

**REPORT OF THE COMMISSION OF INQUIRY  
INTO CERTAIN DISTURBANCES AT  
KINGSTON PENITENTIARY DURING APRIL, 1971**

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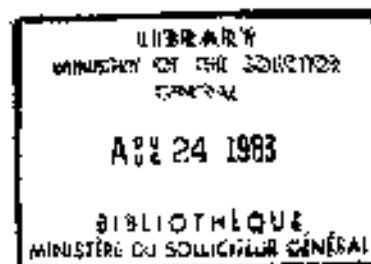
**H.E. Popp  
Member**

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The report of the Commission of Inquiry into the disturbances at Kingston Penitentiary in April, 1971, is printed almost in its entirety. Names of individuals have been deleted with the exception of those of the hostages and the members of the Citizens' Committee. A few lines have been taken out for reasons of security. Seven pages of the original report which contain recommendations relating to internal discipline of the Canadian Penitentiary Service also do not appear in the published version of the report.



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April 24, 1972

Paul A. Faguy, Esq.,  
Commissioner,  
Canadian Penitentiary Services,  
Solicitor General's Department,  
340 Laurier Avenue West,  
OTTAWA, Ontario.

Sir:

The Commission of Inquiry appointed to determine the immediate causes and certain other aspects of certain disturbances which occurred at Kingston Penitentiary between the 14th and 18th days of April, 1971, has the honour to submit the attached report of its findings and recommendations.

Respectfully yours,

(sgd.) J.W. Swackhamer, Q.C.  
Chairman

(sgd.) W.T. McGrath,  
Member

(sgd.) H.E. Popp,  
Member



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## APPOINTMENT AND TERMS OF REFERENCE AS AMENDED

### "COMMISSION OF INQUIRY

WHEREAS certain disturbances have occurred at Kingston Penitentiary between the fourteenth and eighteenth days of April, 1971;

AND WHEREAS it is expedient that the immediate causes and certain other aspects of such disturbances should be investigated;

NOW THEREFORE I, Paul A. Faguy, the Commissioner of Penitentiaries, do hereby, pursuant to section 13 of the Penitentiary Act, appoint J.W. Swackhamer, Q.C., W.T. McGrath, Esquire, and H. Papp, Esquire, under the general direction of the said J.W. Swackhamer, to investigate and report upon:

- (a) the immediate cause or causes of the said disturbances;
- (b) the identity of those persons who fomented or acted as leaders in the said disturbances;
- (c) whether the disturbances were spontaneous or were planned, and if the latter, the extent and nature of the planning;
- (d) whether, if the disturbances were planned, knowledge of the planning came to the attention of any person in the employ of the Canadian Penitentiary Service or should have come to the attention of any such person;
- (e) whether, if any person in the employ of the Canadian Penitentiary Service had knowledge as aforesaid, he took any preventive or other action, and if so, what action;
- (f) what bodily harm was occasioned to persons, whether inmate or staff, during the course of the said disturbances or related thereto, and the identity of the persons responsible for causing such harm;
- (g) the extent of damage to buildings and facilities caused in the course of the said disturbances;
- (h) whether existing security measures are adequate, were they carried out and what additional security measures, if any, should have been taken to minimize the risk that persons in the employ of the Canadian Penitentiary Service might be taken and held hostage by inmates.

AND I DO DIRECT THAT the Commission of Inquiry may, if it considers it desirable so to do, submit a preliminary report on any or all of the above matters.

AND I DO FURTHER DIRECT THAT Ian Scott, Esquire, shall be engaged to act as counsel to the Commission of Inquiry.

AND I DO FURTHER DIRECT THAT the reports required hereby shall be furnished to the Solicitor General as expeditiously as is possible.

AND I DO FURTHER DIRECT THAT any two of the aforesaid members of the Commission of Inquiry shall constitute a quorum thereof with full power to act pursuant to these Terms of Reference. In the case of the absence of J.W. Swackhamer, Q.C., W.T. McGrath, Esq., shall act as Chairman of the Commission of Inquiry.

Given under my hand at the City of Ottawa, in the  
Province of Ontario,  
this 23rd day of April, A.D., 1971.

"P. A. Faguy"  
Commissioner of Penitentiaries"





## Summary of Conclusion with respect to the terms of reference

1. "the immediate cause or causes of the said disturbances;"

We are in agreement that the evidence adduced clearly establishes there was no single, immediate, triggering cause. As will be observed from the report which follows, it is clear that the sum of the conditions which existed at Kingston Penitentiary immediately prior to the April disturbances caused those disturbances. We would refer in that regard to pages 37 and following.

2. "the identity of those persons who fomented or acted as leaders in the said disturbances;"

Because charges were pending in the Courts against persons who apparently acted as leaders in the disturbances, and because convictions have been registered against all but one of the apparent ringleaders, we do not propose to report further with respect to this question.

3. "whether the disturbances were spontaneous or where planned, and if the latter, the extent and nature of the planning;"

We find on the evidence that the disturbances were planned by a few inmates. Although we conclude from the evidence that very few inmates were involved in the initial planning, it is clear that substantially all of the inmate population participated in the disturbances in varying degrees after the disturbances commenced. Inmates in the psychiatric section, and those held in dissociation, were not involved.

4. "whether, if the disturbances were planned, knowledge of the planning came to the attention of any person in the employ of the Canadian Penitentiary Service or should have come to the attention of any such person;"

There was no evidence to indicate that knowledge of the planning of the April disturbances came to the attention of any person in the employ of the Canadian Penitentiary Service, or should have come to the attention of any such person. We express concern, however, at the contents of two letters from the Warden, dated November 24, 1970 and January 18, 1971, written to the Commissioner of Penitentiaries and the Regional Director of Ontario respectively. In those letters the Warden expressed grave concern with respect to conditions existing at Kingston Penitentiary. Although during the course of his evidence, the Warden testified that in his opinion tension at the Penitentiary eased considerably following his letter of January 18, 1971, the letters did graphically forecast the tragic events which in fact did occur in mid-April, 1971.

5. "whether, if any person in the employ of the Canadian Penitentiary Service had knowledge as aforesaid, he took any preventive or other action, and if so, what action;"

We find that because no person in the employ of the Penitentiary Service had prior knowledge of the plans for the April disturbance no preventive or other action was taken.

6. "what bodily harm was occasioned to persons, whether Inmate or staff, during the course of the said disturbances or related thereto, and the identity of the persons responsible for causing such harm;"

(a) Bodily injury was occasioned to inmates during the course of the disturbances at Kingston Penitentiary which resulted in the death of two of those inmates. At the time of the hearing of this Commission charges were pending against certain inmates relating to those deaths. Since the conclusion of the hearing a number of inmates have been convicted by the Courts with respect to those charges.

(b) The evidence also establishes that bodily injury was occasioned to inmates during the course of the Kingston disturbances by fellow inmates. Particulars of those injured and the nature of their injuries are set out at page 30 of the report.

- c) With reference to the admission of inmates to Millhaven Institution at the conclusion of the Kingston disturbances, the evidence establishes that approximately 88 inmates suffered injuries of various degrees. We find that those injuries were caused by persons in the employ of the Canadian Penitentiary Service.

Because charges were pending against various members of the Penitentiary Service at the time this Commission of Inquiry concluded the taking of evidence, we did not deem it proper to attempt to determine the identity of those members of the Penitentiary Service who might have been responsible for inflicting such injuries. We did, however, conclude that certain persons, not charged, were responsible for permitting bodily harm to inmates. We have set out our findings in that regard in the section on Millhaven Institution.

7. "the extent of damage to buildings and facilities caused in the course of the said disturbances;"

The evidence established that that part of the institution which came under the control of the inmates during the disturbances was demolished and rendered totally unfit as a unit for the housing of inmates. As will appear from the narrative, that included Ranges A to H inclusive, the chapel areas, and the Dome. There was, in addition, extensive damage to the cell furniture and fixtures, locking devices, and interior walls and windows in the ranges and the Dome area. Because the damaged areas were not to be reconstructed we did not find it practical to endeavour to estimate the cost of the damage.

8. "whether existing security measures are adequate, were they carried out and what additional security measures, if any, should have been taken to minimize the risk that persons in the employ of the Canadian Penitentiary Service might be taken and held hostage by inmates."

We find that the security measures which were exercised were consistent with established practices of a maximum security institution. There was no evidence that the prescribed security measures were not carried out by the staff on duty at the time of the disturbance. It is our opinion, based on the evidence, that reasonable additional security measures would not have minimized the risk that persons in the employ of the Canadian Penitentiary Service might have been taken and held hostage.

We do, however, express concern that there was no adequate plan for dealing with the disturbance once it had occurred.

## Interpretation

In accordance with tradition established by Commissions of Inquiry and Committees which have preceded us, we determined it desirable and appropriate to give a liberal interpretation to the terms of reference provided by the Commissioner of Penitentiaries.

We are informed that this Commission of Inquiry is the first appointed pursuant to the provisions of The Penitentiary Act since the Biggar Commission of 1920, which has included in its membership persons outside the Public Service of Canada.

It became apparent early in the inquiry that the events under investigation could not reasonably be examined in isolation. It has therefore been our endeavour to render a report which deals not only with the precise questions posed in the Terms of Reference but which also will assist the Canadian Penitentiary Service in lessening the frequency and severity of penitentiary disturbances and devising techniques for management, control and settlement of such disturbances when they do arise. We have nonetheless approached our task within the perimeters established by the Terms of Reference.

## Procedure

### Commission, General

In order to carry out its work, the Commission made use of the following procedures:

#### (i) Notices to the Public

Following the appointment of the Commission of Inquiry and before any hearings were conducted, notices advising of its appointment, summarizing its Terms of Reference and requesting briefs, submissions or inquiries were published in local newspapers on April 30, 1971, and May 1, 1971, at:

Kingston	Sault Ste. Marie
Ottawa	Sudbury
Toronto	St. Catharines
Cornwall	Brockville
Hamilton	Thunder Bay
Kitchener	Port Arthur
North Bay	Windsor

Where appropriate, the notice was published in both official languages. In addition, a notice advising of the Organizational Hearing of the Commission of Inquiry was published in newspapers at Kingston, Ottawa and Toronto.

#### (ii) Visits

Counsel to the Commission or members of his staff visited:

Kingston Penitentiary  
Collin's Bay Penitentiary  
Collin's Bay Farm Annex  
Joyceville Penitentiary  
Joyceville Farm Annex  
Millhaven Institute  
Warkworth Penitentiary

The Oak Ridge Division of the Ontario Mental Health Centre (Penatanguishene), an institution maintained by the Province of Ontario.

Auburn Penitentiary, an institution maintained by the Government of the State of New York.

#### (iii) Interviews

In order to prepare evidence for submission to the Commission of Inquiry, Counsel and his staff took statements from 348 staff members of the Canadian Penitentiary Service and 211 inmates who had been in Kingston Penitentiary during the disturbance. In addition, a substantial proportion of these persons were interviewed further and in detail by Commission Counsel or his staff.

As well, Commission Counsel conducted interviews with some twenty-seven persons not directly connected with the Penitentiary Service.

(iv) **Briefs**

A number of briefs, letters and written suggestions were received, which related to the matters referred to the Commission of Inquiry. All briefs and letters received were read in full and provided considerable help to the Commission in the discharge of its general duties.

(v) **Questionnaire and Prisoners' Brief**

A questionnaire concerning circumstances in existence at Kingston Penitentiary prior to the disturbances was developed by Counsel to the Commission and circulated by him to 340 inmates who had been in the Main Cell Block at Kingston Penitentiary during the disturbances in April, 1971. The response to the questionnaire was in excess of 87 per cent.

The purpose of the questionnaire was to test the extent of inmate "grievances" which, it was asserted, were a major cause of the insurrection and disturbance at the Penitentiary. The questionnaire covered 14 of the areas in which inmates were said to have expressed grievances. The areas examined were in no sense exhaustive; the Commission staff bound itself to the limits imposed by the Terms of Reference.

The response to the questionnaire and a Brief on the questionnaire were filed as an exhibit before the Commission of Inquiry.

In addition, Commission Counsel and his staff met informally and at length with inmates from eight ranges at Millhaven Institution. These ranges comprised, in most cases, persons who had been in Kingston Penitentiary in April, 1971. The purpose of these group interviews or discussions was to assess in more direct fashion the extent to which alleged "grievances" may have initiated or sustained the disturbance. As a result of these meetings, a Brief was prepared by Commission Counsel, which summarized, without comment, the inmate view on such matters.

(vi) **Medical Examinations**

By letter dated April 26, 1971, Counsel to the Commission confirmed oral instructions given on April 23, 1971 to the Regional Director (Ontario) of the Penitentiary Service "to arrange for an immediate physical examination of all inmates at Millhaven Institute by a competent medical doctor, either on the staff of the Penitentiary Service or otherwise. The purpose of this examination is so that there will be available evidence obtained at the earliest possible moment as to the extent of any injuries inmates may have sustained, and so that some assessment may be made of the origin of these injuries."

These medical examinations were conducted on April 28, May 1 and May 3, 1971, and written summaries of the findings were submitted as exhibits during the hearings.

(vii) **Oral Evidence**

Apart from the questionnaire and the Prisoners' Brief, which related exclusively to alleged inmate "grievances" which existed at Kingston Penitentiary prior to April 14, 1971, the Commission heard only oral sworn testimony and considered only such documents as were proved in the usual way by sworn witnesses who had personal knowledge of their contents. The decisions, conclusions and recommendations of this Commission depend on that evidence and nothing else.

## Hearings

(i) **Rulings**

Immediately following the establishment of the Commission, it became known that the possibility of criminal charges under the Criminal Code against both inmates and correctional officers was under consideration by the appropriate Crown agencies.

In due course, criminal charges were in fact laid against 18 inmates and 12 correctional officers arising directly out of the events at Kingston Penitentiary and Millhaven Institution between April 14 and April 21, 1971.

Thereafter, Counsel to the Commission advised that the evidence to be put before the Commission might involve the naming of persons allegedly implicated in illegal and violent acts during the course of the disturbances, either at Kingston or Millhaven.

It was equally clear that evidence would be heard as to existing security measures in effect at the penitentiaries at the time.

The Commission was concerned that any publicity attached to evidence given before the Commission which might by subsequent evidence or otherwise prove to be unreliable, would lead to grave and unwarranted damage to reputations both of inmates and Penitentiary staff. There was also a very substantial risk that the fair trial of persons charged might be severely and irreparably prejudiced by such publicity.

In addition, the Commission was conscious that disclosure of the evidence given before the Commission of Inquiry, especially insofar as it affected security regulations and practices which might depend for their efficacy on confidentiality, might undermine the safety or lead to difficulties in the administration of the institutions with which we were concerned.

At its initial hearing the Commission of Inquiry therefore determined that evidence given before it would be heard in camera. In order to assure that the appropriate objective would be achieved, all members of the Commission and all persons associated with its work, except counsel for witnesses, were required to take an Oath of Secrecy.

#### (ii) Protection of the Bill of Rights and the Evidence Acts

In order to fully protect the rights of all persons, the Commission of Inquiry, as required by law, gave effect to Section 2 of the Bill of Rights and apprised each witness of his right to retain and give evidence with the assistance of counsel. Many witnesses did so. In any event, and to assure that the rights of inmates were fully protected, the Director of Legal Aid in the County of Frontenac provided counsel who was present on each occasion when inmates were required to give evidence. A group of inmates who testified as a panel were apprised of their right to counsel but did not choose to exercise it.

Further, the protection provided by the relevant sections of The Canada Evidence Act and the The Ontario Evidence Act were granted when requested.

#### (iii) Notices

During the course of the Inquiry, the Commission determined that the evidence heard might require it to make a Report, pursuant to Section 13 of The Inquiries Act, against persons not charged in the Criminal Court, who nonetheless were "persons responsible for causing (bodily) harm".

As a consequence, Notices pursuant to The Inquiries Act providing reasonable notice of the charge of misconduct alleged were served upon some members of the Penitentiary Service.

Each appeared in person and with counsel and was provided with a transcript of all the evidence heard by the Commission relating to the charge of misconduct alleged against them.

In addition, Commission Counsel undertook, if requested, to recall any witness for cross-examination by Counsel for the persons upon whom such Notice was served and the Commission itself indicated its desire to hear any further evidence that such persons or their

Counsel might desire to hear any further evidence that such persons or their Counsel might desire to call and any representations their Counsel wished to make with respect to the matters before the Commission.

No request was made to recall any witness for further cross-examination. Additional evidence was, however, given on behalf of some of these members of the Penitentiary Service. In addition, counsel for all made full and most helpful submissions with respect to the evidence.

**(iv) Hearings**

The Organizational Meeting of the Commission of Inquiry was held at the Massey Library, in the Royal Military College, Kingston, Ontario, on May 17, 1971.

The Commission of Inquiry met In camera in Kingston and Toronto to hear evidence and submissions on June 7, 8, 9, 10, 15, 16, July 6, 7, 26, 27, 28, August 17, 18, 19, 20, 30, 31 and September 1, 9 and 10, 1971.

In addition, the members of the Commission met to review the conduct of the proceedings, to consider the evidence heard by them, and to prepare their Report from time to time, as required.

## KINGSTON PENITENTIARY

Kingston Penitentiary was at the date of the disturbance giving rise to this inquiry the maximum security federal institution for the Ontario region. It is located within the City of Kingston, in relatively close proximity to a number of other federal penal institutions, including the Prison for Women, Joyceville Institution, Collin's Bay Penitentiary, Joyceville Institution Farm Annex and Collin's Bay Penitentiary Farm Annex. Millhaven Institute, to which reference will be made later in this report, is located at Bath, Ontario, approximately 15 miles distant from the City of Kingston, and was designed to replace Kingston Penitentiary as the Ontario region maximum security institution. At the date of the disturbance Millhaven Institution had been partially completed, and partially staffed.

The main prison buildings at Kingston Penitentiary were constructed well over a century ago. Since that time substantial alterations and additions have been made. The main structures are hopelessly outdated and inadequate for the purposes for which they were being used in 1971.

The main facilities at the Penitentiary are surrounded by a substantial stone wall surmounted by four observation towers designed to ensure perimeter security of the institution.

The offices of the Warden and certain other administrative offices are located adjacent to the institution, but outside the perimeter walls.

The largest building in the main complex is the Main Cell Block, which houses the general inmate population. It appears to have been originally constructed in a basic cruciform design, the four bars of which comprise cell blocks running north, south, east and west from a large central area known as the Dome.

In addition to the cell blocks, there is located at the north-west quadrant of the main building the Keeper's Hall, which is a one-storey structure, to which access can be gained from the Dome through two barriers, or from the outside yard. The Keeper's Hall is the area in which Penitentiary staff may gather. Generally speaking, it serves as the administrative headquarters of the Senior Keeper on duty in the Penitentiary.

Located in the north-east quadrant of the main building is the Dissociation Cell block, which is also a one-storey structure. The Dissociation Block is used to segregate inmates from the general prison population for various purposes, including discipline, awaiting trial by the Inmate Disciplinary Board, or awaiting trial by courts. The inmate witnesses commonly referred to the Dissociation Cell as "the hole".

Located at the south-east quadrant of the main building are the kitchen and related facilities, which are housed in still another one-storey structure. Entry to the kitchen may be made from the Dome or from the outside yard. Inmates, of course, are admitted to the kitchen area for work purposes.

At the south-west quadrant of the main structure is located the physical and recreational building. It contains a hall which serves as a gymnasium, and an auditorium. It also contains classrooms and small offices. Access to the hall itself is gained by a passageway leading from the Dome. There is also a door at the south-west corner of the hall leading into the yard. There is a gun cage in a corner of the hall.

The four cell blocks, radiating in the manner previously described from the Dome, house the general inmate population, who are quartered in individual cells. Entry to the cell blocks, each of which is four levels high, is gained from the Dome. There are four stairways on the perimeter of the Dome leading to the second, third and fourth tiers of each of the cell blocks. At each level a narrow passageway runs around the perimeter of the Dome. That passageway is bounded by a waist-high handrail, but is otherwise open to the Dome area.

During the course of evidence before the Commission, each floor of the cell block area was referred to variously as a "range" or a "tier". For the purposes of this report, we shall use the term "tier".



Each cell block has 2 divisions which are called "ranges". The ranges are identified on each level by letters "A" through "H" (both inclusive). Each range contains between 18 and 21 individual cells.

The ranges of the first tier (that is at ground level) face on a corridor from which access to the individual cells is obtained. On the second, third and fourth tiers, access to the cells is gained from a narrow walkway similar to that which circles the perimeter of the Dome. Except in the case of Range "C" the walkway is bounded by a waist-high handrail. The walkways do not extend to the outside wall of the building. It is thus possible to look from the walkway on the second, third and fourth tiers down to the corridor passing in front of the cells on the ground level. The only exception is in Range "C", where the handrail supports a protective wire and grill mesh.

Cell locations are designated by reference to the tier and range in which the cell is located. Thus an inmate who is quartered in Cell 7, Tier 2, Range H will be identified as living in Range 2H.

Located at the east end of the East Wing Cell Block is the Institution Hospital, entry to which can be gained from the corridor adjacent to Range 1, and from the yard. The Hospital is a two-storey structure and includes a bed unit, a dispensary, and examination and treatment rooms.

Finally there is located at the end of the West Cell Block a two-storey structure. The ground floor was at the time of the disturbance used as a Correctional Officers' Mess, and access to it was gained from the yard. There was no means of access to it from within the main building. On the second level of that building was located the Roman Catholic and Protestant Chapels, and a Hebrew Reading Room, together with offices for the respective Chaplains. Access to the Chapel area could be gained from the second range of the West Wing of the Main Cell Block. Access to the Chapel area could also be gained through an exterior fire exit leading to the yard.

### **Inmates in Protective Custody**

Range 1D is located on the main floor of the main building. Quartered at this range at the time of this disturbance were inmates who, by reason of their prison records or in the judgment of the Institution authorities, required protection from members of the general inmate population. They were referred to by both inmates and administrative staff as "the undesirables". We were informed during the course of the inquiry that among such persons were those who had committed offences considered reprehensible to the inmate population, or persons who were known or suspected of acting as informers. The evidence indicated that most, if not all, of those inmates called in Range 1D were there at their request. At the date of the disturbance there were 14 so-called undesirables called in Range 1D.

### **The Ontario Region**

For the better understanding of the evidence, we propose to outline briefly the Penitentiary Administration Service as it existed during the Kingston disturbances.

Kingston Penitentiary is located for administrative purposes in the Ontario Region of the Penitentiary Service. The Regional Director at the time of the disturbances had been a member of the Penitentiary Service since 1957. He has been the Ontario Regional Director since April, 1970.

The Regional Director's office is located in the City of Kingston, and consists of five departments, namely, Personnel, Classification, Industrial, Finance and Works. Each of those departments is headed by a supervisor.

