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THE LEGAL CONTROVERSY AS IT RELATES TO CORRECTIONAL INSTITUTIONS — A PRISON ADMINISTRATOR'S VIEW

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MY APPEARANCE before you today is at the behest of the Commissioner of Corrections, Allyn R. Sielaff, who has asked me to address myself to the problem of prisoners' rights and their effect on the administration of correctional programs.

Historically, this problem can be seen as a legal duel of rights between the individual transgressors of society and society itself with the criminal courts being both the contesting arena and the arbiter of decisions between the two. Our prisons, local, state, and federal, continually serve by mandate as umpires in keeping the combatants separated and relatively quiescent so that the orderly progression of our civilization can go on apace.

When one views this legal contest over time it becomes evident that although the courts have fluctuated back and forth, as witnessed recently by the *Harris v. New York*[1] decision swinging the pendulum ever so slightly away from *Miranda*,[2] it is nonetheless true that the courts have developed a trend which emphasizes the individual's rights in contrast to the Commonwealth. In a country dedicated to individual enterprise, there is a certain consistency in the Supreme Court's decisions which protects society as a whole indirectly through individual rights. This trend has certainly proved salutary to residents incarcerated in our penal institutions. This penchant of the courts becomes doubly evident when one reads a document of the Acts of the General Assembly of Pennsylvania for the year 1785 containing legislation of the criminal code, parole, and commutation acts.[3] Glancing through this document, one can see a development from corporal punishment, such as burning the hand or cutting off the ears, to punishment by confinement to hard labor for a term not exceeding two years. I believe everyone would admit that this change is a tremendous modification in thinking.

To illustrate an attitude of our "jailhouse lawyers" — by way of getting to what is termed in the parlance of our times the "nitty

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† Superintendent, Commonwealth of Pennsylvania State Correctional Institution at Pittsburgh.

1. 401 U.S. 222 (1971).
2. Miranda v. Arizona, 384 U.S. 436 (1966).
3. 2 Sm. L. 272 (1810).

gritty" — I would like to direct your attention to these rather careworn acts which were bequeathed to me by a "jailhouse lawyer" on his death bed. The exact date of their publication is somewhat obscure, but I was told by the man as he lay dying that they were handed down from resident to resident ever since the opening of the Eastern State Penitentiary in 1829. The implication from the concealment of this contraband for so many years indicates the value the inmates placed upon legal material, and the corresponding risks they were willing to take in order to safeguard them.

Basically, to the "jailhouse lawyer," legal material affords him the opportunity to parasitically enhance his creature comforts by the exploitation of fellow residents. Before the *Johnson v. Avery*[4] decision, these "lawyers" ironically plied an illegal trade in the name of legality. Their victims were naive, newly received, or just plain ignorant individuals who were forced to pay the widow's mite of five or six cartons of cigarettes — the institution's unofficial medium of exchange. These "lawyers" charged for services rendered whatever the traffic would bear, even going so far as to insist upon bank deposits to their accounts by outside friends or relatives of the "client." Often, when payments were not made on time, substitute services in kind were arranged in the form of homosexual gratification. If the "client" refused completely because of his own perfidiousness or because of dissatisfaction with the services, he would be assaulted or compromised in some other way.

On the basis of this oft–witnessed activity, administrators of correctional institutions have always equated the "jailhouse lawyer" with the gambler and the pervert, for in general most of the personal vendettas experienced in our institutions can be attributed to them. We do not deny the brilliance of many of their writs, and many a judge has lauded the excellent legal thinking that has come across his bench. We even concede to the possibility of a few practicing saints in our midst unbeknown to us. However, in general, "jailhouse lawyers" have been involved in a quid pro quo arrangement.

