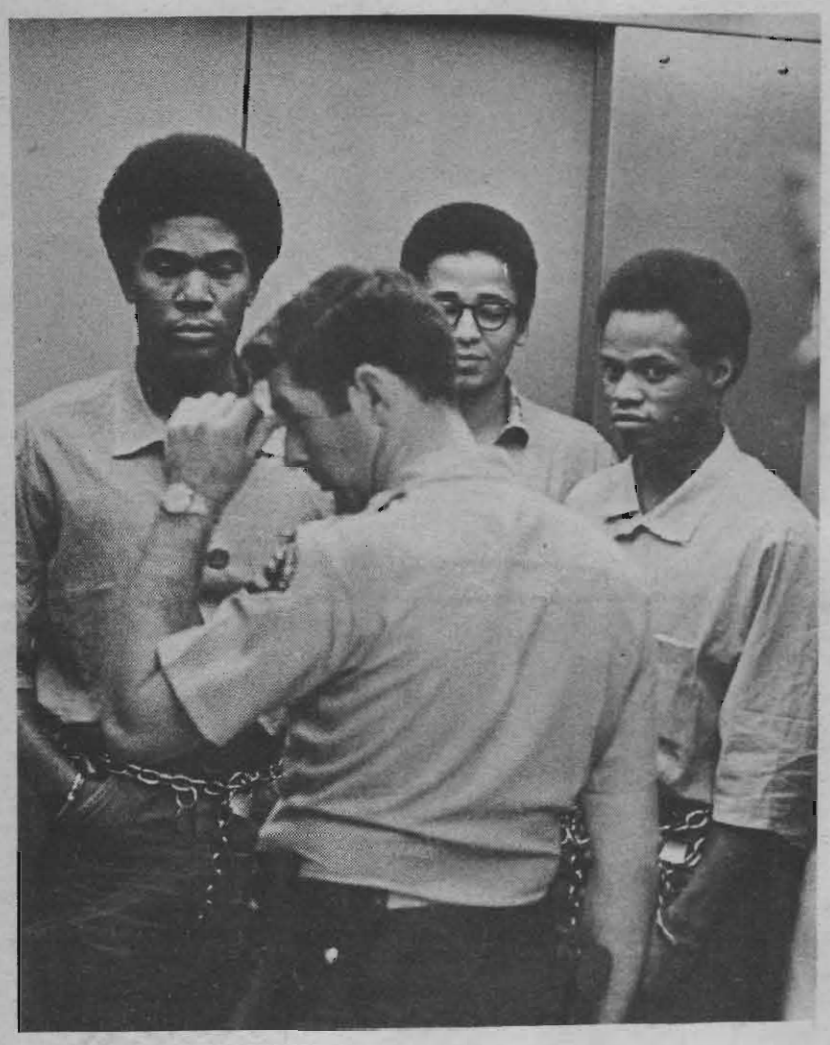
INSIDE

The American prison system is in ferment across the country—and justifiably so. It is clear that most people leave prison more alienated and more angry than when they entered prison. Prisons destroy people's souls. Most of this issue is devoted to descriptionsand analysis of prisons, prison life, and prison rulers. Included are excerpts from George Jackson's recently published book of letters, stories about the prisoners strike at Folsom Prison, the Soledad trials, and many more. Start anywhere.

SOLEDAD BROTHERS NEWS LETTER

November, 1970



John Wesley Clutchette George Jackson Fleeta Drumgo,

Soledad Brothers Fight Venue Change

Superior Court Judge Robert J. Drewes two months ago ordered the trial of the Soledad Brothers, charged with killing a prison guard, moved from San Francisco to San Diego. The judge ordered the move at the request of the prosecution, which claimed that publicity surrounding the attempted kidnapping and resulting shootings at Marin County Courthouse in August would prevent the defendants from receiving a fair trial in the bay area.

The defendants strenuously objected to the relocation: three months earlier they had asked for the change from Monterey County to San Francisco, because surveys taken in Monterey County indicated a fair trial there would be impossible. They believed that San Francisco, because of its sizeable minority group population and relative sophistication, might offer a better possibility for a fair trial.

The defendants have appealed the decision to send the trial to San Diego. A decision on that appeal is expected within the next few weeks.

Attorney Marvin Stender, spokesman for the defense attorneys, stated "We believe that the prosecution's motion for a change of venue to San Diego is an illegal, unwarranted, and blatant attempt to increase the chances of conviction of three innocent men. We are sure that the Court of Appeals will not put its stamp of approval upon the prosecution's venue shopping."

In its petition, the defense argues that only the defendants have a right to request a change of venue under California law, that the prosecution presented no evidence to justify a change of venue, and that the court should have held a hearing to decide on the proper county for the trial, once it had determined that the case should be moved. San Diego, the attorneys content, clearly does not meet the legal requirements for a "convenient" county where a "fair and impartial trial" can be held.

On September 17, Judge Drewes granted the change of venue to the prosecution on the grounds that the defendants could not be given a speedy trial in San Francisco, as is their right, and that there was a reasonable probability that neither the prosecution nor the defense could receive a fair trial in San Francisco because of extensive publicity surrounding the case.

The defense attorneys assert that the court should not even have considered the motion for change of venue, because the California Legislature and Supreme Court have repeatedly denied both the prosecution and the courts the right to seek a change of venue without the consent of the defendants.

They add, moreover, that the defendants are not concerned about a speedy trial, have, in fact, repeatedly asked for more time in which to prepare the case, and feel that their best chance of a fair trial is in San Francisco. This, they state, makes the "solicitude of the court in purporting to protect the rights of defendants . . . a sham and an improper intrusion by the court into the adversary process."

The defense further contends that no evidence has been submitted to prove that San Francisco could not offer both sides a fair trial or that San Diego could. The attorneys point out that publicity concerning the August 7 Marin County Courthouse shooting, which was linked in the press to the Soledad Brothers case, was equally widespread throughout the state of California. They note that the prosecuting attorney has admitted having spoken only to members of

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A Liberal Misunderstanding The Prison System

The California prison system is liberalism run wild. In the process, it has become a particularly open brand of repression. David Karlen's article in this issue on the theory and practice of the indeterminate sentence law describes the problem clearly.

The assumptions are that criminals, if they are evil at all, are evil only temporarily. They committed their crimes — either attack(s) on property or on persons (and sometimes crimes without victims — possession of drugs) because they are undereducated, ignorant, misguided, and because they fail to understand that the American way of life is a good thing. If they are ignorant and untrained, we will smarten them up and train them, and when they are ready to live and let live with the prevailing social system, we will release them. They will be better people when all is said and done.

In fact, many prisoners are not mistaken at all: they have made accurate assessments of the economic and social system. Everybody has a hustle. The landlord hustle consists of using half the rent money paid by tenants to pay off a mortgage, pocketing the rest for 20 years, then selling the house for pure profit. The academic hustle means reading, writing and talking to people nine months of the year, and collecting $10,000 to $30,000 for your troubles.

The robber's hustle means using a gun or some other heavy object to rip off a stereo set or a wallet, to get enough money to pay off the landlord. ("Some men rob you with a six gun, some with a fountain pen." Woody Guthrie.)

If you're caught at the robber's hustle, you are sent to prison. If you are good at any one of a number of other hustles, you are admired, you are elected to public office, or appointed a judge, both of these being even better hustles than being a small landlord or a professor.

In prison, the nature of the society's power relationships become even clearer: one group of people (who wear uniforms with badges) decides the rules for another group of people (woo wear uniforms without badges) to obey. Sometimes a third group, nowhere near the prison, make these rules, but it's never clear who those people are.

Faced with very clear physical evidence, many inmates refuse to change their opinions about the justice of it all, and refuse to accept the rules laid down by the oppressors. If they do not admit error, they are, by the rulers' standards, not rehabilitated. They remain in prison.

Last June, I looked through the personal folder of John Clutchette, one of the three prisoners charged with killing a Soledad prison guard last January. This is the folder presented to the Adult Authority when an inmate seeks parole. In 1967, Clutchette was given 15 days in solitary confinement, for taking part in an "unauthorized Muslim grouping." At the time, all Muslim groupings were illegal. Regulations now allow Muslim religious gatherings, but the record of Clutchette's evil remains in his folder.

More recently, Clutchette was reprimanded by a prison guard for refusing to remove his hat in the prison cafeteria when he was ordered to do so by a guard. Last spring, while in solitary confinement following the accusation of the killing, Clutchette was further disciplined for refusing to shave. His explanation, in his folder, was that the guards refused to give him a mirror to use while shaving, and insisted that he use the same razor as the other two dozen prisoners on the maximum security row. The accusation remains and the punishment began before the prison "hearing." Clearly an unrehabilitated prisoner.

Soon after arriving at San Quentin prison, George Jackson, another one of the original three Soledad Brothers, sat in a front seat of a television room in one of the wings, in a seat previously reserved for whites only. (If you're black, get back.) A fight broke out. Jackson was placed in solitary confinement. Clearly not rehabilitated, ready to take his place in the oppressive world outside the prison gates.

Prisoners and prison rulers are in open conflict inside those dungeons. We had best recognize this, so that we can begin to understand what we hear and see about prisons, and begin to move to change things. Prison rulers are no more interested in rehabilitation of prisoners than they are in becoming prisoners themselves. The articles in this issue are convincing on that point.

People outside prison, meanwhile, have accepted the liberal notions of ignorant (sick?) prisoners, and rehabilitation-minded prison rulers. We have turned our heads, and given the rulers, who pretend to be experts in changing convicts' heads, virtually complete freedom to define the rules of warfare, to enforce them, to exact punishment for their violation, and to make up new rules as they go along.

