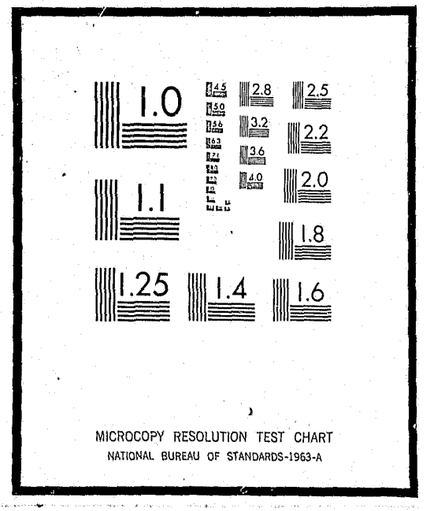




A WORKING PAPER ON

# THE LEGAL RIGHTS OF PRISONERS IN THE UNITED STATES - Working Paper

The League of Women Voters of Ohio

Adult Justice Committee

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# THE LEGAL RIGHTS OF PRISONERS IN THE UNITED STATES

## INTRODUCTION

In its almost 200-year history, the United States Supreme Court has made few decisions on prisoners' rights. Until the 1940's, in fact, all our courts, with few exceptions, consistently refused to intervene in disputes between prisoners and prison administrators, practicing what has become known as the "hands-off policy." Not until the U.S. Supreme Court reached a landmark decision on prisoners' rights in 1948 did the lower courts feel the much needed push to brave this tradition of non-interference. The case at issue was Price v. Johnston, and the decision recognized that a prisoner should not be deprived of rights excepting those which would be detrimental to the administration and discipline of the institution or the program established for him. Price v. Johnston, 343 U.S. 266, 285 (1948). The era in which courts had often regarded the prisoner as a "slave of the state" had ended.

Interestingly, the hands-off doctrine had not been the result of rule of law; instead, it had been based on the following acknowledgments: (1) separation of powers, that is, viewing prison administration as an executive function; (2) allocation of state and federal power, that is, homage to the states' retention of power to proscribe an act as criminal, and to set the punishment; (3) the costliness of reform, and the fact that courts cannot appropriate funding costs; and (4) judicial deference to the expertise of penologists, and fear that interference might create disciplinary problems.

Although it had required a U.S. Supreme Court decision to bring about a new attitude in the courts towards offenders' rights, it had actually been the 6th Circuit Court of Appeals* which first had enunciated the premise that a prisoner retains all the rights of an ordinary citizen except those expressly or by necessary implication taken from him by law. Coffin v. Reichard, 143 F. 2d, 443 (6th Cir. 1944). Since that decision, several other courts went on to clarify that where necessity is claimed as justification for restricting some rights, the burden of proof of this necessity should be born by the correctional authority.

At approximately the same time that courts began to show this new concern for offenders' rights, they began agreeing to hear offenders' complaints. In so doing, they were forced to evaluate correctional practices against some fundamental constitutional commands, namely that (1) state action may not deprive citizens of life, liberty or property without due process of law; (2) state action may not deprive citizens of their right to equal protection of the laws; and (3) the state may not inflict cruel and unusual punishment.

By the mid-1960's, a series of court decisions had begun to recognize due process rights and to apply the "cruel and unusual punishment" standards. By 1968 and 1969, the U.S. Supreme Court had handed down two major decisions which further seriously weakened the hands-off doctrine: in Washington v. Lee, the Court affirmed a 1966 lower court decision which held the 14th Amendment protects prisoners [see 263 F. Supp. (M.D. Ala. 1966)(3-judge court), aff'd per curiam, 390 U.S. 333 (1968)], and the next year the Court stated: "There is no doubt that discipline and administration of state detention facilities are state functions. They are subject to federal authority only where paramount federal constitutional and statutory rights supervene. It is clear,

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*The 6th Circuit Court of Appeals has jurisdiction over an area which includes Ohio.

however, that in instances where state regulations applicable to inmates of prison facilities conflict with such rights, the regulations may be invalidated." Johnson v. Avery, 393 U.S. 483, 486 (1969).

In its 1971-72 term, the U.S. Supreme Court at long last gave dramatic evidence of its new judicial attitude towards sentenced offenders by deciding eight cases directly affecting prisoners' rights, and two other cases having great implications for these rights. Of all of these, perhaps the most quoted so far have been Morrissey v. Brewer, and Argersinger v. Hamlin. Morrissey, decided unanimously by the Court, said that formal procedures were required in order to revoke a person's parole. Prior judicial rulings had granted almost a carte blanche to parole boards on this matter. In Argersinger, one of the two cases having potential ramification for offenders' rights, the Court held that where a person's liberty is at stake, the State must provide counsel in criminal trials for indigent defendants regardless of the seriousness of the offense charged. [See Morrissey v. Brewer, 408 U.S. 471 (1972), and Argersinger v. Hamlin, 407 U.S. 25 (1972)].

PRE-TRIAL DETENTION

In 1971, the Pennsylvania Supreme Court sustained a lower court ruling that conditions at a county prison in Philadelphia were cruel and unusual. The facts in this case--dirty cells and facilities, almost no educational or vocational programs, inadequate social and medical services, an inadequate number of trained guards resulting in sexual assaults, as well as guards participating in physical attacks and beatings--reflected conditions found in most jails, and provided a basis upon which suits may be brought to alleviate pre-trial detention conditions. Commonwealth ex rel. Bryant v. Hendrick, 444 Pa. 83 (1971).

It should be explained here that approximately 85 to 95 percent of the inmates at most jails in the country are persons awaiting trial, usually those who could not make the bail bond set for them. Not only are these persons by law presumed to be innocent, but studies have shown that for the great majority of detainees, pre-trial detention is the only time in their lives they will ever be incarcerated. Some will be found not guilty at trial, but even those who plead guilty or are found guilty will more often than not be released on probation, etc.

In 1970, a federal district court in Arkansas had provided the theory adopted in the Pennsylvania Supreme Court decision cited above. The federal court had held that the totality of substandard prison conditions can amount to cruel and unusual punishment for the persons incarcerated in such prisons. Holt v. Sarver, 309 F. Supp. 362 (E.D. Ark. 1970); aff'd, 442 F. 2d 304 (8th Cir. 1971). In 1972, still another suit brought in Pennsylvania resulted in a lengthy opinion holding the entire local prison system unconstitutional and ordering large-scale reform. Jackson v. Hendrick, No. 71-2437 (Phila. Ct. Com. Pleas, April 7, 1972 (en banc)).

