

Lesson 2

The Politicized Prisoner

SEPTEMBER 15, 1962

MUHAMMAD SPEAKS

3

Prison Official Admits Islam Benefits Prisoners



IRONS, CHAINS AND SHACKLES hobble five Muslim inmates of Attica State Prison they are ushered into U.S. District Court in Buffalo, N. Y. They are surrounded by 17 armed guards from three services: U.S. Marshals, six General Administration guards and five guards from Attica. It is reported that an attempt was made to keep photographers from taking pictures of the prisoners' chains. Inset shows Thomas L. Bratcher, Jr., (right) one of the five Muslims who charged the state of New York with denying them religious freedom in prison, while Protestant and Jewish inmates enjoy that freedom. Bratcher, whose closeup shows armful of documents and papers pertinent to the sensational case, is credited with being the first to prepare his own writ.

Muslims Reveal 'Raw' Details Of 'Solitary'

BUFFALO, N.Y.—Over the strong objections of special counsel for the State of New York, the trial of five Muslim convicts seeking the right to hold religious services was electrified last week when the deputy warden virtually gave his blessings to the men being granted their religious freedom.

The trial is taking on the proportions of one of the most significant court cases on religion in the history of American jurisprudence. Some observers think it will go down as the greatest since Clarence Darrow and William Jennings Bryant battled each other in court over Darwin's theory of evolution.

Attica Prison Deputy Warden Albert J. Meyer's statement was in the form of a memorandum he made to Paul E. McGinnis, commissioner of correction, U.S. District Court Judge John O. Henderson, hearing the case without a jury, ordered the memorandum read. Meyer was quoted:

"It is my feeling that some of these inmates are really benefiting and have had a decided change in behavior patterns since becoming converts to the religion of Islam and I feel as long as this religion does not interfere with the orderly operation of the institution, we may derive some benefit from it, providing we are constantly alert and ascertain that the movement is confined to the channel of the religion and not permitted to get out of bounds and be taken over by individuals or groups for their advance themselves in status in the institution."

JESUS CHRIST

In earlier testimony, one of the Muslim inmates, of Attica State Prison told Judge Henderson he was put in solitary confinement because he told another prisoner that Jesus Christ "did not die upon the cross."

Thomas L. Bratcher, Jr., 30, who made the remark about Christ, appeared in court with four other Muslim inmates to press the charge that the state of New York was violating their civil rights through refusal to permit them to practice the Muslim faith.

The other men, all of whom testified to harassment by prison officers, are James X. J. Walker, 40; Arthur Johnson, 36; Joseph X. Magette, 32, and Walter Samaron, 35.

The most revealing aspect of this testimony has been the statements of the five men detailing their charges of religious persecution.

ONCE CATHOLIC

Bratcher, a Muslim convert from Catholicism, told of being warned by Deputy Warden Albert J. Meyer of Attica to stop trying to expose religious persecution of Muslims, and racial segregation in the prison barber shop and sports program.

After he prepared legal papers for mailing to a state judge, Bratcher said Meyer "advised me he had warned me about mailing false accusations against officers, and said he had a place for me."

The "place" was the "strip cell" where, according to Bratcher, there was "nothing but you and a defecation bucket." He declared that the room contained no bed, lights or toilet, and that the defecation bucket was emptied just once a day.

COLD CONCRETE

"I was on the ice-cold concrete," he said.

Walker told the court that he

was harassed at Clinton Prison and later when he was transferred to Attica because of his religious belief. He said his nose was broken by a prison officer at Clinton on order from the warden, who had ridiculed Walker's interest in Islam.

WORK YOU OVER

Johnson testified that a prison captain of guards told him he'd get several other prisoners to "work you over" if he continued to discuss his Muslim faith. A former Baptist, he declared that a paper with the Muslim profession of faith in Arabic was seized, and that his cell was searched daily.

He was put in solitary confinement for talking to others about the Muslim religion and about Negro history, Johnson asserted.

Magette, who also was transferred from Clinton Prison to Attica, described 72 hours in a "dark cell" at Clinton.

"A man is stripped nude and there is nothing but a toilet," he related. "He is forced to be in the cell day and night naked."

Magette, who professed no religion, said he was put in solitary confinement because he persisted in

(Continued on Page 4)

Demand Rockefeller's Defeat

Negro Leaders Rip Governor's 'Chain Gang' Court Trial

BUFFALO—The brutal, hand and feet, chain-gang type shackling of five Muslim prisoners throughout their long court trial in a Federal District Court was laid here in the lap of New York's "liberal" Governor Nelson Rockefeller and his aide, Attorney General Louis J. Leflowitz.

The sight of five black prisoners, seeking the right to practice their religion at the Attica State prison, led back an uproar to the courtroom, benches and chained like jungle animals, brought furious denunciations from Negro and white leaders throughout the state.

"The religious discrimination against Muslim followers of the Honorable Elijah Muhammad is disgraceful and un-American," declared Donald Jackson, a County Supervisor and State Senate candidate of the United Independent Party.

"GOV. ROCKEFELLER and Atty. General Leflowitz should be defeated in their efforts at re-election for their part in the persecution of these Negroes seeking freedom of worship and allowing the cruel treatment imposed on the Muslim inmates when they persist in seeking their constitutional rights," he said.

Hogace Johnson, 13th Ward Democratic Supervisor, declared "I wish to express my public condemnation of the Rockefeller administration's barbaric treatment of five Negro inmates who are seeking judicial release from religious persecution in prison."

"I AM A CONGREGATIONALIST, but I hope the justice is rendered in Federal Court to these Muslim inmates who have as much right as anyone else to worship and practice the religion of their choice."

Johnson ripped Rockefeller's

administration and said, "Rockefeller pretends to be liberal and progressive and condemns racism in the South, but his Administration's sanction of the religious persecution of these Negroes gives the opposite picture of his true position."

CALVIN COOPER, President of the Masten District Tri-Partisan Committee for Representative Government, an affiliated Republican asserted that "the free exercise of religion, unobstructed by the state, is a fundamental concept of democracy."

"Our organization has sent observers to every session of the trial and we have been stunned to hear of the punishment meted out to these black men because they have dared to challenge and sue their jailers about their constitutional rights."

"MOST NEGROES are realizing that it is one thing to denounce oppression and racism miles away in Mississippi and Alabama, but another thing to attack it right here in New York State."

Others blasting the Muslim treatment and demanding equal justice include the Buffalo Improvement Association, the only Northern affiliate of the Montgomery, Alabama, Improvement Association. The Rev. Samuel Austin Austin, Pastor of the Pilgrim Baptist Church is President and Rev. George J. Leake, Minister of the Durham A.M.E. Zion Church, is secretary.

Dick Gregory Hits Worthy Sentence

BUFFALO—Comedian Dick Gregory joined white and Negro lawyers in protesting the conviction of journalist William Worthy to jail for visiting a prison without "permission" of the U.S. State Department. Gregory was scheduled to walk the picket line in front of the Waldorf-Astoria Hotel with other protesters protesting the granting of an award to U.S. Atty. Gen. Bert Kennedy for allegedly denying human freedom.

Cites Harassment

Gregory listed among these failures the current harassment of William Worthy, Boston-born journalist. Kennedy's Justice Department is conducting a crusade against him for the "crime of coming home from Cuba" without a passport. Americans for the Right to Travel Committee said that Worthy is being persecuted for committing a technical

violation of the 1952 McCarran-Walter Immigration and Nationality Act, but rather, for having reported the news as he sees it without regard to the American official line.

The pickets expressed "strong disapproval" of the American Jewish Congress' choice of Attorney General Kennedy and "Mr. Kennedy's inadequate record in defending constitutional safeguards."

AJC AWARD

Kennedy was slated to receive the Stephen S. Wise Award from the AJC at ceremonies in the Waldorf-Astoria.

Scheduled to walk the picket line with Gregory were Rev. Milton A. Galambos, Sloan Presbyterian Church of Brooklyn; Richard Parrish, national treasurer; Negro American Labor Council; Ossie Davis and Ruby Dee, stars of the play, "Purlie Victorious"; John O. Killens, author of "Youngblood" and scenarist for the film, "Odds Against Tomorrow"; Atty. Conrad J. Lynn, civil rights attorney; and Daniel H. Watts, chairman, Liberation Committee for Africa.

Summary

In 1952, just shy of thirty-years-old, Martin Sostre received a 6-12 year indeterminate sentence for heroin possession and distribution. Despite going up for parole early, he would ultimately serve all twelve years (plus an additional 30 days for contempt of court). Nearly half was spent in solitary confinement. This was a direct consequence of his identification as a Muslim and his lawsuits against the state. Sostre described his incarceration as the “first time [he] had a chance to think, and began reading everything [he] could – history, philosophy, and law.” He began practicing yoga and joined the Nation of Islam, quickly becoming an accomplished jailhouse lawyer. In one of his first lawsuits, he sued the parole board for its all-white racial

composition. In 1959, he helped initiate one of the first lawsuits against the state for violations of religious rights (*Pierce v. LaVallee*). In 1964, *Sostre v. McGinnis* helped establish the free exercise of religion in state prisons. Both cases provided the groundwork for the first recognition of constitutional rights for incarcerated people. Decades before Sostre was widely considered a political prisoner, he became a politicized prisoner—someone whose radicalization was the product, rather than the cause, of their confinement. Through zines, court transcripts, and state-confiscated letters, this section explores Sostre’s politicization and the Muslim organizing that laid the foundation for the prisoners’ rights movement.

Shades of Mississippi: The Nation of Islam and the Prisoners' Rights Movement

Adapted from Garrett Felber's Those Who Know Don't Say, featuring new previously unpublished material on Malcolm X's prison years.

It was 1961 at Attica Prison and nearly thirty Muslims were in solitary confinement. They refused to leave. Martin Sostre, a Black Puerto Rican who had joined the Nation of Islam in the late 1950s, wrote a letter of encouragement to other Muslim brothers: "The warden became afraid of putting any more dead brothers in the box for fear that they would be raised upon coming in contact with us. So his whole security system broke down. As you know brother the box is the only weapon that the wardens have to maintain discipline in prison. When the box ceases to work, the entire disciplinary and security system breaks down."

Muslims had filled solitary confinement in New York prisons until the box no longer became an effective form of punishment. Wardens had to decide whether to create hotbeds of activism in segregation or undermine the arbitrary rules they had worked so hard to justify and enforce—such as rejecting religious literature and Black newspapers, and banning the preparation of legal materials for someone else. Meanwhile, Sostre and others were suing wardens and state prison commissioner Paul McGinnis over their constitutionally-protected right to religious freedom. Deputy Attorney General William Bresinhan captured the magnitude of these cases: "The whole prison system of the State of New York is on trial here."

This strategy of filling solitary confinement coincided with a similar strategy developed in the southern civil rights movement, known as "Jail, No Bail." In January 1961, a group of college students who had been staging sit-ins at department stores in South

We just can't allow [a Muslim] to parade around the prison yard carrying a prayer rug and kneeling on it at least seven times a day, facing Mecca, to say his prayers. We haven't got a muezzin in a minaret to call the faithful to prayers. Some prisons have towers, with guards in them, and calling those of Islamic faith to prayer isn't included in their duties.

— New York State Prison Commissioner Paul McGinnis, 1960

Carolina for a year refused to accept a bond and be released from jail. Instead, the nine students from Friendship Junior College served thirty-day sentences on a chain gang. SNCC, the SCLC, and the NAACP soon joined a local desegregation effort, which targeted transportation, libraries, and lunch counters in Albany, Georgia. One of the defining characteristics of the Albany movement was its strategy of filling the jails, as organizers reasoned that overtaxing the jail system made more sense than overtaxing their budgets by posting costly bail fees.