The relationship of the Regional Director and his supervisors to the administrative officials of the federal institutions within the Region is in our view unduly complex.

The jurisdiction and authority of the Regional Director do not appear to be defined with any substantial degree of particularity. It is clear that he has direct authority over those departments in his office. His jurisdiction and authority with respect to the senior administrative officers at the various federal

institutions within his region is not clear, and appears to depend to a substantial degree on the personalities and personal relationships of the various senior officers and the Regional Director himself.

It was conceded in evidence before us that a Regional Director had authority to give a direct order respecting matters within a warden's jurisdiction. It was also conceded that a Warden could by-pass an order or direction of a Regional Director and deal directly with the office of the Commissioner in Ottawa.

#### COMMENT

It is apparent that the lack of precise definition of authority and jurisdiction with respect to the duties and obligations of the Regional Director and his departments is most unsatisfactory, and as the evidence of events under investigation by this inquiry unfolded, it became apparent to us that the lack of definition of authority and jurisdiction led to a substantial degree of confusion in the minds of the senior officers of the Penitentiary Service present in Kingston at the time of the disturbances.

#### The Law Relating to the Penitentiary Service

The law and rules by which both staff and inmates are governed consists of a massive and almost incomprehensible collection of regulations, directives, standing orders, circulars, instructions and the like:

The Penitentiary Act and the Penitentiary Service Regulations provide the basic authority for the government of the Penitentiary Service.

There is, in addition, a series of directives of the Commissioner of Penitentiaries, consisting of six substantial volumes. These are relatively easy to understand.

There is also a series of circular letters of instructions which have the force of authority, but which is not indexed. There are Institutional Standing Orders which are published by and are the responsibility of the senior officer of each institution in the service. The Institutional Standing Orders at Kingston Penitentiary are contained in a very large volume. A cursory study of it indicates a desperate need for its revision, and one would hope its editing to a manageable size.

There are also regional directives issued by the Regional Director to the senior administrative officers to the institutions in his area. As if that list were not sufficiently confusing and complex, there are also directives issued by the Warden and his staff. Finally, and as became evident during the course of the evidence, the administration must constantly concern itself with the Public Service Staff Relations Act, and regulations made thereunder, and various collective agreements and the position analysis description for each staff member within the institution.

#### COMMENT:

Recognizing as we do the need for flexibility in the administration of the Penitentiary Service, it appears to us, nevertheless, that a more orderly and efficient operation would result if the directives, instructions, regulations, and orders were consolidated and indexed in some form which would be understandable to staff and inmates alike.

#### Staff

The staff of Kingston Penitentiary in 1971 consisted of an active complement of about 359 persons. Of that total, 177 were members of the Custodial Staff, 60 were members of the Inmate Training and Classification Staff, 28 were members of the Industrial Division, and 10 were staff members of the Psychiatric Unit. The remainder consisted of persons employed in services and supplies, general administration, etc.

The Warden was normally assisted in the performance of his duties by a Deputy Warden and by an Assistant Deputy Warden (Custody), an Assistant Deputy Warden (Inmate Training), an Assistant Deputy

Warden (Services and Supplies), an Assistant Warden (Organization and Administration) and a Superior of Industries.

The position of Deputy Warden at Kingston Penitentiary had been vacant since the autumn of 1970. In the autumn of 1970 the duties of Deputy Warden at Kingston Penitentiary were assigned to and performed by the Assistant Deputy Warden (Inmate Training).

The Assistant Deputy Warden (Custody) supervised the custodial staff, whose personnel were properly referred to as Correctional Officers.

Correctional Officers are classified by promotion from one to ten, so that each Correctional Officer in the Service is assigned to a rank from CX1 to CX10.

### Staff Training

The evidence before the Commission indicates that professional persons hired on the staff of a penitentiary by the Regional Office are not given any induction course or special training in penitentiary work.

However, correctional officers and certain other staff members may avail themselves or may be required to avail themselves of the resources of the Correctional Staff College which is located in the Kingston area. Generally correctional officers as a matter of routine receive a course of training at that College before assuming their duties. While this is the general rule, it is not invariable. It is apparently the policy of the College to operate an introductory course when it has approximately 24 candidates available. In the meantime, newly hired correctional officers perform regular duties in the Penitentiary. An attempt has been made to remedy the delay in giving the course by appointing at Kingston Penitentiary and at Millhaven Institution a staff training officer assigned from the College, who provides "on-the-job" training to correctional staff. The staff training officer so assigned, in addition to training newly hired staff, provides follow up training and conducts refresher training on other subjects.

The duties of a correctional officer in a maximum security penitentiary are demanding, difficult and absolutely crucial to the smooth operation of the penal system.

A correctional officer, whether he be posted on range duty or elsewhere in the penitentiary complex, represents the administration's "front line". He has maximum contact in many of his postings with inmates, and is essentially charged with assuring their custody and security. In addition, he is the natural, and ordinarily primary, contact for inmates who have problems, require information, or who are in any way unsettled. In this capacity he is obliged to give orders (many of which may be regarded as restrictive or offensive by inmates) and to see that they are efficiently carried out. It would be unreasonable not to conclude that for the vast majority of inmates the correctional officer represents the Penitentiary Service and is the living embodiment of its principles of operation and its objectives.

It is of paramount importance that the correctional officer should perform his duties firmly and efficiently, but, at the same time, fairly and with due courtesy, so that the rehabilitative objectives of the prison system will not be distorted or damaged by inmate resentment of correctional staff. It is clear to us that many of the difficulties that existed in Kingston Penitentiary resulted from the development of an unfortunate relationship between correctional officers and inmates. Perhaps it goes without saying that for a measure of this relationship the Correctional Officer is not responsible. Inmates are not initially well disposed toward their custodians, and it is no doubt true that some inmates are aggressive and provocative in dealing with them. However, the existence of a skilled, professional custodial staff, aware of the larger objectives of a prison program can do much to improve the prospects of rehabilitation and lessen those pressures which result in such tragic disturbances as occurred in Kingston Penitentiary in April.

Bearing in mind the difficulties inherent in the proper execution of custodial functions and the mass of regulations and directives, many of which the custodial officers are obliged to routinely apply, it is

very difficult to believe that any officer new to the Service can hope to adequately discharge his duties in the manner required of him, notwithstanding his best intentions, without proper and adequate training.

### **The Daily Routine of the Prison**

In 1971 the weekday inmate routine (for which there are exceptions in the case of inmates assigned to kitchen and other specialized duties) may be summarized as follows:

0645 Rising.

0700 First range of inmates are released from their cells and proceed to kitchen to obtain breakfast tray which is taken to the cell. This procedure, in sequence, involves all ranges in the prison and terminates at approximately 0750.

0750 A count of the prison population is conducted.

0800 First range of inmates are released from their cells to return breakfast trays to kitchen and to proceed to shops. This procedure conducted again, in sequence of ranges, is usually completed by 0830.

0830 Prison population count is conducted.

1100 The first range of inmates proceeds from shops to obtain lunch tray which is taken to their cell.

1150 Sequence of range movements to obtain lunch tray is completed and all inmates are in their cells.

1150 Prison population count conducted.

1200 While the general prison population is in their cells, some limited activity, such as medical parade, may take place.

1300 First range of inmates are released to return lunch trays to kitchen and return to shops. This sequence of range movements is completed by approximately 1330.

1345 An individual count is conducted by shop instructors and gang officers.

1545 The first range is released from shops to obtain supper and the sequence of events that occurred at breakfast and lunch is repeated.

1645 The service of supper is completed.

1645 Prison population count conducted.

1700 The administration of the prison is taken over by the Night Duty Officer who conducts a count of the inmate population.

1800 The first range of inmates entitled to recreation proceeds by range to either the Recreation Hall or the Playing Field. The choice of whether recreation is conducted in the Recreation Hall or on the Playing Field frequently depends on the weather and is made by the correctional officer in charge.

2000 The first range of inmates on recreation begins to return to their cells.

2030 The second range entitled to recreation is released to Recreation Hall or Playing Field.

2230 The second range of inmates on recreation is returned to their cells.

2300 A count of the inmate population is taken.

2350 A count of the inmate population is conducted when the administration of the prison is turned over to the night shift.

In addition to the week day routine as set out above, provision is made for a half hour exercise period for each inmate each day. If an inmate is required to attend on his Classification Officer or medical doctor or dentist, such attendance is ordinarily made during the week day. It is obvious from a review of the schedule, that the time an inmate spends locked in his cell varies from approximately 16 to 18 hours a day.

(The prison routine on Saturday and Sundays is somewhat different from that spelled out above, but we do not deem it necessary to review it in detail.)

It was the practice at Kingston to isolate those inmates who had arrived at the Penitentiary in "C" Block in the Main Cell Block during the course of their classification and reception process. The evidence of the Classification Officers was that the process during the months immediately preceding the April disturbance took approximately 4 to 6 weeks to complete. As a result, the newly arrived inmates spent substantially all of their time in their cells.

### **Letters from the Warden to the Commissioner of Penitentiaries and to the Regional Director (Ontario)**

There were filed as exhibits during the course of the evidence two letters from the Warden, which we consider highly significant. The first is a letter dated November 24, 1970 to the Commissioner of Penitentiaries, the text of which reads as follows:

#### **"Deputy Warden, Kingston Penitentiary**

1. The position of Deputy Warden has been vacant at this institution since the 2nd November '70. The Assistant Deputy Warden (IT) has been acting in the capacity of Deputy Warden since before that time and without a doubt is highly capable of functioning in that position very effectively. The problem arises, however, when we attempt to fill the position of Assistant Deputy Warden (IT) in 'acting' status, e.g. the Supervisor of Education would lose several hundred dollars a year as Acting Deputy Warden (IT), the Supervisor of Classification would 'break even', but naturally he is not interested in taking on greater responsibilities for the same pay.

2. It is also a fact that because of mounting pressures in their own departments neither of the above-noted officers can be spared. I cannot expect the Acting Deputy Warden to even attempt to carry out the responsibilities of both positions because I know that, not only is the work-load more than enough for two men, but also in a short time his health would break down owing to the strain. There is no doubt in my mind that Kingston Penitentiary will continue to operate for the next four years. The inmate population will not deplete to less than 350 from our present count of 680. At the present time there is a heavy influx of newcomers, which is magnified by the unusually high number of parole violators. I presume this will continue to increase.

3. Many of our institutions across the country have operated for several years with populations of less than 400 inmates and have found it necessary to have a full complement of senior staff, including a Deputy Warden. It is essential then, at this maximum security institution, which includes a Regional Reception Centre and Psychiatric Unit, that the position of Deputy Warden be filled immediately. There is no doubt that the position of Deputy Warden at this institution will become redundant some time in the future and the incumbent may be desirous of continuing his employment in that capacity. It does not take much imagination, however, to see the number of positions which will be available for lateral (sic) transfer, as a result of promotions, retirements, etc., at a time more appropriate than the present. I urgently recommend that the position of Deputy Warden at Kingston Penitentiary be filled at the earliest date possible."

The Warden testified that he received no written reply to that letter.

The second is a letter dated January 18, 1971 to the Regional Director (Ontario). The text of that letter is as follows:

1. There is a very high degree of tension at Kingston Penitentiary at this time. In fact it appears to be almost at the point of explosion. We are doing all in our power to lessen the tension and to control the inmate population. There are, however, too many factors outside of our jurisdiction, which affect the situations, over which we have no control.
2. The most important problem is that inmates are not getting the attention they require and this is for several reasons, as follows:—
  - a) Divisional Heads, etc. are too busy with paper-work and have no time to communicate with the inmates, i.e. position descriptions, variance reports, Union matters, including grievances, research, studies of reports (Evans, etc.), as well as all the additional work which is created because of the increased staff at R.H.Q. [Regional Headquarters] and the Offices of the Commissioner and Solicitor General.
  - b) We have been short three Classification Officers since August 1970. I have been in contact with Head Office, as well as R.H.Q., on this matter and it seems that no one can fill these positions. As a result of this and the extra load being created by Bill C-150 as well as the number of paroles and violators of parole, along with 1200 newcomers and about 300 returnees from other institutions each year, inmate problems are not being attended to. Our limited Classification Staff is overworked and overtired at the present time. They are also becoming impatient.
  - c) The position of Deputy Warden has been vacant since the 2nd of November 1970 and there has been no attempt to fill it. This means that A.D.W. (IT) is flooded with paper and has no time for inmates. He is being backed up to a degree by the Supervisor of Education. This means again that inmates are also being neglected in the Academic training area. God knows what will happen if one of us breaks down under the pressure. I don't. After all we have 700 of the most difficult inmates in the country to deal with and in my opinion, the number will not deplete to less than 350, even when Millhaven is operating at full capacity (refer to my letter, Rec. C.P.S. 482-0001X, dated 24 November '70, to which I have never received a reply).
  - d) A large proportion of our mature and experienced staff in all areas, but especially custody, have been transferred to Millhaven Institution and more are expected to go in the very near future. We have as replacements simply people without experience trying to fill in a slot which at this time they are not capable of doing. I cannot afford to let more experienced staff transfer until something is done about reducing our count substantially.
  - e) We have dozens of disgruntled inmates, who have been returned from medium or minimum security institutions, who claim they don't know why they were returned, or in some cases, because they were under suspicion or simply they just can't get along in medium security. Some examples of this are inmates being returned directly to maximum security from minimum, etc. for escape or mediocre disciplinary problems.
  - f) Our psychiatric facilities are too small. Many of the people, who should be confined there for treatment, are released to the population before they are ready because someone else in poorer mental condition needs the cell. These are a constant source of trouble and are being used by the psychopath to stir up trouble.
  - g) There are probably 250 empty beds in the Ontario region outside of Kingston Penitentiary and it appears that suitable candidates cannot be found to fill them. Our count seems to remain in the area of 860 to 900. This exceeds by far the number of the type of desperate inmates that we should have in a maximum security institution. Moreover, our Segregation and Disassociation cells are practically full. I don't know where we can house inmates if a disturbance erupts.
  - h) There has been, and continues to be, widespread anxiety among the inmate population because of the contemplated transfer of inmates to Millhaven Institution. I feel sure that there are many inmates who would like to see Kingston Penitentiary in a shambles before the transfer is completed.

i) Last Saturday (Jan. 16th) it was necessary to cancel our Alcoholics Anonymous Anniversary Meeting because we had tips that there would be trouble. The names of the inmates we received were certainly likely candidates to attempt violent action. There also seems to be some relation to the inmates involved in the several violent acts which have occurred recently at this institution, [1] assault upon an officer and [2] the taking of hostages.

3. Unless some immediate action is taken with reference to the above, I expect many serious incidents to occur in the very near future."

During the course of his evidence, the Warden testified that after writing the letter dated January 18 he was of the view that the conditions within the institution had settled down, and he was sufficiently satisfied there would be no disturbance and so took leave.

### **The Kingston Penitentiary Population as at April 14, 1971**

The total inmate population of Kingston Penitentiary was 641 inmates. Of that number 380 had previously been inmates in a penitentiary. A total of 103 inmates were classified as requiring psychiatric treatment. Fourteen of the inmates were classified as requiring protection from the inmate population, and were therefore called in Range 10.

Of the total prison population 39 had been classified as suitable for assignment to a medium or minimum security institution, but had not on April 14, 1971 been transferred. Of the total population, 125 were recent admissions who had not yet completed the classification and admitting processes.

### **Summary of Events Commencing April 14, 1971**

As had been noted, in the daily routine set out in detail at pages 13 and 14 the first recreation period commenced at 1800 hours. On April 14 that recreation period passed uneventfully. At 2030 hours the second recreation period commenced. Those inmates participating were inmates on the second tier. The inmates who chose to do so proceeded from their cells to the Recreation Hall, where they were to remain until 2030. The Correctional Staff on duty within the Main Cell Block on the evening of April 14, 1971 consisted of 10 officers. No other staff or personnel were present in the Main Cell Block during the second recreation period.

A CX6 was the officer in charge of the prison. He was required to assure the custody of the inmates and the security of the Main Cell Block, and to supervise the staff in the Main Cell Block.

We might interject at this juncture that in addition to the staff on duty within the Main Cell Block, there were other officers on duty in the penitentiary complex. A single Custodial Officer was on duty in each of the Dissociation and Hospital areas. Three Custodial Officers were on duty in the East Cell Block. One officer was posted at the North Gate. Two officers were patrolling the prison yard. One officer was in charge of the Keeper's Hall, and the Tower officers were on duty.

The Recreation Hall is a substantial, rectangular shaped, high-ceilinged hall, on the north side of which is located a stage and a number of small offices. There is a doorway to the yard at the south-west corner of the Recreation Hall in the south wall. In the south-east corner of the south wall is an elevated gun cage. The Hall is furnished with tables and chairs and two television sets, which are located on each of the east and west walls.

Entrance to the Hall from the Dome is gained by passing through a locked barrier at the perimeter of the Dome into a corridor which runs in an east-west direction. That corridor is approximately 40 feet in length. At the westerly end of the corridor is a second locked barrier, which opens onto a second corridor which runs in a north-south direction. That corridor is approximately 80 feet in length. At the southerly end of that corridor is the Recreation Hall. There is no barrier between the Recreation Hall and the entrance to the north-west corridor.

Movement of inmates into and out of the Recreation Hall is relatively casual in that inmates are permitted to walk in pairs and to converse as they enter or leave the Hall. Regulation of inmate movement is effected by requiring that the inmates on each Range move into and out of the Hall with approximately two-minute intervals between the range movements.

The evidence establishes that at 2030 hours on the evening of April 14, 1971 three officers were on duty in the Recreation Hall. Another was stationed in the gun cage. There was an officer in the Recreation Office on the north wall of the Hall. At that time there were also two officers on the ground floor of the main Dome, and three were in the passageway around the perimeter of the Dome on the second tier.

At 2030 hours the television sets were turned off and preparations were made by the officers in the Recreation Hall for the inmates to return to their cells. In accordance with established practice the return was signalled by a manually-operated light indicator by which the officer-in-charge signals that group of inmates to proceed to their range. In preparation for the movement from the Hall to the Dome, Mr. Flynn unlocked and left open the first barrier at the perimeter of the Dome leading to the east-west corridor above referred to. He then proceeded to the westerly end of that corridor and signalled to the officer in the Recreation Hall that all was in readiness for the movement of the inmates to their cells. He, according to established routine, directed Mr. Decker to the barrier at the northerly end of the north-south corridor. Mr. Flynn unlocked the barrier and handed the key for it to Mr. Decker. Mr. Decker then closed the barrier and locked it and took position at the north side of it. Mr. Flynn returned to the Dome to assure himself that the officers on the second tier were ready to receive the inmates as they arrived from the Recreation Hall. Having so assured himself, he waved to Mr. Decker, who in turn signalled to the officer in the Recreation Hall that the movement could begin.

The light indicator was activated to read "H", indicating that those inmates celled in Range 2H should proceed from the Recreation Hall to their cells.

It is perhaps appropriate at this point to observe that there is no evidence to suggest that the Custodial Staff were forewarned or could have been prepared for what was about to occur. On the contrary, the evidence indicates that both recreational periods had been quite normal.

When the light indicator was activated, it appears that approximately 17 inmates proceeded in a northerly direction through the first corridor toward the first barrier and Mr. Decker. That group moved at a normal pace, singly, or in groups of two or three, and appeared to be proceeding in a normal fashion. The remainder of the inmates in the Recreation Hall commenced to gather near the entrance of the passageway through which, under normal circumstances, they also would proceed within a matter of minutes to their cells.

Mr. Decker, upon observing the approach of the first group of inmates (ostensibly those celled in Range 2H) unlocked the first barrier and opened it. When approximately ten inmates had passed through the barrier and turned into the easterly portion of the corridor as though to proceed to the Dome area, two inmates attacked Mr. Decker, punching him about the head and knocking off his cap. It appears from the evidence that the remainder of the inmates in the group who had not yet proceeded through the barrier, stood back as though surprised at the incident which they observed. Mr. Decker was pushed a considerable distance down the east-west corridor, knocked to the floor, and the key to the recreation hall barrier was taken from him.

While Mr. Decker was being attacked, the inmates who had preceded his attackers proceeded into the main Dome area. One of them approached Mr. Barrett, who was at that time standing on the Dome floor immediately north of the bell. Mr. Barrett assumed that the inmate desired to make an enquiry of him, and noticed nothing untoward until the inmate grabbed him by the tunic and commenced tussling with him, shoving him toward the north wall of the Dome. A second inmate joined Mr. Barrett's attacker and threatened to discharge into Mr. Barrett's face a foam fire extinguisher which he was carrying. Having thus been threatened, Mr. Barrett gave up resistance. At about the same time that Mr. Barrett was attacked, Mr. Flynn, who was standing to the south of the bell and adjacent to the entrance to the Recreation Hall corridor, was attacked by another inmate, who was later joined by still another inmate attacker.



Messrs. Barrett and Flynn were then directed by their attackers to Range 1F, and instructed to proceed to the end of that Range and to remain at the foot of the stairs leading to the chapels located on the second level. Mr. Flynn had some of the Penitentiary keys in his possession. Mr. Barrett took those keys and threw them out of a window into the yard.

The evidence establishes that very shortly after Messrs. Barrett and Flynn were directed to Range 1F, Mr. Decker was instructed by his attackers to join them in the same location.

At about the time of the attack on Mr. Decker, Messrs. Dale and Vallier were on the second tier in order to supervise the admission of inmates to Range 2H. Before Mr. Dale was aware of any untoward occurrence in the Penitentiary, approximately 10 inmates from 2H were either in their cells or proceeding along the corridor to their cells.

Under ordinary circumstances, once all the inmates on the Range had returned to their cells, Mr. Vallier would have a cell count before proceeding to admit the next Range of inmates from the Recreation Hall to their cells.

Mr. Dale testified that he was first alerted when he heard his name called from the floor of the Dome, and heard an inmate direct him to throw the keys which he had in his possession onto the Dome floor. Realizing that something was wrong, Mr. Dale attempted to lock Range 2H. He did not succeed in his attempt. An inmate immediately mounted the stairs on the west wall of the second tier and ordered the officers on the second tier to the floor of the Dome. The officers complied with that direction and were not attacked with any degree of severity. They too were directed to the end of Range 1F. Mr. Dale availed himself of the opportunity to throw the second tier locking device keys which he had in his possession behind the first barrier leading to the Keeper's Hall.

It would appear from the evidence that the total number of inmates engaged in taking the officers as hostages did not exceed six in number.

It is significant to observe that none of the six inmates who are alleged to have participated in the taking of Custodial Officers as hostages were called on Range 2H, although all of them were called on the second tier. It is therefore clear that those six took place in the exit procedure from the Recreation Hall as if they were in fact called in Range 2H. It is not possible to determine whether those six acted with the complicity of inmates on Range 2H who ought to have proceeded to their cells and did not, or whether they made their exit by persuasion or threat of force.