Similarly, pre-trial jail facilities in Detroit, Chicago, New Orleans, Toledo (Ohio), Gallup (New Mexico), and Alameda County, California, have been strongly condemned by federal and state courts. For some of these and other cases relating to pre-trial jail facilities, see Jones v. Wittenberg, 323 F. Supp. 93 (N.D. Ohio 1971); Hamilton v. Love, 328 F. Supp. 1182 (E.D. Ark. 1971); Morris v. Travisono, 310 F. Supp. 857 (D.R.I. 1970); Wayne County Jail



Inmates v. Wayne County Board of Commissioners (Circuit Court, Wayne County, Michigan 1971 No. 173217); and Brenneman v. Madigan, 343 F. Supp. 128 (N.D. Cal. 1972).

By and large, it has been shown that courts are likely to intercede in jail conditions where a combination of any of the following can be shown: substandard and overcrowded living conditions; inadequate protection against attacks by guards or other prisoners; lack of programs and inadequate social and medical services. In the Ohio case, Jones v. Wittenberg, Ohio Federal Court Judge Young wrote: "It is hard to think of any reason why the conditions of confinement should be permitted for those who are only in jail awaiting trial, and are, according to our law, presumed to be innocent of any wrongdoing. For centuries, under our law, punishment before conviction has been forbidden . . . Obviously, no person may be punished except by due process of law . . ."

Some other federal courts have made the important distinction between prisoners serving time and pre-trial detainees in respect to confinement in isolation (Davis v. Lindsay, 321 F. Supp. 1134 (S.D. N.Y. 1970)) and restrictions on personal appearance (Seale v. Manson, 326 F. Supp. 1375 (D. Conn. 1971)).

An important U.S. Supreme Court decision was made on January 15, 1974, in a case stemming from Monroe County, N.Y., upholding the voting priviledges of prison inmates serving misdemeanor sentences or held for trial because they lack bail money. The year before, following a successful suit in federal court in Cleveland, the Ohio legislature likewise had passed a law providing misdemeanants and pre-trial detainees voting rights by absentee ballots. Robert Love, et al v. Robert Hughes, et al, U.S. District Court, No. Dist. E. Div.

POST-INCARCERATION REMEDIES AND PROCEDURES

Access to the federal courts for state prisoners has been available since 1871 by virtue of the Federal Civil Rights Act. In 1964, the U.S. Supreme Court held that state prisoners could also bring suit against their keepers under this Act. The Federal Civil Rights Act allows for suits against state officials in federal court, in cases where any "right, priviledge, or immunity secured by the Constitution or laws" has been denied to any person. 42 U.S.C. §1983. In legal terms, this means that a prisoner does not need to "exhaust state remedies" when constitutional rights are at issue. Under the Act, a prisoner may sue for money damages or for "injunctive" or "declaratory" relief.

Money Damages

In 1971, a federal circuit court of appeals awarded damages of $9,300 to a prisoner who had been confined for over a year in segregation in retaliation for his political beliefs, black militancy, past prison litigation, and threat to sue over prison censorship. Sostre v. McGinnis, 442 F. 2d 178 (2nd Cir. 1971). Two years earlier, in the case of an unprovoked shooting and blinding of a youth by a prison trustee, a federal district court awarded the prisoner $85,000 after finding the prison superintendent responsible for not having exercised due care in selecting this trustee. Roberts v. Williams, 302 F. Supp. 972 (N.D. Miss. 1969). These two cases give some indication of the kind

of serious violation of constitutional rights, and the kind of proof of intentional misconduct on the part of prison officials, for which money damages can be won.

Apart from suits brought under the Federal Civil Rights Act, money damage suits can also be brought by state prisoners in state courts for intentional or negligent denial of rights, and federal prisoners can be awarded money damages under the Federal Torts Claim Act.

Injunctive and Declaratory Relief

Simply put, an injunction is a court order to stop carrying out a particular rule, regulation or policy (such as censoring prisoners writs before permitting them to be sent on to court), and a declaratory judgment is a court ruling which declares a practice or policy unconstitutional (such as the practice of retaliatory punishment for filing suits).

Injunctive suits can be brought by state prisoners in state courts as well as in federal courts, whether the rights in question are constitutional in nature or caused by state statute or regulation. But, though many states have enacted Declaratory Judgment Acts similar in scope to the federal Act, declaratory relief as a state remedy so far seems to have been ignored by prisoners while they continue, of course, to seek this form of relief in the federal courts. Federal prisoners can also sue for injunctive and declaratory relief, but for injunctive relief should first exhaust administrative remedies by requesting the Federal Bureau of Prisons to provide relief.

Habeas Corpus Relief

A writ of habeas corpus is the traditional method by which prisoners can test the validity of their confinement, and if successful, may gain their freedom. It can also be used to challenge the conditions of confinement. Where the challenge is successful, the court can order either release of the prisoner, or it can order conditional release, that is, release if the conditions which have been declared unconstitutional are not changed within a specified period of time.

Federal prisoners may apply directly to federal courts for the writ of habeas corpus, but state prisoners, with some exceptions, first must exhaust state remedies, and access for state prisoners to the federal courts for this relief is very limited. An example of this was a recent application in federal district court in Ohio for a writ of habeas corpus. Ohio has two similarly worded statutes pertaining to the sale of marijuana, one calling for a penalty of 1-5 years, the other, 20-40 years. The latter is rarely used. The plaintiff had been charged under the latter, and had applied for a writ of habeas corpus on grounds that the heavier penalty statute was unconstitutional. The case was dismissed on the ground that the plaintiff had not exhausted state remedies. Bryant Lee Mayo v. Resolute Insurance Company, filed in and dismissed by the U.S. District Court, Northern District, Eastern Division, Ohio--Exhaustion of state remedies is, however, unnecessary where resort to them will obviously be futile, such as when the state's highest court has made a prior adverse decision on an identical federal question which the inmate seeks to raise. Davis v. Sigler, 415 F. 2d 1159 (8th Cir. 1969).

Quite recently, in April of 1973, the U.S. Supreme Court ruled that a person convicted under state law is eligible to initiate habeas corpus action



in federal court even before he is imprisoned (source: Columbus Citizen-Journal, 4/19/73). But in another 1973 ruling, the Court held that an inmate who pleads guilty in open court should have access to the habeas corpus remedy only if he can show that a guilty plea was not offered voluntarily, or that his attorney acted incompetently in recommending a guilty plea; this applies even if the prisoner's constitutional rights have been clearly violated. In the companion cases involved in this ruling, one plaintiff (Willie Lee Henderson, of Tennessee) had challenged the racial composition of the grand jury which had indicted him, while the other plaintiff (Clifford H. Davis, of Mississippi) had brought a similar challenge regarding the jury make-up at his trial (source: Columbus Citizen-Journal, 4/19/73).

