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ALLEGATIONS OF ILL-TREATMENT IN MARION PRISON, ILLINOIS, USA

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REPORT ON THE PRISONERS' LAWSUIT AGAINST MARION PRISON, ILLINOIS, USA

by David Matas, a member of the Canadian Bar.
January, 1986

1. INTRODUCTION

The Marion litigation involves two separate disputes under the rubric of one lawsuit. One is allegations of assault, abuse, beatings and harassment, which are contested by the administration. The other asserts the illegality of property deprivation, limitation on religious practices and housing of the prisoners in a permanent lockdown. These practices are admitted by the administration. Only their legality is contested.

The legal complaint against the prison administration asked for preliminary and permanent injunctions, a declaratory judgement and damages. The court hearing was to determine whether a preliminary injunction would be granted. There will presumably be a subsequent hearing to determine the issue of a permanent injunction and damages.

The defendants moved to dismiss the plaintiffs' complaint. The motion was successful, in part, and unsuccessful, in part. For instance, the claims against certain defendants in their personal capacity were dismissed for want of personal service. The substance of the claim remained.

I was at Marion on three occasions and heard seven days of testimony, four days of plaintiffs' testimony and three days of defence testimony. As well, I went to Washington, DC to attend a Congressional Hearing on Marion Penitentiary.

In this report I draw no conclusions on the allegations of beating, abuse and harassment. For the allegations, there was a conflict of testimony - prisoners saying they were beaten, and guards and the administration saying prisoners were not beaten. I feel it would be inappropriate for me to comment on the credibility of these claims without having heard all the testimony. The seven days I heard was only a part of the total testimony in the court hearings.

This report has two purposes. It comments on the adequacy of the Congressional investigation and the court hearing as a means of airing the allegations and claim and coming to a conclusion on them. Second, this report attempts to assess what both parties concede to be the case assessing it, not against US law, which the court has done, but against international standards which AI accepts.

2. THE TRIAL

2.1 Deference to the Court

The attitude of the administration and Congress was that the allegations about beatings could be determined at the trial of the action of the guards against the prisoners. The Ward and Breed Report, the Consultants' report submitted to the Committee on the Judiciary, US House of Representatives, on US Penitentiary Marion, Illinois, dated December 1984, states (at page

14) that it did not undertake a systematic inquiry into the allegations of brutality. The report noted that the brutality complaints were in the process of being examined in the lawsuit. Ward, who testified at the Congressional Hearing on June 26, 1985, said that he and Breed thought the court would be a better forum for resolution of this issue. They did not say it was the best forum, just a forum. They felt they did not have the background, nor the resources nor the time to do the investigation.

The Chairman of the Subcommittee on Courts, Civil Liberties and the Administration of Justice, Robert Kastenmeier, agreed with that judgement. According to Kastenmeier, the allegations were subjective. It would be difficult for an investigator to make firm conclusions.

The attitude of the administration to the lawsuit was that it would clear them of wrongdoing. Jerry Williford, warden at Marion, claimed the court hearings would quiet the simplistic solutions of the opponents of Marion.

2.2 Court Limitations

There are, however, a number of limitations to court proceedings. One is delay. The incidents around which the lawsuit revolved occurred in the fall of 1983. Yet, the case was not heard until the winter of 1985, and decision, on a request for an interlocutory injunction, not given till the summer of 1985. There are various circumstances to explain the delay in this particular case, but legal proceedings, at the best of times, can be lengthy.

Another limitation is the initiative that is required of the plaintiffs. It is left to the victims to do something about their victimization. Prisoners are ill-equipped to help themselves. They are usually without means. They may not have access to legal aid. That was true in this case. The lawyers in this case were working without benefit of legal aid.

A lawsuit puts the administration in a defensive stance. The exigencies of the adversary system lead the administration to attempt to exculpate all its behaviour. That may be a natural tendency in any case, but it is aggravated in adversial proceedings.

There can be problems of standing as well. A plaintiff who may wish to go to court may be barred from court. As the result of a Court directive, any plaintiff who wished to leave Marion and was offered a transfer, had to drop his name from the lawsuit in order to leave.

There is the problem of procedure and evidence. A court is restricted by its procedural rules and its rules of evidence. An administrative investigation is a good deal more flexible. It can set its own procedures. It can consider any evidence it believes to be credible and trustworthy.

2.3 Law and Policy

There is the problem of lack of expertise. A judge in a court of general jurisdiction is an expert in the law, but not an expert in any particular area of administration. An expert in prisons, or a panel of experts can

can.

Because a judge is an expert in the law, and because a court is a court of law, there is an inevitable focus on what the law permits. Practices are not viewed from the perspective of whether they should or should not be done.

If an activity is legally within the discretion of the administration, a court must rule that the administration is entitled to do what it did. The fact that the administration acted wrongly is none of the court's business.

A non-judicial investigator can go beyond the law. He can state not merely whether the action was lawful, but as well, whether it was proper.

The form of the hearing placed a high burden on the plaintiffs. They were asked for a preliminary injunction. To get a preliminary injunction, they had to show they would suffer irreparable harm before a decision on the merits would be rendered, at a later time.

As well, they were asking for a finding that conditions were unconstitutional because they were cruel and unusual. Magistrate Myers said that "prison administrators must be accorded wide ranging deference in the administration of prison affairs... This court firmly believes that federal courts should avoid enmeshing themselves in the minutae of the prison operations in the name of the Constitution...It is not the duty of the court to run prisons. Our powers of review are strictly limited. The value judgement inherent in the performance of a discretion...is not reviewable by this court unless a clear abuse is apparent."

It is not enough that the practice is undeniable, that it causes deprivation, that it is condemned by penologists. It must be so abusive as to violate a constitutional right.

So, for instance, though the Magistrate acknowledged that some of the plaintiffs' claims were well-founded, or might be well-founded, he found against the plaintiffs because the deprivation had not reached a constitutional level. That was the position he took, for instance, about the use of restraints, p. 99, (Recommendations of the Magistrate) the destruction of property, p. 101 and the lack of use of name tags, p. 103.