Both civil rights organizers in Georgia and incarcerated Muslims in New York appropriated the mechanisms of local control—jails and solitary

confinement—as tools of organized protest. But despite their similarities, the "Jail, No Bail" strategy has its place in the annals of civil rights history as a heroic confrontation with southern Jim Crow through nonviolent direct action. Meanwhile, the takeover of solitary confinement by Muslims at Attica has previously remained undocumented.

Where do such stories fit within our narrative of the civil rights era? The struggle at Attica demonstrates that challenges to policing and prisons were central to the postwar Black Freedom Movement, and the Nation of Islam was at the forefront of that struggle. Popular understandings of the prisoners' rights movement often start at Attica: a decade later. In 1971,

when incarcerated people made D-yard a people's commune and issued 27 demands to the state, both their demands—and the activism itself—built on over a decade of political organizing by Muslims in the Nation of Islam. The NOI has been characterized as insular, violent, apolitical, and religious heretical. It is for these reasons, we are told, that Malcolm X left the NOI to join the civil rights struggle and practice Sunni Islam. What happens when we put the Nation of Islam at the center, rather than the margins, of the civil rights era? What happens when we take the organizing of those incarcerated as seriously as the state did?

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During the summer of 1942, after the forced removals and mass imprisonment of Japanese Americans in the western United States, the FBI and police arrested eighty African American “admirers” of Japan in Chicago. Among them was Elijah Muhammad, who had already been arrested once that summer for draft evasion. He was held for over a month on a \$5,000 bond before thirty Muslims wearing “red buttons showing a ‘mystical’ white crescent . . . [with] turbans of varying colors worn by the women and crescent rings on the hands of the men” surrounded the jail for fourteen hours, demanding that they, too, be put in prison for draft evasion.

World War II was a particularly difficult time to be Black and against the so-called “Good War.” The strategy of seeking fuller citizenship through military service held widespread appeal for many African Americans. Black enlistment rose from 5,000 on the eve of Pearl Harbor to 900,000 by 1945, and a Negro Digest poll revealed that 59 percent of African Americans believed that the war would aid the fight for democracy at home. Fighting for victory against fascism abroad and racism at home became the foundation of the popular “Double V” campaign.

But Muslims in the Nation of Islam did not believe themselves to be citizens of

the United States. As one newspaper noted, the group “does not call itself an organization or a religion, but a nation.” When asked in court why they had not registered for the draft, Muslims answered: “I have registered with Allah.” John Miller and Harry Craighead both testified that they joined the “Islam Nation” in 1940. Frank Eskridge responded, “Allah is my keeper and Allah has my [registration] card.” By the end of 1943, fewer than two hundred Black men in the entire country had been convicted of draft violations. The majority were Muslims in the Nation of Islam. By 1945, as NOI membership dipped below one thousand, nearly two hundred Muslim men had served time in federal prison for draft evasion, constituting the largest group of Black conscientious objectors (COs) during the War.

While the NOI made up the largest group of Black war resisters, they were a relatively small part of a massive wave of conscientious objectors who remade federal prisons during WWII. Over twelve thousand COs served in what was known as the Civilian Public Service (CPS), and another six thousand were incarcerated in federal prisons. While 4,300 or more were Jehovah's Witnesses, the remaining 1,700 represented what historian James Tracy called the “most militant distinct group of pacifists in the country.” These radical COs staged hunger strikes over racial segregation, challenged prison censorship, and began to theorize the connections between war, imprisonment, racial justice, and private property. A young Bayard Rustin, who served two years in federal prison and would eventually become a key figure in the civil rights movement, wrote that “we must see the connection between our use of the atomic bomb in international war and our mistreatment of the offender against society internally.”

In this context, the dozens of incarcerated Muslims spread across several federal institutions were described by prison officials as “model prisoners.” But by 1964, as James

Bennett was serving in his 37th and final year as director of federal prisons, he compared incarcerated Muslims to the pacifists of WWII in a panel discussion concerning brainwashing and behavior modification of politicized prisoners. What bridged the gap between the so-called model prisoners of World War II and the politicized Muslims whom Bennett and other prison officials were considering brainwashing by the 1960s was a small group of Muslims at Norfolk Prison led by Malcolm X and his co-defendant, Malcolm “Shorty” Jarvis.

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In 1949, a prisoner at Norfolk Prison Colony wrote his friend and spiritual advisor, Abdul Hameed, with a poem by “Red Little.” It read: “Music without the Musician is like life without Allah – both in desperate need of a home – a body – the completed song and it[s] creator.” Red Little would soon go by the name Malcolm X. The author of the letter was Malcolm Jarvis, the character referred to as “Shorty” in Malcolm X's Autobiography.

Malcolm X's hustling sidekick and co-defendant is entirely missing from Malcolm's prison years in his Autobiography. In the book, Shorty emerges after his release from prison and is skeptical of Malcolm's religious conversion. But in reality, Shorty played a key role in Malcolm's conversion to Islam, participated in calls for religious rights at the prison, and maintained connection to a broader Muslim community while the two were incarcerated through his career as a jazz trumpeter.

We can only speculate the reasons for Malcolm's omission of the “other Malcolm” in his autobiography. But a closer look at the experiences of Muslims at Norfolk reveals a rich, heterodox religious community whose conversions were facilitated by the shared experience of incarceration and continued connections to a Muslim community outside, rather than the introspective solitude described in

the Autobiography. As Shorty recedes in the book, so too does the jazz that animated Malcolm's early life in Roxbury. Malcolm's new pious life, which eschewed the drugs, alcohol, and hustling of his "Detroit Red" persona, left no room for the musical backdrop to his lindy-hopping, zoot-suit wearing days. But Malcolm Jarvis's story reveals a network of Islam and jazz that traveled between Norfolk Prison to Boston, connected by faith and music, as Malcolm X articulated in his poem.

Jarvis, who studied jazz composition in prison with an appetite that rivaled Malcolm's for reading and debating, was visited by a host of jazz musicians, many of whom were Muslim. Some, like brothers Ray and "Bey" Perry were credited with introducing other jazz musicians to Islam. Other swing legends such as Lucky Millinder, Lionel Hampton, and even Duke Ellington also visited Jarvis at Norfolk. Malcolm X was also visited by Hampton's trombonist Al Hayse. He wrote to his brother Philbert that he eventually planned to "introduce him to some real Muslims (be it the will of Allah). Hamp [Lionel Hampton], too? But Hameed was the figure most influential in introducing both Malcolms to Islam. Malcolm X later named him in his Autobiography, and Jarvis remembered Hameed sending them prayer books in Arabic. Hameed visited Jarvis several times a month in late 1949 and early 1950.

Around this time, Malcolm X began a vigorous writing campaign to the prison commissioner. In his letters, he identified many of the key aspects of racial and religious discrimination that the organized prison litigation movement of Muslims such as Martin Sostre would challenge a decade later. "Can the 'laws of this state' deprive one from one's God-given Rights? . . . Is there a monopoly on Truth?" he asked. Elsewhere, he decried the fact that he and other Black prisoners could not access their own history after requesting books by the pioneering Black historian J. A. Rogers and being told they could not read "things of that nature."

Soon, Malcolm, "Shorty," and other Muslims captured public attention for refusing typhoid inoculations. They grew out their beards, refused to eat pork, and demanded cells facing east toward Mecca (threatening to contact the Egyptian consul if that right were denied). They even secured transfer from the foundry after complaining that it was too loud for meditation. The warden at Charlestown "had absolutely no idea who or what converted the quartet" but "pooh-poohed" reports that they were being granted extra religious privileges, noting that the cells facing east were "just regular cells." As one newspaper article concluded: "the four new Moslems enjoyed complete religious freedom—and constant surveillance."

This paradox of freedom and surveillance came to define the relationship between incarcerated Muslims and prison officials over the next several decades. As Malcolm remarked just days after leaving Norfolk, "all of the opposition was, after all, helpful toward the spread of Islam there, because the opposition made Islam heard of by many who other wise wouldn't have paid it the second thought." The relationship between prison repression and prisoner resistance grew from the demands of the four men at Norfolk into the vanguard of the prisoners' rights movement a decade later. As Malcolm wrote to his brother, "the more the devil openly opposed it, the more it spread."

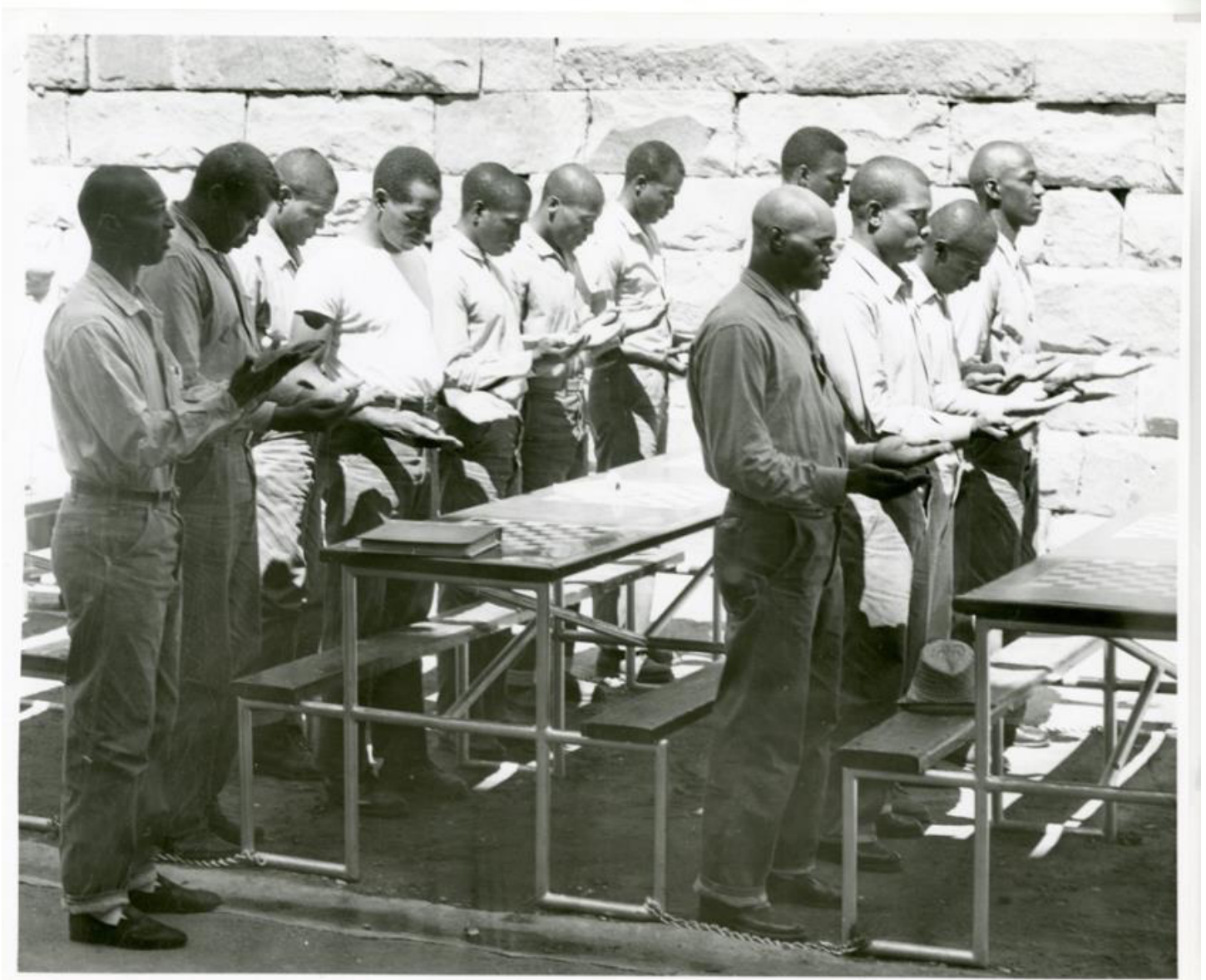
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In October 1962, a newspaper ran a shocking photograph of a Black man carrying a stack of books into a courtroom with his arms and legs in shackles. The headline read: "Shades of Mississippi!" A press release with a similar title denounced the hypocrisy of Nelson Rockefeller and northern white liberals for publicly criticizing Mississippi Governor Ross Barnett while silently condoning the chaining of prisoners in New York. The man in chains was a plaintiff in *SaMarion v. McGinnis*, a case filed by five Muslim prisoners at Attica

Prison. The choice of Mississippi for this southern analogy was deliberate. The previous year, Black and white Freedom Riders were held in the notoriously abusive Mississippi State Penitentiary, better known as Parchman Farm. The utility of the phrase "Shades of Mississippi" to northern Black activists was its suggestion that the struggles against incarceration in New York under Rockefeller and in Mississippi under Ross Barnett were more similar than distinct.

