Will the Federal Courts Run N.C.'s Prison System?

by Joel Rosch

On Sept. 16, 1985, U.S. District Court Judge James B. McMillan (Western District-N.C.) approved an out-of-court settlement in a five-year-old lawsuit, *Hubert v. Ward et al.* The settlement covered conditions in 13 prison units in the south Piedmont area.[1] Before submitting the settlement to Judge McMillan, the defense counsel—N.C. Attorney General Lacy Thornburg and other Department of Justice officials—submitted the agreement to Gov. James G. Martin and the General Assembly. The legislature appropriated $12.5 million to cover the terms of the settlement prior to Judge McMillan's action. A year later, however, the plaintiffs filed new motions claiming that the state had not moved at the pace it promised the court. As of Feb. 15, 1987, Judge McMillan had not ruled on these motions.

Meanwhile, on Oct. 21, 1986, U.S. District Court Judge W. Earl Britt (Eastern District-N.C.) certified a lawsuit similar to *Hubert* as a class action covering all inmates in 48 other state prison units, essentially all the "road-camp" units outside the south Piedmont area.[2] The state could be forced by this suit, called *Small v. Martin*, to make an appropriation of far more than $12.5 million, if the state decides to settle *Small* as it did *Hubert*, or if the plaintiffs win.

These two suits, covering 61 of the 86 prison units in the state, represent the most severe threat of federal intervention into the state prison system in the history of North Carolina. "If the General Assembly does not take decisive action during the 1987 session, the state is in serious danger of losing control of the prison system," says Ben Irons, executive administrative assistant for the Department of Correction and the department attorney most involved in the litigation. "I mean by that, judicial intervention would be much more likely."

That bugaboo phrase—"judicial intervention"—has over the years helped prompt significant legislative action, to the tune of some $125 million for construction costs alone since 1976. But the combination of the *Hubert* settlement and the *Small* case has forced the legislature to take notice like never before.

"In the late '70s and into the early '80s, the focus of the litigation was primarily on brutality and individual complaints," says Marvin Sparrow, director of N.C. Prisoner Legal Services. "Now the emphasis has shifted to class actions regarding overcrowding and conditions of confinement— triple bunking, bathroom space, clothing, recreation, medical treatment, and protection from violence."

In 1985, after the General Assembly approved the $12.5 million for the *Hubert* settlement, Speaker of the House Liston Ramsey and Lt. Gov. Robert B. Jordan III established a Special Committee on Prisons to review all issues related to the litigation. "The litigation has focused attention on the prison overcrowding," says state Rep. Anne Barnes (D-Orange), co-chair of the special committee, which presented its latest report to the 1987 legislature. "Sometimes, it takes special attention, like these suits, to bring some things into

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focus. It's a situation that very definitely needs some major attention. We have received some guidance from the consent settlement in the south Piedmont case in regard to what the court feels needs to be done. I'm certainly hopeful that through the work of the Special Committee, the General Assembly, and the Martin administration, we can keep control of our prison system."

While the federal courts can hand down orders and even appoint "special masters" to administer day-to-day operations in a state system, they cannot appropriate money. Moreover, appellate courts have been reluctant to uphold lower court rulings ordering states to spend money. In some instances, initial victories by inmates have been limited on appeal. In others, long after cases are settled out of court, conflict continues over the pace of implementation and the means of paying for improvements.[3]

A recent decision in Texas dramatically illustrates the point. On Jan. 5, 1987, U.S. District Judge William Wayne Justice found the state of Texas in contempt of court for failing to implement reforms in its prison system previously ordered by the court and agreed to by the state. The contempt ruling involves the complex and longstanding case, *Ruiz v. Estelle*.[4] "Judge Justice ordered the state to remedy the problems by April 1 or face fines that an attorney for the state said could amount to $800,500 a day," *The New York Times* reported on Jan. 6. "Texas is facing an estimated $5 billion budget deficit. State officials said they would probably appeal."

