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"The Most Eloquent Dissents:" Writ Writing at Parchman Penitentiary

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"The Most Eloquent Dissents:" Writ Writing at Parchman Penitentiary

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By

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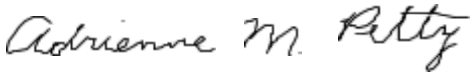

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I. INTRODUCTION

> "How could I conceive that Parchman was past, present, and future all at once? That the history and sentiment that carved the place out of the wilderness would show me that time is a vast ocean, and that everything is happening at once?"
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> - *Sing, Unburied, Sing*, Jesmyn Ward

Driving north from Jackson—through Yazoo City, past Belzoni and Indianola, and into Sunflower County—the small metropolis melts away into the flat land of the Mississippi Delta. Highway 49W stretches for miles alongside half-flooded fields peopled with worn irrigation equipment and abandoned bales of cotton. In the distance, a highway marker warns: "State Penitentiary Area. Emergency Stopping Only." A half-mile farther and a large sign emerges from the vast plains: MISSISSIPPI STATE PENITENTIARY.

Parchman is Mississippi's oldest and only maximum-security prison. Since its inception, those who operate the prison have subjected its incarcerated population to abhorrent conditions and unspeakable abuse. Only fifty years ago, prisoners spent their days toiling in cotton fields under the hot Delta sun. They lived in filthy wooden dormitories called cages under the watch of armed and dangerous inmate guards. Today, those incarcerated at Parchman are housed in deteriorating facilities plagued by violence.[1] Prisoners outnumber guards and, as a result, prisoners and prison staff are constantly in danger of violent assaults.[2]

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[1] Michelle Liu, "Leaked Mississippi prison photos of skimpy meals, moldy showers and exposed wiring prompt call for investigation," *Mississippi Today*, May 29, 2019, https://mississippitoday.org/2019/05/29/leaked-mississippi-prison-photos-of-skimpy-meals-moldy-showers-and-exposed-wiring-prompts-call-for-investigation/.

[2] Jerry Mitchell, "Beatings, murderers, and prisoners set on fire: inside the prison called 'gangland,'" *The Guardian*, August 21, 2019, https://www.theguardian.com/us-news/2019/aug/21/south-mississippi-correctional-institution-prison.

On December 29, 2019, forty-year-old Terrandance Dobbins was the first prisoner killed when rioting and violence erupted throughout Parchman and other state correctional facilities. Five more men died during the first week of the new year. In efforts to quell the violence, prison officials transferred scores of prisoners to Unit 32, a notorious maximum-security unit closed over ten years ago. In Unit 32, prisoners did not have access to running water, food, hygiene products, or mattresses.[3] Some prisoners used cell phones, which prison officials deem contraband, to alert their families and the media about the horrors occurring at Parchman. "Please try to help us," said a prisoner in a video he recorded and posted to social media. "Let the world know."[4]

In total, twenty-seven men have died at Parchman and other Mississippi prisons since rioting began in late December. In response to horrific conditions and violence, over 100 prisoners have filed suit against prison administrators and officials at the Mississippi Department of Corrections (MDOC). They assert that conditions at Parchman violate their rights under the Eighth and Fourteenth Amendments. Fifty years ago, prisoners similarly initiated a class action suit alleging prison administrators subjected them to cruel and unusual punishment.

Such action has become a tradition at Parchman; incarcerated individuals continue to take to the courts to protest abuse and inhumane conditions of confinement they are made to endure. They file suits to secure their freedom and defend their constitutional rights when no one else

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[3] Alissa Zhu, "Parchman reopens notorious, long-closed Unit 32 after deadly Mississippi prison violence," *Clarion-Ledger*, January 7, 2020, https://www.clarionledger.com/story/news/2020/01/07/ms-prison-riots-inmates-moved-parchmans-closed-notorious-unit-32/2824615001/.

[4] Rick Rojas, "'Please Try to Help Us:' Conversing With Mississippi Inmates on a Contraband Phone," The New York Times, January 16, 2020, https://www.nytimes.com/2020/01/16/us/mississippi-prison-cellphones.html.

will. Writ writing at Parchman, prisoners' practice of learning the law on the inside and bringing lawsuits to the courts on their own behalf, has become their paramount means of resistance and self-advocacy. Their efforts have gone unnoticed and are increasingly obstructed, but they persist nonetheless.

II. THE EMERGENCE, DEVELOPMENT, AND RESTRICTION OF WRIT WRITING

On April 20, 2020, in *Ramos v. Louisiana*, the Supreme Court held that the Sixth Amendment, as incorporated and made applicable to the states through the Fourteenth Amendment, requires that guilty verdicts be arrived at by unanimous juries.[5] The decision effectively ended the decades-long debate over the constitutionality of non-unanimous jury convictions. In 2015, Evangelisto Ramos was charged with second-degree murder; 10 members of a 12-member jury voted to convict, and he was later sentenced to life without parole. A 1972 Supreme Court decision sanctioned the Louisiana statute that permitted Ramos's conviction. In *Apodaca v. Oregon*, five justices ruled that the Sixth Amendment right to a jury trial did not require a unanimous jury verdict in criminal cases.[6] Justice Lewis Powell, the deciding vote, concurred and further concluded that the Sixth Amendment only requires unanimous jury verdicts in federal criminal cases.

Since the Court's 1972 ruling, countless petitions for certiorari had been presented but none were granted; that is, until Calvin Duncan's. The jailhouse lawyer for some 23 years at Louisiana State Penitentiary at Angola had championed this cause from inside for a generation. Duncan is credited with "identifying, shepherding and presenting the cases" to the Court.[7] While incarcerated, Duncan studied law and was employed by the prison to assist fellow prisoners with

[5] 590 U.S. _ (2020).
[6] 406 U.S. 404 (1972).
[7] Adam Liptak, "A Relentless Jailhouse Lawyer Propels a Case to the Supreme Court," *The New York Times*, August. 5, 2019, https://www.nytimes.com/2019/08/05/us/politics/supreme-court-nonunanimous-juries.html.

their legal matters. He did it well. Several prisoners received new trials as a result of his assistance; at least one was released.[8]

Meanwhile, although it did not directly affect him, Duncan grew increasingly preoccupied with Louisiana's non-unanimous jury statute. He made about two dozen attempts to persuade the Court to consider the issue.[9] His relentlessness eventually paid off. The question attracted the attention of the news media and prompted several states and organizations such as the American Bar Association and the NAACP Legal Defense & Educational Fund to write amicus curiae briefs in support of Evangelisto Ramos.[10] Notwithstanding the countless street lawyers, as incarcerated writ writers often call those who are endorsed by the Bar, who have gotten behind this issue, it is Calvin Duncan—a veteran jailhouse lawyer with a tenth grade education—who led the movement to get the question before the Court.

This is the work of writ writers. However, Duncan is undoubtedly the exception and not the rule; few pro se prisoner litigants win the suits they bring in state and federal courts, much less author briefs that reach the Supreme Court. Nonetheless, writ writing has long been a means by which the incarcerated have sought, and continue to seek, post-conviction relief and to redress civil complaints. More than two million people are currently incarcerated in jails and prisons throughout the United States and, for most of these individuals, litigation is their only viable option to remedy the problems they face on the inside.

Habeas corpus and civil rights suits compose the overwhelming majority of prisoner litigation. Incarcerated women and men petition for habeas relief when challenging the

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[8] Ibid.
[9] Ibid.
[10] Brief for States of New York, California, Illinois, Michigan, Minnesota, Nevada, Vermont, and Virginia, and The District of Columbia as Amici Curiae, Ramos v. Louisiana, 590 U.S. _ (2020).

unlawfulness of their incarceration. These suits typically allege that some procedural error or constitutional violation occurred during trial or appeal. Civil rights suits concern the treatment of prisoners and their conditions of confinement. In a comprehensive study investigating the evolution of prisoner civil rights litigation, Margo Schlanger (2003) found that the most common civil complaints filed by prisoners involve "physical assaults (by correctional staff or by other inmates), inadequate medical care, alleged due process violations relating to disciplinary sanctions, and more general living-conditions claims (relating, for example, to nutrition or sanitation)."[11] Less common are civil suits related to violations of prisoners' First Amendment rights, access to courts, and censorship of mail.[12] Schlanger (2017) reports that state prisoners have consistently filed more than 20,000 civil rights suits in federal district courts annually since 1987.[13]

Judicial recognition and establishment of prisoners' civil rights developed slowly throughout the Twentieth Century as a result of broader societal struggles for civil rights during the 1960s as well as Supreme Court mandates.[14] For the better part of the Twentieth Century, prisoner suits alleging civil rights violations remained largely ignored by the courts; the state and federal judiciary employed a "hands-off" doctrine in which courts declined to intervene in the operation of prisons. Scholars attribute the courts' long policy of nonintervention to the separation of powers doctrine,[15] the belief that judges lacked the necessary "penological

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[11] Margo Schlanger, "Inmate Litigation," *Harvard Law Review* 116, no. 6 (2003): 1571.
[12] Ibid.
[13] Margo Schlanger, "Trends in Prisoner Litigation, as the PLRA Approaches 20," *Correctional Law Reporter* 28, no. 5 (2017): 71.
[14] Jim Thomas, *Prisoner Litigation: The Paradox of the Jailhouse Lawyer* (New Jersey: Rowman & Littlefield, 1988), 92.
[15] The separation of powers doctrine outlines that the legislative, executive, and judicial branches of government share power, and each branch has a role in checking the power of the others.

knowledge and expertise" to assess the operation of prisons, as well as judges' fear of undermining the authority of prison administrators.[16]

The Tenth Circuit Court of Appeals's opinion in *Banning v. Looney* (1954) typifies this "hands-off" philosophy. In *Banning*, the appeals court declared that "courts are without power to supervise prison administration or to interfere with the ordinary prison rules or regulations."[17] Years later this understanding was reaffirmed in *Sutton v. Settle* (1962) when the Eighth Circuit asserted that the "supervision of inmates of federal institutions rests with the proper administrative authorities and that courts have no power to supervise the management and disciplinary rules of such institutions."[18] The commitment to judicial non-involvement supported legal theory which "effectively stripped offenders of virtually all Constitutional protections."[19] A Virginia court clearly outlined this philosophy in *Ruffin v. Commonwealth* (1871). The court held that incarcerated individuals are "slave[s] of the state" and, therefore, not entitled to the constitutional "rights of freemen."[20] While this ideology prevailed within state and federal courts, cruel treatment of prisoners persisted throughout American prisons.[21] Courts finally began to question their adherence to these principles in the 1960s due, in the view of many scholars, to the

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Under this principle, judges believed prison administration and oversight was an executive function.

[16] Geoffrey P. Alpert, "Prisoners' Right of Access to Courts: Planning for Legal Aid," *Washington Law Review* 51, no. 3 (1976): 656-657; Ronald L. Goldfarb and Linda R. Singer, "Redressing Prisoners' Grievances," *George Washington Law Review* 39, no. 2 (1970): 181.

[17] 213 F.2d 771.

[18] 302 F.2d 288.

[19] Thomas, *Prisoner Litigation*, 84.

[20] 62 Va. at 796.

[21] Citing the absolute authority and discretion of prison officials in the operation of correctional facilities, a federal district court concluded that a prison's practice of arbitrarily isolating prisoners and denying them food and comfort was not unconstitutional. *Knight v. Ragen*, 337 F.2d 425 (1964). A year prior, the Supreme Court of Delaware upheld the state's practice of whipping prisoners as a form of disciplinary punishment. *State v. Cannon*, 55 Del. 587 (1963).

credit of widespread social activism during the Civil Rights Movement and other large grassroots movements.[22] As courts began broadening protections for citizens' civil rights, these rights were slowly extended to prisoners and the courts increasingly became more inclined to review prisoner litigation.[23]

Incarcerated Black Muslims led the practice of writ writing; they filed suits alleging racial and religious discrimination at the hands of prison officials. One such suit was *Cooper v. Pate* (1964). A prisoner at the Illinois State Penitentiary filed a civil suit, under Section 1983 of the Civil Rights Act of 1871,[24] asserting that prison officials prohibited him from purchasing religious publications, which deprived him of his constitutional right to worship.[25] Finding the allegations true, in a per curiam decision, the Supreme Court reversed the lower court ruling and explicitly affirmed prisoners' right to freedom of religion.[26]

Cooper is considered one of the first and most significant prisoners' rights cases because the Court not only acknowledged that prisoners are entitled to certain constitutional protections, but also that courts, under Section 1983, have jurisdiction to review alleged violations.[27] By

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[22] Thomas, *Prisoner Litigation*, 87; Dragan Milovanovic, "Jailhouse Lawyers and Jailhouse Lawyering," *International Journal of the Sociology of Law* 16, no. 4 (1988): 456-457; Alpert, "Prisoners' Right of Access to Courts," 654.
[23] Milovanovic, "Jailhouse Lawyers and Jailhouse Lawyering," 456-457.
[24] 42 U.S.C §1983 outlines: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.
[25] 378 U.S. 546.
[26] *Id*.
[27] Thomas, *Prisoner Litigation*, 87.

determining that prisoners can bring suits against prison officials under Section 1983,[28] the Court expanded prisoners' access to the courts and brought review of prison administration under judicial scrutiny. Alpert (1976) further notes that the Court's ruling was especially consequential because the establishment of Section 1983 as an avenue for incarcerated individuals to defend constitutional protections effectively relieved prisoners of the responsibility of proving entitlement to these rights. Instead, the burden fell on prison officials to establish that imposed restrictions are "necessary and proper" and the "least restrictive of prisoners' rights."[29] Thus, the early work of incarcerated Black Muslims not only provided a precedent for other prisoners to hold prison officials accountable for unjust treatment,[30] but also led to the Supreme Court decision that established the legal grounds by which they could do so.

Article I Section 9[31] of the Constitution explicitly states the right to a writ of habeas corpus; Alexander Hamilton believed it to be among the greatest "securities to liberty and republicanism" outlined in the document.[32] In 1941, the Supreme Court acknowledged, for the first time, incarcerated individuals' constitutional right to access the courts to petition for a writ

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[28] The Court initially revived Section 1983 in *Monroe v. Pape* (1961). The Court held that 42 U.S.C §1983 intends to provide a remedy for "parties deprived of constitutional rights, privileges, and immunities by an official's abuse of his position," and that the "federal remedy is supplementary to the state remedy," which "need not be sought and refused before the federal remedy is invoked." 365 U.S. 167, at 183. *Monroe* was not a prisoner suit, but the protections the Court established in the case were later applied to prisoners through *Cooper*.

[29] Alpert, "Prisoners' Right of Access to Courts," 658.

[30] James B. Jacobs, "The Prisoners' Rights Movement and Its Impacts, 1960-80," *Crime and Justice: An Annual Review of Research* no. 2 (1980): 433.

[31] "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."

