

January 3, 2012

**FROM BLACK POWER to PRISON POWER:  
The Making of Jones v. North Carolina Prisoners'  
Labor Union**

Donald F. Tibbs



**FROM BLACK POWER TO PRISON POWER:**

*The Making of Jones v. North Carolina  
Prisoners' Labor Union, Inc.*

Book Manuscript

**Donald F. Tibbs**

Associate Professor of Law  
Drexel Earle Mack School of Law  
Philadelphia, PA 19104

Preview Prepared for:

The University of Georgia Press  
330 Research Drive  
Oakbrook B-100  
Athens, GA 30362

2010

## PREFACE

### **A Primer on Black Power and the Prisoners' Union Movement**

**The Prisoner Union Movement** remains an enigma. Its sole legal reference appears in the 1977 Supreme Court decision of *Jones v. North Carolina Prisoners' Labor Union, Inc.* At issue in *Jones* was the constitutionality of a corrections policy that specifically prohibited North Carolina prisoners from organizing and joining a prisoners' union: 1) solicitation of membership; 2) convening union meetings; and 3) bulk mailing union newspapers. The inmates argued that the policy was an unconstitutional infringement on their first and fourteenth amendment rights, namely to free speech and association, as well as equal protection under the law. Their case was meritorious in the District Court, but ultimately failed on appeal to the Supreme Court. In a 7-2 split decision, the Court reversed the District Court's ruling and held that neither the First nor the Fourteenth Amendments were violated by prison regulations that forbade inmates from soliciting membership in labor unions or conducting union meetings. Speaking for the majority, Chief Justice Rehnquist declared that the regulations were not only "reasonably related to legitimate prison security concerns" but also that the

“judiciary must give appropriate deference to the decisions of prison administrators” on issues concerning inmate custody. In support, the Court concluded that inmate unionization was an illegitimate enterprise solely designed to foment racial hatred in the prison system. But, history suggests otherwise.

*From Black Power to Prison Power* reconsiders the *Jones* case, arguing that understanding the Court’s reasoning – at the intersection of policy and legal doctrine – requires plumbing the murky depths of a growing black radicalism that paralleled, and at times, overlapped the struggle for prisoners’ rights. It promises to probe the missing debate on the triumphs and troubles associated with inmates using black power as a platform to influence legal policy and effectuate legal change. Their ideology pushed varied points of interest but rested on the underlying principle that the freedom to organize and speak, associate, and engage in political dissidence, was not only a fundamental promise to free blacks, but it should have been promised to captive blacks as well. Missing that point has left the prisoners’ efforts in *Jones* misunderstood, misconstrued, and often misused.

The changes and continuities in this narrative have much to teach us about the intersection of race, law, and

punishment in American history. During the late 1960's through the 1970's, race and punishment were conjoined twins. The political and legal ambitions of many governmental leaders, and the wardens that managed America's prison system are ineluctably tied to the proliferation (and dissolution) of African American social movements – especially the Black Power Movement and its lead organization, the Black Panther Party. By the time *Jones* was argued before the Supreme Court in 1977, FBI Director J. Edgar Hoover had spent considerable years and federal resources “preventing the rise of a black messiah.” Using his brand product, COINTELPRO, Hoover targeted every Black radical that he worried might “unify the masses.” He defined their organizations as Black Nationalist Hate Groups and he openly declared their leaders, as well as their followers, to be the “greatest threat to the internal security” of America. On many levels, Hoover succeeded. Most notable was his campaign against the Black Panther Party and its leaders ranging from Huey P. Newton to Elaine Brown. In a short span of \_\_\_ years, Black panthers were harassed, accused, murdered, and exiled. Those that remained were hustled off to American prisons, as the federal government structured criminal cases against Black radicalism under the legitimacy of American law. His

success, however, eventually became the penal systems' biggest headache particularly as scores of Panthers encouraged Black prisoners to revision their imprisonment as an act of political violence by the state growing out of its socio-political treatment of black liberation efforts across historical timelines. They moved to position themselves as the revolutionary vanguard presumably to rescue Black suffering from the vise-grip of American law. They re-articulated the debate on Black freedom with a different sense of what it means to be free.

This book follows the lead of the 1970's Black prisoners by engaging in its own revisionist history – reconsidering the *Jones* decision in American law. It extends *Jones* beyond its legal doctrine by narrating a story on the role of Black power, its form and substance, in shaping a landmark decision in prisoners' rights law. Although *Jones* originates in North Carolina, it was more than a local case about local issues. Indeed, it was much more. Its roots reach back to the ebb and flow of prisoners' rights issues emanating from legal struggles beginning in America's infamous west coast prisons – namely San Quentin and Folsom. Embedded in those roots are important persons – Eldridge Cleaver, George Jackson, Angela Davis, and Huey P. Newton – as well as the

organizations they inspired – The Black Muslims, the Soledad Brothers Defense Committee, and the Black Panther Party. Although each organization played an important role, the Black Panther Party dominated the national scene – both functionally and ideologically. Histories of black radicalism inform us that the Panthers were not the first grassroots organization devoted to black empowerment, but perhaps they were most memorable as their methodology coupled with their message forced them into our national stream of consciousness.

As a centerpiece to this important history, the Panthers entered the national black freedom struggle a mere four months following Student Nonviolent Coordinating Committee's Stokely Carmichael first introduced the United States to the phrase "Black Power" – replacing non-violent approaches to racial liberation with a particular focus on black self-reliance and self-determination. Ironically, Black Power also entered as a response to the problem of incarceration. "This is the twenty-seventh time that I've been arrested," claimed Carmichael, "I ain't going to jail no more. The only way we gonna stop them white men from whuppin' us is to take over. What are we gonna start sayin' now is Black Power!"

