2013

The Rule Of Three: Federal Courts And Prison Farms In The Post-Segregation South

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THE RULE OF THREE: FEDERAL COURTS AND PRISON FARMS

IN THE POST-SEGREGATION SOUTH

A Dissertation
presented in partial fulfillment of requirements
for the degree of Doctor of Philosophy
in the Department of History
The University of Mississippi

by

GREGORY L. RICHARD

May 2013
ABSTRACT

The following dissertation discusses the United States Federal Court judicial reform of prison farms in Arkansas, Mississippi, and Louisiana. More specifically, it examines the judicial and legislative history of the historic reform that includes the role of the individual judges that presided over the years of legislation necessary to bring Constitutional reforms to the state prison systems of the South. The judges and states in this study include J. Henley Smith of Arkansas, William C. Keady of Mississippi, and E. Gordon West of Louisiana. The research outlines an important aspect of the court system and the struggle between states and the federal government to create a constitutional prison system. Some of these constitutional defects related to substandard living conditions, prison officials not providing for the safety of inmates, the prevention of prisoner complaints reaching the courts, and the segregation of African American inmates from whites within the prison structure.

A number of primary resources provided the bulk of the research, including the use of judicial archives, the individual judges’ papers, court documents such as motions and prisoner petitions, and biographies of the individual judges. The judges’ court opinions, as well as archival information relating to their lives before they reached the bench as well as their work from the federal courts, contributed to this study. These sources helped construct the most exhaustive and complete judicial and legislative history of the reform of three state prison farm systems in the United State South after the segregation era. In numerous ways, the federal prisons began their own transformation after the desegregation of other institutions in American society. This work traces that history and it also discusses the work of these three judges in
bringing about the first such federal court reform of state prison systems to ever occur in the United States. It would set up the eventual federal judicial control of dozens of other state and territorial prison systems.

The research also leads to the discovery that the judges possessed a unique “judicial personality” which influenced their specific methodology. These judicial personalities reflected the society they grew up in, the legal training they received, and their particular legal careers leading up to the bench. In addition, the society that surrounded this prison litigation, namely a southern political attitude that accepted harsh prison conditions for the good of the state, as well as a southern body politic already disenchanted by the desegregation of many areas of public life, also affected the role of the judges during said litigation.

The dissertation enhances the current scholarship of federal judicial prison reform by presenting a geographically specific study focusing on the particular role of the judges in the litigation. The work also brings the study of the federal judge out of the realm of legal scholarship and criminal justice into the field of history and larger historical studies of the rising Carceral state in the United States during the latter half of the twentieth century.
To EMF, my favorite
ACKNOWLEDGMENTS

One always wonders where to begin acknowledging the scores of people that played a role in the completion of any dissertation project. While there have been many, sadly I can only thank a few here. While you might not make this page, however, I thank you for your efforts.

To the number of faculty and staff at the University of Mississippi who at some point in these past five years contributed to my growth as not only a scholar but an individual, I thank you. It all began with the former chair of this project, Dr. Robert Haws, who has since retired from Ole Miss and now lives in Boulder, Colorado. He planted the seed that germinated into this full manuscript. Dr. Charles Reagan Wilson, a historian with a number of other projects on his agenda more apropos to his own research interests, took over the project from Dr. Haws. His guidance has been invaluable to this project. To Drs. Ted Ownby and Charles Ross, I thank you as well for rounding out my committee. I also thank Dr. Kirk Johnson of the Department of Sociology for serving as my outside reader. He offered a dimension to this project that helped create a work of broader scholarly importance as well as historical value. Dr. Joseph Ward, the history department’s chair, also provided much support during this project, contributing to both the growth of this dissertation and of me personally as a historian. I cannot imagine having a more supportive group of colleagues to offer me support and guidance throughout these past years.

Numerous research archivists and librarians have helped me throughout this journey as well. Among those that deserve special consideration are Joan Voelker of the Eighth Circuit
Court of Appeals Library in St. Louis, Mattie Abraham of the archives at Mississippi State University in Starkville, and Linda Pine of the Arkansas Studies Institute in Little Rock. Countless others have helped me also in my archival endeavors, which spanned from St. Louis to Washington, D.C. I thank you all for your guidance.

I must also acknowledge the individuals that were in my corner all along, those who told me to always work hard and strive for happiness. Dr. Pat Harris, my first academic mentor, helped me discover my true love of history and knowledge. Dr. Pat Rickels of the University of Louisiana at Lafayette’s Honors Program taught me to embrace diversity and to be kind and welcoming of anyone I meet in life, friend or foe. She also provided me with the greatest example of providing service to students. In addition, Dr. Mary Farmer-Kaiser, thank you for talking to me that lonely August day of 2005 and telling me that if I can dream it, I can achieve it. You helped guide me into the world I always knew I needed to be a part of. You helped me realize that everything worth something requires effort and a good fight.

And finally, to the Great Justice Oliver Wendell Holmes, I did experience that gulf of solitude. I can finally consider myself a scholar. You were right: No result is easy which is worth having.
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CHAPTER ONE: INTRODUCTION

Since the drafting of the Constitution over two hundred years ago, judges have cautiously treaded the waters of the American legal system. They try to be apolitical, even though their jobs, though not elected for most posts, depend upon appointment by very political characters. They try to remain neutral, even though one cannot deny the human inclination to go with the heart as well as the head when deciding particularly unclear constitutional matters. They attempt to avoid the label of "lawmaker," knowing good and well that the very essence of their job sometimes entails striking down an existing law and creating the necessity of a new one, reflecting their very opinion.

Judges in the federal court system play an even more important—and precarious—role within the court system. A basic tenant of constitutional law remains that the U.S. Constitution forms the bedrock for all laws of our nation. The fifty states must create constitutions that do not infringe on the federal document. The principle of federalism always tugs and pulls at this state/federal constitutional dichotomy. The very notions of American liberty allow one to do what she or he wishes, providing that behavior does not infringe on any other person's rights. The several states—as sovereign beings—claim an attachment to this same sort of liberty through the ideal of federalism. Throughout history, especially in the mid-twentieth century, the federal courts have had to intercede into state matters and keep them in check, reminding state governments that they must indeed stay within the boundaries of the U.S. Constitution. State prison systems, especially in the South after Reconstruction, represented one such state creation that required the federal courts' moderation.
Prisons in the U.S. South after Reconstruction displayed a brutality that few others in the nation rivaled. Southern states, left bankrupt and destroyed after the Civil War, had many needs, two of which were a replacement for a non-existent prison system and a way to bring some much needed income into the state treasures. And if this prison system could further solidify the power of white Democrats, even better. The answer rested in the thousands of untilled acres that sat in the Old Confederacy. Slave masters of old could no longer care for their farmland without chattel slavery providing the major cog of the plantation machine. Several southern states, such as Arkansas, Mississippi, and Louisiana, bought several thousand acres with the intent of placing newly convicted criminals on the land. If slaves were not available, why not just use felons? Thus began the birth of the new southern slavery. The older hierarchical structures of white paternalism came back into play as the planter classes once again held control of the criminal elements, which for a number of the same reasons remained mostly African-American and poor. This certainly made state officials, who concerned themselves with subverting blacks as much as possible, quite content with this system.

And not only did the new southern slavery provide the rebirth of antebellum societal structures. It created a self-contained, self-financing system of imprisonment. No state funds would ever have to be used in maintaining the penal farms because the prisoners would grow their own food and produce their own goods. And not only were they providing for their own upkeep, but they were bringing in considerable profits. Even after most southern states ended the practice of leasing out their convicts to private labor and industry, the goods produced on the farms brought in revenue for prison administrators and state officials alike. With a prison system that required no funding from the legislature, thus no tax money from a state’s citizens, state actors and citizens alike had mostly positive things to say about state prisons in the South.
Inmates within the prison walls had a different opinion of the farms. For decades, prisoners had no opportunity to voice their complaints regarding their imprisonment. Those individuals that attempted to contact the courts seeking relief often felt the wrath of prison administrators who tried their best to keep the brutality and death of the prison farms out of the public view. But forces in the mid-1900s brought the evil of the prison farm of the South to light. Prison conditions were harsh and brutal in both the North and the South, as many historians have noted. The particulars of the Southern prison, however, reeked of a stench that most in the nation could not avoid. While Northern prison systems placed its convicted in harsh labor conditions behind the large, fortress like penitentiary walls, Southerners placed their prisoners in the fields, creating a scene too eerily reminiscent of slavery. In most Americans’ opinions, the Thirteenth Amendment felony-exemption to involuntary servitude did not give Southern state governments the right to recreate the antebellum slave plantation with criminals as the chattel.

Some Southerners realized the prison farm system as run at that time could not continue forever. The Civil Rights Movement and its public exposure brought the brutality of Southern prisons into the national and international spotlight. If state governments had no reason to change the conditions of their prison farms, then the federal government would have to play a vital role. The federal courts, led by a group of very different judges with very different judicial philosophies, stepped in and brought much needed review and reform of Southern prisons. The federal circuit charge on the conditions precedent in Southern penal farms began with the tireless efforts of Judge J. Smith Henley of the Eastern District of Arkansas and later the Eighth Circuit to reform Cummins and Tucker Prison Farms. Judge William Keady of the Eastern District of Mississippi within the Fifth Circuit presided over reform efforts at Parchman Prison Farm. And later, Judge E. Gordon West began the movement to reform Angola Prison Farm in Angola as a
judge for the Eastern District of Louisiana in the Fifth Circuit. These three judges endured
tremendous disapproval from state officials who were against changes within Southern state
prisons, but their efforts created lasting reforms that eventually affected over twenty-five state
prison systems throughout the United States. This work will examine the judicial maneuvering of
these three judges and the legislative actions taken in response to the judicial decisions. This
history

While these judges played crucial roles in the effort to reform their particular state prison
systems, their individual judicial personality, influenced by their judicial ideals and philosophies,
served as a modifier for their particular role. Judge Henley’s judicial archetype can best be
described as the pure reformer. Henley made a conscious effort to work with prison officials in
Arkansas to allow their petitions to reach his desk. His reforms blazed the trail that all other
federal court judges had to follow in similar prisoner complaint cases. Henley also understood
the importance of being closely involved with the litigation, working with prisoner complaints
from Tucker and Cummins farms for almost fifteen years, even after he was promoted to the
Eighth Circuit. Judge William Keady, on the other hand, best fits the judicial archetype of the
forceful reformer. Keady understood that the only way to get the reforms accomplished at
Parchman that needed to take place was to secure the support of the state legislature. He also had
the benefit of the neighboring Eighth Circuit fostering in reform of state prisons, which for
decades had been an area federal prisons avoided. State assemblies in the South were not simply
going to increase funding; they were going to have to begin funding. Judge Keady used his
abilities as a statesman and a negotiator to make sure the money reached the prison system.
Finally, Judge E. Gordon West fits the judicial archetype of the cautious reformer. Resistant to
the idea of the federal courts intervening in matters of the state prison systems early on, he
ultimately had no choice but to follow the guide of the crusader Henley. After setting the trajectory of prisoner complaint cases in Louisiana towards reform, West found it best to insulate himself from Angola and appoint a special master to handle future prison case. Regardless of the methods and philosophies of the judges involved, the three of them served as the catalyst that would forever change the Southern penitentiary systems of many states.

The Evolution of the Prison

Understanding the roots of the penitentiary, its growth and evolution in colonial America, and its divergent history in the growingly schismatic United States approaching the Civil War creates the proper context within which to study the reform of southern state prison systems. Michel Foucault wrote the standard work of modern penal history, *Discipline and Punish: The Birth of the Prison*, originally published in 1977.¹ In this work, Foucault gave the most widely read and discussed history of the modern penal system. He focused on the growth of the penal state from its beginnings during the early classical period and beyond, roughly development through the late seventeenth and eighteenth centuries. The prison, or more specifically the penitentiary, developed mainly through various conceptions of the prisoner and how the state must punish its convicted in order to achieve whatever society’s goals might stipulate. For instance, one observed a transition from the labels placed on those convicted of crimes. People began, in the eighteenth century, referring to the “prisoner” as a “delinquent.” This was more than a simple game of semantics. Those in the seventeenth and early eighteenth centuries had no

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idea of “prisons” and “delinquents.” The development of “discipline” paved the way towards the creation of the prison and the penitentiary.  

Disciplines, which were a series of techniques and practices, allowed those in control to operate the functions and the lives of others, particularly those condemned of crimes. Those in power set up a number of mechanisms that permitted those of usually free will to be controlled through discipline. Officials used devices such as timetables, military drills, and exercise as an effective means of disciplining. Only after the development of these methods did control of others become possible. Individualizing those out of the mass held utmost importance in the idea and viability of the prison system and penitentiary style punishment, which gave rise to other concepts. Not only did the means become available to control as a group a number of criminals in ways not thought of before, but also remember that those means became available through an ever-present concept throughout Foucault’s history of modern penal discipline: power.

Foucault’s concept of power made up a considerable part of the structural framework of his modern penal state history. At the very core of the prison relationship rested the relationship between the one in power and the powerless, namely the official in charge of the convicted and the convicted. One must consider power differently from physical force or violence. That which causes pain to the body in a physical manner differs from the inherent power created by the position of relationships. The relationship structure at the heart of the penitentiary and prison system depended on the ability of the one in control to make a once free subject do something that he or she might not have wanted to do freely. Therefore altering the will of others remained at the heart of this power structure. Nevertheless, what should come of this power? Foucault spoke of the transition between physical force and punishment of the physical body—namely,

2. Ibid., 23-27.
3. Ibid., 89-93.
punishment of the body—to that of the reforming of the soul. Power certainly meant something
different to one convicted before the eighteenth century and one convicted during that century.
The transition of the need to punish the body to the idea of reforming the soul became a driving
force to the establishment of the penitentiary.⁴

Early in classical period, writes Foucault, the state necessitated centrality of the
punishment of the body and chose physical punishment and display as a central means of
establishing itself to the populace. The government arranged public executions as state
celebrations and very public events. Public officials wanted these theaters of execution to
demonstrate to the whole of the community who held the reins of power in society. The body
became something regulated, arranged, and supervised. The focus shifted from pure physical
punishment to reformation and rehabilitation. As concepts of individuality and of the delinquent
evolved during the classical period, so did the idea of reforming the soul.⁵

The idea of the transformation of the prisoner to a delinquent followed along with the
evolution of other ideals during the classical period. The delinquent now became one that should
be set apart from society. With this separation required a means of control and supervision away
from larger society, thus another reason for the rise of the penitentiary. By treating the prisoner
in this more individualistic way, it allowed for easier control and segregation away from the
larger crowds thus limiting their deviance. The working of the carceral system with the growth of
the human sciences spawned the creation of the delinquent. Prisons worked within this carceral
system as a means of controlling and structuring crime. The prison network spreads throughout
the community and throughout society as a whole, representing an important tenant of the
carceral system. The whole of the regulation and operation of the penitentiary, from architecture

⁴. Ibid., 28-31
⁵. Ibid., 7-10, 35, 44-48.
to the hierarchical command structure, all penetrated society. Prisons attempted to control and to manage prisoners and to help keep down the rise of criminality. The increase and the continued committing of crime, however, made up part of this system, for it gave the penitentiary system its lifeblood and allows for its survival. Thus, as Foucault also states, failure was an essential part of the prison structure.⁶

By further understanding the original intentions of the prison, one more clearly understands Foucault’s idea of the prison and the development of the prison in the American South. The penitentiary combines the workshop and the hospital, all within Jeremy Bentham’s panopticon. Bentham’s concept of the panopticon, mainly the architecture and building structure that shows how to efficiently control behavior, exemplifies disciplinary power. Thus, the dual nature of discipline in the later part of the classical period, namely to deprive the criminal of his freedom while at the same time reforming the criminal, worked well with the idea of the panopticon to demonstrate the natural progression to the penitentiary.⁷

The relationship between prison and society becomes even more apparent when one investigates the role played by the prison within the carceral system. Within this system, the prison should not maintain a marginal existence within the municipal structure. On the contrary, the prison remained closely integrated within the community. For the evolutions of discipline and power maintain that similar structures control not only those within the prison walls but those outside. Thus, throughout Foucault’s history of the modern penal system, punishment and the ideals of handling the criminal evolved in such a way to turn the structure of criminal justice on its head. The once physically punished body, a show to all of the community, now became the

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⁶. Ibid., 265-70.
⁷. Ibid., 200-5.
delinquent, hidden from society yet capable of reform, where more subtle but just as powerful disciplines maintain supremacy.

The Rise of the Penitentiary: Prisons and Punishment in Early America, by Adam Jay Hirsch, uncovers the development of a system in early Massachusetts. Tracing paths closely resembling England and France, Americans by the 1820s became disillusioned with Cesare Beccaria’s deterrent approach to handling criminals through drafting of deterring criminal statutes, and the growth of industrialization, urbanization, and population helped spur American fears and anxieties. Thus, Jacksonians, in what Hirsch foolishly calls a “novel—and distinctly American” idea, set out to rehabilitate criminals and return them to the community as reformed citizens. Neither novel nor uniquely American, other European nations followed similar trajectories in the evolution of their systems of punishment and discipline. Criminologists in the United States “now identified the root cause of crime to lie in the social environment, rather than in misconceived criminal codes.” Thus, towards the end of the nineteenth century, the United States, along with England and France, began to realize that rehabilitation and healing of the soul represented sounder criminal punishment rather than physical punishment to the body.

Rationalism took root in the eighteenth century, during which theorists began rejecting scripture in favor of logic and reason. The harm crime caused to others in society made it criminal, thus, the prevention of future harm represented the only rational purpose of punishment. Rationalists, such as John Locke, claimed that environmental stimuli, not innate characteristics or moral principles, guided human behavior. Cesare Beccaria built upon this when he “placed primary blame on the environmental impact of ill-considered methods of criminal

9. Ibid., xiii-xv.
“Sensible humans lived life according to maximum pleasure and minimum pain, thus better sanctions that depended more upon deterrence would more likely prevent criminal behavior. For “whereas criminologists had traditionally assumed that deterrence hinged on the severity of punishment, Beccaria postulated that the *certainty* of punishment contributed far more to the inhibition of crime.” These ideas did not guide Beccaria to advocate penal servitude, but they did guide his beliefs on the ineffectiveness of the death penalty and his suggestion of “perpetual servitude” as its replacement.\(^\text{10}\)

Beccaria’s ideas eventually fell out of favor with American reformers in the late eighteenth century, as more began to accept Jeremy Bentham’s placement of blame upon the social environment as the main producer did of crime, more so than the legal factors. Thus, social connections to crime helped further Bentham and his ideas of the panopticon and the penitentiary, as stated earlier by Foucault. Hard labor, in the form of the workhouses seen earlier in England, became the precursors of the penitentiary system in the United States and in Massachusetts, which Hirsch places as the seedlings of the modern penal system. Thus, the blending of these European ideals of servitude and penal punishment became the sea from which the American penitentiary system flowed. America, however, had a number of other problems to face when it came to penal servitude and imprisonment. One must attribute these problems to the unique case of slavery in the United States.\(^\text{11}\)

It does not take a stretch of the imagination to formulate a number of comparisons between chattel slavery in the United States and the penitentiary system and the subsequent problems this would cause in the development of the penitentiary system in America. Prison inmates and southern slaves both followed daily routines and both systems created subjects

\(^{10}\) Ibid., 21-22.

\(^{11}\) Ibid., 23-25.
dependent upon masters for basic human needs. Both slave and prisoner suffered from isolation from a general population of free humans, and both worked longer hours for very little or no compensation. Other interesting arguments arose in the South regarding slavery that were analogous to those in the North regarding prison labor. For instance, southern artisans and laborers complained that slaves took a number of their jobs. In the North, the same complaint from northern artisans and workers went against prison industry. Both of these arguments affected labor histories of the region and added nuance to their respective histories of the nineteenth century. The imprisonment of classes of criminals and their placement into deviant communities shared a number of characteristics with African slaves who were often deemed criminal by their white masters and communities in which they lived. Both arguments for the continuation of slavery in the South and arguments for the imprisonment of criminals in the North had the “ridding society of criminal masses” component. One has to wonder with all of these questions regarding comparisons and similarities between southern slavery and northern imprisonment how the North and, eventually, the whole of the nation eventually accepted penal servitude as it abolished slavery.12

Ultimately, Americans began to associate the idea of penal servitude with the establishment of ideals of liberty within the early nineteenth century. These same ideals of republican liberty made the South more accepting of slavery. Ultimately, political leaders in the United States such as Benjamin Rush justified the penitentiary and the forced servitude of prison with the ends it attempted to produce. This argument of the ends justifying the means also helped northern Americans justify the penitentiary system while criticizing slavery in the South. Criminals committed crimes that justified the state taking away their liberties and freedoms,

12. Ibid., 74-76.
while African slaves on southern plantations did no such thing. John Locke’s arguments of natural rights to life and liberty helped fortify this position. Thus, those Americans in the North had no issues with the sustaining of prisons while at the same time degrading chattel slavery in the South.13

Examining the development of the penitentiary in a northern state alongside the growth of slavery in a southern state during the nineteenth century reveals a number of issues in the study of the growth and evolution of punishment in the United States and Arkansas in particular. Michael Hindus undertook such a study in his work Prison and Plantation: Crime, Justice, and Authority in Massachusetts and South Carolina, 1767-1878.14 Hindus presents the histories of the development of two different states, Massachusetts and South Carolina, and investigates the different philosophies of criminal justice and reform of criminality each state developed. Law in Massachusetts tended to gravitate toward bureaucratic methods in order to guarantee efficiency, which meant to control and structure social order. Urban and industrial, the emerging commercial society of Massachusetts required a bureaucratic administration of justice, with the traditional restraints of church and family proving inadequate. South Carolina, on the other hand, did not experience this movement towards formal structures of legal authority. Law in South Carolina became characterized by “highly personalized, ad hominem justice,” unstructured, rural, and upheld through custom and deference. South Carolina accepted extralegal techniques of social control, such as dueling and vigilantism. The economics and the intellectual make up of the states, according to Hindus, helped determine this path. In other words, slavery distorted South Carolina’s view of criminal justice. In South Carolina as in most of the South, whites

13. Ibid., 77-78.
became more concerned with race domination rather than crime control. Corporal and capital punishment offered the only opportunity to control slaves, according to white southerners. Thus, the money and intellectual investiture into the development of a penitentiary system that states in the North, such as Massachusetts, spent was not necessary in the South. In conclusion, class control became most important in Massachusetts, while race domination represented the key concern for lawmakers in South Carolina.  

The distorted nature of southern prisons grew more so after the Civil War, fueled mostly by the society and economy of the post-Reconstruction South. After the destruction of the Civil War, many southern states began replacing their destroyed and thus non-existent prison systems with ones modeled after the antebellum slave plantation. This system served a twofold purpose for the white planter classes. Not only did this once again entrench older paternalistic notions of white control over African Americans in a post-slavery world, but the plantation style penitentiary also brought much needed state revenue. The new prisons not only generated self-sustaining revenue but also brought in profit to the impoverished post-Reconstruction South. For these reasons, southern prisons and the way they were run were perfectly acceptable to most southerners, while at the same time they appeared especially heinous to those outside of the South.

**Historiography of Prison Reform in the South**

Malcolm M. Feeley and Edward L. Rubin provide the finest and most exhaustive look at the court reform of prisons not just in the South but all over the nation. In *Judicial Policy Making and the Modern State: How the Courts reformed America’s Prisons*, Feeley and Rubin try to

move past the ideological arguments either for or against judicial activism. They also emphasize the unimportance of whether it exists or not because it invariably plays a role in the decision making of a judge. So, this book does not purport to determine the “rightness” or “wrongness” of judges’ decisions. Nor does it claim to categorize the judges’ rulings as either based on the Constitution or an act of judicial activism. For the sake of brevity, the authors choose to only look at the courts’ reform of prisons in exemplifying how the judicial system helped both influence and create the modern state of American government.

Judges engaged in public policy and eroded those most sacred ideas of federalism and separation of powers because, according to the authors, those ideals are outdated. Vestiges of the eighteenth century, these ideals simply cannot apply to the United States system of government today. The condition of American prisons in the mid-twentieth century did not require a stretch of the imagination to consider why the federal courts became involved with the reforming of these prisons. The Eighth Amendment of the United States Constitution did not provide the courts with a set of standards to apply in deciding whether or not these prisons were engaged in “cruel and unusual punishment.” But the amendment certainly opened up that avenue for the courts to get involved. It authorized the courts to get involved in matters where excessive punishment might have been suspected. Therefore, it ultimately created boundaries of court involvement in areas of corrections. With no standards, it makes sense that the judges would have to reach outside of the language of the constitution in order to determine whether these particular prisons were treating their prisoners unconstitutionally or not.

17. Ibid., 4.  
18. Ibid., 14, 20.
Feeley and Rubin’s book also presents an interesting history of the whole period of court involvement in prison reform, even up to the present day. For instance, in investigating the period known as the “Winding Down” period, which was from 1986 to the present, the authors attempt to give reasons as to why judicial interest in reforming prisons has waned during the past few decades. They pose these possible reasons, allowing the reader to draw his or her own conclusions. Could it be the increasing conservatism of jurists as the nation approached the twenty-first century? Are judges becoming more sensitive to the people’s opinions on prisons, that they are becoming too soft and that they are not doing enough to reform our nation’s worst criminals? Or, is there no more work to be done in the area of prison reform since the most heinous conditions in prisons have been alleviated? While allowing readers to draw their own conclusions, they pose the question of whether prison reform should be looked at a historical incident or as an ongoing process. This dissertation intervenes and accepts the challenge of Feeley and Rubin, placing the issue of judicial prison reform within the historical context. It also goes beyond the work of Feely and Rubin by examining the judicial involvement of three distinct judges and their work in three specific states, detailing the uniqueness of the southern prison farm and the southern experience in penal reform.19

**Historiography of the Southern Prison**

For the most part, the states of Arkansas, Mississippi, and Louisiana lack individual monographs focusing on a state’s penal history. No general histories of Cummins Prison Farm in Arkansas exist. A few books on Louisiana’s state prison system exist. They do not, however, provide a beginning to end complete picture of the history of Angola. Mark T. Carleton’s

19. Ibid., 15.
Politics and Punishment: A History of the Louisiana State Penal System, published in 1971, gives the most complete history of the prison system in Louisiana up to its date of publication.\textsuperscript{20} Anne Butler and former Warden C. Murray Henderson wrote another thematic history of Angola, entitled Angola: Louisiana State Penitentiary, A Half-Century of Rage and Reform.\textsuperscript{21} While this book goes further than Carleton’s work, it caters to a more popular crowd, focusing on only a few specific, more appalling aspects of prison life in Louisiana. Hamilton and Henderson also wrote another book with a similar goal, but this book does not touch on the reform efforts of the federal courts in the 1970s.\textsuperscript{22}

Other authors have written books on Angola, but they come from the prisoner point of view and are more journalistic or biographical in nature. Former prisoner Wilbert Rideau wrote a book that pieced together a number of their award-winning articles from the most famous and decorated prison publication in the United States, The Angolite.\textsuperscript{23} Similarly, Rideau put his own personal life story into words upon his ultimate release from Angola in his autobiography entitled In the Place of Justice.\textsuperscript{24} While all of these works are very interesting and represent efforts that could step up the research of these prisons, none truly examine the prison as a historical and political event since Carleton.

Mississippi differs from the other two states in this study because historians have placed considerable focus on Parchman Prison Farm. William Taylor’s Down on Parchman Farm

\begin{itemize}
\item \textsuperscript{20} Mark T Carleton, Politics and Punishment: The History of the Louisiana State Penal System (Baton Rouge: Louisiana State University Press, 1971).
\item \textsuperscript{21} Anne Butler Hamilton and Murray Henderson, Angola: Louisiana State Penitentiary, A Half-Century of Rage and Reform (Lafayette, La. Center for Louisiana Studies, University of Southwestern Louisiana, 1990).
\item \textsuperscript{22} Anne Butler Hamilton and Murray Henderson, Dying to Tell: Angola--Crime, Consequence, Conclusion at Louisiana State Penitentiary (Lafayette, La.: Center for Louisiana Studies, University of Southwestern Louisiana, 1992).
\item \textsuperscript{24} Wilbert Rideau, In the Place of Justice: A Story of Punishment and Deliverance (New York: Alfred A. Knopf, 2010).
\end{itemize}
represents one of these efforts. Taylor’s work gives a narrative as told by the prisoners and the wardens. *Down on Parchman Farm* takes the reader up to the historic federal court reformation of the prison system in Mississippi. David Oshinsky gives readers another impression of the history of the penal system in Mississippi in his book *Worse than Slavery*. Oshinsky’s work provides readers with a great account of the brutality of racism and the barbaric system of Mississippi’s criminal justice system that resided within it. His work, however, does not delve specifically into the various attempts to reform Parchman Prison.

The following hopes to fill in these historical gaps, providing the historiography with a more complete look at the criminal justice systems in these three southern states and the intervention of the federal courts on those systems. Up until this point, the historiography is incomplete as to the special circumstances of reforming these most heinous southern prison farms. The existing historiography also does not give any special reflection on the judges and their specific role within this reform. Each of these judges approached the reform of southern prisons in his own unique way, and each judges’ methods were somewhat molded and guided by the particular situations existing within their states. This work hopes to give a more complete picture of one of the most thought-provoking uses of federal court intervention into the carceral state of the South. By focusing on those particular aspects of each of these jurists judicial personalities, this study will go beyond the basic studies of judicial activism that fill the shelves of law schools and the pages of law reviews. This is not merely a study of criminal justice, federalism, and judicial activism in the federal courts. It is not merely a study of the South. Nor is it merely a study of federalism. Nor does it encompass a history of discrimination of African American.

Americans in the twentieth century. It is a history of all of these things. And it is as important to
America’s study of the carceral state in the twenty-first century as it was decades ago to those
prisoners seeking a voice within America’s most heinous penitentiaries.
CHAPTER TWO: THE ROAD TO THE FEDERAL BENCH

The most striking characteristic of these prison-reforming judges remains that they were, in the case of Henley and Keady, born in the South, while Judge West made his home in Louisiana but was born in Massachusetts. Now, granted, it is not unheard of for a judge to live within his jurisdictional bounds, but it is of particular importance that these judges were part of a Southern way of life that, for the most part, seemed at ease and accepting of their respective states’ prison systems. An examination of the upbringing and legal training of these three judges reveals more nuance and insight into their particular decisions regarding reforming prison farms in the South. While their decisions left many in their states scratching their heads, their roles in making their states’ farms constitutional clarifies the ever-complicated role of the federal judge. Being located in a southern U.S. District Court of Appeals around a decade after Brown v. Board of Education, the ongoing process of desegregating southern public schools also influenced their involvement in prison reform as well. Southerners embraced these prisons as just another facet of their racially charged societal control, and the emotion-filled process of desegregating public education helped make the very process of reforming the southern prison even that more complicated for the southern judge.

J. Smith Henley: From an Arkansas Mining Town to the Federal Bench

Jesse Henley Smith, born on May 18, 1917, hailed from St. Joe, Arkansas, a mining town of around three hundred people. Henley stated that the only thing his family did not own in the town was the then-recently constructed Missouri and Arkansas Railroad depot. And by owning
“everything” in the town, Henley meant that they owned “a general store, a cotton gin,” and “a grist mill.” His grandfather, Benjamin Harrison Henley, was a former Union soldier, who came from the Kentucky side of the Cumberland River on the border of Kentucky and Tennessee.27

Henley came from a family of mostly Republican lawyers, except for the few circumstances where a change in presidential administration necessitated the need for a Democrat to hold the position of postmaster. Henley’s family “were Republicans . . . all along.” In his words, “all of them, yes. Except for the one or two in-laws . . . so we’d have somebody to be postmaster,” stated Henley. He earned his law degree from the University of Arkansas in Fayetteville in 1941 after two separate stints at law school, being asked to leave the school for what Henley referred to as rambunctious college hijinks. During this time, however, he met and married Dorothy Ingram, “a Harrison girl who’s been very helpful to me through the years.” He ended up graduating with honors from law school. He then practiced law in Harrison until the mid-1950s. No matter where Judge Henley would end up working in his career in the federal government, he made Harrison his home. This was very comforting to Henley, for “working in Washington in an administrative agency . . . sometimes you’re called upon to do some things you don’t really like to do. . . . I could come home and I had a place to go and live and hang my hat.” Harrison would always be home to Judge Henley, and this sense of home would forever affect his thinking both on and off the federal bench.28

Early in his legal career, he served for a few years as a federal referee in bankruptcy for the Western District of Arkansas. He also served as a city attorney for Harrison. From 1954 onward, Henley served in positions within the federal government at the appointment of

28. Ibid., 3, 16-18.
President Dwight Eisenhower, beginning with associate general counsel of the Federal Communications Commission and then head of the Office of Administrative Procedure for the Justice Department. “They needed a litigation lawyer and I went out there and headed their litigation division for a while, did mostly appellate work in the District of Columbia. I didn’t know anything about radio and television. I knew how to turn on a radio set, we did not yet have television here,” stated Henley. But one thing he learned from that experience is that litigation is litigation, no matter where one litigates. In January of 1958, the president appointed him to his first federal judgeship, that of district judge of the Eastern District of Arkansas. Although he managed to sit on the bench by recess appointments, the Senate delayed his actual confirmation until September of 1959. Senator John McClellan of Arkansas wrongly accused him of participating in writing an opinion that gave the president authority to send troops to Little Rock during the battle over the desegregation of Central High School. Henley later became chief judge of the Eastern District from 1959 to 1975, which allowed him to participate in a number of desegregation cases. But the prison litigation concerning the Cummins and Tucker Prison Farms in Arkansas would place Henley’s lasting mark on his home state. Litigation involving a nearby state’s prison system would have the same effect on yet another federal judge.29

**William Keady: Trained in Missouri But Always a Mississippian**

William Keady’s would always call Greenville, Mississippi home, even after leaving the state for his college and legal training. But before that his impoverished father, Michael John Keady, received a tremendous opportunity in 1874 and left his home country of Ireland, thanks to the generosity of Delia and Lewis Voyle. Michael and his sister lived with the Voyle family in

California until he reached his late teens. Later, he moved to Memphis, Tennessee and then finally landed in Greenville, Mississippi in the 1890s. A bout of malaria landed him at the King’s Daughters Hospital where he met Judge Keady’s mother. Judge Keady remembers his father as possessing a “gentle nature, full of Irish sentimentality, wit and humor. He also had a genuine love for learning.” His mother possessed “a dynamic and aggressive nature and was blessed with a warm personality.” The generosity of his parents and their willingness to lend a helping hand forever affected Judge Keady, and his parent’s treatment of his widowed sister and her seven small children served as the most recognizable sign of this affection. The arrival of young William would further test the love and affection of the Keady family.\textsuperscript{30}

Paul Colbert Huddleston Keady was born on April 2, 1913 with a major physical handicap in the form of a deformed right hand with no right forearm or hand. While Paul was his Christian name, his mother wished early on that his name would be Billy, and sticking to Colbert family tradition, he adopted the name of William. This would omit the name “Paul” while allowing him to have the Colbert family nickname of “Billy.” Judge Keady wrote in his memoirs that perhaps this was a “harbinger of things to come.” Life was fine for the Keadys until 1914, when Mississippi enacted a Prohibition law that closed the doors permanently on his father’s tavern. Thus one-year-old Billy and family moved on to Helena, Arkansas, where the sale of whisky was still legal. Arkansas’s further adoption of a Prohibition law forced him finally to convert his business to a lunchroom and a shoe store. His father eventually abandoned that endeavor and moved the family back to Greenville in 1918 where he became a weather stripping salesman.\textsuperscript{31}

\textsuperscript{31} Ibid., 6.
Keady cites many interesting events from his childhood which, taken together, certainly contributed to the man the Judge would become. When his elementary school received a new slate roof, the carpenters broke apart the old roof and failed to pick up a number of them. Of course, kids being kids, they began to throw the pieces of the roof at each other. Keady vividly recalls throwing a piece of roof at a fellow student, striking him on his forehead above his eye. “This event was a heart-shaking experience,” recalled young Billy, “and sufficient to wean me for awhile from boyhood pranks of that type.” While Keady never saw himself as a particularly strong student in an academic sense, he did profess skill in “mumblety-peg, shooting marbles, and in other games which boys played during recesses. Little things from those years stand out in my memory.” He considered citation time in the school auditorium as a “good training ground” to hone his public speaking skills. “I early determined (perhaps it was really Mother’s direction), that in view of my physical handicap I should concentrate on traits and characteristics that might equip me for law.” He excelled in areas of language and vocabulary, and the idea that no one from his family that he knew of was a lawyer made the vocation more appealing to him.32

While Keady’s time in grammar school certainly contributed to the development of his personality and ideology, he also credits the town of Greenville with providing him a most unique Mississippi experience. In 1925, according to Keady, the town had no more than twenty thousand people. Moreover, even with the town surviving hardships such as a yellow fever epidemic, several floods, and financial depression, “it was, and still is, a remarkably tolerant town. It had a considerably diverse population in both religion and national heritage, having a large Catholic population and an “influential Jewish population with an imposing synagogue whose members owned the principal mercantile stores in town,” as well as the mainline

32. Ibid., 9-10.
Protestant faiths. Its citizens had the “usual landed gentry” of the early settlers along with Irish, Italian, and Chinese populations. Greenville also had a majority of African-American citizens. Keady considered Greenville an “unusual Southern Mix.” This unique mixture of diversity and culture would serve William Keady well, especially as he began furthering his endeavors into the study of law and the legal system in the South.\(^\text{33}\)

In high school, Keady became class president of his freshmen class and continued to lead them until they graduated in 1931. Keady recalled that his extracurricular activities would make his academic life in high school a bit more stressful. Even though his father passed away four months before his high school graduation, many people in his life encouraged him to consider entering college. After hearing an alumni representative from Washington University in St. Louis address his senior class, Keady expressed an interest in Washington University. After an interview, alumni representative Philo Stevenson said that his chances of receiving a fully paid scholarship to the university were high, which only reinforced his interest in the Missouri law school. In the summer of 1931, Keady did in fact receive that full tuition scholarship.\(^\text{34}\)

William Keady entered Washington University with the intentions of becoming a lawyer. Due to finances, he never joined a fraternal organization, though he had received numerous invitations. Not being involved in Greek affairs, however, did not prevent Keady from taking part in numerous on campus activities. His dormitory organization joined with a number of Greek organizations and formed a political combine, one that elected him the chairman that would select candidates to run for school offices. He also considered an opportunity to represent the university in a debate against a college team from Oxford, England, on the question of whether courts have the power to declare legislation unconstitutional. His team from Washington

\(^{33}\) Ibid., 24.
\(^{34}\) Ibid., 27-29.
University upheld this action on the parts of the courts. Keady noted in his remarks “that the British history of dealing with Ireland showed what might befall a people unprotected by a written Constitution.” Keady was all set to marry his childhood sweet heart Dorothy towards the end of his law school journey, but the threat of losing his full tuition scholarship made him reconsider matters. The university administration said it would take away his last year of academic funding upon hearing his intention to marry, stating that if Keady had the money to get married then he certainly had enough money to pay for his schooling. This reasoning held considerable fault, according to Keady, for his income that summer consisted of a twenty-five dollar a week paycheck as the driver of a dry cleaning truck. His work with the university’s Young Men’s Christian Association chapter became his savior, for the secretary of the university’s Y.M.C.A. chapter asked a number of prominent St. Louis citizens, including the founder of Purina Mills and a former mayor, to contribute money to make up for the scholarship loss. He eventually married his sweetheart and completed his legal training, earning prestigious memberships to Omicron Delta Kappa and Phi Delta Phi, as well as graduating from law school as a member of the Order of the Coif. That summer of 1936, in Keady’s own words, it never occurred to him to find a job at a St. Louis law firm; instead, he returned to the state he always considered home: Mississippi.\(^{35}\)

Keady passed the Mississippi Bar Exam and became qualified to practice law in the state in September of 1936. His first job was with the law firm of Percy & Farish in Greenville, Mississippi. He won a seat in the Mississippi House of Representatives in 1939, representing Washington County. Later, he would earn a seat in the Mississippi Senate. “Legislative service,” declared Keady, “enabled me to gain statewide friends and colleagues, an opportunity I had

\(^{35}\) Ibid., 34-38.
missed by not attending a state college, especially the University of Mississippi and its excellent law school.” Along with state Congressional members Hilton Waits and Howard Dyer, Jr., Keady joined the conservative bloc of politicians from the Mississippi Delta. Under the leadership of Walter Sillers of Rosedale, this bloc’s chief aim “was to defeat the eight-mill state ad valorem tax advocated by Governor Paul B. Johnson, Sr. whose basic plank was state-owned free textbooks to school children of the state.” In his memoirs, Keady stated, “since I am not proud of my legislative record, I move on to recall certain pleasant experiences while living at the Edwards House, the downtown Jackson hotel which was a fraternity house for the virtually all-male Mississippi legislature.” One should not, however, interpret this as a write-off of Keady’s time in the legislature, for here he gained the political acumen necessary to maneuver the legislative waters to flow money into the dilapidated prison farm later in his career.36

As a member of the Senate Judiciary Committee, he became familiar with a number of future important actors in Mississippi government affairs, such as a young circuit court judge from Dekalb named John C. Stennis and a “rising young damage suit lawyer from Jackson” named Ross R. Barnett. Lieutenant Governor Fielding L. Wright also belonged to this group, and he eventually appointed Keady chairman of the esteemed committee. Shortly after Keady left the state legislature, Governor Thomas L. Bailey died and Keady’s friend and confidant Fielding L. Wright became governor. “Had this occurred while I was still a state Senator,” wrote Keady in his memoirs, “I am reasonably certain that it would have been exceedingly difficult for me to leave. Politics and public affairs had always interested me. Had I been tempted by the Wright Administration with the prospect of a larger office, I might well have succumbed. But it was the better part of wisdom for me to abjure partisan politics, since I was without independent wealth. I

36. Ibid., 40-42.
have never regretted that decision and was thankful I had made it.” This aversion to partisan politics made him especially interested in the federal courts.  

During William Keady’s time as a lawyer, he fondly remembered those cases that involved federal matters. “Federal court cases in which I participated require separate discussion, for it was through those experiences that I formed a sure conviction that becoming a federal judge was the height of my ambition.” Sure enough, Keady would get his opportunity. On May 22, 1957, Judge Allen Cox retired as the Federal Judge of the District Court of North Mississippi. Thus began a series of communications between the U.S. Attorney General and officials in Mississippi regarding the replacement of the North Mississippi Federal Court. United States Senator James Eastland of Mississippi, member of the Senate Judiciary Committee, received numerous letters from citizens giving their input for the replacement of Judge Cox in the northern district. It appeared that the decision on who to appoint for this judgeship came down to two candidates: Robert D. Everitt of Ruleville and Keady. Correspondence to Senator Eastland seemed to support both candidates more or less equally. In a March 1, 1957 letter to the Senator from Arthur B. Clark, writing on behalf of the Sunflower County Bar Association, of which Parchman Prison Farm is within, supported Everitt. He later acknowledged, however, that if Eisenhower did not appoint Everitt, the nod should go to Keady. Senator Eastland wrote back on March 10, stating that the President would not appoint a person who was a member of the Citizens’ Council or who did not actively support his election. Robert Everitt had both of these unfavorable characteristics. While he stated he would approve Keady for the appointment, he also stated “frankly, I do not know what the chances are for anyone, as I have not discussed the individuals with the Department of Justice whose names were submitted.” Howard Dyer, President of the

37. Ibid., 44.
Washington County Bar Association which includes Greenville, sent to Senator Eastland on February 11, 1957 a resolution from the bar association supporting William Keady. Senator Eastland replied, writing that he would do whatever he could to get Keady appointed to the federal bench. A few days later, the Mississippi Citizens for Eisenhower created a list of fourteen candidates worthy of appointment to the federal bench, which included Keady’s name.

Unfortunately for Keady, Eisenhower appointed another name on that list: former Circuit Court Judge of Lee County Claude F. Clayton. Those close to the selection process informed Keady that his name went down to the wire with Clayton. Keady used this as an opportunity to advance in his legal career and “gain further valuable experience, trying cases in both state and federal courts.”

Keady received another opportunity to ascend to the federal bench about ten years later. Several years before Judge Clayton moved to the Court of Appeals, Congress approved another judgeship in that court. This position, due to an agreement between Judge Clayton and Senator Eastland, remained vacant for years, though Judge Clayton “had literally been overwhelmed with the burden of trying to maintain a current docket, as the sole judge in thirty-seven counties of our district, with court-holding points at Oxford, Aberdeen, Greenville and Clarksdale.” He also received word from Senator Stennis that he would suggest his name for another vacancy in the same court, for Judge Clayton had recently been appointed to the U.S. Fifth Circuit Court of Appeals. There were a number of names suggested for one of the vacancies, including Chester Curtis of Clarksdale, whose name was withdrawn due to his contributions to Barry Goldwater’s campaign, and William Winter, “a protege of Senator Stennis,” who eventually withdraw his

name due to lack of interest. Eventually, President Lyndon B. Johnson would appoint William Keady to the judgeship, and the full Senate appointed him on April 3, 1968.\(^{39}\)

The day after his Senate appointment in Washington D.C., Keady returned to Greenville. At around 6 P.M. he received a phone call from his brother, who asked him if he had heard the news. His brother continued, informing him that “Martin Luther King, Jr. had just been assassinated in Memphis, and that Washington was on fire. This significant event formed an appropriate backdrop for the tremendous civil rights struggle soon to be brought in the United States District Court for the Northern District of Mississippi,” wrote Judge Keady. The decades of history that followed included a protracted war on discrimination on a number of fronts, including the constitutional rights and fair treatment of prisoners, many of whom were African-American. Lawyers would wage these battles in federal courts not only in Mississippi, but also throughout the South, especially in places like neighboring Louisiana.\(^{40}\)

**E. Gordon West: A New Englander at Home in Louisiana**

Judge E. Gordon West of the Eastern District of Louisiana federal court helped sustain the reluctance of the court to intervene in the affairs of the Angola prison farm. West was born on November 27, 1914. The third of six children, West’s father was a grocer in Abington, Massachusetts outside of Boston. In 1934, West accepted a job in sales for the Gulf States Utility Company in Beaumont. Not happy with sales work, he obtained a night job that allowed him to attend college during the day at Lamar Junior College. Attorneys that West met and befriended in Beaumont helped him become interested in the legal profession; however he did not quench that desire until he relocated to Baton Rouge. He worked afternoons and evenings in the

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\(^{39}\) Ibid., 95, 97.  
\(^{40}\) Ibid., 97.
accounting department of the Baton Rouge Electric Company, attending Louisiana State University (LSU) while there and earning an accounting degree in 1941. Stories of West’s grandfather also piqued his interest in the legal field. He entered the LSU law school and did very well, earning his juris doctor in one year. He earned a position on the law review and he won, along with Russell Long, the Moot Court competition at LSU. Fearing his service in the Navy might interfere with him taking the bar exam, he sat for the bar before graduating from law school. He passed the bar and continued law school, graduating in early June 1942. On June 10, West received his orders for active duty in the Navy. Upon returning from Navy service in November of 1945, he gained employment with the Louisiana Revenue Service. Five months later, he practiced law with former Moot Court partner Russell Long. When Russell Long began serving as a senator, West dabbled with teaching law at LSU and private practice until September of 1961, when President John F. Kennedy appointed him to be the first federal district judge of the newly created Baton Rouge district court.⁴¹

West’s appointment to the federal bench represented a lifelong achievement. He realized early on that he wanted to be a judge. The creation of a federal judgeship in Baton Rouge became both West’s and Senator Russell Long’s ambition. Both felt that Louisiana’s capital city desperately needed a federal judge. Up until that time, one of two federal judges traveled to Baton Rouge for four to six weeks each year. Nevertheless, while West, Long, and the Baton Rouge Bar Association felt a need for a federal court in Baton Rouge, Washington’s response did not reflect that. Congress stated that not enough business existed in Baton Rouge to warrant the creation of a new court. In addition, attorneys enjoyed an automatic yearlong continuance of cases filed to federal court. The Bar Association eventually appointed West to chair a committee

in an attempt to establish a district court in Baton Rouge. With the help of friend and colleague, Senator Russell Long in Washington, Baton Rouge eventually received its court. After the creation of the judgeship, with the urging of Long, President John F. Kennedy appointed Gordon West to the bench of the newly created Federal Eastern District Court of Louisiana.\footnote{42}

West’s appointment to the federal bench received much criticism upon further reflection from outside of Louisiana, considered by one historian as a “sour” appointment. Some felt that the role of the southern Democrat judge in the federal courts evolved into “the ruthless use of judicial discretion and procedural manipulation to protract civil rights cases.” West once publicly stated that he considered \textit{Brown vs. Board of Education} “one of the truly regrettable decisions of all time” which did not help boost his image. But Kennedy held to firm traditions that accepted the nominations from southern state senators without question, especially considering many of these southern Democrats held committee chairmanships that Kennedy needed in his corner.\footnote{43}

The press continued relentlessly to criticize many of Kennedy’s southern federal court appointments. \textit{Jet} magazine stated that “even while President Kennedy and his Attorney General brother, Robert, lead the pack insisting Negroes’ protests should move from the streets and be taken into the federal courts, their own Justice Department lawyers could tell them that Kennedy-appointed federal judges in Dixie make civil rights legal fights largely an exercise in futility.” Few who wanted to see Angola changed for the better held out hope that Judge West might come to its rescue.\footnote{44}

Judges Henley, Keady, and West all took unique paths to their distinctive federal court benches. Their young adult lives and their education helped create and mold distinctive men who

\footnote{42} Ibid., 8-9. 
would ultimately have to deal with very similar situations within their states. With a growing civil rights movement in the South and the advent of newer technologies such as television, the nation slowly but surely became aware of the atrocities taking place in the Deep South and in many areas of the nation. These revelations would not be limited to racial inequality and discrimination on the streets. The unique rebirth of the prison system in southern states after the Civil War and Reconstruction created a precarious system of state “run” prison farms that helped mold the landscape of southern incarceration in a way that was both different and distasteful to those outside of the South. It would only be a matter of time before these new federal court judges would have to consider issues at these prison farms. Their role in the litigation involving these prison farms would place them in uncomfortable situations, for they would have to interpret, and sometimes govern, issues in these prisons not only as impartial Constitutional protectors but as Southerners as well. The issues at these prisons, the state governments in charge of these prison systems, and the judges unique judicial personalities all combined to drive their distinctive approaches to handling Constitutional matters at these prison farms. While state actors made half-hearted, cosmetic efforts at reforming these prison farms, it would not be enough to keep the courts away.
CHAPTER THREE: THE FARMS AND HALF-HEARTED EFFORTS AT REFORM

Before investigating the reform that took place in these southern prison farms and the judges that led said reform, one must gain a sense of the prison conditions that paved the way for federal court reform. Prisons in the South throughout the early twentieth century remained the most dangerous and mysterious places in the nation. Very few southerners knew what went on within these prisons, and few cared. The state needed to segregate prisoners from law-abiding society and punish them for their crimes. It was the perfect “see no evil, hear no evil” scenario. Changes within American society, however, began lifting the blinders of not only southerners but those outside of the South as well. The Civil Rights Movement cast light on the particularly brutal conditions of southern prisons. While brutal prisons existed elsewhere, the peculiar nature of southern prisons made them particularly heinous in the eyes of many.

The exceptionalism of southern prisons derived mostly from the precarious nature of the southern prison system itself following Reconstruction. Before the physical construction of camps and the establishment of the prison farm, the convict-lease system became the immediate fix for southern states desperate for a prison system. After the destruction of the Civil War, many southern states began replacing their destroyed prison systems with ones modeled after the antebellum slave plantation. According to legal scholars Malcolm Feeley and Edward Rubin, the creation of these new prisons combined with southerners’ desire to maintain the suppression of blacks “created a correctional crisis for the economically exhausted southern states.” This system served a twofold purpose for the white planter classes. Not only did it entrench older paternalistic notions of white control over African Americans in a post-slavery world, but the plantation style
penitentiary also brought much needed state revenue. For these reasons, Southerners accepted southern prisons and their operation, while at the same many outside of the South found them to be particularly heinous.\textsuperscript{45}

The very idea of the southern prison farm based on the antebellum slave plantation made it a most repugnant institution in American society. The Civil War, while it destroyed slavery, did nothing to rid southern planters of their lust for power and control over a group of people they found to be inferior to themselves. “For those who have grown up in an industrial or mercantile environment” in other parts of the nation, “it is difficult to imagine the sense of rightness and well-being that many Southerners derived from seeing people . . . working in bondage on large, agricultural establishments.” Nowhere in the South was this more evident than in the prison farms of Arkansas, Mississippi, and Louisiana.\textsuperscript{46}

**Cummins, Tucker, and the Prison Farm Saga in Arkansas**

Arkansas represented a prime example of the rebirth of the southern prison system, where the post-war convict lease system caused the death of one-fourth of its prisoners from 1873 to 1893. State actors, feeling this excessive brutality must be limited, ended the private lease system and purchased farmland, eventually establishing the Cummins Prison Farm in 1902 and the Tucker Farm in 1912. State officials thus ushered in the “new” era of the Arkansas prison system. After the demise of slavery, this fertile farmland had been uncultivated for years. This seemed like the perfect opportunity for the state to create a new self-sustaining system. The prisoners would build their own quarters and produce their own food. They would even guard each other, which meant that the prison could devote a minimum expense to hiring outside

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\textsuperscript{46} Ibid.
guards. Thus, not only did these prisons bring in self-sustaining revenue, but the products of the farm often raised more revenue than necessary, which meant these prisons were not only self-sustaining but profitable as well.47

Cummins Farm, along with its smaller companion Tucker, comprised over twenty thousand acres of fertile farmland that held the key to the self-sustaining prisons system in Arkansas. Cummins comprised 16,500 acres along the banks of the Arkansas River. Located around twenty miles southeast of Pine Bluff, the state's largest prison farm rested around seventy-five miles from the capital city of Little Rock. Tucker Prison Farm, around twenty-five miles northeast of Cummins, sized out to about 4,500 acres. In a report published by the Southern Regional Council in 1968, Tucker made its name as the farm that housed "young white offenders." Its main products included cotton, rice, soybeans, and various garden vegetables. The report also stressed the fact that the prison farm system in Arkansas produced the funds necessary for the prison upkeep as well as a sizeable surplus. A wooden gate surrounded Cummins, and upon first arrival, a young man in khakis armed with a pistol greeted the fresh convict. Most alarming was that the first armed man the newly arrived prisoner noticed was in fact a prisoner. A trusty received his pistol from the gunroom in the morning and checked it back in in the evening. While civilians made up a few top administrators of the prison, the record keeping and processing of the inmates took place at the hands of more inmates. This resulted in the decimation of "information . . . both inaccurate and widely circulated. Each man's weaknesses are common knowledge, and so, subject to exploitation by the predatory." The mere presence of a majority of prisoners toting arms enforcing order within the prison on its face

47. Ibid., 51-52.
presented the prison with the nexus of many cruel and brutal events to follow, which litigation and investigation of the courts would only begin revealing.\textsuperscript{48}

When state troopers and other state officials later investigated the prison farms, prisoner guards made them leave their weapons at the front gate. Throughout these early years, the prison would establish its own internal hierarchy of control, from prison “line riders” controlling groups of workers down to guards who monitored prison camps. These "line riders" watched over and enforced order over the "longlines" by utilizing a two-tiered method of protection. While the shotgun guards stood close to the workers, the rifle guards could form a second line of defense in case the shotgun guards missed their targets. More often than not, these prisoner guards solved their interpersonal prison matters utilizing their position as guard. The trusty guards, as they were known, also used other methods of control and abuse to keep prisoners in line, such as not allowing certain prisoners to eat their meals. Prisoners’ chances of surviving the brutality of Arkansas’s prison farms increased when the inmates’ families bribed these trusty guards to ensure the survival of their kin. Up until the 1950s, this system worked, at least for the state of Arkansas. As long as this invisible, self-sufficient system produced enough profit to pay for itself, government officials were happy. And as long as the state of Arkansas was happy, the courts accepted the system as well.\textsuperscript{49}

Arkansas's prison farms did not fare much better when considering rehabilitation and education. While the State Department of Vocational Rehabilitation had an office at Cummins Farm, it served very little purpose. In 1966, the office made an effort to establish a school for prisoners, yet men who worked twelve hours in the cotton fields all day did not appear that

anxious to attend classes in the evening. Literacy classes began in February of 1968, yet this could be seen mostly as a cosmetic initiative to make the state's position appear differently after the first rounds of litigation began in the federal courts. The prison staffed no full-time physician, and it contained inadequate and antiquated hospital facilities. The prison flew in a doctor from Little Rock five times a week for half a day to tend to all of the medical needs of the farm. The hospital contained no isolation ward, thus "patients with tuberculosis or hepatitis and those with fractures or appendicitis lie side by side in the same ward." Thus, the prison farms in Arkansas served no other purpose than housing convicts and allowing said convicts to raise the necessary operating funds.  

