

The Need for a Way to Deal With Prison Grievances

By Ronald Goldfarb and Linda Singer

ALTHOUGH many facts about last week's tragedy at the Attica prison are still undetermined, events already have demonstrated two fundamental truths about the American correction system. First, our prison system is a total failure from the perspectives of public safety, rehabilitation, efficiency and economics, as well as of basic humanitarianism. Second, there is a critical need to devise expeditious methods by which prisoners can assert reasonable grievances.

Attica is not the beginning, and it is not the end. Prison riots are not uncommon. The conditions in Attica and the demands of the rebellious inmates were not unique. Nor was the reaction of the officials atypical. Other than the awesome drama of the riot

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the shocking number of lives lost, there was nothing extraordinary about what happened at Attica. And sadly, nothing about the way the situation was resolved offers much hope that the same kind of events will not recur, either at Attica or someplace else.

Prisoners have rebelled against the prison system since its inception. In recent years prison riots have become a regular phenomenon. One noted authority reported that he knew of 105 riots or serious disturbances taking place in American prisons between 1966 and 1968, surely a far quieter time. According to a recent study by the American Correctional Association, the spread of prison riots across the country has increased since 1968. Our impression is that there have been hundreds of relatively minor riots in the last few years in military stockades, jails, and prisons all over the country.

We never can condone the frightening and provoking acts of the prisoners at Attica taking hostages and threatening their lives. Gov. Nelson Rockefeller has claimed that the Attica riot was led by well-organized militants, aided by forces from outside the prison. That may be so. But, prison administrators commonly claim that riots are the result of subversive conspiracies. After the riots in New York City's jails last sum-

mer, Corrections Commissioner McGrath laid the blame for that uprising on a handful of radical provocateurs, but at the same time recognized that the four basic claims the inmates made (for such things as speedy trials and decent physical conditions) were perfectly proper.

Today's prisoners may indeed be younger and more politically active than their predecessors. It was unrealistic to believe that prisons long would remain immune from the civil rights revolution taking place all around them; like others who have burned their own neighborhoods in desperation, prisoners for too long have been without responsive institutions, adequate representatives or other means of redressing strongly felt grievances. Their riots are a warning that prisoners will no longer march silently in lock-step, accepting everything done to them in the name of "correction."

COMMON to all prison riots are demands for decent conditions and civil treatment. Inevitably, the protesting inmates announce a list of specific grievances which form the basis of their complaints. Fundamental to them all is a desire to be treated with some measure of personal dignity. A frequently heard cry by the leaders of the Attica riot last week was, "If we cannot live like men, we can die like men." They implored, "Treat us like human beings," as we have heard countless convicts plead in prisons around the country.

Vice President Agnew articulated the common mentality that regards prisoners as less than human beings in an amazing but very candid remark in the New York Times last week. He wrote that equating the demands of convicts "in a place of equal dignity with legitimate aspirations of law-abiding citizens" was "an insult to reason." Moreover, he said, one could not equate "the loss of life by those who violate the society's law with the loss of life of those whose jobs it is to uphold it." We expect that abhorrent, embarrassingly candid viewpoint probably typifies the general public attitude toward convicts: they are something less than human and should be treated that way.

In fact, prisoners have many legitimate grievances, including a large number that are out of the control of prison officials; poor legal representation, insensitive parole boards, lack of job opportunities on the outside. A surprisingly large number of their gripes, however, are directed at conditions inside the prison and are capable of resolution by the officials involved. The original list of demands by the Attica prisoners included the following:

"Apply the New York State minimum

wage laws to all State Institutions. STOP SLAVE LABOR.

"Allow all N.Y.S. prisoners to be politically active, without intimidation or reprisals.

"Give us true religious freedom.

"End all censorship of newspapers, magazines, letters . . .

"Give us a healthy diet, stop feeding us so much pork, and give us some fresh fruit daily.

"Give us a doctor that will examine and treat all inmates that request treatment."

Every one of these demands has been the subject of litigation in various parts of the country; every one of them has been found by some court to be at least partially justified. One of the many ironies of the Attica situation is that Commissioner Oswald had been presented with most of these demands earlier and apparently had been planning to grant many of them.

Historically, there have been no effective routes through which inmates could complain about their treatment or have any effect on the decisions made about their lives. Statutes regulating the maintenance and care of prisoners and the power of their keepers to control them are rare and generally unenforced. In the absence of statutory regulation of the unlimited discretion given prison officials to deal with people in their custody, prisoners have attempted to take their grievances to court. But until the past few years courts have refused to listen, maintaining a "hands-off" attitude toward prisoners. Faced with the most outrageous treatment of prisoners, including physical abuse, the courts maintained that they had no power to intervene in the management of prisons. The statement of an 1871 case, terming a prisoner "the slave of the State," remained accurate.

