

MARION PRISONERS' RIGHTS PROJECT

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RESPONSE TO REPORT AND RECOMMENDATIONS
OF BREED AND WARD REPORT
TO THE JUDICIARY COMMITTEE
ON MARION FEDERAL PRISON

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MARION PRISONERS' RIGHTS PROJECT*
RESPONSE TO REPORT AND RECOMMENDATIONS OF BREED & WARD

Approximately one year after the imposition of a new lockdown policy at Marion federal prison, Allen Breed and David Ward went to Marion at the behest of the House Judiciary Committee Subcommittee on Courts, Civil Liberties and the Administration of Justice.

THE CONDITIONS AT MARION

What prompted Congressional attention to Marion were the following conditions imposed on the people incarcerated there immediately after the October 22, 1983 deaths of two guards in the isolated Control Unit:**

-On October 27, 1983, a prisoner in the general population was killed. When the warden's executive assistant provoked an incident as the men were on their way to the evening meal, all prisoners were locked down (Breed and Ward at p. 7). They were to remain locked down permanently.

-Less than one week later, sixty guards from other maximum security prisons in the federal system arrived at Marion (Breed and Ward at p. 7), some of whom identified themselves as the

* Marion Prisoners Rights Project (MPRP) is a not-for-profit corporation whose purpose is to provide legal services to prisoners at Marion and to educate the public about conditions at Marion. The lawyers, who work on a volunteer basis, have represented Marion prisoners since the early 70's.

** The three prisoners suspected of the killings were immediately identified, tried, convicted, and sentenced. One of them in particular had been in the Control Unit six years at the time of the killings.

"A Team", after the television serial. They were equipped with riot gear - helmets, face masks, jumpsuits without name tags, flak vests, heavy gloves and boots, and three foot long riot batons or clubs (Breed and Ward at p.7).

-Along with guards from Marion, these guards went first to the Control Unit, where they took prisoners to the "hospital", subjecting them to multiple x-rays and forced finger probes of the rectum, under the guise of searching for contraband, such as hacksaw blades.

-The squads then systematically made their way through the prison, from unit to unit, taking away all personal property and performing skin searches of every prisoner, handcuffing the prisoner behind his back, removing him - nude or barely clad - from the cell. They took each prisoner off the range to the stairwell or corridor, lifting him by the clubs which were woven between his arms. Often they ran the men into grilles and brick walls along the way. In the corridor, groups of guards, using clubs, fists and boots, beat many of the prisoners, who were still handcuffed.* The beatings were accompanied by threats, curses, insults, and assertions of power and control: "Call me Sir!" "We run this place!" On returning

*In a 34 page report, "A Public Report About a Violent Mass Assault Against Prisoners and Continuing Illegal Punishment and Torture of the Prison Population at the U.S. Penitentiary at Marion, IL," published early 1984, the Marion Prisoners' Rights Project documents 37 beatings from October 27 - November 23, and indicates continuing beatings and forced rectal finger probes. We introduced this report as evidence during our testimony before the subcommittee March 29, 1984.

the man to the cell, the guards would slam him down on to the mattressless steel bed, often beating and threatening him again before leaving him in the bare cell.

-In the following several days, medical treatment was denied to those who were beaten. The prisoners were allowed no showers, no fresh air or sunshine, no recreation or exercise, no contact visits, no commissary, one or no warm meals, no religious services, and no law library. Release from the cells was only for legal visits, and movement to and from these was delayed by the process of skin searching, thorough shackling (handcuffs locked to waist chain, ankle irons), and "escorts" - several armed guards encircling the prisoner.

-In mid to late November began occasional showers and sporadic "recreation", where, alone or with one other person, a man might be released from the cell for 30 minutes into the caged range immediately outside the cell, with nothing to do. (Breed and Ward at p.9). Minimal property was restored, though most was either missing or prohibited.

-By the spring of 1984 outdoor recreation once a week had begun, though there was nothing to do in the yard (Breed and Ward at p.11). People were still in the cells 23 hours a day.

-Several months later, at the time of Breed & Ward's visit to this sole level 6 prison, there were still no contact visits, no use of the main law library, no religious services, no jobs for over 90% of the population,* no school or other

*The other 10% was placed in an "honor" unit and afforded substantial out of cell time and the promise of work.

meaningful program, and lockdown 23 hours a day with no disciplinary due process proceedings to justify the punitive detention.* Although the prison administration claims Marion is necessary to manage the especially unmanageable, (Breed and Ward at p.2), the population at Marion over the years and at the time of Breed & Ward's visit comprised 20% people classified as needing level 6 security, with a full 80% people classified as needing lesser security. Prisoners reported to Breed and Ward interference with legal mail, dissatisfaction with the grievance process, and continuing unfounded forced rectal finger probes and beatings (Breed and Ward p.22,28-29). Prisoners also reported to Breed and Ward hostility and great anger at the treatment they had been afforded and at actions taken during the year long lockdown (Breed and Ward p. 18-19). Architectural accomodation of the lockdown policy was evident in the Control Unit, where steel bunks were replaced by concrete slabs (Breed and Ward at p.9,11), into which metal rings were fitted, so that men could be chained down to the concrete in the secured cells.

PROBLEMS OF BIAS AND PREJUDICE WITH BREED & WARD'S APPROACH: MISJUDGMENTS OF CREDIBILITY AND GOOD FAITH.