Carmichael's timely June 16, 1966, speech on Black

Power shifted the paradigm for Black liberation from the Minister of Peace Dr. Martin Luther King, Jr., who advocated non-violent integration to eradicate de facto and de jure segregation, to the Minister of Defense Dr. Huey P. Newton, who advocated armed resistance to white supremacy and a revolutionary end to American racism. But, Newton's new prominence, coupled with his unique methodology of "picking up the gun," forced federal and local law enforcement to focus intensely on his demise; and eventually, his entire organization suffered. No Panther was safe, no Panther was innocent, and no Panther was left unscathed as scores of Panthers found themselves incarcerated, some claiming they were 'political prisoners' imprisoned not for the commission of real crimes, rather targeted, harassed, arrested, and framed for crimes they did not commit.

Once inside the prison system, Newton and his Panthers formed alliances and educated other Black prisoners using the philosophies undergirding vanguard liberation struggles popularized in the works of Malcolm (X) Shabazz (Malcolm Little), Robert F. Williams, W.E.B. Du Bois, Marcus Garvey, Frantz Fanon, Mao Zedong, Karl Marx, Che Guevara and Regis Debray. Also useful were the lessons emanating from the Scandinavian Prison Reform Movement (1966-1968), the Cuban



Revolution (1959), the Algerian Revolution (1954), the Bahamian Independence Movement (1972), the Ghanaian Independence Movement under Kwame Nkrumah (1951-1957), Kenya's Mau Mau Rebellion (1952-1959), the (South African) Black Consciousness Movement that culminated in the murder/assassination of its founder Steven Biko in 1978, and the African Congo Crisis of 1960-1961 that resulted in the martyrdom of Patrice Lumumba. The stories of global struggles to eradicate oppression and colonization ultimately became fertile soil to plant the seeds of resistance to prison culture – dubbed by Black inmates as “a colony within a colony.” The outcome was the formation of a national prisoner union movement and a struggle to radically alter America's prisons through efforts to work with prison authorities as opposed to against them. The movement ebb and flowed throughout America's prisons before eventually landing in the North Carolina penal system – the largest prison system per capita in the United States. The end result of a struggle that reached back thirteen years is what has simply become known today as the landmark Supreme Court decision *Jones v. North Carolina Prisoners' Labor Union, Inc.*

*Jones v. North Carolina Prisoners' Labor Union, Inc.*, is a mainstay in American legal courses on prisoners'

rights. Yet, while the case receives considerable coverage, its story has escaped historical narrative. Even today, law and history students alike find the rationale in *Jones* troubling at the point of historical fact and legal decision-making. Questions abound. What did the phrase "Black Power" signify to grassroots activists and prison organizations? How did Black radicalism shift from the margins to a position of centrality within prison politics between the early years of the Cold War and the early 1970's? How did international events, specifically decolonization efforts in Asia, Africa, and Latin America, impact domestic prisoner political consciousness? Between *Brown* (1954) and the Civil Rights of Institutionalized Persons Act (CRIPA) of 1980, what impact did radical activists and organizations have on the Prisoners' Rights Movement? How did African American political and intellectual thought affect and transform the development of inmate consciousness? How did issues of violence and self-determination influence prisoners' rights ideology and organization? This book will answer those questions and many more.

*From Black Power to Prison Power* contextualizes academic discussions on the merits of *Jones* by revealing the detailed events spawning the first ever attempt to

organize prison inmates into a national collective. It theorizes that the history behind the case reveals more than what is discussed in the Supreme Court's opinion. Without laying claim as to why the Court departed from the previously abandoned "hands-off" doctrine and the current trend in legal precedence to use the judiciary to review the decisions of prison administrators, this book raises important questions and leaves the reader to grapple with the answers. It challenges the reader to confront Justice Rehnquist's important testament in *Jones* that, "the District Court, we believe, got off on the wrong foot in this case by not the giving appropriate deference to the decisions of prison administrators" – by evaluating the struggle for Black power behind prison walls on its own terms. Without the glorification, without the heady rhetoric popularized by the era, and without engaging in victor's history – claiming that the government should not have taken the inmates seriously, this book uses facts, not fiction, to narrate how black radicalism and the subject of inmate unionization ultimately impacted the progress of prisoners' rights during the era of Black power.

ACKNOWLEDGMENTS

PREFACE                    A PRIMER ON BLACK POWER AND THE PRISONERS' UNION  
MOVEMENT

INTRODUCTION:            HOW THE *JONES* CASE WAS BORN: A WEST COAST PRISONERS'  
RIGHTS REVOLUTION

**PART I: FOUNDATIONS**

- I.            AT THE Q
- II.          BIRTH OF A BROTHERHOOD
- III.        THE TRIAL OF HUEY P. NEWTON
- IV.        READING, WRITING, AND RADICALISM

**PART II: FORMATIONS**

- V.          THE PRISON AND THE UNIVERSITY
- VI.        A CRISIS ERUPTS
- VII.       READING, WRITING, AND RADICALISM
- VIII.      INTO NORTH CAROLINA

**PART III: LITIGATIONS**

- IX.        WON AND APPEALED
- X.         ANATOMY OF A DECISION
- XI.        PROTEAN PRECEDENT SINCE JONES

EPILOGUE: RACE AND PUNISHMENT SINCE JONES

CHRONOLOGY

BIBLIOGRAPHIC ESSAY

INDEX