

50

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

FILED  
DEC 8 8 30 AM '01  
CLERK  
U.S. DISTRICT COURT  
EAST. DIST. MICH.

RODERICK WALKER, AMIN HABEEB ULLAH,  
A/K/A FRANKLIN NEAL, ROMANDO VALEROSO,  
FLOYD 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  
Situating,

Plaintiffs,

v.

Civil No. 81-71998  
Hon. Stewart Newblatt

PERRY JOHNSON, Director, Michigan  
Department of Corrections, 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.

---

PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW

PROOF OF SERVICE

75

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

FILED  
DEC 8 8 31 AM '01  
CLERK  
U.S. DISTRICT COURT  
EAST. DIST. MICH.

RODERICK WALKER, AMIN HABEEB ULLAH,  
A/K/A FRANKLIN NEAL, ROMANDO VALEROSO,  
FLOYD 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.

Civil No. 81-71998  
Hon. Stewart Newblatt

PERRY JOHNSON, Director, Michigan  
Department of Corrections, 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.

PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW

INTRODUCTION

At the time of the filing of this lawsuit, out of cell time at three Michigan prisons, Marquette, Michigan Reformatory, and the State Prison of Southern Michigan, was restricted to showers, visits, some eating, and a limited number of work details. The Defendants themselves recognized that deleterious harm was being inflicted upon the inmates based on this form of confinement. While throughout this case, and in many instances obviously in response to it, activity levels have increased, the inmates are still suffering harm.



That the inmates are still suffering harm is clear from the testimony of the two psychiatric experts, who found the existence of psychiatric impairment during tours of the institution and interviews with inmates conducted near or after the time the institutions had allegedly returned to normal. Their testimony was that the amount of in cell time at the institutions has and will cause harm to the inmate population. This harm will be permanent to a certain number of inmates.

The continuing and permanent harm stems in part from the current quantity and quality of in and out of cell time compared to the pre-disturbance situation. It is not just that there was a "routine" change in normal operations; this was a change first to no activity and then to very restricted activity. With large segments of the population not guilty of any wrongdoing, vis-a-vis the May disturbances, the psychological harm caused by the frustration and inactivity is overwhelming.

Compounding what is an obvious negative reaction to the schedule itself is the lack of any rationality utilized by the administration to unlock the institutions. The administration had very little direction in its methods, and moves were made only upon the concurrence of staff. The inmates themselves had no role in the process, contrary to what expert testimony stated was necessary. It is clear from this record that the inmates were pawns in a struggle between staff and administration.

Whatever the reason, there is ongoing injury at all the institutions involved in this case. The injuries are caused by the specific conditions imposed on the inmate population confined within each facility.

In order to give some order to the analysis, the Plaintiffs have organized their proofs by institutions, including the current and former schedules, with particular attention to the quantity and quality of out of cell time. Next, Plaintiffs have set forth the circumstances under which each current schedule was formulated, and why in most respects it was arbitrarily determined. The psychiatric testimony as it relates to the harm caused by the conditions at the institutions is included next. Finally, Plaintiffs have set forth the remedies they request.



STATE PRISON FOR SOUTHERN MICHIGAN (JACKSON)

I. PRACTICES & SCHEDULES: CURRENT AND PRE-DISTURBANCE

General Overview of this Section: In this part of the Proposed Findings of Fact, Plaintiffs are presenting the current and prior schedules at the three SPSM complexes. The purpose of detailing the current schedule is to advise the Court of the existing out-of-cell time available to the inmates. The schedule prior to May 22, 1981 is submitted to advise the Court of what changes have occurred. In the next parts of this pleading, Plaintiffs will establish that these changes are arbitrary and are a continuation of the lockdown.

A. CENTRAL COMPLEX:

1. All general population inmates are eating 3 meals per day in the dining hall. The inmates are out of their cells for approximately 30-45 minutes per meal. This is approximately equivalent to the amount of time spent dining before May 22nd. However, the walk to and from the dining hall is much more regimented by security personnel, and, once within the dining hall, security is much more imposing.

2. Inmates in Administrative Segregation and Punitive Detention eat all of their meals in their cells. This is the same practice which existed before May 22nd. There are more inmates in Administrative Segregation since the riot. In fact, one-half of a cellblock (approximately 200 cells) was added to the Administrative Segregation capacity. This, of course, stretches the ability to provide food to the inmates.

3. General population inmates in 3, 4, 5, 7 & 8 Blocks are scheduled to receive 1 hour of outside recreation per day. Prior to May 22nd., inmates in these blocks received yard for 1 1/2 to 2 hours in the morning; 4 to 5 hours in the afternoon; and 3 hours in the evening during the summer.

4. Inmates in Administrative Segregation get yard once every 8 to 11 days for approximately 1/2 hour. By Policy Directive, inmates in Administrative Segregation prior to May 22nd. received yard for 1/2 hour every 7 days.

5. Inmates in 11 and 12 Blocks (which are Honor Blocks), receive no outside yard time. They receive a "base" yard for approximately 4 hours per day. Base yard is the opportunity for inmates to congregate on the floor of the Block for various activities. Prior to May 22nd., inmates in the Honor Blocks received outdoor yard for 1 hour in the morning, 4 hours in the afternoon, and 2 hours in the evening during the summer; in wintertime, evening yard was supplanted by time in the prison gym.

6. Inmates in 3, 4, 5, 7 & 8 Blocks are permitted to shower only during a yard period or if they choose to forego a meal. Prior to May 22nd., inmates could shower at any time they were not locked in their cells.

7. Honor Blocks (11 & 12) inmates may shower during base yard. Prior to May 22nd., inmates could shower at any time they were not locked in their cells.

8. Inmates in Administrative Segregation shower once every 8 - 11 days. Prior to May 22nd., segregated inmates received showers one time per week.

9. The average length of each shower is 5 minutes. Prior to May 22nd., showers were unsupervised and lasted a reasonable length of time in excess of 5 minutes.



10. Based on the above, an unassigned inmate currently is scheduled to be out of his cell as follows:

a. 3, 4, 5, 7 & 8 Blocks (General Population)

- (1) 1 1/2 to 2 1/2 hour (meals)
- (2) 1 hour outside yard (or showers).

b. 11, 12 Blocks (Honor Blocks)

- (1) 1 1/2 to 2 1/2 hour meals
- (2) 4 hours base yard - no outside yard.

c. Administrative Segregation

- (1) 1/2 hour per 8 to 11 days.

11. Prior to May 22, 1981, an unassigned inmate was scheduled to be out of his cell as follows:

a. 3, 4, 5, 7 & 8 Blocks (General Population)

- (1) 1 1/2 to 2 1/2 hours (meals)
- (2) 8 1/2 to 10 hours yard, plus showers.

b. 11, 12 Blocks (Honor Blocks)

- (1) 1 1/2 to 2 1/2 hours (meals)
- (2) 7 hours yard (or gym)..

c. Administrative Segregation

- (1) 1/2 hour per week yard, plus 1 shower per week.