The early 1960s witnessed a significant transformation in the rights of prisoners and their visibility, largely due to the prison litigation and organizing of incarcerated Muslims in the Nation of Islam. For almost a century, incarcerated people had no legal claims to constitutional rights. The 1871 ruling in *Ruffin v. Commonwealth* unequivocally stated that the prisoner had "not only forfeited his liberty, but all his personal rights except those which the law in its humanity accords to him." In the eyes of the law, an incarcerated person was considered "the slave of the State." During this period, known as the "hands-off" era, the courts were guided by a dual logic of separating powers of government and the fear that judicial review might intervene in prison security. In 1951, a federal circuit judge reaffirmed that it "is not the function of the courts to superintend the treatment and discipline of persons in penitentiaries." Muslim prison litigation put this question of the constitutionally protected religious rights of prisoners on one hand and the so-called security of the prison on the other into stark relief. The courts were forced to decide, in the words of *Shaw v. McGinnis*: "Does the practice of the petitioners' religion (Black Muslimism) pose a threat to the security of the prison system of the State?"

The wall between the constitution and incarcerated people held firm until 1961, when Muslim prisoners at Lorton Reformatory in Washington, D.C. and Clinton Prison in New York cited section 1983 of the Civil Rights Act of 1871 (also known as the Second



Muslims at Folsom Prison in California pray under surveillance as an act of defiance on August 26, 1962. Attorney General's Office Records, Department of Justice, Box 173, Folder 22, California State Archives - Sacramento.

Enforcement Act and the Ku Klux Klan Act) as a means of breaching this barrier. Originally meant to protect freed Black people from the vigilante violence of white supremacists in the South by allowing legal compensation from those acting under state authority through federal court (rather than unsympathetic state courts), the act was rescued from a century of obscurity in *Monroe v. Pape*, a case of a Black family beaten and held during a warrantless raid by Chicago police. Throughout the 1960s, Muslim prisoners used section 1983 as a way to challenge prison official's broad discretionary powers and decisively bring these issues before the judiciary.

But litigation was just one tool in an arsenal of strategies employed by Muslim prisoners during the late 1950s and early 1960s. They used direct action tactics such as sit-ins, hunger strikes, and occupations of solitary confinement. These tactics were in constant dialogue with state methods of control, such as prison transfers, confiscation of religious literature, solitary confinement, the loss of good time credit, and various ways of curbing legal access to the courts (long before the Prison Litigation Reform Act [1996], which resulted in a roll back of many of the gains made by Muslim prison litigation decades earlier). Muslim religious practices were also

deeply surveilled. The politicization and radicalization of prisoners took place in response to these forms of prison discipline, as an emerging web of state surveillance monitored Muslim rituals and daily life. Prison discipline was met with resistance by Muslim prisoners who refused pork, communicated secretly in Arabic, and even performed prayer under surveillance as an act of protest. For example, in 1962 at Folsom Prison, over a dozen Muslim men were holding a meeting in the prison yard when a sergeant began snapping photographs of the gathering. As the officer approached, one of the men proclaimed, "They want to take our picture, so let's give them a

good one.” Another suggested that they “face the east and pray to Allah.” The group lined up with their hands raised waist high, palms facing up, and prayed.

Muslims at Folsom Prison in California pray under surveillance as an act of defiance on August 26, 1962. In examples like this one, Muslims in the Nation of Islam confronted with state surveillance, responded with protest in the form of prayer. Where do such images fit in the stories we tell about the Black Freedom Movement? Such prison monitoring did more than respond to activism of the Nation of Islam with new modes of repression. It became a central motor for perpetuating a religio-racial formation that justified the suppression of Islam in prisons. Because the state’s argument against the NOI in prisons hinged on undermining its religious legitimacy, prison officials emerged as arbiters of religious orthodoxy, determining who was considered authentically Muslim and what constituted legitimate Muslim practice. Throughout the early 1960s, prison workers ranging from guards, wardens, and superintendents to chaplains and psychologists read widely about the growing Muslim movement and presented their thoughts both through monthly internal bulletins and at national meetings. The academic communities of penology and criminology emerged as an additional arm of the state’s developing knowledge production about the so-called “Black Muslims.”

Litigation hit a nerve among prison officials as the NOI flooded courts across the country with writs. Between 1961 and 1978, there were 66 reported federal court decisions on suits filed by Muslim prisoners. In California, the number of habeas corpus petitions rose from a mere 814 in 1957 to nearly 5,000 by 1965. At San Quentin in 1965, prisoners were churning out almost 300 petitions a month. As one judge realized, these were not “cases where uneducated, inexperienced and helpless plaintiffs are involved. . . These applications are part of a movement.”

Prison litigation brought the hidden struggles of prisoners to national attention and catalyzed public support for their cause. The waves of writs coming from incarcerated Muslims moved the courts away from a system of arbitrary and discretionary control by prison officials. As James Jacobs argues, the NOI “provided an example for using law to challenge officialdom.” The 1964 verdict in *Cooper v. Pate* in favor of an incarcerated Muslim plaintiff in Illinois, Thomas Cooper, brought the resolute “determination that prisoners have constitutional rights.” Jacobs analogized Cooper’s role in the prisoners’ rights movement to that of *Brown v. Board of Education* in the civil rights movement. By 1974, the Supreme Court declared that no longer was an “iron curtain drawn between the Constitution and the prisons of this country.”

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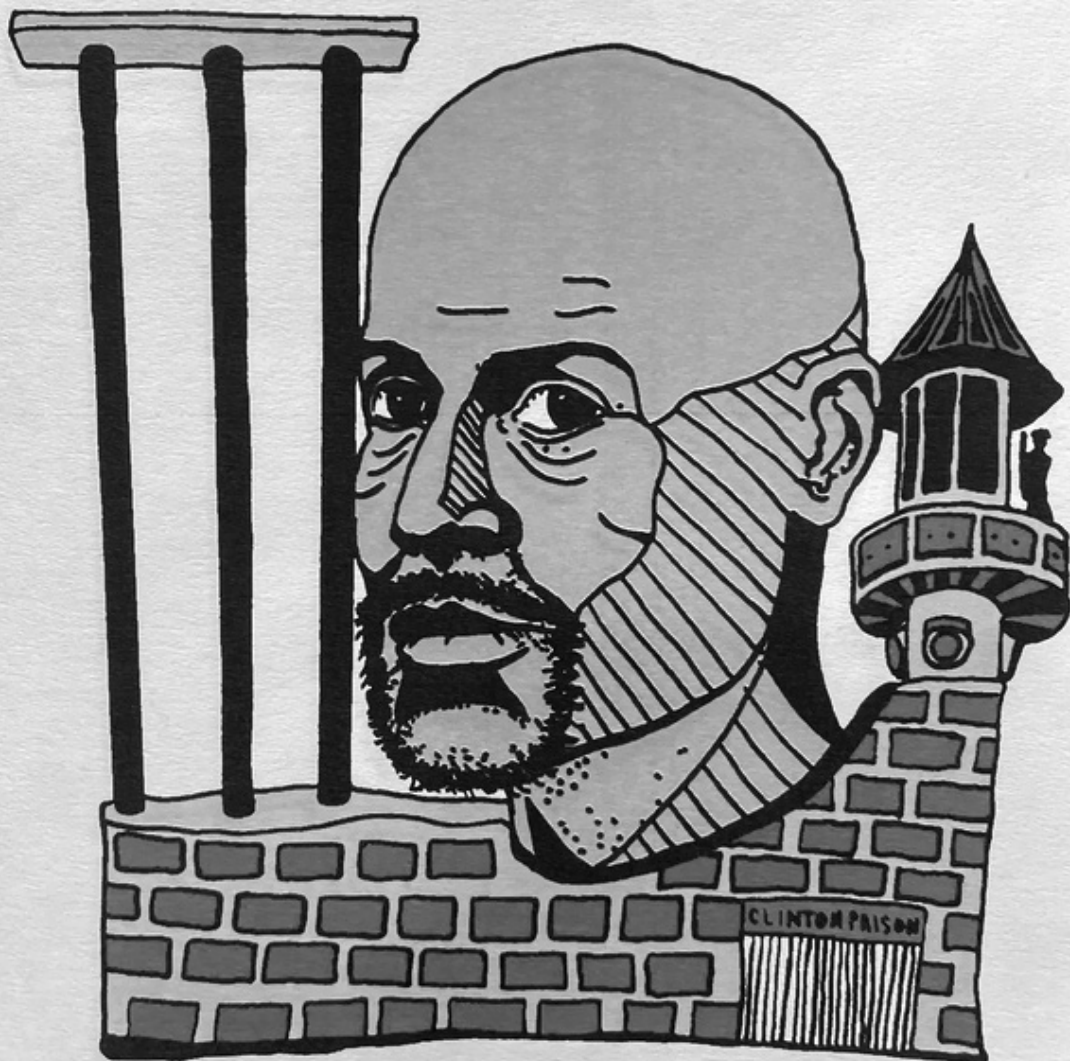
When over one thousand prisoners took over D-yard at Attica Prison on September 9, 1971, the prisoners’ rights movement and the carceral state both decisively entered a new period of struggle. The years 1968-1972 have been called the “prison rebellion years” by Chicano poet Raúl R. Salinas, himself formerly-incarcerated. As Dan Berger and Toussant Losier write, “During the rebellion years, prisoner uprisings linked their conditions with critiques of American capitalism, racism, and imperialism. As they did so, dissident prisoners enjoyed an unprecedented amount of support from people who were not incarcerated. For some, it seemed that prisoners were leading radical challenges to the global political order.”

Whereas there were five recorded rebellions in prisons in 1967, by 1972, there were at least 48—the most in U.S. history in a single year.

During the Attica rebellion, Martin Sostre was back in extended solitary confinement, this time at Auburn prison. Having briefly been out of prison between 1964-1967, he was framed

by police during the Buffalo rebellion of 1967 while running a radical Black bookstore and sentenced by an all-white jury to 31-41 years. He had left the Nation of Islam and would soon identify as a revolutionary anarchist. In his essay “The New Prisoner,” written soon after Attica, Sostre reflected on the legacies of organizing by incarcerated Muslims and others like himself who had used litigation to challenge the state. “The struggle to exercise a First Amendment ‘preferred’ right (freedom of religion) took from 1958 till 1971, thirteen years of torture, suffering and death at the hands of racist outlaw savages who recognize no law except that of force, violence, and murder.” According to Sostre, the time for the litigation strategies he and others trailblazed in the 1960s had passed. He now described prisons as training grounds for revolutionary cadres. “Prisons have become ideological crucibles and battle grounds, he wrote. “Soon you shall reap the harvest.” Sostre was an example of how both people and times had changed. One on hand, he represented the experiences of those he called politicized prisoners, who had developed radical consciousness through their experiences of criminalization and incarceration as well as their repression by the state when they fought back. On the other, his new revolutionary position and thinking signaled the shifting tide of prison radicalism which the carceral state would seek to diminish and extinguish through new modes of repression and never-before-seen levels of punishment and incarceration. ■

"The New Prisoner"



by **Martin Sostre**

COMPLAINT
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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JAMES DOE,

Plaintiff

v.