We have never been overly concerned about the profit motive which in itself is not intrinsically evil, but about the consequences that normally flow from the inability of our residents to form wholesome relationships based on other than pragmatic or selfish reasons. A consequence flowing from this inability is an increased anxiety level of the individuals involved so that when the expected succor does not accrue to the "client," hostility towards the "lawyer" results. This hostility is felt as a constant undercurrent. It is controlled,

4. 393 U.S. 483 (1969).

however, for most men cannot admit to themselves that their case is totally without legal merit, and therefore they have no recourse but to return and superficially cultivate the friendship of the "jailhouse lawyer." The animosity between the two grows, and often leads to open hostility, in a situation where, for example, the client discovers that in his particular case he was duped by the use of a minority opinion. Very often this hostility is displaced to fall upon the administration, the courts, or even the judges directly. Such an example may be found in a recent incident reportedly involving one of our residents who, in a tirade against Judge Samuel Strauss,[5] voiced the regret that he had not been sent to the gas chamber.

The problem of open hostility is compounded by the tremendous volume of legal activity that the courts receive from our institutions, and the paucity of success with which this activity meets. For instance, since March 1966 in the area of the Post Conviction Hearing Act[6] alone, there have been over thirteen hundred legal actions taken. This is but a minutiae of the legal maneuvering from our institutions that clutters up the courts. It is obvious from this fact that if just a fraction resulted in open hostility by dissident "clients" we would be witness to constant chaos.

A typical reaction is to blame everyone else for the failure of the writ *except* the glib "jailhouse lawyer." There are, however, a sufficient number of altercations which are not resolved through this method of rationalization, and hence they deteriorate into deep-rooted bitterness which can at any time flare up into a deadly attack with a "shiv" or other weapon. A perfect example of this is the recent murder on March 3, 1971, at the State Correctional Institution at Pittsburgh, of one Patrick Anthony Crawley, III, an extremely litigious individual who considered himself an expert on the law. Crawley and his alleged assailant, one Stanley Williams, were known to be bitter enemies, and on the day of the murder were reported to be in a very heated dispute over a law book which allegedly culminated in Williams murdering Crawley.

The primary cause of this tension, however, is that in general the "jailhouse lawyer's" motives are personal and not altruistic, and his exploitation of his fellow resident by guile and treachery creates a false atmosphere of hope. This is heinous behavior when you consider that he dallies with one of the most basic human needs, the natural desire for freedom, with the sole purpose and intent of fleecing

5. Judge Strauss was formerly Assistant District Attorney of Allegheny County, Pittsburgh, Pennsylvania. He presently serves as a judge in the courts of Allegheny County.

6. Post-Conviction Relief Act, 28 U.S.C. § 2255 (1964).

the individual. The poor victims of this confidence game cannot afford to think in terms other than freedom, for how could one function from day to day without such thoughts? The cost of the alternative, nihilism, is too high. The "clients" must therefore play the game and be systematically fleeced.

We who are in charge of administering correctional institutions are aware of this appalling situation. In the past, we attempted to control the "jailhouse lawyer" by prohibiting any resident from assisting another. As a matter of fact, we were required to follow this policy under the Pennsylvania statute[7] forbidding anyone except a member of the Bar from practicing law. We tended to frown upon all legal activity.

I recall most vividly our reaction towards writs of Habeas Corpus in civil actions charging us with denial of various rights. In the late 1940's, when I was first appointed to a position on an administrative level, I encountered one of these writs. I was astounded by the audacity of the claimant. My superior, to whom I showed the writ, stated nonchalantly, "Here is the way we handle these," and he proceeded to tear it up and throw it into the waste basket.

Today, due to momentous Supreme Court and circuit court decisions such as *Gideon v. Wainright,*[8] *Escobedo v. Illinois,*[9] *Miranda v. Arizona,*[10] and *Sostre v. Rockefeller,*[11] to cite but a few, a new approach to the vexing problem of legal activity within the confines of our prisons has come about.