Breed & Ward report that they regard as fact allegations

*Confinement in these lockdown conditions must be preceded by a procedure which provides the person written notice of acts purportedly justifying such conditions, a personal hearing with the right to present documentary evidence before an impartial decision-maker, written reasons for the decision to impose such conditions, and periodic review. Bono v. Saxbe, 450 F.Supp. 934 (S.D. Ill. 1978). Lawyers working with MPRP represented the prisoners in this litigation.

and justifications offered by staff and administration (Breed & Ward at pp.14,17) while they regard information offered by prisoners and their lawyers as "allegations," not as fact. (Breed & Ward, at pp.12,17-18,28-29).^{*} This perspective led them to accept at face value prison officials' opinions and to simultaneously ignore very important positions asserted by the prisoners: that large numbers of beatings and unfounded forced rectal finger probes accompanied the imposition of the lockdown and that beatings and finger probes continued and continue throughout the lockdown;^{**} that the beatings, the finger probes, and the lockdown are a mass punishment motivated by revenge for the guard deaths; and that the lockdown is the Marion policy escalated from bad to worse, from failed to more shameful and more dangerous. These positions asserted by the prisoners are corroborated by several facts. On November 12,

^{*}In civil rights cases against government officials, juries are routinely formally instructed by the court with instructions such as the following:

People employed by a government agency, including prison officials, have no higher station in the community than other persons, and their testimony is not entitled to any greater weight. All persons stand equal before the law, and are to be dealt with as equals in a court of justice. A prison official who takes the witness stand subjects his testimony to the same examination and the same tests as any other witness, and you should not believe a prison official merely because he or she occupies a high position in the government.

See: Kerr v. City of Chicago, 424 F.2d 1134 (7th Cir. 1970).

^{**}Breed & Ward state that the Committee did not allot sufficient money to compensate them for an investigation of the beatings. Breed & Ward at p.14. Yet this did not affect their willingness to evaluate other lockdown conditions.

1983 prison officials barricaded the prison gates in an attempt to prevent MPRP lawyers and legal workers from investigating reported beatings and abuse, and then fought MPRP's efforts in court to gain access.* Upon gaining access to our clients, and interviewing prisoner after prisoner, day after day, a very definite pattern emerged from the first wave of beatings, described in the MPRP Public Report.** Prisoners from one unit who had been locked down, with no access to prisoners from other units, recounted beatings occurring in identical ways, even in what escaped from the guards' lips: "Who runs this place?," "Call me sir!"*** Prisoners who did not know each other's names reported seeing injuries and hearing beatings in their units. Lawyers saw with their own eyes gouges, bruises, and lumps on the men's bodies. Prison officials further stymied our efforts to document physical evidence of beatings, by prohibiting us from photographing the injuries.

The incorrect judgment of credibility**** reveals a lack of objectivity on the part of Breed & Ward. In the face of allegations of illegal behavior motivated by bad faith, Breed & Ward, without so stating, assume from the outset that prison

*MPRP had arranged these legal visits in routine fashion. It was only at the prompting of U.S. District Judge William Beatty that Marion officials allowed the lawyers in.

**See footnote at p.2.

***See MPRP Public Report at pp. 5,9,10,11,15,20,21.

****In cases arising out of Marion, federal courts have found the testimony of prisoners credible, in the face of contradictory testimony and documents of guards. See: U.S. ex rel Clifford Jackson-Bey v. Miller., (S.D. Ill)

officials acted and act in good faith. This unfounded assumption prevents them from understanding and exposing the true situation. Breed & Ward's analysis of forced rectal finger probes is a case in point. Even though they acknowledge that the prisoners regard the practice as rape (Breed & Ward at p.23), and even though it is applied in a blanket fashion "whether or not they [prisoners] are suspected or have been reported by other inmates to be carrying contraband," (Breed and Ward at p.22), Breed & Ward assume the practice is invoked legitimately, with good faith*. Breed & Ward's incorrect assumption of good faith can also be seen in their descriptions of lockdown conditions. They refer to the vicious "A Team" riot squad (at p.7) as nonchalantly as they describe new Control Unit concrete slab beds equipped with metal rings (at p.9,11) so a man can be shackled, spread-eagle, to the "bed" in a Control Unit cell. Breed & Ward assess individual aspects of the lockdown as if they bear no relationship to each other, and as if they do not bear out the logical conclusion - that the lockdown is motivated by vengeance, that it is a transparent mass punishment of all for the acts of three men.

THE SELLING OF THE LOCKDOWN

The Bureau of Prisons and officials at Marion work hard at convincing Breed & Ward, the media, the Court, and the public, that the lockdown is rationally related to legitimate penological objectives. They have mounted a large scale propaganda

*See p.13, infra, for fuller discussion on this issue.

campaign attempting to "sell" the lockdown. The first tack was to invoke the "myth of Marion," justifying the lockdown by criminalizing and bestializing the prisoners*, creating an image that they are less than human. Hence, the initial resort to calling the men "savages."** Still invoking the same myth, but masking it slightly, the Bureau of Prisons replaced a gruff, uncommunicative warden whose appearance and behavior fit the lockdown bill, with a younger, public relations executive type, glib front man whose job is more to sell the lockdown than to administer the prison. Since his arrival, he has generated an unprecedented media campaign, including feature articles in the local paper about "our warden the poet," who is such a swell guy that he writes odes to puppy dogs, as if to pretend that the lockdown does not exist.***

The new regime is marked by a change of the name "lockdown," which sounds too harsh and which is very graphic - one imagines men locked down in cages. Lockdown also carries with it a history that does not quite fit, for lockdowns are across

*The myth consciously ignores the fact that a full 80% of the prisoners at Marion are classified in security levels below level 6. (Breed and Ward at p. 27)

**Chicago Tribune, 10/25/83 and 11/8/83.

***Southern Illinoisan, 10/11/84.

the board a temporary animal,* imposed usually after a prisoner disturbance (which is not the case here), and soon lifted after a cooling off period.** The Bureau adopted a new euphemistic title, for Marion calling it an "administrative detention prison," seeking to change the image. Yet, a sword does not become a plowshare merely by changing its name. An artificial atmosphere of normalcy was created not only for its public relations effect but also for its purpose to diminish the prisoners' resistance. The "normalcy" is accomplished in part by shielding from public view the more concrete signs of repression - the movement of prisoners to visits complete with handcuffs, waist chains, leg irons and pack of guards with clubs drawn, once done in full view of the prisoners' lawyers, is now done "off stage," out of view, though it is still done; guards do not carry their clubs to the visiting room, though they still carry them in the cell blocks.

