

# The Burger Court Opinion Writing Database

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

433 U.S. 119 (1977)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



✓  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

November 23, 1976

Re: 75-1874 Jones v. North Carolina Prisoners' Labor  
Union

Dear Bill:

I voted to note and hear this case and was  
prepared to reverse summarily.

With Potter and Harry's memoranda there are now  
four to Note.

Regards,

WSB

Mr. Justice Rehnquist

cc: The Conference

Change was in  
your book  
your book

Supreme Court of the United States  
Washington, D. C. 20543

✓  
L

CHAMBERS OF  
THE CHIEF JUSTICE

June 13, 1977

Re: 75-1874 - Jones v. North Carolina  
Prisoners' Labor Union

Dear Bill:

I join. I may possibly "add a word."

Regards,

W. B.

Mr. Justice Rehnquist

Copies to the Conference

To: Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: The Chief Justice

Circulated: JUN 16 1977

Recirculated:

No. 75-1874 - Jones v. North Carolina Prisoners' Labor Union, Inc.

MR. CHIEF JUSTICE BURGER, concurring:

I concur fully in the Court's opinion.

This is but another in a long line of cases in the federal courts raising questions concerning the authority of the States to regulate and administer matters peculiarly local in nature. Too often there is confusion as to what the Court decides in this type of case. The issue here, of course, is not whether prisoner "unions" are "good" or "bad", but rather, whether the Federal Constitution prohibits state prison officials from deciding to exclude such organizations of inmates from prison society in their efforts to carry out one of the most vexing of all state responsibilities -- that of operating a penalogical institution. In determining that it does not, we do not suggest that <sup>not</sup> prison officials could not or should/permit such inmate organizations, but only that the Constitution does not require them to do so.

The solutions to problems arising within correctional institutions will never be simple or easy. Prisons, by definition, are closed societies populated by individuals

To: Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: The Chief Justice

*Final*  
Circulated: \_\_\_\_\_

1st/DRAFT Recirculated: JUN 20 1977

## SUPREME COURT OF THE UNITED STATES

No. 75-1874

David L. Jones, Secretary of the North  
Carolina Department of Correction,  
et al., Appellants,  
*v.*  
North Carolina Prisoners' Labor  
Union, Inc., etc.

On Appeal from the  
United States Dis-  
trict Court for the  
Eastern District of  
North Carolina.

[June —, 1977]

MR. CHIEF JUSTICE BURGER, concurring.

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The solutions to problems arising within correctional institutions will never be simple or easy. Prisons, by definition, are closed societies populated by individuals who have demonstrated their inability, or refusal, to conform their conduct to the norms demanded by a civilized society. Of necessity, rules far different than those imposed on society at large must prevail within prison walls. The federal courts, as we

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 20, 1977

RE: No. 75-1874 Jones v. North Carolina Prisoners' Labor Union, Inc.

Dear Thurgood:

Please join me in the dissenting opinion you have prepared in the above.

Sincerely,

*Bill*

Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

November 22, 1976

Re: No. 75-1874, Jones v. North Carolina  
Prisoners' Labor Union, Inc.

Dear Bill,

I should appreciate your adding the following at  
the foot of your dissenting opinion in this case:

MR. JUSTICE STEWART would note  
probable jurisdiction of this appeal and  
set the case for briefing and oral argu-  
ment.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

✓  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

May 24, 1977

No. 75-1874 - Jones v. North  
Carolina Prisoners' Union

Dear Bill,

I am glad to join the opinion  
you have written for the Court in this  
case.

Sincerely yours,



Mr. Justice Rehnquist

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 31, 1977

Re: No. 75-1874 - Jones v. North Carolina  
Dept of Correction

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

Copies to Conference

JUN 17 1977

Re: 75-1874 - Jones v. North Carolina Prisoners' Labor Union, Inc.

MR. JUSTICE MARSHALL dissenting.

There was a time, not so very long ago, when prisoners were regarded as "slave[s] of the State," having "not only forfeited [their] liberty, but all [their] personal rights . . ." Ruffin v. Commonwealth, 62 Va. 790, 792 (1871). In recent years, however, the courts increasingly have rejected this view, and with it the corollary which holds that courts should keep their "hands off" penal institutions.<sup>1/</sup> Today, however, the Court, in apparent fear of a prison reform organization that has the temerity to call itself a "union", takes a giant step backwards towards the now-discredited conception of prisoners' rights and of the role of the courts. I decline to join in what I hope will prove to be a temporary retreat.

