In the

Supreme Court of the United States

Vernon Lee Bounds, Etc. Et Al.,

Petitioners,

v.

Robert (Bobby) Smith, Et Al.,

Respondents.

No. 75-915

Washington, D. C.
November 1, 1976

Pages 1 thru 51

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IN THE SUPREME COURT OF THE UNITED STATES

VERNON LEE BOUNDS, ETC., ET AL., Petitioners,	:	
v.	:	No. 75-915
ROBERT (BOBBY) SMITH, ET AL., Respondents.	:	

Washington, D. C.,

Monday, November 1, 1976.

The above-entitled matter came on for argument at 11:40 o'clock a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice
JOHN PAUL STEVENS, Associate Justice

APPEARANCES:

JACOB L. SAFRON, Esq., Special Deputy Attorney General of North Carolina, Raleigh, North Carolina; on behalf of the Petitioners.

BARRY NAKELL, ESQ., School of Law, University of North Carolina, Chapel Hill, North Carolina; on behalf of the Respondents.

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C O N T E N T S

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in 75-915, Vernon Lee Bounds, Etc., Et Al. v. Robert (Bobby) Smith, Et Al.

Mr. Safron, I think you may proceed whenever you are ready.

ORAL ARGUMENT OF JACOB L. SAFRON, ESQ.,

ON BEHALF OF THE PETITIONERS

MR. SAFRON: Mr. Chief Justice and may it please the Court:

This case is before this Court on the grant of a petition for writ of certiorari to the Fourth Circuit Court of Appeals to review similar claims brought by various North Carolina prisoners to the effect that, by not providing them with legal research facilities, the State of North Carolina has denied their access to the courts.

The District Court in its original opinion tracked the language of the three-judge federal court in California, in Gilmore v. Lynch, and stated that the volumes available would provide meager fare for a lawyer who is trained in his profession and even more meager fare for an inmate who has no legal training to assist him in discerning how to file what petitioners and what to include in them.

The court takes notice that more than mere facts are necessary in order to file petition for relief by way of

habeas corpus, for example.

The Fourth Circuit Court of Appeals affirmed in an opinion, which is quite simplistic in its approach, stating that the State of North Carolina has an obligation under the various cases to provide legal research facilities. And it is our argument, and we submit, that the District Court erred and that the Fourth Circuit Court of Appeals erred in its conclusions (1) that extensive legal research facilities are required; and (2) that there is in fact a constitutional obligation as a primary obligation to provide these facilities.

Now, in support of this argument, I would first like to point out that this Court has promulgated rules which go into effect just about any day now, the new rules governing section 2254 cases. These rules go into effect pursuant to Public Law 94-349 thirty days after the recess of the 94th Congress.

Now, we take a look at these rules and we also take a look at the forms in those rules and the forms currently available in all the United States District Courts to file habeas corpus proceedings for state court prisoners in the District Courts.

I have here a typical sample, of which I am sure the Court is well aware. They fill in the blank form available from any United States District Court clerk, and the forms are quite clear, that just set forth facts.

Now, under the rules which go into effect any day now, the rules of this Court, utilizing the forms provided for in these rules, it states quite clearly (1) in the instructions, in setting forth the grounds, supporting facts -- and the word "facts" as prepared by this Court is in capital letters -- supporting facts (tell your story briefly) without citing cases or law.

Now, these are the forms for use in habeas corpus which any day now will be in effect. And the instruction of this Court, in order to gain access to the United States District Court in habeas corpus proceedings, are to tell your story briefly, without citing cases or law.

In civil rights matters, there are the recommendations of the Federal Judicial Conference. These recommendations include various recommended forms. The instructions that go with these forms state: "You will note that you are required to give facts." And then in capital letters, the entire sentence, "THIS COMPLAINT SHOULD NOT CONTAIN LEGAL ARGUMENTS OR CITATIONS." These forms go on to provide statement of claim. "State here as briefly as possible the facts" -- and the word "facts" is underlined -- "of your case. Describe how each defendant is involved; include also the names of other persons involved, dates and places. Do not give any legal arguments or cite any cases or statutes."

In the prayer for relief contained in this printed

form, paragraph 5, relief: "State briefly exactly what you want the court to do for you. Make no legal arguments, cite no cases or statutes."

QUESTION: Well, how in the world would you find out what he wants the court to do? Would he say "I want out"?

MR. SAFRON: Well, Your Honor, this is a civil rights matter.

QUESTION: Is that what he would say, "I want out"?

MR. SAFRON: I have seen civil rights cases where that is it.

QUESTION: That is not my question. Is that what you think is proper?

MR. SAFRON: If Your Honor please --

QUESTION: And, secondly, is that helpful to the court?

MR. SAFRON: If Your Honor please, now, in the middle district of North Carolina, these forms recommended by the Judicial Conference have in fact been adopted by local rule. I have here a civil rights case I filed -- I responded to last week.

QUESTION: Did the court say it could know that?

MR. SAFRON: These rules came out --

QUESTION: Did the court say it could know that? Did they?

MR. SAFRON: These forms --

QUESTION: Do they become effective without the knowledge of the Fourth Circuit Council?

MR. SAFRON: If Your Honor please --

QUESTION: Could they? Well, I will answer it for you. No.

QUESTION: Of course, you might point out that Judge Haynesworth, who sat on this panel, did he not?

MR. SAFRON: Yes, he did, Your Honor.

QUESTION: -- is a member of the Judicial Conference that prepared these rules.

MR. SAFRON: And these rules are prepared subsequent to that argument. But the point is --

QUESTION: Well, wasn't he working on them, then?

MR. SAFRON: I have no idea what he was working on, Your Honor. But the point I would like to make --

QUESTION: Mr. Safron, in the response you made the other day to a habeas corpus petition, did you cite any cases?

MR. SAFRON: This one, Your Honor?

QUESTION: The one -- you said you responded to one of these form --

MR. SAFRON: This was a civil rights form.

QUESTION: I understand, but did you -- when you respond to these, do you sometimes cite cases?

MR. SAFRON: Oh, yes, we do. Now, this --

QUESTION: Now, what is the point you are making

about the fact that the initial filing doesn't require any citation of cases? What do you develop from that premise?

MR. SAFRON: What I mean is this, Your Honor: The theory is that the inmate requires legal research facilities in order to have access to the courts. And my thesis is this: There is access to the courts. The Federal Judiciary has developed forms which make it perfectly clear that there are no -- you are not to cite cases, you are not to give legal arguments in these filings. Now, Justice --

QUESTION: That is in the initial filing?