One other way prisoners managed to raise more capital was through an informal system of “peonage” that lasted through the 1940s. Certain citizens with much influence and wealth could inform the prison board or the superintendent of the farms that they needed able bodied workers for their outside, private enterprises. The farms more than happily arranged paroles or indefinite furloughs for certain “boys,” mostly African Americans who met the private citizens needs. In other words, wealthy planters could now sustain their large farm enterprises by utilizing the cheap labor offered by the prison itself. Realizing this system looked eerily similar to the system of convict labor already abolished, the prison administration amended the rules in 1953, demanding that those citizens wishing to use prison employment must provide the name of a specific prisoner before officials would give consideration. Thus, within and without, these prisons skirted very close to the edge of unconstitutionality and in many ways, especially in the opinion of the prisoners within and those who wanted to reform these farms, displayed outright unconstitutionality. Ultimately, the courts would have to place their constitutional stamps of

approval on Mississippi and Louisiana’s prison farms as well, where conditions were not much better than in the Natural State.

**Mississippi, Parchman Farm, and the Prison Plantation on the Delta**

Parchman Farm, located in Sunflower County in the Delta portion of Mississippi, comprises over 21,000 acres of cotton land. At the end of the 1960s, it contained more than two thousand inmates. Parchman Farm, a self-sustaining operation in terms of cost, actually made a surplus; for example, it brought in around $310,000 in 1967. While this money-producing operation made state actors happy, this same feeling did not transfer to the prisoners at the farm. For “allegations of brutality, lack of treatment or training programs, very low salaries, continued use of armed convict guards, neglect by the legislature and other problems combined to create a system” which sank far below “any reasonable minimum standard of programs, facilities or personnel.” It did not take long for national commentators to trumpet the harsh conditions at Mississippi's central prison farm. ⁵¹

“Like the scandal-ridden Cummins Prison Farm less than one hundred miles west in Arkansas,” wrote Douglas Kneeland of the *New York Times*, “Parchman has had a dual purpose over the years: punishment and profit.” ⁵² The article, written in 1968, told the story of the embryonic process of reform taking place at Mississippi’s only prison farm. It touted a legislative act passed in 1964 aimed to provide a number of reforms at Parchman. Since the passage of the bill, prison officials had stopped using “Black Annie,” the disciplinary lash that Mississippi law still allowed. The article also brought to light vocational training opportunities

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⁵¹ Ibid., 8.
for prisoners, including work within a book binding facility that would provide all of the state’s bindery needs. In addition, the creation of a state-of-the-art blood plasma center now provided inmates with the opportunity to make a meager wage while behind bars. “Scientific farming techniques have been applied in the fields,” stated Kneeland, “almost doubling the yields of cotton to about nine hundred pounds an acre last year.” This increased production in cotton must have made state officials in the Magnolia State happy, for it meant less of their attention (and their state budget) on Parchman.  

To further promote the advances made to the prison system, the Mississippi State Prison released a progress report of the reforms made between 1964 and 1968. Prisoners now had access to a library for the first time, made possible by a 1964 legislative increase in the Mississippi Library Commission’s appropriations. On Christmas Eve of 1966, the prison even replaced the conventional vertical striped inmate uniform for trusties. “Blue denim with white drill stripe down the outside of each leg denotes a man being held under security. A half trusty wears blue denim with white stripe from the waist band to knee on the outside of both legs.” The most boastful aspect of the report, however, had to be the section on farming operations at the prison. Entitled “Agriculture—Still the Sustenance and Propellant of the Penal System,” the report reinforced that cotton still reigned as king at Parchman. With the help of the Cooperative Extension Service, prison administrators enacted a long-term plan that would increase the use of livestock for the production of pork, beef, eggs, milk, butter, and cheese for both staff and prisoner consumption, with the excess being processed or sold. “To feed inmates,” stated the report, “twenty-nine edible crops are grown on one thousand acres of land... 450 acres devoted to okra, beans, yams, cucumbers, and peas for commercial sale” with other products such as

53. Kneeland, “Mississippi Prison.” See also Taylor, Down on Parchman Farm and Oshinsky, Worse than Slavery for a more complete history of incarceration in Mississippi.
“cabbage, cantaloupe, carrots, collards, corn (pop and sweet), cucumbers, cushaws, egg plant, lettuce, mustard, onions, peanuts, peppers (hot and sweet), potatoes (both Irish and sweet), pumpkins, radishes, rice, spinach, squash, strawberries, sugar cane (for syrup), tomatoes, turnips and watermelons” wrapping up the list of products of the farm. Such a list of profitable agricultural products made state legislators salivate at the wealth prison farm industries earned.54

The superintendent of the Delta prison farm at the time, C.E. Braezeale, however, went through painstaking efforts to make those outside of the prison understand that the reforms taking place had nothing to do with the agricultural production of the farm. “We’re trying to get away from the idea,” stated Braezeale, “that while a man’s here we’ve got to get out of him every pound of cotton there is in him. We’re trying to think of the man when he’s getting out. We don’t mean it’s a country club. If he don’t take advantage of what we’re trying to do for him, he’s sure going out there and work.” Many in the state capital of Jackson, around one hundred thirty miles to the southeast of the prison farm, did not favor the new reform efforts taking place. Both the chairmen of the Senate and House committees in charge of Parchman believed the lash needed to be restored and utilized at the prison farm, especially considering the number of forced work stoppages. Though not publicly stating his affirmation in bringing the lash back into the disciplinary repertoire, newly elected governor John Bell Williams probably felt that Parchman officials needed to incorporate the use of the lash more. This would ultimately set up a clash between Williams and the reform-minded Braezeale, to the point where he was unsure of whether he would continue as prison superintendent. The use of prison jobs as patronage posts had always been a problem at Parchman, and Braezeale stated that this presented probably the largest problem the penitentiary faced. While narcotics and homosexuality existed and were

problematic, “both of those added together aren’t the superintendent’s worst problem—it’s the personnel.”

The makeup of personnel at Parchman, while involving patronage with the free world members, also suffered from patronage issues at the inmate level as well, for “of the 210 armed guards, 170 [were] still trusties.” The use of convicts as the central method of maintaining prison order haunted Parchman just as it did Cummins and Tucker in Arkansas. Free world prison officials hardly expected to protect prisoner safety when it depended on their fellow prisoner brethren to protect it. Segregation haunted Mississippi’s largest prison as well, for the prison camps even at the end of the 1960s still remained segregated, and “sixty-six percent of the 1,630 [were] African Americans still in the worst camps.” Thus, it seemed that even with all of the problems still in existence at Parchman, the legislature attempted half-hearted measures to “reform” the prison. They kept alive the idea that the prison’s first and foremost goal was to house criminals, with making money and sustaining its own operation a very, very close second. Towards the end of the 1960s, the state touted Parchman as a reformed establishment. Moreover, as long as the prison kept bringing in profits, the state legislature remained happy. Cosmetic efforts at reform remained central to the history of Parchman leading up to eventual federal court intervention. Mississippi shared this idea of half-hearted reform with its neighbor to the west.

Angola: “America’s Worst Prison” in Louisiana

During the early 1900s, Louisiana rid its state of the brutal practice of leasing its convicts out to private enterprise, thus the Bayou State ushered in a new era of corrections. But Louisiana had a great number of issues in getting rid of this system. One of which involved the work

55. Kneeland, “Mississippi Prison.”
56. Ibid.
prisoners performed, mainly the shoring up of the levees along the Mississippi River. Louisiana would have a tougher time making this transition from levee work for the state to becoming a self-sustaining prison based solely on agriculture as in Arkansas and Mississippi. Louisiana’s experience differed mainly because the prison never became a self-sustaining venture. The very fact that the prison required the state to support it throughout the early half of the 1900s posed a very distinct set of issues on Angola. State actors certainly had Louisiana’s prison farm on their mind—but for reasons wholly different than its neighbors to the north and the east.57

As historian Mark T. Carleton points out, “If Louisiana’s penal history is unique in any respect, the uniqueness may be found in the total politicalization of the system since it was initially leased in 1844. Whether administered by lessees, state appointees, or even by professional penologists, Louisiana’s penal system has been a hostage of politics and a haven for politicians for more than a century. . . . Along with class politics and race politics, Louisiana has also sustained a durable ‘politics of punishment’.”58 Rehabilitation of prisoners rarely entered the mind of the politician given the task of handling Angola. Instead, prison administrators simply tried as best they could to make the prison a completely self-sustaining operation. Throughout the 1900s, Louisiana’s populist governors’ concern for their fellow human and his welfare ended at the borders of the Angola prison farm. Through the decades, some governors flirted with reforming the prison, but they realized it amounted to political suicide and that they would receive little support for their endeavors at the state capital. Thus, half-baked reform remained the central tendency of the prison at the state level until the late 1960s.59

58. Ibid., 199.
59. Ibid., 191, 199.
While change took place throughout the United States during the early 1900s, in Louisiana, one must keep in mind that southern progressivism was for whites only. Southern lawmakers at the time were willing to spend more than those before them, but most felt that the prison still needed to provide a majority of its funding. Thus, the idea of “self-support” ruled the early decades of Angola. “Not far behind was another guiding principle of overriding importance, the believe that because most convicts were blacks, little more than agricultural work and Sunday preaching needed to be provided to effect rehabilitation of inmates,” thus the prison farm at Angola received little help from Baton Rouge. Two major traditional considerations handcuffed Louisiana progressives and would continue to affect politicians’ ideas regarding the prison farm for a majority of the nineteenth century: race and cost. African-American prisoners continued to do what prison officials considered “black” jobs, mainly levee work. Operating and maintaining the levees during pre-bulldozer days represented a feat that most modern engineers cannot fathom. As late as 1912, out of the 1955 males at Angola, 625 of them worked on the levees; out of this number, 616 were African American.60

Interestingly, politicians in Louisiana paid attention to the proceedings of government in nearby Jackson, for Louisiana legislative journals mentioned that legislators took note of Mississippi’s demonstration that “a very large percentage of the prison population [could] be most profitably employed in agricultural work.” If Parchman in nearby Mississippi could be both self-sustaining and profitable, so could Angola. Frederick H. Wines, addressing the Congress of the National Prison Association in Indianapolis in 1906, said, regarding the state of the prison in Louisiana:

The negro is not fitted for indoor life. He is not wanted as an industrial rival to the white man, and there is no possibility (and perhaps it is not desirable) of introducing into

60. Ibid., 87-89.
Southern prisons those forms of carrying on industries by machinery common in our [Northern] prisons. . . . [Louisiana’s] agricultural prisons such as we know nothing about, and I can not imagine, except for the question of reformation (and they are not reformatory), anything more ideally suited to the conditions which exist down there than the large plantations on which the convict population is assembled, properly cared for, and governed."\textsuperscript{61}

Frederick H. Wines continued years later to discuss the life of the African-American prisoner at Angola. Wines seemed completely uninterested in the life of the white prisoner at Angola.

"[The life of the African-American convict] on the State farm is almost identical with what he would lead if working for wages. It is indeed more moral, more regular and more sanitary. He is well housed, well fed and well cared for in sickness and in health. He is not overworked. . . . He is easily controlled, but is liable to punishment by strapping for insubordination or persistent laziness. He will not often run from an armed overseer, and if he does . . . he runs but a short distance before he is treed by the dogs."\textsuperscript{62}

Very few state actors concerned themselves with the plight of the African American in the early 1900s in the South, especially Louisiana. While many poor and impoverished Louisianans felt that the election of Huey Long gave them someone on their side in the governor’s mansion, race created a border that restrained this hope.

While Huey Long broke with conventions of Louisiana governors by bringing paved roads, schools, and hospitals to the Bayou State, his views concerning prisons in Louisiana, stated historian Mark Carleton, "were frankly and utterly conventional: the ‘Kingfish’ looked upon the penitentiary simply as a state-operated enterprise, the sound management of which was required to save the taxpayers unnecessary expenditures and to protect his administration from embarrassment.” The nation’s economic climate did not help sway Long away from that principle, for the depressed 1930s made money “universally hard to come by. . . . Long’s administration was especially loath to appropriate any amount of state funds to such a low priority item as a penitentiary. As a result, his prison appointees continued the traditional

\textsuperscript{61}. Ibid., 90.
\textsuperscript{62}. Ibid., 110.
practices of flogging and long convict work-hours in their determination to make the system self-supporting.” Along with the depressed state of the economy at both the state and national level, the forces of nature also crippled Angola. The prison farm had to take out loans of $3,350,000 between the years of 1923 and 1927 alone to repair massive flood damage from 1922. “Angola, after all,” according to Carleton, “was the only state penitentiary in the nation whose greatest annual concern was to avoid being inundated and ruined by the mightiest river in North America.” One might consider the floods a blessing in disguise for the prison farm, for the federal Army Corps of Engineers took over the work of shoring up the levee system. Thus the necessity of paying back these loans as well as interest payments only hurt Louisiana’s efforts at creating a self-sustaining prison farm in the 1920s during the Huey Long era.63

Many throughout the 1930s and 1940s considered the state's only prison farm to be a nuisance of Louisiana’s body politic, and these feelings continued into the 1950s. Some governors along the way, such as Jimmie Davis, who took office in 1944, promised to reform what slowly became the nation’s worst prison. Davis asked two penologists to conduct investigations at the prison farm and offer him suggestions to change the prison for the better. Joseph W. Sanford, warden of the federal penitentiary in Atlanta, and Charles V. Jenkinson, engineer with Federal Prison Industries out of Washington, D.C., released a report in 1946 entitled Recommendation for Reorganization of the Penitentiary System: A Survey Report by the United States Department of Justice, Bureau of Prisons, and Federal Prison Industries, Inc. The gentlemen’s report went on to condemn “decades of inefficient prison administration” in Louisiana. “The present organization of the Louisiana State Penitentiary,” the report read, was “so inadequate, and in most instances, so unqualified to develop and administer the numerous

63. Ibid, 112, 120.
activities [of an acceptable penal system] that its presence has, of necessity, been discounted in 
[the report’s] discussion of personal requirements.” The report also condemned the prison’s use 
of convict-guards, “which all of Louisiana administrations since that of Governor Pleasant [who 
served as governor from 1916 to 1920] had found to be a wonderful salary-saver. . . . No prisoner 
. . . can be trusted with weapons, keys or with any authority over the custody of others.” The 
cliques that formed due to the prisoners having such access had a “brutalizing effect on the 
morale of the institution.” Thus, Governor Davis asked the legislature to approve a long-term 
plan to modernize Angola at a minimum cost of $6,745,000 spread out over a five-year period. 
His plan, however, did not include the suggestion to hire 620 qualified civilian employees, which 
would have included 285 civilian guards. One should not place the blame for inaction solely on 
Governor Davis but on the penal system in Louisiana and the legislature, “the latter reflecting the 
views of both the political establishment and, to a lesser extent, public opinion. . . . Although the 
distance from the governor’s desk in Baton Rouge to Angola is only sixty miles, the distance 
might just as well have been measured in light-years insofar as executive orders relating to 
prison administration was concerned.” Any governor wanting to reform Angola moving into the 
1950s and beyond would have a seemingly impossible task at the state level.64

The push from Governor Davis did raise the money to construct a $1,400,000 prison 
hospital by 1948. Governor Earl K. Long, brother of Huey, first elected to the governorship in 
1939, entered Baton Rouge with the progressive zeal of his brother, yet he at least promised to 
give the penal system its slice of the pie, no matter how slim it might end up being. Beginning 
with Governor Davis and then with Earl Long, at least the executive department placed Angola 
on its radar, which meant that for the first time in the prison’s history governors discussed

64. Ibid., 142-44.
legitimate efforts at bringing true reform to the prison. The prisoners, now, willing to do their part in bringing the abuses taking place at the prison to the public at large, also helped make Angola a substantive issue. In 1951, thirty-seven prisoners slashed their heel tendons in protest of the conditions and the oppressive work loads forced upon them by prison administrators, denouncing among other things “overwork, brutality, control by political appointees, and lack of recreation, rehabilitation, decent housing, and edible food.” When the convicts “focused public attention on themselves by self-mutilation,” politicians inaugurated the most revolutionary and ambitious program of penal reform in the state’s history. The governor “had no choice, for the moment, but to swim with the tide.” Long quickly appointed a thirty-four-person committee, mostly law enforcement and judges, to investigate Angola. The committee had only two African Americans. Long voiced to the committee that while generating revenue should not be the main goal of the prison, he wished that it would still one day be a self-sustaining effort. This committee, together with the heel-slashing incident, began tearing down the walls that hid the nation’s darkest prison farm along the Mississippi and allowing the rest of the nation and the world to get a glimpse at the prison farm.65

Events at Angola would later set the stage for Collier’s Weekly to publish in 1952 an article entitled “America’s Worst Prison.” Angola would now wear the crown for the whole world to see. The article gave those outside the prison walls a glimpse of life inside: “All the prisoners were assigned to hard labor. Often the work was nothing more useful than cutting wild grass by hand. But it always began at ‘can see’ and ‘can’t see,’ at times a twelve-hour stretch.” Each prisoner would receive what amounted to twenty-eight cents worth of food a day. A prisoner still served a pawn in the lives of Louisiana’s politicians, for the inmate

65. Ibid., 136, 148-52.
was frequently permitted to leave the camp whenever the convenience of a politician outside demanded, undertake whatever job the politician had at hand and then return to his old work gang. If he failed to follow orders, he was often flogged. Or fed a massive dose of salts or castor oil. Or thrown into a blank-walled dungeon on bread and water for weeks. Regulations forbidding such punishment were consistently ignored.  

The writer of the Collier’s piece begged the reader to not confuse this American prison farm with what went on in the steppes of the Soviet Union in the gulags, for this sort of brutality took place in the American South and not Siberia.  

The article also explored the physical state of the prison itself, giving a glimpse into a world that not many people had seen outside of the few free-world employees at Angola itself. “Harems” for all-male prostitution existed within the prison, which was “shaped like an animal trap, with one side barricaded by a ten-mile arc of levees rimmed with quicksands, and the other cut off by the brush-tangled jaws of the Tunica Hills. . . . This ugly fester on the face of democracy stood untouched right up to the last spring, a standing indictment of neglect and forgetfulness on the part of Louisiana citizens over more than a half a century.” Mary Margaret Daughtry, formerly the head nurse at Angola, gave testimony surrounding the heel-slashing incident at Angola which further shed light on conditions there. She called Angola a throwback to the  

Dark Ages. Degenerates of every type, . . . psychopaths and neurotics, are huddled in bedside companionship with new arrivals in huge dormitories that, as one inmate described to me ‘. . . Stink like the hold of a slave ship.’ There is . . . No trade school, no handicrafts or arts—not even a library. A man sentenced here who cannot read or write leaves here the same way. . . . No effort . . . is made to help him stay out of the penitentiary once he obtains his release. . . . Their only choice is to steal or beg.  

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67. Ibid.
68. Ibid., 15.
While Governor Long considered Angola “a cancer on the state treasury,” Daughtry stated that “the penitentiary is a cancer on the soul of every citizen in the state of Louisiana who knows conditions at Angola and has made no effort to remedy them.”

Readers around the world now became aware of the overt governmental corruption and political favoritism, long a practice at Angola. Records from Angola revealed jobs at the prison being used as “rewards for political hacks.” The reports “disclosed an accounting system so contrived that wholesale graft was possible without detection. There wasn’t even an inventory. We couldn’t determine what form of favoritism was used to choose the convict-guards, except that it clearly didn’t reward good behavior.” Besides giving their political allies lucrative job posts at the prison farm, politicians cared little about the prison farm, let alone caring about the humaneness of its punishments. Daughtry described the treatment of prisoners as “medieval, one of the most pathetic victims being a sixty-one-year-old man who had been lashed with a leather strap fifteen or twenty times till he lost consciousness.” The authors of the article paid particular attention to what they at first observed as a “solid block of concrete” with “three iron pipes stuck up from the top of it like periscopes.” They then discovered three steel doors on one side of the concrete block. These solid metal doors contained draft vents near the bottom. “We banged the doors with our fists,” wrote Stagg, and “a man’s voice answered from within! We saw that the door was locked, and that there was no one around who could open it. We asked the man inside if he was all right, and he said he was.” They came upon a second, locked steel door, thus they assumed another prisoner was within. They finally found an unlocked door and swung it open.

The walls and ceiling were painted black. There were no windows. The only sources of light or air were seven inch-wide, down-tilted slits in the bottom of the door and a two-inch hole in the ceiling. The whole led into a pipe on the roof that was bent in the opposite direction from the prevailing wind. A bed stood along the wall. In an opposite

69. Ibid., 13-15.
corner was a concrete box for a toilet. The entire cubicle was the size of a small clothes closet. Into this stifling space as many as seven men were jammed at a time. At least one man had been removed in a state just short of roasting.  

As with prison farms in Arkansas and Mississippi, Louisiana had problems that went well beyond the treatment of the prisoners themselves. Housing the prisoners represented a challenge that government officials in these states did not seem able to tackle.

Barely standing shacks contained men that were often bunked two and three high. Many of these bunks contained close to three hundred men per room. A prisoner—or a prisoner guard—who wanted to prove a point could easily set the wooden frames in the dilapidated prisoner cabins on fire. “A half-dozen kitchen-size water faucets” remained the only way to put out these fires safely. Moreover, “motives for arson and murder were everywhere: favors peddled in return for cash . . . furloughs to work for pay outside the prison—for as much as six months to a year—granted in response to political pull.” Other illicit operations at the prison farm put convicts in harms way, such as “sexual perversion forced by assault . . . whisky making and dope peddling through connivance with the ‘free people,’” and “open gambling, at craps tables patterned on those of fancy casinos.” Even though Governor Long publicly stated the need to reform the prison farm, he never had the will to bring true rehabilitation to the prison farm. “You want us to teach those convicts . . . ping-pong, baseball, elocution, and gee-tar playin’? Those fellows aren’t up there for ringin’ church bells,” stated Long when the committee investigating Angola asked him to end corporal punishment at the farm.

Angola would continue onward similarly for years, with governors offering empty promises, legislators not caring what happened at the prison farm, and citizens generally apathetic to the plight of the prisoner. Long and others that followed remained unconcerned with

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70. Ibid., 16.
71. Ibid.
a prison farm that managed to support itself or could bring in an added benefit to the state coffers. The 1960s would not be any better for Angola, for its “old-fashioned prison system” remained “relatively intact. The racial antagonisms and political rebellions, the arguments about rehabilitation and reintegration, the deep questioning of the basic role of the prison that occurred in more progressive states never caught on” in the Bayou State. Not until the federal judicial fervor for reforming southern state prison systems caught on towards the late 1960s and early 1970s, together with a combination of executives and legislators both forced to make a change and embrace reform, would any real change come to Angola or any of the prison farms of the Deep South. 72

Prisons in the U.S. South throughout the early twentieth century were the most dangerous and secretive places in the nation. Very few southerners knew what went on within these prisons, and very few cared for that matter. For the most part, what went on behind the walls mattered not to them; it was the perfect “see no evil, hear no evil” scenario. Nevertheless, changes within American society helped remove the blinders of not only southerners but those outside the South as well. The Civil Rights Movement began to shed light on the particularly brutal prison conditions of the South. Moreover, while prisons throughout the nation were especially violent, the peculiar nature of southern prisons made them especially heinous in the eyes of many. Fortunately, the work of a few courageous federal court judges helped bring the cruelty of southern prisons to the public eye. Judge J. Smith Henley was one such judge. His years of involvement with the reform of Arkansas’s prison system created a lasting mark on prison reform throughout the nation, producing the spark that would ignite the judicial review of over twenty-five state prison systems in the decades that followed.

The exceptionalism of southern prisons derived mostly from the precarious nature of the southern prison system itself post-Reconstruction. After the destruction of the Civil War, many southern states began replacing their now non-existent prison systems with ones modeled after the antebellum slave plantation. This system served a twofold purpose: not only did this help once again entrench the old paternalistic notions of white planter society over African Americans
in a post-slavery world, but the plantation style penitentiary also brought much needed state revenue. Arkansas’s new prisons, in fact, not only generated self-sustaining revenue, but they also brought in profit to the impoverished post-Reconstruction South. For these reasons, southern prisons and their operation remained perfectly acceptable to most white southerners, while at the same time they appeared to be especially heinous to those outside of the South. While federal courts historically stayed out of state prison matters, the “hands-off” era would soon come to an end.

**Judge J. Smith Henley and the Beginning of Reform in Arkansas**

The era of federal court silence ended in 1965, when Judge J. Smith Henley of the United States District Court for the Eastern District of Arkansas declared certain conditions and practices at two Arkansas prison farms unconstitutionally cruel and unusual. The Eighth Amendment now formed the basis of federal judicial jurisdiction over prisons. Prisoners could now use the federal statute 42 U.S.C. §1983 as a basis of their prison claims, attributing the Eighth Amendment to the sovereign states via the Fourteenth Amendment. Courts could examine prison conditions without evaluating the conviction itself, which took away the chief reason courts refused to investigate prison conditions utilizing habeas corpus. Over the next few decades, courts would interpret the Eighth Amendment and create for themselves boundaries within which they could exercise their authority. Within a decade of the 1965 Arkansas decision *Talley v. Stephens*, federal courts placed prisons within twenty-five states and the entire prison systems of five other states under comprehensive federal court orders. By 1995, forty-one states,
as well as the District of Columbia, Puerto Rico, and the Virgin Islands, witnessed their prison systems become the subject of intense judicial scrutiny.\textsuperscript{73}

During Henley’s earliest days on the federal bench in Arkansas, the mere fact that a prisoners’ petition would ever reach his office represented a miracle. According to Henley, had a prisoner written a letter to a judge in the late 1950s, “a warden would have beaten the hell out of him and he would have been thrown in the hole or chased over the levy and shot as an escapee. We just didn’t get the mail.” Prison authorities muffled inmates’ complaints until Governor Orval Faubus appointed Dan Stephens commissioner of Cummins Prison Farm. “Dan was the first warden I could ever remember down there,” stated Henley, “who ever undertook, there may have been some exceptions, but who undertook to do a little bit of something humane for the prisoners.” One thing he provided the inmates with was hot plates so they could cook their eggs. Before the prisoners had their own hot plates, they would have to fry eggs the night before in the kitchen. And, even Judge Henley admits, “a cold fried egg is not very good.” While this improvement might not sound like much, it meant a great deal to prisoners and to Judge Henley to see such minor, yet positive, changes take place at the farms.\textsuperscript{74}

Sitting on the bench during this litigation, Henley heard first hand the accounts of brutality that made these prison farms sound less like penal institutions and more like medieval torture chambers. One implement frequently used at Cummins and Tucker Prison Farms, known as the teeter, was comprised of a simple plank placed on the ground with a round device forming a pivot. Though this implement resembled the teeter-totter of one’s childhood past, there was nothing innocent about this contrivance. The prisoner balanced himself while standing on the device, a leg on each side of the pivot. Prison officials forced the prisoner to maintain his balance

\textsuperscript{73} Ibid., 14.  
\textsuperscript{74} Henley, “Interviews,” 57-58.
and prevent either side of the board from hitting the ground. The punishment for one side of the board touching the ground: lashes with the strap. The strap consisted of a piece of leather about five feet long, four inches wide, and about an inch thick, which was attached to a six-inch wooden handle. The strap quickly became the most notorious torture device used by guards at the farms.\(^{75}\)

Henley eventually listened to hours of testimony describing other torture devices. These implements provided not only physical but psychological punishment. The Texas TV, for example, taken from a practice used in a nearby state prison, provided a way for prison officials to manage larger crowds or lines of inmates. Trusty guards required prisoners to stand facing a wall with their hands clasped behind their backs, their feet between eighteen inches to two feet from the wall. Finally, the guards forced prisoners to place their foreheads on the wall. Guards found this particular practice useful when prisoners were waiting in line for a meal or a disciplinary hearing. This would go on for a half an hour to an hour at a time. When the prisoner moved down the line, they merely continued the previous position. A prison guard gave the prisoner lashes with the strap as soon as his head stopped touching the wall. The plank and the Texas TV provided the psychological and physical pain the guards needed to subdue and control the prison population.\(^{76}\)

The "Tucker Telephone," however, advanced far beyond the other torture implements used at the prison in terms of brutality. Guards placed these boxes, which resembled older pay telephones, at regular positions throughout both prison farms. It had a crank that when turned produced electric voltage, which was then transmitted through cables with clamps at the end. Prison officials placed these clamps on various body parts of the prisoner, with the fingers and

\(^{75}\) Ibid.  
\(^{76}\) Ibid., 12-14.
the genitalia being most popular. As the prison guard would turn the crank on the device, the voltage would generate throughout the cables and electrocute the clamped body parts. Wardens and administrators often used as punishment for prisoners who wrote writs and petitioned the courts. Even today, it is customary of anyone visiting the warden of Arkansas Penitentiary to ask whether the phone on his desk is in fact a “Tucker Telephone.” If any worthwhile reforms were to take place at the prison farms in Arkansas, prison officials would have to stop utilizing these forms of torture, especially the shooting of complaining prisoners as escapees. Prison administrators must allow convicts to submit their complaints to the court, according to Judge Henley, and he would do what he could to make sure their petitions reached his desk.77

Consequently, the most significant change Dan Stephens brought to the prison farms involved allowing prisoners to petition and write the courts. Judge Henley spoke of Stephens having issues with letters that were “saucy, . . . impudent or impertinent.” Stephens went so far as to prevent prisoners from sending letters, and later approached Henley about the matter personally. The judge, however, told Stephens not to censor the letters unless for security purposes. Although Stephens disagreed with this outright disrespect of the court from the prisoners, he allowed the letters to continue. Shortly thereafter, writs began pouring into Henley’s court, and the state government finally had to face the harsh realities of the Cummins and Tucker Prison Farm.78

Other violence towards inmates from trusties and administrators of the prison further convinced Henley that prisoners definitely needed the protection of the U.S. Constitution. Shortly after hearing testimony from petitioning prisoner plaintiffs regarding their treatment at the prison farms, Judge Henley learned that Mose Harmon, Jr., a thirty-eight year old field

77 Ibid., 59-60; and Feeley, Judicial Policy Making and the Modern State, 56.
78 Henley, “Interviews,” 60.
warden trusty, whipped one of the petitioners, Winston Talley, on October 14, 1965, the day after he testified in front of Judge Henley’s court. Talley stated that in the past three years, officials probably whipped him around seventy-five times, while Harmon placed that number at around seven or eight. The whippings took place around thirty minutes after the workday began. Harmon called Talley in from the field and administered eight or nine lashings. While Talley quoted Harmon as stating that the whippings were “for lying yesterday” in court, Harmon disagreed. For Harmon, the lashings served a disciplinary purpose in an attempt to correct Talley “for agitating work-stopping and insolence.” What earnestly led Judge Henley to believe that more protections were necessary for prisoners came from Harmon’s continued invective. Henley would have a chance to address the issue of corporal punishment given without any sort of procedural protections once he issued his opinion.79

Judge Henley’s Philosophy on the Federal Courts and State Matters

In Judge Henley’s opinion, as evidenced by both his oral biography and his role in the litigation, matters of prison reform rested beyond political ideologies and party affiliation. He would demonstrate this philosophy in the first case that questioned the constitutionality of prisons in Arkansas, Talley v. Stephens. Henley credited governors and politicians from both the Republican and the Democratic parties for helping reveal the atrocities and unconstitutional conditions in Arkansas’ prisons, stating that he was “immensely pleased with the response of the state and of every administration to the needs for prison reform. This [was] true whether it was Republican or Democrat in office.” Considering the negative view that most scholars have of Orval Faubus, Judge Henley praised the governor for attempting to bring light to the dark

conditions at the Arkansas prison farms. Politicians such as Faubus saw beyond the public rhetoric on prisons and the treatment of prisoners in general, for “the public at large has no idea” what occurred behind prison walls, stated Henley. He continued that most people paid little “attention to what’s being done to the prisoner, and they don’t realize or stop to think that a person is put in prison as punishment not for punishment.” Henley credited the governor and legislature with utilizing the “running room” to clean up the prisons.\(^{80}\)

The idea of “running room” represented one theme of Henley’s view of prison reform at the state level. More precisely, the phrase exemplified Henley's views of the relationship between the federal government and the state governments to exist. His conception of federalism reflected his position on the role of judges within the system. In response to criticism that judges make law rather than interpret it, Henley realized that it was true but that nothing was inherently wrong with it. Judges merely filled in the void left by legislators, who drafted bills that could in no way serve all the needs of society. “Those” spaces, claimed Henley, “can only be filled in by judges who, in that sense, make law as they try to adapt the basic constitutional and statutory provisions to circumstances that are new.” If the plain language of the Constitution can guide a law pertaining to modern telephone communication, for example, then it must prevail and guide. As long as judges embraced the middle ground of an issue and made reasonable interpretations, they can and must certainly “make law.”\(^{81}\)

While Henley believed judges made law by their mere interpretation and application of the Constitution to current situations, he envisioned his role in prison litigation as more of an administrator. Henley believed there were two ways to approach institutional reform guided by judges: either say “you must do this” and appoint an administrator to make sure it gets done, or

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\(^{80}\) Henley, “Interviews,” 142-43.
\(^{81}\) Ibid., 119-120.
say “look, this is wrong, you’ve got to stop it and fix it, now you tell me how you want to fix it.”

As evidenced by his opinion in the *Talley* case and the court proceedings that ensued, Judge Henley favored the latter approach. The first approach usually brought resentment from the state governments due to the federal government not allowing them to offer alternative methods of fixing the problem. Henley largely felt that taking this second approach as “administrator from above” contributed to the successes that followed in Arkansas. Henley also thought that this was a better way to approach reform of institutions outside of prison, in places such as schools and hospitals as well. This formed the foundation for the reform of the “dark and evil world” known as the Cummins and Tucker Prison farms and made them not only constitutional but also safe for prisoner and guard alike.82

**The First Step: *Talley v. Stephens*, November 1965**

Judge Henley wrote the first of many opinions concerning the constitutionality of Arkansas’s prisons on November 15, 1965. In the case of *Talley v. Stephens*, the petitioning prisoners stated that they had suffered a number of abuses at the hands of prison officials, including severe corporal punishment at the hands of both official guards and trusty guards as well.83 The petitioners also claimed that prison officials denied them medical attention when requested and access to the courts for relief. Early in the opinion, Judge Henley wrote that the federal courts did not possess the power to undertake complete management of the prison system nor to review every complaint made by a prisoner. This cautious pretext guided Henley through the individual prisoner complaints.84

82 Ibid., 145-146.
84 Ibid., 685-86.
Henley quickly established the basis for an Eighth Amendment violation of cruel and unusual punishment in the prison setting. He wrote that “prison officials knowingly” compelling “convicts to perform physical labor which is beyond their strength . . . which constitutes a danger to their lives or health, or which is unduly painful constitutes an infliction of cruel and unusual punishment.” The lack of established guidelines for the procedure and administration of corporal punishment most alarmed Henley. Prison officials often applied the punishment summarily, within the sole discretion of the official administering the lashings; this did not hold up to constitutional scrutiny. In addition, informal prison regulations stating a punishment should not ten blows did not stand up to constitutional scrutiny.85

Henley chose not to declare the use of corporal punishment per se unconstitutional. Corporal punishment remained constitutionally permissible if not excessive, if responsible people give it dispassionately, and applied according to established standards. This way, the prisoner could know what conduct would bring about such a punishment which punishment to expect for a particular type of behavior. Those safeguards did not exist in Arkansas’s prisons at the time. Therefore, Henley declared the use of the strap in the prison farms unconstitutional. From this particular ruling, Henley did not dictate the particular methods the state should use in creating a constitutional regime of corporal punishment. He did create, however, broad principles that the state would have to follow if it wanted to continue using corporal punishment on its prisoners.86

Henley then addressed the lashings administered by Mose Harmon, Jr. to Winston Talley. While Harmon stated for the record that the lashings had a disciplinary nature, one of quelling insolence and the promotion of work stoppage, Talley testified that the whipping came directly

85 Ibid., 686-88.
86 Ibid., 689-90.
from his “lying in court.” Once Talley reported this new instance of punishment to Judge Henley, the judge procured new testimony from Talley, Harmon, and other prisoners who might have witnessed the punishment. Talley further testified that in addition to receiving nine lashings for lying, he heard Harmon state that he still owed Talley about twenty-five more strokes and that he might as well “get started right now.” Harmon specified that the punishment came for Talley’s “agitating work-stoppage and insolence.” He further indicated that Talley urged fellow inmates to slow down and refuse to work, for “the ‘people in Little Rock’ were on his side and none of them would be punished because the Institution Officials were afraid to do anything.”

More alarming to Judge Henley, Harmon further conceded: “at the time of the punishment I also remarked to him that perhaps it would teach him not to lie in court.” Henley admonished Harmon, stating that it was not his function to determine the truthfulness of the testimony given by Talley or any other prisoner.” Henley continued criticizing the prison farm administration, opining that prison administrators should have been aware of the situation following the days of testimony. It should have been foreseeable that both Talley and his fellow prisoners would be boastful, while at the same time the administration should have also been aware that Harmon and other trusties might have sought out their own revenge. “Although both risks were foreseeable,” wrote Henley; prison officials “apparently took no steps to prevent the occurrence of either.” This, along with other factors and conditions at the prison farms, left Henley with no other choice but to issue injunctive relief to further protect the constitutional rights—and the safety and health—of the prisoners.

Henley also ordered prison officials to further define the amount of work they expected prisoners to complete, in order to give prisoners a tangible goal. The court found the undefined

87 Ibid., 691.
88 Ibid., 691.
standard of “sufficient work” unacceptable. Reprisals came from prison officials and “lineriders” not simply from lack of work. Prison guards also utilized brutality against those prisoners who chose to petition the courts to ask for relief. In one instance, a prison official meted out punishment on one of the petitioner prisoners due to the official’s own personal declaration of perjury. Whether truthful or otherwise, stated Henley, “it was certainly not the function” of prison officials “to punish [prisoners] for perjury, if any was committed.”

Thus, in the opening volley of litigation that would continue for more than a decade, Judge J. Smith Henley declared the unregulated, capricious use of the strap as a form of corporal punishment in Arkansas’s prison farms a violation of the cruel and unusual punishment prohibition of the Eighth Amendment. He also opined that prison officials, whether paid workers or trustee inmates, must not prevent prisoners from petitioning and gaining access to the courts. The days of “escapees” being shot while fleeing ended now. Henley’s insistence on prisoners’ voices being heard gave prisoners from other states, both in the South and out, the ability to utilize their courts more fully. This massive intervention of the federal courts all began with Judge J. Smith Henley’s insistence on prison officials taking prisoner petitions seriously in Arkansas. Going against popular southern notions of prisoner treatment, Henley began the process of forging a distinctly southern approach to prison reform.

A Turning Point: The CID Report, August 1966

Judge Henley now rolled the ball into the state of Arkansas’s court of play. Questions centered on how the state planned to right the wrongs pointed out by Henley in the Talley decision. The night after the court announced its decision, Jeff D. Wood, chair of the State

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89 Ibid., 690-91.
Penitentiary Board, told the *Arkansas Gazette* that the Board already began formulating plans utilizing the whip in a constitutional manner. The Board would also discuss new plans in earnest at its next meeting on December 1. With the new rules, stated Wood, the prisoner would know who could administer the whip, when they could administer it, and for what behaviors they could specifically punish prisoners. Wood also stated that the Board would not approve new plans until a new superintendent could voice his or her concerns and opinions. Dan Stephens, who was the current superintendent, had resigned and it would be effective on January 1. Governor Orval Faubus now had to appoint what could be one of the most important superintendents in all of Arkansas prison history.90

The day after the opinion, on Tuesday, November 16, Governor Faubus met with O.E. Bishop, the seventeen-year sheriff of Union County. Though Faubus stated that he had made no decision on the appointment, the El Dorado sheriff sounded like he had already accepted the job. He considered the post of superintendent, which came with a yearly salary of $12,600, “a promotion, a challenge. . . . I have a good board and I intend to work with it. I think they will be of great help.” One did not have to look far to see a number of past problems crop up with the appointment of Bishop. While having no penology experience, he stated that he would draw from his own experience as sheriff, which placed him in charge of running the county jail. Grady Woolley, from the same town as Bishop, preceded him as sheriff in Union County for fourteen years. The two men remained close, and Bishop probably figured this friendship would come in handy since Woolley was a member of the State Penitentiary Board. In discussing the one issue that pressured former superintendent Dan Stephens from resigning, the strap, Woolley and Bishop both refused to speak on its use. They furthered the words of Board head Wood by

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stating that the Board would ultimately decide on new regulations governing its use. Faubus also refrained from making an official statement on whether or not the prison farms should continue using the strap, though he has said personally that he “was inclined against” its use. He had also stated in the past that while he was against the death penalty, he had to adhere to his official duty as setting the execution dates of those sentenced to death in his state. Faubus did not like the attention, however, given to the use of the strap and the behavior of Warden Mose Harmon towards Winston Talley. Faubus issued a memorandum declaring that if Harmon did in fact whip Talley for testifying in court, his employment should be “terminated immediately.” The governor also blamed the press, for “all of this could have been printed twenty years ago if you had just dug it up.” The Talley case certainly brought many individuals’ harsh feelings towards the prison out in the open. The governor now commanded a prime position to deal with the prison how he deemed appropriate. The governor eventually appointed Bishop to the position of superintendent.91

With a new superintendent in place, the Criminal Investigations Division (CID) of the Arkansas State Police began an investigation into whether conditions at the prison post-Talley had changed for the better. The state police began on August 19, 1966, instructing Superintendent Bishop to assist in the investigation as needed. Investigators H.H. Atkinson, James M. Beach, and Billy Skipper began their investigation of a number of issues, including an event involving intoxication among a number of inmates. The story of twenty-four year old Frank Delgleish, a white male inmate, gave a particularly harrowing picture of what a convict at Cummins might expect to get involved in based on genuine need or concern. A number of inmates ran loan shark operations around the prison, lending money to prisoners. Interestingly,

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91 “Governor is Mum But Bishop Talking Like Head of Prison,” Arkansas-Gazette (Little Rock), November 17, 1965.
Delgleish’s situation involved none other than inmate Winston Talley, whose petition to the Court formed the basis for earlier litigation. Delgleish observed Talley, along with inmates Frank Bosnick, Carl Corder, and others, drank whisky that Bosnick had acquired against prison regulations. Thus satisfying the claim that the inmate trusties did in fact partake in a prohibited use of alcohol within the prison farms, Delgleish continued to tell the story of Winston Talley collecting a debt owed by Delgleish to a lender at Cummins when he was transferred to the Tucker Unit. Talley decided to collect an amount of $12.50 owed after a fair amount of drinking, and according to testimony, he beat Dalgleish “four times with his fists.” Dalgleish stated that he did not attempt to fight back. Dalgleish later said that Talley thus made him collect debts for him and had later struck him several times. The investigators noted in their report that Dalgleish had severe bruises on his face and head at the time of the interview and that he did spend a fair amount of time in the prison hospital. Moreover, while Dalgleish did owe $12.50 to an inmate named Vernon Sloan at the Cummins Farm, he had no way of paying back the debt. The investigators, satisfied with the testimony of Dalgleish, continued with their investigation of the prison farms.  

The report proceeded to give an even more detailed vision of the brutal conditions at the Arkansas prison farms. On August 19, 1966, the investigators began an inspection of the prison kitchen and dining areas. The kitchen was filthy, hastily wiped off but clearly not sanitary. The report continued:

Flies were very thick and there was no screen on the door leading to the wash rack and vegetable room. The food and meat were piled on the cook tables completely exposed to the flies, and nothing was done to protect it. Tin cans with the tops cut out were used as cups. . . . Food had been prepared and was observed to be a very thin, watered down

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92 Case Report – Criminal Investigations Unit – Arkansas State Police, File Number 916-166-66, 1966, Winthrop Rockefeller Collection, Series IV, Box 260, File 7 & 8 (2c), Arkansas Studies Institute, Little Rock, 1-2, 4.
serving of rice. One large spoonful per Inmate. The bread was a tasteless cornbread. One medium slice per Inmate.

The prisoners only received meat with a meal once a week, on visiting Sunday. They received one egg per year as a Christmas morning treat. They never had milk to drink. The prison kitchen received more meat to portion out to prisoners; unfortunately, the inmate trusties and prison guards got their hands on it before. One kitchen worker suggested to the investigators that they inspect the food supply records, “as the majority of the meat was being either sold by the kitchen rider (Trusty Supervisor) or carried out the ‘back door’ by the Wardens.” The report continued, reporting a number of other issues as well with the prison. 93

Investigators found workers on the “long line” malnourished and underweight by at least forty to sixty pounds. Their clothing was “filthy, torn up, and in bad states of repair. . . . Their shoes were in terrible disrepair and seemed to be several sizes too large for each of them.” Unfortunately, the ones who had shoes complained that they did not have laces, and many of the shoes were full of holes. Prisoners never received underwear, and they only received two pairs of socks per year. Their sleep quarters were not any better than their state of dress, considering they contained badly torn and discolored mattresses. “The sheets were dirty and appeared to have been used two or three weeks without change,” wrote the investigators in their report. Over half of the beds did not have pillows, and those that had them had dirty and discolored ones. Toilets and urinals were mostly in a state of disrepair and filth. If one word seemed to sum up the investigators’ report of the physical facilities of the prison farms, it had to be the word filth. “The entire barracks area smelled from filth,” they wrote in the report. “The floors were filthy and littered,” to the point where the investigators ordered the areas to be cleaned up. Investigators

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93 Ibid., 6-7.
realized that other aspects of the prison farms placed prisoners’ lives in jeopardy in a more acute way.\footnote{Ibid., 7-8.}

Investigators then began the process of seizing illegal weapons in the prison farms. During a period of just under three weeks, they seized sixty-one knives, five pairs of fighting knuckles, two palm weights for fighting, five blackjacks and clubs, three straight razors, and one hatchet. Weapons represented a show of force and control that many inmates, trusty and non-trusty, used to command respect from other inmates. Most prisoners aspired to reach the position of trusty, since the position definitely came with fringe benefits. These made the positions very lucrative, which meant that inmates often sold them. Inmate Clifford Cash, the laundry supervisor, testified that Jim Reaves and Winston Talley often sold positions in the laundry. Cash stated “that the jobs sold for ‘as much as the traffic will bear,’ at times as low as thirty dollars and other times for as high as one thousand dollars. . . . Anything could be had at Tucker Farm if you could get the money.” The free world workers and the administrators of the prison knew of this practice at the prison, and they understood that the lack of civilian workers in place at the prison farms prevented them from keeping peace and order on their own. They depended on the inmate personnel, knowing that the state would probably never allocate enough money to hire non-convict guards.\footnote{Ibid., 10-11.}

While Superintendent Bishop received an invitation to help the investigators, the report did not mention any prison administration taking part in the investigation until Assistant Superintendent Jim Bruton arrived at the offices of Tucker. He alleged that the investigation was taking place without his consent. The assistant supervisor continued, actually offering his job to one of the investigators. Bruton stated that his job consisted of an $8,000 salary a year, a new
car, a fourteen-room house, a complete expense account, and furnished food. He went on to assure the investigator “that the smallest part of the job would be the $8000 salary. He stated that a lot of gifts would be offered from business people in the farm supply trade, people in the clothing business, and other ‘interested persons.’” Bruton said that it was the only “smart” thing to do to accept these gifts. Bruton continued telling the investigators that he never had to worry about the rules and that he could do anything he wanted without fear. If the investigator took him up on this offer and accepted the position to “run the God Damned place,” then he had to let the prisoners and the other wardens know who was boss. If a prisoner got out of line, said Bruton, you should “hit him with anything you can get your hands on” because that’s the only way to earn respect at the prison farms. When things come up that you know little about, act like “you knew all about it. Make everybody think you’re the smartest son-of-a-bitch in the world, and you’ll get by.” After terminating the investigation, Bruton invited the investigator to come look at his house.96

Jim Bruton continued his tirade on the way to his house, stating that the next in line for his position would have to find new wardens, for Wilson “is a drunken whore chaser” and had to be under constant supervision, and Fletcher “is a good man but a thief, and he is too open about that fact. . . . Let them know right away who was the boss, and don’t get friendly with them.” Bruton said that the Board would buy anything he needed for his house, including a $1250 rug he showed the investigator. He even told the investigator of a scheme where he would buy horses and let the prisoners break them then sell them for a profit. He also had a retirement provided by the “Henslee Act” to look forward to. One aspect of his house that Bruton was not completely revealing about was the presence of a Tucker Telephone, the brutal, electricity-producing device

96 Ibid., 11-12.
that would provide painful bolts of electricity to a prisoners’ toe and genitals as a form of punishment. The investigator had received word that there was in fact a fully operating “Tucker Telephone” at the residence of Bruton, that was administered to inmates often “of a duration designed to stop just short of the Inmate ‘passing out.’” Inmate informant FL-17 stated that Bruton personally used the telephone on a number of inmates, and that he could supply a list of names that had been “rung up” by Bruton. Investigators reported later that they did in fact find a Tucker Telephone hidden in a closet at Bruton’s residence. FL-17 continued to enlighten the investigator on a number of other unfair and illegal schemes that meant more for the wardens and trusties and less for the common inmate.97

Inmate informant FL-17 told investigators that they should investigate what he referred to as the “hay deal,” an operation in which hay meant for the prison from the farm of a Mr. Veneble in Coy, Arkansas was instead being sent to the barns of Ronnie Bruton, son of assistant superintendent Jim Bruton. Investigators also learned that “Ronnie Bruton had come into the Black Angus cattle business rather suddenly when Tucker Prison Farm changed their cattle from Black Angus to the Charlois breed,” thus prison officials never recorded many newborn Angus calves into the prison registers. The same farm officials also adjusted mortality rates of the prison calf operation to inaccurately reflect more loss to disease. Ronnie Bruton would often have trucks repaired at the prison garage utilizing state purchased parts. The report concluded with individual summaries, taken on August 26, 1966, of inmate informants and instances of brutality they faced at the hands of prison personnel and trusties.98

These testimonials taken as a whole reveal the horrifying fact that prisoners eventually lost touch with who in fact handed out the punishments, for trusty and free world correctional officer

98 Ibid., 15, 18-19.
became one. The terror of these moments only heightened at the thought of it coming from a fellow inmate, with no procedural system in place to regulate it. One informant substantiated Mr. Bruton’s earlier suggestion during his job pitch to the investigator by testifying that Bruton would in fact hit inmates with anything he could find, including his cane. Shootings and beatings all seemed to take place on a regular basis at the prison farms. One inmate testified that after officials beat him four or five times during last year’s strawberry season, his ear began bleeding and was followed by some hearing loss. Trusties would have inmates regularly whipped if the workers could not produce an amount of money the trusty asked for, sometimes as little as $6. One trusty ordered a prisoner that refused to give him money to perform physically impossible work, even after he told the trusty guards that the doctor ordered him to not lift more than three pounds. Nevertheless, a few days’ later trusties ordered him to haul hay and feed upstairs to prison offices. The overwork led him to require surgery in a few weeks for a slipped disc in his back. In another horrifying experience, one inmate arrived at Tucker on July 16. Shortly after, Bruton wrote him a note, advising him to write his mother. So the inmate wrote his mother the following: “Dear Mom, I am at Tucker. Please help me.” The following night, Bruton went to his camp and ordered Fletcher to give him five licks with the strap. Because the inmate did not say, “oh captain” after each strike, Bruton ordered him to receive six more. Bruton advised him that if he did not write his mother a two-page letter he would “whip his head.” Another prisoner testified that his head was stomped by a trusty wearing cowboy boots, and as a result, he required twelve stitches and could not eat due to not being able to open his mouth. These stories continue for pages. Many who read the *Talley* decision could honestly say that from the Criminal
Investigation Department’s report, it did not appear as if much was being done at the prison farms to bring them in line with Henley’s decision.  