12. Not only has the yard time been drastically reduced, but the quality and nature of yard time has been negatively changed. Weight-lifting, a much desired activity, by both the inmates and recreational staff, has been eliminated, despite the conclusion of most staff that no danger is posed by equipment used for this activity. Baseball equipment, horseshoes, and other athletic equipment was not available to the inmates this summer.

13. Following the disturbances of May 22, 1981, the administration decided to divide the Central Complex yard into a "North Yard" and a "South Yard." Tables and handball courts available to North Yard inmates (Blocks 3, 4, 5) are not available to South Yard inmates (Blocks 7, 8). Conversely, basketball courts available to South Yard inmates are not available to North Yard inmates. The swimming pool is no longer available to either side, except on a "program basis" and was not utilized during the past summer.

14. Inmates are also permitted to engage in the following out-of-cell activities:

a. Phone calls: 1 10-minute call per week. This is the same policy which was in effect prior to May 22nd. The policy was rarely enforced prior to May 22nd.; now it is strictly enforced. As a result of restricted movements within the blocks, access to the phones is greatly hindered; waiting lists are long and inmates frequently are unable to make their calls.

b. Visits: 4 per month, for 1 to 2 hours, depending upon the number of people seeking visits at the prison on that day. This is the same visitation procedure which was in effect prior to May 22nd. (Visitation at SPSM-CC was the subject of a Consent Judgment entered prior to May 22nd.)



c. Store: The resident store is open for 3 hours per day. Residents are able to go to the store on the day their cell block is assigned. Depending upon the size of the cellblock and the number of unassigned men, anywhere from 150 to 475 men are scheduled to utilize the store over a 180-minute period. Assigned inmates who are unable to go to the store on their Block's day can only go on weekends. Prior to May 22nd., the store was available to inmates on an every-other-day basis for several hours. (239)

d. Religious services: All denominations represented before May 22nd. are represented in one form or another currently. Religious services last one hour on Saturday or Sunday morning, depending on the faith involved. Prior to May 22nd., religious activities at the prison included not only the weekly services, but also several hours of counselling, group study, and other group activities.

e. Special activities: As of September 30, 1981, only 4 special activity groups are in operation. (I) Prior to May 22nd., there were at least 15 (I) groups meeting. Time out of cell for these activities is approximately 1 to 2 hours on Saturday, AM or PM.

f. Law Library: An inmate may request a maximum of 2 1-hour periods of access to the prison law library. Prior to May 22nd., inmates could obtain library privileges for an excess of 11 hours. (This reduction in time should be considered together with inmates not having access to jailhouse lawyers outside of their cellblock. Prior to May 22nd., inmates could discuss legal matters on the yard with skilled inmates from other areas of the prison. With the new yard schedule, this cannot be done.)

g. Miscellaneous: Inmates are called out of their cells for "sick call," parole board hearings, counselling (if available in the Block), and limited special call-outs for Warden's Forum meetings, attorney phone calls, or visits. This is the same as pre-May 22nd.

15. It is clear that a certain number of Central Complex inmates are assigned to school or work (or both) positions.

a. The exact number of persons on assignment has not been determined by the Defendants. (354, Line 9)

(1) Ex. 136, an August, 1981 Labor Pool report, reflects assignment of 1507 persons out of a population of 2783.

(a) These statistics reflect classified positions which may not exist as of the date the document was prepared (e.g., 351-353). Other positions may exist, but no "call outs" are made. (403)

(b) Multiple positions may be filled by one person (i.e., someone classified to work and school). (350)

(2) Warden Mintzes stated the Exhibits are inaccurate due to lag time in reporting actual positions. (234) However, no effort has been made to determine the number of assigned people leaving their cells. Warden Mintzes stated that, "I don't have any reason to find that out when I have the number [coming from the labor pool] of how many are working." (403)

b. Warden Mintzes does not know if the school assignments are the same amount of hours or not as compared to pre-May 22nd. (349)

16. In April, 1981, SPSM-CC statistics indicate that 1703 out of 2796 inmates were assigned. (Ex. 135) However, the same problems which exist for the August, 1981 statistics are present for the April, 1981 figures. Because of reduced physical facilities, certain activities not being resumed (i.e., prison newspaper) and reduced assignments (i.e., in food service), there is at least some reduction in the number of people actually leaving their cells for assignments.



B. NORTHSIDE:

1. All general population inmates are currently eating 3 meals per day in the dining hall. The inmates are out of their cells for approximately 30-40 minutes. This is approximately equivalent to the pre-disturbance status.

2. Since the disturbances, unassigned inmates are given outside yard time for 2 1/2 hours every other day and one day during the weekend.

3. Since the disturbances, if an unassigned inmate goes outside for "yard," he must stay out for the entire yard period because the cell block doors are locked until "yard" is "blown in." This practice has the effect of discouraging yard use. Prior to May, 1981, inmates were permitted a "base yard" option to outside yard.

4. Since May, 1981, assigned inmates receive "yard" for about 1/2 hour after dinner during the week. However, night yard will be stopped for the winter.

5. In the wintertime, the prison gym will be available for assigned inmates, but the number of inmates permitted in the gym will prevent a meaningful opportunity to recreate.

6. Prior to May 22, 1981, indoor "base yard" was available for the assigned inmates. However, this has been eliminated since the disturbances.

7. Prior to May 22, 1981, all general population inmates had at least 4 hours of daily outdoor yard time.

8. Weight-lifting and horseshoes have been withdrawn as activities since the May 22, 1981 disturbances.

9. Since the disturbances, an assigned inmate is permitted to shower every day under the following conditions:

a. If an inmate has a day assignment and a night school assignment he may shower after work;

b. If an inmate has only a day assignment, he may shower only during his yard period. This will often preclude the inmate from also getting his yard because the showering process cannot be completed before "yard" is "blown in," and because the cell doors are locked after the inmates exit the yard.

10. Since the disturbances, unassigned inmates are given showers at the rate of 1 gallery per day. There are 5 galleries. If a gallery does not complete its showers on its assigned day, they are not completed on the following day. It does occur that one week will pass before an unassigned inmate is able to take a shower.

11. Since the disturbances, showers are frequently cancelled, delayed or shortened because of no hot water or "dribbling shower heads."

12. Prior to the disturbances, all general population inmates could shower daily.

13. Since May, 1981, inmates may have 5 visits per month of 5 hours in length. This is in contrast to 6 visits per month of unlimited duration prior to May, 1981.

14. Since the disturbances, inmates are permitted to go to the inmate store only during yard period.



15. Since May, 1981, Muslims are permitted only 3 hours per week for religious services. Prior to May 22, 1981, it was seven hours per week. This is not enough time to provide adequate religious instructions.

16. Staff does not always honor details to release inmates on Saturdays for religious or special activities purposes.

17. The Warden's Forum, an inmate representative organization, has been changed since May 22, 1981 from 7 members, plus a legal advisor, to 5 members only.

18. Since May 22, 1981, there has been less movement outside of an inmate's cell, and this restricted movement has limited access for the Warden's Forum for the block representatives.

19. Since the disturbances, drama workshop and music, two special activities in which inmates have expressed interest, have been eliminated by Defendants.