MR. SAFRON: Yes, Your Honor.

QUESTION: Most litigation involves more than one filing.

MR. SAFRON: Oh, yes. But the theory of these cases up to this point has been that the inmate has been denied access to the courts because they have not had legal research facilities, and it is that thesis with which we do not agree. Because as we take Mr. Justice White's dissent in Johnson v. Avery, which is the fountainhead case in this area, he made it clear that filing a habeas corpus proceeding is a simple matter, because once it is filed, the court will apply the law to the facts, and that is what happens in all these or the vast majority of these prisoner cases. The court obviously, through the use of its law clerks, its legal research facilities, the courts, as this Court, have law clerks whom they

carefully interview for many, many clerks who are legally trained, so that they can provide a meaningful assistance to the Court. And I question what type of meaningful assistance is given the court, the Federal Judiciary or the state judiciary, by some inmate who has a sixth grade education, who isn't trained in the law. He can't help the court.

I have seen cases cited -- most cases which are cited by the inmates are mis-cited or have no -- can't even be found.

QUESTION: I bet I have seen some you've mis-cited, too, if I looked hard enough.

MR. SAFRON: That is quite possible, Your Honor, but we try not to.

QUESTION: I don't understand your point. Your point is that it will not help him to have the library --

MR. SAFRON: Yes, Your Honor.

QUESTION: -- that he does not need the library.

MR. SAFRON: I say that --

QUESTION: Now, he is on one side of the case and, as my brother Stevens says, you and your office is on the other side. You have blank number of assistants, blank number of para-legal, blank number of libraries and everything, and that is an equal play, where in my mind it is not.

MR. SAFRON: First of all, Your Honor --

QUESTION: And I think Avery, despite what you think,

I think Avery is still the law.

MR. SAFRON: Your Honor, I agree that Johnson v. Avery is the law, because -- let's read Johnson v. Avery --

QUESTION: Johnson v. Avery says one of the ways of doing it is to give him some help.

MR. SAFRON: Your Honor, no, Johnson v. Avery --

QUESTION: It says give him some help.

MR. SAFRON: Johnson v. Avery says that there is a secondary obligation, and the secondary obligation is if the state prohibits mutual legal assistance between inmates, then that gives rise to a necessity to determine alternatives. Johnson v. Avery is clear. The law library is --

QUESTION: Do you agree with it?

MR. SAFRON: Sir?

QUESTION: Do you agree with Johnson v. Avery?

MR. SAFRON: Yes, I do.

QUESTION: And you want us to reaffirm it?

MR. SAFRON: Yes, Your Honor.

QUESTION: Thank you.

QUESTION: I suppose nothing in Johnson v. Avery suggested that the prisoner's resources have to be equal to that of the state?

MR. SAFRON: No, Your Honor, not at all. All that Johnson v. Avery states is that the -- if in the event the state, the department of corrections in a particular state,

passes a regulation prohibiting mutual legal assistance, then in that event alternatives are required.

Now, we turn to one of the last definitive statements on this point of this Court, the case of Ross v. Moffitt, written by Your Honor. Now, in Ross v. Moffitt, this Court made it clear that it is not the obligation of the state to provide that legal arsenal which is available to the private citizen.

QUESTION: Mr. Attorney General, is it the position of North Carolina that no library need be provided?

MR. SAFRON: If Your Honor please, it is the position of the State of North Carolina that if a library were to be provided, it is an administrative decision of the state and that the Constitution and the cases of this Court do not require the state to provide legal research facilities.

QUESTION: No library facilities at all, no access, for example, to the slip opions or the decisions of this Court?

MR. SAFRON: That is correct, Your Honor.

QUESTION: Right. Now, may I follow that up just a bit. You emphasize the forms -- and I understand why you do. I think they are certainly not irrelevant. But is it not possible that inmates may need access to the opinions of this Court, for example, to determine whether or not to consider filing a petition for habeas corpus or a civil rights action?

MR. SAFRON: If Your Honor please, number one, filing

a habeas corpus proceeding is the simplest thing in the world. And as Mr. Justice White pointed out in his dissent, we need only look at the record --

QUESTION: It is still over the dissent?

MR. SAFRON: Oh, yes, Your Honor. But in your dissent, you pointed out and the majority agreed that filing the habeas corpus petition is the simplest thing. No law is required. You just state the facts. And obviously -- and it has been my experience, and as Your Honors are well aware -- when these petitions come in, the federal judge and his law clerks and the United States magistrate reviews these things. And it has been my experience that, of course, let's see what happens. In that particular situation, it is reviewed. In a few situations where the relief sought is obviously frivolous, like we have had complaints filed "I want credit for time spent on escape," in those instances the petition would be summarily denied.

Now, the inmate need merely give a notice of appeal and the entire record goes up to the Fourth Circuit where a three-judge panel in the Circuit Court reviews it, and the Circuit Court judges have the assistance of --

QUESTION: Mr. Attorney General, you wash over Younger v. Gilmore, don't you?

MR. SAFRON: Your Honor, I would like to speak to the Younger case. I would say this, that Younger was improperly

decided, that Younger should be overruled. We have a one-paragraph per curiam, and it cites two cases, Alabama Teachers, which really goes to the proposition that this Court has jurisdiction on appeal from a three-judge District Court, and it cites Johnson v. Avery.

Now, Johnson v. Avery merely held explicitly that the state has no such obligation unless there is a prohibition of mutual legal assistance. In the State of North Carolina, as the Court readily finds, there is no such prohibition against mutual legal assistance. Now --

QUESTION: Let me get back to your basis. Are you taking this position on the theory that the law library would be useless?

MR. SAFRON: Your Honor, perhaps to a small handful of inmates it may be useful, a small handful of inmates who perhaps have the intelligence to utilize these facilities. But as a member of the bar, quite frankly, I almost take this as a personal insult. I went through college, I went through law school, I took the bar exam, in order to be trained in legal research, and quite often, as this case itself reveals, there are attorneys on both sides and courts on both sides which disagree on what the law actually is in any given case. Now --

QUESTION: Did the State of North Carolina make application for an LEAA grant for a library?

