

In The Circuit Court for Baltimore City
CIVIL

In the Matter of

NATHANIEL HARRINGTON

VS

SECRETARY OF PUBLIC SAFETY AND CORRECTIONAL
SERVICES

116244

P 724 023 284

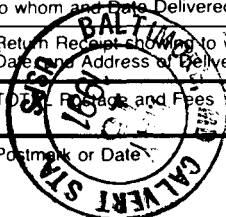
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90190075/CL116244
Harrington vs.
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Harrington vs.
Sec. of Public Safety

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P 724 023 284

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409

THE CIRCUIT COURT FOR BALTIMORE CITY

CATEGORY APPAA

CASE NO. 90190075/CL116244

PAGE 1 of

PARTIES	ATTORNEY(S)
<p>Nathaniel Harrington #180801</p> <p>vs</p> <p>Secretary of Public Safety and Correctional Services</p>	<p>Proper Person</p> <p><i>9/14/94</i> Joseph B. Tetrault</p> <p><i>443465</i></p> <p>Steven S. Hildenbrand</p>

DATE	DOCKET ENTRIES	NO.
7-9-90	Order for Appeal from the Decision of the Inmate Grievance Commission and Petition	1
7-9-90	Motion to Proceed without Payment of Cost and Statement of Indigency	2
7-9-90	Order of Court Granting Leave to Proceed without Advance Payment of Court Costs.	3
	Summons Issued	
<i>8/1/90</i>	<i>Enter the app. of attorney Joseph B. Tetrault for</i>	<i>4</i>
<i>8/1/90</i>	<i>Petition amended for reversal of administrative agency decision</i>	<i>5</i>
<i>8/13/90</i>	<i>App. of attorney Steven S. Hildenbrand for deft. same day answer to amended</i>	<i>6</i>
<i>8/13/90</i>	<i>Transcript of record (at C.T.F) pgs 19</i>	<i>7</i>
	<i>Notice sent in accordance with the M.D. Rule 5-12</i>	

Court of Special Appeals

18
AUG 15 1991

No. 33, September Term, 1991
Type MS

Nathaniel Harrington
vs.
Inmate Grievance Commission

DISPOSITION OF APPEAL IN COURT OF SPECIAL APPEALS:
July 31, 1991: Per Curiam. Application for
leave to appeal denied.

RECORD RETURNED TO CLERK OF CIRCUIT COURT FOR:
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BALTIMORE, MD 21202 DATE: 7/31/91

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REMARKS:

AUG 15 1991

UNREPORTED

(17)

IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

Application For Leave To Appeal

Misc. No. 33

September Term, 1991

NATHANIEL HARRINGTON

v.

INMATE GRIEVANCE COMMISSION

Moylan,
Davis,
Motz,

JJ.

PER CURIAM

Filed: July 31, 1991

The application of Nathaniel Harrington for leave to appeal from a denial of relief from an inmate grievance proceeding has been read, considered and is hereby denied.

APPLICATION FOR LEAVE TO
APPEAL DENIED.

me 33/41

91 MAY 21 PM 12: 53

NATHANIEL HARRINGTON

APPELLANT

* IN THE
L.D. GRADET, CLERK
* COURT OF

(16)

V.

* SPECIAL APPEALS

BISHOP L. ROBINSON, SECRETARY
OF PUBLIC SAFETY AND
CORRECTIONAL SERVICES

APPELLEE

* NO.:
* (Circuit Court for
* Baltimore City Case
* No. 90190075/CL116244

* * * * *

RESPONSE TO APPLICATION FOR LEAVE TO APPEAL

Appellee Bishop L. Robinson, Secretary of Public Safety and Correctional Services, by his undersigned counsel, pursuant to Md. Rule 8-204(d), states that Nathaniel Harrington's request for leave to appeal should be denied for the reasons set forth in the following response.

Introduction

Appellant, an inmate at the Maryland Penitentiary, contends in his application for leave to appeal that the Circuit Court's judgment affirming Secretary Robinson's dismissal of Appellant's inmate grievance should be reversed because the Division of Correction failed to comply with one of its own regulations, Division of Correction Regulation ("DCR") DCR 110-19. Appellant further contends that the failure to comply with DCR 110-19 caused Appellant to remain assigned to an administrative segregation cell from July 27, 1988¹ until January

¹ Appellant in paragraph 5 of his Memorandum in Support of Amended Petition for Reversal of Administrative Agency Decision (Circuit Court Record, pages 137-145, at page 138) concedes that his initial placement on administrative segregation on July 27, 1988, for the reasons that a criminal investigation was pending, was proper.

1989 when he was approved for transfer to an institution of greater security, the Maryland Correctional Adjustment Center ("MCAC"), and he further contends that he would not have been transferred to MCAC if he had not been on administrative segregation at the Maryland Penitentiary. Appellant is currently at the Maryland Penitentiary, having returned there from the MCAC on April 5, 1990.

Argument

1. The Circuit Court was correct as a matter of law in its decision that the investigative reports required by DCR 110-19 need not be in writing and need not be submitted in writing to the classification team.

Appellant Harrington claims that his continuation on administrative segregation for the reasons that a criminal investigation of his involvement in a July 25, 1988 prison riot was ongoing was improper because no written investigative report was ever submitted to the prison classification team by Division of Correction personnel. Appellant contends that the provisions of Section VI.A.4.c. of DCR 110-19 require that a written investigative report be submitted to the classification team. A copy of DCR 110-19 is attached as Appendix A to Appellant's request for leave to appeal.

Secretary Robinson's decision, concluding that DCR 110-19 Section VI.A.4.c. does not require that a written investigative report be given to the classification team, is consistent with the regulation itself. The Circuit Court's decision affirming the Secretary's interpretation of that regulation is thus not an error of law.

Applying the same rules that are used in the construction of statutory and constitutional language to the interpretation of an agency's regulations, Messitte v. Colonial Mortgage Service Co., 287 Md. 289, 293, 411 A.2d 1051, 1053 (1980), Appellee contends that the Circuit Court was correct in stating that DCR 110-19 Section VI.A. 4.c. does not require that the investigative reports are to be written or that the reports are to be submitted to the classification team. The language of the regulation plainly states that "[a]n investigative report shall be prepared and made available to the classification team at the initial hearing or as soon as possible." The Circuit Court was correct in stating that the language "prepared" does not necessarily entail submitting a written report to the classification team. Even if it were concluded that the regulation intended that correctional staff prepare a written report, the regulation does not contain language requiring that the report be submitted. Verbal reports, as the record in this case shows were made by Major Thompson to the classification team, were sufficient to meet the regulation's requirements that an investigative report be made available to the team.

Furthermore, the specific procedures set forth in DCR 110-19 Section VI.A.7. for continuing an inmate on administrative segregation are very broad ("as long as there is a need") and do not contain any language requiring submission to the classification team of any written reports, statements or evidence to justify continued segregation confinement. Neither does the Supreme Court require that additional documentation be

provided to prison officials making a decision concerning continuation on administrative segregation. Hewitt v. Helms, 459 U.S. 460, 477, n. 9, 103 S.Ct. 864, 874, n. 9 (1983). The record in this case shows that the monthly reviews of Appellant's status on administrative segregation (R.5, pages 8, 10, 12 and 13) satisfied the periodic review requirement of Hewitt concerning continuation on administrative segregation. Id. at 476, n.8, 874, n.8. Appellant in paragraph 11 of his Memorandum (Circuit Court record at page 139) concedes that the provisions of DCR 110-19 meet the due process requirements of Hewitt, supra.

However, Appellant contends that as the Division of Correction went beyond the minimum due process requirements of Hewitt in requiring the preparation of an investigative report in DCR 110-19 Section VI.A.4.c., the Division is required to comply with its own regulation but failed in Appellant's case to do so. Appellant argues that the failure to comply with the regulation resulted in Appellant's continuation on administrative segregation. The effect that any written investigative report or that both of Captain Ford's reports to Major Thompson would have had if submitted to the classification team is purely speculative. Although Appellant argues that such a report would have resulted in his release from administrative segregation, Appellant's counsel candidly admitted, in response to a question asked by Judge Ellen L. Hollander at the Circuit Court oral argument, that any recommendation in such a written report given to the classification team would not have been binding on the classification team, or for that matter to the Warden who would

have reviewed the team's recommendations. The effect of an investigative report on the Appellant's continued assignment to administrative segregation is all the more speculative due to the fact that Captain Ford's second report dated September 15, 1988 (R.18, pp. 22-23), that recommended against release from administrative segregation, was prepared prior to the first periodic review of Appellant's status that occurred on September 28, 1988. As Appellant contends that the failure to complete and submit a written investigative report to the classification team caused him to remain on administrative segregation, it is little wonder that Appellant argues that because Captain Ford's reports were not provided to the classification team, those two reports should not be considered as the basis of the substantial evidence upon which the Appellee Secretary Robinson's decision can be sustained. The Circuit Court, however, did not rely on Captain Ford's reports to support its decision.

2. There was substantial evidence to support the Circuit Court's decision.

Concerning Appellant's transfer to the MCAC, Appellant contends, apart from his administrative segregation status, that based on his institutional adjustment history of only one major infraction in 1986 and two adjustment convictions for minor rule violations, no substantial evidence exists that he has a history of prison disciplinary rule violations which would warrant his classification as a "special management" inmate deserving of transfer to the MCAC pursuant to DCR 100-5 Section V.A.5. Contrary to Appellant's contentions that if his continuation on

administrative segregation had not occurred, that there would not have been sufficient justification based on his institutional adjustment history to transfer him to the MCAC, the transcript of the Inmate Grievance Commission hearing shows from the testimony of Pamela Sorensen (R.5, page 6), that because of the nature of the 1986 major rule violation concerning contraband that he tried to bring into the prison through a visitor (R.5, page 7), and because there was still the reduced incident report pertaining to the July 25, 1988 riot, substantial evidence exists in the record upon which a classification team may have still based a recommendation for classification to the MCAC even without the existence of any continued administrative segregation.

Concerning the determination that DCR 110-19 does not require preparation and submission to a classification team of a written investigative report, there is substantial evidence in the record from the actual language of Sections A.4.c. and A.7 to support that determination. The fact that Appellant contends there were conflicting facts in the record concerning the custom and practise at the Maryland Penitentiary concerning the submittal of written reports to a classification team responsible for deciding and reviewing administrative segregation, is not sufficient to overcome the fact that there is substantial evidence in the record upon which the Appellee Secretary and the Circuit Court reasonably based the decision that no written report was required.

Further, concerning evidence of the existence of a criminal investigation, Appellant Harrington's testimony (R.18,

page 12) and Ms. Sorensen's testimony (R.18, pages 8-9, 13) are sufficient to show that substantial evidence exists in the record to support a conclusion that the classification rationale of a pending criminal investigation was supported by fact and not created as an excuse to punish Appellant. Ms. Sorensen in fact testified as to her recollection of some inmates who actually had trials for their involvement in the July 25, 1988 riot and that those inmates were not charged and tried until after the beginning of the year 1989 (R.18, pages 8-9). There was thus substantial evidence in the record to support the fact that Appellant was continued on administrative segregation due to a pending criminal investigation that extended into 1989.

CONCLUSION

For the above reasons, and for the reasons set forth in the Circuit Court's Memorandum Opinion and Order and in the Appellee's Response Memorandum of Law (Circuit Court record, pages 146-153), Appellant Harrington's request for leave to appeal should be denied. However, should leave to appeal be granted and the decision of the Circuit Court be reversed, or remanded, Appellee requests that the lower court be directed to remand the grievance to the Inmate Grievance Commission to determine what if any relief should be granted.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL OF MARYLAND

Steven G. Hildenbrand

STEVEN G. HILDENBRAND
ASSISTANT ATTORNEY GENERAL
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(301) 764-4072

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of May, 1991, a copy of the foregoing Response to Application for Leave to Appeal was mailed, postage prepaid, to Joseph B. Tetrault, Esquire, Legal Aid Bureau, Inc., 809 East Baltimore Street, Baltimore, Maryland 21202.

Steven G. Hildenbrand
Steven G. Hildenbrand

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NATHANIEL HARRINGTON : IN THE COURT OF
 Appellant : SPECIAL APPEALS
 v. :
 BISHOP L. ROBINSON, : No.: _____
 SECRETARY OF PUBLIC :
 SAFETY AND CORRECTIONAL :
 SERVICES : (Circuit Court for
 Appellee : Baltimore City Case
 No. 90190075/CL116244)
 :
 ooo

APPLICATION FOR LEAVE TO APPEAL

Appellant Nathaniel Harrington, pursuant to Md. Ann. Code Art. 41, §4-102.1(m) (1957 & 1990 Repl. Vol.) and Md. Rule 8-204, respectfully seeks leave to appeal the decision of the Circuit Court in this matter, and states as cause the following:

Introduction

This case was heard by the Circuit Court for Baltimore City on appeal from the decision of Bishop L. Robinson, Secretary of Public Safety and Correctional Services for the State of Maryland (hereafter "Appellee"). Mr. Harrington (hereafter "Appellant") is a prisoner committed to the custody of Maryland's Commissioner of Correction, and is currently incarcerated at the Maryland Penitentiary, located in Baltimore, Maryland. Appellee's decision dismissed Appellant's grievance filed with the Inmate Grievance Commission as being without merit.

4/29/91
 PNC Info Report
 + memo given: JBC-trault

This application for leave to appeal involves the interpretation of a Division of Correction Regulation ("DCR"). The Circuit Court's judgment affirming Appellee's dismissal of Appellant's grievance should be reversed because the Division of Correction failed to abide by its own regulations, which failure caused Appellant to be isolated in solitary confinement for eighteen months.

A riot occurred at the Penitentiary on July 25, 1988. Appellant was placed on administrative segregation on July 27, 1988, ostensibly because a criminal investigation concerning his alleged involvement in the riot was pending. R.5, p.16 ("Notice of Placement on Administrative Segregation")^{1/} On July 28, Appellant was administratively charged by prison officials with participating in the riot by Notice of Infraction alleging violations of prison disciplinary rules. R.5, p.2 ("Notice of Infraction"). At a hearing held at the Penitentiary on August 4, the Notice of Infraction was reduced to an incident report, R.5, pp.4-5 ("Adjustment Report"), meaning that no disciplinary segregation or loss of good conduct time^{2/} would be imposed

1/ References to the administrative record are to the item number as designated by the agency.

2/ The prison disciplinary rules and sanctions for their violation are set forth in Division of Correction Regulation ("DCR") 105-1. Administrative hearings on alleged violations of prison disciplinary rules are known as "adjustment hearings" and the applicable

upon Appellant based on the allegations. Nevertheless, Appellant remained on administrative segregation and was eventually approved for transfer to the Maryland Correctional Adjustment Center ("MCAC") on January 18, 1989. R.5, p.6 ("Classification Assignment Sheet").

Appellant, in proper person, filed a grievance with the Inmate Grievance Commission ("IGC" or "Commission") challenging, inter alia, his continuation on administrative segregation and eventual transfer to MCAC. R.1, pp.1-18. The IGC held a hearing on this matter at MCAC on January 24, 1990. R.18, p.1. On April 13, the IGC issued an opinion, R.19, pp.1-4, which, by a two-to-one margin, found Appellant's grievance to be meritorious. On May 8, however, Appellee adopted the dissenting opinion and dismissed Appellee's grievance as being without merit. Id., p.8. Appellant noted an appeal from this decision to the Circuit Court for Baltimore City. On March 28, 1991, the Honorable Ellen L. Hollander issued a Memorandum Opinion and Order affirming the decision of Appellee. It is this affirmance from which Appellant seeks leave to appeal.

(Footnote 2, cont.) procedures are set forth in DCR 105-2. DCR 105-2.IV.B.3 allows the hearing officer, for sufficient reason, to reduce the Notice of Infraction to an incident report at any time prior to rendering a decision.

Issues Presented

1. Did the Circuit Court err as a matter of law in concluding that the investigative reports required by DCR 110-19 need not be reduced to writing and submitted to the classification team?
2. Was the decision of Appellee dismissing Appellant's grievance based upon substantial evidence?

Argument

I. DCR 110-19 REQUIRES WRITTEN INVESTIGATIVE REPORTS TO BE SUBMITTED TO THE CLASSIFICATION TEAM

As the court below correctly noted, this case turns in large part on the interpretation of DCR 110-19,^{3/} which governs administrative segregation. The court below, however, erred in both its approach to the interpretation and in its result.

The purpose of DCR 110-19 is "[t]o establish administrative segregation as a management tool which enables the institutions, under certain conditions and by established procedures, to remove certain inmates from the general population and place them in special housing." DCR 110-19.III. The regulation is replete with the use of the word "shall" -- meaning that its directives are mandatory and not merely hortatory.^{4/}

^{3/} For the convenience of the Court, a copy of the regulation is attached as Appendix A.

^{4/} The rules of statutory construction are applicable to the interpretation of administrative agency regulations. Messitte v. Colonial Mortgage Service Co., 287 Md. 289, 293, 411 A.2d 1051, 1053 (1980). "It

Administrative segregation is not to be used for punitive reasons. DCR 110-19.VI.A.2. While the Warden may authorize immediate placement on administrative segregation, DCR 110-19.VI.A.1, the inmate must receive notice within 48 hours of placement as to the reason for his or her confinement. DCR 110-19.VI.A.3. In addition, the inmate must be given a hearing before a classification team^{5/} within 96 hours of placement on administrative segregation. DCR 110-19.VI.A.4.a. At that time, the inmate must be afforded the opportunity to be heard regarding his or her status, id., and the classification team must consider alternatives to administrative segregation. DCR 110-19.VI.A.4.b. At the initial hearing, the inmate must be advised of the recommendation of the classification team and the reasons for the recommendation. Id. Every stage in the process must be fully documented. See DCR 110-19.VI.A. ("The reason for [the use of administrative segregation]

(Footnote 4 cont.) is now a familiar principle of statutory construction in this State that use of the word "shall" is presumed mandatory unless its context would indicate otherwise. . . ." Moss v. Director, Patuxent Inst., 279 Md. 561, 564-65, 369 A.2d 1011, 1013 (1977) (citations omitted).

5/ Classification hearings are an integral part of prison administration in Maryland. Classification teams make recommendations to the Warden concerning not only administrative segregation, but also decrease or increase in security level, job or school assignment, restoration of forfeited good conduct time, etc. An inmate has the right to be present at all classification team actions which concern him or her. DCR 100-1.V.F.

shall be clearly indicated in the subject inmate's base file and attendant classification materials."); DCR 110-19.VI.A.3.a ("[T]he inmate shall be provided with written notice specifying the reason for same."); DCR 110-19.VI.A.4.b ("The team action shall be documented on a classification assignment sheet. . . .").

The Warden is required to review the team's recommendation within five working days of the initial hearing, and the inmate must be advised in writing of the Warden's decision. DCR 110-19.VI.A.5.a. An inmate continued on administrative segregation must be reviewed every thirty days thereafter by the classification team to determine whether there is a need for retention on administrative segregation status. DCR 110-19.VI.A.7.a.

The procedures were adopted to comply with the Supreme Court's decision in Hewitt v. Helms, 459 U.S. 460 (1983). Appellant, argued below that DCR 110-19 was meant to go farther than Hewitt, however, in that Section VI.A.4.c. of the regulation requires that written investigative reports regarding the reason for a prisoner's placement on administrative segregation and recommendations regarding his continuation or removal "shall be prepared and made available to the classification team at the initial hearing or as soon as possible." The court below concluded that these reports need not be written, and need not be presented to the classification team.

To place Appellant's contention in focus, it is necessary to review the sequence of reporting in this case. As noted before, Appellant was placed on administrative segregation on July 27, 1988, supposedly because he was under criminal investigation. On July 28, the institution administratively charged him with being a participant in the riot. This charge was subsequently reduced to an incident report. On August 8, the Warden approved Appellant's placement on administrative segregation. R.5., p.14 ("Classification Assignment Sheet").

On August 24, Captain Patrick Ford, a shift commander at the Penitentiary, submitted a written investigative report to Major Hollis S. Thompson, Acting Security Chief, which recommended that Appellant be removed from administrative segregation based on the lack of evidence adduced against Appellant at the adjustment hearing on August 4. R.18, pp.20-21 ("Institution's Exhibit No. 1").^{6/} Major Thompson never submitted this report to the classification team. R.18, p.5 In fact, no one other than Captain Ford or Major Thompson ever saw this report

^{6/} The lower court's Memorandum Opinion and Order referred to this exhibit as "R.18, p.3" and to a subsequent report by Captain Ford as "R.20." Memorandum Opinion and Order, p.2 & p.3, n.3. The record as transmitted to Appellant by the agency labels both reports as "Institution's Exhibit No. 1" and the agency appended both reports to the transcript of the testimony before the IGC. Appellant will therefore refer to Captain Ford's reports as R.18, pp.20-21 and R.18, pp.22-23, respectively.

until it was introduced at the hearing before the IGC.
R.18, p.3.

On September 28, Appellant had the first periodic review of his administrative segregation status, neither Appellant nor the classification team having had the benefit of Captain Ford's report. The recommendation of the team was to "[c]ontinue on administrative segregation based on placement rationale." R.5, p.13 ("Classification Assignment Sheet").

On October 31, Appellant had his second periodic review. The classification team recommended "no change pending an investigation into the 7/25/88 incident." R.5, p.12 ("Classification Assignment Sheet"). The team noted that it had not received the investigative report required by DCR 110-19, stating that it was "in need of an updated investigation into this incident." Id.

On November 28, the third review occurred. The reasons for Appellant's continuation on administrative segregation became more cryptic: "No change based on Major Thompson's verbal report of subject being involved in the 7/25/88 disturbance (awaiting written report)." R.5, p.10 ("Classification Assignment Sheet").

On December 16, the recommendation was "[n]o change as per verbal advise [sic] of Major Thompson"; "no change in subject's status until an investigation is completed as to his involvement in the 7/25/88 disturbance." R.5, p.8 ("Classification Assignment Sheet").

On January 18, 1989, Appellant was considered for transfer to MCAC. Appellant's classification counselor noted that Major Thompson had orally advised him that Appellant "was going to remain on Administrative Segregation." Appellant's transfer to MCAC was recommended because of his "overall institutional adjustment and current admin. segregation status." R.5, pp.6-7 ("Classification Assignment Sheet"). On that same day, the Warden approved the transfer. Appellant would remain at MCAC, in solitary confinement, for over a year.

This is why the investigative reports must be written and must be submitted to the classification team as soon as possible. To hold otherwise is to subvert the function of the classification team in making recommendations to the Warden regarding a prisoner's continuation on or removal from administrative segregation status, and to render those decisions entirely within the domain of security officials, whose actions are unreviewable. It is the manifest policy of the State of Maryland, embodied in DCR 110-19, that the classification team participate, by means of both the initial and periodic reviews of an inmate's status, in decisionmaking regarding continuation on or removal from administrative segregation. By not submitting the required written reporting to the classification team in the instant case, Major Thompson defied that policy and rendered the

periodic reviews of Appellant's status required by both DCR 110-19 and Hewitt v. Helms, supra, a meaningless formality.

The Circuit Court's opposite conclusion is the result of a fundamentally flawed approach to the interpretation of agency regulations. Beginning with the axiom that decisions of administrative agencies are prima facie correct, Memorandum Opinion and Order, p.4, the court below cited Maryland State Police v. Lindsey, 318 Md. 325, 568 A.2d 29 (1990), for the proposition that the agency's decision is entitled to be viewed in a most favorable light on appeal.

The court below extended this deference not only to the agency's fact-finding and the inferences to be drawn therefrom, but to the agency's conclusions of law. The question of the interpretation of agency regulations such as DCR 110-19 is a question of law, in which the court must be guided by the canons of statutory interpretation. Messitte v. Colonial Mortgage Service Co., 287 Md. 289, 293, 411 A.2d, 1051, 1053 (1980). Lindsey itself makes this clear by its reliance on State Election Board v. Billhimer, 314 Md. 46, 548 A.2d 819 (1988), cert. denied, _____ U.S. _____, 109 S. Ct. 1644 (1989). Lindsey quotes Billhimer at length, first discussing the deference accorded to agency fact-finding and the drawing of inferences from these facts, but also noting that "'when, however, the agency's decision is predicated solely on an error of law, no deference is

appropriate and the reviewing court may substitute its judgment for that of the agency.'" Lindsey, 318 Md. at 334, 568 A.2d at 33 (quoting Billhimer, 314 Md. at 58, 548 A.2d at 826)(emphasis supplied).

