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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RODERICK D. WALKER, AMIN HABEEB ULLAH a/k/a FRANKLIN NEAL, ROMANDO VALEROSO, FLOYD W. ZEROS, RONALD E. THELEN, MARVIN MAYBERRY, DONALD SULLIVAN, DENNIS SPAULDING, JOHN T. CROWN, JERRY GONYEA, DAVID W. LYTAL, LEWIS ROBINSON and TIMOTHY SPYTMA, On Behalf of Themselves and All Others Similarly Situated,

Plaintiffs,

v

BARRY MINTZES, Warden, State Prison of Southern Michigan, DALE FOLTZ, Warden, Michigan Reformatory at Ionia, THEODORE KOEHLER, Warden, Marquette Branch Prison, Individually and in Their Official Capacities, State of Michigan, through the Michigan Department of Corrections,

Defendants.
_____/

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Civil No. 81-71998
HONORABLE STEWART NEWBLATT

PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

Respectfully submitted,

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Dated: December 4, 1981

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Defendants.
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Civil No. 81-71998
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PROPOSED FINDINGS OF FACT

GENERAL

1. Plaintiffs Roderick Walker, Amin Habeeb Ullah a/k/a Franklin Neal, Romando Valeroso, Floyd Zeros, Ronald Thelen, Marvin Mayberry, Donald Sullivan inmates at the State Prison of Southern Michigan with John T. Crown, Jerry Gonyea, David Lytal and Lewis Robinson, inmates at the Marquette Branch Prison with Timothy Spytma, an inmate at the Michigan Reformatory filed a complaint in the United States District Court, Eastern District of Michigan, asserting a cause of action under §1983, Title 42, U.S.C, with respect to the "lockdown" conditions of their confinement at those institutions subsequent to the riots which occured at all three institutions in May, 1981. Defendant Perry Johnson is the Director of the Michigan Department of Corrections.

Defendant Barry Mintzes is Warden of the State Prison of Southern Michigan, located in Jackson, Michigan. Defendant Dale Foltz is the Warden of the Michigan Reformatory located in Ionia, Michigan, and Defendant Theodore Koehler is the Warden of the Marquette Branch Prison, located in Marquette, Michigan. All of these individuals are employed by the State of Michigan in the Michigan Department of Corrections, which is also named as a Defendant.

2. The instant action has been certified as a class action.

3. In September, October and November, 1981, the instant matter was tried by this court.

STATE PRISON OF SOUTHERN MICHIGAN

1. On May 22, 1981, members of the Michigan Corrections Officers Organization, in spite of specific orders to the contrary by supervisory personnel, attempted to "lock down" inmates in the Central Complex of the State Prison of Southern Michigan. No similar action was taken by corrections officers at the North Complex of the State Prison of Southern Michigan or at the South Complex of the State Prison of Southern Michigan. (Testimony of Warden Mintzes, and Exhibit 142.)

2. Shortly after the riot started in the Central Complex, inmates in the North Complex began to riot. (Testimony of Warden Mintzes pgs. 19-20, and Exhibit ZZZ, QQQ and GGG.)

3. Warden Mintzes was able to negotiate an end to the riot without having to resort to the use of force. He was able to avoid using force because corrections officers obeyed all of his orders. He was able to negotiate because he was trusted by

the inmates. (Testimony of Warden Mintzes pgs. 19-20 and Exhibits UUU.)

5. On May 25, 1981, operating conditions at the State Prison of Southern Michigan had almost returned to normal. This quick unlocking of the institution occurred as a result of the commitment of Warden Mintzes to the inmates and because the corrections officers obeyed his orders to unlock the institution. (Testimony of Warden Mintzes, pgs 22 and Exhibit GGGG.)

4. During the period between May 23 and May 25, 1981, at the State Prison of Southern Michigan, inmates planned a strike and another riot. On May 26, 1981, there was an inmate strike followed by another riot. Inmates in the North Complex burned and looted large portions of that complex. In the South Complex, a group of 50-75 inmates armed themselves and began to rush corrections officers; they were stopped by a corrections officer firing a warning shot. Additionally, a fire was set in the South Complex. In the Central Complex inmates resisted returning to their cells and some broke into the North Complex, joining the rioting; this movement into the North Complex was only stopped when a warning shot was fired. In good faith Warden Mintzes, with Director Johnson's concurrence, ordered the State Prison of Southern Michigan locked down. (Pre-trial Stipulations, testimony of Warden Mintzes, Exhibits QQQQ, PPPP, GGGG, JJJJ, OOOO, and stipulated testimony of Resident Unit Managers Williams, VanDusen, Maynard and Exhibit MMMM.)

5. The riot on May 26, 1981, was not provoked by any action taken by the Defendants or the corrections officers.

6. All general population inmates currently eat all three of their meals in the dining halls. Each individual inmate

has approximately one hour to go to the dining hall, eat the meal, and return. This is the same amount of time individual inmates had for meals prior to the riots in May, 1981. (Testimony of Warden Mintzes, Exhibits C, DE, EI, Exhibit JJ and Exhibit W.)

7. All general population inmates currently have an opportunity to shower daily, at times other than yard and meal periods. Additionally, shower facilities are available to inmates during yard periods so that some inmates can take two showers a day if they choose. This offers the same number of showers as were available prior to the riots of May, 1981. (Stipulated testimony of Charles Sprang, testimony of Warden Mintzes, testimony of Director Johnson, Exhibit T and Exhibit CC.)

8. In the Central Complex all general population inmates, with the exception of 11 and 12-Blocks, receive approximately one hour of recreational yard per day. In 11 and 12-Blocks of the Central Complex, all non-working inmates receive approximately six hours of recreational yard per day. In the North Complex, all non-working general population inmates receive approximately 2 1/2 hours of recreational yard every other day. In the South Complex all non-working inmates receive approximately six hours of recreational yard per day. (Stipulated testimony of Mike Flintoff, Charles Sprang, Edward Bradshaw, Dale Suiter, William D. Malone, Thomas Taylor, Jeff Angstman, Paul Hancock, David Jamrog, Arnold Kimble, Edward Burns, Thomas Phillips, Dennis Straub, testimony of Amin Habeeb Ullah a/k/a Franklin E. Neal and Exhibit T.)

9. Currently, all general population working inmates in the Central Complex receive one hour of recreational yard per

day with the exception of those working inmates in 11 and 12-Blocks, who receive two hours of recreational yard per day. In the North Complex all working general population inmates receive approximately 2 1/2 hours of recreational yard every other day, and in the South Complex all general population working inmates receive approximately one hour of recreational yard every day. (Stipulated testimony of Mike Flintoff, Charles Sprang, Edward Bradshaw, Dale Suiter, William D. Malone, Thomas Taylor, Jeff Angstman, Paul Hancock, David Jamrog, Arnold Kimble, Edward Burns, Thomas Phillips and Exhibit W.)

10. All religious denominations at the State Prison of Southern Michigan have resumed religious services which are available to all general population inmates. All religious denominations have a time available to them, other than during services, for matters concerning housekeeping, business, and/or religious study. (Stipulated testimony of Rabbi Tanninbaum, Resident Services Administrative Assistant VanDusen, testimony of Warden Mintzes, and Exhibit W.)

11. As of August, 1981, 54% of the general population inmates at the Central Complex were either working or in school; 68% of all general population inmates in the North Complex were either working or in school; and 73% of all general population inmates in the South Complex were either working or in school. (Testimony of Warden Mintzes.)

12. A greater percentage of the general population inmates at the State Prison of Southern Michigan were either working or in school in August, 1981, than were working or in school prior to the riots in April, 1981. Job and school activities have returned to normal. (Testimony of Warden Mintzes, Director Johnson, and Exhibits 135 and 136.)

13. In addition to the regular school programs, college programs at Jackson Community College and Spring Arbor College have resumed normal operations. Currently 192 inmates attend Spring Arbor and 565 inmates attend Jackson Community College. (Testimony of Warden Mintzes, testimony of Amin Habeeb Ullah a/k/a Franklin Neal, and stipulated testimony of J. Willsey.)

14. Visiting privileges for all inmates have returned to normal. (Testimony of Warden Mintzes, Exhibit W and Exhibit AAA.)

15. There is no evidence on this record Defendants or their agents have failed to respond to any Freedom of Information Act requests. (Exhibit JJ.)

16. Medical care is dispensed in the same manner as it was prior to the riots in May, 1981. Moreover, the medical care system at the State Prison of Southern Michigan ranks among the best prison medical care systems in the nation. (Deposition of Dr. Harness, Exhibit R for North Complex, Exhibit P for South Complex, Exhibit O for Central Complex, Exhibit KK and 3-Block Exhibit E 10-16-81.)

17. There is no evidence on this record that any attorney visitation has been prevented as a result of the "lock down" at the State Prison of Southern Michigan. (Exhibit JJ and testimony of Warden Mintzes.)

18. Currently laundry service at the State Prison of Southern Michigan operates in the same manner as it did prior to the riots in May, 1981. (Testimony of Warden Mintzes and Exhibit W.)

19. The availability of cleaning materials to clean individual inmates' cells is the same at the State Prison of Southern Michigan as it was prior to the riots in May, 1981. (Testimony of Warden Mintzes and Exhibit W.)

20. The general cleanliness of the blocks in the Central Complex has improved over what it was prior to the riots of May, 1981, due to the block cleaning program instituted by Assistant Deputy Warden Withrow. General cleanliness in the North Complex and South Complex is the same as it was prior to the riots of May, 1981. (Testimony of Warden Mintzes, Director Johnson, stipulated testimony of Resident Unit Manager Malone, and Assistant Deputy Warden Withrow.)

21. Telephone privileges for inmates at the State Prison of Southern Michigan have returned to normal. All inmates are permitted a minimum of one telephone call per week with some inmates being able to make several calls in the course of a week. (Testimony of Warden Mintzes, testimony of Amin Habeeb Ullah a/k/a Franklin Neal, Exhibits W, EI, and E.)