20. Prior to May, 1981, inmates could receive 12 - 15 hours per week of law library access by being placed on "repeat callout basis." Now, an inmate must request permission each time he wants to go. No inmate, since May, 1981, has received more than 4, 1 1/2 hour periods of access in one week.

21. Inmates who request to use the law library on a "yard" day are permitted to do so only during the yard period.

22. The current schedule, formulated subsequent to the May disturbances, provides for the following out-of-cell time for unassigned inmates:

1 1/2 - 2 hours daily for meals; 2 1/2 hours every other day for yard time.

23. It is clear that a certain number of Northside Complex inmates are assigned to school or work (or both) positions. However, the exact number of persons on assignment has not been determined by Defendants.

24. Ex. 140, an August, 1981 Labor Pool Report, reflects assignment of 419 persons out of a population of 663. These statistics reflect classified positions, which may not exist as of the date the document was prepared. Other positions may exist, but no "call outs" are made. Multiple positions may be filled by one person, i.e., someone classified to work and school.

25. Defendants do not know if the school assignments are the same number of hours as compared to the pre-May 22nd. status.

C. TRUSTY:

1. Since May, 1981, inmates are receiving outdoor yard for 2 hours per day during the week. This is contingent on good weather. They also are permitted base yard, i.e., time out of cell within the cellblock, for 3 1/2 hours each day during the week. Yardtime on the weekends is dependent on the discretion of the guards.

2. Activities since May, 1981 within the outside yard are limited to basketball and handball. Prior to May, 1981, weight-lifting, horseshoes and baseball were additional activities available in the yard. The only activity available on baseyard is card playing.

3. Prior to May, 1981, outside yard for general population inmates was available for 11 - 13 hours per day.



4. Since the disturbance, there has been a long waiting list to use the law library. Prior to May, 1981, the law library was easily accessible.

5. Prior to the disturbance, Bible study groups could meet for 3 hours each week. Now, they are only permitted to meet for 1 hour per week.

6. Since May, 1981, not all organizations existing prior to the disturbances function, such as Child of the Month, Gavel Club and HASTA. Other organizations, "AA" and "N/A", have large waiting lists.

II. THE CURRENT PRACTICE IS AN ARBITRARY MANNER OF OPERATION AND IS AN EXTENSION OF THE LOCKDOWN.

General Overview of this Section: The Defendants assert that SPSM has reached its "new normal" and the lockdown is over. In this section, Plaintiffs have organized the testimony to reflect that the "new normal" is, in fact, an extension of the lockdown.

The syllogism of Plaintiffs' argument is as follows:

Prior to May 22, 1981, SPSM was running well, and no changes were planned by the administration in its operation. When the disturbance occurred as a result of the unauthorized conduct of the staff, and the entire institution was locked down, the administration was forced into a situation of having to make certain operational changes in order to placate staff into permitting the increase of activity within the institution. Rather than negotiate an agreement with the staff and develop a comprehensive approach to unlocking and running the institution, the administration engaged in haphazard restoration of activity, when union consent could be arranged.

It is absolutely clear from all the testimony and documents, that the inmates were not the cause of the slow pace of the unlock. The limited nature of the disturbances, and the restrained inmate behavior during the early weeks of the lockdown, were acknowledged by the administration. All of the documents and actions of the administration reflect that the staff was the cause of the extended lockdown. In fact, the inmate role was so minimal in this whole process that there was never any indication that input from the inmates was even considered.

The current schedule is a result of how far the administration could push the staff without causing a walk-out. This is further borne out by the lack of any rational approach to determining proper levels of operation. For example, the administration did not make considered efforts to maximize either yard time or special activities, nor a host of other matters of great significance to the inmates. What was done was simply a question of appeasement of staff.

A. While there is some variation in Warden Mintzes' testimony, the administration's position is that, by late August, 1981, all three complexes of SPSM were operating at their new normal.

1. Upon questioning by the Court, Warden Mintzes stated that, barring normal changes in the administration, the institution was back to the way it would be operated on a permanent basis. (223)

2. Upon cross-examination by Plaintiffs, the Warden admitted that there still was "re-tooling" which needed to be completed regarding certain programs.



B. Whatever problems that existed at the institution had not been viewed, prior to May 22nd., by the administration as cause for changes. Thus, there was no advance or well thought out approach to what the "new normal" at SPSM would be.

1. The Defendants had, at least since 1972, developed a complete plan for reorganizing the massive Central Complex into small, more manageable entities. (Ex. 160) Minor parts of this plan were implemented prior to May 22nd. (involving the separation of 2 blocks on the northside and 2 blocks on the southside into separate facilities). However, all of the facilities at SPSM were/are run as one institution, (181) and most major portions of the plan have never been implemented.

2. While the Daverman Study existed for several years, no plans had been made to implement the recommended changes.

3. Prior to May 22, 1981, the administration's position was that violence was down and the institution was running extremely well.

4. The planned lockdown on May 22nd. by the guards was thought by the administration to be unwarranted. (9)

C. The disturbances at SPSM on May 22nd. and May 26th. involved no loss of life, no hostage taking, and were resolved by peaceful negotiations. The disturbances at Central Complex and Trusty were not major riots and, in fact, displayed that the inmates could act with restraint.

1. The disturbance at SPSM on May 22nd. was a predicted result of the unauthorized union activity. (13)

2. On May 26th., there was not even a major disturbance at SPSM-CC, nor Trusty. Inmates were ordered to their cells because of conditions at Northside and, while there was some verbal resistance and delayed response, there was no disobedience to the commands of the administration.

3. On May 27th., Warden Mintzes had every confidence that inmates in SPSM-CC and Trusty would behave responsibly if released, and the institution immediately returned to normal operations. (169)

D. From May 26th. until now, the inmates were never a cause for lockdown conditions at the Central Complex.

1. Warden Mintzes admits there was no major disturbance at SPSM-CC and Trusty on May 26th. (207)

2. On May 27th., Warden Mintzes was satisfied the SPSM-CC and Trusty inmates would behave responsibly, if released.

3. On July 7, 1981, Deputy Scott stated that a normal operational schedule at SPSM-CC had been reached, but with a limited number of inmates. He further stated, "We are doing extremely well, however, the residents are not the problem at this time, it's the paranoia or perhaps the lethargicness of staff at this time of getting back into a full scale operation." (Ex. WW)

4. In a speech delivered by Warden Mintzes on July 15, 1981, he urged the inmates to continue their restrained conduct in order for progress to be made. In the same speech, the Warden admitted that maintaining gun squads and the locked down condition was a "needlessly high price to pay for security." (Ex. MM)

5. No document or testimony adduced by Defendants attribute any cause for proceeding slowly to inmates. In fact, the documents attribute the pace to staff.

a. In Exhibit ZZ, an up-date to SPSM employees from Warden Mintzes, it is stated:



"We must recognize staff fears as well as the inevitable escalation of tensions which will result on the part of residents from a prolonged lockdown. This is why it is so important for us to continue to make progress towards lifting the lockdown, but doing so in a way that will not force staff to undermine these efforts and will encourage everybody to work together as a team towards making this place operational again."