Whether a suit is filed for an injunction or writ of habeas corpus, the result is likely to be the same. An exception to this is where the totality of prison conditions are attacked as constituting cruel and unusual punishment; a successful injunctive suit will result in an order to change the conditions, while a successful petition for a writ of habeas corpus will result in a court order for either release or conditional release.

Relief by Writ of Mandamus

A writ of mandamus is a command issued by a court to an administrative, executive or judicial officer to carry out a task which is part of his or her legal duty, or to restore petitioner's rights or priviledges which have been illegally denied. Some successful petitions requesting writs of mandamus have involved constitutional or statutory rights. Brown v. McGinnis, 180 N.E. 2d 791 (New York, 1962); Walker v. Blackwell, 411 F. 2d 23 (5th Cir. 1969). However, in cases involving discipline and control of prisons, the courts' "hands-off" policy still seems to be largely in effect.

DUE PROCESS

In 1965, a federal district court gave recognition to the due process rights of prisoners, stating "a theoretical right of access to the Courts is hardly actual and adequate if its exercise is likely to produce reprisals, physical or otherwise, from Penitentiary personnel." The court ruled that a prisoner must be given advance notice of the character of a proscribed act and of the punishment for that particular conduct. Talley v. Stephen, 247 F. Supp. 683, 690 (E.D. Ark. 1965). The following year, another federal district court ruled that a prisoner should be given advance notice of the charges against him for infractions of jail rules. Wright v. McMann, 257 F. Supp. 739, 745 (N.D. N.Y. 1966). Four years later, the same district court adopted specific procedural guidelines in the same case. Wright v. McMann, No. 66 (N.D. N.Y. 1970).

A judicial breakthrough in the setting of due process standards came in 1966 when a federal district court held that prisoners may not be denied fundamental rights out of deference to internal prison policy. The court explicitly stated: "Due Process and Equal Protection Clauses of the Fourteenth Amendment follow (persons) into prison and protect them there from unconstitutional action on the part of prison authorities carried out under color of state law." This decision was affirmed in 1968 by the U.S. Supreme Court. Washington v. Lee, 263 F. Supp. 327, 331 (M.D. Ala. 1966), aff'd per curiam, 390 U.S. 333 (1968).

Another U.S. Supreme Court decision in 1966 held that the administrative commitment of a prisoner to a hospital for the criminally insane at the end of his prison term, and without new judicial determination available to others so committed, denies equal protection of the law. Baxstrom v. Harold, 383 U.S. 107 (1966).

The early 1970's have brought a very sizable number of due process court decisions. In 1971, Justice Douglas stated: "It is significant that most of the provisions of the Bill of Rights are procedural, for it is procedure that marks much of the difference between rule of law and rule by fiat." Wisconsin v. Constantineau, 400 U.S. 433 (1971). That same year, a federal circuit court of appeals ruled that the facts in a prison disciplinary proceeding must be "rationally determined" and that the prisoner should be afforded a reasonable opportunity to explain his action. The court refused, however, to specify procedural rights, and implicitly rejected claims for cross-examination of prison officials, right to counsel, and the right to present witnesses on the inmate's behalf. Sostre v. McGinnis, 442 F. 2d 178 (2nd Cir. 1971). An earlier federal court of appeals decision had held that "sufficient safeguards" must be provided where the possible punishment is "sufficiently great." Nolan v. Scafati, 430 F. 2d 548 (1st Cir. 1970). In a quite recent case brought before a federal district court in Ohio, however, motion for transfer (or more accurately, motion for re-transfer) was denied despite the charge that the administrative transfer from a medium to a maximum prison, for peaceful work stoppage in an effort to better working conditions, had taken place without any due process or hearings. The prisoners in question faced loss of early parole hearing, honor status, furlough and rehabilitation programs. Gordon Firman v. Bennett Cooper et al., U.S. Dist. Ct., So. Dist., W. Div., Ohio.

Some of the most precise due process holdings have come at the federal district court level. One held that prior to any administrative punitive action a prisoner must be given written notice of the charges against him; a record of the hearing; the right to cross-examine witnesses against him; the right to call witnesses on his own behalf; the right to counsel and the right to have counsel appointed if he is indigent; a decision in writing setting forth the reasons for the decision, the evidence upon which it is based, and the legal basis for the punishment imposed. Cuchette v. Procunier, 328 F. Supp. 767 (N.D. Cal. 1971). Another federal district court ruled in 1971 that where disciplinary proceedings may result in the loss of substantial rights, the accused prisoner has the right to retain counsel or a lay advisor, to cross-examine witnesses against him, and to call witnesses in support of his defense. Landman v. Royster, 333 F. Supp. 621 (E.D. Virginia 1971). A Maryland state court took a similar position the same year. McCray v. Maryland, 10 Cr. L. Rptr. (Md. Cir. Ct., November 1971). Yet another federal district court the year before ordered the adoption of various regulations concerning the classification of prisoners and punitive transfers. It did so in response to charges of discriminatory classification procedures in a Rhode Island state prison, and the court order required (1) regular periodic review of classifications, (2) enumeration of privileges and restrictions of each classification, and (3) a written record of classification proceedings and notification to inmates of contemplated changes, giving reasons. Morris v. Travisono, 310 F. Supp. 857 (D. R.I. 1970).

One of the most common problems for prisoners stems from the fact that wide discretionary powers rest with the prison guards. Recent federal court decisions have recognized the serious due process problems which result when prison rules do not provide for an adequate advance notice of what conduct is proscribed and may result in discipline and punishment. One federal district court in 1971 ruled that prison authorities must officially promulgate rules and regulations so as to adequately apprise an inmate what conduct can subject him to serious discipline, what the penalty can be, and what procedures will be used to make the determinations. The court also ordered that a copy of the rules and regulations be furnished to each inmate. Sinclair v. Henderson, 331 F. Supp. 1123 (E.D. La. 1971). That same year another federal district court required a Virginia prison to establish specific written rules governing the prisoners' conduct. Prison officials were ordered to file with the court a list of rules and regulations regarding standards of behavior, and a schedule of minimum and maximum punishments for violations. Landman v. Royster, 333 F. Supp. 621 (E.D. Va. 1971). Again, the same year yet another federal district court ruled that mere posting of rules in the receiving room of a prison constituted insufficient notice of proscribed conduct, and ordered prison officials to adopt a comprehensive set of rules to be given to each new prisoner in the form of a booklet. Rhem v. McGrath, 326 F. Supp. 681 (S.D. N.Y. 1971).



The most expansive decision concerning notice of fair prison regulations came from a Maryland state court. It ordered the Patuxent Institution (a correctional facility for defective delinquents) to adopt an exhaustively detailed code of rules and regulations written by the court itself at the suggestion of the inmates' counsel. The court specified what kind of punishment could be given for each offense, limiting solitary confinement to a maximum of fifteen days, and provided for full due process protections at disciplinary hearings, including the right to counsel and appeal. McCray v. Maryland, 10 Cr. L. Rptr. 2132 (Md. Cir. Ct., November 1971).