The evidence supports the conclusion that the inmates involved in the attacks on the officers were initially unarmed. The evidence establishes that one of them took a flashlight from Mr. Decker. Another removed a fire extinguisher in the main Dome area, and a third used the key box as a weapon. There was some suggestion in the evidence that one officer observed an attacking inmate armed with a flatiron bar about 15 inches in length. That evidence is not corroborated, and we conclude that the officer's recollection was confused.

It is somewhat unusual that when the officers were attacked none apparently shouted or yelled in a manner which might have served as a warning to his fellow officer. Whether such a warning would have had any effect in quelling the disturbance is, in our view, a matter of speculation. In the light of all the evidence, we can find nothing to criticize in the conduct of the officers who were taken hostage.

### **Events in the Recreation Hall**

After the officer in the Recreation Hall had turned on the indicator and observed the inmates from Range 2H proceed into the corridor leading to the Dome, he turned his attention to the remainder of the inmates in the Recreation Hall. When he next looked back up the corridor he observed that all but about five inmates from Range 2H had proceeded from the barrier and disappeared in the easterly passageway. He was, however, alarmed to see a Custodial Officer's cap lying on the floor of the passageway near the barrier. He immediately and correctly assumed that it belonged to Mr. Decker, and he further assumed that Mr. Decker was involved in some difficulty in the easterly portion of the passageway beyond his view. As a

consequence, he instructed another officer to investigate. He moved quickly to the barrier and observed a number of inmates in the easterly portion of the passageway. He heard scuffling, which he took to come from the main Dome. He further heard what he described as the sound of a key or keys dropping onto the concrete floor. He immediately ordered the inmates remaining in the easterly passageway to return to the Recreation Hall, which they did without objection or resistance.

Having thus cleared the easterly passageway, the barrier was closed by an officer, but, because Mr. Dacker had been in possession of the key, it was not possible to lock it. The officer in question endeavoured, however, to hold the barrier closed when two inmates ran from the main Dome area in order to enter the southerly passageway into the Recreation Hall. One of those inmates kicked at the officer's hands, and as a result he was forced to let go of the barrier and he ran to the Recreation Hall. One of the two inmates followed him part way down the passageway between the Recreation Hall and called to the remaining inmates (84 in number) to proceed to the Dome.

Sensing that there was serious trouble in the Dome area, one of the officers in the Recreation Hall immediately ordered the 84 inmates remaining in the Recreation Hall to line up against the north wall of the Hall. The inmates immediately complied. They were, of course, under the observation of the officer who was located in the gun cage. The inmate who had followed the officer who had been kicked into the southerly corridor, returned to the Dome area, locking the barrier behind him, apparently with the key taken from Mr. Dacker.

The officer in the gun cage telephoned the emergency operator, and advised that there was trouble in the Recreation Hall. The evidence establishes that approximately one hour elapsed before assistance arrived.

Shortly after midnight the Warden who had by this time been alerted and had taken station in the Keeper's Hall, received a telephone message from the officer in the gun cage in the Recreation Hall. It was indicated that an inmate had come from the main Dome area to the Recreation Hall and wished to speak to the Warden at the gun cage. The Warden immediately proceeded to the gun cage, which was still manned by one officer. He observed three officers on the floor of the Recreation Hall maintaining control of the inmates. The Warden testified that when he entered the gun cage with another correctional officer, who accompanied him, he observed that the inmates were quiet and under control. The inmate who had made the request to speak to him approached the cage alone and unarmed. He assured the Warden that a peaceful demonstration was intended, and that he wanted to meet again and negotiate with the Warden as soon as possible. There is some evidence, which the Warden is not able to confirm, that the inmate suggested a meeting in the Classification Office.

The inmate further informed the Warden that the presence of additional custodial officers with firearms, fire hoses and other equipment had been observed by the inmate population surrounding the building, and that the inmate population was getting "very concerned".

He requested that the custodial officers be removed from the Recreation Hall, and that the gun cage be cleared of officers so that the Recreation Hall could be used for a meeting of the inmate population. This was accepted. As a result, and in accordance with orders, the officers on the floor of the Recreation Hall left the Hall through an exit door to the yard, and the officer in the gun cage vacated it.

About 20 minutes later, the predictable, and perhaps inevitable, had occurred. The inmates who had been in the Recreation Hall were no longer there, but had apparently returned to the Dome. There is some evidence that the inmate who had spoken to the Warden in the Recreation Hall had rounded up the remaining inmates and driven them back into the main Dome area. We do not regard that evidence as being conclusive.

We do seriously question the wisdom of the decision of the Warden to remove the custodial officers from the Recreation Hall and its gun cage, thus permitting an additional 62 inmates to join the insurrection. We have no doubt that this was done with the best of intentions and under extremely tense conditions. He was, of course, at that time aware that six officers had been taken hostage and he was

undoubtedly and properly concerned for their safety. He was equally concerned that the insurrection be terminated as quickly as possible. Subsequent events, and the benefit of hindsight indicate, however, that it would have been advisable had the Warden declined the requests made of him by the rebellious inmate.

### **The Response of the Administration**

It is thus apparent that within a very few minutes after 2030 hours all of the Penitentiary staff within the Main Cell Block had been taken hostage. It appears that within approximately an hour all of the inmates in the Main Cell Block had been released from their cells, with the exception of the inmates in protective custody in Range 1D. It is our opinion that under those circumstances it was not possible for the administration to regain control of the Main Cell Block by force without grave danger of injury or loss of life, not only to the hostages but also among the inmate population.

There is evidence that some inmates attempted to obtain control of the kitchen. It was suggested in evidence that the attempt demonstrated an intention on the part of those engaged in the insurrection to escape. There is evidence that the attempt was made merely for the purpose of obtaining food. We are inclined to accept the latter explanation. In any event, the attempt was easily repulsed. No serious attempt was made during the course of the insurrection to obtain control of any other areas of the Penitentiary complex.

When the insurrection commenced, the Warden was in his office, and was notified within minutes by an officer stationed in the North Gate that a disturbance had occurred. He was very shortly thereafter advised that control of the Main Cell Block had been taken over by members of the inmate population.

In compliance with the Commissioner's directives, the Warden immediately ordered all off-duty officers to return to the Penitentiary for immediate assignment. He further notified the Duty Officer of the Canadian Armed Forces Base at Barriefield and requested that an Armed Forces Squad be maintained at stand-by in the event that they might be required at the Penitentiary. He further notified the Regional Director and the Commissioner of Penitentiaries in Ottawa.

Within a relatively short time the Penitentiary Armoury, located in the North Gate, had been opened, and as officers of the service arrived at the Penitentiary they were armed and posted around the perimeter of the Main Cell Block, with particular attention being paid to the entrance of the building and to the entrances inside the building leading to areas not controlled by the inmates.

Very shortly after 2330 the Regional Director arrived at the Penitentiary and, having received a preliminary report from the Warden in the Administration Building, proceeded to the Keeper's Hall. The Regional Director was able to look from the Keeper's Hall through a small window into the main Dome area. He testified that he saw a number of persons walking about and standing on the perimeter walkways on the tiers around the Dome. Their manner appeared calm and aimless. Very shortly thereafter the Warden was advised that two inmates wished to speak to him at the door between the Dome and the Keeper's Hall. The Warden and the Regional Director went to the door and there met two of the inmates, one of whom indicated that he would endeavour to organize the inmates in order to settle the disturbance peacefully. He assured the Warden and the Regional Director that there was no cause for alarm, that everything was under control, and no one would be hurt. He requested that a loud hailer be supplied so that he could convene a meeting of inmates to discuss the form in which certain inmate grievances could be put to the authorities. The loud hailer was provided, and the Regional Director and the Warden awaited further developments.

In the hours immediately following the taking of hostages it is clear that the inmates within the Dome area devoted a good deal of their time to freeing the inmate population, except those called in Range 1D, and in destroying Penitentiary property. The evidence establishes that in the destroying process three objectives were achieved:

- firstly*, the symbols of a hated institution were destroyed;
- secondly*, material was accumulated and used to barricade the various entrances to the Dome area;
- thirdly*, some of the material was retained and used as weapons.

#### COMMENT:

At this juncture we are bound to register our concern at the apparent lack of organization and control which characterized the conduct of the senior administrators from the moment the insurrection commenced, until its conclusion. Inmate insurrection has, unfortunately, been a tragic hallmark of the history of Kingston Penitentiary. While recognizing that it is rare that two insurrections should follow precisely the same course, we deem the lack of a riot plan a serious omission. In that regard, the evidence establishes that:

(1) The Keeper's Hall during the initial stages of the Insurrection was the center of all administrative activity. The phone used to communicate with the inmates within the Dome was in the Keeper's Hall. The Regional Director, the Warden, senior Penitentiary officials, as well as junior Penitentiary officials, congregated there. We cannot but conclude that the general atmosphere was less than orderly.

(2) The evidence establishes that there were numerous telephone communications between inmates in the Dome and the Keeper's Hall. There was no proper or adequate recording or logging of the times and import of those calls.

(3) There was no means by which the yard, grounds and buildings of the Penitentiary could be floodlit in an emergency situation.

(4) There was apparently no plan whereby officers of the service were assigned to pre-determined posts with defined duties in the event of a general insurrection.

(5) As will be demonstrated later in the narrative of events, confusion arose as to the respective roles and authority of the Warden and the Regional Director.

(6) The evidence establishes that the Warden and Regional Director found it necessary during the insurrection to move between the Keeper's Hall, the Warden's Office and the Office of the Deputy Warden in order to obtain information, to give instructions, and to communicate with the Commissioner's staff in Ottawa. This was a most unsatisfactory arrangement.

(7) The dangers inherent in having all of the senior administration officers of the Penitentiary present in the Keeper's Hall at one time during an insurrection are obvious. The administration had no knowledge as to what weaponry, if any, the inmates possessed; nor were they aware of any plans, if any, which the inmate population had formulated in furtherance of the insurrection. It is certainly possible that a concerted attack by the inmates on the Keeper's Hall could have been repulsed only with tragic consequences to both staff and inmates.

By two o'clock on Thursday morning there was an apparent stalemate. The Regional Director and the Warden had determined that a forceful entry should not be made into the Main Cell Block. Apart from the assertion made by one inmate on two occasions to the Warden that the demonstration was intended to be peaceful, and that the inmates had grievances which they wished to discuss, nothing further of any consequence was apparently heard by the administration from the inmate population. The Regional Director and the Warden decided that the only course of action was to wait for further developments.

At approximately four o'clock in the morning the Warden received a telephone call on the prison telephone system from an inmate within the Dome, who requested that food be provided. The Warden refused to agree to that request. The inmate also indicated that an "inmates' committee" had been selected, for which he was the spokesman. He further advised that the inmates would be prepared to meet with the administration at 10:30 in the morning in order to air their grievances. The Warden indicated his willingness to meet that committee.

During the course of the dark hours on Thursday morning, the Warden received various telephone calls from inmates within the Dome requesting medication, which was provided, and other calls assuring him that the hostages were safe. On two occasions at least he spoke by telephone with custodial officers who had been taken hostage, who assured him that they were unharmed. He also received written communications from the hostages to the same effect.

At approximately 5:30 on Thursday morning he received a telephone message from the inmate who had previously described himself as the spokesman for the inmates, who insisted that he wished to speak with one Gerry Retzer, a news reporter on the staff of a Kingston radio station. After discussing the matter with the Regional Director, the Warden agreed that the inmate should be permitted to communicate with Retzer.

As a result of the decision so made, two inmates spoke on the telephone with Retzer. The inmates informed Retzer that the insurrection was not intended to be violent, but that its purpose was to enable the inmates to air their grievances. Assurances were again given by the inmates that the hostages were not harmed, and were being protected by an inmate guard. Mr. Retzer was informed that the inmates had chosen a committee to meet with the administration later in the morning, and they wished to have Retzer present. Retzer volunteered that he would attend, and that he would bring a tape recorder to the meeting, and would inform newspapers and television stations in both Kingston and Toronto. The inmates also informed Retzer that the inmate population was becoming alarmed because some shots had been allegedly fired from the yard through the prison windows.

A third inmate joined in the conversation and informed Mr. Retzer that the inmates desired to meet with a Citizens' Committee, to which the inmates could present their grievances. The inmates suggested that the Committee might be drawn from Messrs. Ron Haggart, Alan Borovoy, Arthur Martin, Q.C., Rabbi Joseph Kalman, F.C. Douglas, W.R. Donkin, Prof. Desmond Morton, Mr. Justice Bora Laskin and Mr. Justice Patrick Hart.

The Regional Director then made a telephone report to the Commissioner of Penitentiaries.

### **Press Meeting**

At 10:45 on Thursday morning a meeting between the Committee of Inmates and representatives of the administration was convened in the Classification Office. The Committee of Inmates was composed of three inmates. Representatives of the press and television were present and the meeting was publicized in those media.

The inmates submitted a written memorandum which, after referring to the need for medication and food, stated as follows:

"Security: If any Guards try to force their way into the dome from any place, they will do so at the peril of the hostages. We do not wish to harm anyone, our only desire now is to be heard.

For further negotiations we must wait until at least four members of the noted people we asked for will meet with us.

We wish to inform you that any of the inmates that will do the meeting and negotiating, or who will form the inmate committee, have been asked to do this by all the inmates and are not doing this on their own."

As a result of the turn the meeting had taken, and in an effort to terminate it, the Regional Director advised that the written demands of the inmates would be considered and that the administration would meet with them as soon as possible.

There followed a somewhat protracted discussion on the part of the Committee of Inmates and Penitentiary officials on the administration of justice, the Parole Act, and prison life in general. Representatives of the media engaged in questioning the inmates. In his evidence, the Regional Director described the meeting as a "press conference".

### **Selection of the Citizens' Committee**

Following the meeting, the Regional Director phoned the Commissioner of Penitentiaries to discuss the inmates' proposal for a Committee of "prominent people". It was suggested by Ottawa that, as a

matter of convenience, a meeting with two prominent citizens should be proposed. The Regional Director spoke again to the members of the Committee of Inmates who flatly refused to even put such a proposition to the inmate body. Thereafter, the Regional Director was authorized by the Commissioner of Penitentiaries to attempt to contact Arthur Martin, Q.C., Rabbi Kalman, Mr. Donkin and Professor Morton. He was not able to do.

However, radio news and press reports had already carried the list of names that had been given by telephone to Mr. Retzer. As a result, Professor Morton and Mr. Haggart were already flying to Kingston with Aubrey E. Golden, a barrister and solicitor, from Toronto. They arrived in the Deputy Warden's office in the Penitentiary at about five o'clock in the afternoon.

Mr. Donkin had been telephoned by the press and told that his name as well as that of Mr. Martin had been put forward as a member of the proposed committee. He spoke immediately with Mr. Martin who, in turn, telephoned the Deputy Solicitor General in Ottawa to obtain the assurance of the Solicitor General that his presence and the presence of Mr. Donkin at the Penitentiary as members of such a committee would be acceptable to the Government. Upon confirmation that that was so, Mr. Martin and Mr. Donkin proceeded immediately to Kingston by car. They arrived at the Penitentiary about 9:30 on Thursday evening.

Notwithstanding that no authority had been received from Ottawa to approach Mr. Haggart or Mr. Golden, and that Mr. Golden's name had not even been put forward by the Committee of Inmates, the Regional Director did not feel able to reject their presence and they acted throughout as members of the Committee.

The Citizens' Committee was thus composed of five persons under the general direction of Mr. Arthur Martin, Q.C.. Mr. Martin is a prominent barrister who, for more than 33 years, has been engaged almost exclusively in the practice of criminal law. Among his many distinctions is the fact that he had been a member and vice-chairman of the Canadian Committee on Corrections, known as the Quimet Committee, and was in 1971 the Treasurer of the Law Society of Upper Canada.

Mr. Ron Haggart had for many years been a featured columnist on the staff of successively, the Toronto Daily Star and the Toronto Telegram. He is a very well known author and commentator on public affairs.

Mr. William R. Donkin is a barrister and solicitor, and the Area Director of Legal Aid for York County, in the Province of Ontario.

Professor J. Desmond Morton, Q.C., is a member of the Faculty of Law at the University of Toronto, Research Associate to the Quimet Commission, and a well known commentator in the criminal law field.

Aubrey E. Golden, Esq., is a barrister and solicitor, practicing in the City of Toronto.

The Commission has had the advantage of hearing the evidence of each member of the Citizens' Committee. As a matter of convenience, each member of the Committee was permitted to give his evidence in the presence of his colleagues. We have been able, with their assistance, to reconstruct a very full account of the events in which the Citizens' Committee participated.

Mr. Martin said that when he first spoke to the Deputy Solicitor General in order to obtain the consent of the Solicitor General for his visit to the Penitentiary, that consent had been given. The Deputy Solicitor General had indicated, in a very general way, that the Department would like "the Committee to ascertain what it was that the Prisoners' Committee wanted and transmit that information to [the] Department". There was no specific discussion of the role that the Citizens' Committee was to be permitted to play and, in particular, there was no imposition of restriction or any precise limitation of authority. In any event, it was not Mr. Martin's view, and the other members of the Committee concurred, that they had been constituted a committee simply for the purpose of transmitting a list of demands from Kingston to Ottawa, a function which could otherwise be more expeditiously achieved.

It was understood from the first, however, that the Citizens' Committee had no general authority in advance to bind the Government or the Department to any settlement, or course of conduct.

When they arrived at Kingston, Messrs. Haggart, Golden and Professor Morton and, later, Messrs. Martin and Donkin, met with the Regional Director and the Warden, and were given a brief factual outline of the facts as they then were known. Again, no restriction or limitation of authority was imposed upon them. Each member of the Committee began to recognize that their duty was like that of a "third force", that it would be impossible to make arrangements that were not satisfactory to the Department, on the one hand, and the general prison population, on the other.

While the circumstances might well have created an impression in the mind of certain officers of the Department that the Citizens' Committee was simply a mandatary of the Department, that was not the view of the members of the Committee itself. In fact, it was not long after their arrival that they began to develop a sense of the real role that had been imposed on them. The view of the Committee unanimously shared as it gathered on Friday evening was summarized by Mr. Martin:

"Although the Committee never did sit down and formally spell out to each other what they considered its status to be or what its role was, I think we all accepted the view that being requested to act by both the Government and the prisoners' committee, that we had an independent status, that we were not a mere agent of either the Solicitor General or the prisoners' committee. Again, while we didn't spell it out, I think we saw from the beginning that our role was to exercise our best judgment in doing everything that was reasonably possible to bring the riot to a speedy termination and prevent loss of life or injury to the guards who were being held hostages and to the prisoners themselves."

#### First Meeting

Very shortly after their arrival at the Penitentiary, Messrs. Haggart, Golden and Morton proceeded to the Hospital Wing and spoke with two of the members of the inmates committee. While they were there a detachment of the Canadian Armed Forces arrived inside the Penitentiary walls. That detachment was sent pursuant to a request made by the Warden. The evidence is that the troops, armed and with fixed bayonets, entered the prison grounds at the double. There was evidence that the manner of their arrival caused the inmates to become upset, in that they were apprehensive of an armed attack on the Penitentiary. It is, however, apparent that the inmates' fears in that regard were dispelled in due course.

The meeting with the two inmates lasted a short time, and Messrs. Haggart, Morton and Golden returned to the administrative offices and subsequently met Messrs. Martin and Donkin.

At about nine o'clock on Thursday evening the full Citizens' Committee met for the first time with a Committee of Inmates composed of five inmates. One of them advised that he was really not a member of the Committee, but was present in his capacity as a "legal adviser". The Citizens' Committee met with the Committee of Inmates on that occasion and on all subsequent occasions in a treatment room in the Hospital Wing.

Members of the Citizens' Committee testified that it was determined that the most useful approach which could be made at that stage was to hear the inmates' grievances. Those grievances were wide-ranging but, generally, fell into two categories.

The first category was a criticism of the administration of the criminal justice system, including the operation of the courts, the police and the punitive nature of sentencing, and similar matters.

The second category of grievance related to the administration of the penitentiary system in general, and to Kingston Penitentiary in particular. The inmates complained with respect to their total isolation from society, and the illogical nature of that isolation in view of the need to integrate the inmates more effectively for a return to society. Mr. Martin recalled complaints concerning systems of mass punishment, whereby the privileges of all would be reduced because of their abuse by a few; the mass use of segregation and disassociation in the prison system; the "manhandling" of prisoners by custodial officers, and the lack of meaningful or "useful" work.

Mr. Haggart, who kept brief notes, recalled other specific complaints: the fact that an inmate was unable to earn statutory remission but could simply lose it; conditions and treatment in the dissociation cells. The Committee of Inmates expressed concern about the effect of long sentences on young men; in addition, they discussed the difficulties of adjusting to outside life when they were released from Penitentiary.

The inmates expressed the view that life inside the Penitentiary was unnecessarily degrading and humiliating, and they expressed their desire to impress on the community outside of the Penitentiary the way in which they actually live.

The Committee of Inmates expressed their fear that the general prison population would be subjected to mass physical reprisals by the custodial officers when the insurrection came to an end.

A spokesman for the Citizens' Committee emphasized that members of that Committee did not approve of the hostage taking, and emphasized that it most important that no harm whatever should come to the hostages.

Toward the end of the meeting the Committee of Inmates listed a number of requests which, in their view, if accepted, would bring the disturbance to an end. Those requests were reduced in rough form by Mr. Golden. His notes read as follows:

- "A. 1. Food and coffee.
2. No criminal or internal charges will be laid arising out of any incident including the original seizure, providing that the guards must henceforth be protected and are released unharmed.
3. This assurance must be signed by the Commissioner of Penitentiaries.
- B. The hostages will be released unharmed when these assurances are given by the Commissioner of Penitentiaries, namely:
1. The re-occupation of the Penitentiary will be observed from the dome by at least three members of this Committee.
2. The grievances prepared by the prisoners' committee by 12:00 Noon April 16, 1971 will be presented to the Penitentiary authorities with the assistance of legal counsel and under the observation of this Committee.
3. Transfers from Kingston Penitentiary to Millhaven will take place under the observation of members of this Committee.
- Priority in all transfers shall be given to younger persons.
- Prisoners shall not be transferred outside Ontario.
4. Members of this Committee will visit Millhaven in company with members of the prisoners committee under appropriate security."

In response to inquiries, the Committee of Inmates recognized that their claim for immunity from prosecution extended only to acts associated with the original assault and kidnapping of the guards. The inmates appeared to understand that if any harm came to a hostage after the original seizure, that would not be included in any grant of immunity from prosecution.

Following the meeting, at about two o'clock on Friday morning, Mr. Martin spoke to the Commissioner of Penitentiaries in Ottawa by telephone, read him the Inmate requests and received an assurance from him that "there would be no difficulty with respect to any of the requests except the request for immunity".