Courts rarely settle controversial prison issues. Rather, they redefine them and change the context in which the political battles are fought. Certainly, that has been the case in North Carolina where the threat of losing control of the N.C. prison system to the federal courts has become quite real. Why does "judicial intervention" pose such a threat to N.C. lawmakers? What role does litigation play in developing prison policy?

Why Federal Courts Rule on State Prisons

Historically in this country, the courts have taken a hands-off policy towards the rights of people after they were convicted of crimes and sent to prison. The theory was that corrections officials could make the best decisions about administering a state prison system. Over the last four decades, a

Crowded triple-bunk dormitory at the Columbus County Prison Unit

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—Ben Irons, attorney, Department of Correction

series of court cases has gradually replaced this so-called hands-off policy.

The process began in 1948, when the U.S. Supreme Court ruled in *Price v. Johnston* that people convicted of crimes in federal cases retain certain constitutional rights as long as those rights do not interfere with custody and prison administration.[5] This decision gave *federal* inmates the right to ask the courts for relief if their rights were being violated under the Eighth Amendment to the U.S. Constitution, which says: "Excessive bail shall not be required, . . . nor cruel and unusual punishments inflicted." Most prison inmates, however, are in institutions run by state and local governments, not the federal government. In *Robinson v. California* (1962), the federal courts applied the Eighth Amendment protections to *state*-run prisons as well as federal institutions.[6] These suits and subsequent litigation relied on the Fourteenth Amendment to the U.S. Constitution, which says in part: ". . . nor shall any State deprive any person of life, liberty, and property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The flood of litigation regarding state prisons over the last two decades stems from a breakthrough in *Cooper v. Pate* (1964), which allowed the use of "section 1983" as a litigation strategy for lawsuits by prisoners.[7] "Section 1983" refers to a federal law (42 U.S.C. 1983), originally passed in 1871 to protect civil rights in general, especially of the newly emancipated black population.[8] This law allows plaintiffs alleging violations of their civil rights to bring lawsuits against state agencies and local governments to federal court without having to go first to the state courts. The ability to file directly in federal court is very important for prisoners living in overcrowded conditions. State courts can be inhospitable to claims against state and local agencies. In addition, some states have put legal limits on the ability of state courts to grant judgments against state and local agencies.

In a "section 1983" suit decided in 1970 (*Holt v. Sarver*), a federal court found the entire Arkansas penal system to be in violation of Eigth Amendment prohibitions against cruel and unusual punishment.[9] This decision only set the stage for the most dramatic scenario, which took place in Alabama. In *Pugh v. Locke* (1976), prison officials in Alabama surrendered control of the day-to-day operation of their institutions.[10] In Alabama, federal judges and their appointed agents have helped determine cell size, urinal space, staff-inmate ratios, the temperature of water in prison showers, and the number of inmates that the state could incarcerate. Orders to reduce prison populations have even affected how much time individual inmates have served.[11]

The Alabama situation is not unique. As of January 1, 1987, nine states (seven of them in the South) had their *entire prison system* under court order (see Table 1). In addition, 28 states, including North Carolina, were operating at least part of their prison systems under some kind of court order, and four states were facing litigation concerning overcrowding conditions. Only nine states had no litigation pending regarding prison conitions.

A number of definitions of "overcrowded" exist. The American Correctional Association defines a "crowded inmate" as a person confined in a multiple-inmate unit that provides less than 50 square feet of floor space per person. The N.C. Department of Correction currently says that its prison system has a capacity of 16,695 people. Using this capacity figure, each inmate would have an average space of about 30 square-feet (6' by 5'). The actual population, as of December 1, 1986, was over 18,000. The department hopes eventually to have 50 square feet per person, says Ben Irons.