[32] Alexander Hamilton, Federalist No. 84, in *The Federalist Papers*, ed. McLean, New York, https://www.congress.gov/resources/display/content/The+Federalist+Papers#TheFederalistPapers-84.

of habeas corpus. In *Ex parte Hull*,[33] the Court invalidated a Michigan prison regulation requiring prisoners to submit "'[a]ll legal documents, briefs, petitions, motions, habeas corpus proceedings and appeals'" to the institutional welfare office and the legal investigator at the state's parole board for approval before they could be filed in court.[34] While declaring the prison's practice unconstitutional, the Court asserted:

> The considerations that prompted its formulation are not without merit, but the state and its officers may not abridge or impair petitioner's right to apply to a federal court for a writ of habeas corpus. Whether a petition for writ of habeas corpus addressed to a federal court is properly drawn and what allegations it must contain are questions for that court alone to determine.[35]

Notwithstanding the Court's ruling, prior to the 1960s and just as in the case of civil rights, the writ remained unavailable to prisoners due, in part, to the commitment to judicial noninvolvement. Judges also believed habeas corpus relief was not available to those convicted by a court of competent jurisdiction and, further, maintained that state remedies must be exhausted before prisoners could seek federal relief.[36]

A series of Supreme Court decisions under Chief Justice Earl Warren eroded courts' commitment to these principles. The Supreme Court initially broadened the scope of the writ to include prisoners in *Brown v. Allen* 344 U.S. 443 (1953) when the majority declared that federal courts could collaterally review constitutional issues in state criminal proceedings. Prisoners' right to petition for a writ of habeas corpus was further expanded in 1963 with three additional decisions from the Court.

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[33] 312 U.S. 546 (1941).
[34] *Id.* at 548.
[35] *Id*. at 549.
[36] Thomas, *Prisoner Litigation*, 76, 78.

First, in *Fay v. Novia* 372 U.S. 391 (1963), a prisoner convicted of felony murder in New York state failed to appeal his conviction in state court. Instead, he initiated habeas corpus proceedings, challenging the constitutionality of his conviction based on a coerced confession, in the U.S. District Court for the Southern District of New York. The court conceded the coercive nature of the confession, but denied relief because the petitioner failed to exhaust available state remedies. On appeal, the Second Circuit reversed, and the Supreme Court later affirmed. The Court's decision minimized the constraints of the "exhaustion" doctrine on prisoners filing for habeas corpus relief and affirmed that federal courts possess the power to review state court decisions.

In *Townsend v. Sain,* 372 U.S. 293 (1963), the Court reviewed the admissibility of confessions. It ruled that in certain situations, when a trial record is not clear, federal courts may hold evidentiary hearings when reviewing an application for habeas corpus. Writing for the court, Chief Justice Warren emphasized, "[t]he duty to try the facts anew exists in every case in which the state court has not after a full hearing reliably found the relevant facts."[37] Underscoring the significance of this decision, Thomas (1988) notes that the ruling established a basis for federal courts to review state courts' findings of fact when such proceedings were found to be inadequate, which subsequently established another basis for habeas litigation.[38]

Finally, in *Sanders v. U.S.* 373 U.S. 1 (1963), a pro se federal prisoner filed two motions challenging his conviction. The first motion made conclusions unsupported by facts and was dismissed; the second, filed eight months later, included a complaint supported by facts related to the prisoner's mental competency at the time he entered his guilty plea. The federal district court

[37] *Id*. at 318.
[38] Thomas, *Prisoner Litigation*, 79.

denied both motions without hearing. On review, Justice William Brennan, writing for the court, determined that the prisoner was entitled to a hearing on the second motion because the district court did not deny the first motion on the merits. The ruling outlined circumstances under which prisoners can relitigate issues that were previously raised in state courts.

A. Why Prisoners Represent Themselves

State and federal prisoners filed more than 466,000 suits in federal courts between 1961 and the mid-1980s.[39] The prevalence of pro se prisoner filings during this period highlights the extent to which incarcerated individuals took action to better their situation on their own behalf. The vast majority[40] of prisoner litigation is conducted by prisoners themselves because legal counsel is unavailable or inaccessible. Most incarcerated individuals cannot afford to obtain counsel to represent or advise them in their legal matters.[41] Moreover, many attorneys are "unwilling or unable to take on full representation of prisoner litigants."[42] Prisoners' access to other legal assistance, such as public defenders, is often limited due to inadequate funding and understaffing.[43] Incarcerated individuals' access and right to counsel is also limited following direct appeal or after a guilty plea.

Charles Larsen, a writ writer at San Quentin in the late 1960s, articulates several other reasons why prisoners turn to writ writing.[44] Larsen contends that it is not uncommon for

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[39] Ibid., 51.
[40] Among all prisoner petitions (13,475) filed in federal appeals courts in 2018, eighty-five percent were filed pro se. Admin. Office of The U.S. Courts, Judicial Business (2018) available at https://www.uscourts.gov/statistics-reports/judicial-business-2018.
[41] Ira P. Robbins, "Ghostwriting: Filling in the Gaps of Pro Se Prisoners' Access to the Courts," *Georgetown Journal of Legal Ethics* 23, no. 2 (2010): 275.
[42] Ibid., 273.
[43] Milovanovic, "Jailhouse Lawyers and Jailhouse Lawyering," 458.
[44] Charles Larsen, "A Prisoner Looks at Writ-Writing," California Law Review 56, no. 2 (1968).

prisoners to prefer to represent themselves rather than be represented by a public defender. He explains the belief held among many prisoners that public defense is "but token compliance with the constitutional right to counsel."[45] Prisoners with this understanding are more often than not those who were represented by appointed counsel at trial, and were unsatisfied with their representation upon conviction.[46]

Shon Hopwood reiterates this perspective. In 1998, Hopwood was convicted of five counts of armed robbery and sentenced to ten years in federal prison.[47] While incarcerated, Hopwood studied the law and began assisting other prisoners with their legal matters—most of which involved complaints regarding ineffective assistance of counsel. He maintains that most of the men he assisted demonstrated a lack of faith in professional lawyers.[48] Thus, the decision to proceed pro se derives both from necessity and some prisoners' belief that they can represent themselves better than an overburdened, under-resourced, and ineffective public defender.

B. Jailhouse Lawyers

Whether by necessity or by choice, learning the law and representing oneself while incarcerated is a daunting task. More often than not, incarcerated individuals' legal experience begins and ends with their own trial. Studying law takes patience and determination, especially

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[45] In *Gideon v. Wainwright*, the Court held that indigent state criminal defendants are guaranteed the Sixth Amendment right to the assistance of counsel. Gideon was a writ writer himself. He represented himself on appeal when the state of Florida denied him the assistance of counsel at trial. His case was granted certiorari by the Supreme Court and he won. 372 U.S. 335 (1963). Ibid., 346.

[46] Ibid.

[47] Shon Hopwood, *Law Man: Memoir of A Jailhouse Lawyer* (Washington: Prison Professors, 2017).

[48] Shon Hopwood, Interview with author, February 11, 2020. Hopwood became a successful writ writer while incarcerated; he wrote two petitions to the Supreme Court and both were granted certiorari. Hopwood is now an Associate Professor of Law at Georgetown University Law Center.

given the limited legal materials prisoners have access to and the less than ideal environment in which they work. Many incarcerated individuals have limited education,[49] so a legal education is unsurprisingly rare among the incarcerated. The prevalence of mental illness among prisoners presents additional obstacles for pro se litigants.[50] Therefore, few prisoners draft their own petitions, and instead rely on the assistance of jailhouse lawyers.[51] Sometimes called writ writers, jailhouse lawyers are incarcerated individuals who study the law, as spartan prison conditions permit, obtain some proficiency in legal proceedings, and assist fellow prisoners with their legal matters. Many jailhouse lawyers begin filing suits for themselves and then eventually start assisting fellow prisoners. Jailhouse lawyers are recognized and sought out by other prisoners because of their legal competency, frequency of filing lawsuits, and, possibly, because of their record of winning cases.[52]

C. Prisoners' Right to Access the Courts

Prisoners' practice of writ writing and their ability to assist one another developed in the 1960s and 1970s with recognition from the Supreme Court. The Supreme Court's decision in *Johnson v. Avery* (1969), in particular, recognized jailhouse lawyers as vital actors whose work contributes to realizing prisoners' right to access the courts.[53] In *Johnson*, a prisoner serving life in the Tennessee State Penitentiary was transferred to a maximum-security building for violating a prison regulation prohibiting prisoners from assisting one another in drawing up habeas corpus petitions:

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[49] Michael W. Martin, "Forward: Root Causes of the Pro Se Prisoner Litigation Crisis," *Fordham Law Review* 80, no. 3 (2011): 1225.
[50] Ibid., 1226.
[51] Thomas, Prisoner Litigation, 200-201.
[52] Ibid., 192.
[53] Jacobs, "The Prisoners' Rights Movement," 436.

> No inmate will advise, assist or otherwise contract to aid another, either with or without a fee, to prepare Writs or other legal matters. It is not intended that an innocent man be punished. When a man believes he is unlawfully held or illegally convicted, he should prepare a brief or state his complaint in letter form and address it to his lawyer or a judge. A formal Writ is not necessary to receive a hearing. False charges or untrue complaints may be punished. Inmates are forbidden to set themselves up as practitioners for the purpose of promoting a business of writing Writs.[54]

The Court struck down the prison policy and emphasized the "fundamental importance" of the writ of habeas corpus and prisoners' right to petition the courts.[55] Acknowledging the prevalence of illiteracy among the incarcerated, the Court found that a prisoner's lack of education could affect his or her ability to assist in the handling of their legal matters. Without assistance, the Court reasoned prisoners with limited education would effectively be "denied access to the courts."[56] Writing for the majority, Justice Abe Fortas declared, absent an adequate alternative, prison officials cannot prevent or punish a prisoner for assisting another in the preparation of petitions for post-conviction relief.[57] The majority underscored the importance of jailhouse lawyers as "exceptionally gifted prisoners," in the Court's phrase—in closing the gap by assisting their peers.[58]

In *Wolff v. McDonnell* (1974), the Court extended its holding in *Johnson* to prisoners' assisting one another in civil rights suits.[59] The Court emphasized:

> Where an illiterate inmate is involved … or where the complexity of the issue makes it unlikely that the inmate will be able to collect and present the evidence necessary for an adequate comprehension of the case, he should be free to seek the aid of a fellow inmate, or … to have adequate substitute aid.[60]

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[54] 393 U.S. 483, at 484.
[55] *Id.* at 485.
[56] *Id*. at 488.
[57] *Id.*
[58] *Id.* at 488.
[59] 418 U.S. 539.
[60] *Id*. at 570.

The Court also affirmed that prisoners' right of access to the courts derives from the Fourteenth Amendment's Due Process Clause, and ensures "no person will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights."[61] By deeming access to the courts a right protected by the Fourteenth Amendment, the Court established a "constitutional basis to support" jailhouse lawyering.[62]

Following *Wolff*, the Court stressed, in *Bounds v. Smith* (1977), that it is the State's responsibility to provide prisoners with "meaningful access" to the courts.[63] Prison officials must assist prisoners in the "preparation and filing of meaningful legal papers" by providing them with "adequate law libraries or adequate assistance from persons trained in the law."[64] The Court refused to conclude, as the State argued, that prisoners are "'ill-equipped to use' 'the tools of the trade of the legal profession,' making libraries useless in assuring meaningful access."[65] Instead, citing its own experience with pro se incarcerated petitioners, the Court found that these advocates are capable of using legal materials to "file cases raising claims that are serious and legitimate even if ultimately unsuccessful."[66] Moreover, the Court suggested that other resources, besides law libraries, may be sufficient in providing prisoners access to the courts. In fact, the Court encouraged "local experimentation," stipulating, however, that such experiments are subject to evaluation to ensure they accord with constitutional standards.[67]

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[61] *Id*. at 579.
[62] John F. Myers, "Writer-Writers: Jailhouse Lawyers Right of Meaningful Access to the Courts," *Akron Law Review* 18, no. 4 (1985): 652.
[63] 430 U.S. at 824.
[64] *Id.* at 828. In *Younger v. Gilmore*, 404 U.S. 15 (1971), the Court held per curiam that States must protect prisoners' access to the courts by providing them with legal resources.
[65] *Id.* at 826.
[66] *Id*. at 826-827.
[67] *Id*. at 832.

D. Restrictions on Prisoners' Right to Access the Courts

Bounds strengthened the Court's prior holdings, emphasizing that it has been "established beyond doubt that prisoners have a constitutional right of access to the courts."[68] Scholars have noted, however, that while these cases have allowed jailhouse lawyers to "function within the prison system" the Court has not made the "jailhouse lawyer's struggle less burdensome."[69] In *Johnson*, the Court outlined that prisons may limit the time and location of prisoners' practice of writ writing. Prisons "may impose reasonable restrictions and restraints upon the acknowledged propensity of prisoners to abuse both the giving and the seeking of assistance in the preparation of applications for relief."[70] Moreover, in *Bounds* the Court reiterated its holding in *Johnson*: if adequate alternatives are available, prison officials may restrict or altogether prohibit jailhouse lawyering.[71]

However, even when other legal assistance plans have not been implemented, prison officials have increasingly restricted prisoners' practice of writ writing. And in many cases, the courts have upheld such policies as within the scope of *Johnson's* time, location, and manner restrictions. One early example is *Sostre v. McGinnis* (1970), in which the Second Circuit Court of Appeals upheld a state prison's policy requiring prisoners to apply to the warden for permission to assist other prisoners with legal matters.[72] The court noted that such a policy would

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[68] *Id*. at 821. The Court first acknowledged prisoners' right to access the courts in *Ex parte Hull* (1941). In subsequent decisions, the Court worked to ensure prisoners' meaningful access to the courts. In *Griffin v. Illinois*, 351 U.S. 12 (1956), the Court held that when indigent defendants seek appellate review, states must provide them with trial transcripts. In *Burns v. Ohio*, 360 U.S. 252 (1959), the Court held that indigent prisoners cannot be precluded from filing habeas corpus petitions because of their inability to pay court filing fees.
[69] Myers, "Writer-Writers," 652.
[70] *Johnson*, 393 U.S. 483, at 490.
[71] *Id*. at 490.
[72] 442 F.2d 178.

only violate *Johnson* if the warden established unreasonable conditions for granting permission.[73] The court also upheld the prison's rule of prohibiting prisoners from sharing law books, stating concern that some prisoners may seek non-monetary fees in exchange of legal materials.[74] In *Buise v. Hudkins* (1978), the Seventh Circuit held that "certain types of inmate lawyering" may be restricted "under certain circumstances," such as when prisoners are assigned to other work.[75] The court also held that prison officials may restrict writ writing for purposes of prison security.

In *Simmons v. Russell* (1972), the U.S. District Court for the Middle District of Pennsylvania maintained that a prisoner who has been placed in a segregated unit as a result of violating prison rules has "by his misconduct, [ ] forfeit[ed] his role as 'jailhouse lawyer.'"[76] The Court's ruling opens a clear way to suppress jailhouse lawyering. In some instances, guards have filed false disciplinary reports and placed prisoners in segregated units under "specious administrative charges."[77] In these cases, prisoners are arbitrarily and unconstitutionally precluded from accessing legal materials for themselves and from doing so to assist their fellow prisoners. Courts have also established restrictions on inter-institutional communications. In *Heft v. Carlson* (1973), the Fifth Circuit found that prison officials have the "right and responsibility to regulate correspondence of inmates."[78] Such restrictions may hinder prisoners' ability to

[73] *Id*. at 201.
[74] *Id*. at 202.
[75] 584 F.2d 223, at 231.
[76] 352 F Supp. 572, at 579 n 7.
[77] Mumia Abu-Jamal, *Jailhouse Lawyering: Prisoners Defending Prisoners v. The U.S.A* (San Francisco: City Lights Books, 2009), 60; Prison guards warned a prisoner that if he did not become a guard informant "bad things would happen to him." The prisoner refused. He was subsequently issued two baseless disciplinary charges and later placed in administrative lockdown. *Woods v. Smith*, 60 F.3d 1161 (1995).
[78] 489 F.2d 268, at 269.

communicate regarding legal matters, as in this case. Heft sought advice from a prisoner at another institution regarding how to sue prison officials.