In 1966 with the publication of the *Miranda* decision, the trend became clearly visable. To meet the increased impetus within our institutions brought about by these decisions, especially *Johnson v. Avery,*[12] we were compelled to take a new tack. We recognized that it was incumbent upon us to safeguard the law by permitting its exercise, thereby preventing a similar gallimaufry such as the *Johnson v. Avery* decision which requires the State of Pennsylvania to enforce within the Commonwealth Statute 708,[13] previously alluded to, while at the same time permitting its violation within its own prisons. Psychologists could term this absurdity a grand scale reinforcement of negative behavior patterns, for it gave to the "jailhouse lawyer" the Court's blessing to openly prey upon the resident population.

How were we to cope with this problem? A possible solution occurred to me while I was Superintendent at the Eastern Correc-

7. PA. STAT. tit. 17, § 1610 (Supp. 1971).
8. 372 U.S. 335 (1963).
9. 378 U.S. 478 (1964).
10. 384 U.S. 436 (1966).
11. 312 F. Supp. 863 (S.D.N.Y. 1970).
12. 393 U.S. 483 (1969).
13. PA. STAT. tit. 17, § 1610 (Supp. 1961).

tional Institution. Since most of our residents were indigent, and could not afford to hire a *bona fide* lawyer, I contacted in March 1967, Herman Pollack, Chief of the Philadelphia Defenders Association. The Defenders Association had just received a Ford Foundation Grant from which they were able to finance and assign to our institution Mr. Isaac Pepp, a very able lawyer. The counselling and advice he disseminated to our residents confirmed our opinion that if proper professional counselling were available, the number of frivolous writs currently plaguing the courts would decline, and those that were submitted would be substantially improved.

Because of the welcomed reception of Mr. Pepp by the population, we requested that we be permitted to utilize him two days a week rather than the one formerly agreed to. One day was to be devoted to the men in our general population and the other to the men confined in our Classification and Diagnostic Center, a temporary receiving center prior to disbursement to one of our state facilities. The activity of this center conforms to the generic meaning of its name and the effectiveness of the program was most significant with the new offender who formerly was an easy mark for the con-lawyer. The men appreciated very much being oriented into proper legal procedure.

Originally this legal service was confined to men sentenced from Philadelphia County, but because of the demonstrated need and effectiveness of the program, it was permitted to encompass all prisoners regardless of the sentencing county.

After orientation, the men were transferred to other state institutions such as Huntingdon, Rockview and Graterford, and the program correspondingly blossomed making Mr. Pepp an itinerate lawyer. Eventually every institution in the state, except the one at Pittsburgh, was graced by his presence as he followed up his caseload. Unfortunately, the funding from the Ford Foundation and the Office of Economic Opportunity was not renewed, and the program ended.

The value of the program, however, had already been demonstrated to me, so that when I assumed the position of Superintendent at the Pittsburgh Institution, I immediately contacted the Chief Defender, the Chancellor of the Bar Association, and several of the local judges in an attempt to duplicate the service for the residents at the Pittsburgh facility. However, due to a lack of staff and appropriations, among other things, we were unable to establish the program at that time.

In August of 1969, a meeting was held at the Bureau of Corrections attended by former Commissioner Prasse,[14] Deputy Com-

14. Arthur T. Prasse was first Commissioner of the Bureau of Correction, and served from 1953 until 1970. He is now retired.

missioner Taylor,[15] the Deputy Attorney Generals, and all the Superintendents of the State Correctional Institutions. The purpose of the meeting was to formulate policy to conform to the *Johnson v. Avery* decision.

After considering the possibilities of a law library and a special writ room for all institutions, it was decided after consulting with prominent experts in the field such as Judge Laub,[16] to allow every resident to assist each other, if they chose to do so, and to purchase and retain any and all materials of a legal nature. The directive further stated that no longer would it be a violation for a resident to have in his cell the legal material of another resident. The Pandora's Box was open! How could we safeguard the majority of our residents from the clutches of the "jailhouse lawyer?"

