

The Drive for Inmates' Rights

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"It used to be that the favorite recreational activity of prisoners was playing baseball. Now it's filing lawsuits," says Evelle J. Younger, attorney general of California.

Is there a new kind of person behind bars in the 1970s? More interested in politics than athletics? More militant, organized and rebellious?

Younger is right about the growth of lawsuits. There is a swelling tide of civil petitions flowing out of prison cells into courtrooms. These are not the traditional jailhouse appeals on criminal cases, which continue. The new phenomenon is civil petitions suing prison administrators for allegedly violating human and civil rights.

In 1938, federal courts received only 625 such petitions from prisoners, less than 2 per cent of all federal civil suits that year.

Last year there were 12,200. By now, one of every six civil suits in a federal district court is from an American prisoner claiming that his treatment inside a penal institution is illegal.

Evelle Younger is wrong about this being "recreational activity." Prisoners are dead serious.

Judges have been just as serious. Judges all over the country, horrified when they see conditions to which they have condemned defendants, are dropping their traditional "hands-off" policy toward prisons and are taking responsibility for the nature of the punishment they order.

This is forcing the freshest air into the American prison since its invention in 1790.

Judges have called some prisons unconstitutional — for example, Holmesburg, Pa., and the entire Arkansas state system. In Florida, West Virginia, Virginia, Illinois, California and Maryland, judges have declared



particular prisons unconstitutional, usually for cruel and unusual punishment or administering serious punishment without due process.

Robert N. C. Nix Jr., presiding judge in the Holmesburg, Pa., case, said "prisons aren't supposed to be torture chambers. The separation from society is supposed to be enough."

Judge Israel Augustine of New Orleans District Court said that unless the local jails ceased being "medieval and archaic" he would resign rather than send prisoners to them.

There is reason to think that American prisons are no worse today than they used to be. Except for overcrowding, they probably are bet-

ter. But increasingly inhumane conditions are no longer being tolerated, for reasons including a change in the attitudes of prisoners and of society:

1. Non-whites in America—blacks, Mexican-Americans, Puerto Ricans, Indians — are 12.5 per cent of the total population, but they are from 40 per cent to 50 per cent of all persons in prisons. The entire criminal justice system—police, prosecution, judges jails and prisons — is largely white-run. Ninety-five per cent of prison guards are white. Non-whites are rebelling against their depressed status in the outside world. Behind bars, where their concentration of depression is even more severe, this protest continues.

2. Many impoverished white prisoners, though unsupported by organized ethnic lobbies, are newly activated by the realization that prisons are essentially places for punishment of the poor. Though there is severe tension between black and white inmates, and though many prisons do not discourage this enmity since it helps the staff maintain control over a divided population, when it comes to protest against the institution there is usually racial unity.

3. During this period of heightened sense of injustice in the criminal justice system, penalties have become harsher, increasing bitterness behind the walls.

4. Though the vast majority of prisoners is poor, there is a new, small insertion of affluent middle-class prisoners from cases involving drugs, the draft and civil protest, and this has mobilized much of the previously uninterested middle class to examine their prisons.

5. A new cadre of prison administrators is sufficiently sophisticated in sociology, psychology and statistics to be sensitive to the self-defeat-

See PRISONS, A6, Col. 1

ing nature of most prison punishment. Many wardens agree privately, and some publicly, with the reform demands of their inmates and feel inhibited by lack of money, political pressures and an unsympathetic public.

The most noticeable new kind of prisoner in the United States is the black militant. He sometimes appears as a member of the Muslims, the disciplined and puritanical followers of Elijah Muhammed. Their influence goes far beyond their membership, establishing codes of conduct and attitude for many non-Muslims. Because Muslims will not eat pork, for example, many non-Muslim blacks also refuse to eat it and many prisons now serve pork substitutes.

Black militants (and some others) frequently refer to themselves as "political prisoners." It is a term that sets wardens' teeth on edge. "We don't have any political prisoners here," says Noah Alldredge, warden of Lewisburg Federal Penitentiary, "only men who broke the law." Dr. Norval Morris, a leading American penologist, says, "What happens is that the inmate invests ordinary criminal activity with the idea that he is a part of political change. That way, you end up with the absurdity that killing a policeman or robbing a store is somehow a political act."

