

Quentin disciplinary procedures still was overseeing negotiations between prisoners' lawyers and prison authorities in mid-1972. Only in a very few cases have the courts been willing to assess damages to compensate prisoners for injuries suffered as a result of deprivation of their constitutional rights.⁴⁴ Despite frequent flagrant violations of judicial edicts, no judge has held a prison official in contempt of court, and fined or jailed that official, for failing to comply with a court order.⁴⁵

If all prison decisions to date were enforced as effectively as possible, they still would not seriously limit the power of prison officials. The new court rulings generally allow prison officials to determine, without procedural safeguards, where each prisoner lives within the prison system, when and where he is transferred, and what privileges he receives. Prison staff retain significant influence over when a prisoner is released. They handle all incoming and outgoing mail. They are allowed to decide who can correspond or visit with a prisoner and the circumstances of each visit. They control, within broad limits, what each prisoner eats, where he sleeps, what reading material he receives, what he can have in his cell, his sanitation facilities, exercise periods, education and work programs, and medical care. Officials can confiscate reading material, stop prisoners from sharing literature, and punish organizers and "agitators."

Since visiting, correspondence, and literature remain restricted, prisoners have trouble learning of new legal decisions and outsiders cannot easily determine when a court ruling has been disobeyed. Official control over prison life means that a prisoner who tries to assert his legal rights, or complains when other prisoners are abused, can find his privileges lost, his mail misplaced, his food and cell a mess, visiting obstructed, a program he needs for parole suddenly closed, a complaint filed

44. In the Jordan case, for instance, the court denied damages without comment. The major exception is *Sostre v. Rockefeller* (note 23), in which a prisoner was awarded \$25 for each of 374 days of illegal solitary confinement.

45. Goldfarb and Singer, "Redressing Prisoners' Grievances," p. 281.

against him for a mysterious prison stabbing—and on and on and on.

The courts cannot effectively impose a "rule of law" in the form of due process administrative procedure. It would be totally impracticable for prison officials to hold even a rudimentary hearing over each of innumerable daily administrative decisions which affect a prisoner's life. While court decisions may force officials to provide minimal due process before they withdraw privileges available to the general prison population, the courts cannot possibly require a hearing for every prisoner who applies for a job-training program, a new pair of glasses, special medication, honor block, work furlough, or a conjugal visit. Nor can the courts force officials to hold a hearing each time they relocate a prisoner separating him from his friends, cutting short his education and training programs, and forcing him to adjust to a new community. Finally, due process cannot provide protection against unauthorized, informal punishment by the guards who control food, mail, access to medical care, and the prisoner's general living conditions.

Where due process *can* reasonably be required without making a prison administratively inoperable, it will ultimately make little real difference in how the prisoner is treated. An occasional prisoner may escape the most serious punishment if prison officials decide he does not merit the time and expense of a full hearing. When the officials consider a disciplinary case worth the effort, however, they will be able to use the new procedure to impose the same punishments.

For even the most progressive court decisions, dealing with the most severe forms of punishment, give the prisoner far fewer rights than he was afforded at his original trial. His will be a closed trial, from which officials may exclude family, friends, and news media. He is not entitled to appointed counsel and will have difficulty obtaining free legal aid. He has no right to trial by a jury or even by a judge who does not work for the prison, and no right of appeal outside the prison system. The officials who conduct his hearing will be free to doubt the