Another lockdown promotion has been the initiation of

*Michael Lane, Director of the Illinois Department of Corrections, which houses one of the largest prison populations in the U.S., recently stated, "[L]ockdowns - keeping prisoners confined to cells most of the day - are not used by Illinois. That method of control only works for a few days before conditions become inhumane, leading to violence." Elgin Courier News, 1/11/85.

**For example, at Pontiac prison in Illinois, after three guards were killed in 1978, massive amounts of property was destroyed, buildings were burned to the ground, hundreds of prisoners were involved, and indictments seeking the death penalty were brought against seventeen Black prisoners, a federal court ordered that lockdown completely lifted in nine or ten months, with a gradual restoration of privileges long before that. See: Preston v. Thompson 78 C 3512 (N.D. Ill. 1979)

cosmetic changes, accompanied by announcements of "sweeping" changes. The expansion of visiting hours from 4 hours a month to 8 hours a month is an example. The number of family visits at Marion was never substantial, due to the inaccessibility of the prison and the inability of many families to afford the long trip. Yet the number of visits dropped dramatically after the lockdown, when prisoners told their families they could not bear to see them under the then newly imposed restrictions of no contact and speaking through a glass wall over a monitored telephone. Another example is the "model" unit, which officials have used to try to focus attention away from 90% of the prisoners at Marion, still locked away in cages 23 hours a day.*

COMMENTS ON AND CRITICISMS OF THE BREED & WARD RECOMMENDATIONS

Long Term Options-

1. Construction of a new level 6 prison.

Breed & Ward begin their analysis with the assumption that the concept of Marion, with its policy of centralization and its Control Unit, is appropriate. (Breed & Ward at pp.19-20) Rather than challenge or even question this basic assumption, B & W recommend concretization of the concept in the form of enormously expensive construction projects - a majestic super prison (Breed & Ward at p.20), and many mini-control units throughout the country (Breed & Ward at p.20-22).

*Breed & Ward report that this is precisely how the majority of Marion prisoners view B Unit. Breed & Ward at p.18-19. The issue is more fully addressed infra at p.15.

The Control Unit policy is a proven failure of dangerous and life-threatening proportion. The October, 1983 guard deaths are evidence of its failure, as are the many prisoner deaths throughout the years. Evidence of its failure has been documented in court for more than ten years.

Referring to the inhumane conditions of the Marion Control Unit, now generalized to the whole prison, psychiatrist Dr. Bernard Rubin testified as an expert witness in Adams v. Carlson in 1973 as to the result of conditions in the Control Unit - that :

...it could only do harm. It could only do harm for a variety of reasons: One is that the setting in its organization demands and dehumanizes and shapes behavior which is contrary to that that is professed to be the purposes of the program, that is, it seems to me that it shapes behavior toward violence by accentuating frustration, rage and helplessness and that the violence is either directed inwardly or outwardly.

In the same litigation, clinical psychologist Dr. Arnold Abrams testified as an expert witness after having inspected the Control Unit:

I would say that if we want to produce, to make animals out of human beings, that this is a perfect procedure for doing it. And that humanizing them means affording them some human contact with each other, and in a limited way with whatever the rules prescribe, with the world outside. The more limited they are, the more animal-like they will be in their behavior.

He concluded that violence was an inevitable consequence of this policy of isolation and repression.*

*We testified at the Congressional hearing of the Subcommittee on 3/29/84 as to this issue. See: Transcript at pp.78-80.

As recently as the fall of 1984, these earlier findings were reaffirmed. After a two day tour and inspection of Marion in September of 1984 during which time he interviewed prisoners, Craig Haney, a psychologist specializing in the effects of solitary confinement*, concluded that an urgent, dangerous state of affairs has been created by the lockdown:

I am afraid I cannot over-emphasize the urgency and seriousness of the current situation at Marion. Unless the draconian and Orwellian conditions that now prevail...are significantly abated, I believe that major outbreaks of violence will result.

New architectural structures will not ensure safety and sanity for staff or prisoners - only a new policy will do so. Breed & Ward acknowledge the human costs, not only in the statistics of violence and death (Breed and Ward at p.5 and elsewhere), but also that the policy visits psychological injury on all those subject to it - prisoners and guards alike (see infra at pp.19-20). Rather than concretize a failed policy, we think it makes sense to change the policy to one of decentralization - the "de-Marioning" of Marion - and one of humane treatment.

2. Construction of Regional Control Units.

This recommendation, too, fails to reevaluate the failed Control Unit policy. A Control Unit on a regional level is

*Professor Haney is the director of the Graduate Program in Psychology at the University of California, Santa Cruz, has published extensively in criminal justice professional journals, and has consulted with numerous police and sheriffs departments as well as Departments of Corrections and the U.S. Department of Justice. He is an expert witness in Bruscino v. Carlson No. 84-4320 (S.D. Ill), the class action challenging the lockdown and beatings.

still a Control Unit. And, although we oppose the Control Unit policy, regional Control Units are preferable to a single, central Control Unit for several reasons. The centralization into a single Control Unit makes for double isolation - regionalization would remove one of these levels. A Control Unit in a maximum security prison provides some minimal measure of contact with general population, whose responses to abuses in the Control Unit can have a tempering effect on Control Unit conditions and treatment.