Other restrictions have been established to discourage jailhouse lawyers' exploitation of vulnerable prisoners. Some states have prohibited prisoners from receiving compensation or other non-monetary fees for their assistance.[79] Jailhouse lawyering can be a profitable business, and some skilled prisoners do not provide their services only to help their fellow prisoners. States have enacted restrictions on jailhouse lawyering for profit in response to those jailhouse lawyers "who practice favoritism, bribery and physical abuse upon illiterate and ignorant prisoners desiring legal assistance."[80] Furthermore, such representation blurs the line between "the legal assistance of one inmate to another … and the unauthorized practice of law."[81] While the assistance of a jailhouse lawyer is permitted in the context of a prison where legal counsel is not accessible, jailhouse lawyering for profit "places undue disciplinary and security risks on the prison administration" and "creates severe ethical problems."[82] Such exploitative practices

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[79] Myers, "Writer-Writers," 659; CAL. ADMIN. CODE tit. 15 § 3163 (1982); N.Y. ADMIN. CODE tit. 9 § 7031.3(c) (1977); OHIO ADMIN. CODE § 5120-9-48 (E) (1974).
[80] Myers, "Writer-Writers," 659.
[81] Ibid; 28 U.S.C. § 2254 (1976).
[82] Ibid. During oral argument in *Gideon v. Wainwright* (1963), Justice Hugo Black asked counsel for the state of Florida if Gideon would be permitted to represent someone else:

> THE COURT: I suppose I am right in my assumption I made earlier that Florida wouldn't permit Gideon or any other layman to defend anyone else in the State on trial, would it?
> MR. JACOB: No, it wouldn't, Your Honor. Gideon could—if a man came into court and said, I want to be defended by Gideon, then certainly the court would not object.
> THE COURT: It wouldn't?
> THE COURT: Wouldn't Gideon maybe get in trouble for practicing law without a license?
> THE COURT: With the local bar association.
> MR. JACOB: I'm sorry, Your Honor; that was a stupid answer.

nonetheless continue, and have subsequently contributed to institutional opposition to jailhouse lawyering.

Prison policies and procedures tend to be arbitrary and fecklessly applied by low-level staff who, sometimes, obstruct, harass, and abuse jailhouse lawyers. Many of the obstacles jailhouse lawyers face come from prison administrators.[83] There is institutional resentment toward jailhouse lawyers because their ability to understand the law lends them an elevated status over other prisoners. Moreover, some prison staff perceive jailhouse lawyers as "troublemakers" who undermine the authority of prison officials and disrupt the status quo. Indeed, some jailhouse lawyers rightfully file suits to alert the courts when prisoner officials abuse their power over incarcerated individuals. Subsequently, when a jailhouse lawyer frequently files civil suits against prison staff, whether successful or not, that prisoner may become a target for disciplinary retaliation. In 1991, Mark S. Hamm and a group of other scholars published an extensive study concerning prison discipline across the country, and concluded that jailhouse lawyers experience more disciplinary punishment than any other class of prisoners.[84] Punishment and retaliation from prison staff often includes: preventing prisoners from accessing the law library, failing to repair equipment or replace legal resources, frequently searching a prisoner's cell and disturbing the organization of their legal materials, and, in extreme cases, transferring a prisoner to another facility or threatening violence against a prisoner.[85]

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[83] Thomas, Prisoner Litigation, 227.
[84] Mark S. Hamm et al., "The Myth of Humane Imprisonment: A Critical Analysis of Severe Discipline in Maximum Security Prisons, 1945-1990," *Prison Violence in America* (Ohio: Anderson, 1994).
[85] Thomas, *Prisoner Litigation*, 227-232.

These obstructions derail jailhouse lawyers' productivity and contribute to hostile relationships between the incarcerated and their state keepers. These actions have additional consequences as well. When jailhouse lawyers are unable to oversee other prisoners' cases, the courts often receive "suits that are not well written, that ignore court filing procedures, or fail to state legal issues."[86] These frivolous suits burden courts. Frivolous cases do not only arise from inexperienced writ writers or their lack of assistance from a jailhouse lawyer. Other frivolous suits include those that present trivial issues to the courts, or those that fabricate or exaggerate claims of guard harassment.[87] Many others, however, are meritorious and present serious grievances to the courts. Nevertheless, frivolous suits are pernicious to all prisoner claims. The concern that pro se prisoner litigation burdens courts coupled with the perception that the overwhelming majority of these cases are frivolous has contributed to further legislative and judicial regulation which creates greater obstacles for writ writers.[88]

In the mid-1990s, Congress's passage of the Prison Litigation Reform Act (PLRA) and the Antiterrorism and Effective Death Penalty Act (AEDPA) brought about a new era of restricted writ writing.[89] Among many other damaging regulations, the PLRA established that prisoners cannot file civil suits until they have exhausted available administrative remedies, which can be labyrinthine and unavailing.[90] The act also mandated that, unless in "imminent

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[86] Ibid., 228.
[87] Thomas notes that some prisoners have previously bought suits regarding "cold toilet seats" and prison officials' "failure to provide outside television antennas." Ibid., 67, 137.
[88] Jessica Feierman, "The Power of the Pen: Jailhouse Lawyers, Literacy, and Civic Engagement," *Harvard Civil Rights Civil Liberties Law Review* 41, no. 2 (2006).
[89] Schlanger, "Inmate Litigation," 1558. ("[T]he PLRA has shrunk the number of new federal filings by inmates by over forty percent, notwithstanding a large increase in the affected incarcerated population.")
[90] 42 U.S.C. § 1997e(a) (2000).

danger of serious physical injury," prisoners who have been found to file three or more frivolous suits may not file additional suits in court.[91] The AEDPA similarly prohibits prisoners from presenting claims filed in prior petitions.[92] The AEDPA also outlines that prisoners have one year from the time of the court's decision to file a writ of habeas corpus.[93] Scholars have concluded that such regulations effectively hinder prisoners' right of meaningful access to the courts.[94] Jessica Feierman (2006) found that these statutes are especially burdensome for prisoners with "low literacy levels."[95] She explains that these prisoners may be uninformed about the extensive procedural regulations, and, even when they are aware, the rules can be difficult to understand and follow.[96]

In *Lewis v. Casey* (1996), the Supreme Court placed further limitations on prisoners' rights to access the courts.[97] The Court asserted that *Bounds* "did not create an abstract, freestanding right to a law library or legal assistance."[98] The Court also held that prisoners shoulder the burden in proving they suffered an "actual-injury" or were unable to "pursue a legal claim" due to inadequate legal assistance in the prison.[99] The Court's decision supports prison officials' ability to limit legal materials and assistance available to pro se prisoners which further obstructs their chances of understanding regulations outlined in the PLRA and AEDPA.[100]

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[91] 28 U.S.C. § 1915(g) (1996).
[92] 28 U.S.C. § 2244(b)(1) (2000) (A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed).
[93] 28 U.S.C. § 2244(b)(1) (2000).
[94] Joseph T. Lukens, "The Prison Litigation Reform Act: Three Strikes and You're out of Court - It May Be Effective, but Is It Constitutional," *Temple Law Review* 70, no. 2 (1997).
[95] Feierman, "The Power of the Pen," 379.
[96] Ibid. at 379-380.
[97] 518 U.S. 343.
[98] *Id*. at 351.
[99] *Id*.
[100] Feierman, "The Power of the Pen," 380.

Incarcerated writ writers operate in a system that has clearly recognized and reaffirmed their right to practice as a means of accessing the courts—and one which has also greatly restricted such access. And yet, despite the countless daunting hurdles they face, writ writers continue to file suits and, in some cases, prevail. Litigation is a significant, and often, the only means by which they can challenge their sentences and bring attention to institutional abuses. If nothing else, whether successful or not, prisoners' practice of writ writing is a form of self-advocacy and agency that has persisted within a justice system that facilitates and perpetuates oppression of incarcerated populations.

III. THE PARCHMAN SITUATION

> "[P]resent conditions at Parchman are philosophically, psychologically, physically, racially and morally intolerable."
> - Judge William C. Keady, *Gates v. Collier* (1972)

Established at the turn of the Twentieth Century, the Mississippi State Penitentiary at Parchman consisted of several segregated[101] prison camps scattered across 20,000 acres of the flat land of the Mississippi Delta. From its conception, the sprawling penal farm was intended to be self-sufficient; punishment and profit were its only aims. The prison was better at the former, and over time developed a reputation for its brutal treatment of prisoners. A Northern penologist visiting the prison in the 1920s confirmed as much: "[t]heir cotton is very profitable, but that profit is secured by reducing the men to a condition of abject slavery."[102] Years later, well into the 1950s, a *New York Post* journalist similarly concluded, "[t]he state penitentiary system at Parchman is simply a cotton plantation using convicts as labor. The warden is not a penologist, but an experienced plantation manger. His annual report to the legislature is not of salvaged lives; it is a profit and loss statement, with the accent on profit."[103] Indeed, as late as 1973 the prison returned approximately $1,384,000 to the state treasury from its farming operations.[104]

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[101] Parchman's camps were segregated by race and gender. The prison opened its first women's camp around 1915 where 26 Black women were incarcerated. Throughout the first half of the Twentieth Century 25-65 Black women were incarcerated at the prison each year, while no more than five white women were imprisoned to Parchman at any given time. David Oshinsky, *Worse Than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice* (New York: The Free Press, 1996), 169, 174. Parchman is now an all-male facility. Female prisoners were moved to Central Mississippi Correctional Facility (CMCF) in the mid-1980s.
[102] Hastings Hart, "Prison Planning," January 18, 1929.
[103] *New York Post*, January 9, 1957.
[104] David M. Lipman, "Mississippi's Prison Experience," *Mississippi Law Journal* 45, no. 3 (1974): 701; *Clarion-Ledger*, December 20, 1973.

Every day, gun-toting trusties led prisoners to cotton fields where they toiled from dawn to dark. The prison's emphasis on profit meant that no one spent their days idle. Prisoners worked, ate, and, if time permitted, rested in the fields. Defiance or refusal to work was discouraged with cruel and degrading punishments. The sergeant of each respective camp meted out such penalties. He could elect to put a prisoner in solitary confinement for a period of his choosing or, as most staff preferred,[105] employ Black Annie—a three-foot leather strap that "could lay open a man's back and make his flesh raw."[106] The strap was considered the "true symbol of authority and discipline" at Parchman.[107] Prisoners received whippings from Black Annie for a variety of offenses, including; failing to meet their 200-pound daily quota of cotton, fighting, stealing, insubordination, and attempting to escape.[108]

Floggings were conducted in front of other prisoners to inflict both pain and humiliation. The unlucky prisoner would be "stripped to the waist and spread-eagled" on the ground.[109] Other prisoners held the victim down while the sergeant delivered the blows. The severity of the lashing depended upon the sergeant's temper on the day in question. Prison policy outlined that the victim would receive his "whuppin" on the buttocks.[110] In some instances, however, other parts of the body were targeted. After a failed mass escape attempt, several prisoners were beaten and the superintendent had the ringleader "lashed on the buttocks, calves, and palms, then gave

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[105] Most prison officials opted to utilize Black Annie to punish prisoners; solitary confinement was viewed as a "reward for unacceptable behavior" because it took prisoners away from working in the fields. William Banks Taylor, *Down on Parchman Farm: The Great Prison in the Mississippi Delta* (Columbus: Ohio State University Press, 1999), 62.
[106] Donald A. Cabana, *Death At Midnight: The Confessions of An Executioner* (Boston: Northeastern University Press, 1996), 112.
[107] Oshinsky, *Worse Than Slavery*, 149.
[108] Ibid., 150.
[109] Ibid., 149.
[110] Taylor, *Down on Parchman Farm*, 61.

him fifteen lashes on the soles of his feet."[111] Severe lashings such as this were not uncommon. When asked if a beating from Black Annie ever resulted in injury, one prisoner responded: "Yeah! They'd kill um like that."[112] Although prison officials' use of Black Annie declined over the years, the antiquated punishment was used as late as the mid-1960s.[113]

Other horrors occurred at Parchman as a result of the prison's trusty system. In the place of civilian guards, the prison utilized armed prisoners (called trusty shooters) to supervise the general prison population (referred to as gunmen) while they worked on the long line in the fields. The role of trusty was typically awarded to those serving lengthy sentences for violent crimes. Trusties were selected for their "ability to intimidate" and their "willingness to use force."[114] These inmate guards notoriously abused their power, from engaging in extortion to physically beating and, sometimes, shooting other prisoners to death.[115] In some instances this violence was encouraged or covered up by prison officials.[116]

The perilous reality of incarceration at Parchman was further exacerbated by the prison's racially skewed composition. Parchman's incarcerated population has always been predominantly Black. In 1917, the prison reported that ninety percent of its population consisted of young, illiterate Black males.[117] By 1973, Black prisoners still accounted for as much as

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[111] Superintendent Oliver Tann, quoted in *Memphis-Commercial-Appeal*, July 29, 1953; Oshinsky, *Worse Than Slavery*, 150.
[112] Alan Lomax, *The Land Where the Blues Began* (New York: The New Press, 1993), 257.
[113] *Delta Democrat-Times*, July 12, 1970.
[114] Oshinsky, *Worse Than Slavery*, 140.
[115] *Gates v. Collier*, 349 F. Supp. 881, at 899; Lipman "Mississippi's Prison Experience," 697.
[116] A trusty was instructed to shoot another prisoner who was chained to a fence as punishment. The trusty complied with the order. Stephen Gettinger, "Mississippi Has Come a Long Way, But It Had a Long Way to Come," *Corrections Magazine* (1979): 8.
[117] Oshinsky, Worse Than Slavery, 137.

sixty-three percent (1,211) of the total prison population (1,901).[118] Until the mid-1970s, the prison frequently subjected Black prisoners to disparate treatment. Black prisoners commonly received harsher punishments than white prisoners for similar transgressions. Prison officials segregated prisoners' work assignments on the basis of race. Black prisoners were not provided the same vocational training opportunities offered to their white counterparts. Similarly, residential camps were segregated and the Black camps tended to be overcrowded and in worse condition than white camps.[119] In 1936, the Penitentiary Committee visited Parchman and reported:

> At Camp B we found that there are 173 men and 105 beds and the bedding is in a deplorable condition. The men have had to "double up" considerably on single beds and many of the beds are not fit for any use whatever … We do not think … that we can say anything that would be too bad about this Camp.[120]

Parchman operated this cruel regime for more than 60 years, but it did not do so without opposition. Some newspapers frequently scrutinized prison administrators and their treatment of prisoners. Hodding Carter, in particular, was a progressive journalist and editor at the *Delta Democrat-Times* who regularly ridiculed prison officials and their use of Black Annie. In 1953, Superintendent Marvin Wiggins deemed the paper "not reputable," arguably for its incessant criticism of the prison, and explicitly excluded Carter and his staff from a gathering of journalists at Parchman. Carter subsequently proposed a "deal" with Wiggins. He suggested that a group of newspaper editors evaluate his paper, and a group of penologists evaluate Parchman. "[W]hoever

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[118] Lipman, "Mississippi's Prison Experience," 744. Today, Black men make up 65 percent of prisoners currently housed at Parchman. Mississippi Department of Corrections, "Monthly Fact Sheet," https://www.mdoc.ms.gov/Admin-Finance/MonthlyFacts/2020-3%20Fact%20Sheet.pdf. Accessed March 20, 2020.
[119] *Gates*, at 899; Lipman "Mississippi's Prison Experience," 697.
[120] Report of the Penitentiary Committee (1936), Mississippi State Archives, Jackson, M.S.

gets the low score … [shall] take ten from Black Annie with the winner wielding the strap. We can feel ourselves getting sorry for Marvin's backside already. But, on second thought, since we don't believe in the lash, like Marvin does, we suggest as a substitute that if he loses he be required to read a book on present-day penal methods."[121]

Every so often, a few legislators similarly denounced operations at Parchman and called for reform. During the 1952 legislative session, Senator William B. Alexander did so fervently. As recently appointed chairman of the Senate penitentiary and prison committee, Alexander delivered a speech before the Mississippi Senate condemning Parchman for its use of Black Annie and trusty guards. He called for cooperation between prison administration and the legislature to implement a number of gradual reforms; namely, abolishing the lash, dispensing of the trusty system, and de-emphasizing money-making.[122] Senator Alexander and Senator Howard McDonnell later sponsored a bill requiring that 25 percent of the prison's yearly profits be appropriated for "the correction, welfare, rehabilitation, recreation, and health of the inmates including vocational training."[123] Their efforts proved unsuccessful in the end, as was often the case.

