FROM: Phyllis Schlafly

68 FAIRMOUNT, ALTON, ILLINOIS 62002 / (618) 462-5415

RELEASE: NOVEMBER 8, 1983

PRISON GUARDS AND PRISONERS' PRIVACY

A recent flap in Michigan prisons shows how far the extremists have taken us in their determination to turn us into a sex-neutral society by eliminating "sex stereotypes." It also shows how federal courts are attempting to change our cultural and moral norms in order to accommodate those who demand a ruthless end to "sex discrimination."

The issue came into the open when a prisoner in the maximum-security prison in Marquette, Michigan, wrote a letter to a Detroit newspaper complaining that he and his fellow prisoners were forced to "experience unwanted exposures of their naked body while female guards view them taking showers, using the toilets in their cells and tending to other personal needs." He argued that prisoners should not be considered "circus animals to be put on display for the view of anyone."

The situation of which prisoner Robert Thompson complained came about as a result of a Federal District Court decision in a class-action Title VII sex-discrimination lawsuit filed by a couple of female prison guards. They demanded assignment to the all-male prisoners' housing unit so that this experience could qualify the women for a promotion.

Some of the prisoners (most of whom are serving long sentences and are denied contact with wives or girl friends) feel that the court order robs them of their last shred of privacy and dignity. Several hundred Muslims believe it is contrary to their religion.

The Michigan Department of Corrections argued that female guards in the all-male housing units in the three maximum security Michigan prisons would pose a security risk because one-fifth of the inmates are sex-offenders with a history of hostility and violent attacks against women. A previous experiment of using female guards in these units resulted in assaults on the women guards.

Prison authorities testified that guards in the housing unit must make frequent unannounced security checks by looking into each cell, and this necessitates observing prisoners in various states of undress and performing bodily functions. The job also puts the guards in close contact with the prisoners; during every shift, the guards pat down at least five inmates and order numerous prisoners out of their cells to search for weapons.

Judge Cook ruled in favor of the female guards. He gave the women immediate promotions, back pay, fringe benefits, seniority rights, compensatory damages, attorneys' fees and court costs. His own words speak louder than any comment others can make.

The prison authorities' argument is rejected, Judge Cook wrote, because "it is based on stereotypical sexual characterization that a viewing of an inmate while nude or performing bodily functions, by a member of the opposite sex, is intrinsically more odious than the viewing by a member of one's own sex." He based this ruling on his view that "Title VII of the 1964 Civil Rights Act, in its sex-based proscriptions, embodies a realistic, non-romantic, and non-paternalistic attitude toward women and their role within the work force in today's society."

Judge Cook distinguished this case from Dothard v. Rawlinson, the 1977 case in which the Supreme Court upheld the Bona Fide Occupational Qualification exception in Title VII as applied to an Alabama maximum security prison. Judge Cook said that Michigan maximum security prisons are okay for women because they are not as dangerous as Alabama prisons.

For legal precedent, Judge Cook cited two cases. In In re Montgomery, a 1978 California court ruled: "This court may well agree that the viewing of urinating, defecating, or showering by anyone offends the actor's sensibilities. But once such a viewing is justified by the prison's need for security, the viewing is not demonstrably more significant whether by male or female."

In Gunther v. Iowa State Men's Reformatory, a 1979 Iowa court stated: "... mores as to being viewed naked by the opposite sex under certain circumstances are bound to change as women become further integrated in the occupational and professional world. ... The traditional rule that only male guards may view male inmates under these conditions may derive from just the type of stereotypical value system condemned by Title VII."

The Michigan decision was not only contrary to traditional standards of decency, but it was completely unnecessary. Instead of ordering female guards into positions where they would have to inspect nude men, the court simply could have voided the policy that required this particular assignment for guards to advance to the next pay level.

But both the court decision and the female guards' complaint opted to overturn the "stereotype" of common decency rather than to overturn the promotion policy.