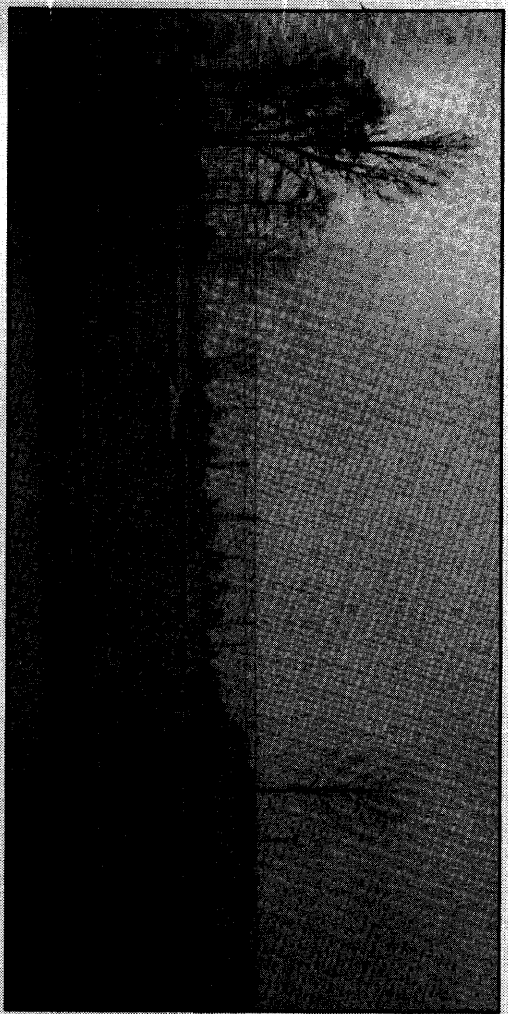


Oakdale Detention Center:

The First Year of Operation



A Report of the
Minnesota Lawyers International
Human Rights Committee

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Minnesota Lawyers International
Human Rights Committee
430 Marquette Ave., Suite 402
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MINNESOTA LAWYERS INTERNATIONAL HUMAN RIGHTS COMMITTEE

The Minnesota Lawyers International Human Rights Committee is a nonprofit organization committed to promoting human rights and to investigating human rights violations in the United States and abroad. The Committee was formed in 1983 by a group of lawyers concerned about human rights, and has since grown to include over 600 members.

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Cover Photo: A view of the Oakdale Detention Center, taken in February 1987.

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I. PREFACE

This report gives an account of human rights conditions at the Oakdale Federal Alien Detention Center during its first year of operation. The Center, located in Oakdale, Louisiana, is the largest immigration detention facility in the United States. This report is based on information obtained by two delegations from the Minnesota Lawyers International Human Rights Committee who visited the facility, and on additional background research.

The Minnesota Lawyers Committee investigated conditions at Oakdale for two reasons. First, the staff of Oakdale Legal Assistance reported that detainees were denied access to counsel and subjected to abuses within the facility. The Committee was also intrigued by the complete change in the purpose of the facility, after only six months of operation, from the detention and deportation of a diverse group of detainees to the long-term detention of Mariel Cubans who have been convicted of crimes in the United States. They are called "Mariel Cubans" because

they were among 125,000 Cubans who came to the United States on boats from Mariel Harbor, Cuba in 1980.

The first Minnesota Lawyers Committee delegation visited Oakdale from November 5-7, 1986. The members of this group included Susan Conley, Director of Centro Legal, a St. Paul non-profit community law office; Chris Peterson, a St. Paul attorney; and Carol Merlin Queensen, a Minneapolis Immigration attorney. They visited while Oakdale was still a short-term detention center for detainees from a variety of countries. This first delegation interviewed staff at Oakdale Legal Assistance (OLA), the Bureau of Prisons (BOP), the Immigration and Naturalization Service (INS), the Executive Office of Immigration Review (EOIR), several detainees at the facility, and local private attorneys. The group also toured the facility and observed approximately 20 hearings.

Among those interviewed were Victoria Sanford, OLA director; Tracy Jones, OLA attorney; OLA paralegals Robert Kahn, Sister Suzanne Lasseigne, and Molly Molloy; Ray Rowe, BOP assistant to the warden; Elliot Caggins, BOP Educational Director; Bill Buddenberg, INS Deportation Supervisor; INS attorneys Daniel Picchio, James Blin and Charles Weigand; Judge John Duck, EOIR; and private attorneys Lourdes Naranjo and Mark Oliver.

The second Minnesota Lawyers Committee delegation went to Oakdale from February 18-20, 1987. This delegation included Karen Ellingson, an attorney at Oficina Legal of Southern Minnesota Regional Legal Services; Lisa Knazan,

Minneapolis Legal Aid Society attorney; Ron Rosenbaum, a St. Paul attorney; Carol Merlin Queensen, mentioned above; and Kai Bjerkness, a staff person for Minnesota Congressman Gerry Sikorski. They visited after Oakdale became a facility for Mariel Cubans, and they investigated the changes this brought to Oakdale.

The second group also met with BOP and INS officials at the Oakdale facility and with Cuban detainees. Among those interviewed were J.R. Johnson, BOP warden; Elliot Caggins, BOP Educational Director; David Johnston, INS assistant warden; and Bill Buddenberg, INS Deportation Supervisor. They also spent about two hours touring the facility.

This report was written and edited by Marie Bibus and Barbara Frey, Minnesota Lawyers International Human Rights Committee; Susan Conley, Centro Legal; Karen Ellingson, Oficina Legal; Mary Beth Gossman and William Kennedy, University of Minnesota Law School; Lisa Knazan, Minneapolis Legal Aid Society; and attorneys Debby Kleinman McNeill, Chris Peterson, Carol Merlin Queensen, and Ron Rosenbaum.

II. INTRODUCTION

Recent United States immigration policy has shown an alarming shift toward the incarceration of undocumented aliens. This trend culminated in April, 1986 with the opening of the largest alien detention center in the country in Oakdale, Louisiana. The Oakdale Federal Alien Detention Center increased the detention capacity of the Immigration and Naturalization Service (INS) by 50 percent. The Center can permanently house 1,000 aliens, and has emergency facilities to hold 5,000 more.

Oakdale's first year of operation was one of change and transition. During the first six months, the Detention Center held aliens of many different nationalities (referred to below as multinational aliens) who were detained, waiting for their deportation or exclusion hearings. Most were from Central America. By November of 1986, thousands of these aliens had been deported.

On October 17, 1986, the INS announced at a press conference that the purpose of the Oakdale Detention Center

would change from temporary detention of multinational aliens to the indefinite detention of Cuban aliens only. All the deportable detainees were moved to other immigration detention facilities, such as Port Isabel in Texas, or were released on bond or on their own recognizance.

Beginning in December, several hundred Cubans were transferred to Oakdale from the Atlanta Federal Penitentiary. These Cubans, who came to the United States in the 1980 boatlift from Mariel Harbor, are in immigration custody because of crimes committed in the United States. Under ordinary circumstances, they would be deported. Cuban President Fidel Castro, however, has refused to permit their return.

