The Riot and Deaths at Archambault Penitentiary, Sainte-Anne-des-Plaines, Canada, on July 25, 1982

A Report to The International Human Rights Law Group

by

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I. Introduction

Archambault Penitentiary is a federal maximum security prison located just outside the small farming community of Sainte-Anne-des-Plaines, Canada. Some thirty miles north of Montreal, Sainte-Anne-des-Plaines has a population of only 600, and the federal penitentiary constitutes its principal industry and source of revenue. On the night of July 25, 1982, Archambault Penitentiary experienced what some Canadian observers have termed the worst prison riot in Canadian history.[1/] An escape attempt by two inmates, Christian Perreault and Yvon Martin, at approximately 10:30 p.m. escalated into a major riot, with the final result being three guards brutally slaughtered and disfigured while the two instigators, Perreault and Martin, were found dead, purportedly as a result of cyanide capsules they had taken themselves.[2/]

Order was finally restored to Archambault by seven o'clock the next morning. With all of Archambault's approximately 425 inmates returned to their cells, prison officials began the arduous efforts of cleaning up the carnage

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[1/] *See* Appendix A for selected newspaper descriptions of the riot. (Newspaper articles referred to in this Report are gathered at Appendix A. Page references will indicate the page in Appendix A where the article is located.)

[2/] A coroner's inquest concerning these alleged suicides is pending.

and taking steps to identify and discipline those inmates actually involved in the murders and destruction.

Shortly after the riot, allegations surfaced in the Canadian press and elsewhere concerning improper and, at times, brutal treatment of Archambault prisoners by guards seeking retribution for their colleagues' slayings. Civil-rights attorneys were barred from visiting their clients at Archambault for some ten days after the riot, and, once they obtained entry to the facility, were informed repeatedly of allegations that guards tortured prisoners in a savage and inhumane fashion. The story about the Archambault riot remained front-page news in most of the Quebec newspapers, and the continuous allegations of torture and other mistreatment prompted wider inquiries by the press, civil-rights activists, and various international organizations concerned with protecting human rights.

The International Human Rights Law Group ("Law Group")[3/] in Washington, D.C. learned of the allegations

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3/ The International Human Rights Law Group is a public interest firm which provides legal assistance in cases involving violations of international human rights. Attorneys from private firms work with the Law Group on a pro bono basis in order to provide information and assistance to nongovernmental organizations and to individuals. The Law Group has offices at 1346 Connecticue Avenue, N.W., Suite 502, Washington, D.C. 20036. Its telephone number is (202) 659-5023.

concerning prisoner mistreatment at Archambault and decided to send an observer to assess the situation some four weeks after the riot occurred.[4] The purpose of the investigation was to inspect Archambault and to meet with attorneys, inmates, guards, Canadian prison officials and administrators in order to prepare a detailed report concerning the reported violations of the inmates' civil and human rights. I was selected as the Law Group's observer primarily because of my familiarity with U.S. prisons, including the District of Columbia's maximum security facility at Lorton, Virginia which is comparable in size to Archambault and which I knew intimately by virtue of having litigated a conditions suit against that facility during the past two years.[5] I also speak French and had undertaken two previous "observer" missions for the Law Group in 1980 and 1981.

Amy Young-Anawaty, the Law Group's Executive Director, then contacted the appropriate Canadian officials, including the Solicitor General's Office and the office of the Regional Director of Communications for the Correctional Service of Canada. I was guaranteed -- and in due course received -- full

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[4] Amnesty International at first considered sending but then declined to send an observer to Archambault. The Paris-based International Federation of Human Rights sent an observer, Mr. Thierry Maleville, an attorney from Montreuil, France.

[5] My credentials and a letter of introduction to Canadian officials appear at Appendix B.

access to Archambault and, accordingly, conducted my inquiry from August 31, 1982 through September 2, 1982. This Report, presented to the Law Group, reflects my observations during the three-day intensive investigation and sets forth my conclusions and recommendations concerning the conditions at Archambault.

II. The Archambault Riot of July 25, 1982

The approach to Archambault Penitentiary runs through the tranquil, spacious rolling fields just outside Sainte-Anne-des-Plaines. Cars follow a straight two-lane road for a mile or so before veering right to enter the parking lot of the low-rise prison complex surrounded by dull metal fencing capped with seemingly endless coils of thick, barbed wire. This relatively new federal penitentiary was opened in late 1968 and was named for Superior Court Justice Joseph Archambault. It is used primarily to house the most problematic inmates -- those who, regardless of their offense or sentence, present the most serious threat of danger to themselves or others. From the outside, at any rate, escape from Archambault seems unlikely.

For two inmates doing life sentences -- 24-year-old Christian Perreault and 27-year-old Yvon Martin -- escape seemed a certainty when, at 10:30 p.m. on July 25, 1982 they took two guards hostage and attempted to force their way out of

the facility as some 300 inmates were returning from recreation in the prison's main exercise yard.[6]

Archambault is constructed around a central control "cage" (Point N on the diagram) past which any inmate or correctional officer must pass to move from one part of the institution to the other. The wings of cellblocks, each having its own separate control cage (Points A, E, and J), radiate from the central control area and give the appearance of a beehive or cellular construct. Each wing of cells consists of two stories and houses 150 prisoners. Correctional officers are stationed inside the four control cells and can see down their respective tiers in order to monitor inmate movement. At the time of the riot, these control cells were lined with breakable glass with an exterior consisting of heavy metal bars which would effectively prevent entry into the cells. Correctional officers entered these cages through underground walkways and, once inside, patrolled the walkways on both levels from their central vantage points.

At the time of the riot, inmates who had been in the recreation yard were returning to their cells through the gymnasium and were passing along Points S and P in the general

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[6] A diagram of Archambault appears at Appendix C. The account of the July 25, 1982 riot which follows is based on eyewitness accounts told to me by inmates and guards. I have also relied on reports which appeared in the Canadian press.

direction of the central control cage (Point N). The hostage-taking occurred in front of the central control cell, and the two inmates attempted to move down corridor H, past control cell E in order to exit the institution. The officer on duty[7] in the area outside control cell E refused to open the gates, thus preventing the two inmates from leaving the perimeter of that control cell. At this point, the two inmates allegedly murdered their hostages. A third correctional officer was also murdered outside control cell E. In all, a total of ten officers were taken hostage once the riot had spread throughout the penitentiary. The two initiators, Perreault and Martin, allegedly committed suicide outside the control cell E area by swallowing cyanide capsules. Their dead bodies were found on top of or next to the third correctional officer whom they had allegedly murdered.

The slaying of the three correctional officers was particularly brutal and tragic. According to newspaper accounts, Denis Rivard was only 26 years old. David Van Den Abeele was 36 years old, and Leandre Leblanc, 60 years old, was due to retire at midnight that evening after some 25 years as a

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[7] Archambault has a correctional-officer complement of 215 officers from which officers are assigned to fill posts during each day's three shifts. The riot occurred during the evening shift (4 p.m. to midnight) to which 39 officers were assigned. The midnight-to-early-morning shift called for 24 officers, and the daytime shift had 49 officers assigned.

correctional officer. All three men were married and had families. One guard's skull was split open from his nose to his chin, a second guard was hanged with a metal wire and stabbed, while the third, Leandre Leblanc, was disembowelled. Seven other correctional officers were also injured, one seriously.

Attempts were made early on by some of the guards to quell the riot and disperse the inmates. One or more of the officers inside Control N fired shotguns into the air. At no time did any of the guards fire their weapons from the control cells directly at the rampaging inmates.

As the violence escalated, inmates smashed the glass in the central control cell and succeeded in obtaining keys to other parts of the institution. Once these keys were obtained, inmates were able to enter the "industries" section of the facility and obtain torches and other potential weapons from the welding, wood-working, and electrical shops. Fires were started, principally in the gymnasium area, and glass was broken along the walls and corridors throughout the penitentiary.

Approximately ten minutes after the hostages were taken, the Quebec Security Police was called to secure the prison's perimeter. Some sixty officers arrived outside Archambault at eleven o'clock.

Order was not generally restored until approximately 3:00 a.m. on Monday, July 26, 1982. All residents were not returned to their individual cells[8] until approximately 4:30 a.m., and the Quebec Security Police finally left Archambault some 2-1/2 hours later.

III. Conditions Inside Archambault After July 25, 1982

On September 2, 1982, I was allowed to tour Archambault Penitentiary and spent approximately 7-1/2 hours inside the institution. No part of the facility was off-limits to me, and I was permitted to speak freely with inmates, correctional officers, and Administration officials. Before beginning my inspection of Archambault and after my tour was concluded, I spoke with Mr. Andre Lemarier, the penitentiary's director, who responded candidly and, I believe, fully to all of my questions concerning the causes of the riot and the conditions inside Archambault after July 25, 1982. My inspection lasted approximately two hours, and I was accompanied through the facility by Mr. Gaston Pelletier, the Regional Manager for Communications of the Correctional Service of Canada, and Mr. Luc Mantha, Archambault's Director of Administration.