## CRUEL AND UNUSUAL PUNISHMENT

At present, there appear to be three principal tests that are applied by the courts under the 8th Amendment: (1) whether the punishment shocks the general conscience of a civilized society; (2) whether the punishment is unnecessarily cruel; and (3) whether the punishment goes beyond legitimate penal aims.

As early as 1910, the U.S. Supreme Court condemned the chaining of prisoners, and "hard and painful" labor for making false entries in a public record, and it held that the 8th Amendment protections were not tied to a particular theory or point in time. The Court went on to say that the basic underlying concept of the 8th Amendment is "nothing less than the dignity of man." Weems v. United States, 217 U.S. 349 (1910). The touchstone for the Amendment's application to prison conditions had been provided in an even earlier Supreme Court decision handed down in 1892. It said that the government is ". . . bound to protect against lawless violence all persons in their service or custody in the course of the administration of justice." Logan v. U.S., 144 U.S. 263 (1892).

In 1958, the U.S. Supreme Court, speaking again of the 8th Amendment, said it "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." Trop v. Dulles, 356 U.S. 86, 100-101 (1958).

In 1962, the federal district court in Washington, D.C., ruled that isolation in solitary confinement for two years for a relatively minor infraction (engaging in a demonstration tending to breach the peace) of prison rules

constituted cruel and unusual punishment. Fulwood v. Clemmer, 206 F. Supp. 370 (D.C. D.C. 1962). Four years later, a federal district court in California stated that solitary confinement in a "strip cell" without clothing, bedding, medical care and adequate heat, light, ventilation or means of keeping clean constitutes cruel and unusual punishment, and that "the responsible prison authorities . . . have abandoned elemental concepts of decency by permitting conditions to prevail of a shocking and debased nature. . . ." Jordan v. Fitzharris, 257 F. Supp. 674 (N.D. Cal. 1966). In New York State a federal circuit court of appeals ruled similarly, saying "We are of the view that civilized standards of humane decency simply do not permit a man for a substantial period of time (one month) to be denuded and exposed to the bitter cold . . . and to be deprived of the basic elements of hygiene such as soap and toilet paper." Wright v. McMann, 387 F. 2d 519 (2nd Cir. 1967).

One year later, in 1968, another federal circuit court of appeals ruled that any form of corporal punishment is cruel and unusual within the meaning of the Constitution. Jackson v. Bishop, 404 F. 2d 571 (8th Cir. 1968). It merits mention that by regulation, most states (including Ohio) forbid the imposition of corporal punishment in prison.

In 1969, a federal district court in Pennsylvania held that even if circumstances are sufficiently serious to warrant long-term isolation, confinement in solitary for four hundred days is not per se constitutional. This ruling was upheld the following year in the federal circuit court of appeals. Knuckles v. Prasse, 302 F. Supp. 1036 (E.D. Pa. 1969), aff'd, 435 F. 2d 1255 (3rd Cir. 1970). Similarly, in 1971 an important New York case was decided in the federal court of appeals, indicating that a prisoner has a right not to be confined in solitary for an excessive period of time. Sostre v. McGinnis, 442 F. 2d 178 (2nd Cir. 1971).

Another recent leading case involving prisoners' rights under the 8th Amendment, Holt v. Harver, concerned conditions of institutional life within the Arkansas penitentiary system. The federal district court undertook an extensive review of all alleged unconstitutional practices at the prison and held that the cumulative impact of the substandard conditions (history of physical attacks, lack of rehabilitative programs, inadequate medical facilities, unsanitary kitchen and cell conditions, etc.) constitutes a system of cruel and unusual punishment--even though some of these conditions, considered individually, might not constitute a violation of the 8th Amendment. The federal circuit court of appeals affirmed the decision. Holt. v Sarver, 309 F. Supp. 362 (E.D. Ark. 1970), aff'd, 442 F. 2d 304 (8th Cir. 1971). The Pennsylvania Supreme Court gave a similar ruling in regard to general conditions prevailing at a Pennsylvania prison (Commonwealth ex rel. Bryant v. Hendrick, 444 Pa. 83 1971) and the same year, 1971, a federal district court in Ohio ruled that being subject to conditions in Lucas County Jail amounted to cruel and unusual punishment. Jones v. Wittenberg, 323 F. Supp. 93 (N.D. Ohio 1971).

In 1970, a federal district court in Georgia ruled that there is no constitutionally acceptable justification for denying segregated prisoners a chance to exercise. Krist v. Smith, 309 F. Supp. 497 (S.D. Ga. 1970). The following year, a federal district court in Louisiana similarly held that confinement for long periods of time without the opportunity for regular outdoor exercise violates the 8th Amendment. Sinclair v. Henderson, 331 F. Supp. 1123 (E.D. La. 1971). Also in 1971, a federal district court in Virginia enjoined the practice of providing only bread and water, as well as extended,



unnecessary confinement in substandard solitary cells of more men than the cell was meant to hold. In addition, the court invalidated the practice of controlling misbehavior by placing inmates in chains or handcuffs in their cells, and enjoined the use of teargas. It furthermore prohibited officials from taking away inmates' clothes unless a doctor's written statement is obtained which says that the inmate's health will not be adversely affected, and that the inmate presents a substantial risk of injuring himself if given garments. Landman v. Royster, 333 F. Supp. 621 (E.D. Va. 1971). In the same year, a federal circuit court of appeals also ruled that severe physical abuse of prisoners by their keepers without cause or provocation is actionable under the Federal Civil Rights Act. Tolbert v. Bragan, 451 F. 2d 1020 (5th Cir. 1971).

PHYSICAL SECURITY

Three possible remedies exist at present in the case where a prisoner is assaulted by fellow prisoners or guards, sexually or otherwise. These remedies are (1) criminal prosecution of the offender; (2) punishment of the offenders after internal prison disciplinary proceedings; and (3) filing a civil suit for damages. In 1966, a federal district court found prison officials negligent because they had failed to prevent an assault through improper classification of the assaulting prisoner (who was psychotic and had a history of physical assaults) and by not keeping him from an area where the victim was working. Cohen v. United States, 252 F. Supp. 679 (N.D. Ga. 1966). Similarly, a federal district court found the superintendent of a county prison legally liable for the gross negligence of an armed trustee who had shot and blinded a juvenile prisoner (see Money Damages under section on POST-INCARCERATION RELIEF AND PROCEDURES). Roberts v. Williams, 302 F. Supp. 972 (N.D. Miss. 1969). More recently, a New Jersey state court ruled that a prisoner could sue prison officials for injuried suffered from an assault by another prisoner even where the officials had no direct notice of the attacker's plan, because a jailer has the duty to protect prisoners against reasonably foreseeable risks. Harris v. State, 118 N.J. Super. 384 (1972).