Section 1983 Suits in North Carolina

In 1980, four inmates at the Union County prison unit near Monroe, including self-educated legal student Wayne Brooks, filed a suit challenging conditions there. In December 1982, eight additional inmates joined the suit and asked permission "in the interest of judicial economy, convenience and fairness, and in order to avoid unnecessary duplication and multiplicity of actions" to raise claims on behalf of all inmates confined in the five medium- and seven minimum-custody units in the south Piedmont Department of Correction administrative area. (A 13th unit was eventually added to the suit.) In April 1983, the name of the suit was changed to *Hubert v. Ward et al.*, and it became a class action suit on behalf of all inmates who were then or in the future would be confined in that administrative area. Except for one, all of the units challenged are "road-camp" prisons. Constructed mainly in the 1920s and 1930s, the road camps housed prisoners who helped build roads throughout the state. Today, 60 of North Carolina's 86 prisons are still known as road-camp units.

In their suit, the inmates claimed that conditions in the south Piedmont prison units violated their rights under the Eighth and Fourteenth amendments to the U.S. Constitution to be free from cruel and unusual punishment. The suit also argued that conditions did not meet American Correctional Association standards and that they violated state building and fire codes, several North Carolina statutes,[12] and the N.C. Constitution.[13] The inmates made these claims, among others:

- buildings held far more prisoners than they were designed to hold;
- prisoners slept in triple bunks so close to each other that they practically touched, allowing no physical integrity;
- weapons were readily available to inmates, and violence or threats of violence were common;
- because of inadequate supervision in the overcrowded units, prisoners were often forced to submit to involuntary homosexual activities;
- educational, vocational, mental health, and medical facilities did not meet minimal state standards; and
- the units did not comply with state laws regarding diagnosing, classifying, and assigning prisoners to proper units.

The 1983 court ruling making *Hubert* a class-action suit also gave the plaintiffs' attorneys the right to conduct extensive discovery proceedings.

Toilet facilities at Columbus County Prison Unit

Under discovery, attorneys may review documents held by the defendants and interview defendants and their assistants under formal judicial conditions. During the discovery period, numerous experts retained by the plaintiffs and by the Department of Correction toured each of the prison units to review conditions and programs. The case was set to come to trial in October 1984. Shortly before the trial date, the Department of Correction began discussing a settlement with the plaintiffs. In 1985, the parties reached an agreement, which then went to the Governor and the legislature for approval.[14] Finally, in October 1985, Judge McMillan approved the settlement.

North Carolina had a lot to lose if the *Hubert* case had gone to trial. As in Alabama, the Department of Correction (DOC) could have lost control of the day-to-day operation of the 13 prison units to officials appointed by a federal judge. Moreover, if the court had found against the state in *Hubert*, the entire state system might then be fair game for a court order. Because so many of the state prison units are as old and overcrowded as those covered by *Hubert*, state prison officials had real concerns about the impact of a trial in *Hubert*. At the same time, state officials saw a settlement as an opportunity to speed up planned improvements.

"The consent judgment contained a great many things that the Department of Correction already wanted to do," says Special Deputy Attorney General Lucien "Skip" Capone III.

In the settlement, the DOC agreed to eliminate triple bunking in all dormitories and to reduce the population in the south Piedmont district by a third. The consent judgment listed the maximum number of inmates that could be held in each dormitory facility.[15] This could be accomplished either by developing alternatives to incarceration or by building new facilities. (In the settlement, the plaintiffs did not express a preference regarding alternatives or new units.) If new units were to be built, they had to meet design requirements set forth in the settlement, including: a minimum floor area of 50 square feet per occupant in the sleeping area, a ceiling height of not less than eight feet, one operable toilet and shower for every eight occupants, one operable wash basin with hot and cold running water for every six prisoners, and other such specifications covering the separate day rooms, temperature, lighting, and noise. The DOC also agreed to:

- upgrade fire safety, heating, cooling, ventilation, and lighting to meet state and national standards;
- establish meaningful educational, vocational, and work programs;
- improve the conditions of inmates segregated for discipline reasons from the other inmates;
- repair and/or install missing window screens, broken windowpanes, and door screens;
- provide all inmates with winter coats, wool blankets, and clean mattress covers;
- improve recreational facilities and equipment;
- hire additional staff and file regular progress reports to the court; and
- upgrade medical and religious programs.

