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Beyond The Whipping Post: The Judicial Sanctioning of Cruel and Unusual Punishment in Atmore Prison 1964-August 28, 1975

by John David Russell

Your Honor, the Defendants in this case, the Alabama Board of Corrections and several of its officers, rest their case at this time. They rest their case based upon the amended complaints filed and upon the overwhelming majority of the evidence, which shows that an Eighth Amendment violation (cruel and unusual punishment) has and is now occurring to inmates in the Alabama Prison System.

-Larry Yackle, *Reform and Regret*¹

THUS ENDED the state of Alabama's defense of its prison system before Federal District Judge Frank M. Johnson on August 28, 1975 in Montgomery, Alabama. With this brief declaration, spoken by attorney Robert S. Lamar, and at the direction of state Attorney General William (Bill) Baxley, the case of *Pugh v. Locke* brought the horrific conditions of Alabama's prison infrastructure, the people who ran it, and the state's elected representatives from darkness to light.²

Attorneys, such as Bobby Segall and Cumberland Law School Dean John Carroll, as well as journalists Bill Moyers, Frank Sikora, and Jack Bass have written articles and given interviews characterizing Judge Frank Johnson and Attorney General Bill Baxley as heroic and coura-

geous men for the manner in which they dealt with the state prison crisis in 1975-76. Their characterization of Johnson and Baxley created images of men, who, when made aware of the barbarism taking place in the Alabama prison system, swiftly put a stop to it while other officials turned a blind eye.³

A closer examination of facts, however, shows that Johnson's and Baxley's role in these events is mischaracterized. While both men claimed to have had no knowledge of just how horrifying prison conditions were until the testimony elicited in *Pugh v. Locke*, facts belie the assertion that neither Baxley nor Johnson knew the condition of Alabama's prisons. In spite of evidence to the contrary, they claimed to have been unaware of the degree of barbarism taking place inside Alabama's prisons. In fact, it is doubtful that any other individuals in Alabama had greater access to information about conditions within the Alabama prison system than did Baxley and Johnson. Furthermore, both of them failed to take action when initially confronted with the conditions of Alabama's prison system. Their unique actions and failures actually aggravated prison conditions. This is not to imply that they dictated policy to the

¹ Larry Yackle, *Reform and Regret* (New York: Oxford University Press, 1989), 14.

² Ibid.

³ John Carroll was former Dean of Cumberland Law School. Bobby Segall is a practicing attorney with Copeland Franco in Montgomery, AL. Bill Moyers was press secretary for President Lyndon B. Johnson. Frank Sikora is the author of the book *The Judge: The Life and Opinions of Frank M. Johnson*. Jack Bass is the author of the book *Taming the Storm: the Life and Times of Frank Johnson*; Rick Harmon, "Prisons in Peril-Alabama Trial had Huge Impact," *The Montgomery Advertiser*, September 15, 2013.



Judge Frank Johnson, seated at his desk, 1966. Photo courtesy of the Alabama Department of Archives and History, Montgomery, Alabama.

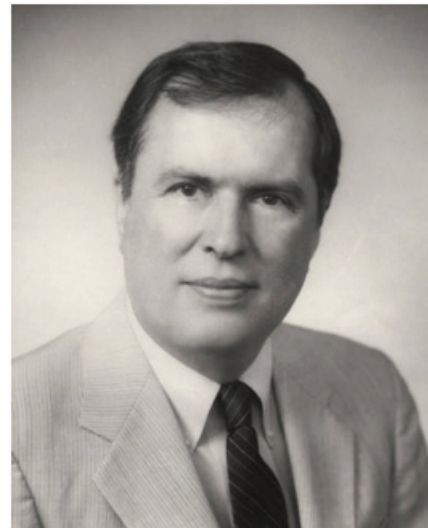
state Board of Corrections. This is to claim that there exists a record of actions (or inactions), prior to *Pugh v. Locke*, deliberately intended to establish a judicial and legal defensive perimeter around the Board of Corrections as to allow it to act without fear of restraint from the courts. With their intrinsic and unique knowledge of the prison system, Baxley and Johnson certainly knew that an unrestrained, underfunded, and overwhelmed Alabama Board of Corrections was tantamount to allowing anarchy within the prison's walls. Furthermore, Johnson and Baxley's actions gave judicial sanction to torture.

The I.F.A. Cries For Relief

As far back as 1969, five years before the *Pugh* case, a group of inmates - later known as the I.F.A. (Inmates for Action) - filed in Judge Johnson's court claims identical to those brought forth in the Jerry Lee Pugh case.

In each instance, Johnson either declined to hear I.F.A.'s complaints, dismissed them, or ruled against their claims. In one rare occurrence, Johnson partially ruled in I.F.A.'s favor. However, despite his favorable decision, Johnson expressed his dislike for the I.F.A. stating: "Most of the named plaintiffs in this suit are troublemakers..."⁴

Baxley could plausibly claim ignorance, and certainly no rational basis for responsibility, until 1971 when his term as Alabama's attorney general began. From January 1971 forward, it was Baxley's responsibility to represent the state against claims brought by the I.F.A. as well as any other prisoner. Logically, as attorney general, Baxley would have had knowledge of prison conditions if he were to mount an effective defense on behalf of the state. However, he was not content to be merely an informed attorney



Attorney General Bill Baxley, 1983. Photo courtesy of the Alabama Department of Archives and History, Montgomery, Alabama.

⁴ Judge Frank M. Johnson, "The Plaintiffs are Trouble-makers," *Diamond v. Thompson*, U. S. District Court for the Middle District of Alabama, 364 F. Supp., 659, July 30, 1973, 668.

general. As will be shown, Baxley went farther than previous attorney generals by personally prosecuting members of the I.F.A. Baxley, while state attorney general, personally stood before a jury and argued in favor of executing I.F.A. member Johnny Harris on March 1, 1975 in Bay Minette, Alabama.