8/ There is no double-celling at Archambault.

A. Interview With the Warden

Both Mr. Pelletier and Mr. Lemarier expressed their complete surprise at the events of July 25, 1982. In their opinions, the riot was unexpected and was not the result of a premeditated assault upon the institution. Rather, the events followed from the escape attempt of Messrs. Perreault and Martin and simply escalated into a general riot. Their opinions were corroborated by other inmates and correctional officers. Prior to the riot, Archambault penitentiary was a relatively calm facility in which, as one official told me, inmates, guards, and the administration had reached an understanding that resulted in a reduction of tension inside the institution. One inmate referred to the pre-July 25 atmosphere inside Archambault as a form of community in which all parties had come to realize that cooperation rather than confrontation would result in a better overall environment.[9/]

[9/] This description should be contrasted with the situation at Archambault just a few years ago. Murders inside the facility were relatively commonplace with eight inmates having been killed by other inmates between June 1979 and June 1980. Also, in 1978, the former director was shot seven times in the head outside his home by three ex-inmates. At that time, the level of tension inside Archambault was relatively high. The last murder at Archambault occurred on July 20, 1980.

One factor credited with reducing the level of tension inside Archambault was the availability of conjugal visitation

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Mr. Lemarier explained that since July 25, 1982 all inmates had been confined to their single cells twenty-four hours per day for the first ten days. Since approximately August 5, 1982, they had been allowed thirty minutes outside in the interior courtyards where they could walk around and exercise. Other than that, there was no prisoner movement inside Archambault. Food was distributed twice daily to inmates in their cells. Each inmate received two cold sandwiches and a Dixie cup of milk at noon and again in the early evening. There had been no hot food served to Archambault's general population since July 25, 1982.

The Director told me that hot meals could not be served because doing so now would create a security problem. To begin with, he said, Archambault had been built without a

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rights since March 1981. Inmates who were married at least six months prior to being sentenced or who had common-law spouses were permitted conjugal and familial visits approximately four times per year after they had been at Archambault for six months. Such visits occurred in a modern trailer located outside the main Administration building. The trailer itself was surrounded by separate fencing and barbed wire. Visits ranged from 43 to 48 hours.

Since July 25, 1982, the visitation trailer has not been used. Ironically, the last inmate to use it was Yvon Martin, one of the prisoners allegedly involved in the slaying of the three guards during the escape attempt with Perreault. Martin had spent that weekend in the trailer with his wife and returned to general population on the evening of July 25, 1982.

kitchen facility.[10/] Food was prepared in the nearby minimum security facility and then trucked to Archambault where it was taken to the distribution centers for each set of cellblocks. (The distribution centers, which consist of steam tables and a food line, are at Points D, H, and M on the diagram of Archambault. (Appendix C).) Under supervision, some seven to nine inmates participated in serving meals to their fellow inmates who had their food dished onto their trays and then ate in a communal setting in the particular distribution center. Approximately thirty inmates at a time would eat together in this fashion.

Since the riot, however, the distrubtion centers were considered unsafe and were in the process of being repaired. Although each distribution center was being repaired at the time of my inspection, there was no explanation offered as to why inmates received no breakfast and why only sandwiches were still being served more than a month after the riot.[11/]

10/ According to Mr. Pelletier, plans exist for the eventual construction of a kitchen at Archambault. The failure to have done so initially was recognized as a mistake.

11/ At lunchtime during my inspection, I dined with Messrs. Mantha and Pelletier in the dining area reserved for officers, administration officials, and clerical personnel. The food served there had also been prepared at the minimum security facility and trucked to Archambault. That afternoon, the menu consisted of hot hamburger patties or beef chop suey over rice, greenbeans, salad, cole slaw, jello, spice cake, fruit, and tea or coffee.

While the distribution of hot meals on carts or trolleys might have been complicated or posed a potential security risk, there was no reason (other than perhaps inconvenience) why individual hot meals and breakfast could not have been served to each inmate in a styrofoam container with plastic cutlery. These containers could be prepared outside Archambault and then distributed by the officers to each of the 425 inmates inside Archambault. Although this procedure would have required more effort on the part of correctional officers, it must be remembered that inmates at this time were locked down for all but thirty minutes per day. Accordingly, the guards' normal duties would have been correspondingly reduced, thereby leaving additional time to serve the hot meals. Moreover, it takes as much time to place two cold sandwiches before an inmate's cell as it does a styrofoam container with a nutritious and well-balanced meal. Finally, even if the preparation of meals in the manner I have recommended would mean that not all of the food would have arrived at Archambault and been consumed while warm, it would at least have been no colder than the four sandwiches which each prisoner had been receiving daily since July 25, 1982.

There was, in short, no excuse for the prolonged absence of hot meals, including breakfast, at Archambault. According to one inmate's estimate, the total caloric content of the meals since July 25, 1982 did not exceed 900 calories

per day. While some initial deprivation might have been justified in light of the truly grave and disruptive events of July 25, that excuse could no longer be employed some five weeks after the riot.

I asked Mr. Lemarier to comment on the behavior of the guards given the repeated accusations surfacing in the press and from civil-rights attorneys of brutality towards and even torture of certain inmates. The Director acknowledged that some inmates had been "harassed" by a "minority" of the guards and stressed three times that the guards involved constituted a "minority" of those in the complement. As to whether he had spoken with members of this "minority" and planned to sanction any of them for their conduct, Mr. Lemarier said that he had spoken to some guards who allegedly had been keeping prisoners awake all night by banging on their cell doors. He had told these guards that such behavior was not conducive to a return to more normal conditions. "After all," he said, "that guard will have to work with that inmate in three weeks," and it does not make sense to instill unnecessary animosity now through such forms of harassment. This was the only form of harassment acknowledged by the Director. As for the imposition of formal sanctions, Mr. Lemarier had no comment other than to say that, if taken, such sanctions were never made public. He reiterated that only a minority of guards had been involved in incidents of harassment.

B. Tour of Archambault

Evidence of the riot and reconstruction was apparent throughout virtually all sections of the penitentiary. The food distribution centers were being rebuilt entirely, and every pane of glass inside the institution was being replaced with Lexan bulletproof, shatterproof glass. The glass in the central control cell had been repaired, although there was evidence of the riot in several of the corridors radiating from the center. Windows were broken and glass was still on the floor in many parts of the institution. The gymnasium area was still totally wrecked, and one wall still had floor-to-ceiling scorch marks from fires set by the inmates.

On the whole, Archambault's overall physical plant was impressive in comparison, for example, with the 450-inmate maximum security facility run by the District of Columbia at Lorton, Virginia,[12/] Archambault appears relatively

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12/ Lorton's maximum security facility was the subject of a lawsuit filed in U.S. federal court in the District of Columbia on July 3, 1979 challenging the conditions of safety and security inside the institution. John Doe, et al. v. District of Columbia, et al., Civil Action No. 79-1726 (D.D.C.). The case was tried in June, 1980, and Judge June L. Green ordered injunctive relief intended to improve security for both guards and inmates. Aside from boosting the officer complement from 126 to 152, Judge Green also ordered the closing of the furniture repair shop (a shop located inside the maximum facility but used only by medium security facility

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progressive. The cellblocks were modern and clean, and the individual cells were well-lighted. The walkways outside the cells were virtually spotless. Each pavillion had its own laundry facilities as well as a small television/recreation area. But for the carnage left from the July 25 riot, the gymnasium appeared fully equipped, and the large recreation yard included tennis courts as well as a wide array of weights and other exercise equipment.

Perhaps most impressive among the facilities inside Archambault were the numerous trade schools in which inmates could receive instruction and training. These "shops" were in addition to a newly rebuilt general school. The practical

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inmates and suspected of constituting a major source of deadly contraband), installation of metal detectors, and installation of an audio-visual monitoring system on each cellblock tier.

The lawsuit was also tried to a six-person jury which awarded the inmate class damages in the amount of $1.00 per inmate per day of incarceration. Damages were premised on violations of inmates' Eighth Amendment rights to be free from "cruel and unusual punishment," common-law negligence, and a District of Columbia negligence statute. The case is presently on appeal before the U.S. Court of Appeals for the District of Columbia Circuit. The author participated in the trial and appellate litigation of the Lorton case.

By way of contrast with Archambault, Lorton's maximum security facility was constructed in the 1930s, totally lacks any rehabilitation programs, and has a decaying physical plant. Of the five cellblocks, at least one includes double celling of inmates.

training included a barber school, a design school, woodworking shop, machinist's shop, sheet metal and welding training, as well as shoe making and shoe repair. Each of these schools was supervised by guards who were able to view the training areas from an interior raised catwalk permitting mostly one-way-only surveillance of the inmates at work. Inmates are carefully searched once they leave the training area before returning to their cells.

