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Wilbert Rideau

Billy Sinclair

PRISONER LITIGATION: HOW IT BEGAN IN LOUISIANA

*Wilbert Rideau & Billy Sinclair**

A Power Legitimized

American prisons are filled with people who are poor and uneducated, with a substantial number being functionally illiterate. As a class, prison inmates have very little knowledge and understanding of the law. They perceive it, in a narrow sense, as the power of the system; a power that is enforced by the police, prosecutors, and judges. By perception they understand that the law is applied markedly different to those at the top of the social structure than to those at the bottom. By experience they understand that those at the bottom see the raw and ugly side of the law. For these reasons, the law must always be checked and its power balanced—and that is a major role of the lawyer. Famed attorney Clarence Darrow understood this role when he said: "I have lived my life, and I have fought many battles, not against the weak and the poor—anybody can do that—but against power, against injustice, against oppression, and I have asked no odds from them, and I never shall."[1]

Since the role of the lawyer is often perceived as being an adversarial check on the power of the system, some of the more intelligent inmates strive to become jailhouse lawyers. Since most prisoners come from the ranks of the poor and disadvantaged, the intelligent convict uses a mixture of gutter cunning and sophisticated Machiavellian manipulation to build a base of power. Thus, prison is a ruthless world governed by rumor, misunderstanding, misinformation, and paranoia—and the knowledge of the jailhouse lawyer translates into a power to not only influence attitudes and behavior, but to assist in solving problems.

Because prison officials considered that kind of power a threat to the discipline and security of the prison, they traditionally opposed the practice of jailhouse law—frequently establishing rules prohibiting it. That was the

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* Wilbert Rideau and Billy Sinclair are prisoners at the Louisiana State Penitentiary where they are serving life terms. They are editors of THE ANGOLITE, the prison's newsmagazine, which under their direction has reaped some of the nation's most prestigious journalism awards.

1. C. Darrow, Attorney for the Damned 497 (1957).

case in Tennessee in 1965 when William Joe Johnson, an inmate serving a term of imprisonment for life, was placed in solitary confinement for practicing jailhouse law in violation of a prison rule.[2] Johnson took his case to court, arguing that the rule effectively denied prisoners their right to access to the courts.[3] The case eventually reached the United States Supreme Court, and in 1969 the Court handed down a decision that would have a major impact on the nation's prison system. The Court in *Johnson v. Avery*[4] held that unless the state provides some alternative means of assisting inmates in the preparation of their post-conviction pleadings, prison officials could not enforce a rule prohibiting inmates from assisting each other in the preparation of such pleadings.

Speaking for the seven-member majority, Justice Abe Fortas pointed out that

> the initial burden of presenting a claim for post-conviction relief usually rests upon the indigent prisoner himself with such help as he can obtain within the prison walls or the prison system. In the case of all except those who are able to help themselves—usually a few old hands or exceptionally gifted prisoners—the prisoner is, in effect, denied access to the courts unless such help is available.[5]

Justice Fortas added that, without the assistance of jailhouse lawyers, many inmates would never have possibly valid constitutional claims heard by the courts.[6]

The *Johnson* decision was not embraced by prison officials. It legitimized a power they had worked diligently, even unscrupulously, to control. In dissent, Justice Byron White articulated the concern of many prison officials when he said that the "aim of the jailhouse lawyer is not the service of truth and justice, but rather self-aggrandizement, profit, and power."[7] During that era, Justice White's observations had substantial

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2. Guidance Manual for Prisoners, Sec. VI, Tennessee State Penitentiary, p. 7: No inmate will advise, assist or otherwise contract to aid another, either with or without a fee, to prepare Writs or other legal matters. It is not intended that an innocent man be punished. When a man believes he is unlawfully held or illegally convicted, he should prepare a brief or state his complaint in letter form and address it to his lawyer or a judge. A formal Writ is not necessary to receive a hearing. False charges or untrue complaints may be punished. Inmates are forbidden to set themselves up as practitioners for the purpose of promoting a business of writing Writs.

3. Johnson v. Avery, 252 F. Supp. 783 (M.D. Tenn. 1966) (State prison regulation forbidding prisoners from preparing habeas corpus petitions for other prisoners was invalid as interfering with federal statutory right of prisoners, incapable of acting for themselves, to have someone act on their behalf); Johnson v. Avery, 382 F.2d 353 (6th Cir. 1967) (State prison regulation prohibiting any inmate from advising or assisting other prisoners in preparation or filing of writs of habeas corpus or other legal papers was valid).

4. 393 U.S. 483, 89 S. Ct. 747 (1969).

5. Id. at 488, 89 S. Ct. at 750.

6. Id. at 487, 89 S. Ct. at 750.

7. Id. at 499, 89 S. Ct. at 756.

merit. There were only a few jailhouse lawyers in the nation's prison system, especially in Louisiana, and, for the most part, they did use their limited legal skills as mercenary weapons to secure homosexual favors and financial gain from gullible inmates and garner influence and status with inmate power-brokers. As a rule, the original jailhouse lawyers were master politicians who maneuvered themselves into positions of power by extending to the weak and strong alike the promise of beating the system. Their power rested in hope—men confined in the insignificance of prison will barter for any kind of hope, even if it is false. Fool's gold is better than no gold.