For regionalization to have more of an ameliorating effect, certain of the Control Unit and lockdown practices would have to be changed. For example, contact visits should be allowed,* and reviews concerning the length of the Control Unit sentence should be meaningful and should follow guidelines which inform the prisoner precisely what conduct will result in release from the Control Unit.

Short Term Recommendations -

1. Halt the use of forced rectal finger probes for nonmedical reasons.

We agree that prison officials should stop subjecting prisoners to forced finger probes of the rectum, and we feel there is no occasion where this intentionally degrading practice can be tolerated. It is invoked in blanket fashion, where there is not even suspicion of possession of contraband (Breed

*A 1979 Justice Department report on the Control Unit at Marion made this recommendation, among others, for improving conditions.

& Ward at p.23), in blatant contravention of the law.* Statistics cited by Breed & Ward evidence that during the first six months of 1984, officials found contraband in less than 20% of the rectal probes.**

*28 CFR Sec. 522.11, Body Searches of Inmates, provides the following:

(c) Digital or simple instrument search--inspection for contraband or any other foreign item in a body cavity of an inmate by use of fingers or simple instruments, such as an otoscope, tongue blade, short nasal speculum, and simple forcep. A digital or simple instrument search may be conducted only by medical staff upon approval of the Warden and only if the Warden has reasonable belief that an inmate is concealing contraband in or on his person. If located, the contraband or foreign item may be removed immediately by medical staff if such removal can easily be effected by use of fingers or the simple instruments referred to above. Staff shall document all digital and simple instrument searches and the reasons for the searches in the inmate's central file.

(1) Staff shall solicit the inmate's written consent prior to conducting a digital or simple instrument search. However, the inmate's consent is not required.

(2) Staff may not conduct a digital or simple instrument search if it is likely to result in physical injury to the inmate. (Emphasis added.)

**Testimony by Warden Williford in Bruscino injunction hearings indicates that the figures he gave to Breed & Ward were inflated - that contraband has been found on fewer occasions than reported. He also testified that, in spite of the scrutiny he is under, particularly with respect to this invasive, offensive practice, the prison has not preserved any of the evidence claimed to have been found.

Professor Joseph G. Cannon* observed that the finger probes could not legitimately be called "searches," because their use was not to find contraband, but to degrade and intimidate the prisoners and to arbitrarily restrict movement within the prison and between the prison and other locations, such as courts. Furthermore, a rectal finger probe is not even a sure means of finding contraband, for items may be inserted beyond the reach of a finger. If there were a flow of contraband into a prison, stemming it would certainly be a legitimate concern. A flow of contraband can be effectively impeded in many ways short of intruding into the body cavities of prisoners who are not even suspected of carrying contraband. Traditionally, in prison settings one common source of contraband is staff. It would be rather simple to require employees entering and leaving the prison to pass through metal detectors, open their parcels and bags for inspection, and even submit to pat down searches. Employees at Marion are not searched at all, though this is a common practice at virtually all state maximum security prisons.

2. Establish graded units at Marion.

Throughout their report, Breed & Ward articulate a division in their minds that there exist "good" prisoners, who they

*Professor Cannon is on the faculty of the Criminal Justice Department of the University of Missouri at St. Louis, where he has taught for seven years. He has been in the field of corrections for 27 years, serving as warden of a maximum security prison and as director of Departments of Corrections in several states. After he inspected the lockdown conditions, he testified as an expert witness in injunction hearings in Bruscino v. Carlson.

even refer to as "white hats" (Breed & Ward at pp.18,22), and "bad" prisoners. They infer that the "good" prisoners should be excepted from lockdown conditions, while the "bad" prisoners deserve whatever happens to them. This perspective leads them to the position that the lockdown is not fair, for example, to those who were "transferred to Marion during the past year who have no responsibility for the events that precipitated the lockdown" (Breed & Ward at p.25). Offering their unstated assumption of good faith on the part of prison officials, Breed and Ward imply that the lockdown is justifiable for those who were incarcerated at Marion before October of 1983, as if mere presence in the prison is evidence of guilt sufficient for punishment. The lockdown conditions are not fair to anyone. Under the system of government in this country, allegations of prison rule violations are supposed to be handled through a procedure guided by the U.S. Supreme Court,^{*} federal regulations and Bureau of Prisons policy statements,^{**} and other court decisions.^{***} It is not legal to punish everyone for the acts of three.

In this recommendation, Breed & Ward echo the prison's attempts to manufacture a "good prisoner" versus "bad prisoner"

^{*}Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974).

^{**}28 CFR Sec. 541.10 et seq., Bureau of Prisons Policy Statement 5270.5.

^{***} See: Bono v. Saxbe, supra.

scenario, in its creation of the "honor"* unit at Marion. The resentment on the part of the prisoners not selected for this unit, acknowledged by Breed & Ward at pp.18-19,24, is due to the prisoners' recognition that this division is artificial. The "honor" unit is not made up of "white hats." Those in the unit came from the restrictive lockdown, and many in the lockdown are eligible for the unit. The unit succeeds not because of who participates but because the conditions are enormously less restrictive.** The success of this unit is evidence that the lockdown is not necessary, that prisoners designated to this level 6 prison can successfully function without being constantly caged and shackled.*** Breed & Ward themselves so state, when they argue for group religious worship:

*"B" unit is sometimes referred to as the "honor" unit. We feel this is a misnomer for reasons stated in the text.