The stated policy of the INS is the release of most of the Mariel Cubans to halfway houses during the next few years. It remains to be seen whether such a policy can be successfully implemented. If, and when, that policy is carried out, it is expected that Oakdale may revert to a short-term holding facility for multinational aliens. In the long-term future, the facility will remain available as a holding facility for unwelcome new aliens.

This report records some of the consequences of United States immigration policy as reflected in the operation of the Oakdale Detention Center. It describes the improper, illegal, and sometimes cruel treatment of the multinational aliens. It also records the most recent unfortunate chapter in the Mariel Cuban story. Finally, it makes

recommendations for a more humane approach to the problem of illegal immigration.

III. BACKGROUND: A SHIFT IN UNITED STATES IMMIGRATION POLICY

In 1958, four years after Ellis Island officially closed, the United States Supreme Court proclaimed, "physical detention of aliens is now the exception, not the rule. Certainly this policy reflects the humane qualities of an enlightened civilization." This decision marked the beginning of a new era during which the INS detained only a small percentage of all refugees.

The enlightened approach ended abruptly, however, less than 25 years later. The 1980's have seen a dramatic increase in the incarceration of refugees. In 1982, the INS passed a rule allowing the detention of all aliens without proper travel documents.¹ Now, only those aliens who fit into certain stringent categories, e.g. those

¹ 47 Fed. Reg. 46, 493 (1982), codified at 8 C.F.R. Sections 212.5, 235.3 (1985).

needing medical care, qualify to live in the community rather than in detention.

The recent restrictive policy coincided with the increase in immigrants fleeing extreme poverty and political violence in Haiti, Cuba, and Central America. During 1980, crowded boats brought 125,000 Cubans and 11,000 Haitians to the coast of Florida. In addition, some 400,000 to 600,000 Salvadoran refugees have crossed the Mexican-American border since 1982.

At least some of these immigrants qualify as refugees and are entitled to certain protections under international law. The United Nations Protocol Relating to the Status of Refugees was adopted to promote a more open policy toward refugees, particularly those fleeing persecution in their countries of origin. It prohibits the return of refugees to countries where their lives would be threatened, and states that unnecessary restrictions should not be imposed on the freedom of movement of refugees.

In 1980, the United States Congress passed the Refugee Act to make United States law coincide with international law. Under the Federal Act, people entering the United States without documentation have the right to apply for political asylum and to obtain legal counsel. The Attorney General has discretion to grant asylum if the applicant has a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." The United States Supreme Court recently held, in I.N.S. v. Cardoza-Fonseca, that

under this standard asylum applicants must only show a reasonable possibility that he or she will be singled out for persecution, not that it is more likely than not that he or she will be persecuted.

The increased use of detention defeats the purposes of the U.N. Protocol and the 1980 Refugee Act. Under current practice, refugees who choose to assert an asylum claim often have to wait in detention until the lengthy process is completed, unless they are able to post a bond which can be set at several thousand dollars. The prospect of detention that could last over a year can strongly discourage a potential asylum seeker. Asylum claimants are also deterred by the practical difficulties of preparing an asylum case while in custody at a remote facility where access to counsel is extremely limited.

Refugees from certain countries have little hope of being granted asylum under any circumstances because of inequities in the implementation of asylum law. Statistics show a relationship between American foreign policy and the approval of asylum requests. In cases decided between June 1983 and September 1986, only 2.6% of Salvadoran asylum applicants and .9% of Guatemalan applicants were granted asylum in the United States. In contrast, the approval rate during the same period was 60.4% for Iranians, 51% for Romanians, 37.7% for Afghans, and 14% for Nicaraguans.²

² The Cardoza-Fonseca decision will undoubtedly have an impact on these statistics. It is too early, however, to speculate on whether one nationality will benefit more than another.

The United States has systematically denied asylum to Salvadorans, despite evidence, such as that provided in a study conducted by the Massachusetts Institute of Technology, showing that "fear of political violence is the predominant motive behind the decision of Salvadorans to migrate." The Reagan Administration bases its position on its support of the current government in El Salvador, headed by President Jose Napoleon Duarte. The United States consistently refuses to acknowledge that an increasing number of civilians are fleeing El Salvador because of human rights abuses there. Instead, it categorizes all Salvadorans as economic migrants.³

The differential treatment accorded to asylum seekers from certain countries violates international law and the 1980 Refugee Act. The federal Act was enacted specifically to eliminate the political factor from asylum decisions. Despite this intent, foreign policy clearly continues to affect asylum decisions.

³ The practice of deporting Salvadorans was recently tested when President Duarte requested that refugees from his country be allowed to stay in the United States. Although the Reagan Administration rejected President Duarte's appeal, the INS acknowledged that it did not intend to round up large numbers of Salvadorans for deportation.

IV. THE PLANNING OF OAKDALE

The city of Oakdale, population 7,100, was very eager to have the detention facility built near the town. Unemployment in Oakdale hit 31.9% in 1986 after the area's largest employer, a paper mill, closed. Oakdale politicians and business people sought the Center as a partial solution to high unemployment. Oakdale Mayor George Mowad lobbied in Washington, and Oakdale residents sent the Justice Department hundreds of letters and telegrams urging that the new facility be located in their city. After the INS announced its decision, the local paper was topped with a three-inch headline in red ink that read, "WE GOT IT!"

Mayor Mowad felt the Detention Center would lead to the "economic rebirth of Allen Parish and Oakdale", and called the Center a "recession-proof industry." The city expected the Center to create 315 new jobs with salaries averaging \$24,000 a year. The city hoped the new jobs

would boost the economy in Oakdale, where the average annual income was only \$7,000.

In contrast, civil rights organizations opposed Oakdale as the detention center's site. The most immediate concern was that locating the facility in a small town, 200 miles from Houston or New Orleans, would make it extremely difficult for detainees to obtain legal counsel. Attorney Arthur Helton of the Lawyers Committee for Human Rights in New York pointed out that Oakdale had only five lawyers, none with experience in immigration law. In addition, a survey conducted by the American Civil Liberties Union (ACLU) found only three attorneys out of 650 in nearby cities who were willing or able to volunteer services for the detainees.

In 1985, the ACLU tried unsuccessfully to block construction of the Oakdale Detention Center. The ACLU lawsuit challenged the Oakdale site, arguing that the location was too remote and that aliens would be effectively denied access to counsel. A federal judge dismissed the case stating that the claims were premature, since the Center had not yet opened.

The construction of the Center was allowed to proceed and, on March 21, 1986, a ribbon-cutting ceremony was held. By that time, most of the buildings had been completed, except for the maximum security unit. The buildings included three dormitories with 988 beds and an administration building with eight courtrooms for immigration hearings. Two rows of fences topped with

barbed wire had been erected around the complex. The total construction cost of the facility was about \$17.5 million.