However, *Johnson v. Avery* ultimately proved to be a good decision for the nation's prison system. As jailhouse lawyers matured and developed an understanding of their role, they became an asset to prison administrators who increasingly had to face the problems of violence and disturbances during the 1970's. Prison officials came to realize that jailhouse law, more than any other force, encouraged the belief that problems and grievances could be expressed and even resolved in an orderly fashion within the framework of the system.

THE HANDS-OFF DOCTRINE

In 1948 the U.S. Supreme Court handed down *Price v. Johnson*[8] which, even though it was not a conditions-of-confinement case, proved to have a tremendous influence on challenges by inmates of the various conditions of their confinement. Price was a federal prisoner in Alcatraz who argued that a federal appeals court had the power to order his production before the court so that he could present oral arguments in his case. While agreeing that the appeals court indeed had the power to order the production of an inmate before its bench, the Supreme Court added: "Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system."[9]

That quote was used as a signal from the Supreme Court that federal courts should not interfere with the internal operations of a penal institution unless a clear abuse of a constitutionally protected right of an inmate had occurred. That attitude became known as the "hands-off" doctrine, and it was derived from a judicial belief that "correctional decisions were guided by rehabilitative goals, were therapeutic in nature and thus did not need, or were inappropriate subjects for, judicial review."[10]

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8. 334 U.S. 266, 68 S. Ct. 1049 (1948).

9. Id. at 285, 68 S. Ct. at 1060.

10. Recommended Procedures For Handling Prisoner Civil Rights Cases in the Federal Courts, the Federal Judicial Center, p. 30 (1980).

The first significant chink in the armor of the "hands-off" doctrine came in 1961 in *Monroe v. Pape*[11] in which the Supreme Court said that an individual can sue for damages and seek injunctive relief in federal court against state abuses of his rights. Two years later in *McNeese v. Board of Education*[12] the Supreme Court dealt a crippling blow to the "hands-off" doctrine when it firmly established that state remedies did not have to first be exhausted prior to seeking federal relief. The Supreme Court quoted Judge Murrah from *Stapleton v. Mitchell*: "'We yet like to believe that wherever the Federal courts sit, human rights under the Federal Constitution are always a proper subject for adjudication, and that we have not the right to decline the exercise of that jurisdiction simply because the rights asserted may be adjudicated in some other forum.'"[13]

But the federal courts in Louisiana did not hear the distant death knell for the "hands-off" doctrine. In 1964 Edgar Labat, a black inmate who had been on death row since 1957, filed one of the original prisoners' rights lawsuits in the State of Louisiana.[14] The lawsuit was filed after prison officials moved to restrict Labat's correspondence with a white woman from Stockholm, Sweden under the provisions of Louisiana Revised Statutes 15:568.[15] Labat charged that the restriction was racially motivated, but prison officials said that their actions were necessary to curb a large volume of pornographic mail being sent to death row inmates from women in foreign countries.

Federal District Court Judge E. Gordon West summarily dismissed Labat's complaint, saying that prison officials had a right to restrict an inmate's mail as long as the restriction was not racially discriminatory.[16] Significantly, Judge West resorted to the traditional "hands-off" language in dismissing the complaint: "In brief, the federal courts do not, apart from due process considerations, have the power to supervise or regulate the ordinary control, management and discipline of the inmates of prisons operated by the state . . . ."[17] Relying on the often-cited *Price v. Johnson*

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11. 365 U.S. 167, 81 S. Ct. 473 (1961).
12. 373 U.S. 668, 83 S. Ct. 1433 (1963).
13. Id. at 674 n.6, 83 S. Ct. at 1437 n.6.
14. Labat v. McKeithen, 243 F. Supp. 662 (E.D. La. 1965).
15. La. R.S. 15:568 (1981) provides:
> The director of the Department of Corrections, or a competent person selected by him, shall execute the offender in conformity with the death warrant issued in the case. Until the time of his execution, the Department of Corrections shall incarcerate the offender in a manner affording maximum protection to the general public, the employees of the department, and the security of the institution.

16. *Labat*, 243 F. Supp. at 666.
17. Judge West concluded that:
> [I]f the state has the right to deprive him [Labat] of his very life, through execution for the commission of a capital offense, then certainly it has a right, as part of the ultimate punishment, to deprive him of other privileges along the way to the final reckoning, just so long as such deprivations are imposed according to law, and on a non-discriminatory basis.