Jerry Lee Pugh

While the I.F.A. received no relief and only scorn from the courts, Jerry Lee Pugh experienced a starkly different outcome. Pugh, a white ninth-grade dropout from Mattoon, Illinois, joined the U.S. Army in August 10, 1964, serving as a combat engineer. He received a dishonorable discharge in February 8, 1968, and moved to the Dothan area in Alabama where he bounced around to a dozen different jobs until incarcerated on a parole violation on May 30, 1973 (stemming from a 1969 case out of Houston County, Alabama).⁵

On July 20, 1973, Pugh arrived at Atmore Prison, and was assigned to dormitory number two, which housed over two hundred inmates though it was only designed for eighty. Pugh was one of only twenty-seven white inmates. After having been at Atmore for about three days, Pugh became aware of the tensions between white and black inmates. Bearing witness to the numerous and diverse weapons inmates held in their possession, Pugh requested, yet was denied, a transfer to a dormitory housing a higher percentage of white prisoners. The guards cited, among other reasons, a federal desegregation order as a reason for the denial.⁶

⁵ No mention is made of Pugh's underlying case. Jerry Lee Pugh, "Deposition," filed Dec. 19, 1974, *Pugh v. Locke*, accs. #021900016, vol. 5, box. 2, National Archives, Morrow, GA.

⁶ *Ibid.*

Less than a month later, on August 8, 1973, at approximately 7:30 p.m., a fight erupted within the dorm with the full involvement of all 200 prisoners. The fight was, regrettably, nothing out of the ordinary at Atmore. Prisoners used steel bars and knives, ranging from one to three feet long, as well as ax handles and tomahawks as weapons. Of the casualties requiring hospitalization, Jerry Lee Pugh was the last to leave because it took several hours to find him. Most prisoners thought he was already dead and had stuffed what they thought to be his corpse under a mattress for fear of indictment for his murder.

Pugh arrived at Mobile General Hospital in the early morning hours of August 9, 1973, suffering from a fractured skull, broken arm, a knife wound across his back, left arm, left clavicle, and skull. Doctors advised that Pugh undergo surgery in six to eight months to have a plate placed in his skull to fill the void left by the removal of skull fragments.

After release from the hospital, Pugh wrote several letters from prison attempting to enlist personal assistance as well as assure his safety. One of Pugh's letters arrived on the desk of Judge Frank M. Johnson. Judge Johnson appointed one of his former law clerks, attorney Bobby Segall, to represent Pugh. Segall, at Johnson's direction, filed in Johnson's court the case of *Pugh V. Locke* as a platform to advocate on behalf of all prisoners housed in the Alabama prison system. Segall's argument rested on the belief that the state of Alabama was not fulfilling its obligation to provide prisoner safety, medical care, food, clothing, and shelter.⁷

The conditions described in the case of inmate *Jerry*

⁷ There was also another case consolidated into the Pugh case, *Worley James v. Judson C. Locke*. James claim differed from Pugh's in that he claimed a duty from the state of Alabama to rehabilitate him while Pugh made no such claims. Laughlin McDonald, "A Decade of Litigation a Southern Devil's Island," *Southern Changes* 12, no.2 (1990): 18

Lee Pugh v. Commissioner Judson C. Locke should not have surprised anyone. As mentioned earlier, the I.F.A. had previously petitioned the clergy, the governor, the legislature, the courts, the press, and even the League of Women Voters, in an effort to improve conditions within prisons and jails.⁸ Based on information in the public domain alone, Johnson and Baxley should have known prison conditions were in clear and present violation of every incarcerated American citizen's right against cruel and unusual punishment. For Johnson and Baxley to know nothing, would mean that they had never watched local Montgomery television and had never picked up a copy of the *Montgomery Advertiser* newspaper. In 1973, no more than three weeks went by before a stabbing or a killing occurred inside of Alabama's prisons.

An Alabama Prisoner's Life 1964-1975: Intake

The humiliation, degradation, and abuse began at intake. Mt. Meigs, near Montgomery, was the infirmary and intake reception. New prisoners would enter the compound and move to the quarantine area. Prisoners would stand in a long line and strip naked as the guards yelled the rules while conducting body cavity searches. Prisoners then deposited their civilian clothes in an incinerator on the way to the shower. Before showering, guards sprayed



Plaintiff Jerry Lee Pugh speaks to his attorney Bobby Segall prior to his 1975 trial. Courtesy of the Southern Poverty Law Center.

the prisoners with a carcinogenic disinfectant called DDT.⁹ After the shower, prisoners received their new clothes and returned to quarantine for at least three weeks. Prisoners could not send or receive mail during quarantine. The only thing provided to the prisoners during this period was the inmate's handbook. The handbook cautioned against hanging out with troublemakers, but also strongly emphasized the perils of associating with "jailhouse lawyers".¹⁰ A prisoner giving legal assistance to another prisoner was subject to disciplinary write-up. A prisoner that filed a complaint, or raised a grievance, went into administrative segregation - otherwise known as solitary confinement - a

⁸ F. B. League, *Preliminary study by the Joint Committee of the League of Women Voters of Greater Birmingham and the American Civil Liberties Union Greater Birmingham on the Birmingham branch of the Jefferson County Jail and the Birmingham City Jail* (Birmingham, 1973), 1-32.

⁹ Clancy Lake, *Clancy Lake's 60 Days Inside Alabama's World Behind Bars* (Birmingham: Hanson, 1959), 12.

¹⁰ State of Alabama, *Inmate Handbook*, Jan. 1, 1964 *Lake v. Lee*, accs. #02175B705, boxes 90-92, National Archives, Morrow, GA.

practice continued within Alabama's prison system until approximately 2013.¹¹

Permanent Housing

Following quarantine, prisoners received their permanent housing assignments. Atmore-Holman in Escambia County maintained a decades-old reputation as being the facility housing the toughest and roughest. Once prisoners rolled through the gates of Atmore-Holman, they settled into their assigned dormitory. Atmore's dormitories were designed to hold approximately eighty people, but by the late 1960's, and during the case of Jerry Lee Pugh, two hundred was the accepted norm. The dorms contained no air conditioning, and the only windows were mostly broken at the top of a high ceiling unreachable by prisoners. In the cold months, there was little in the way of heat. There were multiple toilets, but the plumbing was in such disrepair that, upon flushing the toilet, the dorm would frequently flood causing enormous agitation from those prisoners who, due to overcrowding, slept on the floor near the toilet. Prisoner testimony in *Pugh v. Locke* described rats the size of small cats. The rats no longer feared humans and walked through the dorm as if they were a household pet.¹²

Prisoners, guards, and administration cautioned newly arriving prisoners to be ready for physical attack and sexual assault. The warden's advice to new prisoners was to get a knife from another prisoner and learn to fight. Prisoners begged the guards for protection, but the guards

did not see it as their obligation to assure the safety of prisoners and recommended following the warden's advice to find a knife.¹³ At 6:00 p.m. every night, guards locked all prisoners inside their dorm and remained outside until 5:00 a.m. the next morning. A guard would stand outside the locked door, but he was under strict orders not to go inside the dorm. It was not safe to enter.