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A Soledad Acquittal

By Soledad Brothers Defense Committee

On September 30 a Monterey County jury acquitted three inmates of Soledad Prison of charges of assaulting several prison guards with a deadly weapon, and of holding them hostage. Eight guards had testified that the inmates had used a knife to assault two of the guards. Two other prisoners had already been freed of the charges by reason of insanity and did not stand trial. One of these men, Ralph Chacon, a chicano inmate, had stated in a letter to his attorney that he had not seen the sun for five years.

The chief defense of the three who were acquitted — Robert Eschback, Floyd Thompson, and Marvin Smith — hinged on the inhumane and dehumanizing conditions of Soledad Prison's maximum security "O" Wing, and the brutality and corruption of the prison guards. The jury, astounded by the conditions revealed about "O" Wing, apparently sympathized with the inmates, and perhaps for that reason were more inclined to believe their story, which sharply contradicted the testimony of the guards.

Inmate Johnny Miller testified that the altercation with the guards began when he witnessed a guard engaged "in a sexual act" with an inmate, and refused to accept a payoff of benzedrine from the guard to keep it quiet. When he refused, the guard grabbed him, the alarm went off, and other guards came running. Smith, according to Miller, tried to break up the fight between himself and the guard. Smith, Eschback and Thompson had been serving meals to the inmates when the scuffle broke out. All three ran back to their cells when guards began using tear-gas.

Miller also testified that nobody saw Chacon for several days after the incident, and at that time the Chicano prisoner — who has had a long record of mental disturbance — had a badly swollen head, apparently the result of being hit with a tear-gas canister.

The prison authorities originally put out the story that the four white and chicano prisoners were "neo-Nazis" who were trying to get the guard's keys so they could attack the Soledad Brothers: George Jackson, Fleeta Drumgo and John Clutchette, each locked in solitary on the same wing. But the Brothers themselves shattered this myth by befriending the other prisoners and asking all those involved in the Soledad Defense to aid them as well. Defense Committee members occupied the courtroom during the entire week and a half of the trial, surprising the inmates with their support.

This case is important because it brought out three factors.

1) The conditions in Soledad's "O" Wing. Attorneys for the defendants said "We hope this verdict will awaken those in charge of Soledad that a 6 by 10 by 23 existence (referring to the 23 hours a day the inmates spend in 6' by 10' cells) is repugnant to one's sense of decency." It was the startling revelation of these appalling conditions that caused the jury to exonerate the inmates of these charges.

2) The attempted division of prison inmates along racial lines which is the traditional and most effective tool in the prison's arsenal, appears to be breaking down. Prisoners are now beginning to see that their true interests lie in uniting with other prisoners, against the abuses and injustice of the entire prison system, as well as the barbarity and

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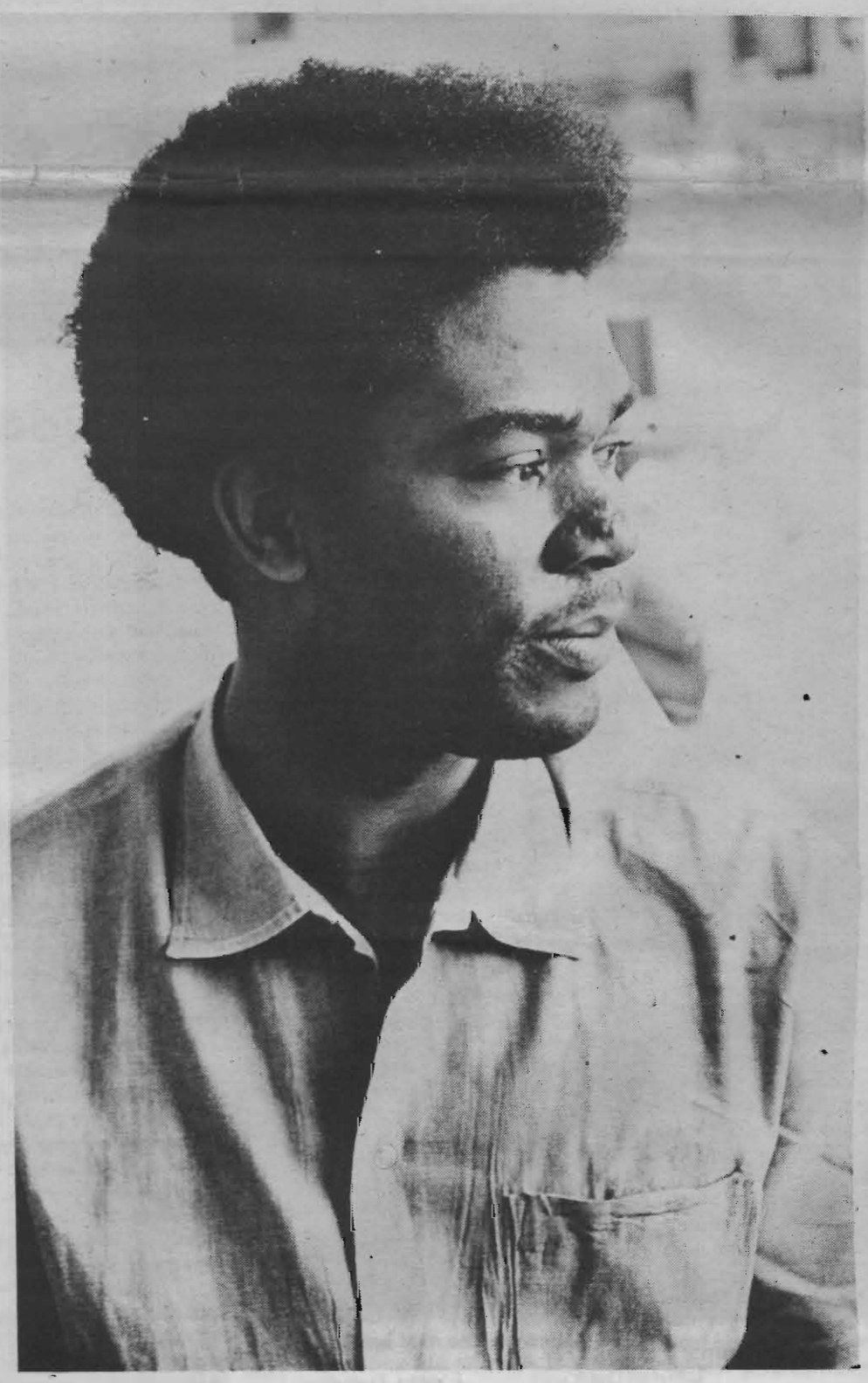

John Clutchette

Warden Unyielding As Folsom Strike Enters Second Week

IT HAS BEEN ONE HELL OF A STRUGGLE BUT RESISTANCE HAS FINALLY CONSTIPATED EXPLOITATION . . . THE PIT STANDS STILL: THE VEGETABLES IN THE VICIOUS GARDEN ARE IN FULL BLOOM REVOLT . . . WE ARE ON STRIKE!

These words from a black inmate at Folsom prison bring the announcement of a strike that began at the prison on Nov. 3, 1970. As of this date the brothers, black, white and chicano are refusing to work and support a prison system that exploits and oppresses them. They "seek an end to the injustice suffered by all prisoners, regardless of race, creed or color."

Last Monday, six days after the beginning of the strike, Folsom Warden Walter Craven and his gang ended the lock-up they began the week before in an attempt to resume normal operations. At least half of the 2,300 inmates refused to return to work, and the prison rulers locked all the men in cells again.

In their Manifesto of Demands and Anti-Oppression Platform the inmates charged that "The administrators of the California prison system have restructured the institutions which were designed to socially correct men into the fascist concentration camps of modern America." The prisoners claim that, instead of being helped in their efforts to learn to live without violence and accept socially approved values of law and justice, they are treated with hostility and brutality, victimized by exploitation and denied due process of law.

In the manifesto of thirty-one demands issued to the California Department of Corrections, the Adult Authority, the Legislature, and the California and United States Courts, the inmates ask for significant changes in legal rights, work programs, and prison conditions.

They call for an end to the indeterminate sentence (such as the frequent one-year-to-life terms), the right to legal representation at parole hearings, and the establishment of a lawyers' panel to provide legal assistance to inmates.

They endorse a proposal by the Black Caucus of the state Legislature (made in a report on Soledad Prison issued last July) that a Board of Overseers for the state prison be established to investigate complaints by inmates "against employees charged with acting inhumanely, illegally, or unreasonably." The Caucus recommended that the Board members be nominated by a psychiatric association, the state bar, and groups of concerned laymen.

The inmates complain that guards tear-gas convicts while they are in their cells and are not prosecuted for beating or shooting inmates.

Many of the inmates' demands deal with the prison work program. They call for an end to wages of 2¢ to 16¢ per hour, and replacement by statutory minimum wage scales; and an eight-hour day, as well as changes in working conditions which would bring prison industry up to standards acceptable outside prison walls in terms of safety and compensation for injuries.

The inmates have asked that negotiation between the prison authorities and a designated outside committee consisting of Charles Garry, Huey P. Newton and Sal Candalaria of the Brown Berets or their representatives begin immediately. The Warden at Folsom has refused.

Demonstrations at the gates of Folsom as well as at San Quentin and Soledad have taken place. A number of groups have endorsed the demands of the inmates, including the Soledad Bros. Defense Committee, the National Lawyers Guild, Coordinating Council of Prisoner Organizations and a number of unions including the AFT, Locals 1928 and 1352 (both at San Francisco

Message from Folsom

(Wednesday, November 4)

The situation at this time is that we have approximately 2100 people who did not work or function in any programmatic capacity today. We had approximately 152 people who did fulfill their work and vocational assignments. However, it is our feeling that within the next 24 hours we will have 100 percent response.