In stark contrast to the instant case, the agency decision questioned in Lindsey "was not predicated on an error of law but was rather based upon an interpretation of the facts and the inferences drawn therefrom." 318 Md. at 335, 568 A.2d at 33.^{7/} See also Kade v. Hickey School, 80 Md. App. 721, 725, 566 A.2d 148, 150 (1989) ("A reviewing court, however, always has the right to determine if the administrative body made an error of law.")(citation omitted).

The lower court also misconceived additional precedent in its adoption of the proposition that "great deference should be given to an agency's interpretation of its own regulation." Memorandum Opinion and Order, p. 7. Maryland

^{7/} Similarly, the decisions in Bulluck v. Pelham Wood Apartments, 283 Md. 505, 390 A.2d 1119 (1978), and Commissioner, Baltimore City Police Dept. v. Cason, 34 Md. App. 487, 368 A.2d 1067, cert. denied, 280 Md. 728, (1977), cited by the lower court in the preliminary discussion of the deference it was to accord Appellee's conclusions of law, Memorandum Opinion and Order, pp.4-5, turned not on errors of law but rather on conflicting evidence and judgments as to credibility. Bulluck, 283 Md. at 513-18, 390 A.2d. at 1124-26; Cason, 34 Md. App. at 508-09, 368 A.2d. at 1079.

Comm'n on Human Relations v. Bethlehem Steel Corp., 295 Md. 586, 457 A.2d 1146 (1983) and Baltimore & Ohio R. Co. v. Bowen, 60 Md. App. 299, 482 A.2d 921 (1984), are cited for this proposition.

A closer reading of the Bethlehem Steel case does not support the lower court's "hands-off" approach. Bethlehem Steel involved exhaustion of administrative remedies. The question before the Court of Appeals was whether the steel company's resort to the trial court prior to exhaustion could be justified on the ground that interpretation of an agency regulation was in issue. 295 Md. at 592-94, 457 A.2d at 1149-50. The holding in Bethlehem Steel was that "in cases involving the interpretation of an agency rule, as in cases involving the interpretation of a statute, statutorily prescribed administrative and judicial remedies must ordinarily be exhausted." Id. at 594, 457 A.2d at 1150. While the agency's interpretation is entitled to "weight" (without the adjective "great"), id. (citations omitted), the Court of Appeals did not rule that once a grievant had exhausted administrative remedies, a reviewing court must bow to the agency's interpretation as controlling on questions of law.

The Bowen case also deserves a closer reading. While Bowen states that "a court will defer to the interpretation an agency gives to its own administrative rules and

regulations," 60 Md. App. at 305, 482 A.2d at 924 (citing Bethlehem Steel, supra), Bowen states that the circuit court erred in that case by deferring to the agency, because "[l]egal questions are ultimately for the courts to decide." Id.^{8/}

^{8/} In Bowen, the Court of Special Appeals noted that since the issue of the burden of proof had never been raised before the Commission on Human Relations, "[t]here was no reason therefore, to defer to the Commission in the resolution of this purely legal issue." 60 Md. App. at 305, 482 A.2d at 924. In the instant case, Appellant is unaware of any other decision of the Inmate Grievance Commission concerning the interpretation of the particular provision of DCR 110-19 in question here, nor of any other grievance in which this issue was raised. Therefore, as in Bowen, there was no reason for the circuit court's deference to Appellee's interpretation of the regulation. In addition, the citation of Adams v. Califano, 474 F. Supp. 974 (D. Md.), aff'd, 643 F.2d. 995 (4th Cir. 1981), for the proposition that "[u]nless plainly erroneous, this court is obliged to respect the Secretary's interpretation," Memorandum Opinion and Order, p. 7, is entirely inapposite. This may well be the federal rule, see, e.g., United States v. Larionoff, 431 U.S. 864, 872 (1977)(citations omitted), but Bethlehem Steel makes it clear that the reviewing court is to weigh the agency interpretation, not to give it controlling weight, while Bowen makes it clear that in some circumstances, a reviewing court need not give any weight to an agency interpretation of its regulations. Even under the federal rule, the agency's interpretation will be disregarded if it is inconsistent with the regulation. Bowles v. Seminole Rock Co., 325 U.S. 410, 415 (1945). Appellee's interpretation of DCR 110-19.VI.4.c so as not to require written investigative reports to be submitted to the classification team as soon as possible is thoroughly at odds with the policy of classification team participation in decisions regarding administrative segregation and with the regulation's requirement that all classification team actions be thoroughly documented.

Finally, the Circuit Court's deference to "administrative custom and practice," Memorandum Opinion and Order, pp. 7-8, cannot withstand scrutiny here. The Circuit Court opined that "Appellant offered no proof that the Secretary's interpretation was contrary to established custom or practice in the Maryland Penitentiary." Id., p.8. On the contrary, the record is replete with substantial evidence to support the conclusion that it most definitely was the practice at the Maryland Penitentiary to require written investigative reports. The periodic reviews of Appellant's administrative segregation status contain notations that the classification team was awaiting written investigative reports. See R.5, p.10 ("awaiting written report"); R.5, p.12 ("in need of an updated investigation"). Appellant's classification counselor, Mr. Benjamin Amara, testified before the IGC that the classification team never received a written investigative report, and that he had requested one from Captain Ford. R.18, p.5. Ms. Pamela Sorenson, classification supervisor at MCAC, testified before the IGC that "we like to see a written packet of everything that was done and that may include a CO II's [correctional officer, second grade] report to the sergeant, sergeant to the lieutenant and so on all the way up the line." R.18, p.7. Finally, the Circuit Court completely ignores the fact that written investigative reports were prepared in the instant case, albeit never submitted to the

classification team. This is substantial evidence on which to base the conclusion (as did the IGC) that the administrative custom and practice was to require written investigative reports to be prepared and submitted to the classification team as soon as possible. Even were it the "administrative custom and practice" of the Penitentiary to completely disregard relevant Division of Correction regulations, such custom and practice cannot be sanctioned by the courts.^{9/}

To summarize, there were no reasons to justify deference to the agency's legal conclusions in this case. The Circuit Court was confronted with a pure question of law, which it answered incorrectly without taking into account the important policy, embodied in the regulation, of classification team participation in decision-making regarding administrative segregation.

II. APPELLEE'S DECISION TO ORDER THE DISMISSAL OF APPELLANT'S GRIEVANCE WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

Appellee's decision to order the dismissal of Appellant's grievance adopts the dissenting opinion of

^{9/} See Hopkins v. Maryland Inmate Grievance Commission, 40 Md. App. 329, 333, 391 A.2d 1213, 1215 (1978) (practice of holding adjustment hearings beyond the time-frame required by DCR 105-2 did not constitute "exceptional circumstances" which would justify tolling rule).

Commissioner Matz of the Inmate Grievance Commission as his rationale R.19, p.8.^{10/} In order to determine whether Appellee's decision was based upon substantial evidence, it is necessary to examine Commissioner Matz's dissenting opinion.

- A. The fact that Captain Ford submitted two reports is irrelevant because the classification team did not see either one.

Commissioner Matz makes much of the fact that Captain Ford submitted two written reports to Major Thompson, the second, R.18, pp.22-23, dated September 15, 1988, countermanding his earlier recommendation (R.18, pp.20-21, dated August 24, 1988) that Appellant be removed from administrative segregation. R.19, p.5 (Concurring and Dissenting Opinion).

What Commissioner Matz (and Appellee) overlook is that this fact is legally irrelevant. Neither report was ever submitted to the classification team in accordance with DCR 110-19. Both should have been submitted to the classification team so that the classification team could

^{10/} Judicial review is of the Secretary's order, and not necessarily directed towards the findings and recommendations of the majority of the Commission. Bryant v. Department of Public Safety & Correctional Services, 33 Md. App. 357, 365 A.2d 764 (1976). The scope of review is the same for both the circuit court and an appellate court. Baltimore Lutheran High School Assoc. v. Employment Security Admin., 302 Md. 649, 490 A.2d 701, 708 (1985).

exercise its independent judgment in formulating its recommendation to the Warden as required by the policy underlying this regulation. This fact, being legally irrelevant, cannot be substantial evidence upon which Appellee's decision can be sustained.

B. There was no substantial evidence of a pending criminal investigation of Appellant.

Commissioner Matz asserts that a criminal investigation targeted against Appellant was pending the entire time Appellant was on administrative segregation. R.19, p.5. There is no evidence to support this assertion. While Appellant may have been originally placed on administrative segregation pending the initiation of a criminal investigation, there is absolutely no evidence that any such criminal investigation ever focused on Appellant. Neither of Captain Ford's reports make reference to a pending criminal investigation. Ms. Sorenson testified that she was unsure whether Appellant was ever the subject of a criminal investigation. R.18, p.13. She further testified that she never received any formal notification from the Office of the State's Attorney for Baltimore City that Appellant was the subject of a criminal investigation, or that such an investigation was now concluded. Id. No evidence was ever introduced as to the actual initiation or results of any criminal investigation regarding Appellant. Appellant

testified that he thought he was under criminal investigation because his counselor, Mr. Amara, told him so. R.18, p.12. Mr. Amara testified that he believed Appellant was under criminal investigation because Major Thompson told him so. R.18, pp.5-6. Commissioner Matz's conclusion that Appellant was under a criminal investigation is based upon a complete misreading of Ms. Sorenson's testimony in this regard. Ms. Sorenson testified to the effect that she received word "through the grapevine" that in the early summer of 1989 all criminal prosecution arising out of the July 25, 1988 riot was over. R.18, p.13. From this testimony, Commissioner Matz leapt to the conclusion that a criminal investigation of which Appellant was the target occurred, and that such an investigation ended in 1989 after Appellant's transfer to MCAC. R.19, p.5. In face of the complete paucity of record information regarding the alleged criminal investigation of Appellant, such a conclusion is not supported by substantial evidence.^{11/}

^{11/} Even were an actual criminal investigation, by either the Office of the State's Attorney for Baltimore City, the Baltimore City Police Department, or the Maryland State Police (Division of Correction Investigation Unit), initiated which focused on Appellant, for prison officials to completely neglect to take any steps to inform themselves of the course of such an investigation violates Hewitt v. Helms, 459 U.S. 460 (1983). In Hewitt, after stating that "administrative

C. There was no substantial evidence that Appellant was a "special management" inmate.

Commissioner Matz also concluded that Appellant could have been transferred to MCAC even had Appellant not been identified as a participant in the July 25, 1988 riot. R.19, p.6. Again, Commissioner Matz completely fails to grasp or understand the significance of the relevant evidence before the Commission. The evidence before the Commission was that Appellant was transferred because of his "overall institutional adjustment and current admin. seg. status." R.5, p.6. ("Classification Assignment Sheet") The question before the Commission, assuming arguendo that Appellant's prolonged administrative segregation status was improper, was whether substantial evidence existed apart from the fact of his administrative segregation status to justify Appellant's transfer to MCAC.

(Footnote 11, cont.) segregation may not be used as a pretext for indefinite confinement of an inmate," 459 U.S. at 477 n.9, the Supreme Court observed that "the decision to continue confinement of an inmate pending investigation of misconduct charges depends upon circumstances that prison officials will be well aware of -- most typically, the progress of the investigation." Id. Under Hewitt, prison officials have an affirmative duty to keep abreast of developments in any criminal (or internal) investigation when such investigation is the cause for a prisoner's continued administrative segregation status.

Transfers to MCAC are governed by DCR 100-5.^{12/} MCAC is exclusively for the housing of "special management" inmates, defined as "[a]n inmate who, by his behavior, has demonstrated his inability to be housed in the general population, or in the administrative or disciplinary segregation areas, of Division of Correction institutions other than MCAC." DCR 100-5.IV.B. To be subject to transfer to MCAC, a prisoner must first be either 1) assigned to maximum security administrative segregation (as was Appellant); or 2) assigned to maximum security disciplinary segregation with a disciplinary segregation sentence of at least six months remaining to be served; or 3) assigned to maximum security and who escape or attempts to escape; or 4) assigned to medium security or below and assigned to disciplinary segregation with a sentence of six months or more on disciplinary segregation, and additionally classified as a "special management" inmate; or 5) assigned to maximum security and additionally is classified as a "special management" inmate. DCR 100-5.V.A. For maximum security inmates, the decision of the Warden to transfer to

^{12/} For the convenience of the Court, a copy of DCR 100-5 is attached as Appendix B. Although this regulation was not made part of the record as an appendix to either of the parties' pleadings, it is cited extensively by the lower court. Memorandum Opinion and Order, p.10, n.5.

MCAC is final, DCR 100-5.VI.A., subject only, as are all classification decisions, to review by the Inmate Grievance Commission. If Appellant's continuation on administrative segregation were improper because of the violation of DCR 110-19, he could only have been transferred because he fell within the fifth category, i.e., he was assigned to maximum security and he was a "special management" inmate. It is undisputed that Appellant was assigned to maximum security. The question then becomes whether substantial evidence in the record exists from which to conclude that Appellant was a "special management" inmate.

The classification team's justification for Appellant's transfer apart from his administrative segregation status was his "overall institutional adjustment." R.5, p.6. A "special management" inmate can be a prisoner with a history of institutional rule violations. DCR 100-5.IV.B. Appellant's institutional adjustment history, however, is such that no substantial evidence exists that he has a history of prison disciplinary rule violations which would warrant classification as a "special management" inmate deserving of incarceration at MCAC. Since his incarceration commenced in 1985, Appellant has received only one major infraction, in 1986, for which he forfeited 10 days good conduct time and spent 30 days on disciplinary segregation; the other two adjustment convictions were for minor rule violations, such as being late once for school, for which he

was merely reprimanded. See R.5, p.7. MCAC houses only the worst of the worst. There is a fatal lack of substantial evidence which would justify classification of Appellant as a "special management" inmate. Therefore, Appellant must necessarily have been transferred to MCAC based on the first category, i.e., assignment to maximum security and assignment to administrative segregation. If Appellant's continuation on administrative segregation was violative of DCR 110-19, then his transfer to MCAC cannot be justified by substantial evidence.

Conclusion

The record shows a complete breakdown in orderly procedures at the penitentiary. Major Thompson's misfeasance or nonfeasance caused the utter abdication by the classification team of its role in the administrative segregation decision-making process. This breakdown culminated in the transfer of a prisoner with a fairly good adjustment record to a prison with chronic and serious rule violators. This has all been sanctioned in the name of "deference" to the "expertise" of administrative agencies.

For the reasons stated above, Appellant prays that this Court grant his application for leave to appeal and reverse the judgment of the lower court, or, in the alternative, grant the application and remand the judgment to the lower court with directions to that court, or, in the alternative, grant the application and order further proceedings in the

Court of Special Appeals, and grant any other and further relief the nature of his cause may require.

Respectfully submitted,



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**DIVISION OF CORRECTION
REGULATION**

STATE OF MARYLAND

**DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES**

DCR NO. 110-19

DATE September 15, 1986

SUBJECT: CUSTODY AND SECURITY

TITLE: Administrative Segregation

- I. References: DCR 105-2; DCR 100-1; DCR 110-4; DCR 220-10
- II. Applicable to: All Institutions
- III. Purpose: To establish administrative segregation as a management tool which enables the institutions, under certain conditions and by established procedures, to remove certain inmates from the general population and place them in special housing.
- IV. Definitions: Time Frames - Holidays and weekends are to be excluded in the determination of all time periods specified in this DCR.

V. Policy:

It is the policy of the Division of Correction to utilize administrative segregation when an inmate requires close supervision and segregation from the general inmate population, for either short or extended periods of time. Administrative segregation may be used to ensure the safety and security of the institution, the staff or the general inmate population.

VI. Procedure:

- A. The procedure outlined below shall be used in placing inmates on administrative segregation. The reason for its use shall be clearly indicated in the subject inmate's base file and attendant classification materials.
1. Wardens or designees are permitted to authorize immediate placement on administrative segregation pending classification team action, provided there is reasonable cause, consistent with the non-punitive purposes of this policy and regulation.
 2. Administrative segregation is to be used for custody and control purposes and not for punitive reasons. Administrative segregation shall be used for reasons such as:
 - a. To prevent escapes, where reason exists to believe the inmate to be an escape risk.
 - b. When an inmate is under sentence of death, where such housing is deemed necessary.
 - c. When reasons exist to believe an inmate is dangerous to the security of the institution, and/or inmates, and/or staff.

- d. Pending criminal investigations.
- e. Prior to the adjustment hearing, when the inmate has been charged with an infraction or violation, and one of the above conditions exists or where custody and control is an obvious factor. All inmates placed on temporary segregation pending adjustment action shall be assigned administrative segregation status. Retention of administrative segregation status will be considered by the adjustment team at the time of sentencing in accordance with the procedures set forth herein.

3. Notification

- a. Within forty-eight (48) hours after placement on administrative segregation, the inmate shall be provided written notice specifying the reason for same. The "Notice of Assignment to Administrative Segregation" (Appendix 1) shall be used for this purpose and shall be signed by the inmate, who shall be provided a copy. The original of this form shall be retained and forwarded to the classification team for use at the initial hearing.
- b. Pending adjustment cases
 - (1) Service of the Notice of Infraction (adjustment report) shall satisfy the 48-hour administrative segregation notification requirement.
 - (2) In such cases, the Notice of Infraction shall indicate that administrative segregation was ordered prior to the adjustment hearing and the reasons for this.
 - (3) At any time prior to the adjustment hearing, the decision to place the accused inmate on administrative segregation may be reversed by the warden, assistant warden, or a shift commander, and the inmate returned to the general population pending the adjustment hearing.

4. Disposition at initial hearing.

- a. Within ninety-six (96) hours after placement on administrative segregation, the inmate shall be seen by the classification team and given the opportunity to be heard as to whether or not he/she should be continued in this status.
- b. The classification team shall consider available alternatives to continued administrative segregation when meeting with the inmate. The classification team will advise the inmate of its decision and reasons for same at the hearing. The team

action shall be documented on a classification assignment sheet (DC Form 100-1).

c. An investigative report shall be prepared and made available to the classification team at the initial hearing or as soon as possible. This report shall include all information pertaining to the placement of the inmate on administrative segregation and recommendations concerning the change in status.

d. Pending adjustment cases

(1) Conduct of the adjustment hearing shall satisfy the 96-hour initial hearing requirement.

(2) In such cases, if a disciplinary segregation sentence is not recommended by the hearing officer, the hearing officer shall include as part of its disposition a recommendation to the warden relative to the need for continued administrative segregation, the inmate shall, upon the warden's review, be returned to general population.

5. Warden's review

a. The recommendation of the classification team or the hearing officer shall be reviewed by the warden within five (5) working days and the inmate shall be advised in writing of the warden's decision. The classification assignment sheet (DC Form 100-1) will be placed in the inmate's base file after review.

b. Cases recommended for removal from administrative segregation shall not be released until the classification team's decision is approved by the warden. The warden may, however, approve release from administrative segregation even in the absence of a favorable recommendation from the classification team or hearing officer.

c. Inmates placed on administrative segregation pending adjustment action who are not sentenced to disciplinary segregation and who are not approved for release from administrative segregation by the warden will receive an initial review hearing by the classification team within 96 hours of the warden's final decision.

6. If the classification team's decision is adverse to the inmate, the inmate shall have the same right of further review as provided in DCR 105-2.

7. An inmate placed on administrative segregation may remain so confined for as long as there is a need in the particular case.

- a. After the initial review by the classification team, the classification team will review the case every thirty (30) days to determine the need for retention in this status.
 - (1) The classification team shall actively consider all available alternatives to continued administrative segregation.
 - (2) Based on its assessment of the case, the classification team shall recommend intervention, as needed, by appropriate treatment staff, such as the psychologist, chaplain, social worker or addictions counselor.
 - b. Additionally, at any time during an inmate's confinement on administrative segregation, the warden or other appropriate staff may request the classification team to review the inmate's continued need for this status. Upon the classification team's review, the warden may approve the inmate's return to the general population.
 - c. Inmates may be released from administrative segregation without classification team action only upon the authorization of the warden, except as aforementioned.
- B. Operational Procedures

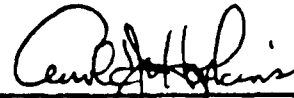
Consistent with the non-punitive custody and control purposes of administrative segregation, the conditions of confinement afforded to inmates so assigned will approximate those in the general population.

1. Housing/Movement/Personal Property/Commissary-Inmates assigned to administrative segregation shall be:
 - a. housed in single cells (the exception to this will be for inmates who are placed on administrative segregation temporarily, pending adjustment team action);
 - b. Escorted whenever they leave their designated housing area (the use of restraint equipment shall be discretionary on the part of the shift commander);
 - c. Authorized to retain and/or acquire, via continued access to commissary privileges, the same possessions allowed in the general population; certain possessions may be excluded for the security of the inmate, staff or the institution if approved by the shift commander. Exclusions shall be documented in the base file and on the "Record of Adminis-

trative Segregation Confinement," and said property will be secured for safekeeping and subsequent return to the inmate in accordance with DCR 220 - 10.

2. Hygiene - Inmates assigned to administrative segregation shall be:
 - a. Allowed the same hygienic items as general population with the same exclusion provision as in 1. above;
 - b. Allowed regular shaves and hair cuts, and showers twice a week;
 - c. Allowed regular clothing, linen and bedding exchange.
3. Exercise - Inmates assigned to administrative segregation shall be allowed an exercise period of at least one (1) hour per day.
4. Library - The librarian or other designated staff person shall, on a regular basis, take library requests from inmates assigned to administrative segregation and provide these inmates with books, magazines, and newspapers.
5. Health Care - Inmates assigned to administrative segregation shall be provided equal access to the full range of health care services available to the general population.
6. Classification Services - At least one classification counselor will be responsible for providing requisite classification services.
7. Education and Legal Services - Inmates assigned to administrative segregation shall be allowed access to educational and legal materials.
8. Visits
 - a. Administrative segregation inmates shall be allowed the same number of visits as the general population and the visits shall be for the same duration.
 - b. Although close security is essential and the use of a separate visiting area is preferable, the location of visits is discretionary.
9. Religious Activities - Inmates assigned to administrative segregation shall be allowed access to chaplaincy services.

- 10. Food - Inmates assigned to administrative segregation shall be fed the same food as the general population, but shall be fed in their cells.
 - 11. Mail - Policies and procedures pertaining to inmate correspondence and the movement of inmates' mail shall not be abridged by virtue of an inmate's assignment to administrative segregation.
 - C. Information relative to each administrative segregation inmate's status will be systematically provided to appropriate institutional staff for entry on the relevant OBSCLS screen(s).
 - D. Each warden will be required to implement a written institutional directive to operationalize this regulation.
- VII. Attachments: Appendix 1, Notice of Assignment to Administrative Segregation, DC Form 110-19a (May '82)
Appendix 2, Record of Administrative Segregation Confinement, DC Form 110-19b (May '82)
Appendix 3, Management Audit Form.
- VIII. Rescission: DCR 110 - 19, May 1, 1982; Appendices 1 and 2 remain in effect.



Arnold J. Hopkins
Commissioner

Distribution

- A
- C - without appendix 3
- D - " " "
- L - " " "

DIVISION OF CORRECTION
NOTICE OF ASSIGNMENT TO ADMINISTRATIVE SEGREGATION

DATE: _____

INSTITUTION: _____

Last Name First Name M.I. Number

Date/Time of Placement

Per

It has been determined that reasons exist (as categorized below) to remove you from the general population and (temporarily) assign you to administrative segregation pending classification team action. You will be seen by the classification team within 96 hours of your placement on administrative segregation (excluding weekends and holidays) and given the opportunity to be heard as to whether or not you should be continued in this status.

Reason (Check applicable category)

- To prevent escapes, reasons exist to believe you are an escape risk.
- You are under sentence of death.
- Reasons exist to believe you are dangerous to the security of the institution, and/or inmates, and/or staff.
- A criminal investigation is pending in your case.
- Other (specify) _____

Distribution

Original — Classification
Copy — Inmate

I have read (or have had read to me) and acknowledge receipt of a copy of this notice.