2.4 Recusal

There is the matter of choice over the investigator. The parties have no choice or input into who will determine the points in issue, when the person deciding is a judge. In this case, it was the one person available even though he was unacceptable to one of the parties, the plaintiffs. An expert or a tribunal of experts can be a person or a tribunal that starts off with the confidence of everyone.

The plaintiffs had asked for the recusal of Myers. This motion was based on the claim that the Magistrate had absorbed the administration's opinions and beliefs about prisoners and staff at Marion. In particular, the motion claimed the Magistrate had supported personal groundless attacks on counsel for prisoners.

Magistrate Myers, himself, decided and dismissed this recusal motion. In so doing, he gave substance to the claims that were being made against him. In rejecting the claims that he shared the administration's beliefs, the Magistrate referred to this principle: where a judge, through his expertise and legal training develops a consistent philosophy, and the fact that such philosophy demands that there be certain preconceptions regarding matters of legal principle, which could disadvantage one party, this legal conclusion should neither be taken as demonstrating a disqualifying bias nor an appearance of partiality.

However, there is a large difference between preconceptions of principle and preconceptions about prisoners and staff. For instance, one of the issues in the litigation was whether the prisoners at Marion really deserved to be at Marion, the American super-maximum penitentiary, or were just put there haphazardly or capriciously. In his recusal decision, the magistrate says: "Inmates at Marion, for the most part, have earned their way into Marion." This preconception is not a preconception of principle. It is a preconception about prisoners.

In discussing the charge of groundless attacks on counsel, the magistrate says that some counsel attempt to manipulate the judicial process. They foment dissention among the prison population by nursing frivolous grievances. Once the real significance of the litigation has subsided, the case wanders aimlessly for years. Counsel moves on to more newsworthy events.

These attacks on counsel are certainly personal. Whether they could have been grounded or have been grounded elsewhere, they are not grounded i the recusal judgement.

Although I was present for only seven days out of a long court hearing, my own personal impression from sitting in court during that time was that the magistrate was lacking in evenhandedness. The contrast was marked between the court's behaviour to Manness, an inmate testifying for the defence, and the inmates testifying as plaintiffs. Questions and comments by the magistrate directed towards plaintiff inmates were hostile. For instance, John Williams, an inmate, testified that his family broke down in tears when he was not allowed a contact visit with them. Myers' comment was: "Other people's feelings will not help you here".

Questions and comments directed to Manness were supportive. For instance, when plaintiffs' counsel objected to Manness' giving opinion evidence, the magistrate commented: "If this man is not an expert, I do not know who is". It is hard to imagine the magistrate making a similar comment about a plaintiff witness. Yet their qualifications as experts, the experience of being inmates at Marion, were the same.

In the end, the magistrate delivered a one-sided judgement in favour of the administration. Of course, even the most unbiased judge can deliver a one-sided judgement in favour of one of the litigants in a lawsuit. In this case, that sort of judgement did nothing to undercut the earlier suspicions that had been raised.

2.5 Disproportion

There is, as well, the incommensurate nature of the lawsuit and the tribunal. Marion is the successor institution to Alcatraz. It is designed to contain the greatest security risks in the US prisons both from the federal system and for those states that have made arrangements with the federal system. Whether the people in Marion justify their having been placed there was a matter of dispute. It was not a matter of dispute that Marion was the highest maximum security prison in the USA.

Marion is a major American institution, and was viewed as such by the US Bureau of Prisons. The litigation was contesting not just one incident but the whole method of administration of the institution. A decision adverse to the administration would have repercussions throughout the whole US prison system.

Marion is located far from major centres. The nearest big city is St Louis, about 120 miles away. The town of Marion has a population of only 14,000. The prison itself is located, not in Marion but in the countryside, some 12 miles from Marion. The isolation of Marion should not, however, mislead. In its own way, within the prison system, Marion is a significant US national institution.

Yet the tribunal deciding the case was the assistant to the local judge. The local judge has too heavy a case-load to handle all of the work assigned to him. So he has an assistant, who is not a judge but a magistrate. The magistrate does not have the power to decide cases that come before him. Instead, he makes recommendations which the judge either accepts or rejects. If the judge decides to reject or amend the recommendations, counsel are given notice and a chance to appeal before the change is made. If the judge decides to accept the recommendations, he does so without a further hearing.

2.6 Winners and Losers

There is the focus of a lawsuit. A lawsuit is essentially for the purpose of determining disputes between individuals. It is not for the purpose of investigating a general situation. A lawsuit may be helpful to determine whether one guard beat one prisoner. It is much less able to deal with the situation where the allegations are the general collapse of the prison administration, wholesale beatings, and a cover-up.

There is the nature of the verdict. A judge in a lawsuit must determine whether the plaintiffs win or the defendants win. He is not there to comment on the general handling of the situation and to suggest improvements in the way that sort of situation could be handled in the future. A non-judicial investigator can get into these matters.

These concerns are exemplified by the recommendation of the magistrate, as they came down. The magistrate, basically, exonerated the administration, and rejected the complaints of the inmates. There was a winner, the administration, and a loser, the inmates. The reasons are not an assessment of prison administration and suggestions for improvement. The reasons are simply an assessment of why the magistrate believed the case of the inmates to be ill-founded.

While the Breed and Ward Report is a report of experts looking at prison administration, it does not look at the incidents surrounding the allegations of brutality. The lessons to be learned from that period are simply passed over.

There is, to be sure, an issue of credibility, and a particularly thorny one when allegations of prisoner brutality are involved. Both prisoners and guards are interested parties. There is usually no disinterested third-party present who can observe and report.

But even taking the administration side at face value, it is still possible to make an assessment about whether the practices that were followed were advisable or whether other practices would have been better suited to the circumstances. Neither the magistrate, nor Breed and Ward got into that investigation. It is something that remains to be done.

2.7 Alternatives to Court

The Congressional Subcommittee, itself, did not do an investigation. In addition to commissioning the Breed and Ward Report, the Congress Subcommittee heard testimony from administration spokesmen and prison rights activists. However, there is no indication that the Congress Subcommittee intends to produce its own report. The one subcommittee hearing I attended lasted only a half-day. It was held on 26 June 1985. It was the first hearing since March 1984. It started 45 minutes late. There was only one congressman present, Mr Kastenmeier, the Chairman. A second congressman entered later, and left early, before the session ended. The Chairman viewed the hearing as an "oversight" hearing, to cast an eye on what is going on, rather than an investigation.