243 F. Supp. at 666.

quote, the Fifth Circuit Court of Appeals upheld Judge West's decision, pointing out that one of the rights lost by an inmate as a result of incarceration is the free use of the mails.[18]

It was five years before Judge West reported on another conditions-of-confinement suit filed by an inmate: the case of Albert Willis, an inmate in the East Baton Rouge Parish Jail, who filed a mandamus petition alleging a denial of adequate and proper medical treatment.[19] Treating the mandamus petition as a civil rights complaint under United States Code section 1983, Judge West deferred to the authority of prison officials to decide what kind of care and supervision an inmate should have. Citing one of the Fifth Circuit's lead "hands-off" decisions in *Granville v. Hunt*,[20] Judge West concluded that: "[t]he medical treatment of inmates is a matter for prison officials and this petition does not allege such inadequacy of medical treatment as to warrant the intervention of the federal court."[21]

The year after the *Willis* decision, Judge West dismissed a crudely drafted *pro se* petition filed by condemned inmate Billy Sinclair[22] challenging living conditions on Louisiana's death row.[23] Sinclair appealed to the Fifth Circuit Court of Appeals, and, for the first time, the appeals court departed from its traditional "hands-off" stance, remanding the case to Judge West for a hearing.[24] Citing the recent and well-publicized case of *Holt v. Sarver*,[25] the Fifth Circuit said: "Although federal courts are reluctant to interfere with the internal operation and administration of prisons, we believe that the allegations appellant has made go beyond matters exclusively of prison discipline and administration; and that the court below should adjudicate the merits of appellant's contentions of extreme maltreatment . . . ."[26]

The Fifth Circuit decided *Sinclair v. Henderson* in November, 1970, and four months later it was cited by Federal District Court Judge Ben C. Dawkins as authority for maintaining a civil rights suit filed by a Bossier Parish jail inmate.[27] It had become apparent that the "hands-off" doctrine was no longer the prevailing judicial attitude in Louisiana.[28] The doctrine breathed its last gasp in 1971 (ten years after *Monroe v. Pape*) when Judge West handed down the first reported prisoners' rights litigation victory in

18. Labat v. McKeithen, 361 F.2d 757, 758 (5th Cir. 1966).
19. Willis v. White, 310 F. Supp. 205 (E.D. La. 1970).
20. 411 F.2d 9 (5th Cir. 1969).
21. *Willis*, 310 F. Supp. at 207.
22. Co-author of this article.
23. Sinclair v. Henderson, 331 F. Supp. 1123 (E.D. La. 1971).
24. Sinclair v. Henderson, 435 F.2d 125, 126 (5th Cir. 1970).
25. 309 F. Supp. 362 (E.D. Ark. 1970).
26. *Sinclair*, 435 F.2d at 126.
27. Wood v. Maryland Cas. Co., 322 F. Supp. 436, 440 (W.D. La. 1971).
28. Anderson v. Nosser, 438 F.2d 183, 189 (5th Cir. 1971); Parker v. McKeithen, 330 F. Supp. 435 (E.D. La. 1971), vacated, 488 F.2d 553, 556 (5th Cir. 1974).

Louisiana in *Sinclair v. Henderson*.[29] Judge West extended minimum due process safeguards to inmates facing discipline at the Louisiana State Penitentiary[30] and held that extended periods in solitary confinement, without the benefit of exercise, violated the cruel and unusual punishment provisions of the Federal Constitution.[31] *Sinclair v. Henderson* ushered in the new "open-door" policy of the Federal judiciary, making prisoners' rights litigation a continuing reality in Louisiana.[32]

In a legal sense, *Sinclair v. Henderson* was significant only because it became a precedent for extending the right of exercise to prisoners held in a lockdown status for extended periods of time.[33] However, *Sinclair v. Henderson* had far-reaching ramifications that transcended its legal significance. *Sinclair* dramatically altered the official attitude at the Louisiana State Penitentiary, laying the foundation for Angola being transformed from a purely custodial institution into a treatment facility as well as destroying the traditional penal philosophy of arbitrary and absolute control of the inmate's life by the institution, and firmly establishing that prisoners did indeed have some rights. This new reality did not set well with Angola's traditional plantation mentality, and it set into motion a bloody conflict between the old order and the new order.

THE OLD VERSUS THE NEW

The Louisiana State Penitentiary has always been known simply as "Angola." The prison's history was written in the blood of the shackled souls who were forced to toil in its sugar cane fields as atonement for their crimes. A brutal army of shotgun-toting convict guards called "khaki backs,"[34] numbering as many as 600, drove the inmates until they dropped from exhaustion and killed them when they tried to rebel or escape. There was little farm machinery to ease the back-breaking labor as the inmates worked the rich Mississippi River bottom to turn a profit for the corrupt

29. 331 F. Supp. 1123 (E.D. La. 1971).

30. Id. at 1129.

31. Id. at 1131.

32. Santiago v. Sowers, 347 F. Supp. 1055 (M.D. La. 1972); Cherry v. Goslin, 350 F. Supp. 1162 (W.D. La. 1972); Matthews v. Henderson, 354 F. Supp. 22 (M.D. La. 1973); Aulds v. Foster, 484 F.2d 945 (5th Cir. 1973).