**This is consistent with the Bruscino injunction hearing testimony of Marion prisoner Thomas Reed-Bey, and others who are housed in B unit.

***Eligibility requirements for B unit, particularly the requirement of clear conduct for 1½ years, are totally unrealistic, especially in light of the high level of tension between the prisoners and the guards (Breed & Ward at p.14). Furthermore, such classification procedures are often very arbitrary, as Breed & Ward point out at pp.27-28. Placement in B unit or other graded units which may be created must be based on realistic requirements which are applied fairly. Furthermore, most of the people at Marion are already not even classified as level 6. See infra at pp.20-23.

...but if it is safe to exercise small groups of 4-5 general population* inmates and if it is safe to for inmates in "B" unit to eat together and work together, the Bureau should consider as part of a graded unit system allowing small groups of inmates to worship together... Breed & Ward at p.30.

We agree and assert that "honor" unit conditions should be expanded and immediately applied to the remaining 90% of the prisoners at Marion.**

3. Reconsider placement of state prisoners in the federal system.

The placement of state prisoners in the federal system is fraught with unfairness, from the initiation of the placement without any hearing, to the deprivation of contact with loved ones, to the interference with access to the courts occasioned by distance from lawyers and a law library at Marion completely lacking in state law resources.*** Since the imposition of the lockdown, though several state prisoners have been transferred out of Marion, several remain. They should be returned to their home states.

*We take exception to their use of the term "general population" at Marion, for the conditions belie that label. The lockdown conditions imposed on what was once the general population now do not differ substantially from conditions in the Control Unit or disciplinary segregation.

**We concede that some prisoners may require close confinement, but those restrictions may be imposed only according to the circumstances of the individual's own behavior, and only after he has been afforded due process.

***See Corgain v. Miller, 708 F.2d 1241 (7th Cir. 1983) and discussion infra at p.21.

4. Establish a mental health unit for prisoners.
8. Reduce staff stress and combat mentality.

We consider these two recommendations together because of their interdependency. Without directly so stating,* Breed & Ward concede that the lockdown psychologically harms everyone subjected to it - both the keepers and the kept.** They acknowledge harmful human reaction on a profound scale, describing the consequences with terms associated with war. Yet the staff, said to be suffering from combat mentality (Breed & Ward at p.31), at the end of their work shift are permitted to leave the lockdown conditions and go home to their

*Despite overwhelming psychological evidence, and in keeping with their biased approach, Breed & Ward refuse to recognize the patent, visible harm to the prisoners, yet begrudgingly admit that lawyers, judges, penologists, and the press "speculate" that long term Control Unit type confinement has "negative consequences."

**See: Stuart Grassian, M.D., Psychopathological Effects of Solitary Confinement, American Journal of Psychiatry, Vol. 140, No. 11, Nov. 1983. See also: Cortes & Rodriguez v. Luther, No. 84 C 1695 (N.D. Ill. 1984) at mem. op. p.5: "We could almost take judicial notice of the serious psychological and physical harm which can result from more than ten months of what is essentially solitary confinement," citing Boudin v. Thomas, 533 F.Supp. 786 (S.D.N.Y.), appeal dismissed, 697 F.2d 288 (2nd Cir. 1982); Brown v. Neagle, 486 F.Supp. 364 (S.D.W.Va. 1979).

families and loved ones.* This is not so for the prisoners, who have absolutely no escape from these harmful conditions. Creation of a mental health unit for prisoners has attendant dangers for those determined to need "treatment" - prisons, like mental institutions, have been known to use and overuse psychotropic drugs nonmedically, to induce fear, to modify behavior, to punish, to rob one of one's personality. Following this recommendation could be dangerous for another reason - the recommendation purports to treat or mask the symptom and ignores the cure, which is to end the lockdown. A child with a splinter in his finger may get an aspirin for pain, but only removal of the splinter will resolve the underlying cause of the pain.

5. Reevaluation of the use of confidential information in classification.

Breed & Ward note that of 343 people at Marion, 70, or

*While the diagnosis of combat mentality (Breed & Ward at p.31) might seem inconsistent with the simultaneous observation of high morale (also at p.31), the two are not necessarily inconsistent. First, the staff functions on a level of self-deception with regard to the potential danger created by the lockdown. Second, morale was elevated initially in November of 1983 when the guards enjoyed "open season" during the imposition of the lockdown, when they were permitted to take revenge against the entire population for the guard deaths in the Control Unit. The morale boost had nationwide effect, as the A Team and other squads returned to the prisons where they were regularly employed and reported that the guard deaths had been avenged. Morale has remained high because continued beatings and forced rectal finger probes and other forms of domination and control are allowed, all with full cooperation of the administration. No guard has been disciplined for brutalizing or mistreating a prisoner. Prisoners' allegations of brutality have not even been investigated by the administration. See: deposition of Warden Jerry Williford in Bruscino.

20%, are classified as level 6 (Breed & Ward at p.27). That means 80% of the people at Marion are level 5 or lower. In other words, by the Bureau's own classification system, 80% of those held under the lockdown do not require placement at this sole level 6 prison.* Furthermore, Breed & Ward recognize that prison officials act quite arbitrarily in implementing the classification system, basically ignoring their own guidelines at whim, with tremendous adverse consequences to the person unfortunate enough to be the subject of that arbitrariness (Breed & Ward at pp.27-28). Breed & Ward's objection to the use of confidential information in classification seems to be founded in its procedural flaw, basically because of lack of advance notice to the prisoners. Arguing that the Bureau of Prisons should no longer feign adherence to the guidelines, they seek to cure this problem by warning the prisoners that from here on out, classification will be officially arbitrary. This is not a solution. The prisoners already know prison officials act arbitrarily and more - vindictively. Announcements to that effect would be redundant.