There is an internal complaints mechanism within the prison system. However, this system is designed for an individual complaint of an isolated infraction of the rules by a member of the administration. It is not designed to cope with general allegations of a breakdown of the system. When the administration itself is under the question, the complaints mechanism amounts to the target of the complaints investigating itself.

The complaints system suffered from delays at the regional and headquarters level. Breed and Ward recommend an expedition of procedures. Inmates complain that the grievance system seldom responds positively to an inmate's complaint.

The United Nations Declaration on the Protection of All Persons from Being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 9 December 1975, provides in Article 9, "Wherever there is reasonable grounds to believe that an act of torture...has been committed, the competent authorities of the State concerned shall promptly proceed to an impartial investigation even if there has been no formal complaint." The Standard Minimum Rules for the Treatment of Prisoners, Article 55, provides that there shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority.

Neither of the requirements of inspection or investigation appear to have been met in respect of the allegations of brutality at Marion. The magistrate who tried the court case was not an inspector of the

institution. He was qualified and experienced as a magistrate but not as an inspector, nor can the court case be considered to be an investigation. The court case was for the purpose of determining right and wrong, not for the purpose of investigating what had happened and what could be done to improve on the institution. As well, the court case was at the initiative of the inmates, not at the initiative of the state. Finally the court case was not prompt.

2.8 Conditions Facilitating Brutality

Altogether, apart from the position of whether the brutality did take place, there remains the question of whether conditions were such as to facilitate the possibility of brutality. A judge in a court is not directed towards that issue. An independent investigator is.

2.8.1

There was the absence of use of name tags by guards. Name tags had been used by guards up to October 1983. The consistent use of name tags stopped on that date. The reasons, according to the administration, was the fear by guards of retaliation by the inmates. The Amnesty International Archambault report recommended that guards wear name tags while on duty.

2.8.2

There was the use of the SORT Team. The Special Operations Response Team was a team of guards brought in from Leavensworth before the alleged incidents occurred. According to the testimony of Jim Graham, the then supervisor of the team, the team was a sort of riot squad.

They trained in forced cell moves - moving an inmate from his cell by force. They trained in the use of riot batons. They prepared to react to hostage situations. The team had riot gear - bullet-proof vests, helmets with visors, blackjacks, plastic shields. Graham testified that the SORT Team was known as the A Team.

"The A Team" is an American TV programme. It is directed to the pre-teen market. The A Team is a police team that uses comic book vigilante violence to get the bad guys. The SORT Team was there strictly for the use of force. Mr Graham testified "our purpose is not to negotiate." "When we are called for...there has been previous negotiations".

The Declaration Against Torture provides, Article 5, that the training of law enforcement personnel and other public officials who may be responsible for prisoners deprived of their liberty shall ensure that full account is taken of the prohibition against torture and other cruel, inhuman or degrading treatment or punishment. Obviously this requirement applies to all guards. There is no such thing as specialization in this area, with one set of guards being trained only in the use of force, and another set of guards being trained in the prevention of cruelty. The undue emphasis, in the SORT Team, on the use of force, is a situation that could facilitate the occurrence of brutality.

2.8.3

There was the cavalier attitude of the administration itself. P W Koehane, the associate warden at the time of the alleged brutality, testified he was satisfied that the use of force was reasonable. He said "no one was taken to hospital." No one was put in intensive care. Yet, a person can be beaten and tortured without being put in intensive care. None of the alleged brutality was at that level of violence. To require that level of violence before the administration shows concern is, itself, unreasonable.

2.8.4

There was the administration notion that it had to show it was in control. Some administration actions were acknowleged to be for the purpose of showing that the administration was in control, and for no other purpose. For instance, prisoners were fed in their cells. There were forced cell moves because inmates refused to return salt packets from the food trays when the meal service was over. Koehane justified these moves by saying that an inmate cannot dictate a shakedown. When an inmate says "no", it is a rebellious comment. The prison administration needed a clear signal that it was in control.

Leaving aside the question of whether a forced cell move over an empty paper salt packet is unnecessary brutality, the whole notion of striving to assert control is itself an attitude that can lead to brutalization of inmates. Brutality is a way of atte...pting to assert control.

The notion of control in the prisons, as in society, is a false issue. If a prison is running properly, if a society is running properly, no one person or group of people is in control. It is the law that is in control. A well-governed prison, a well-governed society runs by the rule of the law, not by the rule of men. Any attempt to assert control, by the governors over the governed, by a prison administration over the inmates, can degenerate very easily and quickly, into an abuse of power.

2.8.5

There was the testimony about Manness, one of the inmates. One of the complaints of the inmates was that forced moves were unnecessary, that they were inflicted simply as a form of brutality against the inmates. Graham testified that Manness was moved forcibly without being given an opportunity to move voluntarily. Graham said: "We went after Manness. We did not give him a chance to cuff up (submit himself voluntarily to being handcuffed). We should have."

In the context of the lawsuit, this admission did not matter. Manness was not one of the litigants. On the contrary, he cooperated with the administration, testifying on their behalf. He confirmed that he was not asked to cuff up, but added that he always resisted cuffing up, that he always required officers to move him by force.

2.8.6

There was the denial of access to lawyers. The statement of claim of the plaintiffs allege that in November 1983 all attorneys were barred from the prison for four consecutive days. It was at this time that the first wave of beatings by guards was alleged to have taken place. Breed and Ward in their report noted, page 9, that on 12 November five attorneys arrived at the prison entrance and requested permission to visit 40 inmates. The attorneys were told they would not be allowed to meet with the inmates since they had not followed established procedures for requesting a visit. On 15 November several attorneys were allowed visits with four inmates. On 16 November 15 inmates were allowed to visit their lawyers.

2.9 Recommendation

There should be an independent investigation into whether the practices followed at the time of the alleged incidents at Marion were such as would have facilitated brutality and in what respect, if any, the practices could be improved to prevent the likelihood of brutality.

3. CONDITIONS

Independent of the question of the brutality that did or did not take place in the fall of 1983 in the question of the continuing treatment of inmates at Marion. The alleged brutality coincided with a lockdown at Marion. The inmate litigants, besides asking for damages for brutality, are asking for an end to the lockdown.