Inmate Signature

Notice Served by _____

Date/Time _____

RECORD OF ADMINISTRATIVE SEGREGATION CONFINEMENT

Inmate Name _____		Number _____	Institution _____	Month _____
Date of Placement _____	Time _____	<input type="checkbox"/> A.M. <input type="checkbox"/> P.M.	Authorizing Officer _____	

REASON

- | | |
|---|---|
| <input type="checkbox"/> Escape Risk | <input type="checkbox"/> Danger to Security of Institution/Staff/Inmates/Self |
| <input type="checkbox"/> Death Sentence | <input type="checkbox"/> Pending Criminal Investigation |
| <input type="checkbox"/> Pending Adjustment | <input type="checkbox"/> Other _____ |

Adjustment Action	Date	Time	Classification Action	Date	Time
Notice Served	___/___/___	_____	Notification	___/___/___	_____
Adjustment Hearing	___/___/___	_____	Initial Class. Team Hearing	___/___/___	_____
Warden Review	___/___/___	_____	Warden Review	___/___/___	_____

ALERTS & RESTRICTIONS

- Medical Alert: _____
- Psychological Alert: _____
- Property Restriction: Items _____
Reasons _____
- Other _____

DISPOSITION ON RELEASE

- General Population Transfer/Other Institution _____ Other _____
- Disciplinary Seg. (Result of Adjust. Hearing) Transfer/Mental Hosp. _____ Release

GENERAL INFORMATION

(Y) = Yes	(N) = No	(R) = Refused by Inmate	(G) = Good	(F) = Fair	(P) = Poor
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Daily Exercise							Showers							Daily Behavior						
1	2	3	4	5	6	7	1	2	3	4	5	6	7	1	2	3	4	5	6	7
8	9	10	11	12	13	14	8	9	10	11	12	13	14	8	9	10	11	12	13	14
15	16	17	18	19	20	21	15	16	17	18	19	20	21	15	16	17	18	19	20	21
22	23	24	25	26	27	28	22	23	24	25	26	27	28	22	23	24	25	26	27	28
29	30	31					29	30	31					29	30	31				

INDIVIDUAL VISITS AND INTERVIEWS

	(S) Solicited by Inmate	(V) Visited	(I) Interviewed	(R) Refused by Inmate																															
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31				
Warden																																			
Assistant Warden																																			
Medical Personnel																																			
Classification Officer																																			
Security Supervisor																																			
Chaplain																																			
Psychologist/Psychiatrist																																			
Correctional Investigator																																			
Outside Agency																																			
Visitor(s)																																			
Other																																			


Daily Individual Comments: Record Comments, Incidents, Use of Force, Meals Refused, etc. on Reverse Side

MARYLAND DIVISION OF CORRECTION MANAGEMENT AUDIT FORM

TITLE & DCR # <u>Administrative Segregation</u> <u>110-19</u>			COMPLIANCE	NON-COMPLIANCE	REMARKS ATTACHED	RE-AUDIT COMPLIANCE	RE-AUDIT NON-COMPLIANCE
INST. _____							
DATE _____ AUL.TOR _____							
ITEM	DCR REF.						
1.	VI.D.	Has an institutional directive been developed to implement and comply with this DCR?					
2.	VI.A.	Are the reasons for placement of inmates clearly indicated in the inmate's base file? Are required classification records present in the base file to document reviews and related classification team actions as required?					
3.	VI.A.1., 2.	Does a review of documentation confirm that placement of inmates on segregation is consistent with placement guidelines provided?					
4.	VI.A.3., a., b.	Does documentation exist to confirm that inmates are properly notified regarding the reasons for their placement on administrative segregation?					
5.	VI.A.4., a.	Does documentation exist to confirm that inmates placed on administrative segregation are seen by classification teams as required and given an opportunity to be heard?					
6.	VI.A.4., b.	Does documentation exist to confirm that classification teams considering administrative segregation cases have considered alternatives to continued administrative segregation housing and properly advised inmates of their decisions and the rationale for decisions?					
7.	VI.A.4., c.	Does documentation exist to confirm that classification teams are properly informed by management and/or investigative reports?					
8.	VI.A.4., d.1., 2.	Are cases of inmates placed on administrative segregation pending adjustment hearings handled as required?					
9.	VI.A.5., a., b., c	Does documentation exist to confirm that such cases have been properly reviewed by the warden?					
10.	VI.A.7., a., b., c	Does documentation exist to confirm that all inmates assigned to administrative segregation are reviewed every 30 days as required?					
11.	VI.B.	Does documentation exist to confirm that the conditions of confinement within the administrative segregation area are consistent with the conditions afforded to inmates assigned to the general population as required?					

MARYLAND DIVISION OF CORRECTION MANAGEMENT AUDIT FORM

TITLE & DCR # <u>Administrative Segregation</u> <u>110-19</u>			COMPLIANCE	NON-COMPLIANCE	REMARKS ATTACHED	RE-AUDIT COMPLIANCE	RE-AUDIT NON-COMPLIANCE
INST. _____							
DATE _____ AUDITOR _____							
ITEM	DCR REF.						
		in the following areas:					
12.	VI.B.1. a.,b.,c.	Housing, movement, personal, commissary					
13.	VI.B.2.	Hygiene					
14.	VI.B.3.	Exercise					
15.	VI.B.4.	Library					
16.	VI.B.5.	Health care					
17.	VI.B.6.	Classification services					
18.	VI.B.7.	Education and legal services					
19.	VI.B.8.	Visits					
20.	VI.B.9.	Religious activities					
21.	VI.B.10	Food					
22.	VI.B.11	Mail					
23.	VI.C.	Is information regarding each administrative segregation inmate's status available to appropriate staff for entry on OBSCIS screens?					

 <p style="text-align: center;">DIVISION OF CORRECTION REGULATION</p> <p style="text-align: center;">STATE OF MARYLAND</p> <p style="text-align: center;">DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES</p>	<p>DCR NO. <u>100-5</u></p> <p>DATE <u>October 1, 1990</u></p> <p>SUBJECT: CLASSIFICATION</p> <p>TITLE: Assignment to Super Maximum Security</p>
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- **APPENDIX B** -

- I. References:
- A. DCR's 100-1, 105-2, 110-6, 110-12
 - B. Article 27, Section 690, Annotated Code of Maryland
- II. Applicable To: All Institutions except MCIW
- III. Purpose: To establish policy concerning the assignment of an inmate to Super Maximum security.
- IV. Definitions:
- A. MCAC: Maryland Correctional Adjustment Center
 - B. Special Management Inmate: An inmate who, by his behavior, has demonstrated his inability to be housed in the general population, or in the administrative or disciplinary segregation areas, of Division of Correction institutions other than MCAC. This inmate may pose an extreme risk of violence to others, may be a high escape risk, may have a history of institutional rule violations, and/or may require constant supervision.
 - C. Super Maximum Security: The highest security level. Super Maximum security institutions provide secure housing within a secure perimeter. Features include single celling, extremely limited institutional movement, constant observation and limited inmate to staff and inmate to inmate contact to control the behavior of inmates who have demonstrated an inability to be housed in institutions of lesser security.
- V. Policy:
- A. The MCAC is a Super Maximum security institution designed to house special management inmates within the Maryland Division of Correction. An inmate may be considered for classification to Super Maximum security and subsequent assignment to MCAC, who is currently classified to:

1. maximum security administrative segregation, or
 2. maximum security disciplinary segregation and who has at least six months remaining to serve on the disciplinary segregation sentence, or
 3. maximum security and who escapes or attempts to escape, or
 4. medium security or below and assigned to disciplinary segregation with at least six months remaining to serve on his disciplinary segregation sentence and who is a special management inmate, or
 5. maximum security and who is a special management inmate.
- B. An inmate who is classified to Super Maximum security shall be assigned to MCAC general population, level III.
- C. An inmate's obligation to serve any disciplinary segregation imposed as a result of an infraction committed prior to approval for transfer to MCAC shall be eliminated at the time of such transfer.
- D. The MCAC program consists of three levels through which an inmate must progress before he may be classified to a lesser security level. As the inmate progresses through each of the three levels, he will earn progressively greater numbers of privileges and responsibilities. Throughout the inmate's progression through these three levels, staff will observe and evaluate his behavior, attitude, and interaction with other inmates and staff.

VI. Procedure:

- A. An inmate's classification counselor may initiate classification of an inmate who meets the criteria in Section V.A. (above) by completing Section A of the Classification Assignment Sheet (DC Form 100-1c) and submitting it to a classification team for processing in accordance with DCR 100-1. The classification team's action is subject to the review of the Warden for approval, disapproval or order for further proceedings. The recommendation for transfer to MCAC of an inmate who meets the eligibility criteria established in V.A.4. shall be subject to the final approval of the Commissioner or designee.
- B. An inmate transferred to MCAC shall be assigned to level III. Thereafter, the inmate may be classified in accordance with DCR 100-1 to:
1. level II after serving at least the preceding three months on level III with satisfactory adjustment,

2. Level I after serving at least the preceding four months on level II with satisfactory adjustment, or
3. Maximum or medium security general population after serving at least the six months on level I with satisfactory adjustment. However, based on Division of Correction needs under unusual circumstances, with classification team recommendation and warden approval, inmates who have completed three months on level I status may also be considered for classification to maximum or medium security.

C. An inmate who, while assigned to MCAC, is convicted of a violation of institutional rules in accordance with DCR 105-2 and receives a sanction:

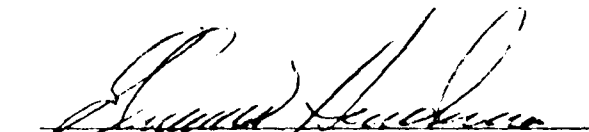
1. of disciplinary segregation shall be assigned to level III upon removal from segregation status, or
2. other than disciplinary segregation shall be assigned to level III at the conclusion of the adjustment proceeding.

D. An inmate who physically leaves the MCAC for any reason (temporary custody of a law enforcement agency, hospitalization, transfer to Patuxent, etc.):

1. for a period of 30 days or less will, upon return to MCAC, be placed on the same level assigned prior to departure and the time absent will be credited toward time requirements as specified in VI.B., or
2. for a period in excess of 30 days will, upon return to MCAC, be placed on the same level assigned prior to departure and a classification team shall review all information available regarding the time absent and shall determine the amount of time credited toward time requirements as specified in VI.B.

VII. Attachments: Appendix 1, Management Audit Form

VIII. Rescissions: DCR 100-5, January 2, 1989
Change 1 to DCR 100-5, August 1, 1989


Eimanus Herndon
Acting Commissioner

Distribution:

A
C
L

MANAGEMENT AUDIT FORM



DCR # & TITLE 100-5, Assignment to Super Maximum
Security

INST. _____

DATE _____ AUDITOR _____

ITEM	DCR REF.	DESCRIPTION	COMPLIANCE	NON-COMPLIANCE	REMARKS ATTACHED	RE-AUDIT COMPLIANCE	RE-AUDIT NON-COMPLIANCE
1.	VI.A.	The counselor initiates the classification of an eligible inmate by completing Section A of the Classification Assignment Sheet (DC Form 100-1c) and submitting it to a classification team for processing in accordance with DCR 100-1.					
2.	VI.A.	The Warden approves, disapproves or orders further proceedings regarding the classification team's action.					
3.	VI.A.	Recommendations for transfer to MCAC of an inmate eligible under Section V.A.4. are submitted to the Commissioner or designee for final approval.					
4.	VI.B.	Inmates transferred to MCAC are assigned to level III.					
5.	VI.C.	MCAC inmates convicted of a violation of 1. institutional rules in accordance with DCR 105-2 and who receive disciplinary segregation are assigned to level III upon removal from segregation status.					
6.	VI.C.	MCAC inmates convicted of a violation of 2. institutional rules in accordance with DCR 105-2 and who do not receive disciplinary segregation are assigned to level III at the conclusion of the adjustment proceeding.					
7.	VI.D.	An inmate who physically leaves the MCAC for any 1. reason for a period of 30 days or less is, upon return to MCAC, placed on the same level as assigned prior to departure and absence will be credited toward time requirements as specified in VI.B., or					
8.	VI.D.	An inmate who physically leaves the MCAC for any 2. reason for a period in excess of 30 days is, upon return to MCAC, placed on the same level assigned prior to departure and a classification team reviews all information available regarding the absence and determines the amount of time credited toward time requirements as specified in VI.B.					

I HEREBY CERTIFY that on this 29th day of April, 1991,
a copy of the foregoing Application for Leave to Appeal was
mailed, postage prepaid, to Steven G. Hildenbrand, Esq.,
Assistant Attorney General, 6776 Reisterstown Road,
Baltimore, Maryland 21215.



Joseph B. Tetrault

NATHANIEL HARRINGTON

Appellant

v.

SECRETARY OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES

Appellee

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*
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IN THE
CIRCUIT COURT
FOR
BALTIMORE CITY
Case No. 90190075/CL116244

12

* * * * *

MEMORANDUM OPINION AND ORDER

Hollander, J.

I. Factual Summary

On July 27, 1988, when Nathaniel Harrington ("Harrington" or "Appellant") was an inmate at the Maryland Penitentiary, he was placed on administrative segregation. R.5, p.16.¹ The next day, Harrington was served with a Notice of Infraction charging him with participation in a riot which occurred at the Penitentiary on July 25, 1988. R.5, p.2. On August 4, 1988, an Adjustment Hearing was held, and the Notice of Infraction was reduced to an Incident Report, pursuant to Division of Correction Regulation ("DCR") 105-2, Section VI.B.3. R.5, p.4-5.

Concurrent with these prison proceedings, a criminal investigation concerning the riot was undertaken by the office of the State's Attorney. Appellant remained on administrative

1. Reference to numbered items in the record is denoted by the letter "R" followed by the item number and a page number of the item or a description of the document.

segregation pending the investigation, and was eventually transferred to the Maryland Correctional Adjustment Center ("MCAC") in January, 1989. R.5, Classification Assignment Sheet, 1/18/89.

On February 2, 1989, Harrington filed a grievance with the Inmate Grievance Commission (the "Commission") R.1, p.1. In his grievance, Harrington complained that he was unjustly placed on administrative segregation and then transferred to MCAC based upon his alleged involvement in the riot. R.1, p.1. Appellant further complained that he was never apprised of the results of the prosecutor's investigation of his involvement in the riot.

A hearing was held before the Commission on January 24, 1990. R.18. Harrington testified at the hearing that he was made aware that the reason for his continued placement on administrative segregation was the pending criminal investigation. R.18, p.18.

At the hearing, Captain Patrick Ford ("Ford"), 8-4 Shift Captain, testified that he wrote a report to Major Hollis Thompson ("Thompson"), Acting Security Chief, on August 24, 1988. R.18,p.3. Ford investigated the riot and recommended in the report that Harrington be released from administrative segregation because of a lack of evidence of Harrington's involvement in the riot.² On September 15, 1988, Ford wrote

2. The investigation revealed that Harrington was seen with a baseball bat in the vicinity of the disturbance, but indicated that there was insufficient evidence of Harrington's actual participation to justify his continuation on administrative segregation. Administrative Segregation Recommendation, 8/24/88.

another report to Thompson in which he countermanded his earlier recommendation.³ These two written reports were not submitted to the classification team, which evaluates an inmate's status on administrative segregation. Nevertheless, Benjamin Amara ("Amara"), Senior Classification Counselor, testified that he received oral reports from Thompson⁴ recommending Harrington's continued segregation based on the fact that the State's Attorney's Office was investigating the riot. R.18, p.6.

Pamela Sorenson ("Sorenson"), Classification Supervisor, testified that in the spring or summer of 1989, several months after Appellant's transfer to MCAC, she heard "through the grapevine" that the criminal investigation of the riot had been completed. R.18, pp.8, 13. No formal criminal charges were ever lodged against Harrington.

On April 30, 1990, the Commission issued a split decision, recommending to the Secretary that Appellant "should have been released [from administrative segregation] after the inmate was absolved of an infraction." R.19, p.3, Conclusion. After reviewing the Commission's recommendation and the dissenting opinion of Commissioner Matz, however, the Secretary of Public

3. While the Notice of Infraction was reduced to an Incident Report, Ford indicated he could not conclude that Harrington was not involved in the riot. R.20. Administrative Segregation Recommendation, 9/15/88.

4. It is interesting to note that Thompson's presence at the hearing was never requested. Accordingly, no explanation for the absence of a written report was presented.

Safety and Correctional Services (the "Secretary") adopted the dissenting opinion. Accordingly, Appellant's grievance was dismissed on May 8, 1990. R.19, p.5-8. It is from the Secretary's decision that Harrington appeals to this court.

II. Scope of Review

Code, Art. 41, Section 4-102.1(1) governs the standard of judicial review in connection with the administrative adjudication of inmate grievances and complaints. Section 4-102.1(1) provides, in pertinent part, as follows:

Review by the court shall be limited to review of the record of the proceedings before the Commission. The court's review shall be limited to a determination of whether there was a violation of any right of the inmate protected by federal or state laws or constitutional requirements.

Holsey v. Inmate Grievance Comm'n., 296 Md. 601, 602 (1983);
Bryant v. Dept. of Pub. Safety, 33 Md. App. 357, 364-65 (1976).

Decisions of administrative agencies, such as those of the Secretary, are prima facie correct, and carry with them the presumption of validity. Thus, on appeal, the agency's decision must be viewed in the light most favorable to the agency. Lindsey, supra, 318 Md. at 334. See generally, Bulluck v. Pelham Woods Apts., 283 Md. 505 (1978). As a reviewing court, this court may not "substitute [its] judgment for the expertise of the agency." Lindsey, supra, 218 Md. at 333.

The substantial evidence test applies to the judicial review of decisions of the Commission in inmate grievance

matters. Greene v. Secretary of Pub. Safety, 68 Md. App. 147, 159 (1986); Hewitt v. Dept. of Pub. Safety, 38 Md. App. 710, 715 (1978); Bryant, supra, 33 Md. App. at 369. This test is satisfied when, upon review of the record, there is found to exist "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Greene, supra, 68 Md. App. at 147 (citation omitted).

In Hewitt, supra, the Court of Special Appeals reviewed the parameters of the substantial evidence test in considering the scope of judicial review of a decision by the Commission. What it said is pertinent here.

A reviewing court may, and should examine any inference, drawn by an agency, of the existence of a fact now shown by direct proof, to see if that inference reasonably follows from other facts which are shown by direct proof. If it does, even though the agency might reasonably have drawn a different inference, the court has no power to disagree with the fact so inferred.

A reviewing court may, and should examine any conclusion reached by an agency, to see whether reasoning minds could reasonably reach that conclusion from facts in the record before the agency, by direct proof, or by permissible inference. If the conclusion could be so reached, then it is based upon substantial evidence, and the court has no power to reject that conclusion.

A reviewing court may, and should examine facts found by an agency, to see if there was evidence to support each fact found. If there was evidence of the fact in the record before the agency, no matter how conflicting, or how questionable the credibility of the source of the evidence, the court has no power to substitute its assessment of credibility for that made by the agency, and by doing so, reject the fact.

38 Md. App. at 714, quoting Comm'r. v. Cason, 34 Md. App. 487, 518 (1977). The validity of these general principles has been

reaffirmed numerous times. See, e.g., Maryland State Police v. Lindsey, 318 Md. 325 (1990); Terranova v. Board, 81 Md. App. 1 (1989); Kade v. Hickey School, 80 Md. App. 721 (1989).

III. Discussion

I.

Appellant acknowledges that his initial placement on administrative segregation was proper. Appellant's Memorandum at 2. But Harrington argues that his continuation on administrative segregation, during the State's criminal investigation, violated the provisions of DCR 110-19, because no written report was ever submitted to the Classification Team. He further claims that this dereliction infringed his rights to due process, thereby entitling him to relief. Appellant also contends that he was unjustly transferred to MCAC because of the length of his administrative segregation.

The Secretary is empowered by Code, Art. 41, Section 4-104(b) and Code, Art. 27, Section 676 to promulgate rules and regulations for his office. Pursuant to this authority, the Secretary promulgated the administrative rules and regulations contained in the DCR. DCR 110-19 Section VI.A.4.c. provides:

An investigative report shall be prepared and made available to the classification team at the initial hearing or as soon as possible. This report shall include all information pertaining to the placement of the inmate on administrative segregation and recommendations concerning change in status.

As the text of DCR 110-19 Section VI.A.4.c. makes evident, the rule is silent as to the form the report is to take. Appellant urges that DCR 110-19 Section VI.A.4.c. implicitly requires a written investigative report. Clearly, no written investigative report was submitted to the classification team. But oral reports were received. R.18, pp.6,7; R.5, Classification Assignment, 11/29/88, 10/21/88. Thus the interpretation of DCR 110-19 Section VI.A.4.c. is at the heart of this controversy.

It is a fundamental concept of administrative law that an agency must follow its own regulations. See, Adams v. Califano, 474 F. Supp. 974, (D.Md.), aff'd., 643 F.2d 995; (4th Cir., 1981) and cases cited therein; Williams v. McHugh, 51 Md. App. 570 (1982). The Court of Special Appeals has consistently held that great deference should be given to an agency's interpretation of its own regulation. Baltimore & Ohio R. Co. v. Bowen, 60 Md. App. 299 (1984); Maryland Comm'n on Human Relations v. Bethlehem Steel Corp., 295 Md. 586 (1983), (citations omitted). Accordingly, the Secretary's conclusion that DCR 110-19 Section VI.A.4.c. does not require a written investigative report must be given great weight. See R.19, pp.5,8. Unless plainly erroneous, this court is obliged to respect the Secretary's interpretation. Adams, supra.

Moreover, where, as here, a regulation is silent or ambiguous, deference must be given to administrative custom and

interpretation. Power Reactor Co. v. Electricians, 367 U.S. 396 (1961); Movement Against Destruction v. Trainor, 400 F.Supp. 533 (D.Md. 1975). Appellant offered no proof that the Secretary's interpretation was contrary to established custom or practice in the Maryland Penitentiary. He offered no more than the unsupported assertion that "preparation" necessarily entails the submission of a written report. This, of course, is not necessarily so. In light of the deference accorded the Secretary's interpretation, this court has no basis on which to subvert that interpretation.

In Hewitt v. Helms, 459 U.S. 460 (1983), the Supreme Court considered the continued administrative segregation of an inmate pending prison disciplinary and criminal investigations. The Court recognized that prison officials have broad administrative and discretionary authority over the institutions they manage and that lawfully incarcerated persons retain only a narrow range of protected liberty interests. Id. at 467. The Court also recognized that administrative segregation could not be used as a pretext for indefinite confinement of an inmate, but that prison officials must engage in a periodic review of the confinement of such inmates. Id. at 477 n.9. Nevertheless, the Court concluded that minimum due process standards for placing and continuing an inmate on administrative segregation were satisfied by providing the inmate with an informal, nonadversary review of the information supporting administrative confinement, within a reasonable time after the commencement of the confinement. Id. at 472.

Appellant concedes that DCR 110-19 incorporates the minimum due process protections set out in Hewitt. The Court in Hewitt did not establish a constitutional requirement that reports relevant to an inmate's continued classification on administrative segregation must be written. Appellant cited no authority for the proposition that the failure to provide a written investigative report offends Constitutional due process. Nor can such a requirement be drawn from the language of DCR 110-19 Section VI.A.4.c.

In any event, Harrington's continuation on administrative segregation was justified by other provisions of the DCR. DCR 110-19 Section VI.A.2. provides in pertinent part:

Administrative segregation shall be used for such reasons as:

(d) Pending criminal investigations.

Additionally, DCR 110-19 Section VII.A.7. provides that an inmate placed on administrative segregation may remain so confined for as long as there is a need in the particular case. The need in the instant case was the continuing outside criminal investigation.

In view of all of the foregoing, the Secretary's decision dismissing Harrington's grievance is supported by substantial evidence and is correct as a matter of law. Appellant has not demonstrated to this court that any provision of the DCR, or due process, requires that a written report be submitted to justify an inmate's continuation on administrative segregation.

II.

Appellant contends that his transfer to MCAC was premised solely on the fact that he remained on administrative segregation for an extended period. The record reveals that transfer to MCAC was effected after the classification team reviewed Harrington's record, including an infraction in September, 1986, involving the attempted introduction of contraband into the prison, infractions on February 2, 1988, for unauthorized lateness for school, being out of bounds, and disobeying a direct order, and an infraction on August 21, 1988, for being out of bounds. R.5, Classification Assignment Sheet, 1/18/89.

Sorenson testified that Appellant was not transferred solely because of his alleged involvement in the riot. She explained that the decision to transfer can be based on an inmate's history of institutional rule violations and/or the risk of escape. Thus Sorenson testified that Harrington could have been transferred to even if he had been in the [general] population, rather than on administrative segregation. R.18, p.17. In any event, Appellant satisfied the criteria of DCR 100-5,⁵ because he was properly placed on administrative segregation and had a history of rule violations. R.18, p.11.

5. DCR 100-5 V.A. provides:

The MCAC is a maximum security custody level 5 institution designed to house special management inmates within the Maryland Division of Correction. An inmate may be considered for classification to maximum security custody level 5, and subsequent assignment to MCAC 5, who is currently classified to: Maximum Security C-4 [administrative segregation] and is a special management inmate.

Accordingly, the Secretary's decision that Harrington was not unjustly transferred to MCAC is supported by substantial evidence.