MR. SAFRON: Your Honor, what happened there, we were

under the order of Judge Larkins to implement this. The Director of Prisons of the State of North Carolina went before the Advisory Budget Commission of the North Carolina General Assembly with Judge Larkins' order in hand, and the Advisory Budget Commission of the state, in preparing the budget for submission, found or said that they would not appropriate such funds, that they had never heard of anything as foolish as that, that they had other needs for state resources, and they were not going to appropriate money for prison law libraries when the state has not yet found it able financially to provide any such facilities to the judges of our courts of the state or district attorneys, and it would in fact result that in many areas the judges to find such facilities would be appearing in the prisons. And we have 77 units spread across our state, across 475 miles. It would be as if we went from Raleigh, where I live, to New York City. That is the distance. That is a tremendous distance.

QUESTION: But getting back to my question, you did file an LEAA grant, did you not?

MR. SAFRON: The LEAA grant was prepared because the General Assembly refused to fund any money and made it perfectly clear that they would not condone any line item transfers.

QUESTION: And did the State of North Carolina in that application state that a prison library would be useful?

MR. SAFRON: If Your Honor please, when one applies

for a grant, one puffs to get the money, and that was puffing to receive an LEAA grant, because the --

QUESTION: So the answer is yes?

MR. SAFRON: Yes. But, if Your Honor please, that still does not get to the basic constitutional question. Now, we have not provided our judiciary with such resources, we have not --

QUESTION: So it does get to your statement that the libraries would be useless?

MR. SAFRON: Your Honor, unfortunately, that grant was salesmanship, it was seeking -- that application was seeking a grant. You have to say what LEAA wants to hear to get the grant.

Now, the facts and figures are interesting. In the Fourth Circuit Court of Appeals, in 1973, some 46 percent of all prisoner civil rights cases in the United States were filed. In 1974, the figure went down; '75, 20 percent of all the petitions in the United States; nationally, 18 percent of all cases filed in the United States District Courts are prisoner petitioners; in North Carolina, the percentage is 41 percent of all petitions filed are filed by prisoners.

Now, the State of North Carolina this yeas has appropriated $5,700,000 for aid to indigent defendants. We have complete post-conviction procedures. As in the federal system, when a post-conviction application is filed, the judge reviews

it. If there is any merit, he appoints counsel. If he finds no merit --

MR. CHIEF JUSTICE BURGER: We will resume there at 1:00 o'clock.

[Whereupon, at 12:00 o'clock noon, the Court was recessed until 1:00 o'clock p.m.]

AFTERNOON SESSION - 1:00 O'CLOCK

MR. CHIEF JUSTICE BURGER: You may continue, Counsel.

MR. SAFRON: Mr. Chief Justice, as we were stating at the break, in the State of North Carolina, we have developed extensive state post-conviction proceedings and also have extensive rules for the appointment of counsel to indigent defendants.

As in the federal system, when a state court prisoner files a petition, that petition is reviewed by the state court judge. If the state court judge finds any merit in the petition, he will appoint counsel to represent the petitioner in a plenary hearing. If he finds no merit in the petition, he obviously dismisses the petition.

However, in the state court system unlike the federal system, the inmate has an absolute right to the appointment of counsel to seek certiorari from the North Carolina Court of Appeals, therefore he has counsel to prepare his petition for writ of certiorari to the North Carolina Court of Appeals, where it is reviewed and, of course, ruled on upon that court.

I would like to point out to the Court that in our brief there is an appendix --

QUESTION: Just before you proceed to that, what would be the mechanics of his getting counsel in your state system? He files, writes out in prison, let's say without the help of any professional help or any book help --

MR. SAFRON: Yes, Your Honor.

QUESTION: -- and files a collateral complaint of some kind in your state court. It is denied. Now, how does he or anybody else know that it has been denied, how does he go about getting counsel to appeal that?

MR. SAFRON: Well, of course, Your Honor, he is provided with a copy of the order of the court denying his petition and, under North Carolina General Statute 15-222, which provides for petitions for certiorari to the North Carolina Court of Appeals, and North Carolina General Statute 7A-451, which is the statute providing for the appointment of counsel for indigents, all he need merely do is write the court requesting appointment of counsel and counsel will be appointed to represent him on a petition for certiorari to the North Carolina --

QUESTION: He doesn't have state statutory right to counsel to represent him at the original hearing on the collateral attack, does he?

MR. SAFRON: Of course, Your Honor --

QUESTION: Does he or doesn't he?

MR. SAFRON: If the court finds merit and holds a hearing, he has a right to counsel, yes. But if the court finds --

QUESTION: If the petition makes out a plausible case?

MR. SAFRON: -- a plausible case, he has a right under our statute 7A-451 to the appointment of counsel, and the court appoints counsel to represent that petitioner.

QUESTION: But if the court finds no merit and therefore doesn't appoint counsel, and further therefore denies the writ, he still has an absolute right to counsel to appeal it, doesn't he?

MR. SAFRON: He has the absolute right of appointment of counsel to assist him to prepare the petition for writ of certiorari to the North Carolina Court of Appeals, right.

QUESTION: And how does he -- he gets a copy of the order of denial?

MR. SAFRON: He writes a letter to the court, "I appeal, appoint a lawyer for me." And so actually in the state system, the lawyer is appointed, whereas in the federal system at that point, there is no right to counsel.

QUESTION: At either point?

MR. SAFRON: At either point. I would like to point out that in the appendix to our brief on the merits, we have reviewed the histories of these various inmates who are the plaintiffs in the initial case.

Now, the various cases to which we refer, Mr. Nakell sent a young attorney who spent two days in our office reviewing all these files. And I would ask this Court to read that appendix, that appendix commencing on page 25, and it reveals

how the state has appointed counsel time and time again at these post-conviction proceedings, how the state has appointed counsel on petition for review on certiorari, how these inmates have had their day in court time and time and time again. And I submit that a review of this reveals that they have not been denied access, they have not been denied meaningful access, and that these inmates have had more than their day in court.

I would further submit that this Court issue clear instructions to the inferior federal courts that a rereading of Johnson v. Avery is required, that the fountainhead case here states that the alternatives are required if there is a state regulation prohibiting mutual legal assistance between inmates. There is no such prohibition in North Carolina, therefore the requirement of Johnson v. Avery does not comme into play.

And one must also read Ross v. Moffitt in conjunction with Johnson v. Avery. The state is not required to provide the same arsenal to the prisoners, the same legal resources as a private citizen may obtain.