22. Law library operations have returned to normal. Law library hours are 7:30 a.m. to 4:30 p.m. at all three law libraries. There is no evidence on this record any inmate has been denied access to the law library, nor is there an evidence on this record any inmate was unable to adequately prepare for any pending or future case because of lack of access to the law library. (Testimony of Warden Mintzes, stipulated testimony of Jerry Kunzelman and Exhibit W.)

23. There is no evidence on this record that access to jailhouse lawyers is significantly different than prior to the riots of May, 1981. Further, there is no evidence on this record

that any inmate has been unable to adequately prepare any pending or future case as a result of being unable to contact a jailhouse lawyer. There exists at the State Prision of Southern Michigan a branch of the prison legal services wherein lawyers provide legal assistance to the inmates. There is no evidence that this program was curtailed by the "lock down". (Testimony of Barry Mintzes.)

24. There is no evidence on this record which establishes the Defendants have in any way hindered or prevented Plaintiffs from having access to the courts.

25. There is no credible evidence that any inmate suffered any physical harm due to general sanitary and health conditions at the State Prison of Southern Michigan during the entire period of the "lock down".

26. Out-of-cell time for all Plaintiffs who are working is approximately the same as it was prior to the riots of May, 1981. Out-of-cell time for all inmates in school is approximately the same as it was for those inmates prior to the riots of May, 1981. Non-working inmates in 11 and 12-Blocks of the Central Complex of the State Prison of Southern Michigan are out of their cell nine hours or more a day which is approximately the same for those inmates prior to the riots of May, 1981. Non-working inmates in the South Complex are out of their cells nine hours or more a day which is approximately the same as prior to May, 1981. (Stipulated testimony of Resident Unit Managers of 11 and 12-Blocks Arnold Kimble and Edward Burns, testimony of Barry Mintzes, and stipulated testimony of Resident Unit Managers of the South Complex, Paul Hancock, David Jamrog and Thomas Phillips.)

witnesses, Defendants' witnesses, and the exhibits in this case. It is clear that he did not carefully review the situation at the State Prison of Southern Michigan and based on the above this court gave no credance to his testimony. (Deposition of Sigmund Fine, stipulated testimony of McLindsy Hawkins, testimony of Gordon Kampka, Warden Mintzes, Amin Habeeb Ullah a/k/a Franklin Neal, stipulated testimony of Resident Unit Managers Edward Bradshaw, Dale Suiter, William D. Malone, Thomas Taylor, Jeffrey Angstman, Arnold Kimble and Edward Burns, Exhibits El 3-Block loggbook, E 3-Block logbook, D 11-Block logbook and C 8-Block logbook.)

32. The testimony of Dr. Frank Rundle, with regard to any long term permanent mental harm done to inmates at the State Prison of Southern Michigan is inherently incredible. Dr. Rundle failed to perform a psychiatric examination in order to determine what, if any, illness existed. He found no recognized mental illness in any of the individuals he interviewed. His characterization of the permanent mental harm was clearly and convincingly rebutted by the testimony of Dr. Dennis Koson whom the court finds was very well qualified. No credance can be given to his testimony. Therefore, Plaintiffs failed to establish that any permanent mental harm was done to any individual at the State Prison of Southern Michigan. (Testimony of Dr. Dennis Koson, and testimony of Frank Rundle.)

33. The only significant difference in administrative segregation between the period prior to May, 1981, and the present, is that presently inmates have more yard time than prior to May, 1981, and general block cleanliness has improved. (Stipulated testimony of Resident Unit Manager of 5-Block William D. Malone, testimony of Perry Johnson, Barry Mintzes, Deputy Warden Withrow, and Amin Habeeb Ullah a/k/a Franklin Neal.)

27. Non-working inmates in the Central Complex other than 11 and 12-Blocks, at the State Prison of Southern Michigan are out of their cells for five to six hours a day. Non-working inmates in the North Complex are out of their cells for six to seven hours a day. (Testimony of Barry Mintzes and Susan Herman.)

28. There is no evidence on this record the letters "k" or "x" were placed above cell doors at the State Prison of Southern Michigan and that inmates with such letters were not given meals.

29. There is no credible evidence on this record that Defendants' actions in returning the State Prison of Southern Michigan to normal operations was in any way designed as a labor negotiations device.

30. There is no credible evidence on this record that the corrections officers as a group have by their actions subsequent to May 26, 1981, hindered the return to normal operation at the State Prison of Southern Michigan.

31. The testimony of Gordon Kampka is inherently incredible. His testimony was inaccurate with regards to his Maryland Penitentiary experience. His testimony with regards to the State Prison of Southern Michigan was based solely on a tour of the Central Complex and he failed to tour either the North Complex or the South Complex. His characterization of the corrections officers taking control of the State Prison of Southern Michigan in a "Coup de Grace" and his justification of that statement is without basis in fact or reason. Moreover, his testimony about inmate out-of-cell time in length of meals, and number of inmates working, was contradicted by other of Plaintiffs'

34. The hobbycraft program is functioning normally. (Stipulated testimony of Lyman Pickering.)

35. The total inmate population at the State Prison of Southern Michigan is 4,883, of that 2,783 inmates are in Central Complex, 350 inmates of which are maintained in segregation; 700 inmates are located in the North Complex; and 1,400 inmates are located in the South Complex. (Testimony of Warden Mintzes.)

36. Based on the population figures along with job and school percentage figures given by Warden Mintzes, this court finds 1,586 inmates are either working or in school in the Central Complex; 1,022 inmates are either working or in school in the South Complex; 490 inmates are either working or in school in the North Complex. Additionally, this court finds 757 inmates are in the college program. Therefore, of the 4,533 general population inmates, 3,977 are working, in school or in college; of the 679 remaining, 167 are in the South Complex and out of their cells for nine or more hours a day; and 80 are in 11 and 12-Blocks and out of their cells nine or more hours a day. Therefore, only 432 general population inmates at the State Prison of Southern Michigan receive five to seven hours a day out-of-cell time. (Testimony of Warden Mintzes, stipulated testimony of Jack Willsey.)

37. The Defendants returned the State Prison of Southern Michigan to normal as soon as safely possible. (Testimony of Warden Mintzes and Director Johnson.)

38. Plaintiffs have failed to establish any wrongful, unlawful, or malicious acts on the part of any of the Defendants which prolonged the "lock down" at the State Prison of Southern Michigan.

MARQUETTE BRANCH PRISON

1. On May 26, 1981, inmates at Marquette Branch Prison rioted. Officials in the Department of Corrections believed this riot to have been pre-planned. The riot at the Marquette Branch Prison, in terms of the percentage of individuals involved and the activity engaged in, was the worst of the riots which occurred in May, 1981. Approximately 120 of the nearly 600 inmates at the Marquette Branch Prison were charged with riot-related offenses by the Marquette County Prosecutor's Office. (See Critical Incident in Exhibit 13 dated May 26, 1981 and testimony of Director Johnson and Warden Koehler.)

2. As of May, 1981, the Marquette Branch Prison was the only maximum security facility in the State of Michigan. (Testimony of Warden Koehler, Director Johnson, and Bob Brown.)

3. After regaining control of the institution, Warden Koehler, in good faith ordered Marquette Branch Prison locked down. (Stipulated by all parties.)

4. Currently meals are served to all general population inmates three times a day in the dining hall. The time an individual inmate spends in the dining hall is the same as prior to May, 1981. (Testimony of Warden Koehler and Exhibit 3.)

5. All general population inmates receive one hour of yard five days a week, one week, and one hour of yard six days a week, the next. (Stipulated testimony of Richard McKeon.)

6. All working general population inmates receive one hour of yard on a daily basis. (Stipulated testimony of Bruce Forstrom, Warden Koehler and Kim McNier.)

7. The green card prisoner status has been abolished with 47 of those formerly classified as green card, returned to general population; 48 of those formerly classified as green card

sent to the Huron Valley maximum security facility; and 28 of those formerly classified as green card moved to administrative segregation. (Stipulated testimony of Richard McKeon.)

8. All inmates are receiving three showers per week. (Stipulated testimony of Richard McKeon.)

9. All general population working inmates are currently receiving showers daily. (Testimony of Warden Koehler, Dennis Hickey and Kim McNier.)

10. There is no showing on this record of unsanitary or unhealthy conditions at the Marquette Branch Prison.

11. There is no convincing evidence of a deliberate indifference to the medical needs of any of the inmates. (Testimony of Louis Williams, Orville Simmons, Bruce Phytila and Exhibit 3.)

12. There is no showing the Plaintiffs, as a group, have been denied access to their own files under the Freedom of Information Act. (Testimony of Warden Koehler and Exhibits 3, 4, 5, 6, 7 and 8.)

13. Visitation rights for all inmates are precisely as they were prior to the riot of May, 1981. (Testimony of Warden Koehler and Orville Simmons, and Exhibits 3, 4, 5, 6 and mainly 7, back to pre-riot.)

14. No individual inmate was denied access to his attorney at any time subsequent to May, 1981. (Testimony of Warden Koehler and Exhibit 3.)

15. There is no showing that any individual has been denied access to the court by any action taken by the Defendants at the Marquette Branch Prison. Since the riot in May, 1981, the court finds that Defendants have reopened the law library to its

former hours; that there is no denial of access to jailhouse lawyers or to the paralegal assistance program provided by the Department of Corrections; or that the Defendants have in any way prevented Plaintiffs from filing any actions in any court. The testimony of Plaintiffs' own witnesses would indicate that Plaintiffs have full and complete access to both state and federal courts. (See testimony of Salih Sabur, Orville Simmons, Louis Williams, Warden Koehler, David Johnson and Exhibits 3, 4 and 5.)

16. Within recent years a new, younger, more violence-prone, type of inmate has been incarcerated at the Marquette Branch Prison. (Testimony of Warden Koehler, Orville Simmons, Salih Sabur, Bruce Phytila and Kim McNier.)