Based on the foregoing, it is this 28th day of March, 1991, by the Circuit Court for Baltimore City

ORDERED that the decision of the Secretary be, and the same hereby is, AFFIRMED.

Costs to be waived.

Ellen L. Hollander
Ellen L. Hollander, Judge

cc: Mr. Nathaniel Harrington
Joseph Tetrault, Esquire
Attorney for Appellant
Steven G. Hildenbrand, Esquire
Assistant Attorney General

5. (continued)

DCR 100-5 IV.B. defines Special Management Inmate as:

As an inmate who, by his behavior, has demonstrated his inability to be housed in the general population, or in the administrative or disciplinary segregation areas of Division of Correction institutions other than MCAC. This inmate may pose an extreme risk of violence to others, may be a high escape risk, may have a history of institutional rule violations, and/or may require constant supervision.

J. Hollander

NATHANIEL HARRINGTON,
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AND CORRECTIONAL SERVICES
APPELLEE

* IN THE
* CIRCUIT
* COURT
* FOR
* BALTIMORE CITY
* CASE NO. 90190075/CL116244

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FILED

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**CIRCUIT COURT FOR
BALTIMORE CITY**

IGC NO. 21719

* * * * *

APPELLANT'S REPLY MEMORANDUM

Pursuant to MD. Rule B12, Appellant Nathaniel Harrington, by his attorney, respectfully submits the following Memorandum in Reply to "Appellees' Response Memorandum of Law."

INTRODUCTION

Appellant is a prisoner committed to the custody of Maryland's Commissioner of Correction. Although cleared of complicity in the July, 1988 disturbance at the Maryland Penitentiary, see Record Item No. 5, p.4 (testimony of Officer White); Record Item No. 18, p.21 (Recommendation of Captain Ford), the Inmate Grievance Commission ("IGC") found that Appellant nevertheless illegally remained on administrative segregation for eighteen months. Record Item No. 19, p.3. As a result of his continuation on administrative segregation status, Appellant was eventually transferred to the notorious Maryland Correctional Adjustment Center ("Super Max"). Id.

SCOPE OF REVIEW

Appellee accurately summarizes the law relevant to this Court's function when reviewing decisions of the Secretary of Public Safety and Correctional Services resulting from proceedings before the IGC.

Appellee's Response Memorandum of Law, pp. 2-4. Appellee, however, overlooks Appellant's contention that, in the instant case, the Secretary of Public Safety's reversal of the decision of the IGC was not based on substantial evidence and further, under the circumstances of this case, was arbitrary and capricious.

When the IGC finds a prisoner's complaint to be meritorious in part or in full, its findings of fact and recommendations are forwarded to the Secretary for review. Md. Ann. Code, Art. 41, 4-102.1 (f) (2) (1990 Repl. Vol.). At that point, the Secretary's functions should be that of an appellate court. See 59, Op. Att'y Gen. 438, 444 (1974). Appellee Secretary should

- (1) accept the findings of fact [of the IGC] as conclusive provided such findings contain a concise statement of conclusions upon each contested issue of fact;
- (2) determine whether the facts, as found by the Commission, support a determination that the inmate has been deprived of his constitutional and/or legal rights or that administrative relief is required; and
- (3) determine whether the Commission's order is appropriate.

Id. at 444-45.

In other words, the Secretary should not disregard, in wholesale manner, the factual findings of the majority of the IGC panel, as was done here. Given the fact that the IGC heard the testimony of the witnesses firsthand, and given the defence which the IGC always accords prison officials, the Appellee's adoption of Commissioner Matz' dissenting opinion amounts to an unwarranted interference with the IGC's function, thereby constituting arbitrary and capricious action which should be reversed.

COMPLIANCE WITH DUE PROCESS AND DCR 110-19

Appellee argues that Major Thompson's "verbal information" was sufficient to comply with the periodic review of Appellant's status on administrative segregation required by Hewitt v. Helms, 459 U.S. 460, 477 N. 9 (1983).

This "verbal information," dutifully relayed by Appellant's classification counselor to the classification team charged with this periodic review, consisted of the command "that subject [Appellant] is going to remain on Administrative Segregation." Record Item 5, p.8. The Chief of Security made it clear that, no matter what the classification team might recommend, Appellant was to remain on "ice" until he, Major Thompson, saw fit to deem otherwise. Such "periodic review" was a sham and a denial of due process.

Appellant does not concede that, in cases challenging placement or continuation on administrative segregation, the requirements of due process and Division of Correction Regulation ("DCR") 110-19 are one and the same. In clarification of Appellant's statement that "DCR 110-19 incorporates the minimum due process protections in regard to administrative segregation as required by the Supreme Court in Hewitt v. Helms, [supra," Memorandum in Support of Amended Petition for Reversal of Administrative Agency Decision, p.3, Appellant notes that he has also argued that DCR 110-19 requires written reports to be submitted to the classification team if prison officials wish to justify continued (and especially prolonged) administrative segregation status. Memorandum in Support of Amended Petition, pp. 2-3. In other words, DCR 110-19 both incorporates the due

process standard of Hewitt and, recognizing the profound deprivations attendant on administrative segregation status, requires further procedural safeguards for prisoners such as Appellant. The IGC found that these further procedural safeguards were clearly disregarded, Record Item No. 19, p.2, and the Appellee's reversal of the IGC's decision emasculates the regulatory provision.

CONCLUSION

There is little enough fairness in prison disciplinary and classification proceedings. When Appellant was cleared of involvement in the 1988 riot by the adjustment team, that should have ended the matter. Instead, Appellant remained in solitary confinement, both on the South Wing of the Penitentiary and at "Super Max," for close to two years while a phantom "criminal investigation" -- the results of which none of the parties to this case have any knowledge -- purportedly was completed. This Court should find, as did the majority of the IGC, that the prison officials' responsible for Appellant's treatment not only violated their own regulations, but that their conduct affronted standards of fundamental fairness. Appellant prays that this Court reverse the decision of Appellee Secretary.

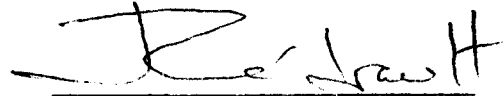
Respectfully Submitted,



JOSEPH B. TETRAULT
Staff Attorney
Prisoner Assistance Project
809 E. Baltimore St.
Baltimore, MD 21202
(301) 539-0390

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of November, 1990,
a copy of the foregoing Appellant's Reply Memorandum was mailed, postage
prepaid, and sent via facsimile to Steven G. Hildenbrand, Esq., Assistant
Attorney General, 6776 Reisterstown Road, Baltimore, Maryland, 21215.



JOSEPH B. TETRUALT

NATHANIEL HARRINGTON,
APPELLANT
V.
SECRETARY OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES
APPELLEE

* IN THE
* CIRCUIT
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IGC NO. 21719

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process standard of Hewitt and, recognizing the profound deprivations attendant on administrative segregation status, requires further procedural safeguards for prisoners such as Appellant. The IGC found that these further procedural safeguards were clearly disregarded, Record Item No. 19, p.2, and the Appellee's reversal of the IGC's decision emasculates the regulatory provision.

CONCLUSION

There is little enough fairness in prison disciplinary and classification proceedings. When Appellant was cleared of involvement in the 1988 riot by the adjustment team, that should have ended the matter. Instead, Appellant remained in solitary confinement, both on the South Wing of the Penitentiary and at "Super Max," for close to two years while a phantom "criminal investigation" -- the results of which none of the parties to this case have any knowledge -- purportedly was completed. This Court should find, as did the majority of the IGC, that the prison officials' responsible for Appellant's treatment not only violated their own regulations, but that their conduct affronted standards of fundamental fairness. Appellant prays that this Court reverse the decision of Appellee Secretary.

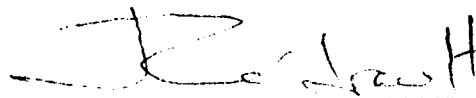
Respectfully Submitted,



JOSEPH B. TETRAULT
Staff Attorney
Prisoner Assistance Project
809 E. Baltimore St.
Baltimore, MD 21202
(301) 539-0390

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of November, 1990,
a copy of the foregoing Appellant's Reply Memorandum was mailed, postage
prepaid, and sent via facsimile to Steven G. Hildenbrand, Esq., Assistant
Attorney General, 6776 Reisterstown Road, Baltimore, Maryland, 21215.



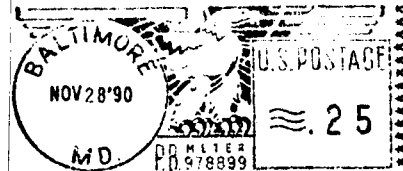
JOSEPH B. TETRUALT

LEGAL AID BUREAU, INCORPORATED

PRISONER ASSISTANCE PROJECT

809 E. BALTIMORE STREET

BALTIMORE, MARYLAND 21202



Steven G. Hildenbrand, Esq.
Assistant Att'y Gen.
6776 Reisterstown Rd.
Baltimore MD 21215

NATHANIEL HARRINGTON

APPELLANT

v.

SECRETARY OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES

APPELLEE

IGC NO. 21719

FILED
NOV 20 1990
CIRCUIT COURT FOR
BALTIMORE CITY

IN THE

CIRCUIT

COURT

FOR

BALTIMORE CITY

CASE NO. 90190075/CL116244

APPELLEES' RESPONSE MEMORANDUM OF LAW

The Secretary of the Maryland Department of Public Safety and Correctional Services, Appellees, by his attorneys, J. Joseph Curran, Jr., Attorney General of Maryland, and Steven G. Hildenbrand, Assistant Attorney General, pursuant to Maryland Rule B12, files the following Memorandum of Law in response to Appellant's memorandum.

STATEMENT OF FACTS

Appellant Nathaniel Harrington, while then an inmate at the Maryland Penitentiary, was served with a Notice of Assignment to Administrative Segregation (Record, item 5, p. 16) on July 27, 1988 for the reason that a criminal investigation was pending against him concerning a prison disturbance that occurred on July 25, 1988 (Record, item 5, p.2). He was removed from the prison's general population and placed in an administrative segregation cell on July 27, 1988. Appellant concedes that his initial placement on administrative segregation was proper, and does not dispute that finding made by the Inmate Grievance Commission. Record, item 19, p.2, Finding of Fact para. 1. See para. 5 of Appellant's Memorandum of Law. On July 28, 1988, Appellant was

served with a Notice of Infraction concerning the July 25, 1988 riot, but that disciplinary charge was reduced to an incident report on August 4, 1988. Record, item 5, p. 2 and 5.

Appellant contends in this appeal case that his continued confinement on administrative segregation while a criminal investigation took its course occurred without due process of law and contrary to the procedures established by the Division of Correction in DCR 110-19 (copy attached as Appendix A to Appellant's Amended Petition for Reversal of Administrative Agency Decision).

In a two-one split decision, the Inmate Grievance Commission (IGC) recommended to the Secretary of Public Safety and Correctional Services that Appellant should have been released from administrative segregation "after... the inmate was absolved of an infraction." Record, item 19, p. 3, Conclusion. The Secretary after reviewing the IGC recommendation and the dissent, adopted the dissenting opinion and dismissed Appellant's grievance on May 8, 1990. Record, item 19, p.5-8.

SCOPE OF REVIEW

An order issued by the IGC dismissing an inmate's grievance constitutes a final decision of the Secretary of Public Safety and Correctional Services for purposes of requesting judicial review of that administrative decision. Md. Code Ann. Article 41, Section 4-102.1(f)(1) and (2). Judicial review of an IGC decision by a court is limited to a review of the record of the proceedings before the IGC and of the final order of the IGC or Secretary. The Court's review is, by statute, "limited to a

determination of whether there was a violation of any right of the inmate protected by federal or State law or constitutional requirements." Art. 41, Sec. 4-102.1(1). Holsey v. IGC, 296 Md. 601, 602, 464 A.2d 1017, 1018-1019 (1983); Bryant v. Dept. of Pub. Safety, 33 Md.App. 357, 364-65, 365 A.2d 764, 766 (1976).

The Court of Special Appeals applies the substantial evidence test to judicial review of decisions of the IGC. Greene v. Secretary of Public Safety, 68 Md.App. 147, 159, 510 A.2d 613, 619 (1986); Hewitt v. Dept. of Pub. Safety, 38 Md.App. 710, 715, 382 A.2d 903, 905 (1978); Bryant, supra, 33 Md.App. at 369. The test is satisfied when a court finds that there exists in the record of the IGC proceedings "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Greene, supra, 68 Md.App. at 147 (citation omitted). In Hewitt, supra, the Court of Special Appeals stated:

If there was evidence of the fact in the record before the agency, no matter how conflicting, or how questionable the credibility of the source of the evidence, the court has no power to substitute its assessment of credibility for that made by the agency, and by doing so, reject the fact.

38 Md.App. at 714, quoting Comm'r. v. Cason, 34 Md.App. 487, 518, 368 A.2d 1067, 1079 (1977).

An agency's decision is to be reviewed in the light most favorable to the agency because decisions of administrative agencies are prima facie correct and carry with them the presumption of validity. Bulluck v. Pelham Wood Apartments, 283

Md. 505, 513, 390 A.2d 1119, 1124 (1978); Maryland State Police v. Lindsey, 318 Md. 325, 334 (1990). The reviewing court should not "substitute [its] judgment for the expertise of the agency." Lindsey, supra, 318 Md. at 333.

ARGUMENT

APPELLANT WAS NOT DENIED DUE PROCESS OF LAW

Appellant concedes that "DCR 110-19 incorporates the minimum due process protections in regard to administrative segregation as required by the Supreme Court in Hewitt v. Helms, 459 U.S. 460, 103 S.Ct. 864 (1983)." The Supreme Court in Hewitt stated that prison officials are obligated to provide an inmate upon his initial placement on administrative segregation only "an informal nonadversary review of the information supporting respondent's administrative confinement, including whatever statement" the inmate "wished to submit, within a reasonable time after confining him to administrative segregation." Hewitt, 459 U.S. at 472, 474, 103 S.Ct. at 872, 873. As Appellant concedes, his initial placement complied with due process of law.

The Supreme Court in Hewitt in a footnote stated that "prison officials must engage in some sort of periodic review of the confinement of such inmates" on administrative segregation. "This review will not necessarily require that prison officials permit the submission of any additional evidence or statements." Ibid, 459 U.S. 477, n. 9, 103 S.Ct. 874, n. 9.

In Hewitt, inmate Helms had both prison disciplinary and criminal investigations pending against him while he was on administrative segregation concerning his involvement in a prison

riot. Like Appellant's situation in this case, the prison staff met while Helms was on administrative segregation to review the status of his confinement on administrative segregation and to make recommendations as to his continued confinement. Hewitt, 459 U.S. at 465, 103 S.Ct. at 868. The Supreme Court found that the prison staff in its review of Helm's continuation on administrative segregation satisfied the necessary due process requirements "for continued confinement pending the outcome of the investigation" (criminal prosecution ultimately was dropped against Helms but the prison staff found him guilty of a prison disciplinary charge three weeks after the review of his continuation on administrative segregation had occurred). Ibid, 459 U.S. 465, 477, 103 S.Ct. at 868, 874. The Supreme Court noted that included in the rationale for continuing Helms on administrative segregation was that prison officials were "awaiting information regarding his role in the riot," Ibid, at 465, at 868.

The Record in this case shows that while Appellant remained on administrative segregation at the Maryland Penitentiary prior to his being transferred to another institution in January 1989, that his status and continuation on administrative segregation was reviewed every month and the Record shows that each time the Classification Team recommended and the Warden reviewed and approved continuation on segregation pending the outcome of the criminal investigation. Record, item 5, pages 6-13. That monthly review procedure satisfies the due process requirements stated in Hewitt. Hewitt does not require

that additional documentation be provided to prison officials making a decision concerning continuation on administrative segregation. Appellee submits that the verbal information by Major Thompson and the information of the classification counselor to the Classification Team was sufficient for the periodic review to satisfy due process.

COMPLIANCE WITH DCR 100-19

Appellant contends that Section VI. A.4.c. of DCR 110-19 requires that a written investigative report prepared by prison corrections staff must be given to the Classification Team for their consideration concerning Appellant's assignment to administrative segregation. Appellant is attempting to read more into the language of DCR 110-19 than that regulation states. Section VI.A.4.c. does not require that an investigative report must be available to the classification team at the time of the initial classification hearing, as the regulation states "or as soon as possible." There is no provision in DCR 110-19 that provides that until an investigative report is submitted, that an inmate may not be placed or continued on administrative segregation. Consistent with Hewitt, DCR 110-19 leaves broad administrative and discretionary authority to prison staff to determine placement and continuation of inmates on administrative segregation.

The specific provisions of DCR 110-19 dealing with the authority to continue an inmate on administrative segregation set forth in Section VI.A.7. do not require submission to the Classification Team of additional statements or evidence to

justify continued segregation confinement. Neither does Hewitt require any such submissions.

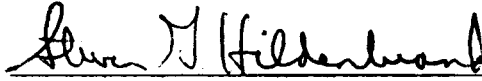
Prior to the first monthly review of Appellant's status on segregation on September 28, 1988, Captain Ford had reversed his earlier August 24, 1988 recommendation of release from administrative segregation in his September 15, 1988 memo. Neither of Captain Ford's reports were required by DCR 110-19 VI.A.7. to be submitted to the Classification Team for consideration by the team concerning continued confinement on segregation.

Commissioner Matz's dissenting opinion as adopted by the Secretary is supported by substantial evidence in the Record, including the provisions of DCR 110-19, the testimony of Ms. Sorensen at the IGC hearing that the criminal investigation was not completed until long after Appellant was transferred from the Maryland Penitentiary, and the absence of any contention by Appellant that he did not know the reason for his placement and continued confinement on administrative segregation. On the other hand, the majority decision of the IGC is not supported by substantial evidence as is explained in the dissenting IGC opinion.

CONCLUSION

For the foregoing reasons, the decision of the Secretary of Public Safety and Correctional Services was supported by substantial evidence and was not arbitrary or capricious. Neither was any constitutional right to due process denied.

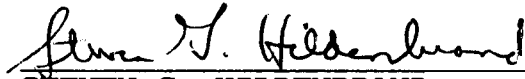
J. JOSEPH CURRAN, JR.
Attorney General of Maryland



STEVEN G. HILDENBRAND
Assistant Attorney General
Department of Public Safety and
Correctional Services
6776 Reisterstown Road
Suite 312
Baltimore, Maryland 21215-2341
Tel: 764-4072

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of November 1990, copies of the foregoing Appellee's Response Memorandum of Law were both mailed and faxed to Joseph B. Tetrault, Esquire, Prisoner Assistance Project, Legal Aid Bureau, Inc., 809 E. Baltimore Street, Baltimore, Maryland 21202



STEVEN G. HILDENBRAND
Assistant Attorney General

FILED

OCT 12 1990

CIRCUIT COURT FOR BALTIMORE CITY

NATHANIEL HARRINGTON,
Appellant

* IN THE
* CIRCUIT

v.

* COURT

BISHOP L. ROBINSON,
Appellee

* FOR

IGC No. 21719

* BALTIMORE

* CITY

* Case No.: 90190075/CL11624

MEMORANDUM IN SUPPORT OF AMENDED
PETITION FOR REVERSAL OF
ADMINISTRATIVE AGENCY DECISION

Appellant Nathaniel Harrington, by his attorney,
pursuant to Md. Rule B12, respectfully submits this Memorandum in
Support of Amended Petition for Reversal of Administrative
Decision, and states as follows:

Introduction

1. On July 28, 1988 Appellant was served with a Notice of Infraction charging him with participation in the riot which rocked the Maryland Penitentiary that month. Record Item No. 5, p. 2.
2. On August 4, 1988, however, at an Adjustment Hearing held at the Maryland Penitentiary, said Notice of Infraction was reduced to an incident report per Division of Correction Regulation ("DCR") 105-2.VI.B.3. Record Item 5, pp. 4-5.
3. Appellant, however, had been in solitary confinement, on administrative segregation, since July 27, 1988, Record Item

No. 5, p. 16 ("Notice of Assignment to Administrative Segregation"), and remained so confined even after the Notice of Infraction was reduced to an incident report.

4. Appellant remained in solitary confinement for approximately eighteen months. Record Item No. 14, p. 3, para. 14.

Argument

5. Appellant concedes that his initial placement on administrative segregation on the rationale that "[a] criminal investigation is pending in your case," Record Item No. 5, p. 16, was proper. Record Item No. 14, p. 2, para. 1.
6. Appellant's continuation on administrative segregation, in "limbo", while a "criminal investigation" -- the results of which were never revealed to Appellant or made part of his institutional records -- purportedly took its course, for eighteen months, which continuation on administrative segregation resulted in Appellant's eventual transfer to the Maryland Correctional Adjustment Center, where he continued to languish in solitary confinement, is a clear violation of DCR 110-19 and fundamental due process.
7. DCR 110-19 (a copy of which is attached as Appendix A to the Amended Petition for Reversal of Administrative Agency Decision in the instant case) requires that "[a]n investigative report shall be prepared and made available to

the classification at the initial hearing or as soon as possible.") DCR 110-19. VI.A.4.c.

8. The regulation uses mandatory language and must be adhered to by Division of Correction officials. See Hopkins v. Maryland Inmate Grievance Commission, 40 Md. App. 329, ___, 391 A. 2d 1213, 1216 (1978) (construing equivalent language in DCR 105-2 as mandatory).
9. "It is now a familiar principle of statutory construction in this State that use of the word 'shall' is presumed mandatory unless its context would indicate otherwise " Moss v. Director, Patuxent Inst., 279 Md. 561, ___, 369 A.2d 1011, 1013 (1977) (citations omitted). See also Tranen v. Aziz, 59 Md. App. 528, ___, 476 A.2d 1170, 1173 (1984) (term "shall" in statute or rule presumed mandatory), aff'd, 304 Md. 605, 500 A.2d 636 (1985).
10. The context of DCR 110-19 confirms that the term "shall" was intended to be mandatory.
11. DCR 110-19 incorporates the minimum due process protections in regard to administrative segregation as required by the Supreme Court in Hewitt v. Helms, 459 U.S. 460, 103 S. Ct. 864 (1983). "[A]dministrative segregation may not be used as a pretext for indefinite confinement of an inmate. Prison officials must engage in some sort of periodic review of the confinement of such inmates." Id. at 476 n.8, 103 S.

Ct. at 874 n.8. It is against this backdrop and the facts of this case that the procedural protections of DCR 110-19 must be viewed.

12. The first investigative report was prepared on August 24, 1988. Record Item 18, pp. 20-21. In it, Captain Ford recommended to Major Thompson that Appellant be removed from administrative segregation, id., p. 21, citing the fact that Appellant "could not be identified as actually participating in the disturbance." Subsequently, on September 15, 1988, Captain Ford changed his mind, stating that the reduction of the Notice of Infraction to an incident report "does not mean that inmate Harrington was not involved." Id., p. 23.
13. In the meantime, Appellant was continued on administrative segregation "based on placement rationale," Record Item No. 5, p. 13, i.e., the purported criminal investigation. See also id., p. 12 ("pending results of criminal investigation"); id., p. 10 (same); id., p. 8 (same); id., p. 5 (same).
14. The reports prepared by Captain Ford were never forwarded to the classification team for their action, but were known only to Major Thompson. Record Item No. 19, p. 3, para. 6.
15. There is no evidence in the record that a criminal investigation ever took place. Without the results of a

criminal investigation, Appellant was continued on administrative segregation solely on the verbal command of Major Thompson. Record Item 5, p. 6-7 ("Major Thompson, Acting Security Chief, advised both Counselor and Subject that subject is going to remain on Administrative Segregation."); id., p. 8 ("No change as per verbal advise [sic] of Major Thompson."); id., p. 10 ("No change based on Major Thompson's verbal report....").

16. In effect, Major Thompson was punishing Appellant for having allegedly participated in the July disturbance, and the classification team abdicated its duty to "actively consider all available alternatives to continued administrative segregation." DCR 110-19.VI.7.a.1.
17. Finally, Appellant was transferred to the "Super Max" prison based on his "current admin[istrative] segregation status." Record Item No. 5, p. 6. For all Appellant knows, the "criminal investigation" is still ongoing.
18. It is because of abuses of administrative segregation status such as this that DCR 110-19 must be viewed as mandatory and not directory.
19. Commissioner Matz's dissenting opinion, Record Item 19, pp. 5-7, adopted by Appellee as the basis of his decision, id., p. 8, is not based upon substantial evidence.