Breed & Ward do not examine the substantive problem - the consequences of the use of confidential information to the person informed on - nor do they acknowledge its pervasive and equally arbitrary use in the disciplinary system and wherever

*Obviously, Marion would not be kept open if it housed only 70 prisoners. Yet it is a BOP priority to keep Marion open, for its significance as the "club" over the head of every federal prisoner in the country - to "behave or else." So Marion must be kept full, even if it means placing hundreds of level 3, 4, and 5 prisoners in this level 6 prison.

else it suits prison officials.* When officials at Marion elect to use confidential information in an alleged rule violation, they cast aside due process guidelines set by the United States Supreme Court and land a person in the Control Unit for years without giving him the opportunity to defend himself or even to know the specifics of the accusation - all allegedly to protect the informant whose reliability and credibility they never bother to test.** The accused serves his sentence in the Control Unit without ever having the opportunity to ascertain

*Marion officials used prisoner informants as the basis for barring MPRP lawyers from all confidential communication with the prisoners from 1980-1982. In Abel v. Miller, No. 82-5280 (S.D. Ill), officials recently testified in court that their main informant, well known to them as a liar for over a decade, had been diagnosed immediately prior to giving his statement as having marginal contact with reality. He had a history of self-mutilation and was known to swallow bedsprings and spoons. On top of all this, they never bothered to even attempt to corroborate the most serious allegations, which were patently incredulous, and they knew he had a motive to make a false statement. Yet, the warden, his executive assistant, and his associate warden relied on this informant to bar lawyers who were suing them for violating the rights of the prisoners. The informant, who earned his freedom in exchange for the false statement against the lawyers, is now back in custody, in total isolation. The warden, Harold Miller, is the same warden who, along with his superiors, imposed the lockdown.

**In one MPRP case, several Marion prisoners were accused of violating a prison rule and were told only generally that informants accused them of running an extortion ring. They were given no details. A staff person purportedly conducted an investigation and supplied an unverified report to the disciplinary committee, which interviewed neither the investigator nor the informants. The committee nevertheless found them guilty, placed them in segregation, and docked 224 days of credit for good behavior. See: McCollum v. Miller, 695 F.2d 1044 (7th Cir. 1983), for the Appellate Court's remand to provide the prisoner with some safeguards against such arbitrary use of confidential information. In February of 1985, at the remand hearing, the Marion administration conceded that it had wrongfully punished the prisoners in that case.

if in fact the "information" exists or was manufactured by staff or prisoners, all of whom know the information will never be subject to scrutiny.

The reasons for pervasive use of informants are obvious: to keep the prisoners off-balance, expecting only arbitrary treatment, and therefore easier to control; and to keep the prisoners distrustful of each other, therefore divided, not united, and easier to control.

With this in mind, we recommend reevaluation of the use of confidential informants wherever the Bureau of Prisons uses it, with an eye to minimizing its use.

6. Increase access to legal material.

The United States Supreme Court and the Court of Appeals for the Seventh Circuit, the Circuit in which Marion is located, have articulated the importance of access to the courts:

It is indisputably established that prisoners have a fundamental, constitutional right of access to the courts. Access must be adequate, effective, and meaningful. Without this right, all other rights a prisoner may possess are illusory. Adams v. Carlson, 488 F.2d 619, 630 (7th Cir. 1973); Corgain v. Miller, 708 F.2d 1241, 1247 (7th Cir. 1983).

Officials at Marion know what the law requires - not only do they enjoy a unique position in the Bureau of Prisons of having had a lawyer on the prison staff continuously since September of 1981, but they have also been regularly sued by prisoners claiming interference with and denial of access to

the courts, including the inadequacy of the law library.* B & W acknowledge there has been no use of this inadequate main law library permitted since October, 1983, and that the "mini" libraries in each unit are even less adequate (Breed & Ward at p.28). Breed & Ward also acknowledge the "limitations" on resort to jailhouse lawyers (Breed & Ward at p.28), another right articulated by the United States Supreme Court.**

Breed & Ward's recommendation for curing these problems are superficial and inadequate. Adding books to unit law libraries or the main law library is a start. Adding staff or preferably outside programs to instruct people in the use of the law library is a necessary partner to the purchase of books. Then permitting people to go to the law library for reasonable periods of time with reasonable frequency is a must, as is facilitating access to jailhouse lawyers.

Though Breed & Ward acknowledge "allegations" of delay in attorney/client visits, they do not report the history and continuing problems with attorneys' access to clients at Marion. Over the years the various administrations at Marion have never taken kindly to the few of us lawyers who provide legal service to prisoners at Marion. The officials' resentment of our presence and our refusal to be intimidated has manifested itself in many ways less subtle than mere delays - from accusations in the early 1970's, recognized by the Seventh

*Corgain v. Miller, 708 F.2d 1241, 1250 (7th Cir. 1983).

**Johnson v. Avery, 393 U.S. 483, 89 S.Ct. 747, 21 L.Ed.2d 718 (1969).

Circuit to be totally unsubstantiated, that attorneys smuggled gunpowder into the prison,* to partially and then completely banning the Marion Prisoners' Rights Project from all confidential attorney/client communications with the prisoners in 1980-1982;** to barricading the gates and barring entry to MPRP lawyers seeking to investigate the beatings and lockdown in November, 1983;*** to submitting lawyers to humiliating and totally unwarranted searches of their persons and automobiles by drug sniffing canines in June of 1984; to, at last, requiring all lawyers and legal workers to give their fingerprints before they gain entrance to interview their clients.