Mr. Martin testified that he endeavoured to persuade the Commissioner of Penitentiaries that in the light of the particular circumstances of the case, and because Kingston Penitentiary as a maximum



security institution was about to be closed in any event, the granting of immunity from prosecution would not create an unfortunate precedent. After some discussion, Mr. Martin concluded that the Commissioner was prepared to accede to the inmates' requests, but that he would not accede to the requests for immunity. The Citizens' Committee concluded that if the Committee of Inmates would withdraw the request for immunity, a foundation for a solution existed.

### Second Meeting

At the conclusion of the first meeting, the Citizens' Committee had agreed to meet with a Committee of Inmates on Friday morning at nine o'clock. The composition of the Committee of Inmates was the same as met on Thursday evening, except that another inmate replaced the one who had stated he was there as a "legal adviser".

The Committee of Inmates began the meeting by expanding upon the requests of the previous evening. Firstly, they desired that an assurance of immunity from prosecution should be signed by the Solicitor General rather than by the Commissioner of Penitentiaries. Secondly, they required that hostages be released as the inmate population was evacuated, that is, on a pro rata basis. Both requests were expressed as being related to the inmates' fear of physical reprisal as they emerged from the Penitentiary.

The Committee of Inmates also advised that as a sign of their good faith, the inmate population was prepared to release one of the hostages, to be selected by a vote of the Inmates.

After some short delay, Mr. Decker was released. He was interviewed, and indicated that he had not been injured, and that he had been reasonably well treated by his inmate captors. He was examined by the prison physician and found fit.

Following upon the release of Mr. Decker, Messrs. Haggart and Martin proceeded to Ottawa by helicopter to meet with the Solicitor General. That meeting occurred shortly after four o'clock on Friday afternoon. Messrs. Martin and Haggart met with the Solicitor General and his staff, including the Deputy Solicitor General, Commissioner of Penitentiaries, and the Deputy Commissioner of Penitentiaries. Mr. Martin presented to the Solicitor General the list of requests that had been made by the Committee of Inmates on Thursday evening and on Friday morning.

Messrs. Martin and Haggart testified that they again were made to understand that there would be no problem concerning any of the Inmate requests, except that immunity from prosecution would not be granted.

### Third Meeting

After the meeting in Ottawa, Messrs. Martin and Haggart returned to Kingston Penitentiary. The Citizens' Committee met for the third time with a Committee of Inmates at about midnight on Friday. Mr. Martin reported to the Committee of Inmates on his meeting in Ottawa. He indicated clearly that immunity would not be granted, but that the other requests would be granted. He confirmed that the grievances of the inmates would be presented to an appropriate Board or Tribunal, with the participation of the Citizens' Committee, if necessary, and with legal counsel.

In addition, and as a personal matter, Mr. Martin indicated that if any criminal charges resulted from the insurrection, the resources of legal aid would be utilized to ensure that those charges were properly defended.

The Committee of Inmates undertook to endeavour to persuade the inmate population that the request for immunity from prosecution should be abandoned and, with the assurance that the other requests were acceptable to the authorities, to persuade the population to emerge from the Main Cell Block peacefully and release the hostages. The Committee of Inmates did, however, insist that a pro rata formula would have to be applied in the release of inmates and hostages to ensure against physical reprisals. By this time the Citizens' Committee had determined from the administration that when the disturbance had ended

it would be possible, indeed desirable, to keep about 200 inmates at Kingston Penitentiary for cleanup and other purposes. It was therefore tentatively agreed that one hostage would be released after 60 inmates had been released, and it was thus anticipated that that ratio would permit the last hostage and the last prisoners to leave the Main Cell Block at the same time.

Before the meeting ended, at about two o'clock on Saturday morning, the Committee of Inmates emphasized again that they were prepared to attempt to persuade the inmate population to accept the proposition. They emphasized the difficulties involved in doing that. As one of the members of the Inmate Committee said "a majority of one" would not be sufficient. Without a substantial majority of the inmate population in support, a settlement could not be achieved.

The members of the Citizens' Committee testified that the meeting terminated with confidence that a formula had been achieved which would be satisfactory to the Inmate population. The Committee of Inmates said that because of the lateness of the hour they would not propose to put the formula to the inmate population until the following morning. The Citizens' Committee went immediately to the Administration Building and reported to the Regional Director and the Warden what had transpired. The Regional Director made some notes which incorporated the matters Mr. Martin referred to. Those notes, excluding inconsequential matters, set out the following items:

1. No immunity from prosecution.
2. Nobody will go back to government.
3. No bargaining about who is to come out or where they are to go.
7. As the three hundred are going out the hostages will be released from time to time.
9. Right to present grievances with assistance of counsel and right of Citizens' Committee to observe if required."

The notes were then read to the Commissioner over the telephone and he indicated to both the Regional Director and Mr. Martin that the arrangement was entirely acceptable to the administration.

Mr. Martin testified that at that juncture he was of the opinion that "the problem was virtually resolved, except for the mechanics of making the transfer".

As a result, Messrs. Martin and Golden returned to Toronto, and the other members of the Citizens' Committee remained in Kingston.

#### **Saturday, April 17, 1971**

Mr. Donkin and Professor Morton arrived in the treatment room in the Hospital Wing at 9:00 a.m. While there was no formal meeting with the Committee of Inmates as such, members of the Committee came from the Dome to the treatment room from time to time throughout the day. The Committee of Inmates had not formally put the "agreement" to the inmate population as a whole as yet. They were not as firmly of the impression as they had been the night before, that it could be successfully "sold" to the population without provision for immunity from prosecution.

After discussing the matter with the inmates for some time, Mr. Donkin and Professor Morton were sufficiently alarmed to conclude that the other members of the Citizens' Committee should be called. The Committee of Inmates was obviously going to have more difficulty than anyone had anticipated. As a consequence, Mr. Haggart arrived at the prison at about noon, Mr. Martin was called and he arrived at Kingston at about 9:00 p.m. The situation had been made more alarming during the day. Reinforcements for the army arrived.

#### **Professor Morton's visit to the Dome**

In order to see at first hand if there was anything the Citizens' Committee could do to bring the inmate population to an agreement, and in order to make a first-hand assessment of the situation within the

Dome, Professor Morton suggested that he should visit there. He testified that he was anxious to determine whether there was any truth in the various sensational rumours being circulated through the news media concerning violent sexual acts, murder and general mayhem.

Professor Morton was escorted into the Dome area by two inmates from the inmate committee. He spoke to inmates and looked into corridor where those inmates in protective custody were being held. During the course of his evidence, Professor Morton described in detail his visit to the Dome area. He concluded his evidence in that respect as follows:

"... the impression that I got at that time was that no serious harm was intended to the undesirables nor to the hostages and I returned unmolested..."

After Professor Morton's tour of the Dome, Mr. Haggart and a public relations officer for the Department of the Solicitor General drafted a press release intended to provide to the media a first-hand account of the existing situation within the Penitentiary. The authors hoped thereby to allay rumours and gossip that were being broadcast and published through the news media. Mr. Haggart expressed the view of the Citizens' Committee in this manner:

"It had been expressed to us by the inmates that they were anxious that two groups of people should understand that things were under control in the institution. They were first of all anxious that their own families should understand that they were not in danger and, also they were anxious to convey the impression that the institution was peaceful and being maintained in an orderly fashion.

We thought it would be useful in reassuring the inmates inside the cell block that they were not being regarded by the outside world as animals. There was apprehension expressed to us by the inmate committee that the outside world considered all inmates to be the same and that they were irresponsible people."

The following draft was prepared and referred to authorities in Ottawa:

"Very useful talks have gone between the two committees and are continuing," Desmond Morton, spokesman for the citizens committee, said this afternoon. "I am very hopeful of reaching a satisfactory solution."

Mr. Morton personally toured the cells [sic] blocks this afternoon and is reasonably satisfied [sic] with the conditions there.

The following is the joint statement issued by the inmate committee and the citizens committee:

The hostages are safe, in good health, and are not being threatened with violence. They are being fed [sic] regularly and receive their food first, in larger quantity than that now being received by the men.

The inmates have organized their own police force which provides security within the area controlled by them and assures that order is being maintained within the area. The police force also is responsible for safeguarding the hostages. The hostages have been able to send out signed letters to penitentiary officials assuring that there [sic] are being well treated.

Complete order is being maintained. There are no sex attacks. Even personal property in cells is being protected. There is no fighting among the inmates. There is fair discipline within the area. No harm is being caused, or threatened to, persons who were locked up by the administration prior to the disturbance. Desmond Morton spoke to these men and confirms this. Those who might have caused harm to themselves have been handed over to hospital authorities.

Representatives of both committees wished to assure wives, close relatives and friends of those in the institution that there is no cause for personal anxiety. As they have repeatedly mentioned, there is no attempt being made, or even suggested, to break out from the institution.

Medical services and sanitary conditions are the best as can be expected under these conditions. There is no immediate health risk. The inmate organization is doing its best to keep sanitary conditions as good as possible.

Although proper meals are not possible, no one is going hungry. The administration is delivering food regularly which is being distributed equitably by the men following [sic] an organized procedure."

It apparently was not approved. In its place, the Department of the Solicitor General issued the following release: "Three members of the Citizens Committee entered the area occupied by the inmates at Kingston Penitentiary today to listen to their representations. The Committee members, in reporting on their meeting, also said that they were informed by the Inmates' Committee that no harm has come to the hostages being held by them and that no harm has come to any of the inmates. This information has been passed directly to the families of the hostages. The Solicitor General realizes that the families of the inmates are also concerned about the situation and is therefore releasing this information although it cannot be confirmed by the Canadian Penitentiary [sic] authorities."

The Regional Director testified that in one of his conversations with the Commissioner of Penitentiaries early on Saturday morning, he was informed that the Department required that the situation within the Penitentiary had to be resolved and under control by noon on Monday, April 20. It was not clear as to what course was intended by the Department if a peaceful solution to the insurrection had not been achieved by that time.

Prior to his return to Kingston on Saturday afternoon, Mr. Martin testified that he spoke to the Deputy Solicitor General, who indicated to him that the time available in which to negotiate a settlement had been shortened. The other members of the Citizens' Committee testified that although that information was never formally communicated to them, they obtained the impression that a deadline had been fixed by the authorities.

After Mr. Martin's arrival on Saturday evening, the Committee of Inmates, which had been informally meeting with the Citizens' Committee in the Hospital Wing intermittently during the day, advised that the settlement proposal had not yet been accepted or rejected by the inmate population. It was apparent, however, that the Committee of Inmates was having increasing difficulty in obtaining acceptance of the proposal.

At about nine o'clock on Saturday evening, the Warden and the Regional Director were asked to join the Citizens' Committee and Committee of Inmates in the Hospital Wing. The Regional Director received a number of telephone calls from the Commissioner and the Deputy Solicitor General, who expressed concern that the discussion concerning clarification might in fact result in an attempt to renegotiate the settlement proposal.

During the last of the telephone calls, the Regional Director made notes of the specific instructions given to him by his superiors, to be passed on to the Citizens' Committee, in point form they were as follows:

- "1. Remind the Citizens' Committee they are not to negotiate in any way, shape or form.
2. Wants to know what are the proposals of the Inmate population.
3. No more information or point of clarification is to be discussed.
4. The Minister wants to know first before any answer is given.
5. The Minister first wants to know what are they going to do with the hostages.
6. Then we will discuss ways and means."

The Citizens' Committee and the Committee of Inmates continued to discuss ways and means of persuading the inmate population to accept the proposals. Shortly after ten o'clock on Saturday evening

the Committee of Inmates left the Hospital Wing and returned to the Dome area, having previously agreed to meet again with the Citizens' Committee shortly after midnight.

### **Sunday Morning Riot**

At about one o'clock on Sunday morning, a meeting of the Citizens' Committee and the Committee of Inmates was interrupted by a telephone message from the Dome area. The Committee of Inmates abruptly left the meeting and returned to the Dome. The members of the Citizens' Committee testified that it was obvious that some sort of a disturbance had or was about to break out in the Dome area. Shortly after one o'clock a great uproar of noise and shouting was heard from the dome. Members of the Committee of Inmates returned to the Hospital Wing between two and three o'clock in the morning. With the exception of one inmate, the remainder of the Committee refused to return to the Dome area. It was apparent that the Committee of Inmates had lost control of the situation and members of that Committee were concerned for their own physical safety.

Events moved very quickly. A trip to Ottawa which had been arranged for the Regional Director had been cancelled. At the same time, the uproar within the Dome area continued.

Because there are serious criminal charges pending before the courts with respect to the events which occurred in the Dome area in the early hours of Sunday morning, we do not propose at this time to deal with those events.

The undisputed facts are, however, that during those hours one inmate was killed, and another suffered injuries which resulted in his death.

In addition, thirteen inmates were apparently assaulted and suffered injuries as noted:

1. Head injuries, possible chest injuries.
2. Head injuries, lacerations right knee and calf.
3. Head injuries, sore neck.
4. Head injuries, chest injuries.
5. Head injuries.
6. Head injuries.
7. Lacerations to forehead and back of head.
8. Lacerations to nose and back of head.
9. Injuries to head.
10. Head injuries.
11. Injuries to nose and left eye.
12. Lacerations to face.
13. Laceration to forehead.

As a result of the events in the Dome area, the Regional Director and the Warden were understandably alarmed. They immediately conferred with senior army officers as to the possibility of an armed assault in the event that there was evidence that either inmates or hostages were being injured or killed. They were informed that it would not be practical to successfully assault the institution before daylight. In preparation for any eventuality which might occur, the Regional Director requested the Warden to order the morning shift to report for duty at 6:00 a.m. instead of 8:00 a.m. That order was given.

Immediately after his meeting with the army officers, the Regional Director reported to the Commissioner of Penitentiaries in Ottawa and advised him of the alarming developments in the Main Cell Block and, in addition, that negotiations appeared to have become stalemated.

Shortly thereafter, the Regional Director was advised by the Commissioner of Penitentiaries that the Solicitor General and senior members of his staff would proceed immediately to the Penitentiary by helicopter.

The Citizens' Committee nevertheless continued discussions in the Hospital Wing. At about three o'clock in the morning one inmate volunteered to return to the Dome area in order to determine the situation there and to make a last attempt to persuade the inmate population to accept the settlement proposal. The remaining members of the Committee of Inmates refused to return to the Dome Area. The courage and resolution of the inmate who re-entered the Dome area must be commended.

A few minutes before five o'clock in the morning this same inmate telephoned Mr. Haggart from the Dome and enquired from Mr. Haggart as to how long the inmates had to make up their minds. Mr. Martin, sensing the urgency of the situation, suggested to Mr. Haggart that they endeavour to arrange a settlement by 5:00 o'clock a.m.

Mr. Martin immediately went to the Administration Office to report to the Solicitor General and his staff, who had arrived at the Penitentiary and were reviewing the situation in conference with senior penitentiary officers. Mr. Martin told the Solicitor General that this particular inmate had been in the Penitentiary for some hours trying to persuade the inmates to come out and that he thought he could get some of them out shortly after five o'clock. Mr. Martin volunteered that, in his judgment, this inmate was a very brave man, and that no steps should be taken until the possibilities raised by this new development were exhausted. Mr. Martin sensed that the Solicitor General's meeting was considering other matters to which he was not a party and he then withdrew from the room. His concern, however, that precipitate action might be taken, led him to return very shortly and advise the Solicitor General that he hoped, before any aggressive action was taken, a warning would be broadcast over loudspeakers to reach the entire inmate population in order to give them an opportunity to come out peacefully. The Solicitor General advised Mr. Martin that that would be done.

At about five o'clock, Professor Morton was standing in the Hospital Wing near the entrance to Range 1A when a large number of prisoners, obviously anxious to escape the prison, moved down the range toward the hospital door. There were so many in such a state of apparent fear that Professor Morton was concerned that the Army and the armed correctional officers in the Hospital Wing, at the sight of such a large group running toward the Hospital door, might open fire. He consequently shouted to the inmates, "come forward one at a time". At that point, three shots were fired over the heads of the prisoners by either the correctional staff or the Army. This was apparently inadequate to stop the mass movement of prisoners and, within minutes, approximately two hundred and six prisoners had moved from Range 1A through the hospital building into the yard.

This mass movement was, we conclude, merely the panicked response of a large number of inmates who wanted to be out of the building before the armed assault which they feared might occur.

The inmate who had been trying to persuade inmates to come out in an orderly fashion and Mr. Haggart had been in regular telephone communication since 5:00 a.m. attempting to commence the operational scheme whereby the exit of inmates and hostages in a 60 - 1 ratio would commence. This unexpected mass exodus created an immediate problem because it abruptly upset the ratio formula. In any event, so that the release of hostages and inmates could be arranged by the one inmate and Mr. Haggart in some order, it was decided that there was no alternative but to get the inmates back into the building and release them according to the predetermined scheme. As a result, it was decided that the two hundred inmates should be quartered in the Recreation Hall. They were conducted there by Professor Morton who locked himself in the Recreation Hall with the prisoners for several hours while the appropriate exit arrangements were achieved by Mr. Haggart and the inmate.

Mr. Martin also spoke to the inmates when they were in the exercise yard and was able to make some assessment of what had occurred in the early hours of the morning. He spoke to a number of prisoners who indicated that a situation of incredible horror had existed in the Dome and "that the one particular inmate had fought all night to regain control of the situation in the Dome and had finally succeeded".

Mr. Haggart and the inmate arranged and supervised the mechanics of the exit of the inmate population from the Dome and the release of hostages.

It is a great credit to the coolness, the will and above all, the stamina of Mr. Haggart and the inmate that the entire operation was completed without incident, by Sunday evening. By that time all prisoners had been released from the Dome and were safely and securely quartered either in other facilities at Kingston Penitentiary or at other penitentiaries near Kingston in the Ontario Region. Upon release, medical examination showed that the hostages were without injury.

A word should be said about the manner in which the Kingston inmates were removed to other institutions. When it became clear during the course of the disturbance that Kingston Penitentiary would be uninhabitable, the administration began to make arrangements for the allocation of inmates to other penitentiary institutions in the region. As a result of these arrangements a very substantial number of inmates following the evacuation of Kingston Penitentiary were moved to other institutions on Sunday. Those for whom arrangements could not be made that day were housed temporarily in the dormitory facilities in the West Shop Block.

The evidence is clear, and we so find, that following evacuation the prisoners were subdued and co-operative. Indeed, in the words of one witness, they appeared pleased that the disturbance was over, and exhibited no resistance or aggressive tendencies.

The inmates were moved to other institutions by bus. On all four days inmates co-operated in moving to the buses and, with one minor exception, there were no incidents of any nature whatsoever. The inmates were not shackled until they were seated on the bus, and the Kingston administration saw no need, and indeed the evidence reveals that there was no need, to authorize the issuance of billies or riot sticks. On each occasion it was possible to supervise the movement of inmates at Kingston Penitentiary with a staff of between eight and fifteen Correctional Officers. By and large the correctional staff so engaged were effectively supervised by one Assistant Deputy Warden, who made it his business to circulate throughout the loading area to assure that the embarkation took place quickly, smoothly and without unpleasantness on the part of either staff or inmate.

### **The Treatment of Hostages**

The evidence establishes, as we have reported, that immediately after they were taken captive the hostages were assembled in an alcove below the chapel stairs in Range 1F. Very shortly thereafter, two inmates required the hostages to surrender their valuables. They were subsequently shifted to a service duct between Ranges G and H on the first tier.

Subsequently, they were removed to Range 4E and put in cells. At that point they were required to exchange their uniforms for inmate clothing. The cells were locked by means of a chain and padlock. For the duration of their captivity the cell locations in which the hostages were kept were changed five or six times. They were guarded by a group of inmates. The evidence indicates that they were reasonably well provided for, and reasonably well treated. The hostages were provided with food, tobacco, razors and other necessary items. In addition, they were permitted short, supervised periods outside of the cells. The inmate guards were armed with iron bars. They did not have guns. In our view, the Correctional Officers who were taken hostage showed great personal courage throughout the period of their ordeal. As we have previously reported, it is apparent that the taking of the hostages was planned. The hostage-taking was achieved by six inmates. It is clear that the group of inmates who assumed the duties of guarding the hostages performed a task which assured the safety of their captives, which is somewhat surprising, bearing in mind the horrible events of the Sunday morning riot.

## MILLHAVEN INSTITUTION

Pursuant to paragraph (f) of the terms of reference, the Commission of Inquiry was instructed to inquire "as to what bodily harm was occasioned persons, whether inmate or staff, during the course of the said disturbance or related thereto, and the identity of the persons responsible for causing such harm".

As has already been explained, the Commission does not deem it proper to report in respect of matters which are pending or have been dealt with by the courts. The Commission does, however, deem it necessary to make a report with respect to those persons not before the courts who may be "responsible for causing such harm".

The evidence with respect to the transfer of inmates from Kingston Penitentiary to Millhaven has clearly established the following facts:

1. The first inmates were received at Millhaven on Wednesday, April 14, immediately prior to the Kingston Penitentiary disturbance. They were twelve in number and were transferred from Kingston as a cleaning staff.

2. The Warden, Deputy Warden, and Assistant Warden (Security) were informed during the course of the Kingston disturbance that it was probable that a substantial percentage of the Kingston Penitentiary population would be transferred to Millhaven when the disturbance ended.

3. Upon receiving that information the Warden met with his subordinates and determined that the inmates being transferred should be received in "P" Corridor in "U" Block and that Assistant Warden (Security) would be in charge of the transfer.

4. It is at this point important to note that Millhaven was but partially staffed, and that most of the junior staff were unknown to the Warden, Deputy Warden, or Assistant Warden (Security). Many had very recently been recruited from the Kingston Office of Manpower, had not been issued uniforms, and had received no training whatsoever in prison routine. It is apparent, however, that there was sufficient staff both senior and junior available to conduct the admission procedures safely and expeditiously.

5. In their discussions prior to the admission of any inmates after the Kingston insurrection, the decision was made that riot sticks would be issued to members of the staff in the reception areas. The Warden, Deputy Warden and the Assistant Warden (Security) concurred in this decision. The Warden testified in his evidence that his main concern was to get the transferred inmates to their cells as quickly as was possible.

6. The evidence establishes that the procedure which the Warden and his subordinates decided should be followed, and which in fact was followed, was that buses containing the inmates were admitted to Millhaven through the saltport and were parked on the paved area adjacent to "U" Block. The inmates were discharged from the buses, and ascended a stairway to a loading platform approximately 15 feet in width. They then proceeded through double doors, which we find were at all times open, into what in the evidence has been described as the southerly portion of "P" Corridor. The southerly portion of "P" Corridor is approximately 80 feet in length and approximately 15 feet in width. As they proceeded in a northerly direction the inmates came to what is called "U" Control, and what in the evidence has been referred to as a cross corridor. "P" Corridor continues northerly for some distance to what was referred to as "N" Control. From "N" Control the inmates were then directed to the various living units.