The DOC said it could do all of this for $12.5 million.

Because the state admitted that conditions in one part of the penal system were bad enough to settle a case, inmates now have an easier time raising claims about similar conditions in other prison units. Three other major suits have been filed against the state: *Small v. Martin*, *Epps v. Martin*, and *Stacker/Milby/Bobbitt v. Woodard*.

"The consent judgment contained a great many things that the Department of Correction already wanted to do."

—Lucien "Skip" Capone III, Special Deputy Attorney General

Small v. Martin. Potentially the most important of all four suits (including even *Hubert*), it is still in the early stages for such major litigation. Discovery proceedings have just begun. The state at this point is defending the lawsuit and not considering a settlement. The suit began in July 1985, with James Small, an inmate at the Columbus County prison unit (near Whiteville) alleging many of the same problems raised in *Hubert*. On June 20, 1986, four inmates confined at other units joined the *Small* case, and their attorneys filed a motion to make *Small* a class-action suit covering 48 units. All 48 are road-camp prisons, similar to those covered under *Hubert*. The overcrowding and related conditions have made these old facilities vulnerable targets for litigation.

"Almost all road camp units are triple bunked now," says Sparrow of N.C. Prisoner Legal Services. Not only are the bunks very close together in the large, dormitory-style sleeping areas, they have also spread into the congregate lounge areas.

With triple bunks so close together, "You couldn't swing your legs out of bed without hitting someone," says one prisoner.

Epps v. Martin.[16] In May 1986, this class-action suit was filed against the state concerning conditions in the Craggy Prison Unit in Buncombe County, built in 1924. Craggy is not a road-camp unit but has all the same problems plus a leaky roof and broken plumbing. The state moved to have the case dismissed as moot, on the grounds that the department plans to close Craggy, and the legislature has appropriated some money towards that goal. (In 1986, the legislature voted $5.6 million toward a replacement for Craggy.)

"I feared for my safety and life every day I was at Caledonia [prison]."

"I also saw two incidents of forced homosexual activity. The two victims were young inmates...."

—from inmates' affidavits in Stacker/Milby/Bobbitt v. Woodard

Lawyers for the inmates are aware of the long-range plans to close Craggy. "We want to make sure that the admittedly deplorable conditions at Craggy are ended," says Melinda Lawrence, a Raleigh attorney with the law firm of Smith, Patterson, Follin, Curtis, James & Harkavy, and an attorney for the plaintiffs in the *Hubert*, *Small*, and *Epps* cases. "It's not even clear that land has been identified to purchase for a new facility. Moreover, even if a new prison is eventually built, it's not clear what will happen to Craggy."

Stacker/Milby/Bobbitt v. Woodard.[17] In April 1982, inmates at the Caledonia Prison Unit, a large prison complex in Halifax County, filed a class-action lawsuit claiming cruel and unusual punishment. In 1985 and 1986, the suit was consolidated with two others also involving Caledonia. N.C. Prisoner Legal Services represents all the plaintiffs in the suit. This combined suit bases its claims on conditions similar to those in the road-camp units (covered by *Hubert* and *Small*) and at Craggy. It alleges particularly stark conditions regarding availability of weapons, forced homosexual activity, and a shortage of staff to control the dormitories.

"I feared for my safety and life every day I was at Caledonia (prison)," said one inmate in an affidavit in *Stacker*.

Another inmate at Caledonia said in an affidavit filed with *Stacker*: "I also saw two incidents of forced homosexual activity. The two victims were young inmates who were forced to commit the act by several other inmates."

Sparrow, one of the attorneys in the suit, says that conditions were particularly violent at Caledonia because the Department of Correction "used to send all the troublemakers there. They are in the process of changing that policy now." Currently, the parties in the lawsuit are engaged in settlement negotiations.