WALTER H. WILKINS and PAUL D. MCGINNIS
Commissioner of Correction of N.Y. State,

Defendants

—————○—————

To: The Hon. Harold J. Burke, U. S. District Judge:

1. This is a civil action under the civil rights of Act Title 28 U. S. C. 1983 seeking redress to the deprivation of freedom of religious worship and to the religious oppression which plaintiff's is being subjected by defendants.
2. Since this action involves the deprivation under color of state authority of the right to freedom of religions worship guaranteed in the first and fourteenth amendments plaintiff invokes *Sewell v. Pegelow* 4 c. r. May 31, 1961; and *Sostre v. LaVallee*, 2 cir., July 31, 1961, as giving this court jurisdiction in the instant case.
3. The specific violation of plaintiffs civil rights complained of are: (1) inmates of the Islamic faith of Attica prison are denied the right to hold, and attend congregational religious services of their religion and are denied spiritual ministrations by a minister (imam) of the religion of Islam; (2) Muslim inmates are restricted in their purchase of Islamic religious literature to that listed on an "approved list" arbitrarily made up by the Commissioner of Correction and issued to the Wardens of all N.Y. state prisons on January 5, 1960; (3) Muslim inmates are the special object of religious persecution—viz: punishment in solitary confinement and the loss of good time, solely because of their religious beliefs.
4. Muslims constitute a substantial segment of the population of Attica Prison; over sixty Muslim inmates; and although plaintiff as well as other Muslim inmates, have sought the allowance of Islamic services, all such requests have been denied by the prison officials.
5. Moreover, Protestant inmates of Attica Prison, although they belong to at least ten different denominations or sects—namely: Baptists, Methodists, Episcopalians, Lutherans, Presbyterians, Unitarians, Evangelicals, Jehovah Witnesses, non-sectarians, 7th Day Adventists, etc. all are allowed to attend a single Protestant service. Another group of Christian inmates at Attica Prison, Catholics, belong to at least two sects: Roman and Eastern orthodox and are allowed a single Catholic religious service. In short Christian inmates at Attica Prison are provided with three religious services—namely: Protestant services, Catholic services; and Christian Science services.
6. It is respectfully submitted that the exclusion of the Muslim group at Attica Prison from congregational religious worship deprives plaintiff, as a member of this group of the freedom of religion and equal protection of the laws, guaranteed by the first and fourteenth amendments of Const.
7. Furthermore, not only are Muslim inmates restricted in their purchase of Islamic literature to the few books on the commissioners "approved list." But any such literature or handwritten copies of any portion thereof, or of prayers of any writings whatsoever dealing with any aspect of the religion of Islam, automatically becomes "Contraband" if taken outside one's cell, and is severely punished with solitary confinement on reduced rations—the most severe punishment available.
8. Christian and Jewish inmates are not similarly restricted to any "approved list" in their purchase of religious literature; nor is their religious literature considered "contraband"; nor has any Christian or Jew ever been taken out of their cell. As a matter of fact not only is Christian religious literature freely and openly carried to and from religious services outside inmates cells, but such literature is freely distributed at all Christian religious services at Attica Prison and such literature is taken to the yard where Christian inmates sit on benches around tables—in full view of the prison officials—and study their religious literature without any interference.
9. In contrast more than thirty Muslim inmates at Attica Prison have been placed in solitary confinement—where plaintiff and three other Muslims are at this very moment being oppressed—solely because they have in their possession an Islamic prayer or other religious literature of their faith.
10. These repressive measures being carried out against plaintiff and others of the Islamic faith are designed solely for the purpose of terrorizing and intimidating the Muslims into abandoning their Islamic faith. The effect of this policy of terrorization of Muslims is that the religion of Islam is being suppressed in N.Y. state prisons, and plaintiff (and other Muslims) is being deprived of the freedom of religion and equal protection of the laws guaranteed in the first and fourteenth amendments.
11. Wherefore, plaintiff prays that this honorable court issues summonses against the defendants and that a trial be had to determine the truth of the above facts and that plaintiff be granted redress to the above said religious persecution and such other further relief as justice requires.

October 1961.

Respectfully submitted,
James Doe
Plaintiff pro se,
Box 149
Attica, N.Y.

Aki James X, when you get your legal paper from the Commissary print the above writ in letters ABOUT THIS SIZE. You should be able to get the whole thing into 6 or 7 pages. However don't put anything more than what is indicated above on pages 1, 2 and 3. From page 4 on use at least one inch space at the top and at the bottom and don't write beyond the red margins on each side. The box on pages 1, 2, and 3 and 4 containing the title of the action should be two inches wide from top to bottom. I put James Doe because I don't know your slave name Aki, so put your full name in the box. Number each page in the one inch space at the bottom in the middle of the page.

Make up two copies of the writ on legal paper (besides keeping a copy for yourself) and send one copy to: Hon. Harold P. Burke, U.S. District Court, Rochester, N.Y. send the other copy to Louis J. Lefkowitz, Esq., 65 Court St., Buffalo, N.Y. After you finish the writs staple the pages of each writ together at the upper left hand corner. Then staple a letterhead to the first page of each copy. Put staple about half way down the letterhead about ½ inch from the left hand edge. To get the letterheads, send a note to correspondence department for legal letterheads as follows: "Dear Sir: Please send me two legal special letterheads which are going to: (1) U.S. District Court, Rochester, N. Y. and (2) Louis J. Lefkowitz, 65 Court St., Buffalo, N. Y. Thank you James Doe #17___. After you get the letterheads and have them made out to the court and Attorney General and have them stapled to the writs, then put in a tab (on ordinary paper) to Head Clerk as follows: "Dear Mr. Cochrane; I have some legal papers to be notarized and mailed to the courts. Please take care of this at your earliest convenience. Thank you, James Doe 17___. In the event you haven't any staples, ask the hack to let you use the stapling machine for your legal papers. However, always save the staples from your letters or take them out of booklets or magazines or legal documents and keep a few handy. When the Notary comes up to notarize and mail your writs, come out of your cell with your pen and legal papers. They will take you to the "Dance Hall" the large room where the mattresses are piled up where the Notary will be waiting at the large table. You will stand at the table across from the Notary and put the writs on the table in front of you. The Notary will ask you if you swear to the truth of the contents of the writs and you reply "yes" then sign your name on the page of the writ at the right hand side where the X is at, then you fill in the dates on your letterhead and on pages 2, 3, and on the last page. Then hand the writ to the Notary and sign the other writ and fill in the dates and hand the second writ to him. In other words, Aki, sign pages 2, 3 and the last page in your cell as soon as you finish the writs. The only page you don't sign is page one, which you have to sign in front of the Notary. The letter stapled to the writ is coming to the U.S. District Court is made out as follows: Dear Sir: Attached hereto am respectfully submitting to this court a complaint, motion and affidavits under 28 U.S.C. 1343 (3). Please notice same for hearing at your next

motion date. Thanking you, I am, very truly yours, James Doe #17___. Dear sir: Attached hereto please find a copy of the complaint which I submitted to Judge Burke in Rochester Federal Court. Very truly yours, James Doe #17__.

Aki: Make the box containing the title: James Doe Plaintiff v. Walter H. Wilkins and Paul D. McGinnis, Commissioner of Correction of the New York State, defendants on pages 2, 3 and 4 exactly like the one on page one in the above copy.

Aki: Send for the following free items which are essential for your fight with Shaitan. Use your Sunday letterhead and send for one a week if your stamp account is not too strong. (1) U.S. District Court, Buffalo, N.Y.: Dear Sir: Please send me a copy of the rules of this court. Thanking you, I am, very truly yours, James Doe #17___. (2) U.S. Court of Appeals, Foley Square, N.Y., Dear Sir: Please send me a copy of the rules of this court. Thanking you, I am, very truly yours, James Doe #17___. (3) U.S. Supreme Court, Washington, D.C.: Dear Sir: Please send me a copy of the rules of this court. Thanking you, I am, very truly yours, James Doe #17___. (4) Hon. Caroline K. Simon, Secretary of State, Albany, N.Y. Dear Madame: Dear Sir: Please send me a copy of the constitution of the State of New York. Thanking you, I am, very truly yours, James Doe #17___. I am also sending you the following addresses in case you should want to order a newspaper to keep up with what the brothers are doing outside. I am getting the Amsterdam News and Omar ordered the Los Angeles Herald Dispatch. These are the addresses: N.Y. Amsterdam News, 2340 8th Ave., NYC 1 yr. \$6.00; 6 mo.: \$3.50; 3 mo.: \$2.25. The Los Angeles Herald Dispatch, 1431 W. Jefferson Blvd. L.A. California, subscription rates same as Amsterdam News. To order the newspaper, get two money order letterheads from correspondence and fill them out and mail them. We would send you the newspapers and a magazine that Aki Omar is getting but they won't allow it.

Aki: Stand firm! Don't let Shaitan trick you and send you down to population. The rest of the Muslims in the box have made a pact not to go down until the religious persecution of the Muslims cease. So if Shaitan tries to send you downstairs tell him that you are not going as long as Muslim literature is contraband because you will only be back up here again in a few days since you will always have Muslim literature on you, so you might just as well save yourself the trip. If Shaitan tries to shake you up by threatening to place you in the strip cell if you don't go down, tell him you expect to be oppressed further and you are ready to go to the strip cell right now. This is what we all are telling him. We have him up tight Brother Aki James. We have taken over the box and he is anxious to get us out of the box, especially with the big trial coming soon. So don't let him clean up for we are living proof of the religious oppression complained of in our writs.

Shaitan has been tricking the Muslim brothers in this prison for the last 4 years by putting one or two Muslims in the box

every month. When he got ready to snatch an aggressive Muslim out of population, he would send one down from the box and send another one up from population. In other words, he kept manipulating the brothers like monkeys on a string. In this manner he avoided keeping too many Muslims up here in the box and averted the same mistake the Warden of Dannemora made when he placed four hard-core Mr. Muhammad followers in the box. They took over the box and converted eight dead brothers in the box. The Warden became afraid of putting any more dead brothers in the box for fear that they would be raised upon coming in contact with us. So his whole security system broke down. As you know brother the box is the only weapon that the wardens have to maintain discipline in prison. When the box ceases to work, the entire disciplinary and security system breaks down. This is what happened in Dannemora when the dead brothers in population became aware that the Warden would not put in them in the box regardless of what they did, they started raising hell in population and taking advantage of the wardens predicament. Eventually the Warden had to ship us out of the box to different prisons. Now the same situation is developing here brother. The Warden manipulated the one or two Muslims kept up here by keeping them isolated in two different galleries to keep them from communicating with each other. But he always kept a separate gallery in which he put the dead brothers—away from the Muslims. Now he is up tight because there are Muslims in all three galleries so if a dead brother comes up to the box we will have to be placed in a gallery with a Muslim. This is why no brothers have come up for a month. So don't let Shaitan get away now that we have him!

Stand firm!! is the order of the day Brother

– Martin X and Omar and William X

Pierce v. La Vallee

pp. 177-179 and 227-232

**Asst. Atty Gen.
William D.
Bresinhan:**

Look at that, Mr. Sostre. He has already identified it and it is offered in evidence.

The Court:

When did you write it if you know, Mr. Sostre, when did you write Exhibit AC?

Martin Sostre:

I would say about a couple of weeks ago.

The Court:

What did you do with it after you wrote it?

Sostre:

Well, I put it in the shower in solitary confinement in Attica Prison.