33. Miller v. Carson, 392 F. Supp. 515, 521 (M.D. Fla. 1975); Miller v. Carson, 401 F. Supp. 835, 891 (M.D. Fla. 1975); Jordan v. Arnold, 408 F. Supp. 869, 877 (M.D. Pa. 1976); Nadeau v. Helgemore, 423 F. Supp. 1250, 1269 (D.N.H. 1976); Ahrens v. Thomas, 434 F. Supp. 873, 898 (W.D. Mo. 1977); Laaman v. Helgemore, 437 F. Supp. 269, 310 (D.N.H. 1977); Smith v. Sullivan, 553 F.2d 373, 379 (5th Cir. 1977); Jefferson v. Southworth, 447 F. Supp. 179, 189 (D. R.I. 1978); Lock v. Jenkins, 464 F. Supp. 541, 551 (N.D. Ind. 1978); Campbell v. McGruder, 580 F.2d 521, 545 n.49 (D.C. Cir. 1978); Parnell v. Waldrep, 511 F. Supp. 764, 771 (W.D. N.C. 1981); Ruiz v. Estelle, 679 F.2d 1115, 1152 n.173 (5th Cir. 1982).

34. Convict guards got this name because they wore khaki uniforms while the other inmates wore pin-striped uniforms.

political interests that controlled the prison. During one thirty-year period in the prison's hellish history, an estimated 3,000 prisoners died from overwork, exposure, brutality, and murder.[35]

When C. Murray Henderson took over the reins as Warden of Angola in 1968, the prison was still poisoned with corruption, politics, and patronage. Factional feuding between prison personnel for power and control was fierce. The wardenship had changed hands nine times in the four years preceeding Henderson's arrival—it was a time of turbulence and pain. The general public expected Angola to show a profit or, at the least, be self-supporting, a demand reflected in the prison's grossly inadequate budget. Henderson's arrival, hailed by the news media as a giant step toward penal reform, found inmates laboring long, hard hours under the broiling sun cultivating sugar cane in snake-infested fields. The only right enjoyed by the inmates was the right to die. It was the twilight of the era of tyranny, of rule by the strongest—by both personnel and inmates.

Henderson, a nationally-acclaimed penologist, faced the immense task of controlling the chaos within the prison, redirecting the goals of its operation, making the brutish existence of the inmates more humane, and generally trying to usher the prison into the twentieth century. It was a seemingly impossible task for Henderson who was an honest, compassionate, and decent man—qualities that made him a misfit in the world of Angola. The prison was far-removed in time and distance from the rest of the world, and its security power-brokers had little respect for honesty and decency. It was a perverse world, totally alien to everything Henderson represented.

The Angola prisoner lived in a sub-human world in which the strong survived and ruled, while the weak served and perished. It was a time of cliques, lawlessness, and violence—anything was possible, including the ownership of as many slaves[36] as a convict could claim and hold. The strong routinely enslaved the weak, and new inmates entering the prison had to pass a test of violence to determine the status they would have in the prison community—"man" or "slave." The younger slaves served as effeminate homosexuals, while the older slaves served as servants who were made to produce income for their owners. In keeping with prison tradition, slaves were bought, sold, and traded among the strong. This practice was accepted as a natural part of prison life by both inmates and security

35. M. Carleton, Politics and Punishment 46 (1971).

36. A "slave" was a prisoner who belonged to and served the interests of another prisoner. While some prisoners became slaves because they simply could not or would not fight, most had no real choice. Young prisoners were gang-raped by as many as 20 inmates in one night and in the presence of an entire dorm while others, who were not used for sexual purposes, were gang-beaten into complete submission. Human life had no value in Angola.

officials.[37]

At the beginning of Henderson's tenure, Angola was still living in the age of racial segregation. White and black inmates lived in separate dormitories, and while they ate in the same dining hall, a wooden partition ran down the center of the huge facility, separating their respective eating areas. The two races lived in a world of co-existence. However, within the basic framework of this racially-segregated world, there were sub-worlds of vicious classism. Prisoners were ruthlessly divided along two social lines: the "urbs" from New Orleans and the "bumpkins" from anywhere other than New Orleans. New Orleans prisoners controlled the prison society and its subcultural vices. While a few "bumpkins" were able to rise to positions of prominence and respect in the prison's subculture, most bumpkins lived in a brutal world of oppression and slavery. As with any class trapped in a world of have-nots held to a level of utter powerlessness and deprivation, the "bumpkins" served the powerful and dominant New Orleans cliques.

Edwin Edwards became governor of Louisiana in 1972, entering office with a vow to clean up the state's penal system—at a time when Angola was a boiling cauldron of controversy and dangerous potential, a spark away from reducing the Attica tragedy[38] to a minor skirmish by comparison. Charges by former State Representative Dorothy Taylor that the prison was overcrowded, corrupt, and mismanaged repeatedly captured press headlines. Allegations of convicts having been murdered by prison officials and listed as "escapees" kept surfacing.[39] The horror stories translated into sensational headlines that brought about an increasing public

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37. Several well-known security officers had their own slaves. They had claimed them as inmates did and used them for sexual purposes. Some of the guards lost their identities and became lost in the brutal psychology of the world of the kept.