V. MULTINATIONAL ALIENS AT OAKDALE: April-November 1986

On April 7, 1986, the first group of 50 aliens was brought to the Oakdale Detention Center. During the next six months, the facility operated as a deportation center for a rotating population of 750-1,000 detainees from Central and South America, Africa, Europe, and the Middle East. The Center was equipped with three immigration judges and three INS attorneys whose primary function was to conduct deportation hearings. By October 1986, over 5,000 immigrants had been processed at Oakdale -- most were deported.

The following is a description of conditions of detention and due process concerns at Oakdale during the initial phase of short-term detention and deportation of immigrants from many countries. In particular, the sections below focus on access to counsel, the manner in which immigration proceedings were conducted, and abuses perpetrated upon aliens during their stay at the Center.

A. TRANSFERRING ALIENS TO OAKDALE

The availability of space and immigration judges at Oakdale became an immediate draw for the transfer of aliens from other parts of the country. The transfer of large numbers of aliens to Oakdale produced many problems. For example, many aliens were transferred without adequate notice or an order from an immigration judge granting a change of venue.

One well-publicized incident occurred during the week prior to the Independence Day celebration. Over forty Salvadorans from New York City were rounded up after the INS raided two factories in New York. Soon after their arrest, the aliens were chained together and put on a plane to Oakdale. Some of the aliens were not allowed to contact their families or their attorneys before they left New York.

The Minnesota Lawyers Committee delegation heard many similar stories of aliens, several with legal representatives on record, who were transferred with less than 24 hours personal notice, and little or no notice to their legal representatives. Detainees complained that the INS and the Bureau of Prisons lost their belongings. In some cities, the INS would not allow aliens to collect personal belongings before the transfer to Oakdale. It was also reported that some aliens were chained and handcuffed while being transported to Oakdale and, according to a detainee interviewed by the Lawyers Committee delegation,

one alien spent several hours locked in the baggage compartment of an INS bus.

B. ACCESS TO LEGAL COUNSEL

After arriving at Oakdale, many aliens discovered that it was almost impossible to obtain a lawyer. There was only one legal assistance office, Oakdale Legal Assistance (OLA), with one staff attorney to meet the demands of hundreds of aliens at the Oakdale facility. Under these circumstances, the right to obtain an attorney, granted to aliens under the 1980 Refugee Act, was meaningless.

1. Oakdale Legal Assistance

The OLA office was originally a satellite branch of the Ecumenical Immigration Service office in New Orleans. In June 1986, OLA was established as a separate organization because of its greatly increased workload. But when Oakdale became a detention facility for Mariel Cubans, OLA closed its doors.

During its existence, OLA was the sole provider of free legal services to the entire Detention Center population. The staff consisted of an executive director, a staff attorney, three paralegals, and short-term volunteers. Although the OLA staff worked seven days a week, 12-14 hours per day, they could serve only a fraction of the hundreds of aliens requiring legal assistance.

OLA concentrated on assisting aliens seeking asylum, particularly those who fled violent conditions in Central

America. OLA attempted to represent aliens both in actual asylum hearings on the merits and by getting cases transferred to other locations where more legal resources were available. According to OLA, in the first five months, it offered legal assistance to approximately 675 refugees, filed approximately 120 asylum applications, and helped more than 700 detained refugees establish contact with family and friends in the United States.

OLA's ability to provide effective legal assistance was hampered by the overwhelming demand for legal help, the lack of more experienced staff, and an antagonistic relationship with government personnel. The primary problem OLA faced was an impossible caseload -- they received up to 70 requests for legal representation every day. The staff tried to provide as much service to as many as possible.

At the same time, most of the staff had little experience in deportation proceedings. Of the three paralegals, only one had previous immigration law experience. Hence, the OLA staff was not in a position to challenge many of the irregularities in the immigration proceedings.

Finally, OLA staff were unable to develop positive working relationships with federal government personnel. The BOP, INS and EOIR were hostile towards OLA, viewing the staff as political activists. An EOIR staff member told the Minnesota Lawyers Committee delegation that EOIR support staff had discussed setting a policy allowing them

to help other legal representatives but not OLA. Ultimately, it was agreed that EOIR staff could assist legal representatives according to their own personal preferences.

On June 25, 1986, OLA paralegal Robert Kahn was ejected from the Detention Center for violating the prison's dress code, which states that T-shirts may not be worn. He was wearing a T-shirt underneath his dress shirt. On August 6, a BOP guard removed one of Kahn's clients before visiting hours were over. When Kahn complained, the guard shoved him. Kahn swore at the guard and was subsequently barred from the facility for 60 days. After the ACLU filed suit to reinstate Kahn's visiting rights, the BOP agreed to reduce the bar to 30 days.

On September 5, Kahn was arrested on a charge of trespass for taking pictures of the Oakdale facility from outside the prison fence. Kahn was jailed under a \$1,000 bond. The maximum penalty for trespassing was only \$500. After the ACLU threatened to sue again, this time for harassment, the trespassing charge was dropped. According to a report in the OLA newsletter, Kahn felt he was being harassed because of his investigation into abuses perpetrated at the Oakdale facility.

2. Other Legal Resources

Other legal resources for aliens detained at Oakdale were scarce. The BOP officials distributed the following names of organizations in New Orleans for aliens to

contact: Associated Catholic Charities, Loyola Law Clinic, and New Orleans Legal Assistance Corporation. In July 1986, a volunteer attorney at OLA, Nancy Kelly, called these organizations in an attempt to obtain legal representation for an alien in Oakdale. Each organization informed her that they would not accept any cases from Oakdale. None of the organizations was aware that their name had been distributed.

In addition, there was a problem with unauthorized practice of law by nonlawyers at Oakdale. Minnesota Lawyers Committee observers heard reports of paralegals and secretaries from private law offices making court appearances without attorney supervision. Detainees complained that one paralegal in particular would guarantee results, take an alien's money, and fail to follow through on a case. The allegations were particularly serious regarding bond proceedings. Detainees claimed that the paralegal would take the legal fees and assist the alien in posting bond but would incorrectly inform the alien that the proceedings were complete and that the alien was free to go without further hearings.

Apparently, none of the paralegals had been certified to represent aliens before the INS or EOIR, as is the accepted practice in other districts. No one questioned by the Minnesota Lawyers Committee delegation was able to explain why the nonlawyers were allowed to practice in Immigration Court, other than perhaps because of local practice of the Immigration Judges.

C. IMMIGRATION PROCEEDINGS: DUE PROCESS CONCERNS

Immigration proceedings at Oakdale were handled by the INS and EOIR. The INS transferred aliens to the facility, handled deportation and exclusion proceedings, and enforced departures or transfers to other facilities. The EOIR consisted of three immigration judges who decided cases and a few interpreters and clerks who assisted with the proceedings.

The BOP, INS and EOIR agencies were all housed at the Detention Center. This unique arrangement was designed to promote the efficient processing of aliens. In August 1986, the BOP Oakdale Detention Center Bulletin reported that over 4,500 persons were processed in and out of the facility since its opening in April -- roughly 250 people per week.