We have had three or four incidents where individuals have been committed to isolation for discussing the strike and for circulating literature in this area. As it is escalated and the anxieties rise a little higher, we do expect more suppression from the administration. We have been peaceable and orderly; we don't desire destructive things, we don't want a violent thing. We really want to raise the issue on a peaceful level. We feel that this way it should maintain the respect of the administration, as well as the people.

The published statement that Warden Craven of Folsom never received the demands is absurd. He was definitely mailed a set of the 31 demands, addressed to him. And if he didn't receive them, they have been intercepted by prison authorities. They were submitted on the 29th of October, and also mailed to the head of the Department of Corrections.

We feel that although we are in prison, we should not be denied all rights and privileges of citizens. We feel that the conditions of prison life have been ignored too long. We call for all people who are concerned about the welfare and conditions of prisoners throughout the state, people who are concerned about the indeterminate sentence, people who are concerned about the escalating violence perpetrated upon inmates in prison, who care about what the American doctrine stands for, to raise these issues. We would appreciate the full support of all the people and organizations who recognize that there are injustices being perpetrated on the people in prison.

The accusation that this has been instigated by outside instigators is ridiculous, because the inside people are the ones who are experiencing the conditions of prison, the inside people are the people who composed the Manifesto, the inside people are the ones who are requesting the support of the outside people regarding the situation inside. It seems that they always attempt to smear outside people who are concerned about the welfare of people in our situation, they always attempt to link them in some type of conspiracy to push them back from the responsibility of aiding the people who are being oppressed.

We also wouldn't be surprised if they try to scapegoat individual people for this action involving all. In any situation in California state prisons they find people to fit the incident, rather than the incident ahat belongs upon the people.

We have requested Attorney Charles Garry, Sal Candelaria of the Brown Berets and Huey P. Newton of the Black Panthers and John Irwin of the Coordinating Council on Prison and Parole Reform to negotiate for us for the purpose of letting community people judge the conditions and situations that exist. We have chosen these particular people because we love and respect them, and we feel that these people or any representatives of these people will do what is just and right by all. The negotiators were unanimously selected by the whole prison population and they or their representatives will speak for us.

JOIN

Know the Bosses

Adult Insanity

In the rehabilitative model which underlies the California penal system, the members of the Adult Authority are penologists, meting out individualized justice to each inmate, returning him to the street when he has seen the error of his ways and is ready to behave more suitably than he has in the past. In fact, the Adult Authority members are exactly the same people who put inmates behind bars to begin with, and the same people who keep them there now, crushing them with an iron fist, no velvet glove wanted.

The Adult Authority consists of nine members appointed by the governor, without consultation with the legislature, for five-year terms. Eight of the nine positions are now filled. Of these eight men, three are former cops or F.B.I. agents. Two are former prison guards, one is a former district attorney, one is a former assistant U.S. attorney. The eighth man is a dentist.

A majority of the board was appointed by Gov. Ronnie Baby, but the credentials of the men appointed by Democrat Pat Brown appear to be little different from those of the men appointed by the current ruler of the state.

Cletus Fitzharris, currently the superintendent of Soledad Prison, was a member of the Adult Authority before appointment to his current job. Before joining the Adult Authority, he was associate warden of San Quentin Prison. Fitzharris' idea of punishment is described in excerpts of Judge Harris's decision in *Jordan v. Fitzharris*, printed elsewhere in these pages.

MEMBERS OF THE CALIFORNIA ADULT AUTHORITY

Henry W. Kerr

Chairman; 10/67 appointed as member; 2/1/68 appointed chairman. Republican. He joined the Los Angeles Police Department in 1937 and reached the rank of inspector in 1953. He retired as Assistant Commander of the Los Angeles Police Department's Detective Bureau.

He is also a member and former president of the Los Angeles Civic Center Speakers Club. Salary - $21,000.

Curtis O. Lynum

Vice Chairman; 12/67 appointment as member; 3/68 reappointed member; 2/68 appointed vice-chairman. Republican. He went to work for the F.B.I. in 1941 as a special agent. From 1963 to his retirement in July 1968, he was in charge of the F.B.I. office in San Francisco. He headed F.B.I. operations in such cases as the Frank Sinatra Jr. kidnapping in 1963, the Hale Champion Kidnapping, 1965, and the Danville California, crash of a Pacific Airlines plane in 1964. He is a graduate of the University of Minnesota. He lives in San Mateo.

Thomas R. Flynn

5/66 appointed. Mr. Flynn is a dentist. No other information is available.

Manley J. Bowler

Appointed 4/67. Admitted to the Bar in 1940. He worked two years as Deputy Attorney for the City of Los Angeles; then 6 years as Chief Assistant U.S. Attorney in the Southern District of California; Chief Deputy Attorney 1957-64. He then became Vice President and Legal Counsel for TransAmerica Title Insurance Co. Republican.

Walter A. Gordon Jr.

Appointed 4/67. He is 45 years old and has been a career Civil Servant in the California Department of Corrections and has been a Parole Agent since 1953. He is a graduate of the University of California with a B.A. in 1947 and he did some graduate study in criminology. He is a Lt. Colonel in the National Guard. Republican. His father was on the Adult Authority board and was Governor of the Virgin Islands and U.S. District Judge at one time. He is the only black member of the Authority board.

Leland M. Edman

Appointed 11/67. He is 45 years old. Graduated from Madera Union High School, Fresno State College, Hastings College of Law and admitted to the Bar in 1953. He was first in private practice; then 3 years as Deputy District Attorney in Fresno County. He also was an instructor of Criminal Law at Humphreys College of Law in Fresno from 1957-61. He was Co-chairman of the Public Administrator's Special Committee to the Fresno County Bar Association. A member of the Scottish Rite and American Arbitration Association. Also past president of Fresno College Laboratory School PTA. Was active as Advancement Committee Chairman at district and council level for the Sequoia Council of Boy Scouts.

James H. Hoover

Appointed 6/69. He joined the California Department of Corrections in 1956 as a Correctional Officer in Chino prison. In 1962 he became a Correctional Sergeant and helped to open the California Rehabilitation Center, a center for addicts. In 1963 he became Program Supervisor at the Southern Conservation Center and in 1966 moved back to Chino to become the Personnel Training Director which post he held until 1969. He lives in Chino and is Republican.

Charles E. Brown

Appointed 4/70. Charles Brown has been on the Richmond Police force for 24 years and retired as the Chief of Police of Richmond. He is a Democrat and is 61 years old. He has also served as a member of the Women's Board of Terms and Paroles. Mr. Brown just finished the study ordered by the Board of Corrections on Inspection of Local Detention Facilities.

Stay In Till You're Better

By David Karlen

The indeterminate sentence has been used in the California prison system since 1917. It has recently become widely identified as a basic repressive tool of the prison authorities because of political trials, as that of the Soledad Brothers. But the dangerous properties of the system are not restricted to isolated instances of political persecution. Rather, they extend throughout the entire prison system and provide a possible example and justification for authoritarian bureaucratic institutions dealing with the general populace.

The idea behind the indeterminate sentence is very simple. Prison commitments for a definite period of time are certainly punishments, but the people who run prisons decided, 60 years ago, that specific commitments do not insure a prisoner will reform himself and will not become a criminal again. Penologists and politicians felt there was no incentive for a convict to reform his way of life if he was going to get out of prison at the same time regardless of whether he had changed or not.

If this logic is correct, prison sentences should be of indeterminate length so that the prisoner does not have to be released until he has shown sufficient indications of adhering to approved social conduct standards. Ideally, the prisoner can be incarcerated for his entire life if he does not reform.

A board of penological experts would administer this system. All control over sentence length and release dates would be in their hands. The judge's role would be limited to merely pronouncing the sentence prescribed by law after the defendant had been convicted.

California System

Theoretically and historically tied with the indeterminate sentence idea is the necessity of a parole system. Once the decision is made to release a prisoner, the parole system ensures that he remains rehabilitated: if he walks the wrong path, he is sent back to prison. Without the added insurance of post-incarceration supervision provided by the parole system, a prisoner could feign reformation while in prison in order to receive a shorter sentence and then return to his previous life-style once freed. Since the terms and conditions of a prisoner's parole can be enforced summarily by revoking parole pending a hearing on their violation, there is no need for a time-consuming trial and appeal process before a parolee can be returned to prison.

California's present system closely approaches this ideal. Under §1168 of the Penal Code, defendants found guilty in criminal trials are sentenced by the judge to the term prescribed by statute for that particular offense. For example, a first conviction for second degree burglary carries an automatic penalty of 1 to 15 years. For offenses considered more serious and for multiple offenders, sentences commonly range to a life term, thus fulfilling the ideal of lifetime supervision, supposedly in order to assure complete reformation. Second degree robbery carries a one-year to life sentence.

Enter the Villains

The administrative agency that runs this system is a nine-member board known as the Adult Authority. Its statutory powers are basically contained in Penal Code §3020-3025 and §5075-§5082 and §3040-3065 which deal with parole.

I. Setting the length of prison terms

The Adult Authority has the power, under Penal Code §3020, to set a prisoner's prison term at less than the statutory maximum. Although this is the usual case, the decision is one made solely at their discretion and there is no way to prevent them from refusing to shorten the term.

So far, there have not been a large number of legal attacks upon these powers that have reached the appellate level. The most common attack upon this arrangement has been that it is an unconstitutional delegation of a judicial function to an executive agency in violation of the separation of powers doctrine of Article III, Section 1 of the California Constitution. This argument has been consistently rejected by the courts, the outstanding opinion being *In re Lee* 177 Cal. 690 (1917).

That decision held that it was the function of the judiciary to determine guilt and impose sentences, but the sentences for the particular offense is properly determinable by the Legislature. Once sentence has been imposed, the carrying out of that sentence is properly an administrative function. In addition, the court held that the "application of various provisions for ameliorating" the sentences are also administrative and "properly exercised by an administrative body."