Alabama employed the "trusty system", the creation of Huey Long of Louisiana.¹⁴ In its most simple form,

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the "trusty system" consisted of armed prisoners guarding prisoners. If trouble occurred inside the dorms during the night, or any other time, it was the trusty's job to break up the fight. Inside the dorms, and on the field crew, the trusty assured order and discipline within the convict population. Trustees carried with them a pick handle and a knife. If a worker on a field crew was moving slow, the trusty would beat him on the guard's order. The trusty system reduced labor costs, since one guard could direct three trustees in the fields, and each trusty could control about twenty prisoners.

Statistics from Atmore-Holman, entered into evi-

¹¹ Mike Cason, "Alabama Prison Commissioner Releases Report on Problems, Improvement Steps at Tutwiler," accessed Nov. 4, 2015, http://blog.al.com/montgomery/2013/01/alabama_prison_commissioner_re.html.

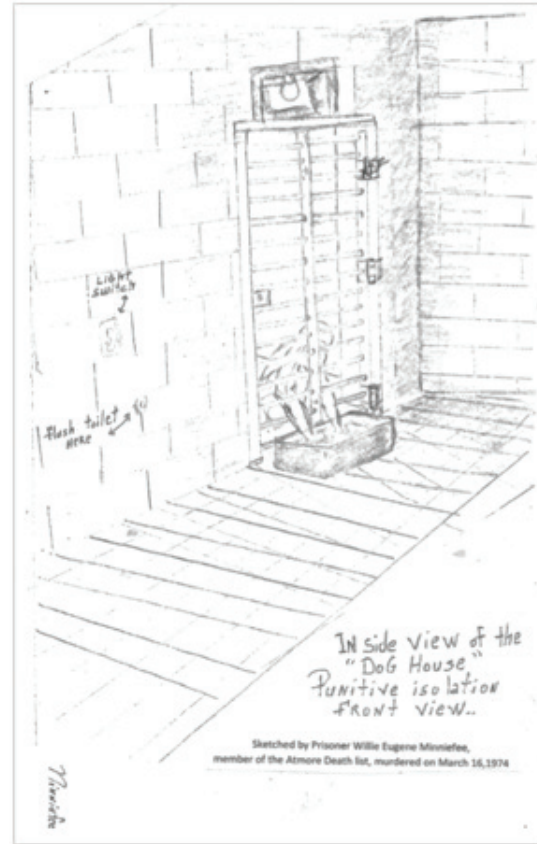
¹² Charles Sarder, Trial Testimony, Aug. 21, 1975., *Pugh v. Locke*, accs.#021900016, vol. 5, box. 2, National Archives, Morrow, GA.

¹³ Interview with inmate Roosevelt Youngblood Jr. and Pugh's attorney Alvin Bronstein, Stephanie Hoops, "Doin' Hard Time: State's Longest Serving Inmate has Witnessed Change, and Tragedy," *Tuscaloosa News*, May 12, 2002.

¹⁴ John Vodicka, "Prison Plantation," *Still Life* 6, no.4 (1978): 31.

dence during the *Pugh v. Locke* case, were staggering. Atmore-Holman housed about one thousand eight hundred inmates, though it was designed for less than one thousand. During a twelve month period, from 1971 to 1972, there were fourteen inmate-on-inmate killings: ten from stabbing, three violent deaths listed as unknown, and one from strangulation. Statistics showed that a prisoner sentenced to two years had as high a probability to being killed inside the prison, as a soldier fighting in Viet Nam.¹⁵

The prison doctor assigned to Atmore-Holman gave testimony at the *Pugh v. Locke* trial that he treated at least fifty sexual assault victims per week.¹⁶ Sexually transmitted diseases were so numerous that the infirmary was constantly in short supply of medication. One figure suggested that three out of four prisoners engaged in homosexual intercourse, by force or consent, on a consistent basis.¹⁷ Strangely enough, the prison psychologist found nothing worrisome in this practice, because once these prisoners went back to regular society, they would return to being heterosexual.¹⁸ The true number of sexual assaults was, likely, much higher, because many went unreported by prisoners who did not want to be ridiculed by fellow inmates and the administration.



Front View of the “doghouse.” Sketched by Prisoner Willie Eugene Minniefee, murdered March 16, 1974. Courtesy of Atlanta Federal Records Center.

The “Doghouse” And The End Of The Whipping Post

Though the conditions for the general prison population were horrific, and apparently known to virtually everyone but Judge Frank Johnson and Attorney General Bill Baxley, the tales from punitive isolation provided the

most gruesome testimony in the case of *Pugh v. Locke*, even though Jerry Lee Pugh never spent a night in punitive isolation (also known as the prison “doghouse”). The “doghouse” had been around for years but was seldom used, because it was far less humane than lashes with the whip. Reform minded legislation, that took effect in the late 1940’s, however, banned the lash and whipping post, except in juvenile facilities. Reformers did not realize that the elimination of the whip actually caused more harm, because the “doghouse” became, by default, the means

15 <http://www.americanwarlibrary.com/vietnam/vwatl.htm>, accessed May, 10, 2016.

16 Hoops, “Doin’ Hard Time.”

17 Sandra Baxley, “Harsh Realities of Prison Life” *Mobile Press Register*, June 11, 1973.

18 *Ibid.*.

to punish inmates. Prisoners often stated that the whip scarred the body whereas the “doghouse” scarred the soul. A “doghouse” prisoner’s sentence ranged anywhere from one to twenty one days at a time.

Between the late 1940’s and August 28, 1975, “doghouse” prisoners entered a room measuring approximately forty-eight square feet with cinder block walls and a concrete floor. In the middle of the cell, a hole served as a toilet with no way to flush from the inside of the cell. Years of poor sanitation had left the “doghouse” floor with a one-inch mixture of dirt, urine, and excrement. Prisoners were thrown into the “doghouse” either fully nude or, at the most, with a pair of boxer shorts.¹⁹ No blankets were allowed regardless of the season, even when the temperature dipped down below thirty-two degrees. Prisoner meals consisted of a small square of cornbread one time a day, five days per week, and three cups of water daily. Prisoners received one full meal on Mondays and Fridays, served on paper plates, but with no utensils with which to eat. When the solid steel door shut to the “doghouse,” it was pitch black. For twenty-one days, the only time a prisoner would see light was when he received his water and cornbread.