The Minnesota Lawyers Committee delegation observed that deportation hearings were conducted in a hurried manner, with little attention to the facts of each case. The INS presumed that the outcome of a proceeding would be an enforced departure and discouraged aliens from filing appeals or federal court actions. The delegation was told repeatedly by detainees, legal representatives, BOP officials, and EOIR staff that most aliens believed it was futile to fight deportation or to assert an application for relief from deportation, such as asylum or suspension of deportation.

The delegation also found that at master calendar hearings (first appearances), an overwhelming majority of

aliens appeared without counsel and had no understanding of the nature of the hearing. Although aliens were advised of their rights by the court clerk, they were sometimes misled concerning their right to an attorney or to various forms of relief from deportation.

Nancy Kelly, a former OIA attorney, gave the following account after attending several hearings. "The clerk advises the detainees that they have a right to an attorney but often mistakes the standard by telling them that they must pay for these services. It is not until much later in the presentation that she speaks to them about the list of free legal services. This leads to confusion among the detainees, and I believe that many choose to go to court alone because they cannot afford to pay an attorney, and they do not understand they can request free legal services." Other aliens chose to proceed without counsel rather than return to confinement for a seven-day continuance to obtain representation.

Kelly also observed that the clerk gave erroneous information concerning voluntary departures, telling aliens they were ineligible if convicted of a crime in the United States. She explained that "this is not consistent with 8 U.S.C. 125(a) which provides that a person who can establish that he has been a person of good moral character for at least the five preceding years, and who does not fall within certain categories set forth in 8 U.S.C. 1251, is eligible for the discretionary relief of voluntary departure." The law does not necessarily preclude a grant

of voluntary departure to those who have been convicted of crimes.

The hearings also suffered from a lack of interpreters. Kelly reported that during the hearings conducted on June 12, 1986, there were six Korean detainees who understood none of the proceedings. They were given a one week continuance to obtain counsel who could also function as an interpreter although, given the location of the Center, such a lawyer would have been virtually impossible to find. It was apparent that they left the hearing with no understanding of what had happened.

1. Conduct of the INS

The INS attorneys often conducted themselves unprofessionally. At times they acted unethically and contrary to the principle of due process of law. The attorneys showed contempt and disrespect for the aliens. INS attorney Daniel Picchio was heard referring to an alien in court (but off the record and outside the presence of the judge) as a "wlezebag client". In the same case, Mr. Picchio accused the alien's attorney of unethical conduct because she advised her client that he could seek a new or reopened bond proceeding since his venue had been changed. This advice by the alien's attorney appeared to be within the bounds of zealous representation and was certainly not unethical.

The most seriously unethical behavior reported to the delegation concerned the way INS attorney James Blinn

conducted himself in the courtroom, particularly when aliens were acting pro se. The delegation was told both by aliens and by EOIR staff that Mr. Blinn routinely shouted at aliens during deportation proceedings, telling them to quit arguing and to "shut up". He also told them, incorrectly, that they had no right to refute the evidence he read from his INS file.

Detainees also alleged that the INS retained legal documents or bond checks after they were confiscated by the BOP. Although the materials were mailed to the aliens by relatives or friends, they sometimes did not see the documents until the INS presented the information at the hearing.

In addition, evidence indicated that detainees were routinely and vehemently denied their right to review files. This right is guaranteed by the Freedom of Information Act and INS regulations pertaining to an alien's right to review material presented against him in deportation proceedings. Detainees were denied access to files without being told either the reasons for the denial or the amount of material withheld, both required by the Freedom of Information Act. These practices continued in spite of pro se federal litigation by detainees.

2. Conduct of Immigration Judges

The three immigration judges at Oakdale came to their positions with relatively little legal training or experience in immigration law and procedure. They seemed

very inexperienced to the immigration attorneys in the Minnesota Lawyers Committee delegation. For example, in a case where an alien was without counsel, the judge failed to inform him of forms of relief from deportation. The judge also ordered a couple deported when they were clearly eligible for suspension of deportation.

In addition, the judges did not maintain the independence required to assure a fair decision. Instead, they relied on the INS trial attorneys for guidance. For example, the delegation noted that one judge discussed the outcome of the case with the INS attorney outside the presence of the alien or his lawyer. The judges also failed to control the conduct of the government attorneys when they verbally harassed the aliens.

The Minnesota Lawyers Committee delegation also reported that the judges did not keep a sufficient record of the proceedings. During the hearings, the judges physically control the tape recorder which records the hearings. The delegation observed that many of the substantive discussions were not on the record because the judge had turned off the tape recorder. Thus, the only record for use on an appeal does not reflect all that went on at the hearing.

The judges seemed predisposed to view all aliens as economic migrants or people fleeing general conditions of war. They did not give the impression that they were willing to consider the evidence impartially in each case. For example, one judge told the Minnesota Lawyers Committee

delegation that he thought he was supposed to stay within the 2.6% approval rate for Salvadorans seeking asylum.

In addition, OIA staff and detainees complained that judges routinely raised bonds for the multinational detainees. Upon losing a hearing on the merits, an asylum applicant's bond was typically raised from \$2,500 to \$5,000. Even before the hearing on the merits, if a detainee asked for additional time to secure counsel or for any other type of relief, the judge raised the bond. For instance, one judge raised the bond of a refugee from \$2,000 to \$3,000 on the grounds that the detainee had no family or equity in the country. The judge ignored evidence presented by the detainee which included a photocopy of his brother's green card and his brother's promise to support him.

D. CONDITIONS OF DETENTION: HUMAN RIGHTS CONCERNS

Investigation into conditions of detention at Oakdale from April to November 1986, revealed a series of human rights abuses. In September 1986, OIA staff reported beatings of detainees, illegal strip-searching, inadequate medical care, confiscation of letters, and verbal harassment of detainees. The first Minnesota Lawyers Committee delegation was able to confirm many of OIA's allegations. Several of the reported incidents violated the BOP's own regulations and international law standards for the treatment of prisoners.

1. Physical Violence

There were numerous reports of violence inside the Oakdale facility. Specifically, there were allegations that guards battered and abused inmates.

A detainee from El Salvador, Luis Alvarado Abarca, attested that he spent eight days in solitary confinement. After the third day, he was allowed to see a doctor for a pain in his stomach. On his way back from the doctor's office, Mr. Abarca stated that he was approached by Lt. Velez, who seized his hands and pushed him to the ground. Velez and another official then threw him into the back of a truck. Mr. Abarca struck his mouth when tossed into the truck, and it began to bleed. While he laid face down in the truck, Lt. Velez placed his feet on Mr. Abarca's back. Mr. Abarca says he was never told why he was in solitary confinement and no hearing was held concerning his confinement.

The incident described above was witnessed by other detainees, including Hugo Rene Chacon. Mr. Chacon stated that he wrote a report describing the mistreatment of Mr. Abarca, but that it was stolen from his room. An OIA attorney, Sister Margaret Welch, wrote to Warden Steve Schwalb on August 25, 1986, complaining about this incident, but received no response.