Parchman's penal system remained largely unchanged because most Mississippians were either indifferent to the suffering that occurred at the prison or found it necessary and appropriate. This indifference was due, in part, to the fact that the prison's remoteness isolated it from the daily lives and thoughts of most civilians. Although Parchman's closest neighbors resided but a few miles south in the city of Drew, the population numbered only a little over

[121] *Delta Democrat-Times*, June 25, 1953.
[122] *Clarion-Ledger*, January 17, 1952.
[123] Taylor, *Down on Parchman Farm*, 136.

1,500 in the 1940s. On the other hand, some others were aware of the atrocities which occurred at the prison and, nonetheless, praised and defended Parchman's administration. In fact, until the 1940s, the public, more often than not, supported the prison's administration.[124] In 1932, the *Jackson Clarion-Ledger* insisted, "very few states give their prisoners more humane treatment or keep them in [a] healthier environment." Three years later, the newspaper defended the use of Black Annie: "[t]he whip makes no appeal to hidden virtue, … but it is a sure effective means of planting fear … in the hearts of [prisoners]. It is retribution and retribution hurts."[125] In other instances, some chose to ignore the whip and other atrocities at Parchman and instead praise the lucrative business of prison labor.[126]

After more than a half century of callous disregard, widespread public attention finally focused on Parchman's conditions in the 1960s, as hundreds of civil rights activists descended on Mississippi. In the summer of 1961, Freedom Riders traveled through the Deep South on integrated buses in protest of southern states' nonenforcement of a Supreme Court decision[127] that ruled segregation on interstate travel unconstitutional. When they arrived in Mississippi, they were arrested and detained at Parchman. The young activists refused bail and instead served their thirty-nine-day sentences. The Student Nonviolent Coordinating Committee (SNCC) initiated the "Jail, No Bail" campaign in 1960; activists sought to fill southern jails in efforts to put financial pressure on localities that enforced segregation. This form of protest became an integral part of the Civil Rights Movement.

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[124] Ibid., 79.
[125] *Clarion-Ledger*, July 20, 1935.
[126] Oshinsky, *Worse Than Slavery,* 226.
[127] *Morgan v. Virginia,* 328 U.S. 373 (1946)

While incarcerated, prison guards shocked the Freedom Riders with cattle prods, forced them into 8 x 10-foot cells, took their mattresses, withheld all reading materials (except the Bible), and only allowed them to shower twice a week. Bernard Lafayette, a longtime civil rights activist, Freedom Rider, and champion of nonviolent resistance, recalls the resilience and creativity he witnessed among his fellow protesters while at Parchman. Despite the treatment they endured, the Freedom Riders sang freedom songs, held lectures, and played chess on a homemade chess set crafted from a page out of a Gideon Bible and pieces of dried biscuits and potatoes.[128] In 1965, four years after the "Jail, No Bail" campaign, 250 civil rights activists were incarcerated in Parchman's maximum-security unit after a demonstration in Natchez. Like their predecessors during the summer of 1961, the activists were subjected to cruel treatment and inhumane conditions.

These events drew attention to Parchman as a "civil rights problem" and prompted scores of lawyers from the NAACP Legal Defense Fund and the Lawyers' Committee for Civil Rights Under the Law to travel to Mississippi.[129] The Lawyers' Committee filed two civil suits in federal courts; the first concerned an incident in which an incarcerated juvenile was shot in the face by a trusty[130] and the second addressed Parchman's inhumane treatment of the Natchez demonstrators. In *Anderson v. Nosser*, the Fifth Circuit Court of Appeals held Parchman's

[128] Bernard Lafayette, Interview with author, Montgomery, Alabama, March 10, 2020.
[129] Ibid., 238.
[130] In *Roberts v. Williams*, a 14-year-old Black boy lost his eyesight and sustained permanent brain damage after being shot in the face by a trusty at the Leflore County penal farm. The court found the superintendent liable for negligence in his failure to properly train trusty shooters at the prison. 302 F. Supp. 972 (1969).

superintendent liable for subjecting the demonstrators to cruel and unusual punishment in violation of the Eighth Amendment.[131]

The court outlined prison officials' nefarious treatment of the demonstrators. Upon arrival, male protesters were ordered to strip naked and women were instructed to remove their "shoes, stockings, sweaters, coats, jewelry, and wigs."[132] The demonstrators were forced to consume laxatives, "deprived of all personal belongings, including sanitary napkins and medicines," and then, as many as eight people were crammed into single cells consisting of two steel bunks without mattresses or bedding, a toilet, and a washbasin. Throughout their imprisonment, the demonstrators were further subjected to physical abuse.[133] Prison officials failed to offer any real justification for the treatment of the demonstrators other than that "the treatment was merely the standard operating procedure for the maximum-security unit."[134] In response, the court asserted, "[w]e deal with human beings, not dumb, driven cattle."[135]

Parchman attracted more attention in 1968 after a riot broke out at Camp Five. The riot began as a labor strike when 39 men "bucked the line" and refused to return to the fields. Those who participated in the riot were transferred to the maximum-security unit where they cursed at guards, destroyed toilets, and smashed windows.[136] Despite attempts from prison administrators

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[131] 438 F.2d 183 (1971).
[132] *Id*. at 187.
[133] The court continued: "There were no towels or soap and there was inadequate toilet paper. The temperature ranged from 60 to 70 degrees, the chill being aggravated by exhaust fans which blew intermittently on the occupants. Some of the men eventually were permitted to get their underwear, but others were nude for a period of 36 hours. Many were subjected to blood tests. Moreover, while standing in the prison courtyard awaiting processing several plaintiffs were kicked, pushed, cursed, and abused by the highway patrolmen and other guards." *Id*. at 187-188.
[134] *Id*. at 193
[135] *Id*.
[136] *Clarion-Ledger*, February 1, 1968.

to conceal the disturbance from the governor and general public, news of the incident leaked and the legislature launched an investigation into the riot and general operations at the prison.[137] A week later, members of the Senate and House Penitentiary Committee sat in the prison library listening to witness testimony from prisoners, sergeants, and administrators which painted a bleak picture of life at Parchman. Several prisoners specifically attributed the cause of the riot to the abuse and violence they experienced from trusties.[138] Other prisoners suggested that the rioting was caused by widespread dissatisfaction regarding "mistreatment and brutality, poor food, favoritism to certain convicts and inadequate efforts toward rehabilitation."[139] In part, the committee report ascribed the riot to "criticism of penitentiary administration and policies by individuals outside the administration."[140]

The 1968 inquiry was followed by an additional investigation in 1970 which officially recognized that "the total atmosphere and actual operation of Parchman [was] completely enmeshed in the use of armed trusties or shooters" and was "for all practical purposes, operated by the prisoners."[141] The report warned against continued use of the trusty system, predicting that "it is only a matter of time before the federal courts will order the complete abolition" of the inmate guard system.[142] Notwithstanding this conclusion and recent investigations' extensive documentation unequivocally exposing the barbarity of the trusty system, it was not until the

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[137] *Delta Democrat-Times,* February 2, 1968.
[138] Richard Harrison, a young prisoner at Parchman, maintained that "he had seen beating of the inmates by convict guards and attributed the riot to the fact that the men doing time were at the mercy of trustees." *Clarion-Ledger*, February 2, 1968.
[139] Ibid.
[140] Lipman, "Mississippi's Prison Experience," 696.
[141] Ibid., 698; Penal Institutions Legislative Study Committee, A Study of Adult and Juvenile Correctional Programs in the State of Mississippi (1970), 40.
[142] Ibid., 33.

controversial murder of a young white gunman by a trusty[143] that the legislature passed a "half hearted" bill to abolish the trusty system by the summer of 1974.[144] Indeed, the legislature's aforementioned prediction came true. The bill was rendered irrelevant, and later repealed, after a federal district court intervened and ordered that, among other things, the wicked decades-old inmate guard system finally be dismantled.

[143] Danny Calhoun Bennett was a young white prisoner serving a short sentence for burglary. The penitentiary listed heat stroke as his cause of death. However, a local undertaker discovered burns and bruising on his body and alerted authorities unaffiliated with the prison. An additional autopsy uncovered broken bones and internal bleeding which suggested Bennett had been beaten to death. The legislature initiated an investigation, and, through witness testimony, unearthed the truth: Two trusty guards murdered the young prisoner. Bennet passed out from exhaustion while working in the cotton fields. When he failed to rise and resume his work, two trusties shocked him with cattle pods, beat him with the handle of an ax, and left his brutalized body on the back of a truck to boil under the Delta sun. The two trusties were convicted of his murder, but nonetheless reappointed to trusty status. Oshinsky, *Worse Than Slavery*, 243-244; Taylor, *Down on Parchman Farm*, 192; Lipman, "Mississippi's Prison Experience," 698.

[144] Lipman, "Mississippi's Prison experience," 699; MISS. CODE. ANN 47-5-143 (1972), (Repealed 1976).

IV. THE VERY HEART OF GATES

At the dawn of the new decade—after years of benign indifference and silent acquiescence to the status quo from legislators, governors, and the public—Parchman finally fell under the scrutiny of the federal judiciary. Beginning in 1972, Federal District Judge William C. Keady issued a series of mandates intended to bring the prison in line with "contemporary concepts of decency and human dignity."[145] By the end of the decade, the most brutal and atrocious characteristics of the old Parchman would live on only in folklore and the memories of old-timers at the prison. Indeed, the intervention of the Federal District Court did much to bring about change, to include deconstructing Parchman's infamous prison administration. But, in truth, *Gates v. Collier* would not have been the revolutionary case it became without persistent pressure from prisoners no longer willing to endure abuse. Aided by their committed civil rights attorneys, Parchman's incarcerated population emerged as the driving force which initiated, sustained, and enforced *Gates*.

In 1970, a group of dedicated prisoners successfully solicited representation from civil rights attorney Roy Haber and the Mississippi office of the Lawyers' Committee for Civil Rights Under the Law.[146] Haber initially traveled to the prison to meet with Matthew Winter, a prisoner serving a life sentence for murder, to determine if Winter's sentence could be challenged on the basis of ineffective assistance of counsel at trial.[147] During Haber's visit, Winter and hundreds of other men recounted stories of unimaginable abuse and neglect they experienced at the hands of

[145] *Gates*, at 895.
[146] Ronald Welch, "Developing Prisoner Self-Help Techniques: The Early Mississippi Experience," *Prison Law Monitor* 2, no. 5 (1979): 118.
[147] Lillian Cunningham, "Fair punishment," Episode 9, Constitutional, podcast audio, October 23, 2017, https://www.washingtonpost.com/podcasts/constitutional/.

trusty shooters and their state keepers. Appalled by what he heard and saw, Haber agreed to file suit against Parchman officials on the prisoners' behalf. The 31-year-old, in the words of a *New York Times* article, was an "abrasive New York lawyer who has probably made more high-placed enemies in Mississippi than any of the other 'outside agitators' who espoused civil libertarian causes" in the state during the previous ten years.[148] Haber became the frontman for Parchman's incarcerated population whose voices had long been silenced.

A new phase in the struggle to protect prisoners' rights and reform Parchman began as incarcerated men gave their statements to the young attorney. In only a few visits Haber collected enough testimony from prisoners describing murders, rapes, and beatings at Parchman between 1969 and 1971 to fill more than fifty single-spaced pages.[149] While most prisoners welcomed efforts to bring about change at Parchman, they understood that their participation in the suit could lead to retaliation from prison officials. Some prisoners were reluctant to speak with Haber; many others took the risk. Winter, the first prisoner to talk to Haber, was beaten and sent to the maximum-security unit after their first meeting. Prison guards forced him to shower and then, without allowing him to dry off or dress himself, placed him in the "hole" for more than 24 hours.[150] The "hole" was a cold, empty, and lightless 6 x 6-foot cell in the

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[148] *The New York Times,* September 18, 1972.

[149] The following are but a few of the alarming allegations from the document: William Bogard "was compelled to stand (days) and sit (nights) for three entire days, without interruption, on a coke crate." A trusty named John Horn shot Jessie Hayes for "refusal to engage in homosexual acts." George Humes was "handcuffed to bars" on his "tiptoes for 2 days without food, water, or bathroom facilities." Walter Nathan was "handcuffed and hung from a tree." Jessie Williams was fatally shot by a trusty named Walker Griffin "on orders of Obar (driver)." Oshinsky, *Worse Than Slavery*, 242 -243; "Incident List" and "Motion for Temporary Restraining Order," July 16, 1971, in *Gates v. Collier*, folder 2.

[150] *Delta Democrat-Times*, March 11, 1971.

maximum-security unit. There was no sink, toilet, or mattress, only a dark pit in the center of the floor.

Reprisal was routine. Scores of prisoners were punished and harassed for speaking to Haber and his staff. After complaining about their abusive sergeant, Black prisoners at Camp 8 reported to Haber, and later testified in court, that the sergeant burned their mail and threatened to kill them. At Camp 11, white prisoners were forced to sleep in a sewage ditch after refusing to work ten-hour days. Prisoners sent more than 200 letters to Haber detailing similar incidents.[151] Haber was subsequently denied permission to meet with clients at Camp 11 when he tried to inquire about their complaints. Prison officials and trusty guards hassled and taunted Haber and his legal team in the same spirit they did prisoners who communicated with the attorney. Trusty guards were stationed outside all legal meetings to intimidate both prisoners and legal personnel. "I remember I had to go to the bathroom," recalls Ron Welch, then a young law student on Haber's staff. "I excused myself and walked out of the superintendent's office and there was a trusty with a carbine in the hallway. I had never been looked at with such hate as I saw in that guy's eyes. And just that quickly he cocked the carbine. I thought, 'This guy had nothing to lose. He was doing life anyway.' So I put on the bravest face I could and tried not to react. I kept a straight face and went down the hallway to the bathroom, but I felt a bullet in my back the whole way down."[152]

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[151] *Delta Democrat-Times*, July 16, 1971.