Blacks sometimes use "political prisoner" to refer to their depressed economic and social status, conditions that produce crime and therefore an inevitable product of "the system." At other times they use it to describe official harassment and punishment of special styles of life. Where they use it to describe their systematic unfair treatment within the criminal justice system, there is more than rhetoric support the complaint.

The criminal justice system screens out the affluent and makes special selection of blacks. All social classes commit significant amounts of crime. In 1947 James Wallenstein and Clement J. Wylie listed 49 serious crimes with a minimum sentence of two years; of 1,698 responses from a cross-section of New York inhabitants weighted toward the more affluent, 91 per cent admitted to one or more crimes without ever being arrested. Average for all men was 18 crimes each. There are not enough American blacks alive to account for unreported and untried crime.

Austin Porterfield compared criminal offenses of college students with 2,000 boys who had been sent to juvenile court; 100 per cent of male and female students had committed at least one of the offenses for which the 2,000 other boys had been sent to court.

So of 1,000 crimes committed in the United States, only 80 are ever reported to the police. Of those 80 reported, only 18 result in an arrest, which is the first point of special selec-

tion of blacks.

Entry into the criminal justice system usually depends on the decision of a policeman. It first depends importantly on where a policeman is.

Poor black neighborhoods are high crime areas, at least in reported crime, so they tend to be watched more closely. The closer they are watched the higher percentage of persons will be arrested.

Entry into the justice system can depend on the discretion of the policeman: Whether to make an arrest, and if so, on what charge, or to let the person

go as innocent or with too weak evidence to prosecute. It is an important decision for the citizen because once he is perceived as potentially criminal by the authorities and once he has been picked up or booked, thereafter the odds go up that he will continue to be considered crime-prone.

It then becomes significant that surveys of urban policemen show overwhelming prejudice against blacks, 72 per cent according to a survey by the President's Crime Commission. Even where there is no conscious bias, there may be unconscious bias, an example of the self-feeding, self-fulfilling prophecy of guilt: Since blacks are so obvious within the criminal justice system and because they are distinctive by their color, law enforcement officials with no personal racial bias may believe that blackness is related to a higher probability of criminal activity. The result is that blacks enter the first, crucial step toward guilt in disproportionate numbers.

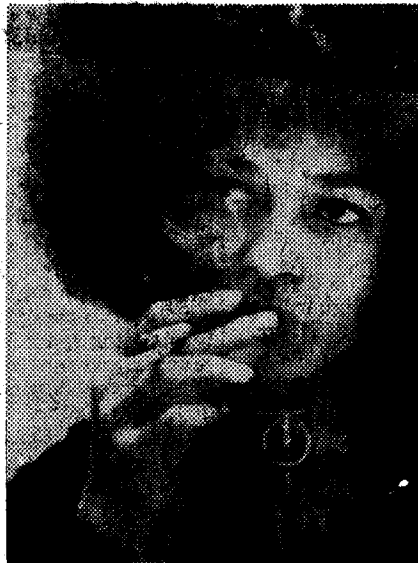
A study of 10,000 Philadelphia males between the ages of 10 and 17 showed that one-third of all whites had been taken into custody at some point but more than half of all blacks.

Dr. Nathan Goldman found that of all children picked up by police, twice as many black children as white had afterward been charged with a crime and sent to court.

This association of blackness with crime is not limited to policemen. In Florida, a judge placing a guilty person on probation may do so with the usual finding of "guilty" on his record or, if he thinks the person is a good prospect for probation success because he is a first offender or for other similar reasons, he can send him on probation with no guilt finding on his record. Three social scientists analyzed 2,419 such decisions by Florida judges and found that when cases had similar backgrounds, from 40 per cent to 60 per cent more blacks were sent out with the "guilty" label than whites.

So where the system selects citizens for surveillance, for picking up by the police, for booking on charge and taking to trial, it selects a disproportionate number of blacks.

Of the original 1,000 crimes committed, 14 result in court appearance and 9 are found guilty. Practically all studies show that when persons are tried on the same charges, blacks more often than whites are found guilty. A study in Stamford, Conn., for example, found that guilty findings per 100,000 ethnic inhabitants was eight times higher for black defendants than whites.



Angela Davis and George Jackson; Their pictures decorate the walls of most black prisoners' cells.

Of nine Americans found guilty in a court, fewer than four actually serve time in a prison. Here, too, whites more often get probation or suspended sentences. In the Stamford study, the rate of commitment to prison per capita for each racial group was ten times more for guilty blacks than for guilty whites.