7. The introduction of inmates following upon the Kingston Penitentiary disturbance occurred on four days, namely the 18th, 19th, 20th and 21st days of April, 1971.

8. On Sunday, April 18, 174 inmates were admitted. Inmates introduced on that day did not complain of injury or maltreatment. The medical reports support the conclusion that no inmate transferred on that day either complained of being or was injured.

9. The Warden has testified that he was present on the loading platform for approximately seventy per cent of the time during which inmates were inducted on Sunday. This transfer is in our view important in that:

(a) it occurred immediately after the Kingston insurrection at a time when it can be assumed that inmates and officers might have been emotionally overwrought;



(b) the number transferred was far in excess of those transferred on subsequent days;

(c) the evidence establishes that the Warden's presence was clearly known to both staff and inmates.

10. On Monday one busload of twelve inmates was admitted. On Tuesday two busloads totalling 48 inmates were admitted and on Wednesday two busloads totalling 64 inmates were admitted.

11. A substantial number of inmates admitted to the Penitentiary on these days have complained about assaults or attempted assaults upon them or others by correctional officers in the course of the admission process. The two doctors interviewed and examined all inmates at Millhaven within a few days of admission. Their reports supported by their evidence substantially corroborate the fact that such complaints were made. They also found evidence of bruising or injury. These objective findings, as one of the doctors concluded and as is apparent from his contemporaneous notes of the examinations, are consistent with the complaints made by inmates and inconsistent with any other reasonable explanation.

12. It is not without significance that before the arrival of inmates at Millhaven on Monday and Wednesday the prison administration was alerted that "ringleaders" of the Kingston Penitentiary insurrection were to be transferred. This information was quickly circulated to the staff assigned to the admission procedure. In fact, the inmates transferred on Monday were nicknamed "the Dirty Dozen" prior to their arrival by members of the Millhaven administration. Although it would have provided no justification for the events which we find subsequently occurred, there is no evidence that links most of those admitted on those days as leaders of the insurrection.

13. The most serious allegation concerns the reception of inmates on Wednesday. We find that on that day ten to twelve custodial officers had been stationed in the southerly portion of "P" Corridor, each armed with a riot stick. Custodial officers were stationed on the platform near the door to "P" Corridor one of whom was armed with a billy. The officers positioned in "P" Corridor were directed to stand some five feet east of the westerly corridor wall and approximately eight feet apart. We can only conclude that the objective and the result of such positioning of staff was to assure that no inmate could pass through the corridor out of range of a riot stick.

## CONCLUSIONS:

We find that on Wednesday when the inmates left the buses and proceeded down "P" Corridor, either singly or in pairs, substantial numbers of them were assaulted by officers standing either on the platform or in the corridor. In short, we find that the inmates in the course of admission to the Penitentiary were in this way required to "the gauntlet".

Our conclusion is founded on the evidence of relatively senior staff members who were present. Such evidence is substantiated in all material particulars by the evidence of inmates heard by the Commission. The senior officials were given transcripts of the evidence of those persons who testified with respect to these events. The Commission offered them through counsel the right to cross-examine or to lead evidence with respect to these events. They chose to do neither.

We are satisfied that similar assaults occurred in a similar way on Monday and Tuesday.

These events occasioned by a substantial number of correctional officers and occurring in the presence of, and condoned by, some senior staff officers are totally inconsistent with the traditions of the Canadian Penitentiary Service. These acts represent a deliberate, substantial and callous disregard of duty to inmates within the charge of the Service, to the Penitentiary Service, and to the public generally. Attempts were made in memoranda prepared contemporaneously with the events above described, and in evidence, and in argument before the Commission to justify or explain the acts described.

## PRISON RIOTS AND SECURITY

We deem it not only appropriate but obligatory to report with respect to the facts elicited during the course of the hearings. In an endeavour to discover the cause or causes of the Kingston disturbances a considerable amount of evidence was adduced concerning the conditions prevailing at Kingston immediately prior to those disturbances. We propose to deal with that evidence and to comment concerning it in some detail.

It is not our purpose or intent to report or advise you with respect to matters beyond the scope of our terms of reference. During the course of our investigation we had the benefit of hearing evidence from Senior Penitentiary Officials, Custodial Officers, Classification Officers, Chaplains and Doctors, members of the "Citizen Committee" and a considerable number of inmates. In addition, we heard the evidence of two faculty members of Queen's University who had in the past performed voluntary service at Kingston Penitentiary.

We have also availed ourselves of the opportunity to review the reports of the Archambault Commission and Oulmet Committee.

Historically, prison disturbances and riots have occurred with alarming frequency. Although in the vast majority of cases they have been limited in their magnitude and intensity, they do reflect situations of permanent and fundamental instability. Particularly noteworthy is the fact that these disturbances are more frequently associated with *maximum security* institutions. This is demonstrably so at Kingston Penitentiary. We conclude that the connection between insurrection and maximum security is not a coincidence.

Although it may be said with some justification that incidents of resistance and violence frequently originate with a small group of inmates motivated in a highly individualistic fashion as we find to be the case at Kingston, we conclude that their occurrence is related to the prevailing sentiment in the penitentiary. While it is true that the vast majority of inmates are not predisposed to resort to violence (or for that matter, any form of organized resistance), we found in the aftermath a very genuine sympathy, on the part of inmates who took no apparent part in the disturbance itself, with mass resistance as a technique to assert grievances. This should not be regarded as a demonstration of *ex post facto* solidarity on the part of the inmates. Insurrection develops and thrives in a sympathetic environment. The evidence before us established that there was in the opinion of many of the inmates a necessity of recourse to violence as a means of redressing long-standing grievances and of calling those grievances to the attention of the public.

Prison administrators and staff testified that inmates were unable to provide convincing justification or explanation for the disturbance. The typical catalogue of complaints focuses on such matters as food, parole and the courts. The conclusion we draw, however, is not that inmates have no legitimate grounds for protest but rather that in the absence of more realistic and sophisticated mechanism and forums for communication, inmates' conduct may be apparently incoherent, disorganized and unreasoned.

We have observed it to be more than a matter of coincidence that Kingston Penitentiary has been embroiled in inmate disturbances to a much greater extent than the medium and minimum security institutions in the Region. Basically, two conventional but conflicting points of view were asserted during the course of the evidence by way of explanation:

First, Kingston Penitentiary as a maximum security institution by definition contains offenders who, by reason of their personal histories, are more aggressive, intractable and dangerous than those in other federal penal institutions in the region, and

Second, Kingston Penitentiary, as a maximum security institution, is far more restrictive and repressive in its operation and hence encourages irrational and desperate responses from certain elements in the prison population.

In our opinion neither point of view fully and adequately explains the phenomenon; the former tends to an unwarranted emphasis on the criminal and anti-social characteristics of those classified as

maximum security cases; the latter tends to an idealizing of inmate characteristics and motivations which effectively absolves the inmates and assigns the burden of guilt completely to the institution. We are of the view that both points of view constitute an over-simplification and leads to inflexible stereotyping as we approach the basic question: what caused the disturbance at Kingston Penitentiary?

Regardless of where blame and criticism can be laid, we found a number of inadequacies, some more obvious than others, in the operation of the penitentiary in April of 1971. There is every reason to believe that those associated with Kingston Penitentiary are generally able to agree upon those areas in which failures and schisms are most pronounced. The essential and immediate task in our view is to recognize the areas where serious misunderstanding and confusion existed, to proceed to analyze the factors contributing to the discontent and, finally, make recommendations that will hopefully lessen if not prevent such further tragic incidents.

Before proceeding to consider the ways in which the tendency to insurrection and riot can be reduced in a maximum security prison, we think it advisable to emphasize the purposes of a penitentiary as formulated by the Ouimet Committee in their Report. An institution such as Kingston Penitentiary has two objectives:

- 1) to hold the individual inmate in custody for the period of his sentence subject to remission and parole;
- 2) to prepare the individual inmate for permanent return to community living as a law-abiding and contributing citizen.

It is important in our opinion to emphasize, as the Ouimet Report does, that these are twin objectives, each of equal authority and importance. The inability to attain either objective is a sign of failure on the part of the institution. The administrator's attempt to keep both objectives in balance is in the language of the penologist the "prison dilemma". It is obvious that the failure to achieve an adequate custodial system will pose dangers for the community and certainly brings the administration of justice into disrepute. In the same sense the failure to create and maintain a program sufficient to prepare the individual for return to the community poses equal dangers in the long run, increasing recidivism and the substantial damage to the community thereby entailed.

Assuming as we do the validity of the twin objectives postulated by the Ouimet Committee, it is clear that at Kingston Penitentiary the objective of preventing escapes was admirably attained: for almost a decade there had been no inmate escape from the premises.

It is regrettably obvious, however, that the second objective failed to be realized and that, indeed, in pursuit of custody as an objective, rehabilitation and appropriate programs in the institution were seriously curtailed.

Before examining the failure of Kingston Penitentiary as a rehabilitative center (which led to the tragic events of April, 1971) and attempting to suggest ways in which, within a maximum security institution such as Kingston Penitentiary, the objective of rehabilitation can be pursued without damaging the objective of custody, it is important to make two observations about the purposes of a maximum security penitentiary in the light of the Ouimet Committee conclusions.

In the first place, it will be observed that punishment *per se* can no longer be regarded as a legitimate objective of the Penitentiary System except insofar as separation from the community for a term of imprisonment amounts in itself to punishment.

In the second place, it is important to emphasize that the Ouimet Committee speaks of "custody". Custody is, of course, the containment of the prisoner within the confines of the institution itself. It is to be distinguished from the necessity of maintaining order within the institution so that the objective of rehabilitation may be pursued. The necessity for internal order is obvious; it is, however, in our view, a function of the rehabilitative program and not a function of custody, *per se*.

It seems to us that the twin objectives of the maximum security prison cannot be pursued (let alone attained) without the recognition of these two important qualifications.

We find that there was no single identifiable cause for the Kingston disturbance. We do, however, find that it was the result of the system which then prevailed. That system failed fundamentally because it was unable to establish and maintain a strong rehabilitative program. That failure resulted from a number of causes, to some of which we will shortly refer. It is perfectly clear, however, that because of that failure there was no reasonable measure of internal security or custody which could have prevented or diffused the Insurrection which occurred on April 14, 1971.

We have already noted a number of causes for Kingston's failure: the aged physical facilities, overcrowding, the shortage of professional staff, a program that had been substantially curtailed, the confinement in the institution of a number of people who did not require maximum security confinement, too much time spent in cells, a lack of adequate channels to deal with complaints and the lack of an adequate staff which resulted in the breakdown of established procedures to deal with inmate requests. Beyond these failures, however, is one that is more fundamental: the schismatic and dangerously polarized nature of the life inside the prison institution itself. The polarization between inmates and custodial staff, between custodial staff and professional staff, led inevitably to the destruction of the program and deterioration in the life of the institution. These facts were established beyond doubt by the testimony heard by the Commission.

Few suggestions that can be made for improvement for the life or program inside the institution, or the security of the inmates and staff will be useful until this formidable obstacle, the apparent traditional schisms and divisions within the prison, are removed or ameliorated. One cannot propose realistically or embark upon any reasonable rehabilitative program if it is suspect or illegitimate in the eyes of certain groups, either administrative or inmate, that live or work in the prison environment.

We therefore propose to deal with what the evidence suggests are the two prison subcultures. The evidence from all groups within Kingston Penitentiary reveals the fractionalized and divided character of the relationships which existed. To state the obvious, there were basically two factions within the prison; the staff on the one hand, and the inmates. That there will always be two such groups is an inalterable fact. What, however, is not inalterable, is the gaping distance separating them. As long as there continues to exist an antagonistic relationship of mistrust and misapprehension as was amply demonstrated by the evidence before this Commission, the twin objectives of order and rehabilitation will not be attainable. There was demonstrated a marked tendency on the part of both staff and inmates to ascribe uniform and stereotypical characteristics and motivations to each other. The consequence appears to be that individuals continue to conduct themselves on the basis of these preconceived and false formulations. Hence, each group is able to find ample justification for its decisions, actions and attitudes in what has become a self-perpetuating circle of mutual recrimination.

Much has been said and written about the "inmate subculture" and, although its existence is by no means mythical, there have arisen serious misinterpretations and explanations as to its nature and role within the prison. It was apparent to us during the hearings that the majority of inmates identify far more readily with other inmates than they do with members of the penitentiary staff, and to a certain extent they see the possibility of their interests being best served by according at least some recognition to its values, principles and rules. It would, however, be erroneous to view the inmate subculture and its concomitant "code" as being irrevocably binding on its members.

The existence of a subculture and the influence and effect of its values should not be regarded as a permanent feature of prison life. A certain unity and group awareness does, in some respects, bind most inmates together, but this cohesion is essentially a response to shared grievances and feelings of victimization. In this sense, a class awareness and cohesion has developed and is continually being sustained by a commonly shared perception of the administration.

Inmates are thus brought together in opposition to staff. This opposition is framed in terms of the necessity to deal with the adversary in a furtive and cautious fashion. A watchword among inmates is the

admonition "don't co-operate with the administration", a principle that surely exposes a profound belief held by inmates that close association with staff is decidedly contrary to the best interests of the inmate group.

The tragedy is that presently there is little or no middle ground to be assumed. The polarization at Kingston was intense and unyielding and although there were invariably individual instances where staff and inmates have demonstrated the willingness and capacity to work together, they remain as isolated exceptions to the general pattern of attitudes.

But there is a custodial staff "subculture" as well, which in terms of the objectives of the prison system, is equally debilitating. Among members of the staff it is widely felt that the tendency for inmates to perpetuate a culture in which rules are illicitly enunciated and adhered to, is simply characteristic of their criminal mentality. That attitude expressed by some members of the staff who testified before us was supported by their expressed view that the inmates had demonstrated their inability and unwillingness to live in conformity with the laws of the community and that it was therefore not surprising that they were unprepared to conform with the regulations of the institution. It was apparent to us that analysis promoted an attitude in some staff, cutting across age, authority and experience, that the inmates were nothing more than scheming, unrepentant criminals. It was apparent to us that a repressive custodial attitude resulted.

Administratively, that is to say in the definition of duties and assignment of responsibilities, it appears to us that the principal, and regrettably almost exclusive, emphasis existing at Kingston Penitentiary in April of 1971 was that of ensuring and maintaining custody and security. If the inmate subculture is as we have suggested in part, a defensive phenomenon that is defined by the necessity to withdraw and disassociate from the authorized norms of the institution, we regret that the response by the administration has been the application of more rigorous and restrictive control of the population. The evidence clearly demonstrated that fact. By way of only one example of many which were given, we observe the substantial curtailment of inmate "privileges" as the aftermath of a "sitdown" demonstration which occurred in 1967. Too frequently the inmate "challenge" has not justified the administration "response". In the long term view unfortunate and destructive consequences result.

We do not suggest that authority and supervision should be abdicated by those entrusted with custodial responsibility. We do, however, suggest that the maintenance of order and security should not be wholly contingent upon the promulgation of detailed restrictive rules, mass curtailment of privileges, and a physical display of force. If a maximum security institution, such as Kingston Penitentiary is to participate in the objective of rehabilitation on a serious and continuing basis, it will be compelled to realign its priorities by encouraging inmates and staff to jointly develop legitimate and acceptable programs. It is our view that in the re-arrangement of priorities to accomplish that purpose, security and treatment need not be posed as irreconcilable opposites. Indeed it is our view that when each is placed in proper balance and perspective a more permanent sense of peace and order within the institution will be ensured.

The conflict between the objectives of custody and rehabilitative programs at Kingston can best be demonstrated by examining the relationship between the inmate and the Custodial Officer and the Classification Officer who perform the two principal service functions in the Penitentiary.

During the course of the evidence it was abundantly apparent to us that the relationship between the custodial staff and the inmate population was extremely antagonistic and bitter. While there were of course exceptions to that pattern, the readiness on both sides to remonstrate against the other was demonstrative of the extent to which the two groups were separated. The dilemma is that it is the Correctional Officers who must maintain order within the institution and ensure that infractions of rules either do not occur, or, if they do, to initiate disciplinary procedures. At the same time the Correctional Officers are in continual physical association with the inmates. As a result, the Correctional Officer functions in an almost untenable association, and one that is inherently and obviously volatile. In reality the Correctional Officer serves a function that is basically narrow and subject to a strict and unvarying routine. He has neither the authority, the opportunity, nor indeed, in most cases, the inclination to place himself outside the strict perimeters of his job.

The Correctional Officer in enforcing the rules of the institution and in ensuring discipline thereby incurs the enmity of the inmates, who resent what they regard frequently as an unwarranted application of authority. In turn, the inmate hostility directed at the Correctional Officer serves to confirm and reinforce in his mind the notion of inmates as potentially aggressive and dangerous. What unfolds in this process is the realization of a self-fulfilling prophecy; the correctional officer is instructed to strictly enforce the rules of the institution, to ensure discipline, and in so doing confront the sullen anger of the inmates who resent what they see as unwarranted application of authority; and, in turn, the hostility directed at the correctional officer serves to confirm and reinforce the notion of inmates as potentially aggressive and dangerous.

The more ritualistic and confining are the duties of staff, the more pronounced the tendency of some to be authoritarian and punitive; moreover, this phenomenon leads some correctional staff to rationalize their attitudes and behaviour on the basis of the very responses they elicit.

In sum, it matters little whether, as a matter of policy, the objectives of treatment and rehabilitation are encouraged if a sense of the worth and viability of these policies is not transmitted to the very people who are assigned to carry the program forward.

We are forced to conclude from the evidence we have heard that relations between correctional officers and inmates at Kingston were in the main exceedingly poor. This conclusion is fortified not only by the evidence before us but by the results of Commission Counsel's survey. Inmates responded that the majority of officers were unreasonable, hostile, indifferent, contemptuous and punitive.

Perhaps the most poignant issue was expressed to us in terms of the inmates' desire for self respect at the hands of correctional staff. The most consistent and eloquent demand made by the inmates during and after the disturbance was that as human beings they ought to be accorded treatment consistent with their dignity and self esteem as individuals. Some correctional staff were accused, in their behaviour towards the inmates, of making a conscious effort to degrade and demoralize them.

Happily, however, and notwithstanding mutual distrust and bitterness, a vast majority of inmates and correctional staff are confident that relations could not only improve but, moreover, that officers could be involved more comprehensively in the various institutional programs.

Both inmates and correctional officers gave evidence of another important source of friction. It was said, and we find, that the manner in which prison regulations were enforced was frequently variable and inconsistent; that standards of strictness or leniency varied with the particular officer or shift. Not surprisingly, this practice at Kingston introduced an element of instability and confusion of which one effect was to undercut the very order that was sought to be applied and the general authority of the institution itself. By way of example, some correctional officers on the Penitentiary staff insisted that shirts be at all times buttoned and that hands be removed from trouser pockets when walking; other officers were quite prepared to ignore such infractions. Frequently, variations in standards depended not merely on the individual officer's discretion, but rather upon the supervising officer on duty in the unit at that time. In this way, inmates were not infrequently confronted by a range correctional officer who felt obliged to impose and enforce a rule on one day but not on the next.

Although the rules governing the conduct of inmates are set out in the Standing Orders of the Penitentiary, it is quite clear, as we have noted elsewhere, that there was considerable confusion at Kingston Penitentiary as to the nature and existence of certain regulations. There is, in addition, clear evidence that some rules are promulgated more by custom and individual whim than by specific regulation or conscious institutional policy.

The danger to the authority of the institution and the morale of both staff and inmates that such practices create can hardly be overemphasized.

Although it would not be difficult to introduce a greater degree of uniformity in the enunciation and application of prison rules there will still remain an overriding confusion which would not be

eliminated by recourse to relatively simple expedients such as the introduction of a simplified book of "rules". Correctional officers at Kingston frequently complained that they were provided with no substantial opportunity to participate in the direction and management of the institution and that major decisions directly affecting them were taken by others without any meaningful consultation, and without adequate explanation. As a consequence, the officers has reason to feel alienated from the processes that determine the very nature and policy of the institution. Particularly, in the area of treatment and rehabilitation, there was at Kingston a serious "communications gap" between custodial and non-custodial staff. This meant that the two essential service arms of the institution functioned in isolation one from the other. This in turn leads to an inability or unwillingness on the part of the Correctional Staff to communicate effectively the objectives of prison programs to the inmate. Thus the gulf is widened. Kingston Penitentiary in April, 1971 was then a classic example of institutional structure militating against the realization of stated objectives.

The relationship between classification staff and inmate at Kingston Penitentiary was significantly different. The evidence before us, confirmed by counsel survey, revealed almost no hostility of any consequence between classification officer and inmate. Inmate attitudes to classification staff ranged from open distrust to mild cynicism of the latter's role and effectiveness in the institution.

One of the principal functions of the classification officer is to determine whether an inmate should be maintained in a maximum, medium or minimum security institution. This process commences for each inmate upon his arrival at Kingston Penitentiary following sentence and continues thereafter as his life in the penitentiary establishment develops. One theory of the classification process was advanced in the Archambault Report (1938). Since then the matters that are relevant to determine in which of the three categories an inmate should be classified have been considered from time to time. The present standard applied is that established over a decade ago by the Stone Committee, which is in the Duimet Committee Report (1969), in the following way:

1. *Maximum Security.* "Inmates who are likely to make active efforts to escape and who, if they do escape, may very well be dangerous to persons whom they may encounter in the community."  
Approximately 35 per cent of the Penitentiary population are considered to fall within this category. About 3 per cent require super-security.
2. *Medium Security.* "Inmates who are not likely to make active efforts to escape but who might very well run away if the opportunity presented itself."  
Approximately 50 per cent of the inmates are considered to fall within this category.
3. *Minimum Security.* "Those inmates who require neither fence nor wall to keep them confined, who will respect the invisible boundary that surrounds them and who, in any event, are not likely to be dangerous in the community if they do walk away." The remaining 15 per cent of inmates are seen as falling within this category.

In theory each inmate upon reception is assigned as a "case" to a classification officer who makes a recommendation as to the appropriate security classification on the basis of two psychological tests, a personal interview and whatever other data such as pre-sentence reports, reasons for judgment, police reports and the like may be available. This assessment then goes forward to the Regional Classification Board which considers, approves, varies or rejects it. Once classified, an inmate may theoretically be re-classified at any stage during his term of imprisonment by a modification of the same process. Needless to say, because of the highly restricted life in Kingston Penitentiary and the limited number of programs that are generally available to maximum security inmates, re-classification to medium or minimum security institutions is much sought after.

The classification process is work that calls for a highly refined although largely subjective judgment about an inmate's personality and needs. Under the pressures of time and staff which existed at Kingston Penitentiary, it is inconceivable that a proper classification program could have been applied, either upon reception or later. As a result, it appears that "rules of thumb" have been devised to resolve classification problems expeditiously for a number of inmate categories. For example, if an inmate is

sentenced to more than ten years, it follows almost as a matter of course, that he will be classified "maximum security" for at least one or two years. In the same way, a person who attempts to escape from a medium or minimum institution is almost invariably re-classified "maximum security" almost without regard for the particular circumstances that might have existed and led to his attempted escape.