20. Although Commissioner Matz is correct in noting, Record Item No. 19, p. 5, that Captain Ford countermanded his earlier recommendation that Appellant be removed from administrative segregation, this fact is immaterial to the contention that DCR 110-19 was violated, as neither of Captain Ford's reports were ever forwarded to the classification team for their consideration as required by the regulation.
21. Ms. Sorensen, who represented the institution at the Inmate Grievance Commission hearing, testified that "[a]s far as I was concerned it was my recollection the criminal aspect of the whole case were [sic] not resolved until the spring of, the spring or summer of '89." Record Item No. 18, p. 8. Commissioner Matz places great stress on this testimony to argue that the criminal investigation was entirely out of Division of Correction officials' hands. Record Item No. 19, p. 5.
22. This argument overlooks relevant language from Hewitt, supra: "[T]he decision to continue confinement of an inmate pending investigation of misconduct charges depends on circumstances that prison officials will be well aware of -- most typically, the progress of the investigation." 459 U.S. at 476 n.8, 103 S. Ct. at 874 n.8. In the instant case, no Division of Correction official -- not Captain Ford, nor Major Thompson, nor any member of the classification team -- ever bothered to make any effort to ascertain the status of


- the purported "criminal investigation." Commissioner Matz's argument is simply irrelevant to the contention that DCR 110-19 and Appellant's right to due process were violated.
23. Commissioner Matz contends that DCR 110-19 does not require written reports, nor does it require that these reports be given to the classification team. Record Item No. 19, p. 5. It is difficult to reconcile this argument with the plain language of DCR 110-19. VI.A.4.C: "An investigative report shall be prepared and made available to the classification team...." (Emphasis supplied.)
24. Commissioner Matz's conclusion that Appellant was not transferred to the MCAC based on his alleged participation in the July 1988 riot is not supported by substantial evidence. Appellant's last major infraction, as the classification team^a was fully aware, occurred in 1986. Record Item No. 5, p. 7. The only basis for his transfer to MCAC was his "current admin[istrative] segregation status." Id., p. 6. See DCR 100-5.V.A.1. Appellant was never found to be a "special management inmate" per DCR 100-5.V.A.5. The only reason for Appellant's administrative segregation status was his alleged involvement in the July 1988 riot.
25. Given the deference which should be accorded the findings and conclusions of the majority of the Commission, who heard the testimony and considered the evidence, Appellee's Order of May 8, 1990, reversing the majority's decision and

adopting Commissioner Matz's dissenting opinion, is arbitrary and capricious. Cf. Washington v. Boslow, 375 F. Supp. 1298, 1301 (D. Md. 1974). rev'd on other grounds, 516 F.2d 357 (4th Cir. 1975), cert. dismissed, 426 U.S. 471, 96 S. Ct. 2640 (1976).

Conclusion

For the reasons stated above, Appellant prays that the decision of Appellee Secretary of Public Safety and Correctional Services be reversed, and the relief prayed for in the Amended Petition for Reversal of Administrative Agency Decision be granted, and that the Court grant such other and further relief as the nature of the cause may require.

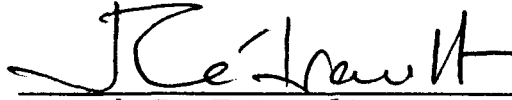
Respectfully submitted,



Joseph B. Tetrault
Staff Attorney
Prisoner Assistance Project
Legal Aid Bureau, Inc.
809 E. Baltimore Street
Baltimore, MD 21202
Telephone: (301) 539-0390

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of October, 1990, a copy of the foregoing Memorandum in Support of Amended Petition for Reversal of Administrative Agency Decision was mailed, postage pre-paid, to Steven G. Hildenbrand, Esq., Assistant Attorney General, 6776 Reisterstown Road, Baltimore, MD 21215.



Joseph B. Tetrault

FILED

AUG 31 1990

CIRCUIT COURT FOR
BALTIMORE CITY

8/

NATHANIEL HARRINGTON, #180801 : IN THE

Appellant : CIRCUIT COURT

vs. : FOR

BISHOP L. ROBINSON, SECRETARY : BALTIMORE CITY
DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES : Case No.: 90190075/CL116244

Appellee :

IGC No. 21719 :
oOo

MOTION FOR EXTENSION OF TIME

Appellant Nathaniel Harrington, by his attorney, pursuant to Md. Rule 1-204, respectfully requests that this Court extend the time requirement for the filing of Appellant's Memorandum of Law in the above-captioned case, and states as grounds the following:

1. Appellant's counsel has received, from the Clerk of the Circuit Court for Baltimore City, the notice sent in accordance with Md. Rule B12, which certifies that the record in the above-captioned case was received from the administrative agency on August 13, 1990.

2. Pursuant to Md. Rule B12, Appellant's Memorandum of Law must be filed within thirty days of receiving such notice, on or before September 12, 1990.

3. Appellant's counsel has prior commitments which would cause him to be out-of-town on September 12, 1990, and for some

time thereafter and Appellant's counsel cannot now alter these prior commitments.

4. Appellant's counsel submits that he cannot prepare a Memorandum of Law prior to attending to these commitments and at the same time adequately represent the interests of his client in this case, and the interests of his other clients.

5. Appellant's counsel has conferred with counsel for the Appellee in the above-captioned case in regard to this matter, and represents that counsel for the Appellee has no objection to an extension of the time in which Appellant may submit his Memorandum of Law.

6. Appellant's counsel states that an extension of time in this case will not harm the interests of his client, and that this Motion is not filed for the purpose of delay.

WHEREFORE, Appellant respectfully requests that the time for filing the Memorandum of Law in the above-captioned case be extended from September 12, 1990, to October 12, 1990.

Respectfully submitted,



Joseph B. Tetrault
Staff Attorney
Legal Aid Bureau, Inc.
Prisoner Assistance Project
809 E. Baltimore Street
Baltimore, Maryland 21202
Telephone: (301) 539-0390

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of August, 1990, a copy of the foregoing Motion for Extension of Time was mailed, postage pre-paid, to Steven G. Hildenbrand, Esq., Counsel for Appellee, 6776 Reisterstown Road, Baltimore, Maryland 21215.



Joseph B. Tetrault

B-12

(7)

FILED

AUG 13 1990

CIRCUIT COURT FOR BALTIMORE CITY

NATHANIEL HARRINGTON, #180801 * IN THE
 Appellant * CIRCUIT COURT
 v. * FOR
 SECRETARY OF PUBLIC SAFETY * BALTIMORE CITY
 AND CORRECTIONAL SERVICES * CASE NO. 90190075/CL116244
 Appellee *
 IGC No. 21719 *

* * * * *

CERTIFICATE OF RECORD

I HEREBY CERTIFY that the attached documents are the full, complete and official record of the proceedings before the Inmate Grievance Commission in Case No. 21719:

1. Request for Administrative Remedy received February 8, 1989 from Nathaniel Harrington to Inmate Grievance Commission;
2. Letter dated March 22, 1989 from Marvin Robbins to Nathaniel Harrington;
3. Letter dated March 27, 1989 from Marvin Robbins to Sewall Smith;
4. Letter received April 13, 1989 from Nathaniel Harrington to Marvin Robbins;
5. Letter received April 17, 1989 from Pamela Sorensen to Marvin Robbins;
6. Letter dated June 2, 1989 from Marvin Robbins to Nathaniel Harrington;

7. Letter received August 21, 1989 from Sheree Bryant to Marvin Robbins;

8. Letter dated August 24, 1989 from Marvin Robbins to Sheree Bryant;

9. Letter dated September 19, 1989 from Marvin Robbins to Nathaniel Harrington;

10. Letter dated September 19, 1989 from Marvin Robbins to Sewall Smith;

11. Memo to File dated November 6, 1989 from Carolyn Waters;

12. Letter dated November 9, 1989 from Marvin Robbins to Nathaniel Harrington;

13. Letter dated November 9, 1989 from Marvin Robbins to Sewall Smith;

14. Memo to File dated December 12, 1989 from Carolyn Waters;

15. Letter dated December 13, 1989 from Marvin Robbins to Nathaniel Harrington;

16. Letter dated December 13, 1989 from Marvin Robbins to Sewall Smith;

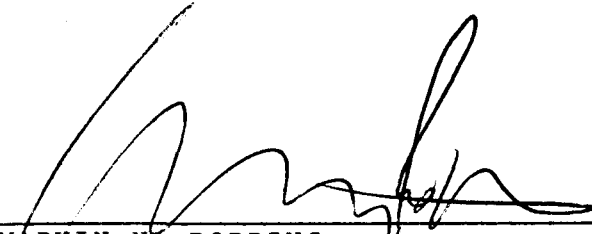
17. Copy of Memo received January 8, 1990 from Bernard Smith to Counselor Benjamin Amara;

18. Transcript of the proceedings before the Inmate Grievance Commission on January 24, 1990 reference IGC #21719;

19. Order of the Inmate Grievance Commission in IGC #21719 dated April 30, 1990 with attached Order of the Secretary of the Department of Public Safety and Correctional Services dated May 8, 1990.

20. Letter dated May 8, 1990 from Bishop Robinson to Nathaniel Harrington.

Exhibit 1



MARVIN N. ROBBINS
Executive Director
Department of Public Safety
and Correctional Services
Suite 302 - 6776 Reisterstown Road
Baltimore, MD 21215

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Certificate of Record was mailed, postage prepaid, this 10th day of August, 1990 to Joseph B. Tetrault, Esquire, Prisoner Assistance Project, Legal Aid Bureau, Inc., 809 E. Baltimore Street, Baltimore, Maryland 21202.



STEVEN G. HILDENBRAND
Assistant Attorney General
Department of Public Safety
and Correctional Services
Suite 312
6776 Reisterstown Road
Baltimore, Maryland 21215-2341
Tel: 764-4072

CASE NO. _____

MARYLAND DIVISION OF CORRECTION REQUEST FOR ADMINISTRATIVE REMEDY

(Instructions for completing this form are on the back.)

TO: _____ Warden of Institution

_____ Commissioner of Correction

Executive Director - Inmate Grievance Commission

Emergency Request _____

FROM: HARRINGTON, Nathaniel C #180801 MCAAC
Last Name, First Name, Middle Initial, DOC Number, Institution

Housing Location E 43; Protective Custody _____ Administrative Segregation _____ Disciplinary Segregation _____

Part A - INMATE REQUEST

Im addressing the issue in regards to my previous Admin. Seg. as well as my present transfer to higher security (MCAAC) Im appealing and challenging the improperties in the unjusted unwarranted placement to an higher security. Both in the unprofessional manner and in circumvention of due process. I have not been attorted with copies of the rationale and facts used to transfer me to (MCAAC) I addressed this matter to several persons which are mentioned in the enclosed forms. My reason for the transfer stems from my alledged involvement, into the 7/25/88

2/2/89
Date

Nathaniel C Harrington
Signature of Inmate

Part B - RESPONSE

RECEIVED
FEB 8 1989
INMATE GRIEVANCE COMMISSION

Date

Signature of Warden/Commissioner

You may appeal this response by following the procedure prescribed on the back of this form.

Part C - RECEIPT

CASE NO. _____

RETURN TO: _____
Last Name, First Name, Middle Initial, DOC Number, Institution

I acknowledge receipt of your complaint dated _____ in regard to: _____

Instructions to Inmates For Completing Request for Administrative Remedy (DC Form 185-2a)

1. Use a typewriter, black pen, or pencil.
2. Check the appropriate space indicating to whom you are addressing this request.
 - a. Normally your request should be addressed to the warden of the institution where you are housed, regardless of where the incident which you are complaining about occurred.
 - b. You may address a request to the Commissioner of Correction only if you believe it would harm you if your complaint became known at your present institution. You must include with your request an explanation for why you don't want your complaint to become known at your institution. The Commissioner will consider your explanation in deciding whether or not to send your request to the warden for processing.
 - c. Address the request to the Executive Director-Inmate Grievance Commission only when you are appealing the Commissioner's response to a Headquarters Appeal of Administrative Remedy Response. In this case you must enclose one copy of any completed DC Forms 185-2a and 185-2c you received, showing the warden's response to your complaint and the Commissioner's response to your complaint.
3. If you believe that your request concerns a situation that poses a threat to your health, safety, or welfare, or that of others, you may ask that your request be processed as an emergency by checking the space provided.
4. Type or print the specifics of the complaint in the space provided in Part A. Use one form for each complaint. Be sure to include the date of the incident, the names of the people involved, a description of the incident, and a description of any efforts you have made to resolve the incident informally before submitting this request. Keep the specifics as brief as possible. If you checked the Emergency Request space, you must include an explanation for why you believe your complaint should be processed as an emergency. If you need more space, attach another sheet.
5. Date and sign the request in the spaces provided in Part A.
6. Place the request in an envelope addressed to the intended recipient.
7. If you need assistance in completing a Request for Administrative Remedy, write to your institutional Administrative Remedy coordinator.

Appeal Procedure

If you choose to appeal the warden's response, you must complete the Headquarters Appeal of Administrative Remedy Response, DC Form 185-2c (available from your institutional Administrative Remedy coordinator), enclose a copy of any completed DC Form 185-2a you received showing the warden's response to your complaint, and mail them to:

Commissioner of Correction
6776 Reisterstown Road, Suite # 311
Baltimore, Maryland 21215

so that they are received within 10 calendar days of the date of the Warden's response.

2062

CASE NO. _____

MARYLAND DIVISION OF CORRECTION REQUEST FOR ADMINISTRATIVE REMEDY

(Instructions for completing this form are on the back.)

TO: _____ Warden of Institution
_____ Commissioner of Correction
 Executive Director - Inmate Grievance Commission

Emergency Request _____

FROM: Harrington, Nathaniel C 180801 MCAC
Last Name, First Name, Middle Initial, DOC Number, Institution

Housing Location E 43; Protective Custody _____ Administrative Segregation _____ Disciplinary Segregation _____

Part A - INMATE REQUEST

incident. However I have not been afforded the final results of the so called investigation which was conducted. There are no facts nor a complete rationale for my transfer. I request a rationale for my present status, as well as a transfer back to the MD. Pen with my original status. Also back pay allowance from my previous job assignment before being placed on Admin. SES. 7/25/88

2/2/89
Date

Nathaniel Harrington
Signature of Inmate

Part B - RESPONSE

Date

Signature of Warden/Commissioner

You may appeal this response by following the procedure prescribed on the back of this form.

Part C - RECEIPT

CASE NO. _____

RETURN TO: _____
Last Name, First Name, Middle Initial, DOC Number, Institution

I acknowledge receipt of your complaint dated _____ in regard to: _____

Date

Headquarters/Institutional Coordinator

Instructions to Inmates For Completing Request for Administrative Remedy (DC Form 185-2a)

1. Use a typewriter, black pen, or pencil.
2. Check the appropriate space indicating to whom you are addressing this request.
 - a. Normally your request should be addressed to the warden of the institution where you are housed, regardless of where the incident which you are complaining about occurred.
 - b. You may address a request to the Commissioner of Correction only if you believe it would harm you if your complaint became known at your present institution. You must include with your request an explanation for why you don't want your complaint to become known at your institution. The Commissioner will consider your explanation in deciding whether or not to send your request to the warden for processing.
 - c. Address the request to the Executive Director-Inmate Grievance Commission only when you are appealing the Commissioner's response to a Headquarters Appeal of Administrative Remedy Response. In this case you must enclose one copy of any completed DC Forms 185-2a and 185-2c you received, showing the warden's response to your complaint and the Commissioner's response to your complaint.
3. If you believe that your request concerns a situation that poses a threat to your health, safety, or welfare, or that of others, you may ask that your request be processed as an emergency by checking the space provided.
4. Type or print the specifics of the complaint in the space provided in Part A. Use one form for each complaint. Be sure to include the date of the incident, the names of the people involved, a description of the incident, and a description of any efforts you have made to resolve the incident informally before submitting this request. Keep the specifics as brief as possible. If you checked the Emergency Request space, you must include an explanation for why you believe your complaint should be processed as an emergency. If you need more space, attach another sheet.
5. Date and sign the request in the spaces provided in Part A.
6. Place the request in an envelope addressed to the intended recipient.
7. If you need assistance in completing a Request for Administrative Remedy, write to your institutional Administrative Remedy coordinator.

Appeal Procedure

If you choose to appeal the warden's response, you must complete the Headquarters Appeal of Administrative Remedy Response, DC Form 185-2c (available from your institutional Administrative Remedy coordinator), enclose a copy of any completed DC Form 185-2a you received showing the warden's response to your complaint, and mail them to:

Commissioner of Correction
6776 Reisterstown Road, Suite # 311
Baltimore, Maryland 21215

so that they are received within 10 calendar days of the date of the Warden's response.

1062

CASE NO. _____

MARYLAND DIVISION OF CORRECTION
REQUEST FOR ADMINISTRATIVE REMEDY

(Instructions for completing this form are on the back.)

RECEIVED

JAN 23 1988

TO: Warden of Institution
 Commissioner of Correction
 Executive Director - Inmate Grievance Commission

Emergency Request
W.C.A.C.
ESST. W.A.S.

FROM: HARRINGTON, Nathaniel C 180801 MCAC
Last Name, First Name, Middle Initial, DOC Number, Institution

Housing Location E-33; Protective Custody _____ Administrative Segregation _____ Disciplinary Segregation _____

Part A - INMATE REQUEST

ON 1-16-89 I WAS TRANSFERRED TO AN HIGHER SECURITY (MCAC) BEFORE 1-16-89 I WAS ON ADMIN. SEG AT THE MD. PEN. STEMMING FROM AN 7-25-88 DISTURBANCE. AN INVESTIGATION WAS CONDUCTED IN MY CASE IN REGARDS TO THE 7-25-88 INCIDENT. ON 1-16-89 I WAS TRANSFERRED TO HIGHER SECURITY (MCAC) BEFORE THE COMPLETION AND RESULTS OF THE INVESTIGATION. BEFORE THE ISSUE CONCERNING ADMIN. SEG. MY CASE DID NOT WARRANT HIGHER SECURITY
1/24/89 Date Nathaniel C. Harrington Signature of Inmate

Part B - RESPONSE

RECEIVED
FEB 8 1989
INMATE GRIEVANCE COMMISSION

RECEIVED
FEB 8 1989
INMATE GRIEVANCE COMMISSION

Date _____ Signature of Warden/Commissioner _____

You may appeal this response by following the procedure prescribed on the back of this form.

Part C - RECEIPT

CASE NO. _____

RETURN TO: Rejected
Last Name, First Name, Middle Initial, DOC Number, Institution

I acknowledge receipt of your complaint dated 1/31/89 in regard to: ARP does not address classification decisions. Write the Inmate Grievance Commission
1/31/89 Date Kevin P. [Signature] Headquarters/Institutional Coordinator

Instructions to Inmates For Completing Request for Administrative Remedy (DC Form 185-2a)

1. Use a typewriter, black pen, or pencil.
2. Check the appropriate space indicating to whom you are addressing this request.
 - a. Normally your request should be addressed to the warden of the institution where you are housed, regardless of where the incident which you are complaining about occurred.
 - b. You may address a request to the Commissioner of Correction only if you believe it would harm you if your complaint became known at your present institution. You must include with your request an explanation for why you don't want your complaint to become known at your institution. The Commissioner will consider your explanation in deciding whether or not to send your request to the warden for processing.
 - c. Address the request to the Executive Director-Inmate Grievance Commission only when you are appealing the Commissioner's response to a Headquarters Appeal of Administrative Remedy Response. In this case you must enclose one copy of any completed DC Forms 185-2a and 185-2c you received, showing the warden's response to your complaint and the Commissioner's response to your complaint.
3. If you believe that your request concerns a situation that poses a threat to your health, safety, or welfare, or that of others, you may ask that your request be processed as an emergency by checking the space provided.
4. Type or print the specifics of the complaint in the space provided in Part A. Use one form for each complaint. Be sure to include the date of the incident, the names of the people involved, a description of the incident, and a description of any efforts you have made to resolve the incident informally before submitting this request. Keep the specifics as brief as possible. If you checked the Emergency Request space, you must include an explanation for why you believe your complaint should be processed as an emergency. If you need more space, attach another sheet.
5. Date and sign the request in the spaces provided in Part A.
6. Place the request in an envelope addressed to the intended recipient.
7. If you need assistance in completing a Request for Administrative Remedy, write to your institutional Administrative Remedy coordinator.

Appeal Procedure

If you choose to appeal the warden's response, you must complete the Headquarters Appeal of Administrative Remedy Response, DC Form 185-2c (available from your institutional Administrative Remedy coordinator), enclose a copy of any completed DC Form 185-2a you received showing the warden's response to your complaint, and mail them to:

Commissioner of Correction
6776 Reisterstown Road, Suite # 311
Baltimore, Maryland 21215

so that they are received within 10 calendar days of the date of the Warden's response.

2 of 2

CASE NO. _____

MARYLAND DIVISION OF CORRECTION REQUEST FOR ADMINISTRATIVE REMEDY

(Instructions for completing this form are on the back.)

TO: Warden of Institution
 Commissioner of Correction
 Executive Director - Inmate Grievance Commission
Emergency Request

FROM: HARRINGTON, Nathaniel C 180801 MCAAC
Last Name, First Name, Middle Initial, DOC Number, Institution

Housing Location E-33; Protective Custody Administrative Segregation Disciplinary Segregation

Part A - INMATE REQUEST

however I was still transferred to higher security, while at the Md. Pen I was not informed of the results of the investigation. I was informed by Major Thompson that I would be remove from Admin. Seg back into population, but this did not occurred. I request that my case be investigation also to be transfer back to the Md. Pen into population with my job assignment.

1/24/89
Date

Nathaniel C. Harrington
Signature of Inmate

Part B - RESPONSE

Date

Signature of Warden/Commissioner

You may appeal this response by following the procedure prescribed on the back of this form.

Part C - RECEIPT

CASE NO. _____

RETURN TO: _____
Last Name, First Name, Middle Initial, DOC Number, Institution

I acknowledge receipt of your complaint dated _____ in regard to: _____

Date

Headquarters/Institutional Coordinator

Instructions to Inmates For Completing Request for Administrative Remedy (DC Form 185-2a)

1. Use a typewriter, black pen, or pencil.
2. Check the appropriate space indicating to whom you are addressing this request.
 - a. Normally your request should be addressed to the warden of the institution where you are housed, regardless of where the incident which you are complaining about occurred.
 - b. You may address a request to the Commissioner of Correction only if you believe it would harm you if your complaint became known at your present institution. You must include with your request an explanation for why you don't want your complaint to become known at your institution. The Commissioner will consider your explanation in deciding whether or not to send your request to the warden for processing.
 - c. Address the request to the Executive Director-Inmate Grievance Commission only when you are appealing the Commissioner's response to a Headquarters Appeal of Administrative Remedy Response. In this case you must enclose one copy of any completed DC Forms 185-2a and 185-2c you received, showing the warden's response to your complaint and the Commissioner's response to your complaint.
3. If you believe that your request concerns a situation that poses a threat to your health, safety, or welfare, or that of others, you may ask that your request be processed as an emergency by checking the space provided.
4. Type or print the specifics of the complaint in the space provided in Part A. Use one form for each complaint. Be sure to include the date of the incident, the names of the people involved, a description of the incident, and a description of any efforts you have made to resolve the incident informally before submitting this request. Keep the specifics as brief as possible. If you checked the Emergency Request space, you must include an explanation for why you believe your complaint should be processed as an emergency. If you need more space, attach another sheet.
5. Date and sign the request in the spaces provided in Part A.
6. Place the request in an envelope addressed to the intended recipient.
7. If you need assistance in completing a Request for Administrative Remedy, write to your institutional Administrative Remedy coordinator.

Appeal Procedure

If you choose to appeal the warden's response, you must complete the Headquarters Appeal of Administrative Remedy response, DC Form 185-2c (available from your institutional Administrative Remedy coordinator), enclose a copy of any completed DC Form 185-2a you received showing the warden's response to your complaint, and mail them to:

Commissioner of Correction
6776 Reisterstown Road, Suite # 311
Baltimore, Maryland 21215

so that they are received within 10 calendar days of the date of the Warden's response.