Final Authority

The decision in *Lee* upheld the original indeterminate sentence law in California. Since there were no previous California cases on this subject, the judgment cites six decisions from other states. Only one of these decisions involved a statute providing for an administrative board of any sort to set sentences at less than the statutory maximum and that was only for boys 16-25 who were sent to the state reformatory in Kansas. All the other cases involved indeterminate sentence laws and parole boards, bot no administrative setting of sentences.

Nevertheless, *Lee* has been considered to have settled the issue for the statutory Adult Authority, which is successor to the original indeterminate sentence law. There are no court decisions offering a real analysis of what the judicial function in sentencing has been in the common law; only a blind following of *Lee's* non-analysis doctrine. The Judicial function is complete when the court has imposed upon the defendant the sentence provided by law for the crime for which he has been convicted. The function of carrying out that sentence is administrative rather than judicial, and the Adult Authority may properly supervise that function.

People v. Kostal
159 C.A.2d 444(1958)

Some activities in the area of sentencing have been ruled to remain "judicial" and thus not a proper activity of the Adult Authority. Determining whether sentences are consecutive or concurrent is a judicial function. Also, only the courts can correct an error in a sentence. From these decisions, it is clear that once the court pronounces the correct statutory formula for the crime for which the defendant has been convicted, the courts are through with the defendant. The most important thing to a prisoner, the actual length of time spent in prison, is seen as a purely administrative matter.

Kangaroo Court

Prisoners can't complain that the decisions of the Adult Authority deny them equal protection of the laws. The idea of individual treatment (within the statutory maximum) according to the best judgment of the Adult Authority "affords no ground for complaint."

In upholding the administrative nature of sentencing, some cases state that there was more involved than rehabilitation. Setting of sentences was also considered a merciful measure, but that is still a proper administrative matter.

The setting of a prisoner's sentence, considered as a purely administrative matter, can and does, then, take place in an informal setting without any procedural or due process safeguards. The prisoner's trial is considered to have ended with his conviction and sentencing by the judge. The Adult Authority hearing is merely an administrative proceeding to set the length of the term within the statutory limits provided for the particular offense. It is in no sense a public trial. Therefore, the absence of a requirement for notice or a hearing before the term is set doesn't violate the requirements of due process. Notice given as required in the proceedings leading to the original conviction was sufficient.

Because it is an administrative act, the speedy trial clause of the Constitution is not applicable either. Where a prisoner's term was originally set, based on inaccurate records of the Adult Authority, the court ruled that he was entitled to a timely determination of his sentence on a true and correct record. But "timely" in this sense has been interpreted to include postponing determination until the time that the prisoner must serve to be eligible for parole has expired.

Although entitled to "timely" consideration in determining the sentence length, no prisoner is entitled to have it determined in any particular way. When the Adult Authority refrains from acting, it is equivalent to an action declining to reduce the sentence from the statutory maximum.

In one case, the court accepted the prisoner's contention that, by declining to set his sentence, the Adult Authority intended to keep him a life-termer. Since he was considered a "dangerous, apparently incorrigible prisoner from whom acts of violence were anticipated," the Adult Authority action was held to be quite reasonable, and not "arbitrary, repugnant to traditional concepts of fairness, or designed to 'destroy' " the prisoner. Because the prison system failed to reform him did not make its operation unconstititutional.

Hands off the Pigs

The best statement of the courts views on supervising the Adult Authority is in *In re Mill* 55 C.2d 646(1961):

If there is no "compelling reason to doubt that the Adult Authority has properly considered the various factors and with equal propriety has exercised its discretion thereon, we are without authority to substitute our judgment for that of the duly constituted tribunal to which determination of these matters is committed."

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Jordan v. Fitzharris

Printed below are excerpts from the opinion of then Chief Judge George B. Harris of the U.S. District Court for the Northern District of California in the case Jordan v. Fitzharris. *257 F.S. 674 (1966). Jordan was a prisoner at Soledad. Fitzharris, as now, was prison superintendent.*

Jordan claimed that the punishment meted out to him by Fitzharris and his associates was cruel and unusual punishment, and was therefore unconstitutional. He asked for injunctive and monetary relief. The first was granted, the second, without explanation, was denied.

Plaintiff's cruel and unusual punishment contention arises out of his confinement from July 9 until July 20, 1965, in a so-called "strip cell" at Soledad. The strip cells (6 in number) form part of the isolation section of the prison's maximum security Adjustment Center. Each strip cell measures approximately 6'-0" by 8'-4". The side and rear walls are solid concrete, as is the floor. The front wall is constructed of steel bars covered by a metal screen. Access is gained through a sliding barred door.

A second front wall is located 2'-10" from the barred wall, thus forming a kind of vestibule between the cell proper and the corridor. Set into this otherwise solid wall are a 24" x 36" barred and screened window opening. The window openings in this outer wall and outer door can be closed off by means of a metal flap which is hinged at the bottom of each window and can be swung up and latched at the top of the window opening.

Immediately outside of this outer wall is an 8'-7 1/2" wide corridor which runs past the six strip cells, through a barred barrier with a locked door, past the eighteen isolation cells,

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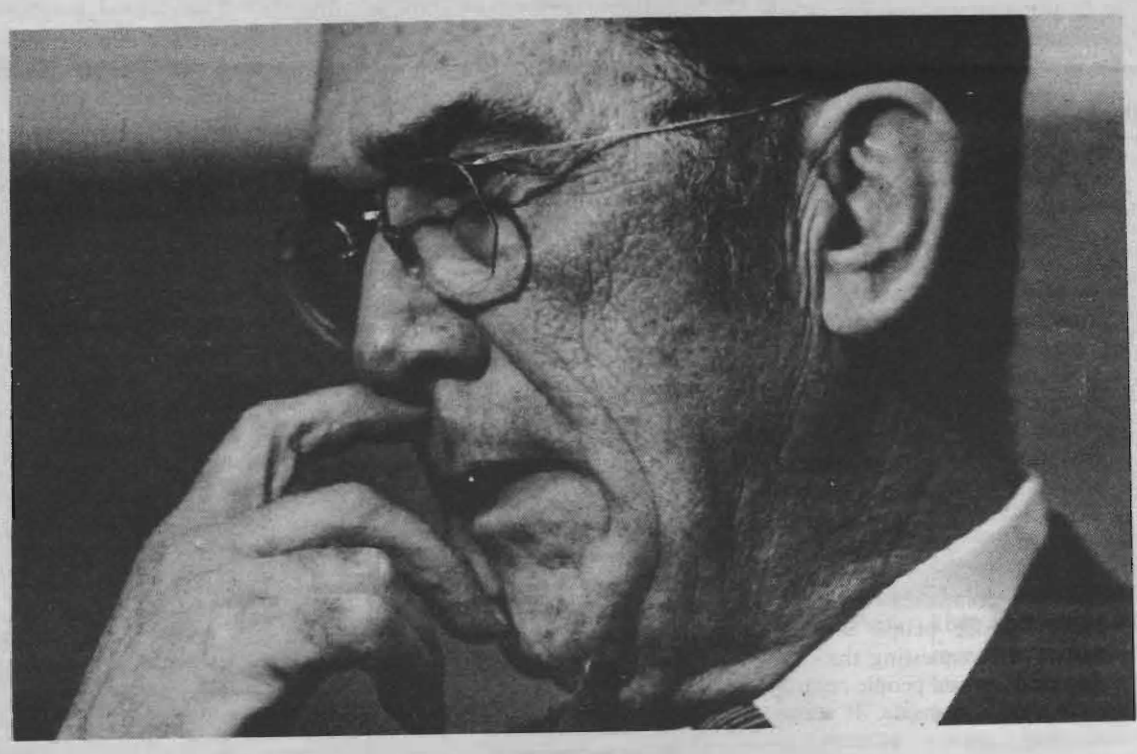
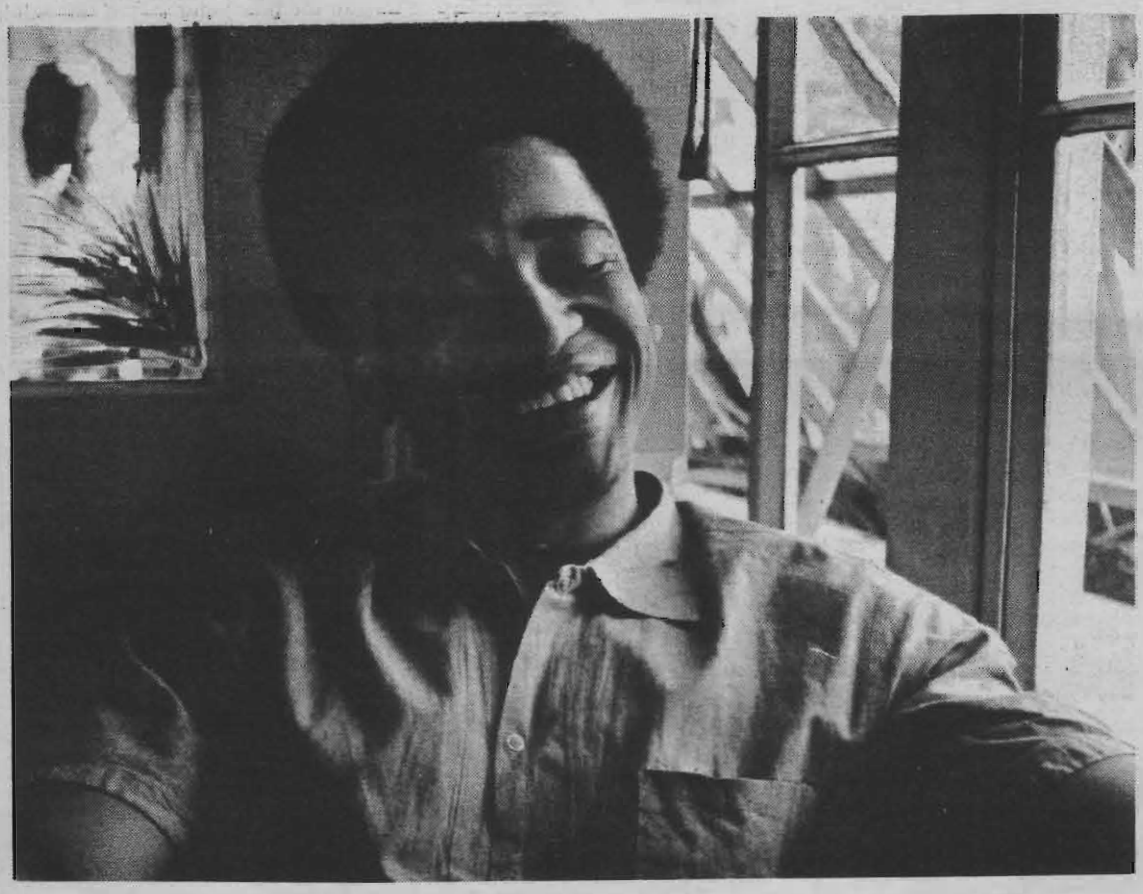