3.1 Lockdown

Lockdown conditions can amount to cruel and unusual punishment. In a Canadian case, a federal court judge held solitary confinement in a Canadian prison to amount to cruel and unusual punishment. He reasoned that even if the confinement served some positive penal purpose, the treatment was still cruel and unusual because it was not in accord with public standards of decency and propriety, since it was unnecessary because of the existence of adequate alternatives. He made no recommendation about what those alternatives should be, noting that the court was not a commission of inquiry into conditions at the penitentiary. It was sufficient for the court that, on the evidence adduced, the court was satisfied that adeequate alternatives did exist which would remove the cruel and unusual aspects while at the same time retaining the necessary security aspects.

Breed and Ward recommended the establishment of graded units at Marion, from the most restrictive to the least restrictive. The lockdown could continue, but for fewer people than at present.

The Marion Prisoners Rights Project (MPRP) takes the position that the lockdown is not fair to anyone. It should not be used as a form of group punishment. Prisoners can successfully function without being locked down. Magistrate Myers, in the Marion Recommendations, did not examine the alternatives. He simply deferred to the administration.

3.2 Rectal Probes

It was unquestionable that physical rectal searches did take place and do take place at Marion. The plaintiffs complain they take place without cause. The Magistrate recommended that the searches did not violate the constitutional requirement of reasonable search. Prison rectal searches could be conducted, according to him, for less than probable cause, on suspicion alone.

Amnesty International, at its International Council Meeting in 1985 in Helsinki, passed Resolution 14 which said, in part, that body probing can sometimes constitute cruel, inhuman or degrading treatment or punishment. The ICM called on the International Executive Council to examine the circumstances in which body probing came within Amnesty International's mandate.

Joseph Cannon, a plaintiff witness, in an affidavit, wrote that rectal probe searches were used to degrade, intimidate and restrict the legitimate movement of prisoners. The rectal probes and the strip searches reflected an extreme over-reaction mentality of staff responsible for general security practices. As well, the frequency of the searches, when coupled with the probes, created an atmosphere of harrassment and degradation.

Breed and Ward, in their report to Congress, recommended that the Bureau of Prisons should halt the use of forced digital rectal examinations for non-medical reasons. The report notes that rectal probes are applied to all inmates who leave Marion for a court appearance on the theory that they might be coerced into carrying contraband back into prison after a trip to the outside world.

Doctors are reluctant to undertake rectal probes because it has a non-medical purpose. The American Medical Association resolved that examination of body orifices for security reasons should "usually" be performed by correctional personnel with medical training.

Breed and Ward suggested as a guideline that body cavity searches should be considered only when there is probable cause to believe that an individual is carrying hard contraband that would threaten security. There should be no rectal probes on suspicion alone. There should be no rectal probes even for probably cause, when there is probable cause to believe that the inmate is carrying soft contraband alone, ie drugs.

Magistrate Myers found as a fact that sonograms and x-rays can detect hard contraband in the digestive system. It is not necessary to have rectal probes to detect this sort of contraband.

Prison regulations permit rectal probes only when there is reasonable belief that an inmate is concealing contraband. Yet contraband was found on inmates in less than 20% of rectal probes. The magistrate had two comments about the low rate of positive finds. One was that when inmates first suspect a rectal search, they retrieve the contraband from the rectum and swallow it. The other is that, though the number of positive finds is low, the nature of the contraband found is significant. The Warden testified that the low find rate demonstrates the effectiveness of the rectal search policty. Magistrate Myers considered that neither x-rays, sonograms or dry cells were adequate alternatives for detecting soft

contraband.

The plaintiffs and the Marion Prisoners Rights Project believe that there is no occasion when rectal probes can be tolerated. Contraband can be stopped in other ways, they say.

3.3 Restraints

The Standard Minimum Rules for the Treatment of Prisoners provide that chains and irons shall not be used as restraints. Other instruments of restraint shall not be used except in exceptional circumstances, as a precaution against escape during transfer, or if other methods of control fail. Even as a precaution against escape, restraints are not permitted when the prisoner appears before a judicial authority.

The plaintiffs complained that whenever a prisoner left his cell for any reason, other than exercise or shower, the administration required that he be handcuffed, waist shackled, and leg shackled. There is the use of black boxes. A black box is a locked box over the handcuffs that prevents the inmate from picking the handcuffs' lock. Inmates are, on occasion, handcuffed to their beds as well. The frames of beds in the control unit are concrete slabs with metal hoops sticking out. Inmates restrained in their cells are chained to these hoops.

I, myself, witnessed the inmate plaintiffs and the inmate witnesses in court, handcuffed with waist chains and leg irons. Counsel for the plaintiffs asked the court for permission to remove the irons and chains during the hearing. Magistrate Myers denied permission.

The magistrate viewed the use of black boxes, leg shackles and waist chains a prudent use of restraint. They could have prevented earlier instances of violence if they had been used earlier.

The plaintiffs argued against the use of restraints at parole hearings. Magistrate Myers recommended that the argument did not rise to a constitutional magnitude.

There is here a clear violation of the Minimum Rules. The Rules say, unequivocally, chains and irons shall not be used. Yet they are being used. The Minimum Rules say that restraints shall be used in exceptional circumstances. Yet at Marion restraints are used routinely. The Minimum Rules say restraints should be removed when the prisoner is before a judical or administrative authority. Yet for Marion prisoners restraints are maintained when prisoners appear before judicial or administrative authority.

As well, the Minimum Rules say that instruments of restraint must not be applied for longer time than is strictly necessary. Yet Magistrate Myers notes that inmates have been chained to their beds for eight hours and longer.

3.4 Books

In Marion inmates are denied access to the main library, because of the security implications of allowing inmates to congregate in groups. Instead satellite libraries have been established on the ranges. Books from the

main library can be obtained on request. The satellite libraries are limited in nature. There can be long delays in obtaining requested books from the main library.

The Standard Minimum Rules require every institution to have a library, adequately stocked. Prisoners are to be encouraged to make full use of it.

3.5 Property Destruction

There was a shakedown at the time of the start of the lockdown. Inmates' personal property was taken from their cells. Some was lost or destroyed by the administration. The loss and destruction was not disputed by the administration.