E. The Defendants never differentiated between ending the lockdown and creating a "new normal." (387-390)

1. At trial, Warden Mintzes stated the two processes were distinct: one was getting people out of their cells, and the activities going; the other was the extent to which activities would be allowed after everybody was out of their cells and all the activities were operating. (388)

2. In actuality, Warden Mintzes reversed the process. Within the first week following May 26th, Mr. Mintzes decided to make major permanent changes at the institution. (28) Warden Mintzes stated on June 4, 1981 that "if there was ever an opportune time to rethink the direction and operation of SPSM it is now."

F. The manner in which SPSM was unlocked was determined by what would appease the staff.

1. A major problem faced by the SPSM administration was lack of control over the staff.

a. The line staff abandoned parts of the institution on May 22, 1981, despite direct orders to the contrary from the highest local authority and the presence of supervisory personnel in the blocks. (14)

b. On May 23, 1981, the administration decided to allow the inmates out of their cells for lunch. This decision had to be reversed when staff threatened to walk off their jobs for a second time. (Ex. GGGG)

c. On June 3rd., Warden Mintzes was concerned that a union strike was inevitable. (June 3, 1981 - Staff Meeting - P. 48) This fear was based generally on union activity, with particular fears as a result of a situation in RG & C, and/or pending discipline of staff which abandoned the prison on May 22nd.

i. It is significant that the administration was concerned that further illegal union activity would occur if fellow workers were disciplined for previous illegal activity. While Plaintiffs concede the concern was administratively justified, the hammer held by the union is very probative.

d. Warden Mintzes stated he had to balance getting inmates out for activities with all due speed without causing "staff to take precipitous action out of fear." (209)

e. The Warden was also concerned with union sabotage. (212)

f. The president of the MCO told Warden Mintzes showers would not be given unless full staffing existed. (150)



g. On July 6th., Warden Mintzes was still concerned with staff undermining the efforts to unlock. (Ex. ZZ)

h. On July 7th., it was conceded that the residents were not the problem at SPSM - CC; it was staff. (Ex. WW)

2. With staff being discontented, it was essential that the administration and staff reach a consensus and strive together towards operating a normal, as opposed to locked down, institution. This was never attempted nor accomplished.

a. It is important to the operation of a prison that staff feel that it has had a voice which is considered by the administration. Staff input and involvement in the administration of a prison is not necessarily destructive and can lead to an esprit de corps which improves the overall attitude of the prison.

b. Obviously, the union had certain grievances about the manner in which the institution was run. It would be important for a team of staff and administration to have dialogue and reach a common understanding.

i. Defendants' expert, Sigmund Fine, indicated that it is important to have staff cooperation. His opinion was based upon personal experience he had had with riots. He stated that, following his riots, there was intensive negotiation with staff, together with daily contact and input from inmates during the first week to 10 days post-riot. This resulted in a comprehensive agreement in some 16 areas of operation. New written policies and procedures were formulated and the institution was fully operational within 2 weeks, and at normal within 30 days. It is noteworthy that the riots Mr. Fine experienced were far more violent than the disturbances at SPSM.

c. Such an agreement was never worked out in Michigan. As late as July 7, 1981, staff was requesting more frequent guidance from Warden Mintzes as to the progress, direction and philosophy of the institution. (Ex. 44)

i. If an agreement to a unified approach could not have been worked out, both correctional experts in this case (Kamka & Fine) stated the necessary thing to do was for the head of the institution to take command, say this was the way it is going to be, and discipline those who did not obey.

3. Instead, the administration never formulated a plan or approach to dealing with the institution. Rather, it was step-by-step nudging of the union, with action not being taken unless their approval was obtained first.

a. In the Warden's first staff meeting following the riot, he promised the unions they would be involved in the return to normal.

b. On June 4, 1981, Warden Mintzes promised, "It is important to point out that all plans to return to normalcy in all complexes will be worked out between the deputies and employee representatives." (Ex. UUU)

c. The first activity was to permit showers; this was not done until approval from the employee unions was granted on June 5, 1981. (Ex. WWW)

d. On June 12, 1981, meetings with the MCO and MSEA unions resulted in agreements permitting, but limiting, the beginning of activities at SPSM-CC. (Ex. PPP)

e. On June 18th., the unions permitted a further increase in activity. (Ex. JJJ)

f. On June 29th., more agreements were reached permitting limited yard, store and meal activities.



g. On July 6th., Warden Mintzes reexpressed his trepidation at moving too forcefully and "forcing" the staff to undermine the lifting of the lockdown.

h. On July 27th., Charles Utess, Director of Resident Services at SPSM, in discussing the proposed use of an abandoned building, set forth a traffic pattern that was subject to the approval of custody. (Ex DD, P. 4)

i. By mid-August, the institution had essentially reached its new status quo. (Ex. V) Every step along the way had been approved by staff.

4. While documents abound with references to fears of staff, no administration official or document ever relates the effect of input from inmates.

a. The administration defended their actions by claiming they had to move slowly and that before a move was made, the pulse of the institution had to be taken. Yet, they never determined nor considered the feelings of the inmates.

i. Both correctional experts stated that inmate input is critical to evaluating the atmosphere of the institution.

b. That inmates were ignored during the unlock process reveals an arbitrariness, even by Defendants' own expert's standards.

5. What occurred was a running of a prison by staff committees. This practice was specifically condemned by Mr. Fine.

6. What the evidence shows is that the administration did not have an organized plan; did not feel the pulse of the entire institution; did not take control of the staff, but, rather, became subservient to their demands and dictates.

7. According to Gordon Kamka, and based upon his tours of the facilities, his experience, and a review of the documents, he detected that SPSM was being run by the guards and mid-level staff.

a. Aside from his personal observations, Mr. Kamka indicated that one symptom of this would be abnormal misconduct statistics. On September 1, 1981, Warden Mintzes stated that "misconducts are (getting to be) of a more normal nature," clearly implying that abnormal conditions had existed and were existing to some extent.

b. The official policy of staff (and the position which prompted the unauthorized activity on May 22, 1981) was that there should be much more restricted activity at SPSM. With staff in control, combined with their stance of restricted activity, the context and import of the statement in Ex. WW (P. 2), that the problem at SPSM is staff, is clearly shown.

G. Warden Mintzes agreed that a lockdown invites the greatest potential for abuse of inmates because they are totally reliant upon staff members for a greater number of individual needs. With the knowledge that staff was rebelling at SPSM, the administration did little or nothing at all to provide a buffer between staff and inmates.

1. Despite reports of "abusive, hostile, demeaning and condescending" attitudes of guards towards inmates, Warden Mintzes could relate no concrete attempts to remedy the existence of this problem. He did admit that, because of restricted inmate movement, guard abuse would be a "particularly important problem." This would be so because inmates are more reliant and because they are psychologically less able to cope with abuse while they are locked up for an extended period.



H. Not only have, and are, guards exhibiting abusive attitudes towards inmates, but they have, and are acting arbitrarily and even cruelly, without any negative sanction from the administration. This, too, is a direct result of staff being dominant at the institution.