Prisoner complaints stated that as many as thirty people at a time occupied a cell, whereas the administration settled on a number of twenty at a time. From an analysis of Atmore-Holman records, it appears “doghouse” residents, with the exception of one or two, were all Negro. The prisoners were packed in so tight in the darkness, that they had to spend most of their twenty-one days in the “doghouse” either standing up, sitting down, or curled up in a fetal position, because of lack of space.

Administrative segregation, another type of punitive isolation, was less harsh and consisted of confinement

in a 9 x 5 cell for an indefinite time. Unlike “doghouse” prisoners, prisoners in administrative confinement did have a bunk to sleep on, along with one blanket. Most of the cells did not have a toilet, so a slop bucket had to suffice.²⁰ Unlike their counterparts in the “doghouse,” prisoners in administrative segregation did receive light. Guards were supposed to let them out of their cell once every eleven days, but this occurred only on rare occasions. They did receive three meals a day. There were no maximum occupancy rules, but they generally were two-man cells. As far as the term “indefinite” goes, ten years in administrative segregation was nothing out of the ordinary.

The Road Camp Era 1928-1964

The question arises: “How did things get so out of control?” Most research concerning the *Pugh v. Locke* litigation has focused on the horrific prison system being a function of two intertwined factors - overcrowding and profit. The idea that prisoners should be a profit for the state, not an expense to it, went all the way back to the convict lease system. When the era of the convict lease system ended in 1928, the era of the road camp began.²¹ While the termination of the convict lease system heralded the end of the prison system as a guaranteed profit center, the eighteen road camps scattered throughout Alabama assured citizens that the prison system had, at least, the potential to be self-sustaining and not a liability to the state. The lease of prisoners to the state’s Highway Department brought in an excess of one million dollars per year to the Board of Corrections.

The road camp design of eighty prisoners per

¹⁹ Willie Beard, “Deposition,” filed May 31, 1969, *Lake v. Lee*, assc. #02175B705, box. 90-92, National Archives, Morrow, GA.

²⁰ Ibid.

²¹ Legislation to end convict leasing passed in 1924, but was not to take effect until 1928; Lake, *Clancy Lake’s 60*, 1-60.

camp, versus seven hundred at the maximum security “walled” prisons at Kilby, Atmore, and Draper, allowed for the implementation of policies and procedures, otherwise not allowed by the state of Alabama, that contributed to civility and safety.²² Most road camp captains allowed conjugal visits, reducing violence to almost nil. Additionally, the road camps recycled all the glass and aluminum found on the road and disbursed profits, in equal shares, back to the inmates. A testament to the safety and security within the road camp was the fact that young men newly hired by the state highway department frequently lived in a road camp to save money.²³ Because road camps offered conjugal visits, and a chance for prisoners to make a little money while incarcerated, they had a lower recidivism rate than walled prisons.

In spite of the cost efficiency and rehabilitative aspects of the road camp, it had two major liabilities. First, it was dependent on the willing partnership of the State Highway Department. As already mentioned, the State Highway Department was paying the Board of Corrections over one million dollars a year for prison labor. If the Highway Department decided to pull the plug, then the Board of Corrections could not exist without that money coming in.

The other liability was security. Road camps suffered numerous prisoner escapes. In order to address these two liabilities, beginning in the early 1960’s, the Board of Corrections devised a plan to bring prisoners behind the walls, thereby assigning Negro prisoners to the Atmore

prison farm and White prisoners to the Kilby and Draper manufacturing centers. The plan never materialized, because the Board of Corrections could not part with the million dollar of yearly revenue generated from the Highway Department’s lease, which accounted for about one-fourth of the department’s budget. Additionally, the manufacturing facilities at Kilby and Draper were obsolete, and there was no money to modernize the equipment.

The road camp’s ultimate demise came as a result of public outrage over prisoners’ escapes. Two unrelated escapes at opposite

ends of the state, in June 1964, amplified the public’s displeasure with the road camp model, causing an already bad situation to rapidly worsen. The first escape took place on June 15, 1964, when Johnny Beecher, serving a 10-year sentence for rape in Clarke County, escaped from a road crew in Stevenson, North Alabama. Beecher subsequently raped and strangled pregnant, newlywed Martha Jane Chisenall leaving her bound and lifeless body underneath a pile of leaves behind her house.²⁴

The second incident involved Ben T. Mathis serving a ten-year sentence, out of Montgomery County, for killing a Negro woman. He escaped from the Enterprise road camp in South Alabama five days after Beecher, on June 20, 1964. Mathis got drunk, broke into the house of senior couple Mr. and Mrs. Joseph Edward Morgan and killed both of them. Mathis stabbed Mr. Morgan one hundred eleven times.²⁵ These two events signaled the end of the road camp and the beginning of overcrowding and

“ THE WARDEN’S ADVICE TO NEW PRISONERS WAS TO GET A KNIFE FROM ANOTHER PRISONER AND LEARN TO FIGHT.

22 Wetumpka was referred to as “the walls;” Yackle, *Reform and Regret*, Preface.

23 Charles Walker, interview by author, Springville, AL, September 18, 2015.

24 *Beecher v. State*, 193 So. 2d 505, Court of Criminal Appeals of Alabama, 1966.

25 *Ben Mathis v. State*, 189 So 2d 564, Court of Criminal Appeals of Alabama, 1966.

budget shortfalls.

year sentence.²⁷

Richard E. Lake Jr. and the I.F.A. in 1969

As mentioned earlier, before *Pugh v. Locke*, Judge Johnson heard the case of *Richard E. Lake v. Prison Commissioner Frank Lee*. To Judge Johnson, Richard Lake Jr. embodied the meaning of the word “troublemaker” since they first had crossed paths in 1969. To prisoners within Alabama, past and present, Richard Lake Jr. is the founding member of the I.F.A. Born in 1940 to Richard Sr. and Alma Lake, Richard Jr. grew up near Legion Field in Birmingham, Alabama. His father worked downtown for Morris Sher selling clothes and furniture, primarily on layaway or in-house credit.²⁶

Richard Jr. was brilliant, fearless, and not afraid of the police. He caught the attention of the Birmingham Police in 1953 when he was arrested for robbery at age thirteen. A Birmingham Police index card listed him as being sixteen, thereby making him more likely to receive certification as an adult. Evidence suggests that he did a short stint at a juvenile hall in Mt. Meigs near Montgomery on a larceny charge at age thirteen.