**The Strap Revisited: Jackson v. Bishop, 1967-1968**

Three prisoners decided to test the newly promulgated rules regarding the use of the strap in the courts, and the Eastern District court (without Judge Henley sitting on the case) announced its decision in *Jackson v. Bishop* on June 3, 1967. Judges Oren Harris and Gordon E. Young, who had both received handwritten petitions from the prisoners, decided to consolidate the three cases into one hearing and hear them as a panel of two. The inmates claimed, among other things, that the court should declare corporal punishment unconstitutional “in any form,” which of course included Arkansas’s infamous strap, even with the addition of procedural rules regulating its use. No procedures drawn up by the Penitentiary Board or prison personnel would make its use constitutional. Even with this said, however, the prisoners complained that the current rules did nothing to protect their Eighth Amendment constitutional rights. Prison officials rarely enforced these rules anyway. The Court pointed out that it never approved the new rules drafted by the Penitentiary Board following *Talley*. In short, the new rules provided six major offenses that if committed by an inmate warranted use of corporal punishment: homosexuality, agitation, insubordination, making or concealing weapons, refusal to work when medically certified able to work, and participating in or inciting a riot. The rules also pointed out that no inmate should ever be given the authority to administer corporal punishments. The punishment should not exceed ten lashings, and a board of inquiry, which would have at least two free-world prison officials, would determine the specific number of lashings. “The Board of Inquiry will

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99 Ibid., 19, 32-35.
request that the accused inmate appear before the Board and speak in his own behalf. No
Punishment will be administered in the field,” concluded the regulations. The Court now had its
opportunity to determine the constitutionality of these new regulations. 101

The trial, taking place during continuing investigations of the Cummins and Tucker Prison
units, had a unique opportunity to hear from a great number of people regarding the
administration’s use of the strap. Around fifteen prisoners and experts testified in front of the
two-judge panel. According to the testimony of most prisoners, officials administered lashings
without a formal hearing. Some received hearings, but they testified that officials did not give
them much of an opportunity to defend themselves. Prisoners also stated that they received a
number of beatings from other inmates, having little or nothing to do with actual infractions
committed at the prisons. H.H. Atkinson, one of the lead investigators of the CID Report issued
just a year earlier, corroborated many of these facts. The court also mentioned that Atkinson
eventually, though hopefully for reasons different than discovered during the earlier
investigation, accepted a position which placed him in charge of Tucker Farm as an Acting
Assistant Superintendent during the plethora of administrative changes that occurred in late 1966
and early 1967. Interestingly, Atkinson testified that he had to utilize the strap as administrator of
the farm, approving the administration of lashings to four of twelve prisoners sentenced by a
three-person board of inquiry for picking an insufficient amount of cotton. Inmates later told him
that they were “trying to see if he would use the whip.” Once Atkinson proved in fact that he
would utilize the whip if necessary, overall work improved. 102

Other more permanent prison officials testified that they did their best to spread the word
about the new rules regarding corporal punishment. O.E. Bishop, still superintendent of the

101 Ibid., 806-8.
102 Ibid., 809-11.
Cummins Unit, testified that he did his best to get the new rules to all prisoners, saying that he even used the loud speaker to announce them, also threatening to demote, or “rank,” trusties if they violated the rules and gave out punishments. Bishop stated that he was not aware of any events brought up in this trial at the Tucker Farm, because it was around fifty miles down the road and it was not in his command. The prison also utilized other methods of punishment, including loss of privileges, solitary confinement, and removal of the prisoner from the plasma donation program, which provided inmates with a source of income. Other officers of the prison farm administration trumpeted Bishop’s statements that the prison did all it could to follow and promote the new rules at the farms.103

The penological experts who testified in the court, however, cared little whether or not prison administrators followed these rules or not, for in their opinions no need for corporal punishment existed in the prison setting. James V. Bennet, who served as Director of Federal Prisons for almost thirty years, testified that he never used corporal punishment during his years working with federal prisons. He felt that devices like the strap were “brutal and medieval and did no good,” further reinforced by the fact that only one other state “officially” used corporal punishment in its prisons. As Director of Corrections for the state of Missouri, Fred Wilkinson agreed that there is no penological advantage gained by using corporal punishment. Director Wilkinson also pointed out that Arkansas’s dependence on trusty guards probably made prison officials feel they had no other choice but to utilize the strap. In his home state of Missouri, one paid prison employee existed for every four or five prisoners; in Arkansas, for every one paid

103 Ibid., 812-13.
employee there existed approximately fifty-eight. After hearing testimony from all sides, the Court finally issued its ruling of law.\footnote{Ibid., 814.}

In \textit{Jackson v. Bishop}, the Court agreed with \textit{Talley} that not all forms of corporal punishment in the penal setting are \textit{per se} unconstitutional. “This, of course,” clarified the Court, did not extend “to all types of corporal punishment or to unguarded use of the strap. . . . Certainly proper safeguards against capricious administration are necessary to keep such punishment from violating constitutional standards.” Therefore, while the Court acknowledged that the rules the Penitentiary Board promulgated after \textit{Talley} lacked the protections necessary, the Court only prohibited the use of the strap “until proper and adequate safeguards surrounding its use are provided by those in charge of prison administration. . . . It is neither this court’s duty nor its inclination to tell the defendant or the Penitentiary Board what rules should be promulgated in order to comply with the Constitution.” The Court also issued a decree prohibiting the use of the Tucker Telephone and the teeterboard, two other popularly used disciplinary devices in the Arkansas prison system. Thus, the Eastern District of Arkansas affirmed Henley’s ruling in \textit{Talley} just a few years earlier: prison officials could use the strap if their existed proper safeguards.\footnote{Ibid., 814-16.}

\textbf{The Eighth Circuit Declares the Strap Unconstitutional, Once and For All: \textit{Jackson v. Bishop}, December 1968}

Following \textit{Jackson}, while the Prison Board went back to the drawing board and created new rules and regulations regarding the use of the strap, the prisoner-petitioners appealed the district court’s decision to a higher court. On December 9, 1968, the Eighth Circuit Court of
Appeals issued its own opinion regarding the use of the strap in the penal setting.\textsuperscript{106} Per District Judge Harry Blackmun, the Eighth Circuit concluded that “the plaintiffs are correct in their position and that Arkansas’ use of the strap, irrespective of safeguards, is to be enjoined.” The Court goes through a lengthy historical discussion of the term “cruel and unusual,” recognizing that while the limits of the Eighth Amendment “are not easily or exactly defined . . . broad and idealistic concepts of dignity, civilized standards, humanity, and decency are useful and usable.” Thus, the Court had little difficulty determining that the use of the strap violated a prisoner’s Eighth Amendment constitutional protection from cruel and unusual punishment, regardless of whatever precautions prison administrators enacted.\textsuperscript{107}

The Court gave nine reasons for deciding that the use of the strap was unconstitutional under any conditions. For instance, no set of rules, “however seriously or sincerely conceived and drawn,” prevented abuse. These rules, often unobserved and circumvented, placed corporal punishment in the hands of the “sadistic and unscrupulous.” According to Judge Blackmun, corporal punishment served no penological purpose, and enforcing who can give the punishment remained difficult. Use of the strap in the prison setting made it harder for the prisoner to adjust to society after prison, and, finally, the simple reason of “obviously adverse” public opinion sufficed in this instance. In other words, the state of Arkansas had no penological need requiring it use the strap. The state’s argument lacked any sort of purpose necessitating its use. “Humane considerations and constitutional requirements” were not, according to Blackmun, “in this day, to be measured or limited by dollar considerations or by the thickness of a prisoner’s clothing.” Therefore, no amount of change made by the Penitentiary Board or prison officials to the rules and regulations made any difference in the eyes of the Court. With this declaration, prison

\begin{footnotes}
\item[106] Jackson v. Bishop, 404 F.2d 571 (8th Cir. 1968).
\item[107] Ibid., 579.
\end{footnotes}
administrators would have to resort to new, more progressive methods to operate their farms and discipline their prisoners. One supervisor would come along and bring a new philosophy towards operating the farms.\footnote{Ibid., 579-80.}

**Penology Versus Arki-ology: The Murton Years, February 1967-March 1968**

Many people would be appointed to run the prison system from the top, but few would be able to garner the support necessary to change conditions at the prison. Tom Murton, appointed superintendent of Tucker Prison Farm in February 1967 and later Cummins prison farm, was one such person. His story garnered interest on a number of levels, supported by his writing of a tell-all book (shortly after being released from his duties as superintendent of Cummins prison), which even went on to inspire the movie *Brubaker* starring Robert Redford. Many of the prisons studied in this work have had watershed moments that pierced the veil of secrecy that shrouded these institutions; Murton’s book definitely helped provide that exposure.

Governor Winthrop Rockefeller, elected in January of 1967, became the first member of the Republican Party to hold the governorship of Arkansas since Reconstruction. At first mum on conditions at the farms, Rockefeller knew that something had to be done about the state’s two prisons. Appointing Tom Murton to head Tucker Prison Farm on February 12 represented a massive first step towards cleaning up the farms. According to Murton, Rockefeller told O.E. Bishop, still the superintendent of the Cummins Prison Farm, that Murton would run Tucker as an autonomous unit apart from Cummins. If Bishop did not like these arrangements, Rockefeller stated he would fire Bishop and put Murton in charge of both prison farms. Rockefeller and his aids appreciated the fact that Murton had qualifications apart from simply running an Arkansas
county jail. Tom Murton’s expansive penological resume included a superintendent position at an army stockade and later over five other penal institutions, including a stint as acting Chief of Corrections following Alaskan statehood. Here, he helped develop the first official state prison system for the territory. Murton also served as a Deputy U.S. Marshall in Illinois as a chief probation and parole officer. While in the Lincoln State, Tom Murton conducted seminars under an Office of Law Enforcement Assistance Act grant for twenty-two other midwestern states. Interestingly, Murton wondered why Arkansas never sent any representatives to his seminars. He now realized that they would have had to obtain permission from the parole board to attend since they were prisoners. Rockefeller appeared serious about reforming Arkansas’s prison farms, and Murton seemed to be the person to help.109

Murton entered the position of superintendent of Tucker with a few immediate goals in mind as well as some long-term goals. He first wanted to eliminate the exploitation of inmates by the free world personnel, those outside of the prison walls, and each other. He would have to change attitudes towards the prison, for “prison reform rests with the people” first and foremost. Murton willingly placed his professional reputation on the line; few others had that sort of commitment. He also expected to be fired towards the end of his reform efforts, knowing that he would have to step on a number of toes in the process. Murton also understood that putting weapons in the hands of free world personnel as well as getting them out of the prisoners’ remained a crucial first step. He also put free world personnel in charge of areas that should not be handled by trusty labor, such as radio and telephone communications as well as inmate records. “For the first time in the history of the prison,” wrote Murton, “control of communications at the farm was taken away from the inmates.” Racial segregation would have

to end at the prison farms as well. African Americans often had to live in the worst camps, segregated from white prisoners. Murton continued exploring prison conditions by meeting with a number of inmates.\textsuperscript{110}

The meeting of an inmate guard at the infirmary nicknamed “Chainsaw Jack” helped Murton begin to realize just how unusual Arkansas was when it came to prison philosophy. On a side note, Chainsaw Jack received his name for using a chainsaw to cut up a man and murdering him for making homosexual advances at him. Chainsaw Jack continued, telling Murton: “You may know quite a bit about penology but you have a lot to learn about Arkie-ology. There’s no logic to us’ns. Arkies are tough, and we think different from other folk. The old heads inside don’t want you breakin’ up their cliques and the free people aren’t goin’ to let you stop their stealin’ from the prison.” Not only did Murton have to break the bad habits of a system, but he now realized he would have to change a larger mentality that went beyond the prison walls. After three weeks there, Murton felt that he could not “get hold of this situation. It’s just one big can of worms, and wherever you grab one piece, you shake up the whole enterprise.” The whole of the farm system actually represented a camp system with a number of disjointed sections, impossible for one person to control. Inmate trusties had their own separate houses on the farm, with their own food and cooking equipment. Payoffs, extortions, and drug dealings still raged within the prison farms. “It’s just one big funny farm,” wrote Murton, “When you want to make one minor change you have to revamp the entire system. The complexity of the operation is beyond belief. I’ve dubbed this place the Tucker Time Machine. Enter this institution and you go back one

\textsuperscript{110} Ibid., 19-20, 26-27, 77.
hundred years in penology.” The time he spent at the prison farms would do little over the next year to change his mind regarding the prison farm system in Arkansas.\textsuperscript{111}

The events of early 1968 would convince most Arkansans, including Governor Rockefeller and a largely antagonistic Democratic majority in the state assembly, that these prison farms and their administrators needed the attention of more than those practitioners of “Arkie-ology.” Dr. Edward Barron, the prison doctor, told Murton that he reached some tragic conclusions after studying death certificates from a few years prior. He stated that he noticed an unusually high number of inmate deaths attributed to “organic heart disease.” The doctor also mentioned a conversation he had with inmate Reuben Johnson where the inmate revealed that he had helped bury three murdered inmates later listed on official prison records as escapees. Johnson told the story of one inmate named Jake Jackson, who got into a dispute with a warden over the proceeds from a sale of scrap metal. When Jackson could not produce the amount of money the warden deemed appropriate from the sale, he struck Jackson with a crow bar. He missed, and Jackson ducked quickly and ran to a workshop. The warden followed and shot Jackson in the chest with a pistol. The warden then told Reuben to bury Jackson. The next morning, which just so happened to be Christmas morning, Reuben went back to the body, removed Jackson’s clothes and sent them to the laundry, made a coffin, and buried him near the old camp five near the levee alongside the Arkansas River. Reuben also stated that he buried two other inmates, one beheaded by a warden and another killed by other trusties with the butts of their rifles.\textsuperscript{112}

One could easily observe a number of depressions in the field where Reuben stated he buried the men. One inmate mentioned that all of the inmates knew the story behind those indentations in the field, which is why they called that particular field “Bodiesburg.” A closer

\textsuperscript{111} Ibid., 28, 48.
\textsuperscript{112} Ibid., 183; and Feeley and Rubin, 59.
look at prison records revealed that since 1917, officials listed more than two hundred inmates as escapees. Murton found that number unusually large. He eventually pieced together the facts and realized that many of those listed as escapees might be buried in that field along with Jake Jackson. Walter Rugaber of the *New York Times* helped pique interest outside of the prison farms as well by asking inmates a number of questions regarding the possibility of dead inmates being buried on prison grounds. Rugaber, researching a current article, asked Murton about the truth behind the testimony. Murton stated that he had heard such rumors and that within the next few weeks, they would begin digging to see if the buried bodies did exist. Murton received approval from Governor Rockefeller’s office to begin digging. Bob Scott, a Rockefeller aid, suggested that discovering dead bodies at the prison farms might be what Arkansas needed to wake up and support reforming the prison farm.\(^{113}\)

The *New York Times* published Rugabee’s article on January 28, 1968. The pictures published along with the article brought the prison farms to the attention of not only the nation but also the world. The next day, other local and national news agencies flooded the phones at Cummins, wanting to do pieces on the prison farms and desiring to be present when the digging began. Murton had no problem with this, considering he wished to show the world the prison. Later that day, officials and trusties revealed graves, holes with remains in the exact places Reuben pointed out. In one of the graves, the skull lay shattered. In another, the burrier obviously detached the legs so that the body could fit in the box. The media quickly snapped up pictures of the exhumed bodies. Tom Eisele from Governor Rockefeller’s office said that the governor would send state police to assess the matter, due to the impossibility of Murton being impartial. Already, the governor seemed to be communicating a different message regarding Murton.

\(^{113}\) Ibid., 184.
Inmates heard about the news from the radio and they cheered and celebrated. “It was like New Year’s Eve,” wrote Murton, for “their story had finally hit the outside world.” And with this increased notoriety of the prison came the increased scrutiny on Murton, especially from those who had no problem with the prison farms.\footnote{Ibid., 185-86.}

Murton wrote that his biggest competition in finding support for his proposed reforms came from the penitentiary board and the governor’s office. With their support, Murton could win legislative support. The penitentiary board never gave him the backing he desired. By now, Murton controlled Cummins, hoping to spread many of the changes from Tucker to the larger, more brutal Cummins unit. Murton made a last ditch effort to get more power from the penitentiary board by drafting a letter to John Haley, the chairman of the penitentiary board. Dozens of prisoners wanted to testify and give more information regarding buried prisoners. They had a number of different claims, from one inmate witnessing six inmates get shot, another saw three get beaten to death with bats, and another prisoner stated that prison officials fraudulently created a “spinal meningitis epidemic” of 1952 to explain a number of deaths.

Murton hoped that word of these prisoners’ willingness to testify would reach the governor’s office, spurring him to investigate further. He began to sense, however, that many within government worked towards putting an end to his term as superintendent.\footnote{Ibid., 189.}

The governor’s office remained resistant, with the first criticisms coming from Bob Scott, who condemned Murton for not allowing the state police to handle the excavation. Murton met with Rockefeller on February 1, 1968 and suggested that they relocate the bodies found to another cemetery and then continue digging. Rockefeller agreed, according to Murton. But within a week, Murton stated that the governor did an “about-face.” The governor stated to the
press that he first heard of the news of buried bodies from the *New York Times* and not from Murton before he started digging. Murton felt that the governor simply reacted “to pressure. He was doing what was politically expedient. I had been taken to task in both the state house of representatives and the state senate for ‘destroying the image of the state of Arkansas’—which would be like murdering a corpse.” Members of Arkansas’s assembly actually censured Murton and prevented him from entering its chambers. It appeared as if the downfall of Murton, as he earlier predicted, began in earnest. The District Attorney of Lincoln County called a grand jury together to investigate the issue. But the Sheriff, a son of a former warden of Cummins, called Circuit Court Judge Henry W. Smith to suggest that digging up the bodies might be illegal. Matters did not get any better as Judge Henry W. Smith was the uncle of Clay Smith, who also worked at the prison before Murton’s time in charge. Clay Smith’s boarded his horses at the prison farms regularly, but eventually that practice was stopped.\(^\text{116}\)

The grand jury eventually claimed to have a map from the U.S. Army Corps of Engineers that showed a church and graveyard on the site where prison officials found the bodies, but Murton had no knowledge of a map and stated that no past prison farm records ever mentioned such a church. Local newspapers refused to give the presence of the map much credence because they could not verify its validity. Ultimately, Governor Rockefeller completely abandoned Murton and left him at the mercy of Haley and the penitentiary board. On March 1, 1968, the legislature created a state Department of Corrections, and Murton held onto the slim chance that he would be appointed its first leader. The next day, however, after a penitentiary board meeting, Murton not only realized that the governor would not appoint him to the secretary position but that he might be fired altogether. A petition, signed by 1084 inmates out of 1250 total hoping to

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\(^{116}\) Ibid., 190-92.
retain Murton as superintendent did little, for on March 7, Haley officially terminated Murton. As Murton left Cummins for the last time as superintendent, he declared: “I left the Arkansas prison system as I had come: I had a gun in my belt; I passed an armed inmate at the gate; and I did not know what to anticipate.” Murton served as a sacrificial victim who did what he could to reform the prison farms but was ultimately removed from the office for “stepping on too many toes.” Murton’s prediction came true. It seemed that only Henley and the courts had the power to force change at the prison farms.117

**Widening the Scope: *Holt v. Sarver*, June 20, 1969**

Judge Henley announced his opinion in the case of *Holt v. Sarver* on June 20, 1969, around five years after he first heard cases raising the issue of prison constitutionality.118 In this decision, Judge Henley further asserted his control over the prison, both clarifying earlier opinions and point out newer, more specific instances of unconstitutionality at the Cummins and Tucker Prison farms. The central issue in this new round of litigation focused on the use of isolation units on the prison farms in Arkansas. In April, the Eighth Circuit affirmed a decision from the Eastern District of Arkansas (though not heard by Judge Henley), which stated, in that particular petitioner’s situation, placement in isolation cells did not amount to cruel and unusual punishment. Judge Henley now had his chance to ascertain whether prisoner complaints were true that their placement in isolation cells amounted to cruel and unusual punishment, prohibited by the Eighth Amendment. Once again, the Court consolidated complaints of three inmates into a

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117 Ibid., 192-93, 198, 200-4.
single case, utilizing all evidence and testimony from the three actions and releasing one opinion. 119

Repeating what the Eighth Circuit said in Courtney, prison administration’s use of isolation cells did not amount to unconstitutionality per se, but it might under certain circumstances. Federal courts in California, for instance, declared the use of “slit cells” in that state unconstitutional, but Henley stressed that the idea of cruel and unusual punishment when considering isolation cells should be one judged on a case-by-case basis. After he gave his standard warning to prisons that the state “owes to those whom it has deprived of their liberty an even more fundamental constitutional duty to use ordinary care to protect their lives and safety while in prison,” he also reminded prison administrators that they could not use a “better” or “no worse than conditions prevailing elsewhere” excuse. Henley stated that the petitioners failed to sustain their burden of proof regarding medical and dental facilities as well as the food served to prisoners while in isolation. While the prison did not serve appetizing meals, wrote Henley, the U.S. Constitution did “not require that prisoners in isolation be served tasty or attractive dishes.” 120

And while Henley ruled against the petitioners that prison administrators violated the order from the Jackson case forbidding corporal punishment, the court did find that the prison failed in fulfilling its constitutional duty to protect the safety of certain inmates. In this particular case, the conditions in existing isolation cells, such as overcrowding, did render confinement in them unconstitutional. Even though the state began constructing a new maximum-security facility to be completed beginning next year, the petitioners still should be afforded some immediate relief. Judge Henley’s opinion provided a brief history of the prison situation at Cummins and Tucker

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120 Holt v. Sarver, 828.
since his decision in *Talley v. Stephens* in 1965. He mentioned the appointment of Thomas Murton to the position of superintendent of first Tucker then Cummins, stating that Murton forbade the use of the strap at Cummins when he took control of the larger prison, just as he did at Tucker earlier. The time after the Eighth Circuit’s decision in *Jackson v. Bishop* began what Henley called the second phase of history of the farm. While whipping was gone, use of the isolation cell increased. Marked improvements, however, had taken place due to the increase of free-world personnel and the diminished dependence on convict trusty guards.121

“However,” wrote Henley, “it appears to the Court that the Farm is still in a transitional period, and much of the old regime is still visible.” Convicts still worked long hours and received few incentives to cooperate and observe rules. Prisoner trusties still guarded, unfortunately, a number of other inmates. Illicit operations still operated money within the prison, such as the selling of drugs and weapons. At the end of the day, a prisoner would do whatever he could to earn “brozine,” small metal coins that served as replacements for “free world money” in the prison farms. Inmates had low educational levels, with many being “psychopathic and sociopathic” and “aggressive homosexuals.” Henley pointed out that the respondent state of Arkansas had a problem of its own due to its legislature refusing to provide the prison farms with money. One could blame the impoverished nature of the prison farms in Arkansas “to the historical concept of the Farm as a self-sustaining or profit-making institution which should not require appropriations of large sums of State money.” According to Henley, “an understandable reluctance” existed “on the part of those in charge of the revenues and disbursement of the State to spend large sums on prisons while other agencies and institutions providing services for law abiding people are under-funded.” Due to its monetary deficiency, the state still heavily

121 Ibid., 829.
depended on trusty work in the area of inmate protection. Henley pointed out that even though
the petitioners state evidence of trusty brutality existed, this case did not amount to an all-out
attack on the trusty system. Nevertheless, Henley refused to give the trusty system a theoretical
“get out of jail” card. While it might be completely constitutional to utilize trusty labor for
performing services both valuable to the institution and the prisoner, administrators should never
grant trusty powers to inmates that allow them to exercise direct control over other inmates.
Outside, free world personnel must perform those particular services. Henley, therefore, put the
state of Arkansas on notice: if inmates every challenge the trusty system wholesale in front of his
court, be prepared to find the money to replace trusties in guard roles. This dark cloud would
hang over the rest of the decision. 122

Judge Henley then discussed the issue of inmate safety. In other words, prison officials
failed in their duty to protect prisoners, especially while sleeping. The superintendent and
assistant superintendent of Cummins, who Henley noted “to be competent men,” had seventeen
free world guards working for them. The number of paid free world employees at the larger of
the two prison farms totaled fifty-six. The main concern with safety rested in the fact that while
each set of barracks had one or more free world guards on duty, none actually patrolled on the
inside where the inmates slept. Inmate “floorwalkers,” often heavily armed, still watched the
actual sleep areas of the barracks. Thus, armed inmates had easy access to other helpless,
sleeping inmates. Due to the impossibility of preventing inmates from arming themselves with
small weapons such as homemade knives, prison officials must provide increased, free world
protection to prevent inmates stabbing a vulnerable inmate in his sleep. These inmates who often
solved their personal feuds at night, so-called “crawlers” and “creepers,” caused other inmates to

122 Ibid., 830.
live in constant fear of their lives, both while awake and while asleep. Henley stated the ineffectiveness of this system, evidenced by the floorwalkers having done nothing to prevent seventeen stabbings that had taken place at Cummins during the previous year and a half. Therefore, even though Judge Henley stated that this was not going to be an all out attack on the trusty guard system, it appeared as if the trusty guard system could not adequately, and constitutionally, protect inmates.\textsuperscript{123}

Administrators at the prison, while they lamented the situation, claimed not much could be done until the completion of the new maximum-security unit. The respondent prison administrators also pointed to a neighboring state that had inmates sleeping in individual cells and 170 free world guards that had experienced the same rate of stabbings as Cummins. This would not sway Henley, however. Stabbings and violence do take place at prisons, at a higher rate than the free world. At Cummins, however, officials placed no precautions to make sure prison officials kept the incidence of violence to a minimum. According to Henley, “if . . . Arkansas . . . chooses to confine penitentiary inmates in barracks with other inmates, they ought at least to be able to fall asleep at night without fear of having their throats cut before morning, and that the State has failed to discharge a constitutional duty in failing to take steps to enable them to do so.” Henley decided then to move on to the issue of prisoner safety relating to the isolation units.\textsuperscript{124}

The solitary units at Cummins consisted of a one-story concrete building, containing twelve cells on a single row, surrounded by a tall metal fence. The building had gas heat, dispersed using blowers. Open doors provided the only relief from the heat of the summer; no windows offered any airflow. Electricity provided lighting to the approximately ten-foot by

\textsuperscript{123} Ibid., 830-31.
\textsuperscript{124} Ibid., 831.
eight-foot cell during the day. The door consisted of a solid metal structure and a slot at the bottom, which allowed the sliding in and out of a food tray. The cells contained no furniture, but they did include a drinking fountain and a concrete toilet, which the prisoner could not flush. These prison cells housed those who violated prison rules, those in need of protective custody for their own benefit, and those prisoners deemed an escape risk by prison personnel. One accused of breaking a rule could take advantage of an administrative court hearing, where he would declare his guilt or innocence. A prisoner might end up in the cell for many days before a hearing, however, as part of a holding process until the hearing took place. Officials allowed those inmates who requested the isolation unit for protective measures to attend their regular work job each day and could eat regular prison food. Those in isolation for other reasons, however, did not get the luxury of regular prison food.\textsuperscript{125}

A prisoner in isolation due to rules infractions or escape tendencies received the benefit of eating “grue” instead of regular prison meals, which consisted of meat, potatoes, vegetables, eggs, oleo, syrup, and seasoning baked in a pan and served to inmates in four inch squares. Speaking for the Court, Henley found that grue, while not appetizing and not attractively served, provided “a wholesome and sufficient diet for men in close confinement day after day.” While the isolation cells remained unsanitary, full of bad odors, and contained filthy, dirty mattresses, much of the blame for this should be placed on prisoners having no interest in keeping their cells clean. Henley, however, attributed this mostly to the overcrowding of the isolation cells. Calling these isolation cells solitary promotes misinformation, for one person rarely ever occupied the eight-foot by ten-foot cell. In fact, at the time of the hearing, only two cells contained one man. Four men normally live within the small, isolation cells at once. As many as ten or eleven

\textsuperscript{125} Ibid.
inmates have lived in the isolation cells at once. The overcrowding of the cells also led to a number of other administrative nightmares.\textsuperscript{126}

The prisoners who were in isolation due to rule infraction or escape risk remained in their cells twenty-four hours a day. To help give them a bit more room, prison officials removed the mattresses from the cells and placed them at one end of the corridor during the day. This meant that the prisoner might not get his same mattress or even get one at all the next night. Since many prisoners suffered from serious infectious disease, inmates often got sick from sleeping on other prisoners’ mattresses. In one instance, a prisoner died due to his sleeping on a mattress previously used by an inmate with hepatitis while in isolation. Another contracted a venereal disease. Henley pointed out, however, that there existed “no evidence that any inmate has as yet contracted a serious contagious disease from another inmate.” Prison guards allowed prisoners to shower twice a week, though they were not forced to. Officials also provided no time outside of the cell for exercise. From the looks of things, the Court might not need tangible evidence to conclude that there existed a serious risk of health from overcrowding in these isolation cells.\textsuperscript{127}

Without getting into the necessity of defining the exact instance where a jail cell moves from being “crowded” to “overcrowded,” the Court found that the isolation cells were in fact overcrowded and that these conditions would “unavoidably continue until such time as more isolation cells are available.” From a constitutional viewpoint, however, the Court did not conclude that officials placed any of the current inmates in isolation “unnecessarily, unjustly, arbitrarily, or discriminatorily.” The inmates of the unit there for discipline had “deserved their punishment.” Prisoners in isolation for the protection of themselves and other inmates needed be kept away from the general prison population. Without the strap, isolation remained the only

\textsuperscript{126} Ibid., 832.
\textsuperscript{127} Ibid., 832-33.
meaningful way to punish inmates, and in order for punishment to be effective it must be “rigorous, uncomfortable, and unpleasant.” The state, however, must observe limits “to the rigor and discomfort of close confinement which a State may not constitutionally exceed needed to be limited, and the Court finds that those limits have been exceeded here.” The prolonged confinement of more than one person in solitary cells under these conditions created an environment “mentally and emotionally traumatic as well as physically uncomfortable. . . hazardous to health. . . degrading and debasing,” offending “modern sensibilities,” and, according to the Court, amounted “to cruel and unusual punishment.”

Henley reached his conclusion of law based on the facts presented at the case. Unfortunately, the problematic part remained. Henley now had to figure out how to remedy the situation at Cummins regarding these isolation cells. He referred to this task as both “difficult and delicate.” Henley recognized that the state of Arkansas needed the mechanisms in place to punish and discipline those convicted within its borders, thus he and the Court had “no intention of entering a decree herein that will disrupt the Penitentiary or leave Respondent and his subordinates helpless.” Henley also considered the financial hardships facing the prison, knowing that prison administrators “cannot make bricks without straw.” Yet he ordered the state of Arkansas to find the funds at the beginning of the new fiscal year. Staying true to his philosophy of being a guide, telling prison officials what needed to be done and letting them get it done, he stated that the Court would not prescribe any specific and immediate steps to be taken. “The Court,” rather, “would like to know first what Respondent thinks that he can do, and what he is willing to undertake to do.” If prison officials can help protect the safety of inmates in the barracks by investing in utilizing free world workers for actual patrol duty, while at the same

128 Ibid., 833.
time helping to alleviate some of the poor conditions in the isolation units, for example, the prison could shift some of its dependence on inmate “floorwalkers.” Prison administrators could possibly find a way to build a few more isolation cells, though taking into consideration that the new maximum-security unit would be completed in the near future. Administrators might find that shifting prison populations from Cummins to Tucker might help prevent some of the problems inmates are having at particular institutions. Also, every effort must be made, wrote Henley, to hold the number of inmates confined to isolation cells at a minimum. Maybe they could do this by being more selective in who received isolation as a punishment, or they could give shorter or more flexible sentences. There were also a number of steps that administrators could do which required very little monetary outlay, such as helping keep things a bit more sanitary in the isolation units. A good first step might be making sure each prisoner got to sleep on his own mattress at night, and “most important, seriously ill men should not be confined in close contact with other prisoners. The foregoing suggestions happen to be those that occur to the Court at the moment; the Court does not suggest that they are necessarily all of the steps that should be taken.”129

Perhaps the last paragraph Judge Henley drafted of the opinion represented the most important one, and it would be the one that would dictate Judge Henley’s involvement in matters of reforming the Tucker and Cummins prison farm:

In the decree to be entered Respondent will be directed to report to the Court within thirty days as to what steps he in fact plans to take, and jurisdiction of the case will be retained for all appropriate purposes.”130

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129 Ibid., 833-34.
130 Ibid., 834.
In other words, Judge Henley would be doing more than simply keeping an eye on the prison farms. He expected the prison to report back as to what was being done to help the prisons pass constitutional muster. And he would retain jurisdiction over the prison farms for the immediate future. Henley obviously felt that his continued jurisdiction over the Arkansas prison farms would be necessary to make sure things changed there for the better. Henley thus mapped out a tremendous amount of litigation for his docket; he would continue to oversee Arkansas prison reform for the next decade and then some.

**The Respondents’ Respond: Doing the Best with What They Have, Summer 1969**

Shortly after Henley announced the opinion from the Court, the legislature took action. The Legislative Council voted to send a committee to Cummins to investigate the labor situation there. Robert Sarver, then state commissioner of corrections, welcomed the committee. He hoped that legislators would finally see first-hand the needs of the prison. The Legislative Joint Auditing Committee also voted to have its personnel investigate the prison and the labor situation as well. Many legislators wondered why more inmates were not available to work in the fields, concerned with the amount of money the prison farms brought in during the harvest season. Sarver stated on the day the Court announced its decision that 103 inmates at Cummins had been transferred from their regular jobs to helping out in the farms due to a “critical” labor shortage in the farm operations sector of the prison. This brought the numbers in the fields at around two hundred, but the farm manager at Cummins said that number still represented one hundred less than he needed. The labor shortage at this time meant more hardship for the prison because the middle of June was its prime harvest time. And considering the prison population at Cummins decreased to around 940, which is 150 less than the previous summer, manpower had
to be found elsewhere in prison operations to take up the slack. Even though the transfers from other essential jobs would result in a slowdown in other prisoner services, Sarver reiterated its necessity due to the prison system supporting itself on crop sales. The Court that Friday “slapped our hands rather hard,” stated Sarver, and he hoped that the legislative investigations made Little Rock aware of the need for increased capital at the prison farms. The days of a completely self-funded prison farm were coming to an end.\textsuperscript{131}

The \textit{Holt} respondents submitted the report that Judge Henley ordered in a timely manner, on July 18, 1969. Administrators converted the number four barracks into new disciplinary barracks, which involved removing the furniture from the barracks and cleaning and scrubbing them. The prison also experimented with new arrangements of beds to help keep violence down in the new disciplinary cells. Sarver also set up an inmate council “to promote the communications between the respondent and his staff.” Each barracks would have one delegate and one alternate who would serve on the council and help complaints reach administrators in a more effective manner. The commissioner also sought to rid two problems at once by allowing prisoners in isolation cells to have “their slates wiped clean and all previous penalties and disciplinary actions removed” if they decided to work in the fields. This helped take up the slack due to the shortage of farm field labor and would help alleviate some of the population pressures in the disciplinary barracks. Those who did not agree to work remained on grue and walked to the baseball diamond to be kept under constant watch while getting a little exercise. The prison doctor even made more trips to the disciplinary barracks now for sick call. But with these

\textsuperscript{131} “103 Inmates Transferred to Field Work,” \textit{Arkansas-Gazette} (Little Rock), June 21, 1969.
changes, Sarver remained realistic about things actually changing for the long term, especially in terms of not using free world floorwalkers.\textsuperscript{132}

Sarver reported that he could not place free world guards in barracks instead of inmate floorwalkers due to the critical labor shortage at Cummins from the lack of funds. He nonetheless walked the barracks himself and expected to do that up until November. By then, the harvest would be finished and then administrators could revisit the personnel situation. Sarver noted that “even if funds were available to hire a free-world floorwalker to patrol the disciplinary barracks at night, he doubted very seriously that anyone would take the job, due to the grave physical danger in which such a person would find himself at all times.” While no stabbings had taken place since the new disciplinary barracks opened, they still remained “quite . . . dangerous.” The inmates kept there had “already destroyed several of the new facilities in the barracks, such as a new water fountain,” and had participated in other sorts of unruly behaviors, such as “breaking light bulbs, burning mattresses, sheets, and clothing on a nightly basis.” Sarver noted, however, that the changes that took place after Holt affected more than just the organization of the isolation barracks.\textsuperscript{133}

While the prison also began new programs such as “in service training” for staff and had also begun transferring people to the Tucker prison farm, as suggested by Judge Henley, the respondent simply pointed to the principal issue for not making any more progress at the prison farms. Sarver’s petition pled his case further with the Court, once again stating that the lack of funds prevented the hiring of any new free-world personnel. The financial situation of Arkansas’s farms would not get any better until at least the end of the harvest, which provided

\textsuperscript{133} Ibid., 3-4.
the capital for the running of the facility. Low funds would continue to haunt the prison farms in Arkansas for years to follow, and the legislature did not seem to be in any hurry to increase funding.  

Increased habeas corpus petitions from inmates, some handwritten by inmate lawyers, did not hasten the legislature to increase funds to the prisons either. Prisoners continued complaining about conditions at isolation units following the first Holt trial. Four prisoners, for instance, complained of being forced into isolation cells with four or five other prisoners at a time. Some stated that they did not even have a mattress to sleep on much less a clean one, and rats throughout the isolation cells made it impossible to sleep on the floor. One petition claimed that inmates had not received food for three days, and officials served them food unsuitable for consumption. Inmate Jerry Denham described conditions in isolation cells that, if true, Henley certainly could not let continue. Denham complained to Henley’s court that guards took away other privileges from the prisoners when placed in disciplinary barracks, such as being able to write letters home and receive mail. One of Judge Henley’s biggest criticisms regarding prisoner treatment involved prison officials preventing inmates from writing letters to their lawyers and the courts. Judge Henley knew that he would have to do more to force change at Arkansas’s prison farms.

In December of 1969, Judge J. Smith Henley issued a pre-trial order and memorandum outlining the next course of action that would be heard in the Eastern District of Arkansas. Eight prisoner complaints would be consolidated and collectively known as the “Penitentiary Cases.” This action would also have the added effect of transforming the cases into class action suits.

134 Ibid., 5-6.
which would benefit all inmates of both prison farms regardless of status within the prison farm. Judge Henley would appoint Jack Holt, Jr. and Philip Kaplan as the petitioners’ attorneys. They would be a mainstay in the numerous actions that followed. Henley also set the tone for the increased future prison farm litigation, expressing a desire to begin bringing prison litigation to an end. While his Court would consider a “wide range” of issues, Henley expected to focus on issues of the trusty system. He hoped that the new round of litigation, set to begin on January 20, 1970, would bring about all of the change necessary to produce a constitutional prison system in Arkansas.136

On January 16, 1970, the respondents filed a motion to dismiss the current litigation based on the Eleventh Amendment. They claimed that “although the action is in form a suit against the Commissioner and Board of Corrections,” it actually represented “a suit against the state of Arkansas since the relief sought can only be had through the State and the General Assembly in their sovereign capacities.” In other words, if the petitioners won their case, it would impose a direct obligation against the State to provide more money to the prison farms, “which might be found unconstitutional.” Judge Henley denied the motion to dismiss, testimony for the trial did in fact begin in late January, and Judge Henley would announce a new proclamation from his Eastern District Court the next month.137

*Henley and the Full Frontal Attack: Holt II, February 18, 1970*

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137 Brief in Support of Motion to Dismiss, January 16, 1970, PB-69-C-24, Series I, Box 6, File 4, Kaplan Papers, ASI, 1.
Judge Henley announced the opinion of his Court in the case of *Holt v. Sarver*, better known as *Holt II*, on February 18, 1970.\(^{138}\) And as promised in *Holt I*, Henley would be forced to consider the trusty guard system as a whole if prison authorities forced his hand. Henley began as he had in the past, demonstrating reluctance to step into prison affairs, as evidenced by his earlier decisions beginning with *Talley* in 1965. In the previous *Holt*, however, he took a new outlook on prison reform, acting as the prison farms caretaker in a sense, holding the prison authorities, and by default the whole state of Arkansas as well, responsible for what happened behind the prison farm walls. This meant that Henley would begin examining different issues at the prison farms, including racial segregation. The prisoner petitioners’ complaint stood as evidence of Henley’s expanded take on reforming the prison farms, for it contained ten various complaints of unconstitutionality within both Cummins and Tucker Prison farms, violating the prisoner class of “rights, privileges and immunities secured to them by the due process and equal protection classes of the Fourteenth Amendment of the Constitution of the United States” and also violating the Eleventh and Thirteenth Amendment as well.\(^{139}\)

Henley quickly stated why he denied the respondent’s motion to dismiss, as the Attorney General’s office, representing the prison, characterized this case as a simple ploy to force the legislature into giving the prison more money. But Henley stated that the Court did not see this as such an action, which is why he denied the motion to dismiss. The respondents, namely Commissioner of Corrections Robert Sarver and the individual members of the Board of Corrections of the state of Arkansas, did not try to convince the Court that they were running a “good” or “modern” prison, but they did trumpet its constitutionality. They claimed that they did their best “with extremely limited funds and personnel. They point, justly, to the fact that over

\(^{139}\) Ibid., 364.
the past several years a number of significant improvements have been made within the System and they say that more are in the offing.”

But Judge Henley stated from the beginning what he had been alluding to in his past case: “This case, unlike earlier cases to be mentioned which have involved specific practices and abuses alleged to have been practiced upon Arkansas convicts, amounts to an attack on the System itself. As far as the Court is aware, this is the first time that convicts have attacked an entire penitentiary system in any court either State or federal.” The Court heard testimony from a number of expert witnesses, from the federal prison system, to penologists, to individuals that led investigations of the prison farms. Also, a number of prisoners and free world personnel testified. The Court even viewed a motion picture film that gave a unique glimpse into prison conditions. From the opening of this opinion, one had a sense that this is going to be a different kind of prison case.

“In view of the serious nature of the case,” wrote Henley, “in view of the fact that in a sense the real Respondents are not limited to those formally before the Court but include the Governor of Arkansas, the Arkansas Legislature, and ultimately the people of the State as a whole, the issues presented have been given the most careful consideration of which the Court has felt itself capable.” Quickly, Henley dismissed the petitioners’ claim that forced and uncompensated labor of prisoners amounted to a violation of the Thirteenth Amendment. The Court did sustain, however, certain claims that practices within the prison farms amounted to confinement of persons that violated the Eighth and Fourteenth Amendments. Prison administrators must eliminate practices such as racial discrimination at Cummins and Tucker.

140 Ibid., 364-65.
141 Ibid.
142 Ibid., 367.
Here, readers had access to the legislative reports from investigations that began after the recovery of the dead, buried bodies at Cummins for the first time. These reports gave a great deal of information regarding the prison farms. In mentioning why the prisoners’ Thirteenth Amendment violation claim had no merit, for instance, Henley went into detail regarding the amount of money brought in from actual prison industries and just how the prison utilized the products of the farms. While the farming operation at Tucker represented efforts to produce goods for the prisons consumption only, operations at Cummins were much larger and brought in much income for the prison itself. In December of 1967, prison industries at Cummins cultivated around 9070 acres of land. The robust livestock operations at the farm sustained 2070 cattle, 800 hogs, 40 horses, 160 mules, and 1600 poultry on this nearly ten thousand acres. The main crops at the farms produced cotton, soybeans, rice, vegetables, and other fruits and berries. One commission’s study revealed that sixty percent of the farm’s acreage produced crops sold in the market, thirty percent of the crops sustained the livestock, and around ten percent of the crops fed civilian workers and inmates. During the fiscal year that ended on June 30, 1966, both farms derived an income of $1,415,419.43 from the sale of crops. Even the sale of things other than crops brought in nearly $200,000. With total receipts from 1966 being $1,763,487.09 and total expenditures amounting to $1,473,497.70, the prison farms made close to $300,000 in profit. In other words, Henley had no trouble determining the profitability of the prison farm system in Arkansas.143

“Naturally, the men do not like to work in the fields,” wrote Henley, but this did not necessarily make the uncompensated work of prison inmates in the farms unconstitutional. Prisoners definitely faced grueling work conditions, long hours, often six days a week, in the hot

143 Ibid., 370.
Arkansas sun. Inmates could make money by donating blood through the plasma program, known to inmates as “bleeding in the blood bank,” or by working in the commissary type store. They did not work in temperatures below freezing, but troubling evidence existed that guards often sent workers to the fields without adequate footwear. Henley found most troubling that the skills prisoners learned at the farms had “very little, if any, value to them when they return to the free world.” Director Bennett testified that workers should receive some sort of wage for the work they do, even a minimal one. Wages gave incentive to work and help boost morale, and it provided the prisoner money when or if he left prison, more so than the twenty-five dollars the state provided each prisoner before release. No matter how unglamorous the work of an inmate might have been, Henley concluded that prison farm work does not amount to slavery. The state of Arkansas had no claim of ownership over the inmates, nor did they claim to. Also, the prisoner had been convicted of a crime. Even though the work was harsh, even though it provided income for the state, and even though it served little other purpose, the work did not violate the Thirteenth Amendment. Even Director Bennett conceded that “the idea that prisons and prisoners ought to support themselves is as old as American penology.” Henley then presented U.S. Supreme Court jurisprudence that distinguished “involuntary servitude” with “uncompensated labor,” and thus uncompensated labor as part of a penal punishment did not violate the Constitution.  

Henley next discussed the Eighth Amendment claim of “cruel and unusual punishment,” which in this case prisoners claimed a violation of the Fourteenth Amendment, due to the Eighth being applicable to the state and its actions as prison overseers. The prisoners’ broad complaint in the case at bar stated that “overall conditions in the Arkansas penal system, including but not


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144 Ibid., 371-72.
limited to those relating to inmate safety, may be so bad that it amounts to an unconstitutional
cruel and unusual punishment to expose men to those conditions, regardless of how those
conditions may operate fortuitously on particular individuals.” Henley continued that “the
distinguishing aspects of Arkansas penitentiary life must be considered together. . . . Things exist
in combination; each affects the other; and taken together they have a cumulative impact on the
inmates regardless of their status.” The Court then described individual aspects of the prison with
some detail, based on testimony that, in many areas, simply repeated testimony heard in *Holt*
I.\(^{145}\)

The trusty system, which according to Commissioner Sarver ran about ninety percent of
the functions of the prison farms, could be beneficial in areas but less so in others. Too few free
world workers held positions of authority in the prison, around thirty-five at the time of this case,
and at any given moment the trusties could take over the prison. But, according to Henley, they
probably refrained from this so as to not “spoil a good thing.” Thirty-five free world workers
represented a paltry number, considering they were in charge of slightly less than one thousand
prisoners. Using trusties as guards embodied the most grievous use of inmate personnel, and the
reasons behind its particular heinousness have been recounted in this work before. And while
penologists had universally attacked the use of inmate guards, only three states were still using
the system: Arkansas, Mississippi, and Louisiana. Though according to Bennett, the reliance on
prison personnel as guards in Louisiana was much less than in Arkansas. Henley continued:

> When all is said and done, the fact remains that a trusty is a convict, and many trusties
> will on occasions act like felons and thieves. They will take bribes, they will engage in
> extortion, they will smuggle contraband, and they will connive at violations of prison
> rules. Opportunity for abuse is particular present where, as in Arkansas, trusties have
> access to prison records pertaining to themselves and to other inmates. . . . The

\(^{145}\) Ibid., 373.
undesirability of having prison telephone communications with the outside world in the control of trusties, as it is in Arkansas, is too obvious to require description.\textsuperscript{146}

The Study Commission trumpeted the danger of using inmates as guards as well. The particular jobs given to trusties needed to be reconsidered in Arkansas. “In a very real sense,” wrote Henley, “trusty guards have the power of life and death over other inmates. Some guards are doubtless men of some judgment and humanity; others are not. It is within the power of a trusty guard to murder another inmate with practical impunity, and the danger that such will be done is always clear and present.” Henley recounted a recent situation where an inmate gate guard murdered another inmate “carelessly.” The Study Commission suggested that Arkansas phase out the guard system, and while Henley agreed with this as well, other aspects of the trusty system bothered him as much as the guard aspect.\textsuperscript{147}

Trusties had positions and powers where they could “make prison life tolerable or they can make it unbearably hard.” They could do everything from buying and selling jobs, extorting money, operating rackets, and creating loan shark situations. And this extortion began when an inmate first entered the prison farm, as trusty greeted the new prisoner and advised him of the importance of money within the prison walls. Trusties should not serve as barriers between normal inmates and facilities being available to them.\textsuperscript{148}

This led to Henley’s discussion of life in the barracks at Tucker and Cummins, focusing specifically on segregation issues within the barracks. White trusties, for instance, occupied one barracks while black trusties lived in another. New areas of concern in the barracks appeared in this particular trial, such as homosexuality, both consensual and non-consensual, and the fact that

\begin{footnotes}
\footnote{146 Ibid., 374.}
\footnote{147 Ibid., 374.}
\footnote{148 Ibid. 374-76.}
\end{footnotes}
inmate floorwalkers more often than not did very little to prevent it. Convicts called those inmates who engaged in homosexual activities “punks,” while they referred to those who were pressured into it “pressure punks.” Trusties made feeble efforts to control homosexual activity, such as moving some to a row of cots near the bars that enclosed the open barracks from the outside world. This only segregated those most afraid of being assaulted, thus making them stand out more easily as targets. “Sexual assaults, fights, and stabbings in the barracks put some inmates in such fear” that many inmates would move towards the front of the barracks and “cling to the bars at night.” Inmates referred to this practice as “coming to the bars” or “grabbing the bars,” which once again not only segregated a frightened and weakened inmate for the punks but also left him in no state to work the next day. The presence of drugs and alcohol made matters especially difficult to control within the barracks, for many prisoners indulged in drugs and alcohol frequently. The few free world workers employed could not control this matter. Trusties had a number of reasons not to change conditions. The floorwalkers frequently partook in such activities. While Henley imagined a situation where trusty labor would work effectively, such a scenario did not exist in Arkansas. Henley mentioned the prison farms’ isolation cells, ruled unconstitutional in Holt I. The proposed maximum security unit, stated Henley, would “be in operation, hopefully, in 1971,” placing the new unit opening a year later than prison officials originally said it would open a year earlier in Holt I testimony. But Henley did note that improvements had been made, especially regarding overcrowding, and that work to make them better continued. Thus Henley did not see the isolation cells at that moment raising any constitutional problem.149

149 Ibid., 377-78.
Henley also raised another aspect of the prison system in Arkansas that had not been approached by inmates until this instance: lack of a rehabilitation program. Henley pointed to a legislative act in 1968 that recognized the importance of having a rehabilitation program in place, and while Tucker officials had recently created a program that provided positive results, nothing had been established at Cummins. New inmates received intelligence and aptitude tests, though officials did little with the results. Large percentages of the prison population remained ignorant and unskilled, and Henley stressed that learning some sort of skill or trade while in prison might help a released prisoner not turn back to crime when free. “Since it costs money to confine convicts, more than many taxpayers realize, it would seem to be in the enlightened self-interest of all States to try to rehabilitate their convicts,” but whether or not the Constitution required it interested Henley. While penologists pointed to the importance of rehabilitative programs, many on the outside concluded that prisons should be utilized for punishment and protection of those not in prisons. Henley concluded the lack of a program not unconstitutional. That did not end the discussion of rehabilitation, however. If the lack of a program actually prevented or deterred reform and rehabilitation, that might create a different situation. Prisoners usually leave Cummins and Tucker prison farms worse than when they entered. “Living as he must under the conditions that have been described, with no legitimate rewards or incentives, in fear and apprehension, in degrading surroundings, with no help from the State,” stated Judge Henley, “an Arkansas convict will hardly be able to reform himself, and his experience in the Penitentiary is apt to do nothing but instill in him a deep or deeper hatred for an alienation from the society that put him there.” Thus, the failure of the state in providing rehabilitation simply bred more criminality. While Henley did not consider the lack of a rehabilitation program unconstitutional per se, he noted that the absence of such a program remained “a factor in the
overall constitutional equation before the Court.” Henley also recognized that the trusty system also produced deplorable conditions at the prison medical and dental facilities as well as conditions in the kitchen. Henley’s application of a mathematical equation to a totality of the conditions’ assessment of the Arkansas prison farm system represented a novel way of handling a situation left to fester for decades.\textsuperscript{150}

**Lighting the “Dark and Evil World”**

Henley now had to determine whether or not the Arkansas state prison system as a whole represented a violation of the U.S. Constitution.

For the ordinary convict a sentence to the Arkansas Penitentiary system amounts to a banishment from civilized society to a dark and evil world completely alien to the free world, a world that is administered by criminals under unwritten rules and customs completely foreign to the free world culture. After long and careful consideration the Court has come to the conclusion that the Fourteenth Amendment prohibits confinement under the conditions that have been described and that the Arkansas Penitentiary System as it exists today, particularly at Cummins, was unconstitutional.

Confinement at one of the prison farms was “inherently dangerous.” Prison authorities did not provide a guarantee to “a convict, however cooperative and inoffensive he may be,” that he would “not be killed, seriously injured, or sexually abused. Under the present system the State cannot protect him.” The terrible and disgusting conditions at the prison farms contributed to the lack of safety for the prisoner.\textsuperscript{151}

Henley had little patience with people who said changing conditions at the farms amounted to turning the places into country clubs, and the Court had not heard any of these people volunteer to spend the night at one of the farms incognito. “However constitutionally tolerable the Arkansas system may have been in former years,” continued Henley, it simply would not do

\textsuperscript{150} Ibid, 379-80.
\textsuperscript{151} Ibid., 380.
today as the Twentieth Century goes into his eighth decade.” Regarding racial segregation of inmates, considerable jurisprudence stated the Fourteenth Amendment protection of segregation extended to inmates. While Tucker appeared to be integrated, officials at Cummins needed to further eliminate all aspects of racial segregation, especially in the barracks. Immediate segregation, stated the respondent-prison officials, would cause disciplinary problems, and Henley agreed, continued:

It must be remembered that we are not dealing here with school children. We are not dealing with free world housing; we are not dealing with theaters, restaurants, or hotels. We are dealing with criminals, many of whom are violent, and we are dealing with a situation in which the civilian personnel at the Penitentiary are not in control of the institution.