1. Warden Mintzes stated that, whether or not there is an increase in activities and whether or not scheduled activities are provided, depended in large part upon the good will of the guards. He agreed that an unhealthy relationship between guards and inmates would lead to slow responses to inmate needs.

2. The inmates have provided several examples of abusive behavior of guards. Snide remarks, threatening behavior, and a demeaning attitude are clear indicators of an "unhealthy relationship" between staff and inmates.

3. Accordingly, it is not surprising and, in fact, is predictable, that guards are interfering with inmate activities in the following ways:

a. Being released for yard is contingent upon the whims of staff. If, for any reason, the guards do not want to be outside, the inmates will remain in their cells.

b. Contrary to the announced policy of the administration, inmates at SPSM-CC are being forced to choose between yard and showers.

c. Roger Roberts, the director of special activities at SPSM - Northside, stated that he had personal knowledge of repeated instances, on a weekly basis, of guards not honoring special activity details (passes).

d. Guards are not communicating sick call requests to the medical staff. Significantly, inmates do not have direct access to medical care; requests must be communicated through staff.

e. Requests for religious and library call-out privileges are repeatedly disregarded or delayed.

f. Legal and personal mail is being delayed by guards. When finally received, the inmate mail has generally been opened and read.

g. Roger Roberts also stated in his trial testimony, that guards have attempted to discourage female volunteers from entering the prison by taunting them with statements like, "You are only coming to the prison hoping to get raped."

I. The ultimate proof that the current schedule is an extension of the lockdown is the arbitrary manner in which the current schedule and activities were determined.

1. The arbitrariness existed during the months following the disturbances, even before the current "final" schedule.

a. Dr. Harness, Director of the Office of Health Care, testified that the triage system of examining inmates through the cellbars negatively affected accurate diagnosis and inhibited communication of complaints. Yet, when asked whether inmates could have been examined more privately, out of their cells in screened-off areas in the block, Dr. Harness responded that such a procedure had not been investigated.

b. When inmates were fed their meals in the cells, sanitation in the blocks was "unspeakable and atrocious" according to Warden Mintzes. He was unaware, however, of how inmates were to dispose of their refuse and was unaware of what instructions were given to the inmates to avoid the poor conditions.

The lack of efforts in these two critical areas displays a sampling of the arbitrary decisionmaking through the lockdown period.



2. The grossest example of arbitrariness is the administration's handling of the issue of recreational out-of-cell time at SPSM-CC.

a. All experts in this case agreed that recreational time out of cell is of prime importance to the physical and mental well-being of inmates. Efforts to maximize such time is critical. The SPSM administration, including Bob Brown, Deputy Director to Perry Johnson, admitted they have made no efforts to maximize such out-of-cell time.

b. Warden Mintzes stated that one of the major changes following the riot was an alleged reduction in the number of people permitted to be in the yard at one time. When questioned as to how many were on the yard on a daily basis before the riot, he said that he did not know. When questioned about how many are in the yard on a daily basis currently, he again said that he did not know. He further admitted that there never has been a determination of what is a safe number of people on the yard at one time.

c. Warden Mintzes finally admitted that, rather than make the effort to determine the appropriate numbers for yard time, it was easier "logistically" to just give yard to one cellblock at a time. This is done, even though it is not known how many are in the yard at one time and it is known that the number of inmates per cell block fluctuates by as much as 100. Additionally, the number of unassigned inmates per cellblock varies and can create differences of even greater than 100.

What makes this "logistical" decision even more incredible and arbitrary is that, at night, 50% of the population is on the yard at the same time. This is true because Defendants assert that over 50% of the population is assigned and gets recreation at night. There is no reported security problem at night, and the obvious question exists: why can't the other 50% have yard at the same time during the day? The Defendants have no answer for this question.

d. The Defendants have further arbitrarily eliminated afternoon yard. All agree that the yard is unoccupied and unused in the afternoon. The Defendants claim that the staff is too busy in the afternoon to provide yard time. Yet, all of the activities that are allegedly done in the afternoon could be (and, in fact, are) given at night. These activities include phones and haircuts. Furthermore, and most significantly, this staff is able to provide all the necessary functions and still be able to provide yard in the evening. There is no adequate explanation why it can be done in the evening, but not in the afternoon.

e. The Defendants have divided the yard up into "North" and "South" areas. This was done by erecting barbed wire fences. It was performed in such a haphazard and arbitrary manner that, on one side of the yard, there are tables and a baseball field and nothing else, and, on the other side, there is a small field, basketball and handball courts, and nothing else. Meaningful recreation is inhibited by the lack of a variety of available activities; inmate yard time is frequently spent just standing or sitting around with nothing to do.

3. Compounding the arbitrary manner in which outside recreation has been decided is the administration's complete failure to utilize or even investigate "base yard" as an alternative. Warden Mintzes could give no reason why base yard was not given to inmates. He further stated that no efforts were being made to determine whether such activity was feasible.

4. A second glaring area of arbitrariness is the manner in which special activities have been resumed. Prior to the May, 1981 disturbances, there were 156 volunteers for special activities at all three complexes of SPSM. Subsequent to the disturbances, there are 67 volunteers at the three complexes. According to Roger Roberts, Director of Special Activities at SPSM - Northside, the Defendants are responsible for the fewer numbers of volunteers since the disturbances, because of the following:



a. An orientation for volunteers is required for participation in special activities by Defendants; however, none exists.

b. A picture identification is required for participation. Prior to the disturbances, arrangements could be made to have pictures taken during more convenient nighttime hours. Subsequent to the disturbances, the only allotted time for picture-taking is from 9:00 - 10:00 AM and 1:00 - 2:00 PM.

Mr. Roberts stated that no volunteer has indicated to the Defendants that he or she is fearful of coming into the prison since the disturbances.

5. Mr. Roberts further testified that special activities at SPSM - Northside were not started until September 29, 1981, and then it was only because he inquired as to why he was not included in the "normalization" meetings. Once he was included in the meetings, he was able to persuade the administration to begin the activities at Northside.

a. While some activities have begun, there is a new unwritten rule which provides that inmates who miss one meeting can be prevented from participation in the activity. The written policy on this issue allows for 3 absences.

b. The administration has set aside less space to conduct activities at Northside. This is not due to any destruction by inmates, but rather due to a policy decision of the administration. No apparent reason for this reduction in space has been given.

c. The administration has created a new written policy that states that groups no longer will be able to hold banquets. Prior to the disturbance, each group could have one banquet per year. (These were generally conducted with family members on holidays of religious and/or ethnic significance.)

6. At SPSM-CC, there is an enforced requirement now that there be one staff member present at each group activity. While granting this security request of staff, the Warden admitted he made no effort to determine what effect this would have on the number of inmates able to participate. He further admitted that no effort has been made to maximize staff allocation to permit the most expansive availability of programming.

a. All correctional experts agree that interaction with community groups is extremely important and beneficial to inmates. Defendants' expert stated that, from a management point of view, contact with outside volunteers creates a more normal atmosphere in an abnormal situation. The SPSM administration is impeding this process by appeasing the security concerns of staff.