The infirmary contains sixteen cells, fourteen of which were occupied on the day of my visit. The entire medical unit was spotless, and medical personnel explained in detail the daily visits paid by outside physicians and the easy access inmates had to proper medical treatment. The medical supply room was kept locked and appeared well-stocked. I spoke briefly with one inmate who had been transferred from the detention cell area to the infirmary. There was nothing wrong physically with this resident: He was initially assigned to a detention cell upon request as he was a transfer inmate from another Canadian prison and did not want to be in Archambault in the first place. After the July 25 riot, he was moved to the infirmary since all of the detention cells were needed for those inmates suspected of participating in the riot. According to this resident, hot food -- at least in the infirmary -- had been restored two weeks previously. He knew of no mistreatment of inmates by guards.

The detention cells, or the "hole," warrant special concern. Located near the gymnasium, these sixteen cells are reserved for the most troublesome residents or those requiring special security. Fourteen of these cells contain nothing more than a wooden pallet, mattress, and metal toilet. The ceilings are extremely high, and the fluorescent light on the ceiling is unreachable by the inmates. Food is served through metal openings in the doors that are fastened shut from the outside. Two of the detention cells contain no pallet and no toilet. Inmates in these cells sleep on mattresses on the floor and use a small hole in the floor of the cell as their toilet. Unlike the other detention cells, the flushing mechanisms for these toilets are located outside the cells and can only be activated by a correctional officer. During my visit, all sixteen detention cells were occupied. There were approximately five or six officers on duty outside the cells. The overall temperature in the detention cells and the surrounding area was relatively warm.

Incarceration in the hole represents a form of solitary confinement. Several inmates suspected of involvement in the July 25, 1982 riot were first sent to the hole and then transferred to the super maximum security facility known as the Centre de Developpement Correctionnel or "CDC." This 130-inmate facility is located on the island of Laval across the Saint Lawrence River from Montreal. On September 1, 1982,

I met with the Director of the CDC, Mr. Pierre Goulem, prior to interviewing inmates who had been transferred from Archambault to the super maximum security facility. I did not tour the CDC but only met with certain inmates. The results of these interviews are integrated with the rest of the narrative concerning the general conditions in Archambault after the riot.

After completing the inspection of Archambault, I returned for a further conference with the Director. Mr. Lemarier responded to my inquiry as to why members of the press were admitted to Archambault shortly after the riot whereas attorneys were not permitted access to their clients for ten days. He said that members of the press both requested access to the prison and were invited by the Administration. Yet, the very day after the riot, attorneys began requesting access to their clients, and inmates, including some of those who had been placed in the hole as suspects in the riot, also asked that they be permitted to contact their attorneys.

On July 28, 1982, however, some forty journalists were allowed into Archambault where they were permitted to see the damage done to control center N and pavillion E. Correctional officers had been using tear gas on the inmates during the previous two days, and Mr. Lemarier expressed some concern about the lingering effects of the tear gas throughout the institution. Nevertheless, the journalists were allowed in,

the lawyers were not. The only explanation given was that their entry was "delayed" until the Administration and officers could regain control of the facility. For the most part, however, the press was confined to the visiting hall area of the administration building, the same area where inmates generally met with their attorneys. Although this area is where the tear gas is stored, it was not near where it was used. There is, in my view, no legitimate basis for having denied access to attorneys while having allowed -- in fact, expressly invited -- journalists to enter Archambault. If security conditions were dangerous for the attorneys, they were no different for the journalists. Inmates could have been escorted individually by guards to see their counsel, or other arrangements could have been made to accommodate the situation. Nothing was done, and as a result, inmates desiring to meet with counsel were denied such access for ten days. More will be said about this matter in Part IV.

Mr. Lemarier also explained the rationale for the massive general search of the entire institution that began shortly four days after the riot and lasted for several days. According to Mr. Lemarier, the inmates who broke the glass of the central control cell also reached inside and obtained keys permitting access to various parts of the institution. Aside from the torches used to set fires, some inmates were apparently suspected of still possessing some ten .38 special caliber

bullets. At any rate, these bullets were reported missing (and were still missing at the time of my visit), and Mr. Lemarier feared that they might be used by inmates who could fashion homemade zip guns from lead pipes or other contraband objects obtainable inside the institution. According to Mr. Pelletier, general searches, as distinguished from the more frequent, random cell searches, are conducted approximately every four months. On this occasion, however, all inmate property with the exception of basic clothing and bedding materials was stripped from the cells, itemized, placed in labelled bags, and stored in the penitentiary's education area. Hundreds of these paper bags were visible during my inspection and filled four classrooms, in some areas, from floor to ceiling.

C. Inmate Interviews

After lunch, I began a series of interviews with inmates. All such interviews were conducted in the Administration Building without the presence of either correctional officers or administration officials. Except for when I met with the three-member inmate committee, all such interviews were conducted face-to-face with the inmate. In these one-on-one sessions, each inmate was strip-searched prior to entering the room where I was seated. After our discussion, each inmate was then subjected to a patdown search before being

returned to his cell. I began each discussion by identifying myself, explaining the nature of my visit, and outlining the scope of my investigation. In no instance was an inmate reluctant to talk with me, and in total I spoke with three inmates at the super maximum security facility and six inmates at Archambault. Each inmate was assured that his name would not appear in my Report and that specific comments would not be attributable to any particular inmate.

The prison officials were provided with the names of the individuals with whom I spoke as there was no other way for me to meet with a given individual. What follows represents a compilation of what I was told. In some instances reports were secondhand but, for the vast majority of cases, the situations described were corroborated for me directly leaving no question as to their accuracy. Situations which struck me as less than credible are not reported here, although there were very few such cases. The incidents which follow are based on stories which I heard repeatedly. On the whole, I found the inmates extremely credible and, I should add, remarkably free of hostility. While they corroborated Mr. Lemarier's statement that a minority of guards was involved in "harassing" some of the inmates, they recounted incidents of violence which went beyond mere harassment and which approached what can only be termed "torture" or, at best, "cruel and unusual punishment."

According to the inmates, fewer than fifty prisoners were actually involved directly in the violence that broke out on July 25, 1982. The slayings of the guards were apparently indiscriminate. In other words, the three guards who were slain were not singled out for any particular reason other than that they were taken hostage and murdered once it became clear that the escape attempt would fail.

Beginning on July 27, 1982 and lasting through August 8, 1982, the inmates were locked into their cells twenty-four hours per day. On July 26 and 27, at least two entire pavillions were systematically tear-gassed. All of the prisioners in these pavillions were confined to their cells. According to one inmate, guards would shout "If you all don't shut up we'll gas you." One second later the tear gas was released. Journalists who entered Archambault on July 28, 1982 reported the lingering odor of tear gas in the air, and inmates hung placards out the windows of certain parts of the penitentiary stating, "They have gassed us."[13/]

Tear gas was also sprayed directly onto some of the sandwiches and into the milk which the inmates were supposed to eat. One inmate, who later signed a confession to his actual involvement in the violence, had reportedly been held by two

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13/ See Appendix A, p. 1, Le Soleil, July 29, 1982.

guards while tear gas was shot directly into his mouth at point blank range. There were repeated instances of guards serving inmates food by throwing it on the floor or directly into the toilets in their cells. Others reported having their food spat upon prior to its being thrown into the cells. There was at least one reported instance of a guard urinating on sandwiches, making the inmate eat the sandwiches, and then forcing him to say how good they were.

Some of the acts just described occurred not only in the pavillion cellblocks but also in the hole where there were at least twelve inmates being held upon suspicion of having participated in the violence. One resident who had been transferred to the hole told me that he had been gassed at least a dozen times -- in his cell, outside his cell, and in the hole. He stated that he was gassed directly in his mouth in order that he would sign a confession. Guards then brought him blank paper, but he refused to sign. Between August 10th and 16th, he was gassed and kicked repeatedly. During the general search, which began on August 26th and lasted several days, his personal papers were taken by guards who tore them up in front of him. Although this inmate was later transferred to the super maximum security facility where conditions were better, he complained that up until the morning of my visit (September 1, 1982) he still found saliva in his food.

Another inmate who ultimately was transferred from the hole at Archambault to the super maximum security facility described his experiences as follows. Beginning on the morning of July 27, 1982, his pavillion was gassed. Early that afternoon he heard some tapping on his cell door which was then opened to reveal nine or ten guards standing around holding leaded sticks. This inmate was then placed on the floor face down, handcuffed from behind and then beaten en route to an interrogation room where he was shoved head first into the room, smashing his head into a closed door. He was interrogated but refused to confess any involement in the riot. He was not returned to his cell but was taken directly to the hole.