[152] Ron Welch, Interview with author, Jackson, Mississippi, January 8, 2020. Welch served as class counsel for all Mississippi State prisoners in *Gates v. Collier* from 1975 until 2011 when the case was dismissed with prejudice by Judge Jerry A. Davis at the U.S. District Court for the North District of Mississippi.

On February 8, 1971, Haber filed suit in federal court on behalf of Nazareth Gates, Willie Holmes, Matthew Winter, and Hal Zachery. The suit alleged that defendants, the Superintendent of Parchman, the members of the Mississippi Penitentiary Board and the governor, by their methods of prison administration, deprived plaintiffs of their rights guaranteed by the First, Eighth, Thirteenth, and Fourteenth amendments to the United States Constitution and sections 1981, 1983, 1985, and 1994 of Title 42 of the United States Code. Plaintiffs sought injunctive relief against the deprivation of their rights and certain practices and conditions at the prison. They also requested a declaratory judgment that the deprivation of such rights and continuation of current practices and conditions were unconstitutional.

One month after the suit was initiated, ten additional prisoners filed a lawsuit against Parchman administrators. Their handwritten petition alleged that they were subjected to cruel and unusual punishment while "confined in the 'permanent side' of the maximum-security unit."[153] They contended they were held in confinement 24 hours a day with inadequate food and medical assistance. They also claimed that sergeants withheld family visitation and recreation time, and that their ability to send mail was severely restricted. They asserted that their petition could not "state further facts due to censorship" of the document by prison officials and their "fear of bodily harm."[154] The court accepted the petition as a motion to intervene, and determined that the original suit filed on behalf of Gates and three other prisoners was suitable to continue as a class action. There were two classes of plaintiffs. One class consisted of all prisoners incarcerated at Parchman alleging deprivation of constitutional rights. The second class involved all Black prisoners claiming racial discrimination and segregation in addition to the broader

[153] *Delta Democrat-Times*, March 18, 1971.
[154] Ibid.

violation of constitutional rights. Judge Keady's decision to distinguish the two classes was informed by his prior experience with other civil rights issues; since his appointment by President Lyndon B. Johnson in 1968, Keady presided over cases concerning voting rights, school desegregation, and racial and sexual discrimination in jury selection.[155] Over time, the Greenville native came to be recognized as "someone the minorities in [Mississippi] could turn to and know that the Constitution was alive and well in the state."[156]

On August 23, 1971, the United States Department of Justice intervened on behalf of plaintiffs, making *Gates* the first time the federal government joined a prison reform suit. In the following months, all parties conducted extensive pretrial discovery proceedings, including depositions, interrogatories and answers, interviews, and inspections at Parchman. A full evidentiary hearing was set for May 15, 1972. Despite growing momentum behind the suit, "prison administrators did not seem to take the lawsuit seriously," recalled a former warden at Parchman. "Even when the U.S. Justice Department joined the suit … the attitude of prison officials was largely to ignore it as a nuisance."[157] Their attitudes changed as the trial date neared.

On April 12, 1972, prison administrators filed a motion for continuance. The court denied the motion. In an effort to avoid a public trial, prison administrators subsequently agreed to allow the judge to decide the case "on the pleadings"—importantly, in the state's view, without presentation of evidence in open court.[158] At a court hearing four days prior to the initial trial date, Governor William Waller plaintively inquired, "Isn't there enough of the incriminating

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[155] Oshinsky, *Worse Than Slavery*, 240.
[156] *Clarion-ledger*, April 16, 1983.
[157] Cabana, *Death at Midnight*, 43.
[158] Gettinger, "Mississippi Has Come a Long Way," 7; Lipman, "Mississippi's Prison Experience," 702.

facts in these depositions and interrogatories to give the court adequate grounds to find a conclusion of fact that the First Amendment and all the other constitutional provisions have been violated?"[159]

Indeed there was. On September 12, 1972, the court entered its Findings of Fact and Conclusions of Law,[160] only the second court decision ever directed at an entire prison system.[161] The opinion was an unrestrained indictment of Parchman's leadership, practices and conditions. Judge Keady found that the longstanding "gross deficiencies" which characterized the prison overwhelmingly offended modern standards of decency.[162] He further found that such deficiencies were the result of "public and official apathy and neglect for the fundamental needs" of Parchman's incarcerated population. The prison's policy and practice of maintaining a system of segregation and subjecting Black prisoners to "disparate and unequal treatment" violated the Equal Protection Clause of the Fourteenth Amendment. He found that prevailing conditions in housing and medical facilities as well as prison administrators' inability to protect prisoners

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[159] Governor Waller continued, "We are, in effect, You Honor, admitting that the constitutional provisions have been violated." Prison administrators and the governor never challenged any evidence admitted to the record or the court's findings of fact. *Gates v. Collier*, No. GC 71-6-K, Transcript of Hearing, May 11, 1972, at 45; Ibid.

[160] *Gates*, at 885-898.

[161] In 1969, several prisoners at the Cummins Farm Unit of the Arkansas State Penitentiary filed pro se suits alleging that prison administrators deprived them of their constitutionally protected rights. The U.S. District Court for the Eastern District of Arkansas permitted the petitions to be filed as a class action. The court found that prison administrators' use of the trusty system, prevalent overcrowding throughout the prison, the absence of adequate rehabilitation programs, and conditions in isolation cells amounted to cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. The court further found evidence of unconstitutional racial discrimination. *Holt v. Sarver*, 309 F. Supp. 362 (1970). Prison administrators later appealed the case to the Eighth Circuit Court of Appeals. The appeals court affirmed the district court's holding and remanded the case to the lower court for review of prison administrators' progress in respect to correcting the constitutional violations in question. 444 F.2d 304 (1971).

[162] *Gates*, at 888.

amounted to cruel and unusual punishment. Keady described the housing units at Parchman as "unfit for human habitation."[163] Men slept on old dirty mattresses. Broken windows were packed with rags to keep out cold weather and rain. Open sewage ditches attracted vermin, and, in at least one camp, 80 men shared three old oil drums cut in half for wash basins.[164] Bathrooms, kitchens, and medical facilities were understaffed, undersupplied, and unsanitary. Because the prison employed only one physician, prisoners often had to tend to their own illnesses and injuries.[165]

Keady also catalogued the many ways in which prison administrators left prisoners vulnerable to abuse and assault. He noted that overcrowded barracks and the absence of a proper classification system resulted in mixing prisoners convicted of violent crimes with those who were first offenders or convicted of non-violent offenses. During the day, the four civilian guards stationed at each camp oversaw prisoners alongside armed and untrained trusties.[166] At night, in the dark and unsupervised cages, prisoners had to protect themselves from physical and sexual assaults—both regular occurrences. The superintendent of the prison confessed, "there is no way that anyone can guard the safety of an inmate in the Parchman situation."[167] Guards, and especially trusty shooters, often victimized those they were charged to protect. Trusty guards grossly abused their power; the prison's own records reveal that during the prior year 29 prisoners were shot and 52 more were beaten by inmate guards.[168]

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[163] *Id*. at 887.
[164] *Id*.
[165] *Id*. at 888.
[166] The court noted that, as of April 1, 1971, 35% of trusties had not been psychologically tested, 40% suffered from intellectual disabilities, and 71% were found to have personality disorders. *Id*. at 889.
[167] *Id*.
[168] *Id*. at 890.

Keady focused next on the cruelty of the prison's disciplinary system. While the maximum-security unit principally housed men on death row and prisoners with escape records, prison officials also exercised discretion in assigning other prisoners to the unit. It was routine to cut a prisoner's hair with heavy-duty clippers, strip him naked, and place him in the "hole" with limited access to food, medical treatment, or hygiene products. Some men were kept in unit's dark cells for up to 72 hours. The court further detailed the "innumerable instances" of sadistic punishment known to have been imposed on men held in the maximum-security unit. The record showed that prisoners were handcuffed to fences and cell doors for long periods of time, prison officials shot at or around prisoners to keep them moving, and cattle prods were used to keep prisoners standing while in the unit.

On October 20, 1972, the court issued an order for immediate, wide-reaching and long-term relief. Prison administrators were to cease immediately the arbitrary restriction and censorship of mail, adopt a meaningful classification system, establish formal disciplinary procedures, and end the use of corporal punishment and solitary confinement practices which were of "such severity as to offend present-day concepts of decency and human dignity."[169] Judge Keady ordered prison administrators to submit to the court plans to desegregate the camps, construct new and renovate existing medical and housing units, eliminate the trusty system, and begin hiring civilian guards "making special appeal to the black community for qualified persons"[170] by December 20, 1972. Judge Keady underscored the need for Black employees because, historically, Parchman's staff had been entirely white. Only in the months leading up to the suit did the prison employ any Black people. However, the staffing was still severely racially

[169] *Id*. at 900.
[170] *Id*. at 903.

disparate; the prison only employed two Black people when the record closed. This racial disparity is further striking when one considers Black men made up sixty-three percent of the incarcerated population.[171]

Although comprehensive, the 1972 ruling was only the beginning of the long, arduous journey to change Parchman. Prison administrators, perhaps unsurprisingly, were not keen to comply. Officials submitted a plan by the court's December deadline to eliminate racially discriminatory policies and practices, to end the use of corporal punishment, and to abolish the trusty system, but, little action was actually taken to accomplish these goals.[172] For example, prison officials superficially complied with the court's mandate to desegregate camps by placing a lone Black man in an all-white camp and a lone white man in an all-Black camp.[173]

Almost immediately, prisoners took action to enforce the court-ordered changes. Prior to the court's intervention, prisoners' communication with the outside world was essentially nonexistent. In the months following the decision, however, prisoners utilized their new-found ability to communicate with those on the outside; hundreds of letters flowed out of Parchmam's dilapidated and rat-infested cages.[174] In their letters, prisoners requested legal representation and

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[171] *Id*. at 887.

[172] Haber subsequently filed a motion for contempt alleging that prison administrators made "no coordination of effort" to bring the prison under constitutional standards and "offered no excuse for their failure to obey [the] court's order." *Delta Democrat-Times*, January 1, 1973.

[173] A year after the court delivered its first order in Gates, a court-appointed federal monitor observed that seven housing units at Parchman were still completely segregated. In other units there was "only token integration:"

	Number of Prisoners	
	Black	White
Camp B	85	1
Camp 5	1	66
Camp 6	88	1

Federal Monitor Report, Sept. 7, 1973 & Oct. 4, 1973.

[174] Welch, "Developing Prisoner Self-Help Techniques," 119.

recorded and reported occurrences of continued abuse and neglect from prison officials. And they shared this written catalog of wrongs—with Judge Keady, with attorneys at the Lawyers' Committee, with North Mississippi Rural Legal Services. Soon a growing need became clear for a local law office specifically devoted to *Gates* litigation and other prisoners' rights suits. Thus, with funding from the New York Foundation, in the early summer of 1973 civil rights attorney David Lipman and his wife, Barbara, established the Mississippi Prisoners' Defense Committee (MPDC), which would later become part of the Lawyers' Committee offices in Jackson.[175]

With only four employees,[176] MPDC locked arms with Parchman prisoners to monitor and build on *Gates* during the next several years. The approach included a twelve-member Advisory Board, five of whose seats were reserved for designated prisoners. All of the incarcerated Board members were Black, all were recognized as leaders at the prison, four out of the five were writ writers, and all but one was Muslim.[177] These five men, alongside one or two others who came to be recognized as "de facto executive committee" members, helped create and sustain a prisoner-to-prisoner information network throughout Parchman to gather and share news about happenings on the inside. Keady's thoroughgoing opinion had underscored the importance of a robust record, and prisoners organized a bootleg law firm to press their advantage. Doing so depended on "discovering, developing, and preserving virtually all prisoner factual testimony and affidavit evidence" used in *Gates*.[178] Prisoners shared information during trips to the medical unit, during religious services, on work assignments, in transportation

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[175] Kent Springs, *Voices of Civil Rights Lawyers: Reflections from the Deep South*, 1964-1980 (Gainesville: University Press of Florida, 2017), 353-356.
[176] In the early years, MPDC consisted of only Lipman, a paralegal, an investigator, and a student. Ibid.
[177] Welch, "Developing Prisoner Self-Help Techniques," 120.
[178] Ibid.

vehicles, and during attorney-client meetings.[179] Since prisoners were transferred to different camps fairly regularly, most were generally aware of things happening throughout the prison.

MPDC stayed informed through correspondence and in-person meetings at Parchman. Between 1973 and 1976, prisoners sent MPDC nearly a hundred letters each week. The prisoner-MPDC communication network kept prisoners informed about the status of *Gates*; MPDC notified prisoners when a new court order was delivered and incarcerated men subsequently alerted MPDC if and when such orders were violated by prison officials. When such an event arose, prisoners could promptly gather witness testimony, and notify MPDC within 24 hours.[180] Such was the case in July of 1973 when an alleged "goon squad" roamed from camp to camp beating prisoners. A letter addressed to Judge Keady signed by 86 prisoners at an all-Black camp offered potent testimony.[181]

Camp 11
Parchman, MS.
July 13, 1973

Dear Judge Keady:

In the past three days at least a dozen prisoners have been beaten by the penitentiary security force in bold violation of your orders. We believe and pray that this recrudescence of corporal punishment will merit your attention and that you will act to insure that the court's orders will not be flaunted and our lives further threatened.

Reports from the hospital indicate that abuses such as the three we describe below have taken place all over the farm. Inmates from First Offenders Camp, Camp 1, Camp 4, Camp 5, Camp 8 and Camp 11 have required medical treatment there as a result of beatings by security personnel this week.

We write as victims of and/or eyewitnesses to the following: On Tuesday night, July 10, five prisoners were transferred from Camp 5 to Camp 11. Shortly after their arrival, security personnel took two of the five-William Bingham (MSP #36070) and Ronald McNelis

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[179] Ibid.
[180] Ibid.
[181] *Gates v. Collier*, No. GC 71-6-K, Letter from Inmates of Camp 11, July 13, 1973; Lipman, "Mississippi's Prison Experience," 749.

(#36843)-out of the gunmen cage and assaulted them with their fists and nightsticks. (Camp l1's Sergeant, Gene Bell, was not on the Penitentiary grounds.)

Thursday night, July 12, at about 9:10 p.m., ten to twelve security force officers entered the Camp 11 hallway. Two or three approached the gunmen cage door and ordered everyone onto their bed. Their order was complied with; one officer then pointed to Mark Desmond Proietti (#36585), an inmate on his bed nearest the cage door. He was ordered to take off the short pants he was wearing; he responded, "Alright", and did as he was told, putting on a pair of long ones. He was then ordered out of the cage and into the hall where, without either provocation or explanation of any sort, he was attacked by five or six of the security officers wielding all manner of weapons: slap jacks, night sticks, a 12 to 15" bar and shotguns. Proietti was knocked to the floor by a combination of blows to his head from these weapons.

Once on the floor, he was repeatedly kicked about his head and back; he was asked if he knew how to say, "Yes sir". He answered, "Yes sir", and the beating continued for another minute or so.

It ended only when the camp sergeant, Gene Bell, arrived and intervened: He bodily pushed two of the assaulting officers from Proietti. As the others backed away, he ordered all the security personnel outside (telling them that he might lose his job but that he wouldn't allow the beating as long as he was in charge of the camp).