Thus, the process of integration must be part of the overall process of making the prison constitutional. The Court further assisted the prison with making these changes in its order. While not considering any of the individual prisoners’ claims worth merit, Henley pointed out that they would receive relief from the order in which Henley will benefit all prisoners at both farms.152

The Court continued with its declaration that the confinement within both of the prison farms, even though the situation at Tucker was much better than at Cummins, amounted to an Eighth Amendment violation of “cruel and unusual punishment,” thus applicable to the states by way of the Fourteenth Amendment. Henley also declared that the existence of racial discrimination at Cummins barracks violated the Equal Protection Clause of the Fourteenth Amendment. As for injunctive relief, Judge Henley repeated his Holt I concerns regarding interference in state matters. Respondents must, however, promptly begin addressing the

152 Ibid., 381-82.
concerns Henley raised in this opinion, for “the lives, safety, and health of human beings, to say nothing of their dignity, are at stake. Unless officials brought conditions at the Penitentiary farms up to a level of constitutional tolerability, the farms could no longer be used for the confinement of convicts.” The decrees of his court, and the placement of good people in charge, such as Dan Stephens, had made it a slightly better place than in the past. Legislation from 1967, 1968, and 1969, and the legislative reports of the Study Commission and the Commission on Crime and Law Enforcement demonstrated that the Arkansas state government needed to exhibit more concern in state prison matters than they had in the past, and this increasing awareness of prison farm deficiencies needed to continue.153

Judge Henley praised the governor calling for a March 2 special session that would consider the matter of prison reform. Henley, and most anyone involved with prison reform in Arkansas, knew that money would definitely be needed to alleviate the unconstitutional issues at the farms. Henley also pointed out that solving these problems would take time. No amount of money would make the prison farms become constitutional overnight. Thus Henley granted the prison time to make sure it hired competent civilian employees to replace the inmate trusties. Henley continued with what he considered minimum guidelines to help lead prison authorities in the right direction. First, the respondent-prison authorities needed to deal with the trusty system as a whole. Henley would not accept simply excising the trusty guard system and leaving the rest of the system untouched. Trusties need to slowly lose the authority they had over other inmates, thus losing their power of extortion over other inmates. Trusties must be given “jobs,” not “offices of profit,” and free world personnel must supervise them. Henley then went into more specifics about how the trusty system needed to be “overhauled,” from getting rid of the long

153 Ibid., 383.
line riders and inmate pushers and putting the immediate control over the long line of workers into the hands of free world workers.\footnote{Ibid., 383-84.}

Other changes needed to take place as well. Authorities must amend the barracks’ situation, and no longer could this change wait for the theoretical completion of a new maximum-security unit. Officials needed to invest more effort in dividing inmates among barracks, which should begin with placing them into smaller, more manageable groups. Prison authorities simply needed “to do more than . . . in the past about keeping order in the barracks at night and about protecting inmates from violent assaults of whatever kind.” Free world personnel must watch over isolation cells. The investigatory commission suggested that inmates be walked out to eat their dinner in a more suitable and sanitary dining area than in their cells, and Henley suggested that authorities enact this “without substantial expense and without danger to any inmates.” If respondents enacted these changes,

the Court thinks that subsidiary problems will tend to take care of themselves. It would be a mistake to order too much at this time; but, in the areas just mentioned Respondents will be required to move. And, of course, the remaining vestiges of racial segregation must be eliminated. The Court will not be dogmatic about time just now. If there are things that Respondents can do now with available funds and personnel, they will be expected to do them now. If necessary steps cost money, and they will, Respondents must move as rapidly as funds become available.

Henley placed the opening of the maximum-security unit in 1971 as a tentative date for making the prison constitutional. Henley also gave himself and his Court the power to alter the schedule.

The decision required prison authorities submit a report to the Court no later than April 1, showing what they had done and planned on doing. Henley also stated he had the power to order more reports if necessary. If Henley did not approve the initial report, then he would have to step in further. In other words, Judge Henley would be more specific and assertive in reforming the
prison farms. The time for the prison to stop blaming the legislature or the governor for lack of funds had come, wrote Henley. With Judge Henley’s decision in *Holt II*, he declared an all-out war on an unconstitutional prison system. Nothing would be outside of the scope of the Court, and Henley’s court would be involved in every step. While Henley attaching the Court to the reform did not necessarily mean his personal involvement in prison reform, his urgent plea gave the impression that he claimed a stake in the constitutionality of the prison farms. In a span of around five years, Henley moved from a cautious approach focusing on a few specific complaints to a much wider approach in declaring the whole prison system of the state of Arkansas unconstitutional. As Henley correctly pointed out, no Court had ever undertaken such a resounding and total declaration of a prison system unconstitutional. Arkansas’s prison system was different, as were those in neighboring southern states. But more importantly, Judge J. Smith Henley was different. And it would be these differences that brought about a historic transformation.\(^{155}\)

\(^{155}\) Ibid., 385.

Judge J. Smith Henley did more than declare the conditions at the Cummins and Tucker Prison farms unconstitutional on February 18, 1970. He declared every aspect of the prison farms unconstitutional. If officials did not begin reforms to make them constitutional, Henley would shut down the whole system. Henley declared himself to be the overseer of this operation, having to balance a delicate operation: he urged the state of Arkansas to reform the prison however it could but also allowed the state to come up with its own methods of change. The years following Holt II demonstrated Henley’s views on the role of judges and the ideals of federalism, but Henley made sure that first and foremost Arkansas upheld the constitutional rights of the citizens at the prison farms. The judge recognized the unpopularity of his position, but oftentimes popularity did not equate constitutionality.

After Henley announced the opinion, word spread about conditions at Arkansas’s prison farms. Some, such as United States Chief Justice Warren E. Burger, agreed with Henley’s decision, stating that proper prisoner treatment was “as important a part of the system of justice as a fair trial.” United States Senator Thomas J. Dodd, a Democrat from Connecticut and Chair of the Senate Juvenile Delinquency Subcommittee, voiced that conditions at the prison farms were “worse than zoo-like” during an earlier investigation. Dodd stated that many called him out
negatively for bringing these terrible conditions to light. Judge Henley’s decision in *Holt II*, if anything, vindicated Dodd and his committee.\(^\text{156}\)

**Scramble for Money: The Aftermath of *Holt II***

But no announcement from a Supreme Court Justice or a United States Senator would do much to spur action from the most important group in this saga: the Arkansas state legislature. The day following the announcement of the opinion, Arkansas state senator Clarence Bell voiced that the legislature would find money to help take care of the farms’ most urgent needs, but it would not resort to passing any new taxes. The legislature’s top priority, according to Bell, would be bringing the prisons up to “constitutional tolerability,” in other words: doing the absolute minimum. It surprised no one that the Arkansas legislature would be the group most hesitant to act. For one, its members’ jobs depended on pleasing their constituents. And as the court hearings slowly revealed, many Arkansas citizens made money and received services due to the corrupt, unconstitutional nature of the prison farms. Budgetary issues guided legislative reluctance as well, for up until this point, Arkansas legislators could not fathom the possibility of having to budget money for the state prison. If the prison had not only supported itself but also made extra money for the state, why should they now be obligated to provide funding money that they could otherwise invest in the lives of Arkansas’s free people? Why should schools and other service agencies of the state suffer for inmates? No matter their thoughts on whether or not

\(^{156}\) “Burger Says Prisoners Deserve Care,” *Arkansas-Gazette* (Little Rock), February 18, 1970; and “Prison Ruling Supports Him, Dodd Asserts,” *Arkansas-Gazette* (Little Rock), February 20, 1970, 2A.
they should allow state funding to run prisons, legislators had to accept the realities of a new way of thinking concerning state prisons in Arkansas.  

Many outside of politics agreed that the impetus for prison change rested with the legislature and its control of the purse strings. “Arkansas has continued to neglect its prisons scandalously even after the most notorious of the prison practices [use of the strap and corporal punishment] have been discontinued,” began a February 20, 1970 *Arkansas-Gazette* editorial. Editors praised the “predictable climax” brought about by Henley’s decision. They placed the blame for the inhumane conditions on the Arkansas legislature “in its failure to provide enough money to give prison inmates elemental guarantees of decent treatment.” Arkansans must insist that the legislature, at the urging of the governor, allocate the necessary funds to help reform the prison farms. Editors promoted the inevitability of new taxes that would have to provide funding for the prisons. And Governor Rockefeller has proposed three sound tax-related measures: eliminating certain business tax exemptions, increasing the state income tax, and expanding the sales tax in some areas such as services. In the name of common decency, the General Assembly should do what was needed to keep the prison farms from being shut down. Not all legislators, however, agreed that increasing taxes was the way to go. In fact, many felt that the legislature should consider different avenues regarding Arkansas’s prison farm dilemma.

Some legislators did not appear as optimistic as Bell that the legislature would allocate the necessary funds. State Senator Knox Nelson, from the city that contained Cummins Prison Farm, Pine Bluff, stated that rising costs might eventually force the state of Arkansas to close its prison farm system entirely and send its inmates out of state. Commissioner Robert Sarver of the

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157 “Arkansas Prisons, As Presently Run, are Declared Illegal,” *Arkansas-Gazette* (Little Rock), February 19, 1970.
158 “Prison Crisis Belongs to the Legislature,” *Arkansas-Gazette* (Little Rock), February 20, 1970, 6A.
Arkansas Department of Corrections, however, said that he had never heard of a situation where the federal government’s prison system would take in state prisoners, especially the whole lot of 1400 convicts from Arkansas. Instead of Nelson reconciling the rising cost of inmates with other areas which contributed to those high numbers, such as reforming sentencing legislation or simply being creative with the state budget, Nelson “said he could foresee the day when the cost of operating a prison would be prohibitive for a poor state such as Arkansas.” 159

Commissioner Sarver, however, remained optimistic the legislature would provide the necessary funds to make conditions at the farms constitutional. At a Legislative Council meeting on February 19, Sarver noted that the council appeared receptive and understanding regarding the dilemma: “They are very knowledgeable about the problem. I don’t think there is any question about it.” Both Sarver and John Haley, leader of the Penitentiary Board, remained hopeful that the special session Governor Rockefeller had called for March 2 would help alleviate the problem a bit. Haley indicated that Henley’s opinion did not surprise the board and other prison officials. Haley also hinted that tax increases, though modest, would probably be necessary to bring the prison up to the standards Judge Henley and the federal court deemed necessary. In a memorandum from Governor Rockefeller a few weeks earlier concerning the upcoming special session, he asked that the legislator provide an additional $828,447 for operating expenses and $144,500 for construction for that fiscal year and $1,086,701 in operating and $450,000 in construction for the next fiscal year. After the release of Holt II, Haley believed that this might not be enough money. Prison administrators needed to spend the most money on free world staff replacing the trusty guards at the farms. Sarver agreed, reiterating that the

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situation called for “some substantial revision above what we told the Legislative Council today that we needed.”

Prison officials also had the court-appointed lawyers to acknowledge for their efforts to bring the deplorable prison farm conditions to light. Judge Henley often thanked attorneys Jack Holt and Philip Kaplan, praising their efforts. Both lawyers, of course, celebrated the results, recapping the unique nature of the Henley opinion. They knew that they had their work cut out for them asking Henley to declare the whole prison unconstitutional, but they felt confident Henley would do what was necessary to uphold the Constitution. Henley obviously put much thought into appointing the team of Holt and Kaplan to represent the convict petitioners. While Kaplan, being a member of the city’s only racially integrated law firm, had established himself as a great civil rights’ and constitutional attorney, Holt was by his own definition a “conservative” though he believed in the civil rights of humans based on the Constitution through his legal training and religious nature. Kaplan stated that “the judge exhibited great wisdom in striking a balance, a balance between Jack, who has had a great deal of experience in the attorney general’s and prosecuting attorney’s office and who is well-known and well-respected among many people who were involved in the suit . . . and someone like me, who is used to raising constitutional issues in trials.” The lawyers expressed disappointment on a few issues, however, one being the fact that Henley did not rule in the convicts’ favor regarding involuntary servitude stemming from prison work without proper compensation. At the very least, stated Kaplan, Judge Henley should have forced the state to provide adequate food, living quarters, and working conditions. Also, Holt wished that the judge had addressed a state law allowing female alcoholics to be sent to jail on an “open sentence” of one to three years, without

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160 Ibid., 1, 11; and “Decision on Prisons No Surprise; Need for More Funding is Indicated,” Arkansas-Gazette (Little Rock), February 19, 1970.
any finding of guilt of a crime. Holt had hoped these issues would be brought up in the discussions regarding the women’s reformatory, where testimony revealed that one woman was sent to the reformatory eighteen times for alcoholism alone by court order. The positives, however, outweighed the negatives, as the lawyers praised the convicts whose voluntary testimony proved most crucial to winning the case. These prisoners, additionally, had the most to lose, for fear of repercussion from prison officials existed and prison guards often used force to punish those who testified and also to scare those who might in the future. Kaplan stated that “they had no axes to grind . . . Many of them who came to us, voluntarily at great personal risk, did so because they thought there was some hope that something might be changed. . . . They knew it couldn’t be changed overnight.” Kaplan also spoke of the difficulty in remaining emotionally unattached to the convicts. They also remained confident that, if appealed by the state of Arkansas, the decision would remain.161

As for the state of Arkansas appealing the decision, Commissioner Sarver expressed doubts. Even Penitentiary Board Chairman Haley voiced his opinions that an appeal from the government would serve little purpose. Some state legislators, such as Guy H. “Mutt” Jones, expected the Attorney General to file an appeal, which would alleviate the urgency for the legislature and buy them some time. Governor Rockefeller’s office took Henley’s decision as a victory, reiterating that one of his first goals upon entering the governor’s mansion involved cleaning up the prison farms. Marion B. Burton, legal aid to Rockefeller, believed that the prison farms needed to be something more than a factory producing hardened criminals, for in his mind “the prisons merely had become graduate schools for criminals.” For now, it seemed that no officials in Arkansas knew just how much money would be needed to continue the

161 Bill Lewis, “Convicts’ Lawyers Pleased by Ruling, Raise Few Points,” Arkansas-Gazette (Little Rock), February 20, 1970, 1, 2A.
transformation of the prison farms into constitutional penitentiaries, but one thing remained certain: the prisons needed more money.\textsuperscript{162}

The question of a state appeal soon became popular news, as the \textit{Arkansas-Gazette} released an article which, even with Commissioner Sarver of the Department of Corrections disagreeing, stated that many government officials deemed an appeal of Henley’s decision in \textit{Holt II} necessary. Legislators closest to budgetary and auditing aspects of the General Assembly, such as the Legislative Joint Auditing Committee, urged Attorney General Joe Purcell to appeal. Commissioner Sarver had trouble pinpointing any aspect of the ruling that the State could possibly appeal: “I can’t find a thing to take issue with in the judge’s order. . . . I was there ninety-eight percent of the trial and there is no question in my mind that the testimony will support his order. I would not be inclined to appeal.” Governor Rockefeller and his aides agreed with Sarver, urging the legislature to face the problems for they would not go away. One of Rockefeller’s advisors said that he “didn’t see any sense in buying time.” Representative W.F. Foster of England, who reiterated that he voted for every bill benefiting the Department of Corrections in the previous session, sponsored this most recent Legislative Auditing Committee resolution urging Purcell to appeal. Foster stated his hesitance at giving money to the prison instead of to other governmental departments which needed funding as well, including the Welfare Department and the State Hospital. Only one committee member, George E. Nowotny Jr. of Fort Smith, questioned the need for such a resolution, for the Attorney General could appeal on his own accord, and Nowotny did not want this resolution to give the impression that the legislature approved the current trusty system. The resolution urged the Attorney General to appeal this decision to the Eighth Circuit Court of Appeals immediately. Sarver, however,

\textsuperscript{162} Ernest Dumas, “Prison Ruling Delights WR, Aides, but the Question Is: What About Money?,” \textit{Arkansas-Gazette} (Little Rock), February 20, 1970.
continued working on the changes made necessary by Henley’s decision, suggesting the Board of Corrections seek the authority from the legislature to hire eighty-three new free world guards before July 1 to replace the trusty guards. He also hoped to receive three million dollars in revenue bonds to construct additional facilities. With such budgetary outlay requested from a legislature unaccustomed with funding a prison system that managed up to this point to fund itself, one might understand why the legislature welcomed an appeal. The legislature wanted breathing room, but few realistically believed that breathing room would provide the General Assembly with any real impetus to help fund the prisons. The time for stall tactics ended, and many in Arkansas began realizing that it was time for the legislature to act.163

An editorial in the *Arkansas-Gazette* on February 21, 1970 noted that the state of Arkansas not only had a constitutional duty but an “urgent moral” duty to reform the prison farms. Henley simply gave “formal recognition to a conclusion that anyone with the barest sensitivity to the human condition realized about life at Cummins and Tucker Prison Farms long ago.” State actors must begin reforming the prison farms now. But until that can happen, wrote the editors, the state must accept the ruling and deal with it. The attorney general “should not accede to the pressures of prison apologists who want to appeal the ruling to the Eighth Circuit Court of Appeals at St. Louis.” Editors also questioned Attorney General Purcell’s “instincts for decency—aside from any gubernatorial ambitions he may have.” Even if he did appeal and the Eighth Circuit overturned Henley’s decision, “Arkansas as a state, nonetheless, will have a moral obligation to eliminate what Judge Henley has called the ‘dark and evil world’ within the prison environment. As Attorney General Mr. Purcell shares a part of that burden of responsibility with other state

officials and legislators.” The editors called this not a test for the question of states’ rights but one of state’s responsibilities. State Senator Knox, for example, needed to accept this responsibility instead of thinking he could pawn off Arkansas’s fourteen hundred inmates to other federal facilities. “Political sophistry of a kind long practiced by those who would justify rather than correct the prison conditions obtaining in Arkansas is no longer respectable—if it ever was. Duty cannot be evaded.” Ultimately, at a meeting between the Board of Corrections and Attorney General Joe Purcell on Tuesday, February 24, Commissioner Sarver roughly estimated that the prison farms would need around $4.5 million for the farms to operate within constitutional parameters until June 30, 1971. Both Sarver and John Haley shuddered at the thought of an appeal, which would put off any possibility of the prison farms receiving more money for at least a year.\footnote{164}

The Era of Reports: Henley’s Continued Monitoring of the Prison Farms

Whether or not the state of Arkansas and Attorney General Purcell decided to appeal on behalf of Sarver and the respondents of \textit{Holt II}, Judge Henley expected prison officials to file timely progress reports charting the prison farms’ progress towards constitutional status. The first of these supplemental reports, filed in March of 1970, listed a number of legislative acts passed in the previous year would help the prison farms become constitutional. Act 17 of the First Extraordinary Session of 1969 set aside a budget specifically for the farm, the first time in Arkansas’s history that corrections received their own dedicated portion of the budget. The budget set for the 1970-71 fiscal year, which including farm revenues and general revenues totaled around $2,800,000, almost doubled the budget set for the 1966-67 fiscal year. This

\footnote{164} “State’s Prison Duty,” \textit{Arkansas-Gazette} (Little Rock), February 21, 1970; and “Approval of Board, Sarver for Appeal Appears Doubtful,” \textit{Arkansas-Gazette} (Little Rock), February 22, 1970.
amount was around one million dollars more than the fiscal year budgets from 1967 to 1968 and 1968 to 1969. The act also created positions for 246 employees to help aid custody and care of prisoners and twenty-seven employees to help with agricultural functions. Unfortunately, the legislature did not give the money necessary to fill the positions. “Nevertheless,” continued the report, “the Department expects to double its present number of employees (82) in fiscal 1970-71.” Act 7 of the 1970 Extraordinary session set aside two hundred thousand dollars for the maximum security unit which had been promised for completion for some years. The Department of Corrections was also taking contracts for the construction of a vocational rehabilitation facility at Cummins, which would cost $150,000 with the federal government paying eighty percent of the cost. The legislature also added an appropriation to the Department of Corrections for $350,000. Also from the 1970 Extraordinary Session came the creation of the Department of Correction Construction Act, of which the legislature gave $450,000 for farm equipment improvement and mechanization, $176,000 for improvement and renovations of barracks and latrines, and $174,000 for kitchen, dining, laundry, water, and sewer improvements.165

The report also discussed matters not directly related to allocation of funds. For one, “priority in the employment of personnel to replace trusties has been established so as to eliminate, as soon as possible, inmate control over records, medical services, food services, job assignments and key security posts.” The department would appoint free world employees to posts first helping to secure the safety of inmates first. Safety of the barracks remained the first priority, as well as the physical conditions of the barracks and the building of new quarters to alleviate crowding. Integration of the sleeping quarters, now a top priority, should be completed

by July 1. Racial integration would make the barracks constitutional in a Fourteenth Amendment sense, but it would also result “in segregation by security risk, institutional adjustment and conduct record and, in effect” would double “the number of barracks areas available for placement after proper classification.” Prison administrators only considered around twenty-five inmates high risk, with the rest could live in minimum and medium security barracks. Workers would complete the maximum-security unit no later than September of 1971. One wondered whether this would be acceptable to Judge Henley, who had heard by then too many times that the maximum-security unit would be completed soon. Prison officials set a July 1 deadline for staff placement, thus creating a properly supervised barracks and yard by free world personnel twenty-four hours a day.166

Isolation cells needed a number of changes as well to make them constitutional. As of the writing of this report, the prison could only afford staff to operate twelve-hour shifts, but they hoped eventually to have constant protection of the isolation units. Once again, the respondents set July 1 as their goal date to have that in place. The report also suggested that both private and federal agencies expressed a desire to fund vocational training at both Cummins and Tucker units. The Department of Education had allocated two hundred thousand dollars to help begin a vocational program, and it promised to continue giving money. Though the report lacked many long-term solutions, the vocational program represented the central, long-term aspect of the prison needing attention. The report concluded that the Department of Corrections, being “committed not only to the principle of providing humane living conditions for inmates,” providing “the counselors, training, and environment to make more productive citizens of inmates entrusted to its care, both during their tenure as inmates committed to the custody of the

166 Ibid., 3-5.
Department and as free citizens upon their release.” The Arkansas Department of Corrections and prison supervisors would release more detailed timetables as necessary. While it appeared that this represented an adequate first step to reforming the prison farms, only the opinion of Judge Henley mattered.167

On April 15, 1970, Judge J. Smith Henley released a memorandum and order assessing the earlier reports he received from the Department of Corrections. The Court, stated Henley, had “no difficulty in approving the Reports as evidencing that a prompt and reasonable start has been made by the Respondents towards eliminating the unconstitutional conditions” of the prison farms. Regarding the outlay of capital from the legislature and Governor Rockefeller’s insistence that the earlier special session provide the Department of Corrections with more funding, the Court expressed pleasure, having “no reason to believe that the institution will not be adequately funded in the future, taking into consideration, of course, the overall financial condition of the State.” Henley wrote that after July 1, no inmates would process mail, and “trusty recommendations will no longer be relied upon in connection with job assignments.” He commended the prison’s efforts at ending racial segregation throughout the prison as well.168

The Court did have problems, however, with the earlier report’s suggestion that the prison would only be able to supervise the prisoner barracks and the yard on a twenty-four hour basis after July 1, 1970. The fact that it would take them a few months to do this “will not do,” wrote Henley, for it offered “small comfort to a barracks inmate to know that he may expect to be reasonably safe at some time after July 1 if that safety depends on his being able to live that long.” Moreover, the fact that prison administrators claimed that they had trouble disarming the prison population did not mean that officials should tolerate the situation. Prison authorities

167 Ibid., 6-7.
168 “Memorandum and Order,” April 15, 1970,” Kaplan Papers, Series I, Box 6, File 5, 1, 2.
could call the Arkansas State Police, reinforced Henley. “The argument that if A, B’s enemy, is
armed, B needs to be armed in order to protect himself. . . . If A is armed and wants to kill B, he
will do so in circumstances that will allow B little, if any, opportunity to defend himself” did not
impress the judge. The Court wanted required information on the sanitary conditions of the
barracks. Respondents needed to file additional reports no later than May 10, 1970. Henley
approved the earlier report, however, as demonstrating progress. The Department of Corrections
must also file a full report by July 10 to show what they had done before the availability of new
funds, to give the Court a point of comparison. Thus, while Judge Henley applauded the positive
aspects of the report, the prison farms remained far away from escaping his oversight.169

The Department of Corrections filed their follow up report on May 7, three days before
Henley’s deadline. The report presented more detail of the isolation cell situation, offering a
number of detailed information on who occupies each cell in isolation. Officials made efforts to
separate those in isolation for protective reasons and those there for punitive ones. The prison
also made attempts to use alternative forms of punishment other than isolation. Prison officials
gave the most productive inmates during the twelve-hour workday certain limited privileges, but
the report did not reveal the specifics of these rewards. Administrators assigned three full time
staff members to the isolation units, providing twenty-four hour protection of the units seven
days a week. The report also addressed Judge Henley’s concerns over the cleanliness of the
barracks, stating that a commercial professional exterminator now provided insect and vermin
control in the barracks. “The cells are required to be cleaned daily and, except for assorted
graffiti which adorns the walls, the sanitation facilities are operable and adequate.” In addition,

169 Ibid., 3-4.
while certain things might break or malfunction, such as clogged toilets, the prison staff repaired the glitches as quickly as possible.\footnote{170}{“Supplemental Report of Respondents, May 7, 1970,” Arkansas Studies Institute, UALR.MS.0132, Philip E. Kaplan Papers, Series 1, Box 6, Folder 5, 1-2.}

The report then presented matters pertaining to the possession of deadly weapons. Since one of Judge Henley’s main concerns with the prison barracks dealt with prisoner safety, the state had its work cut out for itself when it came to a practical policy regarding deadly weapons. Henley no longer accepted excuses. Inmate trusties voiced a concern for their own safety and protection that necessitated carrying weapons. Many, however, began relinquishing their weapons on their own, for the prison administrators gave them a considerable amount of time to do so before the shakedowns and searches of inmate bunks began. Once guards completed those shakedowns, prison personnel believed they confiscated most weapons. More shakedowns occurred at the front gates when inmates returned from work assignments. Prison officials also admitted their doubt “that all weapons could ever be removed from the barracks but” they believed the new protocols would decreased the “likelihood of assaults with deadly weapons in the barracks.” The respondents hoped to satisfy Henley with these changes.\footnote{171}{Ibid., 3-4.}

Regardless of the positives trumpeted by prison officials, the prisoner petitioners filed their objections to the Respondent’s report on May 14. In a way, they mirrored the Henley’s issues in that there certain conditions needed to change immediately, no matter the barriers. The petitioners focused on the continued overcrowding situation in the isolation cells. If prison officials used alternative measures to placing inmates in disciplinary cells, why were they still crowded? Officials must address the type of overcrowding still present in the Cummins Unit before the completion of the new maximum-security unit. The respondents’ earlier report
disclosed that thirty-three prisoners shared eleven isolation cells, which petitioners found inexcusable. Prison officials also exploited the few protections prisoners had regarding isolation sentences by transferring the prisoners’ status in isolation to that of “protective custody,” which meant guards could keep the prisoner in isolation longer. The lack of due process utilized in sentencing inmates to isolation also disturbed the prisoner petitioners. “In view of the limitations placed by this Court upon the use of the isolation cells,” concluded the petitioners’ response, “it would seem that the respondents’ last report” was “wholly inadequate. . . From the face of the report it would appear that the respondents have not made a good faith effort to use alternative means of discipline for protection of a prisoner.”\footnote{172 “Response to Respondent’s Report, May 14, 1970,” Kaplan Papers, Series 1, Box 6, Folder 5, 1-3.}

Judge Henley did not go so far as to see a lack of good faith on the part of the Arkansas Department of Corrections. He pointed out, however, that while prison officials had made positive changes, they still had “a considerable distance to go before” the prison farms reached “a condition of constitutional tolerability as required by the Court’s original decree herein. The judge understood the realities at hand for the Department of Corrections, for he considered the prison to be “in a state of transition, and that the availability of funds on July 1 will go a long way in helping solve some of these issues.” Thus, Henley’s court took no action against the Arkansas Department of Corrections. The Court continued to keep an eye on the prison farms and would later “scrutinize the report to be filed in July. While the Court does not desire to impose any impossible burden on respondents, the Court, on the other hand, does not want to create the impression that it is entirely satisfied with the progress that has been made up to this
point.” Henley continued to walk that tight rope, trying to maintain his philosophies on allowing the state to repair its own issues, yet his patience seemed to be running a bit thin.\textsuperscript{173}

The Respondents replied with a full report updating the Court as to the status of reforms up to June 30, 1970. Of the thirty-five different items included with this report in a graphical representation of implementation, the Department of Corrections stated that twenty changes had been completed, along with nine to be finished by early September. Prison administrators promised to complete the remaining six items in a timely manner. On April 3-4, 1970, the Respondents boasted that they had integrated the barracks at Cummins entirely. On April 15, the prison replaced the trusty guards at the front gate of the unit, known as the “Sally Port Gate,” with free world personnel. On July 1, the prison employed six new free world personnel to provide extra security within barracks. The prison also began examining the diets of prisoners more thoroughly, hiring a consultant dietician and two free world kitchen supervisors. The prison also hired free world personnel to take charge of the kitchen cold storage, the laundry, and farm operations. By hiring these free world workers, they eliminated all forms of graft and corruption associated with inmates having these jobs. Administrators employed additional employees due in part to federal grants from the United States Department of Labor, Manpower Administration, which provided “for the recruitment, testing, education, and on-the-job training of new department personnel.” The changes at the prison farms, however, moved beyond simply free world personnel issues.\textsuperscript{174}

The prison farms no longer placed inmate trusties in charge of the prisoner record offices at the Cummins Unit. Officials stripped the longline riders and yard supervisors of their former

\textsuperscript{173} “Memorandum and Order, May 28, 1970, Considering Supplemental Reports,” Kaplan Papers, Series 1, Box 6, File 5, 1-2.

\textsuperscript{174} “Decree Implementation Schedule, July 10, 1970,” Kaplan Papers, Series 1, Box 6, Folder 5, Kaplan Papers, 1-2.
powers, calling them “inmate supervisors. Since March 1970, the term ‘trustys’ has assumed a new meaning and these new ‘inmate supervisors’ have no immediate, direct or indirect control over other inmates.” Inmates also now possessed three changes of cloths, including socks and underwear, per week. “Isolation cells were painted, again, on March 1, 1970, and each cell is disinfected at least once a week,” read the report. As soon as money became available, officials would purchase new bedding and beds. Improvements to sewage, kitchen, and laundry facilities also depended on the availability of new funds. On August 15, the free world personnel would fully supervise the infirmary. The Southern Baptist Convention had also provided a full time chaplain, and a degreed Recreational Activities Director began employment on May 1. A total of $450,000 of the Legislative money earmarked for the prison farms would be help upgrade farming operations and mechanization.175

Administrative changes helped reduce violence, for of the nine incidents reported since May 1, only three took place within the barracks. Prison officials stated that these violent acts were due to the regular and frequent shakedowns that took place at the front gate and in the barracks. Officials searched the barracks at least once a week, and the Shift Supervisor or Chief Security Officer performed a weekly walkthrough inspection of all of the barracks. Shakedowns between May 1 and June 30 recovered approximately sixty dangerous weapons as well as one hundred gallons of homemade alcohol.176

Prison officials also minimized prison overcrowding in the isolation units, for none of the isolation cells averaged over three inmates per cell from the period of May 1 to July 6. Prison officials began placing inmates who refused to work on the old baseball field, citing one inmate who officials moved to the field on May 14 and remained to that date, “except that he has been

175 Ibid., 3.
176 Ibid., 4.
brought into the isolation unit during thunderstorms.” One wondered whether Judge Henley would find that placing an inmate at the baseball field for that amount of time would be better than being placed in an isolation unit.177

Other similar reforms took place at the Tucker Unit, now referred to as the Intermediary Reformatory. All free world personnel at both units began going through training through the Federal Bureau of Prisons’ Correspondence course and have become active members of the American Correctional Association. The prison also pointed to the fact that around four hundred thousand extra dollars would be received in the form of federal grants to help further train inmates. Prison officials remained hopeful that federal money from the Law Enforcement Assistance Agency (LEAA) ensured the completion of the mythical maximum-security unit by the fall of 1971. This more detailed report filed by the Respondents sufficed as continued progress regarding the reform of the two prison farms in Arkansas. The respondents, though complying with Henley’s opinion and continuing to reform the farms, against Commissioner Sarver and Chairman John Haley’s better judgment, filed an appeal to the Eighth Circuit Court of Appeals.178

**Henley’s Mandate Strengthened: *Holt II* and the Eighth Circuit, May 1971**

The state of Arkansas appealed Henley’s judgment and received a rehearing, but its advocates based the scope of their appeal on Eleventh Amendment concerns.179 A panel of three judges announced its opinion for the Eighth Circuit on May 5, 1971. The prisoners filed a cross-appeal questioning Henley’s decision regarding the Thirteenth Amendment issues that they

177 Ibid., 5.
178 Ibid., 8.
179 *Holt v. Sarver*, 442 F.2d 304 (8th Cir. 1971).
deemed made their coerced labor unconstitutional, but a Department of Correction’s motion convinced the panel to dismiss the cross-appeal on January 8, 1971. The Respondent Department of Corrections claimed that Henley erred in opining that conditions at the prison farms amounted to an Eighth Amendment violation of cruel and unusual punishment based on three reasons. First, the Eleventh Amendment barred such a suit against the state of Arkansas. In addition, the lower court should not have excluded the testimony of two expert witnesses. And finally, the Court lacked substantial evidence to declare the conditions unconstitutional. The Court eventually rejected all three of these and affirmed Judge Henley’s opinion.\textsuperscript{180}

The Eighth Circuit quickly pointed out that an earlier Eighth Circuit case dealt with this exact issue and allowed such a suit.\textsuperscript{181} The U.S. Supreme Court case of \textit{Ex Parte Young} “repeatedly recognized that an act of a state official which violates a federally guaranteed constitutional right may be enjoined upon the basis that the officer is ‘stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct.’”\textsuperscript{182} Thus, the state could not offer said state actor any sort of immunity. If the Court stepped in during earlier cases involving the prison farms in Arkansas, such as \textit{Jackson v. Bishop}, no constitutional principle could prevent it here. As for Judge Henley refusing to consider certain testimony in \textit{Holt II}, the Eighth Circuit stated that it would not reverse unless it appeared “that the competent evidence is insufficient to support the judgment or that the court was induced by incompetent evidence to make an essential finding which it would not otherwise have made.” Thus without such a showing in the case at bar, the Court rejected the Respondents’ claim. As for the final claim, the Eighth Circuit judges specified that “overwhelming substantial

\textsuperscript{180} Ibid., 306.
\textsuperscript{181} Board of Trustees of Arkansas A&M College \textit{v. Davis}, 396 F.2d 730 (8th Cir. 1968).
\textsuperscript{182} Ibid., 732, quoting \textit{Ex Parte Young}, 209 U.S. 159-169 (1908).
evidence” existed which supported Henley’s decision. Additionally, the Court pointed out that Henley declared many of these same instances unconstitutional in the first *Holt* case, thus the penal wondered why respondents did not appeal the previous matter. Commissioner Sarver’s testimony that “frankly admitted that the physical facilities at both units were inadequate and in a total state of disrepair that could only be described as deplorable” did not help matters for the Respondents.\(^{183}\)

The Court concluded by affirming the remedy given by Judge Henley, even though neither party ever questioned the remedy. One must conclude that the Eighth Circuit did this as a reaffirmation of Judge Henley and the long road ahead for the Arkansas Department of Corrections and other state actors, including the Legislature, regarding reform of the prison farms. The opinion also included a concurring opinion from Judge Donald P. Lay, who hoped it is not wasted rhetoric to express additional judicial condemnation of the conditions and practices carried out by the State of Arkansas in operating its system of ‘correction.’ Contemporary conditions in Arkansas do not vary greatly from those condemned in England in the 1700’s.

Judge Lay continued his own criticisms of the Department of Correction’s slow action. “New buildings and additional guards,” wrote Lay, “although essential for compliance within the court’s decree, fall far short of remedying the defilement of individuals and the inhumane treatment of prisoners practiced in the name of the state.” Prison officials needed to place immediate emphasis on rehabilitation programs, and until that happened, Henley’s court should retain jurisdiction. Thus, on top of Henley’s continued personal pressure to retain jurisdiction over the Arkansas prison system, the Eighth Circuit, in its own passively aggressive though not

\(^{183}\) *Holt v. Sarver*, 307-308.
binding way, urged Henley that he would have to retain the course of action reforming the prison farms till the very end.\textsuperscript{184}

In the two years that followed Judge J. Smith Henley’s landmark ruling of the unconstitutionality of a whole state prison system, even with increased capital from the Arkansas General Assembly, the prison farms remained unconstitutional. In what Judge Henley had hoped would be an opportunity to nudge the state of Arkansas and allow it to implement change that would bring about a constitutional prison system, some six years after his first case involving the prison farms in Arkansas, he still remained in control. Judge Henley always held a philosophy of telling a state government that something was unconstitutional but allowing it to make the changes necessary on its own accord. After hearing the Eighth Circuit not only declare Arkansas prison farms still deplorable, he also witnessed the higher court advise him to continue doing whatever was necessary to reform these prisons. While Henley hoped to relinquish control of the prisons as soon as constitutionally permissible, there was no way he could do this with the prison conditions as they were. Following the orders of the Eighth Circuit, Henley would continue to lead the charge in creating constitutional prisons in Arkansas. The scope of his leadership, however, had changed and would continue to change considerably from what he envisioned in 1965.

\textbf{Back in Court: Henley and the Eastern District Still in Charge}

On June 16, Judge Henley issued a memorandum and order commencing the next phase of prison reform. Henley seized the affirmation of the Eighth Circuit of his trial as a mandate to continue further hearings and proceedings to keep the Arkansas prison farms on the path towards

\textsuperscript{184} Ibid., 309-310.
constitutionality. Henley began by substituting the new Commissioner of Corrections, Terrell Don Hutto, as a party respondent in place of former Commissioner Sarver. He also ordered the Arkansas Board of Corrections to file a full and complete report no later than July 20, 1971, updating the Court as to the current conditions. This report should cover the Cummins Unit, the State Reformatory for Women, and the Tucker Intermediate Reformatory, and this report must “be as specific and detailed as possible.” The report must also include information on the trusty system, detailing the reorganization of trusty power. The prison must then describe how free world personnel had taken over the jobs formerly manned by trusties. Judge Henley also wanted to know the question that was probably on most peoples’ minds that were associated with prison reform: just when was that maximum-security unit going to be finished? Not only that, but Henley wondered just how the Department of Corrections planned to use this unit. The report also needed to describe whether inmate safety was improved, had work conditions improved, and whether the rehabilitation program at Tucker was doing okay, the women’s reformatory as well as inmate clothing, food preparation, and medical treatment. This memorandum appeared to be Henley’s once-and-for-all order: even if prison officials covered these matters already, he hoped to be fully convinced that considerable change has taken place at the prison farms. Armed with the higher court mandate, Henley stepped up his role and now began playing hardball with the state of Arkansas. Henley further held the Department of Corrections accountable by allowing attorneys for the petitioning prisoners to inspect and submit their own report as well. Henley would consider the Respondent’s report as well as accept feedback from the Petitioners in determining “how much of an evidentiary hearing will be necessary or desirable to enable the Court intelligently to make the determinations that it will be called upon to make.”

185 “Memorandum and Order, June 16, 1971,” Kaplan Papers, Series I, Box 6, Folder 6, 2-3.
On July 19, 1971, just one day before Henley’s deadline, Terrell Don Hutto and the Department of Corrections submitted its most complete status report to date, a fifteen-page document with numerous appendices. The most interesting aspect of the detailed report showed that Legislative funding for the prison farms increased dramatically from the beginning of prison litigation to 1973, climbing from zero to around $2.5 million. The Department of Corrections quickly noted that the trusty system had not been dismounted but drastically re-organized, “the efforts which have been made have succeeded reasonably well in removing much of the power formerly held by the trusties and placing this power into the hands of civilian personnel.” The prison accomplished this change, in spite of still utilizing armed guards at both Tucker and Cummins towers, “under the direct supervision of a civilian supervisor, who is present at all times within the work forces.” Trusties no longer had the responsibility of handling inmate job assignments, promotions and demotions, free world personnel handled all disciplinary matters. Medical services, as well as the ability to approve or disapprove an inmate receiving such services, now remained with free world personnel. In fact, “any inmate is permitted to go on sick call which is held at Cummins from 11:00 A.M. to 1:00 P.M. Monday through Friday.” Inmates could also utilize medical services on the weekends in emergencies via free world workers who were on call.186

Free world personnel handled all inmate mail, both incoming and outgoing, allowing for uncensored inmate communications with the courts or their lawyers. With all of this progress, cited the prison, the complete replacement of trusty guards still could not take place due to budgetary constraints. Prison officials speculated that with increased funds in the next fiscal year, the complete phasing out of trusty guards could take place by January 1, 1972. Prison

officials also hoped to have the ratio of inmates to free world personnel be approximately thirty inmates per one free world worker.\textsuperscript{187}

Regarding the mythical Maximum Security Unit at Cummins, the Department of Correction stated that it had “taken beneficial occupancy” of the newly constructed unit. Though they had not received all furniture for the new unit, “living conditions are far superior to the remainder of the unit.” The new unit consisted of one, two, and four person cells that housed inmates “who directly present or who may be reasonably expected to present a threat to other inmates, themselves, or the security of the unit.” Officials closed the old isolation unit, and the new one housed all of those inmates formerly living in the older unit. Demonstrating a sharp contrast to the isolation units Henley had deemed intolerable in the past, the Department of Corrections stated that the new unit was “well lighted, well ventilated and the surrounds are pleasant.” The new unit also offered “day-rooms for recreation purposes” and once the prison received the remainder of the furniture, authorities would allow inmates “to recreate on a controlled and supervised basis during their off duty hours.”\textsuperscript{188}

Other changes made the Arkansas prison system of 1971 appear foreign to the one the Court had dealt with just a few years earlier. Free world guards inspected cells daily. All units had a free world worker on duty at all times. Foodservice personnel now served meals “in special hotboxes which have been purchased through the construction contract and food will be served hot in an attractive and sanitary manner.” Officials now fully classified inmates according to job assignments and threat to other workers. The Intermediate Reformatory at Tucker classified inmates by age group. Administrators finally integrated all barracks, but with this more complex system of prisoner classification, however, came more complications when dealing with

\textsuperscript{187} Ibid., 4.  
\textsuperscript{188} Ibid., 6.
overcrowding, which the Board of Corrections felt now posed the greatest problem in the barracks. While the new maximum-security unit had helped somewhat, prison officials determined that “to subdivide the barracks into smaller units would only restrict visibility by employees and aggravate the overcrowding which now exists.” Personnel could further improve prisoner safety if they could get the numbers down to around eighty or ninety per barracks. Daily shakedowns of inmates provided a safer place for inmates to live, and free world guards always on duty in the “yard” created a sense of safety and security that prisoners rarely experienced at the prison farms. “It is the experience of this Administration,” continued the report, “that only [emphasis theirs] adequate supervision by free-world personnel can and will assure inmates personal security and safety whether working in the fields or elsewhere. The most modern and secure facility will not furnish this protection without proper supervision.” Prison authorities could only provide this sort of personnel if it had the ability to provide the competitive salaries “provided in the present budget.” The Department of Corrections appeared to be pleading not merely to the judge but to the legislature, for their efforts would always fall short without adequate legislative funding. While the amount of money allocated increased significantly within the previous few years, the Department of Corrections needed more to continue this monumental reform.189

The report fulfilled Henley’s request to discuss worker organization as well, but one cannot imagine Judge Henley satisfied with the excuses provided as to why administrators continued using inmate guards for work details. Prison officials stated that free world personnel directly supervised these inmate guards. Prison officials hoped to replace these inmate guards with free world personnel by January 1, 1972. The report also discussed rehabilitation programs,

189 Ibid, 7-8.
something Henley specifically requested. The Manpower Development Training grant helped the prison establish a sound rehabilitation program at Tucker. The Pines Vocational School at Pine Bluff began classes in drafting, welding, cooking and baking, and the building trades. Between these two programs, fifty-one inmates participated, some attended all day classes and some half-day. The prison also began an Adult Basic Education program that led to the granting of a G.E.D. certificate of high school equivalency, of which around 130 inmates enrolled in either half day or night school programs. Fifteen inmates enrolled in college classes provided by Shorter College. Rehabilitation extended beyond the classic educational realm as well. Fifty-eight inmates joined Alcoholics Anonymous, and the State Jaycees sponsored a chapter at the prison farms, which had twenty-six members. Tucker also staffed one full-time chaplain and one full-time counselor to help benefit the personal needs of the inmates as well. The Arkansas Prison Ministry developed a pre-release program, which brought in a number of civilians from outside the prison farms to discuss life after the penitentiary with inmates near release.190

The treatment program at Cummins, however, paled in comparison to the one at Tucker. One might explain this by the newness of the program at Cummins. Yet, even in its embryonic state, prison officials noted that it demonstrated “a slight contribution to the inmates morale and rehabilitation. The program is very small and it may be fairly said that it is only a nucleus from which to work.” The rehabilitation services at the women’s reformatory, however, were “extremely limited. . . . In the proposed women’s reformatory that will either be occupied at the Deaf School [in Little Rock] or built on another site, provisions are being made for facilities which can house an educational program, increased benefits of the Arkansas Rehabilitation Service which are now available, and increased counseling services.” Once again, the Arkansas

190 Ibid., 9.
Department of Corrections placed its faith in services not yet created or in structures not yet built. “Conditions that prevail at the Women’s Reformatory,” stated the Department of Correction’s Report, “cannot recommend it as a good prison. There is almost no privacy available to a woman inmate and the building itself is in very poor condition.” The General Assembly’s allocation of three hundred thousand dollars as well as $616,000 in aid from the federal government would help create a new woman’s facility. The Department of Corrections also considered the purchase of the Deaf School, but the Department acknowledged in its report that there certain legal hurdles might prevent that deal from taking place.191

The remainder of the report further explored issues the Department of Corrections mentioned in earlier reports. “Perpetual and on the spot shakedowns” of inmates both at the gates and the barracks kept illegal weapons down to a minimum. Inmates now received clothing, such as socks, shoes, shirts, and trousers, now laundered regularly. While the prison did have some problems with their “old and inadequate” laundry facilities which prevented them from being “able to remove all stains from the clothing, the clothing can be described as clean.” Prison officials provided inmates with winter clothing and winter coats, and prison personnel allowed inmates to “receive packages which include various items of clothing which they might wish to wear.” Registered dietitians helped prepare meal plans for the kitchens, and free world personnel now performed all work in the kitchens. Inmate meat consumption reached one-half pound a day, which was considerably more than they received just a few years earlier. While food service workers apportioned meat and dessert portions, inmates may take whatever amount of the other items they wish, including milk. With this report, the Department of Corrections hoped they

satisfied Judge Henley’s request for more information regarding the prisons. They also hoped to have finally created a constitutional prison.\textsuperscript{192}

Acting on the Eighth Circuit’s demand, Judge Henley presided over hearings for the Eastern District of Arkansas on November 16-18 and December 1-3. At the end of these hearings, Judge Henley announced from the bench that while “great progress has been made in the direction of making the Arkansas Penitentiary System a constitutional one . . . there are still problem areas.” Thus, his court would retain jurisdiction over the Arkansas prison farms “for all necessary and appropriate purposes until it may be satisfied definitely that the institutions in question met constitutional standards.”\textsuperscript{193}

Henley enjoined the defendant members of the Arkansas Board of Corrections and their successors in office, including the present Arkansas Commissioner of Corrections and his successors and associates from Cummins, Tucker, and the women’s unit, from inflicting cruel and unusual punishment upon one inmate or upon inmates as a class. The order also prevented the defendants from interfering with any inmate’s ability to access the courts, whether state or federal, or to access their counsel. This right also extended to inmates residing in isolation cells as well and the right extended for prisoners to have their correspondence with the court notarized when required. Inmates continued to testify that prison officials punished them for testifying in court by violence and abuse. Judge Henley further enjoined the defendants “from practicing or threatening to practice, directly or indirectly, reprisals on inmates for the exercise of their right to access the courts and counsel or on account of their testifying or offering or professing willingness to testify in any hearing before this Court or any other Court.” While brief, Henley’s decree represented a great deal. In his continued control over the Arkansas prison system, Henley

\textsuperscript{192} Ibid., 13-15.
\textsuperscript{193} “Supplemental Decree, December 31, 1971,” Kaplan Papers, Series 1, Box 6, Folder 6, 1-2.
informed the Department of Corrections that their changes, while considerable, still lacked in making the farms constitutional. Henley continued to monitor the reforms taking place at the prison farms, but it appeared that with each new decree, each new order, Judge Henley increased his involvement in the direct action of reform, probably more than he had desired. His role as moderator of change slowly morphed into a more engaged presence; no longer did he mandate change, but he might have to begin demanding specific actions.¹⁹⁴

The next year was another busy year for Judge Henley regarding the prison farms, for prisoner successes in the courts fueled an influx of complaints from inmates. In an action filed on June 15, 1972, in a matter titled M.R. Raif v. Hutto, “Inmates of the Cummins Unit of the Arkansas State Penitentiary Assigned to Work in the Vegetable House” joined prisoner Raif as a petitioner. Apparently, Judge Henley felt strongly enough about aspects of this particular petition to issue a memorandum and order, which focused on the continued use of inmate “riders” in the fields. Prisoner petitioners also complained of not receiving proper classification regarding good time served and of continued harassment from other inmates acting in an authoritative role. Henley now had to question whether or not the past year of reports from the Department of Corrections regarding reforms at the prison represented actual change or if they were just change in word only. Henley ordered the petition filed and that the respondent Department of Corrections reply within twenty days as to the accusations. On August 7, Henley consolidated another prisoner’s petition, named Jewel Boyd, who claimed that while in isolation, guards

¹⁹⁴ Ibid., 2-4.
reduced his diet to “two slices of bread.” He also claimed that prison administrators refused to recognize “good time” and that wardens still utilized physical abuse to control inmates.\textsuperscript{195}

Prisoners also began petitioning the court on a number of other issues not previously raised in litigation. While Inmate Raif complained of not having time to worship on Sunday due to increased work, other inmates began filing petitions focusing on worship and religion. A convict named Alvin “X” Higgins at the Tucker Unit petitioned Henley’s court, stating that he was the subject of religious discrimination. As the acting Black Muslim minister of the unit, Higgins complained, “the hindrance of our meetings is a direct and deliberate intention by the administration here at Tucker to impede our progress.” Higgins also noted that officials made the unwelcome nature of their services known by making open threats. “Officials on duty at the time,” stated Higgins, “would attend our meetings and glare at all present in an attempt to throw fear into their hearts and to keep prospective members from attending future meetings. . . . The mere presence of a white man at their service,” represented “a direct violation of the Islamic rules set forth by the Honorable Elijah Muhammad, Messenger of Allah.” A prison guard by the name of Captain J.E. Chambers even told Black Muslims that they could not hold their service without the presence of the Christian Minister, Reverend Sherman Lewis. In addition, he claimed that officials only allowed them to hold services in the dining hall, which the kitchen night crew always occupied. The excessive noise and the smell of pork burning offended the Black Muslim congregation. Finally, the complaint stated that the prison kitchen staff did not prepare suitable meals that they could eat in accordance with their religious beliefs. A number of petitions followed that month and continued throughout the rest of 1973. Judge Henley eventually

consolidated thirty-four petitions from inmates and began more remand hearings, as earlier urged by the Eighth Circuit.\footnote{“Memorandum and Order and Attached Petition, 6; and “Order, Higgins v. Britton, PB-72-C-116, September 6, 1972,” Kaplan Papers, Series I, Box 6, File 8, 1-4.}

\textbf{More Force Necessary: Holt III and Increased Force from the Eastern District, August 1973}

Henley released an opinion on August 13, 1973. “While different individual inmates naturally complain about different things,” began Henley, “petitioners as a class contend that in spite of previous decrees and opinions of this Court conditions in and practices at both of the institutions that have been mentioned are such as to render the confinement of human beings there a cruel and unusual punishment.” Jack Holt, Jr. and Philip E. Kaplan once again represented these inmates. Judge Henley began his opinion by asserting that the proceedings at bar differed from those of the past, for previous cases dealt with specific prison official approved sanctions. Here, prison administrators did not sanction nor prohibit the issues prisoners complained of. Before, prison officials mostly did not dispute any of the claims of unconstitutional treatment. Now, these issues became more factual in nature where Henley would have to ascertain the credibility of one person’s testimony against another. Prisoners now began testing the limits of Henley and just how far he would expand their rights. As a whole, wrote Judge Henley, he found that none of the prisoners should be entitled specific relief. He noted, however, that “some problem areas of constitutional significance continued to exist, and that the inmates as a class stood in need of some additional injunctive relief, and that respondents need to be admonished about a number of things. The judge continued to praise the Department of Corrections, prison officials, and the legislature, for their “changing attitudes and efforts”
helped transform the Arkansas prison system into one that barely resembled the one in 1969 and 1970. Henley applauded the basic “dismantling” of the trusty system, stating that while barracks are still overcrowded, prisoner safety has increased tremendously. The new maximum-security unit had helped reduce overcrowding, but since the unit housed less than ten percent of the total inmate population, prison administrators needed to do more. Henley also pointed out that many prisoner complaints come from inmates in the new unit, “a fact which is not without significance.”

With this cautious praise and optimism came the realities of the prison units in Arkansas, for “serious deficiencies, whether constitutional or not” remained at both the Tucker and the Cummins prison farms. Blaming the dual deficiencies of lack of funds and rural location of the prison farms, Henley found that regarding the medical and dental treatment of inmates, the Department of Corrections did not breach the constitutionality of the inmates in the prison units. A great number of the complaints involved inmates stating they did not receive treatment as quickly as possible, but Henley mentioned that for “a great many people in the free world would have the same complaints.” In Henley’s opinion, the Department of Corrections did its best with what resources it had, even though some inadequacies in the system required addressing. Hiring a full time physician, for example, represented a great step forward, but it did not solve all of the issues with medical services at the prison farms.