I would further suggest that the case of Gilmore v. Lynch be reread, because that court assumed, as many federal courts have been assuming, that there is a definite obligation to provide legal facilities. The lower courts have misread Johnson. They have gone to step two, without ever seeing what is required to reach step two.

QUESTION: Well, a federal court might have to go to

step two if a state, as a matter of its state policy, said we are going to provide adequate law libraries to everybody in custody in our prison system, and then proceeded to supply adequate law li raries to only one institution but not to any of the others, then the prisoners in those other institutions would have an equal protection claim, wouldn't they?

MR. SAFRON: No question about it, Your Honor, there would be equal protection problems. But I would say this: We have a situation with 77 units in our state, covering 475 miles. Most of these units, as the Fourth Circuit readily acknowledges, are small, they are set in localities throughout the state, so we can have work-release, so we can have study-release, so they can be close to their families. And we will have an incredible equal protection problem in the State of North Carolina with these small units spread across the state. It has been our intention to keep the inmates close to home. It has been our intention to let them be where they could get work-release jobs, study-release jobs. And a situation like this could be counterproductive, because we would be forced, due to the shear expense of providing these facilities, which are not available to the private citizen in the streets, which are not available to our judges, which are not available to our DA's, and quite frankly our law library is the library of the Supreme Court of North Carolina, we in the Attorney Ganeral's office, and just the two of us who handle these

multiplicity of cases, we don't have our own law library facilities, we use the Supreme Court's library at the suffrance of the Supreme Court of North Carolina. They could enter an order any day saying that it is just "for our own use," and --

QUESTION: What happens out in County A, way out in the woods, where the inmate doesn't have a library, the judge doesn't have a library, the state's attorney doesn't have a library?

MR. SAFRON: They pick up the phone and call us, Your Honor, and we run upstairs to the fifth floor and use the Supreme Court's library?

QUESTION: No, no. This is way out.

MR. SAFRON: Yes, Your Honor, I mean that is exactly what happens, they pick up the phone and they call us.

QUESTION: So if you are way out there past Asheville, out there, you come all the way into Raleigh?

MR. SAFRON: No, I mean they pick up the phone and call --

QUESTION: Oh.

MR. SAFRON: -- the judges or district attorneys --

QUESTION: But not the convicts?

QUESTION: But the convict can't call?

MR. SAFRON: No, the convict doesn't call.

QUESTION: I see.

MR. SAFRON: But I am saying, we don't have these

facilities for our judiciary.

QUESTION: I wonder if possibly your argument suggests that the solution might be if the two of you handle this whole voluem of litigation for the state, perhaps one or two lawyers could handle the other side of all this litigation, might be an alternative that would be less expensive than all these library facilities?

MR. SAFRON: Your Honor, that is, of course, up to the General Assembly. In their wisdom, they make these decisions. But we have a Novak v. Beto problem which would arise, as in Texas, where several attorneys were appointed and then the court found that those attorneys were insufficient and finally they had to have 15 attorneys -- I believe that is the number -- in Texas, because the federal court down there found that it took 15 attorneys to provide meaningful access, 15 attorneys compared to our staff is an incredible number, and --

QUESTION: We have a case right here that says that in Texas they don't have any attorneys at original filing.

MR. SAFRON: Your Honor --

QUESTION: Yes. Yes.

MR. SAFRON: -- I know they have 15 lawyers --

QUESTION: We have a case pending right now where --

MR. SAFRON: I am familiar with that aspect of it.

QUESTION: -- where the inmate files a case, and if

the judge decides it has got merit, then he lets the government know about it, the state.

MR. SAFRON: Well, in Texas there are 15 lawyers, that I know. And I also know that in Texas all the penal institutions are within ten miles of one another. They have got them consolidated so they can use common facilities and common resources. Our facilities aran't --

QUESTION: El Paso and Houston? Don't they have a jail out in El Paso?

MR. SAFRON: The state facilities, Your Honor, I once made inquiry, I believe they are all in the panhandle there, and they are all within one limited distance, so they have common resources as far as hospitals and administration and things of that nature. We are spread across the map.

QUESTION: Does your state have a limit on the number of inmates to be confined in one institution, a statutory limitation?

MR. SAFRON: No, Your Honor, we don't.

QUESTION: Administrative?

MR. SAFRON: And at this point in time, quite frankly, we are overcrowded and we need all the money we can and we are trying to get all the money that we can for new institutions.

QUESTION: And did you say 77 different institutions?

MR. SAFRON: Well, at the time there were 77, and since then we have opened up a series of new half-way houses

for women. I don't know how many there are. But we have 77 main institutions or -- we have several main institutions and a series of subsidiaries spread across 475 miles.

QUESTION: What is the total number of prisoners, approximately?

MR. SAFRON: I heard that -- the last figure I saw, unfortunately, was like 13,350. We are overcrowded. We need money for new facilities. And the General Assembly has determined that our resources should be applied to other needs which they have determined to be more pressing than providing law libraries for prisoners.

QUESTION: Are prisoners with means limited to the use of the official library, or may they buy their own books?

MR. SAFRON: What official library, Your Honor?

QUESTION: Well, any official library.

MR. SAFRON: I'm sorry, Your Honor, we don't have libraries in prisons.

QUESTION: Well, how about -- then I will ask you, does the prisoner with means, is he permitted to buy law books?

MR. SAFRON: Oh, yes, Your Honor.

QUESTION: As many as he wants?

QUESTION: From the publisher?

MR. SAFRON: From the publisher.

QUESTION: As many as he wants?

MR. SAFRON: There may be regulations prohibiting the

absolute number as far as crowding the cell is concerned. But I know inmates who have arrived at prison with like three cases of books and pleadings, and these things are kept stored for him. There is a limit of what can be kept in the cell, obviously, for safety reasons and fire reasons.

QUESTION: Are there law books available in prisons?

MR. SAFRON: As a practical matter, there aren't, except those --

QUESTION: Well, how about the ones that prisoners themselves own?

MR. SAFRON: Oh, those are available, yes, Your Honor.

QUESTION: And do you permit counseling between inmates?

MR. SAFRON: Your Honor, that is the crux of this case. We do not prohibit, and if we don't prohibit --

QUESTION: Your answer is yes?

MR. SAFRON: Yes, Your Honor.

QUESTION: And is there enough books so that a counseling inmate will know what he is doing or not?

MR. SAFRON: Some of these counseling -- in fact, Your Honor, I will say this, there is an association, North Carolina Writ Lawyers, and those in the -- particularly the inmates here who filed the suit, they are terrific. Many of them hold themselves out as professional writ writers and they sign the pleadings.