17. The riot at the Marquette Branch Prison had the highest percentage of inmate involvement of all three of the institutions. Additionally, there is evidence suggesting that the riot at the Marquette Branch Prison was pre-planned. (Testimony of Director Johnson, Warden Koehler, Bruce Phytila, Exhibit 13, Exhibit 14, Exhibit 21, and Exhibit 34.

18. There is still an emergency condition at the Marquette Branch Prison. (Testimony of Warden Koehler, Director Johnson, Robert Brown, Exhibit 14, Exhibit 16, Exhibit 21, Exhibit 25 and Exhibit 38.)

19. Plaintiffs have failed to prove by a preponderance of evidence that the emergency condition believed to exist by the Defendants will not continue for some time.

20. Plaintiffs have failed to prove by a preponderance of the evidence that Defendants have grossly abused their discretion.

21. With the exception of recreational yard, administrative segregation at the Marquette Branch Prison is currently operated in the same manner as it was prior to May, 1981. (Testimony of Warden Koehler, Orville Simmons, and Bruce Forstrom.)

22. Inmates in administrative segregation currently receive one hour of recreation or yard two days a week. (Testimony of Warden Koehler and stipulated testimony of Bruce Forstrom.)

23. Plaintiffs have failed to prove that the way mail is delivered now is different than the way it was delivered prior to May, 1981.

24. Defendants are establishing an on-the-job training program to replace the vocational training which was ended when the vocational school was destroyed during the riot. (Testimony of Richard McKeon and Warden Koehler.)

25. As of September, there were 674 inmates at the Marquette Branch Prison. Of these, 126 were working and 210 were in the school program. Additionally, with the start of the fall semester, 146 inmates were enrolled in college programs. Therefore, in spite of the emergency situation, 71.5% of the inmate population at the Marquette Branch Prison were either working or enrolled in educational programs. (Testimony of Warden Koehler, and stipulated testimony of Goretzka.)

26. The hobbycraft program currently is operating in the same manner that it was prior to the riots in May, 1981. (Testimony of Warden Koehler and Orville Simmons.)

27. The testimony given by Gordon Kampka in regards to the Marquette Branch Prison is inherently incredible. There is no showing on this record that access to jailhouse lawyers is

significantly different than it was prior to the riots of May, 1981. Further, there is no showing on this record any inmate has been unable to adequately prepare his case as a result of being unable to contact a jailhouse lawyer. In addition Mr. Kampka admitted he informed several members of the staff at the Marquette Branch Prison conditions were much better than he had been lead to believe and his employers would not care to hear what he had to say regarding that institution. This admission appears to contradict his testimony regarding conditions at the prison. Mr. Kampka appears to have no clear grasp of conditions at the Marquette Branch Prison and, therefore, his testimony is untrustworthy and can be given no weight. (Testimony of Gordon Kampka, Sigmund Fine, Warden Koehler and McLindsy Hawkins.)

28. It is the intention of the Defendants to have the Marquette Branch Prison restored to a normal operating state, assuming no intervening crisis, on or about January 1, 1982. (Testimony of Warden Koehler and Director Johnson.)

29. It is the intention of the Defendants to return the Marquette Branch Prison to the form of operations that it had prior to the riots of May, 1981, allowing for the destruction of certain buildings which would prevent the reintroduction of certain programs. (Testimony of Warden Koehler and Director Johnson.)

30. Law library operations have returned to normal. There is no showing on this record that any inmate has been denied access to the library nor is there a showing that any inmate did not adequately prepare for any case because of lack of access to the law library. (Testimony of Warden Koehler, David Johnson and Exhibit 36.)

31. The Defendants have acted in good faith with regard to the conditions at the Marquette Branch Prison since the riots in May, 1981.

MICHIGAN REFORMATORY

1. On May 22, 1981, there was a riot at the Michigan Reformatory which destroyed and/or damaged a large portion of the facility. In good faith, after he was able to regain control of the institution, Warden Foltz, with the concurrence of Director Johnson, ordered the institution "locked down".

2. Plaintiffs have failed to establish any dietary deprivations or that any of the Plaintiffs are being fed in any other place but the dining hall.

3. Plaintiffs have failed to establish that visitation rights are not operating in the same manner as prior to the riot in May, 1981.

4. Plaintiffs have failed to prove that medical services are not being given in a manner consistent with constitutional standards.

5. Plaintiffs have failed to prove any prolonged lasting mental damage has been inflicted by the Defendants.

6. Plaintiffs have failed to prove Defendants have denied access to Plaintiffs' records under the Freedom of Information Act.

7. Plaintiffs failed to prove Defendants have denied inmates access to attorneys subequent to May, 1981.

8. Plaintiffs failed to prove that Defendants have denied access to the courts due to a failure to supply library

services, jailhouse lawyers, access to lawyers or denial of access to legal assistance provided by the Department of Corrections. (Stipulated testimony of Joe Cross.)

9. Plaintiffs failed to prove the existence of any unsanitary or unhealthy conditions at the Michigan Reformatory.

10. Plaintiffs failed to prove the school system is not operating at a normal level. (Stipulated testimony of Charles Brown.)

11. Plaintiffs failed to prove that the number of jobs and job opportunities are not the same as they were operating prior to May, 1981.

12. Plaintiffs failed to prove volunteer organizations are not operating in the same manner as prior to May, 1981.

13. The witnesses presented by Plaintiffs on the issues of recreation contradict themselves, one claiming "that yard is available for working inmates only when the cellblock assigned to use it, for non-working as well as working inmates, and an additional twenty minutes four times a week", the other claiming "non-working inmates get yard two to three times a week for 45 minutes to one hour". Therefore, Plaintiff failed to prove that recreational activities are not the same as prior to May, 1981. (Stipulated testimony of Timothy Spytma and Edward Sanders.)

14. Plaintiffs failed to prove Defendants are not providing cleaning materials to inmates in their cells.

15. The only evidence on the record regarding religious services at the Michigan Reformatory indicates that religious

services are held weekly. Therefore, there is no credible evidence which establishes that access to religious services have been denied any inmate at the Michigan Reformatory by the Defendants. (Stipulated testimony of Joe Cross and Edward Sanders.)

16. There is no evidence on this record showing Defendants are not providing either G.E.D. or college level education opportunities.

17. There is no evidence on this record proving any denial of jobs or job opportunities currently at the Michigan Reformatory.

18. Defendants have failed to present any evidence to show the Michigan Reformatory is currently "locked down". Further, Defendants have presented evidence that the Michigan Reformatory has returned to normal operations. Therefore, this court must find the Michigan Reformatory has returned to normal operations. (Stipulated testimony of Warden Foltz and Director Johnson.)

CONCLUSIONS OF LAW

INJUNCTIVE RELIEF

Plaintiffs, in their equitable action, seek a declaratory ruling along with injunctive relief which would in effect prohibit Defendants current conduct. The extraordinary equitable relief of an injunction, however, must be fashioned to prevent future violations. Injunctions are respective in nature.

The United States Supreme Court in Dombrowski v Pfister, 380 US 479; 85 S Ct 1116; 14 L Ed 2d 22 (1965) concluded:

> "Since injunctive relief looks to the future, and it was not alleged that Pennsylvania Courts and Prosecutors would fail to respect the Murdock ruling, the court found nothing to justify an injunction." (380 US at 485)

The same conclusions were reached in United States v Packorp Incorporated, 246 F Supp 963 (WD Mich, 1965) when the court stated:

> "Injunctions are not to be used as punitive measures, but only to prevent future violations." (246 F Supp at 965)

See also Meltzer v Board of Public Instruction of Orange County, Florida, 548 F2d 559 (CA 5, 1977).

Accordingly, the court's broad equitable powers may only be invoked to fashion an injunctive relief that seeks to prohibit certain conducts in the future.

STANDARD OF REVIEW FOR THE STATE PRISON OF SOUTHERN MICHIGAN AND THE MICHIGAN REFORMATORY

In analyzing the challenge to the conditions at the State Prison of Southern Michigan and the Michigan Reformatory, this court is adopting an approach which examines each challenged condition of confinement, to determine whether each condition is compatible with the "evolving standards of decency that mark the progress of a maturing society". Estelle v Gamble, 429 US 97; 97 S Ct 285; 50 L Ed 2d 251 (1976). The court does so for two reasons: First, this is not a general conditions lawsuit, but rather, a challenge to the "lock down" conditions at both of these institutions which the Defendants claim have ended. In deciding Plaintiffs' challenge to the "lock downs" and the Defendants' response, this court is first obliged to determine whether the conditions of confinement have returned to their pre-riot state. In those instances where the court finds there have been some changes, the court must then determine whether those new conditions are consistent with constitutional requirements. The court therefore, must look at each condition on an individual basis. Second, Plaintiffs may not use the concept of "totality of conditions," as a combination which opens the operation of a state agency to supervision by the federal courts. The Eighth Amendment, properly used, permits the court to correct only those prison conditions which impact in a cruel and unusual manner. Of course each condition of confinement does not exist in isolation, but the court has to keep in mind the Supreme Court's admonition in Brombell v Wolffish, 441 US 520, at 562; 99 S Ct 1861; 60 L Ed 2d 447 (1979) wherein the Supreme Court advised lower courts to avoid inserting themselves into the day-to-day operation of prisons under the guise of the Eighth Amendment to the Constitution. The Supreme Court cited with approval a second circuit opinion which stated:

> "An institution of obligation under the Eighth Amendment is at an end if it furnishes sentenced prisoners with adequate food, clothing, shelter, sanitation, medical care, and personal safety." (Wolffish v Levi, 573 F2d 118 at 125 (CA 2, 1978) cited in 441 US at 529.)