He then took Polaroid pictures of Proietti's wounds, which included multiple lacerations and abrasions about his back, arms and head. One of two head wounds required stitches at the MSP hospital. He was taken there by Sgt. Bell and treated by Dr. Sam. The doctor also treated one of the security officers for broken foot bones sustained in kicking Proietti.

There are rumors [to the] extent that as many as twenty inmates were beaten at Camp 4 on Wednesday night. We'd rather not speculate as to what might have happened here had not Sgt. Bell arrived when he did.

The following MSP security personnel were among those involved during the events of July 12 described above: MSP Sergeants Childs (Camp 1), Slaughter (C-2), Burchfield (C-4), L.A. Johnson (C-8) and High (MSU); security officers Lt. Steed, Steve Johns, Slate, Ronnie Hudson, and Emmett Adams.

Finally, you should be aware of the (rumored) threats against the lives of any inmate who speaks of MSP Security's night riding.

Respectfully,
Inmates of Camp 11

Note: This is our second attempt to complete this petition. The first four typed copies (in somewhat better form) were confiscated in a shakedown Saturday night by Lt. Mooney of MSP Security. cc: L.C.C.R.U.L., 213 N. Farish St., Jackson, Ms. News Media

[Signatures of 82 inmates]

An expedited evidentiary hearing was held ten days after the incident.[182] Due to coordinated communication between prisoners and MPDC, prisoner-plaintiffs were able to submit to the court 200 affidavits from incarcerated men who experienced or witnessed the assaults.[183] The incident underscored that prison officials recognized and resented prisoners' efficient coalition with MPDC; a significant majority of those who were attacked were members of the Board, writ writers, and men who were plaintiffs in *Gates* and other prisoners' rights suits.[184] At the time of the incident, Walter Leonard, Jr., an executive member of the Board, was party to a suit against the state parole board.[185] Leonard reported that he was beaten for nearly 30 minutes. His attackers cut his right ear, fractured two of his fingers on his left hand, and dislocated his right knee. He was, he asserted, "being abused because of his participation in the suit."[186] When retaliatory attacks did not deter prisoners from participating in litigation, prison officials next employed bribery. Willie X. Stevenson, a Black Muslim and a member of the Board at Parchman, was promised he would be allowed to go home on Christmas if he dismissed a lawsuit against prison administrators. When he declined, he was told Parchman Superintendent William Hollowell "never will let you go home until you let go that law library suit."[187]

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[182] Judge Keady did not hold prison administrators in contempt of court for the physical assaults, but later appointed a federal court monitor to supervise prison administrators' implementation of the court's orders. Lipman, "Mississippi's Prison Experience," 748.
[183] Ibid., 750.
[184] Ibid., 748; Welch, "Developing Prisoner Self-Help Techniques," 120.
[185] *Leonard v. Mississippi State Probation & Parole Bd*., 509 F.2d 820 (1975).
[186] *Delta Democrat-Times*, July 19, 1973.
[187] *Delta Democrat-Times*, March 13, 1974

Such attacks and threats sometimes successfully discouraged potential whistleblowers.[188] However, like Stevenson, many others refused to capitulate. The determination of undaunted prisoners lent a measure of protection to Board participants, named plaintiffs, and prisoner witnesses. Although harassment from prison officials did not completely cease, prison officials targeted litigants less frequently after the incident in July of 1973.[189] They understood there were legal consequences to their actions; prisoners demonstrated they could and would bring civil and criminal charges against those who attempted to obstruct justice or influence prisoner witnesses through violence or other forms of harassment.[190]

In addition to monitoring and enforcing Gates, the prisoner-MPDC communication network allowed prisoners to notify MPDC of their needs and areas for new litigation. Legal representation and resources were soon identified as the prisoners' top priority, and the law library suit Stevenson refused to dismiss became their vehicle. In *Stevenson v. Reed*, Parchman prisoners contended prison administrators failed to provide them with "adequate means to have access to the courts."[191] Plaintiffs argued that in order to satisfy the constitutional requirement established in *Ex parte Hull*, prison administrators must provide them with both an adequate law library and state-paid legal counsel. When prisoners and MPDC initiated the suit, Parchman's

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[188] In December of 1973, prison administrators led a group of reporters through the prison to boast about some of the minimal changes they had implemented since the release of the initial court order: freshly painted walls and tiled bathroom floors. During the visit, three prisoners mentioned they knew of several men who were attacked by prison guards during the summer incident. Despite seeing the physical aftermath of the attacks, one prisoner explained that he would not testify against prison officials because he did not want to risk losing his parole eligibility. Another prisoner reiterated his perspective: "They'd stick you away forever but set up parole for the ones who testify for them." *Delta Democrat-Times*, December 16, 1973.
[189] Welch, "Developing Prisoner Self-Help Techniques," 121.
[190] Ibid.
[191] *Stevenson* was made a class action suit and consolidated with *Gates v. Collier* on December 21, 1973. 391 F. Supp. 1375 (1975), at 1378.

existing law library resided in the tiny, unheated security building and was furnished with one desk, a broken typewriter, and 132 volumes of casebooks, none of which included Mississippi or United States codes.[192] On July 3, 1974, both parties submitted stipulations which satisfied the prisoners' demands for a law library.[193] Judge Keady entered a consent order binding prison administrators to establish and maintain a law library fully stocked with legal materials pertaining to federal and Mississippi codes, digests, encyclopedias, and textbooks.

When the parties were unable to agree upon the question of state-paid counsel, the court, on January 27, 1975, conducted an evidentiary hearing during which "extensive stipulation, live testimony, and materials were entered into evidence."[194] Emphasizing the need for legal representation, plaintiffs submitted expert testimony demonstrating that prisoners' limited education put meaningful use of a law library beyond their ken. Reviewing the testimony, Judge Keady acknowledged that legal materials make for "tediously difficult reading" and that Parchman prisoners are so "ill-educated" that most "would not be able to well comprehend and make intelligent" use of the law library.[195] The court also noted that Mississippi did not have a statewide public defender program, that most prisoners at Parchman were indigent and relied on pro bono representation, and that MPDC and North Mississippi Rural Legal Services were the only two legal assistance services that regularly represented incarcerated individuals.[196]

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[192] Federal Monitor Report, Oct. 4, 1973.
[193] *Stevenson*, at 1377.
[194] *Id*.
[195] The court cited statistics from the 1970 census conducted by the Delta State University. The study reported the following: Mississippians' education levels were lower than national averages. Black Mississippians were the least educated population in the state. 88.2% of all Parchman prisoners had not finished high school, and 56.3% had less than a ninth-grade education. The court further noted that two-thirds of Parchman's incarcerated population is Black. *Id*. at 1379.
[196] *Id*. at 1388.

Notwithstanding these findings, the court counterintuitively denied plaintiffs' second claim asserting the need and right to state-paid counsel. Keady asserted no court had ever found access to state-paid attorneys to be a "constitutional absolute."[197] The court further reasoned: "the scrivener for the unlearned inmate may be an institutional attorney, a free-world person with paralegal training, or an inmate who through experience and native intelligence has emerged as a competent writ writer."[198]

In refusing to require the state to provide paid counsel to incarcerated individuals, Keady underscored writ writers' capacity to assist their fellow prisoners in drafting and filing pro se lawsuits at Parchman. Keady's recourse to Parchman's writ writers might have seemed cynical, indeed his decision to rule against state-paid counsel was perhaps more about state costs than the needs of prisoners; nonetheless, his opinion was an acknowledgment of writ writers' abilities and the respect the court had for them. He noted that the record did not show Parchman was "devoid of competent" writ writers or that prisoners did not utilize the law library.[199] Keady continued, that most prisoners are not "able writ writers" and cannot make effective use of a law library is not "unique to Parchman."[200] The court concluded that writ writers at Parchman can and do assist other prisoners. The court recognized plaintiffs' concern that some camps may lack a skilled writ writer leaving some illiterate prisoners without access to much-needed assistance. However,

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[197] In *Hooks v. Wainwright*, 352 F. Supp. 163 (1972), the court mandated that the Florida Division of Corrections failed to provide incarcerated individuals with adequate access to legal services. The court thus mandated that the state improve existing law libraries throughout its correctional facilities as well as supply professional legal counsel. While acknowledging this exception, Judge Keady concludes that the court in Hooks did not rule that both law libraries and legal assistance are constitutionally required. Instead, the court deemed both necessary due to the specifics of the Florida case. *Stevenson*, at 1381.

[198] *Id*. at 1382.

[199] *Id*.

[200] *Id*.

Judge Keady concluded that such occurrences could be remedied by less costly alternatives than state-paid counsel. Keady upheld the prison's restriction against prisoners' inter-camp travel and ordered prison administrators to establish rules and regulations for use of the law library. Prison administrators were required to allow writ writers and prisoner-plaintiffs to meet so that the entire incarcerated population could have reasonable access to legal materials and assistance from a writ writer, if needed.[201] Prison administrators permitted prisoners to visit the law library, by request, between Monday through Friday from noon to eight o'clock at night. Officials also appointed prisoners to the role of librarian, they were responsible for keeping the books in order and helping prisoners find information in law books.[202]

Convinced of the need for state-funded legal assistance, prisoners and MPDC unsuccessfully appealed to the Fifth Circuit Court of Appeals.[203] The loss was deeply felt. Improvement of the law library was much needed, but it was not enough. The average Parchman prisoner was intellectually unable to "read, comprehend or understand the legal materials" in the law library.[204] Even those who could effectively use the legal resources were unable to do so because prison officials repeatedly obstructed prisoners' access to the law library. Between the summer and winter of 1974, prison officials arbitrarily denied nearly 150 prisoners from five different camps access to the new law library.[205] In June of that year, Gary A. Moran, a prisoner serving five years for a burglary charge, filed a handwritten suit alleging prison officials previously denied him access to the law library, paper to prepare his petition, and the ability to

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[201] *Id*. at 1383.
[202] *Id*. at 1384.
[203] *Stevenson v. Reed*, 530 F.2d 1207 (1976).
[204] *Stevenson v. Reed*, No. GC 73-76-K, Testimony of Mary Sharp, a Memphis reading specialist, at a hearing before Judge Keady, January 27, 1975.
[205] *Delta Democrat-Times*, April 10, 1975.

buy stamps. Other prisoners who had similar experiences wrote letters to MPDC attorneys voicing their complaints. In the months and years to follow, MPDC repeatedly returned to court, filing motions for contempt and supplemental relief to prevent prison officials from impeding prisoners' use of the library.

Prisoners' and MPDC's efforts in *Stevenson* proved to be only partially successful. The expansion of the law library was a victory, but, even with a fully stocked law library and assistance from competent writ writers, prisoners were not ensured access to the courts or the ability to protect themselves and their constitutional rights. Prisoners' best chance requires the assistance of counsel. Indeed, counsel helped Parchman's incarcerated population bring about an end to Mississippi's seventy-year old penal farm concept. Reflecting on the years he spent working for and alongside prisoners at Parchman, MPDC attorney David Lipman asserted, "They were the driving force in shaping what we did. They were the clients. We were their lawyers. We saw the case through their eyes. They were the very heart of *Gates*."[206]

By the end of the decade, prisoners no longer spent 12 to 14 hour days picking cotton. Black Annie was a thing of the past, and civilian guards replaced armed trusties. Whereas the prison staff was once entirely white, 48% of prison officials were Black by 1979.[207] Six of the oldest and worst camps were closed and new housing units and medical facilities were built. The law library was relocated, expanded, and soon staffed by nine writ writers assigned by prison officials to assist other prisoners in the preparation of legal documents.[208] In the decades that

[206] David Lipman, Telephone conversation with author, November, 15, 2019.
[207] Gettinger, "Mississippi Has Come a Long Way."
[208] Welch, "Developing Prisoner Self-Help Techniques," 121.

followed, the incarcerated men at Parchman would continually turn to the courts to fight for their liberty and protect their constitutional rights when no one else would.

V. THE MOST ELOQUENT DISSENTS

> "In a place designed to crush the souls of men and women, there are people who, with time, attention, study, an artful phrase, and the odd starburst of insight can and do work together to help, to uplift, and even to free others."
> - *Jailhouse Lawyers: Prisoners Defending Prisoners v. The U.S.A*, Mumia Abu-Jamal

"They do what they can. Everybody wants to get out of prison," remarked Martin Groot, a former Parchman prisoner recently paroled from a life sentence.[209] "But as far as inmate litigation—inmates actually being successful in courts—I haven't seen a whole lot of that, not in the state of Mississippi." On the inside, throughout the nearly three decades he spent incarcerated, the 62-year-old parolee witnessed as Mississippi increasingly implemented "neat little ways to deter inmates who may otherwise be successful in the courts."[210] Indeed, success among Parchman's pro se litigants is a rare occurrence, but not because of their lack of effort. Numerous, pervasive institutional barriers, procedural restrictions, and biases against pro se prisoner litigation in Mississippi decreases writ writers' chances of prevailing in court. In spite of these omnipresent difficulties, Parchman writ writers are resilient in their efforts to succeed.

As tragic events in late 2019 and early 2020 made plain, incarcerated men at Parchman endure violence and abhorrent conditions on the inside. Put plainly, conditions throughout many of Parchman's units are unsafe and unfit for human habitation, to say nothing of drafting petitions to the courts. The abysmal wood cages from the pre-*Gates* era have long been replaced

[209] Martin Groot, Interview with author, Jackson, Mississippi, January 7, 2020.
[210] Ibid.

with concrete and steel units, but underfunding and legislative neglect[211] in recent years has contributed to understaffing and deterioration of facilities at Parchman, creating similar, if not inferior, living conditions than those which existed when the federal district court first intervened. A 2019 Health Inspection Report details unsanitary and inhumane living conditions throughout several units at Parchman. Inspectors discovered the worst conditions in Unit 29, which was only recently partially closed. On January 27, 2020, Governor Tate Reeves instructed the MDOC to begin working to close down Unit 29. Several hundred men have since been relocated, but some work units and death row prisoners still remain.[212] Inside the Unit, one could find leaking sinks, broken toilets, and showers with black mold; cells with no hot water, and others without water entirely. When it rained the ceiling leaked. There were holes in the walls and mold in kitchen refrigerators.[213] Cell floors were covered in feces from overflowing toilets.

[211] In 2011, Federal District Court Judge Jerry Davis dismissed Gates v. Collier with prejudice. Up until that point, the federal court monitored the MDOC and ordered regular inspections of the prison's facilities. After the dismissal of the case, the state legislature increasingly began to decrease funding for the department of corrections. In the last six years, the state legislature has cut MDOC's budget by $215 million. MDOC officials requested an additional $78 million from the state legislature for fiscal year 2021, a third of which would go exclusively to renovating Unit 29. Members of the Joint Legislative Budget Committee urged their fellow legislatures to reject the request and cut appropriations to MDOC by $8.3 million. Michelle Liu, "No water, no lights and broken toilets: Parchman health inspection uncovers hundreds of problems, many repeat violations," *Mississippi Today*, August 5, 2019; Jerry Mitchell, "Mississippi cut corrections by $215M. Horrid conditions, violent deaths have followed at Parchman," *Mississippi Today*, February 18, 2020; Jerry Mitchell, "Lawmakers Refused to Increase an Infamous Prison's Funding. Then, Chaos Erupted," *ProPublica*, January 8, 2020.
[212] Justin Carissimo, "'Why is it still open?' Inmates at Parchman's Unit 29 describe life inside notorious cellblock," CBS News, February 24, 2020.
[213] Mississippi State Penitentiary Sanitation Inspection Report 2019, Mississippi State Department of Health, June 3-7, 2019, 1-17.