38. In September 1971, the same month that *Sinclair v. Henderson* was decided, inmates at New York's Attica Correctional Facility seized control of the prison, taking guards and inmates as hostages. Following a long standoff in which negotiations repeatedly failed to reach a solution, several hundred state troopers and sheriff's deputies stormed the prison. In nine and one-half minutes, they fired over 2,000 rounds of amunition directly into the yard, killing 39 people in the largest one-day massacre on American soil since the Civil War. Besides the dead, three hostages, 85 inmates and one state police lieutenant suffered gunshot wounds during the assault. S. Bello, Doing Life, The Extraordinary Saga of America's Greatest Jailhouse Lawyer 204-05 (1982).

39. Rumors circulated in Angola of secret grave-digging expeditions searching for the bodies of dead inmates. The rumors were influenced by the sensational scandal that Thomas Murton, Superintendent of the Arkansas State Penitentiary, created in 1968 when he led similar grave-digging expeditions at the Cummins Prison Farm. Murton was fired, creating a national belief that all Southern prisons have hidden graveyards of murdered inmates. That belief was given credence in 1970 when John Haley, chairman of Arkansas' prison board, revealed that "between 1916 and 1950 there were 100 Negroes and 107 whites who were listed as escapees and never recaptured" and said that he believed that many of them were buried in the fields of the Cummins Prison Farm. Murton, The Effects of Prison Reform: The Arkansas Case Study, Prisoners' Rights Sourcebook 472 (1980).

demand to do something about the scandalous conditions at the prison.

Given that political backdrop, the first task of the Edwards administration was to get Angola off the front page of the state's daily newspapers. The governor promptly appointed Baton Rouge attorney Elayn Hunt, a long-time prison reform crusader, as Director of Corrections, making her the first woman to ever head the state's penal system. In the ultra-masculine world of the prison, Hunt's appointment rankled Angola's security power-holders. They regarded her as a "prison reform liberal" and that made them perceive her as a friend of the inmates. Inmates encouraged that perception by shouting with glee at her appointment and hailing her arrival as the answer to all the prison's deeply rooted problems.

With *Sinclair v. Henderson* altering the way prison officials could discipline inmates and the efforts of Representative Taylor making political waves and the appointment of a liberal reformist as Director of Corrections, the prisoners' rights movement had arrived in Louisiana and was touching every segment of the prisoner's daily existence.[40] The movement was given added impetus when Hunt, in one of her first official acts, closed Angola's infamous Red Hats, a brutal solitary confinement unit built in the mid-1930's. The Red Hats stood as a historical symbol of the prison's brutal and bloody past, and while it was seldom used at the time of its closure, it nonetheless stood as an ominous reminder of what the prison had done and could do to the humanity it confined. With the closure of the Red Hats, Elayn Hunt told everyone, inmate and personnel alike, that there would be a new penal philosophy governing Angola.

By April of 1972, Angola had become a restless and dangerous beast. A Black Panther militancy had crept into the inmate's daily life and dominated the prison's subcultural thinking. It was fashionable to be a "Panther." The label symbolized strength, defiance, and violence—traits necessary for survival in the prison during that era. Encouraged by militant acts and the radical political rhetoric capturing headlines around the nation, Angola's political militancy grew bolder, more ominous, and more intimidating. Secret societies formed within the broader militant following, with some inmates being tortured and forced to vow allegiances to radical political beliefs.

While Hunt worked to establish her new and progressive penal philosophy throughout the state's prison system, some militants plotted to ignite a spark that would cause Angola to explode in violence. They wanted nothing less than a bloody Attica-like rebellion, and they were prepared to achieve its imagined glory, regardless of the consequences. A sinister plan circulated through the prison's grapevine. Twelve of the prison's

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40. Alvin J. Bronstein wrote, "When Attica exploded in September 1971, it created an unmatched awareness of prisons and their nature. It was no longer true that prisons and prisoners were 'out of sight, out of mind.' The prisoners' rights movement began in earnest." Bronstein, Offender Rights Litigation: Historical and Future Developments, Prisoners' Rights Sourcebook 9-10 (1980).

known informants would be killed, and each would have his head and genitals severed. Assassination teams were designated. The assassins would be armed with knives and hatchets, each moving simultaneously to eliminate their respective targets. It was a ruthless plot aimed at whipping the rest of the inmate population in line, showing them what they could expect if they did not cooperate with the political objectives of the militants. With the inmate population intimidated, the scenario called for a major riot that would destroy the physical structure of the prison itself.[41]

But the unexpected happened. Brent Miller, a young, inexperienced security officer, walked into a dormitory on the Big Yard of the Main Prison Complex where one of the militant teams was preparing for its mission. The militants murdered Miller, stabbing him repeatedly and cutting his throat. The killing turned Angola's undisciplined security force into an enraged mob seeking revenge. Lynch-fever burned in their brain. Local residents, barroom patrons, and area farmers came to the prison and were deputized. Armed with machine guns, shotguns, and ball-bats, the security force beat, tortured, and brutalized prisoners indiscriminately. One white prisoner, seeing a black inmate being beaten, hollered an obscenity at the security officers through a dorm window. The security officers opened the door of the all-white dorm and grabbed the first white prisoner passing. They stomped him to the floor and beat him unconscious. The slightest sign of resistance was brutally crushed as the white security mob swept through the black prisoner population. Tear gas, mace, and ball-bats were the most frequently used weapons. Black inmates were interrogated for hours, routinely beaten and tortured for the slightest bit of information about the militants.