7. Personal hygiene and sanitation is one of the most basic needs the administration must provide to inmates, yet the administration has completely failed to rationally insure these needs were/are met.

a. Throughout the first months of the lockdown, hygienic supplies were unavailable to the inmates. Even now, inmates have difficulty getting supplies.

b. Despite the "unspeakable and atrocious" sanitation conditions in the cell blocks, Warden Mintzes could not detail what the sanitation system should have been, nor what efforts, if any, were made to remedy the problem.

c. Warden Mintzes did order special sanitation crews before tours came through the institution, but not in response to his finding of "unspeakable and atrocious" conditions.



d. Warden Mintzes has never determined how inmates are getting showers. He was unable to respond to why inmates are only getting showers (at SPSM-CC) if they choose to forego yard.

e. Warden Mintzes further stated that he would want to correct the shower situation in Administrative Segregation if inmates were getting showers only once every 11 days. The logs kept by the cellblock staff show that inmates are getting showers this infrequently, and nothing has been done. (i.e., 5 Block East Second Gallery was able to shower on September 25th. and not again until October 6th. The other galleries are in the same pattern.)

8. The SPSM-CC administration has reduced law library access from 11 or more hours to two 50-minute periods. Warden Mintzes offered no justification for this drastic reduction. He further admitted no effort has been made to determine whether any problems have resulted from this time reduction.

At SPSM-Northside, inmates must choose between yard and law library privileges. This policy exists to insure that inmates will not seek library privileges just to get out of their cells on days they do not have yard. This not only poses an intolerable choice between recreation and access to courts, but also shows the desperation of inmates just to get out of their cells.

9. The prison newspaper, an important device for airing of inmate views, is not back in operation. There is no excuse for this, since all of the printing equipment was untouched during the disturbance. The lack of a paper is pure, arbitrary punishment of the entire prison population.

10. There never was a major disturbance at SPSM-Trusty, yet the yard schedule was greatly reduced. This was a completely arbitrary action, since it never was shown that the yard was a problem at Trusty.

11. At Northside, there is yard every other day for 2 1/2 hours. This was determined by a straw poll of about 300 inmates, whereby the choice was 1 hour every day versus 2 1/2 hours every other day. There was no consensus, with the vote being about 50/50. The result of this poll is that, now, inmates spend 21 1/2 to 22 1/2 hours in their cells every other day. This is particularly offensive on the weekends, when inmates will spend every other Saturday and every other Sunday in their cells.

12. During the trial, it became apparent that there were several areas of problems that the administration either ignored or didn't even recognize.

a. Call out details were routinely (even pervasively) not being honored by custody staff before May 22nd. The administration then changed the call out procedure to give the custody staff more control over details. With staff being abusive to inmates, it is irrational to give them more control. Predictably, inmates have testified that religious, library, activity, medical and other call outs are routinely being ignored.

b. The practice of dishonoring medical call outs is particularly disturbing. Warden Mintzes stated that custody staff in the blocks are responsible for communicating requests for medical care and even rendering advice (based on communication of the problems to the infirmary and receiving medical advice from personnel there). Dr. Harness opined that such a practice is not permissible. In the first instance, custody staff has no reason to intercede in an inmate's doctor-patient privilege. Second, the inmate himself should communicate with medical personnel. The fact that this practice goes on despite official disapproval is inexcusable.

c. There is an uncertainty among high-level staff over the roles of Resident Unit Managers. Some state they are counsellors; others state they are not. This lack of cohesiveness in the approach to the duties of the persons with the most contact with inmates creates very basic difficulties.



d. Recreational directors suggested increased table activities (i.e., chess) to help compensate for reduced yard. Nothing has been done to pursue this recommendation; it has been completely disregarded.

J. From all of the above, it is clear that the administration was solicitous of staff fears, which were thought by the administration to be unwarranted, and paid little or no attention to the needs of the inmates, which all of the experts stated to be of critical importance.



## MICHIGAN REFORMATORY

### I. PRACTICES AND SCHEDULES: CURRENT AND PRE-DISTURBANCE

A. All general population inmates are eating three meals per day in the dining hall.

B. Since the May, 1981, disturbance unassigned inmates get yardtime 2-3 times per week for 45 minutes to one hour each period.

Since the May, 1981, disturbance assigned inmates receive yard when it is available for unassigned inmates, and an additional twenty minutes four times a week.

C. Prior to the disturbance, assigned and unassigned inmates received two yard periods a day, each of one hour duration.

D. Weightlifting and baseball have been removed as yard activities since the disturbance.

E. Religious practices for Muslims have changed in the following ways since the disturbance:

1. Before: Radio services for Muslims.

After: No radio services for Muslims.

2. Before: Free world Iman (religious leader) came to prison.

After: Free world Iman does not come in for services.

3. Before: Services held on Thursday, 6:30-8:00 p.m. and Saturday, 9:00-11:00 a.m.

After: Services held 10:00-11:00 a.m. on Sunday, but inmates are not allowed out of their cells until 10:30 a.m. Inmates were told services would be at least one hour.



F. Not all special activities which were operational prior to the disturbances have been resumed.

G. Prior to the disturbance an inmate could go to the law library every day during the period when yard was available. Since the disturbance an inmate's access to the law library is limited to 1-1/2 hours once a week.

H. Since the disturbance, Defendants have been censoring legal materials prior to photocopying them. They have also been screening legal materials which one inmate will bring to another who is a jailhouse lawyer.

I. There is no established procedure for being acknowledged as a jailhouse lawyer and consequently staff has exercised discretion to disallow the provision of jailhouse lawyer assistance.

J. Since the disturbances job positions which occurred previously, have been eliminated, based on the demands of the custody staff.

K. Since the disturbances guards have been retaliating against inmates for the riots by engaging in brutal physical attacks on the inmates. For example, Brian Boggs, who was charged and ultimately cleared on "inciting to riot" and "assault on an officer" was brutally beaten in the groin while handcuffed by several guards.

L. Since the disturbances, on most days, an inmate will only be able to leave his cell for meals. Prior to the disturbance, an inmate could spend at least 3-1/2 hours per day out of the cell.

II. THE "NEW NORMAL" FORMULATED AFTER THE DISTURBANCES IS ARBITRARY.

A. There is no reason proffered by Defendants for not permitting Plaintiffs to have daily outside recreation.



B. There is no reason proffered by Defendants for limiting law library access to one hour per week from its pre-disturbance daily access allowance.

C. There is no reason proffered by Defendants for limiting the available sports activities on the yeard.



HARM SUFFERED BY PLAINTIFFS.

Enforced idleness has been found to be harmful and constitutionally impermissible in cases construing prison conditions. There was general agreement from those witnesses who have training in psychology or psychiatry, including Warden Mintzes, that inmates who are confined under lock down conditions will suffer psychological harm.

A. Inmate testimony revealed that living under these conditions has made them feel frustrated, hostile, and angry.

B. The manifestation of these emotions, caused by long periods of isolation, was evidenced in the testimony of inmates who said since the disturbances they have been shouting just to vent their anger, shaking or rattling their cell doors, becoming totally withdrawn, experiencing sleeplessness and loss of appetite, and having difficulty communicating with other human beings.