In May of 1960, Clifton Waldrop from the Star Gas Station claimed that Lake robbed him. Lake refused the offer of a three-year plea and went to trial with Orzell Billings as his defense lawyer. Even though the prosecution presented only one witness, while Lake’s defense presented in excess of fifteen witnesses, Lake still lost the trial. Jefferson County Circuit Court Judge Alta King meted out a ten-year sentence that did ultimately turn into a thirteen-



Current Picture of Richard Lake.

Lake began his sentence at the Hamilton road camp, but within six months he was transferred to Decatur and, later, to the Cullman road camp. He escaped from the Cullman camp in April 1961, fleeing to Detroit, Michigan, where he remained free for twenty-one days. He was captured and brought back to road captain W.O. Dees. This misadventure, however, sent Lake to Atmore prison’s administrative segregation where he would remain for the next twelve-years, entering into general population for only brief periods every two to four years.

Lake, not being content with either his conviction or condition, chose to ignore the inmate handbook’s warning about the dangers for troublemakers and jailhouse

²⁶ “Trial testimony,” *Richard E. Lake Jr. v State*, 6 Div. 457, Appellate Opinion 1985, Alabama Department of Archives and History, R-207, Montgomery, AL.

²⁷ Birmingham Police Department Inter-Office Communication, June 27, 1960, File 1125.1.3, Birmingham Police Department Surveillance Files from 1955-1980, Birmingham Public Library Department of Archives and Manuscripts, Birmingham, AL.

lawyers. Lake wrote letters, and recruited other prisoners to write letters, to people in the outside world asking for help. Lake formed a small alliance of prisoners petitioning the Catholic Church, the National Association for the Advancement of Colored People (NAACP), numerous Universities, and the U.S. Department of Justice.

Richard Lake studied Fredrick Neitzsche, Aristotle, and Thomas Paine. He also taught himself calculus in his cell. The administration resented the influx of books and, subsequently, confiscated all his books, paper, and pens citing a threat to the security of the institution. Security threats were defined according to the opinion of the warden and were subject to indefinite confinement without explanation.²⁸

As previously mentioned, Lake lobbied the NAACP's Legal Defense Fund to petition the courts to end the "doghouse," modify administrative segregation, and improve general population long before the *Pugh v. Locke* case. NAACP's Legal Defense Fund responded to his requests by hiring U. W. Clemmon to file a case in the Middle District of Alabama on May 31, 1969, before federal Judge Frank M. Johnson. The case was *Lake v. Lee* and sought certification, as a class, to end some practices and improve conditions in the Alabama prison system, just as *Pugh v. Locke* would do six years later. Right after filing in Judge Johnson's court, attorney general Macdonald Gallion was granted a change of venue from Judge Johnson's court in Montgomery to Judge Virgil Pittman's in Mobile. Judge Johnson never explained why he chose to punt the *Lake* case, yet chose to hold onto *Pugh v. Locke*. Had he held onto the *Lake* case, he could have issued the same order six years earlier and, most likely, saved well in excess of eighty lives.

Mobile Judge Virgil Pitman took jurisdiction of

the case *Lake v. Lee* from Judge Johnson. In spite of his being in administrative segregation, Lake worked tirelessly in preparation for the case. Lake and his fellow prisoners compiled the statements of over two hundred witnesses to testify to the charges in the complaint. Lake gathered and kept meticulous notes, in spite of the fact that the only thing he had to write with was a smuggled stub of a pencil and a few pieces of toilet paper. He accomplished all of this while never leaving his cell.²⁹

The case was doomed before it started when on June 1, 1970, Judge Pittman consolidated Lake's case into four other cases, because of what he believed were similarities between them.³⁰ Now, rather than having Judge Pittman's undivided attention with regard to matters pertaining to Richard E. Lake Jr.'s case, U. W. Clemmon would have to share the stage with several other attorneys. Because the consolidated case included three sub-cases, Judge Pittman limited the number of witnesses in the now consolidated case to ten, far fewer than the two hundred Lake had lined up to testify. According to Lake's writings, Clemmon believed Judge Pitman would rule against them, but he planned to preserve all items for appeal, and he assured Lake they would appeal.

On June 30, 1971, Judge Pitman gave his order in regards to the matters brought before him in the case of *Lake v. Lee*. The news was bad, but the worst part was that Lake did not find out about the order for almost a full month after it was released. And he did not hear it from his attorney, in spite of numerous requests and letters. Contrary to earlier statements, Clemmon did not to appeal and never consulted Lake about his decision. In a letter to his

29 One folder in the 3rd box of the case file archives contains multiple pieces of toilet paper with notes scribbled on them, *Lake v. Lee*, assc. #02175B705, box. 92, National Archives, Morrow, GA.

30 Judge Virgil Pittman, "Order," filed May 31, 1969, *Lake v. Lee*, assc. #02175B705, box. 90-92, National Archives, Morrow, GA.

28 "Books confiscated from Lake's cell," *Lake v. Lee*, assc. #02175B705, box. 92, National Archives, Morrow, GA.

attorney, Richard Lake Jr. wrote: “The courts gave judicial sanction to barbarism and if you aren’t hip to this then you are in the wrong profession.”³¹

Judge Pittman ruled in the state’s favor on every claim, except for matters related to the “doghouse” (punitive isolation). Pittman declared that Lake’s demeanor and attitude in court, as well as on the witness stand, “shaded the credibility of his testimony and any claims by Lake of beatings were either non-existent, greatly exaggerated or deserved.” It was disturbing that a sitting federal judge would think that a prisoner could earn or deserve a physical beating. Pittman never tried to reconcile how Lake lost a finger, which Lake stated took place while receiving one of his many beatings. With regard to Lake’s claims of forced homosexuality, as being the result of collaboration between trusty prisoners and administration, Pittman found, “no evidence of such and that it is more likely the result of inmates own initiative.” In the matter of Lake’s claims that inmates were marked for death by the administration, Pittman found that to be totally without merit. Pittman also failed to place limits on the number of “doghouse” sentences a prisoner could receive. One prisoner chalked up fifty one trips, and over one thousand days, in the “doghouse” over an eight-year period.³²

Richard E. Lake Jr counter-argued that Judge Pittman could not find evidence to prove his claims because he had not allowed more than ten witnesses in the whole case. In essence, this meant that Lake could only present himself and, at most, three other witnesses, because the other two plaintiffs were due their share of the ten-witness allotment. Even if all two hundred witnesses had been allowed to tes-

tify, however, it seems likely that Pittman would not have believed any of them, as they were all inmates at Atmore-Holman whose credibility, in the judge’s eyes, was compromised. As Pittman stated: “Inmates would do or say whatever they felt necessary to obtain their release, and short of this, to have their way.”