Letters From a Brother in Hell



Printed below are excerpts from letters written by George Jackson, one of the three Soledad Brothers accused of killing a prison guard last January. A book of Jackson's letters was published in September in hard cover (Coward McCann) and paperback (Bantam), with an introduction by Jean Genet. Its title is "Soledad Brother: The Prison Letters of George Jackson." Jackson has been in prison for ten years since the age of 18.

The first excerpt is from a letter Jackson wrote to an editor at Bantam Books who asked him for an autobiography. The second is from a letter from Jackson to one of his two attorneys for the upcoming trial, Fay Stender, of Berkeley. The two short excerpts are from letters written to friends last June.

A month before this thing happened (Jackson had been accused of attempting to rob a store, and then of attacking the cop who was shooting at him), a guy had sold me a motorcycle and provided a pink slip that proved to be forged or changed around in some way. The bike was hot and I was caught with it. Taken together these two things were enough to send me to what California calls Youth Authority Corrections. I went to Paso Robels.

The very first time, it was like dying. Just to exist at all in the cage calls for some heavy psychic readjustments. Being captured was the first of my fears. It may have been inborn. It may have been an acquired characteristic built up over the centuries of black bondage. It is the thing I've been running from all my life. When it caught up to me in 1957 I was fifteen years old and not very well equipped to deal with sudden changes. The Youth Authority joints are places that demand complete capitulation; one must cease to resist altogether or else . . .

The employees are the same general types found lounging at all prison facilities. They need a job—any job; the state needs goons. Chino was almost new at the time. The regular housing units were arranged so that at all times one could see the lockup unit. I think they called it "X." We existed from day to day to avoid it. How much we ate was strictly controlled, so was the amount of rest. After lights went out, no one could move from his bed without a flash of the pigs' handlight. During the day the bed couldn't be touched. There were so many compulsories that very few of us could manage to stay out of trouble even with our best efforts. Everything was programmed right down to the precise spoonful. We were made to march in military fashion everywhere we went—to the gym, to the mess hall, to compulsory prayer meetings. And then we just marched. I pretended that I couldn't hear well or understand anything but the simplest directions so I was never given anything but the simplest work. I was lucky; always when my mind failed me I've had great luck to carry me through.

All my life I've done exactly what I wanted to do just when I wanted, no more, perhaps less sometimes, but never any more, which explains why I had to be jailed. "Man was born free. But everywhere he is in chains." I never adjusted. I haven't adjusted even yet, with half my life already spent in prison. I can't truthfully say prison is any less painful now than during that first experience.

In my early prison years I read all of Rafael Sabatini, particularly *The Lion's Skin*. "There once was a man who sold the lion's skin, while the beast still lived, and was killed while hunting him." This story fascinated me. It made me smile even under the lash. The hunter bested, the hunted stalking the hunter. The most predatory animal on earth turning on its oppressor and killing it. At the time, this ideal existed in me just above the conscious level. It helped me to define myself, but it would take me several more years to isolate my real enemy. I read Jack London's "raw and naked, wild and free" military novels and dreamed of smashing my enemies entirely, overwhelming, vanquishing, crushing them completely, sinking my fangs into the hunter's neck and never, never letting go.

Capture, imprisonment, is the closest to being dead that one is likely to experience in this life. There were no beatings (for me at least) in this youth joint and the food wasn't too bad. I came through it. When told to do something I simply played the idiot, and spent my time reading. The absentminded bookworm, I was in full revolt by the time seven months were up.

* * *

They are fighting upstairs now. It's 11:00 a.m., June 11. No black is supposed to be on the tier upstairs with anyone but other blacks but — mistakes take place — and one or two blacks end up on the tier with nine or ten white convicts frustrated by the living conditions or openly working with the pigs. The whole ceiling is trembling. In hand-to-hand combat we always win; we lose sometimes if the pigs give them knives or zip guns. Lunch will be delayed today, the tear gas or whatever it is drifts down to sting my nose and eyes. Someone is hurt bad. I hear the meat wagon from the hospital being brought up. Pigs probably gave them some weapons. But I must be fair. Sometimes (not more often than necessary) they'll set up one of the Mexican or white convicts. He'll be one who has not been sufficiently racist in his attitudes. After the brothers (enraged by previous attacks) kick on this white convict whom the officials have set up, he'll fall right into line with the rest.

* * *

June, 1970

I haven't seen the night sky for a decade. During the early sixties in San Quentin, "lockup" meant just that, twenty-four hours a day, all day, a shower once a week, and this could last for months (it's not changed much). On a shower walk one day in '63??, a brother called me to his cell for an opinion on his work he was doing on his walls. He had drawn in *the night sky* with colored pencils and against it, life size, lifelike (he was good), female comrades — some with fluffy naturals like my sister Angie, some with silky naturals like my sister Betsy. He had worked on it for three months. It was enormous—beautiful, precise, mellow. When he finished the last strokes the pigs moved him to another cell and painted over it, gave him a bad-conduct report, and made him pay for the new coat of paint. That brother didn't draw much any more last time I saw him. Some political cartoons, abstracts in book margins. Life's "a tale told by an idiot." Have you read any Shekespeare? I really enjoyed him when I was young. Macbeth is timeless, put him in a Brooks Brothers or a uniform and he'd fit right into the seventies. But you read all that stuff when you were in high school. I keep forgetting your background (class). Forgive me, sister, forgive the parochialism I sometimes slip into, habits formed in being, and addressing myself to, the hindmost.

From Dachau with love—

George

* * *

Dear G.,

The California Adult Authority board and inmate Jackson A63837 clashed for the final time in June 1969. When I was called

cont on p 7

Take the individual who has been in the general prison population for a time. Picture him as an average convict with the average twelve-year-old mentality, the nation's norm. He wants out, he wants a woman and a beer. Let's say this average convict is white and has just been caught attempting to escape. They may put him on Max Row. This is the worst thing that will ever happen to him. In the general population facility there are no chains and cuffs. TVs, radios, record players, civilian sweaters, keys to his own cell for daytime use, serve to keep his mind off his real problems. There is also a recreation yard with all sorts of balls and instruments to strike or thrust at. There is a gym. There are movies and a library well stocked with light fiction. And of course there is work, where for two or three cents an hour convicts here at Soledad make paper products, furniture, and clothing. Some people actually like this work since it does provide some money for the small things and helps them to get through their day — *without thinking* about their real problems.

Take an innocent con out of this general population setting (because a pig "thought" he may have seen him attempting a lock). Bring him to any part of O Wing (the worst part of the adjustment center of which Max Row is a part). He will be cuffed, chained, belted, pressured by police who think that every convict should be an informer. He will be pressured by the white cons to join their racist brand of politics (they *all* go under the nickname "Hitler's Helpers"). If he is predisposed to help black he will be pushed away—by black. Three weeks is enough. The strongest hold out no more than a couple of weeks. There has been *one* white man only to go through this O Wing experience without losing his balance, without allowing himself to succumb to the madness of ribald, protrusive racism.

It destroys the logical processes of the mind, a man's thoughts become completely disorganized. The noise, madness streaming from every throat, frustrated sounds from the bars, metallic sounds from the walls, the steel trays, the iron beds bolted to the wall, the hollow sounds from a cast-iron sink or toilet.

The smells, the human waste thrown at us, unwashed bodies, the rotten food. When a white con leaves here he's ruined for life. No black leaves Max Row walking. Either he leaves on the meat wagon or he leaves crawling licking at the pig's feet.

Ironic, because one cannot get a parole to the outside prison directly from O Wing, Max Row. It's positively not done. The parole board won't even consider the Max Row case. So a man licks at the feet of the pig not for a release to the outside world but for the privilege of going upstairs to O Wing adjustment center. There the licking process must continue if a parole is the object. You can count on one hand the number of people who have been paroled to the streets from O Wing proper in all the years that the prison has existed.

* * *

One can understand the depression felt by an inmate on Max Row. He's fallen as far as he can into the social trap, relief is so distant that it is very easy for him to lose his holds. In two weeks that little average man who may have ended up on Max Row for

cont on p 6

Soledad Seven Hearing

By Marie Roberson

On October 13, 1970 seven Black inmates of Soledad prison were brought to Monterey County's Municipal Court Building in Salinas, California for the preliminary hearing on the inmates' alleged murder of a Soledad prison guard in July, 1970.