The court's admonition in Wolffish, supra is even more appropriate in this case for in Wolffish the court was reviewing a conditions case involving a federal facility; here, the court is considering whether a lock down has been ended at two institutions operated by a state government. The Supreme Court recently displayed an increased sensitivity to federal court intervention into state affairs. See Sumner v Mata, ___ US ___; 101 S Ct 765; 66 L Ed 2d 722 (1981). The court in Spain v Procunier, 600 F2d 189 (CA 9, 1979) stated:

> "The federal court should use great restraint before issuing orders based on the finding that the state has followed unlawful procedures in discharging the unenviable task of keeping dangerous men in safe custody under humane conditions. . ." (600 at 193) (emphasis added)

Therefore, given the limited nature of the hearings, rather than venturing into the area of prison reform, a function more properly left to state government officials, this court will only be concerned with determining whether the specific conditions at the State Prison of Southern Michigan and the Michigan Reformatory have returned to their pre-riot state and, if not, whether the new conditions are within the Eighth Amendment.

STANDARD OF REVIEW FOR
THE MARQUETTE BRANCH PRISON

In determining whether an emergency still continues at the Marquette Branch Prison, and how soon restrictions there should be lifted, the court must decide whether the evidence presented by the Plaintiffs proves the lack of an emergency situation at the institution. In making that determination, the court must weigh what testimony is on behalf of Plaintiffs' versus the testimony of Director Johnson and Warden Koehler that there is still continuing an ongoing emergency at that institution. In weighing the testimony the court has kept in mind the admonition of Justice Brennan in his concurring opinion in Rhodes v Chapman, ___ US ___; ___ L Ed 2d ___; ___ S Ct ___; 49 LW 4677 (1981):

> "In performing this responsibility, this court and the lower courts have been especially deferential to prison authorities 'in the adoption and execution of policies and practices that in their judgment are needed to preserve paternal order and discipline and to maintain institutional security." (49 LW at 4683) (emphasis added)

The deference paid to prison officials is extremely important in determining the existence, or lack thereof, of an emergency situation. As the court in Blair v Finkbeiner, 402 F Supp 1092 (ND Ill, 1975), a case involving a prison "lock down" as a result of inmates taking hostages in one of the cellblocks, stated:

> "Particularly in instances of emergency situations where prison authorities are faced with serious threats to the security of the prison community, it is not within the province of a court to second-guess the judgment of corrections officials by deciding after

> the fact whether a lock-up was, in fact, justified. . . . The same judicial deference which must be afforded prison administrators in reviewing their imposition of emergency dead-lock must also be afforded them in reviewing their decisions as to when and how to terminate it."

The burden this standard places on the Plaintiffs is so great that only in those situations where the officials themselves have stated an emergency no longer exists have the courts found in fact an emergency does not exist. In Jefferson v Southworth, 447 F Supp 179 (D. RI, 1978), the court found:

> "In this case there is not even an open question as to whether an emergency exists. Associate Director Laurie flatly states there is none. Even if an emergency once existed sufficient to justify the initial lockup, a conclusion this Court has not and need not reach, those circumstances ceased long ago and cannot justify confinement extending for over five months. Any deference, properly accorded an administrative determination that an emergency situation justifies a general lockup, is not appropriate when, by the administration's own admission, the emergency no longer exists. See Hoitt v. Vitek, 497 F.2d 598, 600 (1st Cir, 1974). (emphasis added)
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> Thus the case at bar is clearly distinguishable from those lockups which were constitutionally justified because an emergency in fact existed, see e.g., Hodges v. Klein, 421 F.Supp. 1224, 1235-36 (D.N.J. 1976); Blair v Finkbeiner, 402 F.Supp. 1092, 1094-95 (N.D.Ill. 1975); Knuckles v. Prasse, 302 F. Supp. 1036 (E.D.Pa.1969), cert. denied, 402 U.S. 936, 91 S.Ct. 2262, 29 L.Ed.2d 717 (1971); cf. LaBatt v Twomey, 513 F.2d 741 (7th Cir. 1975); Carlo v Gunter, 392 F.Supp. 871 (D.Mass.1975), vacated and remanded, 520 F.2d 1293 (1st Cir. 1975) (due process required)." (emphasis added)

See also Preston v Thompson, 589 F2d 302 (CA 7, 1978). In this case both Director Johnson and Warden Koehler have indicated the emergency still continues at the Marquette Branch Prison. The court is obliged to place great weight on their opinions and it is incumbent upon the Plaintiffs not just to prove that their judgment is incorrect, but that judgment is so erroneous that it constitutes a clear showing of a gross abuse of their discretion insofar as the need to maintain internal security at the Marquette Branch Prison is concerned. As the court in Gillard v Oswald, 552 F2d 456 (CA 2, 1977) stated:

> "An 'emergency' of the type exhibited in Clinton in February 1973 cannot be measured with the timing of a stop-watch or have an automatic shut-off switch. It may well be that the immediate measures taken by the Superintendent caused the assaults to cease, but these visible signs would not necessarily evidence a cure of the cause to assure accurate identification of the troublemakers. Their ascertainment would necessitate time and subtle investigation because it is to be doubted that inmates would relish even the suspicion of being known as informants. The methods to be pursued had to be entrusted to the discretion and judgment of the Superintendent. His judgment should prevail absent a clear showing of gross abuse." (552 F2d at 459)

The Plaintiffs have failed to establish that the Defendants have grossly abused their discretion. This failure by the Plaintiffs to establish a gross abuse of discretion requires that this court give Director Johnson and Warden Koehler the deference that they must be afforded in terms of deciding how and when to return the Marquette Branch Prison back to normal. The court cannot find the Defendants' actions are in violation of the Eighth Amendment.

VISITATION

The threshold question facing this court is whether Plaintiffs established a change in visitation privileges at the three institutions. With regard to the Michigan Reformatory the only evidence of change is the Defendants have instituted a "no smoking" policy in their visitation room. With regard to the Marquette Branch Prison, it appears that current visitation privileges for all inmates are the same as existed prior to the riots in May, 1981. (For a period of time non-contact visitation existed for individuals who were classified as being on green cards; this however did change prior to these hearings.) With regard to the State Prison of Southern Michigan, current visitation privileges for all inmates are the same as existed prior to the riots of May, 1981. Therefore, it does not appear the Plaintiffs have established a change in inmate visitation privileges.

It must be recognized, however, even if Plaintiff estabilised that a change in visitation privileges for inmates at any of the three institutions occurred, there is no federal constitutional or statutory right to visitation. See McCray v Sullivan, 509 F2d 1332 (CA5, 1975); White v Keller, 588 F2d 913 (CA 4, 1978); Henry v Delaware, 368 F Supp 286 (D Del, 1973); Pinkston v Bensinger, 359 F Supp 95 (ND Ill, 1973); Rowland v Wolff, 336 F Supp 257 (D Neb, 1971); Patterson v Walters, 363 F Supp 486 (WD Pa, 1973). Moreover, those cases which have considered visitation arrangements have found that there is no right to contact visitation. See Fitzgerald v Procunier, 393 F Supp 335 (ND Cal, 1975); Feeley v Sampson, 570 F2d 364 (CA 1, 1977); Oxendine v Williams, 509 F2d 1405 (CA 4, 1975). Nor may the Plaintiffs bring a §1983 action on behalf of those people who are visiting them, as one person cannot sue for the alleged deprivation

of another person's rights under 42 USC 1983. See Inmates v Owens, 561 F2d 560 (CA 4, 1977); 405 F Supp 50 (WWA, 1975).

This court finds Plaintiffs' claims with regard to denial of visitation privileges are frivolous and Defendants should be commended for the expeditious fashion in which they restored visitation privileges for all inmates at all three institutions.

REHABILITATION

Plaintiffs claim, due to the limited rehabilitation programs available to them (education, vocational, job assignments, etc.) caused by the "lock downs", they are being subjected to cruel and unusual punishment. Additionally, they charge this deficiency has an adverse affect on their prospects of parole. There is no evidence on this record that any inmate's prospect for parole has been hampered at any of these institutions because of the "lock downs" which occurred subsequent to the riots. Nor, does the record support a claim of severely limited rehabilitative programs at any of the institutions.

However, even if the Plaintiffs had presented evidence in support of their claims in regard to parole, Plaintiffs would not have stated a cause of action for which relief could be granted under 42 USC §1983. Inmates do not have an inherent constitutional right to a reduced term of confinment by way of release on parole. See Greenholtz v Inmates of Nebraska Penal and Correctional Complex, 439 US 1064; 99 S Ct 827; 59 L Ed 2d 29 (1979). Nor would Plaintiffs have stated a cause of action with regards to rehabilitative programs. The Plaintiffs in French v Heyne, 547 F2d 994 (CA 7, 1976) brought an action which alleged a lack of adequate rehabilitative programs including educational

and employment opportunities, which when combined with overall conditions of confinement, were such they violated the Eighth Amendment ban on cruel and unusual punishment. The court held:

> "Although rehabilitation has been recognized as one of the ends of confinement, see e.g. Procunier v Martinez, supra 416 U.S. at 412-413, 94 S.Ct. 1800, we cannot say that the lack of rehabilitative programs in this case, even coupled with those conditions alleged to exist that the reformatory, establish that '. . . the actions of the defendants intentionally inflicted excessive or grossly severe punishment . . . or that conditions so harsh as to shock the general conscience when knowingly maintained.'" (547 at 1002)

A similar conclusion was reached by the United States Court of Appeals in the 10th Circuit in Battle v Anderson, 564 F2d 388 (CA 7, 1977). The court held:

> "An inmate does not have a federal constitutional right to rehabilitation."

So, as desirable a goal as rehabilitation of inmates is, there is no constitutional right to rehabilitation. See Gardner v Johnson, 429 F Supp 432 (ED Mich, 1977); Newman v State of Alabama, 559 F2d 283 (CA 5, 1977 cert den 483 US 919; 98 S Ct 3144; 57 L Ed 2d 1160 (1978); Jackson v McLemore, 523 F2d 838 (CA 8, 1975); Novak v Beto, 453 F2d 661 (CA 5, 1971).

Therefore, Plaintiffs have failed to establish any violation of the Eighth Amendment with regards to Defendants' rehabilitative programs.