Other Cases. Inmates in N.C. prisons have won several cases in federal court which forced the Department of Correction to institute new administrative procedures. For example, *Slakan v. Porter* forced the department to issue regulations restricting the use of high-pressure fire hoses, tear gas, and billy clubs to punish or control inmates confined in their cells.[18] In another case, *Bounds v. Smith*, the courts required the state to provide inmates with "meaningful assistance" with access to the courts, such as adequate law libraries. Filed more than 10 years ago, this case went all the way to the U.S. Supreme Court.[19] And, it still continues over the question of "meaningful assistance." The court ordered the state to facilitate

Table 1. States Under Court Order or Facing Litigation Because of Prison Conditions, January 1987

A. Entire prison system under court order (9)

Alabama[1]	Mississippi	South Carolina
Florida	Oklahoma[1]	Tennessee
Hawaii	Rhode Island	Texas

B. One or more facilities under court order (28)

Arizona	Kansas	Ohio
California	Kentucky	South Dakota
Colorado	Louisiana	Utah
Connecticut	Maryland	Virginia
Delaware	Michigan	Washington
Georgia	Missouri	West Virginia
Idaho	Nevada	Wisconsin
Illinois	New Hampshire	Wyoming
Indiana	New Mexico	
Iowa	**North Carolina**	

C. One or more facilities in litigation (4)

Alaska	Massachusetts	Pennsylvania
Arkansas		

D. No litigation pending (9)

Maine	New York	Nebraska
New Jersey	Montana	Oregon
Minnesota	North Dakota	Vermont

FOOTNOTE

[1]In these states, the federal court no longer maintains a compliance mechanism, but the court order is still in effect.

Source: American Civil Liberties Union, National Prison Project

access to the courts for inmates in N.C. prisons by providing free legal counsel, specifically by funding an additional 10 lawyers at N.C. Prisoner Legal Services. The state has appealed this ruling.[20]

Finally, a brutality case at the once notorious Piedmont Correctional Center in Salisbury involved criminal charges. While not tied directly to overcrowding and related conditions, the case shows another way that the courts can monitor the activities that take place behind prison bars. Known as the Hinton case, charges of brutality led to investigations by the Federal Bureau of Investigation and the State Bureau of Investigation, and to criminal convictions.[21]

Prison Policy from the Courts

The role of the federal courts in prison litigation, in North Carolina and nationwide, raises a number of questions about the separation of powers between the legislative, executive, and judicial branches of government and about the division of power between the states and the federal government.[22] In our democratic society, decisions about building and administering prisons are traditionally made by the elected "representatives of the people"—the legislature—not by federal judges, who are appointed to office. In our system of federalism, each state is supposed to run its prison system, not the federal government. At the same time, prison inmates are guaranteed certain minimum constitutional rights.

Since the 1930s, a controversial view of the judiciary has emerged that has spurred the way for prison litigation. The U.S. Supreme Court has paid special attention to the rights of certain "discrete and insular minorities," as U.S. Supreme Court Justice Harlan Fiske Stone put it.[23] These minorities have no place else to turn besides the courts for just treatment from the government, because the other parts of the political system do not work for them. Defenders of such "judicial activism" argue that democracy includes respect for the rights of the minority as well as majority rule. When the court acts in the interest of those who cannot effectively use the political system, it creates a forum for the politically powerless to air their grievances.[24]

Many jurists regard the Eighth Amendment as establishing a minimum standard of decency below which the courts will not allow prison conditions to fall. When conditions for inmates became as egregious as they were shown to have become in Alabama and Arkansas, the courts used its powers on behalf of inmates who had no place else to turn. In addition to the overcrowding and cruel living conditions, like those alleged in the various N.C. lawsuits, Alabama and Arkansas had particularly nightmarish situations, including even suspicious deaths and graves found under some Arkansas prisons.