The next day guards came to his cell in the hole and told him that he had been seen stabbing and killing a guard. One evening shortly thereafter he was taken handcuffed and in shackles from his cell to the Administration Building. He was then introduced to two detectives from what he said was the Quebec Provincial Police. They told him he had been identified as attacking a guard with a shovel. The inmate denied his involvement and professed his total innocence. He was led back to the hole, asked to kneel in front of the door to his cell, and was then kicked into his cell.

The same inmate was interrogated again during the morning of July 30, 1982 in the Administration Building by the same two detectives who saw him previously plus two additional ones. This time he was told that he would be charged but probably with a lesser charge if he would confess. He said that he needed time to think it over, but that eventually he would tell everything he knew. First, however, he wanted to reflect in his cell until midafternoon. When he later changed his mind, the following morning his water was turned off; all of his clothing, linens, and mattress were removed. He was left totally naked in what he said was a very cold cell.

This resident remained in the hole until his transfer to the super maximum security facility on August 16, 1982. He described seeing at one point eight guards lined up to have their boots polished by a naked inmate kneeling on the floor. During many of these evenings the lights were left on in the cells, and guards would circulate periodically to bang their leaded sticks on the doors to keep inmates awake.

Several of these allegations were corroborated by another inmate who was sent to the hole for ten days and who began his stay there much later, after the middle of August. This inmate spent the first two days in the hole naked. Then he received a pair of shorts; two days later he received a

shirt. His water stopped. The lights stayed on all night, and guards would shout, "Wake up pigs, you cannot sleep!" Although this inmate was never beaten himself, he heard other inmates crying from the beatings they had apparently received. He had been in the hole previously but said that the treatment this time was completely different -- much worse. Now, at mealtime, his door was opened, and he was told to move to the rear of the cell before his food was thrown in. He also said that a guard had reportedly put on a pair of gloves, wiped one of his hands in human feces remaining in the toilet or in the hole in the floor, and then wiped his soiled glove in an inmate's face.

During the first week in which they were locked in their cells, inmates were not permitted to shower. Then they were allowed one two-minute shower per week. Several of the inmates had requested to see attorneys, but these requests were denied until on or about August 4, 1982. Some of the twelve inmates suspected of complicity in the riot were reportedly confined in the hole for several days without any food or water (except what they could drink from their toilet bowls) whatsoever.

As for other deprivations, inmates complained of being without soap, toilet paper, and writing materials. Others were concerned that they had been moved to the hole or transferred

from Archambault to the super maximum facility without any formal charges having been brought against them and without an opportunity to contact their attorneys.

Perhaps the most unusual allegations concerned acts of sexual perversion by both inmates and guards. According to more than one inmate with whom I spoke, guards were particularly outraged by reports that during the general violence, some inmates were found masturbating over the bodies of the dead guards. I was told that some guards chose to retaliate by themselves masturbating into the cells of some of the inmates incarcerated in the hole. This story was corroborated for me by at least three inmates.

D. Correctional Officer Interviews

During my visit to Archambault, I spoke with two correctional officers, one who was relatively junior in rank and one who was more senior and who was a close friend of Leandre Leblanc, the officer who had been murdered just ninety minutes before he was to have retired. Neither officer knew of any acts of physical violence by guards against inmates, although one said that there may have been instances of verbal abuse by the officers. After all, he explained, with the riot and the brutal slaying of three of their comrades, the officers

in general were less tolerant and were seriously concerned about restoring security inside Archambault. This same officer thought that it was "plausible" that some disciplinary actions might be brought against some of the guards but stressed that ninety percent of the correctional-officer complement did not believe that they could mistreat prisoners.

Both officers confirmed that prior to the riot, relations between guards and inmates were very good. They recognized that tensions had been high after the riot, were better now, and that, ultimately, there would be a gradual return to order. One guard who had arrived at Archambault in the early morning hours after the riot on July 26, 1982 described the whole situation as "the worst disaster" he had ever seen.

* * *

In this section of the Report, I have tried to present the situation inside Archambault as I found it on September 2, 1982. My discussions with Administration officials, inmates, and correctional officers lead to the inescapable conclusion that the events of July 25, 1982 and thereafter were both violent and tragic. At the same time, I found no real evidence of bitterness or resentment on the part of the guards or

inmates. All persons directly or indirectly involved recognized that what started as an escape attempt by two inmates had escalated into a general riot in which other inmates panicked. The July 25, 1982 riot was not the result of longstanding tensions due to poor conditions inside the penitentiary or from prolonged physical abuse of and disrespect towards inmates by guards.

It was this absence of hostility which, in my view, enhanced the credibility of the inmates' statements concerning mistreatment by guards. There was almost an air of disbelief on the part of some inmates who simply could not comprehend why they were receiving the treatment they had been subjected to since July 25, 1982. As one inmate told me, "I cannot understand why they [the guards and the Administration] treat all of us this way when only a small number of inmates was involved." There is, of course, no excusing or minimizing the brutality of the slayings of the three guards. Their bodies were horribly mutilated by inmates who appeared to be not only bent on escape but who were on a rampage while doing so. As one newspaper article expressed it, "Selon plusieurs gardiens de l'institution, l'ambiance était à son meilleur depuis un mois. Rien ne laissait présager des actes aussi cruels et gratuits. Les mutins n'ont pas negocié. Ils ont agi, un point

c'est tout."[14/] The guards' responses, at the same time, are understandable in human terms. As one guard told a newspaper, ". . . comment voulez-vous que nous les traitons comme des êtres humains quand ils agissent comme des chiens enragés et qu'ils tuent sans motif.[15/]

While the guards' reactions are perhaps understandable, the actual physical and mental abuse of the prisoners at Archambault is inexcusable. Charged with preserving order themselves, correctional officers are trained, at least in theory, to resist provocation under all circumstances. The extent to which this mistreatment violated the inmates' constitutional rights and their human rights will be addressed in Parts V and VI.

IV. The Attempts By Counsel To Meet With Their Clients

Immediately after the July 25, 1982 riot, access to Archambault by the general public was suspended. This prohibition also extended to attorneys who had been seeking access to their clients since the morning after the uprising.

14/ Appendix A, p. 3, Le Journal de Montreal, July 27, 1982, p. 7, col. 5. "According to several guards in the institution, the ambiance was at its best for the last month. Nothing would have predicted such cruel and thoughtless acts. The rioters didn't negotiate. They acted, that's all."

15/ Id. "How do you expect us to treat them like human beings when they act like mad dogs and kill without any motive?"

According to some of the attorneys who were refused access to Archambault inmates, entry was denied for ten days, until August 4, 1982. This was also confirmed by press accounts.[16/] Mr. Lemarier, Archambault's Director, could not remember the exact date on which attorneys were again permitted inside Archambault.

One civil-rights attorney explained that she had approximately fifteen clients at Archambault whom she visited regularly. After the riot, she telephoned the penitentiary in order to arrange visits with these inmates. On July 27, 1982, she attempted to enter the prison but was refused access. At first she was told that she would only be permitted in once the control center had been repaired. Then she was later told that she had to await the conclusion of the general search. As has already been explained, some forty journalists were invited inside Archambault the next day, July 28, 1982, where they were briefed for approximately one hour -- one-half hour in French, the other half hour in English. These journalists went inside the facility even though all of the damage had not been repaired by that time.

When attorneys were finally allowed in, the conditions under which they were permitted to visit with their clients

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16/ See Appendix A, p. 4, Montreal Gazette, Aug. 5, 1982.

were far stricter than the usual regimen. Attorneys had to reserve one of the two visitation rooms in advance. They also had to "reserve" the inmate in advance of their arrival in order that he might be escorted to the visitation room by correctional officers. When an inmate arrived for a visitation, his hands and feet were usually chained, and sometimes the inmates were not wearing shoes.

A group of four attorneys entered Archambault together on August 4, 1982.[17/] Three of the four were women, and the last woman to pass through the metal detector in the Administration Building was subjected to a strip search by a female guard. Since the only metallic object she was wearing was a watch, whereas the woman who preceded her had on numerous objects of metal jewelery that did not activate the metal detector, this attorney, who is a well-known civil-rights advocate, strongly suspects that the sensitivity selector on the machine was specially adjusted for her as a form of harassment.

Some of the attorneys involved told me that one inmate who is unable to read was forced to sign a confession. One inmate told me that guards tried to trip him and shoved him in the back with their leaded sticks after he had spoken with one of his attorneys. Other attorneys said they waited up to 1-1/4

[17/] A copy of their press release appears at Appendix D.

hours for an inmate to be escorted to one of the visitation rooms. Whether these actions were intentional or otherwise, they certainly added up to what at least appeared to be a campaign of harassment against the attorneys and their clients.