The Standard Minimum Rules requires the administration to keep inmates' property in good condition. Inmates at Marion sued the institution successfully for monetary relief for loss of property. Magistrate Myers rejected the argument that the destruction was cruel and unusual punishment, because he did not find it to be done intentionally to punish the inmates.

3.6 Work

Prisoners at Marion are not given work, except for those in B Unit. A limited number of general population inmates are employed as range orderlies or barbers.

The Standard Minimum Rules require that sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.

3.7 Name Tags

As outlined earlier, there was a practice at Marion of wearing tags prior to October 1983, prior to the time of the alleged brutality. The consistent wearing of name tags stopped in October 1983 on the ground that it would protect correctional officers from retaliation. The inmates complained that the absence of name tags hindered the identification of correctional officers involved in illegal behaviour. Magistrate Myers noted that "inmates' concerns may be justified." He felt, however, the issue was not one of constitutional magnitude.

Amnesty International, in its report on allegations of ill-treatment of prisoners at Archambault Institution, Quebec, Canada, recommended that "means should be taken to make it mandatory that correctional service employees wear name certificates on their outer clothing while on duty".

3.8 Complaints

The Standard Minimum Rules requires that there be a complaints system. As well, there is the requirement that complaints be promptly dealt with and replied to without undue delay.

As mentioned earlier, when discussing the adequacy of existing remedies for dealing with allegations of brutality, the Breed and Ward report, page 29, noted delays at regional and headquarters levels in responding to complaints. As well, inmates allege that the complaints system exists in form, but not in substance. Complaints are systematically denied. Breed and Ward found they did not have the time to investigate the truth of the allegations. Magistrate Myers dismissed the allegations because the inmates themeselves had presented nothing to support it (page 100). There is no independent investigation of the allegation.

3.9 Placement

The Standard Minimum Rules require separation of categories. Different categories of prisoners are to be kept in different institutions.

Marion is the only level 6 prison in the Bureau of Prisons. The purpose is to provide long-term segregation for inmates who threatened or injured other inmates or staff, who possessed deadly weapons or dangerous drugs, who disrupted the orderly operation of a prison, or who escaped or attempted to escape, where the escape involved injury, threat to life or use of deadly weapons.

Within Marion itself there is a control unit to separate those prisoners whose behaviour seriously disrupted the orderly operation of the institution. B Unit inmates are allowed to eat in the main dining hall. They are allowed to move out of the unit without handcuffs or leg irons, except for attorney visits. They are allowed group recreation. Some B Unit inmates have been working on a cable assembly project. B Unit resembles a traditional open penitentiary. The rest of the prison is in lockdown.

The Standard Minimum Rules also provide that a system of privileges appropriate for the different classes of prisoners should be established at every institution.

There is a scheme for the separation of prisoners of which Marion is a part. Within Marion there is a system of privileges for the different classes of prisoners. However, altogether apart from the question of whether the lockdown is cruel and unusual, is the question of whether the separation and privilege scheme is functioning in fact. In order for a separation and privelege scheme to be functioning, it is not enough merely to set up different regimes for different prisoners. As well, prisoners must be properly placed. Those who earn privileges should be granted them. Only those who behave in such a way as to justify more severe treatment should have it inflicted upon them.

One of the complaints about Marion is that inmates are transferred there even though they are not at, or do not deserve, the level 6 classification. Inmates complain that, within Marion, allocation to B Unit is also often arbitrary.

Neither Magistrate Myers nor Breed and Ward come to grips with these complaints. Magistrate Myers recommended that placement and transfer of inmates is an administrative proces that does not warrant or involve constitutional protection (page 43). Breed and Ward said they simply did not have time to determine whether inmates were correctly placed (page 28).

4. CONCLUSION

Within Marion, violation of the Standard Minimum Rules is common. Although this report deals only with some facts of life at Marion, a comparison of the Standard Minimum Rules with the conditions at Marion, as set out in the recommendations of Magistrate Myers and in the Breed and Ward report, shows there is hardly a rule in the Standard Minimum Rules that is not infringed in some way or other. The reason has to do with the purpose of Marion. According to the Standard Minimum Rules, treatment of persons shall have as its purpose encouraging self-respect and developing a sense of responsibility amongst inmates. The purpose of Marion, however, is security. All other considerations are secondary.

Norman Carlson, the Director of the Federal Bureau of Prisons in the USA, in a statement before the Congressional Committee, said that the overriding concern of the administration at Marion was concern for the safety and security of staff as well as inmates - and the protection of the public.

Breed and Ward suggest the problem is one of construction design. If a new prison were built, according to current technology, it would be possible to have a secure institution without a complete lockdown.

In a prison setting, as elsewhere, there has to be a balancing of sec rity and freedom. Allowing considerations of freedom to prevail, in every case, over considerations of security creates unnecessary risks. Allowing considerations of security to prevail, in every case, over considerations of freedom creates unnecessary repression.

The Federal Bureau of Prisons is not geared to provide this balancing. It represents only one side of the equation, the security side. The US prison system has nothing on the other side of the equation. The constitutional standards of the courts are just too remote from the administrative detail of everyday life at Marion to be of much help. Congress has not much commitment or interest. The Breed and Ward Report, though helpful, does not cover enough ground. Their report was done on the basis of compensation allocated for ten days' work (page 14).

There needs to be a complete and independent assessment of the administrative details of the lockdown to determine whether the security system in place is strictly necessary or whether it hampers freedom of the inmates unduly. In the absence of such an assessment, it is impossible to be certain that the lockdown of Marion is justified.

5. RECOMMENDATION

The USA should set in place a permanent mechanism for detailed, independent, continuous assessment of prison conditions in the Federal Bureau of Prisons. This independent assessment should look, in particular, at the lockdown conditions of Marion and assess them against the Standard Minimum Rules for the Treatment of Prisoners.

amnesty international

INTERNATIONAL SECRETARIAT
1 Easton Street London WC1X 8DJ
United Kingdom

Our reference: TG AMR/51/84/4

Direct line:

Mr Norman Carlson
Director
Federal Bureau of Prisons
320 First Street NW.
Washington, D.C. 20534
U S A

22 March 1984

Dear Mr Carlson

Amnesty International has received allegations that inmates of the penitentiary at Marion, Illinois, were beaten or otherwise ill-treated by prison guards during November 1983. Amnesty International has received these allegations from a number of different sources, including representations from the National Prison Project in Washington and a group of twelve lawyers who visited the prison between 15 and 23 November and interviewed 84 inmates. Their report, of which you may already be aware, describes allegations of ill-treatment in 37 cases.

