

Page 11-25-71

What Prisoners Have a Right to Expect

All too soon, the soul-searching aftermath of the Attica crisis is subsiding, dropping out of public discussion and concern, the way big stories can do in time. But the issues raised by Attica, the hard questions of how this nation should treat those whom it incarcerates, have by no means evaporated; in fact, they were the focus of an important court decision last week on the rights of prisoners at Maryland's Patuxent Institution.

In a remarkably detailed, 81-page ruling ordering far-reaching changes at Patuxent, Judges H. Ralph Miller of the Montgomery County Circuit Court and Robert B. Watts of the Baltimore Supreme Court Bench, concluded that the institution had neglected its special mission to rehabilitate its inmates, by allowing arbitrary practices that ignored prisoner rights.

To many people on "the outside," the procedural changes ordered at the institution may not seem so significant, for the order covered everything from methods of discipline to the number of washcloths and candy bars allowed each prisoner in his cell. But in meticulously detailing regulations governing diet, sanitary conditions, punishment procedures, visiting rights, mail privileges and medical care, the judges pointed up the absence of written rules and established procedures that has been at the heart of so many prison problems.

Moreover, the judges asserted that Patuxent's inmates have a legal right to the treatment they need for rehabilitation, not just to better living conditions and less arbitrary discipline, especially in view of a unique law that provided the basis for opening the institution in 1955. The facility in Jessup, about 25 miles from Washington, houses prisoners covered by the state's "defective delinquent" law.

This law permits the indefinite confinement of chronic and compulsive—but legally sane—lawbreakers, for the purpose of psychiatric rehabilitation. Such persons may be kept in custody beyond the maximum sentences they would face if they went to traditional prisons, but in exchange are to receive the help they need to overcome their criminal tendencies. In effect, Judges Miller and Watts found that the state not only had failed to keep its end of this bargain, but had permitted "cruel and unusual punishment" in violation of the Eighth Amendment to the Constitution.

"The current unstructured and uncontrolled processes result in decisions that are unfounded, inconsistent and unrelated to any of the professed goals of this institution," the judges said, noting that the arbitrary banishment of inmates to "the hole"—a "prison within a prison"—is "unfortunate."

"The court is of the opinion that one of the

needs of the institution paramount at this time is an intensive treatment program to deal with recalcitrant prisoners," the judges wrote. "It is not enough that these persons be left alone, based on their mere refusal to cooperate in the rehabilitative effort..."

While Patuxent is a unique treatment facility, the ruling by Judges Miller and Watts is replete with conclusions that bear on the problems of penal institutions nationwide—at a time when judges increasingly are developing law holding that inmates, though imprisoned, still retain some constitutional rights; and the ruling has drawn from many sources in addressing Patuxent's problems. For example, in discussing use of a "hole," the judges quoted from the American Correctional Association's Manual of Correctional Standards, for a comment that is worth remembering at any penal facility:

Perhaps we have been too dependent on isolation or solitary confinement as the principal method of handling the violators of institutional rules. Isolation may bring short-term conformity for some, but brings increased disturbances and deeper ingrained hostility to more.

As yet, no one has established a "model" prison, or found the perfect combination of rules for confining people and returning them to law-abiding roles in society. But the experiences at Attica demonstrated that troubles arise in prisons because the inmates feel they are being treated unfairly, through arbitrary, informal rules that make it hard for prisoners to know precisely what they have a right to expect.

This was the gist of an opinion earlier this month by U.S. District Judge Robert R. Merhige Jr. in Virginia, who made it abundantly clear that conditions in that state's prisons had been precisely those that nurture riots; and this basic message has now been reinforced in Maryland. Everywhere, the courts are subjecting prisons to greater scrutiny, recognizing that a prisoner does not lose all his civil rights when he is incarcerated.

The new judicial attention to these questions must continue, for, as Judges Miller and Watts noted, neither the public nor the courts have seriously tackled the problems in the past. "Because of this insulation from public awareness and judicial review, faults have developed in the nation's prisons which might otherwise have been corrected by zealous reformists," the judges commented. "The problem has been compounded because once administrative procedures were developed by prisons, very little was accomplished thereafter to bring these procedures in line with the Constitution or developing methods of prisoner rehabilitation. Prisons have changed little in comparison with the rest of society, since the turn of the century."