One attorney, Georges LeBel, who is also a member of the law faculty of the University of Quebec in Montreal and a professor of International Criminal Law and a member of the Committee of Law Deans of Canada, interviewed Archambault inmates under the auspices of the Office of Prisoners' Rights which had been campaigning for the rights of attorneys to enter into prisons to meet more freely with their clients. Professor LeBel interviewed numerous inmates some of whom, while still manacled before him, executed affidavits confirming many of the conditions described in the preceding section. Representative samples of some of these executed affidavits appear at Appendix E. Inmates' names have, however, been deleted to protect their privacy at this time.

The attorneys with whom I spoke confirmed three basic facts: (1) that they had been denied entry to Archambault and access to their clients on alleged security grounds although such grounds were not sufficient to bar forty journalists, (2) that inmates, including some who were both suspected of and charged with acts of violence connected with the July 25, 1982

riot, were denied access to their counsel for several days, and (3) that the conditions inside Archambault after the riot were exactly as many of the prisoners described them and as were depicted in the previous section. Whether these conditions comport with applicable Canadian and international law will be addressed in the next section.

V. An Appraisal of the Events Surrounding the July 25, 1982 Riot in Light of Canadian Constitutional Law and Other Applicable Statutes, Declarations, Rules, and Judicial Decisions

Assessment of the situation at Archambault requires analyzing the facts as set forth above in light of applicable Canadian laws and standards. Foremost among these is the Canadian Constitution which became effective in April, 1982. Besides the Constitution, there are several statutes, declarations, rules, and judicial decisions relevant to this case. This section of the Report will examine the principal allegations brought by attorneys and inmates concerning the conditions of confinement and inmate treatment by guards at Archambault after July 25, 1982.

A. Allegations of Arbitrary Detention or Imprisonment

Several attorneys were concerned that some of their clients who were due to be released shortly from Archambault

would be detained beyond their release dates although they were not charged specifically with any crimes or disciplinary offenses relating to the events of July 25, 1982. Under the "Regulations Respecting the Canadian Penitentiary Service," CRC, Vol. VIII, c. 1251 ("Penitentiary Service Regulations" or "PSR"),[18] it is provided that "[n]o inmate shall be punished except pursuant to (a) an order of the institutional head or an officer designated by the institutional head; or (b) an order of a disciplinary court." Art. 38(1). This provision further states that "[w]here an inmate is convicted of a disciplinary offence the punishment shall, except where the offence is flagrant or serious, consist of loss of privileges." PSR Art. 38(3). Where there is a "flagrant or serious disciplinary offence," the punishment shall consist of either the "forfeiture of statutory or earned remission or both" or "dissociation for a period not exceeding 30 days," or both. PSR Art. 38(4).

The transfer of an inmate from general population to either the hole or solitary confinement at the super maximum security facility is unquestionably a form of dissociation -- a treatment which is reserved as punishment for an institutional

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18/ These Regulations are promulgated pursuant to Article 29 of the Penitentiary Act, Chapter P-6.

offense. Inmate offenses are described generally in PSR Art. 39 as follows:

> "Every inmate commits a disciplinary offence who
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> (a) disobeys or fails to obey a lawful order of a penitentiary officer,
> (b) assaults or threatens to assault another person,
> (c) refuses to work or fails to work to the best of his ability,
> (d) leaves his work without permission of a penitentiary officer,
> (e) damages government property or the property of another person,
> (f) willfully wastes food,
> (g) is indecent, disrespectful or threatening in his actions, language or writing toward any other person,
> (h) willfully disobeys or fails to obey any regulation or rule governing the conduct of inmates,
> (i) has contraband in his possession,
> (j) deals in contraband with any other person,
> (k) does any act that is calculated to prejudice the discipline or good order of the institution,
> (l) does any act with intent to escape or to assist another inmate to escape,
> (m) gives or offers a bribe or reward to any person for any purpose,
> (n) contravenes any rule, regulation or directive made under the Act, or
> (o) attempts to do anything mentioned in paragraphs (a) to (n)."

There is no doubt that many, if not all, of the events of July 25, 1982 constitute inmate offenses. And yet, inmates were removed from general population to a more restrictive incarceration entailing the loss of dissociation without having been formally convicted of let alone even charged with any of these offenses. In virtually every case of which I am aware,

inmates transferred to the hole or to the super maximum security facility were under nothing more than a suspicion of having committed an offense. What appears to have occurred is that inmates suspected of having been involved in the July 25, 1982 carnage were sent to the hole or transferred to the super maximum security facility without having appeared before a disciplinary court and solely upon an order of the institutional head.

My interpretation of PSR Art. 38, however, would require the conclusion that punishment, as such, for the offenses described in PSR Art. 39 cannot be predicated upon a mere suspicion of involvement in a crime or an offense. Assignment to the hole or transfer to the super maximum security facility necessarily entails a punishment, namely, the loss of dissociation. It is at least arguable, and, in my view extremely plausible, that punishment based upon a mere suspicion contravenes Article 9 of the Constitution Act of Canada[19] which states that "[e]veryone has the right not to be arbitrarily detained or imprisoned." Although it may be argued that this provision would apply only to the initial imprisonment rather than subsequent punishment during incarceration, such a result would necessarily entail the view

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19/ Canada's Constitution was adopted by the House of Commons on December 2, 1981, and by the Senate on December 8, 1981.

that prisoners forfeit their constitutional rights when they enter prison. This conclusion would be absurd. In my view, loss of associational rights upon a mere suspicion of criminal complicity amounts to arbitrary detention or imprisonment in excess of the basic incarceration. It is not warranted under either the PSR or Canada's Constitution. While in some instances dissociation may be necessary and even appropriate to maintain institutional order, prolonged dissociation would not be proper where inmates were held beyond their parole dates, not informed promptly of the grounds for the dissociation, and not provided the necessary prompt review of that status within thirty days.

There are at least two cases of which I am aware that raise the issue of arbitrary detention or imprisonment. Inmate Maurice Michel, age 23, was serving a three-year sentence at Archambault for armed robbery and was due to be paroled on July 29, 1982, four days after the riot. However, as one newspaper explained it, his release was denied and he was held "suite à l'émission d'un mandat du coroner Maurice Laniel, qui veut l'intérroger sur la mort du gardien Denis Rivard, l'une des cinq victimes de la mutinerie du 25 juillet. . . ."[20]

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[20] Appendix A, p 5, La Presse, August 8, 1982. ("following the issuance of a request from coroner Maurice Laniel who wanted to interrogate him concerning the death of officer Denis Rivard, one of the five victims of the July 25 mutiny. . . .")

Michel was not, however, formally charged with any offenses or crimes, yet habeas corpus proceedings brought on his behalf failed to secure his release from Archambault. At the time of my visit, he had been transferred to the super maximum security facility at Laval.

Another inmate who had lost his association rights told me that he had been transferred to the super maximum security facility without having been charged with any offense or crime. He had learned from hearing a radio broadcast that he had been charged with attempted murder of one of the guards but was never directly informed of these charges. He later heard from a radio broadcast that the charge had been reduced to assault, but even this information had not been confirmed as of the time of my visit. This inmate was scheduled for release on September 14, 1982 and was concerned that his parole would be postponed while the investigation into the riot continued. I was able to confirm that as of September 15, 1982, this inmate had not been paroled but had been formally charged with the murder of one of the correctional officers.

The transfer of inmates to the hole or to the more restrictive incarceration at Laval when no formal charges or convictions had been brought appears to violate not only the Penitentiary Service Regulations but also Canada's Constitution. Although the Constitution is a relatively new document and there has been little opportunity for the

development of Article 9 jurisprudence, it is by no means a strained construction to conclude that the loss of association in these circumstances prior to any formal charges, indictments, convictions, or disciplinary hearings is unconstitutional. In light of the fact that all inmates at Archambault have been confined to their cells almost exclusively since July 25, 1982, there is little justification for singling out certain inmates for more restrictive treatment based solely on the fact of their suspected involvement in the July 25, 1982 riot.

Canadian courts have recognized that the decision to impose solitary confinement (dissociation) under the PSR is a purely administrative decision. White & Buch v. The Director of Strong Mountain, et al., unreported decision, May 10, 1976, F.C.T.D.[21/] PSR Article 40 deals specifically with dissociation and states as follows:

21/ See also McCann et al. v. The Queen, [1976] 1 F.C. 570, 68 D.L.R.3d 661, 29 C.C.C.2d 337 (F.C.T.D.), where it was held that maintaining good order and discipline inside a prison justified dissociation where that action was deemed necessary to quell riots and other disturbances. The decision by an institutional head to impose dissociation in such a context represents an administrative rather than a judicial decision. As a result, the court held that sections 1(a) (the right of an individual to life, liberty, personal security, and the right not to be deprived of these without proper legal procedures being followed) and 2(e) (the right to a fair hearing in accord with fundamental principles of justice) of the Canadian Bill of Rights did not apply to impose certain procedural requirements on the decision. In light of Canada's new Constitution, it is at least questionable whether McCann is still good law.