The evidence of both staff and inmate reveals, however, that the classification officer almost by default performs a wide variety of duties related to the welfare of the inmate. For example, inmates are required in fact to see their classification officer for a multitude of reasons such as personal counselling, family problems, "special" letters, parole matters, and work or school programs.

At Kingston in April, 1971 the classification staff was well below its assigned complement. We do not hesitate to conclude, however, from the evidence that we heard, that the classification staff complement itself was totally inadequate, bearing in mind the nature and extent of the responsibilities assigned or assumed by classification staff.

The problem is heightened by the fact that custodial staff, for some of the reasons noted above, cannot perform many of the myriad "welfare" duties which might normally be expected of them because of their constant direct contact with the inmate. Essentially, therefore, the classification officer is the only person to whom the inmate can turn for a broad variety of reasons relating to all aspects of his life in the institution.

It is clear from the evidence that while classification officers were prepared to listen to inmates' requests and grievances, and generally appeared to approach them in sympathetic fashion, they were frequently powerless to deal with matters thus placed before them. We have no hesitation in concluding that classification officers were not always able to make decisions in a free and independent manner insofar as it might be asserted by the administration that such decisions has potential "security" implications.

The evidence would indicate that the functions of the classification staff so essential to a truly rehabilitative program, were not infrequently regarded as unimportant in the custodial orientation of the institution, or merely collateral to the main stream of penitentiary life. As a result, and in order to give their function realistic significance, some classification staff began to see their duties in precisely that context.

Secondly, the inmates' relationship (and it can scarcely be considered a "relationship" in most instances) to his classification officer, was unsatisfactory. Inmates were, for the reasons of institutional structure set out above, not infrequently left with only the benefit of uncertain promises. In many instances, the officer was quite unable as a result of limited authority or inadequate facilities to render an immediate and concrete decision with respect to a specific inmate request. By April of 1971 the Kingston inmate had come to expect an intolerable lapse of time between the statement of his request, problem or grievance, and a decision. The inmate frustration thereby created is compounded in light of the evidence that classification officers were almost without exception the only assigned staff persons to whom an inmate could go in connection with a broad variety of problems relating to almost all aspects of his life in the Penitentiary. When it is appreciated that requests that may seem inconsequential to a free man are frequently crucial or urgent for the inmate, the consequences of this state of affairs can be imagined. Yet, although limited in authority, heavily overburdened, and appallingly short staffed, the classification staff attempted to perform within the Penitentiary the essential function which might hold promise to reduce inflammatory tensions and frustrations.

Significantly, and notwithstanding these burdensome circumstances, the evidence revealed clearly that inmates make a definite distinction between the classification and custodial staff.

The Commission was able to detect little of the anger and bitterness toward the former that is invariably directed between it and the latter group. In fact, it was apparent that the opportunity for the inmate to have a personal relationship with the administration was greater with his classification officer than with any other member of the staff. It was to him, if to anybody, the average inmate could turn for assistance, encouragement and support. At Kingston, for the reasons noted, the inmate was confronted with



a situation in which his classification officer could be of only limited assistance. The conviction that his personal concerns were not being considered, or were being dealt with in an indifferent and impersonal manner, was simply strengthened.

If, as the authors of the Ouimet Report have noted, it is "possible to reduce escape (and security) risks by means other than physical control" it is in our view in the interests of any well-motivated security system in the prison that such steps be taken forthwith. It is a fortuitous accident that as the Ouimet Report notes, "other means" frequently involve techniques and programs that advance the rehabilitative objective of the penitentiary. Indeed, various studies indicate, and almost all senior staff who gave evidence before our Commission agreed, that an aggressive rehabilitative program emphasizing all the potential opportunities of the prison situation effectively reduce the risks posed by custody and security. The so-called "prison dilemma" created by the presumed inconsistent demands of security, custody and rehabilitation may, in fact, be an illusory dilemma.

We think that it is desirable in light of our conclusions from the evidence to make a number of concrete practical recommendations to you which we believe, if implemented, will have the effect of minimizing the "polarization" between staff and inmates by altering the priorities of institutional life that were found to exist in this maximum security penitentiary in 1971. Thereby we hope that the debilitating factors which were clearly present and operative at Kingston Penitentiary before the disturbances of April last, can be effectively neutralized. We propose, therefore, to make recommendations designed to assist the Penitentiary Service of Canada to create in an institution such as Kingston Penitentiary an environment in which the objective of rehabilitation can be pursued in an atmosphere of order and purposefulness. As a consequence, we believe the security of both inmate and officer be increased, and the incidence of disturbance, disorder or insurrection correspondingly reduced.

### Re-orientation of Internal Prison Staff

In the interest of both rehabilitation and security, we recommend that steps be taken forthwith to alter administrative structure and to re-allocate non-professional staff in the following way:

- (a) The Department of Inmate Training under the Assistant Warden (Inmate Training), including the classification staff, shall, subject only to the Warden, exercise full and unrestricted responsibility for and control of the work, academic, recreational and social program of the prison as presently implemented within the penitentiary buildings. It is the intent of this proposal that an expanded Inmate Training Department, not only be charged with matters of treatment and training, but also have responsibility for and control of matters associated with discipline, inmate control and the maintenance of good order within the penitentiary building.
- (b) The Department of Custody will assume responsibility for the containment of inmates within the penitentiary walls. It is the intent of this proposal that the Department of Custody be essentially charged with the maintenance of security.
- (c) The Warden of the penitentiary should undertake an active supervisory role with respect to the Department of Inmate Training. It is our view that the Warden should not only be administratively responsible but should participate fully in the planning and implementation of the prison program. At present, as we have noted, the Warden is heavily burdened with administrative detail and paper work; arrangements must be made so that the burden of these relatively routine tasks can be assigned to others, freeing him for a more formative function in the interior life of the penitentiary.

It is the intent of these recommendations to place prisoners in direct contact with staff who perform a variety of staff functions, and to whom custody and security are not matters of exclusive concern. The effect, we think, will be to reduce that portion of the security orientation of the maximum security prison, that is, strictly speaking, unnecessary or merely "responsive", by placing the maintenance of good order within the ambit of responsibility of those staff primarily charged with treatment and training.

It is true that the Department of Inmate Training will require regular staff assistance from the Department of Custody to control certain contact points within the interior of the prison. Such custodial presence should, however, be minimal because internal security must not be viewed as merely an opportunity for the application of a quasi-military "rule" and consequent "punishment". This can best be achieved, in our view, if internal security and the maintenance of good order and discipline is viewed by staff and inmates alike as part of the treatment program and, generally speaking, a therapeutic function.

In our judgment, these general objectives can be obtained best and most expeditiously by the re-allocation of penitentiary forces here recommended.

We have previously noted that in Canada the ratio of custodial staff to inmates is three times that prevailing in the large prisons in the United States. Because custodial staff are principally with the maintenance of security and discipline, this represents an extravagant use of staff if legitimate custodial and security objectives can be realized otherwise. One of the practical results of our recommendations will no doubt be that the staff of the Department of Custody can be very substantially reduced in size. Another consequence, of course, is that the Department of Inmate Training will require additional staff to perform its new and expanded duties. We have reason to hope that no very great problem should result in practical terms because in our view, a view shared incidentally by many of the senior staff witnesses who gave evidence before the Commission, many of the present custodial staff are quite capable, with training, of performing the duties which we would now assign to the Department of Inmate Training.

#### **Classification Case Interview Committee**

The present practice of line personnel simply on request filing written reports to classification staff, frequently on a check list basis, is not adequate either in a reporting sense or in the more important task of involving line staff in the classification decisions affecting each inmate. Regular case conferences should be held on each inmate, where staff can exchange information on specific cases.

#### **Group Counselling**

Group counselling should be undertaken on a regular basis by Inmate training staff. Its goals, apart from personal contact, are immediate solutions to specific personal problems and a larger effort to develop self-understanding and maturity within the offender. Such counselling must be seen as part of the total correctional program.

#### **Inmate Advisory Committee**

Detailed reference will be made to this proposal subsequently.

#### **Allocation of Professional Classification Staff**

We propose that program staff should be assigned "cases", not merely at random, as at present, but rather on a living unit, academic, work, or like basis. The intent of this proposal is that the officer will not view his "case" in isolation or in a vacuum, but will rather see it against the background of the complex of relationships in which the "case" works and lives.

#### **Institutional Staff**

Institutional Staff must be encouraged to participate regularly and actively in the daily routine of prison life by associating themselves in the social, recreational, religious and educational aspects of the inmate's life. Tension, frustration and animosity can be reduced significantly, and the two prison "sub-cultures" breached by such simple human contacts as can be provided by sports, indoor games and the wide range of recreational and other activities that should be available to the inmate.

#### **Uniforms**

In "bridging the gap", we have attempted to emphasize the desirability of encouraging informal contacts between staff and inmate. This objective can be assisted by encouraging inmate training personnel to maintain offices or work areas so they will perform at least a portion of their function within the prison

complex itself. In addition, in our view, staff personnel within the interior of the prison should not be uniformed. We note that at present some senior staff and all professional staff wear civilian clothes. This is a desirable development. It reduces the quasi-military atmosphere of the penitentiary and makes it more difficult for inmates to feed their tendency to unfavourably stereotype inmate training staff.

### **Staff Training**

As has been observed by others, a prison must be an educational centre in the widest sense of the word for both inmates and staff in which treatment and training are closely related in an orderly environment designed to create a series of progressively re-educative experience for the inmate in order to promote his identification with non-criminal society.

The re-allocation of staff within the penitentiary will require substantial re-training of manpower throughout the administration but particularly in the Department of Inmate Training. The bulk of the inmate training staff will no doubt remain non-professional. The senior personnel must be treatment-oriented, able to see internal security in terms of its true purpose and function. A well-ordered and well-disciplined institution is not desirable merely as an administrative convenience, but because it creates a milieu in which a correctional program can be pursued without hindrance and in safety.

Initially, Inmate Training Staff who interact with inmates with the most frequency will require an intensive, full-time training program to provide an understanding of prison psychology and to equip them in the techniques of group counselling and staff-inmate interaction. In addition, regular "refresher" programs should be instituted for all staff, where possible during the daily program of the prison, but if not then on a "leave" basis.

In order to assure that training is effective, and that the program of the penitentiary is being purposefully carried forward by all, staff meetings of all ranks must be held on a regular basis at which full and frank discussion of the penitentiary program is conducted and encouraged. These meetings should not merely be "instructional", but should attempt to involve each staff member no matter how minor his responsibility in the long-range program of the institution. Staff of all ranks are entitled to know that their views about penitentiary problems are sought and considered in the preparation and implementation of programs. In addition, it is essential for staff morale and in order to inculcate an ability to respond creatively in discretionary areas that staff understand and appreciate the objectives that motivate senior staff in the penitentiary and in the Canadian Penitentiary Service when programs are planned or directives circulated. Staff morale and performance also requires the opportunity of advancement.

Our conclusions from the evidence about the circumstances at Kingston and our observations of staff morale lead us to regard as critical that within the newly-expanded Department of Inmate Training no limit, except demonstrable ability, should be imposed on the opportunity given to the most junior staff member to rise to senior positions of greater responsibility. We were impressed by the fact that there presently are many correctional officers in the service at maximum security institutions and Kingston Penitentiary who are quite capable of performing duties in a newly-expanded department of inmate training. We believe that new recruits to the service are required, and an expanded program designed to enlist the most suitable personnel should be developed. We are confident that if the maximum security prison is re-oriented with a correctional emphasis, it will be able to obtain the services of many persons who are strongly motivated by the desire for community service.

### **Inmate Classification Criteria.**

The Penitentiary Service Regulations by paragraph 2.03 provide that every inmate shall be "classified" and confined in an institution that seems most appropriate having regard to:

- (a) the degree and kind of custodial control considered necessary or desirable for the protection of society, and
- (b) the program of correctional training considered most appropriate for the inmate.

Recommendations as to classification are made by the institutional classification staff and reviewed and acted upon by the Regional Classification Board.

We have noted earlier the practical application of those standards as summarized by the Ouimet Committee. The evidence made abundantly clear that at Kingston there had been a marked tendency to emphasize the "custodial control considered necessary" in view of the possibility of escape or injury, at the expense of determining a program of correctional training appropriate for the inmates.

This tendency, no doubt, results from the fact that the necessity of custodial control must be measured against standards which are not readily capable of objective analysis or determination. As a result, at Kingston and in the Ontario Region "rules of thumb" may have been developed which merely emphasized the tendency to err on the side of custody and security. For example, the evidence made clear that any prisoner sentenced to ten years or more in the Ontario Region is most likely to spend a certain initial portion of his sentence in Kingston Penitentiary, the Region's sole maximum security institution. In the same way, we conclude that an inmate who is a disciplinary problem or merely an inconvenience to staff at a medium or minimum security institution may very well be simply re-assigned to maximum security.

Kingston Penitentiary therefore was from time to time regarded as an administrative or disciplinary device to assure the "smooth operation" of medium or minimum security institutions in the Region.

The problem is particularly important if one bears in mind that different rehabilitative and correctional programs exist at maximum, medium and minimum institutions in the Region. Because there is, in fact, developing a tendency to smaller institutions, it cannot be economically possible to make a full range of programs available at each penitentiary. The practical consequence we draw from the evidence heard by us is that the kind of custodial control considered necessary to each inmate determines and limits to a marked extent the program of correctional training which may be available to him.

For these reasons, and our conclusion received support from many senior staff persons, we are not satisfied that the classification standards as presently applied are *per se* acceptable at this time. While it must be recognized that certain incorrigible inmates must be isolated in maximum security, it is time to recognize that for the balance of the inmate population, an approach should be taken which assures that an inmate is placed in an institution which provides a program of correctional training appropriate to his needs. In short, classification must be much more directly related to the needs of the inmates in terms of their prison life rather merely related to the ability of the walls of the prison to contain them.

Again we recognize that there are some risks involved in such a proposal. It need hardly, however, be pointed out that risks always co-exist with creative opportunities. We regard those risks as a burden that can be borne by the service in view of the widely accepted observation that an inmate well-adjusted to prison life, that is, engaged in a social or work program suited to him and satisfactory for rehabilitation purposes is a substantially reduced custodial or security risk.

#### **Inmate Reception Program**

The Inmate Reception Program at Kingston Penitentiary in April 1971 was designed almost exclusively to "classify" the inmate for incarceration in a maximum, medium or minimum security institution. The evidence revealed that each inmate was required to submit to two brief psychological tests scaled to show gross abnormality and to be interviewed by a staff classification officer. If considered appropriate, further psychological testing might be provided. Thereafter, on the basis of the material before him and the personal interview the officer made an assessment of the "case" and a recommendation as to classification to the Regional Training Board.

The Reception Program, as such, at Kingston Penitentiary, was in our judgment totally inadequate. That this was the case is no doubt in part attributable to the chronic shortage of adequate classification and psychiatric staff, the total absence of psychological staff, and the unsatisfactory fact that inmates in the Reception Program were isolated within the Main Cell Block itself.

We cannot account, however, for the relatively inadequate data upon which the crucial issue of classification was determined and the narrow perspective of the "reception" function which included almost nothing to assist the inmate, particularly the newcomer, to adjust to his new status and to the life of the institution.

Due, no doubt in part to chronic understaffing which the evidence revealed, the average period required to complete the relatively simple process of "reception" was six weeks. It is incredible to record that during that period the prisoner spent at least twenty-three and one-half hours locked in his cell without work and with only minimal recreation. When one is reminded that many of the inmates passing through Reception were young, inexperienced or first-time offenders, the total failure of this program as an introduction of the inmate to the prison system is apparent. It would not be surprising if hostility to and resentment of the institution and a sense of futility and cynicism developed at this very early stage.

Until reception centers as such become a reality, an adequate Reception Program should be established at Kingston Penitentiary which has now been designated as the Reception Centre for the Ontario Region. Though physical modifications are in the course of being made, the Main Cell Block itself remains unsuited to any modern prison purpose. We think it totally inadequate for such a central, crucial and determinative function as "reception".

It is to be hoped that the time an inmate spends in Reception can be substantially reduced. The tests to which he is presently submitted require relatively little time; it is the necessity of collecting a variety of relevant material such as pre-sentence reports and reasons for judgment, as well as the chronic shortage of classification staff that had dictated the long delay. We have no doubt that steps can be taken so that the Program is reduced to two weeks. It is desirable that the new prisoner should be placed in the environment in which he will work and live at the earliest possible moment. We understand that some progress has been made toward this end recently.

We also recommend that the Reception Program should be utilized for broader purposes than mere classification. It is possible and desirable to prepare a comprehensive induction program in which the prisoner may learn something of the rules which he will be expected to live, familiarize himself with the various programs that are available in the academic, social and work areas, and be given some detailed exposure to and explanation of the opportunities that are available within the prison system and that are suited to him. The prisoner should leave Reception fully aware of the facilities the system makes available and conscious that he is in a position to make a start on a useful and attractive program.

#### Rules of Conduct and Prison Discipline.

In 1938, the Archambault Commission noted that:

"... discipline should never be confused with punishment.

It is a system of training with the object of inculcating obedience to rules and respect for authority and its intended effect is orderly conduct. Punishment, on the other hand, is the treatment given to those who infringe the rules.

In a penal institution discipline applies to the staff as well as to the inmates. Two sets of rules are enacted by the authorities, one for the staff and one for the inmates. These rules should be based on the principles of modern penology, as interpreted by our Penitentiary Act: first, the detention of prisoners in safe custody, and second, their reformation and rehabilitation. In enacting these rules and in putting them into practice this dual objective must constantly be kept in mind . . ."

It is obvious that upon admission to a penitentiary, an inmate is obliged to abide by the rules of the institution and that his failure to abide by them may lead to further punishment. Bearing in mind the narrow restrictive life the inmate in a maximum security institution like Kingston is already required to lead, such punishment may be for him a grievous burden indeed. The cancellation of a few modest privileges, which to a free citizen would be of trivial value, can deprive him of activity, embitter his mind and alter the course of his life in the institution.

Every kind of community life, however, requires the application of rules of conduct and sanctions for their breach, and this is particularly so in a penitentiary. We conclude however that every such system will, in fairness to both those who apply the rules and those who must follow them, bear the following essential characteristics:

1. The general rules of the institution (from which we distinguish their application in particular cases) must be clearly formulated in writing and available to those who submit to them for ready reference.
2. The general rules must be regularly and consistently applied.
3. The rules must be applied in such a public fashion and by the use of techniques that illustrate to the inmate population the regularity and consistency of their application.
4. The general rules not only must be applied justly (insofar as that is humanly possible) but must appear to be applied fairly and in circumstances in which all relevant considerations can be made known and examined.
5. If a rule is applied by an administrative official of junior or limited authority, there must be techniques by which a full examination of the application of that rule and all relevant circumstances can be conducted.
6. The rules themselves must meet a reasonable standard and must be justifiable in terms of the twin objectives of the penal system: rehabilitation and custody.

A rule and its application that cannot satisfy these guidelines will not long be respected by either administrators or inmates, and will be the breeding ground of animosity, and will lead inevitably to charges of brutality, favouritism and prejudice, real or imagined.

As we have noted, at Kingston Penitentiary there was a very substantial volume of regulations, directions, instructions and directives, many of which affected inmate conduct or established standards that the inmate was required to meet. We do not, of course, merely refer to those regulations which restricted the inmate's conduct but also to those regulations which delineated his privileges and opportunities.

In most cases, the rule is initially applied against an inmate by a correctional officer or a shop instructor. Frequently, the correctional officer or instructor cannot himself be aware of the precise rule, if any, that has been breached and the evidence before us was that at Kingston Penitentiary the authority for the rule of conduct was often quite simply the oral requirement of a more senior staff member. This, no doubt, occasionally leads to *ad hoc* rulings and inconsistency of treatment on matters which for the inmate may assume a large importance.

The Institutional Standing Orders of Kingston Penitentiary, by paragraph 3.49, required "that each cell will be equipped with a list of cell rules". This Standing Order, we regret to say, has not been applied for some time. In any event, the printed list of cell rules which, we are told, is read and explained to the inmates upon admission (which may have been many years earlier) is so archaic that many of its provisions are simply no longer applied as being inappropriate even to prison life in the middle of the twentieth century.

In addition, the evidence was that none of the acts, regulations, directives, circulars, or even selected portions, are available at all to the inmate population.

To be meaningful and useful, a list of cell rules must obviously be a selection and summary of those rules that are most significant or important. It cannot be beyond the competence of a sophisticated administration to prepare such a document. No reason was advanced why such a document and the relevant Directives themselves cannot be made available.

Of course, the point about rules is that one should attempt to list fully, clearly and concisely the areas of prohibited conduct, with the implicit understanding that all other conduct is regarded as tolerable and is not subject either to reprobation or punishment.

The authors of the Archambault Report noted that a complete and adequate code of inmate conduct had existed for many years in England which comprises a mere seventeen rules. Those rules set out in full in the Archambault Report are, with minor exceptions, as appropriate as a model code of prison rules now as they were then.

It is our judgment that steps should be taken immediately to adopt an explicit code of inmate rules of conduct for a maximum security penitentiary such as Kingston satisfying the tests set out above. It is important to emphasize, for this must be the motivating factor and operative principle, that rules for the sake of rules and punishment imposed for the sake of rules, have no place in an institution which is devoted to the objective of rehabilitation.

We also desire to emphasize that the only legitimate function of a rule code is to procure inmate conformity to the minimum behaviour standard required for the smooth functioning of the institution. The rule system should be based, insofar as possible, upon a consideration of community standards of acceptable conduct and should be designed to impose upon the inmate a code of conduct which will have some practical application for him when he returns to the life of the free community.

As the Manual of Correctional Standards of the American Correctional Association asserts:

"Discipline . . . Looks beyond the limits of the inmate's term of confinement. It must seek to ensure carry-over value by inculcating standards which the inmate will maintain after release. It is not merely the person's ability to conform to institutional rules and regulations but his ability and desire to conform to accepted standards for individual and community life in free society. Discipline must . . . develop in the inmate personal responsibility to the social community to which he will return".

We adopt that observation and trust that in preparing a rule system for maximum security penitentiaries it will serve as a fundamental guideline.