— Stylistic Changes Throughout  
J 15,8

JUN 22 1977

1st PRINTED DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 75-1874

David L. Jones, Secretary of the North  
Carolina Department of Correction,  
et al., Appellants,  
v.  
North Carolina Prisoners' Labor  
Union, Inc., etc. } On Appeal from the  
United States Dis-  
trict Court for the  
Eastern District of  
North Carolina.

[June —, 1977]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN  
joins, dissenting.

There was a time, not so very long ago, when prisoners were regarded as "slave[s] of the State," having "not only forfeited [their] liberty, but all [their] personal rights . . ." *Ruffin v. Commonwealth*, 62 Va. 790, 792 (1871). In recent years, however, the courts increasingly have rejected this view, and with it the corollary which holds that courts should keep their "hands off" penal institutions.<sup>1</sup> Today, however, the Court, in apparent fear of a prison reform organization that has the temerity to call itself a "union," takes a giant step backwards towards that discredited conception of prisoners' rights and the role of the courts. I decline to join in what I hope will prove to be a temporary retreat.

I

In *Procunier v. Martinez*, 416 U. S. 396 (1974), I set forth at some length my understanding of the First Amendment rights of prison inmates. The fundamental tenet I advanced is simply stated: "A prisoner does not shed . . . basic First Amendment rights at the prison gate. Rather, he 'retains all

<sup>1</sup> For brief exposition of the "hands-off" doctrine and its demise, see Fox, The First Amendment Rights of Prisoners, 63 J. Crim. L. C. & P. S. 162 (1972).

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

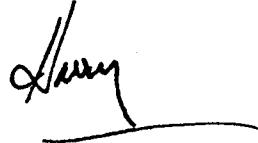
November 23, 1976

Re: No. 75-1874 - Jones v. North Carolina Prisoners'  
Labor Union

Dear Bill:

At the foot of your opinion would you please note that I also would note probable jurisdiction and set the case for briefing and oral argument.

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 27, 1977

Re: No. 75-1874 - Jones v. North Carolina Prisoners'  
Labor Union, Inc.

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Dear Bill:

I am with you in any event, but I have two minor suggestions that are one and the same.

In Pell the Court spoke of "substantial evidence" as the point of deference. 417 U.S., at 827. I wonder, therefore, if your use of "irrational" is somewhat different from Pell's substantial evidence standard. I would be happy if (1) "utterly irrational" in the 6th line on page 8 were changed to read "unreasonable" or "without adequate foundation" and (2) if the 5th word in the 1st line on page 16 were changed to "unreasonable."

Sincerely,



Mr. Justice Rehnquist

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

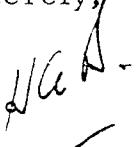
May 27, 1977

Re: No. 75-1874 - Jones v. North Carolina Prisoners'  
Labor Union, Inc.

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 23, 1977

No. 75-1874 Jones v. North Carolina  
Prisoners' Labor Union

Dear Bill:

Please join me.

Sincerely,

*Lewis*

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Black  
Mr. Justice Blackmun  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Marshall  
Mr. Justice Stewart  
Mr. Justice White

1st DRAFT

NOV 21 1976

**SUPREME COURT OF THE UNITED STATES**

**DAVID L. JONES, SECRETARY OF THE NORTH  
CAROLINA DEPARTMENT OF CORRECTION,  
ET AL., v. NORTH CAROLINA PRISONERS'  
LABOR UNION, INC., ETC.**

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF NORTH CAROLINA**

No. 75-1874. Decided November —, 1976

**MR. JUSTICE REHNQUIST, dissenting.**

The District Court appears to have decided this case on the theory that once a corrections official allows the nose of a camel within the institutional tent, he is obliged by the Constitution to admit the entire animal. I disagree with this approach, and think that the District Court's injunction against the enforcement of these prison rules invades the discretionary domain of prison officials which our cases have been careful to preserve.