According to these reports, the alleged treatment occurred after two serious incidents in the prison. These were the killing of two prison guards by inmates in the Control Unit on 22 October and, on 27 October, the stabbing to death of a prisoner in the general population by another inmate. Amnesty International has been told that, during the week following the second of these incidents, each inmate was removed from his cell while the cells were searched and the contents removed. While a large number of prisoners reportedly complained of being brutally treated by guards during the general cell searches, the most serious allegations concern the concerted beatings of a number of prisoners, individually, by groups of guards in separate incidents between 27 October and mid-November.

According to the report compiled by the lawyers who subsequently visited the prison, 37 of the prisoners interviewed alleged that they were ill-treated during this period. Each prisoner was reportedly beaten by between four and twenty guards. Those alleged to have taken part in the ill-treatment included prison officials who had been transferred to Marion Prison after 27 October and who reportedly had no identifying tags, wore face masks, heavy boots and gloves and carried 3-foot clubs with steel beads on the end. The allegations include reports of beatings to the chest, spine, groin and genitals, often when the prisoner was in a prone position; kickings; kneeings in the groin and chest; having prisoners' heads rammed against the metal doors or grilles; in a few

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instances the spraying of mace directly into prisoners' faces; a number of prisoners alleged that the steel-studded clubs were inserted under their armpits and that they were raised up and carried in this position. In nearly every instance recorded, the prisoners alleged that they were handcuffed while receiving this treatment. One prisoner alleged that, after being beaten, he was left for five days in a cell with no functioning toilet.

Of the cases described in the above-mentioned report, 31 prisoners were from the general population or segregation unit; the remaining six prisoners were inmates of the control unit. The beatings were said to have taken place variously in the prisoners' cells, on the tiers or stairways outside the cells, and while being transferred from one unit to another. Most occurred during the period 1-7 November (17 prisoners alleged they were beaten on 7 November); others allege they were beaten on 27 and 30 October, and on 17 November. Sixteen prisoners allege they were beaten in the segregation unit (I Unit); others in units E, C, D, G and F. At least four prisoners alleged they were beaten while being transferred from the general population to the segregation unit.

Four prisoners were reportedly taken from the control unit on 2-4 November after rumours that a hacksaw blade was hidden in the unit. These four were transferred to the prison hospital unit for X-rays and rectum searches. All four allege that they were punched, clubbed and kneed by guards in the hospital unit. One of the prisoners alleged that, after being beaten, he was held for three days, handcuffed, in an unheated, stripped hospital cell, with the water turned off.

The lawyers who interviewed prisoners from 15-23 November report that they witnessed scars and bruising to some of the prisoners interviewed.

Amnesty International is not in a position to establish the veracity of the above allegations. Nevertheless, it is this organization's view that the allegations described above present at least reasonable ground to believe that inmates of Marion Prison may have been subjected to torture, or other cruel, inhuman or degrading treatment during the period in question.

I should be very grateful to learn from you whether an official investigation has taken place into the incidents described above and, if so, of the nature of the inquiry and its results.

Amnesty International would appreciate receiving your comments as soon as possible regarding these very serious allegations.

Yours respectfully and sincerely

José Zalaquett
for Secretary General

U.S. Department of Justice

Federal Prison System

Washington, D.C. 20534

INT 51/24.5

April 3, 1984

Mr. Jose Zalaquett
for Secretary General
Amnesty International
International Secretariat
1 Easton Street London WCIX 8DJ
United Kingdom

Dear Mr. Zalaquett:

Thank you for your March 26 letter concerning conditions at the the United States Penitentiary, Marion, Illinois.

We were aware of the serious allegations cited in your letter and have investigated accordingly. Marion is the only security level six - maximum custody institution in the Federal Bureau of Prisons The Control Unit is a self-contained cellblock--a prison within a prison--which houses the 60 most violent and dangerous offenders confined in the Federal Bureau of Prisons. Inmates who are transferred to the unit have demonstrated their inability to function in the general population of other prisons by their continued assaultive behavior toward staff and inmates. A brief history of events at Marion should be helpful to you.

On October 22, 1983, two separate incidents involving two inmates occurred in the Control Unit during which two correctional officers were fatally stabbed. Two other correctional officers were seriously wounded during these assaults. Subsequent to these attacks, another inmate was assaulted and killed by inmates on October 27, 1983, in the general population area of the institution. Several staff were also attacked by another group of inmates that same day. In view of these tragedies and continuing inmate unrest, the entire institution was placed on lock-down status. It was during this period of time that allegations surfaced from inmates charging staff with using excessive force.

We were concerned about the situation at Marion as soon as the assaults occurred. Anticipating a very emotional atmosphere, eight high level staff were immediately dispatched to the institution from the Central Office and the Regional Offices. Additionally, three of our senior Wardens, including two who had each formerly been in charge of our Office of Inspections, were sent to Marion. This group personally monitored the lock-down operation, the moving of men from their cells, and the cell shakedown procedures. During the shakedown, a great deal of contraband was discovered including prison made deadly weapons.

The group monitoring these operations reported that confrontations did develop and that force was necessary at times because some inmates attacked staff, set fires, and refused to obey orders. However, the Marion staff and the officers detailed from other institutions conducted themselves in a very professional manner throughout these difficult days. In fact, their restraint and good judgment were noted by the monitoring team. Furthermore, agents from the Federal Bureau of Investigation were at Marion during this period conducting investigations into the murders and did not note any incidents of staff impropriety.

We are confident that the allegations of brutality are without any merit. We continue to monitor the situation closely and feel that the present operations at Marion are both successful and necessary. The number of inmate assaults has substantially decreased since the lockdown at Marion and the safety of both staff and other inmates has been enhanced. However, future modifications to the program are anticipated as inmates demonstrate the ability to conduct themselves appropriately.