We therefore recommend:

1. That an up-to-date and complete Code of Rules for inmates be prepared. Care should be taken to see that it is as explicit but yet as concise as possible. Every effort should be made to avoid "catch-all" or "discretionary" regulations. It is important that the standards of conduct to which the inmate must conform have relevance, not only to the operation of the institution itself, but to the accepted standards of conduct of the community at large.
2. The Rules of Conduct for inmates, together with a precise and full summary of the opportunities and privileges available, and the terms on which they are available to the inmate within the institution, should be printed and posted as the regulations now require, in each cell and in other public areas of the prison. In addition, copies should be provided at Reception and otherwise as required.
3. Rules of Conduct and rules respecting the application of Inmate Rules of Conduct are important to the correctional staff. Steps should be taken forthwith to prepare a handbook for the guidance of junior and middle officers charged with supervising the conduct of prisoners. We cannot over-emphasize the importance of this requirement which is founded in our observation that many correctional officers appear, because of the volume of directives and their technicality, to be uncertain as to what rule, if any should be applied to inmates and the mode of application. This natural confusion has led to an unevenness of treatment which is not only unjust but which damages the morale of both inmates and staff. Indeed, it brings the integrity of any rule system.
4. While the responsibility for making rules should continue to rest with the Warden and his staff, subject to General Directives, the Warden should be obliged to file for approval with the Commissioner of Penitentiaries a copy of the Code of Rules provided to each inmate or staff member. In addition, the Warden and his staff should be required to review the rules on a regular basis and to submit revisions to the Commissioner of Penitentiaries for his approval, in order to assure that the aptness of the rule system to changing circumstances and general code of conduct in the community is maintained.

## Prison Punishment

The evidence before us indicated that the range of punishments available in a maximum security institution such as Kingston Penitentiary is extensive. Without being certain that the list is exhaustive, they may be summarized in order of severity:

- (i) Admonishment
- (ii) Reprimand
- (iii) Change of work
- (iv) Forfeiture of privileges
- (v) Downgrading of pay
- (vi) Extra chores during leisure hours
- (vii) Punitive dissociation for a period not to exceed 30 days with or without restrictive diet
- (viii) Hard bed without mattress for a period not to exceed 30 days
- (ix) Forfeiture of statutory remission for a period not to exceed 30 days
- (x) Corporal punishment
- (xi) Criminal prosecution: Offences that amount to a breach of the Criminal Code can and are prosecuted in the ordinary criminal courts with the result that the inmate may be subject to an additional sentence of the court.

Theoretically, the purpose of punishment is twofold: first, it is designed to stop and deter any inmate behaviour which is inconsistent with the twofold objective of the penitentiary system and, second, it is designed to enforce upon the offending inmate, a desire to conform to the standards of prison life.

In fixing and imposing penalties, the institutional authority is confronted with the same difficult problem that dally perplexes the courts, that is, to determine a penalty that is appropriate to the offence, that meets a reasonable standard of consistency with like offences and which yet takes account of the fact that each offender may be differently motivated and subject to different pressures.

There are however, four important differences that distinguish the imposition of discipline and punishment in a prison setting.

First, the institutional authority must be mindful that the inmate has already suffered by deprivation of liberty, the maximum penalty that the community can impose through its courts. As a result, the few liberties and privileges which remain his are valued by him out of all proportion to their intrinsic worth. For example, to deprive an inmate of his recreation period can, in the context of the maximum security prison, be a penalty of very severe proportions indeed.

Second, one cannot overlook the motivation and personal circumstances of the offending inmate in the proper imposition of penalties within the prison. Inmates in maximum security penitentiaries like Kingston are forced to live, perhaps for many years, in circumstances which are shockingly unnatural in terms of normal working, intellectual, social or sexual life. This fact imposes on many prisoners, and perhaps particularly on the very youthful or a first offender, extreme pressures which are frequently volatile. A prisoner who willfully breaches a prison rule, even an important one, when he is under strain resulting from unfortunate news of his home or family, presents a different punishment problem than a prisoner whose disregard of a rule is entirely willful, callous, and self-serving.

Third, in the prison, unlike the general community, the imposition of punishment and the maintenance of order becomes and is characterized as a collective event. Not only does the breach of discipline arise out of an overall pattern of relationships, staff-inmate and intra-inmate, but the punishment and the events that gave rise to it quickly become known and a matter of comment throughout the



institution. Occasionally, it must happen that the inmate disciplined and punished is merely one of a group, the balance of whom have escaped authority. On other occasions, the inmate may have breached a rule which other inmates regard as unjust or which they may have been disposed to breach themselves. In short, the consequence of discipline and punishment if unjust or inappropriate, as a source of hostility, resentment and friction, is pronounced and immediate.

An inmate confined for a longer period may be regarded as a "martyr" by other prisoners, a rallying point for prison disaffection and real evidence of the alleged repression and brutality of the administration. In short, prolonged confinement may itself become a source of friction in the prison long after it has ceased to have any disciplinary or corrective effect.

We are generally satisfied that at Kingston Penitentiary the matter of punishment was dealt with by the authorities in good faith. There is no doubt however that punishment practices inside the penitentiary, principally because of their inconsistency and the air of secrecy surrounding their application in dissociation, caused serious dissatisfaction among both inmates and correctional staff.

The evidence heard by us confirmed that in the former case, it was a frequent cause of pronounced resentment even by non-offenders; and among the latter, it created substantial problems for staff morale. The whole question is a difficult and delicate one; the more so because it is so fundamental to the atmosphere, morale and general well-being of the institution as a community.

There are, generally speaking, two contrary propositions which summarize the hypothesis on which punishment might be administered:

1. Punishment should be imposed according to the offence rather than according to the offender: "by the book" rather than with the flexibility which takes account of individual cases. Applied in this way, punishment creates shared expectations in staff and inmates as to what penalty is mandatory. The person guilty of the offence knows the penalty is prescribed beyond the control of junior correctional staff and he does not develop hostility towards the staff and administration because of it.
2. Objectionable behaviour by prisoners is so diverse that no fixed punishments can encompass it without being so arbitrary as to arouse resentment by dealing in similar fashion with diverse acts. Punishments must be, therefore, fitted to each case, taking into account the affect of such penalty on the future behaviour of the offender and others.

The application of the second hypothesis depends, obviously, upon the existence of a prison staff of extremely high calibre capable of keen judgment and with an ability to suppress prejudices and hostility. It represents a theoretical ideal.

The first hypothesis, that is a government of rigid laws, may be appropriate where the prison administration having the power to be tyrannical, fear that their power may be misused or used in a fashion that is misunderstood by the prison community.

In our judgement, the second hypothesis is generally to be preferred where a substantial effort has been made over a period of time to "bridge the gap" between staff and inmate by the successful establishment of communication techniques such as group counselling. When these techniques are part of the prison tradition and have credibility, there will be available a process in which disciplinary action can be, generally and specifically, the subject of counsel. The result will be that a flexible approach to discipline will be more readily comprehended and appreciated as just.

We conclude, however, that the first hypothesis is more appropriate at present in a maximum security institution such as Kingston Penitentiary, to so-called "nuisance" infractions. We anticipate by "nuisance" infractions those which pose only a modest threat to prison order, which appear to be isolated acts of individual offenders and for which a standardized set of penalties can be created.

We would encourage the implementation of such a scheme for the great bulk of minor or nuisance offences. In our view, additional and useful consequences will be the reduction of inmate hostility toward staff who are responsible for detection, discipline and punishment.

### RECOMMENDATIONS

We therefore, make the following recommendations:

1. A Code of Punishment Standards relating to nuisance and relatively minor offences should be established and promulgated within the Institution. Within such a category, we intend to include such offences as the possession of contraband not designed to effect escape, isolated acts of fighting or assault, refusal to work, disobedience to a routine prison rule, abusive behaviour and others. For example, it might well be provided that a penalty of a fixed type always be imposed on an inmate involved in a fight unless he not only did not start it but made every possible effort to retreat from it and did not fight back, or where there were very clearly other extenuating factors. A more severe penalty might be imposed for any person clearly established as the initiator of a fight or for any person using any kind of weapon in a fight. Increased fixed penalties might be awarded for second and subsequent offences within, say, a one year period.
2. A new punishment, which permits the Institution to segregate the inmate within his cell, should be instituted. It is apparent that the imposition of forfeiture of privileges *de facto* may have this effect. It is desirable, however, that a specific punishment should be created so that Forfeiture of Privileges might be reserved for more flexible use.
3. We observe that, happily, an award of corporal punishment has only rarely been imposed at Kingston Penitentiary, and not at all in the recent past. We concur in the conclusion of the Ouimet Committee, that its use as a disciplinary measure be altogether discontinued. The use in dissociation of Restricted Diet and Hard Bed should also be discontinued. We are of the opinion that these additional discomforts add substantially to the technique of punishment in a prison setting. In addition, their imposition is, in our view, demeaning to the administration of justice within the institution.
4. Except when an offence is connected directly with the inmate's work program, no punishment including Change of Work or Downgrading in Pay, should be imposed. There is no doubt, of course, that these two penalties are matters of consequence to the offending inmate. We think, however, that their imposition, except in appropriate circumstances is inconsistent with the corrective objective of the penitentiary. If an inmate has developed a reasonable attitude to his work, that fact can be the starting point for the development of a good relationship for him in the prison and may indeed represent the first step toward his rehabilitation. It would be a grave misfortune if that modest start was jeopardized by the imposition of a penalty for an offence connected with an entirely different aspect of his penitentiary relationships. In short, such penalties can rarely be appropriate to offences unrelated to the work situation.
5. The penalties of Admonishment, Reprimand, Forfeiture of Privileges for one day only, and Extra Chores During Leisure Hours, should be available to be applied by the principal Keeper on duty in the prison upon the information of a member of the correctional staff. The Keeper should be obliged forthwith to make a report to the Chairman of the Inmate Disciplinary Board, setting out the name of the inmate, the offence, the appropriate witnesses thereto and the extent of the penalty.

At the request of the inmate, the Chairman of the Inmate Disciplinary Board shall, in the presence of the inmate, conduct a hearing to determine whether the offence was in fact committed. The Keeper on duty shall not be permitted to impose forfeiture of privileges in respect of one inmate more than once during any week. If such an occasion should arise the alleged offense shall be brought before the Inmate Disciplinary Board in the usual way.

## Inmate Disciplinary Committee

### Procedures

The Inmate Disciplinary Board (or Warden's Court as it is colloquially known) is established by Commissioner's Directive No. 300. At Kingston Penitentiary it was chaired by the Deputy Warden, assisted by other members of the senior staff designated from time to time. The evidence revealed that the Inmate Disciplinary Board deals with all matters of prison discipline according to the following general procedures:

1. The penitentiary officer or complainant files the Chairman of the Inmate Disciplinary Board a written statement of complaint.
2. In many cases, the inmate charged is immediately taken into dissociation and held there pending disposition of the matter by the Inmate Disciplinary Board.
3. The Chairman of the Inmate Disciplinary Board, on the basis of the written complaint, makes a determination whether "the allegation, if proved, would constitute a flagrant or serious disciplinary offence meriting punishment by way of forfeiture of remission, punitive dissociation or corporal punishment". If he so determines, the case is listed to be heard by the Inmate Disciplinary Board. If on the other hand, the Chairman determines that the offence alleged was not within that category, the Chairman alone is entitled to hear and determine the offence and impose the punishment.
4. The inmate is brought before the Inmate Disciplinary Board or the Chairman of the Inmate Disciplinary Board, as the case may be, the complaint made against him is read and he is invited to plead guilty or not guilty.
5. If the inmate elects to plead not guilty, he is then tried; if the complaining officer or his witness are not available, he is returned to his cell or to dissociation and tried on a date subsequently fixed by the Chairman.
6. Ultimately, a hearing is conducted, and punishment imposed.

The Archambault Commissioners dealt with the trial for prison offences in some detail and made many useful observations. They noted the important consequences that may follow from an inadequate or unfair prison trial system:

"If a normal prisoner believes that he and his fellow inmates are justly treated and only punished when guilty, he will be amenable to prison authority, and much disciplinary trouble will disappear. If, on the other hand, he feels that he is unjustly punished without a fair chance to defend himself, he will become anti-social, embittered, and uncontrollable. This state of mind is contagious, and will be aroused even when he, himself, is not the victim of the injustice. It is a major contributing cause of breaches of discipline, conspiracies, assaults, and riots in the penitentiaries.

"The second consequence of injustice in dealing with prison reports is that, instead of instilling faith in human justice into the heart of the prisoner, which is an essential part of reformation, it will create in his mind a disbelief in justice and an unbreakable creed of scepticism and contempt, which cannot be eradicated, and which the prisoner will carry with him from the penitentiary. This scepticism and contempt is not only aroused by unjust treatment in the prison court, or by false and malicious report made by hot-tempered, cruel, or merely untrained officers, but also by favouritism, whether it is prompted by ignorance or prejudice.

"Unfortunately, under present conditions, which provide no proper or effective outlet for the complaints of the inmates, or any machinery for correcting mistakes in the enforcement of discipline, this feeling of injustice is quite prevalent in our penitentiaries. This is a situation which calls for immediate correction, although it should not involve any impairment of discipline".

We regret to conclude that the consequences which the Commissioners feared existed at Kingston Penitentiary. Almost universally, the prisoners regard the Inmate Disciplinary Board as a "Kangaroo Court". It is not possible to put the lie to inmate assertions of injustice and unfairness because the procedures applied by the Board under the appropriate Regulations and Directives leave a great deal to be desired.

In order to make the trial of prison offences more effective and more just, the Archambault Commission recommended that officers should be instructed to use their own judgment and discretion in making written complaints. They further recommended that when the Institutional authority received a written complaint and before bringing the inmate to the prison court, he should interview the officer and question him closely to determine whether the complaint is one that should properly require trial, bearing in mind that trivial, unfounded and exaggerated complaints are to be discouraged.

This proposal was implemented in the Penitentiary Service and no doubt has had its effect. We do not think, however, that its application has achieved the objectives that the Commissioners had in mind. This is so in part, because the effort to discourage an officer from proceeding with an inappropriate or trivial complaint frequently occurs too late in the process after he has formally committed himself in writing. A refusal of the Inmate Disciplinary Board to proceed with a charge in these circumstances, can be destructive of morale and lead to accusation from correctional staff that the Disciplinary Board is "soft" in the matter of discipline. No doubt in some instances consciousness of this fact may lead the Inmate Disciplinary Board to proceed to hear cases when it should properly not do so. While we think the process presently applied at Kingston Penitentiary has some utility and should be maintained, we are of the view that there should be some supervisory authority introduced even before the formal charge is reduced to writing.

We wish to emphasize that as far as we can judge, the Inmate Disciplinary Board has acted at Kingston Penitentiary throughout conscientiously and in good faith, and cognizant of its duties both to the inmate and to the institution. The procedures, however, which it is bound to follow are, in our view, defective and may lead to serious injustice:

We, therefore, recommend:

1. Correctional Officers should be encouraged to use their own discretion and judgment in determining whether an offence has, in fact, been committed: Where possible they should assure good order by utilizing the penalties within the power of the Senior Keeper on duty. With the reallocation of the Administration staff contemplated above and more intensive training, we are sure this can be effectively done.

The presentation of a formal complaint and the utilization of the Inmate Disciplinary Board must be a last resort in the maintenance of order reserved only for the most serious matters. Complaints presented for trivial or minor matters on a continuing basis may indicate that the officer is unsuited to the performance of his functions within the penitentiary.

2. No formal written report shall be made by an officer against an inmate without the written concurrence of the Senior Keeper on duty. We believe that this recommendation may serve to affect the intent of the Archambault Commission which was to prevent, at the earliest stage, the processing of relatively trivial matters.

Indeed, it may frequently be that the intervention of the Senior Keeper will be sufficient to maintain discipline and order without the necessity for any formal complaint.

3. The Chairman of the Inmate Disciplinary Board should continue to exercise the power to refuse any complaint in an appropriate case.
4. When an inmate is charged with an offence which is to proceed before the Inmate Disciplinary Board, he shall be informed as soon as possible and in any event, at least one clear day before his trial of the nature of the offence and he shall at the same time be provided with a copy of the complaint against him.
5. No inmate charged with an offence shall be confined in dissociation unless the offence is one where:
  - (i) the officer in charge of the institution is of the opinion that the nature of the offence and the attitude of the inmate is such as to present a continuing physical danger to the inmate or to any other person or to the property of the institution, or
  - (ii) where the inmate himself requests that he be so confined pending trial and the officer in charge is satisfied that his request is justified.

6. When an inmate is confined in dissociation, pending trial, he shall appear before the Inmate Disciplinary Board whenever possible on the next regular business day of the Institution following his confinement and at that time:
  - (i) a hearing shall be held to determine the necessity of confining the inmate in dissociation, pending trial;
  - (ii) If the Board determines that dissociation pending trial is necessary, it shall, upon the request of the inmate, fix a trial date within 72 hours.
  - (iii) If the Board determines that dissociation pending trial, is not necessary, the inmate shall forthwith be released from dissociation.
  - (iv) if the Board determines that the inmate requires dissociation, pending trial, because he is either mentally or emotionally unstable, the Board shall remand the inmate into the care and custody of the Institutional Psychiatrist and transfer him forthwith to the Psychiatric Unit.
7. At trial, all evidence including that of the inmate and his witnesses shall be under oath and be transcribed. The transcribing medium shall be retained by the Institution following conviction. The requirement of transcription applies to a hearing conducted under paragraph 5 hereof.
8. All witnesses, including the complainant, shall give evidence *viva voce* and shall be subject to direct cross-examination by the inmate (or his representative, or the person assisting him, as the case may be).
 

The present regulations require cross-examination, but in fact it has not been permitted at Kingston Penitentiary except through the Chairman.
9. At trial, the Inmate shall be advised of his right to give evidence or call witnesses.

## Inmate Disciplinary Committee

### Appeals

It is an unfortunate fact, which has previously been noted, that with no effective outlet for the complaint or the establishment of any machinery whatever for correcting mistakes in the enforcement of discipline, which even in the best ordered system are bound to occur, inmates frequently harbour a sense of injustice respecting the disposition of cases before the Inmate Disciplinary Board. Regrettably this sense of grievance was all too prevalent, although perhaps in fact unwarranted, in Kingston Penitentiary. It is a situation which, in our judgment, calls for immediate correction although it should not, in any way, involve the impairment of proper discipline and punishment.

The Archambault Commission, in a very full consideration of prison trials, recommended, and it is significant that they stated that it was in this area, "the most important of (their) recommendations," that an appeal should lie from prison court sentences.

"This (an appeal) is in accordance with the practice in Great Britain, where the inmates have a right of appeal . . . The results obtained by this provision are that the prisoners feel they have full access to a fair administration of justice, false and exaggerated accusations are discouraged and unfair punishments eliminated. In England where this right of appeal is permitted, it has been found that sentences given by the prison court are very seldom reversed. The officers, the guards, and even the governors, are held in check by the supervision of the (Appeal Board). The consensus of opinion there, including that of the Governors, is overwhelmingly in favour of this right of appeal. One of the Governors told your Commissioners that he regarded this right of appeal as essential to the administration of discipline, and that he felt it supported his authority rather than diminished it."

We regret that this recommendation, although regarded as "most important" has never, in fact, been implemented. We are encouraged to note, however, that both the Warden and Deputy Warden at Kingston Penitentiary indicated before us that he would welcome such an appeal and that, indeed, he

would have no objection and saw such merit in the recommendations hereinbefore proposed generally respecting prison trials. We are of the view that not only would such an appeal give the inmate an outlet for grievance and a vent for his sense of dissatisfaction, which is necessary in any penal Institution, but it would remove the sense that the inmate is absolutely without protection of the community and secluded from it. In addition, and most important, in terms of bridging "the gap" between administration and staff, the presence of such an appeal will effectively defuse criticism of the prison trial administration process itself and give to its proceedings an additional authority and integrity which it does not now possess.

We, therefore, recommend:

1. The establishment of a Regional Appeal Board to hear appeals from inmates who have been convicted and sentenced by the Inmate Disciplinary Board. The inmate to be advised of his right to appeal when one or more of the following sentences is awarded:
  - ii) any loss of any statutory right;
  - ii) the imposition of corporal punishment;
  - iii) punitive dissociation in excess of five days.
2. When an appeal is taken, no punishment shall be imposed until the appeal has been heard. The proposed rules respecting dissociation pending trial shall apply *mutatis mutandis* pending appeal.
3. When an appeal is taken, the Inmate Disciplinary Board will provide a transcript of the proceedings to the Regional Director and to the inmate.
4. The inmate shall be entitled to appear in person before the Regional Appeal Board or to make his submissions in writing.
5. The Regional Appeal Board shall be composed of three members, one of whom shall be a judge or lawyer not otherwise connected with the Public Service of Canada. It shall convene as may be required with the intent that the appeal shall be heard promptly. The decision of the Regional Appeal Board shall be the decision of the majority.
6. The Regional Appeal Board shall have the power to:
  - a) quash the conviction,
  - b) affirm the conviction but amend or increase the punishment,
  - c) dismiss the appeal.

#### **Inmate as Citizen — Inculcating a Sense of Responsibility**

In examining inmate life in Canadian penitentiaries, including Kingston Penitentiary, the Archambault Commissioners reported over thirty years ago:

"The following factors have an undermining influence on the morale of prisoners and interfere with their reformation in a penal institution. They have only half an hour of daily exercise in the open air, spend sixteen out of twenty-four hours in poorly ventilated cells, and in winter, a large portion of their remaining time in stuffy and overheated shops, so that they are practically deprived of exercise, sunshine and fresh air which are so essential to their physical and mental development. The prisoners have no choice of associates, but are compelled to converse with neighbours who, in most cases, are unsympathetic or worse . . . they have no varied social or mental contacts to keep their minds active, and so are thrown almost entirely into retrospection and brooding, subject to a constant craving for freedom, a furious hatred of all restraints, and a hunger for bodily and spiritual necessities. They have an utter lack of responsibility, with no need to care about food, clothing, shelter, a job, or planning a day's work, but are given orders and a daily task to perform until finally they lose all initiative, physical and mental alertness, and are left with senses atrophied from disuse. They have an over-abundance of leisure and no necessity for hurrying about anything. Anything that can be put off until tomorrow is put off until tomorrow, and they become adept at procrastination. The guards often treat them with apathy, or even brutality and do not try to help or encourage them, believing that an officer's duty is merely to see that the prisoners obey the rules and that they do not try to escape.

"The result of all this is that when a prisoner comes out of prison, after the first thrill of freedom, he relaxes into habitual lethargy and becomes enveloped in a thick shell of apathy. He is badly handicapped in his efforts at rehabilitation. He wanders aimlessly in the midst of the sharp rivalry and feverish activity of the free world."

With only modest modification, that statement applied to the life of the inmates at Kingston Penitentiary in 1971.

The depressing and dehumanizing effects of confinement are all well known and can scarcely be exaggerated. Before, during and after the disturbances in April, 1971, these effects were a constant source of complaint from the general inmate population and probably underlie more specific complaints about many areas of prison life and program.