"(1) Where the institutional head is satisfied that

(a) for the maintenance of good order and discipline in the institution, or

(b) in the best interests of an inmate it is necessary or desirable that the inmate should be kept from associating with other inmates, he may order the inmate to be dissociated accordingly, but the case of every inmate so dissociated shall be considered, not less than once each month, by the Classification Board for the purpose of recommending to the institutional head whether or not the inmate should return to association with other inmates.

"(2) An inmate who has been dissociated is not considered under punishment unless he has been sentenced as such and he shall not be deprived of any of his privileges and amenities by reason thereof, except those privileges and amenities that

(a) can only be enjoyed in association with other inmates, or

(b) cannot reasonably be granted having regard to the limitations of the dissociation area and the necessity for the effective operation thereof."

Given the fact that Canada's new Constitution precludes arbitrary detention or imprisonment, it is unclear whether this Article, promulgated in 1978, would pass constitutional muster. The simple assertion that dissociation shall not constitute punishment appears to conflict with Article 38 which, on its face, specifically recognizes dissociation as a "punishment" for a "flagrant or serious disciplinary offense." As a matter of logic, it is difficult to understand how the punishment for such offenses is recognized as a "punishment" under one article but not under another. The presence or absence of sentencing would appear to be irrelevant.

Moreover, it is not clear that Archambault inmates subjected to dissociation since July 25, 1982 have either (1) been informed as to why they received such treatment, or (2) had their status reconsidered once each month in accordance with PSR Article 40(1)(b). This review must occur and should apply to inmates in the hole as well as to inmates transferred to the super maximum security facility. A broad interpretation of Article 40 -- which this author rejects as being at odds with Article 9 of Canada's Constitution[22/] -- could in essence mean that an inmate could be subjected to dissociation for an unlimited period of time if (1) he is not sentenced, and (2) his dissociation is continued month after month by the Classification Board.[23/] Such a result would clearly contravene Article 9 of Canada's Constitution and conceivably could even violate Article 12 which precludes "cruel and unusual treatment or punishment."

22/ An argument can also be made that the failure to inform an inmate as to the reasons for dissociation violates Article 10 of Canada's Constitution which states that "[e]veryone has the right on arrest or detention (a) to be informed promptly of the reasons therefore; and (b) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful." This interpretation follows from a construction of Article 9 to the effect that a more restrictive incarceration not premised upon charges or conviction amounts to arbitrary detention or imprisonment.

23/ There does not appear to be any provision in the Penitentiary Service Regulations concerning the functioning of the Classification Board.

Finally, there is nothing in the PSR which permits an institutional head to detain an inmate beyond his release date. To the extent that this has occurred as a result of the Archambault riot, it constitutes a violation of Articles 9 and 10 of Canada's Constitution. Charges may always be brought once an inmate has been released on parole. The practical difficulties that might be associated with having to locate and arrest such a person once liberated are inconsequential once his right to be released has been established.

B. Allegations of Denial of the Right to Counsel

As was explained above, attorneys were denied access to their clients for approximately ten days after the Archambault riot. Moreover, inmates were apparently interrogated concerning their participation in the riot without having been permitted to consult their attorneys initially. On August 5, 1982, four attorneys from La Ligue des Droits et Libertés were allowed to enter Archambault to interview clients.[24/] Concerning the denial of the right to counsel, these attorneys said the following:

> "Nous avons cependant vue des personnes de chacun des trois pavillons et du 'trou', ce qui nous a permis de faire les constatations suivantes:
>
> 1. le droit à l'avocat, garanti par la Loi

24/ A press release summarizing this visit may be found at Appendix D.

> Constitutionnelle de 1982 et la Déclaration Canadienne des Droits, a bel et bien été violé depuis le 26 juillet 1982 et continue de l'être, malgré la possibilité de voir nos clients, puisqu'aucun détenu ne peut communiquer avec son avocat, ni par lettre, ni par téléphone, ni même par leurs familles ou par l'intermédiaire du personnel affecté au pénitencier et généralement habilité à permettre les téléphones."25/ (Emphasis in original).

In light of the fact that an investigation was under way and members of the press had been invited to enter Archambault on July 28, 1982, the professed concern for security was not a sufficient excuse for denying inmates their right to consult with counsel.

There are at least two sources of the right to counsel in Canadian law. One of the sources is statutory, and the

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25/ "We have, in the meantime seen persons in each of the three pavilions and in the 'hole', which has permitted us to arrive at the following observations:

> 1. the right to counsel, guaranteed by the 1982 Constitution and the Canadian Declaration of Rights has clearly been violated since July 26, 1982 and continues to be violated, in spite of the possibility to see our clients, since no inmate may communicate with his attorney, neither by letter, telephone, or even by their families or by an intermediary such as the person inside the penitentiary generally charged with allowing outside telephone calls."

My interviews with several of the families of Archambault inmates also confirmed these allegations. Some families, unable to contact their relatives at Archambault for several days after the riot, attempted to do so unsuccessfully through their attorneys.

other may be found in the common law. Although the right is not clearly stated with respect to the question of inmates' rights to counsel once incarcerated, there are, in my view, compelling arguments that the right does apply.

Article 10 of the Canadian Charter of Rights and Freedoms, adopted as part of Canada's Constitution Act, 1981, states the following:

> "Everyone has the right on arrest or detention
> (a) to be informed promptly of the reasons therefor;
> (b) to retain and instruct counsel without delay and to be informed of that right, and
> (c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful."

This provision is relatively new, and there is very little jurisprudence as yet explaining its scope. Nonetheless, it can be argued that Section 10 will apply whenever there is a new arrest or detention, e.g., whenever there is a major change in the status of an inmate's incarceration as a result of having been charged with a major constitutional offense.

There is, however, a fine line that must be drawn here. Obviously, administrative decisions relating to inmate classification do not always have the trappings of judicial decisions, and there is in both American and Canadian jurisprudence a large degree of discretion with respect to the

scope of internal administrative decisions which a warden should be free to make in connection with his own best judgment as to how the institution should be run. On the other hand, where there are major investigations conducted by both internal and external Canadian Correctional Service sources, as there are at Archambault, and where the ultimate result may be serious criminal charges being brought against inmates, the right to counsel and all of the other guarantees of Section 10 attach. In other words, while it may not yet be firmly or fully established that an inmate at <u>any</u> time has the right to counsel, there is a significant distinction between a mere internal disciplinary matter involving loss of good-time privileges or a brief period spent in segregation and a more serious offense which could lead to additional criminal charges. It was the latter situation that occurred at Archambault, and Section 10's guarantees should have been satisfied.

Although Section 10 does not refer explicitly to "continuing" detention as such, it does use the phrase "<u>on</u> arrest or detention," and "on" has been defined by the Oxford English Dictionary, at definition 4, as meaning "during" or "as a result of." Moreover, it seems inconceivable to conclude that inmates have no protection whatsoever under Article 10: Surely Canadian jurisprudence does not support the proposition

that upon incarceration an inmate relinquishes all of his rights under Canada's Charter of Rights and Freedoms. Extending the application of Section 10 to inmates comports with both common usage and logical statutory interpretation. As noted above, the distinctions come in determining just when there is a new "detention" warranting the presence of counsel. To the extent that inmates transferred from Archambault's general population to the hole or to the super maximum security facility find themselves living inside a prison within a prison, the additional restriction on their activities can be regarded as a new form of detention. The gravity of the Archambault riot and the potential for serious charges brought against inmates suspected of involvement clearly warrant the presence of counsel.

Canadian common-law rulings also recognize the existence of the right to counsel. See, e.g., Pollard v. Young, [1980] 6 W.W.R. 271 NFLD SC; Denton v. National Parole Board, [1980] 4.W.C.B. 476 (F.C.T.D.). These decisions do not discuss facts similar to the instant case, although they leave no room for doubting the presence of the right to counsel in Canada. In Re McLeod and Maksymowich, 12 C.C.C.2d 353, 364 (1973), the court stated as follows:

> "It seems to me that the right to appear by agency (counsel as the case may be) may well be recognized when a person runs the risk of serious

> property loss, or damage to his reputation, or loss of liberty. . . . But I cannot agree that the same right can be reasonably extended to a matter such as is now before me where the issue is merely of the inner discipline of an institution to which the application has been sent following a trial at which he was offered the full assistance of counsel."