Respondent prisoners' union brought this § 1983 action to challenge the policies of the State Department of Corrections in restricting the Union's activities within the prison. The three-judge District Court hearing the case specifically found that while the defendant officials permitted inmate membership in the union, they prohibited all face-to-face solicitation of membership within the prison, barred all meetings of the Union, and refused to allow receipt of bulk mailings from the Union for distribution among the inmates. Finding that these very privileges were allowed to the Junior Chamber of Commerce, Alcoholics Anonymous, and, in one institution, the Boy Scouts of America, and that "[t]here is not one scintilla of evidence to suggest that the union has been utilized to disrupt the operation of the penal institutions," App. to J. S., at 28, the court found merit in the union's free speech and equal protection arguments. Without deciding whether the union could assert any constitu-

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To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Stevens

RECORDED MAY 1977

MAILED 1977

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 75-1874

David L. Jones, Secretary of the  
North Carolina Department  
of Correction, et al.,  
Appellants,  
v.  
North Carolina Prisoners' Labor  
Union, Inc., etc. } On Appeal from the United  
States District Court for  
the Eastern District of  
North Carolina.

[May —, 1977]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.  
Pursuant to regulations promulgated by the North Carolina Department of Correction, appellants prohibited inmates from soliciting other inmates to join appellee, the North Carolina Prisoners' Labor Union, Inc. (the Union), barred all meetings of the Union, and refused to deliver packets of Union publications that had been mailed in bulk to several inmates for redistribution among other prisoners. The Union instituted this action, based on 42 U. S. C. § 1983, to challenge these policies. It alleged that appellants' efforts to prevent the operation of a prisoners' union violated the First and Fourteenth Amendment rights of it and its members and that the refusal to grant the Union those privileges accorded several other organizations operating within the prison system deprived the Union of equal protection of the laws. A three-judge court was convened. After a hearing, the court found merit in the Union's free speech, association, and equal protection arguments, and enjoined appellants from preventing inmates from soliciting other prisoners to join the Union and from "refus[ing] receipt of the Union's publications on the

P. 13

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Carried out:

Recirculated: May 4, 1977

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1874

David L. Jones, Secretary of the  
North Carolina Department  
of Correction, et al.,  
Appellants,  
v.  
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[May —, 1977]

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Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 31, 1977

Re: No. 75-1874 Jones v. North Carolina Prisoners'  
Labor Union, Inc.

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Dear Harry:

Many thanks for your note accompanying your join letter of May 27. I agree with your suggested changes and will circulate a fresh edition of the opinion as soon as it returns from the print shop.

Sincerely,



Mr. Justice Blackmun

PP. 8, 16

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Reproduced by

MAY 21 1977

3rd DRAFT

Reproduced by

## SUPREME COURT OF THE UNITED STATES

No. 75-1874

David L. Jones, Secretary of the  
North Carolina Department  
of Correction, et al.,  
Appellants,  
v.  
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[May —, 1977]

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 20, 1977

Re: No. 75-1074 - Jones v. North Carolina  
Prisoners' Labor Union, Inc.

Dear Thurgood:

I do not anticipate making any changes in my  
circulating opinion in response to your dissent.

Sincerely,



Mr. Justice Marshall

Copies to the Conference

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist

From: Mr. Justice Steve  
 JUN 15 1977

75-1874 - Jones v. North Carolina Prisoners' Union

Circulated:

Recirculated:

MR. JUSTICE STEVENS, concurring in part, and dissenting in part.

My disagreement with the Court is extremely narrow.

The Court has not sanctioned a restraint on discussion between inmates on the relative advantages or disadvantages of belonging to a prisoners' union. The prohibition of inmate-to-inmate solicitation which the Court upholds is defined as "an invitation to collectively engage in a legitimately prohibited activity." Ante, at 11. The Court has made it clear that mere membership in a union is not such an activity, ante, at 9. The language of appellants' "no-solicitation regulation" is, however, somewhat broader. <sup>\*/</sup> Therefore, instead of concluding that the entire regulation is valid, ante, at 16-17, I would hold it invalid to the extent that it exceeds the Court's definition.

I join the portions of the Court's opinion concerning the bulk mailing and union meeting claims.

<sup>\*/</sup> "Persons in the custody of the Department of Correction are prohibited from soliciting other inmates about membership in any inmate union." App. 38.

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: \_\_\_\_\_

1st DRAFT

Recirculated: JUN 20 1977

## SUPREME COURT OF THE UNITED STATES

No. 75-1874

David L. Jones, Secretary of the  
 North Carolina Department  
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 v.  
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 States District Court for  
 the Eastern District of  
 North Carolina.

[June —, 1977]

MR. JUSTICE STEVENS, concurring in part and dissenting  
 in part.

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\*"Persons in the custody of the Department of Correction are prohibited from soliciting other inmates about membership in any inmate union." App. 38.