QUESTION: One of them describes himself as "legal assistant" --

MR. SAFRON: Yes, Your Honor. In fact, that case ultimately came here, Bradford v. Weinstein.

QUESTION: So you are suggesting that they just want you to buy their books for them?

MR. SAFRON: Exactly, Your Honor, and so that they can have a power base within the penal system. They will really become powerful then. They will be the men with the law books who will write all the petitions.

Thank you, Your Honors.

MR. CHIEF JUSTICE BURGER: Mr. Nakell.

ORAL ARGUMENT OF BARRY NAKELL, ESQ.,

ON BEHALF OF RESPONDENTS

MR. NAKELL: Mr. Chief Justice and may it please the Court:

Younger v. Gilmore was decided unanimously by this Court. The decision was rendered after mature and thorough consideration, and it was based on sound principles.

QUESTION: Why do you say that? Wasn't it summary affirmance?

MR. NAKELL: No, Your Honor. In fact, I made that same mistake originally, in my brief in opposition to the petition for certiorari, I made the same mistake. I later learned that complete briefs were filed in the case and indeed

an oral argument was held, and actually the opinion indicates having heard the case on its merits.

QUESTION: Well, it is still just a one-sentence affirmance, isn't it?

MR. NAKELL: Yes, Your Honor. The briefs show, and the transcript of the oral argument shows, that the issues in that case were carefully and thoroughly canvassed by the parties. The state --

QUESTION: I take it, whatever may be our authority to re-examine it, that the Fourth Circuit had no choice under Hicks v. Miranda but to follow it?

MR. NAKELL: That's correct, Your Honor, certainly. And I think that the Younger v. Gilmore case stands as a very substantial precedent for this Court as well, because it was decided not summarily but after complete briefing and argument. And indeed California, in its jurisdictional statement and in its briefs, presented all of the arguments that North Carolina has presented in this case, with the exception of the argument based upon Ross v. Moffitt.

QUESTION: What do you think the question was in the Gilmore case here?

MR. NAKELL: The question was, as stated in the jurisdictional statement filed by California, the question was whether the state of California has a constitutional obligation to provide extensive law libraries for its inmates.

QUESTION: But how could that be justified simply by a citation of Johnson v. Avery, which is all that Gilmore cites?

QUESTION: Why don't you finish the question that was presented?

MR. NAKELL: That was the statement of the question in the brief as --

QUESTION: Let me read you from the jurisdictional statement: "...or alternatively to provide inmates with professional or quasi-professional legal assistance..." --

MR. NAKELL: I'm sorry. That is correct, Your Honor, that was taking the alternative, and that is the view that we take of the issue in this case, that the ruling in Younger v. Gilmore or the holding in Younger v. Gilmore permits or requires the state to provide either law libraries or a reasonable alternative, in the form of legal services through lawyers or --

QUESTION: Or quasi- -- but it wouldn't require lawyers, would it?

MR. NAKELL: Not necessarily, Your Honor.

QUESTION: Well, what if there are reasonably competent fellow prisoners to serve the inmates?

MR. NAKELL: If there were reasonably competent fellow prisoners, I would think, Your Honor, that the reasonable competent fellow prisoners would also need law books in order to be

able to function in that role, and law books would still be necessary.

QUESTION: Well, they may have them on their own.

MR. NAKELL: Well, they may or may not. They may -- and I understood Mr. Safron to say that some prisoners bring law books --

QUESTION: But there is no showing here that they don't have them, is there?

MR. NAKELL: Neither is there a showing that they do or what the extent of their books is.

QUESTION: Well, who has the burden, you or the state?

MR. NAKELL: Well, Your Honor, the state has the burden of showing that it has provided an alternative. We proved in the District Court that there were no law books. The record shows that there were no law books in any of the prisons. That is what the record shows. The state did not --

QUESTION: You mean state-supplied law books?

MR. NAKELL: Well, the record shows no law books and doesn't make a distinction. There are no facts in the record to show that there are any law books or what the extent of them is provided by any person other than the state, including inmates. I would grant that it is undoubtedly true that some inmates have some law books, but I certainly don't think that the --

QUESTION: Well, if in a particular prison there are writ writers or inmates with their own supply of law books and they are reasonably competent, would you say the state's duty is satisfied or not?

MR. NAKELL: Well, I believe that in Wolff v. McDonnell, this Court --

QUESTION: Well, how about it? How about it?

MR. NAKELL: It may well be, Your Honor. It may well be. I think it would still depend upon questions such as what if the writ writer is released or paroled the next day, then that eliminates the --

QUESTION: I understand, but that wasn't my question. My question was if there was a writ writer there, with his own law books, does that satisfy the state's duty?

MR. NAKELL: If that writ writer would measure up to the standards set by this Court in Wolff v. McDonnell, where the Court --

QUESTION: Well, what do you think Johnson v. Avery has got to do with that question?

MR. NAKELL: Well, Johnson v. Avery, undoubtedly the facts of Johnson v. Avery were relatively narrow. In that case, the Court held that the state could not prohibit the operation of writ writers unless it provided some adequate alternative. In defining what an adequate alternative might be, and the suggestions that the majority --

QUESTION: Well, doesn't that suggest, though, that a writ writer might satisfy the constitutional requirements?

MR. NAKELL: Insofar as the prohibition of writ writers is concerned, I would quite agree that para-legals, including inmate para-legals, might satisfy the requirements, even of Younger v. Gilmore, not alone of Johnson v. Avery. But there is no showing on this record that there is any such alternative available to the North Carolina prisons.

QUESTION: Johnson was talking about a prohibition of availability, not an affirmative making available.

MR. NAKELL: I agree, Mr. Justice Rehnquist, that that was what was involved in Johnson v. Avery, and the Court held on the narrow facts of that case that it was illegal for a state -- I believe it was Tennessee in that case -- to prohibit writ writers without providing an alternative. I pointed out that the possible alternatives that the Court suggested that the state might implement and order, if it wanted to, to cut out its writ writer system, did not include providing law books, simply providing law books was not one of the alternatives, but providing para-legals --

QUESTION: But in order to get any benefit from Johnson v. Avery in this case, don't you first have to show that North Carolina prohibits the availability of writ writers?

MR. NAKELL: Your Honor, I think that there -- yes, the answer to that question is yes.

QUESTION: And have you made that showing?