DIET AND MEALS

The Court finds Plaintiffs have failed to present any evidence with regard to meals at the Michigan Reformatory, and have therefore, failed to meet their burden of proof as to their claims about meal and dietetic programs at that institution. The uncontested evidence for both the State Prison of Southern Michigan and the Marquette Branch Prison shows inmates are currently eating all of their three meals in the dining hall.

The court finds that at the State Prison of Southern Michigan, each inmate receives approximately three hours per day to eat meals or one hour per meal. Additionally, special diets are prepared for those inmates who are in need of them. There is no evidence on this record that any individual has been forced to eat a diet that is contrary to his religious beliefs.

At the Marquette Branch Prison general population inmates receive 1 1/2 to 2 hours a day or a 1/2 hour to 45 minutes per meal in the dining hall. The court finds that these periods of time are sufficient for an individual inmate to eat a meal and are not in violation of the Constitution. As the court stated in Stewart v Gates, 450 F Supp 583 (CD Cal, 1978):

> "[M]ealtime is an important occasion to a prisoner, and he should be entitled to savor his food, along with a bit of conversation, rather than be obliged to eat in a hurried atmosphere. An inmate should be allowed not less than fifteen minutes at the meal table and an order will be issued accordingly." (450 F Supp at 588) (emphasis added)

This is not to say that the Constitution requires inmates be fed out of their cells. As the court in Frazier v Bishop, 396 F Supp 305 (ED Tenn, 1974), a case involving a claim that feeding non-working inmates two meals a day in their cells violated their Eighth Amendment rights, stated:

> "The Court finds from all the evidence and reasonable inferences drawn therefrom that the plaintiff has not proved by the preponderence of the evidence that he was deprived by the defendants of his right against cruel and unusual punishment. . ." (396 F Supp at 307)

See Gibson v Lynch, 652 F2d 348 (1981) at 350353.

While this court believes state officials should make every effort to provide individualized menus to assert every religious faith there is no requirement that they do so, so long as they provide a sufficient diet that a prisoner who is obliged by religious beliefs to abstain from eating certain foods and does so, can obtain a balanced diet. See Adams v Carlson, 352 F Supp 882 (ED Ill, 1973); Abernathy v Cunningham, 393 F2d 775 (CA 4, 1968). In this case there is no evidence which proves any individual suffered from a dietary imbalance caused by Defendants' failure to provide meals whose content is not offensive to individual inmate's religious beliefs.

Plaintiffs' claim about meals and cleanliness are not of constitutional dimension. In the case of Burrascano v Levi, 452 F Supp 1066 (1978), an inmate sued among others, the United States Attorney for the District of Maryland and the Warden of the Baltimore City Jail, Gordon Kampka, alleging among other things, that the kitchen and dining area were filthy. The court held:

> "Even liberally construed, see Haines v Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), the complaint as to this state of affairs fails to rise above the level of a common gripe about the cleanliness of the City Jail's dining area. This is hardly a matter of constitutional dimension in view of the bounds of any reasonable interpretation of one's right to be free from cruel and unusual punishment." (452 at 1068)

The testimony about meals being cold or less than pleasant do not in and of themselves, rise to the level of a constitutional claim. As the court said in Freeman v Trudell, 497 F Supp 481 (ED Mich, 1980), a case involving a claim by an inmate that waste had been placed in his food:

> "In addition, it has been held that deficient prison food does not rise to the level of a constitutional violation requiring the intervention of a Federal Court. As the Court explained in Sinclair v. Henderson, 331 F.Supp 1123, 1126 (D.La. 1971). 'An occasional incident of a foreign object finding its way into the food, while regrettable, does not raise a question of constitutional proportion. It simply raises a problem of internal prison administration to be dealt with by the prison authorities the best they can."

See also Lovern v Cox, 374 F Supp 32 (WD Va, 1974).

To sustain an Eighth Amendment claim regarding meals, Plaintiffs would have to establish that the diet was insufficient or resulted in illness. They have failed to do so.

MAIL

The court finds Plaintiffs failed to present any evidence that any inmate, at any of the three institutions, has had any of

his personal mail censored, read or destroyed. Neither is there any evidence that any of the outgoing mail at any of the institutions has been censored, read, destroyed or delayed. That testimony from Defendants indicates they are providing outgoing and incoming mail service in the same manner as existed prior to May, 1981.

Plaintiffs have failed to establish a violation of the type presented in Procunier v Martinez, 416 US 396; 94 S Ct 1800; 40 L Ed 2d 224 (1974), and so have failed to meet the burden of proof.

TELEPHONES

Plaintiffs failed to present what, if any, access inmates at the Michigan Reformatory have to telephones. Therefore, this court need not consider that institution, and all claims regarding telephone access at the Michigan Reformatory are dismissed. This court finds as to the State Prison of Southern Michigan and the Marquette Branch Prison, that the evidence presented by both sides establishes inmates may use the telephone at least once a week and some inmates may use the telephone several times a week. The evidence presented shows there is no demonstrable change in telephone access between the situation as it currently exists, and as it existed prior to the riots of May, 1981.

However, even if the Defendants had not restored inmate access to telephones to the pre-riot levels it would then not rise to a constitutional question. That such denial is not a violation of the Eighth Amendment. See Hill v Estelle, 537 F2d 214 (CA 5, 1976); Parker v Cook, 464 F Supp 350 (SD Fla, 1979). Even in those cases when corrections officials have been ordered to provide

access to telephones no particular formula is required to regulate telephone use. This is a matter that is within the sound discretion of the prison officials. See Feeley v Sampson, 570 F2d 364 (CA 1, 1978). Since both sides agree Plaintiffs are being allowed access to the telephones, this court does not have to reach the issue of whether telephone access is mandated by the Eighth Amendment. Rather, this court finds that there is existing access to the telephones and the level of access for an individual inmate is within the sound discretion of the prison officials. Therefore, this court finds no cause of action.

SHOWERS

Plaintiffs failed to present evidence as to how often inmates at the Michigan Reformatory take showers on a weekly basis. Insofar as that institution is concerned all claims regarding showers are dismissed. The court finds those inmates at the State Prison of Southern Michigan who are working, in school or attending college, have access to showers on a daily basis, at times other than their meal and yard periods. As to the small portion of the population at the State Prison of Southern Michigan, which throughout this case have been called non-working inmates, the court finds they have access to showers on a daily basis. While there has been some dispute as to whether these inmates are forced to chose between taking a shower or going to eat or to yard, the preponderance of the evidence proves there is time set aside other than yard and meal periods for which these inmates can take showers. The most persuasive piece of evidence in that regard, are the logbooks submitted for the Central Complexes. These books show showers are operated during periods, other than yard and meals, when working and student inmates are not in the block. The court concludes these logbooks support the testimony of

Defendants' witnesses that times other than yard and meal periods are set aside for inmate showers and this court so finds. As to the Marquette Branch Prison, the evidence shows inmates receive three showers per week.

A review of the relevant decisions with regard to the minimum number of showers per week required by the Eighth Amendment, leads this court to the conclusion that Plaintiffs' access to showers exceeds the standards set by the Constitution. In Preston v Thompson, 589 F2d 300 (CA 7, 1978), a case which dealt with complaints about the unnecessary extension of a lock down, the Court of Appeals sustained the District Court's order requiring a minimum of two showers a week for general population inmates stating:

> "The shower and west cellblock recreation provisions of the limited preliminary relief ordered by the district court on November 3 do not constitute an abuse of this discretion. The fact that the elements of the relief package may go beyond the constitutional minimum does not mean that the court lacks the authority to order them to remedy a constitutional violation." (559 F2d at 303)

In Jefferson v Southworth, 447 F Supp 179 (D RI, 1978,) a lock down case heavily relied upon by Plaintiffs, the court found no existing emergency and ordered the end to the "lock down" at the maximum security facility of the adult correctional institution in Rhode Island. In so doing, the court ordered the defendants to institute a program which included showers every other day for general population inmates. Neither of these cases purport to be the minimum level of showers required by the Eighth Amendment, rather they are responses to unconstitutional conditions where the court in its discretion has exceeded minimum constitutional

standards. Several courts have found that access to showers at levels equal to or below those ordered in Preston, supra and Southworth, supra to be constitutional. In United States v Rundle, 368 F Supp 1186 (ED Penn, 1973), the court held, an inmate confined in administrative segregation, who was allowed only one shower per week was not subjected to cruel and unusual punishment. The court in Dorrough v Hogan, 563 F2d 1259 (CA 5, 1977), a lawsuit alleging unconstitutional conditions, held that the general operation of the Atlanta Federal Penitentiary including access to showers was constitutional, stating:

> "Moreover, each prisoner's individual hygenic needs are adequately met by the facilities in each cell, [hot and cold running water] and by access to the shower facilities at least two, generally three times a week." (563 F2d at 1262)

See also Krist v Smith, 309 F Supp 497 (SD Ga, 1970), aff'd 439 F2d 146 (CA 5, 1971); McCray v Sullivan, 509 F2d 1332 (CA 5, 1970) cert den 423 US 859; 96 S Ct 1114; 46 L Ed 2d 36; Houchin v Holmes, 386 F Supp 1038 (ED Ky, 1974).

In Watkins v Johnson, 375 F Supp 1005 (ED Pa, 1974) the court found an inmate placed in administrative segregation with no hot water, who was allowed two showers a week, could not claim that these conditions were:

> "of a quality that would be characterized as barbarous, inhumane, foul, or shocking to the conscience."

The court therefore, found the conditions of the plaintiff's confinement were within the structures of the Eighth Amendment. In Fitzgerald v Procunier, 393 F Supp 335 (ND Cal, 1975) the

court found the "occasional showers" given to the plaintiffs were sufficient, and granted the defendant's motion for summary judgment with regard to all aspects of the case relating to a claim of cruel and unusual punishment. (393 F Supp at 342 at 343)

This court therefore finds that Plaintiffs' access to showers at the State Prison of Southern Michigan is the same as existed prior to the riot. Further, the number of showers given at both the State Prison of Southern Michigan and the Marquette Branch Prison are well above those required by the Eighth Amendment.