At one point during the violent aftermath, Angola's Deputy Warden Lloyd W. Hoyle was pushed through a plate glass window by angry security officers during a meeting with security personnel. Some of the officers held Hoyle responsible for Miller's death because only a few days before he had released a group of militants from maximum security. The militants had been locked down on what was called the "Panther Tier"—a maximum security tier housing suspected militants. Two of the released militants were later identified as being part of the group that killed Brent Miller.

Despite the volatile emotions, Warden Henderson managed to prevent a bloodbath. He spent many hours visiting isolation, maximum security, and the general prison in the weeks following Miller's death. He followed up on leads and rumors of brutality. He ordered, chided, and maneuvered his security staff in such a way as to minimize the effects of their rage. Even with threats being made on his life, Henderson continued to make his rounds throughout the prison. He visited and talked with brutalized

41. A glimpse at the political turmoil brewing at the prison can be found in Elie v. Henderson, 340 F. Supp. 958 (E.D. La. 1972), a case that reflected the militancy in its infancy.

inmates, ordering some sent to the hospital for treatment. It was those efforts by Henderson that kept anyone else from being killed.

However, despite Henderson's efforts, security officials locked up several hundred inmates in maximum security following Miller's death, and nearly every one of them was brutally beaten before they were placed in a cell. The Miller killing provided an official license for indiscriminate terror and violence against black inmates, especially those suspected of being militant. But the brutal repression of the prison's political consciousness would have far-reaching side effects. The criminal element of the inmate population made their own power moves to isolate the militants, setting them up to be placed in lockdown or having them stabbed during the period of emotional turbulence. Frequently, the criminal and security power-brokers worked hand-in-hand because they shared a mutual interest of returning the prison to its normal, corrupt keel.

Naturally, since the increased security used up the prison's limited cell space to lock up suspected militants, it was safer for the criminal power-brokers to deal narcotics, perpetuate homosexual enslavement, and operate profitable loan-sharking and protection rackets. And by cooperating with security to nail the militants, the criminal element acquired a stockpile of favors and obligations needed to protect their vices and profits. Such unholy arrangements contributed significantly to Angola's reputation as the "bloodiest prison in the nation."

SETTING THE STAGE FOR HAYES WILLIAMS

One year after the death of Brent Miller, violence had dramatically escalated at Angola. Death duels were waged on a near daily basis—and they were fought with homemade but high-quality knives, hatchets, swords, and occasionally with zip-guns and handguns. For battle gear, the inmates constructed sophisticated helmets, shields, and chest armor. Estimates of the level of violence in Angola in 1973 ranged from 11 to 16 inmates being killed and an additional 150 stabbed. That figure represented a substantial increase over the 1972 figure of 8 stabbing deaths and 51 stabbings.[42]

In an effort to curb the violence and ease the tensions tearing at the fabric of the prison, Elayn Hunt established the Prisoner Grievance Committee, a body of thirty-seven inmates selected by popular vote to represent the inmate population in regular face-to-face negotiations with Angola's top-level administrative staff. Shortly after the committee was given departmental approval, a group of black and white inmates met, formulated the objectives of the committee, and drafted its bylaws and constitution.[43]

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42. See Breaux v. State, 314 So. 2d. 449, 453 (La. App. 1st Cir. 1975) and Williams v. Edwards, 547 F.2d. 1206, 1211 (5th Cir. 1977) for additional figures concerning the level of violence.

43. In a secret meeting, Billy Sinclair, Douglas Dennis, Robert Matthews, Frank Bagala, Leotha Brown, and Harold Sneed met and decided to distribute the power of the committee along racial lines. Since the majority of the prison population was black, it was agreed that there would be four black and three whites on the seven-man Executive Committee (the group that actually negotiated with the administration). Matthews was named as chairman, a position that was largely ceremonial, while Sinclair was tagged as secretary, the position of real power on the committee.

Unfortunately, the committee survived less than six months before succumbing to internal political feuding and harrassment by security personnel; however, in the few months of its existence, the committee made substantial gains in the problem-solving arena and in obtaining privileges still enjoyed by inmates today. The gains were primarily the result of efforts by Hunt and her legal counsel, Richard Crane, who maintained the pressure on Angola officials to not only negotiate in good faith but to preserve their commitments to the inmates.