Dear Ass. Warden Sewall B. Smith

Jan 23, 1989

My name is Mr. Nathaniel C. Harrington #180801 and I'm writing in regards to my transfer here to this institution (MCAI) from the Md. Pen. I feel that my transfer here shouldn't have been made while at the Md. Pen I was an administrative segregation pertaining to the July 85 incident. An investigation was being conducted in my case. At this present the investigation has not been completed or so I was informed. I was also informed by Mayor Thompson from the Md. Pen. that I wasn't going to be moved here. Clearly my record (background) doesn't warrant a higher security. In regards to the July 85 disturbance which I was allegedly involved, I was clearly vindicated of the infraction which I received. During the time of the incident I was working as a clerk at the library as well as attending my second semester in college. I'm asking that you review my case files in reference to this important matter. Thank you for your time.

cc/filed

Mr. Nathaniel Harrington
#180801 E-65/E-331

7/30/88

Nathaniel Harrington: ~~actual~~ actual

This issue cannot be addressed informally ~~at~~ by this Counselor. It is an Administrative Issue. You were allegedly involved in the 7/25/88 Riot. As you were advised on 9/28/88 by the Seg. Team Review Board, you have to write for the final results of Capt. Ford's Investigation. That investigative report is in Major Thompson's office, as I was advised by Capt. Ford. NOT until administration reaches a decision pending on the results of Capt. Ford's

original

Investigation, ~~and~~ ~~rep~~ I am
afraid there's nothing your
Classification Counselor
can do. So you
must address this issue
to the warden in a letter
and not a Remedy to see
what he has to say about
it

Good Luck
Mr. Amara
COUNSELOR

CASE NO. _____

MARYLAND DIVISION OF CORRECTION REQUEST FOR ADMINISTRATIVE REMEDY

(Instructions for completing this form are on the back.)

NOV 27 1988
11 27 AM '88

TO: Warden of Institution
 Commissioner of Correction
 Executive Director - Inmate Grievance Commission

Emergency Request

FROM: HARRINGTON, NATHANIEL C # 180801 MD. Pen
Last Name, First Name, Middle Initial DOC Number Institution

Housing Location _____; Protective Custody _____ Administrative Segregation _____ Disciplinary Segregation _____

Part A - INMATE REQUEST

Presently my status is Admin. Segregation stemming from the 7-25-88 disturbance. An investigation was conducted in my case by Capt. Ford. At this present time I haven't receive any notification justifying why my status remains Admin. Seg. I was informed by my counselor MR. Amara on 9-30-88 as well as by Capt. Ford and Major Powell that my investigation is completed. They also informed me that Major Thompson has the results. I request my original status back, or reasons

10-25-88
Date

Nathaniel Harrington 180801
Signature of Inmate

Part B - RESPONSE

Date

Signature of Warden/Commissioner

You may appeal this response by following the procedure prescribed on the back of this form.

Part C - RECEIPT

CASE NO.

RETURN TO: Harrington Nathaniel C 180-801 MD Pen
Last Name, First Name, Middle Initial DOC Number Institution

I acknowledge receipt of your complaint dated 10/25/88 in regard to: Rejected. This is a Classification decision. ARP does not address Classification decisions

11/2/88
Date

Kevin R. ...
Headquarters/Institutional Coordinator

CASE NO. _____

MARYLAND DIVISION OF CORRECTION
HEADQUARTERS APPEAL OF
ADMINISTRATIVE REMEDY RESPONSE

(Instructions for completing this form are on the back.)

- Appeal of Warden's Response
- Appeal of Untimely Response

TO: Commissioner of Correction

FROM: HARRINGTON, NATHANIEL C #180801 MD. PEN.
 Last Name, First Name, Middle Initial, DOC Number, Institution

Housing Location _____; Protective Custody _____ Administrative Segregation Disciplinary Segregation _____

***Part A - REASON FOR APPEAL**
 My REASON FOR BEING PLACED ON Administrative Segregation BECAUSE I WAS ALLEGEDLY INVOLVED IN THE 7/25/88 RIOT. I RECEIVED AN INFRACTION IN REGARDS TO THAT RIOT; HOWEVER THE INFRACTION WAS REDUCED TO AN INCIDENT REPORT. STILL A INVESTIGATION WAS CONDUCTED IN MY CASE BY CAPT. FORD. CAPT. FORD INFORMED ME THAT THE FINAL RESULTS WAS GIVEN TO MAJOR THOMPSON. AT THIS PRESENT TIME NO INFORMATION WAS GIVEN TO ME IN REGARDS TO MY CASE. Nathaniel Harrington
 Date 10/13/88 Signature of Inmate

*One copy of any completed DC Form 185-2a you received must accompany this appeal

Part B - RESPONSE

Date _____ Signature of Commissioner _____

You may appeal this response by following the procedure prescribed on the back of this form.

Part C - RECEIPT

CASE NO. _____

RETURN TO: _____
 Last Name, First Name, Middle Initial, DOC Number, Institution

I acknowledge receipt of your appeal dated _____ in regard to: Not accepted for processing - You may challenge rejection by OAC by submitting another request to warden setting forth the basis of your challenge to the rejection returned 10-21-88 pursuant to the OAC
 Date _____ Jack Cragway
 Headquarters Coordinator

Enclosed is form 185-2A

Instructions to Inmates for Completing Headquarters Appeal of Administrative Remedy Response (DC Form 185-2c)

1. Use a typewriter, black pen, or pencil.
2. If you received a receipt from your institutional coordinator, enter the case number recorded on the receipt in the blank provided.
3. Indicate by checking the appropriate box the type of appeal you are submitting.
4. Type or print the specifics for the appeal in the space provided in Part A. Use one form for each appeal. Be sure to include the date of the incident, the names of the people involved, and a description of the incident. Keep the specifics as brief as possible. If you need more space, attach another sheet.
5. Date and sign the appeal in the spaces provided in Part A.
6. Mail the appeal and one copy of any completed DC Form 185-2a you received showing the warden's response to your complaint to:

Commissioner of Correction
6776 Reisterstown Road, Suite# 311
Baltimore, Maryland 21215

so that they are received within 10 calendar days of the warden's response.

7. If you need assistance in completing the Headquarters Appeal of Administrative Remedy Response, write to your institutional Administrative Remedy Coordinator.

Appeal Procedure

If you choose to appeal the Commissioner's response, you must, within 30 days:

1. Complete a Request for Administrative Remedy Form (available from your institutional Administrative Remedy Coordinator).
2. Check the space marked "Executive Director - Inmate Grievance Commission."
3. Include in the "Inmate Request" section:
 - a. the name and address of the institution where you are incarcerated;
 - b. the nature of your grievance, including the name(s) of the person(s) you believe are responsible for your grievance;
 - c. the facts or evidence on which your grievance is based. Give dates, times, and names of any persons, officials, or inmates involved;
 - d. the names and addresses of any witnesses, lawyer, or representative you would like to be present at your hearing;
 - e. date and sign your request.
4. Enclose one copy each of any completed DC Forms 185-2a and 185-2c you received, showing the warden's response to your complaint and the Commissioner's response to your complaint.
5. Mail your appeal to:

Executive Director
Inmate Grievance Commission
6776 Reisterstown Road, Suite# 302
Baltimore, Maryland 21215

RECEIVED

CASE NO. _____

OCT 18 1988

MARYLAND DIVISION OF CORRECTION
REQUEST FOR ADMINISTRATIVE REMEDY

(Instructions for completing this form are on the back.)

RECEIVED
SEP 21 AM 3 35
WARDEN'S OFFICE

Division of Correction

Classification Unit _____
Warden of Institution _____

Commissioner of Correction

Executive Director - Inmate Grievance Commission

Emergency Request _____

FROM: HARRINGTON, Nathaniel C 180801 MD. Pen
Last Name, First Name, Middle Initial, DOC Number, Institution

Housing Location _____; Protective Custody _____ Administrative Segregation _____ Disciplinary Segregation _____

Part A - INMATE REQUEST

I was placed on Admin. Seg. 7/27/88 administered by MAJOR DURNELL. REASONS STATED, CRIMINAL INVESTIGATION PENDING IN MY CASE. STEMMING FROM THE 7/25/88 DISTURBANCE. 7/28/88 I WAS GIVEN A INFRACTION IN REFERENCE TO THE DISTURBANCE. THE INFRACTION WAS MADE INTO AN INCIDENT REPORT. Admin. Seg. REVIEW REQUESTED MY STATUS TO REMAIN THE SAME. I RECEIVED A NOTICE WHICH YOU (WARDEN) AGREED WITH THE DECISION OF TEAM.

9/18/88
Date

(Attached sheet)

Nathaniel Harrington
Signature of Inmate

Part B - RESPONSE

Date

Signature of Warden/Commissioner

You may appeal this response by following the procedure prescribed on the back of this form.

Part C - RECEIPT

CASE NO. _____

RETURN TO: Ruxted
Last Name, First Name, Middle Initial, DOC Number, Institution

Acknowledge receipt of your complaint dated _____ in regard to: seek an informal

Division of Correction Commissioner

9/26/88
Date

Kevin R. Lach
Headquarters/Institutional Coordinator

Instructions to Inmates For Completing Request for Administrative Remedy (DC Form 185-2a)

1. Use a typewriter, black pen, or pencil.
2. Check the appropriate space indicating to whom you are addressing this request.
 - a. Normally your request should be addressed to the warden of the institution where you are housed, regardless of where the incident which you are complaining about occurred.
 - b. You may address a request to the Commissioner of Correction only if you believe it would harm you if your complaint became known at your present institution. You must include with your request an explanation for why you don't want your complaint to become known at your institution. The Commissioner will consider your explanation in deciding whether or not to send your request to the warden for processing.
 - c. Address the request to the Executive Director-Inmate Grievance Commission only when you are appealing the Commissioner's response to a Headquarters Appeal of Administrative Remedy Response. In this case you must enclose one copy of any completed DC Forms 185-2a and 185-2c you received, showing the warden's response to your complaint and the Commissioner's response to your complaint.
3. If you believe that your request concerns a situation that poses a threat to your health, safety, or welfare, or that of others, you may ask that your request be processed as an emergency by checking the space provided.
4. Type or print the specifics of the complaint in the space provided in Part A. Use one form for each complaint. Be sure to include the date of the incident, the names of the people involved, a description of the incident, and a description of any efforts you have made to resolve the incident informally before submitting this request. Keep the specifics as brief as possible. If you checked the Emergency Request space, you must include an explanation for why you believe your complaint should be processed as an emergency. If you need more space, attach another sheet.
5. Date and sign the request in the spaces provided in Part A.
6. Place the request in an envelope addressed to the intended recipient.
7. If you need assistance in completing a Request for Administrative Remedy, write to your institutional Administrative Remedy coordinator.

Appeal Procedure

If you choose to appeal the warden's response, you must complete the Headquarters Appeal of Administrative Remedy Response, DC Form 185-2c (available from your institutional Administrative Remedy coordinator), enclose a copy of any completed DC Form 185-2a you received showing the warden's response to your complaint, and mail them to:

Commissioner of Correction
6776 Reisterstown Road, Suite # 311
Baltimore, Maryland 21215

so that they are received within 10 calendar days of the date of the Warden's response.

CASE NO. _____

MARYLAND DIVISION OF CORRECTION REQUEST FOR ADMINISTRATIVE REMEDY

(Instructions for completing this form are on the back.)

TO: Warden of Institution
 Commissioner of Correction
 Executive Director - Inmate Grievance Commission

Emergency Request

FROM: HARRINGTON, Nathaniel C 180801 MD. PEN.
Last Name, First Name, Middle Initial, DOC Number, Institution

Housing Location _____; Protective Custody _____ Administrative Segregation _____ Disciplinary Segregation _____

Part A - INMATE REQUEST

Sometime afterwards I was interviewed by Capt. Forbes in regards to my status. At this present I haven't received any information in regards as to why my status remain as it is (Admin. SEG.) My request is to know when will I be TAKEN OFF (Admin. SEG.) Also how long until the investigation stops in my case?

9/18/88
Date

Nathaniel Harrington #180801
Signature of Inmate

Part B - RESPONSE

Date

Signature of Warden/Commissioner

You may appeal this response by following the procedure prescribed on the back of this form.

Part C - RECEIPT

CASE NO. _____

RETURN TO: _____
Last Name, First Name, Middle Initial, DOC Number, Institution

I acknowledge receipt of your complaint dated _____ in regard to: _____

Date

Headquarters/Institutional Coordinator

Instructions to Inmates For Completing Request for Administrative Remedy (DC Form 185-2a)

1. Use a typewriter, black pen, or pencil.
2. Check the appropriate space indicating to whom you are addressing this request.
 - a. Normally your request should be addressed to the warden of the institution where you are housed, regardless of where the incident which you are complaining about occurred.
 - b. You may address a request to the Commissioner of Correction only if you believe it would harm you if your complaint became known at your present institution. You must include with your request an explanation for why you don't want your complaint to become known at your institution. The Commissioner will consider your explanation in deciding whether or not to send your request to the warden for processing.
 - c. Address the request to the Executive Director-Inmate Grievance Commission only when you are appealing the Commissioner's response to a Headquarters Appeal of Administrative Remedy Response. In this case you must enclose one copy of any completed DC Forms 185-2a and 185-2c you received, showing the warden's response to your complaint and the Commissioner's response to your complaint.
3. If you believe that your request concerns a situation that poses a threat to your health, safety, or welfare, or that of others, you may ask that your request be processed as an emergency by checking the space provided.
4. Type or print the specifics of the complaint in the space provided in Part A. Use one form for each complaint. Be sure to include the date of the incident, the names of the people involved, a description of the incident, and a description of any efforts you have made to resolve the incident informally before submitting this request. Keep the specifics as brief as possible. If you checked the Emergency Request space, you must include an explanation for why you believe your complaint should be processed as an emergency. If you need more space, attach another sheet.
5. Date and sign the request in the spaces provided in Part A.
6. Place the request in an envelope addressed to the intended recipient.
7. If you need assistance in completing a Request for Administrative Remedy, write to your institutional Administrative Remedy coordinator.

Appeal Procedure

If you choose to appeal the warden's response, you must complete the Headquarters Appeal of Administrative Remedy Response, DC Form 185-2c (available from your institutional Administrative Remedy coordinator), enclose a copy of any completed DC Form 185-2a you received showing the warden's response to your complaint, and mail them to:

Commissioner of Correction
6776 Reisterstown Road, Suite # 311
Baltimore, Maryland 21215

so that they are received within 10 calendar days of the date of the Warden's response.

WILLIAM DONALD SCHAEFER
GOVERNOR



MARVIN N. ROBBINS
EXECUTIVE DIRECTOR

MELVIN A. STEINBERG
LT. GOVERNOR

BISHOP L. ROBINSON
SECRETARY

INMATE GRIEVANCE COMMISSION

Suite 302, Plaza Office Center
6776 Reisterstown Road
Baltimore, Maryland 21215-2346
(301) 764-4257
TTY FOR THE DEAF: 486-0677

March 22, 1989

Mr. Nathaniel Harrington #180801
MCAC

RE: IGC #21719

Dear Mr. Harrington:

Please be advised that your letter dated February 2, 1989 has been received by this office.

The Commission is presently reviewing your grievance and will be in touch with you.

You are entitled by statute to call a reasonable number of relevant witnesses in the event a hearing is held. Accordingly, please furnish us with the name or names of any witness or witnesses you would request and the testimony you would expect each to give. If you fail to specify the expected testimony, the Commission will make the selection of witnesses on the basis of the information available to it. You have the right to be represented by an attorney of your choosing at your expense or by another inmate if you wish. The Commission cannot provide a lawyer for you. If you desire legal representation and cannot afford it, you may wish to apply to the Prisoner Assistance Project of the Legal Aid Bureau, Inc., 809 E. Baltimore Street, Baltimore, MD 21202, and its phone number is 539-0390. The determination as to whether or not to represent you is within its discretion and I suggest that if you are going to contact the Prisoner Assistance Project, you do so as far in advance of the hearing date as possible.

Please refer to the above IGC number in future correspondence concerning this matter.

Sincerely,

Marvin N. Robbins
Executive Director

MNR: rf

-3-

STATE OF MARYLAND
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

WILLIAM DONALD SCHAEFER
GOVERNOR

MELVIN A. STEINBERG
LT. GOVERNOR

BISHOP L. ROBINSON
SECRETARY



MARVIN N. ROBBINS
EXECUTIVE DIRECTOR

INMATE GRIEVANCE COMMISSION

Suite 302, Plaza Office Center
6776 Reisterstown Road
Baltimore, Maryland 21215-2346
(301) 764-4257
TTY FOR THE DEAF: 486-0677

March 27, 1989

Sewell Smith
Assistant Warden
MCAC

RE: IGC #21719
Nathaniel Harrington #180801

Dear Mr. Smith:

Please forward copies of all Classification and/or other records to show why Mr. Harrington was placed on Administrative Segregation and then transferred to MCAC. He contends that it was due to his alleged involvement in the disturbance at the Penitentiary on July 25, 1988. He claims, however, that he has never been apprised of the results of the investigation undertaken by Captain Ford.

Very truly yours,

Marvin N. Robbins
Executive Director

MNR/rf

MCA

RECEIVED

APR 13 1989

STATE GRIEVANCE COMMISSION

Dear Mr. Martin P. Robbins

April 3, 1989

Please be advised that I received your letter in regards to IGC # 21719.

I request to have the following witnesses to testify on my behalf as to the exact issues, and testimony.

Officer Paul White who'll testify that at the exact time which I was alleged to have been involved in the 7/25/88 disturbance, I was in fact attempting to return back to my job assignment located in the new school bldg. He will also testify as to the time which employees at the library are to report back to work, which is in fact the same time that I was alleged identified participating in the 7/25/88 incident. Officer White will be an character witness as well.

Ms. Glumox Shirley, the librarian at the Md. Pen and also my employer, will testify as to the exact time employees at the library are to report back to their job assignment. She will also be an character witness.

Hearing Officer Ms. Briggs who'll testify as to Officer White's testimony which was taken over the telephone at my adjustment hearing.

Counselor Mr. Amara who was my counselor at the Md. Pen. will testify as to my progress during my stay at the Md. Pen as well as to an character witness.

My intentions are to be represented by an attorney in the event a hearing is held.

Please be advised that Counselor Mr. Amare will also testify that my transfer to an higher security (M.C.A.C) is a result as to my alleged involvement into the 7/55/88 incident.

Thank you for your time and cooperation as to these important matters.

Respectfully Submitted,
Mr. Nathaniel C. Harrington
#180801 IGC #21719

cc/filed

STATE OF MARYLAND
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES
DIVISION OF CORRECTION



WILLIAM DONALD SCHAEFER
GOVERNOR

MELVIN A. STEINBERG
LT. GOVERNOR

BISHOP L. ROBINSON
SECRETARY

ELMANUS HERNDON
ACTING COMMISSIONER

DEPUTY COMMISSIONER

JAMES N. ROLLINS
WARDEN

SEWALL B. SMITH
ASST. WARDEN

MARYLAND CORRECTIONAL ADJUSTMENT CENTER
401 E. MADISON STREET
BALTIMORE, MARYLAND 21201
(301)
TTY FOR THE DEAF: 486-0677

April 12, 1989

RECEIVED

APR 17 1989

INMATE GRIEVANCE COMMISSION

Marvin N. Robbins
Executive Director
Inmate Grievance Commission
Suite 302, Plaza Office Center
6776 Reisterstown Road
Baltimore, Maryland 21215-2346

RE: IGC 21719
Nathaniel Harrington # 180-801

Dear Mr. Robbins:

Per your March 27, 1989 correspondence addressed to Assistant Warden Sewall Smith, attached are copies of classification actions on the above named inmate since July 27, 1988.

Sincerely,

Pamela D. Sorensen
Classification Supervisor I/MCAC

PS/dr

cc: Basefile
IGC File #21719

D216

Maryland Division of Correction

MS Pen

Institution

Notice of Infraction or Incident

I. Name NATHANIEL HARRINGTON No. 180801 Date of Infraction 7-28-88 Time 12:00 P.M. A.M.

A report has been filed charging you with the following violation(s):

Major: Rule # 3 AND 4 Minor: Rule # _____ (See reverse side for explanation of Rule #)

State Facts (What Happened): Sir, while making security rounds within the segregation unit, Officer Lenthrop positively identified inmate Harrington as one of the inmates within #3 and in possession of a baseball but during the disturbance, which took place on 7-25-88 in #3 and #4 yds. at approx 1:00 p.m.

Reporting Officer Samuel Lenthrop COI

The report, as stated, has been reviewed by the Shift Commander and the following action has been taken:

Approved Disapproved Reduced to an Incident Report (State Reasons) Informal Disposition (State Disposition)

Referred to the Hearing Officer

Shift Commander's Signature [Signature] Date 7/28/88 Time 108 A.M. P.M.
I accept reduction to Incident Report Yes No I accept Informal Disposition Yes No
Inmate's Signature Nathaniel Harrington Number 180801 Date _____

II. SERVICE NOTICE

Served by Det. E. RUSSELL Title CO III Date 7/28/88 Time 1:30 P.M. A.M. P.M.
In acknowledgement of the charge(s) presented: I do not want to be represented I do want to be represented, and request

the following person(s): Representative: _____ Witnesses: _____

NOTE: If you are currently on probation by virtue of a previous adjustment violation, please be aware that your probation may be revoked by committing another offense and all sanctions deferred as a result of that probation may be added to those received, if you are found guilty of a current offense.

Name _____ Number _____ Date _____

III. WAIVER OF 24-HOUR NOTICE

I understand that I must be given 24-hour notice before an adjustment hearing in order to prepare my case. I may waive this requirement by signing this section:

Inmate's Signature _____ Date _____

STATE OF MARYLAND
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES
DIVISION OF CORRECTION

WILLIAM DONALD SCHAEFER
GOVERNOR

MELVIN A. STEINBERG
LT. GOVERNOR

BISHOP L. ROBINSON
SECRETARY

F R O M	MARYLAND PENITENTIARY 954 Forrest Street Baltimore, Maryland 21202	AGENCY NAME & ADDRESS
	Elijah Thomas, Jr. <i>ETJ</i> 8-4 Chift Captain	NAME & TITLE
	Request for Delay in Hearing	SUBJECT

ARNOLD J. HOPKINS
COMMISSIONER

ELMANUS HERNDON
DEPUTY COMMISSIONER

JAMES N. ROLLINS
WARDEN

BERNARD SMITH
ASSISTANT WARDEN

To: Hearing Officer, Division of Correction

Date: July 29, 1988

RE:

Nathaniel Harris for 180801

Sir:

This memo is to officially request a delay in the Disciplinary Hearing of the above-named inmate for the following reason:

Officer out injured and unable to testify at this time.

Thanking you in advance for your anticipated cooperation. Additionally, there is an ongoing investigation that may yield more information relevant to above-named individual.

ETJ/elr

ETJ

*Investigation Completed
Case be heard*

W. M. ...

Maryland Division of Correction

Inmate's Name Nathaniel Harrington No. 180801 Date of Infraction 7/28/88

I. ADJUSTMENT HEARING ACTION

Date of Hearing 8/4/88 Time 10:15 A.M.