MEDICAL CARE

So far not much by way of effective remedies is available for prisoners who receive negligent or inadequate medical treatment. In 1963, the U.S. Supreme Court ruled that federal prisoners may sue under the Tort Claims Act for money damages for negligent medical treatment, even where such suits might interfere with prison discipline. United States v. Muniz, 374 U.S. 150 (1963). Eight years earlier a federal district court had said that a refusal of prison authorities to provide inmates with needed medical care was actionable under the Federal Civil Rights Act. McCollum v. Mayfield, 130 F. Supp. 112 (N.D. Cal. 1955). However, neither simple negligence nor a mere difference of opinion between an inmate and prison officials has sufficed for the courts to support an allegation of inadequate medical care under the Federal Civil Rights Act. Obvious neglect or intentional mistreatment must be demonstrated. In 1970, one federal court of appeals adopted a rather rigid standard similar to the "cruel and unusual punishment" test, ruling that the conduct must amount to a "barbarous act" that "shocks the conscience" in order to entitle the prisoner to judicial relief. United States ex re. Hyde v. McGinnis, 429 F. 2d 864 (2nd Cir. 1970). Yet, courts have also said that prison officials may not overrule a medical prescription, and that when current medical practice

indicates a particular course of treatment, denial of such treatment constitutes cruel and unusual punishment. For examples of a variety of situations in which courts have found a denial of prisoners' constitutional rights under the above guidelines, see Talley v. Stephens, 247 F. Supp. 683 (E.D. Ark. 1965); Sawyer v. Sigler, 320 F. Supp. 690 (D. Neb. 1970); Tobert v. Eyman, 434 F. 2d 625 (9th Cir. 1970); and Martinez v. Mancusi, 443 F. 2d 921 (2nd Cir. 1970).

In Ohio, a federal district court decision is presently pending on a complaint alleging that the new Southern Ohio Correctional Institute at Lucasville has inadequate medical and rehabilitative facilities. Originally, the complaint requested that the court enjoin the Ohio Department of Rehabilitation and Correction from transferring any more inmates to the new institute until the medical facilities would be completed. Meanwhile, by March 1973, two inmates died there, allegedly from a lack of medical treatment, including the principal plaintiff, Kelly Chapman. Since by that time most prisoners had already been transferred to the new facility at Lucasville, the request to the court was changed to one ordering the State to provide for adequate medical care. Kelly Chapman, et al. v. Governor John Gilligan, et al., U.S. Dist. Ct., So. Dist., W. Div.

## REHABILITATION

Several federal courts, including the U.S. Supreme Court in the Gault case, have suggested that officials in mental hospitals, juvenile jails, and other institutions have a constitutional obligation to provide adequate treatment and/or rehabilitation programs for the inmates of these institutions. See In re Gault, 387 U.S. 1 (1967); Rouse v. Cameron, 373 F. 2d 451 (D.C. Cir. 1966); Covington v. Harris, 419 F. 2d 617 (D.C. Cir. 1969); and Wyatt v. Stickney, 325 F. Supp. 781 (N.D. Ala. 1971). These decisions, however, have been based on the theory that the sole reason for commitment to such institutions was for treatment. As long as prisons are meant to punish, deter, and prevent as well as rehabilitate, courts will not likely feel obligated to apply this principle to the treatment of prisoners.

In some cases, courts have indicated that a prison's failure to provide rehabilitation opportunities may be considered a factor in determining whether confinement in the institution amounts to cruel and unusual punishment. In Holt v. Sarver, the federal district court in Arkansas considered the constitutional necessity for rehabilitation in imprisonment for adult criminal offenders. It held that, though not prepared to constitutionally require rehabilitative measures for convicts, "the absence of an affirmative program of training and rehabilitation may have constitutional significance where in the absence of such a program, conditions and practices exist which militate against reform and rehabilitation." Holt v. Sarver, 309 F. Supp. 362 (E.D. Ark. 1970), aff'd, 442 F. 2d 304 (8th Cir. 1971). A Similar point was made by another federal court three years earlier, when it prohibited the imposition of corporal punishment: ". . . corporal punishment generates hate towards the keepers who punish and towards the system which permits it . . . it frustrates correctional and rehabilitative goals." Jackson v. Bishop, 404 F. 2d 571 (8th Cir. 1968). The Supreme Court of Pennsylvania also held that absence of rehabilitative programs resulting in forced idleness could, when considered together with other substandard conditions, constitute a system of cruel and unusual punishment. Commonwealth ex rel. Bryant v. Hendrick, 444 Pa. 83 (1971).



A Maryland state court decision, which if upheld on appeal may well become the court decision needed to firmly establish the right to rehabilitation for convicted felons, concerns Patuxent Institution, Maryland's correctional facility for defective delinquents. The court ruled that Patuxent inmates have a constitutional right to be treated for the mental condition that led to their crimes. McCray v. Maryland, 10 Cr. L. Rptr. 2132 (Cir. Ct. Md. November 11, 1971). However, the right-to-treatment is a very complicated one. Just as rehabilitation programs in a coercive environment are at times accused of suppressive motives, so can a right-to-treatment doctrine, unless it is carefully balanced by an equally supported legal position of the right-not-to-be-treated.

## PRIVACY, PERSONAL AND PHYSICAL APPEARANCE

In 1971, a Maryland state court issued regulations governing searches of inmates. It said that searches must be conducted with "maximum respect and minimal discomfort" to the inmates, and that only items prohibited by the conduct rules may be confiscated; that all items removed in searches of cells must be replaced without damage, and that inmates have a right to be present during a search of their cells and must be given a written list of all items confiscated. McCray v. Maryland, 10 Cr. L. Rptr. 2131 (Cir. Ct. Md. November 1971).

In the matter of personal appearance, a federal district court in Connecticut ruled in 1971 that where a prison regulation limited the jewelry women prisoners might wear to certain enumerated items, no infringement on any constitutional right existed. The same court, however, also ruled that in respect to physical appearance, a male prisoner could wear a short beard and goatee. Seale v. Manson, 326 F. Supp. 1375 (D. Conn. 1971).