The Court:

I guess you better explain that, I don't know what you mean.

Sostre:

In other words, I put it in the shower room.

The Court:

In the shower room?

Sostre:

Yes.

The Court:

Well, it is addressed to anybody?

Sostre:

Yes, it was put in the shower room so that another Muslim that was in the box there could pick it up. That is the only way we could communicate.

The Court:

So it really is the same, handled the same as the former exhibit AB, it was intended for some other inmate of the prison.

Sostre:

That's right.

The Court:

And what sort of manner did you leave it in the shower room, on the floor, on a ledge or was it concealed.

Sostre:

Yes, it was concealed in a piece of soap.

The Court:

And you know that was against prison regulations?

Sostre:

Well, we-

Edward Jacko: I object to that question, it is prejudicial coming from the Bench.

The Court: Your objection is overruled.

Jacko: I object to any questions regarding what happened at Attica, because we couldn't put in anything about Attica.

The Court: Yes, you can, overruled.

Jacko: Exception.

The Court: Was that in violation of the prison rules?

Sostre: No inmate was supposed to communicate with others in solitary.

The Court: So you know you were violating the prison rules when you did that?

Sostre: Yes.

Jacko: I understand the witness to say he left the paper in a piece of soap. There is no evidence he communicated it to anybody.

Bresinhan: If I recall the testimony right, Mr. Sostre said it was intended for somebody. He hasn't tried to conceal it.

The Court: All right. I suppose it is time to recess anyway. Recess until tomorrow morning at ten o'clock.

[...]

Bresinhan: Now, after that you began to get into this Muslim religion; did you not?

Sostre: No, I was in it before that. Before I took the oath.

Bresinhan: How long before that had you been in it, Mr. Sostre?

Sostre: Since 1956.

Bresinhan: But you didn't take that oath until two years later?

Sostre: That's right.

MUSLIM NEGROES SUING THE STATE

Convicts Seek Concessions on Religion in Prisons

By LAWRENCE O'KANE

A widespread legal attack on the state's prison system is being made by Negro Muslim prisoners demanding concessions for the practice of their version of the Islamic religion.

More than 100 court actions have been brought by inmates, many of whom were converted to their Muslim beliefs while in prison. Most of the cases involve members of the Lost-Found Nation of Islam in North America, of which Elijah Muhammad is the leader.

State officials are concerned by the development partly because of the administrative trouble and expense caused by the cases, but primarily because they believe they may be facing an explosive situation.

Bresinhan: Now, this Muslim vehicle upon which you stand in court today was a good way by which you could cause trouble for the governing officials; wasn't it?

Jacko: Just a minute. Objection.

The Court: Overruled.

Jacko: Your honor, that is an exceptional form of question. It is conclusive.

Sostre: I don't know how to answer that.

The Court: Well, all right. I will frame the question. Witness, you used this religion, the religion of Muslim or Islam as a means for disrupting prison discipline at Dannemora Prison?

Sostre: No, I did not, Your Honor.

The Court: All right.

Bresinhan: And did you not undertake this Muslim religion for the purposes of securing vengeance against the people whom you regarded as your oppressor; is that right?

Sostre: No, I did not.

Bresinhan: But you do regard the Warden of Clinton Prison as your oppressor?

Sostre: Yes, because he did oppress me.

Bresinhan: That is your aim. You do regard him as such?

Sostre: Yes.

Bresinhan: Do you regard the Warden of Attica Prison as your oppressor?

Sostre: Yes. He is oppressing me.

The Court: No. Strike it out. Witness, you have not learned discipline yet after all your years in prison. You are a learned man. Just answer the question.

Sostre: I am trying to amplify it to bring out the facts.

The Court: I know you are trying to amplify it, but you must abide with the rules of the Court the same as anyone else.

Sostre: Very well, Your Honor, I am sorry.

The Court: You are not sorry. You have done it before.

Bresinhan: So that you tie in your religion to Islam with the prison authorities whom you claim are oppressing you; is that not right?

Sostre: No, I do not.

Jacko: Just a moment. I object to that. That question sums up the whole issue of the case here.

The Court: Well, I will let it stand. The answer is no.

Bresinhan: But after you became acquainted with the religion of Islam, as you call it, and you found that you could use it to cause trouble in prison, didn't you?

Sostre: No.

Bresinhan: So that this religion has some meaning to you other than to use it to vent your hate—

Jacko: I object to that.

Bresinhan (continuing): —upon the—

Jacko: Certainly incompetent, irrelevant and prejudicial.

The Court: Overruled.

Jacko: Exception.

The Court: Upon?

Bresinhan (continuing): —upon the prison authorities?

Sostre: I don't know how to answer this question.

The Court: If you can't answer this question, just say so.

Sostre: He is making this up. I don't know what he means.

The Court: Please pay attention to what I tell you. If you can't answer it, say so.

Sostre: I can't answer it because I can't understand you.

The Court: You don't like these prison authorities, do you?

Jacko: Just a minute. I object to this question.

The Court: Overruled.

Jacko: Exception.

Sostre: I don't like anybody who oppresses me, and if the prison authorities are oppressing me I don't like them.

Bresinhan: You have been oppressed all your life by somebody?

Jacko: I object to that.

The Court: Overruled.

Sostre: By somebody?

Bresinhan: By somebody, yes.

Sostre: I don't know anything about that.

Bresinhan: Were you oppressed by the Army?

Jacko: Now, if Your Honor please.

The Court: Well, Mr. Jacko, I guess I will have to take care of you too. Wait until the question is asked and then object and I will rule on it. I didn't hear the question. I don't understand what you said. I am sure the stenographer couldn't get enough out of this to make any sense from either of you. Let's start all over again.

Bresinhan: Were you oppressed—

Jacko: I am objecting to that.

The Court: Now, wait. The question hasn't been finished. Finish the question.

Bresinhan: Were you oppressed by the Army when you were put in prison for being absent without leave?

Sostre: No, I was not.

The Court: Were you oppressed by any other official who prosecuted you for any of these crimes which you admit having committed?

Jacko: You Honor, I object to this as having any relevancy or bearing on the issues in this case.

The Court: I will take it.

Jacko: It is incompetent, irrelevant, immaterial and prejudicial.

The Court: I will take it for this reason, that this letter that he writes indicates it may have some inference to be drawn from it and if this man feels he is oppressed, let's find out about it.

Bresinhan: Actually, Mr. Sostre, you will accept no opposition to your will from anybody will you?

Jacko: I object to that, Your Honor.

The Court: Overruled.

Jacko: Exception.

Sostre: Yes, I will accept opposition.

Bresinhan: You will?

Sostre: I have. ■

Note: This handwritten letter was transcribed from a photocopied scan of microfiche and may contain errors or illegible words. The original is located in the Malcolm X Collection at the Schomburg Center for Research in Black Culture, Box 4, Folder 9.

**To: Minister Malcolm "X"
C/O Muhammad's Temple of Islam No.
#7 - 102 West 116 St. New York City,
New York**

**"In the name of Allah, the All-Wise,
All-True God. Who has given us our
beloved Leader and Teacher; The Hon.
Elijah Muhammad. In Their Holy Names
I greet you my brother:**

As-Salam Alaikum,

I trust that the Grace of Allah is upon the Nation of Islam, upon you, and upon The Holy Apostle. The Grace of Allah has also been upon we Muslims in The New York State Correction System. He has given us several openings in the Federal Courts across the country so that we may seek redress from those in State and Federal authority who seek to repress our Freedom of Religious Worship, rights guaranteed us in the U.S. Constitution. Brothers! We have been persecuted, beaten, marred both mentally and physically, put in "Isolation-Segregation-Protection and Solitary confinement for the past 5 years. But, not, by the Will of Allah, our fight has almost come to an end. Victory is now in sight!

Recently a Federal Court in Washington D.C. granted a trial to two Muslims: Theodore "X" Sewell and Paul "X" Watson. Another Federal Court in N.Y.S. Northern Dist. granted a trial for these Muslims: Martin "X" Sostre, James "X" Pierce and William "X" SaMarion. These were trials for "specific" religious denials - as: the right to purchase the Holy Qur'an; the right to contact their spiritual advisors. Brothers, the biggest trial is yet to come. Recently, a Federal Judge in Buffalo, on October 11, 1961, granted a hearing and trial to two Muslims. One

of them is me: Thomas "X" Bratcher and William "X" SaMarion. This trial promises to be the last one in the Muslims fight for Religious Freedom. It is taken out in behalf of the 60 Muslims in Attica Prison. This writ covers all grievances. We have compounded so much evidence - over a period of two years - against the defendants - Paul D. McGinnis and Walter H. Wilkins- that under its magnitude, these two tyrants must fall. We are calling over 20 Muslims as witnesses from every major prison in N.Y.S. In fact, at this very moment we are still fathering evidence to be used against them at the trial. At present Bro. Sostre "X"; SaMarion "X" and myself are in "Segregation" because of our religious beliefs. Brothers, I could go on and on elaborating about our cases, but I must now discuss more important matters.

Recently I sent word to the Temple about the Muslims condition in Attica Prison. The message was sent and delivered by one: Mrs. Juanita Bratcher, my mother. The message was that we need a few dollars so that we could fast during the Holy Month of Ramadan and that we need a Holy Qur'an and other literature from them in the Temple. Also, that these things could be gotten to us through my family, as we cannot as of yet contact the Temple. Well Brothers, I don't know where things went wrong, but the answer I got back from my mother from the Temple was "What For?" "Ramadan is a time for penance," "If you read your Quran, you would know that a person who is incapacitated need not fast!" Now I don't know who she spoke to or even if the correct message I gave was delivered. I instructed her to deliver the message to no one but Minister Malcolm "X". The answer did not sound like it came from you. I've never met you or the Holy Apostle, in fact, I've never been inside a Temple. I was raised out of the grave of ignorance in prison. But from what I've heard from Brothers who have attended the Temple, namely: James 33X Rickey of No. #7; Lamont "5X" Holiday of No. #2 - I know some misunderstanding took place. I was in Auburn with Bro. James "X" Pierce and

I am now with Bro. Martin "X" Sostre and they have related to me how the Messenger came to their aid. But my Brothers, knowing that "Everything is Real," if this was the official answer from the Temple to us, I am affraid that I do not have to tell the rest of my Brothers the sad, sad news, for most of them, like myself, have never seen the inside of a Temple, but all of us have vowed to follow the Messenger to the grave. Brothers, Allah has promised us a green portion of the Planet Earth for our very own - but we must be ready when he comes back in 1970. We weren't ready in 1914, I wonder will we be ready in 1970? Brothers, only in the "Unity" of our people shall we find true strength. We here in Attica Prison have been fighting this man for many years. We are fighting for the Right to have a minister - Bro. Robert "X" Williams, in Buffalo - come in to the Prison and give us religious ministration; to be able to write for an purchase any form of Islamic literature we want; to be able to practice Islam without fear of aggression and terrorization; to be able to have a service on Friday (Juma) just as the Christian and Jewish inmates are allowed services. Most of us have never seen the inside of a Temple, not heard of the Holy Apostle until we came to prison, but "We believe although we have not seen." We have had to make up our own lessons from articles appearing in the Los Angeles Herald Dispatch - when we could get a copy. But we believe and want to be true Muslim Brothers. Not only do we fight prison officials, we also must fight the adverse publicity in magazines and papers. One of our biggest problems is that we do not have enough books and religious literature to meet our needs. But even in the face of great odds, we still fight for the right to believe as we choose. This right was given to us by the sweat of our fathers who: upon their bent and broken backs this country was erected. We have had to content with the Head of the Ahmadiyya Mosque in Wash. D.C. when he wrote the then existing warden of Attica Prison a letter praising the warden for the suppression of Muslim inmates in Attica Prison. I have

this letter now. We have had to put up with the "Starvation Diet," as 20 of the 28 meals served in a week here contain "Swine," many of us who have no one outside and only make .05 cents a day (to which you can only spend .02 1/2 cents) have had to depend on brothers how have people outside to send them money and packages container "Kosher" foods. But we are not complaining of our hardships or crying on you brothers shoulders, because we are here for crimes committed against the law of N.Y.S. But, if this was the official answer from the Temple, the I've been telling my dead brothers a lie, because I've been "preaching" how the messenger has brought to us the "unity" we have so long needed. Then James "X" Pierce has been in "Solitary Confinement" since August of 1959 for something that he believed in but wasn't really true. I just know that the answer was a great error and a misunderstanding on my mother's part. It must be, or the things we believe in have failed us. For the fighting man cannot win a war without the moral support of the home front.