We have received information that some Marion inmates have filed complaints in Federal court on these allegations of brutality. We think this is an appropriate form to review the complaints, and we welcome the opportunity to present the facts so that the court can determine whether there was any excessive use of force or brutality.

We trust that the information is responsive to your concerns. If we can provide additional information, please contact us.

Sincerely,

Norman A. Carlson

Norman A. Carlson
Director

amnesty international

INTERNATIONAL SECRETARIAT
1 Easton Street London WC1X 8DJ
United Kingdom

TG AMR 51/86/19

The Hon Norman A Carlson
Director, Federal Bureau of Prisons
US Department of Justice
Washington, DC 20534
USA

30 December 1986

Dear Mr Carlson

I enclose a copy of a report by David Matas, a member of the Canadian bar, who attended part of the federal district court hearings in 1985 into a complaint brought by inmates of the United States Penitentiary at Marion, Illinois, as an observer for Amnesty International. Mr Matas was asked by this organization to collect further information on the allegations of ill-treatment made by a number of inmates of Marion penitentiary during imposition of the lockdown in November 1983, about which Amnesty International wrote to you on 22 March 1984.

Mr Matas observed seven days of hearings held in Marion prison in January and June 1985. He also read court documents, including the Report and Recommendation of the magistrate dated 15 August 1985. In addition, he attended a congressional hearing on conditions at the penitentiary and studied the report of the consultants appointed by the House Committee on the Judiciary.

Mr Matas' report deals with two issues. Parts I and II address the investigation into the allegations of guard brutality during the period November - December 1983. Part III deals with the continuing conditions in the prison in 1985. It is on the first issue, alleged brutality, that Amnesty International addresses its primary concerns, since this falls more directly under its mandate to oppose the "torture or other cruel, inhuman or degrading treatment" of prisoners.

In his report Mr Matas states that he was unable to draw conclusions on the substance of the allegations of brutality, nor did he find it appropriate to comment on the credibility of the conflicting testimony given by guards and prisoners. However, he found serious shortcomings in the measures taken to investigate the allegations. In your letter to Amnesty International dated 3 April 1984, you stated that the lockdown operation was monitored by senior prison staff, who found no improprieties in the conduct of the officers involved. The prison administration did not find it necessary to hold an investigation into the specific allegations of brutality, taking the view that the action brought by a number of inmates

in the federal court was the appropriate forum for reviewing the complaints. The House Committee on the Judiciary did not order a specific inquiry into the brutality claims, also taking the view that these matters were best left to the court to decide. Thus, the federal district court, in adjudicating on the motion for an injunction brought by the inmates themselves, provided the only independent forum for reviewing these complaints.

Mr Matas found, however, that the court was limited in its ability to investigate the allegations, which involved widespread complaints by inmates of the use of excessive force during a period in which the institution was operating under conditions of maximum security and control. His main observations, which are described in more detail in the attached report, may be summarized as follows.

The lawsuit was essentially for the purpose of determining a dispute between two opposing parties, rather than examining general circumstances. In deciding upon the brutality claims, the court was limited to establishing whether there was proof of specific violations of law or a constitutional right. Proof of individual complaints - especially when examined long after the event and where much of the evidence consists of conflicting testimony between guards and inmates - may be difficult or even impossible to establish. However, it was beyond the court's jurisdiction to examine whether procedures or practices existed which might have facilitated acts of brutality or to make recommendations.

The onus fell upon the plaintiffs - the alleged victims - to initiate the proceedings. As prisoners, the plaintiffs may have lacked the resources to present the full facts of their case. They did not have the benefit of legal aid. Mr Matas also noted that plaintiffs who were offered (and accepted) a transfer from Marion prison were obliged through a court directive to withdraw from the case.

The adversarial nature of the proceedings, moreover, placed the burden of proof upon the plaintiffs, with the prison administration in the position of defendants. This inevitably led the administration to seek to exculpate all of its behaviour, rather than assisting in an impartial investigation of all the circumstances of the case. The nature of the lawsuit meant that the court had to rule in favour of one side against the other. Its verdict was concerned only with whether the plaintiffs had discharged their burden of proof.

Mr Matas draws attention to a number of practices or circumstances prevailing in the prison during implementaton of the lockdown which the court was unable to address because they did not involve constitutional violations, but which an independent administrative inquiry might properly have looked into. These include the absence of the use of name tags by guards involved in the lockdown operation, which prevented the prisoners from identifying individuals alleged to be involved in abuses; the denial of access to lawyers in the immediate aftermath of the lockdown; the non-reporting by prison officials of the use of force, and the role and training of the Special Operations Response Team. Mr Matas observes that, while these practices were not unlawful in themselves, they may have created circumstances which could have facilitated ill-treatment and/or inhibited investigation of such claims. The court was also unable to address other relevant matters, such as the adequacy of the existing complaints procedures within the prison.

The United Nations Declaration on the Protection of All Persons from being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment calls upon states to proceed to a prompt and impartial investigation of allegations of torture even if there has been no formal complaint. Amnesty International does not draw conclusions as to whether torture or other cruel, inhuman or degrading treatment did occur during the period in question. However, it believes that the allegations, including those documented in the report prepared by inmates' lawyers after November 1983, presented prima facie grounds for holding an investigation. Amnesty International believes that the motion for an injunction brought by prison inmates, with the limited role of the court and the inherent delays in the proceedings, did not relieve the government of responsiblity to conduct an investigation.

In the light of these concerns and its observer's report, Amnesty International respectfully recommends that a full, independent and impartial inquiry into the allegations of brutality be instituted and that this be undertaken by impartial prison experts who could look into all the circumstances of the alleged events and take evidence from a wide range of sources. It should, in particular, inquire into whether procedures or practices existed which might have facilitated brutality; examine the adequacy of the complaints machinery existing within the prison; review the training of correctional service employees in responding to situations such as that which occurred in October 1983, and report on whether improvements could be made in any of these areas to minimise the risk of ill-treatment. Any review of the training and education of correctional officials should take account of the principles described in the United Nations Code of Conduct for Law Enforcement Officials and the United Nations Standard Minimum Rules for the Treatment of Prisoners.