In Alabama, Arkansas, and other states with their prison system under court order, rulings have had an impact not only on the prisons themselves but also on the overall political debate about

prisons. Successful court action on behalf of inmates is never popular with voters because the result is either that taxes must be raised to pay to improve the penal system, funds are diverted from other services for prisons, or fewer convicted offenders can be incarcerated. After the takeover of the Alabama prison system by the federal courts in 1976, George Wallace, in his presidential race, used the slogan "Vote for George Wallace and give a barbed wire enema to a federal judge."[25]

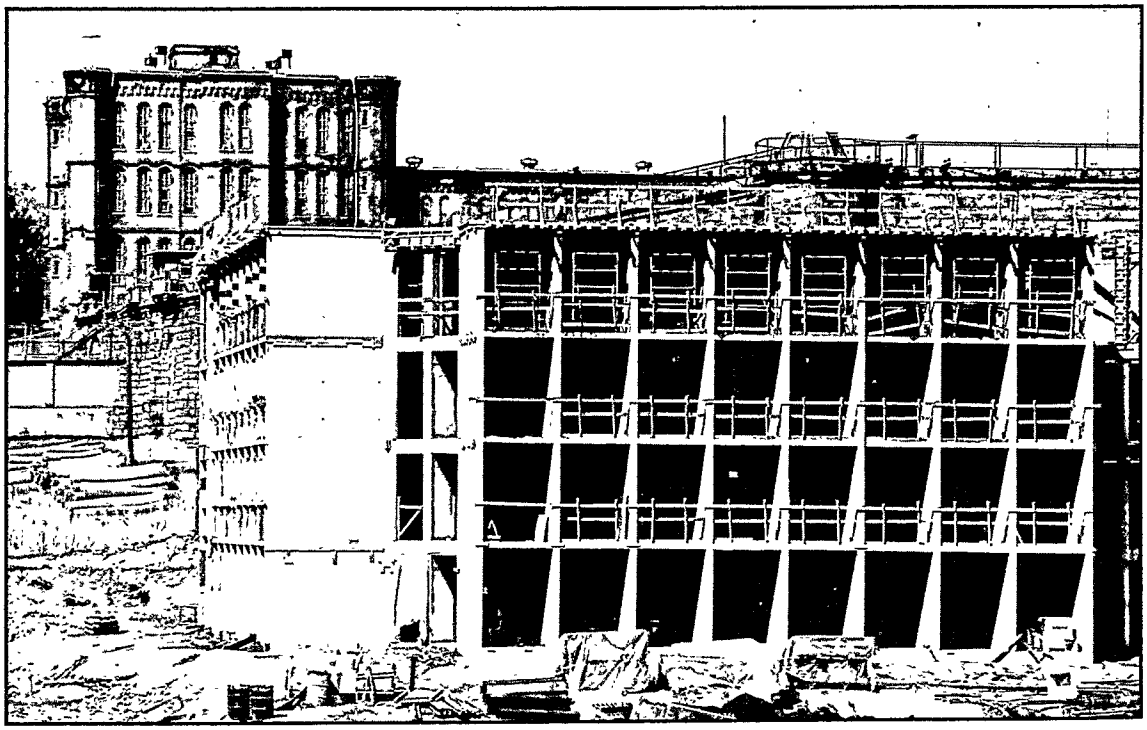
Regardless of one's philosophical view of judicial activism, legitimate questions can be voiced about the competence of court officials to make specific rules about running correctional institutions. Surprisingly, some recent research shows that court-ordered policies can be more cost effective than traditional correctional policies. For example, some aspects of what the courts have ordered in Alabama and in North Carolina (through the *Hubert* settlement) have proven to be *more cost effective* than a policy of overcrowding. One national study of prison costs found that correctional institutions with single cells, more square feet per person, and better sanitation facilities cost less to run than overcrowded prisons. For example, a prison that had 100 percent of inmates in single cells cost $7.20 less to run per person per day than a prison with 58 percent of inmates in single cells.[26]

Ironically, the inmates and attorneys who have filed the litigation in North Carolina have sought many of the same goals as have Department of Correction officials. "Almost all of the demands agreed to in the *Hubert* case and those that have been raised in *Small v. Martin* are things the department would want to do anyway," says Ben Irons. Likewise, because of the *Epps* suit, the department has a much better chance of replacing the Craggy Prison Unit than it had before the litigation. The prison system must compete with schools, roads, parks, the elderly, and many other constituencies for limited resources. The department's request for increased personnel has taken on new credibility since the settlement of the *Hubert* case.