My Brothers, I have a trial comming up soon. I don't know as of yet the exact date, but it will be the first part of 1962. There is much pressure on my back as all the Muslims are looking to me to win for them their Freedom of Religious Worship that has been denied them in past years. I pray that Allah makes me strong and worthy of my Brother' confidence in my coming ordeal, as I am up against a legal giant - Louis J. Lefkowitz - who is going to use every trick of deciet he has ever learned to knock me down in court. I am very young to cary such a load - only 29, but when Isa was 12, he was teaching the wise men in the Temple of the Gloris of Allah. Yes Brothers, "Everything is so very Real," Allah is real, the Devil is real, and this is a real war I and SaMarion are fighting. It may not be as important as the total Destruction of Gog and Magog but it is very important to we people in Attica. So when you Brothers sit down in the Temple restaurant and order some of those tasty dishes prepared by the good

Sisters, remember us in the Attica Prison and in every prison in the Nation who are fighting for Islam. You Brothers from the Temple in NY, and in Buffalo, can help us in more ways that cannot be explained on paper. But there are some ways that I can explain.

From the Attorney General's answer to my writ, I can see that his main argument is going to be in the presenting of certain publications out of Books, magazines, and papers about the Muslims. He admits two very important issues in my complaint. He admits that the Muslims have been denied spiritual ministraton by a minister of Islam. But he is going to try and justify the warden's violation of our constitutional rights by submitting these published reports to the court saying that we are preaching "hate" and we are a fanatical group not recognized by the rest of Muslim World. He is going to submit letters from various Muslims denouncing the Hon. Elijah Muhammad. This is his only defence / We have so much evidence against the commissioner of correction and the warden of Attica Prison that the Attorney General must take this line of defense to defend the tyrants he is counsel for. Since this is the only loop-hole he has, I plan to close this hole up forever. The "Key" wittness I am depending on to "seal" our victory is "You" Minister Malcolm "X." Who could be more of an example that Muslims abide by the law - even with your past record; which only makes you more of an ideal wittness - and had clean upright lives, and are highly respected by all? Who knows more about The Messengers program of the Nation of Islam? Who is respected by this man as the "Whip Sharp" minister of Islam and the leader of New York's Temple No. #7? Who can defend Islam against the slander publications - to which the messenger has to separate million dollar suits - and can testify to the fact that the messenger made his 'Hadjj" and has received letters from leaders in the East addressing him as "The Leader of the Muslims in N. America? Who--? Malcolm "X". I don't want the court to summonsd you

as a witness because I don't want the Attorney General to know that you are going to be our "Key" wittness. It would be just grate for us if we could see a courtroom filled with emaculate Brothers and Sisters from the two Temples. The Temple can keep in touch with me and learn of our trial date through my mother: IL-8-5589. It would also be a big push for us to have some reporters and photographers in the court to play the trial up big in papers and magazines. I will try to give you brothers and at least two weeks notice through my letters to my mother as to when the (illegibile) schedule to take place. So you must keep in constant touch with (illegibile) has means of contacting me for very important news.

So Brothers, If you agree to all I have put forth in Behalf of the Muslims in Attica Prison, By No Means Are You to Answer This letter!!! But call my mother and tell her to write me a letter as usual containing nothing pertaining to this letter; But, she is to write the letter in "Red ink" and she is to open the letter with "First , Three lines of Al-Fatihab." In this way I will know that you have received my letter and that you agree with its contents. Please don't delay!

I close now by Brothers as I opened:
In the name of Allah and our Beloved Leader and Teacher: The Hon. Elijah Muhammad

Ma'a Salame,

Thomas "X" Bratcher, Jr.

SaMarion v. McGinnis

pp. 185-193

**Asst. Atty Gen.
William D.**

Bresinhan: Now, Minister Malcolm, did you read last night from the record of the case Pierce versus LaVallee?

Mr. Griffin: For the record, I suggest Mr. Besinhan, we mark the portion of the record that you refer to as an exhibit.

Bresinhan: Yes, starting with page 156 and continuing to page 175. I will have it marked.¹

Bresinhan: Now, I will ask you whether the expressions contained therein are in accordance with the Muslim teaching as set forth by the Honorable Elijah Muhammad?

Malcolm X: May I see it?

Bresinhan: Yes.

Malcolm X: Up to one what, 176?

Bresinhan: T hat is the document written by Mr. Martin Sostre.

Malcolm X: There seem to be a lot of legal documents in there, not any one document, if I understand you correctly.

Bresinhan: Laying aside the matter of the legal documents, which he is talking about, is the rest of the matters contained in there according to the theology of Mr. Elijah Muhammad?

The Court: Let me ask, is this the testimony of another man similarly situated as these Plaintiffs, in another court? Is that Martin S-o-s-t-r-e?

Bresinhan: S-o-s-t-r-e.

The Court: Is he testifying here?

Bresinhan: This the document that is in his handwriting, offered in evidence as an exhibit in that case, your Honor, pertaining to certain expressions made by Sostre in regard to the operation of the prison, as part of this whole Muslim situation in our prisons.

Mr. Griffin: I object to this. This is a different case. I do not see its relevancy or pertinency to this case.

The Court: The operation of the prison, you say? Is that what he is talking about, Sostre, in these paragraphs?

Bresinhan: Yes.

The Court: What does that have to do with this witness? This witness is here to tell us about a basic belief that he said is an organized religion and what Sostre thinks happened in prison, at Attica or any other State prison is not important, is it?

Bresinhan: We think it is. We think that this is part of the general overall modus operandi by which the prisoners, certain prisoners, who profess the Muslim belief in our State prisons, are seeking to undermine and overthrow the authority of our prison officials in the operation of the prison.

The Court: I haven't read this. If Sostre is echoing a philosophy or belief in those pages, then I would permit you to ask this witness, as a leader of the faith, to state whether or not that is the doctrine that he, as a leader, preaches. I am not interested in what Sostre thinks happened in Dannemora or somewhere.

Bresinhan: This represents, in my opinion, a philos-

¹ The document Assistant Attorney General William Bresinhan is referencing is the legal complaint and accompanying letter from Sostre, Thomas Bratcher, and William SaMarion that was left in a bar of soap and referred to in testimony in Pierce v. LaVallee. The complaint and letter appear earlier in this lesson.

ophy developed under this Muslim creed by the prisoners in our State prisons and is part of the theology which they use for the purpose of undermining and destroying discipline in our State prisons.

The Court: You mean as taught by this gentleman on the stand?

Bresinhan: Not at all, by one who professes to be a Muslim and is part of this movement and who is presently in Attica Prison. This document that is referred to in that record there was found in Attica Prison.

Mr. Griffin: I object to this.

The Court: Let me say this. This gentleman made it vividly clear, it seemed to me, yesterday, that he has certain teachings that he believes constitute a religion. He made it quite clear that if some prisoners who want to follow him do not have the guidance that he thinks is necessary and there distorts the belief and perhaps causes unrest in the prison by reason of their lack of knowledge--he says that is unfortunate--I think that is the substance of his testimony. If there were prison conditions somewhere where Sostre was--I know the name, it was a habeas corpus matter before me--if Sostre is complaining about prison conditions and you are asking this gentleman who has been an approved leader of the religion whether he has any part of these complaints in the prison, I do not think that is competent.

Bresinhan: May I just say this. We say this document, which was found in Attica prison--

The Court: I didn't hear you.

Bresinhan: Bresinhan: We say this document, which was found in Attica Prison, written by Sostre, shows that Sostre and other Muslims are using the Muslim movement and the Muslim religion for the purpose of destroying prison discipline.

The Court: Couldn't that be true of any faith? Supposing I were of a faith, and I was in

prison, I chose to use certain teachings as an individual, which you claim were destructive in nature, couldn't that be true in any case, Muslim or otherwise?

Bresinhan: Well, I don't know. I haven't thought the question through, but I assume it could be. I don't know, your honor. I do know--

The Court: Look, this is not a jury case. If it were I would feel differently about it. I will let you ask this gentleman, if he can answer at all, the question whether or not the sentiments whatever they may be, are the sentiments of the Muslim religion. If you are going to ask him whether he is part of a conspiracy, and that these men in prison are using his teaching pursuant to his directions that becomes another question.

Bresinhan: I had no intention of asking that question.

The Court: Let me ask you this, Mr. Malcolm. You have read that?

Malcolm X: Yes, sir.

The Court: Do you have any opinion at all about the sentiments of Sostre as echoed in that writing?

Malcolm X: Yes, sir. In my opinion, what he has written is the result of someone who has heard Islam, and as a Negro has heard it; automatically it has given him a great deal of enthusiasm for the religion, but because of improper religious instructions or having been deprived of proper religious instructions, or religion instructors, there are some things that have been said that would not have been said by him if he had proper religious instruction. This is what I have seen from all I read last night, and I read bales. It is a compliment to these men, frankly, that they could have the strong religious zeal they have; the strong religious zeal that they have expressed, and still without the proper religious instruction. The only areas in which they show a tendency to attack are in the areas they have been improperly instructed religiously.

Birthing a Movement

Excerpted from Dan Berger and Toussaint Losier, *Rethinking the American Prison Movement* (New York: Routledge, 2018), 59-68.

The prison burst into national consciousness as a result of the Southern civil rights movement. With cameras rolling, African Americans sitting at segregated lunch counters or marching for the right to vote were attacked and arrested throughout the South. So too were the interracial “Freedom Riders,” who challenged segregated public accommodations throughout the South in 1961. Refusing to be intimidated, these activists turned their jail cells into church pews and college classrooms. Mississippi authorities tried to intimidate the activists by sending them to Parchman, the notoriously brutal prison farm. Yet, the prisoners refused to back down. In prisons throughout the region, incarcerated civil rights activists sang freedom songs, staged hunger strikes, and otherwise steadied their resolve. Thousands were arrested in demonstrations large and small. Activists turned imprisonment into a strategic resolve, demonstrating their moral courage in the face of racist violence.

Among other things, the experience produced one of the foundational documents of the movement: in “Letter from a Birmingham Jail,” Martin Luther King made a passionate call for nonviolent resistance to racism. King’s letter, addressed to white liberals who pleaded with him for moderation, sounded themes that would become common to the prison movement—the necessity to act against injustice. “Oppressed people cannot remain oppressed forever,” King wrote. Segregation required action, even extremism, he counseled.

So the question is not whether we will be extremists, but what kind of extremists we will be. Will we be extremists

for hate or for love? Will we be extremists for the preservation of injustice or for the extension of justice?