## COMMUNICATION AND ACCESS TO THE COURTS

In 1946, the U.S. Supreme Court struck down a prison regulation providing that all legal documents, prior to being forwarded to a court, were subject to a prison official's determination as to whether they were properly drawn. Ex Parte Hull, 312 U.S. 546 (1946). Since that decision, the power to open, read and censor prisoners' legal mail has been substantially limited by the federal courts, and significant opinions have resulted from cases in Ohio and Rhode Island. The Ohio case was an action brought by a number of prisoners at the Lucas County Jail, and the court order said in part: "Prompt arrangements shall be made for library service to prisoners. There shall be no censorship of books or periodicals supplied to, purchased by, or given to prisoners, except that the defendant Sheriff may, in his discretion, forbid the introduction into the jail of books or periodicals which would come clearly within the definition of pornography established by the decision of the Supreme Court of the United States." On communication and attorney visitations the court said that the following minimum standards with respect to prisoners awaiting trial must be met: (1) no censorship of outgoing mail; (2) no limitation on the persons to whom outgoing mail may be directed; (3) no censorship of incoming letters from the prisoners' attorney or from any judge or elected public official; (4) incoming parcels or letters may be inspected for contraband, but letters may not be read; (5) proper arrangements must be made that prisoners may freely obtain writing materials and postage; (6) indigent prisoners shall be furnished at public expense writing materials and postage for personal use

in dispatching a maximum of five letters per week; (7) provisions shall be made for as many phone calls as necessary for a person who is without counsel to obtain counsel; (8) provisions shall be made for prisoners to make local telephone calls during stated hours; (9) prisoners' telephone calls shall not be monitored. The court added that "Proposals for communication by prisoners under sentence may limit the above standards to the following extent: (1) standards 2, 4, 7, 8 and 9 need not be applied, and (2) reasonable limitations may be placed upon the number of letters dispatched." With respect to attorney visitation, the court ordered provision of physical facilities in which prisoners could consult privately with their attorneys. Jones v. Wittenberg, 330 F. Supp. 707 (N.D. Ohio 1971). In the Rhode Island case, the federal district court observed that total censorship serves no rational deterrent, rehabilitative or prison-security purpose. The court held that it was unconstitutional to censor any letters that criticize jail conditions, and ruled that the prison had no right to "protect" the public from vulgar or insulting letters from prisoners. In addition, it held that prison officials may not open or inspect outgoing or incoming mail to or from the courts, attorneys, or a long list of government officials. It required that prison officials obtain a search-and-seizure warrant prior to reading any outgoing mail. With respect to incoming mail, the court ruled that all letters (except from counsel, the courts, and the government officials) may be inspected for drugs, weapons, and contraband, and may be read to detect and censor hard-core pornography and highly inflammable writings; however, if any mail or other material is censored or confiscated, prison officials must notify the prisoner to whom the mail was addressed. Palmigiano v. Travisono, 317 F. Supp. 776 (D. R.I. 1970).

In yet another federal court decision in Ohio in 1972, the court ordered a prisoner released from solitary and ruled that the punishment of prisoners for exercising their rights to access to the courts is unconstitutional. Armstrong v. Cardwell, 475 F. 2d 34 (6th Cir. 1972).

An important 1972 decision in the area of prisoner correspondence with legal assistance agencies resulted from the effort of inmates at Green Haven Prison in New York to organize a Prisoners' Labor Union. Several prisoners had written to a legal aid society requesting advice and assistance with respect to the formation of the Union. Prison officials refused to recognize the Union and withheld letters from the legal aid society to the prisoners. The Second Circuit Court of Appeals ordered the officials to deliver the letters, holding that the letters did not present a clear and present danger to the institution. The court also said "Under the test for attorney-client mail, the state must show clearly an abuse of access in order to justify restrictions. Defendants claim that such an abuse exists here, because the letter advocated an 'unlawful scheme' . . . The contention . . . seems a misuse of that term. The lawyers were telling the prisoners to utilize lawful, not unlawful channels for the presentation of grievances and were guiding a challenge to a prison rule through orderly procedures. It is difficult to discern in what other fashion the prison would prefer to have the rule examined; it is the only peaceful method by which it can be reviewed by someone other than the Commissioner or his deputy, who are naturally interested in quelling any inmate activity which may arrogate to inmates themselves some decision-making power about the conditions of prison life." Goodwin v. Oswald, 462 F. 2d 1237 (2nd Cir. 1972).

In 1969, the U.S. Supreme Court ruled that unless prison officials provide reasonable legal assistance to inmates, they may not prohibit prisoners from assisting each other with legal work. The Court also said that the due



process right to unimpeded access to the courts overrode any objections that prison officials made on the ground that jailhouse lawyers would interfere with prison discipline. Johnson v. Avery, 393 U.S. 483 (1969). Many prisons have implemented that decision by establishing legal assistance programs. Of those permitting jailhouse lawyers, some have nevertheless placed restrictions on them, such as limiting the number of legal books in the prison library. The U.S. Supreme Court has recently placed many of these restrictions in question by requiring California to greatly expand its prison law libraries. In doing so, it affirmed a federal district court holding which said "A prisoner should know the rules concerning venue, jurisdiction, exhaustion of remedies, and proper parties respondent. He should know which facts are legally significant, and merit presentation to the court, and which are irrelevant and confusing . . . 'Access to the courts,' then, is a larger concept than that put forward by the State. It encompasses all the means a defendant or petitioner might require to get a fair hearing from the judiciary on all charges brought against him or grievances alleged by him." Younger v. Gilmore, 404 U.S. 15 (1971), aff'd 319 F. Supp. 105 (N.D. Cal. 1970).

In 1970, a New York federal district court ruling invoked a First Amendment analysis which has been sadly lacking in most other cases concerned with censorship of non-legal correspondence. In this particular case, the prisoner had been punished for criticizing prison officials in a letter to his parents. The court broadened its previously stated rule affirming the right of prisoners to complain to the courts about prison conditions, by saying that prisoners have the right to complain to private persons. "Any prison regulation or practice which restricts the right of free expression that a prisoner would have enjoyed if he had not been imprisoned must be related both reasonably . . . and necessarily . . . to the advancement of some justifiable purpose of imprisonment . . . A prisoner could be punished only if he acted or threatened to act in a way that breached or constituted a clear and present danger of breaching the justifiable regulation." Carothers v. Follette, 314 F. Supp. 1014 (S.D. N.Y. 1970).

Regarding prisoners' right of access to the media, a federal circuit court of appeals held in 1971 that prisoners have a right to send letters to the press concerning prison management, treatment of offenders, or personal grievances except those which (1) contain or concern contraband, or (2) contain or concern any plan of escape or devise for evading prison regulations. The court added that "the prisoners' right to speak is enhanced by the right of the public to hear." Nolan v. Fitzpatrick, 451 F. 2d 545 (1st Cir. 1971). In 1972, a federal district court ruled that a Federal Bureau of Prisons policy prohibiting any interviews between prisoners and news reporters was in violation of the First Amendment. The court said "Prisons are public institutions . . . Whenever people are incarcerated, whether it be in a prison, an insane asylum, or an institution such as those for the senile or retarded, opportunities for human indignities and administrative insensitivity exist. Those thus deprived of freedom live out of the public's view. It is largely only through the media that a failure in a particular institution to adhere to minimum standards of human dignity can be exposed . . ." Washington Post v. Kleindienst, 1 Prison L. Rptr. 141 _ F. Supp. _ (D.D.C. 1972). One year before this decision, a state court in Maryland had also ordered that media access to provided subject to reasonable regulations. McCray v. Maryland, 10 Cr. L. Rptr. 2132 (Md. Cir. Ct., November 1971).