Prison litigation in North Carolina has passed two critical junctures—the $12.5 million settlement of *Hubert* and the court's certification of *Small* as a class-action suit covering 48 units throughout the state. And, other important litigation continues to put pressure on the department and on the legislature to address problems in the prisons. In the wake of these decisions, a far larger constituency supports improving prison conditions. This growing constituency even reaches into the lower levels of the Department of Correction.

A number of lower-level correction officials

Central Prison in Raleigh under construction in 1980



Jackson Hill

"The litigation has focused attention on the prison overcrowding."

— Rep. Anne Barnes (D-Orange), co-chair, Special Committee on Prisons

cheer when the department loses a case, They are happy, they say privately, because longstanding problems will finally begin to be addressed. These officials (who do not want their names used for obvious reasons) could never muster the political punch to relieve the problems, but the litigation has provided new leverage. The litigation in a curious way links the "insular minorities" in the prisons with the "insular minorities" within the bureaucracy. Court action has permanently altered the political landscape in North Carolina by increasing the leverage of those advocating prison reform—both public and private advocates.

FOOTNOTES

[1]*Hubert v. Ward et al.*, No. C-C-80-414-M (W.D.N.C.).

[2]*Small v. Martin*, No. 85-987-CRT (E.D.N.C.).

[3]*Rhodes v. Chapman*, 452 U.S. 337 (1981). For a review of such cases, see Erika Fairchild, "The Scope and Study of Prison Litigation Issues," *The Justice System Journal*, Vol. 9, No. 3, 1984, pp. 325ff.

[4]*Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980); 679 F. 2d 1115 (5th Cir. 1980); *cert. denied*, 103 S. Ct. 452 (1983); *Modified on rehearing*, 688 F. 2d 266 (5th Cir. 1982); *cert. denied*, 103 S. Ct. 1438 (1983).

[5]*Price v. Johnston*, 334 U.S. 266 (1948).

[6]*Robinson v. California*, 370 U.S. 660 (1962).

[7]*Cooper v. Pate*, 378 U.S. 546 (1964).

[8]42 U.S.C. 1983. *"Civil action for deprivation of rights.* Every person who. . .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. . . ."

[9]*Holt v. Sarver*, 309 F. Supp. 362 (E.D. Ark. 1970); *aff'd.*, 442 F. 2d 304 (8th Cir. 1971).

[10]*Pugh v. Locke*, 406 F. Supp. 318 (M.D. Ala. 1976).

[11]Tinsley Yarbrough, "The Alabama Prison Litigation," *The Justice System Journal*, Vol. 9, No. 3, 1984, pp. 276ff.

[12]N.C.G.S. 148-12, -19, -22, and -26. These statutes include such requirements as the following: "The Department of Correction shall, as soon as practicable, establish diagnostic centers to make social, medical, and psychological studies of persons committed to the Department." N.C.G.S. 148-12(a); "The general policies, rules and regulations of the Department of Correction shall prescribe standards for health services to prisoners, which shall include preventive, diagnostic, and therapeutic measures on both an outpatient and a hospital basis, for all types of patients." N.C.G.S. 148-19(a); and "The general policies, rules and regulations of the Department of Correction shall provide for humane treatment of prisoners and for programs to effect their correction and return to the community as promptly as practicable." N.C.G.S. 148-22(a).

[13]Constitution of the State of North Carolina, Article I, Section 27: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted."; and Article XI, Section 1: "The following punishments only shall be known to the laws of the State: death, imprisonment, fines, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under this State."