MR. NAKELL: No, Your Honor. No.

QUESTION: So you don't get any benefit from Johnson v. Avery?

MR. NAKELL: Well, we do because -- we don't from the specific holding of Johnson v. Avery. Younger v. Gilmore went a step beyond Johnson v. Avery in terms of its specific holding.

QUESTION: Well, you say Younger v. Gilmore went beyond Johnson v. Avery, yet it is a one-sentence affirmance and the only case that it cites on the merits is Johnson v. Avery.

MR. NAKELL: Yes, Your Honor. I think that was appropriate because underlying the majority opinion in Johnson v. Avery was the statement that a prisoner has the constitutional right to help in regard to his access to the courts. The majority said this, and Mr. Justice White, in his separate opinion in dissent, elaborated even further on that and expressly said that without some help, the prisoner is effectively barred from access to the courts. And on that rationale, which was the rationale that supported the opinion in Johnson v. Avery, I think the Court in Younger v. Gilmore was entitled to rely.

QUESTION: I gather that you do not challenge your friend's statement that as soon as this procedure gets under

way, counsel is provided for the prisoner. Is that correct? Has he correctly described it, in your view?

MR. NAKELL: You mean as soon as a post-conviction procedure gets under way? No, I didn't understand him to describe it that way.

QUESTION: No, he said on the appeal, as soon as it is denied.

MR. NAKELL: Frankly, Mr. Chief Justice, I must say that I have no independent knowledge of whether a prisoner who is denied the right to proceed with a post-conviction proceeding and is denied counsel in that proceeding, he would be provided counsel on appeal.

All I can say is I do note that the plan that the State of North Carolina has submitted to LEAA assumed -- at page 3a of my brief -- assumed that in order to get counsel, a prisoner would have to submit a petition which on its face has some merit. And also Judge Larkins -- who is probably more familiar than I -- in the District Court -- with this procedure -- also said that, like the federal courts, there is no right to counsel in the state post-conviction proceeding unless counsel is appointed. I quite agree that the statute seems to provide for it, but I understand Mr. Safron agreed that it is not done at the trial level, where the statute seems to provide for it, and quite frankly I don't consider myself qualified to speak as to whether it is done on appeal.

I had always assumed that it was not, and did not look to see whether there is anything to the contrary, so I do not know the answer to that.

But it is clear that the inmate receives no help in the preparation of his petition at the initial stage, and he certainly receives no help at any point through the petition unless the court decides to appoint counsel to represent him. And let me say that this petition for certiorari is just what it sounds like. There is no right to appeal from the denial of post-conviction writ in North Carolina. It is a discretionary review, and therefore even if the application had some merit, the court may deny it for reasons that have nothing to do with the intrinsic merit.

QUESTION: Where do you go, the intermediate court of appeals?

MR. NAKELL: The intermediate court of appeals, and that is as far as you can go. You can't go any higher than that on a post-conviction proceeding.

QUESTION: And is that decided by less than the full number of the judges of that court?

MR. NAKELL: I am not sure of the answer to that. They sit in panels, so I assume that it could be done by a majority of the panel, but I quite frankly am not certain of that.

QUESTION: I know, but here certiorari is granted on

votes of four of the Ninth. Is there ay thing like that on the --

MR. NAKELL: No, not as far as I know, Your Honor, not as far as I know.

QUESTION: Counsel, do you recall, going back to Younger v. Gilmore for a minute, whether in that case the California system had a rule against one writ writer helping another prisoner?

MR. NAKELL: It is clear, Mr. Justice Stevens, that California did not. In footnote one of its opinion of the three-judge court, it stated that California did not prohibit writ writers, and therefore I think on the facts Younger v. Gilmore is precisely the same as this case.

QUESTION: Wasn't the holding in the District Court that at least California had to provide either decent legal research facilities or lawyers or law students?

MR. NAKELL: The District Court actually --

QUESTION: It didn't say that fellow inmates would be enough, did it?

MR. NAKELL: The District Court ordered -- that is correct, Your Honor. That is correct. They did not consider writ writers to fellow inmates to be enough. In the circumstances of that case, where there was no evidence, it should be taken into account that, as in this case, there was no evidence that the writ writers were adequate.

Now, I might point out, Mr. Justice White, in regard to your interest about the use of inmate writ writers that the plan submitted by the state and approved by the District Court, and which is part of the order in this case, does provide for the training and use of inmate para-legal assistants. I believe the plan provides for the training and use of about 21 of them. In this way, the state would have a way of guaranteeing or assuring that there are writ writers available on the premises who would be in a position to assist the prisoners, and of course the plan is very carefully drawn to take account of the nature of the North Carolina prison system, the far-flung nature of it, so that it provides that only -- libraries have to be provided in only seven of the prisons, and the plan itself calls for an additional five core libraries. It also provides for a Xerox machine to be available at the Raleigh library, which will probably be in central prison, I assume.

QUESTION: Did you say that that plan was submitted by the state?

MR. NAKELL: Submitted by the state, that is correct, Your Honor. And quite frankly, we found as to those aspects of it that it was acceptable and we did not ask to have a law library in every one of the 80 or so prison units. We were perfectly amenable to the reasonable compromise in terms of the number of libraries. I might say that this is far less

than many professional correctional administrators have recommended. It is far less than the National Advisory Commission recommended.

QUESTION: Of course, you are talking about a constitutional question and those recommendations have very little if any relevance on what is a good policy as constituted with what is constitutionally required.

MR. NAKELL: I agree with that, Your Honor. To the extent that we are concerned with the exercise of discretion or the exercise of expertise by the prison administrators, it is helpful I think to look at what other prison administrators have thought.

QUESTION: How could you justify having any less than the same scope of library facilities in every institution in the state?

MR. NAKELL: Because, Mr. Chief Justice, the State of North Carolina in its plan has made provision for being able to assure that all inmates have equal access to the library facilities of the seven prisons. There are alternative methods. Prisoners may be brought into the prison facilities that have libraries, if they request the use of a library, and may be housed there overnight if necessary, according to the plan.

Moreover, there is provision for a Xerox machine to be maintained at the central prison, at the library in

Raleigh, wherever that is ultimately situated, so that any prisoner upon request could get copies of specific cases if it were possible to service his needs without providing him the use of the entire library. So that I believe it is very possible, with the seven main libraries and the five core libraries and the Xerox machine, that this can be implemented in such a way that all prisoners in all institutions will have equal access to the library facilities and will have meaningful access to legal materials to assist them in their constitutional right to access to the courts.