C. The psychological harm has reached such serious proportions that one inmate testified that since the lockdown, he has been routinely watching "General Hospital."

D. While not all inmates will be permanently harmed by the lockdown, it is clear that a certain portion of the inmate population will be. Dr. Frank Rundle, a psychiatrist with experience in prisoner mental health, testified that it is predictable that a sizeable number of the inmate population will always experience the effects of the debilitating conditions under which they are being incarcerated. This was partly due to the fact that the vast majority of the inmates subjected to these conditions were not involved in any wrongful act. It was Dr. Rundle's opinion that the abhorrent conditions of the lockdown combined with the feelings of blamelessness and helplessness will give rise to permanent harm in a certain portion of the inmate population.



E. Defendants' expert did not necessarily disagree with the opinion of Dr. Rundle. Dr. Dennis Koson stated that as long as a lockdown continued, psychological harm would remain. Further, as the inmate has "to dig deeper into his bag" of psychological defenses, it becomes more likely that the inmate will suffer permanent harm.

F. Dr. Koson testified that he detected the existence of ongoing psychological harm in a significant portion of the inmates he interviewed and that he particularly found harm in the unassigned inmates. These interviews were conducted after the administration had determined the institutions were normalized. This finding of Dr. Koson reflects both the probability of permanent psychological harm and the continuing psychological harm from the current lockdown conditions.

G. Plaintiffs have and will suffer not only psychological harm but physical harm as well. According to Dr. Jay Harness, Director of the Office of Health Care, inmates who experience little exercise or physical movement may suffer stomach, intestinal, bowel and other digestive tract related problems. Further, skin rashes, acne and general physical deterioration will occur as a result of little or no physical activity.



## CONCLUSIONS OF LAW

### I. Eighth Amendment Violations

- A. A court considering an Eighth Amendment challenge to conditions of confinement must examine the totality of the circumstances.

U.S. Constitution, Amendment VIII  
Rhodes v. Chapman, 101 St. Ct. 2392 (1981)  
Hutto v. Finney, 437 U.S. 678 (1978)

- B. Conditions of confinement must not involve the wanton and unnecessary infliction of pain, nor may they be grossly disproportionate to the severity of the crime. The conditions must conform to evolving standards of decency.

Rhodes v. Chapman, supra.  
Gregg v. Georgia, 428 U.S. 153 (1976)  
Wiems v. United States, 217 U.S. 349 (1910)  
Trop v. Dulles, 356 U.S. 86 (1958)

1. Among unnecessary and wanton inflictions of pain are those that are without penological justification.

Gregg v. Georgia, supra.  
Estelle v. Gamble, 429 U.S. 97 (1976)  
Rhodes v. Chapman, supra.

2. The Eighth Amendment proscribes more than physically barbarous conditions.

Estelle v. Gamble, supra.  
Rhodes v. Chapman, supra.  
Laaman v. Helgemoe, 437 F. Supp.  
269 (D.N.H. 1977)

3. Conditions of imprisonment which inflict needless pain, whether physical or otherwise, must be justified by legitimate penological objectives, which include deterrence, institutional security and rehabilitation.

Pugh v. Locke, 406 F. Supp. 318 (M.D. Ala. 1976),  
aff'd in part 559 F.2d 28 (5th Cir. 1977)  
Gregg v. Georgia, supra.  
Pell v. Procunier, 417 U.S. 817 (1974)  
Laaman v. Helgemoe, supra.

4. The goals of deterrence, institutional security, and rehabilitation must be balanced, and no single goal should be followed at the expense of the others.

Barnes v. Government of Virgin Islands,  
415 F. Supp. 1218 (St. Croix 1976)  
Laaman v. Helgemoe, supra.  
Pugh v. Locke, supra.



- C. Core areas of Eighth Amendment claims are shelter, sanitation, food, medical care, and personal safety.

Ramos v. Lamm, 639 F.2d 559 (10th Cir. 1980)

- D. While concepts such as rehabilitation, idleness and degeneration may not alone be constitutional requirements, there may be situations in which abuse in those areas does constitute a violations of the Eighth Amendment.

Ramos v. Lamm, supra.

Holt v. Sarver, 300 F. Supp. 825, supplemented,  
309 F. Supp. 362, (E.D. Ark. 1970) aff'd 442  
F.2d 304 (8th Cir. 1971)

Pugh v. Locke, supra.

Laaman v. Helgemoe, supra.

- E. Prisoners have a right to be confined in an environment which does not result in degeneration or which does not threaten their mental and physical well-being, and which does not impair their ability to at least preserve the skills and attitudes with which they entered prison.

Battle v. Anderson, 564 F.2d 388 (10th Cir. 1977)

Laaman v. Helgemoe, supra.

Barnes v. Virgin Islands, supra.

Pugh v. Locke, supra.

1. Unbroken inactivity increases boredom, tension and frustration which promotes violence, threatening inmates' personal safety.

Pugh v. Locke, supra.

- F. Rehabilitation is a declared goal of the Michigan prisons.

Glover v. Johnson, 478 F. Supp. 1075  
(E.D. Mich. 1979)

Mich. Comp. Laws §800.321-334 (Supp. 1981)

- G. While prison officials may temporarily deprive prisoners of rights during an emergency, those deprivations must come to an end once the emergency ends.

Jefferson v. Southworth, 447 F. Supp.

179 (D.R.I. 1978), aff'd, Palmigiano

v. Garrahy, 616, F.2d 598 (1st Cir. 1980)

Hoitt v. Vitek, 497 F.2d 598 (1st Cir. 1974)



### SPECIFIC CONCLUSIONS

1. The current conditions of confinement of those prisoners in administrative segregation, on green card status, and all unassigned prisoners in all three prisons violate the Eighth Amendment.
  - a. The extreme periods of in-cell time, resulting in idleness and inactivity, combined with poor sanitation, inadequate medical care, and unacceptable shelter create a totality of circumstances which subject the prisoners to wanton and unnecessary infliction of pain.
  - b. There are no valid penological justifications for the failure to restore more out of cell time to the prisoners. The behavior of prison officials does not reflect any concern for rehabilitation. Internal security does not require the extreme restrictions currently imposed. The restrictions are unnecessary and wanton and therefore unconstitutional.
  - c. Idleness and inactivity do not permit prisoners to preserve or maintain the basic attitudes and skills with which they entered prison. This creates a punishment additional to incarceration, which is an unnecessary and wanton infliction of pain, violative of the Eighth Amendment.
  - d. Idleness and inactivity, which lead to increased boredom, result in increased violence which threatens prisoners' rights to exist in an environment free of the constant fear of physical violence, and violates the Constitution.
  - e. The total impact on prisoners of existence in an environment of idleness and unhealthy and unpleasant conditions can cause permanent psychological harm, a punishment additional to the incarceration, and therefore an unnecessary and wanton infliction of pain.
  - f. The current conditions of confinement in Michigan prisons are inconsistent with the state's expressed goal of rehabilitation, and general societal interests in reduced crime, instead producing degeneration.
2. Temporary lockdowns, allowed in emergency situations despite violations of prisoners' Eighth and Fourteenth Amendment rights, must eventually end because violation of constitutional rights cannot continue indefinitely. Calling a lockdown by another name does not end prison officials' duty to restore constitutional conditions to prisoners.
3. The inadequate system of medical diagnosis and care, complicated by unsanitary living conditions, inflicts additional cruel and wanton punishment upon prisoners, which violates the Eighth Amendment.