Amnesty International is aware that the events in question took place against a background in which acts of extreme violence had been perpetrated by a number of inmates. However, the government retains a responsiblity at all times to ensure that security measures do not conflict with the requirments for the humane treatment of prisoners. It believes that an inquiry could provide valuable guidance for any future incidents of this kind, which could serve to protect guards and inmates alike.

Amnesty International hopes that you will give favourable consideration to this recommendation and would appreciate receiving your comments on its observer's report.

Part III of Mr Matas' report deals with a number of issues relating to the general conditions prevailing in the prison after November 1983. Amnesty International is not in a position to comment on what security measures may be needed in the running of the institution. However, Mr Matas notes that a number of practices, including the use of restraints and lack of provision for work programmes, appear to violate the UN Standard Minimum Rules for the Treatment of Prisoners, and that certain conditions

could, in their totality, amount to "cruel, inhuman or degrading treatment". We understand that the security measures and the conditions of the lockdown continue to be monitored by the prison authorities and hope that these observations will be taken into account. Again, we should appreciate any comments you may have on this matter.

Yours respectfully and sincerely,

Clayton Yeo
For the Secretary General

cc The Hon Edwin Meese III
The Hon Robert Kastenmeier,
Mr Jerry Williford

U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, DC 20534

February 4, 1987

Mr. Clayton Yeo
Amnesty International
International Secretary
1 Easton Street
London WCIX 8DJ
England

Dear Mr. Yeo:

I am responding to your letter of December 30, 1986 in which you enclosed a report concerning the United States Penitentiary, Marion, Illinois. You requested that we conduct a further investigation into allegations of staff brutality at the Penitentiary during November and December, 1983.

By way of background, the U.S. Penitentiary at Marion, Illinois is the highest security level institution of the 47 institutions in the Federal Prison System. The Penitentiary houses only 350 of the total 41,500 federal prisoners, each of whom have been transferred to Marion because of a history of aggressive, assaultive, and predatory behavior. These inmates have demonstrated their inability to serve their sentences in other institutions without presenting serious threats to staff or inmates.

Following the murders of two Correctional Officers and an inmate at the Penitentiary during October, 1983, a decision was made to significantly modify procedures in order to make the institution more secure and safe for both staff and inmates. These procedures, which were implemented during November and December, 1983, were directly supervised and monitored by members of the Bureau of Prisons' executive staff as well as officials from our Regional Offices. We have continued to monitor the institution and have made several procedural changes over the past three years which have resulted in a relaxation of the controls.

As you indicate in your letter, the operations at the Penitentiary as well as the conduct of staff have been the subject of litigation now pending before the U.S. District Court for the Southern District of Illinois. During this litigation, the inmate plaintiffs have been assisted by counsel with considerable experience in prison litigation.

After a lengthy trial, the Magistrate concluded in his written opinion "No credible evidence to support a pattern and practice of prisoner abuse at USP-Marion has been presented. . . The credible evidence clearly demonstrates that correctional officers exercised great restraint under the very difficult circumstances that existed."

The U.S. Magistrate's report and findings have been submitted to the U.S. District Court where a further hearing was recently held. We anticipate that the District Court will issue a decision in the near future.

I believe that conditions at the Marion Penitentiary as well as the performance of staff have been thoroughly reviewed by representatives of the Bureau of Prisons, as well as the Federal Court. In my opinion, there are no reasons to initate a new investigation into incidents which allegedly occurred three years ago. I want to assure you that the Federal Bureau of Prisons is committed to providing safe and humane facilities for the incarceration of criminal offenders committed to our custody.

Sincerely,

Norman A Carlson

NORMAN A. CARLSON
Director

U.S. Department of Justice

Federal Prison System

Washington, D.C. 20534

February 27, 1987

Mr. Clayton Yeo
Amnesty International
International Secretary
1 Easton Street
London WC1X 8DJ
England

Dear Mr. Yeo:

This is in further response to my letter of February 4, 1987 concerning a report Amnesty International prepared on the United States Penitentiary, Marion, Illinois.

Enclosed is a copy of the U.S. District Court order of February 24, 1987 concerning the Penitentiary. You will note that on pages 7 and 8 of the order, the court specifically addresses the issue of alleged beatings and use of physical restraints.

Should you have any questions or desire additional information, please let me know.

Sincerely,

NORMAN A. CARLSON
Director

Enclosure

amnesty international

INTERNATIONAL SECRETARIAT
1 Easton Street London WC1X 8DJ
United Kingdom

TG AMR 51/87/12

Mr Norman A Carlson
Director
Federal Bureau of Prisons
US Department of Justice
Washington, DC 20534
USA

20 March 1987

Dear Mr Carlson

Thank you for your letters of 4 and 27 February and for enclosing a copy of the US District Court Order of 24 February 1987, concerning Marion Penitentiary.

Amnesty International welcomes your assurance that the Federal Bureau of Prisons is committed to providing safe and humane facilities for the inmates within its jurisdiction. However, we remain concerned that there has been no independent inquiry into the allegations of brutality other than the above lawsuit. We believe that the public interest would be best served in this case by holding such an inquiry.

This belief is supported by the fact that many of the court's findings with regard to the allegations of beatings were based upon the magistrate's determination that the plaintiffs were not credible witnesses and his acceptance of guard testimony that no such treatment had occurred. The evidence of injuries to a number of the plaintiffs were found by the court to be the product of reasonable force. This conclusion, while supported, in the court's view, by evidence of video tapes of some cell moves, was again based largely upon the court's acceptance of the version of events given by the defendants and its dismissal of plaintiff testimony as not credible (we refer to points 78 to 157 of the Findings of Fact in the Memorandum and Recommendation of the US District Court on 15 August 1985). It appears that the case was dismissed, not because the weight of independent evidence clearly showed that there had been no incidents of ill-treatment or use of excessive force, but because the plaintiffs had failed to discharge their burden of proof.

This result may well have been inevitable under the circumstances, for the reasons we have stated previously. We believe that the court's findings serve only to reinforce the case for an independent inquiry with the broader terms of reference suggested in our letter of 30 December 1986.

I enclose for your information a copy of Safeguards Against Torture, a list of preventive and remedial measures prepared and published by Amnesty International.

Yours sincerely,

Clayton Yeo
For the Secretary General