Some men placed cafeteria crates on the ground so they did not have to walk on the sewage. Men relieved themselves in plastic bags.[214]

In other units, prisoners live in similarly dismal conditions. Prisoners in Unit 25 and Unit 30 are without adequate bedding. Some men sleep on concrete bed frames; that might be preferable to the old, dirty, and torn mattresses that are available. Toilets do not flush and water fountains are inoperable. Guards provide prisoners bottled water "when they feel like giving it to them."[215] In the kitchen in Unit 29, sinks are clogged, spoiled food is left out, and chemicals are improperly stored. Birds create nests in cell windows, and rats and roaches crawl across the floor and prisoners' bunks. In hallways and communal spaces, exposed wiring creeps out from broken electrical sockets and crumbling ceilings.

Most of the units at Parchman do not have regularly functioning lights or air-conditioning.[216] In conjunction with already awful conditions, these deficiencies create special challenges for writ writers. With no lights on throughout the day or night, writ writers in some units must work where they can find natural light or strain to read and write in the dark. The absence of air-conditioning likewise creates an uncomfortable work environment. In the summer months, extreme temperatures, humidity, and swarms of pests create an almost unbearable environment in the prison. Without air-conditioning, fans in the units tend to circulate hot air and there is little prisoners can do to keep from sweating profusely. This is especially troublesome for the writ writer drafting a petition to the court: Working at a table in the dayroom leads to sweat dripping onto his important legal document. Creativity is key. One writ writer

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[214] Marvin Edwards, Interview with author, Birmingham, Alabama, March 14, 2020. Edwards has served as a prison chaplain at Parchman since 2006.
[215] Ibid.
[216] MSP Sanitation Report, 17-34.

usually places the cardboard backs of legal pads under his forearms to keep the paper dry or he works during the early hours of the morning when it is not too hot.[217] One summer day, when it was nearly 100° outside and felt like 110° in the prison, this writ writer had a new idea: he "got a milk crate from the kitchen, folded [his] mattress back, and used the metal from [his] bunk as a desk;" although he "plugged in a little 8'' personal fan and had it blowing directly on [him]—[he] still sweated bullets."[218]

In addition to the terrible environment in which they work, writ writers' ability to file and prevail in their suits is handicapped by severe limitations on their legal research. In 1985, Parchman's incarcerated population had access to the prison's two law libraries and the 30 writ writers who staffed them.[219] These writ writers would assist and attempt to litigate for other prisoners, filing petitions to the court on their behalf or advising them as to which cases, statutes, and rules were germane to their legal matters. In 1997, a federal court ordered Mississippi to remove all law libraries and legal materials from Parchman and other state correctional facilities and, in their place, established the Inmate Legal Assistance Program (ILAP).[220] Prisoners may request legal research, notarization of documents, copying services, and a pen and a limited amount of paper through ILAP by submitting a completed Legal Assistance Request Form.[221] Prisoners may request only 10 documents per week, a threshold that underestimates the capacity of serious writ writers, much to their frustration.[222] Illiterate prisoners can request assistance from

[217] Michael Drankus, Letter to author, February 9, 2020.
[218] Ibid.
[219] *Delta Democrat-Times*, January 13, 1985.
[220] Kathryn McIntyre, Laura Hopson, and Richard Pennington, "Changes Witnessed at MSP," *The Resource*, January-June 2015, 23.
[221] Inmate Legal Assistance Program, MDOC Inmate Handbook, 19.
[222] Demario Walker, Letter to author, February 2020.

a case manager to help them complete the ILAP form and answer any questions they may have about the system, but ILAP does not provide prisoners with legal assistance.[223] To make the most of ILAP, prisoners must know which cases, statutes, and rules they need. In other words, it is the very contributions of Parchman's writ writers—the hard-won experience, the intricate understanding of federal and state procedure, the patience to mind courts' peculiar filing rules—that the ILAP system withholds from prisoners. If they do not know what they need, and cannot find a competent writ writer to help them, then they are "just out of luck."[224]

As if understanding the ILAP system and which materials to request is not difficult enough, some prisoners' access to legal materials and services are intentionally obstructed by ILAP staff. Groot explained that the helpfulness of ILAP "depends on what you're filing, what it's about, and who you're filing against." ILAP officials "are state employees," he continued—"they work for the state and anybody that works for the state aren't gonna be pro inmate."[225] Other writ writers' experiences corroborate his assertion. A writ writer expressed to an attorney that he felt officials at ILAP ignored his document requests because they were mad at him for making frequent use of the program and filing suits against the state.[226] Likewise, another writ writer experienced opposition from an ILAP staff member whenever he tried to assist other prisoners with their cases.[227] The writ writer frequently submitted ILAP requests for other prisoners. Eventually an official in the department began to recognize his hand writing; any time

[223] Inmate Legal Assistance Program, MDOC Inmate Handbook, 19.
[224] Demario Walker, Letter to author, February 2020.
[225] Martin Groot, Interview with author, Jackson, Mississippi, January 7, 2020.
[226] Jake Howard, Interview with author, Jackson, Mississippi, January 7, 2020.
[227] Michael Drankus, Letter to author, February 9, 2020.

the writ writer filed a request for someone else, the ILAP staffer declined to fill the request until the person who he made the request for wrote out the request in his own handwriting.[228]

Since the 1990s, writ writers at Parchman have also been affected by increasing statutory restrictions on pro se prisoner litigation. In 1995, Congress passed the Prison Litigation Reform Act (PLRA) in an effort to decrease the amount of pro se prisoner lawsuits filed in federal courts. One of the PLRA's most significant restrictions outlines that "No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."[229] As a result, the MDOC created the Administrative Remedies Program (ARP) which requires Mississippi prisoners to exhaust institutional remedies before they can file a lawsuit in either state or federal court. MDOC outlines that prisoners may file ARP complaints regarding conditions of confinement, staff misconduct, incidents with fellow prisoners, lost property, reprisals for using the ARP, and appeals of rules violation reports (RVR). Prisoners must file an initial complaint and an ARP appeal through ILAP before filing a suit in court; when they fail to do so, courts decline to consider the complaint.[230]

For example, on November 29, 2016, Michael Carroll filed suit in the U.S. District Court for the Southern District of Mississippi alleging that he was assaulted by another prisoner, and that the correctional officer on duty witnessed the incident but failed to intervene, call back-up, or take him to the medical unit until three days after the assault.[231] In his complaint, Carroll

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[228] Ibid.
[229] 42 U.S.C. § 1997e.
[230] Administrative Remedy Program, MDOC Inmate Handbook, 16.
[231] *Carroll v. Fisher*, 2018 U.S. Dist. LEXIS 42736, 2018 WL 1352334 (United States District Court for the Southern District of Mississippi, Northern DivisionJanuary 31, 2018, Filed).

requested to be moved from Parchman and to be compensated for the injuries that he sustained from the assault. He then detailed the following:

> On 11-22-16 I got jump on on the zone and the officer just sent there at the door and did not call for no back up and they called me out for medical and the officer did not come and let me out of my cell to go to medical. The offenders on the zone told the officer I was not going and they do not have no officers to work the zones.[232]

In a Motion for Summary Judgement, MDOC Commissioner Marshall Fisher requested that the court dismiss the suit because Carroll failed to exhaust administrative remedies. Carroll contended that he filed both the initial and second stage appeal required by the ARP process, but was unable to produce copies of his complaints. The court subsequently dismissed Carroll's complaint without prejudice. This outcome occurs frequently in Mississippi courts. Whether there is a substantiated claim or not, prisoners' suits are dismissed when they fail to adhere to ARP procedures. The concerns of PLRA drafters have been addressed with crystal clarity in the Mississippi courts' dispensation of prisoner complaints.

The ARP further outlines that prisoners have 30 days from the time of the incident to file a complaint. This time bar is problematic because prisoners are permitted to submit only one complaint at a time. If a prisoner wishes to file an additional complaint, they must withdraw their pending grievance or wait until all available remedies are exhausted. The entire process of submitting a complaint, receiving a response, and filing an appeal must occur within 90 days. During this time, a prisoner may miss the opportunity to seek relief for an additional grievance because the filing deadline has passed while they awaited their first complaint to be addressed.[233] Indeed, this is frequently the case. Prison guards intentionally interfere with and delay the

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[232] *Id*. at 3.
[233] Jake Howard, Interview with author, Jackson, Mississippi, January 7, 2020.

remedies process when prisoners file complaints. Some prisoners have witnessed guards "discarding or ripping up completed ARP forms."[234] Moreover, prisoners must request ARP forms from guards and sometimes guards simply refuse to provide them.[235]

If a prisoner is unsatisfied with the remedies offered by prison officials, they may then seek judicial review from the courts. Pro se prisoner-plaintiffs encounter an array of obstacles in Mississippi courts just as they do in the ARP system. Federal and state judges are required to review pro se prisoner suits liberally, taking into consideration that they are not professional attorneys,[236] but some judges do not always do so. Most writ writers at Parchman submit handwritten petitions to the courts. They do not have access to computers, and only a few men who are serving long sentences have typewriters from the law library days.[237] When requested, ILAP officials who work at Central Mississippi Correctional Facility (CMCF) will type writ writers' drafted petitions and briefs, but no such service is offered to writ writers at Parchman.[238] This disadvantages pro se prisoners at Parchman because some judges, whether unconsciously or consciously, tend to have a natural bias against handwritten petitions.[239]

Some prisoners have poor handwriting which can be difficult to read. "It definitely hurts them," asserted Jerry Mitchell, an investigative reporter who has contributed to reopening

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[234] *Lang Et Al v. Taylor Et Al*, (US District Court for the Northern District of Mississippi February 25, 2020, Filed), at 28.
[235] *Id*.
[236] "Where [ ] a prisoner is proceeding pro se, [the court] take[s] that fact into account and, in [its] discretion, credit[s] not so well pleaded allegations to the end that a prisoner's meritorious complaint may not be lost because inartfully drafted. *Moore v. Ruth*, 556 So. 2d 1059 (1990), 1061; *Haines v. Kerner*, 404 U.S. 519 (1972), at 521.
[237] Jake Howard, Interview with author, Jackson, Mississippi, January 7, 2020.
[238] Demario Walker, Letter to author, February 9, 2020.
[239] Jake Howard, Interview with author, Jackson, Mississippi, January 7, 2020. Jerry Mitchell; Interview with author, Jackson, Mississippi, January 9, 2020.

unsolved murder cases from the Civil Rights era and who works closely with formerly incarcerated and incarcerated men at Parchman. "It makes it seem more primitive even if [the petition] has a good claim."[240] Jake Howard, an attorney and legal director of the University of Mississippi Law School's MacArthur Justice Center, reiterated this point. From his experience in Mississippi courts, he believes pro se suits are generally perceived differently by judges, but that "it's easier, psychologically, for [judges] to treat pro se [suits] as less legitimate" when they are handwritten. Writ writers understand this too. Howard sometimes receives requests from writ writers who hope that he or a willing law student may type up their legal documents for them because "they know if they can just get something typed then it will be received differently."[241]

In other instances, some judges are "openly hostile" to writ writers' suits because they are frustrated with the amount of pro se prisoner litigation before the courts.[242] Some prisoners, whether out of ignorance or desperation, repeatedly file petitions for post-conviction relief even when they are procedurally barred from doing so.[243] Besides such out-of-time suits, judges' frustration with pro se prisoner litigation is amplified by the volume of suits they receive which they deem to be frivolous: suits that fail to state a legal claim. The Mississippi Supreme Court is especially harsh on prisoners who bring such suits.

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[240] Ibid.
[241] Jake Howard, Interview with author, Jackson, MS, January 7, 2020.
[242] Ibid.
[243] Under Mississippi's Criminal Procedure statute, petitions for post-conviction relief must be "made within three (3) years after the time in which the petitioner's direct appeal is ruled upon by the Supreme Court of Mississippi or, in case no appeal is taken, within three (3) years after the time for taking an appeal from the judgment of conviction or sentence has expired, or in case of a guilty plea, within three (3) years after entry of the judgment of conviction." Miss. Code § 99-39-5(2).

In 2018, Jimmy Wren filed a petition for post-conviction relief from a life sentence. The court found that his petition was both procedurally time-barred and frivolous in nature because it was "without merit."[244] On two prior occasions, Wren received monetary sanctions in the amount of $100 for filing suits the court deemed frivolous. The court noted that these fines were still outstanding and "warned" that future suits found to be frivolous "may result not only in additional monetary sanctions, but also restrictions on filling applications for post-conviction collateral relief in forma pauperis."[245] The court regularly delivers such rulings and does not hesitate to carry out their prescribed sanctions.

Mississippi Supreme Court Justice Leslie King, however, routinely dissents to these sanctions. In the aforementioned case, Justice King dissented in part. He joined the court in finding that Wren's petition lacked merit, but he disagreed with the court's determination that the petition was frivolous and with the majority's warning of potential sanctions for future frivolous claims. King found that Wren made "reasonable arguments regarding violations of due process" in his petition.[246] He further denounced the court's threats to impose monetary sanctions and preclude Wren from proceeding in forma pauperis. King asserted that imposing such sanctions on an indigent defendant essentially prevents him from "his lawful right to appeal" and "cut[s] off his access to the courts."[247] It belabors the obvious to note that Justice King's broad view of due process is exceptional among Mississippi judges.

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[244] *Wren v. State*, 2018 Miss. LEXIS 495 (Supreme Court of Mississippi December 5, 2018, Decided).
[245] *Id*.
[246] *Id*. at 3.
[247] *Id*.

Mississippi's state code outlines some additional restrictions and costs placed upon writ writers.[248] The first restriction, born out of the PLRA's "three strikes" law, outlines that prisoners who have been found to bring frivolous suits to court on three separate occasions are thereafter barred from filing or appealing a civil action in forma pauperis. Moreover, when courts deem a prisoner's suit to be frivolous, MDOC is permitted to revoke portions of the prisoners' earned time.[249] The first instance in which a prisoner is found to have filed a frivolous suit, the prisoner is required to forfeit 60 days of their accrued earned time. On the second occasion, they will lose 120 days, and on the third finding of a frivolous suit prisoners can lose up to 180 days of earned time. MDOC will not restore lost earned time.[250] The code also includes rules regarding the rate at which pro se prisoner litigants will be charged for filing a suit: "if an inmate proceeds in forma pauperis in a civil action against MDOC for conditions of confinement, the inmate shall pay 20% per month of the funds in his or her inmate account to MDOC until all filing fees and costs of litigation are paid."[251] These costs can be overwhelming for frequent writ writers. One active writ writer at Parchman owes about $16,000 in federal court fees, $1,200 in state fees, and $900 in legal postage fees.[252] The threat of these sanctions and costs can deter prisoners from petitioning the court, an alarming outcome for those with no other avenues for relief.