The only possible solution that I could think of was to become competitive by offering superior legal service, and to do so free of all expense to the residents. Having been thwarted in my efforts at implementing the Defenders Program, I contacted Professor William Schulz[17] through a mutual friend, Doctor Herbert Thomas,[18] and as a result of our meeting held at the University of Pittsburgh, we developed a student program acceptable to the University's Law Faculty.

This was immediately recognized as a reciprocal boon to the law school to such an extent that interested students in their second year of law were requested to take an additional course in counselling in order to better equip themselves to cope with the problems which would ensue.

As a result of this cooperative effort, we now have ten senior law students entering the institution at Pittsburgh on a weekly basis to assist our residents in all phases of legal activity. To support this program, we employ two residents as full-time typists to make all legal petitions legible. In addition to this, we purchased for our library Purdons Statutes, all supplements and legal rules and procedures of both the federal and state courts.

Subsequent to this, the Prison Education Department permitted the hiring of two law students from Duquesne University plus a

15. Dr. Kenneth E. Taylor, initially a psychologist at the State Correctional Institution at Pittsburgh, served as Deputy Commissioner of the Bureau of Corrections from 1953 to 1971. He is now retired.

16. Judge Laub, a member of the Pennsylvania Bar, is Dean of the Dickinson Law School and Chairman of the Committee on Corrections. He was judge in the Court of Common Pleas, Erie County, from 1940 until 1946.

17. Professor William Schulz, a member of the Pennsylvania and Illinois Bars, is a Professor of Law at the University of Pittsburgh.

18. Dr. Herbert E. Thomas, Psychiatric Consultant in the State Correctional Institution at Pittsburgh, is a Clinical Associate Professor of Psychiatry for the School of Medicine and Adjunct Associate Professor of Psychiatry and Law in the School of Law at the University of Pittsburgh.

member of the Bar Association as teachers. They each put in nine hours per week assisting men with individual problems. Mr. Pratt,[19] the lawyer, has been teaching a law course to the residents since September, 1970. This course is not specifically devoted to criminal law, because the educational department's purpose is much more basic, that of teaching the men communicative skills. Since the men have an avid interest in law, this is merely one way of accomplishing that end.

At this stage of the institution's development, I believe it can be said without qualification, especially since the appointment of Mr. Allyn R. Sielaff as Commissioner of Corrections, that we are forging a commendable treatment program. There is little doubt that we can ameliorate the problem by providing superior legal services, and in so doing, detract from the effectiveness of the "jailhouse lawyer." There remains one area in legal communication, however, where we cannot outdo him, and that is in the area of deception. We do not tell the client what he wants to hear, thus playing upon his fantasies, for our law students are bound by an ethical code that requires the truth of each case be revealed. This means we will never be able to rid ourselves totally of their ilk, and so incidents similar to the murder of Crawley, as previously discussed, will occur from time to time, just as will those spawned by gambling and homosexual activity.

The Supreme Court's shift toward protecting society indirectly through individual rights has caused consternation on the part of many an official charged with maintaining law and order. However, it can be viewed as beneficial in that it challenges the ingenuity of those so charged to develop sophisticated and competent techniques in the discharge of their duties, which in the long run can be even more effective. We offer today's demonstration as but one example.

At this time in history, with tremendous social and economic changes taking place, we are fortunate in having Mr. Sielaff in control of formulating policy for the Bureau of Corrections. He has already made his will known to all concerned that the development of comprehensive treatment programs are first in the order of priorities. It has been reemphasized that our purpose for existing is to assist the residents with their innermost problems so that they can begin to achieve self-realization for themselves and society. We have been assured that comparable problems will be met in the same bold and ingenious way.

19. Ralph D. Pratt, Esq., a member of the Allegheny Bar, has been hired by the Allegheny County School System to teach a law course in the Adult Basic Education Program in the State Correctional Institution at Pittsburgh.