As mentioned earlier, Pittman did address and make changes to the “doghouse” as follows:

1. Inmates in punitive isolation be allowed to wash their hands prior to eating their meal.
2. Inmates in punitive isolation be furnished adequate toilet paper.
3. Drinking water will be furnished a minimum of 3 times a day.
4. Inmates in punitive isolation will be furnished shirt and pants and a pair of cloth slides for the feet.
5. Meals will be fed on paper plates with plastic spoons.
6. The number of persons per cell in isolation is not to exceed eight.
7. Medical attention will be available whenever needed and the doctor will visit the unit once every three days.
8. All inmates in isolation will be served one meal per day, except under extraordinary circumstances.
9. Each inmate will be given one blanket.
10. The lights will be left on a minimum of eight hours and a maximum of sixteen hours per day.
11. The punitive isolation cells will be adequately ventilated, appropriately heated, and maintained in a sanitary condition.

31 Richard E. Lake to U.W. Clemmon, Letter dated March 2, 1972, filed May 31, 1969, *Lake v. Lee*, assc. #02175B705, box. 90-92, National Archives, Morrow, GA.

32 Willie Beard had in excess of 51 citations remanding him to the “doghouse,” *Lake v. Lee*, assc. #02175B705, box 90-92, National Archives, Morrow, GA.

12. All toilets in punitive isolation will be flushed a minimum of three times a day.³³

This order represented Pittman's thoughts on punitive isolation and, ultimately, it made things worse for prisoners. Prior to Pittman's order, it was still questionable whether the "doghouse" was even legal, but with it this issue was resolved. Prisoners and their attorneys could no longer file claims before, perhaps, more sympathetic judges objecting to the "doghouse," because this order settled the question of law. It is frightening to think that a sitting federal judge could sanction cramming eight people into a forty-eight square foot room.

The only real change in "doghouse" policy was that prisoners won a spoon with which to eat, toilet paper, and eight hours of light per day. The remaining period was complete darkness. Even though ordered to do so, the inmates attest a doctor never visited the "doghouse." The rations did not change because the administration retained the right to determine an extraordinary circumstance, and they almost always decided every "doghouse" sentence was an extraordinary circumstance. To make things worse, the court order demanded that toilets be flushed three times a day. Pittman's order said nothing about the plumbing being in working order, so now guards would flush the toilets three times a day frequently covering the eight prisoners in each cell with waste. When prisoners complained, guards smiled and told them they were under federal court order and had to do it.³⁴

33 Previously unpublished agreement between parties in the Beard v. Lee case consolidated into the Lake case, Judge Virgil Pittman, "Order," January 24, 1969, *Lake v. Lee*, assc. #02175B705, box 91, National Archives, Morrow, GA.

34 Guards frequently liked to blame actions on federal court orders. Robert Segall, "Complaint," *Pugh v. Locke*, accs. #021900016, Vol. 5, box 2-3, National Archives, Morrow, GA.

The Inmates For Action and the First Prisoner Labor Union

Lake and his alliance of prisoners had followed the rule of law and petitioned the courts to address their grievances. The court, however, dismissed their claims based on who they were and how they had acted in court. The court frequently stated in Lake's cases that the Prison Administration Board enjoyed discretion on how to operate prisons without interference from the courts. This statute was based on the case of *Beto v. Novak*.³⁵ The *Beto* case was a higher court case originating out of Texas and served to place prisons virtually outside the jurisdiction of the courts.

To the prisoners, the United States Constitution had failed them. It was not possible that the United States Constitution allowed for eight American citizens to be crammed into a forty-eight square foot room for twenty-one days at a time only receiving a full meal twice a week.

Judge Johnson's punting of the case, and Judge Pittman's order of June 30, 1971, forced Lake and his fellow prisoners to realize that the court system was not the only place that could induce change to improve their condition. They used the next twelve months to become more than just an alliance of prisoners. They created the prisoner union I.F.A., an acronym for Inmates For Action. The original founders of the I.F.A. were Negro, but they were able to recruit a substantial number of white prisoners before the latter were threatened with their lives by non-union whites on behalf of prison administrators. Within the walls of the prison, in the court system, and throughout the press, the I.F.A. got attention.

35 The 5th circuit appeals case gave broad power to prisons to administer prisoners. "Courts are not equipped to administer state prisons," *Ronald Novak v. Dr. George J. Beto*, No. 31116, United States Circuit Court of Appeals, (5th Circuit), March 8, 1972.

The I.F.A. was formed in the Fall of 1971 on the yard of Atmore prison. Even though they were not ready to act in May 1972, the I.F.A. felt compelled to take action after guards savagely beat almost to death one of their members, Willie “Fly Red” Spencer. In protest, the I.F.A. held a rally on the prison yard and then launched a labor strike. The strikers’ demands were for the administration to recognize the union as the representative of all prisoners, to meet with union representatives, and to show good faith in implementing some reforms. The administration refused to recognize the union, but the strikers held firm. After four days, the administration closed the dining hall in an effort to break the strike by starving the prisoners. The strike continued to hold and after two more days the warden re-opened the dining hall. To show strength and solidarity, the strikers refused to enter the dining hall. After eight days, the administration met with I.F.A. union representatives, but the only result was the inmates’ return to work with prison administrators failing to honor their commitments.

This first strike, however, was only a dress rehearsal for the big strike that started on the afternoon of Thursday, October 11, 1972, at Atmore. The strike was five hundred prisoners strong. Richard E. Lake Jr. had carefully planned for the strike to take place during harvest time in October. If the prisoners did not return to the fields, the cash crops would rot in the fields. The Department of Corrections was in dire need of the revenue from those cash crops. Hoping to avoid the pitfalls of the last strike, the administration met with the prisoners the next day and agreed to some of the demands. The workers returned to the fields, but the administration again failed to honor the agreement, causing even more tension between inmates.

On a positive note, Richard E. Lake Jr. reached the end of his sentence on May 11, 1973, and remained a free man until June of 1983. But for the other members of

the I.F.A., things went from bad to worse between October 1972 until January 18, 1974, with individual stabbings and beatings serving to increase pressure within Atmore-Holman prison.