POLITICAL RIGHTS

The First Amendment political right of free expression, association, assembly and belief has not been given much encouragement in prison, and few court decisions supporting this right exist to date.

In 1969, a New York federal district court ruled that inmate members of the Black Panther party are permitted to read the party magazine subject to the correctional authority's discretion on the magazine's dissemination to other inmates and to when and how the party members can read the periodical. U.S. ex rel. Shakur v. McGrath, 303 F. Supp. 303 (S.D. N.Y. 1969).

Two years later, the Sostre case brought a decision in a federal circuit court of appeals which included a discussion of the right to political expression and belief. Sostre had been punished for expressing radical beliefs and for collecting the writings of black nationalists and revolutionaries. The court ruled that this punishment was illegal since it would "permit prison authorities to manipulate and crush thoughts under the guise of regulation." Sostre v. McGinnis, 442 F. 2d 202 (2nd Cir. 1971). Other courts, though ruling that a prisoner's beliefs are protected under the Constitution, have not ruled as generously in regard to the expression of these beliefs.

RELIGIOUS AND RACIAL DISCRIMINATION

So far, nearly all litigation over the right to the free expression of religion has involved suits by Muslims, and Muslims have been instrumental in establishing new rights for prisoners of all religions.

Several federal court decisions have established that the Muslim sect is a religion under the First Amendment, thereby guaranteeing Muslim prisoners the same rights as other inmates to practice and exercise their religious beliefs. Sewell v. Pegelow, 291 F. 196 (4th Cir. 1961); Fulwood v. Clemmer, 206 F. Supp. 370 (D. D.C. 1961); Sostre v. McGinnis, 334 F. 2d 906 (2nd Cir. 1964). In Fulwood v. Clemmer, the court also declared that even in prison a person has an absolute right to embrace the religious beliefs of his choice, and that it is not the function of the court "to consider the merits or fallacies of a religion or to praise or condemn it, however excellent or fanatical or preposterous it may be."

Several federal courts have ordered that Muslims have an absolute right to receive, possess and read the Muslim bible, on either the ground that the bibles of the major religious denominations are freely possessed by other prisoners, or for the more basic reason that the Constitution guarantees the free exercise of religion and that this guarantee includes the right to read and study the religion's most important scriptures. In Long v. Parker, the federal court of appeals said that if other religions receive religious literature, Muslims may not be denied this right unless the corrections authority can demonstrate a "clear and present danger" to prison discipline. Long v. Parker, 390 2d 816 (3rd Cir. 1968). However, in Walter v. Blackwell, the federal court of appeals ruled that if a religious newspaper should after a while develop an inflammatory effect on inmates, prison officials could act to avoid violence. Walter v. Blackwell, 411 F. 2d 23 (5th Cir. 1969).

Some federal courts have sustained prison officials' arguments that the newspaper Muhammed Speaks and Elijah Muhammed's book Message to the Black Man



in America are inflammatory and racist and therefore a threat to prison discipline (see Knuckles v. Prasse, 302 F. Supp. 1036 (E.D. Pa. 1969), and Abernathy v. Cunningham, 393 F. 2d 775 (4th Cir. 1968)), but most courts have granted Muslims the right to collective worship and visitation by Muslim ministers (see Walker v. Blackwell, and Long v. Parker, both cited above; also, see Cooper v. Pate, 382 F. 2d 518 (7th Cir. 1967)), on the ground that it would be impermissible discrimination not to allow these rights to Muslims while permitting them for other groups.

Cases involving the dietary requirements of Muslims have varied somewhat as to the decisions reached. The overall outcome is that prison administrators must make reasonable provisions for the dietary and other needs of Muslim and orthodox prisoners. In 1969, a federal circuit court of appeals decided that there was no reason why the prisoners' request for one full-course meal per day could not be accommodated, and made this statement: "That penal as well as judicial authorities respond to constitutional duties is vastly important to society as well as to the prisoners. Treatment that degrades the inmate, invades his privacy, and frustrates the ability to choose pursuits through which he can manifest himself and gain self-respect erodes the very foundation upon which he can prepare for a socially useful life. Religion in prison subserves the rehabilitative function by providing an area within which the inmate may reclaim his dignity and reassert his individuality. But quite ironically, while government provides prisoners with chapels, ministers, free sacred texts and symbols, there subsists a danger that prison personnel will demand from inmates the same obeisance in the religious sphere that more rightfully they may require in other aspects of prison life. . . ." Barnett v. Rogers, 410 F. 2d 1002-1003 (D.C. Cir. 1969).

In regard to the wearing of religious symbols, a federal district court decided in 1961 that confiscation of Muslim--but not Catholic, Protestant, or Jewish--religious medals was a violation of the prisoners' right not to be discriminated against because of religion, and that the prison administration must provide Muslim medals from public funds as long as other religious medals were so provided. Fulwood v. Clemmer, 206 F. Supp. (D. D.C. 1961).

Racial segregation is not permitted in any prison. Following decisions by the U.S. Supreme Court invalidating various forms and practices of racial discrimination, the courts have consistently condemned such discrimination in prisons. See Montgomery v. Oakley Training School, 426 F. 2d 269 (5th Cir. 1970), and Washington v. Lee, 263 F. Supp. 327 (M.D. Ala. 1966). Even so, racial discrimination remains a commonplace grievance, but it is difficult to prove since the real motives are easily hidden under official discretionary acts. One federal district court, however, awarded over $1,400 to a black prisoner in 1972 upon finding that he suffered a demotion in his job assignment because of his race. United States ex rel. Motley v. Rundle, 340 F. Supp. 807 (E.D. Pa. 1972). And in another 1972 decision, a federal circuit court of appeals ruled that potential hostility of some white inmates are not adequate ground for racial segregation of a state facility. McClelland v. Sigler, 456 F. 2d 1266 (8th Cir. 1972).

PAROLE

When parole is denied, it constitutes in essence a re-sentencing. Due process in the parole-granting and parole-revocation process is therefore a critical concern to the majority of prisoners.