RECREATIONAL YARD

This court finds the Plaintiffs failed to meet their burden of proof with regard to recreational yard at the Michigan Reformatory. Plaintiffs' witnesses contradict themselves and are therefore unreliable. Since there is no clear evidence as to the amount of recreational yard at the Michigan Reformatory, this court finds that Plaintiffs have not established a lack of recreational yard which is in violation of the Eighth Amendment at the the Michigan Reformatory.

As to the State Prison of Southern Michigan, this court finds in the Central Complex, working and non-working inmates receive one hour per day of recreational yard. Additionally, this court finds working inmates in 11 and 12-Blocks receive at least two hours per day and non-working inmates in 11 and 12-Blocks receive up to six hours per day of recreational yard. In the South Complex this court finds working inmates receive up to two hours a day of recreational yard and non-working inmates receive up to six hours a day of recreational yard. In the North Complex, this court finds that working and non-working inmates receive 2

and a 1/2 hours of recreational yard every other day. Additionally, this court finds the State Prison of Southern Michigan has an athletic director in charge of organizing athletic activities for the entire institution and each complex has its own athletic director. The court also finds that there are gymnasiums and baseyard areas which can be used for indoor athletic and recreational activities. Further the court finds that during the period of the "lock down", organized recreational activities were interrupted; but that these activities have resumed and this court has no reason to believe that they will not continue as they did prior to the riot of May, 1981. Currently inmates at the Marquette Branch prison are receiving one hour of recreational yard per day five days a week one week, and one hour a day six days a week the next. The court has observed a pattern throughout this proceeding of increasing recreational yard time for the inmates at the Marquette Branch Prison. This pattern is consistent with the Defendants' stated goal of returning that institution's recreational yard back to their normal operation by January 1, 1982. This court finds that recreational activities were interrupted at the Marquette Branch Prison, but are in the process of being returned to normal. Further the court finds supervised group recreational activities at the Marquette Branch Prison will return at some point sometime prior to January 1, 1982.

This court believes if confinement is for long periods of time, then the failure to provide regular outdoor activity is as a matter of law, cruel and unusual punishment. See Smith v Sullivan, 553 F2d 373 (CA5, 1977). However, this court cannot conclude that the recreational yard periods provided to the Plaintiffs by the Defendants are either by themselves or when combined with other conditions of confinement cruel and unusual punishment. This court, after a careful review of the law, has found no cases which indicate yard periods of the durations

provided by Defendants to the Plaintiffs constitute cruel and unusual punishment. It has found several cases where recreational periods of equal to, or shorter duration, than those in this case are either found to be within the structures of the Eighth Amendment, or are remedies ordered by the court to cure an unconstitutional condition.

In Smith v Sullivan, supra, the Fifth Circuit Court of Appeals found the defendants provided the inmates neither outdoor exercise or recreational areas. The District Court directed the authorities to create an area for outside exercise and then to allow each individual inmate one hour supervised recreational yard three days per week. The Court of Appeals upheld the District Court's decision finding the order was consistent with state statutes and regulations on recreation. In Stewart v Gates, 450 F Supp 583 (DC Cal, 1970) the court held:

> "providing two hours and twenty minutes of outdoor recreation per week was constitutional." (450 F Supp at 586)

The court in Fitzgerald v Procunier, 393 F Supp 335 (ND Cal, 1975) found inmates in administrative segregation, who were allowed out of their cells only for showers and noncontact visitation, need not be given more than 45 minutes to an hour of recreational yard 2 to 3 times a week. In Alberti v Sheriff of Harris County, Texas, 406 F Supp 649 (SD Tex, 1975) the court found the constitution required only:

> "[O]ne hour of physical exercise outdoors three times per week, weather permitting." (406 F Supp at 667)

In Watkins v Johnson, 375 F Supp 1005 (ED Pa, 1974) the court found an inmate who is confined in administrative segregation

after being transferred there on charges flowing out of charges of prison rioting and who was allowed out of his cell only for visits need only be given 15 minutes a day for recreation. The court stated the schedule could not be characterized as:

> "barbarous, inhumane, foul, or shocking to the conscience." (375 F Supp at 1010).

In Hamilton v Landrieu, 351 F Supp 549 (ED La, 1972) the court ordered a recreational program which:

> "should strive to give each inmate one hour of recreation off the tier at least five days a week." (351 F Supp at 550).

In Frazier v Ward, 426 F Supp 1354 (ND NY, 1977) the court found the state of New York should institute a recreation program that:

> ". . . one that directs outdoor exercise for one hour per day in the yard at least for five days a week, weather permitting, . . ." (426 F Supp at 1369)

See also Spain v Procunier, 600 F2d 189 (CA 9, 1979).

Several courts, after finding a failure to provide the minimum level of recreational activity required by the Eighth Amendment, ordered defendants to provide at least one hour per day of recreation outside of the cell. In Campbell v Cauthron, 623 F2d 503 (CA 8, 1980) the court held:

> "Furthermore, to prevent enforced idleness from resulting in the type of physical degeneration described in the record, each inmate that is confined to his cell for more than 16 hours per day shall ordinarily be given the opportunity to exercise for at least one hour per day out side the cell."

See also Miller v Carson, 563 F2d 741 (CA 5, 1977); O'Brien v Moriarty, 489 F2d 941 at 944 (CA 1, 1974); Conklin v Hancock, 334 F Supp 1119 (D NH, 1971.

Finally in those "lock down" cases relied upon by Plaintiffs, where the courts have found the "lock down" of institutions to be of an unconsitutional duration, the remedy implemented by those courts for recreational yard was no more than one hour per day. See Jefferson v Southworth, supra; Preston v Thompson, supra.

In Dorrough v Hogan, 563 F2d 1259 (CA 5, 1977) the court held:

> "this court concludes that an order requiring a change in exercise periods from two days to three or five or whatever, would be an unwarranted intrusion upon the Bureau of Prisons' discretion in this area, . . . The denial of additional exercise periods simply is not a sufficient grave deprivation of bodily needs to trigger special injunctive relief from this court." (563 F2d at 1264)

This court finds currently inmates at both the Marquette Branch Prison and the State Prison of Southern Michigan are given recreational yard in excess of the amount required by the Eighth Amendment. To order additional yard would be an unwarranted intrusion into the Department of Corrections' discretion in this area.

RESTRICTIONS ON OUT-OF-CELL MOVEMENT

Plaintiffs failed to offer any evidence as to the amount of out-of-cell time available to individual inmates at the

Michigan Reformatory. Therefore, this court must dismiss all claims regarding out-of-cell time at the Michigan Reformatory. This court finds only approximately 432 general population inmates at the State Prison of Southern Michigan are out of their cells less than seven hours a day, none of those are out of their cells less than five hours per day, and most general population inmates at the State Prison of Southern Michigan are out of their cells in access of nine hours per day or more. This court is unaware of any Eighth Amendment standard that requires Defendants to give Plaintiffs more than nine hours out-of-cell time.

Turning to those individuals who are out of their cells for only five to seven hours a day this court finds even that period of time is not so inhumane, barbarous or offensive to civilizied conduct as to constitute cruel and unusual punishment. The Supreme Court in Rhodes v Chapman, supra found as little as two hours out-of-cell time per week could be constitutional for those inmates in administrative segregation (49 LW at 4678, N. 3). The court also found inmates which were classified "voluntarily idle" could be confined to their cells for all but four hours a week (49 LW at 4678, N.3). The court in O'Brien v Moriarty, supra found those individuals placed in a maximum security facility might be limited to out-of-cell time of no more than one hour a day. The court held:

> "the conditions here are not so severe as to be per se impermissible." (489 F2d at 944)

Since the amount of available out-of-cell time for those non-working inmates at the State Prison of Southern Michigan is so much greater than the out-of-cell time sustained in either Rhodes v Chapman, supra or O'Brien v Moriarty, supra, this court must conclude the amount of out-of-cell time for the small number

of non-working inmates at the State Prison of Southern Michigan does not constitute cruel and unusual punishment.

RELIGION

The court finds the evidence on this record with respect to religious services at the Michigan Reformatory and at the State Prison of Southern Michigan establishes they are currently on-going. At the Marquette Branch Prison, due to the emergency situation, full chapel services have not resumed, but religious services are being broadcast over the institution radio.

Federal courts have consistently recognized incarceration necessarily limits or withdraws specific rights enjoyed by the general public. Price v Johnson, 334 US 266; 68 S Ct 1049; 92 L Ed 2d 1356 (1948). In Sharp v Sagler, 408 F2d 966 (CA 8, 1969), then Circuit Judge Blackman dismissed a complaint from four inmates who were not allowed to attend church services on security grounds stating:

> "While freedom to believe is absolute, the exercise of religion is not."

See also Sweet v South Carolina Department of Corrections, 529 F2d 854 at 863 (CA 4, 1975). In 1964, the Second Circuit Court of Appeals in Sostre v McGinnis, 334 F2d 906 (CA 2, 1964), cert den 397 US 892; 85 S Ct 168; 13 L Ed 2d 96 (1964), a prominent and often cited case observed:

> "we should point out that the practice of any religion, however orthodox its beliefs and however accepted its practices, is subject to strict supervision and extensive limitations in a prison. The principal problem of prison administration is the maintenance of disci-

> pline. . . No romantic or sentimental view of constitituional rights or of religion should induce the court to interfere with the necessary disciplinary regime established by the prison officials." (334 F2d at 908)

In Cooper v Pate, 382 F2d 518 (CA 7, 1967), the court held that:

> "It is clear that prison authorities must not punish a prisoner nor discriminate against him on account of his religious faith. But although a prisoner retains his complete freedom of religious belief, his conviction and sentence have subjected him to some curtailment of his freedom to exercise his beliefs." (footnotes omitted) (382 F2d at 521)

In Pell v Procunier, 417 US 817; 94 S Ct 2800; 41 L Ed 2d 495 (1974), the Supreme Court discussed and summarized the viability of the first amendment in prison contexts:

> "We start with the familiar proposition that 'lawful incarceration brings about the necessary withdrawal of limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system' Price v Johnson, 334 US 266, 386, 92 L Ed 1356, 68 S Ct 1049 (1948). See also Cruz v Beto, 405 US 319, 321, 31 L Ed 2d 263, 92 S Ct 1079 (1972). In the first amendment context a corollary of this principle is that a prison inmate retains those first amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system. Thus, challenges to prison restrictions that are asserted to inhibit first amendment interests must be analyzed in terms of the legitimate policies and goals of the corrections system, to whose custody and care the prisoner had been committed in accordance with due process of law." (417 US at 822, 94 S Ct 2800, 41 L Ed 2d at 401).