[14]In February 1981, the executive branch settled a highly controversial class-action suit (*Willie M. v. Hunt*) in federal district court without first notifying the General Assembly. The *Willie M.* settlement and subsequent appropriations have totaled more than $13 million. After the *Willie M.* settlement, the General Assembly passed a statute that required the Attorney General personally to approve any consent settlement and stated that no consent decree could be binding on the state unless sufficient funds were *first* approved by the General Assembly (N.C.G.S. 114-2.1 and 2.2). This statute was enacted as a special provision in the 1982 budget bill, Chapter 1282 of 1981 Session Laws (2nd Session, 1982), section 51. "These statutes took away the discretion that state agencies previously had simply to enter into consent judgments," says Lucien Capone III of the Attorney General's office. If at a later date (after the settlement), the court orders *additional* sums spent, then the statute is not binding. "The statute cannot be binding on the federal courts," says Capone. For background on the *Willie M.* settlement in the context of other separation of powers issues, see "Separation of Powers," *North Carolina Insight*, Vol. 5, No. 1, May 1982, pp. 42-43.

[15]According to the consent decree, the maximum number of inmates "housed in each dormitory facility (in existence at the date of this agreement) at the field units shall not exceed" the following numbers: Union (94), Iredell (92), Stanly (92), Cleveland (100), Mecklenburg I (82), Mecklenburg II (110), Rowan, North (68), Rowan, South (52), Cabarrus (66), Gaston (68), Lincoln (74), Catawba (56), and Anson (90), *Hubert v. Ward et al.*, No. C-C-80-414-M (W.D.N.C.), paragraph III-6.

[16]*Epps v. Martin*, No. A-C-86-162 (W.D.N.C.)

[17]*Stacker v. Woodard*, No. 85-231-CRT, *Milby v. Woodard*, No. 82-489-CRT, *Bobbitt v. Stephenson*, No. 86-69-CRT, (E.D.N.C.); these three cases have been consolidated into one, commonly called *Stacker/Milby/Bobbitt v. Woodard.*

[18]*Slakan v. Porter*, 737 F. 2d 368 (4th Cir. 1984).

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

[20]*Smith v. Bounds*, 610 F. Supp. 597 (E.D.N.C. 1985, *appeal pending*).

[21]In 1981-82, prisoners at the Piedmont Correctional Center in Salisbury filed numerous complaints regarding brutality, through the Department of Correction grievance procedure and to the FBI. The department conducted an internal investigation which resulted in demotions, transfers, and dismissals of several officials serving at the Salisbury unit, including the superintendent, Robert L. Hinton. The State Bureau of Investigation conducted a separate investigation and found no evidence of any wrongdoing. Meanwhile, an FBI investigation of the complaints led to criminal charges against six officials, including Hinton. All but Hinton entered guilty pleas; at Hinton's trial, some of the officers testified that Hinton had authorized beatings of prisoners. Hinton was convicted; he is appealing his conviction. The Salisbury unit developed a reputation as a "reign of terror," as Marvin Sparrow puts it. "They were taking prisoners into back rooms and beating the hell out of them. One guy got his skull broken."

[22]See "Separation of Powers," *N.C. Insight*, Vol. 5, No. 1, May 1982, pp. 36ff; "The Role of the Judiciary in Making Public Policy," *N.C. Insight*, Vol. 4, No. 1, April 1981, pp. 12ff; and *Boards, Commissions, and Councils in the Executive Branch of North Carolina State Government* by Jim Bryan et al., pp. 41-64.

[23]*United States v. Carolene Products Co.*, 304 U.S. 144, n. 4 (1938).

[24]See Stuart Scheingold, *The Politics of Rights*, Yale University Press, 1974.

[25]Yarbrough, p. 287.

[26]William Trumbull and Ann Witte, "Determinants of the Costs of Operating Large-scale Prisons with Implications for the Cost of Correctional Standards," *Law and Society Review*, Volume 16, No. 1, 1981-82, pp. 115-135.