Henley dealt with a number of realities when determining the constitutionality of the prison farms as then run in Arkansas. For one, mentally ill convicts who probably should not be in prison in the first place had no other place of refuge. Also, a number of inmates had serious illnesses that many prison medical facilities would have trouble handling, but once again, there

198 Ibid., 194, 198-200.
existed no other alternative for such prisoners. The state closed the sanatorium in Booneville, the only state facility that could treat tuberculosis, thus the prison had the responsibility of segregating inmates with infectious diseases. Henley could only assume that the prison staff, untrained in such areas, would do their best in isolating sick inmates. This follow up proceeding, according to Henley, would consider the numerous reports from the Department of Corrections and compare them to the dozens of prisoner complaints his office had received the past year, carefully ascertaining whether or not the state of Arkansas had done enough to the prison farms to make them constitutional.199

Many of the deficiencies mentioned above, and others that had been consistently criticized by Henley, such as the kitchen and dining facilities, “call for correction, but they are not such, in the Court’s opinion, as to render confinement today at either Cummins or Tucker unconstitutional.” Henley wrote that the constitutional issues at the prison farms had more to do with the “seriously deficient” quality of prison personnel at both units, a deficiency that “lies at the root of most of the serious problems at the Department.” Regarding what Henley considered the “management” of the institutions, the commissioner of the Department of Corrections and the supervisors at the prison farms, “with some reservations as to particular individuals, the Court finds that . . . [they] are qualified for their jobs, and the Court thinks that up to a point at least they are trying to do good jobs and to run an efficient, reasonably humane, and constitutional prison system. The Court cannot say as much for lower echelon personnel as a class,” however. Henley described the lower rungs of the management ladder, poorly recruited, poorly trained, many quite young, many quick tempered, with one adjective: “unprofessional.” The prison employed too few African Americans, and many of the prison committees, such as those dealing

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199 Ibid.
with classification and discipline, had no black representation. The work force that dealt with inmates the most should be a group that accurately reflected the make up of the inmate group. The Court saw many other considerations within the make up of the inmate group that prison officials should take into account when hiring prison personnel.200

Such a diverse group of individuals requiring protection demanded that administrators devote greater attention to hiring. The racially diverse group of inmates also differed "greatly in ages, cultural levels, dispositions, criminal records, intelligence, education, training, and experience." Most of them, indeed the great majority of them, had extremely poor work records in the outside world. "They carried into the prisons the same weaknesses and deficiencies that they had in the outside world and that got them into prison in the first place," stated the judge. Henley also assumed that, concerning the black population, they came from the "lower strata of the black population. As a class, they are neither well educated nor industrious; and they appear to be highly suspicious of those in authority over them. Some have difficulty in communicating intelligently, particularly under conditions of stress." Thus, given the already friction-filled environment, prison employees did not possess the skill set necessary for them to properly guard these prisoners. Moreover, even though the Department of Corrections provided rules that were "administered conscientiously and with reasonable efficiency," the lack of leadership from the superior managers of the prison who carried out the rules and regulations provided the main source of unconstitutionality. "In other words," wrote Judge Henley, "the Court is convinced that today it is dealing not so much with an unconstitutional prison system as with a poorly administered one. However, unconstitutionality can arise from poor administration of valid policies as well as from policies that are constitutionally invalid themselves." Henley would now

200 Ibid., 201.
go into specific detail on the most egregious problems contributing to the constitutional inadequacies of the prison farms in Arkansas.\textsuperscript{201}

Judge Henley chose to first deal with claims of racial discrimination, in particular with the complaint of the Black Muslim population within the prison farms. “Established by judicial opinions too numerous to mention,” wrote Henley, Black Muslims within prisons constitute a religious sect, thus the prison must provide “reasonable limitations dictated by the conditions of prison life, to the protection of the First Amendment as carried over into the Fourteenth and by the Fourteenth Amendment itself.” Prison officials could not discriminate against Black Muslims because of religion. More importantly, “at least some accommodations must be made by prison authorities to some requirements and taboos of their professed religious belief. . . . Without any particular elaboration the Court” determined that Muslims at the farms experienced some problems of “constitutional significance.” The dietary restrictions of Muslims, which required that they not consume pork or any food cooked in pork, could be dealt with administratively without declaring the prison in violation of any constitutional right, for the Court did not find that prison administrators intentionally discriminated against Muslims. For example, while their faith prohibited the Black Muslim population from holding their services in a Christian temple from having a Christian present, security considerations did exist that would make it reasonable for prison administrators to force Black Muslims to hold their services in a Christian temple. “It [appeared] to the Court,” wrote Henley, “that some of the difficulties of the Muslims are due to the fact that the prison authorities are simply not familiar with Muslim problems, and that the administration is prepared to meet reasonable Muslim requests for consideration.” Thus Henley enjoined discrimination against “undue restrictions” in a general sense upon the Black Muslim

\footnote{\textsuperscript{201} Ibid., 201-2.}
population, and “the Court [doubted] that as of today the Muslims as a class have any real
problems that cannot be disposed of administratively.” Thus Henley held true to his philosophies
from the very beginning: recognize the problem and then give the state a chance to rectify the
problem. Henley refused to step in, for example, and mandate that the prison provide pork-free
food for the inmates, even though he knew that prison officials would have to provide such.
Rather, he allowed prison officials to conclude this themselves, which would provide for a much
easier situation to deal with. Though the judge allowed the prison some leeway in the area of
Muslim accommodations, he seemed ready to be a bit more forceful with prison authorities
regarding older issues.202

One of these other matters, and probably the most important, had to do with the matter of
racial discrimination. While prison administrators had eliminated racial segregation in most of
the living areas of both prison farms since Holt II, the remaining segregation at the maximum-
security unit at Cummins concerned Henley. He refused to accept the Department of Corrections
argument that members of both races could not dwell peacefully together in the maximum-
security unit. There might be some exceptions, and in those cases the Constitution did not
prohibit their separate quarters. Henley did not approve, however, the “existing general policy of
racial segregation in the maximum security cells.” He thus ordered the Department of
Corrections to determine on an individual basis whether or not an inmate could safely reside with
a member of another race. If so, administrators should assign that inmate to a cell regardless of
race. When discussing issues regarding discipline and work assignments of inmates, the
Employee Handbook clearly did not authorize racial discrimination. It would not have mattered
if it did, however, for discrimination, rather “covert, subtle, or even unconscious,” could not exist

202 Ibid., 202-3.
in the prison setting. Henley determined that no gross evidence of discrimination existed at Tucker or Cummins prison farms, except in the maximum-security units, and “the Court is not at all sure that there is not some covert discrimination in the areas of classifications, job assignments, and punishments.” Utilizing the monthly operating reports from the Cummins farm covering most of 1972, the Court concluded that sentences given to white inmates definitely appeared milder, for a “black inmate is more likely than a white inmate to be subjected to such penalties, and if he is sentenced to punitive isolation, he is likely to stay there longer than is a white inmate.” Once again, Henley suggested that this conclusion did not necessarily represent intentional discrimination at the hands of the white members of the Disciplinary Committee.

Henley’s continuing on the issue of racial discrimination demonstrated how difficult it could be for a judge to determine whether or not racial discrimination existed. In many instances, according to Henley, the words or acts of African Americans might appear more offensive to white members than similar acts from white inmates, which could produce an unfair, but still unconscious, disadvantage for the black prisoner receiving punishment.203

Henley also refused to find constitutional violations in other areas of prison operations based on discrimination. From the judge’s perspective, prison officials utilized fair job assigning practices, even considering testimony that white convicts often received “better” jobs while African Americans received the worst. The white members of the Classification Committee, however, did not do enough to classify and assign inmates to particular jobs based on qualifications, and the court found that “Negroes should occupy some job slots that they are not now occupying, and that certain categories of jobs should have more than their present number of lack assignees.” Henley stated once again the difficulty of ridding the prison system of these

203 Ibid., 203-5.
inequities. Prison officials should avoid the appearance of discrimination, wrote Henley. “And it should be obvious,” continued the judge, “that apart from any question of constitutional law black inmates will make a better adjustment to prison life and will conform better to prison routine and requirements if they believe affirmatively that members of their own race are being treated fairly and without discrimination on account of race.” Henley no longer found it effective to simply urge the prison system to change its ways regarding racial discrimination.  

Henley stipulated that previous decrees would be “supplemented so as to enjoin racial discrimination in any form and in all areas of prison life.” He now offered direct suggestions to prison officials on how to end current discrimination, prevent it from happening in the future, and rid the prison system of the appearance of discrimination. Henley’s philosophy of allowing the state to reach a goal through its own means had ended. Administrators should enforce rules regarding employee language more rigorously, stated Henley. Also, prison administrators needed to promulgate “positive rules prohibiting racial discrimination. . . . Employees at all levels must be made familiar with those rules, and must be made to realize that if they want to keep their jobs, they must abide by the rules.” And in what Henley called an “extremely important” measure, prison officials must do a better job recruiting African American employees, and these employees “should be assigned to meaningful positions of authority, including assignments to Classification and Disciplinary Committees.” Moreover, “the difficulty of hiring qualified blacks should certainly not deter respondents from trying to do so.” Henley then moved on to other prisoner concerns.  

Petitioners claimed that there existed constitutional issues with the disciplinary procedures that prison officials followed when prisoners violated certain rules. Henley briefly discussed the

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204 Ibid., 205.
205 Ibid.
Inmate Handbook given to convicts after their orientation period, which listed twenty-five offenses with eleven possible punishments that officials could mete singly or in certain combinations. Each of the units had a Disciplinary Committee that consisted of three or four men. The Assistant Supervisor of the unit acted as the Chair, and the Chief Security Officer of the institution acted as Vice Chair. Each prisoner charged with an infraction had the right to present his or her side of the case in front of the committee. The committee could call other witnesses, yet the inmate had no right to call witnesses on his own behalf. Additionally, the inmate had no right to representation at these committee meetings nor could he confront his wrongdoers. The Committee passed its daily work onto the Superintendent for approval then onto the Commissioner of Corrections. While the Superintendent could approve or disapprove the measures of the committee, he had no responsibility to do so. An inmate who did not agree with the committee’s decision had a right to appeal in writing to the Superintendent and the Commissioner. The Disciplinary Committee handed down its decision in a “Disciplinary Report,” of which the inmate did not have an opportunity to review. The inmate never had the opportunity to write his own account of what happened, nor did the inmate ever plead to the charges. Henley determined that while the issue of prison discipline and the amount of procedural due process a prisoner received to be in “a state of flux,” the committees appeared to be rather heavily weighted “in favor of what may be termed the ‘prosecution.’” Prison administrators could promulgate constitutional provisions if they revised their procedures in place during this trial. The Disciplinary Committee needed to spend more time with each prisoner and his or her individual disciplinary case. The committee’s seemingly “perfunctory . . . determinations of guilt or innocence” could not continue. At a very minimum, authorities needed to make clear to prisoners the charges against them, their individual rights in the matter, the
consequences of being found guilty of such actions, and encouragement from the committee to the prisoner to state his particular case. Instead, “the Committee tends to act summarily and in a very short space of time, and it may display an attitude of hostility toward the inmate calculated to intimidate him and suppress his version of the incident involved.” Henley went so far as to conclude the time of day of the hearings might affect the fairness of the proceeding. These hearings took place at night, which meant that “some or perhaps all of the members of the disciplinary panel probably have been working all day, and they want to go home. That is understandable, but it does not contribute to the proper administration of prison justice.” Henley once again diverged from his previous practices by issuing specific directives to prison administrators on how to fix the issues at hand.206

Judge Henley issued three directives for administrators to enact to create fairer disciplinary hearings. First, the committees must hold hearings “as quickly as possible.” More specifically, Henley required “that in cases other than highly exceptional an accused inmate must be given a hearing within seventy-two hours after the occurrence of the disciplinary episode.” Second, hearings must take place between 6:00 A.M. and 6:00 P.M. This would produce not only an improvement on the current procedures but also a restructuring “so as to include more noncustodial personnel who may be available during ordinary business hours but not at night.” Finally, the records of the proceedings needed to be adjusted to where if a hearing required a higher appeal, even one from a Court, an adequate record would exist of the disciplinary hearing. This meant “the tapes or transcripts of the hearings must be preserved for at least a reasonable time after the hearings take place.”207

206 Ibid., 206-7.
207 Ibid., 207-8.
In hearings past, Henley repeatedly pointed out that conditions in the maximum-security sections of the prison farms and the isolation units were unconstitutional. Authorities provided inadequate food, deplorable conditions, and at times prison officials forced near a dozen inmates into one cell. Officials left prisoners with little choice but to sleep on a mattress that might have been used by a prisoner suffering from tuberculosis or other transmittable diseases. Henley’s earlier decisions almost appeared to be a way to give the prison administration time to complete its new maximum-security unit at Cummins. With the completion of this unit, Henley’s tune changed regarding the conditions of the isolation units at Cummins. While conditions in this unit might be “somewhat more rigorous than may be absolutely necessary,” the Court found the situation constitutional. Henley even approved guards’ use of the “quiet cells,” which were soundproof cells located in the middle of the new maximum security unit that leave the prisoner in complete darkness. Authorities often placed young inmates in the maximum-security unit at Cummins for their own protection from inmates that had been their longer, considering young prisoners often became victims of brutality. Henley stated that this treatment of young prisoners was acceptable and constitutional.\textsuperscript{208}

The problem began immediately after the inmate experienced the initial orientation phase. One instance Henley pointed to occurred in early 1972, when prison officials moved youthful offenders to the Cummins unit after receiving a tip that the young convicts might riot. Henley stated that the youthful offenders needed access to the educational and vocational facilities offered at Tucker. Many of the inmates at the Cummins unit were “hardened criminals with whom a youth of comparatively tender years should not be confined any longer than reasonably necessary.” Since Cummins had no minimum-security units, prison guards placed these young prisoners in the isolation units.

\textsuperscript{208} Ibid., 209.
inmates in the maximum-security unit or in the barracks with the general Cummins prison population. This situation troubled Henley and the Court, enough so that for the first time in all of the Arkansas prison litigation he would discuss the rules governing the transfer of inmates from the farm units, especially considering a young inmate should not be “unreasonably deprived of opportunities for improvement that exist at Tucker.” Shortly after hearings in November of 1972, the Commissioner of the Department of Corrections issued a memorandum that addressed this matter directly. In short, the memorandum stated that authorities could only transfer a Tucker inmate to the Cummins unit in cases of extreme emergency. And if for some reason officials sent him to that unit, his case would be evaluated every ninety days to assure his quick return to the Tucker farm. The memo entitled the Tucker inmate to a hearing before the Cummins Classification Committee within seventy-two hours of his arrival. Inmates also had the right to appeal any sort of transfer to the Cummins unit. Henley approved of this measure but stated that the ninety day review represented too long a time to wait, for “it may not take the transferee ninety days to realize the error of his ways and to become ready to behave himself if sent back to Tucker.” Henley ordered that the first evaluation take place within two weeks of the Tucker inmate’s arrival at Cummins and then a second not later than thirty days after the first one.  

Henley’s direct action towards the Department of Correction continued throughout the opinion. Henley began examining the rules governing the censorship of mail. While Henley stated that the current rule allowing prison officials to open correspondence from lawyers skirted close to the edge of violating privilege, this must only take place in the presence of the inmate to assure that prison officials did not read the correspondence. Only if the prison officials witnessed

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209 Ibid., 209.
money sent to the inmate illegally could they seize the correspondence. Henley did not discuss the other rules concerning general correspondence, for while they were “doubtless stricter than those that prevail in some jurisdictions and doubtless more liberal than those that prevail in others,” they closely followed the recommendations of the Association of State Correctional Administrators. Thus Henley declared the other rules governing the censorship of general correspondence constitutional.210

In discussing individual claims of abuse received by the prisoners at the hands of prison administrators, Henley determined that no such policy of prisoner abuse existed, and that the rules of the Department limited the use of force to only that which the guard deemed “both legitimate and necessary” and specified that the force must not “in any event exceed the reasonable necessities of a particular case.” These situations, pointed out Judge Henley, became more precarious when dealing with those “less tractable” inmates. Henley blamed both the inmate’s behavior and the sometimes unprofessional reaction at the hands of the prison personnel for this situation, thus “in this overall problem area, as in other areas of prison life, the ultimate answer may lie more in the upgrading of prison personnel than in anything else.” The hours and work assignments of inmates raised no questions of constitutionality except in instances where inmates did not possess the strength or the health to perform such tasks. Henley found that authorities did not deliberately assign older inmates to perform work that younger inmates could, and when it did occur it represented” simply poor communication and administration.”

Departmental rules also forbade other issues, such as the use of vulgarity and racial slurs by prison guards, and moreover Henley recognized “as a matter of common sense that at least some employees on occasion do use profane or ‘gutter’ language when addressing inmates, and that

210 Ibid., 210-11.
the objectionable language may include offensive racial and other allusions.” This use, standing alone, did not amount to an unconstitutional action. But, collectively, these can potential rise to constitutional significance. Henley expected “higher echelon personnel to set an example for their subordinates in this field, and to enforce the institutional rules that have been mentioned.” Henley also scolded prison employees who used that language in jest, asking them to be more cautious of their behaviors. “Employees of the Department today,” wrote Henley, “simply cannot afford to joke or jest coarsely with inmates, particularly black inmates who, whether rightly or wrongly, are obviously ‘up tight’ and prone to take offense.”

Henley also reminded prison officials of previous decrees from his court that enjoined them from “retaliating against or threatening to retaliate against any inmate for having petitioned for judicial relief or for having testified or for having offered to testify in any proceeding.” Though Henley could not find from a preponderance of the evidence that this took place, he did point out that through the course of this litigation the Court had “seen some indications that in instances some reprisals have been taken against inmates who have testified in this Court. . . . The Court’s injunction in this area is as specific as it can be made, and further discussion of the subject in this opinion would not be profitable.” Henley also stated that he would revisit this matter in a future hearing if inmates continued to complain.

The final issue Henley covered in this lengthy opinion was the use of unnecessary force from prison officials towards inmates. While most of the physical violence complained of by prisoners involved manual force, some utilized other implements, such as “slappers” and firearms, though the latter had been only used to fire warning shots in the field. And while many prison employees have often overreacted in situations, Henley found that “by and large the

211 Ibid., 213-14.
212 Ibid.
inmates who have been subjected to force have brought it on themselves, and that in general the
degree of force used has been in reasonable proportion to the violence displayed by the inmates
involved.” No matter how frustrated prison officials might become, especially when considering
punishments dealing with the return of escapees, those engaged in “custodial work must learn to
take such episodes in stride and must learn to control themselves.” Prison guards had no excuse
for “hitting, slapping, or kicking an escapee” after recapture. Henley also urged prison
administrators to investigate more fully incidents of abuse from prison employees. 213

Thus, in his most detailed and lengthy opinion concerning the Arkansas prison farms,
Henley praised officials at first for the positive change, then he not only reprimanded them on
the problems that still existed but he raised new concerns, directly offering what had to be done
in order to correct the constitutional inadequacies of the farm reform. Thus, Holt v. Hutto, or
what would become known as Holt III, represented a transformation in the manner Henley would
deal with the prison farms in the future. No longer would he sit by idly while the prison
administration and the Department of Corrections reformed matters at the farms. Before, Henley
knew that the Department of Corrections could do little with the prisons absent adequate
funding. Now, however, the legislature began doing its part to resolve unconstitutional issues. It
seemed like issues with this particular case dealt more with matters that could be repaired
without the need of more capital, and thus Henley had to hold the prison administrations more
accountable considering the increase in funding they had received. Thus, concluding this more
directed guidance of the Department of Corrections and the prison administrators, Henley
considered the farms up to this point and the work of state administrators to exemplify “marked

213 Ibid., 215-16.
improvement.” With this improvement, Henley determined his time and his Court’s involvement in prison reform matters finished. “The Court,” wrote Henley, did not consider it either necessary or desirable to retain further supervisory jurisdiction with respect to the Department and such jurisdiction will not be retained. . . . The Court hopes that this will be the last long opinion dealing with the Department that the Court will be called upon to write. But the Court knows that regardless of what has been said here, and regardless of what its decrees may forbid, or command, and regardless of how diligently respondents may seek to obey the orders of the Court or to follow the Court’s suggestions, inmates complaints are going to continue to be received by the Court. Many of these reports, wrote Henley, would be insubstantial. Many could be disposed of administratively. If the Board and the Commissioner could work out a suitable grievance procedure that would be both effective and available to complaining inmates, the Court might “refuse to consider inmate complaints until that procedure has been exhausted.” If some could not be disposed of in that manner and required the Court to step in, Henley noted that his Court would do what was necessary. 214

   Henley did not foresee having to utilize the ultimate sanction, closing down the prison farms or enjoining them from further receiving inmates until the prison repaired remaining unconstitutional qualities. Henley also considered, at the very end of the opinion, the claims of the petitioner’s court-appointed attorneys, Jack Holt and Philip Kaplan. Both attorneys petitioned the Court to allow them a fee and to be reimbursed for fees they paid four law students for assistance in bringing the prisoners’ claims to Court. Henley stated “their request should be granted not by way of punishment or sanction but in recognition of the fact that they have performed valuable services not only to the inmates and to the Court but to the people of the state of Arkansas as well.” Thus, Henley’s Court awarded to the lawyers what it felt was “substantial compensation” of $8000.00, which they could divide between themselves in whatever manner they wished. They also directed the Board to pay $502.80 as reimbursement to the law students.

   214 Ibid., 216.
Thus, dispensing with the final matter, considering the fact that the prison population as a class would benefit from the latest decree Henley dismissed all of the individual cases that were dealt with in this hearing except the anchor case of *Holt v. Hutto*, which he stated could be appealed by both prison officials and prisoners. Thus with his most forceful opinion written regarding Arkansas prison reform written up to the issuing of *Holt III*, Henley ended his direct control over what he called years earlier a completely unconstitutional system.215

Judge J. Smith Henley, the purest reformer of the judges involved in reforming southern prison farms, exhibited a respect toward federalism and a sovereign state’s authority to control its own prisons. Being raised in the South and representing a judicial district in the South, Judge Henley expected hesitation by the state in the reform of Arkansas’s prison farms. Therefore, the judge amended his judicial philosophies to uphold the U.S. Constitution in forcing the state of Arkansas to reform its prisons. In doing so, Judge Henley demonstrated that he would do whatever necessary to make sure his home state operated constitutional prison farms. Prison reform matters rose above politics. The Constitution demanded that even those imprisoned receive its protection. Henley had spent years of his life holding the Cummins and Tucker prison farms under his court’s jurisdiction. Balancing the state’s ability to repair its own constitutionally deficient prisons with his own duty as a federal court judge to uphold that same Constitution, he finally determined that Arkansas’s prison system could manage on its own. Not all citizens of Arkansas and courts of the land, however, felt that the reformer’s task should come to an end.

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215 Ibid.
Ending what amounted to close to nine years of litigation attempting to make the Arkansas prison system constitutional, Judge J. Smith Henley decided in August of 1973 that he no longer needed to have control over Arkansas’s prison farms. In his most thorough opinion regarding conditions at the farms, Judge Henley brought an end to the Eastern District Court of Arkansas’s direct jurisdictional power over the farms. Henley’s obligation to issue more forceful and direct orders to spur change at the prison farms obviously made him uncomfortable. Considering the jurist’s philosophy regarding such issues as federalism and the role of the federal judge in state matters, Henley’s more direct action began creeping into a gray area where he did not want to reside. Thus, the judge moved swiftly, ordered only what he determined necessary, then relinquished control of the farms. Henley imagined a situation where he could be a bit more specific, more forceful with authorities and then leave them with the stern warning of potentially more forceful action to come if prison officials did not make necessary changes.

Henley’s relinquishing control over a prison system still rife with race-based discrimination was eerily reminiscent of an event that took place around a century earlier. As federal troops left the South after the Compromise of 1877 and the sudden end to Reconstruction, African-American advances and rights gained in the political and social realms of their lives left as well. With no military protections offered by the federal government, many gains and protections fought for and won by African Americans vanished. A once strong, now strengthened, white planter class managed to recreate a pre-Civil War societal structure. Through
a number of disfranchisement devices, legal segregation, sharecropping with its often corrupt and unfair crop lien system, and the beginnings of a convict lease system, those whites who possessed power over a subservient African American class now regained those rights. Convicts, especially African American prisoners, wondered if the same thing might take place in Arkansas with the absence of Judge J. Smith Henley and the protections his court offered the prisoners.

The Eighth Circuit Puts Henley Back in Control, June 1974

On June 10, 1974, prisoners asked the Eighth Circuit to determine whether or not Henley’s court should have retained jurisdiction. In short, the Eighth Circuit opined that due to the Arkansas prison farms still failing considerably in creating a constitutional prison system, Judge Henley should have retained supervisory jurisdiction over the farms. While being mindful of the hundreds of petitions still burdening Judge Henley and prison officials, Judge Donald P. Lay, on behalf of the Eighth Circuit, stated that by then prison officials should have been able to create a more constitutional prison system. While there might not be such a thing as a perfect prison system, acknowledged the Eighth Circuit, “this does not relieve respondents of their duty to make their system a constitutional one in which the human dignity of each individual inmate is respected.” While the courts in the past had acknowledged not being experts in penal reform, and that they should respect the authority of a state prison system, the “courts need not be apologetic in requiring state officials to meet constitutional standards in the operation of prisons.” The Eighth Circuit found itself in the unique position of being able to analyze the whole swath of court litigation involving reforming the farms, concluding that “major constitutional deficiencies” still existed,

especially at the Cummins unit, in areas of housing, lack of medical care, infliction of physical and mental brutality and torture upon individual prisoners, racial discrimination,
abuses of solitary confinement, continuing use of trusty guards, abuse of mail regulations, arbitrary work classifications, arbitrary disciplinary procedures, inadequate distribution of food and clothing, and total lack of rehabilitative programs.

The Eighth Circuit, therefore, forced Judge Henley back into the fray of prison litigation.\textsuperscript{216}

The Eighth Circuit Court found dissatisfaction with what the Department of Corrections and Judge Henley considered progress regarding overcrowding in barracks and solitary confinement. The state assumed the responsibility of providing an inmate with a safe abode and adequate facilities. “The fact that there is some compliance,” wrote Judge Lay, “is not good enough. As long as barracks are used respondents must assure that they are not overcrowded and are safe and sanitary for every inmate. There can be no exceptions. . . . Lack of funds is not an acceptable excuse for unconstitutional conditions of incarceration.” The Eighth Circuit mandated that upon remand, Judge Henley’s court meet with lawyers from both sides to create plans that would bring immediate relief to issues of overcrowding. If the overcrowding situation continued as it had been at the time of the case, Henley’s court shall not allow new prisoners into Cummins Prison Farm. Henley must also fully prevent prison authorities from transferring youthful offenders from Tucker to Cummins as long as Cummins remained an unconstitutional facility. The Eighth Circuit further discussed the plethora of other constitutional issues that remained at the prison farms.\textsuperscript{217}

While Henley stated earlier in \textit{Holt II} that the Department of Corrections had done the best it could in areas of medical services, the Eighth Circuit disagreed. “We find the problem,” the opinion continued, “to be much more complex and serious than this, and assuming the deficiencies are of a constitutional nature, we again cannot agree that lack of funds or facilities justify lack of competent medical care.” Judge Donald Lay questioned the ability of the

\textsuperscript{216} \textit{Finney v. Arkansas Board of Corrections}, 505 F.2d 194 (8th Cir. 1974), 200-1.

\textsuperscript{217} Ibid., 201-2.
Department of Corrections to rehabilitate criminals when it allowed prisoners to exist in such poor physical and psychological health. Citing the deplorable care provided by medical, dental, and mental health staffs at the prison farms, the Eighth Circuit mandated “additional hearings . . . to delineate within specific terms and time limitations not only an overall long-range plan but an immediate plan to update all medical equipment at all facilities, ensuring that every inmate in need of medical attention will be seen by a qualified physician when necessary.” The use of inmates as guards also created an unconstitutional scenario that needed immediate address from prison officials.\textsuperscript{218}

The Eighth Circuit referred to the continued use of armed trusties as guards as “perhaps the most offensive practice in the Arkansas correctional system.” Commissioner Hutto’s report to the Eastern District of Arkansas Court reporting that while prison officials did not dismantle the trusty system but reorganized it to protect inmate safety represented a “deficient” update, according to Judge Lay. “We feel the time for dismantling the entire system has passed,” according to Lay and the Eighth Circuit. The Court ordered Henley to remove the trusty system on remand. Change also needed to be made in the area of inmate brutality at the hands of guards. Gone were the times of the federal courts praising steps in the right direction but still admonishing unconstitutional practices. Henley’s court, though not declaring working conditions at the prison farms cruel and unusual, pointed out a number of instances which presented questionable constitutionality, including authorities assigning inmates to work which they physically could not handle, forcing inmates to run while at work, requiring work crews to race one another, and forcing inmates to run in front of vehicles or running horses. Prison guards put one inmate, a “young boy . . . given a one-day sentence,” through “mental and physical torture”\textsuperscript{218} Ibid., 201-4.
that only ended “when the guards shot at his feet and inadvertently killed him.” And while Commissioner Hutto stated that such behavior from guards had stopped, the Eighth Circuit expressed sadness that it took the life of a young inmate rather than a court decree to prevent such activity. The Eighth Circuit also expressed discontent at the “profane, threatening, abusive and vulgar language, together with racial slurs, epithets, and sexual and scatalogical terms when addressing inmates that prison personnel still frequently used. . . . This court finds that the present working conditions are unconstitutional and must be radically changed.” The Eighth Circuit continued to question some of Judge Henley’s previous declarations of constitutional practices from prison authorities.219

Judge Henley previously considered the use of grue, the “tasteless, unappetizing paste-like food which is served to prisoners in solitary confinement as a form of further punishment,” constitutional, citing that while unsavory, the foodstuff did provide a nutritionally complete meal. Judge Lay and the Eighth Circuit, however, questioned its nutritional value, citing the prison procedures of giving inmates at least one full meal every three days and then providing a thorough physical examination of the prisoner after fourteen days to determine whether or not he could continue the punitive diet. “There exists a fundamental difference between depriving a prisoner of privileges he may enjoy and depriving him of the basic necessities of human existence,” stated the Eighth Circuit. “We think this is the minimal line separating cruel and unusual punishment from conduct that is not.” The Eighth Circuit ordered Henley on remand to help ensure that prisoners received the “basic necessities including light, heat, ventilation, sanitation, clothing and a proper diet.” In reviewing the prison’s disciplinary procedures, the Eighth Circuit felt that more relief would be required to bring the prison within constitutional

219 Ibid., 204-6.
standards. The district court should assure that the same officer that invoked a disciplinary procedure not sit on the committee to review the matter, considering that the courts have unanimously condemned such procedures in the past. The Eighth Circuit also demanded that the Department of Corrections create a full-fledged rehabilitative program for Cummins. Regarding racial segregation, Judge Lay further reinforced that more efforts needed to be made in hiring African American employees, reminding the respondents that “inadequate resources cannot justify the imposition of constitutionally prohibited treatment.” The Eighth Circuit also urged Judge Henley to amend the previously issued decree “to include an affirmative program directed toward the elimination of all forms of racial discrimination.” After stating the lower court must review the mail procedures set up by the prison, the Eighth Circuit moved onto the issue of individual relief requested by a number of prisoners.\footnote{Ibid., 207-8, 210-11.}

The Eighth Circuit ruled that Judge Henley erred in not granting individual relief in \textit{Holt II}. Judge Henley, as per the Federal Rules of Civil Procedure, should have made a finding of fact for each individual case. Even though the court would be at a disadvantage doing this with simply the record of review, Judge Lay pointed out that the Eighth Circuit could make a determination on individual claims. Willie Montgomery, whom prison officials assaulted and took away his earned good time, and Larry Gray, who received discipline due to a foot ailment slowing his work production, should have been given some sort of court attention. While their claims might not have afforded them specific relief, Henley should have stated some individual findings of the petitioners.\footnote{Ibid., 212.}

The Eighth Circuit decided to hear new appeals and consolidate them with the current appeal at hand. One of those prisoners, James C. Ellingburg, claimed that current regulations at
Cummins prohibited inmates from providing each other with legal advice. It also appeared to the Eighth Circuit that prison officials provided only one attorney for prisoner consultations but that he could not assist prisoners in civil litigation. The court stated that prisoners should be able to receive counsel in both habeas corpus relief and civil rights relief. While this might place an increased burden on the prison administration, it should not prevent its possibility. Inmate legal representation should also be reinvestigated by Henley’s court. In looking at prisoner Ellingburg’s other complaints, the Eighth Circuit also stated that the lower court, this time a proceeding led by Judge Paul X. Williams, erred in refusing to file Ellinburg’s petition since it deemed the complaint to be frivolous. The complaint involved the prisoner’s claim to damages alleging a “conspiracy” to murder him. Judge Lay of the Eighth Circuit demanded that the petition be filed, and if the lower court still determined the case to be frivolous, it should issue an appropriate judgment based on that fact. The Eighth Circuit judge remanded two of Ellingburg’s complaints, ordering that they be consolidated with the Finney proceedings and heard again at the lower court level. Thus, the Eighth Circuit ordered Henley back in the Arkansas prison reform litigation. Judge Lay ordered Henley’s court, if necessary, “to call its own witnesses in order to fully explore the viable alternatives in meeting respondents’ immediate responsibility to eliminate the unlawful conditions which now exist in the Arkansas prison system.” The lower court should also consider appointing federal monitors or a committee of attorneys to help eliminate these unconstitutional prison conditions. While apologizing to the district court, Judge Lay stated that the problems at the farms continued to be “monumental. Our decision is intended to reinforce its view in a newly developed area of constitutional law. Our continuing confidence and respect for the district court gives us assurance that a suitable end will be quickly attained.” Thus, the Eighth Circuit deemed Arkansas’s prison farms still unconstitutional. The efforts the
Department of Corrections and prison officials had made simply would “not suffice.” Although an individual had violated the criminal law, had little and poor health, prison officials needed to treat him humanely. “Segregation from society and loss of one’s liberty” amounted to all the law allowed. Now, it would be up to prison officials and the state of Arkansas once again had to convince Judge Henley and the Eastern District of Arkansas federal court that its prison farms were constitutional. No longer would Henley be able to accept prison authorities telling his court “we are not there yet, but we are heading in the right direction.” Thus, with the Eighth Circuit opinion, a new phase of Arkansas prison reform began.\(^{222}\)

The year 1975 involved much of the same back and forth evidentiary hearings and reports from Arkansas stating progress made within its prison farm system. In mid-August, according to court records, Judge Henley visited the prison farms in Arkansas accompanied by lawyers for both the state of Arkansas and prisoner petitioners. Finally, on March 19, 1976, Judge Henley released his opinion in *Finney v. Hutto*. Judge Henley presided over this trial by designation, for at this time Congress would promote him to the Eighth Circuit Court of Appeals. Henley began this opinion by giving his usual warning against meddling in the affairs of a state prison system, proclaiming that his court would only interfere “with constitutional deprivations, and if it finds that such deprivations exist or have existed, the court has the power to intervene and device appropriate relief.”\(^{223}\)

First approaching the subject of overcrowding, Henley admitted that the women’s prison had a severe issue with overcrowding, but assurances that the new women’s unit would be completed by the end of the summer of 1976 gave him hope that those issues could be alleviated. Concerning Cummins and Tucker, he stated that the issue contained more nuance than simple

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\(^{222}\) Ibid., 214-16.

square feet, for “regard must be had to the quality of the living quarters and to the length of time
which inmates must spend in their living quarters each day; further some small housing units
although cramped may be more comfortable and livable than more spacious quarters.” As the
number of prisoners increased steadily from older litigation, hearings in 1975 determined that the
population in Cummins had grown to 1518 inmates, while the figure at Tucker rose to 501;
Commissioner Hutto blamed this not on a failure of the parole system but on the simple fact that
intake had exceeded release beginning at around 1974. Inmate discharges, however, beginning in
the early fall of 1975 had allowed a bit more space to exist and helped alleviate the issues
somewhat. A modern minimum-security building equipped with single person cells had been
largely completed and utilized, which helped lessen the burden. Prison officials had also
purchased a number of mobile trailers that could accommodate around twelve inmates per unit,
and this helped the crowding situation as well. Citing a number of other prison statistics going
into the populations of different buildings at the farms, Judge Henley noted that on November
12, 1975, Cummins held around eighty-nine percent of its total capacity and Tucker around
seventy-seven percent. “Those total figures, however,” wrote Henley, “do not tell the whole
story, and it is necessary to consider how the total populations of the two prisons are distributed
among the individual housing units in each situation.” Going into even more detail regarding
prison dwelling than ever before, Judge Henley began questioning prison official’s estimates at
just how many prisoners could comfortably—and constitutionally—live within the barracks.224

One particular building, the East Building, could comfortably hold two inmates per cell. A
brochure designed by the architects of the building and the Department of Corrections, however,
stated architects initially designed these cells to house one inmate. During Holt III, Henley

[224 Ibid., 255-56.]
agreed that even though architects only designed them to hold one prisoner, he found no constitutional fault in allowing two inmates to reside in the cells. The court now found, however, the increasingly prison officials housed three, sometimes four, inmates in these same cells. Prison guards forced inmates to utilize a single washbasin and toilet; one or more of them had to sleep on the floor. “Regardless of what the theoretical capacities of the cells may be,” wrote Henley, “the court finds that the East Building, or particular units thereof, has been chronically overcrowded and that something must be done about the situation.”

Henley once again cited efforts of prison officials with assigning inmates to particular cells based on their work assignments, which meant that at certain times of the day the barracks were emptier than at others. “However, incidents of violence do occur in the barracks,” stated Henley, “and two men have been murdered in barracks by other inmates since the court visited the prisons last August.” Henley alleged, for assumptions sake, that even he declared that the overcrowding did not reach the level of constitutional breach, if conditions and practices continued as they did overcrowding might definitely recur. Housing inmates in gymnasiums and infirmaries did not amount to acceptable long-term solutions. Only by constructing modern, adequate facilities or by reducing the inmate population could prison administrators reach a court-approved solution. The latter approach seemed to be favored by the current Department of Corrections, for Commissioner Hutto indicated in hearings no future construction plans existed for the Cummins Unit. The commissioner expressed concern regarding making the unit larger. “There is very little, if anything,” admitted Henley, “that the court can do immediately about long-term solutions to the housing problem.” As for the short-term solution, the court determined that the maximum population at Cummins should not exceed 1650 inmates, and that the

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225 Ibid., 257.
maximum population at Tucker should not exceed 550. Thus for the first time in all of the Arkansas litigation Henley had presided over, he set firm limitations on the number of inmates that might be kept at the prison farms. Judge Henley also declared that the infirmaries were equipped enough to be constitutionally satisfactory. The dental care, while “rudimentary,” was sufficient for constitutional purposes. Henley did doubt, however, whether facilities at Cummins and Tucker could adequately detect, treat, and prevent eye defects. He also doubted the prison’s ability to treat and also contain the spread of many infectious diseases. Hepatitis and tuberculosis brought a great deal of concern for Henley. The judge, even after expressing his doubt, declared that the prison situation regarding infectious disease as well as their relationship with the Arkansas Department of Health to detect, treat, and prevent the spread of disease passed constitutional muster. Sanitary conditions of the medical facilities and the prison in general, however, left much to be desired. Prison officials should make more efforts at preventing flies, especially in areas such as kitchens and dining areas. Finishing up his discussion of medical treatment of prisoners, Henley stated that the Department of Corrections hoped to have a new medical building completed for prison use that would be in operation by 1977. Henley, however, remembering his past experiences with completion of the new maximum-security unit and the new women’s prison, took the Department’s word with a grain of salt. The court’s past experience caused “it to be somewhat skeptical about target dates for the completion of Department construction, particularly in view of the fact that much of the work is done by prison labor.” The Eighth Circuit, stated Henley, utilized earlier reports which might cloud the more recent improvements made to healthcare concerns of inmates. Thus, his court ordered a new study which would be made working closely with the Department of Health. Due to the lack of any policy or custom regularly denying inmates of medical care, the prison breached no
Henley discussed other matters of importance regarding the individual treatment of prisoners, such as rehabilitation and group therapy concerns.\textsuperscript{226} The creation of a limited operation group therapy program demonstrated a tremendous step forward for the Department of Corrections, according to Judge Henley. The prison needed to do more in determining the sincerity of inmate claims of ill health simply to escape work, known as “malingering.” All too often officials ordered prisoners to punitive segregation without actually investigating whether or not the prisoner actually sustained an injury or illness. Henley specified that the disciplinary panels that issued this punitive segregation needed to include a prison medical official that might be able to testify to the prisoner’s health. With all of these issues, especially the medical aspects, Henley could not declare the prison unconstitutional as a whole due to the instances not reflecting any sort of Department of Correction wide rule. Most of these infractions involved individual lapses in personnel and administration, which prison officials could certainly do more in controlling. These individual infractions, even taken as a whole, did not rise to the level of declaring the system unconstitutional as a whole as he had done in the past.\textsuperscript{227}

The number and quality of rehabilitation programs at the prison farms had represented a major problem for the Eighth Circuit Court a few years earlier. Henley, however, expressed optimism and hope for the new programs. “Unlike the situation that existed in 1973,” wrote Henley, “the rehabilitation picture within the Department is now quite bright, and the court finds it free of constitutional deficiencies.” The addition of a number of off-stations, facilities away from the prison farms that were established in 1975, offered rehabilitative services not available earlier. The Department of Correction School District, created in 1973 by the Arkansas

\textsuperscript{226} Ibid., 258-61.
\textsuperscript{227} Ibid., 262.
Legislature, offered a high school education “comparable to the program available in public schools in the state. If a trustworthy inmate” desired, he could take college courses and received credit. The prison offered female inmates certain trade skills, such as ceramic making.

“Hopefully, when the women moved into their new institution,” wrote Henley, “rehabilitative opportunities will be broadened further.” Prison officials offered a number of trade vocational training courses at both Cummins and Tucker, in areas such as farm equipment and furniture repair, upholstering, welding, and building maintenance. Tucker offered courses in automobile repair and bodywork, welding, woodwork, and drafting. The graphic arts program, stated Henley, deserved special recognition. The course offered lessons in offset printing and other forms of duplication, which had helped a number of newly released inmates find jobs in the outside world. “Although the health care provided by the Department has been criticized,” wrote Henley, “it appears to the court that a good many inmates emerge from the Department in better physical condition than they were in when they were received as inmates, and that in itself has rehabilitative value.”

Regarding regulations restricting inmate mail, Judge Henley stated that the U.S. Supreme Court case *Procunier v. Martinez* offered some guidance to the Arkansas Department of Corrections. And in January of 1975, the Department altered its older rules concerning inmate mail in accordance with the new U.S. Supreme Court guidelines set forth in *Procunier*. Without going into any detail regarding the rules regulating inmate visitors, Henley stated that Chapter IV of the Department’s Inmate Handbook appeared to the court “reasonable and appropriate.” Only time would tell whether the Eighth Circuit agreed. At the insistence of the Eighth Circuit, Judge Henley also reviewed the prison’s guidelines relating to the adequacy of inmate legal assistance,

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228 Ibid.
taking into consideration guidelines established by earlier U.S. Supreme Court jurisprudence.\textsuperscript{230} Henley’s court found that the assistance available to inmates, which for the most part was rendered by fellow inmates known as “writ writers,” adequate, and he noted that the Eighth Circuit might “not have been advised fully in this area.” Henley stated that his court had known for years that writ writers had functioned “freely and without hindrance in the Department for years, and that the representation to the contrary made by the Court of Appeals by one of the appellants in Finney was simply false.” Henley wrote that the role and function of the Legal Advisor to Inmates was not fully disclosed to the Eighth Circuit, for the Legal Advisor was a fully licensed lawyer who worked for the Department of Corrections full time. Offering his services to inmates for free, he could serve the inmates in any way possible, and the Eighth Circuit assertion that he was only permitted to assist inmates in criminal matters and not civil was simply false. Prisoners who could afford their own counsel, however, had every opportunity to do so and the Department of Corrections did not prohibit them from obtaining their own counsel. Henley did recognize that writ writers needed full access to law libraries, and upon his own personal inspection of the newly created law libraries at Cummins and Tucker, he concluded that they were “adequate for inmate use and that access to them is reasonably available subject to restrictions which are not appropriate.” Henley would next approach an issue that he had held to be one of the most important duties of prison officials and also one that it had failed over and over.\textsuperscript{231}

The duty of a prison to protect the safety of its inmates, stated Henley time and again in the Arkansas prison farm litigation, remained at the heart of whether or not a prison violated the constitutional protection from cruel and unusual punishment each inmate possessed. Henley’s

\textsuperscript{230} Specifically, the Eighth Circuit pointed Henley to Johnson \textit{v.} Avery, 393 U.S. 483 (1969).
\textsuperscript{231} Finney \textit{v.} Hutto, 262-264.
approach to prisoner safety, as the litigation progressed, became more nuanced. Henley even alluded to the issue of whether one could ever consider a prison “safe,” regardless of how well constructed or organized it might be, for prisons were inherently havens of violence, including homosexual violence. While the state could not always protect an inmate’s safety, “the state does owe to convicts the duty to use ordinary care for their safety, and a state cannot be permitted to maintain a penal institution in which conditions are so dangerous that the inmates must exist in dread of imminent injury or death inflicted by other inmates.” The reforming of the trusty system, largely thanks to the line of Holt opinions where Judge Henley stated gradually that the system needed to be reformed to a position that the system needed to be torn down, had helped lessen instances of prisoner violence. Summarizing the journey his court and the prison farms had taken regarding the end of the armed trusty guard, Henley wrote that the department no longer used armed inmates as guards or in any other highly administrative position.

Prisoners testified at hearings for this course stating that prison officials continued using “floorwalkers,” inmates who would patrol the barracks at night. The prisoners wanted this “relic of the old system” banned. Henley did not agree. Floorwalkers had no weapons and no authority over the inmates they watched over. “While the court doubts,” wrote Henley, “as it has doubted in the past, that the floorwalkers are of much protection to sleeping inmates, they are not a source of danger to inmates; their presence may have some deterring effect on the “creepers” and “crawlers.” Civilian personnel now guarded inmates, both within barracks and out in the field. Inmates now had the protection of these free-world workers when they felt threatened by other inmates. Regardless of the two deaths that occurred at the prison farms within the previous year, the prison had made continued effort at protecting inmates over the previous three or four years, thus Henley did not find that the Department failed “to use ordinary care for inmate safety, or
that either Cummins or Tucker is today such a dangerous place for an inmate to live as to raise a constitutional problem as far as inmate safety is concerned.”

Henley focused on issues of race and race relations at the prison farms, noting that at certain times in history penal institutions had often reflected the social conditions of a given community. Such was the case in Arkansas in the mid-1970s. The issue of race relations at the prisons, according to Henley, was “perhaps the most vexing one to beset the Department, and it manifests itself in a number of areas of prison life and administration.” Part of the issue that complicated matters involved the subjective feelings of those individuals who made up the whole of the prison. “As long as the subjective feelings involved are no more than feelings,” wrote Henley, “no federal constitutional problem is presented. Where, however, those feelings manifest themselves objectively in words, actions, or policies in prison context, constitutional deprivations can result.” Henley always recognized the difficulty in attempting to repair deficiencies in the prison farms that came out of decades of deep-seated attitudes towards other races. Some of these issues were so deep-seated that a person might not be actively conscious of his or her discrimination. Oftentimes, wrote Judge Henley,

a member of a minority racial or ethnic group who believes that he is a member of a class that has been systematically discriminated against by members of a dominant majority may see discrimination where none exists. Further, a member of a minority, including a convict, may seek to excuse his own failings, incapacities, or shortcomings by claiming that he has been the victim of racial discrimination when such is not the case.

And when Henley wrote of relationships between the races, he certainly spoke of African American relations with whites. While African Americans made up a majority of the inmate population, whites made up a considerable portion of the guard community. This, noted Henley, would always be the root of many racial issues existing at the farms. Even though the

[232] Ibid., 263-65.
Department of Correction had gone through the process of hiring what Judge Henley called a “substantial number of blacks,” a majority of the employees who administered the prison were white. While the Eighth Circuit might object to Judge Henley’s use of “substantial,” progress forward appeared to be enough for Henley. While many African Americans within the Arkansas prison system bore the title of Captain, Lieutenant, or Sergeant, few held any true positions of power, except for Helen Carruthers, the Superintendent of the Women’s Reformatory. In one of the few areas where Judge Henley did not see much improvement over time, he pointed out that relations between the races still remained sour at the prison farms. Henley did positively not that those in authority at the prison farms knew of the problems and worked toward “at least a partial solution, although in candor the court doubted that race relations,” as such, would ever be any better in the Department than they are in the free world, and “that observation is as applicable to any prison in the country as it is to the Arkansas prisons.” Hopefully new rehabilitative plans put into motion would help alleviate the issue somewhat.233

Henley pointed to the Department of Correction’s “Affirmative Action Plan,” which administrators approved and put into action in February 1975. Since March 1974, prison administrators had given sixty-four of 198 promotions to African Americans, or 32.32 percent. The plan also stated that within the same time period, the Department of Corrections terminated sixty-one African Americans, or 23.46 percent of the total terminated, while hiring seventy-eight African Americans, or 28.47 percent of the total number hired, thus representing an excess of black employee hiring versus termination. Henley concluded that, while commendable, “the court doubts that it really reaches the problem that is involved here. This is not a fair employment practices case. The question is . . . whether the recruitment and promotional policies

233 Ibid., 265-66.
of the Department are designed to correct or alleviate the racial imbalance of the Department’s staff.” The issue required more than simply hiring African Americans; it meant that the Department needed to hire more qualified African Americans. Black prison employees must be placed “in positions . . . which will enable them to exercise some real authority and influence in the aspects of prison life with which black inmates are primarily concerned.” The Department must place more African Americans in positions of authority, allowing them to sit on classification and disciplinary panels, and to supervise inmates at work. And while this was difficult for the prison, and had been for years, Henley concluded that administrators of the Department of Corrections had not “exerted themselves to the fullest extent possible” or had not “exhausted their resources as far as hiring responsible blacks.” The Department must explore options around the state of Arkansas that might provide competent African American workers, such as the University of Arkansas at Pine Bluff, the Urban League or the National Association for the Advancement of Colored People. “Such approaches to the problem might not turn out to be fruitful,” wrote the Judge, “but at least they should try.” Judge Henley would go on to discuss more specific instances of racial discrimination throughout the prison farms.234

Regarding specific instances of racial discrimination, Henley stated that his court had nothing to add from what it opined in 1973 during Holt III. Due to the type of discrimination that existed at the prison farms not officially being promoted by the Department, Henley found no evidence of unconstitutional discrimination. According to Henley, instances of “covert and perhaps even unconscious” discrimination on the part of individual employees did not constitute unconstitutionality on the part of the whole prison system.235

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234 Ibid., 267-68.
235 Ibid., 268.
Henley also revisited the issue of discrimination of Black Muslim inmates, which he covered in some detail in *Holt III*, where he declared that no official departmental policy of discrimination existed against Black Muslims. Revisiting this issue at the behest of the Eighth Circuit, Judge Henley indicated that “Muslims are not unduly restricted in the exercise of their religion.” Dietary issues remained, for unfortunately pork made up a vast quantity of the protein portion served to inmates. Though Henley determined that “the Department has made and is making a conscientious effort to supply the Muslims with a pork free diet and to advise Muslim inmates in connection with each meal what dishes they can eat without danger of being contaminated.” Black Muslim inmates, however, did not trust the cooks for their analysis demonstrated that they never utilized proper methods of food preparation, such as not using pork grease or cooking instruments that had touched pork. While Henley specified that the court could do very little to encourage trust, he once again enjoined the prison administrators and cooks from serving pork to Muslims. He would not, however, go so far as ordering special kitchens to prepare food for the Black Muslims, due to the relatively small number of affected prisoners. Administrators could do more by assigning Muslims to work in the kitchen to make sure staff followed the dietary restrictions. Henley concluded his discussion of the discrimination of Black Muslims by suggesting that Commissioner Hutto gather knowledge from Muslims outside the prison population, which might help alleviate some of these issues. Henley would thus move on to other matters in accordance with the Eighth Circuit’s orders.236

In discussing the problem of brutality facing the inmates, Henley pointed out that in *Holt III* he did broaden the tenants of “cruel and unusual punishment” to include:

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236 Ibid., 268-70.
the infliction upon any inmate of any unreasonable or unnecessary force in any form; the assigning of an inmate to tasks inconsistent with his medical classification; the use of any punishment amounting to torture; the practice of forcing any inmate to run to or from work, or while at work, or in front of any moving vehicle or animal; and the infliction of any punishment not authorized by the Department’s rules and regulations.

“Brutality,” repeated Henley as he had for a number of other accusations facing the Department of Corrections, “whether broadly or narrowly defined, is not countenanced in the Department today.” Henley believed that “the reasonable use of force by prison authorities is not only permissible but positively required on occasions. Hence, every incident of violence involving an inmate and a prison employee is not necessarily an incident of brutality.” Along with two instances of inmates dying mentioned earlier in the opinion, Henley discussed another fatal incident that took place in August of 1975. “This incident, unlike the killings that have been described,” stated Henley, “involved prison personnel to some extent.” Cummins prison officials received a young inmate early one workday and put him to work clearing a ditch bank without receiving any sort of breakfast. He ate lunch, though that afternoon he died of what Henley stated “circumstances that were at least suspicious. The incident evoked considerable publicity and stirred up the usual inmate rumors, including charges that the young man had been beaten to death by his guards.” The State Medical examiner performed an autopsy, and “after a rather strange period of delay stated that the inmate had not been physically assaulted and had come to his death as a result of heat exhaustion. There is at least some reason to believe that the young man was subjected to ‘hazing’ by fellow inmates and that one or more prison employees may have participated to some extent in the process.” Regardless of the true chain of events that led to the young man’s death, Henley proclaimed that “the incident was inexcusable, and points up as
much as anything else the fact that some of the employees of the Department are still sadly lacking not only in professionalism but also in ordinary common sense.\textsuperscript{237}

Judge Henley concluded that after careful consideration, as well as nothing that the Departmental policies already in place and the relief his court already granted, Henley indicated that no further relief was necessary. Though he did enjoin personnel from “verbally abusing, or cursing, inmates, and from employing racial slurs or epithets when addressing or talking with inmates.” Once again, Henley made no considerable change in the policies that the Eighth Circuit questioned previously. The judge’s remanded hearings appeared to be simply restating the gist of his previous \textit{Holt} proclamations and decrees.\textsuperscript{238}

Regarding disciplinary proceedings, the Eighth Circuit asked that Henley revisit those previously approved guidelines in light of new U.S. Supreme Court jurisprudence. Henley found that the guidelines were constitutional and in line with the Supreme Court’s guidance in \textit{Wolff v. McDonnell}.\textsuperscript{239} One particular issue Henley mentioned involved prison authorities not allowing the presence of an inmate accused of an infraction during witness testimony. Conversely, the disciplinary board did not allow the correctional officer bringing the charge to be present. Commissioner Hutto explained that inmates normally did not want to testify or say anything adverse to the accused, nor did they want to say anything that might put them in the bad graces of a correctional officer. The accused could not cross-examine the charging officer, and Commissioner Hutto stated that this “would be worthless and would be quite likely to cause increased hostility between the inmate and the employee involved and might lead to future confrontations between them.” Henley concluded that these prohibitions were reasonable and did

\begin{footnotesize}
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\textsuperscript{237} Ibid.
\textsuperscript{238} Ibid., 271-72.
\textsuperscript{239} Ibid.
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not contradict Wolff v. McDonnell or due process of law. Discussing brutality as it related to punitive and administrative segregation, Henley admitted that “as a class, the convicts confined in punitive isolation or in administrative segregation . . . are violent men. They are filled with frustration and hostility, some of them are extremely dangerous, and others are psychopaths. As a result, violence—and more violent responses from personnel to control dangerous behavior—is more commonplace in the punitive wing of Cummins.” Henley opined, however, that the response from prison personnel at times had been known to be excessive, and that much of the violence that took place on the punitive wing “could be avoided readily if the guards were more professional and used better judgment and common sense in dealing with refractory inmates. The lack of professionalism and good judgment on the part of maximum security personnel in the Department was one of the things that led the court to say in 1973 that the Department’s prisons were not so much unconstitutional as they were poorly administered.” Henley agreed with clinical psychologist Dr. Arthur Rogers who testified in 1974 that “punitive isolation as it exists at Cummins today serves no rehabilitative purpose, and that it is counterproductive. It makes bad men worse. It must be changed.” While Henley thought that violence could be lessened by keeping those inmates in punitive isolation alone and one per cell, he was not quite “prepared to go so far as to say that it is unconstitutional to confine as many as two men in the punitive isolation and administrative segregation cells at Cummins and Tucker provided that each man has a bunk to sleep on at night and to sit upon during the day. The court enjoined the confining of more than two men at any one time in one of the individual cells in question and will require that where two men are placed in the same cell, each must have a bunk.”

