and Roger A. Hanson. “The Impact of Judicial Intervention on


Biography

Amanda Hughett hails from Mt. Juliet, Tennessee. She was born in 1985 and graduated from Mt. Juliet High School in 2004. She received a Bachelor of Arts degree in history and women’s studies from the University of Tennessee, Knoxville in 2008. After a two-year stint working in the non-profit world, Hughett entered graduate school at Duke University. There she received a Master of Arts in history in 2013 and finished her Ph.D. in 2017. During her final two years of graduate school, she served as a Law and Social Sciences Dissertation Fellow at the American Bar Foundation in Chicago, Illinois.