

U.S. Judges Declines to Act on Attica Prisoners' Complaints

By JAMES F. CLARITY
Special to The New York Times

BUFFALO, Oct. 6—Federal Judge John T. Curtin dismissed today a series of requests for orders to protect the constitutional rights of all the inmates at the Attica Correctional Facility.

But the judge said that his decision did not stop individual prisoners at Attica from bringing civil rights suits into Federal Court.

Judge Curtin did not deny allegations that the prisoners had been beaten, their lives threatened, and their legal materials destroyed, in the wake of the four-day uprising at the prison last month. He said, however, that lawyers for the inmates had failed to prove that the abuse was continuing, and that it could not be remedied by state officials or in state courts.

State Move Disclosed

Judge Curtin read his decision from the bench in the United States Courthouse a few minutes after a state attorney told the court that Governor Rockefeller had asked Attorney General John N. Mitchell to appoint Federal monitors at Attica. Judge Curtin, who refused in his decision to order such monitors, did not appear surprised by the state's disclosure that the Governor had already made a request for them.

A team of lawyers for the inmates, headed by Herman Schwartz, at first misunderstood the wording of the judge's decision and thought he had dismissed only some of their requests.

Advised later by the judge's office that he had dismissed the entire case, the lawyers met to decide whether to appeal the

decision. The lawyers have already appealed other related requests, denied by Judge Curtin, to the United States Court of Appeals for the Second Circuit, and the United States Supreme Court.

During hearings that ended yesterday, inmates testified that they had been beaten, their lives threatened at gunpoint and their legal books and papers removed and mutilated since the revolt was crushed. Sept. 13. Virtually all the inmates' testimony held that the abuses took place on Sept. 13 or 14.

Lawyers for the state, including Deputy Attorney General Robert E. Fischer, who is directing the state's investigation of the rebellion, did not challenge the inmates' accounts of mistreatment.

Requests Are Outlined

In his decision, Judge Curtin refused five requests by the inmates:

1. That the prison be ordered to stop physical abuse of the inmates.
2. That the prison be ordered to stop destroying inmates' legal materials.
3. That Federal monitors be installed at the prison.
4. That Mr. Fischer be ordered to stop acting simultaneously as investigator and potential prosecutor of both prisoners and of state troopers against whom prisoners may have complaints.
5. That the prisoners be considered as a group, and represented in court as such by Mr. Schwartz and other lawyers.

Last week, Judge Curtin refused to order an immediate halt to the state investigation until each inmate was afforded counsel before being interrogated. His decision was upheld in the Court of Appeals

and was taken to the Supreme Court yesterday in a request for action.

In his decision, Judge Curtin said there was no evidence of continuing physical abuse of prisoners or destruction of their legal materials. After noting that the state had asked for Federal monitors, he said, "There is evidence that racial slurs, night-time harassment, threats and improper conduct have continued. These are serious matters and require the attention of the correctional authorities to make sure that they do not continue."

"There is no reason to believe," Judge Curtin said, "that these steps cannot be taken by state authorities, and the plaintiffs have failed to persuade the court that there is any need for Federal injunctive relief in this regard. The evidence before the court is that any actions of state officials arguably amounting to unconstitutional conduct occurred shortly after they regained control of the Attica Correctional Facility on Sept. 13."

State Charges Delay

By FRED P. GRAHAM
Special to The New York Times

WASHINGTON, Oct. 6—The State of New York told the Supreme Court today that lawyers for a group of prisoners at the Attica Correctional Facility were attempting to impede the state's investigation of last month's prisoner rebellion.

The state also questioned whether the seven prisoners suing to stop all questioning of inmates until lawyers were present represented the interests of other inmates in the prison. In papers filed in the Su-

preme Court, Deputy Attorney General Robert E. Fischer, who heads the state's inquiry into the Attica revolt, asked the Supreme Court to let the state courts resolve the question of legal representation for the prisoners.

Yesterday the seven inmate-plaintiffs, represented by lawyers from the Legal Aid Society of New York, asked Justice Thurgood Marshall to block further interrogation of prisoners unless lawyers for the inmates were present. Justice Marshall, who exercises jurisdiction over courts in New York, referred the question to the entire Supreme Court.

The prisoners brought a class-action suit in which they purported to represent the interests of all Attica's inmates. They claimed that under the Supreme Court's 1966 decision, *Miranda v. Arizona*, no person in custody could be questioned outside the presence of his lawyer, unless the individual waived his right to counsel. Mr. Fischer asserted that to stop all questioning until law-

yers approved by the seven plaintiffs were on hand "would grossly inhibit the investigation contrary to the proper needs, not only of the public as a whole, but of numerous inmates in that institution."

He said that in addition to the Legal Aid lawyers and those from the New York Civil Liberties Union, the N.A.A.C.P. Legal Defense and Educational Fund, Inc., and the National Lawyers Guild have claimed to represent various prisoners, so that it was difficult to know who represented whom.

William M. Kunster, the civil rights lawyer, claimed he represented all 1,000 prisoners in the cellblock at the time of the uprising. Mr. Fischer said. Some prisoners have been visited by as many as nine lawyers, he added.

Mr. Fischer said that the state courts would be asked to appoint lawyers for each prisoner who wanted one. So far, he said, 231 have asked for court-appointed counsel and 126 have asked to see their individual lawyers.