

'ABUSE' AT ATTICA SCORED IN RULING BY FEDERAL COURT

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Lower Bench Reversed and Judge Is Told to Grant Writ Against Brutality

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A ruling to protect prisoners from "barbarous abuse" by guards at the Attica Correctional Facility was issued here yesterday by the United States Court of Appeals for the Second Circuit.

In a strongly worded decision written by Circuit Judge Walter R. Mansfield, a three-judge panel of the appeals court reversed a ruling by District Judge John T. Curtin and ordered the District Court to grant a preliminary injunction against "physical abuse, torture, beatings or other forms of brutality" at Attica.

Monitors Suggested

The opinion by Judge Mansfield, with the concurrence of Judge J. Edward Lumbard and Judge James L. Oakes, instructed the District Court to consider any measures needed to implement the injunction, including the appointment of Federal monitors at the state prison.

Describing it as an extraordinary and exceptional case, Judge Mansfield stated that the public wanted to know the facts to avert a recurrence of conditions leading to the uprising at Attica last September that resulted in 43 deaths.

The appeals court decision, which covered 40 pages, noted that Judge Curtin had "accepted as true" the testimony he had heard about abuse of prisoners after the suppression of the uprising, but that he had denied an injunction request because he had found little evidence of continuing brutality.

'Beyond' Needed Force

"The barbarous conduct testified to by various witnesses and taken as true by Judge Curtin for the purpose of his interlocutory decision—the beatings, physical abuse, torture, running of gantlets and similar cruelty—was wholly beyond any force needed to maintain order," Judge Mansfield wrote.

"It far exceeded what our society will tolerate on the part of officers of the law in custody of defenseless prisoners," he asserted.

"If the abusive conduct of the prison guards had represented a single or short-lived incident, unlikely to recur, or if other corrective measures had been taken to guarantee against repetition, injunctive relief might be denied, despite the heinous character of the conduct."

"Here, however, the conduct of some of the prison guards, state police and correctional personnel, as testified to, was not only brutal but it extended over a period of at least several days," Judge Mansfield continued.

"In addition, there was extensive testimony regarding nighttime harassment, threats,

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racial slurs and similar misconduct by prison personnel, which was found by Judge Curtin to be continuing at the time of his decision on Oct. 6."

Judge Mansfield added that an investigating group reported on Nov. 18 that it had found complaints of continuing harassment and fears of further retaliation.

"In the last analysis, the situation here is unique in that plaintiffs, being prisoners, are at the mercy of their keepers, many of whom, on the testimony below, have already subjected inmates to barbarous

abuse and mistreatment," Judge Mansfield observed.

"The major wave of guards' reprisals has probably passed," the judge wrote. "On the record before us, however, the district court was not justified in assuming, without further proof, that adequate steps would be taken to protect the inmates against further reprisals, perhaps of a more sophisticated and subtle nature."

Besides deciding that a preliminary injunction must be granted to bar brutality, the appeals court ruled that the Attica inmates could present additional evidence in the district court to seek a permanent injunction. But it affirmed Judge Curtin's refusal to pre-

vent the state from interrogating inmates without lawyers.

"There is on substantial evidence of any improper questioning of prisoners," Judge Mansfield said. "On the contrary, the record reveals a conscientious effort on the part of responsible public officials to respect inmates' rights to remain silent if they choose.

"Plaintiffs' incarceration as the result of prior convictions for unrelated offenses, while it does not strip them of Sixth Amendment rights, does not confer upon them greater right to counsel than those of citizens outside of the prison walls."

Yesterday's decision resulted from an appeal filed for Attica

prisoners by Phylis Skloot Bamberger and William E. Hellerstein of the Legal Aid Society in New York.

Judge Mansfield said they had provided detailed evidence that constitutional rights had been violated by an "orgy of brutality" that included the beating of injured inmates on stretchers, the burning of some with matches and the forcing of others to "run naked through gantlets of guards armed with clubs."

"Public investigations have already been instituted," the judge said, "for the purpose of determining whether the prison conditions that existed at Attica before the uprising were inhumane or intolerable."