A Liberian detainee, Gwendo Johnson, attested that on the morning of October 2, 1986, he had an argument with a prison official named Capt. Craven. Five prison guards, including Craven, later came to his unit and forcibly

removed him to a solitary room. He banged on the door demanding to be let out. The guards then took him to another room where they allegedly handcuffed his hands and feet to the corner of the bed. Then, said Johnson, "they beat me for almost ten minutes, while I was handcuffed to the bed. I was crying. They left me like that for three hours." Johnson said he suffered blurred vision for a week after the incident because Capt. Craven hit him in the eye.

The BOP Incident Report stated only that Johnson was charged with refusing to obey an order and insolence toward a staff member. According to the report, Johnson became belligerent and swore at Capt. Craven. He was then escorted to the Administrative Detention Unit, but refused to enter the room. The report does not mention any punishment of Mr. Johnson.

Incidents of physical abuse such as these clearly violate the BOP's own regulations. Section 541.10(b)(5) of the regulations prohibits corporal punishment. Placing inmates in segregation without notice of disciplinary charges within 24 hours and a hearing within two days, violates Sections 541.15 (a) and (b). Such incidents also violate the United Nations Standard Minimum Rules for the Treatment of Prisoners. Rule 31 forbids corporal punishment and Rule 33 forbids the use of instruments of restraint, such as handcuffs, as punishment. Rule 30 states that a detainee shall not be punished unless he has been informed of the alleged offense and given an opportunity to present his defense.

2. Strip and Pat Searches

During April and May, 1986, every detainee was subjected to a strip search after meeting with his or her attorney or other visitors. Some Salvadoran women chose not to obtain counsel rather than endure the humiliation of a strip search. Immigration attorneys requested a preliminary injunction against strip searches, claiming that the strip searches violated their clients' civil rights. On May 29, 1986, strip searching of inmates was banned by BOP officials at Oakdale. Random strip searching of detainees after social visits, however, continued. There also have been allegations by detainees that strip searching after legal visits still occurred after the ban.

Female detainees also continued to be thoroughly pat searched by male guards before and after legal visits and on other occasions. According to one detainee, Zintia Dominguez, the searches were done in a private room by a male officer, sometimes in the presence of another male guard. Dominguez complained that it was unpleasant and embarrassing to be searched by male, rather than female, guards.

3. Inadequate Medical Care

Detainees reported certain practices at the facility which could promote the spread of disease. Detainees with illnesses, such as influenza, were not isolated from others, increasing the risk that the disease would spread.

In addition, at least one detainee reported that the undergarments issued to detainees were filthy and unfit to be worn.

At least one pregnant detainee received inadequate care for her condition. Detainee Evangelina Tamba, who was five months pregnant, stated that she was required to wear elastic pants which were too tight. She also was not allowed to eat lunch on one occasion because she refused to tuck in her shirt.

One bilingual detainee, Zintia Dominguez, served as a translator for a Guatemalan detainee who was tested at the prison clinic for a heart condition. The doctor told Ms. Dominguez to tell the Guatemalan that he was fine. In English, though, the doctor told her that the man needed heart surgery, but that telling him he was fine would prevent him from worrying about his condition.

OLA paralegal, Paul Mux, reported that a Salvadoran detainee, Rafael Ramirez Gonzalez, was so dissatisfied with the medical care he received at Oakdale that he requested deportation back to El Salvador. Mr. Gonzalez suffered great pain in his leg because of an old gunshot wound. He reinjured the leg when he slipped and fell in the kitchen at Oakdale. He was taken to a local hospital and then returned to the clinic at Oakdale. He asked to be released from the clinic because it was too cold there. When he tried to return to the clinic later, he was allegedly denied medical assistance.

This treatment of detainees falls short of the Standard Minimum Rules for the Treatment of Prisoners. Rules 22 and 24 require that prisoners suspected of infectious or contagious diseases be segregated and that sick prisoners who require specialized treatment be transferred to specialized institutions or to civil hospitals. Rule 17 states that all clothing be clean and kept in proper condition and that underclothing be changed and washed as often as necessary for the maintenance of hygiene.

4. Other Problems

Other complaints about conditions at Oakdale included the confiscation and subsequent loss of personal property by the BOP, failure to provide enough books written in Spanish, and failure to keep the library open during recreation hours. These conditions violated provisions of the Standard Minimum Rules for Treatment of Prisoners. Rule 40 mandates that the BOP provide access to a library "adequately stocked with both recreational and instructional books." Rule 43 provides that the BOP safeguard the detainees' personal property and keep it in good condition.

E. CONCLUSION

From April through November, 1986, the Oakdale Detention Center functioned as a one-way revolving door which sent thousands of immigrants back to their countries.

These undocumented aliens experienced firsthand the cruelty of a policy of detention and deportation.

Aliens at Oakdale found it almost impossible to obtain an attorney. The Oakdale Legal Assistance Staff, even working 12-hour days, could not keep up with requests for legal help. To most Oakdale detainees, the right to an attorney, guaranteed by the 1980 Refugee Act, was an empty promise. In addition, those aliens who attempted to assert their rights on their own were frustrated by INS and EOIR actions, such as the confiscation of legal documents and denials of requests for information.

The Minnesota Lawyers Committee delegation observed that the primary objective of INS attorneys and Immigration Judges was the efficient deportation of aliens at the expense of constitutional rights. BOP and EOIR staff verbally abused aliens and misled them concerning their legal rights.

Finally, aliens detained at Oakdale while waiting for their hearings lived under chaotic conditions. BOP staff at times resorted to unnecessary violence in their attempts to control the huge population of immigrants. The Minnesota Lawyers Committee found that the incidents of physical abuse, combined with inappropriate strip and pat searches, inadequate medical care, and the confiscation of personal property violated the BOP's own regulations, as well as the Standard Minimum Rules for the Treatment of Prisoners.

VI. MARIEL CUBANS AT OAKDALE: November 1986 through the present

On October 17, 1986, the INS announced a dramatic "change of mission" for the new Federal Detention Center at Oakdale. Beginning in November 1986, the facility would house solely Mariel Cubans in preparation for release to half-way houses around the country. This decision was made at the INS Central Office in Washington and only later communicated to BOP and EOIR staff in Oakdale. According to Dave Johnston, INS Assistant Warden in Oakdale, the agency hoped to improve the process of releasing the Cubans to halfway houses by moving all those who might be eligible to one location.

A. CUBANS LYING IN LIMBO

Most of the Cuban detainees arrived in the United States by boat from Mariel Harbor, Cuba between April and June of 1980. The Cubans entered the United States as "conditional entrants," which means they are technically

excludable because they lack a valid passport or visa. Although excludable, most Cubans were allowed to live in the United States on "parole".

Almost all of the 3,400 Cubans currently in INS custody around the country had their parole revoked because of crimes committed in the United States. The Cubans have served their criminal sentences and are now detained indefinitely by the INS. They cannot be deported to Cuba because the Cuban government will not take them back.