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240 Ibid. 273-74, 276-77.
Discussing “grue,” the unsavory meal served to those in punitive segregation, Henley questioned whether or not the Eighth Circuit actually determined the food unconstitutional due to the language of the opinion. No matter, indicated Henley, for “it is clear to the court that the constitutional handwriting is on the wall . . . and that its use had as well be outlawed now rather than at some later time or by the appellate courts. And that will be done.” Officials issuing indeterminate sentences in punitive and administrative segregation, declared Henley, also amounted to behavior deemed “unreasonable and unconstitutional.” Henley also determined that the maximum permissible confinement to punitive or administrative segregation was thirty days. And while these and other changes might bring about “consternation in the Department and, indeed, outside the Department,” Judge Henley and the court “sincerely believes that these changes are not only constitutionally required, but also that they will produce both a more humane prison system and a system that is going to be more peaceful and orderly and easier to administer efficiently in the long run.” As for issues with overcrowding, the Department of Corrections needed to now consider new guidelines the court imposed, such as thirty-day maximums for punitive segregation, and reevaluate its population in light of this case.241

Henley concluded with a lengthy discussion of attorneys’ fees, affirming his earlier award, which was of no importance to our discussion here. His discussion determining whether or not the respondent Department of Corrections acted in good faith, however, brought to light a number of considerations that revealed Henley’s thoughts on the progress of the prison from the beginning of litigation to date. “If one looks at the history of the Arkansas prison system from 1965 or 1966 down to the present day,” wrote Henley, “one may note a continuous albeit erratic course of improvement.” Henley noted that some of these reforms might have taken place

241 Ibid., 278-81.
without his involvement and without litigation, but one must question whether or not he believed that as he wrote it. As the years progressed, the legislator and the governor’s office “have shown marked sympathy with and affirmative response to prison needs, an attitude that was not always characteristic of former years. On the other hand,” wrote Henley, “it is only fair to say that this litigation has served to impress upon Arkansas policy makers that if the prisons are to be operated at all, they must be operated in a constitutional manner, and has served as a spur to improvement.” Early in litigation, prison officials and administrators, including Robert Sarver, “appeared to welcome the action of the court in requiring them to do what they wanted to do anyway but felt unable to do voluntarily. . . . The court thinks that . . . there has been some hardening of Departmental attitudes and an unwillingness on the part of the prison administrators to go much if any farther than they have gone, and as has been seen the progress . . . is still insufficient.”

The fact that current prison administrators appeared ignorant to a number of issues that prison administrators quickly fixed when made apparent bothered Henley as well, for more often than not prison administrators should have discovered these conditions and corrected them themselves without the need for evidentiary hearings and court urging. He called the period after 1968 a transition period for a patently unconstitutional prison to one heading in the direction of being a constitutional one, “but, each major transitional step has followed the mandate of this court or the Court of Appeals. And significantly at each state of the litigation, remaining constitutional deficiencies have been discovered.” Henley noted that in 1973, he felt that the Department of Corrections had reached a point where he could release it from court control, but, “as all concerned know, the Court of Appeals sharply disagreed. Enough on this subject has been

242 Ibid., 284-85.
said.” Not only did Henley conclude with approving the previous $8,000 award in attorneys’ fees for the petitioning prisoners counsel, but he increased the amount to $20,000, considering increased effort for remand hearings. Henley thus mandated that current petitioner counsel stay on the case for the time being, and he directed the respondents to file a report no later than July 15, 1976 demonstrating considerable progress considering this current opinion. 243

Thus, Judge J. Smith Henley reluctantly accepted jurisdiction over the Arkansas state prison system once again on behalf of the Eastern District of Arkansas. While the court held jurisdiction, this last case began to spell an end to Judge Henley’s daily affairs with the court, for he now served the Eighth Circuit Court of Appeals out of St. Louis. The situation must have been awkward at the very least, being urged by a court that he sat on to revisit a case from a lower court that he thought was past. Henley’s lessened involvement with the lower court’s jurisdiction over the Arkansas prison farms did not spell the end of litigation, however. In what Judge Ross of the Eighth Circuit Court of Appeals called “the latest chapter in the seemingly endless litigation involving the constitutionality of the Arkansas state prisons,” the Arkansas Department of Corrections appealed Judge Henley’s ruling in Finney v. Hutto. 244 Giving no guidance on the Department of Correction’s objection of the thirty-day maximum period of punitive punishment for inmates, the Eighth Circuit quoted Judge Henley’s earlier opinion regarding the thirty-day maximum he placed and affirmed it. “We affirm this holding,” wrote the Eighth Circuit, “on the basis of Judge Henley’s well-reasoned opinion.” Thus, the first matter the respondent Department of Justice appealed did not go in their favor. 245

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243 Ibid., 284-86.
244 Finney v. Hutto, 548 F.2d 740 (8th Cir. 1977).
245 Ibid., 741-42.
As for the second matter, attorneys’ fees and costs being awarded to the prisoners’ attorneys, which the Department of Corrections “vigorously” contested, the Eighth Circuit affirmed Judge Henley’s award. The Civil Rights Attorney’s Fees Awards Act of 1976, passed on October 19, 1976, definitely permitted Judge Henley to demand attorneys’ fees from the Department of Corrections. Since this act was brought under 42 U.S.C. Sec. 1983, there was no doubt that Congress intended this case to be covered by this act. The Eighth Circuit not only affirmed the award, but it also increased the award by $2500 due to the attorney’s service in this most recent appeal.246

The Arkansas Department of Corrections had no desire to let this subject rest, for it ultimately appealed these same two issues to the United States Supreme Court. On June 23, 1978, the Supreme Court affirmed the lower court rulings.247 Justice John Paul Stevens had no trouble supporting Judge Henley’s thirty-day restriction, which was “supported by the interdependence of the conditions producing the violation. The vandalized cells and the atmosphere of violence were attributable, in part, to overcrowding and to deep-seated enmities growing out of months of constant daily friction. The thirty-day limit will help to correct these conditions. . . . The exercise of discretion in this case is entitled to special deference because of the trial judge’s years of experience with the problem at hand and his recognition of the limits on a federal court’s authority in a case of this kind.” Justice Stephens also decided that Henley’s original award and the extra amount awarded by the Eighth Circuit were authorized by the Civil Rights Attorney’s Fees Awards Act of 1976, thus it also affirmed the lower court.248

246 Ibid., 742-43.
248 Ibid., 688-89.
next year, on January 15, 1979, the United States Supreme Court denied the Department of Correction’s application for a rehearing.  

In the years leading up to that 1979 U.S. Supreme Court denial of a rehearing, Judge Henley continued to sit by designation for the Eastern District of Arkansas, tying up loose ends involving individual prisoner claims of unconstitutionality within the prison farms. But in all actuality, Judge Henley’s daily control of the Arkansas prison farm system ended. Judge Eisele, who became Chief Judge of the Eastern District Court in Arkansas, would continue to hear cases from prisoners questioning the constitutionality of the prison farms. Thus, what began almost fifteen years earlier ended with Judge J. Smith Henley’s devotion to the docket of his new court, the one that had earlier questioned his decisions and forced him to revisit the prison. Judge Henley’s philosophy, at the beginning, and even after, embodied the idea that the federal court should stay out of state affairs at all costs. If it had to take place, he preferred to point out a problem and allow the state to correct that constitutional problem on its own. Judge Henley hated his ever having to get so involved with the Arkansas prison farm system to the point where he had to take direct jurisdiction over a state entity. He certainly loathed when the Department of Corrections failed to correct constitutional inadequacies on its own, forcing him to be more forceful and actually suggesting the manner in which the change should take place. And while early in the litigation the lack of funds from the state legislature and the absence of support from the governor and other state actors certainly retarded any change in the prison system, as legislative commitment grew, albeit meager, the time for prison officials to blame others had to come to an end.

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250 In an unpublished memorandum opinion Hester v. Hutto, PB-74-C-291, decided February 1, 1977, for example, Judge Henley decided that prison officials did not err in not sending a prisoner with epilepsy to the hospital. Kaplan Papers, Series 1, Box 7A, File 1.
Ultimately, it was the inability of the Department of Corrections to reform the prisons quickly enough on its own that forced the federal courts’ continued jurisdiction over its operations. Henley cut his ties with the prison system, but the prison failed to do enough in the year or so that followed, allowing the Eighth Circuit to step in and declare Henley’s relinquishing of control over the prison system premature. But certainly, attitudes across the board in the state of Arkansas, from the courts, to the legislature, to the governor, changed in ways one could not have comprehended in the 1960s. Opinions that always began with Henley’s cautious approach to meddling in state affairs ended with his forceful prodding to change very specific aspects of the prison system, requiring numerous reports and investigations and even visits to the prison farms himself to make sure change took place at a court approved pace. And with all of that prodding and forceful involvement, when Judge Henley moved onto other affairs in the United States’ federal court system, the Arkansas prison system still did not rise above the constitutional minimums necessary for the courts to relinquish control. But one certainly cannot see the work of Judge J. Smith Henley in reforming Arkansas’s prison system as a failure. Judge Henley created the blueprint that federal courts around the United States would utilize in reforming their state prison systems. Judge Henley’s judicial personality of the pure reformer helped blaze the path of federal court reform of prisons throughout the United States. Judge Henley’s precedents certainly helped reform another prison farm in Arkansas’s southeasterly neighbor, Mississippi.
National Notoriety, For All the Wrong Reasons: Parchman Before Federal Intervention

Mississippi’s prison farm, located in Sunflower County of the state’s Delta region, certainly received its fair share of criticism. On the other hand, it also produced patronage and jobs for many throughout the state as well as hundreds of thousands of dollars for the treasury. Being yet another prison farm that not only made the capital to run its operations but also brought in surplus, officials in the Magnolia State did not consider funding prison operations their problem. Parchman Prison Farm went through its own transformation at the hands of the federal courts, riding the heels of the historic and monumental transformation that occurred in neighboring Arkansas. There were, however, a number of challenges specific to Mississippi that would make Judge William Keady’s task even more daunting.

For one, all of the transformation that took place within Arkansas’s prisons occurred within the larger umbrella of the Eighth Circuit Court of Appeals, an area which covered not only Arkansas but Missouri, Iowa, Minnesota, North Dakota, South Dakota, and Nebraska. When considering the nature and history of the prison farm in the Deep South, one might conclude that a federal judge’s task of reforming a southern prison within the Eighth Circuit a bit more plausible than in America’s Fifth Circuit Court of Appeals system, which covers Texas, Louisiana, and Mississippi. Though Judge Henley’s decisions and the Eighth Circuit’s affirmations might have been persuasive to a court within the Fifth Circuit, an argument could be made that persuasive certainly did not mean binding on another Court of Appeals district.
Another challenge came from the fact that Mississippi’s prison system brought in such large profits that the Mississippi state government touted its ability to bring in revenue. Judge Keady certainly had a tougher time convincing legislators that they now had to fund the state penitentiary system. While Parchman Farm brought in much needed revenue, with that excess money came the ills inherent with a poorly administered state prison system.

The ills of Mississippi’s prison system began surfacing in 1962, when the Mississippi legislature convened a committee to investigate the specific roles of government actors relating to Parchman prison farm. Many challenged the specific roles to be played by the governor, at the time Ross Barnett, and Parchman Supervisors. This joint House-Senate Penitentiary Sub-Committee, chaired by Senator W.B. Lucas, released its final phase of the report, which specifically detailed the operation of the prison farm. “For the past two years,” began the report, “the operation of the penitentiary has been conducted in an air of uncertainty and confusion due to conflicts over the exercise of authority between the Governor, the penitentiary commissioners and the superintendent.” The superintendent of Parchman, Fred Jones, testified in front of the sub-committee that Governor Barnett, for instance, recommended such a large number of employee suggestions for the prison farm that he had no idea of the total. “I couldn’t begin to tell you,” stated Jones, “I have a large file here on it, and then, of course, a lot of them I have been called up over the telephone a lot. A lot of them rather than just fill the whole office up, I throw them in the wastebasket.” He later estimated that the number reached several hundred. The testimony also included a number of letters from Governor Barnett practically begging Jones to not discharge his friends from the prison farm. Regarding B.F. Ingram, for instance, Governor Barnett pleaded that he keep “one of the best friends I ever had. He worked awfully hard for me. Please, let’s fire some of our enemies and not our friends. We have plenty of enemies at
Parchman.” The committee concluded that as a matter of the state’s interest, “it is now the duty and responsibility of the Legislature to take the necessary steps to enact proper and remedial legislation . . . to see that the penitentiary is operated in a businesslike and efficient manner, devoid of political influence peddling and interference.” The regular session of the 1964 Mississippi state legislature took into consideration this report and did in fact pass new legislation clarifying the respective positions of members of the penitentiary board of commissioners. Only time would tell whether or not this legislative reform would help prevent some of the political patronage that crippled Parchman prison.251

It did not take long for the notorious prison farm to begin receiving national attention, in part due to the growing national Civil Rights Movement, which reached a head in the 1960s. In 1965, after their arrest, local police sent 250 civil rights demonstrators from Natchez to Parchman prison farm. Years later, when the detainees appealed an action of false imprisonment in front of the Fifth Circuit Court of Appeals, the Court observed that the petitioners arrested due to their participation in racial protests “according to undisputed facts . . . were subjected to subhuman treatment which beggars justification and taxes credulity.”252 It also gave the appeals court a prime opportunity to put into record the conditions at Parchman Farm. Prison guards forced the prisoners to reside in thirty-nine vacated cells in the prison barracks. In all, prison authorities forced more than two hundred and fifty detainees to reside within cells normally accommodating around forty prisoners. Superintendent C.E. Breazeale ordered the protest detainees to be given the “standard” treatment that would be afforded any prisoner at the farm, be it the first offender or the aggravated rapist or murderer. Prison officials required male

251 “Legislative Investigation, 1962, by Mississippi State Penitentiary; Department of Corrections, call number: Series 1552, Box 7723,” Mississippi State Archives, Box 7723, Row 53, Bay 21, Shelf 7, Series 1552, 1, 20, 61.

252 Anderson v. Nosser, 438 F.2d 183 (5th Cir. 1971), 186.
prisoners to strip naked and women prisoners to remove most of their outer clothing. Prison authorities even required all detainees to take a laxative and continued on to deprive them of all of their personal belongings, “including sanitary napkins and medicines.” Officials placed up to eight prisoners in cell containing only two steel bunks. While guards allowed a few of the men to wear underwear, most remained naked for up to thirty-six hours. Prison officers forced many to give blood tests as well as subjected some to physical abuse and assault.\textsuperscript{253}

Ultimately, the court found that the punitive measures the utilized by prison officials “out of harmony with the presumption of innocence. Despite their pigmentation or political beliefs the accused here cannot be treated as though convicted of heinous crimes.” The prison’s treatment of the detainees definitely violated the Eighth Amendment, clearly passing the threshold test of behavior that violated “developing concepts of decency” but it also represented punishment greatly disproportionate to the offense for which it is opposed. . . . These plaintiffs bear the stigma of having served in the penitentiary for violating a misdemeanor ordinance besotted with constitutional infirmities. They were not felonious terrorists or hardened recidivists—the treatment in the maximum-security unit was totally unfounded. If similar treatment for convicted prisoners is universally condemned, which it is, that treatment has no place here. We deal with human beings, not dumb, driven cattle.

In addition to the treatment these racial protestors received at Parchman, a riot in 1968 brought the prison farm even more negative publicity. A legislative committee followed and released a “rather insipid report” that, among other things, attributed the riot to the prison’s continued use of armed inmate guards, a problem that plagued Cummins and Tucker prison farms in Arkansas throughout Judge J. Smith Henley’s litigation.\textsuperscript{254}

\textsuperscript{253} Ibid., 187.
Following the new notoriety Parchman Prison began receiving in the late 1960s, after the “glowing” reports earlier that decade from state officials touting the positive at the prison farm, a bevy of investigations commenced from a various groups, from the Mississippi state legislature to a team of investigators from the University of Georgia. The group from Georgia, commissioned by the Penal Institutions Legislative Study Committee, released a sixty-eight page final report that discovered “inadequacies in virtually every phase of Parchman’s program.” The Report also sternly warned that if change did not occur at Mississippi’s principal prison farm, the state of Mississippi might have the federal court mandating change take place as it had been in neighboring Arkansas. The Penal Institutions Legislative Committee agreed, further acknowledging that the use of armed prisoner guards created a prison “for all practical purposes, operated by prisoners. . . . It is only a matter of time before the federal courts will order the complete abolition of the armed trustie [sic] inmate guard system.” With these events of the late 1960s, the Mississippi legislature could no longer claim ignorance of the situation at Parchman.255

In April of 1971, the legislature passed a bill completely eliminating the trusty system by July of 1974, but even with the “presumably most noble” intentions of the legislature, “in view of the documented abuses inherent in the trusty system, the legislative response was half hearted at best.” The legislature failed to include in this bill the the funding of the new civilian positions that would replace the trusty guards. All familiar with Parchman farm knew the Georgia commission’s prophecy would come true. With the sweeping change taking place in the neighboring Eighth Circuit, state actors in Mississippi realized that the driving force behind change would eventually come from a higher power. With a state legislature and governor still

255 Ibid., 697-99.
unwilling to create legitimate change, and with a prison farm, no matter how corrupt, still not only paying for itself but bringing the state badly needed profits, the federal courts would have to be the catalyst for a new era of penal history in the Magnolia State.256

Those in favor of bringing about legitimate change at Parchman had to like their chances of getting reform accomplished considering the presence of the federal court judge who would be overseeing the litigation involving Parchman. Many point to William Keady’s decision to attend law school at the Washington School of Law in St. Louis as a sign of “independent spirit” which differentiated him from many southerners who grew up in the Mississippi Delta. His decision to not attend the University of Mississippi Law School demonstrated an independent spirit indeed, which further developed and broadened his professional perspectives outside of the heated political and social climate of Mississippi. As a young state senator, Keady helped pass the state’s first parole statute. He often found himself in line with the state’s “radical” penal reformers, such as Bill Alexander and Howard McDonnell. Many found Keady “fully aware of . . . [Parchman’s] iniquities, of the factors that spawned them, and of the interests that perpetuated him.” Keady also had a reputation of being friendly to the cause of African Americans in his home state. He often treated civil liberties cases with a degree of sympathy not seen from other southern federal judges of the time. The New York Times even declared in 1973 that Judge Keady was “friendly to Negroes.” While some considered this to be a slight exaggeration, one cannot dismiss the fact that he often ruled with a “judicial sensitivity” in favor of petitioner plaintiffs in cases such as school desegregation, gerrymandering, and first amendment issues.

256 Ibid., 699-701, and Taylor, Brokered Justice, 197.
Thus, supporters of prison reform realized they might have someone in the federal courts who would hold one of the nation’s most notorious prison farms to constitutional standards.\textsuperscript{257}


Hearings began well before the release of an opinion for the case of *Gates v. Collier*, which Judge William Keady’s United States District Court, in the Northern Division of Mississippi in Greenville, Mississippi, presided over. *Gates* testimony told a different story than similar prison reform in Arkansas, for unlike Governor Rockefeller in Arkansas, Governor William Waller not only publicly shared his opinion that Parchman needed reform, but he did so on the record. In a hearing for the *Gates* trial on May 11, the Governor testified in open court:

> We are, in effect, Your honor, admitting that the constitutional provisions have been violated. Isn’t there enough of the incriminating facts in these depositions and interrogatories to give the Court adequate grounds to find a conclusion of fact that the first amendment and all other constitutional provisions have been violated?

In another divergent turn of events for the Mississippi legislation, both parties waived a full evidentiary hearing set for May 15, 1972, which meant that Judge Keady would use the multitude of depositions, stipulations, offers of proof, factual summaries, documentary evidence, photographs, etc. to make his decision.\textsuperscript{258}

> “This case of great public concern and interest involves alleged unconstitutional conditions and practices in the maintenance, operation, and administration of the Mississippi State Penitentiary at Parchman, Mississippi,” began Judge Keady in his opinion for *Gates v. Collier*, released to the public on September 13, 1972.\textsuperscript{259} The complaints of Parchman prisoners read

\textsuperscript{257} Taylor, Brokered Justice, 198-200.
\textsuperscript{258} 45 Miss.L.J. 685, 702.
along the same lines as those prisoners in Arkansas, alleging violations of their First, Eighth, Thirteenth, and Fourteenth Amendments as well as Equal Protection of the Fourteenth Amendment due to segregation and discrimination on account of race. United States intervened as a plaintiff on August 23, 1971 pursuant to 42 U.S.C. Section 2000h-2. The federal government’s complaint indicated that the state of Mississippi “maintained a system of prison facilities segregated by race; and, additionally . . . failed to provide the inmates with adequate housing, medical care, and protection from assault from other prisoners.” Unconstitutional breaches reached sewerage and water systems and the prison’s use of “inadequately trained armed trusties” who often inflicted “cruel and unusual punishment upon inmates in violation of the Eighth Amendment.”

In 1972, Parchman contained around nineteen hundred inmates. Of this number, African Americans made up two-thirds while women of all races numbered fifty. The farm itself consisted of a total of twenty-one units, twelve of which were major residential camps. The collection of physical facilities at Parchman outnumbered those at Cummins and Tucker in Arkansas, making any determinations of overcrowding and discrimination more difficult. One other matter that differentiated the earliest litigation in Arkansas from that in Mississippi involved the makeup of free-world employment. Though both systems shared the use of armed trusties, Mississippi utilized more free world personnel at the barracks for supervisory duty. Prison authorities also utilized free world personnel as “drivers” to bring inmates to and from the farm for work duty. The remaining civilian employees acted as night watchmen in the barracks. As a former superintendent described it, however, “the inmates do the guarding of other inmates.” Utilizing the same hierarchical system imposed in Arkansas, the only thing that

260 Ibid., 885-86.
differed might be the terminology. Trusties still performed the duties as “hallboys,” “floorwalkers,” and “cage bosses,” most often being armed to perform their duties.\textsuperscript{261}

Racial discrimination and segregation plagued Parchman prison farm as well. Authorities separated prison facilities and barracks by race, which meant that African-American inmates often received disparate and unequal treatment. African Americans also received unequal access to vocational training at Parchman. Even at the hospital and women’s camp where both blacks and whites worked and lived, authorities split prisoners into separate wings of the facilities. Black inmates had also testified that they received harsher treatment from white prison officials. As in Arkansas litigation, Judge Keady would urge Mississippi prison officials to hire more African Americans in positions of authority. “Historically,” wrote Keady, “Parchman employees have been only of the white race and not until recent months have any blacks been employed as civilian personnel. At the time the record was closed, only two blacks were employed.”\textsuperscript{262}

Regarding the housing units, Keady found the units “unfit for human habitation under any modern concept of decency. The facilities at all camps for the disposal of human and other waste are shockingly inadequate and present an immediate health hazard. Open sewage is a breeding ground for rats and other vermin.” Even the State Board of Health suggested that a new sewage system was the most pressing environmental issue existing at the prison. Of the fourteen water systems in place for the prison farm, all had deficiencies needing improvement. Eight had major defects that did little to prevent the possibility of contamination. At most camps, the amount of sanitized water available barely satisfied half of the prison guards much less the prisoners. The State Board of Health concluded that Parchman’s water supply was “inadequate and obsolete,” indicating that the need for a new water system might be greater than a new sewerage facility.

\textsuperscript{261} Ibid., 885-87.
\textsuperscript{262} Ibid., 887.
Even a joint Mississippi Legislative committee admitted in 1971 that Parchman’s facilities existed “in a deplorable state of maintenance and repair.” Electric wires suffered from considerable damage and fraying, heating facilities often failed, and bathroom facilities contained broken commodes, showers, or soap containers. At Camp B, for instance, eighty men shared three washbasins made from oil drums cut in half. Dead rats littered the kitchen areas and the barracks. Dirty mattresses remained in various states of disrepair. Most camps also lacked the ability to put out any sort of fire that might occur, especially since the water system barely provided drinking water and the barracks contained little or not fire-fighting equipment. One wondered why the Mississippi Department of Corrections did not see fit to alleviate some of these physical facilities before, considering the transformation taking place in neighboring Arkansas.  

Medical facilities also failed to provide adequate care for sick or diseased inmates. Prison authorities only had one doctor on staff to oversee the nearly two thousand inmates at the prison farm. The hospital facilities lacked the equipment necessary to perform necessary medical functions. Unsanitary conditions existed throughout the medical facilities area, especially at the tuberculosis ward. Officials made no effort to prevent those inmates with contagious disease from mingling with other inmates. “Administration practices,” wrote Keady, dissuaded inmates from seeking medical assistance by taking away an inmate’s ability to sell plasma, his good time, or visiting privileges if he unnecessarily requested medical help. Judge Keady, as Henley did, focused on the basic duty of a prison system to protect the safety of its inmates. 

The details of prisoner organization within the barracks of Parchman presented Keady’s court with peculiar situations regarding the protection of inmates. Officials housed those inmates

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263 Ibid., 887-88.
264 Ibid.
not at the punitive and administrative segregation unit in various two-winged camps. One wing contained barracks called “cages.” Regular inmates, called “gunmen,” resided in one wing, while trusties lived in the other. The “gunmen” side had one large room that contained bunks. Judge Keady obviously understood the risks of having a large number of poorly classified and assigned inmates in this bunk type situation. This created the intermingling of those convicted of aggravated, violent crimes with first offenders or those convicted of non-violent crimes. Free world sergeants appointing the trusties of each bunk created a plethora of other issues, making their appointments usually without consideration of the particular skill set of the prisoner. The sergeant often used the assignment of these jobs as a way to further control the inmate population. “Floorwalkers,” for instance, could suggest that a particular inmate be punished. “Cage bosses” had the duty of “enforcing discipline and maintaining peace in the barracks both day and night. The evidence,” according to Judge Keady, was “replete with instances of inhumanities, illegal conduct and other indignities visited by inmates who exercise authority over their fellow prisoners.”265

Parchman also had no official shakedown procedure, thus the barracks contained a surplus of homemade weapons. According to Keady, of eighty-five instances of physical assault from one inmate to another, twenty-seven of these involved instances where one inmate stabbed, cut, or shot another. Civilian guard numbers remained insufficiently low to deal with prisoner threats and violence. Testimony revealed that free-world personnel had no power once they turned off the lights in the barracks, prompting one former superintendent to testify that “there is no way that anyone can guard the safety of an inmate in the Parchman situation” due to the lack of civilian personnel and the organization of the bunk style system at night. In some cases, free

265 Ibid., 888-89.
world workers “allowed inmates to fight, gamble and acquire liquor and drugs in violation of prison and state law.” While the physical elements of Parchman contributed to the lack of inmate safety, one undoubtedly had to place most of the blame on the trusty system. 266

Free-world sergeants appointed trusty positions with no objective criteria or standards. “Payoffs, favoritism, extortion, and participation in illegal activities,” pointed out Keady, had “influenced the process of recommending and selecting trusties.” The prison farm utilized around one hundred fifty trusty shooters in various camps. “While no written rules prohibited the arming of civilian employees,” noted Keady as they had Arkansas, free world workers “do not ordinarily carry firearms. Instead, armed trusties are used to guard and oversee the inmates while working in the fields and on occasions the trusties are left in sole charge of the fields.” Many of the armed trusty guards had been convicted of aggravated crimes. As of April 1, 1971, thirty-five percent of armed trusty guards had not been psychologically tested. Of those tested, forty percent possessed retardation, and a staggering seventy-one percent had personality disorders. Parchman had no formal program of training these armed trusty guards; their lack of training with firearms oftentimes resulted in injury to themselves and others. Not surprisingly, these trusties often abused their positions by engaging in “loansharking, extortion, and other illegal conduct.” They had engaged in “intolerable patterns of physical mistreatment [of other inmates].” During the reign of Thomas D. Cook as superintendent of Parchman, thirty inmates received gunshot wounds, while twenty-nine others had been shot at. Fifty-two inmates suffered physical beatings at the hands of trusty guards. 267

As for disciplinary rules within the prison farm, three orders governed treatment of inmates after authorities placed them within punitive segregation (also known as the Main Segregation

266 Ibid., 889.
267 Ibid., 889.
Unit, or the MSU). Officials must feed the prisoner at least one regular meal a day and doctors must examine the inmate every two days. Additionally, prison authorities could not keep an inmate in the “dark hole” of the segregation unit for longer than twenty-four hours. The segregation unit contained four wings, one known as the “permanent side,” which housed specific escape-prone inmates. Death row inmates also resided on the “permanent side.” The other portion of the unit, known as the “punishment side,” housed inmates who violated certain prison rules. Thirteen eight-by-ten foot cells housed two men, and each cell contained double metal bunks, a commode, and a lavatory. Two six-by-six foot cells, known as the “dark hole,” had no lights, commode, sink, or other furnishings. A hole in the concrete floor six inches in diameter served as a toilet. No windows adorned the walls of the “dark hole,” and a heavy metal door closed the entrance. Former Superintendent Cook defended the use of the “dark hole as a necessary type of psychological punishment for inmates who are obstreperous, obstinate violators of penitentiary discipline,” and the former administrator preferred this method of punishment to using the lash. Prison officials shaved inmates’ heads with heavy-duty clippers known as sheep shears then sent the prisoner to the dark hole without any sort of hygienic materials and often without adequate food. Even with the promulgated rules preventing an inmate from staying in the dark hole for longer than twenty-four hours, inmates often remained in the concrete chamber for forty-eight and sometimes seventy-two hours. The confined inmate never encountered another human during this confinement, and officials never cleaned the cell. Authorities also never allowed the inmate to clean himself or shower while in the “dark hole.”

The final rule listed that officials must limit corporal punishment to the use of the lash, and its use must not exceed seven licks a day. Only after the superintendent gave permission could an

268 Ibid., 890.
officer administer these lashes, and the superintendent, the chaplain, or a member of the penitentiary board must witness the lashing. No matter what rules prison administrators officially promulgated, the record contained “innumerable instances of physical brutality and abuse in disciplining inmates who are sent to MSU,” according to Keady. Some of these tortures included the forced consumption of milk of magnesia as a form of punishment, stripping inmates of their clothes, turning the fan on inmates while naked and wet, depriving inmates of mattresses, hygienic materials and adequate food, handcuffing inmates to the fence and to cells for long periods of time, shooting at and around inmates to keep them standing or lying in the yard at MSU, and using a cattle prod to keep inmates standing or moving while at MSU. Indeed, the superintendents and other prison officials acquiesced in these punishment procedures.

Judge Keady interpreted the existence of brutality and torture at the prison differently than Judge Henley did in Arkansas. Even to the very end, Judge Henley chose not to blame prison administrators for the wrongdoings of prison employees. It appeared that Judge Keady placed the prime responsibility of these continued violations with top prison administrators.269

Regarding the actual procedural issues that resulted in prison personnel meting out punishment, similar issues existed in Mississippi as in Arkansas. Former Superintendent Thomas Cook established the “trial council,” composed of three civilian penitentiary employees in November of 1970 to investigate and handle disciplinary actions brought about by officers towards inmates. The camp sergeant produced a written report of the incident, and would distribute it to the trial council. The council members then interviewed the prisoner, considering all information supplied by the inmate and investigate if necessary to determine guilt or innocence. If the council found him guilty, it could give whatever punishment it found appropriate, requiring no further approval from the superintendent. Keady determined that

269 Ibid.
numerous problems existed with this sort of council. For one, the council never notified the inmate of the charge prior to the interview of that said inmate. While the inmate could respond orally to the charge, the council did not allow him to present witnesses on his behalf nor could he cross-examine those witnesses testifying against him. Also, rules did not require the sergeant to name anyone with personal knowledge of the infraction, thus he often made the charge without citing anyone with personal knowledge of the infraction or by investigation of the sergeant. This, coupled with the fact that one rarely questioned or contradicted the sergeant’s word, meant that the inmate had virtually no chance of receiving a fair hearing. In only around one percent of hearings did the trial council ever do any investigation outside of what the sergeant’s report revealed. The inmate also had no availability of representation during the trial council. No uniform nature characterized the punishments, for similar infractions normally did not receive similar punishments. One had no doubt that when Judge Keady moved on to his conclusions of law portion of the opinion that he would have a number of issues with the procedural due process afforded prisoners regarding these trial councils.270

Parchman prison officials censored all incoming and outgoing inmate mail, defended by prison authorities as necessary for maintaining a secure prison. The camp sergeants had this responsibility for the camps they supervised; they often, however, delegated this responsibility to their wives or the free world drivers. Judge Keady issued a temporary injunction of this type of mail censorship during this case, and on May 5, 1972 the current Superintendent John A. Collier released an order to prison workers that mail would not be read and censored but only looked over to prevent the entry of money into the prison.271

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270 Ibid., 891-92.
271 Ibid., 892.
Judge Keady pointed to the notoriety of conditions at Parchman Prison that made these efforts of reform both arduous and momentous. Numerous groups, ranging from the Mississippi Legislature, public officials, a study team from the University of Georgia, and even a partnership from the Mississippi State Planning Agency, the Law Enforcement Assistance Administration (LEAA), and the American Correctional Association, produced multitudinous results which made the situation at Parchman Farm known throughout the nation and even the world. The attention brought upon reform efforts in Arkansas also transformed prison farm reform in the South from a dirty little secret to a national issue of extreme necessity. The three-organization committee completed a report and submitted it to Keady’s court for review. The committee stated that conditions at Parchman were “philosophically, psychologically, physically, racially, and morally intolerable.” Keady stated that the report claimed the prison farm operated under three deficiencies which officials needed to correct before change could begin at Parchman:

1. The prison system must operate at a profit at any cost; 
2. Armed inmate guards are acceptable and capable of insuring safety and security within the system; and 
3. Security and control of inmates are insured through maintaining a high degree of fear within the inmate population.

Judge Keady agreed that the evidence supported the groups’ claims.  

The Department of Justice also assured the court that emergency discretionary funds from LEAA in the amount of one million dollars could be made available towards helping Parchman Farm “meeting fundamental human needs of the inmate population as well as for long-range planning.” This figure met the recommendations of the three-group committee. The LEAA administrator stated that he would also appoint a three-person group to help Mississippi state officials develop a long-term plan for Parchman. A letter on July 24, 1972 from Administrator

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272 Ibid.
Jerris Leonard of the LEAA assured Judge Keady that funds would only be approved upon the conclusion of the current litigation. The LEAA began informal preparation for changes at Parchman around that time in preparation for an order from Keady promoting change at the prison farm. Governor Waller also gave his assurances that he would strongly advocate that the Mississippi Legislature provide adequate funding “not only to eliminate the undesirable conditions at Parchman but to make it an exemplary penal institution.” Thus, it appeared that the Mississippi prison farm, along with proper court guidance and financial backing, might one day become a constitutionally sound prison farm. Before this could happen, however, Judge William Keady would have to make his final determinations as to the constitutionality of these current issues.273

Judge Keady began this opinion stating the understood reluctance a federal court has in interfering with a state run institution such as a prison. Interestingly, however, Keady pointed to the Fifth Circuit case of *Sinclair v. Henderson* from 1970.274 In this case, Judge E. Gordon West from Louisiana, the third figure examined in this work, denied a petition and refused to hold an evidentiary hearing for an Angola death row inmate named Billy Wayne Sinclair. The inmate alleged that conditions on Louisiana’s death row amounted to cruel and unusual punishment. The Fifth Circuit Court of Appeals, in a per curium opinion issued collectively by all judges hearing the trial, overturned Judge West’s decision, citing both an Eighth Circuit Court of Appeals decision affirming a Judge J. Smith Henley ruling in Arkansas and an opinion of Judge Henley’s Eastern District of Arkansas court:

>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

273 Ibid., 892-93; and Jan 24 letter from Jerris Leonard to Judge Keady (need specific archive location).
matters exclusively of prison discipline and administration; and that the court below should adjudicate the merits of the appellant’s contentions of extreme maltreatment.

Citing *Sinclair*, Judge Keady stated that although his court shares the reluctance of other federal courts to mingle in state affairs, “the clear fact is that Parchman, in certain material respects, has been, and continues to be, maintained and operated in a manner violative of rights secured to inmates by the United States Constitution, and also contrary to Mississippi Law.”

Judge Keady’s opinion contained a number of references to opinions authored by Judge J. Smith Henley or by Eighth Circuit opinions that affirmed his lower court decisions. In explaining his court’s rationale behind determining whether or not conditions within the prison violated the Eighth Amendment’s cruel and unusual punishment provision, he explained that confinement within prison could certainly reach the level of cruel and unusual punishment when the conditions and practices, quoting Judge Henley, become “so bad as to be shocking to the conscience of reasonably civilized people even though a particular inmate may never personally be subject to any disciplinary action.” Keady held that prisoner confinement within Parchman’s barracks was “unfit for human habitation and in conditions that threaten their physical health and safety, by reason of gross deficiencies in plant and equipment and lack of adequate medical staff and facilities, is impermissible.” State law, in addition to the U.S. Constitution, mandates that inmates receive proper healthcare and “wholesome food prepared under sanitary conditions.”

While the prison’s current conditions did not rise to the level of “unnecessarily cruel and unusual,” they certainly slowed and in many ways prevented any sort of rehabilitation.

Until prison officials could assure the safety of their inmates, the conditions in the barracks would remain unconstitutional. This included allowing inmates to suffer “indignities and

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275 Ibid., 126; and *Gates v. Collier*, 892.
cruelties” at the hands of other inmates, placing excessive numbers of prisoners in barracks, assigning tasks to prisoners with inadequate skill sets or training, and placing weapons in the hands of other inmates. If prison authorities could not prevent “the arbitrary infliction by the trusties of physical and economic injury upon their fellow inmates, the system must be condemned as unconstitutional. Indeed, the Mississippi statutes do not contemplate for guard duty the use of trusties who are corrupt, venal, incompetent, or dangerous. As maintained at Parchman, the trusty system . . . is patently impermissible.”

As for Parchman’s punitive segregation practices, Keady declared them to be unconstitutional as well. Prior jurisprudence concluded that holding criminals in segregated confines was not per se cruel and unusual punishment. It could be unconstitutional, however, “if carried out in a manner that is ‘foul,’ ‘inhuman’ and ‘violative of [the] basic concepts of [human] decency.”

Parchman officials placing inmates in “MSU’s dark hole cells naked, without any hygienic materials, bedding, adequate food or heat, and also without opportunity for cleaning either themselves or the cell, and for longer than twenty-four hours continuously” certainly did not fall within constitutional limitations. Not only did the United States Constitution mandate that Parchman use its punitive cells within a certain standard, but the Mississippi statutes required certain standards as well. These standards also applied to other forms of corporal punishment. While the record stated that the whip had not been used since 1965, Mississippi state statutes did limit its use to seven lashes at a time. Unfortunately, the U.S. Constitution limited Judge Keady’s hands when attempting to outright ban the use of the whip and the black

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277 Gates v. Collier, 894.
hole, for it would be unconstitutional for him to strike down a punishment mandated by Mississippi state law without a three judge panel, according to 28 U.S.C. Section 2281. 279

Regarding the due process afforded to an inmate when accused of a prison infraction, some difference in opinion existed among the federal court circuits, which Judge Keady pointed out. He insisted that prison officials must, however, observe the minimal standards. Authorities had a duty to provide assurances of fairness. Keady stated that at least three procedural safeguards needed to be in place: rules and regulations in place stating what behaviors could subject the inmate to punishment, official written notice of a charge before a hearing, and the inmate having the opportunity to be heard at a hearing conducted by an impartial tribunal. Keady not only concluded that prison officials at Parchman failed to meet these minimum standards, but he also ordered that they implement procedures requiring these minimums. 280

Keady also noted that different appeals circuits held different standards regarding censorship of inmate mail; however, courts must utilize “especial vigilance to protect an inmate’s right of access to the courts, public officials, and his counsel of record in order to challenge the legality of his conviction or the condition of his imprisonment.” Thus, any restriction placed on prisoner mail must be “related both reasonably, and necessarily, to the advancement of some justifiable purpose.” The arbitrary censorship rules utilized by Parchman, opined Keady, did not pass this test. “Total censorship,” wrote Keady, “may not be imposed at the whim of prison officials.” Certain letters, such as those addressed to “officers of the federal, state, and local courts, all federal officials, all state officials, all officials of the Mississippi State Penitentiary administrative staff and letters to the Probation and Parole Board” would be classified as privileged and thus must not be opened. Other types of outgoing mail, excluding mail to one’s

279 Ibid., 895.
280 Ibid.
counsel, “may be screened to detect escape attempts or other illegal activity.” Incoming mail may be screened as well if prison authorities suspect illegal activity or escape attempts. Thus, for the first time in Mississippi’s history, a federal court judge declared major components of Parchman Farm unconstitutional.\footnote{Ibid., 896.}

Judge William Keady now had to craft an order that would serve as a guide for Mississippi state officials in making changes to the prison farm. Would he begin as Judge Henley did almost seven years earlier and proclaim broad changes that needed to be made while allowing the state to formulate its own change? Or would he be more forceful in deciding that the Mississippi Department of Corrections needed to enact certain specific changes to the prison system? Judge Keady believed “that the ends of justice would be best served by reserving the entry of its judgment until conference is had with counsel for inmate plaintiffs, the United States as plaintiff-intervenor, and defendant state officials” on October 16, 1972. In preparation for this conference, which “shall be open to the public with opportunity for interested state and federal officials to express their views as to the implementation of plans with specific time-tables to satisfy legal standards,” counsel for all parties had to provide written submissions and memoranda by October 10.\footnote{Ibid., 897.}

Judge Keady did communicate, by way of the conference agenda, the terms of what he considered a “proposed injunctive order.” The order would first and foremost prohibit the “arbitrary and unjustified censorship and suppression of mail” to inmates. Inmate discipline would have to be accompanied by proper “administrative procedures . . . with due process.” Corporal punishment should be prohibited “where it is of such severity as to offend the modern concepts of human dignity.” Of the four most important factors to be included in any injunction,
Keady declared that confinement at the MSU unit must be under conditions “agreeable to state law and without the imposition of cruel and unusual punishment as prohibited by the Eighth Amendment.” He wished that those changes would take place within ten days of his eventual issuing of the judgment and order. Racial segregation and discrimination needed to be eliminated “as speedily as possible. The court shall be advised as to those camps and facilities which are presently desegregated, problems which may exist for desegregating the remaining units, and obstacles which may prevent the elimination of all other racially discriminatory practices in the operation of the penitentiary.” The Mississippi Commission on Hospital Care and American Correctional Association standards must be enforced on the medical staff, procedures, and facilities at Parchman Farm. Prison officials must also revise classification guidelines so as to prevent violent criminals from being placed with first offenders. Administrators must also enact more protections to prevent the entry of illegal weapons into barracks. Prison administrators needed to enact both short-range and long-range plans regarding renovation and construction of physical facilities. Keady also demanded that administrators devise a plan “for the rapid elimination of the trusty system as presently existing at Parchman and conversion to a system of civilian guards, including provision in the interim for using competent trustees strictly in accordance with adequate training and supervision.” Judge Keady hoped to alleviate problems at Parchman that took the state of Arkansas years to alleviate. The Justice Department also released a series of recommendations for Parchman, hoping to get the prison ready for the eventual orders from Judge Keady.  

In his first opinion, Judge Keady also attempted to avoid some issues inherent in other prison farm reform. He mentioned that an allowance should be made for inmate plaintiffs to

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receive “reasonable attorney’s fees and reimbursement of expenses for successful prosecution of the action.” Judge Keady had to be mindful of the appeals taking place in neighboring Arkansas that eventually reached the United State Supreme Court in the matter of prisoner counsel receiving attorney’s fees. Keady also hoped to include a clause in the judgment which stated that “other matters appropriate for inclusion in the judgment to be entered by the court” as well as a “provision for the court’s continuing jurisdiction over the case for approval of all plans and periodic reports on the steps taken in implementation thereof.” Judge Keady, as his colleague in Arkansas, fully embraced the role he would have to play in creating a constitutional prison farm in Mississippi.284

Before he issued that final order, the prison board decided to act proactively by reorganizing the state prison board. The board removed chairman J.Q. Demoville and vice-chairman H.L. Roberts from their positions. The board replaced them with Charles Riddell and K.C. Peters, both of whom appointed by Governor William Waller. Demoville and Roberts, appointed by former Governor John Bell Williams, represented holdovers of former Superintendent Tim Cook. While Governor Waller stated to the Delta-Democrat Times that he did not order the board reorganization, the removal took place shortly after his own appointed board criticized the prison’s operation as well as urging the replacement of current Parchman Superintendent John Allen Collier. In the fall issue of the Parchman convict-produced publication, Inside World, around one thousand inmates signed a petition supporting current Superintendent Collier, blaming the prison farm’s problems on politics rather than its leader. Of interest to note, in late October a group of “black inmates” from Parchman wrote the Clarion-Gates v. Collier, 897-898. For more on those conference, see “State Prison Huddle Set,” Clarion-Ledger (Jackson, MS), October 15, 1972 and “Prison Order Due Friday from Keady,” Delta-Democrat Times, Greenville, MS, October 17, 1972.
*Ledger* calling this support petition “a lie.” State actors, from the highest positions in Mississippi, anxiously awaited Judge Keady’s official order; he would issue his final order within the week.  

Judge Keady released his full judgment on October 20, 1972. Keady divided his judgment into two parts, immediate and intermediate relief, and long-range relief. Discussing changes needing to take place immediately, Judge Keady stated that prison officials needed to revise the rules and regulations governing inmate mail censorship. Prison authorities “shall not open or otherwise interfere with any outgoing mail of inmates addressed to” federal officials, including the President of the United States, members of the State Probation and Parole Board, and inmates attorney’s of record. Prison authorities also should not interfere with outgoing mail except “to open and inspect, in the presence of the inmate, any letter where prison officials have reasonable grounds to suspect such communication is an attempt to formulate, devise, or otherwise effectuate a plan to escape from the penitentiary, or to violate the laws of the state of Mississippi or of the United States.” Prison officials could inspect incoming mail for contraband, but only if they had “reasonable grounds” to suspect escape attempts or law infractions. The prison should not place any limitations on the number of letters sent from inmates to the officials listed above, but prison representatives could limit the number of outgoing letters to other people “as an appropriate disciplinary measure pursuant to published prison rules.” If the prison wished to alter said rules, while Keady’s court has jurisdiction over Parchman officials must submit the rule.

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changes in writing to the court, serving prisoners’ counsel as well at least ten days before said rule change was to take effect.  

Judge Keady ordered new procedural rules governing discipline of inmates enacted as well. Prison authorities must notify an inmate of a violation in writing at least twenty-four hours before a disciplinary hearing take place. The accused should be given the opportunity to appear and be heard during the hearing. In addition, “in no event shall the person bringing the charge serve on the disciplinary tribunal” conducting the hearing. The Department of Corrections also had until November 20, 1972 to “compile comprehensive rules and regulations governing inmate conduct which are sufficiently clear and definite to apprise inmates of” what constituted a breach, the penalties which might be imposed for such a breach, and “a complete statement of the procedure by which such determination shall be made.” Keady also enjoined prison authorities “until further order of this court . . . from imposing any form of corporal punishment of such severity as to offend present-day concepts of decency and human rights.” Keady specifically banned prison officials from using forms of corporal punishment that it found to be excessive, such as

- beating, shooting, administering milk of magnesia, stripping inmates of their clothes, turning fans on inmates while they are naked and wet, depriving inmates of mattresses, hygienic materials and/or adequate food, handcuffing or otherwise binding inmates to fences, bars, or other fixtures, using a cattle prod to keep inmates standing or moving at Maximum Security Unit (MSU) or elsewhere, shooting at or around inmates to keep them standing or moving while at MSU, [and] forcing inmates to stand, sit or lie on crates, stumps or otherwise maintain awkward positions for prolonged periods.

 Authorities must take “immediate necessary action without excessive force to prevent acts of violence or destruction or escape attempts to restore order,” but if officials used such action, they had to make a complete report of the situation.  

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Keady stated that officials could utilize disciplinary confinement at the MSU or in the “dark hole” only if the inmate received the same food ration as other inmates, officials allowed the inmate to wear ordinary institutional clothing, authorities give the prisoner a toothbrush, soap, and shaving utensils, and the cell contained adequate bedding and clean sheets. Adequate bedding, however, could be withheld if the inmate destroyed the mattresses. Prison officials must ensure that disciplinary cells be properly heated, ventilated, and sanitary. Under no circumstances could a prison official place an inmate in the “dark hole” for longer than twenty-four hours. The order further required officials to eliminate racial segregation throughout the prison farm. Keady banned all prison authorities from engaging, or continuing to engage, in racially discriminatory practices and procedures of any nature in the operation or administration of the penitentiary, including racial discrimination in recruiting, selecting and hiring of staff guards and other civilian personnel, discrimination in assigning inmates to work details, discrimination in providing vocational educational training, or in any other practice or procedure which effectuates disparity in treatment of prisoners because of race.

Keady ordered prison officials to submit to the court a report detailing their plan of action ridding Parchman of segregation by December 20, 1972. After submission of the plan, authorities had four months to implement the plan, which meant that Parchman should be desegregated no later than April 20, 1973. 

Taking a much different approach than Judge J. Smith Henley during his early Arkansas prison litigation, Judge Keady continued issuing specific changes that the prison needed to make immediately to Parchman farm. Regarding medical facilities and staff, Mississippi state authorities must hire additional medical personnel so that the prison medical staff consisted of

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287 Ibid., 900.
288 Ibid.
three full time doctors, two full time dentists, two full time trained physical assistants, six full
time nurses, either LPNs or RNs, one medical records librarian and two other clerical assistants.
While Judge Keady noted that “no inmate shall be utilized to fill a position in the above
described civilian medical staff,” he did allow the prison to utilize “trained and competent inmate
personnel to supplement the minimal civilian medical staff necessary for adequate health care.”
Prison officials needed to allow defendants access to a radiologist and pharmacist. In other
words, “defendants shall use their best efforts to comply with the general standards of the
American Correctional Association relating to medical services for prisoners.” Keady insisted
authorities improve on medical facilities as well, including improvement on the housing and
treatment of inmates with tuberculosis and those that were chronically ill. No inmate should be
punished for requesting medical attention unless authorities made a finding that a particular
inmate sought medical care “unnecessarily and for malingering purposes.”

Prison officials also had until December 20, 1972 to present to the court “a proposed
program of classification and assignment of all inmates” which considered desegregation, prison
safety, and providing honors camps for inmates. Here, authorities would have four months as
well to enact their proposed plan. Keady noted that the defendants currently had forty thousand
dollars of funds from the LEAA, which could be used for the study and proposal of a
classification program. The United States Bureau of Prisons also agreed to help Mississippi
authorities. Prison officials should consult with sheriffs and circuit judges to explore ways that
pre-trial detainees might not be sent to the prison farm in order to help state officials effortlessly
adopt the new plan. Other changes must be enacted which would take into account prisoner
safety, such as eliminating overcrowding in cells and barracks, creating more dividers in
barracks, assigning more civilian guards to barracks and relieving inmate guards of their night
watching duties. Once again, the court had until December 20 to bring these and other changes to
the barracks, including the prohibition of gambling and fighting among prisoners. Judge Keady
declared all of these changes interim, being aware that “greater improvement in the degree of
protection accorded to inmates may well depend upon modification of existing structures or the
building of new and additional facilities and the fulfillment of a proper classification and
assignment system.” 289

Keady required officials to eliminate the use of shooter trusties immediately. Also,
civilians needed to replace the trusties serving in a custodial manner at the punitive unit. These
two changes, according to Judge Keady, constituted “the highest priority items in the elimination
of the trusty system. Defendants shall exert every effort to obtain competent civilian personnel,
making special appeal to the black community for qualified persons.” Repeating the mantra of
Judge Henley in Arkansas, Keady reminded prison authorities that “lack of funds shall not
constitute valid grounds for continuing delay.” Keady also indicated that his court would
temporarily increase the amount of funding allowed for new hires by state law if it meant that
more African American officials could be hired. While immediate plans had to take effect before
December 20 as well, Keady understood this would take more time to put into effect. Thus the
state had until June 20, 1973 to provide a plan for the total elimination of shooter trusties, which
“shall include the type and nature of training program recommended for the new civilian guard
force and proposals for recruiting personnel upon racially nondiscriminatory basis.” In the short
term, prison officials must administer psychological tests to those inmates with armed or
custodial authority. Judge Keady concluded the short-term relief portion of his judgment by

289 Ibid., 901.
enjoining defendants “to make all improvements and expenditures which are specified in the Interim Committee’s Report on Mississippi State Penitentiary.”