The I.F.A. continued to file suits in the Federal courts, and Johnson continued to express his dislike for the I.F.A. On the occasion of the 1973 case of I.F.A. member *Glenn Diamond v. Prison Commissioner L.B. Sullivan*, Johnson stated that “the named plaintiffs in this suit are troublemakers, knowledgeable in manipulating and maneuvering others to their advantage.” The *Diamond v. Sullivan* case represented another specific occasion in which Judge Johnson could have done something sooner to stop the existing brutality, but he did not.³⁶ The case of *Diamond v. Sullivan* sought, among other things, to challenge the conditions set forth in Judge Pittman’s previous order. Judge Johnson declared that those matters had been settled and refused to redress them. By this time, Bill Baxley was already attorney general and would have, or should have, known of the conditions in Alabama’s prison system set forth in this case. Baxley’s responsibility was to defend the state in the federal court system. A federal judge, or the attorney general, having no knowledge of the conditions in the state’s prison system would have been, in the words of Richard Lake, “blind, deaf, and dumb.” Especially taking in consideration that Lake and the I.F.A. employed every form of communication available in order to get their message out regarding the conditions in Alabama’s prison system.

Judge Johnson was still not done with his disdain, when he dismissed I.F.A. member Edward Ellis’s claim in November 1974 regarding the lack of heat in the tubercu-

³⁶ Lake filed multiple cases in addition to *Lake v. Lee*. One of his cases, *Lake v. Sullivan*, was consolidated into the *Diamond v. Sullivan*, 364 F. Supp. 659, July 30, 1973, United States District Court, M.D. Alabama, N.D.

losis ward at Mt. Meigs. Judge Johnson took a posture of non-interference citing the language of *Beto v. Novak* and stating the Prison Administration Broad's discretion in operating Alabama prisons. He also claimed as a fact, without any evidence of such, that the heat in the tuberculosis ward had been just fine. Throughout his tenure, Johnson intentionally never entered a prison or state hospital.³⁷ To place this in proper perspective, Ellis filed a similar case in Judge Varner's court at approximately the same time, objecting to the lack of heat in the Mt. Meigs infirmary. Judge Varner refused to dismiss the case citing a desire for the truth to come out regarding the conditions within Alabama's prison system.³⁸

The Riot And The Revolution

The conditions within Atmore-Hollman reached their apex and exploded on January 18, 1974. On this date, a rebellion occurred in administrative segregation. The result of the rebellion was the death of guard Luell Barrow and prisoner George Dobbins from Anniston. The rebellion started when guards walked into the segregation unit at Atmore prison with bloody clothes and laughing about the beating they had just administered to Jesse Clanzy, a fellow I.F.A. member locked up on the Holman side of the Atmore-Holman complex. According to an I.F.A. member's testimony in *State v. Oscar Johnson*, the guards stated inside the segregation unit: "Let's go in these cells and kill these revolutionary niggers just like we did Clanzy."

While it may be disputed as to what the guards said,

there was agreement among the parties that two guards entered the administrative unit covered in Jesse Clanzy's blood. Inmates stated they thought they were next to be killed.³⁹ Johnny Harris and Oscar Johnson were in the hallway of the segregation unit picking up the food trays from the locked up prisoners when they grabbed both the guards. After grabbing the guards, they opened the cell doors of the fifty prisoners in administrative segregation. Of those fifty, only about twenty-five were I.F.A. members.

The surviving I. F. A. members later stated that their intent was to hold the guards hostage, so they could bring outside attention to their condition. They stated that the hostage taking was a last resort, because every other remedy had failed them. They had petitioned the courts on numerous occasions, but the courts consistently denied any sort of relief. They had sought a peaceful labor strike, but the administration had refused to honor its commitments. The I.F.A. believed that they had no other course of action than to take hostages.

The leader of the rebellion was I.F.A. member George Dobbins from Anniston, Alabama, who told the warden they would release the hostages upon satisfaction of their one and only demand. They requested to meet with the prison commissioner L.B. Sullivan, Catholic Sister Patricia Caraher, Tom Martin from the *Montgomery Advertiser*, and state legislator Fred Gray. Reports differ as to whether the prisoners said the warden had five minutes to get them there, or whether the warden said he was not getting anybody.⁴⁰

Within the next few minutes, the warden became aware that one of the hostages was already dead and the other hostage was injured. Warden Harding gave the order

37 Video: Bill Moyers Journal, "Judge: The Law and Frank Johnson," WNET/Thirteen, New York, PBS air date July 24, 1980.

38 Both Varner and Johnson sat in the Montgomery Federal building. Two virtually identical cases but two different rulings. "Prison Criticism Upheld," *Mobile Register*, 15 November 1974.

39 Trial testimony from Oscar Johnson, *Johnson v. State* 335 So. 2d 663 (1976) 3 Div. 340, Appellate Opinion May 18, 1976, Alabama Department of Archives. Montgomery, AL., 165.

40 Trial testimony of Marion B. Harding, *Ibid.*, 35.

for his “heavy team” of guards to enter the cellblock firing shotguns as they entered. When the carnage was over, there were fifty wounded prisoners, one dead guard, and a prisoner that would arrive dead at the hospital (George Dobbins).⁴¹

After the riot, Harding allegedly left the cellblock, while guards ordered the prisoners to strip naked and crawl in a line through the lobby of the cellblock while guards beat them with pick handles. As for where Harding was at this time, it is still in dispute. One witness testified under oath that Warden Harding was in a shower stall with George Dobbins beating him across the face with a pick handle. The original press release stated that Dobbins died of a gunshot wound, but the coroner’s report several days later stated that he died from numerous hits across the face with either a wooden club or steel rod. Harding maintained that he went outside the cellblock to check on the injured guard and did not kill George Dobbins.⁴²



Johnny Harris shortly before his death in 2012.

Of the fifty prisoners in administrative segregation on January 18, 1974, all 7 receiving indictments held I.F.A. membership. Between January 18, 1974, and the date of their trials in early 1975, multiple members of the I.F.A.’s senior leadership died under mysterious circumstances. According to grand jury testimony in Escambia County, Alabama, given on April 2, 1974, by reporter Sandra Baxley of the *Mobile Register*, she took possession on March 4, 1974, of a twenty-three person death list supposedly smuggled from the warden’s desk. Though it has never been confirmed if all the names on the death list were of I.F.A. members, most were. First on the list was George Dobbins, who had already died during the January 18, 1974, events. Sandra Baxley did not think much of the list until eight days later, on March 12, 1974, guards clubbed to death Tommy Dotson, the number two man on the list. Willie Eugene Minniefee, the third man on the list, died four days later on March 16, 1974. On April 25, 1974, I.F.A. member Frank Moore, also mentioned on the death list, was found to have committed suicide by hanging inside the Mobile County jail, according to an article in next day’s *Mobile Press*. Nothing ever became of this series of unfortunate events.