Aplying these principles to the case at bar, it is clear the manner in which religious activities are conducted at the State Prison of Southern Michigan and the Michigan Reformatory are constitutional and due to the emergency situation at the Marquette Branch Prison, this court in balancing the competing interest does not believe that attendance at church services outweighs the existing need to maintain prison safety and order.

This court therefore finds that the Defendants have not restricted the Plaintiffs rights to exercise their religious beliefs.

JOBS AND EDUCATION

This court finds Plaintiffs have failed to establish that there have been any changes in the job or educational activities at the Michigan Reformatory. Therefore, the claims regarding job opportunities at the Michigan Reformatory are dismissed. At the Marquette Branch Prison, more than 50% of the inmates are working or take classes and Defendants have consistently been increasing the number of jobs and individuals allowed to attend school and have gone so far as to begin planning for an on-the-job training program to replace the educational opportunities that were lost when the inmates destroyed the vocational school. At Jackson 3,855 of the 4,533 general population inmates either are working, attending school or attending college.

However, even if Defendants were not making this type of effort, the United States Supreme Court in Rhodes v Chapman, supra, has stated that limitations placed upon inmates' jobs and education opportunities are not an Eighth Amendment question, the Supreme Court observed:

> "Limited work hours and delay before receiving education do not inflict pain, much less unnecessary or wanton pain; deprivations of this kind simply are not punishment, we would have to wrench the Eighth Amendment from its language and history to hold that delay of desirable aids rehabiilitation violates the constitution." (49 LW at 4679)

The holding is not new; rather it is simply another case in a long line of federal cases dealing with the issue. In Gardener v Johnson, 429 F Supp 432 (ED Mich, 1977), Chief Judge Damon Keith found an inmate does not have a property or liberty interest in any job and therefore, removal from that job does not state a cause of action under 42 USC 1983. Judge Keith stated:

> "Prison inmates have no vested rights to particular job assignments; removal therefrom is a matter of prison administration with which courts are loathe to interfere."

In Altizer v Paderick, 569 F2d 812 (CA 4, 1978), the court held work and educational assignments are matters of discretion for the institutional administrator, not the federal courts. The court in Hayes v Cuyler, 475 F Supp 1347 (ED Tenn, 1979), held the level of educational activity is a matter for prison administrators and allegations regarding education or lack thereof, does not rise to the level of a federal issue. In Jordon v Keve, 387 F Supp 765 (D Del, 1974), the court held:

> "In the case at bar, the petitioners specifically claim deprivation of the right to academic programs, which had been available to them while in pretrial detention. Manifestly, this activity is not one that rises to the level of a fundamental constitutional right deserving of federal judicial interference with internal administration of state prisons. Queens v. South Carolina Department of Corrections, 307 F.Supp. 841, 846 (denying even the possibility of judicial re-

> view at 845 (D.S.C.1970); United States ex rel. Cleggett v. Pate, 229 F.Supp. 818, 819 (N.C.Ill. 1964); Pinkston v. Bensinger, 359 F.Supp. 95, 99 (N.C.Ill.1973); Diehl v. Wainwright, 419 F.2d 1309 (C.A.5, 1970). As stated by the Third Circuit in Marnin v. Pinto, 463 F.2d 583, 586 (C.A.3, 1972), 'there should be federal court intervention into state prison affairs only under extreme provocation.' That situation is clearly not present here.
>
> Accordingly, the complaint will be dismissed for failure to state a claim upon which relief may be granted." (emphasis added)

See also Deihl v Wainwright, 419 F2d 1309 (CA 5, 1980). The courts have also held that there is no right to vocational training. In Russell v Oliver, 392 F Supp 470 (WD Va, 1975) mod 552 F2d 115 (CA 4, 1977) the court held:

> "Furthermore, it is the opinion of this court that no federal constitutional right to vocational training exists for inmates in a correctional system and the state has no obligation to provide the plaintiff with vocational materials."

See also Pinkston v Bensinger, 359 F Supp 99 (ND Ill, 1973.)

Therefore, it is the court's opinion that Plaintiffs have failed to establish any violation of the Eighth Amendment in regard to the level of jobs and educational programs at any of these institutions.

MEDICAL CARE

This court finds that with regard to the Michigan Reformatory, Plaintiffs have failed to establish any facts which support a claim of a denial of medical care and therefore, the court

is dismissing all claims with regard to that institution. This court finds that the State Prison of Southern Michigan and the Marquette Branch Prison proceeded to send medical personnel into each block, cell by cell, immediately following the riots, and the medical teams initiated medical examinations to determine if any inmate was in need of medical care. At both institutions, as conditions returned to normal Defendants began to conduct the initial medical call-out, out-of-cell and both institutions have returned to the procedure that was used prior to the riots of May, 1981.

Additionally, this court finds that medical personnel at the State Prison of Southern Michigan went so far as to provide life support medication and other forms of medical assistance to inmates during the course of the riot itself. This court also finds that the medical system at these institutions is run in a laudatory manner.

In order to have a cognizable claim for inadequate medical care, Plaintiffs must establish that Defendants' medical assistance in some manner exceeded the prohibition against cruel and unusual punishment. See Estelle v Gamble, 429 US 97; 97 S Ct 285; 50 L Ed 2d 251 (1976). In Estelle, supra, the United States Supreme Court held an actionable claim under 42 USC 1983 must allege a deliberate indifference to serious medical needs. In discussing these standards, Justice Marshall, writing for the majority, stated:

> "Similarly, in the medical context, an inadvertent failure to provide adequate medical care cannot be said to constitute 'an unnecessary and wanton infliction of pain; or to be 'repugnant to the conscience of mankind.' Thus, a complaint that a physician has been negligent in diagnosing or treating a medical con-

deliberately indifferent to any serious medical need. None of Plaintiffs' witnesses testified to any life threatening illness or injury which was left untreated. In fact, several of Plaintiffs' witnesses from the Marquette Branch Prison testified as to the excellent nature of the medical care they were receiving at the Marquette Branch Prison. Dr. Harness testified that his department was second to none in terms of the medical care given to inmates and that the Department had a record that he was proud of. It is therefore apparent that no deprivation of medical care or intentional disregard for serious medical need occurred. That some Plaintiffs felt they did not receive the type of treatment they desired did not in any way amount to a deprivation of their Eighth Amendment rights under the federal constitution.

MENTAL HEALTH

Plaintiffs have failed to present any evidence regarding the impact of the "lock down" at the Michigan Reformatory on the mental health of the inmates there and/or any change in the approach of the Defendants with regard to the treatment of mental illness at the Michigan Reformatory. Therefore, all claims with regard to that institution are dismissed.

This court finds at the State Prison of Southern Michigan and the Marquette Branch Prison that the testimony in this case demonstrates a concern for the mental health of the inmates on the part of the Defendants. This concern is reflected by the fact that both institutions have professionally trained staff personnel on the premises to deal with both serious mental illness and emotional crises. This court finds that this concern was heightened with the advent of the "lock down" to the point where employees of the Defendants actually conducted surveys to attempt to determine what impact the "lock down" had on the mental health of the inmates.

This court concludes the evidence fails to support any claim that the Defendants have deliberately ignored any serious mental illness that arose from the "lock down". This court further finds that while the "lock down" has created some short term distress, that distress in and of itself does not raise to the level of a constitutional issue. See Robinson v McCorkle, 462 F2d 111 (CA 3, 1972). Therefore, this court finds that Plaintiffs have failed to carry their burden of proof with regard to its claims of permanent mental harm occurring to inmates at the State Prison of Southern Michigan and the Marquette Branch Prison as a result of the "lock down".

ATTORNEY VISITATION AND LEGAL MAIL

It is clear that prison officials must allow inmates to communicate with their counsel, both in terms of visitation and by mail. See Wolff v McDonnell, 418 US 539; 94 S Ct 2963; 41 L Ed 2d 935 (1974); Rhem v McGrath, 507 F2d 333 (CA 2, 1974); Procunier v Martinez, supra.

This court finds that Plaintiffs at all three institutions have failed to meet their burden of proof to establish Defendants have denied them access to counsel. There is no evidence on this record any inmate was denied access to counsel at any point subsequent to May, 1981. Nor is there any credible evidence on this record that the delivery of legal mail has in any way changed from the way it has always been delivered. Therefore, this court finds that Plaintiffs have failed to establish that the Defendants have in any way restricted access to counsel, or prevented delivery of legal mail.

ACCESS TO COURTS AND LAW LIBRARIES

The record reflects that the law libraries at all three institutions are currently in operation and that, at the Marquette Branch Prison, the Defendants during the "lock down" improved the overall condition of the law library. This court also finds while there is some dispute between the Plaintiffs and the Defendants as to what level of access is allowed, there is no evidence on this record, if the court completely accepts the Plaintiffs' testimony, that this lack of access has resulted in a denial of access to the courts.