Since the lockdown, many guard escorts "brief" prisoners on the way to attorneys visits not to tell the truth, and "debrief" them following legal visits,**** all of which violate the law. Communication is certainly not encouraged when Control Unit prisoners attend attorney interviews completely shackled. And with the lockdown came the policy to punish prisoners who went to court by subjecting them to forced finger probes of the rectum (Breed & Ward at p.22-23).

Nor do Breed & Ward address other problems with access. For example, the attorney visiting booths in the visiting room

*See: Adams v. Carlson, 488 F.2d 619 (7th Cir. 1973).

**December 13, 1984, a jury in the Southern District of Illinois found three high prison officials liable for violating the constitutional rights of the MPRP legal staff and awarded the staff \$36,000, finding the ban to be unreasonable.

*** See p. 6, supra.

****See MPRP Public Report at p.29.

are immediately adjacent to and about two feet below the guard station, divided only by a large glass window wall. This construction permits the guards to read the legal papers being exchanged by attorney and client, and also permits the guards to eavesdrop on privileged attorney/client conversations, both of which breach the confidentiality to which attorney and client are entitled. There are also an insufficient number of attorney/client visiting spaces. Two attorney/client booths are virtually unusable due to insertion of a wire mesh wall between attorney and client. Not only does the wall inhibit free and open communication, it creates optical illusions and causes headaches. Breed and Ward make no recommendation to cure another breach of this confidence, which breach was reported to them (Breed & Ward at p.28-29) - that of the staff opening and reading of legal mail, clearly marked as such. Breed & Ward's ignoring of such serious breaches of rights and their superficial response to the problems they do acknowledge reveal, again, their prejudice against the prisoners and bias in favor of the prison administration.

It is this context in which we must see the question of access to the courts.

Though Breed & Ward acknowledge (at p.29) that prisoners reported dissatisfaction with the substantive disposition of grievances, and not merely with procedural timing problems, they address only the timeliness. It is a grave error to ignore the prisoners' report of arbitrary denials of grie-

vances, warns Dr. Craig Haney:*

In this context deprivation and provocation, the absence of any effective grievance mechanisms at Marion serves to worsen and exacerbate an already tense, dangerous situation. Lacking any avenue of administrative redress, many prisoners feel increasingly compelled to take circumstances directly in hand. Others are becoming hopeless and desperate, feeling that they have nothing to work towards, and nothing left to lose within the institution. None of these quite understandable reactions contributes in any way to the long-term safe and orderly operation of the institution.

Timely blanket denials of grievance are no more valuable than tardy blanket denials. Attention should be rather to addressing the ills complained of.

It is axiomatic that access to courts and to meaningful administrative remedies function to reduce the prisoners' tension and engender positive attitudes and adjustment:

Regardless of which types of legal services prisoners receive or how the programs are structured empirical evaluations reveal a positive impact on prisoners. Specifically, studies in Massachusetts, Washington, and Texas demonstrate that receiving legal assistance is likely to improve prisoners' attitudes toward the criminal justice system as well as their institutional behavior (Alpert, 1978). These longitudinal investigations show how important legal service delivery is to prisoners....[Studies also] concluded that participation in the legal aid project is a significant factor in producing positive changes in prisonization and in prisoners' attitudes toward police, lawyers, law and the judicial system....A second significant finding which moves beyond attitudinal changes concerns the number of institutional infractions committed by members of our cohorts. The finding that users of legal aid experience fewer convictions of institutional infractions is significant in that it uses a behavioral measure as an independent variable. Providing legal services to prisoners is one step to reduce tension and anxiety,

* See footnote at p.12, supra, for Dr. Haney's background.

and reduce hostility among inmates [Alpert, 1978: 44-47]. Alpert, Ed., Legal Rights of Prisoners, at 14 & 15 (1980).

Given this principle, if the Bureau of Prisons is serious about reducing "management problems," it is difficult to understand why they would not immediately cure every problem relating to access to the courts. Since prison officials will not do so voluntarily, we recommend Congress require them to do so.

7. Equal religious access.

It is clearly established that:

[P]rison rules that incidentally restrain the free exercise of religion are justified only 'if the state regulation has an important objective and the restraint on religious liberty is reasonably adapted to achieving that objective.' Madyun v. Franzen, 704 F.2d 954, 959-60 (7th Cir. 1983).

It is also clear that restrictions on the observance of non-white, non-Christian religions bear no relationship to any legitimate objective. Breed & Ward acknowledge that Native American, Jewish, and Muslim prisoners are prohibited from receiving the type of access to spiritual guidance and worship that are afforded those of the Christian faith. In spite of their own recognition of the disparate treatment and lack of necessity therefore (Breed & Ward at pp.29-31), Breed & Ward nevertheless fail to acknowledge the bad faith underlying such restrictions. Though they acknowledge the importance of religion in providing a shred of humanity in an otherwise inhumane environment, Breed & Ward fail to acknowledge the tremendous significance to the prisoners, as witnessed by the religious

death fast undertaken by Native American and Jewish prisoners.*

Breed & Ward cite the installation of television sets and broadcast of live and taped religious services (Breed and Ward at p. 31), apparently condoning this, even though their cite immediately follows their own recognition of the important role clergy can play in providing human relationships. A television broadcast of a religious service obviously does not fulfill this role. Many of the men deeply resent the new televisions, seeing them as an attempt to pacify and buy off the prisoners.