The situation at Archambault is distinguishable from those situations involving merely questions of the "inner discipline of an institution." At issue are charges as serious as assault, battery, willful destruction of property, and murder. The fact that three separate investigations (an internal Correctional Service inquiry, a corner's inquiry, and an investigation by the Quebec police) are being conducted simultaneously is indicative of the gravity of not only the situation but the charges that are likely to be forthcoming. As a result, it belies reality to contend that what was involved at Archambault was merely an "internal" investigation. In short, the potential for further loss of liberty was great in light of the serious nature of the potential crimes. The right to counsel was applicable in such circumstances and should have been respected.

C. Allegations of Cruel and Unusual Treatment or Punishment

There can be absolutely no question that the treatment to which inmates were subjected after the July 25, 1982 riot

violates Article 12 of Canada's Constitution. Article 12 states that "[e]veryone has the right not to be subjected to any cruel and unusual treatment or punishment." (Emphasis added). The beatings, deprivations, and other sordid and occasionally sadistic acts described above in Part III would definitely constitute "cruel and unusal treatment or punishment" by virtually any legal or humanitarian understanding of what these terms commonly mean.[26/] Additionally, the treatment of the inmates and the general conditions inside Archambault after July 25, 1982 violate several provisions of the PSR. Among the PSR Articles violated are the following:

26/ The Eighth Amendment to the U.S. Constitution prohibits "cruel and unusual punishments". See generally Trop v. Dulles, 356 U.S. 86 (1958). Relevant criteria for deciding what treatment constitutes cruel and unusual punishment have been the inherent cruelty or severity of the punishment, its alleged excessiveness, its disproportion, arbitrariness, or lack of necessity, or whether society found it acceptable. See Furman v. Georgia, 408 U.S. 238, rehearing denied, 409 U.S. 902 (1972).

At least one U.S. Supreme Court ruling has recognized that confinement in prison or in an isolation cell constitutes a form of punishment subject to Eighth Amendment scrutiny. Hutto v. Finney, 437 U.S. 678 (1978), rehearing denied, 439 U.S. 1122 (1979). See also Estelle v. Gamble, 429 U.S. 97 (1976), rehearing denied, 429 U.S. 1066 (1977), where the Supreme Court said that punishments incompatible with evolving standards of decency that mark the progress of a maturing society, or which involve unnecessary and wanton infliction of pain, are repugnant to the cruel-and-unusual-punishment clause. A more recent standard inquires whether the punishment inflicts unnecessary or wanton pain or is grossly disproportionate to the severity of the crimes warranting imprisonment. See, e.g., Rhodes v. Chapman, 101 S.Ct. 2392 (1981).

"Article 15. (1) Every inmate shall be

(a) adequately fed and clothed, according to the requirements of the season and the nature of his employment, and

(b) provided with adequate bedding.

(2) No inmate shall be required to wear clothing that, by its nature, is calculated to subject him to ridicule or contempt from other persons.

Article 16. Every inmate shall be provided, in accordance with directives, with the essential medical and dental care that he requires.

Article 17. Toilet articles and other articles necessary for personal health and cleanliness shall be issued to every inmate.

Article 18. The institutional head shall take reasonable care to ensure that the effects of an inmate which, in accordance with the directives, he is permitted to bring into and keep in the institution, are protected from loss or damage.

Article 19. Every inmate is entitled, where weather permits, to a daily period of exercise in the open air in accordance with directives."

The repeated allegations of mistreatment, including beatings and other acts of violence implicate the provisions of PSR Article 33 which states that

"Where an inmate suffers bodily injury, the institutional head shall cause an inquiry to be made and shall report to the Commissioner

(a) the evidence taken on the inquiry,

(b) the findings of the inquiry, and

(c) the recommendations, if any, arising out of the inquiry."

The Canadian Correctional Service and the Archambault Administration have an obligation to comply with PSR Article 33 which mandates an investigation into the allegations of correctional-

officer brutality. Failure to conduct an objective investigation and present findings based on repeated allegations of cruelty and sadistic behavior can only breed resentment among inmates and make a return to normal life at Archambault that much more difficult. Additionally, it should be stressed that all the inmates have suffered because of July 25, 1982, whether they participated in the violence or not. It would be a serious mistake if those correctional officers who subjected inmates to "cruel and unusual treatment or punishment" were permitted to escape censure.

VI. An Appraisal of the Events Surrounding the July 25, 1982 Riot In Light of International Law

Did the conditions inside Archambault Penitentiary violate Canada's obligations under international law as set forth in the various human-rights declarations or covenants to which Canada has freely adhered? If one considers three such human-rights instruments, the Universal Declaration of Human Rights, 9 G.A.Res. 217A (III), U.N. Doc. A/810, at 71 (1948), the International Covenant on Civil and Political Rights, adopted Dec. 19, 1966, entered into force Mar. 23, 1976, G.A.Res. 2200 (XXI), 21 U.N. GAOR, Supp. (No. 16) 52, U.N. Doc. A/6316 (1966), and the Standard Minimum Rules for the Treatment of Prisoners, adopted Aug. 30, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of

Offenders, U.N. Doc. A/CONF./6/1, Annex I, A (1956); adopted July 31, 1957 by Economic and Social Council, E.S.C. Res. 663 (XXIV) C, 24 U.N. ESCOR, Supp. (No. 1) 11, U.N. Doc. E/3048 (1957), the answer must be yes.

Canada has adopted the Universal Declaration of Human Rights. The Universal Declaration contains at least five articles which appear to have been violated by Canadian officials in allowing the conditions at Archambault after July 25, 1982 to continue without redress.

Article 5 provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." The conditions at Archambault after July 25, 1982 and the corresponding treatment of several of the inmates clearly contravene this provision. Similarly, subjecting inmates to more restrictive incarceration, i.e., prolonged loss of association prior to having been charged with or convicted of an offense connected with the riot, implicates the guarantees of Articles 8 through 11 which state as follows:

> "Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.
>
> Article 9. No one shall be subjected to arbitrary arrest, detention or exile.

> Article 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.
>
> Article 11. 1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
> 2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed."

Inmates who have been sent to the hole or transferred to the super maximum security facility at Laval merely because they were suspected of criminal complicity have not been heard by a competent tribunal, have been treated arbitrarily and without impartiality, and have not been presumed innocent.

Finally, Canada has also violated Article 25's guarantees to "a standard of living adequate for the health and well-being of [an inmate] . . . including food, clothing, housing and medical care and necessary social services . . . ." Although it would appear that the scope of Article 25 extends to everyday life rather than to the lives of those incarcerated, there can be no doubt that its basic guarantees of adequate food, clothing, housing and medical care are nonetheless applicable to inmates as well.

Canada has ratified the International Covenant on Civil and Political Rights which also contains a number of guarantees relevant to the situation at Archambault. Several of the guarantees in this covenant are concerned with preserving the "inherent dignity" of the individual, not only in general but in prison as well. For example, Article 7 states explicitly that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. . . ." With respect to arbitrary arrest or detention, Article 9 guarantees the following:

> "1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
>
> 2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
>
> 3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.
>
> 4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order

that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."

Article 10 is particularly appropriate to the treatment of inmates and provides in pertinent part that "[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." This article further provides that "[t]he penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. . . ."

The right to a "fair and public hearing," including "the right to be presumed innocent until proved guilty according to law" and the right to counsel are guaranteed by Article 15.

The events at Archambault after July 25, 1982 contravened all of these guarantees of the International Covenant on Civil and Political Rights. Article 28 of the International Covenant establishes a Human Rights Committee which should monitor Canada's future compliance with the International Covenant in light of the events at Archambault.

In the meantime, Canada's Solicitor General should submit a report on Archambault to the Human Rights Committee explaining precisely what occurred at Archambault on and after July 25, 1982 and outlining what steps are being taken to guarantee future compliance with the International Covenant.

Of direct relevance to the situation at Archambault are the Standard Minimum Rules for the Treatment of Prisoners which Canada adopted in August, 1975. These rules recognize at the outset that they "are not intended to describe in detail a model system of penal institutions" but instead "seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions." Preliminary Observation No. 1. As such, the rules when viewed normatively are an attempt to express the applicable principles of customary international law concerning the treatment of prisoners.

As for basic accommodation guarantees, the rules call for appropriate sanitary and living conditions, including adequate bathing and shower installations, toilet facilities, heating and ventilation. (Article 9). Article 15 covers personal hygiene and calls for prisoners to "be provided with

water and with such toilet articles as are necessary for health and cleanliness." Under Article 17, prisoners must receive appropriate clothing and bedding.

Article 20 concerns food and states that

> "(1) Every prisoner shall be provided by the administration with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.
>
> (2) Drinking water shall be available to every prisoner whenever he needs it."

Even the Archambault Administration concedes that these guarantees were not satisfied after July 25, 1982.