Once in prison, blacks stay there longer, partly because they get longer sentences and partly because they get from 10 per cent to 14 per cent fewer paroles. On burglary charges in Los Angeles, the longer sentences were for blacks: sentences of four months or less, 45 per cent white, 27 per cent black; sentences of 4 to 9 months, 50 per cent whites, 47 per cent blacks; to 20 months, 13 per cent whites, 20 per cent blacks. Median time served for all white prisoners in the United States is 20 months; for blacks, it is 23.5 months.

Death sentences and executions are most plainly biased against blacks. Between 1930 and 1966, when blacks were about 10 per cent of the total population, 3,857 persons were legally killed in the United States; 53.5 per cent of them were black.

This was not because only blacks committed capital crimes. Between 1940 and 1964 in Florida, 285 men were found guilty of rape. Of the 133 white men, less than 5 per cent received the death penalty. Of the 152 black men, 35 per cent received the death penalty.

Similar bias against color appears in statistics for Mexican-Americans, Puerto Ricans and other non-whites. In addition, Spanish-speaking people suffer serious communication problems because most prisons still censor all prisoner mail and will permit only English-language letters.

The reasons for malevolence of the criminal justice system toward particular a society of growing complexity there are more laws against certain acts than ever before; about one-third of what we call crimes today were not called crimes in 1900. This conglomeration of laws is selectively enforced. Lack of money is clearly a major factor—poorly dressed people often "look" more "criminal" and when picked up lack lawyers to defend them vigorously at every stage, including the crim-

cial time when law enforcement officials decide how serious an offense to select.

Lack of money for bail while awaiting trial is a serious detriment to equal justice. A man in jail cannot prepare as sound a defense as a man out of jail. A study of New York prisoners by the New York City Rand Institute showed that for those of comparable cases men out on bail before a trial are less often found guilty. The poor lack good legal help for appeals and applications for parole and this affects their treatment while in prison: Prisons are more careful with prisoners who have outside connections.

Inevitably, rebels against prison find a quick response among prisoners and always will. But this has special meaning now when so many blacks are conscious of the nature of their unfair treatment. George Jackson, one of the "Soledad Brothers" recently killed in a shooting in San Quentin prison, and Angela Davis, a Communist professor charged with complicity in a fatal shootout in a California courtroom both black, are the two photographs most often found in cells of black prisoners in prisons where individual decoration of cells is permitted.

The issue of prisons has become a public one from a non-racial source—the introduction of middle-class convicts. A decade ago a high-income inmate was an exotic, a rare murderer or an unlucky embezzler.

But because of drugs and civil protest, the middle classes of America are now getting an authoritative view of the inside of prisons.

During civil rights demonstrations of the 1960s hundreds of college-educated white Americans found themselves herded into southern city and county jails and occasionally into a state prison. When protests against the war in Vietnam occurred in the North, it spread this knowledge from Southern jails to Northern jails. The resulting shock of discovery contributed to the examination of all prisons now current in the country.

The expansion of drug use into middle-class America also sent more affluent citizens behind bars. An estimated 12 million persons use marijuana and in some places the penalties are severe. Even when there is no prison sentence, the intensive law-enforcement searching for marijuana, especially routine stop-and-frisk routines of police, have helped make a large proportion of American youth anti-police and anti-criminal justice. It contributed to the conclusion of much of the middle class that jails and prisons

were not just places for others.

Added to this are draft cases—evasion of Selective Service or conscientious objection—which has sent 2,600 young men into prison in the last five years, most of them affluent and from college-background families earnest about social causes.

Middle-class Americans have high standards of personal relations. They expect to be treated civilly and justly. When confronted with primitive prison conditions, cruelty and capricious handling, they are not so likely as a ghetto veteran to accept it as the inevitable