The legal status of the Mariel Cubans is very different than that of illegal aliens from Central America who cross the border undetected, but are later caught. The Central Americans usually end up in deportation proceedings and are entitled to certain rights under federal law. For example, they may bring a habeas corpus action if detained more than six months after an order of deportation has been entered. In contrast, most Mariel Cubans are involved in exclusion proceedings. As excludable aliens, the Cubans have no right to challenge their prolonged detention through habeas corpus or any other proceeding.

Advocates for Mariel Cubans detained in Atlanta unsuccessfully tried to establish hearing rights for the Cubans. In October 1986, the United States Supreme Court refused to review an 11th Circuit Court of Appeals decision, Garcia-Mir v. Meese, which had dismissed all the Cubans' claims to relief under federal statutes, the Constitution, and international law.

Because of the legal problems with their immigration status, and the inability of the INS to deport them, many Cubans have lived for years in limbo in United States prisons and jails. No one has been able to tell them when or under what conditions they will be released. For example, one inmate at Oakdale when first brought to Atlanta was told that he would be there for three or four weeks. As it turned out, he was there for two and a half years.

From their interviews with several Cuban detainees, the second Minnesota Lawyers Committee delegation learned that virtually all the Cubans were confused about their legal status and did not understand why they were being detained. The Cubans felt their continued detention was unfair, since they have already completely served their criminal sentences. It was clear that they had never understood that they were not officially admitted to the United States, and were only given a conditional entry status that could be revoked at any time. It had also never been satisfactorily explained to them that the federal court system, after a long series of cases, had decided that they had very few rights under the Constitution.

The prolonged, indefinite detention of the Cubans violates the spirit of international law expressed in the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights. These international agreements provide a right to be free

from arbitrary detention and the right to freedom of movement.

B. PROCESS FOR RELEASE

The INS is using Oakdale to try and remedy the Cubans' situation in the United States. The agency plans to evaluate the Cubans' files, if they haven't already, and send those who appear to be good candidates for release to half-way houses around the country. The primary complaint among the Cubans at Oakdale was that they had not received enough information about the process of being released to a half-way house, or about the timetable for release.

The process of release to a half-way house basically involves three steps. Each Cuban must first be screened by an INS review panel to determine if he is a favorable candidate for release. They must then have an interview with the Community Relations Service (CRS), a small office within the Justice Department, and with a half-way house representative who decides whether the Cuban should be accepted into a half-way house program.

1. INS Review

The INS Commissioner, Alan C. Nelson, recently approved a plan to review the cases of all Cubans who have not yet been approved for release by the INS. Under the plan, an immigration review panel composed of two immigration officials will examine the Cubans' records, and

recommend that they either be released or interviewed by the panel.

According to Panel Director, Thomas Curl, the panel will consider the following factors when making its decision: the Cuban's criminal record in the United States and Cuba; disciplinary infractions or incident reports received while in custody; psychological history; completion of educational or vocational training, including work done in prison; and general background. Based on these factors, the panel will make a determination whether the Cuban is non-violent, likely to remain non-violent, and unlikely to pose a threat to the community if released.

If the two panel members disagree on the recommendation, Curl will cast a deciding vote. The panel then reports its recommendation to the Commissioner who makes the final decision whether a Cuban will be released.

The panel will begin reviewing cases during Summer 1987 at the Atlanta Federal Penitentiary, the Krome Detention Center, and at Oakdale. According to Curl, Cubans who are selected for personal interviews will receive prior written notice, and will be entitled to have an attorney or other representative present during the interview.

The new review panel is similar to a panel established under the Justice Department's "Status Review Plan" which was in effect from 1981-1984. Under that plan, approximately 2,040 Cubans were released from detention. The panel was discontinued when the United States reached

an agreement with Cuba providing for the return of some Cubans. Many Cubans at Oakdale were reviewed by that panel in 1984 and have since been waiting to be released.

It is unclear what will happen to those Cubans who are not favorably reviewed by the new panel, or to those who are released but who then commit more crimes. Theoretically, they could be sent back to the Atlanta Federal Penitentiary to be held indefinitely. Mr. Curl indicated that detainees who receive a negative recommendation may be reviewed again, but was unable to say when the subsequent reviews would take place.

2. Interview with Half-Way House and CRS

The second step in the process for release involves an interview with CRS and with representatives of a particular half-way house who decide whether they want to accept the individual. The Cuban must meet both CRS guidelines and half-way house requirements before they can actually be released. CRS will consider factors similar to those examined by the INS review panel, including the Cubans' criminal record, any drug dependency, mental impairments, education level, participation in prison industry, and family or community support.

CRS will probably reject Cubans who have a long record of violent behavior both while incarcerated and prior to incarceration. According to a staff attorney in the Justice Department, persons with the following types of

criminal convictions would not be accepted into a half-way house program:

Murder
Attempted murder
Cutting with intent to kill
Major drug trafficking or possession of large quantities of drugs with intent to sell
Sex crimes
Arson
Violent assaultive behavior in connection with a felony, with or without a weapon
Established history of multiple felony convictions

In addition, each half-way house has its own set of requirements which prospective residents must meet. For example, a particular half-way house may require that the Cuban be proficient in English. If the Cuban does not speak English very well, he would be rejected. The Cuban would then stay on the list and could be interviewed by another half-way house which might have different requirements.

The Community Relations Service coordinates and monitors the interviews of Cuban detainees. CRS is the only agency authorized to contract with half-way houses. On May 29, 1987, CRS published a notice in the Federal Register stating that it now has funding available to contract with three half-way houses that can provide "Special Placement Programs." If a half-way house is interested in contracting with the Department of Justice, it must submit a proposal application to the CRS office in Chevy Chase, Maryland by July 31, 1987.

There are currently only five half-way houses in the country that have been approved by CRS. They are located

In Columbus, Chicago, Kansas City, Detroit, and St. Louis. Some Cubans would like to be relocated to Miami or other areas where they have family members. Unfortunately, according to the CRS, funding will not be given to any half-way houses proposing to resettle Cubans in Florida. Also, there will be a heavy burden on half-way house program applicants from states heavily impacted by Cuban or Haitian entrants to show they can assure employment and community support. CRS will be accepting proposals for three more half-way houses during Summer, 1987. It is not clear, however, when any facilities will receive final approval or where they will be located.

Once they are released, the Cubans will spend four months living in a half-way house. After that time, they may live in the community but will remain under conditional parole for a minimum of eight months.

Once they have completed a half-way house program, INS officials indicated that the Cubans' parole will continue to be reviewed by the District Director of the Immigration District in which the Cuban resides. Even when the Cubans are living in the community at large, they still cannot legalize their status. They will remain excludable due to their criminal convictions.

3. Rate of Release

Oakdale officials estimate that about every month, twenty Cubans from Oakdale will have completed the screening and will be released to one of five half-way

houses. As of May, 1987, about 140 Cubans had actually been released to half-way houses. Even at this rate, however, it will take about two years before all 600 Cubans currently at Oakdale are released, unless many more half-way house spaces are approved. It would take about ten years to funnel all the Cubans currently in detention around the country through this process.