Exercise opportunities are called for under Article 21 which states, in pertinent part, that "[e]very prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits." The need to restore institutional order in the wake of the Archambault riot can be regarded as a legitimate security concern justifying the curtailment of this guarantee. At the same time, however, every effort should be made to

restore the situation to normal in order to allow each prisoner the minimum amount of daily exercise.

The rules also contain provisions governing inmate discipline, punishment, and appropriate instruments of restraint. The following relevant sections appear to have been violated at Archambault after the July 25, 1982 riot:

> "30. (1) No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence.
> (2) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case.
> (3) Where necessary and practicable the prisoner shall be allowed to make his defence through an interpreter.
>
> Article 31. Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.
>
> Article 32. (1) Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.
> (2) The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner. In no case may such punishment be contrary to or depart from the principle stated in rule 31.
> (3) The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.

Article 33. Instruments of restraint, such as handcuffs, chains, irons and straitjackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:

(a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;

(b) On medical grounds by direction of the medical officer;

(c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority."

In light of the fact that journalists were invited into Archambault just three days after the riot, there is no justification for having denied inmates contact with the outside world, especially their families. This treatment appears to have violated Rule 37 which states that "[p]risoners shall be allowed under necessary supervision to communicate with their families and reputable friends at regular intervals, both by correspondence and by receiving visits."

Finally, the minimum rules also contain several provisions concerning institutional personnel. Those having the most importance for the situation at Archambault are the following:

> "Article 46. (1) The prison administration shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends.
>
> . . . .
>
> (3) To secure the foregoing ends, personnel shall be appointed on a fulltime basis as professional officers and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness. Salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work.
>
> Article 48. All members of the personnel shall at all times so conduct themselves and perform their duties as to influence the prisoners for good by their example and to command their respect.
>
> Article 54. (1) Officers of the institution shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Officers who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution."

These rules offer guidance concerning the selection, training, and behavior of correctional officers. The standards which they necessarily entail were often ignored at Archambault after July 25, 1982

* * *

In summary, the conditions at Archambault after the July 25, 1982 riot reveal numerous instances in which

violations of these human-rights covenants occurred. The Canadian Government has an obligation to its citizens and the international community to investigate this situation and to provide an accounting of the events that took place. At the same time, the Canadian Government should provide assurances that such violations will not occur again.

VIII. Conclusions and Recommendations

The events of July 25, 1982 and thereafter represent a sad chapter in the history of Canada's Correctional Service. Already observers are calling the Archambault riot one of the most tragic uprisings in Canadian prison history. Although this Report has focused heavily on the allegations of inmate mistreatment by guards and denial of the right to counsel, this emphasis in no way implies any lack of concern for the three innocent correctional officers who were brutally and savagely murdered that evening. Nor should the litany of grievances in this Report at all detract from the truly remarkable fact that the Administration and its correctional officers succeeded in restoring order to Archambault by the following morning without seriously injuring a single inmate. This restraint in the face of panic and mayhem should not go unnoticed.

There is little question that a minority of guards has been involved in what has risen to the level of inmate torture or, at least, cruel and unusual treatment or punishment. From a purely human perspective, the emotion of resentment and a desire to exact retribution on the guards' part is understandable. It cannot, however, be condoned. When a society's guardians take the law into their own hands, the prospects for total anarchy and a crisis of confidence in the system become more likely. These acts cannot be excused, and they should not go unpunished.

Extreme situations such as those found at Archambault in the wake of the riot may, perhaps, have justified extraordinary measures on the part of the prison Administration. The massive general search was understandable, but denying inmates adequate food and access to counsel for over a month cannot be condoned. Likewise, subjecting them to more restrictive forms of incarceration upon a mere suspicion of involvement in the riot violates not only the Canadian Constitution and applicable Penitentiary Service Regulations but also Canada's obligations under international law as well. Even-handed justice must therefore be applied if Archambault is to return to the way it was before July 25, 1982: Inmates who participated in the violence must be punished according to proper procedural rules, including full representation by

counsel, and correctional officers who violated the rules governing proper conduct and who mistreated inmates should be sanctioned accordingly. In all cases, the punishments and sanctions applied should be made public.

Based on the above observations, I offer the following recommendations.

1. In addition to the investigations now under way concerning inmate misconduct, a separate, outside, and objective investigation concerning correctional-officer misconduct should be made and the results released to the public. Appropriate sanctions should be invoked against those guards whose behavior warrants such discipline.

2. Canada's Penitentiary Service Regulations should be reconsidered in light of the principles set forth in Canada's Constitution. Particular attention should be devoted to regulations concerning the loss of association rights.

3. Canada's Penitentiary Service Regulations should be amended to provide for a broader inmate access to counsel at all pertinent times as required by Canada's Constitution.

4. "Normal" conditions should be restored to Archambault immediately, including the resumption of adequate hot meals.

5. Inmates currently detained in the hole or who were transferred to the super maximum security facility and who have not been charged with or convicted of any improprieties concerning the July 25, 1982 riot should be returned to their normal form of incarceration, i.e., general population status, at Archambault.

6. Inmates who are due for parole and who have not been charged with or convicted of any improprieties concerning the July 25, 1982 riot should be released.

7. No inmate should be interrogated concerning his involvement in or knowledge of the July 25, 1982 riot without first being apprised of his right to have counsel present. The scope of the investigations now under way has extended far beyond the typical internal inquiry and has involved both inside and outside investigators. Because of the potentially serious charges which inmates found to have been involved may face, counsel should be present at all such inmate interrogations, if requested.

8. As many inmate privileges as possible should be restored as soon as is consistent with the institution's internal security. A weekly report should be issued by the Administration stating the current status of the situation inside Archambault until such time as it is publicly adjudged and announced by the Correctional Service of Canada that such reports are no longer necessary.

9. Canada's Solicitor General should report to the Human Rights Committee explaining the events that occurred at Archambault on and after July 25, 1982 and outlining what steps are being taken to guarantee Canada's future compliance with the International Covenant on Civil and Political Rights. The Human Rights Committee, on its part, should monitor Canada's future compliance with the International Covenant.

* * *

Whenever a tragedy such as the Archambault riot of July 25, 1982 occurs, a certain amount of institutional polarization occurs. Inmates may become pitted against the

guards and the Administration, and vice versa. Similarly, outside an institution such as Archambault, various groups will understandably press even further their own particular points of view. The atmosphere may become more strident and less conducive of understanding. On the one hand, there are groups or individuals who seem to believe that, once incarcerated, prisoners have relinquished all of their rights, while on the other hand some lobbying on behalf of the prisoners may appear to believe that inmates are constantly victimized and can do no wrong. Both such attitudes miss the point. Moreover, they tend to preclude what is most needed in the aftermath of a situation like Archambault's: dialogue.

The deaths at Archambault will signify nothing more than just another unfortunate prison tragedy if the parties concerned -- both inside and outside the institution and the corrections department -- cannot use this occasion to learn from mistakes and ensure that another Archambault never occurs. Although this Report has criticized strongly the conditions inside Archambault, the author sincerely hopes that the criticisms will generate constructive responses from all parties concerned, and especially from the general public. At stake are not only the lives of officers and inmates but the dignity of our common society. As Winston Churchill once reportedly remarked, "[a] society may be judged by the way in

which it treats its prisoners." If his observations are correct, then all of us have an obligation to ensure that another Archambault riot and its aftermath never occur again.

Additionally, there is a special obligation that all Canadians, and especially the Canadian Government, have to avoid another situation like the July 25, 1982 Archambault riot. That obligation is to the international community at large. Speaking at the Annual Meeting of the Canadian Section of the International Commission of Jurists in Toronto on August 31, 1982, the Honorable Mark MacGuigan, Canada's Secretary of State for External Affairs, discussed "The Canadian Approach to the International Promotion and Protection of Human Rights." In his remarks, Secretary MacGuigan said the following:

> "What, then, can we do to ensure genuinely effective promotion and protection of human rights and freedoms as a legitimate objective of Canadian foreign policy?
>
> "Our first priority, in my view, must be to ensure the health of our own society and institutions. There is no paradox in this statement. Human rights do not end at home but they do begin there. Thus our immediate duty is to preserve and expand our heritage of freedom in Canada. The Canadian Charter of Rights and Freedoms, which you have been discussing today, is a great milestone in this regard. Its origins and objectives are Canadian but it also bears upon our international obligations. For one thing, it is our domestic record that -- despite

> its blemishes -- gives us a credible voice in the field of human rights within the wider forum of the international community."

Unless Canada takes immediate steps to rectify the situation at Archambault, the Archambault riot and its aftermath will represent a blemish on Canada's domestic human-rights record and potentially threaten its credibility in this area with the international community. Canada's frank recognition that wrongs have been committed at Archambault, if accompanied by its sincere attempt to prevent them from reoccurring, will be the necessary first step towards a greater recognition by Canada at home and abroad of the basic rights and freedoms of all persons.