Proper Notice Given Notice Signed Hearing Within 96 Hours Postponed

Reason _____

Inmate Refusal to Appear for Hearing _____

Representation Requested NO Name & No. Regent C. Hopkins in Pers. Rep. Accepts gr

Adjustment Report Read to Inmate gr Pleas: Guilty Not Guilty No Plea

Additional Witnesses Requested no Name(s) off White as witness - reason for medical

Reporting Officer's Statement: (See Notice of Infraction)

Inmate's Statement: I was in 4 yard when I left

work - off R White cler work the

off White was in the building at the school to

make Court - I was on the bench -

R White let old guy in & let the building up

I work in library as clerk - I never went

3 yard - I was locked up on Wednesday -

the 27th

I was about 25 ft from the door - Police came & started

searching - we were escorted to the blackboard

Witness(es) Statement: _____

off R White - work in the library - I don't remember

if I saw him in the 4 yard area - He tried

to come in the area - (School) I didn't see him

the 4 yard - now that you bring it up - The

Cell Guy & Taylor I didn't let him in -

D-216

Maryland Division of Correction

Inmate's Name Nathaniel Harrington No. 180801 Date of Infraction 7/28/88

II. HEARING OFFICER DECISION/RECOMMENDATION

Decision: Guilty Not Guilty Dismissed Guilty of Rule: _____ But not Guilty of Rule: Reduced

Charge(s) 3, 4 Reasons: H.O. understands

the report is written, the fact off. White states he remembers Harrington tried to get in to the school H.O. also notes officer indicates he saw H but does not indicate what occurred & why the delay in tickets being written on 7/25/88. H.O. feels at reduction is warranted

Recommend: Lose _____ Days GCT; Industrial Time for Month of _____

Commissioner to Take _____ Days GCT (Document Time Taken on Each Charge): _____

Remove: PRS Work Release Return: PRS MHC MCIH MCTC MP MCI-J

Segregation Sentence _____ Days, Including Time Spent Prior to Hearing (Document Time for Each Charge): _____

Cell Restriction _____ Days or Probation _____ Days from _____

Other Penalty Reduced to an Incident

Reasons: _____

Sanction is appropriate under the continuing guidelines

Decision and Recommendation to Inmate Yes Inmate Objects: Yes No Date 8-4-88

III. MANAGING OFFICER ACTION

Approved Disapproved Sentence Reduced to _____ New Proceedings Ordered

Reasons: _____

Decision Suspended Due to Following Technical Violation of Adjustment Procedure:

Signature: James A. Fox Date 8/16/88

Inmate Notified of Managing Officer's Decision Date _____

INMATE
8/18/88

MARYLAND DIVISION OF CORRECTION
Classification Assignment Sheet

Appendix 6 to DCR 100-1

Name HARRINGTON, NATHANIEL DOC No. 180801 Institution MARYLAND PENITENTIARY

Current Assignment ADMIN. SEG. Date Assigned 8-3-88 Current Security Level MAX Current Custody Level C4

A. ACTION BEING CONSIDERED: CLASSIFICATION TO MAXIMUM SECURITY C-5 - TRANSFER TO MCAC

SENTENCE: LIFE + 20 YRS. CS From 2-2-85 Offense MURDER I; HANDGUN VIOLATION; ATTEMPTED RMDW

Detainer(s) 7-25-86: P & P Warrant #159221-Revoked on 10-9-86- Allowed 14 Mos. Street Time

Escape History NONE RECORDED

Date of Last Parole Hearing NONE AS YET Decision N/A

Current Mandatory Release Date: LIFER as of _____

Date of Last Adjustment 9-21-86 Guilty of Rule(s) 18 (Contraband-Something Red like Jailon)

In Visiting Room but Swallowed It)
Sanctions 30 days Segregation Sentence from 9-21-86. Lose 10 days GCT. Commissioner

Additional Information Subject was approved for placement on Administrative Segregation on 8-8-88 because of subject's involvement in the 7-25-88 Institutional Riot pending Results of Criminal Investigation. On 10-31-88 Major Thompson, Acting Security Chief advised

Prepared by A. Benjamin Amara Title CC III Date _____

B. RECOMMENDED ACTION: Jim recommends classification to max sec

Rationale C-5 Transfer to MCAC. Jim notes overall institutional adjustment and current admin segregation status

C. MEMBERS OF CLASSIFICATION TEAM (Name and Title) Date Jan 15, 1989

	Concur	Non-Concur
1. <u>[Signature] CS I</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. <u>[Signature] CS I</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. <u>[Signature] CC III</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. <u>[Signature] CC III</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reasons for non-concurrence _____

D. Approve Disapprove

Approve Disapprove
 Approve Disapprove
 Approve Disapprove

Assistant Warden Unit Manager
James R. Rollins

Warden
(Forward if Applicable)

Commissioner

Date
1/15/89
Date

SANCTIONS: approved the deduction of 5 days Good Conduct Time on 10-17-86

ADDITIONAL INFORMATION: both Counselor and Subject that Subject is going to remain on Administrative Segregation. Reason was given to Counselor by Major Thompson.

- 7-25-88:---Subject was alleged to have involved in the Institutional Riot which left several Correctional Officer, and other Staff members seriously injured.
- 7-28-80---Infraction Violation for the 7-25-88 Institutional Riot. Reduced to Incident Report
- 2-16-88---Guilty of Rules #10 (Unauthorized Lateness for School); #11 (Out-of-Bounds); #23 (Disobey Direct Order). Reprimand.
- 8-21-88---Guilty of Rule #11 (Out-of-Bounds).. Council & Reprimand.
- 9-21-86---Guilty of Rule #18 (Contraband-Something Red like a Ballon was passed to Subject during visiting hours by Visitor, Mr. Camphor. Subject swallowed it before it could be retrieved). 30 days Segregation Sentence from 9-21-86. Recommend revoke 10 days GCT. Commissioner approved the deduction of 5 days Good Conduct Time on 10-17-86.

MARYLAND DIVISION OF CORRECTION
Classification Assignment Sheet

Appendix 6 to DCR 100-1

Name HARRINGTON, NATHANIEL DOC No. 180801 Institution MARYLAND PENITENTIARY
Current Assignment ADMIN. SEG. Date Assigned 8-8-88 Current Security Level MAX Current Custody Level C4

A. ACTION BEING CONSIDERED: ADMINISTRATIVE SEGREGATION MONTHLY EVALUATION

SENTENCE: From Offense
LIFE + 20 YRS. CS 3 2-2-85 MURDER I; HANDGUN VIOLATION; ATTEMPTED RWDW

Detainer(s) 7-25-86; P & P Warrant #159221-Revoked Hearing on 10-9-86. Allowed 14 Mos. Street Time.

Escape History NONE RECORDED

Date of Last Parole Hearing NONE AS YET Decision N/A

Current Mandatory Release Date: _____ as of _____

Date of Last Adjustment 9-21-86 Guilty of Rule(s) 18 (Contraband)

Sanctions 30 days Segregation Sentence from 9-21-86. Lose 10 days GCT. Commissioner approved

Additional Information Subject was approved for placement on Administrative Segregation on 8-3-88 because of his involvement in the 7-25-88 Institutional Riot and pending Results of Criminal Investigation. RECOMMENDATION: No change as per verbal advise of Major Thompson

Prepared by A. Benjamin D. Amare Title CC III Date 12-15-88

B. RECOMMENDED ACTION: No change

Rationale I am recommending no change in subject's status until an investigation is completed as to his involvement in the 7/25/88 disturbance.

C. MEMBERS OF CLASSIFICATION TEAM (Name and Title) Date 12/16/88

	Concur	Non-Concur
1. <u>[Signature]</u> <u>CC III</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. <u>[Signature]</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. <u>Ben Amare, CC III</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. _____	<input type="checkbox"/>	<input type="checkbox"/>

Reasons for non-concurrence _____

D. Approve **Disapprove**

[Signature]
 Assistant Warden, Unit Manager

 Warden
 (Forward if Applicable)

12/21/88
 Date

 Date

 Date

SANCTIONS: the deduction of 5 days Good Conduct Time on 9-17-86.

MARYLAND DIVISION OF CORRECTION
Classification Assignment Sheet

Appendix 6 to DCR 100-1

Name HARRINGTON, NATHANIEL DOC No. 180801 Institution MARYLAND PENITENTIARY

Current Assignment ADMIN. SEG. Date Assigned 8-8-88 Current Security Level MAX Current Custody Level C4

A. ACTION BEING CONSIDERED: ADMINISTRATIVE SEGREGATION MONTHLY EVALUATION

SENTENCE: _____ From _____ Offense _____

LIFE + 20 YRS. CS 2-2-85 MURDER I; HANDGUN VIOLATION; ATTEMPTED RVDW

Detainer(s) 7-25-86: P & P Warrant #159221-Revoked Hearing on 10-9-86-Allowed 14 Mos Street Time

Escape History NONE RECORDED

Date of Last Parole Hearing NONE AS YET Decision N/A

Current Mandatory Release Date: LIFER as of _____

Date of Last Adjustment 9-21-86 Guilty of Rule(s) 18 (Contraband)

Sanctions 30 days Segregation Sentence from 9-21-86. Lose 10 days GCT. Commissioner approved

Additional Information Subject was approved for placement on Administrative Segregation on 8-8-88 because of his involvement in the 7-25-88 Institutional Riot and pending Results of Criminal Investigation. RECOMMENDATION: No change as per verbal advise of Major Thompson

Prepared by A. Benjamin D. Amaro Title CC III Date 11-26-88

B. RECOMMENDED ACTION: No change based on Major Thompson's verbal

Rationale report of subject found involved in the 7/25/88 disturbance (awaiting written report); review in 30 days

C. MEMBERS OF CLASSIFICATION TEAM (Name and Title) Date 11/28/88

	Concur	Non-Concur
1. <u>John Amaro, CC III</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. <u>Paul L. Bani, COTU</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. _____	<input type="checkbox"/>	<input type="checkbox"/>

Reasons for non-concurrence _____

D. Approve **Disapprove**

Bernard D. Smith
Assistant Warden - Unit Manager

11/29/88
Date

Warden

Date

(Forward if Applicable)

Commissioner

Date

SANCTIONS: the deduction of 5 days Good Conduct Time on 10-17-86.

RECOMMENDATION: Mr. Thompson also stated that he advised Subject of the decision to keep Subject on Administrative Segregation on 10-31-88.

MARYLAND DIVISION OF CORRECTION
Classification Assignment Sheet

Appendix 6 to DCR 100-1

Name HARRINGTON, NATHANIEL DOC No. 180801 Institution MARYLAND PENITENTIARY
 Current Assignment ADMIN. SEG. Date Assigned 8-8-88 Current Security Level MAX Current Custody Level C4

A. ACTION BEING CONSIDERED: ADMINISTRATIVE SEGREGATION MON THLY EVALUATION

SENTENCE: From LIFE + 20 YRS, CS Offense 2-2-85 MURDER I; HG VIOLATION; ATT. RWDW

Detainer(s) 7-25-86: P & P RETAKE WARRANT, #159221-Revocation Hearing on 10-9-86

Escape History NONE RECORDED

Date of Last Parole Hearing NONE AS YET Decision N/A

Current Mandatory Release Date: LIFER as of _____

Date of Last Adjustment 2-16-88 Guilty of Rules(s) 10, 11, 23

Sanctions REPRIMAND

Additional Information Subject was approved for placement on Administrative Segregation on 8-8-88 because of his involvement in the 7-25-88 Institutional Riot and pending Results of Criminal Investigation. RECOMMENDATION: No change.

Prepared by A. Benjamin D. Amara Title CC III Date 10-28-88

B. RECOMMENDED ACTION: No change

Rationale Team recommends no change pending an investigation into the 7/25/88 incident. Team is in need of an updated investigation into this incident.

C. MEMBERS OF CLASSIFICATION TEAM (Name and Title) Date 10/31/88

	Concur	Non-Concur
1. <u>E. Bond, CSC</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. <u>Det B. Staton</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. <u>Det Donato, CCT</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. _____	<input type="checkbox"/>	<input type="checkbox"/>

Reasons for non-concurrence _____

D. Approve Disapprove

Bernard D. Smith
 Assistant Warden / Unit Manager

11/1/88
 Date

(Forward if Applicable) Warden _____ Date _____

Commissioner _____ Date _____

MARYLAND DIVISION OF CORRECTION
Classification Assignment Sheet

Name HARRINGTON, NATHANIEL DOC No. 180801 Institution MARYLAND PENITENTIARY
 Current Assignment ADMIN. SEG. Date Assigned 8-8-88 Current Security Level MAX Current Custody Level C4

A. ACTION BEING CONSIDERED: ADMINISTRATIVE SEGREGATION MONTHLY EVALUATION

SENTENCE: From LIFE + 20 YRS. CS 2-2-85 Offense MURDER FIRST DEGREE; HANDGUN VIOLATION; ATTEMPTED ROBBERY WITH A DEADLY WEAPON

Detainer(s) 7-25-86; P & P (Retake Warrant, #159221)

Escape History NONE RECORDED

Date of Last Parole Hearing NONE AS YET Decision N/A

Current Mandatory Release Date: LIFER as of _____

Date of Last Adjustment 2-16-88 Guilty of Rule(s) 10, 11, 23

Sanctions REPRIMAND

Additional Information Subject was approved for placement on Administrative Segregation on 8-9-88 because of involvement in the 7-25-88 Riot and pending result of Criminal Investigation for his involvement. RECOMMENDATION: No change. Remain on Admin. Seg.

Prepared by A. Benjamin D. Amaro Title CC III Date 9-21-88

B. RECOMMENDED ACTION: Continues on Administrative Segregation

Rationale based on placement rationale.

C. MEMBERS OF CLASSIFICATION TEAM (Name and Title)		Date	Concur	Non-Concur
1.	<u>[Signature]</u>	<u>9/28/88</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2.	<u>[Signature]</u>		<input checked="" type="checkbox"/>	<input type="checkbox"/>
3.	<u>Ben Amaro, CC III</u>		<input checked="" type="checkbox"/>	<input type="checkbox"/>
4.			<input type="checkbox"/>	<input type="checkbox"/>

Reasons for non-concurrence _____

D. Approve Disapprove

[Signature]
Assistant Warden Unit Manager

9/29/88
Date

Warden

Date

(Forward if Applicable)

Commissioner

Date

**VISION OF CORREC. JN
CLASSIFICATION ASSIGNMENT SHEET**

MD. Pen.

INSTITUTION

Name Nathaniel Harrington No. 180961 DOB 9-10-62 Housing B

Assignment Library Worker Current Security Status MAX. Date Assigned 4-23-81

ACTION BEING CONSIDERED: Administrative Segregation Placement

BACKGROUND:
Current Offense(s) Murder I; Handgun Violation; Attempted RWDCW

Current Sentence(s) Life and 70 yrs. CC From 2-2-51

Detainer(s) 7-25-86 Parole and Probation retake warrant # 159221

Escape History None indicated

Date of Last Parole Hearing None 2-7 or 2-7A None Decision None

Date of Last Major Adjustment 2/16/88 Guilty of Rules(s) 10, 11, 23

Sanctions Reprimand

Additional Information/Justification Mr. Harrington is appearing before the team for placement on Administrative Segregation per the attached Administrative Assignment Notice which indicates subject

Signature Alma Wade Title CCM Date 7/28/88

RECOMMENDED ACTION: Assign Admin Segregation

Action/Reasons Pending investigation due to recent disturbance at MD. Pen

MEMBERS OF CLASSIFICATION TEAM (Name and Title)

Date 8/8/88 9:45 am

	Concur	Non-Concur
1. <u>[Signature]</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. <u>Ben [Signature], CCIT</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. <u>[Signature]</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. _____	<input type="checkbox"/>	<input type="checkbox"/>

Reasons for non-concurrence _____

Approve Disapprove

Bernard L. Smith 8/8/88
 Assistant Warden/Unit Manager Date
James W. Hollins 8/9/88
 Warden Date
 (Forward if Applicable)

 Commissioner _____
 Date

A permanent investigation is pending - you can write,
recommend placement in light of pending investigation as a
result of institutional nod on 7/25/88.

DIVISION OF CORRECTION

NOTICE OF ASSIGNMENT TO ADMINISTRATIVE SEGREGATION

DATE: 7/27/88

INSTITUTION: Madison

Harrington Nathaniel 180801

Last Name First Name M.I. Number

7/27/88 11:12am

Date/Time of Placement

Wags J. F. [Signature]

Per

It has been determined that reasons exist (as categorized below) to remove you from the general population and (temporarily) assign you to administrative segregation pending classification team action. You will be seen by the classification team within 96 hours of your placement on administrative segregation (excluding weekends and holidays) and given the opportunity to be heard as to whether or not you should be continued in this status.

Reason (Check applicable category)

- To prevent escapes, reasons exist to believe you are an escape risk.
- You are under sentence of death.
- Reasons exist to believe you are dangerous to the security of the institution, and/or inmates, and/or staff.
- A criminal investigation is pending in your case.
- Other (specify) _____

Distribution

Original — Classification
Copy — Inmate

I have read (or have had read to me) and acknowledge receipt of a copy of this notice.

Nathaniel Harrington 180801
Inmate Signature

Notice Served by Sgt. M. Reid

Date/Time 7-27-88 3:00 PM

STATE OF MARYLAND
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES
DIVISION OF CORRECTION

WILLIAM DONALD SCHAEFER
GOVERNOR

MELVIN A. STEINBERG
LT. GOVERNOR

BISHOP L. ROBINSON
SECRETARY

F R O M	MARYLAND PENITENTIARY 954 Forrest Street Baltimore, Maryland 21202	AGENCY NAME & ADDRESS
	<i>James N. Rollins</i> James N. Rollins, warden	NAME & TITLE
	Classification Boards	SUBJECT

ARNOLD J. HOPKINS
COMMISSIONER

ELMANUS HERNDON
DEPUTY COMMISSIONER

JAMES N. ROLLINS
WARDEN

BERNARD SMITH
ASSISTANT WARDEN

To: Mr. H. Rodgers, Class. Sup. II

Date: 8/2/88

Due to the recent disturbance which took place on July 25, 1988, the institution has found it necessary to revise recreation and activities schedules.

As you are aware, all classification activities have been suspended with the exception of adjustment hearings. Beginning August 8, 1988, you are to resume classification boards.

JNR:bd

cc: AW B. Smith
Chief Thompson
Maj. Hopkins



WILLIAM DONALD SCHAEFER
GOVERNOR

MELVIN A. STEINBERG
LT. GOVERNOR

BISHOP L. ROBINSON
SECRETARY

MARVIN N. ROBBINS
EXECUTIVE DIRECTOR

INMATE GRIEVANCE COMMISSION

Suite 302, Plaza Office Center
6776 Reisterstown Road
Baltimore, Maryland 21215-2346
(301) 764-4257
TTY FOR THE DEAF: 486-0677

June 2, 1989

Nathaniel Harrington #180801
MCAC

RE: IGC# 21719

Dear Mr. Harrington:

In response to your letter dated April 3, 1989 be advised that I have listed Ms. Briggs and Mr. Amara as prospective witnesses.

Please note, however, that inasmuch as we will not be conducting a de novo (or second) Adjustment Hearing or Classification Hearing, the expected testimony of your other requested witnesses would be irrelevant for our purposes, and they are hereby respectfully denied.

Very truly yours,

Marvin N. Robbins
Executive Director

MNR/rf

LEGAL AID BUREAU, INCORPORATED

PRISONER ASSISTANCE PROJECT

809 E. BALTIMORE STREET

BALTIMORE, MARYLAND 21202

(301) 539-0390

CHARLES H. DORSEY, JR.
HARRIETTE TAYLOR
STUART R. COHEN

LAWRENCE B. COSMNEAR
WITOLD WALCZAK
NORMAN HANDWERGER
DEBORAH A. DONOHUE
FRANCES E. KESSLER

JAMES J. NOLAN, JR., PRESIDENT

RECEIVED

AUG 21 1989

INMATE GRIEVANCE COMMISSION

August 15, 1989

Mr. Marvin N. Robbins
Inmate Grievance Commission
Suite 302
Plaza Office Center
6776 Reisterstown Road
Baltimore, Maryland 21215-2346

Dear Mr. Robbins:

I will be representing Mr. Nathaniel Harrington, #180801, and I would like for you to enter my appearance in the upcoming grievance hearing. His IGC number is 21719.

Sincerely,

Sheree M. Bryant

Sheree M. Bryant
Student Investigator

VK4A/40.1/5E

WILLIAM DONALD SCHAEFER
GOVERNOR

MELVIN A. STEINBERG
LT. GOVERNOR

BISHOP L. ROBINSON
SECRETARY



MARVIN N. ROBBINS
EXECUTIVE DIRECTOR

INMATE GRIEVANCE COMMISSION

Suite 302, Plaza Office Center
6776 Reisterstown Road
Baltimore, Maryland 21215-2346
(301) 764-4257
TTY FOR THE DEAF: 486-0677

August 24, 1989

Ms. Sheree M. Bryant
Student Investigator
Legal Aid Bureau, Inc.
809 E. Baltimore St.
Baltimore, MD 21202

RE: Nathaniel Harrington #180801
IGC No. 21719

Dear Ms. Bryant:

Please be advised that your letter dated August 15, 1989
has been received and duly noted.

Very truly yours,

Marvin N. Robbins
Executive Director

MNR:vm

-9-

STATE OF MARYLAND
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES



WILLIAM DONALD SCHAEFER
GOVERNOR

MELVIN A. STEINBERG
LT. GOVERNOR

BISHOP L. ROBINSON
SECRETARY

MARVIN N. ROBBINS
EXECUTIVE DIRECTOR

INMATE GRIEVANCE COMMISSION

Suite 302, Plaza Office Center
6776 Reisterstown Road
Baltimore, Maryland 21215-2346
(301) 764-4257
TTY FOR THE DEAF: 486-0677

September 19, 1989

Mr. Nathaniel Harrington, #180801
MCAC

RE: IGC No. 21719

The captioned case has been scheduled for a hearing on 11/6/89. Any other complaints made by you in this matter which are not included in the attached synopsis have been administratively dismissed. At your hearing you will have an opportunity to appear and present your grievance.

If you have not already done so, please furnish us with the names and addresses of your requested representative and witnesses, and the testimony you would expect each of your witnesses to give. If you fail to specify the expected testimony, the Commission will make the selection of witnesses on the basis of the information available to it.

A request for postponement should be made at least five (5) days prior to the hearing and will be granted only with adequate justification.

If yours is a property grievance, see the attached "Property Regulation" **FOR YOUR RESPONSIBILITIES AT YOUR HEARING**. You should further note that in reference to paragraphs D(4) and E(5) therein, the best evidence to present in order to establish the actual cost of the property at the time of acquisition is the purchase receipt. We are also enclosing a form which you are encouraged to fill out and present at your hearing.

Please note that whatever information you wish to offer into evidence must be submitted at the time of your hearing. WE WILL NOT CONSIDER AS EVIDENCE ANYTHING THAT IS SUBMITTED AFTER YOUR HEARING.

Sincerely,

cc: Ms. Sherree Bryant
Legal Aid Bureau

809 E. Balto. Street

Baltimore, Md. 21202 - the hearing will begin at approximately
9:30 a.m. atMCAC

Marvin N. Robbins
Executive Director

WILLIAM DONALD SCHAEFER
GOVERNOR

MELVIN A. STEINBERG
LT. GOVERNOR

BISHOP L. ROBINSON
SECRETARY



MARVIN N. ROBBINS
EXECUTIVE DIRECTOR

INMATE GRIEVANCE COMMISSION

Suite 302, Plaza Office Center
6776 Reisterstown Road
Baltimore, Maryland 21215-2346
(301) 764-4257
TTY FOR THE DEAF: 486-0677

September 19, 1989

Mr. Sewall Smith
Asst. Warden
MCAC

RE: IGC Hearings - November 6, 1989

Dear Mr. Smith:

Listed below are the matters to be heard by the Inmate Grievance Commission on November 6, 1989 at MCAC. The Commission's hearing session will begin at approximately 9:30 a.m.

BRIGHT, David, #142547 - IGC No. 21806

Mr. Bright contends that at his Adjustment hearing on February 15, 1989 the Hearing Officer unjustly denied a crucial witness; that the Adjustment records do not specifically indicate what he was found guilty of having done; that the conviction was not based upon substantial evidence; and that as of April 18, 1989, he had not yet received the written notification of the Warden's decision (which was to have been delivered to him no later than 10 days after the Hearing Officer's decision, pursuant to DCR 105-2).

As witnesses we request the presence of Hearing Officer Shawn Jackson, and Warden James Rollins or his designee.

MERENDINO, Paul, #157776 - IGC No. 21623

Mr. Meredino contends that at his Adjustment hearing on December 29, 1988 for an "escape" charge, he was denied an opportunity to call or be confronted by witnesses and/or evidence being used against him.

He further contends, therefore, that the conviction was not based upon substantial evidence.

Mr. Merendino wishes to be represented by Ms. Deanna Watkins, of the Legal Aid Bureau, Inc.

As a witness we request the presence of Hearing Officer John Sandstrom.

GIBBS, Kevin, #143391 - IGC No. 21706

Mr. Gibbs contends that on January 18, 1989 he was unjustly reclassified and transferred to MCAC due to a "pending investigation". He claims that his transfer is unfair because it was "like punishing me before a verdict of guilt has been reached".

As a witness we request the presence of Classification Supervisor Pamela Sorenson or another member of the January 18, 1989 Classification Team which recommended Mr. Gibbs transfer to MCAC.

HARRINGTON, Nathaniel, #180801 - IGC No. 21719

Mr. Harrington contends that he was unjustly placed on Administrative Segregation and then transferred to MCAC based upon his alleged involvement in a disturbance/riot at the Maryland Penitentiary on July 25, 1988 -- and that he has never been apprised as to the results of the investigation conducted by Capt. Ford.

Mr. Harrington will be represented by Ms. Sheree Byant, Student Investigator, Legal Aid Bureau, Inc.

As witnesses we request the presence of Capt. Ford (MP). Hearing Officer Patricia Briggs (who reduced his charges to an Incident Report); and Counselor Benjamin Amara.

MEINES, Jeffrey, #167832 - IGC No. 21896

Mr. Meines contends that on or about January 24, 1989 he was unjustly transferred from the Maryland Penitentiary to MCAC just to "fill the place up" -- and not for any justifiable reason or rationale.

As a witness we request the presence of Mr. Zbozien, Classification Counselor.