The civil rights movement effectively tarnished the stain of incarceration; prison would not be enough to quiet antiracist activism. Yet, the movement was not concerned with the general state of prison conditions. Thus, it was not Martin Luther King and the civil rights movement but the Nation of Islam that effected the greatest legal change for people in prison. In the late 1950s and early 1960s, converts to the Nation of Islam launched a series of targeted challenges to the refusal of prison authorities to recognize the legitimacy of their religious beliefs. In a sense, these challenges were as spontaneous and individualized as the prison disturbances that had broken out like a string of firecrackers during the course of the previous decade. These challenges were nearly always initiated by NOI converts and pursued with only minimal outside assistance. In the instances where the NOI provided legal representation, it was usually after these pro se petitions had wound their way up through the lower courts and showed some promise of success on appeal. Left largely isolated, NOI converts raised a host of concerns, but ultimately used religious freedom as the grounds upon which to demonstrate the inconsistencies of the prevailing prison order. Rather than allowing the judicial “hands-off” policy to hinder their efforts, NOI converts won a handful of legal precedent and then used them as the basis for further litigation. In shoring up these gains, these converts relied not only on the legal petitions and courtroom testimony, but also disruptive confrontations to compel prison officials

to adhere to the judicial decisions their legal activism had secured.

In late 1959, NAACP affiliated attorneys, Edward Jacko Jr. and Jawn Sandifer, announced that they would be representing three members of Clinton prison’s Muslim Brotherhood in U.S. Federal District Court in the case of *Pierce v. LaVallee*. Prior to the meeting with his clients, attorney Sandifer predicted that this federal lawsuit might have national repercussions as a number of other prisons sought to prevent NOI converts from practicing their religion. For several years, the two Harlem-based lawyers had worked closely with Malcolm X on cases of police brutality. Following his encouragement, they had agreed to represent these converts, although some time after a New York state court had already dismissed their claims. Months earlier, the three leaders of the Muslim Brotherhood—James Pierce, Martin Sostre, and William SaMarion—had filed a pro se suit against Clinton’s warden, J. E. LaVallee. The plaintiffs claimed that while guards had provided them with space to meet in Clinton’s yard, the warden had repeatedly denied their written request for access to the Holy Quran and other religious literature as well as to an NOI minister. In denying their request, LaVallee had responded to their requests like most prison administrators did—by holding them in solitary confinement and reducing good time credit that would have allowed them to have been eligible for an earlier release date.

The circuitous development of this case would have a significant impact on the recognition of NOI at Clinton and beyond. At trial, Pierce’s lawyer sensed that the defendants would premise their case

on the need to maintain institutional security. Recognizing that Malcolm X's criminal record might be interpreted as a violation of the prison's rules preventing correspondence between prisoners and "known criminals," attorney Jacko motioned for his clients' request for a spiritual advisor to be stricken from their complaint. Without this aspect of the lawsuit, Clinton's warden now had to argue that accessing the Holy Quran posed a security threat. Anticipating the weakness of this argument, New York's Commissioner of Corrections responded by announcing that prisoners could now purchase four approved versions of the Holy Quran, leaving the use of solitary confinement as a form of religious discrimination as the only basis of the Muslim Brotherhood members' complaint. After dismissing this aspect of the suit, the court found that the remaining claim—the warden used solitary confinement in a discriminatory manner—touched on matters of prison discipline in a state prison and dismissed the remainder of the case, determined that it was properly in the purview of a state court.

While the Muslim Brotherhood had failed to secure a ruling on most aspects of their suit, they had set a key precedent in gaining a hearing—one that other NOI converts would draw on in short order. As a federal judge speculated in his 1961 decision dismissing *Pierce*, these lawsuits were of a different caliber than those of the traditional self-taught writ writer:

These are not cases where uneducated, inexperience and helpless plaintiffs are involved. The similarity of the complaints, prepared while the plaintiffs were not in communication with each other and the availability of legal representation from outside sources, taken together with the number of complaints directed to this court by these plaintiffs and others of the same sect, indicates that these applications are part of movement which has already received notice in the public press and lack the spontaneity of a genuinely wronged person.

Strident in its condemnation of this legal activism, this opinion speaks to political challenge implicit in NOI converts' litigation. These lawsuits had a distinct movement quality to them. As attorney Jacko appealed the decision in *Pierce*, dozens of NOI converts filed a series of suits. In the first several months after the court's ruling, they lodged five different federal pro se petitions to gain the privileges extended to most Jewish and Christian prisoners, including access to an NOI spiritual advisor. Even though each of these suits would be dismissed on the grounds that it touched on matters of prison discipline and should be tried in state court, their efforts demonstrated assertiveness growing behind bars. By March 1961, the *New York Times* contended that *Pierce* was the opening shot of a "widespread legal attack on the state's prison system" being waged by NOI converts, speculating that they made up a majority of the 100 lawsuits recently filed by prisoners. "The number and persistence of the cases," the paper suggested, "are taken to indicate the growing size and vitality of the Black nationalist Muslim movement within the [New York] prisons."

This legal movement was not simply an Empire state phenomenon. In April 1961, the California State Supreme Court handed down its decision in *Re Ferguson*, a case involving a petition for a writ of *habeas corpus* filed by Folsom State Prison convert Jesse Ferguson. In addition to the claims made in *Pierce*, Ferguson alleged that he and other converts had been denied access to legal counsel as well as subjected to routine verbal and physical abuse because of their religious beliefs. While the court sided with California's Department of Corrections, determining that the restrictions placed on NOI religious freedoms had not been so severe as to warrant judicial intervention, it took a step away from a strict adherence to the "hands-off" doctrine. Even as the justices ultimately declined to interfere with departmental policies, simply agreeing to subject prison management to judicial review reflected a growing shift away from the hands-off doctrine.

The U.S. Court of Appeals for the Second Circuit would shift even further away in its ruling on the appeal of *Pierce*. Handed down in June 1961, the court conceded that there was room for limited federal judicial oversight of prisons on issues of constitutional rights, particularly the freedom of religion as it remained a "preferred right." Prison officials, the court determined, had violated this right in refusing to provide NOI converts with access to religious materials. Although the appeals court left the issue of religious discrimination to be retried before the district court, it determined that the prisoners had been within their legal right to seek a hearing at the federal level for their claims of religious persecution, effectively overturning the hands-off doctrine and opening state prisons to judicial review.

Not only did *Pierce* gain a foothold in federal court, but it also did not rely on *habeas corpus*, a legal mechanism for the enforcement of rights that one should be entitled while in custody. *Habeas corpus* had limited purchase on constitutional claims. In contrast, the Muslim Brotherhood defendants had based part of their federal court suit upon the Civil Rights Act of 1871, later codified as section 1983 of the U.S. legal code. Also known as the Second Enforcement Act, this obscure Reconstruction era law had originally been drafted, ironically, to allow the federal government to suspend the writ of *habeas corpus* in its efforts to suppress attacks against African Americans by the Ku Klux Klan and other white supremacist vigilante groups in the states of the former Confederacy. The aspect of the law that would be incorporated into the U.S. code focused not on the actions of groups like the Klan, but instead on those government officials who failed to enforce a state law. To avoid potentially hostile state courts, section 1983 allowed one to seek legal remedy, such as monetary compensation, in federal court for violations of constitutionally protected rights by lawful authorities.

Largely ignored for close to a century, section 1983 had recently served as

the basis of *Monroe v. Pape* (1961), a Supreme Court case pursued by the ACLU on behalf of a Black family beaten and humiliated during a warrantless raid by Chicago police officers. Ruling in favor of the family and ordering that a trial be held, the majority opinion concluded that the 1871 Civil Rights Act had been passed in the following terms:

[T]o afford a federal right in federal courts because by reason of prejudice, passion, neglect, intolerance or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges and immunities guaranteed by the Fourteenth amendment might be denied by the state agency.

While securing the intervention of the federal government in state matters was part of the strategic vision of the Civil Rights movement, the court's decision in *Monroe* made the process of intervention a tangible reality in matters relating to government officials. Handed down four months before *Pierce*, this decision suggested that section 1983 might make it possible for prisoners like those in the Muslim Brotherhood to sue state officials in federal court for violations of their constitutional rights.

The success of this appeals court ruling would be short lived. Following a new district court hearing, the case would be decided in favor of Clinton's warden. By October 1963, the Supreme Court had denied their appeal. Yet, in the two and a half years prior to this decision, the initial success of the Muslim Brotherhood in federal appeals court "created an avalanche of other legal petitions by incarcerated NOI members requesting spiritual advising, ministrations, and religious services from Malcolm X and the NOI's Temple No. 7 in Harlem, New York." This avalanche was the product of both spontaneity and organization. When Clinton officials transferred leaders of the Muslim Brotherhood to Attica prison to disrupt their activities, they filed a new *pro se* lawsuit just four months after the appeals court decision.

A moving force behind this litigation was Muslim Brotherhood leader Martin Sostre. Although he was not listed as a lead plaintiff, Sostre played an integral role in attracting other prisoners to Islam and filing litigation against New York officials. Once at Attica, he would quickly become the most proficient "jailhouse lawyer," preparing a set of lawsuit templates and instructions that made it possible for NOI converts to coordinate their litigation. In addition to providing them with paperwork, he explicitly advised them on how to evade institutional regulations that explicitly forbade prisoners from providing legal assistance to each other, with, for instance, NOI converts copying these materials in their own hand and then destroying the original. By refining and then spreading the legal arguments at the heart of these complaints, jailhouse lawyers like Sostre played a key role in building the movement that emerged in the late 1950s and early 1960s.

The dynamism of this legal campaign was reflected not only in the use of legal precedent, but also in the way in which NOI converts experimented with their lawsuits, raising claims that had earlier been presumed to be moot and reframing their arguments to be more amenable to the federal courts. In addition to raising the denial of a spiritual advisor after it had been stricken from *Pierce*, NOI converts began suing New York's corrections commissioner and, in doing so, called attention to a statewide pattern of abuse as well as the failure of New York officials to enforce their own regulations. In *Brown v. McGinnis*, another case that Sostre helped prepare, a New York Court of Appeals cast the denial of religious liberties a clear violation of section 610 of New York's Correction Law and ordered a new hearing in federal district court. Even though the particular prisoner who brought the suit gained his release prior to a new trial, the violation of state prison regulations would be taken up in suits by Sostre and SaMarion that lasted until 1978.

Two months before *Pierce*, a three-judge

federal appeals court panel had ruled in favor of NOI converts in *Sewell v. Pegelow*, ordering officials at the district's Youth Correction Center at Lorton, Virginia, to allow NOI converts to correspond with NOI ministers at the sect's Washington D.C. temple, as well as other matters of official recognition. When the officials attempted to avoid implementing this order by transferring 25 NOI converts to the district jail for protesting its policies, prisoner William T. X Fullwood sued the director of Department of Corrections and won a favorable hearing on *Fullwood v. Clemmer* in federal district court.

In July 1962, the U.S. District Court for the District of Columbia determined that the faith of NOI converts constituted a valid religion. Several days later, the same court ordered Lorton officials to return to the youth correctional center those transferred to the D.C. jail and to afford them their religious rights. These breakthroughs came after repeated dismissals by the district court, with Lorton's young Muslims patiently chipping away at the court's refusal to address their demands. Like those in other facilities across the country, these NOI converts waged a protracted struggle, creatively adjusting their demands to gain a full hearing and, ultimately, a favorable court decision.

Three days after the district court handed down its ruling in *Fullwood*, Thomas X Cooper, filed his handwritten *pro se* lawsuit from Stateville's harsh segregation unit, claiming that prison officials had unconstitutionally denied him his right to practice his religion. Since officially registering with the NOI in 1957, Cooper had been the subject of surveillance and harassment, spending all but three months of the years that followed in a solitary confinement cell. Both the federal district and circuit court of appeals would, over the next several months, ground their dismissal of his suit in the argument that the Nation of Islam was not a religious organization. After reviewing Cooper's appeal, the Supreme Court issued a one-paragraph *per curiam* ruling in June 1964, stating that it had been an error to dismiss Co-

per's complaint. Although the justices did not weigh in on the merits of the lawsuit, they did determine that Cooper's claims deserved a hearing in federal court. Citing both *Pierce* and *Sewell*, this landmark decision was the first confirmation that Section 1983 could be used by prisoners, effectively upending the hands-off doctrine. In doing so, the Supreme Court pushed forward a bold and unprecedented extension of federal judicial oversight into the operations of state prisons already underway in the various district and appeals courts.