Access to law books is a derivative right. Access to a law library itself is not so much constitutionally required as it is required to make access to the court effective. See Johnson v Avery, 393 US 483; 89 S Ct 747; 21 L Ed 2d 718 (1969); Johnson v Anderson, 370 F Supp 1373 (D Del, 1974). The Supreme Court in Bounds v Smith, 430 US 817; 97 S Ct 1491; 52 L Ed 2d 72 (1977), stated prisoner litigants have to be given meaningful access to the courts and officials in prison and state systems are obligated to provide adequate law libraries or adequate assistance from persons trained in the law. However, Bounds does clearly state that the right of access to the law library is not unlimited. In addition to the law library's operations, the evidence in this case indicates there are legal assistants and jailhouse lawyers at all three institutions. Further, there is no allegation that any individual was denied access to the court due to lack of access to the law library. Mr. Williams, a jailhouse lawyer at the Marquette Branch Prison who indicated he was unable to gain access to the law library on several occasions, but could not testify that he was in any way hindered in the extensive litigation that he has currently ongoing. Mr. Spytma at the

Michigan Reformatory has not claimed a denial of access to the courts due to an inability to use the law library. No inmate at the State Prison of Southern Michigan has testified to a denial of access to the courts.

For Plaintiffs to prevail on this issue, they would have to establish some lack of effective access to the courts due to an inability to use their respective law libraries, and as there is no evidence on this record to indicate a lack of effective access to the courts, Plaintiffs have failed to establish any significant deprivation of their constitutional rights. See Boston v Stanton, 450 F Supp 1049 (WD Mo, 1978); Burrascano v Levi, 452 F Supp 1066 (D Md, 1978); Adams v Carlson, 352 F Supp 882 (ED Ill, 1973); Twyman v Crisp, 584 F2d 352 (CA 10, 1978). While there are claims by Plaintiffs' witnesses that certain individuals have been unable to contact specific jailhouse lawyers and claims by jailhouse lawyers that they have been unable to work as much as they might like, there is no claim on this record that any individual inmate at any of the three institutions has been denied access to the court based upon inability to speak with a jailhouse lawyer. Since there is no constitutional right to a particular jailhouse lawyer and there is no claim that anyone has been deined access to the courts due to an inability to contact a jailhouse lawyer, Plaintiffs have failed to state a cause of action for which relief can be granted. See Johnson v Avery, supra; Mitchell v Carlson, 404 F Supp 1220 (D Kan, 1975).

SANITATION

There is no evidence on this record with regard to the sanitation conditions at the Michigan Reformatory and, therefore,

this court finds the Plaintiffs have failed to establish any inhumane or barbarous conditions at the Michigan Reformatory and, as such, have failed to establish a violation of the Eighth Amendment. As to the State Prison of Southern Michigan and the Marquette Branch Prison, the evidence indicates that access to cleaning materials is the same as it was prior to the riots in May, 1981. Further, the evidence indicates at the State Prison of Southern Michigan, Central Complex, a new cleaning program has been instituted which has improved the cleanliness of the blocks in that complex substantially over what it was prior to the riots in May, 1981. While the evidence does indicate one point, at the State Prison of Southern Michigan, inmates by throwing food out of their cells, created conditions which were characterized by the Warden as unspeakable, the Defendants were able to alleviate these conditions once they were able to go back to using the dining halls and instituted this new cleaning program. Since those conditions occurred because of actions taken by the inmates and are no longer in existence, this court finds that Plaintiffs have failed to establish a violation of the Eighth Amendment. See Adams v Carlson, supra; McLaughlin v Royster, 346 F Supp 297 (ED Va, 1972); Frazier v Bishop, 396 F Supp 305 (ED 10C, 1974). Additionally, this court finds that the inmates' access to linens, towels and clothing is the same as it was prior to the riots of May, 1981. As the court said in Tunnell v Robinson, 486 F Supp 1265 (WD Pa, 1980):

> "Accordingly, while courts seek to protect the welfare of those incarcerated, courts can do so only within the limits of the authority granted them by the constitution and law. Under these circumstances, prisoners' complaints relating to conditions concerning clothing issues or repairs of facilities and the like, are matters of internal concern and should be presented to the administrators of the institution to correct on each occasion when and where they occur, since they are bound to occur on almost a daily basis." Sparks v Fuller, 506 F2d 1238 (CA 1, 1974).

Therefore, in this area also Plaintiffs have failed to state a cause of action for which relief can be granted.

CONCLUSION

The court, in approaching this matter as it has already stated is well aware that it must be given appropriate deference to the expertise of the Defendants. The problems that arise in day-to-day operations of a correctional facility are not susceptible to easy solutions:

> "[T]he problems that arise in the day to day operation of a corrections facility are not susceptible of easy solutions. Prison administrators therefore should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." Bell v Wolfish, supra, 441 U.S. 520 at 547; 99 S.Ct. 1861; ___ L Ed 2d ___ (1979)

In addition to giving deference to prison administrators the court is keeping firmly in mind that "lawful incarceration brings about the necessary withdrawal or limitations of many privileges and rights, a retraction justified by the considerations underlying our penal system." Pell v Procunier, 417 US 817; 94 S Ct 2800; 41 L Ed 2d 495 (1974) [quoting from Price v Johnson, 334 US 266; 68 S Ct 1049; 92 L Ed 1356 (1948)]. Further, this court is firmly keeping in mind that federal courts do not supervise prisons but rather are there to enforce the constitutional rights of all individuals within prison settings. See Cruz v Beto, 405 US 319; 92 S Ct 1079; 31 L Ed 2d 263 (1972). Additionally, this court is aware it possesses no particular expertise in the conduct and management of correctional facilities and is particularly aware of the admonition that the problems of prison management are, in fact, very complex and not easily

susceptible to resolution which is why the courts have instituted the broad hands-off attitude towards the problems of the day-to-day operation of prisons. See Procunier v Martinez, 416 US 396; 94 S Ct 1800; 40 L Ed 2d 224 (1974).

This court does not wish anyone to believe that it is abrogating its responsibilities; but rather, this court believes that its responsibilities are limited to those areas where it finds the Defendants to have acted in violation of the Eighth Amendment's prohibitions against cruel and unusual punishment. This court does not intend to impose its own views on prison reform on the Defendants but rather will only act in those instances where it is firmly convinced that the Defendants have engaged in conduct which constitutes cruel and unusual punishment.

Traditionally, federal courts have used a liberal hands-off approach toward problems of prison operations. This approach arises from the federal court's view of the nature of the problems and the efficacy of judicial intervention. Prison officials are responsible for maintaining internal order and discipline in their institutions. They must guard against unauthorized access or escape, and must work to rehabilitate, to the extent that human nature and inadequate resources allow, the inmates placed in their custody. The massive obstacles to effective discharge of these duties are too numerous to warrant detaining. It is sufficient to state the problems of prisons are complex and intractable, and are not easily susceptible of resolution by the courts. Most demand the expertise of experienced administrators which are peculiarly within the province of executive branches of government. For all of those reasons, courts are not equipped to deal with the problems of prison administration and reform. Nor as a matter of judicial philosophy should they. Moreover, where state penal institutions are involved, federal courts have a further reason to deference to the appropriate prison authorities.

This court does not find any violation of the Plaintiffs' right to be free from cruel and unusual punishment. This court believes that the "lock down" at all three institutions was ordered in good faith and that the Defendants throughout have acted in good faith.

A review of the evidence fails to establish the need for the relief requested by Plaintiffs. In fact, even if the court had found that the "lock downs" were not in good faith, as the court found in Jefferson v Southworth, supra, the relief granted in that case would leave these institutions operating essentially as they are today. The court in Jefferson v Southworth, supra, ordered the following actions to be taken by the Defendants:

> "The court therefore takes the quite narrow step of ordering defendants to submit a plan within five days that will contain specific timetables and arrangements for the following:
>
> 1. Three meals per day in the dining room;
>
> 2. Visiting at the frequency permitted before the lock up began on August 26, 1977;
>
> 3. Consultation with counsellors in a private area other than the cell block if desired by the inmate;
>
> 4. Showers every other day;
>
> 5. Recreation for at least one hour per day;
>
> 6. Schools, industries, vocational training and work assignments for all sentenced inmates, who wish to participate and who are not confined to the Behavioral Control Unit, to the maximum extent currently available and to the maximum extent these programs become available in the future."

This court notes with interest that in those areas on the record where there is sufficient evidence to make a determination, the remedies ordered by the court in Jefferson v Southworth, supra, have already been complied with by the Defendants. Therefore, this court finds that the Plaintiffs have failed to establish that the Defendants have caused Plaintiffs to suffer cruel and unusual punishment and consistent with these findings the court dismisses all Eighth Amendment claims.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RODERICK D. WALKER, ET AL,

Plaintiffs,

v

Civil No. 81-71998
HONORABLE STEWART NEWBLATT

BARRY MINTZES, ET AL,

Defendants.
_____/

PROOF OF SERVICE

STATE OF MICHIGAN)
)ss
COUNTY OF INGHAM)

I, Lois E. Gruesbeck, being first duly sworn, depose and say that on December 4, 1981 I served a true copy of the annexed Proposed Findings of Fact and Conclusions of Law.

upon Judith Magid, Bill Goodman and Larry Bennett by placing same in an envelope addressed as follows:

Ms. Judith Magid
WAYNE COUNTY NEIGHBOR-
HOOD LEGAL SERVICES
3550 Cadillac Tower
Detroit, MI 48226

Mr. William Goodman
GOODMAN, EDEN, MILLENDER
& BEDROSIAN
3220 Cadillac Tower
Detroit, MI 48226

Mr. Larry Bennett
BENNETT & ROSENTHAL
6735 Telegraph Road
Suite 100
Birmingham, MI 48010

and depositing same in a United States Postal Depository in the City of Lansing, Michigan with postage fully prepaid.

Lois E. Gruesbeck
Lois E. Gruesbeck

Subscribed and sworn to before me this 4th day of December, A.D., 1981.

Carol Ann Dane
Carol Ann Dane, Notary Public
Eaton County, Michigan, Acting In
Ingham County
My Commission Expires: 05/14/84