As for long-range relief, Judge Keady ordered prison officials to submit to his court by December 20 “a comprehensive plan for the elimination of all unconstitutional conditions in the inmate housing, inadequate water, sewer and utilities, inadequate firefighting equipment, inadequate hospital and other structures condemned by this court.” Keady expected state authorities to collaborate with the three-man committee appointed by the LEAA as well as with state congressional leadership. Here, Keady would not “dictate or limit the nature or content of” the long-range plans as he had done with the short-range, immediate implementations. Keady offered innovative long-term plans that differed from Judge Henley’s in that they involved the whole criminal justice community of Mississippi. Judge Keady suggested that prison officials do what they could to reduce the number of incarcerated people within the state. Officials could accomplish this goal, for example, by housing certain inmates at other places instead of Parchman, exploring relationships with neighboring states or federal prisons. The Magnolia State should also consider implementing a halfway house system that would house certain first offenders or non-violent offenders. Keady also ordered prison officials to increase their utilization of work release, parole, and probation. The defendants should also utilize the prison’s assets better, including its farm operations, slaughterhouse, and dairy, consider alternatives of renting or selling farm acreage and expanding prison industries. Keady detailed specific long-term construction projects prison officials should undertake, which “would not only eliminate present overcrowding but also allow future expansion of prisoner population . . . and provide an adequate supply of safe drinking water, and control of all rodents and insects.” The prison should

290 Ibid., 902-3.
also consider the construction of a “complete medical center including a hospital within the Parchman complex” as well as making agreements with private hospitals and clinics in Mississippi.\textsuperscript{291}

Judge Keady concluded his historic judgment by giving defendants the responsibility of “fully explaining the terms of this order to all their agents, servants, representatives and employees, including staff, guards and other personnel, to assure their understanding of the court’s requirement and strict compliance therewith.” Keady also left open the power to “issue further and supplemental orders in aid of the provisions of this injunction or any of its terms.” Thus, fully aware of Henley’s parallel reform of prisons in Arkansas within the realm of the Eighth Circuit Court of Appeals, Judge Keady brought similar reforms to Parchman Farm, Mississippi, and the Fifth Circuit Court of Appeals and retained jurisdiction over Parchman and the Mississippi prison system. Mindful of the possibility of reluctant state actors, he broke from Henley’s earlier practice of allowing the prison to draft its own short-term changes by specifically stating a number of immediate changes the prison needed to make. Like Henley, he took control of the Mississippi prison farm and left open his ability to issue future orders to the prison. And like Henley, he stated that lack of money would not be a sufficient excuse for not imposing the immediate changes he ordered. With one swift, complete, and very bold order of change to take place at Parchman, Judge William Keady sent a strong message to prison authorities. It took one opinion for Judge Keady to enact the change that Henley’s methods took years to bring about. Whether or not Mississippi would respond to his demands was another story.\textsuperscript{292}

\textsuperscript{291} Ibid., 903-4.
\textsuperscript{292} Ibid., 905, and Taylor, Brokered Justice, 202.
“Patching the Holes:” The State’s Reaction to *Gates*, October 1972-Late 1973

In the words of one Mississippi historian, “political pragmatism shaped the state’s initial response to *Gates*.” Considering the pains Judge Henley endured forcing the state of Arkansas to reform its prisons, most observers knew Judge Keady would have his work cut out for him. No matter how Governor Waller’s testimony in *Gates* sounded to outsiders, the state knew it would have to appeal the judgment, if only to give it some time to consider how and when these changes should take place. The state, however, did what it could to “patch the holes,” such as creating a meager adult education program. In September of 1972, an embarrassing murder of a trusty at Parchman forced Governor Waller to create a special investigatory commission at the prison, further impeding progress. Convicts continued running the daily operations of the prison, including the financial records. In many ways, the convict record keeping did little to hide corruption or graft and helped bring to light a number of violations on the part of prison authorities. For instance, prison officials often purchased new suits under the guise of “uniforms.” One member of the penitentiary board purchased 208 pounds of beef and pork from Parchman for $48.90. Asked later about his purchase, the board member stated that such purchase agreements constituted a “passed along” privilege. In December of 1972, Superintendent John A. Collier purchased new office furniture worth fifteen thousand dollars from a manufacturer owned by a friend of the governor. The post-*Gates* era meant the end of these so-called “perks.”293

Superintendent Collier further expressed the difficulty of hiring of civilian guards to replace armed trusties. “If we hire civilians to replace all the trusties, we’ll have to hire sixty-seven more than we have now. I don’t think we’ve hired sixty folks since I’ve been here, and

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293 Taylor, Brokered Justice, 204.
thirty have quit work since the first of the year. Folks just don’t want to work here,” Collier conveyed the *Delta Times-Democrat*. As for relieving the “cage-walkers,” those trusties that guard inmate barracks at night, Collier expressed even more doubt at finding free world personnel willing to replace those convicts, telling the newspaper “you couldn’t pay me to take a position like that.” Keady’s proclamation that shortage of funds shall not prevent these changes from taking place represented the judge “lock[ing] horns” with the state legislature, stated Collier, for “if we’re going to hire people when we don’t have the money, it’ll be the legislature’s problem.” Collier also saw little chance of complete desegregation of the prison by April 20, 1973. Remarking that of the near two thousand inmates, two-thirds of them were African American, thus, according to Collier, “you run out of white guys if you’re going to do it on an equal basis.” According to the superintendent, Judge Keady “evidently didn’t buy” his earlier plan of integration. Collier also received cautionary tales from his associates. Prison psychologist Dorothy Rice, in a letter to Collier dated October 29, 1972, stated her concern at integrating “before adequate facilities are available and before an adequate program of counseling and supervision can be initiated.” Throughout the remainder of the article, Collier had few answers for Keady’s demands.294

Superintendent Collier would have little help from the legislature, for they did very little when it came to solving a number of the underlying philosophical issues creating an unconstitutional environment at Parchman. The state legislature balked at all of Judge Keady’s suggestions for curing the prison farm of long-term overcrowding ills. It refused to fund money for expanded construction of new camps, and it “absolutely” shot down any proposal to create

294 Letter from Dorothy Rice, Parchman Prison Psychologist, to Superintendent John Allen Collier, Forwarded to Judge Keady, October 29, 1972, Judge William C. Keady Papers, *Gates* Collection, MSU Box 115 (Original Box 8), Correspondence (General) Folder, Mississippi State University Archives; and Ed Issa, “Order Brings Difficulties for Collier,” *Delta Democrat-Times* (Greenville, MS), October 22, 1972.
more prison units around the state, seeing any satellite prison as yet another burden on the state treasure. Governor Waller did all he could to convince county sheriffs to keep their prisoners at the local jails. Superintendent Collier ultimately quit his post after the furniture purchase fiasco, thus prompting the state to look for another leader of the prison farm. Unfortunately, not many sought the leadership post of one of the worst prisons in the United States. One potential candidate, a Mississippi native then working for the prison system in Colorado, declined even being considered for the job, stating that Parchman was the worst prison he had ever seen. Unable to find a suitable candidate for the post, which paid $17,000 annually, Judge Keady ordered the state legislature in August of 1973 to increase the yearly salary of Parchman’s superintendent. “Legislators fumed and cursed about this attack on their sovereignty,” swearing to resist it at all cost.” Judge Keady ultimately had to deal with a state legislature even more reluctant to provide money for the prisons than the assembly in Arkansas. The judge understood, however, that the legislature would have to provide funding soon. Ultimately, the LEAA provided the increased salary in an attempt to make the superintendent job more attractive.295

At the beginning of 1973, prisoners continued sending Judge Keady petitions and letters complaining of further problems at Parchman. At least twelve inmates signed a petition dated January 18, 1973, citing unfair conditions in the segregation unit. The petition indicated that inmates “housed in the permanent sections of the security unit, have not received any relief from the suit filed.” The petitioners claimed they did not receive a sufficient diet, and that corporal punishment had continued, with one inmate, “an alleged mental person and . . . under the care of the prison’s psychiatrist . . . was beatened [sic], kicked, stomped and choked by the maximum security unit Sgt Mooney, guard Cole and three convict half trusties and sprayed with mace quite

295 Ibid.
extensively.” The inmate had spit up blood for three days, and prison officials continued to deny him medical attention. Willie Phillips, an eighteen-year-old convet at Camp eleven of Parchman who has been at Parchman since age thirteen, wrote Judge Keady a letter postmarked on January 29, 1973 informing him of a sergeant selling alcohol to prisoners. Inmate Phillips also complained of prison officials “trying to make me go to school against my will; and I don’t want to go.” The continuous influx of petitions made Keady’s task of reforming Parchman even more difficult.296

On February 1, 1973, the Mississippi House of Representatives passed a bill that prohibited counties from sending any more prisoners to Parchman, which Representative Bob Anderson of Wesson stated Keady’s order necessitated. The Senate, meanwhile, approved the prison selling around $32,000 in obsolete farm equipment to bring in needed revenue. Some senators, such as Ellis Bodron of Vicksburg, objected to this, questioning why the prison farm did not have to go through the building commission and the legislature like other government agencies. Governor Waller continued urging the legislature to appropriate whatever funds necessary to meet the requirements of Judge Keady’s orders.297

On February 2, 1973, prison officials would submit their long-range plan to Judge Keady. This plan involved mostly construction and physical improvements, and it presented three phases that would be fully completed at the end of 1976. The legislature funded all three phases at a cost of $3 million. This plan represented an ambitious effort on the part of state prison authorities and the federal officials helping the cause as well. The first phase dealt mostly with renovating and

296 Parchman Prisoner Petition, January 18, 1973, Judge William C. Keady Papers, Gates Collection, MSU Box 115 (Original Box 8), Correspondence (General) Folder, Mississippi State University Archives, 1-3; and Letter from Willie Phillips, January 29, 1973, Judge William C. Keady Papers, Gates Collection, MSU Box 115 (Original Box 8), Correspondence (General) Folder, Mississippi State University Archives.
upgrading current buildings and operations, as well as building a new Administrative Security Building and new maximum and medium security units. Phase II, which would take place between 1974 and 1975, would consist of the construction of a central food service and cold storage plant, natural gas heating and emergency lighting, and other renovations and upgrades to farming operations. Phase III, taking place during 1975 and 1976, involved the construction of a new field house and further upgrades to farming operations. The LEAA would help offset the cost of Phase I by offering the state of Mississippi a grant in the amount of $2,770,000. Sadly, according to the federal monitor overseeing these efforts, “in the process of transforming the original plans into statutory law, certain priorities were reshuffled by the state with unfortunate consequences.” The overall failure of the legislature to consider rehabilitative services particularly disturbed the monitor. Coincidentally, while this report urged increased spending on penitentiary matters, testimony in front of the Senate Appropriations Committee the day before revealed that “until recently, there was virtually no control over accounting and purchases at the Mississippi State Penitentiary.” In late February, the Mississippi Senate proposed a bill allocating $10,700,000 to simply build a new penitentiary. Considering the lack of progress made following Keady’s judgment and order in Gates, the legislature probably expected the Fifth Circuit to overturn some of Keady’s proclamations on appeal.298

The Higher Court Affirms: Gates, the Fifth Circuit, and Keady’s Mandate, November 1973

Ultimately, the state of Mississippi did appeal Keady’s Gates hearing, but it did not appeal on issues relating to the unconstitutional declarations of Keady towards Parchman. As Arkansas

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had earlier, the state appealed Keady’s awarding of attorney’s fees to prisoner counsel. In determining that “there can be no question about the adequacy of the trial court’s findings to warrant to awarding the awarding of attorneys’ fees,” the Fifth Circuit Court of Appeals on December 5, 1973 also presented its own opinions regarding the prevailing conditions at Parchman Farm. From the earliest Gates hearings in 1971, state actors, specifically the legislature, “staunchly denied the existence of unconstitutional practices and conditions at Parchman” and they “continued to adhere to this position at several lengthy evidentiary hearings” thus compelling the prisoner’s counsel, in the words of the Fifth Circuit Judge Elbert Tuttle, to

> expend time and expenses which otherwise would not have been incurred. . . . The unconstitutional conditions and practices at Parchman have long existed as a result of public and official apathy, despite the notoriety of matters affecting prison administration stemming from prior reports to the State Legislature and widespread publicity of the news media. . . . We are further convinced that the unnecessary delay, extraordinary efforts and burdensome expenses incurred incident to the resolution of this case were occasioned because of defendants’ maintenance of their defense in an obdurately obstinate manner.

Thus, in commenting on the defense counsel’s conduct throughout the Gates trial, Judge Tuttle affirmed the undertaking of Judge Keady. No longer could the state put off reforming the unconstitutional conditions at the prison farm.

Or could they? The Fifth Circuit, after denying the state of Mississippi’s request for an appeal in front of a full panel of Fifth Circuit judges, known as an en banc hearing, the defendants actually received another opportunity to present an appeal in front of the court in September of 1974. The appeal of Gates took place in this bifurcated manner due to the Fifth Circuit wanting to hold off issuing an opinion on certain matters until the U.S. Supreme Court

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299 Gates v. Collier, 489 F.2d 298 (5th Cir. 1973).
300 Ibid., 301.
301 The rehearing en banc was denied in Gates v. Collier, 500 F.2d 1382 (5th Cir. 1974).
decided on a matter that involved some of the issues on appeal. Judge Elbert Tuttle of the Fifth Circuit first decided that the initial Keady-led trial did not require an en banc panel. The Fifth Circuit had earlier opined that only “if the action to be enjoined is authorized by statewide prison regulations” would the court require an en banc hearing. The Fifth Circuit distinguished the present case due to the governor’s previous admissions of unconstitutionality.

Judge Tuttle discussed the sole argument of appeal, which involved the state lacking the funding to implement Judge Keady’s order during the mandated time frame, amounting to the lower court exceeding its jurisdiction. Once again, the Department of Corrections did not appeal the underlying declarations of unconstitutionality; it merely stated the lack of funds necessary to enact Judge Keady’s orders. “To reiterate,” wrote Judge Tuttle, as if to reinforce that fact, “appellants do not challenge a single finding of fact or conclusion of law by the trial court.” Thus, the court found it necessary to establish the extent of change necessary to transform Parchman into a constitutional prison farm. Judge Tuttle examined each of Keady’s mandated changes.

Considering the elimination of racial segregation and discrimination, the Fifth Circuit held that Keady’s allowance of the prison six months from the date of judgment “to devise and implement a plan desegregating the housing facilities” amounted to “well considered” relief, “within the jurisdiction of the district court and necessary for the prison operation to comport with the equal protection clause.” Concerning conditions of the barracks and medical facilities, Judge Tuttle also agreed with Judge Keady, stating that “prison authorities have abused their discretion and that confinement of inmates at Parchman, in barracks unfit for human habitation

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302 The Fifth Circuit was waiting for an opinion to be released in Wolff v. McDonnell, 418 U.S. 539 (1974).
303 See Sands v. Wainwright et al, 491 F.2d 417 (5th Cir. 1974).
304 Gates, 1296.
305 Ibid., 1299.
and in conditions that threaten their physical health and safety and deprive them of basic hygiene and medical treatment by reason of gross deficiencies in plant, equipment and medical staff, not only departs from state law, but constitutes cruel and unusual punishment.” The principal issue regarding the physical conditions of facilities at the prison involved the “exact remedy to alleviate these conditions to minimal constitutional standards. At this juncture, approximately two years after the entry of the district court’s initial judgment, . . . [the court was] concerned over unnecessarily adjudicating this complex question.” Judge Tuttle continued affirmed Keady’s decision and recognized “the district court’s power to prescribe a remedy. However, any decision dissecting what precise degree of improvements in these two areas is necessary to meet constitutionally minimal standards is premature at this stage.” The court also determined that Keady’s court must retain jurisdiction over Parchman prison farm.\footnote{Ibid., 1300-4.}

Considering the use of solitary confinement and the “dark hole,” the court utilized the requirements set forth by the U.S. Supreme Court in \textit{Novak}, which involved authorities placing inmates in a cell with a sink and a toilet, given a tooth brush, tooth paste, and toilet paper, where the cells were cleaned whenever a prisoner showered, where the prisoner slept on a concrete floor with a blanket. In Mississippi, reiterated the Fifth Circuit, solitary confinement consists of individual cells shared by two individuals. But it also consisted of the “dark hole,” a six-foot-by-six-foot cell with no lights, no toilet, no sink, a concrete hole in the middle of the floor for excreting waste, no windows, no soap, no bedding, and no food. According to Judge Tuttle, “even under the restrictive standards for determining cruel and unusual punishment enunciated in \textit{Novak}, this solitary confinement in the dark hole at Parchman undoubtedly meets the test as found in the district court.” Judge Keady was well within his duties by demanding that changes
take place to confinement within the "dark hole" to bring it up to constitutional standards. The Fifth Circuit also had no problem agreeing with Judge Keady's restraints on corporal punishment and his ordering or the abolition of the trusty system as currently run at Parchman. Regarding prisoner safety, an issue both Judge Keady and Judge Henley in Arkansas took very seriously, the Fifth Circuit concluded that "not only do we agree that the totality of the present practices fosters cruel and unusual punishment, but we also conclude that none of the above measures [as implemented by the district court] require burdensome implementation or is beyond the remedial jurisdiction of the district court." While the state of Mississippi's appeal represented a broad appeal of all aspects of the district court trial, due to their lack of specific challenges regarding mail censorship and disciplinary procedure, Judge Tuttle refrained from giving the Fifth Circuit imprimatur to those portions of the order.307

"The final catchall plea on appeal," wrote Tuttle, was “the financial inability to implement the district court's order." Both the Mississippi Department of Corrections and the United States as intervener questioned whether or not the district court judge had within his power the ability to pass down such a judgment on an executive office of a state which would require them "to recruit, employ, train and equip 150 new employees at an estimated cost of $1,400,000 annually prior to June 20, 1973" and to construct or renovate facilities at Parchman. Here, Judge Tuttle pointed to Holt I from Arkansas in which Judge J. Smith Henley stated that lack of funds could not be used as an excuse and that he was well within his power to ask the state legislature to appropriate money for the prison, which was upheld by the Eighth Circuit Court of Appeals as well. Judge Tuttle repeated the language of Judge Henley from the Eastern District of Arkansas:

307 Ibid., 1305-11, 1316-18.
"Let there be no mistake in the matter; the obligation of the Respondents to eliminate existing unconstitutionalities does not depend upon what the Legislature may do, or upon what the Governor may do, or, indeed, upon what Respondents may actually be able to accomplish. If Arkansas is going to operate a Penitentiary System, it is going to have to be a system that is countenanced by the Constitution of the United States."\(^{308}\)

Judge Tuttle also quoted the Eight Circuit in its affirmation of *Jackson v. Bishop*, another case led by Judge Henley, stating that "humane considerations and constitutional requirements are not, in this day, to be measured or limited by dollar considerations." The respondents, according to Tuttle, cited no case that would support their opinion that the district court went beyond its powers.\(^{309}\)

Finally, Judge Tuttle threw out the respondents’ objection that the original court order did not apply to current Mississippi state actors since the current governor, superintendent of Parchman, and the penitentiary board were not named in the original case. Judge Tuttle stated that this held little merit, for prisoners sued the defendants in their official capacities, and considering they filed the original complaint against those actors "and their successors," this was an easy objection to overcome. Respondents also asked that the "harsh and extensive" judgment and order be set aside due to the current governor and other state officials pledging "to create a model prison. The appeal to this Court is that since improvements are being implemented in the condition and operation of Parchman, the order of the district court should be set aside and 'the defendants should be left to operate their own state prison.'" Fortunately for those within the walls of the prison farm, Tuttle did not agree with this logic. The last ditch effort of appellants putting together a manifest of quotes from cases stating the federal government should not meddle in the affairs of a state run prison system did nothing to convince Judge Tuttle otherwise.


\(^{309}\) *Jackson v. Bishop*, 404 F.2d 571 (8th Cir. 1968), 580.
By this proclamation, Judge Tuttle not only affirmed the lower court judgment in its totality, but he also affirmed Judge Keady's desire for his court to retain its supervisory role over Parchman for the time being. Thus, the Fifth Circuit became the second federal court circuit in the nation to proclaim that in the matter of unconstitutional state prison systems, the federal courts definitely had a place in making sure they adhere to constitutional standards.\(^{310}\)

Keady and his court in the Northern District of Mississippi would continue its jurisdiction over the prison system in Mississippi. State actors in Mississippi, even after admitting from the highest executive office that conditions at Parchman definitely amounted to an unconstitutional level, attempted to appeal Keady's initial Parchman case, hoping to delay having to put the immediate plans that Keady ordered into place. Judge Keady treated the Mississippi prison farm differently than Judge J. Smith Henley did in Arkansas. While Judge Henley tried as best he could to allow the prison system in Arkansas to make changes, Judge Keady had hindsight as his ally in realizing that change would not take place in Mississippi without his stern, forceful, and direct order to the state. The Fifth Circuit, as had the Eighth Circuit in the case of Arkansas's prisons, agreed with Judge Keady and reinforced his mandate to do whatever was within his court's power to enact change across the board in Mississippi. Keady would do whatever was necessary to transform Parchman into a constitutional prison farm. Unlike Judge Henley in Arkansas, Keady’s possessed a judicial personality of the forceful reformer.

While Judge J. Smith Henley played the role of the pure reformer, beginning slowly and allowing the state to change conditions on its own, Judge Keady had the gift of hindsight to guide his forceful reform of Parchman. During the early phase of prison reform in Mississippi, Judge Keady certainly lived up to the hopes of those wanting reforms at Parchman. With the

\(^{310}\) Ibid., 1321.
Fifth Circuit lining up with the Eighth Circuit in the area of prison reform, their affirming of Judge Keady’s declaration of the unconstitutionality of Parchman only gave him more judicial capital to follow through with the transformation of Mississippi’s prison system.
CHAPTER EIGHT: THE CONCLUSION OF JUDGE KEADY’S REFORM OF PARCHMAN FARM, 1974-1978

Judge William C. Keady, with strengthened resolve thanks to the Fifth Circuit Court of Appeals, continued his control over Mississippi’s Parchman Farm. State actors did not fool the Fifth Circuit with simple cosmetic changes, for “clearly, state politicians were dragging their feet, continuing to speculate that the replacement of a few urine-soaked mattresses, a little sprucing up, and the addition of several new units at Parchman would suffice; since October 1972 only 368 new beds had been added.” Many in Mississippi realized that everyone in Mississippi’s government, especially the legislature, had to do more to produce a constitutional prison farm. By early 1975, Judge Keady found none of the “cosmetic” changes acceptable. The Mississippi state legislature remained unenthusiastic, holding back funding for the necessary changes. State officials seemed reluctant to do anything relating to the prison farm, for even after the positive recommendations from Judge Keady, fifteen senators voted against appointing Jack K. Reed the new superintendent of Parchman Farm. The legislature had hoped the governor could do something, but they had to realize that the fate of the prison farm was firmly within their control. Governor Waller could not do much, for he was “caught squarely between a federal judge demanding money bills and a legislature unwilling to deliver them.” Keady, unquestionably, would have to be the driving force behind change in Mississippi to make Parchman constitutional.311

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311 Taylor, Brokered Justice, 208-9.
In the January/February issue of the Parchman inmate published periodical *Inside World*, editors penned an article entitled “Special Editorial to Legislators,” which began:

This was not written for the Superintendent, but for inmates in the hope that the legislature will help us help ourselves. Any rebuttal will be welcomed. It might appear ridiculous to expect you, the most respected people of Mississippi, to read much less support the idea of a convict writing to you in hopes of the betterment of himself and others like him, but I shall nevertheless.

The editorial questioned why a state prison system like Mississippi, which represented a progressiveness in being one of the few prison systems in the nation that allowed conjugal visits, could not simply enact reforms to the prison but “exceed all expectations” of prison reform.

“Mississippi has presently at its disposal the opportunity to make a great stride toward progress and betterment of this state,” read the article. “This opportunity lies with you.” The unnamed author of the piece holds out hope that newly appointed Parchman Superintendent Reed might be able to accomplish something no other superintendent could. Even the inmates of Parchman farm realized the real power rested with the legislature. The article concluded:

His is you, the Mississippi State Legislature. It will be only through your support of him and his new programs can he become a truly effective administrator and superintendent. . .

Gentlemen, you owe it to yourselves, to the people of Mississippi to do what’s right. In this case I, a mere inmate of your penitentiary, suggest that the right way would be to allow Mr. Reed to help better our state by improving our penitentiary. Give the man a chance. We are and all we are is convicts!!!! [sic]

Inmates had little to do at the beginning of a new year but hope that its legislators did all they could to enact Judge Keady’s orders. The judge did all he could for the inmates, keeping watch on prison authorities to see if those changes took place.\(^{312}\)

In April, Judge Keady issued a minor order that amended his earlier proclamation regarding mail censorship. In this new order, Keady gave prison authorities permission to inspect

mail and remove money, drugs, weapons, liquor, and other items prohibited by law. The order also allowed prison officials to take appropriate action regarding the discovery of such items. Inmates reacted to this order with panic, declaring in Inside World that “everyone seems to be in turmoil concerning the new court order.” The article clarified that mail and parcels would only be opened for inspection and not censored. From the looks of things, 1974 would represent a year of great change at Mississippi’s largest penal farm.313

Differing groups and individuals kept attention focused on Parchman. Keady appointed T. Wade Markley to act as a monitor at Parchman. Markely testified in court that Superintendent Reed “took pretty violent exception” to his presence at the prison. On Tuesday, January 28, 1975 Markeley made his last personal inspection of the prison before Keady’s next opinion. Markeley, along with former Arkansas prison administrator Robert Sarver, now working for the University of Arkansas, advised Keady that their inspections “revealed numerous improvements, some situations that haven’t changed, and ‘some reversions.’” Sarver did admit that “this administration is running as hard as it can forward and it is still losing ground. . . . They’re making the best of what they have.” Dr. Robert L. Brutsche, the chief medical adviser to the director of the US Bureau of Prisons, declared medical facilities at the prison to be “generally adequate.” A number of other witnesses also testified to the job that Jack Reed performed at bringing change to Parchman. Even though some of the monetary changes began with former Superintendent Collier, PEER Auditor Robert Livingston stated that Reed continued those changes, and that “it really gathered momentum under his direction.” Livingston, who visited Parchman in May of 1973, noted “numerous deficiencies in almost all areas of operation.” According to the Clarion-Ledger, all witnesses testifying on behalf of Reed’s senate

confirmation credited the legislature “with providing more money and direction to the prison but
said it was Reed who implemented the reform strategy and made it work.” While one might
rightfully question this praising of the legislature from testimony in front of a legislative
committee, no one doubted the evolution of Parchman. Now, Judge Keady needed to make sure
the change headed in the right direction. 314

In December of 1974, inmates petitioned Keady’s court to reevaluate the change taking
place at the prison farm, and on January 31, 1975, Keady released a memorandum opinion with
his conclusions. Keady would reexamine seven issues, all which had their genesis in the previous
Gates case. 315 These issues included disciplinary procedures, mail regulations, racial
discrimination in both housing and employment of free world personnel, physical facility
conditions, overcrowding, medical issues, and inmate safety. In other words, Judge Keady would
determine whether or not the state made any substantive change in accord with the order released
in the first Gates case in 1972. Keady began by praising state officials, declaring that “according
to the overwhelming proof, commendable progress has been achieved by the defendants in many
areas,” and Keady noted that all branches of the government should accept praise for the
“substantial progress . . . toward removing or eliminating, if not in whole then certainly in great
part, many of the nefarious practices and conditions which this court found to exist in 1972.”
Keady attributed much of this change to the prison’s transition from inmates to civilians ensuring
inmate safety. Prison authorities hired enough free world workers to achieve a complete
transition away from arming inmates with weapons. Merit and qualification based hiring of
prison staff, as well as a rigorous and ongoing training program, had helped produce a

314 “Keady Checks Prison Reform,” Clarion-Ledger (Jackson, MS), January 30, 1975; and Ronni Patriquin,
“Supporters of Reed Complete Testimony,” Clarion-Ledger (Jackson, MS), January 30, 1975.
315 Gates v. Collier, 390 F.Supp. 482 (N.D. Miss. 1975). This case will also be referred to as Gates II.
formidable correctional officer squad for the prison farm. “The history of the Mississippi corrections system, both before and after our comprehensive Gates order,” wrote Keady, provided “vivid proof of the importance of professionally trained staff in a prison setting.” State officials improved other prison services as well, such as food service, inmate clothing, and education, and officials have also added new programs, such as a counseling program, family visitation, and “a full chaplaincy service,” which included “the exercise of religious freedom under reasonable rules and regulations.” Inmate classification had also been introduced, and though “still in a primitive state,” it represented tremendous change for the prison farm.

Regarding the physical structures, the state provided three “temporary” housing units, which provided adequate quarters for up to one hundred inmates. Officials made improvements to the sewage and water systems as well. Prison administrators had also secured under contract the construction of a new medium security building, costing two million dollars with funding from both state and federal sources.316

Most importantly, Judge Keady noted that evidence demonstrated that prison officials removed racial discrimination from Parchman “almost without dispute. . . . Equality of treatment of minority inmates, in work assignments, housing, discipline, education, and in other ways” now permeated the prison farm. African Americans also reached free world positions of authority, in both security and non-security divisions. Blacks represented forty-five percent of the security work force, and African Americans filled a majority of the inmate counselor positions. The prison’s recruitment program improved significantly and helped seek out, recruit,

316 Ibid. 484-85
and hire a number of African American employees. Thus, Judge Keady expressed satisfaction at
the progress made in racial segregation and integration.317

Serious constitutional problems remained, wrote Judge Keady, at Parchman. The judge
first pointed out issues with the prisons’ master plan, which detailed a plan where prison
administrators transferred a number of prisoners to other facilities across the state with the help
of federal funds from the LEAA. Unfortunately, LEAA restricted its funding to the prison farm
for this matter due to its position “that the concentration of prison inmates at a single location or
operating facility, in numbers exceeding four hundred, is contrary to generally accepted modern
prison practices.” Judge Keady rightfully blamed the legislature for not helping matters. The
state legislature, according to Keady, did not present any sort of plan to construct new statewide
facilities to house adult felony offenders, therefore if the legislature choose to retain Parchman as
the only facility in the state, “Mississippi can expect to shoulder the entire burden without
financial assistance from ‘Big Brother.’” The present housing situation, according to Keady,
combined with the lack of funds “compounds an already critical housing situation.” Prison
authorities lacked any sort of realistic future planning. Officials wanted to construct a new 192-
man unit, but the state legislature appropriated no funds for the project, and the federal
government could not provide any new funds. Many of the current residential structures, “now
quite old,” remained “in a state of deplorable and appalling disrepair.” Keady declared that the
units “remain unfit for human habitation.” More importantly, Keady noted a number of these
“subhuman” conditions in the first Gates opinion of September 1972 continued to the current
litigation. The old buildings, combined with the openness of the bunk-style living quarters at

317 Ibid., 485-86.
Parchman, created a situation where no one could expect prison officials to succeed in the “prevention of acts of violence.”\textsuperscript{318}

Dr. Robert Brutsche, Assistant Surgeon General of the U.S. Public Health Service and chief medical advisor of the U.S. Bureau of Prisons, testified that medical services and facilities at Parchman had “shown marked progress within the past two years.” He concluded that the court’s requirements in this regard had “been substantially complied with, and worthwhile innovations established, except for two gross deficiencies.” Officials needed to hire more than one medical doctor. Additionally, Brutsche found the existing hospital facility “grossly inadequate for the prison needs, incapable of repair,” and that it “should be replaced by a new facility.”\textsuperscript{319}

Before offering his conclusions of law, the judge stated that his court’s concern was “limited solely to determining whether the state has been able to achieve constitutional compliance, and we continue to disavow any purpose to render the penitentiary subject to federal superintendence and control.” Judge Keady, aware of Henley’s control of prison farms in Arkansas, might have begun this section in this manner to quell any sort of long-term federal court control of the prison. Like Judge J. Smith Henley, Judge Keady found his position as a federal court judge over these state matters precarious. Keady continued, writing that as long as the prison upheld the Constitution, he would not involve his court in matters of administration and management. Prison authorities needed to handle most of the problems Keady discussed in the opinion “in the exercise of sound discretion. It would be improper for this court to substitute its judgment for the expertise of correctional officers in coping with special needs or individualized problems presented by certain classes of offenders.” Thus, Judge Keady refused to

\textsuperscript{318} Ibid, 485-87.
\textsuperscript{319} Ibid., 487-88.
take the prisoners’ counsel suggestion of preventing prison officials from bunking more than one prisoner within a maximum-security cell at one time. He also refused to force prison authorities to enact steps to clean cells or make better use of hospital beds. Additionally, the judge noted that prison officials had not adequately addressed some conditions existing in late 1972.320

Referring back to the portion of the first Gates opinion titled “Medical Facilities,” Keady noted that the defendants had not adequately met these requirements. The prison’s “continuing failure to provide for the physical health and well being of inmates” continued to violate the Eighth Amendment as well as state law. Prison authorities “must exert maximum efforts to employ two additional doctors, one a chief medical officer and the other a psychiatrist” in order to assure what Keady called “an acceptable level.” The prison must also provide care for those patients requiring serious treatment of disease. Prison authorities must close the “appalling, deplorable conditions” of the current housing units, being “unfit for human habitation . . . And Mississippi has no exemption or shield whatever from complying with constitutional imperatives.” The lack of funding stifled any progress at the prison, and the removal of these constitutional inadequacies, even with proper funding, required “not only intelligent planning but time for major construction,” wrote Keady. But the judge squarely placed the ball in the legislature’s court: it needed to fund a plan to relieve overcrowding from the prison farm by sending inmates to other institutions or it needed to expand Parchman and build new camps. The state legislature must provide the main thrust of Parchman improvements by providing the necessary funds. All defendants, along with the governor and the legislature, needed to work together and submit specific plans to Keady’s court. He also urged courts to find alternative means for reducing prison population levels. State judges bore a major share of responsibility as

320 Ibid.
well, and they should become aware of the dire situation at Parchman. State district court judges
must also work with local prosecutors and “institute cooperative, yet coordinated, efforts to aid
the prison administration in reaching correct solutions.” Thus Judge Keady called on all parties
to play a role in the reform of Parchman.321

Judge Keady had a more difficult time in Mississippi garnering money from the legislature
than did Henley in Arkansas. In the eyes of Mississippi legislators, the prison had been running
efficiently and bringing in profits for decades. But, to hear that their prison remained
unconstitutional, legislators balked at making any sort of legitimate reforms. Now, within sixty
days of his opinion, Keady ordered the defendants to release a report stating immediate plans on
reducing the inmate population and eliminating those residential camps “unfit for human
habitation.” Judge Keady demanded very specific guidelines from the defendants, including an
analysis providing the current housing situations in both regular quarters and maximum security
barracks, studies of each camp and what repairs might make them fit for habitation, and
alternative means of providing relief to the crowding situation, alternatives “which may be
accomplished within the framework of existing state law.” Judge Keady crossed the line set by
Henley early in Arkansas litigation by forcefully and specifically directing the whole system of
criminal justice, making them aware of the role they play in reforming Parchman. Judge Keady
avoided, however, the ultimate sanction that Judge Henley in Arkansas could not: declaring the
whole system unconstitutional. While change moved at a snail’s pace in Mississippi, Judge
William Keady’s forceful reform of Parchman hoped to continue the prison moving toward
constitutionality.

321 Ibid. 489.
Judge Keady continued his oversight of Parchman’s reform, ruling on the numerous complaints from inmates. In a ruling on March 25, 1975, Judge Keady determined that the state of Mississippi did not have to provide free representation for inmates seeking to petition the courts. The prison needed to provide access to a law library, however. Prison officials timely submitted their plans addressing both inadequate medical facilities and deplorable housing. In August of 1975, defendants also submitted architectural plans detailing the construction of a new medical and dental facility, costing around $3,500,000, which Keady later approved. On October 31, Judge William Keady would address those submitted plans and re-evaluate the change taking place at Parchman in the third Parchman case, labeled Gates v. Collier (Gates III). Construction for this new facility, of course, depended on the Mississippi legislature. Convening in two months, legislators must have seen this as a direct mandate from Judge Keady to fund the new medical facility. Keady also accepted prison officials using local, free world physicians to take up the slack of the inadequate prison staff, but only as a temporary measure.322

Parchman remained unconstitutionally crowded. Keady’s court determined in Gates III that the only constitutionally approved rubric of prison housing required each prisoner have given fifty square feet of living space. The maximum number of prisoners who could live at Parchman within those parameters: 2094. Unfortunately, 2260 prisoners lived at Parchman during mid-1975. New construction, as well as refurbishing of older buildings, had ameliorated, but not resolve the question of constitutional housing. In spite of the ordered closing of a number of older camps and the creation of new camps, which Keady ordered on August 7, 1975, prisoners further petitioned Keady’s court to enjoin Parchman from accepting new prisoners until

additional space would be available. The prisoner petitioners utilized a ruling from a federal
district court in Louisiana, where Judge E. Gordon West, the third judge focused on in this study,
ordered in April of 1975 that Angola State Penitentiary, the Bayou State’s largest—and only—
prison farm, housed 3698 inmates when it was only designed to hold 2212. Judge Keady also
pointed to overcrowding conditions officials dealt with in Alabama. The jurist differentiated
between overcrowding in Louisiana and Alabama by stating that the conditions at prisons in
those states

    had obviously reached proportions which can only be described as barbaric, and which
carried daily threats to the physical safety of large numbers of the prison population. . . .
[In those states,] nearly all semblance of order and inmate protection had disappeared,
and where there were no indications that the states involved were prepared to move
forward to eliminate the problems, this court can readily appreciate that the drastic step of
an immediate embargo on further inmate population increases would be both appropriate
and necessary.

Judge Keady called the situation at Parchman, however, “substantially different.” With a
designed capacity of 2094 prisoners at Parchman, the most recent inmate counts at Mississippi’s
prison farm reached 2290, which only represented ten percent overcrowding. Judge Keady also
stated that he had confidence in the staff at Parchman, knowing corrections officials at the farm
to be disciplined and well-trained, and, although perhaps somewhat understaffed, is far
better equipped to deal with inmate problems than appears to have been the case in either
Alabama or Louisiana. . . . Violence . . . While once prevalent, has now been dramatically
reduced. Present conditions at Parchman, while still constitutionally unsatisfactory in
several respects, are a far cry from what existed in 1972 and from what evidently obtain
in our two neighboring states.

One can attribute this more adequately prepared free world correctional staff to the fact that
Mississippi always utilized a balance of free world and convict guards, whereas in Arkansas,

323 See Williams v. McKeithen (E.D. La. 1975).
before Judge Henley began litigation, inmates manned all corrections’ staff positions, from office clerk, to telephone operator, to tower guard. Keady also distinguished the situation at Parchman by pointing out that the constitutional issues there more aptly involved dilapidated conditions of buildings rather than the mere overcrowding of bunks. Thus, the method Judge West used in Louisiana should not apply here, especially since Keady had already ordered the closing of the most ramshackle camps by the middle of 1977. The Fifth Circuit would later affirm Keady’s decision to not enact an emergency injunction on the acceptance of new prisoners at Parchman.324

By the end of 1975, Judge Keady had specifically ordered considerable change to take place within Parchman. He still managed to enforce these changes by nudging the legislature to give much needed money. Keady had faith that the prison officials in charge of Parchman would make the necessary and proper changes once they finally had the funds available to enact such changes. The medical and dental facility would be created the following year and would take approximately two years, conditioned upon the Mississippi legislature giving the $3,500,000 needed to construct the facility. Thus, Judge Keady placed the responsibility of ridding the prison of this particular constitutional inadequacy squarely in the state capitol. Secondly, not only must prison officials analyze and present detailed reports discussing the crowding situation, but a certain number of camps must be closed in three phases: July 1, 1976, January 1, 1977, and July 1, 1977. New construction would take up the slack for the 626 inmate capacity loss, which included the building of a new women’s camp, two new medium security camps, and the renovation of the old women’s camp as a new reception center. Judge Keady’s orders closing camps came at a time in Parchman where the farm experienced the most growth of inmate

324 Gates v. Collier (Gates III), 1119-20; and Gates v. Collier, 525 F.2d 965 (5th Cir. 1976).
population in decades. Keady’s ruling “brought state criminal policy to a point of crisis similar to that which had developed in the years immediately following the War Between the States.” While the state legislature engaged in “tough on crime” politics, jurists throughout the state trumpeted this cause as well, sending record numbers of convicted persons to Parchman without any idea of where they would be kept. Between July 1, 1975 and June 30, 1976, the legislature, however, allowed around 1,202 inmates to leave the prison due to paroles and other schemes of work release. However, during the same time, judges sent 1,356 prisoners to Parchman. By the end of that period, Parchman had more inmates within its fences than it had at its previous peak during the Great Depression: 2,509.\textsuperscript{325}

Keady’s reform of Parchman took a much different direction than Judge Henley’s in Arkansas, mostly due to being able to observe the earlier reform and to realize where he had to push to get more done. Judge Keady also had much more confidence in prison administrators and their staff than Henley in Arkansas. The forceful reformer inside Judge Keady realized that this would be the only way to work with a reluctant government not interested in funding the state prison. He did have an advantage over Cummins and Tucker in Arkansas, however. While Judge Henley constantly criticized free world workers at Cummins and Tucker, from physical brutality to unconscious and conscious discrimination, Judge Keady had the benefit of a more seasoned free world staff that had more collective experience than those officers in Arkansas. Judge Keady did receive complaints from prisoners in the form of hand written letters, stating the continual abuse from both free world and convict trusty guards at Parchman, but Keady appeared to treat those as growing pains rather than issues that needed to be specifically dealt with at the court level as had Judge Henley.

\textsuperscript{325} Gates v. Collier (Gates III) 1121-22; and Taylor, Brokered Justice, 209.
Legislature: Don’t Kick the Dog: The Aftermath of Gates III

Even though Judge Keady stated in Gates III that he would not force prison authorities to prevent admitting new prisoners to Parchman, state actors decided that they should take the necessary precautions in case that happened in the future. Better yet, they figured a plan to disperse some of the overflow of prisoners might help alleviate matters—and quell Judge Keady. In early January 1976, the members of the Mississippi Building Commission proposed a legislative plan to use abandoned state hospital facilities at the sanatorium, which once housed patients with tuberculosis, as a place to send prisoners from the state penitentiary. The Mississippi Prison Board decided to allocate up to two hundred thousand dollars to support such a plan. Mississippi Building Commission member Senator Sam Wright from Hinds County indicated that they needed to enact such a plan considering Judge Keady might order an immediate reduction. Many on the Commission expected such an order to take place, considering the deadline for the first round of camp closings at Parchman neared. Senator James Molpus of the Commission indicated that even with new construction taking place, according to Keady’s guidelines only around nineteen hundred prisoners would be able to remain at the prison farm. He expected that number to grow to at least twenty-seven hundred by the beginning of 1977.326

Many of the nineteen hundred or so prisoners voiced their opinions in the Parchman inmate published Inside World. One of these editorial writers, Pete Robertson, praised Superintendent Reed, stating that if the legislature relieved Reed of his duties, it would quickly find another problem at Parchman lurking. Robertson stated that he had seen much positive change take place

at the prison farm, which would benefit not only inmates but “the good people of Mississippi.” Robertson continued, nothing that the prison, once resembling “a concentration camp. A place of extreme physical and mental anguish, if you please, and a storehouse for any free-world person who needed a handout,” began transforming into a more pleasant, constitutional institution, due to an “air of ‘human decency’ around Parchman. . . . This may be a lousy comparison,” continued Robertson, “but you can kick a dog until he will tug and bite you; and you can treat that same dog with kindness and make him obey your every command. Human beings aren’t much different.” Robertson continued, listing the many “good things” at Parchman, including the blood and plasma donation program and the dental lab services provided by inmate trusties.\(^{327}\)

The legislature also acted proactively in further reorganizing prison administration, creating a Department of Corrections. The “Mississippi Corrections Act of 1976” provided for the appointment of a commissioner, the first being Dr. Allen Ault, considered one of the nation’s most prominent prison officials. Ault, according to one historian, “set about his duties with vigor, boldly advancing proposals that made everyone wince, and fighting off intrigues in both the legislature and the governor’s mansion.” A Board of Corrections now replaced the Penitentiary Board and the Parole Board. The most noticeable modification, at least to incarcerated inmates, resulted in an inmate being committed to the custody of the Department of Corrections instead of to a particular institution. The legislature at least gave the appearance of relieving Parchman crowding by diverting prisoners to other facilities. Other inclusions of the act helped further reduce overcrowding, such as pre-sentence and post-sentence reviews. Prisoners still saw this bill as a change in “label” only for most inmates. Instead of a prisoner, one would be known as an

“offender.” But the prison newspaper ultimately praised the law, stating that “the people in Jackson are finally on the road to law-making in the interest of the offender.” 328

In the next opinion from his court, also titled Gates v. Collier, Judge Keady amended the fine print of his past orders closing certain prison camps. Based on hearings that took place on August 16 and October 4, 1976, Judge Keady pored through the numbers of inmates at each prison camp and building, and with the rigidity of a fine tooth comb, detailed the numbers of prisoners he expected to be constitutionally housed in these areas. Now with the state legislature presenting increased funding to the Department of Corrections, prison authorities and the judge could now begin truly creating plans to relieve overcrowding at Parchman. Many interpreted this most recent opinion as Keady’s willingness to halt new prisoners being sent to Parchman if officials did not solve overcrowding issues. As had Henley, Keady assumed that new construction projects would be complete in due time. Keady hoped that two new 192-man inmate camps would be ready by March 1, 1977. Construction, however, had not started as of November of 1976. Prison officials still expected said camps to be complete by the originally planned date. Keady further placed blame on the legislature, for any option the state of Mississippi took with its prison required more money. Apparently, a September overnight visit of a few Congressmen to Parchman, to serve as “trusties,” did nothing to clarify their opinions on which direction to proceed with the prison farm. Whether the state decided to maintain the current system or send prisoners to other facilities, Keady needed to see some action. 329

328 Taylor, Brokered Justice, 211; and “Department of Corrections Assumes Control of Facilities,” Inside World, September 1976.
In fact, the remainder of the *Gates v. Collier* cases that followed further tweaked the assignment of prisoners at Parchman as well as ordering more camps closed. On March 17, 1977, the Fifth Circuit Court of Appeals denied a request from prisoner attorneys stating that Judge Keady granted too much time to defendants and that he did not provide a speedy enough amending of prison unconstitutionality. In a per curium opinion, the Fifth Circuit Court of Appeals noted that Keady’s judgment appeared “to strike a rational balance between the interests of society and the prisoners.” Meanwhile, many within the state of Mississippi, including Ron Welch of the Mississippi Prisoners Defense Committee, blamed county jail overcrowding on the Parchman litigation, concluding that “you can’t solve the Parchman problem by creating county jail problems.” State Attorney General A.F. Summer reacted to the Fifth Circuit’s affirmation of Keady’s work reforming Parchman farm as expected, stating that with more than eleven million dollars spent on the 22,000 acre prison farm, it no longer appeared to be a “‘subhuman’ jungle.”

Revisiting Parchman’s situation the following year, Judge Keady ordered more camps closed. Judge Keady determined that it would not be practical to appoint a special master or magistrate to monitor environmental conditions at the prison farm. Keady did state, however, that

a permanent injunctive order, couched in explicit terms to assure the commitment of the state’s resources to plan, program, monitor, implement and achieve acceptable environmental, public health and safety standards, will bring, without further delay, the penitentiary into full compliance with the Constitution insofar as environmental standards concerning institutional maintenance, cleanliness, food handling services, public health, safety, and other aspects of a decent environment.

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330 *Gates v. Collier*, 548 F.2d 1241 (5th Cir. 1977), 1242.
331 “County Jails’ Overcrowding Blamed on Parchman,” *Clarion Ledger* (Jackson, MS), March 19, 1977; and “Parchman Reform Order Refused,” *Clarion-Ledger* (Jackson, MS), March 19, 1977.
Regarding the closure of camps one and two, the state improvements represented mostly cosmetic changes. Keady addressed the issue of overcrowding at county jails, asserting that even though the state wished these camps to remain open until July of 1980 to alleviate county jail issues, this amounted to an “unacceptable” request. Reports stated that prison authorities had only made minimal, modest repairs to the camps. Keady declared these camps to be aged buildings, with rotted wood, without proper ventilation and water filtration, “wholly incapable of repair, so dilapidated that the new roof repair cannot prevent leaks at the corners of these ancient buildings; old concrete floors are porous, cracked, and cannot be maintained,” and the list continued. Thus, while aware of the problems county jails faced, Keady could not withhold closing these camps until the state built replacements. Keady precisely quoted the Fifth Circuit in *Newman v. State of Alabama*, a quote that could very well sum up Keady’s issue with the state of Mississippi throughout all of this litigation: “No litany of the prison [hopes and expectations for new housing units] can vitiate the district court’s duty to fashion a remedy commensurate in scope with that of the infirmities discerned.” Attorney General A.F. Summer considered Keady’s order further creating a “crisis at both the prison and in county jails. We heartily disagree with the court’s decision.” Further repeating his earlier statements that the prison remained in the best condition it had ever been in, he mentioned that “there are many citizens of this state living in worse conditions and in older buildings” than the ones closed by Judge Keady.332

Thus, Keady began winding down his role in the reform of Parchman prison farm. Like Judge Henley in Arkansas, he took firm control of a state prison system in need of some constitutional guidance. Unlike Henley, Judge Keady did not have to declare the totality of

conditions at Parchman prison unconstitutional. Instead, Keady, as the forceful reformer, focused on two major constitutional concerns: inadequate medical facilities and poor conditions of buildings and outlined exactly what prison authorities had to do to create a constitutional prison farm. Judge William Keady recognized the free world workers already in place at Parchman Farm and decided that he had a stable enough nucleus of competent officers to put into place many of the necessary changes. Judge Keady’s main problem with Parchman Farm presented itself in the lack of enthusiasm demonstrated by the Mississippi legislature. Granted, Judge Henley had similar issues as well, but it appeared that Judge Henley’s issues came in his approach. Judge Henley wrote very broad outlines, giving the state of Arkansas every opportunity to change conditions on their own. Judge Keady, with hindsight as his guide, realized that Henley’s allowance of state action—or inaction—probably led to him having to declare the whole system unconstitutional. Instead, Judge Keady outlined issues with mandate specificity and prison authority precision. Judge Keady certainly truly represented the forceful reformer, blending his tough approach with officials and legislators and the path taken by Judge J. Smith Henley in Arkansas. Judge Keady, being a former member of the Mississippi state legislature, knew that he had his work cut out for him trying to force the body to allocate money to Parchman. He utilized his past knowledge of the state assembly to outline specific plans of action in a way that the legislature had no choice but to accept and allocate. Another state, one that shares a border with Mississippi and one that also resides in the Fifth Circuit Court of Appeals, had a federal court judge dealing with an unconstitutional prison farm of his own.

Not only did the courts provide the farmhands for the land, but it provided the prison guards as well. The few free world administrators that ran Angola promoted a number of prisoners to the rank of trusty, more or less affectionately called “khaki-backs” from the clothing they wore. One can hardly imagine a prison today with correctional officers replaced by inmates, wielding at times more firepower and weaponry than the free world protectors of the prison farm. The profit earned from the selling of goods produced at Angola combined with the absence of budgetary expense at hiring free world personnel produced not only a self-sustaining prison system for Louisiana but also a profit-bearing one. State officials, especially legislators, appreciated that the state prison system funded itself. Unfortunately, this hands-off approach that the state applied to Angola made the prison farm a maelstrom of violence and corruption. It does not take a stretch of the imagination to realize why journalists called Angola the “nation’s most dangerous prison” in a 1952 Collier’s Weekly expose. Many hoped the article would help bring the deplorable conditions at the prison farm to a larger public outside of the South.333

The particular problems that helped corrupt Angola made it a national—and international—target for criticism. Surely, as other historians have pointed out, dangerous and

corrupt prisons existed in areas outside of the South. None of these prisons, however, carried the foul stench of slavery, racism, and evil of those in the South, especially Angola. This miasma also managed to reach the federal government. The U.S. Constitution, which once represented the justification for locking up criminals with impunity, would now become a prisoners’ redeeming quality. Beginning in Arkansas in the late 1960s, courageous federal court judges, attorneys, and petitioning inmates worked together to expose the brutality of southern prison farms. Eventually, Judge E. Gordon West in Louisiana would have an opportunity to do something about Louisiana’s only prison farm in Angola, Louisiana. Many in Louisiana had little confidence that Judge West would represent any sort of saving grace for Angola’s convicts. But ultimately, in the end the actions of Judge West set Louisiana’s prison farm on the path to being one of America’s safest prisons. Such was not always the case in Angola, however.