4. Order of Release

The Cubans at Oakdale are put on a list chronologically according to when they entered the facility. So, for example, those who came in the first group of Cubans in December are much higher on the list than those who have arrived more recently. Those Cubans who have been in the system longest will be the first interviewed by half-way house representatives. Most of the Cubans have no idea where they are on the list. This lack of information has unnecessarily exacerbated the frustrations felt by the Cubans.

5. BOP Review and Disciplinary Procedures

At Oakdale, the Cubans' behavior is monitored by BOP case managers and counselors. The stated policy of the BOP is to review each Cuban every 90 days to see if there are any problems or concerns. The review committee is composed of the unit case manager, the unit counselor, the psychologist, and the educational representative. There are also weekly inspections of the living quarters.

If a Cuban commits a serious violation of institution rules, they will have a hearing before the unit disciplinary committee. The committee could decide to confine a person to the lockup area. The individual may be locked into the room for 23 hours at a stretch and only allowed out for one hour of exercise or recreation.

The behavior of the Cubans while in detention is taken into account by the CRS and half-way houses when they review the Cubans. As a result, the second Minnesota Lawyers Committee delegation had the impression that most of the Cubans were behaving like model prisoners, hoping that this would facilitate their acceptance into a half-way house. It is also likely they fear being sent back to the Atlanta Federal Penitentiary.

C. CURRENT CONDITIONS AT OAKDALE: AN IMPROVEMENT FOR THE CUBANS

Conditions at the Oakdale facility seemed to improve after the facility's transition to the long-term detention of Mariel Cubans. The second Minnesota Lawyers Committee delegation did not observe the abuses which had been common when multinational aliens were there. BOP personnel said they prefer working with the Cubans because they have records available to them on the history of each detainee. They did not have any comparable information about the multinational detainees.

All of the detainees interviewed by the second delegation reported that Oakdale is a better place than the Atlanta Penitentiary where most of them had spent the past

few years. The Cubans were glad to leave Atlanta, with its crowded conditions and high rate of suicides, homicides, and assaults. In addition, the transfer to Oakdale gave the Cubans increased hope of eventual release.

Although conditions at Oakdale are an improvement compared to other facilities, there have been some incidents at Oakdale which reflect the continuing frustration felt by the Cubans. According to a BOP representative, Lynnette Johnson, a few Cubans at Oakdale have engaged in acts of self-mutilation by cutting their arms. She reported, however, that there have not been any serious disturbances since the Cubans arrived.

1. Educational and Recreational Programs

After the transition to the detention of Cubans, the women's unit was converted to an educational area. There are two full-time instructors who teach five levels of English-as-a-Second-Language classes. Classes are offered in the mornings and evenings. It is also possible to get a high school equivalency degree at Oakdale. Another important component of the Educational Program, according to BOP staff, will be to help the Cubans develop interviewing skills to prepare for half-way house interviews.

There is a long waiting list to get into the education program at Oakdale. Detainees interviewed by the Lawyers Committee delegation complained that they very much wanted to study, but there were not enough spaces in English

classes. Many of the Cubans have a strong interest in learning English, especially since English language ability could make it easier to get into a half-way house program.

There is also a law library at the facility. The Cubans use the library less often than the multinational detainees who had more to gain from legal remedies. One Cuban detainee, however, complained that there were not enough books in Spanish.

Detainees normally are allowed time for recreation from 1:00 to 3:00 p.m. There are basketball courts, volleyball nets, weight-lifting equipment, etc. in the vast open court in the middle of the various units. Mr. Caggins has established a recreational program which includes sporting events and has acquired more musical instruments for detainees to use. Both Minnesota Lawyers Committee delegations thought Caggins was very committed to providing quality educational and recreational services to the Cubans.

2. Medical Care

The Oakdale facility has a hospital with four patient rooms and a "dry" room for any individual having drug-related problems. There is a staff doctor, a psychiatrist, and one dentist. The BOP plans to add another doctor and a psychiatrist to the staff. There is also a pharmacy on the premises. Any individuals who need special care are supposed to be sent to hospitals in Oakdale or Alexandria.

According to the BOP, all inmates are given a basic physical exam when they enter Oakdale. Apparently, the refugees from various parts of Central and South America needed far more medical and dental attention than the Cubans. The Cubans, having been imprisoned in Atlanta, are in better physical shape and do not require as many hospitalizations as did the former detainees at Oakdale.

3. Work Opportunities

One worksite at Oakdale, called Unicorps was already in operation when the second Minnesota Lawyers Committee group visited in February. Unicorps provides jobs for a number of Cubans who hem white towels which are then sold to the military and other federal institutions. There are five pay levels within the Unicorps system, ranging from 22 cents per hour to \$1.10 per hour. Unicorps is designed to make a profit which is then used for educational or recreational programs.

There is a long waiting list for the much sought after positions at Unicorps. The BOP also plans to open a textile factory during the summer of 1987 which could employ an additional 400-500 Cubans. Inmates are also involved in landscaping and masonry work at the facility.

4. Mental Health Unit

A more secure unit for up to 300 Cubans with significant mental health problems opened at Oakdale on April 1. Most of the detainees in that unit were formerly

in Atlanta or in the St. Elizabeth's facility in Washington, D.C.

According to BOP staff, there may be some work opportunities for those in the mental health unit and, possibly, some may be eventually released into half-way houses equipped to handle persons with mental health problems. Despite the optimistic picture presented by BOP staff, however, this group of Cuban detainees will probably have a difficult time qualifying for release because of their psychological problems. Their confinement could, therefore, continue for several more years.

D. ACCESS TO COUNSEL

Before their transfer to Oakdale, many of the Cubans had obtained legal representation through Atlanta Legal Aid, or through pro bono panels of private attorneys in Atlanta. There are virtually no attorneys assisting the Cubans in the Oakdale area. The Oakdale Legal Assistance Office, whose primary interest was in Central America, has closed. Local private attorneys appear to have little interest in representing the Cubans.

E. CONCLUSION

Life for the several hundred Mariel Cubans held at Oakdale since December, 1986 can be described as a waiting game. The Minnesota Lawyers Committee delegation found that, while most Cubans are happy to have escaped the horrendous conditions at the Atlanta Federal Penitentiary,

they are also tired of the endless waiting. They are on waiting lists to get into English classes, work programs, or to see a doctor. They wait for bits of information about their status, and to see family or friends who can only afford to make the long trip to Oakdale every few months. Finally, they hope Oakdale will be their last detention facility, as they wait for the INS and CRS to release them to a half-way house.

While the Cubans' frustrations with their indefinite status increase, the wheels of government bureaucracy are slowly turning. The INS has finally established a new panel to review the Cubans' cases, and funding has been approved to contract with more half-way houses for the provision of special placement programs.