IN THE past five years, this scene has changed. Starting with individual federal judges acting under the Federal Civil Rights Act, several federal courts have begun to



take prisoners' claims of deprivation of constitutional rights seriously, although state courts have continued their aloofness from prisoner problems. The courts have dealt with a variety of issues, ranging from access to court to civil rights in prison and the right to adequate food, clothing, medical care and sanitation. In 1964, federal and state prisoners filed 6,240 petitions in federal district courts alone. By 1969, this figure had more than doubled—to 12,924.

One cannot help wondering whether the fact that New York prisoners recently had been granted through a far-reaching decision by Judge Constance Baker Motley, numerous rights involving prison disciplinary procedures, allowable punishments, receiving political publications, and correspondence, only to be reversed in large part by a federal court of appeals, played any part in sparking the Attica riot. Judge Motley was one of the people the inmate leaders called out for.

Despite many inroads into the judicial attitude of hands-off, the victories thus far have been scattered, and much remains to be done. Even if the courts completely overcome their reluctance to intervene in the everyday affairs of prison administration, an unlikely event, there always will be limitations on judicial remedies for prison abuses. For one thing, litigation requires months, and often years, before any satisfaction is obtained. (A New York prisoner who sued officials complaining of conditions in solitary confinement in 1966 recently received a final decision in his case—four years later.) In addition to the lengthiness of judicial remedies, judicial decisions are difficult to enforce. Federal judges sitting in faraway courtrooms can do little to ensure that their orders are carried out. Observers touring the solitary cells at Soledad in California recently noted that conditions had changed little from 1966, when they were condemned by a well-known court decision.

What is needed is an expeditious way of settling the problems, many of them petty, that plague a prisoner's existence. Other countries have ombudsmen or inspectors whose function it is to listen to prisoners' complaints and attempt to resolve those that

are justified. Chief Justice Burger has praised this idea and called for its implementation in the United States: "With us, the prisoner hopes that some distant proceeding before a remote judge will enable him to have his cries heard; with them, the prisoner meets face to face with trained counselors who give him a sympathetic hearing, ask questions, make a record of his complaints, and bring his valid grievances to the attention of higher authority."

THE IDEA of nonjudicial remedies to redress prisoners' grievances has started to take hold in the United States during the past year. A bill pending before the California legislature would create a correctional ombudsman whose responsibility it would be to receive complaints from prison inmates and to try to resolve them by dealing with the administrators involved or suggesting new legislation when necessary. An ombuds-

man (a former prison guard) has been appointed by the superintendent of the Oregon Penitentiary and has been working at the penitentiary for the past three months. Both officials and inmates feel that he has done much to resolve tensions in the institution.

The greatest potential for the creation of nonjudicial remedies probably lies in the work of private groups who are not employed directly by government officials. The Pennsylvania Prison Society has received the approval of authorities for putting an ombudsman employed by it into the Philadelphia prison system. The Center for Correctional Justice, a private, nonprofit organization in the District of Columbia, has a grant from the Office of Economic Opportunity to develop nonjudicial remedies in the District of Columbia system. It has started to use methods of dispute settlement such as negotiation, mediation and arbitration as well as selected law suits. (One prisoner at Lorton told us recently: "Attica won't happen here; we won't let it. We know what we've got, bad as it is".)

An ad hoc grievance procedure actually did begin to evolve during the riot at Attica. The tragedy was that outside negotiators, who should have been called in many months earlier, were not given more time to attempt to reach some compromise. As one of the negotiators cried after the event, "if only we had had more time . . . things which appear imbedded in stone today may not appear imbedded in stone tomorrow." By refusing to continue the effort to reach a compromise, Governor Rockefeller signed the multiple death warrants not only of some of the inmates but of his own employees who had been taken hostage. This is more than enlightened hindsight; in Tom Wicker's words, ". . . waiting, while it might not ultimately prevent the slaughter, could hardly cause it; while attacking could result in nothing else." (One wonders what the Governor's reaction would have been had high state officials or prestigious private citizens been the hostages rather than the guards. As one of the hostages remarked bitterly, "we were expendable.")

There will inevitably be demands for harsher treatment of prisoners in the wake of the Attica riot, as there were in California last month after the deaths at San Quentin. Such demands can only be self-defeating. The more we dehumanize prisoners, the more dangerous it will be to run the prisons. Prison officials have told us many times that all prisons operate only with the cooperation of the imprisoned. With guards unarmed and greatly outnumbered, this always must be so. The only way to avoid a repetition of the tragedy at Attica is to ensure that prisoners are given access to institutions of government to resolve their grievances.

It is easy to say that there should be no prisons and that we must concentrate on developing community alternatives for all but the most extreme cases of law-breaking. However, for the foreseeable future, there will be people whom we cannot handle without locking them up. It is not clear that there is any method that can meaningfully protect all these inmates' rights. But we must do all we can. Until we do something constructive about radically reforming American prisons and developing means to ensure their fair operation, what happened at Attica portends bleak days ahead.

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