Breed & Ward also recognize the lack of necessity in restrictions against group worship (Breed & Ward at p.30). Officials at Marion and in the Bureau of Prisons, conceding that the restriction bears no relationship to any legitimate objective, recently instituted an "experiment" in the religious arena. Officials have just begun to allow men of the same faith from one side of each unit to attend a private service in

*Leonard Peltier and Standing Deer/Robert Wilson, Lakota Sioux Indians; and Albert Garza, a Sephardic Jew, were all denied access to worship according to the dictates of their faith, and undertook ritual fasts. At one point the three men obtained a court order acknowledging the religious basis for their refusal to eat and enjoining the prison from its stated intention of interfering with the ritual and force feeding the three. When the injunction was ultimately dissolved, the prison authorities transferred the three to the Medical Center for Federal Prisoners at Springfield, Missouri. Faced with the imminent and dangerous force feeding process, the three were forced to cease their religious fast and take enough solid food to avoid the risky procedure. They have been held at Springfield in virtual isolation for many months, still without access to spiritual guidance, apparently to punish them for the strength of their religious convictions. Interestingly enough, Breed & Ward refer to the religious fasting rituals as "hunger strikes," showing the same prejudice exhibited by prison officials who sought to forcefully intervene. (Breed & Ward at p.11)

chapel, where, in an ironic twist, a guard sits in a cage and watches on as the two or three prisoners pray together. While the mini-services are a token improvement, they are conducted without regard to the teachings of the minority religions. For example, the structure of the Muslim community and its elected religious leaders is disregarded. Even the attempted partial resolution creates resentment and frustration in the insensitive, arrogant and racist way it is implemented.

Before the lockdown, there were no security problems at religious services. Prohibiting group worship would thus seem to bear no relationship to security needs. We must question the good faith of prison officials who required priests, backed by guards outfitted with riot batons, to give communion through cell bars, and who deny adherents of minority religions any meaningful spiritual guidance and cut them off from their religious leaders. Prisoners of all faiths should be permitted to worship according to the dictates of their respective faiths.

CONCLUSION

This lockdown, the longest in the history of U.S. prisons, now enters its 17th month. Prison officials' vigorous defense against the injunction sought by the prisoners in Bruscino; their refusal to agree to an order prohibiting prospective beatings; and their continuing unfounded use of the degrading finger probes are some of the evidence that they will not voluntarily end this lockdown.

Breed & Ward are correct in their conclusion that the lockdown must end (Breed & Ward at p.19), but their assessment of the timing is faulty. In a feat of illogic, they contend that the lockdown should not be lifted immediately because the officials and guards fear the natural consequences of their own brutal policies and practices. (Breed & Ward at pp.31-32)

[M]any of those inmates who have been at Marion since the lockdown was imposed feel and express great anger at their circumstances and the actions taken against them during the past year. The strip searches, the rectal examinations, the loss of previously allowed personal property, the requirement that all movements out of cells be made in handcuffs and leg irons, the limitation on all activities including visits and telephone calls and the elimination of opportunities to engage in joint or congregate activities with other inmates have helped the staff bring down the rate of serious assault at Marion, but these actions have been interpreted by many in the present inmate population as elements in a concerted effort to demean, degrade and humiliate them (Breed & Ward at p.18).

Of course, human beings resent such treatment. Anger at such abusive treatment at the hands of government officials is a healthy and normal response. To conclude, as did Breed & Ward, that the conditions creating resentment be permitted to continue because they create resentment makes no sense at all. One ready solution would be to transfer Marion prisoners to many other federal prisons and transfer others to Marion, which would be operated as the other level 3, 4, and 5 prisons in the system.

Nor does it make sense to permit the operation of the Marion as a massive, punitive Control Unit, when that policy has proved that it does not work. The "Control" Unit is out

of control. The repression and inhumanity of the Control Unit, and now of Marion, are proven to breed violence.

Marion is not just one small prison - it has been and is the main experimental laboratory for the entire federal Bureau of Prisons. Recently imposed policies at Marion have already filtered down and are in use all over the country - policies which dehumanize, brutalize, and provoke violence. Furthermore, the situation at Marion has already been used as ammunition in the Bureau of Prisons's push for imposition of a federal death penalty. Such a penalty would illogically impose responsibility on an individual for the gaping failure of the government policy which initially provoked the senseless acts of violence. Such a penalty would not stop future senseless acts of violence. Only the dismantling of the policy can do so.

"A naked man in chains in a bare cell poses no risk. From that point on, every increase in freedom brings at least some decrease in security." Valentine v. Englehardt, 474 F. Supp. 294,300-301(D. N.J. 1979).

The United States prides itself on being a democratic country and holds itself out as an example to the world. The lockdown at Marion exemplifies governmental power gone unchecked, power abused. The horrific example of Marion where

conditions violate domestic and international laws,* is gaining nationwide and international attention.** We find ourselves forced to ask Congress to recommend that Bureau of Prisons officials do what they are supposed to do - follow clearly established law and afford prisoners their basic human rights.

The U.S. Congress must act as a check on the power of prison officials and intervene. We therefore recommend Congress immediately end the lockdown and convene Congressional hearings into human rights violations at Marion.

Respectfully submitted,


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Dated: March, 1985.

*See, e.g. U.N. Standard Minimum Rules for the Treatment of Prisoners; U.N. Declaration on the Protection of All Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

**Amnesty International has sent an observer to the injunction hearings in Bruscino. Amnesty International is a worldwide movement which is independent of any government, political grouping, ideology, economic interest or religious creed. It plays a specific role within the overall spectrum of human rights work. The activities of the organization focus strictly on prisoners. It seeks the release of men and women detained anywhere for their beliefs, colour, sex, ethnic origin, language or religion, provided they have not used or advocated violence. These are termed "prisoners of conscience." It advocates fair and early trials for all political prisoners and works on behalf of such persons detained without charge or without trial. It opposes the death penalty and torture or other cruel, inhuman or degrading treatment of punishment of all prisoners without reservation.