Five Atmore-Holman brothers went to trial for the January 18, 1974, death of guard Luell Barrow. Attorney General Bill Baxley asked for the death penalty for Johnny Harris:

A law from 1862 states, that if an inmate is serving a life sentence (as was Harris for rape and robbery) and is convicted of first-degree murder, the death penalty is automatic. This would get around the objection the U.S. Supreme Court found in Alabama’s (and other states) capital punishment laws....the discretion of the jury to give life or death. The other four

⁴¹ Trial testimony of Marion B. Harding, *Ibid.*, 38-44.

⁴² Trial testimony of Marion B. Harding, *Ibid.*, 48.

inmates charged in the guard's murder are facing Alabama's regular murder statute providing a life sentence. None of these inmates were serving a life sentence at the time of the riot.⁴³

The Supreme Court's 1972 ruling in *Furman v. Georgia* resulted in the de facto commutation of every death sentence in the country to life in prison.⁴⁴ A conviction for Harris would mean that he would have the sad distinction of being the founding member of Alabama's new death row. Attorney General Bill Baxley contributed to the high profile politically charged nature of the case by prosecuting Johnny Harris himself. Baxley would also personally prosecute Bob Chambliss a few years later for the 16th St. Baptist Church bombing. Over the past 40 years, Baxley's personal prosecution of Chambliss has been the subject of enormous positive press coverage, whereas history has largely swept under the rug his personal prosecution of Johnny Harris. The defense in the Harris case as well as in the other I.F.A. members' cases tried, repeatedly, to present evidence regarding the conditions of the prison being the catalyst for the events of January 18, 1974. Baxley and his prosecutors objected, and the judge sustained their objections every time a defense attorney, such as Harris' attorney Morris Dees, brought prison condition testimony into the courtroom. Judge Leigh Clark and Judge Douglas Webb, as well as every other judge that heard an I.F.A. case, repeatedly stated: "the defendant is on trial and not the Alabama prison system."⁴⁵



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Johnny Harris and his attorney Morris Dees talk prior to his trial in February 1975. Courtesy of Michael Mauney/ Southern Poverty Law Center.

One can draw a reasonable conclusion that, because Baxley personally prosecuted Harris' case, he knew everything regarding conditions in the Alabama prison system. If any plausible deniability could still exist on behalf of Baxley, his closing statement to the jury on February 28, 1975, abolished it:

Your're not going to put Johnny Harris in the electric chair, you didn't put him in prison and the judge and jury didn't do it, he put himself. Finding Harris guilty would be the first step in providing the greatest possible protection for inmates. Prison is a horrifying jungle.⁴⁶

43 "Harris is Sentenced To Die," Poverty Law Center Report 3, no. 1, March, 1975.

44 A Supreme Court case declaring that any death penalty statute giving a jury, or a judge, a choice in punishment between death and some period of incarceration, was unconstitutional. Statutes giving no choice but death as punishment were still legal, *Furman v. Georgia* 408 US 238 (1972).

45 *Johnson vs. State*, 335 So. 2d 663 (Court of Criminal Appeals

of Alabama, 1976), 185-187.

46 Sandra Baxley, "Harris is Convicted," *Mobile Press*, March 1,



Attorney General Bill Baxley, Judge Frank M. Johnson, and former Governor Jim Folsom on Inauguration Day in Montgomery, Alabama, 1975.. Photo courtesy of the Alabama Department of Archives and History, Montgomery, Alabama.

In a bit of twisted logic, Baxley told the jury that it was their job to take the first step in improving prison conditions by sending Johnny Harris to the electric chair. Baxley's reasoning was that prisoners were to blame for prison conditions. Baxley's theory stood on the notion that if inmates had the constant threat of the electric chair hanging over their head in prison, then they would be much more likely to behave and, subsequently, conditions would improve. The jury bought Baxley's logic and found Johnny Harris guilty, making him the first Alabama prisoner to face the electric chair since 1965.

It should now appear obvious that both Frank Johnson and Bill Baxley knew long before August 28, 1975, the conditions in Alabama's prison system. Johnson was culpable because of his numerous orders and scornful

1975.

comments directed at Richard E. Lake and the I.F.A. Baxley was culpable because his office defended the state in most of those cases, but the additional step of personally prosecuting I.F.A. member Johnny Harris, placed Baxley in a separate and exclusive position from other Alabama Attorneys Generals.

Post *Pugh v. Locke* interviews, given by Baxley and others, attempt to convince the public that Baxley and Johnson were unaware of the conditions inside of Alabama's prisons prior to the case. The facts do not support such a conclusion. A legend descended upon the legacy of Frank M. Johnson and William Baxley. Baxley would be the man that put away the Klan with his personal prosecution of Robert "Bob" Chambliss. Johnson's legacy became that of the judge who enabled the Selma march, imprisoned Viola Liuzzo's killers, stood up to George Wallace, and took a litany of other decisions sympathetic to African Americans and the downtrodden.

The Pugh case never became either man's highest profile case. In the rare event that the Pugh case received attention, its false conclusions merely served to supplement the largely positive legacy of these two men. The likely reason for this inaccurate history is the case's minor importance in each man's larger legacy. Little evidence exists that original scholars studied the case solely by itself. The original biographers of Frank Johnson paint both men in a positive light. Those scholars' works now serve as secondary sources for others and represent the foundation for future work. Those original authors, by trade professional journalists or legal scholars, by the nature of their work focused much attention on filings and proceedings within the courtroom. No evidence exists that any of the previously mentioned biographers of Frank Johnson ever interviewed a prisoner, or visited an Alabama prison, in contrast to their numerous interviews

with attorneys, politicians, and judges. Because of the limited scope of such early writings, accuracy has suffered to this day. How would the story differ if those writers had interviewed Richard Lake Jr. or other I.F.A. members?

Numerous archival documents exist on Richard Lake and the I.F.A., but very few secondary mainstream sources. Behind the walls of Alabama's prisons, most inmates have no idea who Bill Baxley and Frank Johnson were, however, virtually every prisoner in Alabama, who has the misfortune of a lengthy sentence, knows of the great organizer and relentless warrior Richard "Mafundi" Lake and the Inmates for Action (I.F.A.).⁴⁷

⁴⁷ Ray Melvin, *All for One and One for All* (Springville, AL.: Free Alabama Movement, 2014), 6.