Shortly after the collapse of the Prisoner Grievance Committee, Warden Henderson called together a group of black and white inmate leaders to announce the integration of the Main Prison Complex. In the presence of several Justice Department officials, Henderson told the inmates that they would be given an opportunity to integrate the prison themselves if it could be done non-violently. Justice Department officials were on hand to let the inmates know that they had no choice in the matter, that the prison would be integrated either through cooperation or by force of authority. Black and white inmate leaders agreed to try and achieve the seemingly impossible task on their own.[44] Each leader was aware that the inmate population was heavily armed and did not welcome integration. When they walked away from the meeting with Henderson, each leader knew that he was stepping into a situation in which rumor, misinformation, and instigation could set off a bloody race riot.

The leaders had a difficult task in selling the inevitability of integration to the rest of the inmate population. Fear, anger, and paranoia made it difficult for the black and white leaders to strike agreements among themselves. Their negotiations lasted for hours, and their meetings were rife with distrust and hostility as each leader jockeyed for the best position for the particular interests he represented. Finally, after a week of proposals, disagreements, and eventual compromises, the leaders worked out an acceptable plan, and the Main Prison Complex was successfully integrated without a single violent incident.

While there was no racial violence as a result of the integration, individual violence was increasing at an alarming rate. In early July of 1973, a white inmate was stabbed to death in front of two security officers. He was stabbed at least 30 times (nine directly through the heart) as the two guards watched, too terror-stricken to act. In late July, open warfare broke out between black cliques from New Orleans and Shreveport. Several men were stabbed with knives and swords and one had his arm severed by a wild swing from a hatchet. Only the seriously wounded went to the hos-

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44. Sinclair, Irvin Breaux, Herman Smith, Philip Hutchins, James Guinn, Ferdinant Boutte, Paul Lacoste and Douglas Dennis were the leaders who worked out the integration plan. Of the leaders, Breaux and Guinn were dead within six months—Breaux was killed in a knife fight and Guinn died from an overdose in an isolation cell. Hutchins, Bouttee and Lacoste were eventually released from Angola. Dennis escaped in 1978 and remains on the lam. Sinclair and Smith are still at Angola.

pital. The rest returned to their dorms where they were treated by their friends.

During the first week of August, violence erupted between two feuding New Orleans factions of white inmates. Sterling Mitchell, one of the prison's toughest inmates, was stabbed to death in his sleep. The following night Mitchell's killer, a young kid named Ricky Rachal,[45] was also stabbed to death in his sleep. A friend of Mitchell's, adhering to the "eye for an eye" code of vengeance, buried a butcher knife in Rachal's chest as he lay sleeping, supposedly under the watchful and protective eye of two friends.

The violent summer of 1973 clearly showed that Angola was out of control and that something had to be done. Little did anyone know that a solution to the prison's massive problems was in the offing. It came in 1973 when four black inmates, led by Hayes Williams, filed an unheralded lawsuit in Federal Court in Baton Rouge alleging that minority inmates were discriminated against at Angola, that conditions at the prison amounted to cruel and unusual punishment, and that the conditions violated state fire and sanitation codes.[46] Two years after the lawsuit was filed, Judge West adopted a report by then Special Master Frank Polozola that found that conditions at Angola would "shock the conscience of any right thinking person" and "flagrantly violated basic constitutional requirements as well as applicable State laws" and that "the State authorities, who have the power to do so, are either failing or refusing to take the necessary steps to correct these conditions."[47]

The Polozola findings were a blistering indictment of the state's prison system, but it was a welcomed indictment. The Edwards' administration embraced the "court order,"[48] using it to spur the Legislature into appropriating the massive amounts of money needed to clean up the state's prison system. Tragically, the lady who most wanted the court order did not live to see it implemented—Elayn Hunt died in early 1976, shortly after Henderson had left Louisiana to become commissioner of the troubled Tennessee Department of Corrections. C. Paul Phelps, Hunt's deputy director, found himself suddenly responsible for the management of both the Louisiana State Penitentiary and the Department of Corrections, a task he handled by flying back and forth each day between Angola and corrections headquarters in Baton Rouge.

In March of 1976 Phelps was officially made Corrections Secretary and Ross Maggio, Jr., director of the department's Agri-Business opera-

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45. Rachal killed Mitchell because Mitchell called the kid an "asshole"—one of the most derogatory terms that one inmate could call another. If Rachal had let the insult pass, someone would have next attempted to make him a slave. A couple of Mitchell's enemies, who wanted Mitchell out of the way, convinced the kid he had to kill him. It was an old convict's ploy and it cost Rachel his life.

46. *Williams*, 547 F.2d at 1208.