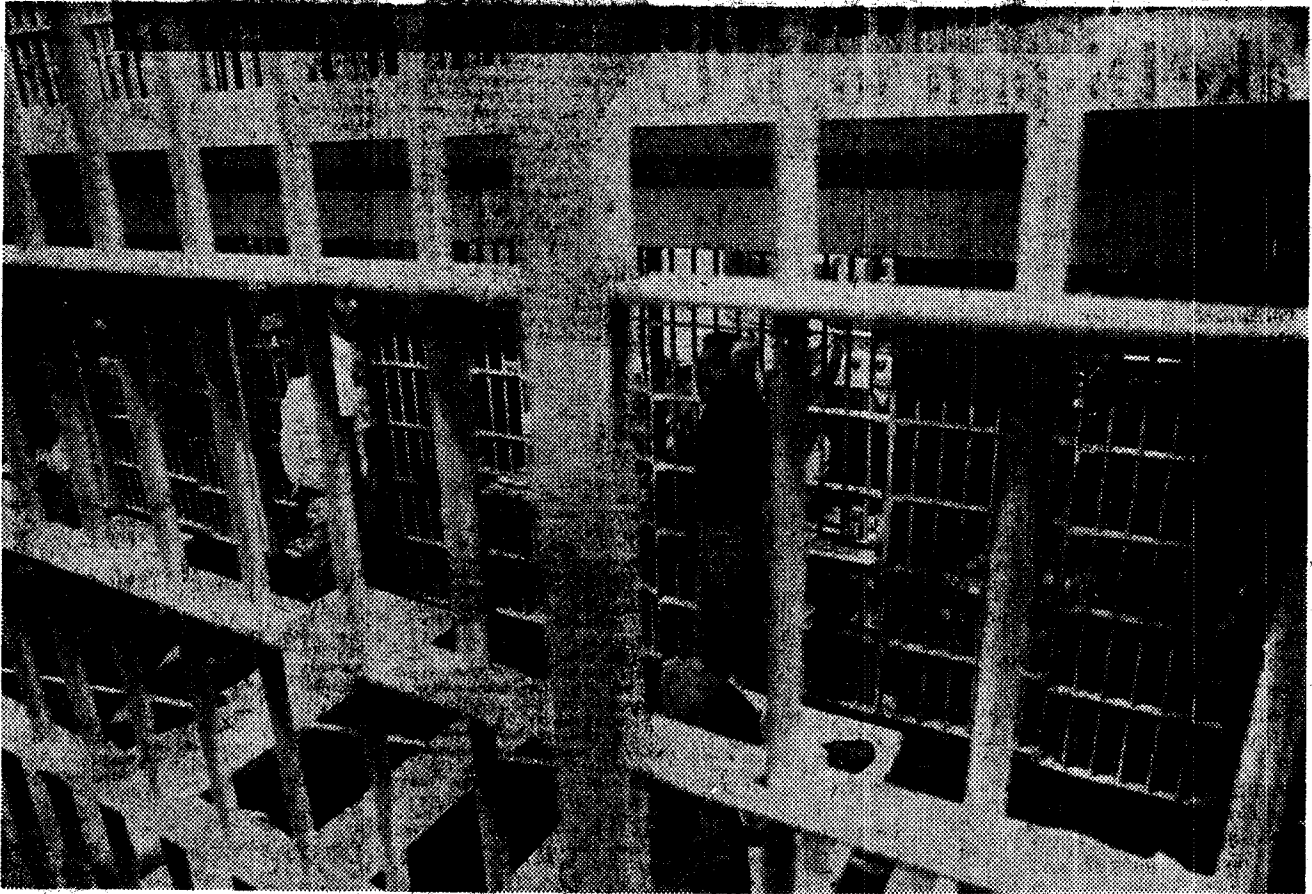
harshness of a harsh world. The middle-class prisoner often is skilled in the arts of communication, has affluent parents and has access to influential lawyers and friends. Consequently, prison brutality and unfairness has been recorded and transmitted to the outside world as never before.

Some of the middle-class prisoners are committed to varying degrees of social reform or revolution, and have been willing while still incarcerated to dramatize prison conditions with strikes, fasts and passive resistance. Peace inside a prison is fragile, relations between staff and inmates always tenuous, and disturbances in any prison creates shock waves in all others. So even prisoner protests far short of riots have caused correction administrators to examine their operations.

Wardens generally dismiss the influence of the protesting inmate. "They have very little influence with the regular inmates," Noah Aldredge, warden of Lewisburg Federal Penitentiary, said recently. But in Allenwood, an associated minimum security colony of Lewisburg, when one prisoner serving time for burning draft records in Catonsville, Md., was being transferred to maximum security, about 115 inmates, half the population of the camp, stood in silent protest in the yard. "That was an exception," Warden Aldredge said. At Alderson, W. Va., Federal Reformatory for Women, Warden Virginia McLaughlin similarly dismissed the impact of "political prisoners". She said, "The other women pay no attention to them." But after Attica, such prisoners led a sympathy strike of about 130 minutes, with enough large-scale involvement to require importing of guards from other prisons.