QUESTION: What provision of the Constitution is it that provides the right to law libraries for prisoners?

MR. NAKELL: Well, Your Honor, I believe that it is based -- the right is not, as Mr. Justice White pointed out, not strictly for law libraries but the right is for some help from the --

QUESTION: Well, what provision of the Constitution?

MR. NAKELL: Well, Your Honor, on different occasions this Court has identified it as ensuing from the First Amendment, right to petition for redress of grievances, the due process clause --

QUESTION: What case was that?

MR. NAKELL: Johnson v. Avery. I believe that there have been other authorities in which you have discussed it as well. I think the one constitutional basis where this Court

has talked about it most recently is in Procunier v. Martinez, where this Court identified the due process clause as the source of it. Also, of course, in Younger v. Gilmore, both the due process clause and the equal protection clause were cited as the constitutional source for the constitutional right of prisoners' access to the courts.

QUESTION: In this Court's opinion?

MR. NAKELL: Well, this Court did not specify. This Court's opinion was very brief. But it was in the opinion of the three-judge court.

QUESTION: Would this right extend to the right of inmates, the next step, every inmate has a lawyer to interpret the cases he finds in the law books for him?

MR. NAKELL: No, Your Honor, I don't believe that that would be necessary. I think that what is required is that the prisoner have a constitutional right to meaningful access to the courts, and I believe that this is a flexible standard. In Ross v. Moffitt, this Court held that there was no right to counsel for petitioning for discretionary review, and discussed both due process and equal protection in the course of that opinion. But due process, as the Court pointed out, is a concept of fairness, and fairness may be flexible, so that whereas counsel will not be required, something less, something other than counsel might be required. And I think the decision in Ross v. Moffitt makes legal research

facilities even more important.

QUESTION: Well, what if an inmate comes into court and says "I have had a second-grade education, my IQ is 85. It is true, the State of North Carolina furnishes a lot of law books, but I simply am incapable of reading them and I am being denied a right that others who are better able to read the law books have, so I want a lawyer."

MR. NAKELL: Yes.

QUESTION: What is your response to that kind of --

MR. NAKELL: That certainly was the very special concern of this Court when it decided Johnson v. Avery, where it was the illiterate, non-educated inmate, and the Court there was specifically talking about his constitutional right to help. And Mr. Justice White, in his dissenting opinion, expressed the view that we shouldn't necessarily just allow writ writers to operate and forbid the state from prohibiting them, but we should do something about providing this kind of help.

QUESTION: Well, what is your answer to the question does the Constitution require the State of North Carolina to furnish a lawyer to this particular person I have hypothesized about?

MR. NAKELL: Well, here again, not necessarily a lawyer, Your Honor, but something else, and I think that the provision in this plan for the training and use of about 21

inmate para-legals would satisfy that requirement.

QUESTION: You say that the State of North Carolina is constitutionally obligated to furnish him a trained para-legal?

MR. NAKELL: Is constitutionally obligated to provide him some form of help, and it is up to the state in the first instance to decide what the help should be.

QUESTION: Okay. But is it or is it not obligated to furnish him a qualified lawyer?

MR. NAKELL: Not necessarily.

QUESTION: Is it or is it not obligated to furnish him a trained para-legal?

MR. NAKELL: Well, I would think that something in that area would be reasonable --

QUESTION: Well, something in that area, what do you mean by that?

MR. NAKELL: Well, my point in not addressing myself specifically to what the requirement is, Your Honor, is simply that I want to emphasize that the District Court in this case took the position that the method of complying with the constitutional requirement was up to the state and left it to the state, or as the Court did in Younger v. Gilmore, to decide exactly how to satisfy the constitutional requirement. The state may find some other road to do it.

QUESTION: Well, suppose this same question comes up

before Judge Larkins again and we have this situation I have hypothesized to you. Now, what is going to be your answer for petitioning the court or your answer if you are the judge?

MR. NAKELL: Hopefully, if the Court affirms the order of the Court of Appeals, my answer would be that the trained inmate para-legals would satisfy this requirement, unless something else --

QUESTION: And is constitutionally required?

MR. NAKELL: That something is constitutionally. This might --

QUESTION: Well, something -- not lawyer, and you say not a -- perhaps not a trained para-legal either?

MR. NAKELL: Well, there may be some other way of being able to accomplish this.

QUESTION: Can you think of any?

MR. NAKELL: Well, possibly the use of employees may be able to -- employees that are trained, perhaps they would be characterized as para-legals as well, to help him. I am not sure that I necessarily can. And I would think that trained para-legals as a minimum would be required, but there may be a way that the state could formulate to provide this kind of help without doing that, and the matter would be left to the state to formulate, I think.

The District Court in this case did that, and I think properly so, left it up to the state to formulate the

plan. And the plan that we have for review now is the plan submitted by the state. I might say with --

QUESTION: Pursuant to the District Court's requirement, is it not?

MR. NAKELL: Yes, of course. Of course. But certainly it is clear that the -- my point is simply that the District Court and the Court of Appeals did not themselves undertake to make the decision, otherwise they made clear that if the decision were up to them, they would have provided legal counsel. I think they both gave an indication that they would find that to be a preferable system.

I might point out that the great success -- and Younger v. Gilmore has been a great success -- and the great success that it has enjoyed, in my judgment, is due in large part to the use of trained inmate para-legals. The literature has shown that the training program for inmate para-legals has been very successful. Indeed, the State of Michigan just graduated its first class of inmate para-legals last week, with a major graduation ceremony provided over by the Chief Justice of the State. Those jurisdictions that have used inmate para-legals have found them to be very, very useful, and this in my judgment is really the secret to why these programs have been so successful, and far more successful than we would expect law books alone to be, and people have been surprised by how well inmate para-legals have functioned.

get his turn in the library for a day. Writ writers are not going to be able to flourish under that system any better than they can under the present system, where a few people may have access to the only and very, very limited legal information that is available. So there is nothing in this plan that would facilitate the flourishing of inmate writ writers or the development by them of a power base.

QUESTION: Just to be sure -- and I want to nail this down for my own purposes -- you are not attacking in any way the constitutionality of the plan as submitted?

MR. NAKELL: No, Your Honor, no. We would be perfectly satisfied to have the Court approve the plan as it was approved by the District Court with minor modifications, and by the Court of Appeals with one minor modification. We would, I might say, be very pleased to entertain some suggestions about providing counsel because we think that would be better, but we recognize that the constitutional obligation under Younger v. Gilmore is satisfied by the plan that we have.