The dangers of depression and dehumanization in confinement are well known. Even then, however, very little is done about it. Although some substantial amelioration of conditions has occurred in medium and minimum institutions, in Kingston Penitentiary few steps of any kind had been taken to alleviate the situation. Indeed, it was observed by one experienced witness before the Commission that the classification of institutions into maximum, medium, and minimum security has merely compounded the problem: in order to illustrate differences between the three classifications, and as humanizing measures have been applied in medium and minimum security, the tendency has been to make life in maximum security institutions such as Kingston Penitentiary more repressive, security-oriented, and dehumanizing than ever.

The construction of new maximum security buildings does not in itself alter the focus or extent of the existing problem. It is quite apparent that the conditions which require acknowledgment and correction are only occasionally related to physical surroundings; much more fundamental and determinative is the social, emotional, and communal milieu in which the prisoner lives.

It is fundamental, of course, that an inmate should be allowed to live his term in a maximum security penitentiary with some individual integrity and sense of personal worth as befits a human being no matter how serious his crime. It would be less than civilized to permit anything else. The problem, however, is expansive. The depressing and dehumanizing effects of maximum security life simply serve to bolster the inmate group identity which the facilities of the prison induce, to solidify the inmate subculture as the only "real" community, and to effectively thereby prevent the inmate from developing a sense of independence and individuality without which rehabilitation is probably an unattainable goal.

Thus the traditional portrait of a jungle-like existence in which the stronger prey on the weaker, and no one trusts anyone, is intensified. The practical tragedy is that in those circumstances, not only is it impossible to pursue an adequate correctional program with any reasonable hope of success, but these unfortunate conditions themselves create a situation in which the order and security of the institution is itself ultimately endangered by insurrection or revolt. There can be no doubt that such conditions played a large part in the prison disturbances of 1971; in a sense, the depressing and dehumanizing life of the institution was the soil within which the violent seed was planted and grew. The results are well known. In addition, in our view, recurrence cannot be regarded as unlikely unless immediate steps are taken to provide an adequate program within which the inmate may order his life and be encouraged to develop a sense of individual worth and responsibility. This requirement is essential not only for his own needs, but for the rehabilitative needs and safety of the group community as well.

As we have noted, the situation at Kingston Penitentiary had been aggravated over the last five years by a steady and continuous curtailment of so-called "privileges" and inmate programs, in order, allegedly, to achieve and assure security. Whether the events of April, 1971, were predictable or not is really beside the point; the result of such an approach, the maximum security psychosis, was the ultimate failure of order and security. We have noted the tendency of the institution to enforce "mass discipline" with the result that inmates were substantially deprived of any reasonable athletic or other recreational, academic or self-improvement program, any meaningful group contact, any responsibility for the ordering of their own affairs at even the most simplistic level; in short, the winding down of many activities and programs in which the worth of the inmate as an individual might be recognized and developed.

### **Restrictions on Inmate Life Within the Prison**

We have observed that the inmate at Kingston Penitentiary was obliged to spend at least sixteen hours a day locked in virtual isolation in his cell. Within that restricted and narrow environment he was free only to sleep, read, write "authorized" letters and engage in a single hobbycraft if that was permitted to him and he could financially afford to pursue it. Can it be surprising that in these circumstances many inmates spent a great deal of their time in brooding and introspection? Boredom and a sense of helplessness and hopelessness was inevitable. The result was a furious sense of discontent and the breeding of violent and anti-social inclinations. Rehabilitation cannot even be contemplated let alone conducted in such an environment. Indeed, at Kingston it was not seriously attempted.

Even within the confines of the cell and in matters of personal grooming the list of regulations mounted in confining volume so that the inmates became a series of pags in holes, each programmed to be identical in personal habits and life style. For example, inmates were strictly limited in the extent to which they could decorate their cells. Indeed any personal item, book, clothing, musical instrument or memento, no matter how insignificant for which an inmate did not have a prison issued licence was "contraband" and subject to seizure. Discretion and individuality in clothing and such trivial matters as haircuts were regulated to achieve maximum conformity. Indeed at Kingston inmate life was almost always conducted to a standard dictated by the lowest common denominator in the inmate population.

The cumulative effect of these factors is, of course, first, to increase the likelihood that the inmate will become highly institutionalized and submissive to the inmate subculture, and second, to seriously impair his ability to adjust to the community at large upon release. In addition, and not without importance, such a regime does a real injustice to a human being and is destructive of whatever humanity may be within him in the event that the regime is merely "convenient" and not required, as we think it is not, by a legitimate object of the prison.

We note, however, with satisfaction that since the appointment of this Commission the Secretary of State [the Solicitor General.] and the Commissioner of Penitentiaries have promulgated regulations which are designed to reduce the uniformity of prison costumes and permit certain variations in personal grooming. We applaud this course of conduct and wish to most seriously recommend its continuation as a part of a radical plan to "humanize" the maximum security prison.

We are of the view, as a result of the evidence we heard respecting Kingston Penitentiary, that a number of matters which relate to the inmate's individual life should be removed from the area of regulation, with the intent that a prisoner may live with some personal integrity, some awareness of individual worth, and may be encouraged to exercise his innate and invaluable individuality, as he would be encouraged to do in a free society. We are optimistic that such steps would be effective to reduce the power of the so-called inmate subculture and would positively affect the possibility of rehabilitation.

We therefore recommend that:

- a) Within reasonable limits inmates should be permitted and encouraged to decorate their cells with and possess for their personal use in their cells any objects, materials, and personal mementos that pose no clear threat to the security of the institution. This recommendation will necessitate a re-consideration of a wide variety of objects that are presently categorized as "contraband", e.g. books belonging to fellow inmates, pictures, photographs, and personal mementos of various kinds. It is our suggestion that only those objects which can be reasonably characterized as dangerous, or potentially dangerous, should not be permitted.
- b) We have throughout this report commented with respect to the unreasonable periods of time spent by inmates in their cells. It is in our view highly desirable that programs should be established to ensure that time spent in cells is reduced to a minimum.

We recognize that a certain amount of the inmate's time must be spent in his cell. It is our opinion that during the periods an inmate is confined to his cell he should be encouraged to engage in "hobbycraft". The present regulations relative to hobbycraft should, and in our



opinion can, be relaxed without inducing undue confusion in the administration of the penitentiary. It was apparent during the course of the evidence that inmates regard hobbycraft as instructive, interesting, and individually rewarding. We recommend that the choice of hobbies be enlarged, and that an effort should be made to ensure that inmates who so desire be entitled to borrow money against their earnings for hobbycraft purposes.

Present regulations prohibit an inmate upon discharge from the institution assigning tools and materials to a fellow inmate who may not have the resources to purchase for themselves. That prohibition is in our view inconsistent with any real intention or effort to encourage what we consider to be legitimate, creative, and worthwhile call activity.

- c) Since this Commission was appointed, regulations concerning inmate clothing have been changed. It was apparent to us during the course of the evidence that the former regulations were a source of irritation. It is our opinion that an inmate should be permitted to receive clothing from his family and friends for use on temporary absence from the institution.
- d) There should in our view be no substantial period of time during the regular day when inmates are compelled to remain confined in their cells. In particular at Kingston between the evening meal at 4:00 p.m., and the evening recreation at 8:00 p.m., or on every second night between 4:00 p.m. and "wake up" the following morning, all inmates were confined exclusively to their cells with basically nothing to do. Inmates should be permitted to exercise a number of options which should include gathering in the day room, going to the library, attending group meetings, walking in the quadrangle, visiting each other on a carefully selected basis or engaging in casual sports in the recreation yard.
- e) A comparable series of options should be available to the inmate during the recreation period itself. Without undue risk to security the options available can, in our judgment, be greatly expanded.
- f) On weekends, when no work is required, the inmate has a unique opportunity heretofore denied him at Kingston Penitentiary to establish his own individual schedule of organized activities according to his own interests. Opportunity should be provided so that inmates can organize and participate on a voluntary basis, in activities such as group counselling, lectures, music lessons and rehearsals, sports competitions, entertainment, special day-long events and so forth.

In this connection, there is a substantial supply and variety of talent to be found among the inmate population. Inmates should be encouraged to utilize such talent either themselves, or in the course of instructing others.

### Physical Recreation

As we have noted, and indeed as was conceded by most witnesses who gave evidence before the Commission, in the last few years at Kingston Penitentiary a very substantial curtailment of the athletic and physical recreational program had taken place.

In the past, Kingston inmates had been able to organize and participate in a wide variety of sports, including boxing, floor hockey, basketball, baseball, tennis, badminton, broomball, weight lifting, horse-shoe pitching, volleyball and others. To a marked extent inmates themselves were responsible for setting up the appropriate teams, regulating them, providing timetables and schedules, and staff such as umpires and managers.

By 1971, the program had been thoroughly emasculated so that basically only broomball, basketball and, to a limited extent, baseball as well as weight-lifting were available. Even participation in these limited programmes was substantially reduced. In addition, and perhaps equally significant, the organization of these activities had been largely taken out of inmate hands.

For example, in the past, Kingston Penitentiary had had a very elaborate baseball schedule within which several leagues were established to accommodate players of varying skills. Player behaviour was

carefully scrutinized by inmate umpires and inmate league commissioners who were given the authority to impose sanctions and penalties. The Penitentiary had a team that participated in an outside community league and games were played within the Penitentiary grounds as well as elsewhere. In addition, exhibition games between "Pee Wee" teams from the Kingston area were played in the Penitentiary. From time to time, inmate and staff games were scheduled.

As may be imagined, a great deal of effort, skill and organization was put into these programs by the inmates themselves. For those who did not play, attendance at the games was a popular distraction. On many occasions members of the general community were invited to attend, and from time to time the inmates mobilized a portion of their welfare funds to purchase, for example, crests to be awarded to the victorious teams.

In addition, at an earlier time, the Penitentiary ran an annual or bi-annual "Sports Day", which was planned, organized and carried out by an inmate committee. It was generally regarded as one of the exciting highlights of the year and its existence went far to improve the morale of the population as a whole.

Baseball and "Sports Days" are merely two examples among many of vital physical recreation programs, largely inmate sponsored and regulated, which by 1971 had been effectively "wound down" by administrative regulation in the interests of super security.

It is clear from the evidence concurred in by senior officials that athletics should and can be a very crucial component of life in the prison community. The inmate himself, as counsel's survey indicates, considers the existence of an extensive sports program as being of high importance; he is naturally dissatisfied by the existing program in 1971, which the Warden, exercising hyperbolic gift, described in his evidence as "modest". Not only was it modest in scope, but it was so arranged that the inmates were not encouraged to participate in its organization or development. At the very best it was laid on "for them" not "by them".

We conclude, therefore, that a properly planned program of physical recreation is an essential part of prison life. It is not merely an entertainment but a necessary part of the prisoner's life; it absorbs time that would otherwise be spent in idleness and introspection. It should be an important factor in the inmate's reformation and every step should be taken to assure that the inmate feels a real part of the physical recreation program; insofar as possible, inmates should be encouraged to participate and to organize and supervise the program itself.

A full recreational program for inmate participants or audience can do much to reduce tensions which are brought on by brooding in isolation, and can restore and maintain inmate morale. Equally important, such a program in which special events are a regular part gives to the inmate something around which to plan his life and an occasion in the reasonably foreseeable future that he may look forward to. It will no doubt be said that there are risks in permitting a large part of the inmate population to participate in sports. That may theoretically be so; we have no hesitation in concluding, however, that the risks to security inherent in the absence of a program in which the inmate population actively participates are substantially greater.

We, therefore, recommend that:

1. Steps be taken forthwith to permit the organization of as extensive and all-embracing a physical recreation program as time will allow. We do not see any reason why the wide range of sports which existed many years ago should not be restored and expanded. Full facilities should be made available and adequate time should be made available every day so that each inmate who wishes to participate or watch physical recreation is permitted to do so.
2. Inmates themselves, should, to the greatest possible extent, be permitted to organize and supervise the administration of the sports program. They should not only be permitted to do so, they should be actively encouraged to do so. The program to be effective, must be one that is designed to meet their physical recreation needs and the best way to achieve this is to permit

them to plan, organize and direct it. In addition, their role will provide a productive outlet for their energies and provide, a matter of some importance, a real sense of accomplishment.

3. Skilled assistance should be given to an inmate-oriented and organized recreation program. A Recreation Director who, however, is obliged to ask an inmate how many men compose a baseball team is not likely to be satisfactory at motivating the kind of program we have in mind.

We are conscious that it may be extremely difficult to get staff properly trained and inclined to participate in this kind of work. We are satisfied, however, that there are many correctional officers who would be anxious and willing to participate if given the opportunity to do so.

There are, in addition, many young men available in the community, particularly in the Department of Physical and Health Education at Queen's University, for example, who would be prepared to participate regularly in such a program. They should not be asked to do so on a voluntary basis but should be hired by the administration on a part-time basis to provide this essential service. Many such young men are anxious to do so; they have the will and are trained in the skills required to make such a program effective and meaningful for the inmate. Also, their presence on a regular basis will provide an avenue of contact for the inmate with the community which we think to be highly desirable.

#### **Non-physical Recreation and Events**

During the early 1960's, musical activity, chess and bridge clubs and like programs of a popular variety existed at Kingston Penitentiary in which all inmates were encouraged to be active. Correspondence courses in music were available and inmates were given the opportunity to teach other inmates musical theory and technique. This opportunity spawned a number of orchestras, "combos" and other musical groups which provided entertainment both to fellow inmates and occasionally to the outside community. Concerts by well-known entertainers were permitted, and occurred with some frequency.

Regrettably, this aspect of prison life at Kingston was "wound down" in the same fashion as the sports program. By April, 1971, musical programming was virtually non-existent. Other like activities were substantially reduced as well. Once again there was exhibited a discouraging tendency on the part of administration to justify restrictions in terms of the security requirements of the institution. Once again this policy was adopted as a disciplinary response to a variety of minor inmate disturbances.

The observations we have made and the recommendations that we have set out above in relation to physical recreation apply with full force in non-physical recreation and events. We recommend that steps be taken forthwith to assure that the organization and participation of inmates in such activities is actively encouraged and their variety increased. They provide not only a reduction of sources of friction and tension but are events which are looked forward to as a source of variety in inmate life. In addition, an active and varied program tends to break down the inmate subculture by developing a sense of individuality and encouraging an association within the prison that is not merely predicated on one's basic status as a convict.

#### **Exploring New Avenues of Development**

We are firmly of the view that much useful work can be done by way of exploring new avenues of development for the inmate within the institution, with a view to occupying the inmate's time positively and creatively, providing a useful adjunct to the rehabilitation program, and reducing the tensions which idleness, a sense of hopelessness, and the dehumanizing characteristics of life at Kingston Penitentiary frequently imposed. We propose to briefly discuss three areas in which we feel the time is ripe for such development. These three are in no sense exhaustive of the potential opportunities.

#### **Inmate Committees**

Inmate Committees of one kind or another, have been in existence for almost as long as prisons themselves. Indeed, the principle that inmates may serve legitimate participatory roles in the management of certain facets of prison life is well established.

Until comparatively recently, an Inmate Welfare Committee functioned at Kingston Penitentiary and was responsible for arranging such matters as movies, entertainment, athletics and a number of other recreational affairs. The Inmate Welfare Committee was ultimately terminated by the Kingston Penitentiary Administration on the ground that it had become a source of influence for inmates who desired to manipulate its functions to their own particular purposes. Therefore, in 1971, there was in fact, no inmate committee in existence at Kingston Penitentiary and indeed, one had not existed for some years, notwithstanding the regulations which contemplated the creation of such committees.

We note with interest that the Commissioner of Penitentiaries has recently issued Directive No. 308 on the subject of inmate committees. The policy statement in the directive enunciates the following intention:

The purpose of the inmate committee is to provide a channel of communication between the inmate body and the administration to permit inmates to co-operate and make suggestions on the planning and operation of programs and to carry out assigned responsibilities.

It is our opinion that the Penitentiary Service should take all steps necessary to encourage the functioning of inmate committees with a view to reducing the frustrations of which inmate witnesses constantly complained during the course of the evidence. We think, for example, that inmate committees should be used as an agent for two-way communication, so that both staff and administrative problems regarding the inmate population can be communicated in exchange for the reception of inmate communications about the particular problems or desires of the inmate population. A properly constituted committee can be utilized to exercise the "co-optive" principle by encouraging the cooperation of staff and inmates as part of a single community responsible for operating the prison and concerned with common problems.

We would suggest that such committees be composed of equal numbers of senior representatives of the staff appointed by the Warden, and inmate representatives elected by the inmate population. In order to accomplish its purpose, all members of the committee should be encouraged to express their views about prison problems. It should not be a forum confined to hearing and dealing with inmate grievances. We can think of a number of areas in which inmates might well be taken into the confidence of the administration and given some real authority. We think, for example, of the following areas:

1. The administration of hobbycraft and other related cell activity.
2. The administration of an academic program and the library.
3. The administration of community programs in the penitentiary.
4. The administration of physical and non-physical recreation.

This list is by no means exhaustive.

### **The Prison and the Public**

It is true but nonetheless important to observe that Kingston Penitentiary is a public institution. It has been created and is entirely maintained by resources made available by the community to meet the public need for custody and, where possible, the correction of those who offend community standards. The average cost to maintain each inmate for a year is in excess of \$10,000. Those incarcerated, although temporarily deprived of their liberty as a result of their criminal conduct, are members of the general community, and the evidence before us indicated that almost all may be expected to return to full enjoyment of that status in due course.

It is equally obvious also that any failures attributed to the penitentiary system creates a burden which falls primarily on the general public: the rate of recidivism and resultant injury to persons and property are only examples. Furthermore, convicts entering prison leave wives, children and other relatives behind them, often dependent upon the public for support.

The community, therefore, has from a number of points of view, a vested interest in a penitentiary system; more specifically, the minimum limit of its interest is in assuring that the penitentiary system functions efficiently and fairly and is operated on reasonable principles dictated by the twin objectives of custody and correction.

It is perhaps ironic, therefore, that the penitentiary system is one of the last remaining public institutions which, generally speaking, is closed to the public and of which the general public is able to hear relatively little through the traditional media. There are, of course, cogent reasons why some reasonable restriction must be placed on the public's "right to know". For example, the maintenance of custody and security may very well require such a limitation. In addition, it is very doubtful whether an appropriate rehabilitative program can be carried on in the face of continuous and perhaps misguided publicity. The communications barrier that separates the prison, its administration and general population from the general community does, however, create unwarranted risks. There can be no doubt that the capacity for secrecy can and perhaps, on occasion, has been used to mask unfairness, inequity, and even brutality from public view. On the other hand, the Canadian democratic experience has shown that all public institutions benefit from, and often thrive mightily, in the presence of public attention.

Thirty-eight years ago the Archambault Report commented that "under the present system existing in the Canadian penitentiaries, what is going on in the institutions is shrouded with absolute secrecy, giving rise to suspicion and misgivings, which are further enhanced by extravagant and abused tales of ex-prisoners and the imagination of sentimentalists. As a consequence, although, for the sake of security, no undue information should be given, a practical check of what is going on should be made. The prisoner feels that he has no access to a fair administration of justice and is absolutely removed from the protection of his fellow man". These observations are equally pertinent in 1971.

To meet these problems, the authors of the Archambault Report recommended that a Board of Visitors, such as existed in England, should be created. We regret to observe that that recommendation has never been implemented.

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The evidence before us confirms that the problem to which the Archambault Commissioners directed themselves continues to exist in the maximum security penitentiary, and particularly at Kingston. In such a place there frequently exists a reservoir of bitterness which infects prisoners forced to live, perhaps for the first time, in the most extraordinary and unnatural circumstances. Grievances of all types are bound to exist among the prison population. Whether those grievances are justified or not, they require to be dealt with so that the order and morale of the institution may be maintained. At present, we heard that such grievances can only be resolved, if at all, when an inmate submits them to the administration. It is clear that inmate frustrations are created and thrive because the inmates' only avenue of complaint is to the very administration which is frequently the source of its dissatisfaction. It is perfectly evident that at Kingston Penitentiary the total absence of any formula by which such matters could be effectively aired was a factor in the disturbance itself.

#### Visitors' Committee

We therefore recommend that:

1. A Visitors' Committee of five persons should be forthwith appointed for the maximum security penitentiary in the Ontario Region by the Solicitor General of Canada.
2. The appointment of each member should be for a term of five years and should be arranged so that the term of the members overlap, thereby assuring continuity. A member should be eligible for reappointment once.
3. The Visitors' Committee should be composed of persons who will be regarded as representative of the general public, and whose characters are marked by a high order of tolerance, intelligence, and practical judgment. We think it desirable that, for obvious reasons, the Committee should include at least one lawyer; otherwise, efforts should be made to assure that a variety of community backgrounds is represented.

4. The members of the Visitors' Committee should be paid a small honorarium and expenses. It is anticipated that the type of person whose service is most desired and who will be most useful, will be prepared and anxious to serve as a community duty and without fee or salary. It is desirable, in order to assure their independence of judgment, that they should do so.

In our view, it is fundamental that the duties of the Committee must include, at the very least, the following matters:

- i) The Visitors' Committee or any of its members shall be entitled, without notice, to visit the penitentiary and to meet with any inmate or staff member in privacy and to examine any portion of the penitentiary or any files, reports or other documents without notice or interference.
- ii) The Visitors' Committee shall visit the penitentiary at least once each month for at least one day in order to inspect the facilities and to meet, as it may think appropriate, with representatives of the administration or the inmates.
- iii) The Visitors' Committee has the right and duty to hear complaints put before it by inmates or others, to make inquiries as to their validity, and to make recommendations to the Warden. The Committee may, at any time, and shall at least once a year, report directly to the Solicitor General of Canada.

It was forcibly expressed before us, and we agree, that the proposed Visitors' Committee should have no authority to interfere in or sit in appeal from a matter of institutional discipline; other remedies have been recommended for such matters.

We think that to vest such authority in the Visitors' Committee would fundamentally alter its role and render it less effective in the performance of the important duties we would propose to assign to it.

The administration of a prison is a difficult, complex and much misunderstood task. It would not be our wish that a Visitors' Committee should interfere in that administration as such. We do, however, feel strongly that the presence of such a Visitors' Committee can be instrumental in defusing areas of legitimate grievance and assisting both the Administration and the inmates in rendering the machinery and life of the penitentiary suitable to its broad rehabilitative and custodial purposes. It is not desirable that such a Committee should exalt the expectations of the inmates or interfere with the day to day work of the prison. We are confident, however, that the existence of a Visitors' Committee can do much to allay suspicion, grievance, and assure the prompt rectification of legitimate complaints when they exist. We hope thereby that the possibility of a recurrence of the tragic events of April, 1971, will be made substantially more remote.

In addition, it is not without importance to note that the presence of such a committee will enable the general public to have some assurance, to which they are entitled, that life, in the closed society that the prison is, is subject to those humane standards which the Government and the citizens of our country have every right to expect.