The brothers were chained — hands and feet, when delivered and picked up in a closed garage beneath the court house. Despite police attempts to keep the brothers from the view of their supporters (and of course, to prevent the brothers realizing how much support they had), many brothers and sisters were at the garage with clenched fists and shouts of "Right on." and "We're with you."

The court has a seating capacity of 200, but only 77 persons were allowed in the court because of a new fire regulation put into effect shortly before the hearing. Approximately 40 people from Los Angeles weren't allowed into the court room.

Just before the hearing began, the Sheriff's officers took pictures and fingerprints from all immediate family members, claiming that this would insure that all family members got into the court room. Inside family members were given seats in the back of the court, although one mother insisted on sitting and sat in the front row. Other family members then moved closer to the front of the court.

Supporters of the seven stood up as they shuffled in: when Judge Machado entered, some brothers and sisters assumed various postures between standing and sitting and others didn't bother to move at all.

The atmosphere in the court room was not charged, but it was apparent that sides had been established. The proceeding was interesting, but fairly predictable. Patrick Hallinan and Joe Rhine, the Seven's attorneys, made three requests all of which were immediately denied. They asked that (1) the people on the outside be allowed to come in until the court was filled to capacity; (2) the prisoners be allowed more humane visitation privileges (unlike most Soledad prisoners, they may speak to their visitors only through wire mesh, for short periods of time, etc.); and (3) the prisoners be unshackled as it was unbecoming to their dignity, interfered with their taking notes, and made unnecessary noise.

Getting down to what he called the "nitty gritty," Hallinan stated that he and Rhine had had only 5 days to prepare for the hearing. He asked for a 30 day extension of the hearing to adequately interview prisoners whom the state inconveniently (convenient for the state's purpose) scattered over the state, and to adequately review testimony against the Seven taken by prison officials.

Upon denial of this request, the Brothers and their attorneys waived the preliminary hearing. It was evident that the court had been caught off guard. The slow thinking District Attorney consented to the waiver and then asked for a five minute recess which he rushed out of the room and rushed back in to flip through a book on his table. After the recess, the judge again asked the prosecutor if he consented to the waiver; his feeble reply was, "Yes."

The political significance of the waived preliminary is that it lets prison officials know that they will not always get away with their scheme of divide and rule. According to Hallinan, notices had been posted on the halls of Soledad prison stating that any prisoner who would testify against the Seven would be given $500 or paroled. All of the prisoners who agreed to testify against the Seven were up for parole within a month. If the preliminary hearing had been held, the witnesses would have testified at that hearing, received parole, and left town. At the trial, this testimony would have been read to the jury and entered in the trial record without the defense being able to cross-examine these witnesses. *California v. Green*

LATE NEWS

Judge Gordon Campbell has saddled the seven with six lawyers who the prisoners refuse to speak to, and has refused to appoint six experienced criminal lawyers who the prisoners, all indigent, want to represent them. Over the objections of everybody involved, the judge set the trial date for mid-December.

The attorneys wanted by the defendants who are willing to defend them, include Marvin Stender, Richard Hodge, who represented Los Siete and Oakland 7 defendants, Penny Cooper of Berkeley, Ron Bondoc, Dick Patsey, and Patrick Hallinan. The lawyers assigned by Campbell are a Monterey County public defender and five private local lawyers.

Stephen Shames/Photon West

Jackson Letters

cont from p 5

suspicion of attempted escape is so brutilized, so completely without holds, that he will never heal again. It's worse than Vietnam.

***

The picture that I have painted of Soledad's general population facility may have made it sound not too bad at all. That mistaken impression would result from the absence in my description of one more very important feature of the main line—terrorism. A frightening, petrifying diffusion of violence and intimidation is emitted from the offices of the warden and captain. How else could a small group of armed men be expected to hold and rule another much larger group except through *fear*?

We have a gym (inducement to throw away our energies with a ball instead of revolution). But if you walk into this gym with a cigarette burning, you're probably in trouble. There is a pig waiting to trap you. There's a sign "No Smoking." If you miss the sign, trouble. If you drop the cigarette to comply, trouble. The floor is regarded as something of a fire hazard (I'm not certain what the pretext is). There are no receptacles. The pig will pounce. You'll be told in no uncertain terms to scrape the cigarette from the floor with your hands. It builds from there. You have a gym but only certain things may be done and in specified ways. Since the rules change with the pigs' mood, it is really safer for a man to stay in his cell.

You have to work with emoluments that range from nothing to three cents an hour! But once you accept any pay job in the prisons industrial sector you cannot get out whthout going through the bad conduct process. When workers are needed, it isn't a case of accepting a job in this area. You take the job or you're automatically refusing to work, even if you clearly stated that you would cooperate in other employment. The same atmosphere prevails on the recreation yard where any type of minor mistake could result not in merely a bad conduct report and placement in adjustment center, but death. A fistfight, a temporary, trivial loss of temper will bring a fusillade of bullets down on the darker of the two men fighting.

You can't begin to measure the bad feeling caused by the existence of one TV set shared by 140 men. Think! One TV, 140 men. If there is more than one channel, what's going to occur? In Soledad's TV rooms there has been murder, mayhem, and destruction of many TV sets.

The blacks occupy one side of the room and the whites and Mexicans the other. (Isn't it significant in some way that our numbers in prison are sufficient to justify the dividing of half of all these facilities?)

We have a side, they have a side. What does your imagination envisage out of a hypothetical situation where Nina Simone sings, Angela Davis speaks, and Jim Brown "splits" on one channel, while Merle Haggard yodels and bets for an ass kicking on another. The fight will follow immediately after some brother, who is less democratic than he is starved for beauty (we did vote, but they're sixty to our forty), turns the station to see Angela Davis. What lines do you think the fighting will be along? Won't it be Angela and me against Merle Haggard?

But this situation is tolerable at least up to a point. It was worse. When I entered the joint on this offense, they had half and we had half, but our half was in the back.

In a case like the one just mentioned, the white convicts will start passing the word among themselves that all whites should be in the TV room to vote in the "Cadillac cowboy." The two groups polarize out of a situation created by whom? It's just like the outside. Nothing at all complicated about it. When people walk on each other, when disharmony is the norm, when organisms start falling apart it is the fault of those whose responsibility it is to govern. They're doing something wrong. They shouldn't have been trusted with the responsibility.

Shut it Down

POWER TO THE PRISONERS

A Poem To Spring — Nov. 1970

Spring Bobby!

Spring the Soledad Brothers!

Spring the N.Y. 21!

Spring the New Haven 9!

Spring all Political Prisoners!

cont from p 2

Judges often are chosen from among the prosecutors: district attorneys or U.S. attorneys. They see no reason to rescue the prisoners from their oppressors. In fact, judges generally refuse to intercede when prisoners ask their assistance in limiting the arbitrariness of the oppressors. See David Karlon's article.

Ex-convicts are generally not allowed to vote, although a recent California decision changed that slightly. If their families are economically lower class, they vote in disproportionately small numbers. Prisoners certainly do not vote.

It is a violation of parole conditions, and cause enough for immediate revocation of parole, for a person on parole to associate with another person on parole. Growth of a political organization of former convicts is thus impossible.

Legislators have little reason to care about the warfare inside prison.

In the executive branch — well, there's Ronald Reagan and there was Pat Brown before him. Sometime before that was Earl Warren, who, during World War II, was an enthusiastic supporter of prison camps for all Americans of Japanese descent.

We liberals and conservatives out here have refused to keep the oppressors who rule the prisons on a leash. The recent uprisings in New York City, in Folsom, Soledad, and less publicized struggles in other prisons, suggest that we have already given these rulers rope enough to hand themselves.

—Martin Fassler

Soledad Brigade

(Continued from page 8)

cal literature, integrated a segregated prison TV room, and in general refused to grovel before the prison authorities.

Similar reprisals have already begun against other inmates connected with the Soledad Brothers case. Several inmates who contributed money from their meager incomes to the defense fund, have been denied parole and told orally that their contribution was the reason. Former inmates of Y wing have been told that if they cooperate with the Soledad Brothers defense they will never be paroled. The simple fact that a man is in O wing, and many of the inmates in question have already been placed there, is usually considered sufficient reason to deny him parole.

Faced with this repression, lawyers for the Soledad Brothers wrote to the President of the State Bar, asking for the assistance of the Bar in dealing with the situation. They received a reply, on Sept. 8, stating that "It is not and should never be a function of the State Bar to . . . assist in protecting the rights of witnesses in criminal action."

The Defense Committee then contacted the prison committee of the regional office of the National Lawyers Guild, and through them the Soledad Brigade was organized. The aim of the Brigade is to provide a lawyer for each individual inmate who was on Y wing at the time of the killing, to protect him from intimidation and reprisals for testifying truthfully on behalf of the three brothers. Specifically, if an inmate seeks the help of the Brigade, he will be provided with a lawyer who will:

- interview him before the trial;
- watch over his disciplinary files before and after the trial;
- request permission to attend the Adult Authority hearing at which he is considered for parole;
- provide other help as requested and feasible (not including the bringing of habeas corpus actions with respect to the original conviction);
- contact the prisoner's own attorney with respect to these matters, if asked;
- cooperate with other attorneys in seeking affirmative release if a pattern of reprisals emerges.

Some 60 attorneys have volunteered their services to the brigade so far. On Sept. 21, individual letters were sent to the 170 inmates at Soledad involved, informing them of the existence and functions of the brigade, and of the intention of the defense lawyers to subpoena persons who were inmates of Y wing on Jan. 16, to testify at the trial. Most of the inmates, however, had already been transferred out of Soledad, and scattered among prisons throughout the state. Over 80 of the letters were returned from Soledad marked "moved, address unknown." The brigade is currently attempting to obtain a list of addresses for these inmates from the prison officials.