Despite these steps in the right direction, there will probably be Cubans in detention at Oakdale and other facilities for several more years. The future of those Cubans who have more serious records, or a history of mental illness, is particularly uncertain. The stated INS and CRS guidelines and the limited number of half-way houses could preclude their release, in effect, sentencing them to potentially lifelong incarceration.

VII. SUMMARY OF FINDINGS AND RECOMMENDATIONS

A. FUTURE OPERATIONS FOR MULTINATIONAL ALIENS

By constructing the Oakdale Detention Center, the federal government demonstrated its continuing commitment to a general policy of detention for illegal aliens. The opening of Oakdale raised many questions concerning the human rights consequences of this policy and its appropriateness under international law. The Minnesota Lawyers Committee examined these questions while observing the first year of operation at Oakdale.

The Minnesota Lawyers Committee found that the operation of Oakdale during its first six months resulted in violations of the U.N. Protocol relating to the Status of Refugees, the U.N. Standard Minimum Rules for the Treatment of Prisoners, the 1980 Federal Refugee Act, and the Bureau of Prison's own regulations.

From April to November, 1986 the Oakdale facility basically functioned as a holding area for aliens awaiting

deportation. During this period, detainees were routinely denied access to counsel, Immigration proceedings were conducted improperly, and conditions of detention were poor. Many aliens at Oakdale were effectively deterred from asserting their legal rights by the prospect of long term detention and the scarcity of competent legal assistance. In short, the facility improperly greased the wheels of deportation for aliens held at the Center. Streamlining that process took precedence over the protection of constitutional rights.

If, in the future, the facility reverts to its original purpose of short-term detention of multinational aliens, several changes must be made to guarantee that such abuses do not happen again. The three agencies involved-- the INS, BOP and EOIR -- all share in the criticism. Each must substantially improve its performance before again attempting to deal with a multinational population. Some of the recommendations below also apply to other detention facilities run by the INS where conditions are similar to those found at Oakdale from April to November 1986.

1. Access to Counsel: Due to its remote location, access to counsel will always be a problem at Oakdale. Therefore, the INS must recognize the inherent unfairness of transferring in aliens who have already retained counsel in other areas. Due caution must be exercised by both the INS and the EOIR to guarantee that aliens without counsel are not pushed through deportation proceedings without being informed of their rights and how to exercise them.

All aliens must be afforded time to obtain counsel if they so desire. For those aliens with asylum claims, bond should be set at reasonable levels and venue changed where appropriate. In short, the system must operate to facilitate fairness, not to circumvent it.

2. Immigration Proceedings: Immigration judges must take responsibility to insure that immigration proceedings are conducted fairly. They should function independent of the INS and guard against any ex-parte communication with INS attorneys. They should exercise proper control in their courtrooms, and make sure that aliens understand their rights, particularly if they are appearing without counsel.

3. Conditions of Detention: The BOP should expand its staff, especially adding more people who are bilingual and have experience working with refugees. More medical personnel are also necessary. The BOP must also provide more comprehensive training for employees to help them develop the required cultural sensitivity in order to be humane and effective, without being abusive. Any custodial staff, either BOP or INS, who engage in the unreasonable use of force against detainees must be disciplined or dismissed.

The BOP should alter its policy regarding searches and the confiscation of personal belongings and mail received by detainees. All strip searches should be banned unless there is reasonable cause to believe that a detainee is concealing weapons or contraband. Pat searches should not

be done in conjunction with legal visits. Pat searches of women must only be conducted by female staff.

The BOP must also improve its system for retaining personal belongings so that they can be returned to individuals when they leave. Mail should not be searched or seized unless there is reasonable cause to believe it contains weapons or contraband. Legal documents addressed to detainees should not be sent to the INS.

B. FUTURE OPERATIONS FOR MARIEL CUBANS

The Minnesota Lawyers Committee found significantly fewer problems concerning conditions of confinement for Mariel Cubans at Oakdale. Moving the Mariel Cubans out of the Atlanta Federal Penitentiary and other crowded facilities is a positive step. Likewise, the government deserves credit for attempting to expedite the release of this population into half-way house programs, and helping pave the way by instituting educational and work programs.

Ultimately, however, the success of the program will turn on the number of Cubans actually released. Unless those numbers remain constant, what is now a glimmer of hope will turn to frustrations when the Cubans realize their release has again been postponed indefinitely. To ensure the continued success of the program, the Minnesota Lawyers Committee recommends the following:

1. Half-way Houses: Several more half-way houses must be approved by CRS without further delay. There simply are not enough spaces currently available to

accommodate the anticipated number of Cubans to be released. And, although three new half-way house programs could handle about 120 Cubans per year, additional programs will soon be needed to assure an adequate rate of release.

2. Direct Release: Those Cubans with minimal non-violent criminal records should be released directly to a sponsor or to family members. A short stay at a half-way house is unnecessary for those Cubans who are not deemed dangerous, who already have the skills to support themselves, and who have contacts in the community to help them start again.

3. Improve Communication: The Cubans and their families must be provided with more information about their status and the process for release. The prolonged detention of the Cubans has been unduly cruel in part because of its indefinite nature. Common decency dictates that the Cubans be kept informed as to any guidelines for release, and the expected timetable for any reviews by the INS or half-way houses.

4. Limit on Length of Detention: The INS must address the future of those Cubans who will never qualify for release under the present plan, and those who commit further crimes after their release. There should be a ceiling on the length of time a detainee can remain in immigration custody unless proven dangerous to the community. Without some time limits, those Cubans who are not good candidates for release will be serving the equivalent of lifetime prison sentences without ever having

been formally convicted or sentenced of crimes carrying such a penalty. Such a draconian result violates international law and flies in the face of basic human rights principles.

VIII. CONCLUSION

The increased use of detention as a means of deterring illegal aliens is a backward and inhumane approach to immigration problems. It violates the letter and spirit of international laws regarding the treatment of refugees and is particularly shameful in a country that has traditionally welcomed immigrants. The human rights problems which arose at Oakdale during its first year demonstrate some of the adverse consequences of a general policy of detention. The Minnesota Lawyers Committee found that aliens at Oakdale were denied meaningful access to counsel and subjected to conditions of detention that met neither BOT standards nor U.N. Standard Minimum Rules for the Treatment of Prisoners. Despite protections guaranteed under international law and the 1980 Refugee Act, most aliens ultimately were deported to their countries of origin where many risked persecution, imprisonment or, in some cases, death.

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The Cubans, although not currently threatened with deportation, face continuing indefinite detention in violation of basic principles of international law. The criteria for their release are still unclear, and given the limited number of half-way houses, it could take several years before most are re-paroled. Those Cubans with mental problems or serious crimes may never be released. Others must wait while government plans for releasing them are slowly played out.

Clearly, detention of aliens as a matter of course is not an appropriate solution in a civilized nation, and should be used only as a last resort. A policy of detention endangers the human rights of all those seeking to enter the United States, and the mere existence of institutions like the Oakdale Detention Center poses a threat to the concept of freedom which our society values so highly.

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