All of these factors—navigating ILAP, following institutional requirements, avoiding court sanctions, and paying filing costs—make it significantly more difficult for Parchman's less

[248] Miss. Code of 1972, §47-5-76.
[249] "Meritorious Earned Time (MET) allows for a reduction of sentence earned by offenders for satisfactory participation in education and work programs with a maximum allowance of 180 days." "Earned Time," MDOC, https://www.mdoc.ms.gov/Inmate-Info/Pages/Earned-Time.aspx.
[250] Rule Violations, MDOC Inmate Handbook, 22.
[251] Ibid.
[252] Demario Walker, Letter to author, February 2020.

educated pro se plaintiffs to succeed on their claims in court. Education levels among Parchman's incarcerated population have not significantly improved over time and understanding the law, considering the continual introduction and implementation of new procedural requirements and restrictions, has arguably become more difficult. Low literacy rates among incarcerated men at Parchman have always presented as an obstacle to their ability to read and comprehend legal material and statutes. In 1986, 70 percent of Parchman's incarcerated population was illiterate.[253] In 2013, then-MDOC Commissioner Christopher Epps reported that the average Mississippi prisoner reads at a sixth-grade level and half of the state's incarcerated population never completed high school education upon their incarceration.[254] MDOC offers Adult Basic Education (ABE), General Education Degree (GED), and vocational training programs at Parchman, but the enrollment capacity and duration of these courses are far too low to benefit a significant portion of the incarcerated population at any given time. As of April 1 of this year, 2,096 men are incarcerated at Parchman.[255] Parchman's ABE program only offers 140 seats and both day and night vocational programs are limited to 15 people.[256]

MDOC has recently partnered with Mississippi Delta Community College to offer academic courses for men at Parchman covering subjects such as English and history, but the

[253] 70 percent of prisoners failed the basic literacy test administered when they entered the prison. One prisoner stated, "Inmates get letters from home and they can't even read them." Another added, "Some [prisoners] just sit and don't do anything because they can't read." Sunflower County Library Literacy Project, September 1986, Record no. 23591, Mississippi Department of Archives and History.
[254] JB Clark, "The State of Our Schools - Lacking literacy: Poor readers populate state's prisons," *Daily Journal*, February 20, 2013.
[255] Monthly Fact Sheet, Mississippi Department of Corrections, April 2020, 3.
[256] Annual Report, Mississippi Department of Corrections, 2019, 51.

program has not yet begun.[257] The community college currently offers vocational night classes at the prison. Men who wish to enroll are responsible for covering their tuition fees.[258] Instructors, books, and materials for the new courses are being funded by grant money. It is unclear, but highly likely that prisoners will have to pay to enroll in these courses. Considering most of Parchman's incarcerated population is indigent, the cost of these programs inevitably makes them inaccessible to those who may need them the most.

Low literacy levels among Parchman's incarcerated population and their limited access to educational resources underscores the importance and necessity of competent writ writers: prisoners who are fairly well educated, who learn the law, and have a reasonable understanding of legal proceedings and procedures. Reflecting on his time at Parchman, the Groot recalls the various kind of writ writers one can find at the prison:

> "Some [writ writers] were very effective. Some did it as a hustle to make money; they didn't know what the hell they were doing. They did it just as a money-making venture and to the untrained ear and eye it sounded very good to them. To a person, you know, who has reading skills at maybe a third-grade level it sounds really good when someone starts writing a bunch of ten dollar words to them."[259]

Because writ writers tend to be more educated than the average prisoner, they hold a degree of power over those who are naive, uneducated, or desperate. Every writ writer does not take advantage of the vulnerability of their fellow prisoners, but some do.

Robert Tubwell is one of Parchman's most infamous writ writers. He first entered the prison in 1971, then returned in 1976 with a 40-year sentence on three counts of armed robbery.

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[257] "MDCC to Offer Academic Courses to Parchman Inmates," *The Enterprise-Tocsin*, January 23, 2020.
[258] Annual Report, Mississippi Department of Corrections, 2019, 51.
[259] Martin Groot, Interview with author, Jackson, Mississippi, January 7, 2020.

Tubwell began doing legal research for himself and realized that he had a "knack for legal affairs."[260] In 1977, the 25 year old filed a suit asserting that two prison administrators improperly transferred him to another camp which resulted in his being beaten by three prisoners who were his "enemies."[261] The next year, he filed another civil suit against prison officials for taxing goods at the prison canteen.[262] By 1985, Tubwell was selected to work in the prison's two law libraries assisting other prisoners with their legal matters. In an interview with the *Delta Democrat-Times*, Tubwell stated that he spent 16 hours a day working on cases for himself and others, and estimated that he had about 82 cases pending in state and federal courts.[263] The prison attorney at the time noted that Tubwell generated "tremendous amount[s] of paperwork" and that he was "one of the best four of five inmate writ writers at the prison.[264] As Tubwell continued to assist other prisoners with their cases, he began charging them for his services and did not always offer quality assistance.

In 1995, the Mississippi Supreme Court found that Tubwell assisted an illiterate prisoner in filing a frivolous claim.[265] Recognizing Tubwell's "20 years of experience as a writ writer" and determining that such experience made him "most capable of distinguishing a meritorious claim from a frivolous one," the court held him to the standards of an attorney and imposed sanctions on him for filing a frivolous suit on behalf of another prisoner.[266] The court asserted

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[260] *Delta Democrat-Times,* January 13, 1985.
[261] *Delta Democrat-Times*, March 8, 1977.
[262] *Delta Democrat-Times*, January 24, 1978.
[263] *Delta Democrat-Times*, January 13, 1985.
[264] Ibid.
[265] *Ivy v. Merchant*, 666 So. 2d 445 (1995).
[266] *Id*. at 452.

further that he "neglected his responsibility" to the prisoner plaintiff.[267] The court's acknowledgement of Tubwell as someone who possessed the capabilities of professional counsel conveyed that the court held a certain degree of respect and recognition of his work, and that of other capable writ writers.

The next year, charges were brought against Tubwell for illegally practicing law. He was accused of accepting payment and illegally signing legal documents for another prisoner without his knowledge. Tubwell claimed to be a paralegal and charged the prisoner $150 for his assistance with the case. The prisoner who paid him asserted that Tubwell "didn't do [his] work like he was paid to do."[268] After his release from prison, Tubwell continued to practice law without a license, and especially advertised his services to prisoners. For several years, the Mississippi Bar Association received complaints about Tubwell's activities. Eventually, the Chancery Court of Desoto County enjoined him from further engaging in the unauthorized practice of law.[269]

Predatory jailhouse lawyering continues at Parchman today. In other instances, less skilled prisoners may truly want to help someone but do not know what they are doing; "they misinterpret statutes or court rulings and end up filing frivolous suits that have no chance of winning because the writ writer misinterpreted the law."[270] A competent, skilled, and genuine writ writer can be hard to find, but it is not impossible. Michael Drankus is one such writ writer. Drankus was first incarcerated at Parchman in 1987 in Unit 29. In the Unit, he got to know some

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[267] *Id*. The court did not disclose how it knew Tubwell assisted Ivy with filing and litigating the suit.
[268] *Delta Democrat-Times*, April 3, 1996.
[269] "Final Disciplinary Actions," *The Mississippi Lawyer*, Fall 2014, https://www.msbar.org/media/2123/ms_barnewsfall2014.pdf, 36.
[270] Michael Drankus, Letter to author, February 9, 2020.

of the writ writers who worked in the law library and they eventually started sharing court opinions with him which they believed could help him overturn his conviction. Between 1992 and 1997, although he was procedurally time-barred, he sought post-conviction relief with the help of a writ writer; he lost at each stage in the process. But he grew increasingly interested in the law. Drankus learned how to do research from the writ writers he had contact with and eventually took a home study paralegal course through a Florida "diploma mill." He learned twelve subjects including civil, criminal, business, and real estate law. In 2000, he was released on parole. Twelve years later he returned to prison on a parole violation.[271]

In 2014, Drankus filed suit in the Circuit Court of Sunflower County. It was the first and only time he ever filed a lawsuit on his own behalf. And he won—that is, until the state appealed. That year the state legislature passed House Bill 585.[272] Section 43 authorized MDOC to "develop a case plan for all parole-eligible inmates to guide an inmate's rehabilitation while in the department's custody and to reduce the likelihood of recidivism after release." In August of that year, Drankus filed an ARP request to be issued a case plan. In October, MDOC rejected the request, asserting that he was not entitled to a case plan because he was sentenced in 1987, and the bill only provided that prisoners sentenced on or after July 1, 2014 be given a case plan. Drankus appealed the denial and asserted, "[b]y the law, I am entitled to have a case plan," and again requested that MDOC "develop one for [him] and provide [him] a written copy."[273] MDOC

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[271] Ibid.
[272] "Section 43 of House Bill 585 is codified at Mississippi Code Section 47-7-3.1. House Bill 585 is a comprehensive criminal-justice and corrections-reform bill that amended and added numerous provisions of state law." *Fisher v. Drankus*, 204 So. 3d 1232 (2016), footnote #1.
[273] *Id*. at 1234.

responded, affirming its prior determination: the case plan provision of the bill did not apply retrospectively to Drankus.

The writ writer then sought judicial review in the Sunflower County Circuit Court. The court ruled in Drankus's favor and concluded the language of the statute was "plain and unambiguous."[274] MDOC appealed and the Mississippi Supreme Court, accepting MDOC's argument that the legislature intended the bill to be prospective, reversed.[275] Drankus filed the case on his own behalf, but if the state had not appealed, the circuit court's ruling would have benefited all prisoners in the state of Mississippi. House Bill 585 included another statute which prescribed that every parole-eligible prisoner "shall be released from incarceration to parole supervision on the inmate's parole eligibility date, without a hearing before the board if the inmate has met all of the requirements of the parole case plan."[276] The statute's assurance that parole-eligible individuals would be released on their parole date, if they complied with their case plan, would have been significant for a lot of people incarcerated throughout Mississippi prisons. This additional statute undoubtedly contributed to MDOC's desire to appeal Drankus's win. Since then, Drankus mostly assists other prisoners filing suits. He undertakes a handful of cases each year, most of which relate to issues regarding prisoners' parole eligibility; since he started writ writing eight years ago, he has only lost two cases.

Demario Walker is another "perpetual litigator" who comes "highly recommended."[277]

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[274] *Id*.
[275] *Id*. at 1236.
[276] § 47-7-18.
[277] Martin Groot, Interview with author, Jackson, Mississippi, January 7, 2020.

At any given time, Walker may be working on as many as five or six cases and he "always keeps up with his deadlines."[278] He began doing legal work in 2001. While incarcerated, he took legal courses and obtained a certificate through Blackstone Career Institute. Walker has filed more than 140 lawsuits on his own behalf, but he makes time to help others as well.[279] In 2018, like Drankus, he similarly challenged a Mississippi statute that would have wide-reaching effects for many Mississippi prisoners.

Before the legislature passed House Bill 585, the Corrections and Criminal Justice Oversight Task Force launched an investigation to determine what factors were fueling growing incarceration rates in Mississippi. The Task Force discovered that most people entering prisons were not first-offenders; they were individuals who were being reincarcerated for probation or parole violations.[280] Furthermore, most offenders were being incarcerated for technical violations of parole,[281] not because they were committing new crimes. The legislature subsequently created a system of graduated sanctions to limit the amount of people reentering prisons on revocations, but the statute was "inartfully drawn."[282] The statute prescribed:

> If the court revokes probation for a technical violation, the court shall impose a period of imprisonment to be served in either a technical violation center or a restitution center not to exceed ninety (90) days for the first technical violation and not to exceed one hundred twenty (120) days for the second technical violation. For the third technical violation, the court may impose a period of imprisonment to be served in either a technical violation center or a restitution center for up to one hundred eighty (180) days or the court may impose the remainder of the suspended portion of the sentence. For the fourth and any

[278] Jake Howard, Interview with author, Jackson, Mississippi, January 7, 2020.
[279] Demario Walker, Letter to author, February 2020.
[280] Final Report, Mississippi Corrections and Criminal Justice Task Force, December 2013, https://www.mdoc.ms.gov/Documents/2013%20Corrections%20and%20Criminal%20JusticeTask%20Force%20Final%20Report.pdf, 9.
[281] Technical violations of parole or probation include missing or failing a drug test and failing to report to a parole or probation officer. Ibid.
[282] Jake Howard, Interview with author, Jackson, Mississippi, January 7, 2020.

> subsequent technical violation, the court may impose up to the remainder of the suspended portion of the sentence. The period of imprisonment in a technical violation center imposed under this section shall not be reduced in any manner.[283]

The legislature intended the statute to mean that after every revocation of parole or probation, the offender would be subject to incarceration for a period of time in a technical violation center. However, judges interpreted the imposed sentences on the basis of technical violations and not revocations. Thus, judges believed if an individual had four technical violations they could be reincarcerated for the entirety of their suspended sentence. Under this interpretation, a trial court sentenced Walker to serve the full five years of a suspended sentence when he was found to have four technical violations of probation. Walker appealed to the Court of Appeals and won. However, the state filed a petition for certiorari in the Mississippi Supreme Court and the court reversed the Court of Appeals.

Walker's case no doubt contributed to illuminating the problems with the poorly worded statute. The legislature eventually amended the statute to provide clarity,[284] which is important in terms of slowing down the growth of the state's prison population. The legislation "may have been the most important criminal justice reform in recent Mississippi history. It's the reason we

[283] Miss. Code § 47-7-37(5)(a).

[284] If the court revokes probation for one or more technical violations, the court shall impose a period of imprisonment to be served in either a technical violation center or a restitution center not to exceed ninety (90) days for the first revocation and not to exceed one hundred twenty (120) days for the second revocation. For the third revocation, the court may impose a period of imprisonment to be served in either a technical violation center or a restitution center for up to one hundred eighty (180) days or the court may impose the remainder of the suspended portion of the sentence. For the fourth and any subsequent revocation, the court may impose up to the remainder of the suspended portion of the sentence. The period of imprisonment in a technical violation center imposed under this section shall not be reduced in any manner. Miss. Code Ann. § 47-7-37 (Rev. 2014).

dropped from number two to number three in per capita incarceration," explained Howard.[285] However, Walker is still serving time for the imposed sentence. Although it is a state law question, he is now litigating the suit in federal court.

Drankus and Walker are among countless other pro se Parchman prisoners who turn to the courts to secure their freedom, defend their constitutional rights, and protest against cruel treatment and inhumane conditions while incarcerated and sometimes they prevail, against all odds. At every step of the process, writ writers at Parchman encounter institutional, judicial, monetary, and interpersonal obstacles which hinder their ability to access the courts, assert their claims, and secure much needed relief. The system provides the barest assistance the Constitutional requires and imposes the maximum restrictions it allows. What results no doubt reflects the states' intent: writ writers do not have meaningful or adequate access to Mississippi courts. Demario Walker, perhaps having cultivated the concision prized by judges, puts it more plainly still. "Pro se prisoner litigants do not get a fair chance in court in Mississippi."[286] But these men nonetheless persist. Whether their efforts are successful or not, every complaint, every request for administrative relief, every letter to an attorney or judge, every petition, every motion, every lawsuit filed is a dissent to the many injustices that pervade the criminal justice system. Every complaint is a refusal to be silenced, oppressed, or forgotten. Indeed, Parchman writ writers deliver the "most eloquent dissents of all." [287]

[285] Jake Howard, Interview with author, Jackson, Mississippi, January 7, 2020.
[286] Demario Walker, Letter to author, February 2020.
[287] *McCleskey v. Kemp*, 481 U.S. 279 (1986), Justice Brennan dissenting, at 345.

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