On the other hand, the political fervor of prisoners can be exaggerated. Frank Callahan, 21, a former broadcast journalist, served a year in Lewisburg for destroying draft records in Rochester, N.Y. He described his imprisonment with inmates in for conventional crimes:

"You know, we would start talking about the war and it seemed so artificial and distant from the situation at hand. . . after awhile I just stopped dealing with that. It was a thousand years away to talk about Vietnam. If a guy was a bank robber, he'd tell us about the jobs he had done, or we'd talk about the movies we'd seen. You know, just fairly average conversations. When things got political, they were political in the sense that here



By Ellsworth Davis—The Washington Post

New York's Tombs and the new type of prisons. "There's greater assertiveness now on the part of inmates."

we are getting screwed. . ."

Groups tended to stick to their own but, Callahan says, they banded together if inmate interests within the prison conflicted with policies of the prison administration, on pragmatic treatment rather than ideological commitment.

In dozens of prisons across the country, inmates have formed unions, councils and associations to obtain personal protection against violation of "rights." It has raised the question of what rights a prisoner has, if any.

The answer is murky. American law for convicts has evolved mainly from feudal England and some of it is applied today in apparent contradiction to reason, logic and the U.S. Constitution.

Civil death," for example, was spelled out in feudal society. Lower-class convicts were killed or mutilated. An upper-class person might escape death by permanent banishment to a distant place or by becoming a monk. In either case, he was no longer a part of the feudal community, he was declared "civilly dead" and his property was distributed to his heirs as though he were physically dead. Since he could never return, "civil death" was logical.

To this day, American convicts suffer some of the same feudal punishments: Thirteen states have "civil death" statutes.

In 17 states "civil death" is imposed if a man gets a life sentence. His property is redistributed, his marriage is dissolved and his children become subject for adoption, even though most life sentences end in parole.

A "civilly dead" prisoner is nevertheless still obligated to support his wife and children.

In most states, imprisonment is automatic grounds for divorce, though most prisoners are in for less than two years.

The best-known loss of rights is the right to vote. This loss probably had its origins in the Greek statute for persons convicted of "infamy." In three-quarters of the states, felons lose the right to vote by statute and in most of the remainder by administrative policy of local boards of election. It is defended as protecting the honesty of the ballot box from disreputable persons and as denying influence over laws and lawmakers to those who have set themselves against the law. It is criticized as adding no protection to the society and inhibiting the integration of the ex-prisoner into normal life.

Prisoners lose other rights and opportunities by law, varying from state to state. Some private and much public employment is denied them. Prisoners cannot sue others but others can sue them.

Three states (North Dakota, Virginia, Washington) prohibit marriage of offenders with three felony convictions to a woman under the age of 45 (presumably to prevent birth of children with the felon's "corrupted" blood). Seven states authorize sterilization of "habitual criminals." In at least three states, the law provides for complete or partial forfeiture of a convict's property.

All of these originate with another feudal English concept, that of "corruption of blood." Article III, Section 3 of the United States Constitution specifically forbids forfeiture and corruption of blood except during the lifetime of a person convicted of treason.

Most "prisoner's rights" moves are directed to his treatment inside prison. The assumption is that there are some punishments so cruel as to be prohibited in any case—like driving a man insane—and that others are so severe that they constitute a serious punishment that ought to be imposed only with due process to prevent its being done unjustly and without independent review.

The movement toward prisoners' rights represents hope on the part of inmates, since these rights focus on the need for a prisoner to accept relations with society. But they also represent explosive tensions. All institutions in society are being re-examined for their goals and the ineffectiveness in attaining those goals. Failures are no longer as quietly accepted as in the past. The prisoner who universally hears he is being "rehabilitated" no longer passively accepts cruel and capricious treatment. Ninety-seven percent of prison inmates return to society, and each prisoner emerging gauges his future relations with society.

A very unpolitical young man, emerging from five years in a state prison, said:

"All the time I was in, I remembered what they called out at my trial: 'The People versus . . .' and then my name. The people against me. I'm not sure whether they're still against me."

Next: Alternatives to prison?