A small number of letters, however were delivered, and the brigade has received fifteen replies from inmates so far. Eleven of those asked to see a brigade attorney, and many expressed enthusiasm for the work of the brigade and the defense committee.

Four inmates asked to be left alone, and expressed hope that they would not be subpoenaed or contacted again. Their replies are particularly interesting, because they express clearly the terror that inmates are subjected to. These are men who have had a date set for their release, and they are afraid that if they do *anything* that displeases the authorities they will lose, possibly forever, their chance to obtain freedom. One such inmate asked "Affirmative court relief from subtle, unwritten pressures?" His letter continues:

I realize you are concerned for your clients but as of this winter I will be starting my life again from scratch. Do you understand what that means? It means that if I work like a dog for a few years I might have a wardrobe, transportation, and a place to stay. If you subpoena me, not only will I probably lose my job but in my opinion it certainly won't be at all conducive to my parole.

Clearly the task facing the Soledad Brigade is immense, and the atrocities in California prisons that are coming to light in the course of the Soledad Brothers case are only the tip of the iceberg. Help is still needed in providing protection to the inmates involved. Interested law students should contact David Sklare at the Regional Office of the National Lawyers Guild, 197 Steiner Street, S.F., 863-5193.

cont from p 2

corruption of individual prison guards. It was this understanding that led the three black Soledad Brothers to extend their support to four white inmates and a chicano whom they had been told were their enemies.

3) The jury gave a fair and just decision, taking all factors into account. But the jury was one absolutely typical of Salinas, Monterey County, typical, in fact of most juries in this country: white, middle-aged, and middle class. One question must be asked: Would their response have been the same if the prisoners involved had been black? Perhaps the response would be yes. But given the history of this country's version of justice for black people, we can only reserve our judgment on this matter until we see the outcome of the remaining Soledad cases.

Lawyers for the three defendants were Mike Willey and Ed Caldwell, both of San Francisco, each with some, but not extensive criminal experience. They defended Eschback, Thompson and Smith without charge, after being persuaded to handle the case by the Soledad defense committee.

Jackson

cont from p 5

up in June '70 (the usual arrangement is once a year), I refused to go. I was already under indictment for the murder of the pig and it wasn't very likely that I would be given consideration for anything but the firing squad. The June 1969 appearance, however, was very significant because it followed a six-month postponement. I had gone to the board for the eighth time in December 1968. I was told by the institution employee who always sits on the board hearings that I was "granted a parole." I would be back on the street on March 4. I walked back to my cell telling everyone I had a "date." I even wrote to my family. Three days later I was informed that a mistake had been made. Consideration of my case was postponed for six months. They explained to me that I would be transferred to Soledad from San Quentin. If I did well for six months at Soledad, I would be given parole for certain. When the June 1969 appearance finally took place different people were on the board panel. No one could find any reference to the promises made to me by the earlier board. I was denied for another full year.

All the other board appearances were tense affairs conducted in an atmosphere of mutual hostility. We argued over conflicting interpretations of the disciplinary reports in my central file. I had been accused of being a Muslim, Communist, agitator, nationalist, loan shark, thief, assassin, and saboteur. Nothing was ever settled, nothing was really exchanged except hostility.

Power to the People.

Comrade George

cont from p 1

the San Francisco District Attorney's office and to one anonymous resident of the city to buttress his claim that neither side could get a fair trial in San Francisco. And they claim that San Diego is even more likely to be prejudiced against the defendants because of its conservative population.

The attorneys state that, according to Kevin Phillips, in his book *The Emerging Republican Majority*, blacks in San Diego call their city "the Mississippi of the West." They claim "In seeking San Diego as the site for the trial, the prosecution has sought to bring the defendants before those most likely to convict, whether or not guilty. The populace of San Diego is least likely to produce jurors who are black or who share the political or social ideas of the defendants." For these reasons, and because San Diego is geographically inconvenient for the attorneys, the county should not have been chosen as the site for the trial even if a change were warranted.

The Soledad Brothers — George Jackson, John Clutchette, and Fleeta Drumgo — are accused of killing a guard at Soledad Prison last January, three days after another guard shot and killed three black inmates. The trial was moved from Monterey County to San Francisco in June, after the defense attorneys presented evidence that the defendants could not get a fair trial in Monterey County.

Adult Authority

cont from p 4

Yet what would be a "compelling reason" for the court to interfere is not very definite. Because the Adult Authority is theoretically a board of "experts" with access to the prisoner's entire prison and pre-prison records, they are presumed to be the best judges of the situation. They may consider the prisoner's arrest record, the degree of violence or amount of viciousness used in his crimes, and his entire prison disciplinary record. Since a major purpose of the indeterminate sentence law is to permit individual treatment of offenders according to the best judgment of the Adult Authority, "the discretion lodged in the Authority is so broad that it is seldom that a case can be made out that would show an abuse of that discretion."

H. EFFECTS OF THE SYSTEM

The case law frequently mentions the goal of rehabilitative treatment and of the individualization of punishment necessary to achieve that goal. These were the foremost reasons advanced for the adoption of the indeterminate sentence when it was first being widely discussed in the late 1800's.

However, no matter how sincere these professions of reformist motives are, the system obviously functions as a complete control mechanism over the lives of the prisoners, even extending to their normal activities outside prison while on parole. Whether or not the prison system adequately prepares the inmates for a normal life outside prison, the incredible discretionary power of the Adult Authority certainly functions to keep them in line, to make them fit into the Adult Authority's conception of a good citizen, by keeping the threat of increased punishment over the heads of prisoners without any real need to justify their actions to anyone.

Dwelling upon the hypocrisy of the discrepancy between the announced purpose of rehabilitation and the completely authoritarian nature of the system would not be a very productive form of analysis. That would only dilute the amount of attention that should be paid to the most important aspect of the problem — the consequnces of the existence of such a system of unfettered controls over the lives of a segment of the population.

John Irwin, a sociologist at San Francisco State, has outlined the effects of the system upon the prisoner population in his book, *The Felon*. At first, the inmates received the rehabilitative philosophy enthusiastically, but general disillusionment soon set in for several important reasons.

1. The program has failed because recidivism rates have not been lowered.

2. The prisoners have begun to see that custodial concerns, administrative convenience, and punishment have been masked under the guise of "treatment."

3. The prisoners resent highly the sickness image that is the foundation of the treatment ideal.

4. A tremendous sense of injustice has been created by the extraordinary unchecked powers of the Adult Authority under such a fraudulent system of justifications. There is no fairness in the determination of their sentence — no due process and no standards of term length to which the Adult Authority can be held accountable. All kinds of considerations extraneous to the conviction for which the prisoner is serving time often affect the board's decisions. And the ability to reset sentences leaves the prisoner at the mercy of prison authorities reports on their behav-[OUR] It should come as no surprise that the recent California prison strike made the Adult Authority its number one target.

Treatment of prisoners as non-persons with no protection from arbitrary authority has far greater consequences than the defeat of the ostensible goal of rehabilitation. Denying the possibilities of any rudimentary justice to any segment of society automatically dehumanizes that group. Those unfortunate people pay too high a price for their sins.

"Experts" Control Lives

The indeterminate sentence system not only cheapens American justice by arbitrarily denying any of its protections to certain groups, but sets dangerous precedents and justifications for its future application to other unpopular groups. These people will be designated misfits who have to undergo "treatment" in order to induce their conformity with officially sanctioned conduct. Punishment will wear the humanitarian guise of "rehabilitation." Uncontrolled authority will be justified as an obvious administrative necessity whose rationale is unquestionable because the "experts" have made the decision.

Laymen or judges would be defined to lack the necesary qualifications, expertise, or access to information to even criticize, much less contradict, these administrative decisions. Social non-conformity will be viewed as a sickness to be cured by the social engineers of socity. The political or sociological phenomenon of criticism or dissent will lack any legitimacy whatsoever.

America, Beware

As this rationale becomes better articulated in the penological jargon, any legal battle against it will become hopeless. Already, an analysis of the case law shows an easy acceptance by judges of basically unfettered administrative discretion. Searching for inconsistencies in the fine points of their justifications of the present system would be fruitless. The only legal attack that would have any possibility of success in injecting an element of judicial control over the system would have to go beyond any argument based on past precedents and point out the exact nature and consequences of the system and the inconsistency of these consequences with basic constitutional requirements of due process. Additionally, the entire rehabilitative philosophy would have to be exposed as a fraud. Although surprises may occur, given the state of the conventional legal wisdom in this area, judicial liberation of the system is improbable.

Fitzharris Decision

cont from p 4

through a "sally port" (a small rectangular, barred enclosure having two locked doors) and into another corridor where it terminates. In this latter corridor is located the officers' area.

Thus the strip cells are placed at the opposite end of the wing from the officers' area and an officer must pass through three locked doors to get from his area to the strip cells. Across the corridor from the strip cells is the outer wall of the wing. This wall has barred windows which formerly contained glass but now are partially covered by sheet metal.

The interiors of the strip cells are entirely devoid of furnishings except as follows: Four of the strip cells have an ordinary commode toilet encased in concrete. The remaining two strip cells have a so-called "Oriental" toilet, i.e., a hole in the floor. None of the toilets can be flushed by the occupant of the cell, but must be flushed from outside the cell by an officer or an inmate porter. The flushing mechanism is located in a tunnel immediately behind the row of strip cells.

Heat and ventilation are supplied to the strip cells through two ducts located high on the rear walls of the cells. The cells have no interior source of light. When the flaps on the outer wall are closed the cells are totally dark except for such light as may seep in through the crakes around the flaps and the outer door.