The American Correctional Association --

QUESTION: Let me interrupt there, since you referred to that. Would you also agree that the library facilities would perhaps no longer be constitutionally required if there were an alternative program such as student lawyers of some kind or other outside the prison system giving this kind of

help?

MR. NAKELL: I would agree. I would agree.

QUESTION: And let me ask you this also, while I have interrupted you. In the Younger case, as I remember it, there was a -- the California system did allow some access by the prisoners to the state law library, and it was challenged as not being adequate. Is that true in North Carolina? Do the prisoners have any access to the state law library?

MR. NAKELL: No, there is no state law library as such. There are law libraries at the Supreme Court and at the state law schools and, as I understand, they may be able to get cases from the libraries at the Supreme Court or the state law library if they pay ten cents a page.

QUESTION: I see.

MR. NAKELL: I believe that is the going rate, ten cents a page.

QUESTION: You have just responded that if this alternative were provided, then libraries would not be necessary. What if someone comes in and points out that in Foretta v. United States, I think it was, the Court held that every individual has the right to represent himself, be his own counsel, and we have such a person in the prisons as under Foretta, "I want to be my own counsel, therefore I must be furnished with all the facilities that I need, even though I am the only one out of 2,000 prisoners here who wants to do it

this way."

MR. NAKELL: Well, first, Your Honor, we are talking about the North Carolina prison system, where people are placed generally -- there are a few people placed there pending trial, but generally people have already been convicted at this stage --

QUESTION: Some of them -- I am talking about if Foretta gives the person the right to represent himself in the trial of a case, would it not follow as a matter of course that he would be entitled to represent himself in anything less than the trial of a contested criminal case?

MR. NAKELL: Yes, I would assume so.

QUESTION: Then what happens to your answer to Mr. Justice Stevens?

MR. NAKELL: Well, Mr. Justice Stevens, of course, raised the question of whether counsel is necessary or whether counsel would be an adequate substitute. If counsel were provided and a prisoner did not want to take advantage of the provision that was made, I think the obligation of the state would be satisfied because the obligation of the state is not to do whatever is necessary in order to satisfy the inmate, but is only to do whatever is necessary or reasonably necessary in order to assure the inmate's access to the courts. Because a particular prisoner might prefer a different method -- and I can imagine prisoners even not in that situation,

prisoners who are in post-conviction or 1983 actions or civil rights actions in state court, who would prefer to have a library rather than counsel. The personal preference of the inmate in that circumstance would not control, I think, it is not a Foretta-type situation at all. It is a situation in which the state's obligation is not to provide necessarily counsel but is only to provide the means reasonably necesary in order to insure the prisoner meaningful access to the courts. That is a different standard than the standard that applies in situations where the inmate would be entitled to the right to counsel, and therefore I don't see any problem or conflict in that particular circumstance.

I would like to say that the American Correctional Association, in May of this year, a development I learned about since filing my brief, came out with a statement of responses to the National Advisory Commission recommendations, and they either accepted or rejected or modified the recommendations, and they with regard to the National Advisory Commission recommendation for access to legal services, they acceptad that, which would provide for a library equivalent to what is provided for in the state's plan in every prison with a design capacity of 100 or more.

QUESTION: Of course, they are addressing themselves to the question of policy and procedure, are they not, and not the Constitution?

MR. NAKELL: That is absolutely correct, Your Honor. I just think that the Court should be informed about the opinions of professional correctional administrators, and they --

QUESTION: As far back as ten or twelve years ago, some of us were parties to a program that advocated and was carried out on a pilot basis circuit-riding lawyers, not law students, circuit-riding lawyers who would periodically show up at a prison to help prisoners. You wouldn't regard that as a commitment on the constitutional issue, would you?

MR. NAKELL: No, Your Honor, just because it is done would not be a commitment on the constitutional issue. But I think that it is important to note that, as Mr. Justice Blackmun brought out, I think, that even the State of North Carolina has taken the position that meaningful access to the courts for prisoners requires that they be given access at least to legal services. This was in the LEAA grant application. I understood Mr. Safron to characterize that as puffing or as salesmanship or saying whatever was necessary to get an LEAA grant. And the only question is whether the state would also say whatever is necessary in order to get an order from this Court.

The state has taken the position that this is necessary and that it will have the collateral effects which have been expressed in many other states, that is it has reduced

the number of frivolous petitions and has increased the quality of petitions in all the other states that have implemented this.

QUESTION: I understand the state's position, that it is necessary because it was required by an action of the District Court. Isn't that what they said to LEAA?

MR. NAKELL: Their grant application.

QUESTION: What?

MR. NAKELL: Their grant application.

QUESTION: Yes. That was the necessity for it.

MR. NAKELL: Well, I assume --

QUESTION: There would be filing without that decision?

MR. NAKELL: Well, I can't say that there would. I don't agree with that. But of course, their petition and their brief in this case were necessitated by the same District Court order.

QUESTION: Well, don't we have to consider it in that light, their application to the LEAA?

MR. NAKELL: Well, I think so.

QUESTION: We accept the fact that they made it after the court's decision?

MR. NAKELL: That's correct. That's right.

QUESTION: All right.

MR. NAKELL: I think the LEAA application, of course,

has another important factor that bears on our case, and that is the state has represented that the cost factor of meeting the District Court's order, of meeting the plan that they themselves proposed would require a distribution, a redistribution of services from something else that the Department of Corrections is providing.

The LEAA application shows that the state was planning all of this time to apply to the federal government for 90 percent funding of the initial cost, 90 percent funding of the expenses for the first couple of years of the program, and that they have every reasonable expectation of being funded in that way because LEAA has funded other programs and indeed has funded programs to greater sums of money, particularly programs which have gone beyond Younger v. Gilmore and provided legal services to varying degrees, including many states which have provided legal services in a comprehensive manner. And we just do not agree that the State of California -- the State of North Carolina, excuse me, in this case, cannot afford to meet its prisoners' constitutional needs in this respect.

On June 30, 1975, the fiscal year ending then, the State of North Carolina -- excuse me, my time is up.

MR. CHIEF JUSTICE BURGER: Thank you gentlemen. The case is submitted.

[Whereupon, at 1:43 o'clock p.m., the case in the above-entitled matter was submitted.]