## II. Fourteenth Amendment Violations

- A. Prisoners do not surrender all due process rights upon incarceration. Certain standards must be met.

U.S. Constitution, Amendment XIV  
Wolff v McDonnell, 418 U.S. 539 (1974)

- B. Specific procedural due process conclusions.

1. Placement in green card status is equivalent to administrative segregation and therefore requires due process hearings.
2. Failure to regularly review the behavior of prisoners on green card status, with the goal of ending that status, is unconstitutional.
3. Placement in or classification to administrative segregation following only a misconduct hearing and report is unconstitutional because the inmate never receives a meaningful opportunity to be heard on the issue, which is violative of M.D.O.C. regulations and the Constitution.

(These matters were separately briefed and argued, and Plaintiffs now awaiting decision from the Court.)

Wolff v. McDonnell, supra.  
Wright v Enomoto, 462 F. Supp. 397  
(N.D. Cal. 1976), aff'd mem., 434  
U.S. 1052 (1978)  
Bills v. Henderson, 446 F. Supp. 967  
(E.D. Tenn. 1978)  
Preston v. Thompson, 589 F.2d 300 (7th Cir. 1978)  
Morris V. Travisono, 373 F. Supp. 177 (D. R. I. 1974),  
aff'd, 509 F.2d 1358 (1st Cir. 1975)  
Marionaux v. Colorado State Penitentiary, 465 F.  
Supp. 1245 (D. Colo. 1979)  
LaBatt v. Twomey, 513 F.2d 641 (7th Cir. 1975)  
M.D.O.C. Policy Directive BCF-60.01 (1-22-75)  
M.D.O.C. Policy Directive DWA-62.01 (8-20-79)  
Michigan Administrative Code R791.4405

- C. Prisoners are protected from arbitrary and capricious treatment by prison officials.

U.S. Constitution, Amendment XIV  
Washington v. Lee, 263 F. Supp. 327  
(M.D. Ala. 1966), aff'd per curiam,  
390 U.S. 333 (1968)  
Pugh v. Locke, supra.  
Barnes v. Virgin Islands, supra.  
Sostre v. McGinnis, 442 F.2d 179 (2d. Cir. 1971)  
cert. denied sub nom., Sostre v Oswald,  
404 U.S. 1049  
Marionaux v. Colorado State Penitentiary, supra.



D. Specific substantive due process conclusions.

1. Defendants' failure to return the prisons to pre-riot conditions is not supported by penological justification, and is therefore arbitrary and capricious.
2. Defendants' failure to return the prisons to pre-riot conditions constitutes a punishment arbitrarily imposed upon all prisoners, even those not involved in any blameworthy behavior. Such punishment also violates the Eighth Amendment because it is disproportionate to the offense, and constitutes additional punishment.
3. Defendants justify continuation of lockdown conditions on the basis of effects created by the lockdown - tension, anger and anxiety, thus indicating that the lockdown might never end, which is arbitrary and capricious behavior on the part of prison officials.
4. Defendants have demonstrated their arbitrary and capricious behavior by failing to produce a plan by which to end the lockdown; by arbitrarily ending certain restrictions in the midst of the hearings on this motion; and by failing to resume certain prior conditions where the facts suggested such a resumption was possible. All of these factors suggest that prison officials, absent an order, will continue to behave arbitrarily, and could at any time return the few improved conditions to a more restrictive status.

E. Retaliatory acts by prison officials or employees against members of the Plaintiff class are arbitrary and constitute a deprivation of due process.

U.S. Constitution, Amendment XIV  
David v. Travisano, 495 F.2d 562 (1st Cir. 1974)  
National Prisoners Reform Ass'n v. Sharkey, 347 F.  
Supp. 1234 (D. R.I. 1972)  
Laaman v. Helgemae, supra.

F. Prisoners have been denied meaningful access to courts due to restrictions on law library use, restricted access to jailhouse lawyers, restrictions on phone calls, and delays in mail delivery. Such behavior on the part of prison officials violates Plaintiffs' rights under the Fourteenth Amendment.

Johnson v. Avery, 393 U.S. 483 (1969)  
Bounds v. Smith, 430 U.S. 817 (1977)  
Younger v Gilmore, 404 U.S. 15 (1971)  
Ramos v. Lamm, supra.



### III. First Amendment Violations

- A. Inmates do not surrender their right to freedom of religion, including services, counseling and contact with other members of the religious group.

U.S. Constitution, Amendment I

Cruz v. Beto, 405 U.S. 319 (1971)

Mawhinney v. Henderson, 542 F.2d 1 (2d Cir. 1976)

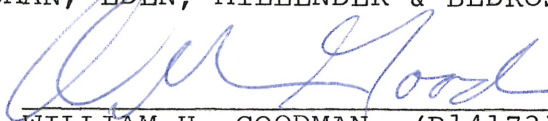
Laaman v. Helgemoe, supra.

- B. The current situation at the Michigan prisons, where religious services have been restricted and reduced, and where contact between prisoners is severely limited, violates Plaintiffs' First Amendment rights.



Respectfully submitted,

GOODMAN, EDEN, MILLENDER & BEDROSIAN

BY:   
WILLIAM H. GOODMAN, (P14173)  
3200 Cadillac Tower  
Detroit, MI 48226  
(313) 965-0050

WAYNE COUNTY NEIGHBORHOOD LEGAL  
SERVICES

BY: 151  
JUDITH MAGID, (P24525)  
3550 Cadillac Tower  
Detroit, MI 48226  
(313) 962-9015

BENNETT & ROSENTHAL, PC

BY: 151  
LARRY W. BENNETT, (P26294)  
6735 Telegraph Road  
Suite 100  
Birmingham, MI 48010

Attorneys for Plaintiffs

DATED: December 7, 1981



RODERICK WALKER, AMIN HABEEB ULLAH,  
A/K/A FRANKLIN NEAL, ROMANDO VALEROSO,  
FLOYD 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,

V.

PERRY JOHNSON, Director, Michigan Department of Corrections, 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,

## PROOF OF SERVICE

Eva Navarro, being duly sworn, deposes and says she is employed by the law firm of GOODMAN, EDEN, MILLENDER & BEDROSIAN; that on the 7th day of December, 1981, she served copies of the following pleadings:

upon all interested parties in the above matter by enclosing  
said copies in envelopes as follows and having same hand delivered:

Eve Nevane

Eva Navarro

CAROL S. ROSEBROUGH  
Notary Public, Macomb County, Mich.  
My Commission Expires Jan. 3, 1984