In 1971, the New Jersey State Supreme Court ruled that a parole board must give reasons for denying parole since such a "course as a general matter would serve the acknowledged interest of procedural fairness and . . . as a suitable and significant discipline on the Board's exercise of its wide powers." Monks v. State Board of Parole, 58 N.J. 238, 277 A. 2d 193 (1971).

The Supreme Court of California, in 1972, ruled that California parole officials must discontinue their policy of refusing parole to all persons who sold narcotics for profit. It added that such a policy "violates the spirit and frustrates the purposes of the Indeterminate Sentence Law and the parole system." In re Minnis, 1 Prison L. Rptr. 289 (Cal. Sup. Ct., July 21, 1972). That same year, a federal court of appeals ruled that a prisoner must be given a court hearing on his claim that the parole board relied solely on his prior criminal record in denying parole. Scarpa v. United States Board of Parole, 1 Prison L. Rptr. 213, _ F. 2d _ (5th Cir. 1972).

Although some courts have provided for assistance of counsel at parole-revocation hearings, they have refused to extend procedural rights at parole-granting hearings. For example, see Menechino v. Oswald, 430 F. 2d 403 (2nd Cir. 1970). The right to a fair hearing and especially the right to counsel in preparation of and during the parole-granting process have as yet received almost no court recognition.

In regard to parolees' First Amendment rights, a federal district court ruled in 1971 that a U.S. Parole Board decision restricting the right of a parolee (on parole for espionage) to travel and to speak and participate in anti-war demonstrations was unconstitutional. Sobel v. Reed, 327 F. Supp. 1294 (S.D. N.Y. 1971). The court held that First Amendment rights of parolees may be restricted only to serve valid penological services, and noted that totalitarian states use "rehabilitation" as a means of thought control, and that rehabilitation is probably best achieved by not imposing degrading and distrustful restrictions. Another federal district court upheld similarly First Amendment rights of parolees in a case where the parolee had been required to obtain permission from his parole officer before giving any public speech. Hyland v. Procunier, 311 F. Supp. 749 (N.D. Cal. 1970). In 1971, a federal circuit court of appeals held that parole conditions prohibiting a convicted income-tax violator from expressing his "fanatical" opinions about the constitutionality of federal tax laws was unconstitutional, adding that he could properly be prohibited only from urging others to violate the law. Erth v. Templar, 453 F. 2d 330 (10th Cir. 1971).

As early as 1967, a federal district court in New York suppressed illegally seized evidence by law enforcement officials and held that a parolee does not forfeit Fourth Amendment rights to privacy by agreeing to be released on parole. United States v. Lewis, 274 F. Supp. 184, 190 (S.D. N.Y. 1967). Other courts, however, have argued that parole is both a kind of custody and a privilege instead of a right, and have ruled for the admissibility of illegally seized evidence at parole-revocation hearings. In re Martinez, 83 Cal. Rptr. 382, 463 P. 2d 734 (1970), and United States ex rel. Sperling v. Fitzpatrick, 426 F. 2d 1161 (2nd Cir. 1970). Similarly, in a 1968 case, Rose v. Haskins, a federal circuit court of appeals in Ohio held that parole was a "matter of grace" on the part of the state, and that no tangible entitlements rested with the parolee, and that, in fact, a revocation did not require a hearing. Rose v. Haskins, 388 F. 2d 91 (6th Cir. 1968). (Interestingly, however, the vigorous dissenting opinion in this case seems to have been used subsequently in numerous other circuit court of appeals decisions in granting certain parolee rights!)



In 1972, the U.S. Supreme Court ruled in the now famous Morrissey case that a parolee is entitled to a parole-revocation hearing, and mandated that the parolee be given (1) written notice of charges against him, (2) an opportunity to confront and cross-examine witnesses, (3) the right to present evidence in his own behalf, and (4) the right to a neutral hearing officer. The Court said "The liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a 'grievous loss' on the parolee and often on others. It is hardly useful any longer to try to deal with this problem in terms of whether the parolee's liberty is a 'right' or a 'privilege.' By whatever name, the liberty is valuable and must be seen within the protection of the Fourth Amendment." Morrissey v. Brewer, 408 U.S. 471 (1972).

The question of the right to counsel at parole revocation hearings was left undecided by Morrissey v. Brewer, even though in the parallel case of probationers the Court has ruled that they are constitutionally entitled to counsel at probation-revocation hearings and deferred sentencing proceedings. Mempa v. Rhay, 389 U.S. 128 (1967). As for lower courts, they are divided on the issue of counsel at parole-revocation hearings. In 1971, a federal appeals court held that parolees have this right. United States ex rel. Bey v. Connecticut State Board of Parole, 443 F. 2d 1079 (2nd Cir. 1971). State courts in New York, Pennsylvania, and Michigan (People ex rel. Menechino v. Warden, 27 N.Y. 2d 376 (1971); Commonwealth v. Tinson, 433 Pa. 328 (1969); Warren v. Michigan Parole Board, 23 Misc. App. 754, 179 N.W. 2d 664), and federal district courts in Wisconsin, California, and Florida (Goolsby v. Gagnon, 322 F. Supp. 296 (E.D. Wis. 1971); Mozingo v. Craven, 341 F. Supp. 296 (C.D. Cal. 1972); Cottle v. Wainwright, 338 F. Supp. 819 (M.D. Fla. 1972)), have handed down similar decisions.

Courts which have decided that parolees are not entitled to counsel at parole-revocation hearings include the Third, Sixth, and Tenth Circuit Courts of Appeals. United States ex rel. Halprin v. Parker, 418 F. 2d 313 (3rd Cir. 1969); Rose v. Haskins, 388 F. 2d 91 (6th Cir. 1968); and Williams v. Patterson, 389 F. 2d 374 (10th Cir. 1968).

RESOURCE MATERIALS/POST-SCRIPT

Sources used in the preparation of this working paper have been:

The Rights of Prisoners: The Basic ACLU Guide to a Prisoner's Rights, by David Rudovsky. Avon Books, 1973. This book is also known as the "ACLU handbook on prisoners' rights," and its importance as a handbook was underlined in a January 1974 out-of-court settlement of an Ohio lawsuit concerning prisoner abuse. The agreement called for the American Civil Liberties Union to provide to the Ohio Department of Rehabilitation and Correction, with the understanding that the Department in turn must distribute copies of the handbook to all present and, for a period of six months, all incoming prisoners at the Southern Ohio Correctional Facility at Lucasville. Lacey, et al. v. Gaver, et al., U.S. Dist. Ct., So. Dist. E. Div.

The Rights of Americans, Norman Dorsen, ed. Random House, New York, 1970, 1971.

Constitutional Rights of Prisoners, by John W. Palmer. The W. H. Anderson Company, Cincinnati, 1973.

The National Advisory Commission on Criminal Justice Standards and Goals: Corrections. 1973.

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