* * *

Plaintiff testified, and the records indicate, that he was placed in a strip cell on the evening of Friday, July 9, 1965. He remained continuously in the cell until the morning of Tuesday, July 20, 1965, except for a brief period on Tuesday, July 13, when he was removed from the cell, taken to a hearing before the Disciplinary Committee, and returned to the cell.

The amended complaint filed by Jordan, through his appointed counsel particularized his grievances and charged substantially as follows:

On or about July 9, 1965, plaintiff was placed in a special punishment unit at the Correctional Training Facility, known as a "strip cell" (hereinafter referred to as "strip cell"). Plaintiff was continuously confined in solitary confinement in said strip cell for twelve consecutive days.

During plaintiff's confinement in said strip cell, plaintiff was forced to remain in said strip cell with said flaps and door of the second wall closed. As a result, plaintiff was deprived of light and ventilation for twelve days, except that twice a day the door of the second wall was opened for approximately fifteen minutes.

The interior of said strip cell is without any facilities, except that there is a raised concrete platform at the rear of the cell containing a hole to receive bodily wastes. There is no mechanism within the cell for "flushing" bodily wastes from this hole. "Flushing" is controlled by personnel of the Correctional Training Facility from the exterior of said strip cell. The hole was only "flushed" at 9:00 p.m. on some of the twelve days plaintiff was confined in said strip cell.

During plaintiff's confinement in said strip cell, the strip cell was never cleaned. As a result of the continuous state of filth to which plaintiff was subjected, plaintiff was often nauseous and vomited, and the vomit was never cleaned from the plaintiff's cell. When plaintiff was first brought to the strip cell, the floors and walls of the strip cell were covered with the bodily wastes of previous inhabitants of the strip cell. Plaintiff is informed and believes and on that basis alleges that said strip cell had not been cleaned for at least thirty days before plaintiff was confined therein.

Plaintiff was forced to remain in said strip cell for twelve days without any means of cleaning his hands, body or teeth. No means was provided which could enable plaintiff to clean any part of his body at any time. Plaintiff was forced to handle and eat his food without even the semblance of cleanliness or any provision for sanitary conditions.

For the first eight days of plaintiff's confinement in said strip cell, plaintiff was not permitted clothing of any nature and was forced to remain in said strip cell absolutely naked. Thereafter, plaintiff was given a pair of rough overalls only.

Plaintiff was forced to remain in said strip cell with no place to sleep but on the cold concrete floor of the strip cell, except that a stiff canvas mat approximately 4 1/2 feet by 5 1/2 feet was provided. Said mat was so stiff that it could not be folded to cover plaintiff without such conscious exertion by plaintiff that sleep was impossible. Plaintiff is six feet and one inch tall and could not be adequately covered by said stiff canvas mat over himself. The strip cell was not heated during the time that plaintiff was forced to remain there.

* * *

It is evident from the foregoing narrative of Jordan's testimony that he was required to eat the meager prison fare in the stench and filth that surrounded him, together with the accompanying odors that ordinarily permeated the cell. Absent the ordinary means of cleansing his hands preparatory to eating, it was suggested by the prison consulting psychiatrist, Dr. Hack, that he might very well use toilet paper for this purpose plus his small ration of water, being two cups a day. (Tr. p. 597)

Regarding medical care: Jordan requested from time to time medical assistance through the medical officer, Dr. Kunkel. As evidence of the limited medical care provided, the official records demonstrate that Dr. Kunkel came into the wing where the strip cells are located and spent eight minutes on one occasion and ten minutes on another occasion, thus servicing one hundred and eight inmates.

* * *

It is to be observed that the inmates and their testimony were subjected to vigorous and searching cross-examination. Notwithstanding such scrutiny, the narratives contain the essentials of truth and are credible and convincing.

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Issue Editor .....

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Soledad Brigade

By Sam Gross

About 170 prisoners were housed in Y wing of the Soledad Prison on Jan. 16, 1970, when a white prison guard was killed. After the death, for over a week, all the inmates of Y wing were kept in isolation and interrogated; many were threatened with long confinement or promised early parole in the process. Eventually, three young militant black inmates — John Wesley Cluchette, Fleeta Drumgo, and George L. Jackson—were charged with murder, in what has become a major political prosecution. One of the major problems that has faced the defense in this case is the intimidation and harrasment by the prison authorities of the witnesses to the events surrounding the killing.

In the initial interrogations and subsequently, inmates have been told that they themselves might be prosecuted for the killing if they didn't cooperate. Inmates have also been threatened with, and in many cases subjected to, confinement to O wing, the maximum security "Adjustment Center" of Soledad Prison, where they are locked in their cells 23½ hours a day, and their priviliges are abrogated.

By far the most powerful weapon in the hands of the prison authorities, however, is the threat of reprisals from the Adult Authority. In California, conviction of any one of several felonies carries an "Indeterminate Sentence." After a prisoner has served the minimum sentence, the actual length of his sentence, up to the maximum, is determined by the California Adult Authority, an appointed body that is answerable to no one. The Adult Authority also determines the length of parole following release, up to the maximum sentence, and the conditions of parole. The range from minimum to maximum sentence is usually very large; often, in fact, the maximum sentence is life.

The primary evidence used is the disciplinary record of the inmate and the opinions of the prison officials. No records are kept of these hearings, and no reasons need be given when parole is denied. There is no appeal from a decision of the Adult Authority. Furthermore, even after release, an inmate can be recommitted to prison through similar proceedings, for anything the Adult Authority construes as a violation of his parole.

The Adult Authority uses its immense power as an instrument of terror and control. For example, George Jackson was given a sentence of one year to life for being an unknowing accessory to an armed robbery when he was eighteen years old. His co-defendant, who actually committed the robbery, was released after two and one half years. Jackson has been in jail for ten years, and at the time he was charged with murder no release date had been set. Apparently he committed far more serious crimes than armed robbery after his incarceration — he became a Black revolutionary, read politi-

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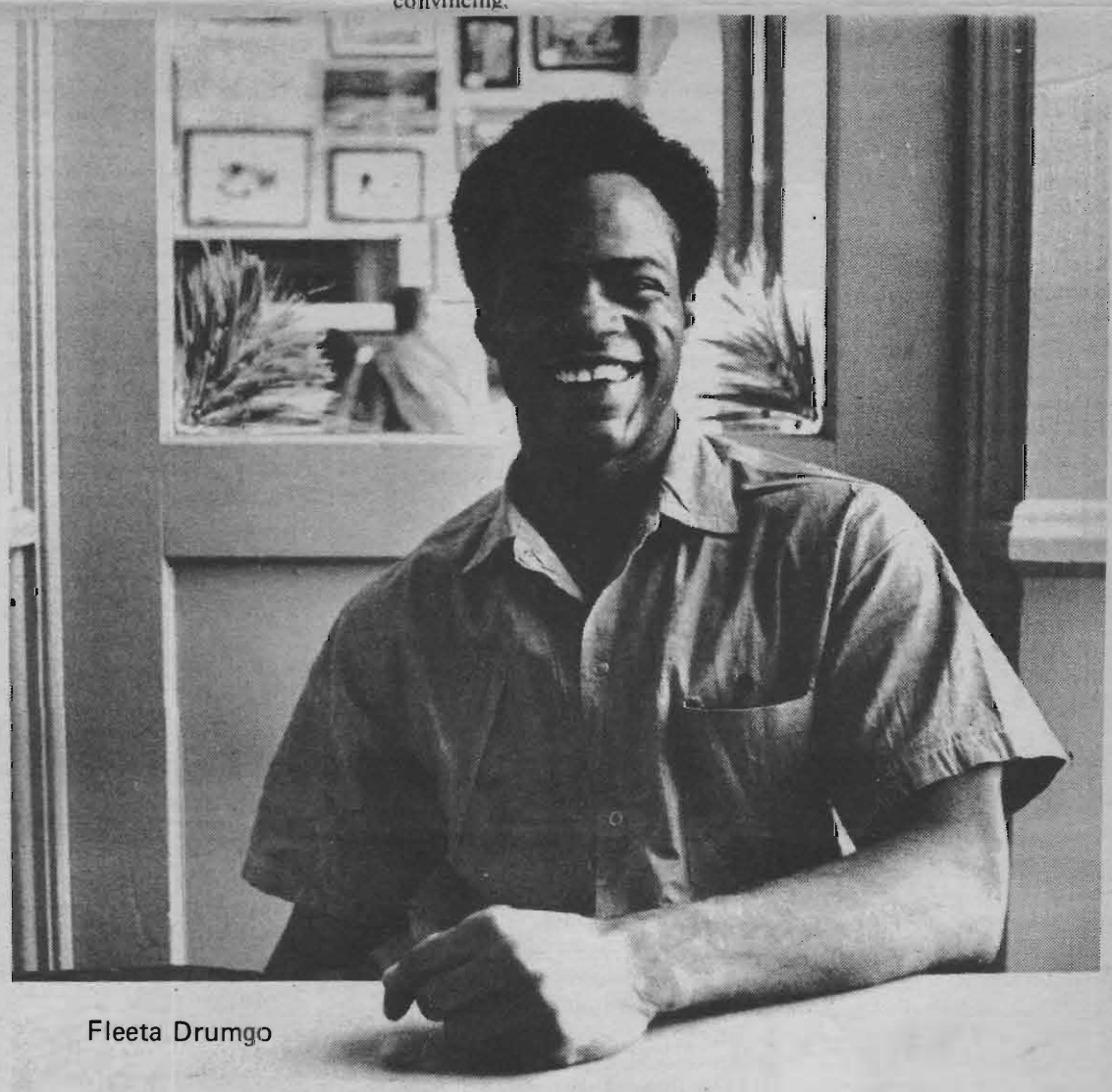

Fleeta Drumgo