The federal courts would decide more than 2,000 Section 1983 cases a year by the end of the decade. By 1995, that number would rise to over 39,000 a year. Even though it came after the window of opportunity offered by *Pierce* had already been reversed by the lower courts, Cooper's lawsuit built upon the precedent other NOI converts had established, demonstrating the rising movement sensibility within postwar prisoner activism. The NOI would hire attorney Jacko to represent Cooper in his 1965 federal trial and claim victory on behalf of all NOI members when the district court judge ruled that Cooper should be allowed to have a Quran, attend religious services, and communicate with NOI ministers. Yet these gains were largely made without the organization's assistance. Reflecting the sort of independent ethos at the core of these efforts, Cooper would file his own appeal of this decision, specifically objecting to the federal judge's finding that his confinement to solitary had been for purely disciplinary purposes. The court rejected his appeal.

The fact that Cooper's handwritten petition received a favorable hearing in the highest court is itself ironic. Through the first half of the twentieth century, the Supreme Court had served as a bulwark against any consideration of prisoner's rights. "The hands-off policy was not mandated by the Supreme Court in any formal sense," notes legal scholar John Flier in discussing the decades leading up to the 1960s, "and not all courts followed it, but throughout this period,

the Court encouraged a policy of nonintervention."

This policy shifted dramatically under the leadership of Chief Justice Earl Warren. A liberal Republican, Warren had consistently demonstrated a penchant for law-and-order politics. As the Attorney General of California, Warren played an important role in efforts to win the exclusion and internment of the state's Japanese and Japanese-American population, shaping the legal justification for their mass imprisonment. Later, as the state's governor, Warren gained national recognition for his push to overhaul the California prison system, appointing progressive-minded prison officials, while at the same time demonstrating limited interest in prisoner's civil liberties or the problem of prison Jim Crow. Following Warren's ascension to the bench in 1953 and the emergence of a liberal majority of judges in the early 1960s, the court began giving serious consideration to the civil liberties of prisoners by establishing a legal foundation for rights claims.

This shift had already been underway before the court ruled on Cooper. In its 1963 decision in *United States v. Muniz*, the Supreme Court held that federal prisoners may bring tort action against federal administrators in federal court through the Federal Tort Claims Act (FTCA). "Just by opening a forum in which prisoners' grievances could be heard," argues sociologist James Jacobs, "the federal courts destroyed the custodian's absolute power and the prisoners' isolation from the larger society. And the litigation in itself heightened prisoners' consciousness and politicized them." Through its decisions in *Muniz and Cooper*, the Supreme Court not only provided both federal and state prisoners with access to the federal courts, but also laid the legal foundation for the emerging prison movement.

Transforming Prisoner Activism

Rather than simply relying on a favorable hearing from the federal judiciary, NOI converts repeatedly demonstrated the

capacity to directly press their demands through their own actions. When officials at the Lorton Youth Correctional Center failed to fully adhere to the July 1962 *Fullwood* decision by providing converts with access to an NOI minister, but not pork free meals, nearly two dozen young Muslims revolted just a few weeks later. To suppress this protest, officials agreed in principle to their meal requests and to allow NOI converts to cohabitate amongst themselves and meet at regularly scheduled times for worship. When Lorton officials then moved to transfer these protesters to the D.C. jail, prison guards were only able to quell their riot by showering them in tear gas. Across the country, NOI converts pressured administrators to reconsider their policies or foster a hotbed of activism in the segregation wings of their prisons.

Following their transfer to Attica, the Muslim Brotherhood members joined other NOI converts in collectively agitating for recognition. When officials sent one of them to solitary confinement, the rest organized a sit-down protest to protest this punishment. After learning of these efforts, officials placed all of those involved on keep-lock, deducted 90 days good time, and then transferred them to different sections of the prison. As Attica guards continued to send converts to solitary confinement, known as "the box," as punishment for their activism, they in turn sought to fill all the prison's solitary cells until officials met their demands for religious recognition. "NOI members filled solitary confinement until the box no longer became an effective means of social control," argues historian Garrett Felber. "Wardens were then faced with the decision of creating hotbeds of activism in segregation or undermining the arbitrary rules they had worked so hard to justify and enforce."

Over a short span of time, these prisoners became further adept at linking their protests to specific demands. As the Civil Rights movement progressed outside the prison's walls, NOI converts increasingly framed their specific demands in the language of political protest. Where the spontaneous revolts

of the 1950s had often resulted in lists of demands being produced amidst a revolt, prisoner organizing of the 1960s relied on formulating these points prior to taking action. The morning after a guard shot and killed the prisoner who led San Quentin's NOI mosque in February 1963, 60 converts held a work strike and presented the warden with a list of demands that included religious recognition, the arrest of the gun rail officer, a meeting with the Marin County district attorney, and permission to petition the U.S. President. When all but one of the converts refused to disperse, the warden had them arrested on mass and confined to solitary cells in San Quentin's Adjustment Center.

Just days after the Supreme Court announced its June 1964 finding on Cooper's appeal, he and five other NOI converts in Stateville's Segregation Unit presented the first set of written demands in the institution's history. Organized in 14 separate points, it addressed many of the same points that Cooper had attempted to address in his lawsuit, including use of the chapel for Islamic services with a minister from the NOI's Mosque No. 2 and access to Kosher meals, as well as an end to the "suppression, and 'Genocide' oppression of the Islamic religion." When officials failed to meet these demands, they launched the first revolt Stateville had experienced in 30 years, burning their cells, taunting prison guards, and throwing pieces of their toilets and sinks at those that approached their cells. Even after this disturbance had run its course, the converts held a hunger strike for several days establishing a model for later prisoner activism.

In the main, these lists of demands hardly ever produced specific concessions or the broader goal of recognition. Throughout the remainder of the 1960s, NOI converts only saw positive outcomes after years of courtroom litigation, particularly in maximum-security prisons, where officials were loath to assent to their demands. In spite of the favorable Supreme Court ruling, Cooper had to

return to court to pursue his suit. Even after a federal district court ruled in his favor in July 1965, the matter would not be settled for another two years when an appeals court found that NOI converts posed no greater safety threat than those who adhered to other religions. When Appeals Court ordered New York officials time to develop entirely new prison regulations that would have effectively recognized the NOI, they repeatedly resisted efforts to do so, contending that visits by NOI ministers posed a serious problem to prison security. It would not be until May 1966 that a new set of regulations would be implemented, but even this new policy would be the subject of another four years of litigation as they continued to identify Muslim believers as a group distinct from all other prisoners. Similarly, it would not be until 1970 that a California district court ordered San Quentin officials to extend basic religious rights to NOI converts on the grounds that Islam was a legitimate religious practice behind bars.

Perhaps more important than the reforms their lawsuits and writ writing produced was the impact their activism had on profoundly transforming how prisoners went about the business of challenging the prevailing prison order. NOI converts repeatedly asserted rights that went beyond the traditional framing of prisoners as passive and morally degraded. Moreover, they asserted them as Black prisoners, who, more than any other group within the institution's informal social hierarchy, were supposed to accept their inferior status, to know their place. In challenging these mores through a strategy that joined activism in the courtroom with demonstrations in the prison yards and mess halls, these prisoners effectively fashioned a new sense of prisoner collectively. Grounded in racial group solidarity and mutual aid, NOI converts were in many ways "the first popular radical convict political union." With their willingness to engage in collective political action on the shop floor and prison yard, as well as in the cell house and court room, they demonstrated innovative ways to press their concerns. The tangible gains won

by their efforts, along with the broader sense of prisoners' capacity for collective action, would help to lay the foundation for the radicalization of the prison movement during the late 1960s and early 1970s.

Just as it disrupted the social hierarchies of prison Jim Crow, the NOI's Black nationalist ideology would be the foil against which key prison administrators would seek to reassert control. Nowhere was this more prevalent than in California, where increasingly militant protests against the hollowness of rehabilitation and the bleakness of prison conditions would be channeled by polarizing prison populations along racial lines. In the mid-1960s, white supremacist groups such as the American Nazi Party and later the Aryan Brotherhood emerged as counters to the NOI. On several occasions in January 1967, minor skirmishes on San Quentin's yard between these contending forces nearly culminated in armed melees involving thousands of prisoners split into groups of whites, Blacks, and Chicanos. These particular confrontations did not end in mass violence, but they heralded the arrival of "racial-political violence" as an important characteristic of prison politics over the next decade. Grounded in particular racial animosities, as well as the general deprivations of prison life, this form of violence pitted prisoners against one another in a manner that starkly undercut their willingness to act in concert. Although conflicts between Black and white (and Chicano) prisoners was not a new feature of prison life, this violence would give these tensions a group politics and a permanency that had not heretofore existed.

Although it would take several years for NOI converts to gain access to religious services on par with those provided to followers of other religions, a gradual change had taken place by the late 1960s. This breakthrough was largely due to their unique combination of legal activism and direct confrontation. It was also conditioned by the decline in the militancy of the NOI and the rise of new threats to the prevailing prison order

during the years following Malcolm X's assassination on February 21, 1965. Martin Sostre, for instance, parted ways with the NOI not long after his release from Attica in October of that same year after completing his entire 12-year sentence for a drug conviction. Taking up residence in nearby Buffalo, New York, Sostre opened an Afro-Asian Bookstore in 1965, the first bookstore in the city's Black community. Subsidizing its operation with wages he earned from Bethlehem Steel, he was only able to stock it with paperbacks on African and African-American history and culture.

Reflecting the influence of Malcolm X, Sostre hoped to attract local Black youth and develop it into a center for radical activism, with a range of literature on socialism, Black Nationalism, and revolutionary politics. These plans had only begun to bear fruit by June 1967, when a series of minor skirmishes between Buffalo police and residents of the city's segregated East Side broke out into a three-day urban rebellion. Under local police and FBI surveillance within months of opening the store, Sostre quickly became the target of harassment and was then arrested. Charged with possession and sale of narcotics, Sostre was depicted as "Martin X" by the city's chief of police in his testimony before a Senate Judicial Subcommittee, responsible for both training youths on how to prepare Molotov cocktails and grossing from \$2,000 to \$10,000 in a drug business. A local defense committee took up his case and called attention to blatant attempts to frame, but was unable to overcome concerted efforts to see Sostre put behind bars. After a half-day trial and a 60-minute deliberation, an all-white jury convicted Sostre and later sentenced him to 30 to 41 years in prison.

By 1968, Sostre was once again in Attica before being transferred to Green Haven prison, where he would be held in "punitive solitary," for assisting another individual with their legal case. Although the organizing and litigation surrounding his case would stretch on over the next decade, his arrest and conviction

reflected how the rise of a more secular, revolutionary nationalist politics and the explosion of urban rebellions quickly came to define the prison movement. Between 1968 and 1972, that combination shaped the most dramatic period of prison rebellions in the country's history. ■

Discussion Questions

- 1** How did incarcerated Muslims' litigation change prison regulations? How does their work affect incarcerated people today?
- 2** What were the dialectics of discipline between incarcerated Muslims and prison administrators? How do those interactions play out today?
- 3** Do you think jailhouse lawyering is an effective political tool?
- 4** What role did outside supporters play in the organizing by incarcerated Muslims? Do you think this connection is important for today's incarcerated organizers? If so, how?
- 5** What role did psychologists play in the State's repression of incarcerated Muslims?
- 6** What role did Malcolm X play in incarcerated Muslim litigation?
- 7** Why do you think incarcerated Muslim litigation during this period is not as well known as other aspects of the Civil Rights Era?