47. Id.

48. The West/Polozola ruling was not reported in the Federal Supplement; it simply became known as the "court order."

tions, was appointed warden of Angola. Armed with the court order, Phelps stated that their job was to regain control of Angola, make it responsible to Headquarters, and stop the violence. Maggio was vested with whatever power needed to do the job. A tough, no-nonsense man, Maggio forcefully seized control of the prison, dealing with the criminal power-brokers, as well as the security power-brokers, on any terms they wanted to deal. He cracked down on the violence—and he cracked down hard. Beefing up his security force and equipping them with a variety of electronic devices, he instituted massive security measures. He disrupted the traditional living patterns of the inmates and deliberately upset and rearranged the entire power structure within the prison. Inmate gang leaders were put out of business, locked up in maximum security or transferred to other parts of the prison, making them ineffective. Inmates in critical clerical positions were replaced by free personnel, ending their control and influence on those sensitive positions.

A new and streamlined system of government was created at Angola. A massive $34 million construction program was undertaken by the Phelps-Maggio regime which resulted in the erection of Camps C, D and J and a new dining hall in the Main Prison Complex. Medical services were improved, a correctional training academy was established, and educational and recreational programs were expanded. One year after they had assumed the reins of power and two years after the court order was issued, the Phelps-Maggio regime had fulfilled the basic objectives of the court order. When Maggio departed Angola in 1978 to become warden at the Hunt Correctional Center in St. Gabriel, the prison, which had once been the bloodiest in the nation, had been converted into the safest maximum security facility in the nation.

CONCLUSION

For the most part, prison reform in other states was brought about by zealous reformists, conscientious lawmakers and attorney activists who pursued prisoners' rights litigation with a strategy aimed at change. Unlike those states, the emergence of prison reform in Louisiana in the late 1970s evolved solely from a reluctant marriage carved out by the nature of peculiar circumstances affecting the state's penal system. First, there has been very little involvement by the state's legal profession in the development of prisoners' rights and efforts to change Louisiana's penal system. And with the exception of the Louisiana Coalition on Jails and Prisons, which was unable to influence any meaningful change in the state's prison system, civil rights groups such as the ACLU and NAACP have not involved themselves in any organized effort to either define or protect prisoners' rights, much less develop a strategy for prison reform.

Moreover, right-wing politics over the last decade have so paralyzed progressive thinking that conscientious penal administrators have been unable to develop a rational and responsible penal philosophy. More often than not, they have been forced to do the convenient rather that the right

thing. Consequently, while the state's prison system was locked in the grips of violence and lawlessness, the normal forces of change were either disinterested or neutralized by conservative politics. The federal court was the only moral leader willing to respond to the cries for relief coming from the hellish confines of Angola. The feelings of many corrections officials around the state have been expressed by Phelps and Maggio who have often stated that federal court intervention was a godsend, that prison reform could not have been achieved without it.

But the bond between prisoners and the federal court is fraying at the seams. Forces are already in motion that could very well shut the door of federal court to most prisoner litigation.[49] Some want the door shut for unholy reasons, while others have simply grown tired of what has become known as "frivolous litigation." To be sure, there have been too many frivolous lawsuits filed, and the courts have been abused by a handful of jailhouse lawyers.[50] And it is understandable that the federal court has a problem with using its precious time and resources in settling petty arguments between keeper and kept about a confiscated pair of blue jeans, misplaced stamps, or damaged radio. Handling such trivial disagreements was not the intent of the federal court when it intervened in *Sinclair v. Henderson* and *Williams v. Edwards*. However, that the federal court is constantly called upon to deal with such complaints is accusing testimony that the Department of Corrections has acted irresponsibly in failing to set up a system-wide grievance procedure.[51]

Since the Department of Corrections lacks a meaningful grievance procedure, the federal court is looked upon as the only avenue of relief. But certainly this is preferable to encouraging inmates to believe violence and rebellion are their only recourse. With the federal courts' power of summary dismissal and its power to enjoin those who abuse the process, charges that the courts are overburdened with frivolous lawsuits have a false ring. If our free and democratic society is to remain committed to protecting the rights of all its people, then there must be judicial tolerance for some apparently frivolous litigation. The strength of our system of government lies in its willingness to keep its courtroom doors unlocked, no matter how costly or inconvenient. That is the price of Democracy.

Even after more than a decade of federal court intervention, the legislature has failed to develop a rational penal philosophy for the state of Louisiana. It has entrenched in an incarceration attitude, so much so that Louisiana has the highest incarceration rate in the nation. The Department of Corrections is taking in one hundred more inmates each month than it is releasing. Given that reality, it is even more essential that the federal court remain the big brother of the state's prison system. That role of

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49. Parratt v. Taylor, 451 U.S. 527, 101 S. Ct. 1908 (1981); Hudson v. Palmer, 104 S. Ct. 3194 (1984); Collins v. King, 743 F.2d 248 (5th Cir. 1984).

50. Green v. Warden, U.S. Penitentiary, 699 F.2d 364 (7th Cir. 1983).

51. Johnson v. King, 696 F.2d 370 (5th Cir. 1983).

judicial activism will inevitably contribute to more frivolous litigation being filed by inmates, but that is a small price to pay for ensuring that the state's prison system will remain safe and that constitutional guarantees will be upheld.