The Worst Prison in America: Angola Before Federal Intervention

On January 9, 1966, a political associate of Governor Earl K. Long of Louisiana quoted the governor after his death as saying “You don’t fool with Angola or LSU if you’ve got good sense.” Apparently, a number of Long’s predecessors, as well as his brother Huey, and even some that followed Uncle Earl into the governor’s mansion, remained apathetic to Angola State Penitentiary, later known as the Louisiana State Penitentiary, while in office. Angola’s precarious position along the Mississippi River, surrounded on three sides by the United States’s longest river, meant that the prison farm faced the wrath of Mother Nature as well. Corruptness from the very top of Angola’s leadership, combined with apathy from all governmental actors in

Baton Rouge, and the deadly forces of the river, all contributed to Angola being the only prison in this study that not only did not bring in large profits, but it lost money as well. The constant struggle between proper management of a prison utilizing legitimate penological principles, which began somewhat in the 1950s, and the issue of creating a self-sufficient (and profit making, if possible) prison farm never allowed Angola to offer any sort of true rehabilitation to those sent there. And no one who knew much about the prison farm expected any help from the court system.\textsuperscript{335}

**West's Early Interactions with Angola: *Labat v. McKeithen*, July 1965**

West believed integrity should rule in his federal courtroom. He also believed in a federal judiciary that managed to stay out of issues of morality and society that state legislatures were best suited to handle. “If they have to be involved because of a Supreme Court ruling,” stated West, “the federal courts ought to carefully limit their involvement to what is absolutely required by the statutes or the rulings of the Supreme Court. I think many problems are created by federal court involvement in matters that I don’t believe were ever intended to be federal matters.”\textsuperscript{336} Along with West’s notions of strict lines delineating the federal and state governments, West later reflected after retirement about how trends of the rights of criminal defendants versus those of the victims troubled him. “I respect the constitutional protections of those accused and would not want to see the basic protections in any way violated,” stated West, “but I believe that by court interpretation, many decisions in favor of criminal defendants have caused the scales of


\textsuperscript{336} “A Candid Conversation,” 9.
justice to become somewhat unbalanced.” West’s views might help explain why refrained from reforming Angola for as long as he could.337

West’s early opinions on prisoner rights and conditions at Angola reflected his philosophy on the role of federal courts. His first came in a case questioning the prohibition of certain mail communications from death row inmates at Angola. In late 1964, attorneys for death row inmate Edgar Labat, a forty-one year old African-American convicted of the rape of a white New Orleans woman, filed suit claiming that laws proscribing death row inmates’ communications unconstitutionally restricted their freedom of speech. These laws, according to his lawyers, took away Labat’s “right to free speech, to equal protection of the law . . . and subject[ed him] to cruel and unusual punishment.” The particular communication restricted in his case involved letters exchanged between Labat and a married, white woman named Solveig Johansson, thirty-nine, of Stockholm, Sweden. Louisiana Revised Statute Title 15 Article 568 stated that “until the time of his execution, the convict shall be kept in solitary confinement . . . and no one shall be allowed to access to him without an order of the court except the officers of the prison, his counsel, his physician, his spiritual adviser, his wife, children, father, mother, brothers, and sisters.” The law did not prohibit mail interactions between inmates and others based on race. But oftentimes with the law, practice differed from the actual language of the law.338

Johansson decided to write the Louisiana State Penitentiary, asking for an explanation as to why officials abruptly halted her communications with Labat. Until that point, restrictions on the identities of letter writers had been lax; officials allowed prisoners to write to pretty much whomever they want. However, officials stated that there existed a major problem with letters

337 Ibid., 10.
from outside of the U.S. that contained substantial amounts of pornographic material. International letters also increased for Labat. During his eleven-and-a-half year stint at death row, his stay at Angola had become great fodder for the press. Walled within Louisiana’s death row during the moratorium on death sentences meant that sentences like Labat’s rested in a procedural limbo. This limbo provided great newsprint and interesting commentary on the state of capital punishment in not only Louisiana but also the nation. And the fact that some in the United States, especially the South, remained steadfastly in support of capital punishment, as most other nations of the world rid their laws of capital punishment, made it even more of a worldwide phenomenon. Edgar Labat had been serving in prison for longer than any other prisoner in the United States, making Labat’s story without doubt more appealing.339

Argument of Labat’s case in front of Judge West took place in late March, and he issued an opinion on July 27, 1965. According to the opinion, before January 21, 1964, Labat “was permitted to carry on virtually unlimited mail correspondence with those officials he could statutorily communicate with. . . . Prison officials also allowed correspondence with pretty much anyone else, even those not listed in the statute.” According to the testimony of one prison official, much of the material received from foreign countries was of a “pornographic nature.” Prison authorities stated that “it was not compatible with good prison administration to allow this to continue,” thus the previously practiced policy of unfettered free communication ended. The letter Mrs. Johansson wrote earlier came into play due to the response she received from the prison, particularly a Mr. Leblanc. Said Mr. Leblanc wrote back to Mrs. Johansson, writing that correspondence with her was in violation of Louisiana Revised Statutes: “Unfortunately, please

be advised that you have been denied correspondence privileges because of existing rules and regulations set forth by the Office of the Warden in keeping with the laws of the state of Louisiana. Under said laws, correspondence is not permitted unless the correspondents are of the same race.” This comment drew much criticism not only from the press but, according to West, from “certain foreign women who seemed, for some unexplained reason, deeply concerned about the manner which the prisons in this country are administered.” As the matter gained publicity both nationally and internationally, O.C. Sills, who would later become Director of Institutions for the Department of Corrections, began investigating the matter. His investigation began with an inquiry to the Department of Justice, asking the Attorney General to write an opinion on the matter.340

Second Assistant Attorney General Harry Fuller drafted the Attorney General’s Opinion, which meant to give some clarity to the statute in question. Unfortunately, the Department of Justice did not offer much clarity on the matter. Merely repeating the language of the statute, the opinion repeated that the several statutory restrictions already in place for death row inmates to keep. By the plain language of the statute, according to the Attorney General, only the people listed in the statute could have “access” to the prisoner. According to Labat’s counsel, the Attorney General improperly defined the word “access” to broadly include mail communications. If the Department of Justice accomplished anything, it allowed for a more strict construction of the statute, which posed no problem to Judge West. “This Court agrees completely with the . . . opinion [of the Attorney General],” wrote West in his opinion. While prison officials cannot constitutionally prevent African-American prisoners from corresponding with free world whites solely based on color, “the State has every right to place all reasonable

and necessary restrictions upon activities of inmates in a penitentiary, just so long as the restrictions imposed are not discriminatorily based on racial considerations.” Judge West justified not tampering with prison policy by stating that, “on the face,” the law did not discriminate.\textsuperscript{341}

The decision to restrict death row inmates’ communications more than those in the general population was just “common sense,” according to Judge West. “A person incarcerated for the commission of some relatively minor crime is generally considered a subject for rehabilitation, while an inmate confined to death row, awaiting execution for the commission of a capital offense, is confined for an entirely different purpose.” Those prisoners condemned to death have had their rights taken away through due process of the law. “If the state has the right to deprive him of his very life, through execution for the commission of a capital offense” continued West, “then certainly it has the 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.” West concluded his opinion by reiterating his position on the federal court’s involvement in the affairs of state prison systems in general, stating that 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 states. The Civil Rights Statutes confer no such power upon the federal courts.”\textsuperscript{342}

Now, Judge Gordon West properly ruled that no federal court to that point had ever involved itself in the affairs of a state prison. The Fifth Circuit Court of Appeals would uphold his decision in June of 1966, holding the statutory prohibition against certain access to death row

\textsuperscript{341} “Mailing Rights Asked by Man on Death Row;” and \textit{Labat}, 664-665.
\textsuperscript{342} \textit{Labat}, 665-667.
inmates reasonable and non-discriminatory.\textsuperscript{343} The courts of the Fifth Circuit could not avoid the change in federal court behavior taking place around them, as Judge J. Smith Henley of the Eastern District of Arkansas later in 1965 declared the Arkansas’s prison system’s use of corporal punishment without the proper procedural safeguards in place and the system’s restriction of prisoners petitioning the courts for relief definitely violated some of their constitutional rights, such as those which protected against “cruel and unusual punishment.” Judge West would not bring the Fifth Circuit in line with other circuits until the next prisoner complaint case that came his way in 1970.

**Remaining Out of Prison Matters at the Parish Level: Willis v. White, March 1970**

On March 13, 1970, Judge West issued an opinion regarding the medical treatment of a prisoner serving time at the East Baton Rouge Parish Prison. Albert Willis claimed that he did not receive the proper medical attention that he felt he needed. He wished for parish prison officials to transport him to the Earl K. Long Charity Hospital in Baton Rouge for proper care, but prison officials denied his request. Upholding his belief of separation between the federal courts and state or local matters, West quoted a Seventh Circuit case which the Fifth Circuit later affirmed: “State prison officials must of necessity be vested with a wide degree of discretion in determining the nature and character of medical treatment to be afforded in state prisoners. It is not the function of the federal courts to interfere with the conduct of state officials in carrying out such duties under state law.”\textsuperscript{344} West went on to quote the Eighth Circuit to demonstrate even more federal court hesitance in interfering with prison affairs by stating later that it only involved itself in state and local prison matters “in exceptional cases and then only, when the available

\textsuperscript{343} Labat v. McKeithen, 361 F.2d 757 (5th Cir. 1966).
\textsuperscript{344} U.S. ex rel. Lawrence v. Ragen, 323 F.2d 410 (7th Cir. 1963); 412.
remedies within the prison system had been exhausted. . . . Our surveillance of state penal and correctional institutions has a limited spectrum."\textsuperscript{345} None of this information, however, should have prevented him from stepping in and stating the medical care received by Willis was improper. West, however, felt that the particular matter at bar did not require any federal court intervention. Willis’s case did not involve officials denying him medical treatment. Willis “simply feels,” according to Judge West, “that he is a better diagnostician than the doctor, and he feels that he can better prescribe treatment for his condition than the doctor.” Thus, West dismissed Willis’s complaint. He continued his denial of the necessity of the federal courts in prison affairs.\textsuperscript{346}

The Eighth Circuit’s experience with prisoner litigation appeared markedly different than in Louisiana. Toward the end of the 1960s, Judge Smith Henley continued his crusade against an Arkansas prison system that consistently violated the Eighth Amendment, holding that the state’s prison farms failed to protect its inmates by allowing them to sleep in open barracks without any sort of protection from guards. Judge Henley also ordered that officials alter policies of confinement in dirty, unsanitary isolation cells to not constitute cruel and unusual punishment. It became clear that Henley had begun a full-frontal assault on the Cummins and Tucker Prison farms in Arkansas, while in Louisiana, the status quo would remain for the time being. The next case Judge West heard regarding Angola Prison Farm inmates, however, would strain his judicial philosophies of federalism and the role of the federal courts in a way that would change the court’s relationship with the Louisiana State Penitentiary for the better.\textsuperscript{347}

\textsuperscript{345} \textit{Douglas v. Sigler}, 386 F.2d 684 (8th Cir. 1967), 688.
The Fifth Circuit Changes its Course: *Sinclair v. Henderson, 1970*

In 1970, the Fifth Circuit heard an appeal of a decision of Judge West to deny the petition of Billy Wayne Sinclair, a prisoner on Angola’s death row. Sinclair claimed that only being allowed outside of his cell for fifteen minutes a day amounted to cruel and unusual punishment. Prisoners had to do everything that required being outside of their cell necessary for their well-being during that fifteen minutes, which included shaving, showering, washing their clothes, and managing to get some sort of physical exercise. Sinclair claimed prison administrators denied him “sunshine and exercise,” which created a number of physical illnesses and suffering. Sinclair continued that prisoners “must drink water . . . loaded with rust.” Inmates also ate food served from a “filthy” food cart, where they often found food containing “insects, roaches, or human hair.” Roaches regularly made homes in the breadboxes, which continued to be used week after week with no cleaning or extermination. Judge West peremptorily denied relief, stating that the appellant had failed to exhaust his available state remedies. The Fifth Circuit Court of Appeals, however, reversed this and remanded the case back to Judge West. According to earlier case law, which Judge West agreed gave him jurisdiction in an earlier case using the Civil Rights Act, the Fifth Circuit stated “a federal court’s assumption of jurisdiction over the matter cannot be declined on the basis of the exhaustion doctrine.”

The Fifth Circuit decision continued that although federal courts had been reluctant in the past to interfere with the operations of state 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 the appellant’s contentions of extreme maltreatment.” Here, interestingly enough, the Fifth Circuit mentions two cases Judge J. Smith

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Henley presided over in Arkansas, which the Eighth Circuit both affirmed. Judge William Keady would eventually use this Fifth Circuit mandate to reform conditions at Angola's death row to begin his similar reforms to Parchman Farm.\footnote{349 See Gates v. Collier, 349 F.Supp. 881 (N.D. Miss. 1972), discussed in Chapter 7.}

It remained unclear as to why West did not apply the Civil Rights Act to hear the Angola prisoner case, but one could conclude it involved his general reluctance to mingle with the affairs of the prison. He had no choice in the matter now. Not only did the Fifth Circuit now embrace federal court intervention into state prisons, something that had been going on for years in Arkansas, but it signaled to Judge West that he now had to embrace the policy as well. By overturning West’s decision to not hear evidence of Billy Wayne Sinclair’s treatment in death row, the Fifth Circuit signaled the beginning of a new era in Angola’s prison history. One that would eventually lead to Angola transforming from the nation’s most dangerous prison to its safest in a span of a decade.

**Judge E. Gordon West Changes Course: Federal Courts Bring Change to Angola’s Death Row, September 1971**

On May 17, 1971, Judge West’s court held an evidentiary hearing to accommodate the request of the Fifth Circuit’s remand, and on September 21, 1971, Judge E. Gordon West released his opinion of the case remanded from the Fifth Circuit Court of Appeals.\footnote{350 Sinclair v. Henderson, 331 F.Supp. 1123 (E.D. La. 1971).} Prisoners on Angola’s Death Row complained of nine defects on the prison block. Judge West ruled that of that list, eight of them did not contain any constitutional violations. Some of these issues included adequate medical conditions, serving of meals, plumbing, ventilation, and bedding in cells, censorship of mail, and due process for violation of prison regulations. In stating that none
of these issues violated the Constitution, West summarily determined that prison authorities were “doing their best” with the facilities they had. Regarding ventilation, for instance, due to a new ventilation system being installed on death row, there would be no need to deem the current one a violation of the cruel and unusual punishment clause of the Eighth Amendment. Writing of mail censorship, Judge West pointed back to his opinion in *Labat v. McKeithen*, where he held that “limiting the correspondence of inmates on death row to those persons designated in the statute was constitutionally permissible so long as it was not applied in a racially discriminatory manner.” Additionally, West stated that prison officials could place more onerous restrictions on a particular class “if permitted by State law.” West continued by pointing out that the Fifth Circuit “has frequently stated that the control of mail is a matter of prison administration. This Court agrees with and is bound by these Fifth Circuit decisions.” Regarding the use of inmate guards, Judge West stood firm in stating that their use did not violate the US Constitution. In this particular instance, one could understand why West would not rule this use of inmate guards unconstitutional. The prisoners on death row mostly complained of inmate guard unresponsiveness to when being called and a vague complaint that they “threaten the lives of death row prisoners.” Another death row inmate complained of an inmate guard spilling coffee on the inmate, which the guard stated was an accident. The fact that a free world worker managed the inmate guards on death row also supported West’s finding.

The one condition on death row that Judge West did find to be unconstitutional involved the lack of exercise opportunities the guards provided death row inmates. Prison guards kept death row inmates in their six-foot-by-nine-foot cells, which contained no sunlight, for twenty-

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351 Ibid., 1126.
352 Ibid., 1127. See *Labat v. McKeithen*, supra.
353 Ibid., 1128.
three hours and forty-five minutes a day. The warden of Angola testified that they kept the prisoners in this sort of solitary confinement due to the Louisiana statute, Louisiana Revised Statute 15:568, being written that way. Unfortunately, the Louisiana legislature passed the statute in 1928, at a time when an inmate convicted of a capital crime remained with the regular population until the day of his execution. Death row stints in the 1960s amounted to years, especially considering a general moratorium being placed on most executions throughout the United States due to a number of issues. Here, Judge West demanded that correctional officers allow death row inmates a time to exercise outside. While he pointed out in Labat that sometimes a prison could use more onerous restrictions, that did not give prison authorities carte blanche on restricting the activities and behaviors of prison inmates. Thus, relating to one situation affecting death row inmates, Judge E. Gordon West found his first unconstitutional practice of Angola penitentiary. Even though Sinclair might not appear to be much of a victory, it dramatically shifted the attitude towards prison reform at the Louisiana State Penitentiary. The case began transforming prison authorities’ values and philosophies of penal institutions. In short, Judge E. Gordon West finally proclaimed that prisoners in Louisiana did in fact have some rights. In mid March of 1972, prison officials at Angola finally completed the construction of an exercise yard area for death row inmates, as ordered by Judge E. Gordon West. Prison guards allowed Billy Wayne Sinclair, the victor of the court battle, to be one of the first to use the new facility. One death row inmate declared his time out in the yard “just wonderful.” Parnell Smith had mixed emotions, stating that he “felt funny all over . . . Like I had something over my eyes,”

waiving his hands in front of his face while speaking to reporters of the Baton Rouge *Morning Advocate*.355

**Turbulent Times Ahead for Angola: 1972-1974**

The year 1972 marked a turning point of sorts for Louisiana’s only prison farm. Edwin Edwards became governor of Louisiana that year, vowing to clean up Louisiana’s prison system. Edwards’s promise to repair the ills of Angola represented the first time a governor had placed the prison farm square in his line of vision in decades. While the 1952 expose written in *Collier’s Weekly* declaring Angola to be “America’s Worst Prison” brought America’s attention to the prison farm on the Mississippi, it did nothing to create any actions within Louisiana’s government to change anything for the better. A former state representative called Angola, among other things, overcrowded and corrupt. Allegations of convict deaths being listed as “escapees” also crept up, as they had in Arkansas. But it took someone like Edwin Edwards to step in and finally put Angola on his gubernatorial to-do list. His first call of action involved appointing the first woman director of prisons, Baton Rouge attorney Elayne Hunt, as the Director of Corrections in Louisiana. No one ever doubted the positive work that Hunt did for corrections in the Bayou State, for her appointment, according to former Angola prisoners Wilbert Rideau and Billy Sinclair in a law review article for the *Louisiana Law Review*, “rankled Angola’s security power-holders. [Many] 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

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rooted problems.” One of Hunt’s first actions as Director of Corrections involved closing the infamous “Red Hats” cellblocks at Angola. The worst of the worst made their way to the Red Hats. Officials painted the tips of their straw hats red so that they could be distinguished in the fields among the other workers. Guards actually welded one prisoner, escape artist Charlie Frazier, into his seven-by-three-and-one-half-foot cell at Red Hats for seven years. Hunt also helped enact a radical revision of the harsh discipline practices as the farm, in short making life at the prison farm “a little more humane.” A positive change in leadership for Angola and corrections in Louisiana came at the best time possible, for 1972 began some of the most brutal years for prisoners at the farm.

Criminal justice and corrections’ expert Burk Foster referred to Angola between the years 1972 and 1975 as “a full-blown monster, with a potential as dangerous as the quality of life in its bowels.” During the said period, forty prisoners died due to knife wounds, and medical authorities treated another 350 with serious knife wounds. Many stated that the shiv became a necessary tool for survival at the prison during the heated mid-1970s. Gang wars combined with the particularly heated, more violent black power movement taking place outside of the prison walls. Inmates soon ignored the morbid call “one on the stretcher!” as an all-to-usual occurrence. One guard, a rookie at the time, often left in charge of a two hundred man barrack, noted that it was a “rare day indeed . . . When he came to work without finding fresh blood on the floor somewhere in the dormitory.” Drugs and exploitation took over, creating a situation where “the strong ruled, and the weak either served or perished.” Sexual abuse and homosexuality, always a problem in a penitentiary setting, became even more “widespread, with inmates auctioned, sold and traded like cattle by other inmates.” Eerily recalling Collier’s proclamation a few decades

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earlier, Angola now truly led the nation in two categories: most total inmates, with that number coming in around 4,300, and the bloodiest, averaging one or two stabbing deaths per month.\textsuperscript{358}

Elayne Hunt, as well as Warden C. Murray Henderson, both understood that the prison farm could not function in its previous state. The monster had grown so many heads, prison authorities realized that something needed to be done to prevent the beast from growing. Realizing that state judges had no intention of sending fewer inmates to the farm, Warden Henderson in early 1971 realized some sort of revision to the current system, possibly the creation of satellite prisons lessening the burden on Angola, might be necessary.\textsuperscript{359}

Unfortunately, as seen in the other southern states examined in this study, the legislature’s lack of desire to correct the system with funding, coupled with their “tough on crime” mentalities that district court judges often reflected, made any sort of reform Hunt or Henderson considered a pipe dream. Additionally, as in Arkansas and Mississippi, they had hoped that federal intervention, in either funds or court orders, might help take Angola and Louisiana’s penitentiary system out of the “dark ages.”\textsuperscript{360}

\textbf{“Shocking the Conscience:” Judge West, an Unconstitutional Prison Farm, and an Unprecedented Order, 1972-June 1975.}

Mark T. Carlton, the historian responsible for the most complete history of the Louisiana State Penitentiary up to that point, created in mid 1974 a documentary showing those tumultuous times at the prison farm during this period. Warden Henderson assigned Lieutenant David Rambin to work with Carleton and film crews, hoping that their expose would get an even larger,\textsuperscript{358} Ibid., 23.\textsuperscript{359} J.C. Tillman, “Henderson Suggests Individualized Penology System,” \textit{Morning Advocate} (Baton Rouge, LA), February 20, 1971.\textsuperscript{360} Foster, 23.
more national audience focused on the need for reform at Angola than the *Collier's* article did years before. Carlton told the Baton Rouge *Morning Advocate* that he believed a full-scale “no-holds-barred” investigation needed to take place at the prison farm on the Mississippi. Carlton spoke of a federal investigation already underway at Angola, and he had hoped this would bring some light to the corruption and scandal that crippled the prison. The five prisoners that testified in front of U.S. Attorney Douglas Gonzales’s grand jury had to be removed from the prison farm to protect their safety. The basis for this investigation, a complaint from the five prisoners claiming civil rights violations, would ultimately form the basis of litigation that would put Judge E. Gordon West in the familiar position of Judges J. Smith Henley and William E. Keady.\(^{361}\)

On August 11, 1971 and August 10, 1973, four Angola inmates filed civil rights actions claiming violations of their Eighth and Fourteenth Amendment rights at the prison. Instead of tackling the problems at Angola head on as did Henley and Keady in their respective prisons, Judge E. Gordon West decided that testimony and the trial be heard in front of a special magistrate. The special magistrate, United States Magistrate Frank Polozola, submitted his report to the district court on April 28, 1975. The prisoners complained of constitutional inadequacies similar to those in Arkansas and Mississippi. Petitioners claimed violations of the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments as well as unconstitutional segregation in violation of the Equal Protection Clause of the Fourteenth Amendment. As in Mississippi, the United States intervened in Louisiana due to issues of racial discrimination. Prisoners complained that while under disciplinary segregation, prison officials did not provide them with adequate food, bedding, lighting, and personal hygiene items. The four also claimed that prison

officials failed to provide them with adequate medical care and treatment as well as their having to deal with inadequate facilities. They complained of illegal censorship of mail, of officials preventing their freedom of religion, and of officials overall not providing for the safety of the inmates.

US Special Magistrate Polozola also heard emergency hearings on December 3-4 and December 14, 1973, where he ordered officials to close Dorm 3 of Camp 11 and remove sewage that had accumulated in the kitchen and dining areas. After the completion of the emergency hearing and completion of that order, Polozola ordered that parties submit proposed findings of fact, conclusions of law, and recommendations. Efforts at reaching a decision based on those filings, unfortunately, proved "futile," wrote Polozola. Thus, "being of the opinion that further delays in this matter are unwarranted," U.S. Magistrate Frank Polozola decided to release a wholly conclusive order discussing constitutional issues at Angola on April 28, 1975.  

Magistrate Polozola began his report with the same type of statement with which each of these judges preceded their opinions, stating that the courts had appropriately given the state of Louisiana "great latitude in running the prison. As a result, the Court has been reluctant to interfere with the internal operation and administration of the prison except in extreme cases such as now before the court." 

Though Polozola commended the attorneys from both parties in their cooperation, as well as noting that some of issues present at the filing of the original complaint had been dealt with, the magistrate noted that many conditions, "some very serious in nature," still needed to be handled. No longer could prison officials argue whether or not poor conditions existed. The issue must be how and when would the state correct the constitutional

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362 This report is unpublished. It appears to be a slip opinion. It is attached to the unpublished opinion “Williams v. McKeithen.”
363 Polozola Report, 314.
inadequacies. Polozola wrote that “the time has simply come to stop talking about and criticizing the conditions . . . . Immediate action must and shall be taken to correct any constitutional infirmities found at the Angola prison.” The magistrate stated that he would accept no more excuses:

Many excuses have been made in the past in connection with the cause of or the failure to eliminate those conditions which endanger the lives and safety of both the inmates and civilian personnel at the prison--lack of funds, lack of support from state government, and from the public, the remoteness of the location of the prison, and lack of a sufficient number of trained personnel. It was and is Louisiana's decision to operate a state prison for men, and Louisiana has chosen to locate that facility at Angola, Louisiana. However, having made the decision to operate a state prison at Angola, Louisiana, the State of Louisiana must do so without depriving inmates of the rights guaranteed to them by the federal constitution and state law.\textsuperscript{364}

Polozola continued by outlining the specific issues that plagued the farm at Angola.

Prison safety represented at Angola, as it had at Cummins, Tucker, and Parchman prison farms, the key constitutional protection that prisoners should have. Magistrate Polozola pointed out that the issue of inmate security remained "one of the most serious and deplorable conditions," repeating statistics on the number of stabbings and deaths at the prison farm. Overcrowding in dormitory style housing probably contributed to this lack of safety as well as a critical shortage of security personnel. Polozola went into a bit more detail than other judges in describing the violence at Angola, attributing much of it to fighting involving homosexuals and gambling debts. One major issue that Judge Henley especially had to confront involved the use of inmate guards, which Angola stopped using as of July 15, 1973. Regarding medical treatment, Polozola stated that prison officials had failed to provide adequate medical care. The hospital, as at other prison farms, failed to provide the adequate equipment and bedding to ably treat

\textsuperscript{364} Ibid., 315.
prisoners. Problems such as inadequate sewage, lighting and fire safety equipment, and improper food preparation facilities and sanitation plagued Angola as they had other prison farms in Mississippi and Arkansas.\(^{365}\)

Breaking from previous Louisiana State Penitentiary policies, on December 3, 1973, as part of a voluntary effort on the part of staff and inmates, officials desegregated the racially divided camps. Magistrate Polozola stated that this desegregation effort would be complete by June 1, 1974. Prison authorities had also changed their policies regarding religious freedom and censorship of mail during the time from the filing of the petition to that date. Polozola wrote that he was aware of mail personnel at the prison constantly revising the mail policies in accordance with US Supreme Court jurisprudence. He also declared that the disciplinary confinement conditions and the due process accorded to prisoners facing such punishments "meet or exceed the minimum constitutional requirements" of due process.\(^ {366}\)

In the last part of his report, US Special Magistrate Frank Polozola concluded that "the Louisiana State Penitentiary at Angola, Louisiana, in certain material respects, has been and continues to be, maintained, operated, and administered contrary to Louisiana law and in a manner violative of the rights secured by the United States Constitution."\(^ {367}\) Polozola utilized prior opinions from Judges Henley and Keady to further reinforce the fact that "the Eighth Amendment does not have a fixed and settled test for determining the limits thereof." As in Mississippi, Polozola pointed out that certain revised statutes in Louisiana state that prisons and jails must "meet standards of health and decency which shall be established by the State

\(^{365}\) Ibid., 316.
\(^{366}\) Ibid., 317-18.
\(^{367}\) Ibid., 319.
Department of Health\textsuperscript{368} that buildings should be properly maintained and safe for habitation,\textsuperscript{369} and that hospital quarters should be set up and be adequate for treatment of inmates.\textsuperscript{370} While Polozola stated that one of these defects individually might not rise to the level of unconstitutionality, quoting Judge Keady in \textit{Gates v. Collier}, the "effect of the totality of the above factors and conditions is the infliction of punishment on inmates violative of the Eighth Amendment."\textsuperscript{371} Prison officials also failed to reach constitutional muster in not providing their inmates with properly trained medical and psychiatric staffs. As with the other judges in this study, Polozola praised prison administrators for their efforts, here including Louisiana Director of Corrections Elayn Hunt and Warden C.E. Henderson, yet he acknowledged that lack of funds often stifled their efforts. However, citing \textit{Gates} again, which originally quoted \textit{Holt v. Sarver}, "shortage of funds is no defense to an action involving unconstitutional conditions and practices, nor is it a justification for continuing to deny the constitutional rights of inmates." Thus, being in a unique position, Magistrate Polozola reviewed the totality of the conditions at Angola and made specific determinations on each issue, utilizing the work of US District Court Judges J. Smith Henley and William Keady.\textsuperscript{372}

After Polozola submitted his report, both parties now had the opportunity to object or dispute certain aspects of the report. During hearings after submission to his report, Judge West told reporters that he and Magistrate Polozola might not be experts in penology, but they did "know something about constitutional law, human dignity and justice." He even stated that the federal government had been "forced to take part in these matters" and that it had an obligation

\begin{thebibliography}{99}
\bibitem{368} La. R.S. 15:751
\bibitem{369} La. R.S. 15:752
\bibitem{370} Ibid., La. R.S. 15:760
\bibitem{371} \textit{Gates v. Collier}, 501 F.2d 1291, 1309.
\bibitem{372} Polozola Report, 320-321.
\end{thebibliography}
to do so. Judge West also noted that "a person sent to prison for burglary has a fairly good chance for [a] death sentence." Judge West also grew tired of waiting for prison officials to make many of the ordered changes, stating that the time for "making excuses" needed to end. "I'm rather tired of (inmate Civil Rights) suit after suit being filed, only to find out that the changes that have been ordered haven't been made, and the same excuses given as to why they haven't been made." 373

After hearing objections to the report, Judge West accepted and adopted the report of Judge Polozola without any change on June 10, 1975. Judge West noted that, throughout all of the discussions regarding the final order and judgment, none of the defendants took responsibility for nor necessarily denied the existence of unconstitutional conditions at the prison farm. Their issues, rather, rested on the question of whether or not the federal government had any business telling a state run prison system how to operate and reform. While the court, as stated before, only reluctantly stepped into state matters, it certainly had that right regarding prisons. For evidence easily demonstrated that conditions at Angola “should not only shock the conscience of any right thinking person.” If the defendants had paid attention to prison litigation taking place in neighboring federal courts, it might not have been so surprised at what Judge West and Magistrate Polozola attempted to do with Angola. 374

Utilizing Polozola’s report, Judge E. Gordon West issued a historic order mandating change in a number of areas at the Angola prison farm. Regarding corrections staff, he ordered that Angola increase the officer staff to a minimum of 950, as well as requiring more thorough shakedown and cell inspection procedures. He also mandated that updated equipment, such as

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374 West Order, 307.
state-of-the-art walkie talkies, be purchased for corrections officers. Prison officials must assign at least two officers to each dorm, twenty-four hours a day. West required authorities to assign more personnel to areas where prisoners work with tools and heavy equipment. Officials must also do what they can to separate more aggressive prisoners, as well as aggressive homosexuals, from the general population. Authorities should “strictly, and forcibly, if necessary” prohibit gambling, fights, homosexual activities between inmates, and insist on strict punishments to those inmates who violate these orders. The order continued, demanding even more specific changes and actions be taken by prison authorities. West’s order in many ways eclipsed any order previously released by the other judges in this study in breadth, scope, and specificity.

Judge West also mandated prison officials hire a specific list of medical personnel, including four physicians, one psychiatrist, two dentists, eleven trained physician assistants, and the list continued. The report also stated that officials must provide prisoners with eye glasses, dentures, and other prosthetics required by physicians. The prison must also purchase a number of ambulances. Regarding psychiatric care, West demanded that the whole system as then used regarding mentally ill patients be reorganized, removing inmates confined in psychiatric units and placing them in therapeutic environments under psychiatric care.\footnote{375 Ibid., 308-9.}

He also ordered extensive repair of many units at Angola. Comprehensive state inspections should commence within sixty days regarding kitchens and food preparation. West also further enjoined the prison from engaging in race-based segregation and discrimination of any kind. He also demanded that long term plans be provided to the Court in six months, stating with specificity the creation of new barracks. But most importantly, Judge West concluded his judgment and final order stating that his court would retain jurisdiction over the prison “for the
purpose of receiving the reports called for herein and for the purpose of issuing such additional orders as it may from time to time deem necessary and proper.” Thus, with the help of US Magistrate Frank Polozola, Judge E. Gordon West, along with the Fifth Circuit, swiftly changed course regarding the treatment of prisoners and prison conditions. In a judgment and order of considerable length, Judge West, once again with hindsight as his ally, enacted a great number of changes at the prison farm. In essence, Judge West probably wished to catch up his state’s penal institution with changes taking place all around him regarding the constitutionality of southern prison farms.376


Considering the reactions of state actors following these sorts of orders from federal court judges asking for change within a state court system, many felt that the state of Louisiana would try to stall and appeal as long as possible until it could figure out how to handle the sprawling order. A New Orleans *Times-Picayune* headline reinforced this feeling, proclaiming: “Officials Have No Idea What to Do About Order on Angola.” Even Governor Edwin Edwards, a man who campaigned on the issue of reforming “America’s Worst Prison,” did not appear thrilled about West’s decision. He even stated that “we didn’t take the magistrate’s recommendations that seriously. Now that it’s been elevated to the status of a formal court order, we’ll have to treat it with more deference.”377 He also did not like the idea of the federal government stepping in and cleaning up a state run prison system. He said shortly after Judge West signed and released the order at a press conference that “we will exhaust our legal remedies (in appeals court) and will comply with the final decision,” reinforcing his contention that conditions at Angola were a state

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376 Ibid., 310, 313.
377 Foster, 24.
problem, not a federal one. Director of Corrections Elayne Hunt had recently stated that “all the money in the world” could not help ease unconstitutional conditions at the prison farm, due to its remote location and inability to attract qualified persons to work there. She did, however, state that she would in fact comply with the final order, hoping that the legislature would now take a special interest in the prison farm. Hunt and Edwards felt an increased burden due to Judge West’s demand that they either decentralize the prison farm to ease crowding issues or that they drastically expand Angola prison farm. Angola, designed to hold around two thousand inmates, at the time of West’s judgment housed over four thousand inmates, thus Judge West had no problem stating that an “extreme public emergency” existed at the prison farm.  

The *Times-Picayune* also pointed out one aspect of Judge West’s approach that differed from the other judges’ prison reform orders and opinions, especially those of Judge Keady. Judge West went out of his way to name Governor Edwin Edwards a defendant in the case, while at the same time he never specifically called out the state legislature to fund these reforms. Judge William Keady made certain that the legislature understood his role in the reform of Parchman prison, but besides general calls for more funding, Judge West did not specifically place the burden on the legislature. Maybe Judge West’s hands off relationship with legislative involvement changed with the legislature’s continued refusal to allocate any money to the prison during the 1975-1976 fiscal year but appropriating funds for the expansion of Tiger Stadium on the campus of Louisiana State University. Maybe West did this to force Governor Edwards to utilize his friends at the state capitol to pass legislation to fund the prison. Judge Keady appeared to have a grasp on legislative matters in Mississippi, ultimately placing the onus on the state assembly and assuring not only increased funding but an omnibus bill in 1976 that created a

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Department of Corrections and drastically reorganized the way lawmakers handled state corrections. With one attorney stating that Louisiana might have to spend upwards of ten million dollars on Judge West’s order, the Louisiana legislature had to take notice of this order and realize the role they would have to play in making Angola a constitutional prison farm. Judge West commented once that “I find it’s always so easy for people to say what can’t be done rather than what can be done.” In West’s opinion, it was time for the legislature to start doing what it had to do in order to reform Angola, even if he did not directly come out and give the legislature any specific requests.³⁷⁹

Accurately reflecting the opinion from those outside of Louisiana’s government and corrections’ system, an editorial in the *Morning Advocate*, Louisiana’s paper of record in Baton Rouge, firmly told Louisiana’s government to quit procrastinating and repair a problem that existed well before Judge West’s order.³⁸⁰ Governor Edward’s reaction that the federal government had no business meddling in state affairs “has proved time and time again to be ineffective. Even an appeal of the federal court order will only ‘buy time’ for the state to get around to solving the many complex problems at the pen.” Angola certainly suffered from similar issues experienced in Parchman, where a “tough on crime” legislature and group of district court judges cared little about where the numbers they convict would reside. Spending money on those they send to prison seemed to many in southern state governments like a laughable possibility. “The legislature should provide some funds for emergency use in purchasing materials for construction of new housing facilities at Angola,” stated the editor. While Director Elayne Hunt properly had refused to construct tent cities to temporarily ease

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³⁷⁹ Foster, 25.
overcrowding, the decentralization process should begin soon. “Decentralization,” stated the article, “is the best answer, but procrastination in facing the realities of the situation at Angola can only bring the state more headaches.”  

In July, the Louisiana legislature began taking steps to help ease the crowding situation at Angola by adding a five million dollar bond to a capital improvements bill which would allow the construction of a first offenders camp, giving the nearly two thousand first offenders and non-violent offenders a place to go instead of living among the hardened criminals of Angola.  

Defendants Elayne Hunt and Governor Edwards, filed an appeal, but this appeal appeared to be solely a time-buying decree. They had earlier asked Judge West to grant a temporary extension of the deadlines of his June order, but he refused. Obviously, West’s patience continued to grow thin with Angola and state officials. This prompted Governor Edwin Edwards, on July 19, to halt all new prisoners from entering Angola. This decision from Edwards would bring about the same backlash it garnered in Mississippi from sheriffs and prosecutors. Governor Edwards, declaring that “this is a serious problem involving the penal system out of step with the times,” stated that he considered it impossible to bring Angola to within constitutional standards in the time frame West imposed. “The court order makes it impossible to proceed with ‘deliberate speed,’” wrote Judge West, “and it is hoped that the public will recognize that the expenditure of funds on an emergency basis . . . Nonetheless, the public’s paramount right to security and safety will be maintained during these procedures.” Elayne Hunt stated that funds needed to make the required changes at Angola might amount to over one hundred million dollars over

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381 Ibid.
383 In November, Sheriff Charles Foti charged the Department of Corrections of “hiding behind a federal court order” and asked a local judge to force an order opening up Angola. See Pierre V. Degruy, “Foti Asks Court Here to Open Angola Gates,” Times-Picayune, New Orleans, LA, November 5, 1975 and “Sheriffs’ Group Seeks Funding for Prisoners,” Morning Advocate (Baton Rouge, LA), November 26, 1975.
three years. She made this statement in Washington, D.C., asking the LEAA to offer whatever assistance possible.384

The government attempted a great number of plans throughout 1975 to ease crowding issues at Angola. The Department of Corrections began moving up to five hundred inmates to the East Louisiana State Hospital in Jackson, Louisiana.385 By other means of reducing the population, Angola officials figured that they could get the total population down to around three thousand, which still hovered over West’s number by 2600. Commissioner of Administration Charles E. “Buddy” Roemer stated that the current decentralization plans in place for Louisiana’s prison system would cost around seventy million dollars. On Monday, January 5, 1976, Judge West praised officials at Angola, stating they were doing a good job in attempting to comply with his 1975 order. The jurist also stated that he had not yet reviewed a compliance report submitted by defendants in December, but Magistrate Polozola began the process of reviewing the report.386

The years following 1976 began an even newer era for corrections in Louisiana. Slowly, but surely, the decentralization plan would commence. Slowly, but surely, new facilities would be built around Louisiana in order to house the prison population that could not constitutionally remain at Angola. Judge E. Gordon West’s connection to prison reform in Louisiana also slowly came to end. Judge West approached reforming Louisiana’s largest prison farm in a different manner than had Judges Henley and Keady. Maybe he had to because of the actual extent of problems at Angola. Judge West utilized the trails blazed by Henley and paved by Keady. Judge

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384 Ibid.
385 Deidre Cruse, “500 Inmates To Be Moved from Angola to Jackson,” Morning Advocate (Baton Rouge, LA), October 29, 1975.
386 Ibid. Also see C.M. Hargroder, “Moves Taking 45 to 60 Days,” Times-Picayune (New Orleans, LA), October 29, 1975; and “West Praises Angola Efforts at Compliance,” Morning Advocate (Baton Rouge, LA), January 6, 1976.
West’s judicial personality when litigating state prison conditions represented the role of a cautious reformer. Always wary of prisoner complaints, even resisting the urge to utilize his federal court to reform the state prison during the earlier trials, Judge E. Gordon West had no choice once the Fifth Circuit Court of Appeals changed the federal court mentality regarding state prison reforms in Louisiana. Even then, West resorted cautiously, declaring conditions unconstitutional but appointing a special master to handle the delicate duties of prison reform. Judge West could utilize a line of precedent that mandated a number of changes in Louisiana that had already taken place in Arkansas and Mississippi. Thanks to previous cases in federal courts, West’s special master quickly pointed out the problems at Angola, thus shifting the task to how and when the state would fix the problems. While impossible to identify the specific reasons as to why Judge West appointed a special master, some might look back to comments made earlier in his career and wonder if he just had no interest in helping Angola prisoners seek constitutional relief. No matter his motives, Judge E. Gordon West set Louisiana’s infamous Angola prison farm on course to becoming one of America’s safest prisons.

Thus, in a span of around eleven years, three southern federal court judges all began, presided, and guided—all in their own unique way—the intense and complicated reform of a penal farm system in the South that, only a decade earlier, no one ever comprehended would be changed. But more importantly, these judges spearheaded efforts to make their states’ citizens aware of the problem and helped them to realize that whatever happened within their prison farm walls affected society without as well.
CHAPTER TEN: CONCLUSION

The Prison Farm and its Peculiar Journey

Throughout the course of this study, the reader has taken a journey into a world that not many people were aware existed. Northern states had their issues with prisons, for sure, but they had no idea that prisons in the South involved old, abandoned plantations, rebranded as “penal institutions.” They probably had no idea of paternalistic attitudes of southern white classes and how prisons in the South only helped bring back to postbellum southern America those old power notions. Yes, many could correctly call this a system of pseudo-slavery. Whether discussing the brutal convict lease system, or the system that replaced it, utilizing the plantation system, not many outside of the South had any idea of such a system existing.

Those in the South, even those living very close to these prison farms, had no idea what went on behind the fences. Or if they did, they probably looked the other way, while at the same time sticking their hand out to receive the benefits these penal farms provided for those free people in surrounding areas. If the prison farms in this study shared one aspect, it was the grease to keep the graft and handout system working. Not only did private citizens benefit from this benefit, but the government certainly gained advantages from such a prison system. For one, the government did not have to outlay any capitol for a new prison structure. The castle-like fortress prison of the Northeast never made its way to the Deep South, for the plantations, minus the slaves, already existed. These prison farms often provided enough money to assure their running, even if that running did not amount to anything glamorous, or as this study demonstrated,
constitutional. Not only did these farms bring in the capital that ran them, but they oftentimes brought in profit. If someone had asked a state legislator from Arkansas, Mississippi, or Louisiana how much debating they had in their last session on capital bills for prisons, they would have looked at you amusingly, for it was not the legislature’s responsibility to provide funding for convicts. These men and women needed to suffer for their crimes, and they needed to provide for their own vehicles of suffering. One thing these three judges did accomplish, among many others, was instilling the principle into their respective state legislatures that if their sovereign state wanted to house their convicted felons, then they needed to do it on a constitutional level. And if that meant the legislature needed to fund such endeavors, so be it.

In considering why it did in fact take so long for this crisis to come about, one might consider the history of the United States. After Reconstruction, the Compromise of 1877 began the continual bargaining away of African-American rights for the benefit of the southern white classes and began taking away any sort of political personality that freedmen gained thanks to the military presence in the South and the Thirteenth, Fourteenth, and Fifteenth Amendments. Former slave masters mourned the fact that their once productive farms, worked, tilled, fertilized, and reaped with the sweat of the former slave’s brow, now sat in a deplorable state. Yes, the corrupt sharecropping arrangement and the crop lien system that came with it brought some of that power back, but nothing replaced the slave system, taken away by the North whose selfishness destroyed the chattel system. Southern states never rebuilt their prison systems, which the Civil War destroyed. The brutal practice of lending and leasing out convicts represented too deadly a system even for southern states wishing to keep their racial divide in place while punishing its mostly African-American convict population. So, utilizing old slave plantation land as a prison seemed like a great idea, especially to near bankrupt Southern state governments. Not
only would they have a place to send their prisoners, but they would have a steady stream of money come in.

This system continued in relative secrecy for decades, until the 1950s and 1960s, when a rising Civil Rights Movement began reaching an early apex. The National Association for the Advancement of Colored People (NAACP) made considerable headway in the court system, winning victory in *Brown v. Board of Education*, which declared segregation in public school systems unconstitutional. If Jim Crow could be systematically dismantled, then its effect on penal affairs could also be reduced. As did certain events during the Civil Rights Movement, such as the murder of Emmett Till, the nation began taking notice of what was occurring in the South. Thanks to television, those in other areas of the nation and the world began seeing how destructive race relations played out in the South in their living rooms. One can argue that these penal farms in the South had their own movements which began garnering interest outside of the South, such as the heel-slashing incident at Angola or the discovery of buried convicts that were listed on Cummins Farm roles as “escapees.”

**The Peculiar Judges that Changed Southern Prisons Forever**

Most southerners either cared little about their nearby prison farms or they simply took advantage of them and rather appreciated their existence. Unfortunate for those wishing to keep the white paternalistic ideals in place, the inmates in these prison arms had constitutional rights as well. As people began slowly seeing the brutality of these prisons, most realized that change would never come from within their respective states. For one thing, the South of the Southern Democrats came to embrace the mindset of Barry Goldwater and the Southern Strategy of Richard Nixon. In a staunch reaction to the rebellious 1960s, many Southern Democrats began
embracing Nixon’s “tough-on-crime” politics, firmly merging the conservative mindset with the Republican Party. Thus, state legislators who had this “tough-on-crime” mentality had no issue with an abusive, unconstitutional prison system. They also had no problem agreeing that more people needed to be sent to these prisons for longer amounts of time.

Also, the memories of Reconstruction and the Civil War, the “Lost Cause” still represented a mindset embraced by most white southerners. And part of this memory involved the egregious Union armies remaining in the South, instituting what became known as Radical Reconstruction, enacting punishment upon the southern states and never allowing them to rebuild and recover. In many ways, these issues of Federalism from Reconstruction persisted, and many governors and legislatures in southern states took personally any enactment from Washington, DC or the federal government. This especially involved Washington, DC mandating that southern public schools allow African American children to attend the same schools as white children. Along these same lines, “how dare the federal government tell us how we need to run our prison farms” had to be a line oft repeated in southern state capitals during the decades of federal court prison reform.

Judge J. Smith Henley, from little St. Joe, Arkansas, trained as a lawyer at the University of Arkansas. Never leaving Arkansas, he fully grasped what it meant to be a southerner. For a number of reasons, maybe not quite known to him at the time of his judgeship, the role of a federal court judge in a Southern state in the middle of the twentieth century would not be a pleasant role. Considering Judge Henley and his US District Court in Arkansas became the first to mandate the reform of southern prison farms, Henley definitely had his work cut out for him. Henley, a firm believer in the ideal that the state governments should not be told what to do, but rather they should be guided and given the ability to make their own decisions, had no blueprint to follow in mandating change take place at Arkansas's two largest prison farms.
Judge Henley started small, first telling the prison farms that they had to get rid of corporal punishment. But then, change after that took place on the state's schedule. Unfortunately, in Arkansas the state did not do enough in due time to please Judge Henley. This forced him to take another never travelled road—he declared the whole prison system in Arkansas unconstitutional. Henley acted as a manager of the prison from then on, more specifically stating what the prison farm needed to do in order to be constitutional. Henley then tried to release the prison from his jurisdiction, but the Eighth Circuit Court of Appeals told him that he needed to retain jurisdiction over Arkansas's prisons until the system moved within constitutional restraints. One could imagine how this decision pained Judge Henley. He wanted sorely to give control of the system back to Arkansas, realizing that the state could on its own continue guiding the farms in a more positive way. But prisoners in Arkansas had to thank the Eighth Circuit Court of Appeals, for their forcing Henley to retain jurisdiction of the farms meant that Henley would be involved in reform efforts for years to come. Judge Henley even had to return to the bench at his old district court once he was promoted to judge at the Eighth Circuit Court of Appeals in St. Louis. Judge J. Smith Henley, for all of his efforts, unpopular as they might have been to southerners in Arkansas, represented the purest prison reformer of the three. His judicial personality both allowed state actors in Arkansas the latitude to approach prison reform in a way they chose, but this same personality allowed him to step in and force their decisions when necessary.

Judge William C. Keady's rise to the federal bench took a different direction than that of Judge Henley. Growing up in Greenville, Mississippi, young Bill Keady did something that not many expected once he graduated from high school: instead of attending the University of Mississippi School of Law, he traveled to St. Louis to attend law school at Washington University. Once he became a federal judge in Mississippi, many people had hopes that he could
be the person that might change the attitudes toward prison reform in the state. Judge Keady had the advantage of witnessing Judge Henley’s reform of prison farms in Arkansas, and Keady realized that he would have to be a bit more stern and direct in handling issues at Parchman Prison Farm. Judge Keady declared a number of issues within the prison farm unconstitutional, such as the lack of proper medical facilities and staff and overcrowding within the prison which did not ensure the safety of prisoner at the farm. Judge Keady’s reform of Parchman differed from Henley’s earlier reform in a few respects. For one, Judge Keady did not start small and then move from there. He examined the whole of the prison situation at Parchman and made decisions regarding constitutionality over the whole system. He did not have to declare the whole system unconstitutional as had Judge Henley, for Mississippi in many ways had a number of advantages which would make certain reforms easier to enact. For one, while Arkansas had no free world personnel working at their farms except at the highest administrative levels, Mississippi did have a better mix of free world personnel with more experience in correctional matters. Also, Mississippi, possibly due to the changes taking place within Arkansas’s farms, began slowly reforming its prison’s inadequacies earlier. Also, Keady would not allow authorities in Mississippi to come up with their own plans. Keady would be intimately involved with the statistics and figures of the proper population for the prison farm to become constitutional. His reports would have the detail present in architectural designs for penal institutions. Judge Keady also realized the key to making any positive change at the prison rested in the legislature appropriating more funds to the prison. Judge Keady certainly embodied the role of the forceful reformer when tackling state prison deficiencies from the federal bench. He understood the legislature he had to deal with, and he took note of the difficulties Judge J. Smith Henley faced in neighboring Arkansas. Judge West utilized his unique legal training and experience outside of
Louisiana and his expertise with the Mississippi legislature to take a unique path in reforming Parchman. Thus, specifically in his opinions, Judge Keady often called out the legislature and demanded that it allocate money and do its part in reforming the system. Keady’s work with the legislature brought about sweeping changes in the way corrections managed itself and the money it provided for its prison.

Judge E. Gordon West had his own unique path to the federal bench in Louisiana. Born in Massachusetts, he gradually made his way to Louisiana, attending law school at Louisiana State University. Thus, West had the most peculiar upbringing when compared to the other judges, but he also had the peculiarity of relocating to a southern state and training within its borders. Unlike the other judges, Judge West’s path to the bench was not as smooth as it might have been. While many had hoped Kennedy’s appointment would favor tackling issues of discrimination and issues within Angola, he reached the federal bench already being criticized for his remarks regarding the “unfortunate” nature of *Brown v. Board of Education*, not even given the opportunity to explain himself. If one observed Judge West’s earliest opinions regarding prisoner rights in Louisiana, practically all hope was lost. Not many expected a judge insistent on not interfering with state prison matters to do anything to reform what many had considered “America’s Worst Prison.” Fortunately for prisoners in the Bayou State, the Fifth Circuit had recently experienced a renewed desire to review civil rights matters in state prisons. The Eighth Circuit affirming Judge Henley’s actions in Arkansas certainly led to a persuasive argument for doing the same sort of reform in the Fifth Circuit, which encompassed Mississippi and Louisiana. Judge West embodied the judicial personality of the cautious reformer. Unlike Judges Henley and Keady, Just West appeared hesitant to get the federal courts involved in Louisiana’s prison matters. Whether due to concerns of federalism or simply his assumptions of state
prisoner motives when petitioning his court, he took a very cautious approach to reforming Angola. Ultimately, Judge West would use one of Judge Keady’s opinions in Mississippi to justify his declaration of a majority of aspects of prison life at Angola unconstitutional. At first glance, the seemingly quick appointment of a special master to handle penitentiary matters in Louisiana might appear to demonstrate apathy toward the plight of prisoners at Angola. The evidence for such a conclusion, however, simply does not exist. Federal court judges appoint special masters for a number of reasons, especially considering the complexity involved in reforming a penal system. One must not forget that these three judges also had their hands full desegregating the public school system. Also, Judge West had an even clearer view of how prison reform should best be accomplished. His cautious approach urged him to appoint a special master to hold all hearings and produce a report, which he would then consider and sign. Judge West placed all faith in his special master, and him signing off on the report with no changes in no way represented laziness or lack of sympathy. Looked at another way, Judge West’s particular methods of handling reform in Louisiana might have represented a fairer way of accomplishing change. Instead of clogging his docket and trying to become a penal specialist overnight, he allowed another jurist to take charge. At the end of the day, it would be Judge West whose signature would enact the order. Thus, the buck stopped with Judge West. In a rather direct, yet still unforeseen way, he brought about the impetus of change at Angola prison farm as had Judges Henley and Keady.

All three of these states would have their prisons maintained by the jurisdiction of the federal court for years to follow. But these three judges slowly stepped away from the reform. All of them left the bench being respected for the work they performed in reforming America’s worst prisons. All uniquely southern in their own ways, they managed to use their own unique
judicial personality to institute vastly unpopular change. Their meticulous reform of state system represented a balance that only judges with their respective backgrounds could have pulled off.

The most fascinating aspect of this study reveals itself in studying these judges before the bench and during. One born, raised, and trained in Arkansas, another born and raised in Mississippi but trained in Missouri (but declaring all his life that he would always be a Mississippian) and one born and raised in Massachusetts, taking a path to Louisiana via Texas and trained in Texas.

Each judge had his own splash of southernness. But the judges could also separate that part of them when it mattered the most. Each judge realized that the US Constitution forms the foundation of all law, even the law of a state in the Deep South. The law worked. It ultimately paved the way for a group of enslaved Africans to become citizens, African-Americans, one even reaching our nation’s highest office. Judges J. Smith Henley, William C. Keady, and E. Gordon West all had faith in the US Constitution and faith in their federal courts to do the right thing, even if they did it their own way. Judge Henley blazed the trail, Judge Keady paved it, and then Judge West traveled down the path, celebrating in his actions those of the prison farm reforming southerners before him.
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Worked as co-editor of an undergraduate and graduate scholarly journal in history published by Phi Alpha Theta International History Honors Society, Epsilon Xi Chapter. Duties included selecting, reading, proofreading and editing submitted manuscripts to include in a scholarly journal.

Graduate Assistantship, Honors Program, Fall 2005 to May 2008
Duties included assisting in attendance record keeping of weekly Honors Seminars, a class that every honors student must take every semester. I also advised students and assisted in coordinating honors thesis projects.

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Duties included researching legal issues, investigating client’s case, and corresponding with client and organization regarding cases for clients convicted of rape. Duties also involved research that would allow use of Louisiana’s DNA statutes allowing post-conviction relief to take advantage of new genetic technology after the normal appeals period has expired.

Department of Justice, Attorney General’s Office, Civil Division: Baton Rouge, LA
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Duties included researching legal issues for assistant attorneys general primarily in the areas of litigation, writing original briefs, motions, and interoffice memoranda. I also researched various state law issues and drafted Attorney General Opinions for the various departments of the civil division.