BRIGHT, David, #142547 - IGC No. 21853

Mr. Bright contends that his transfer from the Md. Pen. to MCAC was unjust inasmuch as he was denied due process, pursuant to DCR 100-5, DCR 100-1 and Olim V. Wakinekona (103 S. Ct. 1741-1983), because a) he received no notice of the hearing; b) the decision was arbitrary; c) the Assistant Warden signed the Warden's name on the approval section of the decision; and

d)there was no "new evidence" or reason given for the transfer-- thereby depriving the Classification Team of an opportunity to conduct a meaningful review.

As witnesses we request the presence of Warden James Rollins and Ms. Pamela Sorensen, CS I (who chaired the Classification Team on February 17, 1989).

HORSEY, Leon, #168828 - IGC No. 19972

In a grievance filed in March of 1988. Mr. Horsey contended that he was being unjustly housed in segregation due to his alleged refusal to accept Protective Custody.

(Although copies of pertinent Classification records were requested in writing from this Commission to the Assistant Warden of the Md. Pen. in April of 1988, there is no record of their receipt).

As a witness we request the presence of Assistant Warden Bernard Smith, or his designee.

DIXON, Bentley, #185727 - IGC No. 21330

In a grievance filed in November of 1988 Mr. Dixon contended that he had been on Administrative segregation since July 27, 1988 without due process, and for no reason, by order of Major Thompson.

(Although copies of pertinent records were requested in writing from this Commission to the Assistant Warden of the Maryland Penitentiary in December of 1988, there is no record of their receipt).

As a witness we request the presence of Major Hollis Thompson (now of MHC).

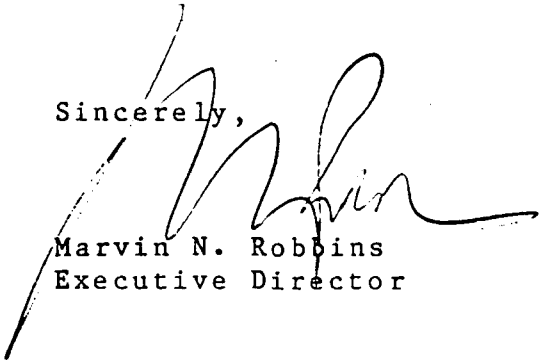
BROWN, Darren, #179460 - IGC No. 20598

In a grievance filed in July of 1988 Mr. Brown contended that his Adjustment conviction for "cocaine", following the April 21, 1988 infraction, was not based upon substantial evidence. (In this regard, he claims that there was no documentation to support Lt. Cusick's claim that the substance was actually cocaine).

(Although copies of pertinent records were requested in writing from this Commission to the Assistant Warden of the Maryland Penitentiary in August of 1988, there is no record of their receipt).

As a witness, we request the presence of the Hearing Officer who conducted the referenced Adjustment hearing.

Sincerely,



Marvin N. Robbins
Executive Director

MNR/ps

cc: Commissioners
Ms. Carolyn Waters
Mr. Richard Singleton, Warden (MHC) (see DIXON case)
Mr. David Barthlow, DOC
Mr. Richard Kastendieck, Esq.
Mr. Bernard Smith, Asst. Warden, Md. Pen.
Mr. James Rollins, Warden, Md. Pen. (see BRIGHT case)

Memo to File

-11-

Harrington, Nathaniel

21719

Hearing postponed due to the absence of Capt. Ford. He was notified to be present today, and Mrs. Sorenson did not know why he failed to appear.

Staters
11/6/89

Note: Mrs. Sorenson will notify Tharden Rollins.

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STATE OF MARYLAND
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES



WILLIAM DONALD SCHAEFER
GOVERNOR

MELVIN A. STEINBERG
LT. GOVERNOR

BISHOP L. ROBINSON
SECRETARY

MARVIN N. ROBBINS
EXECUTIVE DIRECTOR

INMATE GRIEVANCE COMMISSION

Suite 302, Plaza Office Center
6776 Reisterstown Road
Baltimore, Maryland 21215-2346
(301) 764-4257
TTY FOR THE DEAF: 486-0677

November 9, 1989

Mr. Nathaniel Harrington, #180801
MCAC

RE: IGC No. 21719

The captioned case has been scheduled for a hearing on 12/11/89. Any other complaints made by you in this matter which are not included in the attached synopsis have been administratively dismissed. At your hearing you will have an opportunity to appear and present your grievance.

The Commission has made the selection of witnesses on the basis of the information available to it.

A request for postponement should be made at least fifteen (15) days prior to the hearing and will be granted only with adequate justification.

If yours is a property grievance, see the attached "Property Regulation" FOR YOUR RESPONSIBILITIES AT YOUR HEARING. You should further note that in reference to paragraphs D(4) and E(5) therein, the best evidence to present in order to establish the actual cost of the property at the time of acquisition is the purchase receipt. We are also enclosing a form which you are encouraged to fill out and present at your hearing.

Please note that whatever information you wish to offer into evidence must be submitted at the time of your hearing. WE WILL NOT CONSIDER AS EVIDENCE ANYTHING THAT IS SUBMITTED AFTER YOUR HEARING.

Sincerely,

Marvin N. Robbins
Executive Director

cc: Ms. Sheree Bryant
Legal Aid Bureau, Inc.
809 E. Balto. Street
Balto., Md. 21202

- the hearing will be held at MCAC and
will begin at approximately 9:30 a.m.



WILLIAM DONALD SCHAEFER
GOVERNOR

MELVIN A. STEINBERG
LT. GOVERNOR

BISHOP L. ROBINSON
SECRETARY

MARVIN N. ROBBINS
EXECUTIVE DIRECTOR

INMATE GRIEVANCE COMMISSION

Suite 302, Plaza Office Center
6776 Reisterstown Road
Baltimore, Maryland 21215-2346
(301) 764-4257
TTY FOR THE DEAF: 486-0677

November 9, 1989

Mr. Sewall Smith
Asst. Warden
MCAC

RE: IGC Hearings
December 11, 1989

Dear Mr. Smith:

Please add the following matter to the Commission's hearing session scheduled for December 11, 1989:

HARRINGTON, Nathaniel, #180801 - IGC NO. 21719

Mr. Harrington contends that he was unjustly placed on Administrative Segregation and then transferred to MCAC based upon his alleged involvement in a disturbance/riot at the Maryland Penitentiary on July 25, 1988 -- and that he has never been apprised as to the results of the investigation conducted by Capt. Ford.

Mr. Harrington will be represented by Ms. Sheree Bryant, Student Investigator, Legal Aid Bureau, Inc.

As witnesses we request the presence of Capt. Ford (MP), Hearing Officer Patricia Briggs (who reduced his charges to an Incident Report); and Counselor Benjamin Amara.

(This hearing was postponed due to the unexplained absence of Captain Ford).

Sincerely,

Marvin N. Robbins
Executive Director

MNR/ps

cc: Commissioners

Ms. Carolyn Waters

Mr. Richard Kastendieck, Esq.

Mr. Bernard Smith, Asst. Warden, MD. Pen. (please assure Capt. Ford's presence as scheduled)

Mr. David Barthlow, DOC

Memo To File

Harrington, Nathaniel

21719

Hearing postponed due to the absence (2nd time) of Capt. Ford and the specific request for H. O. Briggs (the Adjutant H.O.).

Harold Collins assured the Commissioners that Capt. Ford will be present at the next scheduled hearing, and that ~~appropriate~~ appropriate disciplinary action will be taken.

Haters
12/13/89

WILLIAM DONALD SCHAEFER
GOVERNOR

MELVIN A. STEINBERG
LT. GOVERNOR

BISHOP L. ROBINSON
SECRETARY



MARVIN N. ROBBINS
EXECUTIVE DIRECTOR

INMATE GRIEVANCE COMMISSION

Suite 302, Plaza Office Center
6776 Reisterstown Road
Baltimore, Maryland 21215-2346
(301) 764-4257
TTY FOR THE DEAF: 486-0677

December 13, 1989

Mr. Nathaniel Harrington, #180801
MCAC

RED IGC No.
21719

The captioned case has been scheduled for a hearing on 1/24/90. Any other complaints made by you in this matter which are not included in the attached synopsis have been administratively dismissed. At your hearing you will have an opportunity to appear and present your grievance.

The Commission has made the selection of witnesses on the basis of the information available to it.

A request for postponement should be made at least fifteen (15) days prior to the hearing and will be granted only with adequate justification.

If yours is a property grievance, see the attached "Property Regulation" **FOR YOUR RESPONSIBILITIES AT YOUR HEARING**. You should further note that in reference to paragraphs D(4) and E(5) therein, the best evidence to present in order to establish the actual cost of the property at the time of acquisition is the purchase receipt. We are also enclosing a form which you are encouraged to fill out and present at your hearing.

Please note that whatever information you wish to offer into evidence must be submitted at the time of your hearing. WE WILL NOT CONSIDER AS EVIDENCE ANYTHING THAT IS SUBMITTED AFTER YOUR HEARING.

Sincerely,

cc: Ms. Sherze Bryant
Legal Aid Bureau, Inc.
809 E. Baltimore Street
Baltimore, Md. 21202

Marvin N. Robbins
Executive Director

- the hearing will be held at MCAC at 9:30 a.m.
on 1/24/90.



WILLIAM DONALD SCHAEFER
GOVERNOR

MELVIN A. STEINBERG
LT. GOVERNOR

BISHOP L. ROBINSON
SECRETARY

MARVIN N. ROBBINS
EXECUTIVE DIRECTOR

INMATE GRIEVANCE COMMISSION

Suite 302, Plaza Office Center
6776 Reisterstown Road
Baltimore, Maryland 21215-2346
(301) 764-4257
TTY FOR THE DEAF: 486-0677

December 13, 1989

Mr. Sewall Smith
Asst. Warden
MCAC

RE: IGC Hearings - January 24, 1990

Dear Mr. Smith:

Please add the following matter to the Commission's hearing session scheduled for January 24, 1990 at MCAC at 9:30 a.m.

HARRINGTON, Nathaniel, #180801 - IGC No. 21719

Mr. Harrington contends that he was unjustly placed on Administrative Segregation and then transferred to MCAC based upon his alleged involvement in a disturbance/riot at the Maryland Penitentiary on July 25, 1988 -- and that he has never been apprised as to the results of the investigation conducted by Capt. Ford.

Mr. Harrington will be represented by Ms. Sheree Brvant, Student Investigator, Legal Aid Bureau, Inc.

As witnesses we request the presence of Capt. Ford (MP), Hearing Officer Patricia Briggs (who reduced his charges to an Incident Report); and Counselor Benjamin Amara.

(This hearing has been postponed twice due to the unexplained absence of Capt. Ford. This Commission is relying on Warden Rollins' assurances -- given on December 11, 1989-- that Capt. Ford will be present at this hearing).

Sincerely,

Marvin N. Robbins
Executive Director

MNR/ps
cc: Commissioners
Ms. Carolyn Waters
Mr. Richard Kastendieck, Esq.
Mr. Bernard Smith, Asst. Warden, Md. Pen.
Mr. James Rollins, Warden, Md. Pen.
Mr. David Barthlow, DOC

-17-

RECEIVED

JAN 1990

Hearing Date: 01-24-90 @ 9:30 a.m.

INMATE GRIEVANCE COMMISSION

DATE: December 18, 1989

MEMO TO: Counselor Benjamin Amara

FROM: Bernard D. Smith
Assistant Warden

SUBJECT: I.G.C. Hearing

Please initial and return to me indicating that you have received notice of I.G.C. # 21719 HARRINGTON, Nathaniel #180-801

and you are required to be present for this hearing at the date and time specified. If any unusual circumstances prevent you from appearing, please notify me as far in advance as possible so that I may notify the Inmate Grievance Commission.

Representation by the Attorney General's Office has _____ has not X, *
been requested for you at this hearing.

SDS:cmw
cc: files

I have received notice

A. Ben D. Amara
(Signature or Initial) CCM

* P.S. Please be advised that representation was not requested since the Attorney General's office has indicated they will provide representation only in cases of alleged physical assault.

STATE OF MARYLAND
INMATE GRIEVANCE COMMISSION

Transcript of Proceedings
January 24, 1990
Maryland Correctional Adjustment Center

In the Matter of Nathaniel Harrington, #180801 IGC No. 21719

John WARD, Commissioner: This grievance is being (off the record) present as witnesses are Captain Patrick Ford and Mr. Ben Amara, Classification Counselor. The grievant is being represented by Ms. Deanne Watkins and Sherre Bryant of the Legal Aid Bureau. The institutional representative is Ms. Pamela Sorensen. The grievance is being heard before Commissioners Hawkins, Matz, and Ward. The record will reflect that Mr. Harrington and his counsel had an opportunity to review pertinent documents to be considered by the Commission in the course of the hearing. Specifically those items are: a Notice of Infraction dated 7/28/88, a memo from Roger Thomas Shift Captain dated July 29, 1988, Adjustment Report 7/28/88, the Classification Assignment Sheet with a date of 1/18/88, (inaudible) Classification Assignment Sheet dated 12/21/88, Classification Assignment Sheet dated 11/29/88, Classification Assignment Sheet dated 7/1/88, Classification Assignment Sheet dated 9/29/88 and 8/8/88 and a Notice of Assignment to Administrative Seg. with a date of 7/27/88 and finally a memo from Warden Rollins to Mr. Rodgers the Classification Supervisor dated 8/2/88. At this point I'm going to request that all those who are going to give testimony in this matter please raise your right hand. Do you declare under penalty of perjury that the testimony you will give in this hearing will be the truth.

(Affirmative responses)

WARD: Thank you gentlemen. Now Mr. Harrington contends that he was unjustly placed on administrative segregation and then transferred to MCAC based upon his alleged involvement in a disturbance/riot at the Maryland Penitentiary on July 25, 1988 -- and that he has never been apprised as to the results of the investigation conducted by Captain Ford. Mr. Harrington is that your grievance?

Nathaniel HARRINGTON, Inmate Complainent: Yes sir.

WARD: Okay. Thank you very much. There are two items under contention here. One, unjustly placed him on administrative seg and the transfer to MCAC. Let's take the first item first, the matter of placement on administrative segregation. Which counsel is going to speak (inaudible).

UNIDENTIFIED COUNSEL: (Inaudible) that he was unjustly placed on administrative segregation simply because the rationale given was that he would be placed on administrative segregation pending an investigation and when I reviewed the (inaudible) I did not see any evidence to support that claim that an investigation had been conducted or was....

Herbert MATZ, Commissioner: (Inaudible) issue isn't it.

UNIDENTIFIED COUNSEL: No....

MATZ: You're talking about the original placement on, on a...

UNIDENTIFIED COUNSEL: That's why he was unjustly placed. There was no rationale.

MATZ: Well I think the rationale is the criminal investigation was pending (inaudible) something else.

UNIDENTIFIED COUNSEL: Well there was nothing to support the claim.

WARD: Let's just have the institution to support it. Now (inaudible) you have a question that's fine, you are arguing the case.

MATZ: (Inaudible) discuss the issue (inaudible).

UNIDENTIFIED COUNSEL: Okay as I was saying there was nothing to support the fact that there was an investigation so therefore he should not have been placed on administrative segregation.

Clarence HAWKINS, Commissioner: Mr. Chairman.

WARD: Yea.

HAWKINS: I'm a little perplexed. I don't understand when you say there was not, no rationale to support. Well I think I'm in agreement with Mr. Matz. The rationale is that he was under investigation for an incident that occurred 7/25/88.

UNIDENTIFIED COUNSEL: Okay but what I'm saying I wanted to know in fact was there an investigation, a written report or the result of it because that is what he....

HAWKINS: (Inaudible) that's further on.

MATZ: A different thing.

HAWKINS: Okay, thank you Mr. Chairman.

WARD: Anything further?

UNIDENTIFIED COUNSEL: That's it as far as administrative...

WARD: Now in terms of response Ms. Sorensen.

Pamela SORENSEN, Classification Supervisor: Okay and I'll (inaudible) the assignment sheet clearly notes the fact that a criminal investigation was pending in this case of course we all know this was the riot at the Penitentiary (inaudible) July 25th '88 incident. And he was served within the proper time periods, that wasn't raised as an issue but I'll bring it up anyway and also the first time he did see a class team and was placed was not within the time frames (inaudible) by DCR on the notification from the Warden to the Classification Supervisor at the Penitentiary explains why that was not done within the specified time period because everything was locked down.

UNIDENTIFIED: Well if it's my understanding that's not an issue.

SORENSEN: Apparently not I thought I'd just comment and then I'll pass to the counsel.

Captain Patrick FORD: Okay on a, I wrote a report on August 24th of 1988 and the subject was recommendations for placement on administrative segregation for an inmate Nathaniel Harrington.

MATZ: I don't think we have that.

UNIDENTIFIED: I don't have it either.

HAWKINS: The key to the whole issue.

WARD: Okay do you want to take a look at that. See if you can get some copies of it. (end of tape)

UNIDENTIFIED COUNSEL: (Inaudible) report stated that he did not feel as though he should have remained on segregation because they could not, they did not see how he was involved.

UNIDENTIFIED COUNSEL: There was no need for him to be held on segregation.

MATZ: Well let me see (inaudible) first there are two separate distinct things placing him on whether or not that was proper, and then after he was placed on (inaudible).

(Inaudible)

MATZ: But that's another issue but the initial placement.

UNIDENTIFIED COUNSEL: Was due to an investigation (inaudible).

MATZ: Well what's wrong with that.

UNIDENTIFIED COUNSEL: I don't think that there is a problem with the placement of him (inaudible).

(Inaudible conversation)

MATZ: That's it so the issue is whether or not he should have remained, that's the point I was trying to make.

UNIDENTIFIED COUNSEL: Well the report said that he could not have remained, now my question is because of that (inaudible) okay I'm sorry because of that what is the rationale of keeping him on administrative segregation.

UNIDENTIFIED COUNSEL: I'm not even sure whether or not the classification team seen that report when they recommended no change pending the result of a criminal investigation.

WARD: Well perhaps you can address that Ms. Sorensen.

SORENSEN: Well I'm going to look here at the results. First off a criminal versus internal are two different things also okay. The August 8th placement, well the actual assignment (inaudible) I can't attest to, I was not a member.

MATZ: Well Mr. Amara was.

SORENSEN: (Inaudible) I was a member of that Team (inaudible) maybe Mr. Amara can address (inaudible) Mr. Amara can remember 10/31 Mr. Amara was a member. November 28th Mr. Amara was a member. 12/16 they are all right there for you.

(Inaudible)

Ben AMARA, Classification Counselor: (Inaudible) pending investigation (inaudible) because (inaudible) placed on there while the investigation was done. That is done to separate him from any other witness that he may have to talk with to prevent any you know information going (inaudible) so that was an order he was placed pending an investigation. Now what happened afterwards I can (inaudible) I talked with Mr. Harrington several times down in segregation, admin seg and I talked with Captain Ford (inaudible) the investigation report. On his (inaudible) he told me he did and he gave it to Major Thompson before going on vacation. We never received a (inaudible) so we can continue until we receive that report.

UNIDENTIFIED COUNSEL: So in essence you're saying that you have never seen this report.

AMARA: Never.

(Inaudible)

UNIDENTIFIED COUNSEL: And this was written on August 24 of 1988 approximately a little over two weeks after his placement on administrative segregation.

HAWKINS: Okay. Mr. Chairman.

WARD: Yes.

HAWKINS: We must remember Captain Ford works, worked at that time for Major Hollis now his report is only a recommendation to Major Hollis. Major Hollis can overrule his report, which he did. He wrote the report to Major Hollis what was it August, alright now the date of the Major's response to him, the Major responded what's the date on the Major's response Mr. Matz. There it is first page, first page.

MATZ: September (inaudible).

HAWKINS: Alright so the Major was aware of his report and he decided to continue him on administrative segregation, he didn't have to accept his report which obviously he didn't because in the records here Major Hollis made (inaudible) reports recommending that he stay on administrative seg.

SORENSEN: Those are noted on the pink sheet.

HAWKINS: Yea they're on the pink sheet.

SORENSEN: (Inaudible) no changes per verbal advice from Major Thompsen.

(Inaudible)

HAWKINS: Now (inaudible) I'm not finished. My point is this. Did the Major have to make you aware of this report?

HARRINGTON: He was (inaudible) of the report.

HAWKINS: Why?

HARRINGTON: Because we....

HAWKINS: You're supposed to be made aware of the security chiefs report not Captain Ford.

SORENSEN: Not necessarily Captain Ford.

HAWKINS: Well it says here (inaudible) the classification meeting there were no reports given by Major Thompson, verbal report, verbal report. No change - well then you all aren't doing your job you're not reading what you're writing. Your name is on there Mr. Amara - no change as per verbal advice of Major Thompson. So he did make a report.

AMARA: No he said keep him on admin seg until we get (inaudible).

(Inaudible conversation)

UNIDENTIFIED: I had that they were waiting for (inaudible).

HAWKINS: But obviously nobody questioned the Major about this.

SORENSEN: Well the DCR 110-19 specifies that an investigative report shall be prepared. It doesn't say by whom and made available to the classification team at the initial hearing (inaudible) now in all possible worlds, or possible worlds we like to see a written packet of everything that was done and that may include a COII's report to the sergeant, sergeant to the lieutenant and so on all the way up the line. We don't get that all the time. I mean what we get is what we get and what we have to, as a class team operate of the information that we have and in this case it's fairly clear that I don't see in the documents that doesn't mean we should have seen those documents because that's (inaudible) what they see (inaudible) what they don't. Obviously if there was some contact that important between Counselor Amara and the security chief that's documented right on the (inaudible).

HAWKINS: That's my point. In fairness to the inmate the classification team should have asked for a written report but obviously they accepted three times verbal reports knowing the DCRs or whatever recommend a written report.

SORENSEN: But we can only get what we can get.

AMARA: We only (inaudible) I did the ground work. (Inaudible) that was repetition because I couldn't get (inaudible) on vacation.

HAWKINS: Right, okay.

AMARA: So I had to continue the original one (inaudible) until we could get (inaudible) and I never did get, the last time I found out he was down at Jessup.

HAWKINS: I understand. Could you help us out Mr. Amara. This sheet says (inaudible) indicate (inaudible) and the top was cut off.

SORENSEN: Yea I may not have, what date is that?

MATZ: That's the first hearing.

SORENSEN: It was the placement.

MATZ: Yea 8/8/88.

SORENSEN: Okay I'll read from the (inaudible).

MATZ: No just the (inaudible) because it's a continuation.

SORENSEN: Okay well this indicates subject a criminal investigation is pending in your case (inaudible) recommends placement pending investigation (inaudible) again this is all back to the criminal investigation (inaudible).

MATZ: That's why he was put on, that's why he was put on administrative seg.

SORENSEN: The criminal vs. the internal are two different things.

MATZ: Well where, where does it say....

SORENSEN: It doesn't say (inaudible) it just says criminal.

MATZ: Alright that's when he was placed on administrative segregation.

HAWKINS: But this was only two weeks after the riot.

MATZ: That's alright. Where does it say or indicate that the internal investigation was taking place.

SORENSEN: Well there's always an internal when there's a criminal (inaudible) but there's not necessarily a criminal when there's an internal but the criminal that's what's checked on the form and that's what was pending. I mean all the reports in the world are not going to answer the question about criminal investigation. As far as I was concerned it was my recollection the criminal aspect of the whole case were not resolved until the spring of, the spring or summer of '89.

HARRINGTON: You're wrong about that, yea.

SORENSEN: I mean until it was all over with, the (inaudible) Classification was done and over with.

UNIDENTIFIED COUNSEL: But the inmate that was involved didn't know that (inaudible).

SORENSEN: Some that were charged and some were not. But that didn't happen in August of '88. A lot of that didn't happen until after the first of the year. We were open, this institution was open.

MATZ: When was it, when was it resolved.

SORENSEN: Spring of '89. We were open before a lot of those charges were (inaudible) and before, and the trials and all of that and whatever you got copies of.

WARD: Any further comments in regard to the first (inaudible).

SORENSEN: There were two reports, where it says, is this it okay.

WARD: Okay, alright in the absence of that let's move on to the second contention. The transfer to MCAC. Ms. Bryant.

BRYANT: Okay I believe that the transfer was improper because of the fact that administration, Mr. Harrington being held on administrative segregation was improper and to be transferred to a higher level in DCR 100-5 he had to have met the qualifications.

(Inaudible)

BRYANT: 100-1, okay 100-1, section 6 procedure, page 7.

SORENSEN: (Inaudible)

BRYANT: 100-1.

UNIDENTIFIED: That's 100-5.

UNIDENTIFIED: 100-5.

BRYANT: Okay this (inaudible) procedure for classifying Mr. Harrington to a higher security level.

SORENSEN: No that is not (inaudible).

BRYANT: Assignment to custody level 5.

MATZ: That's 100-5.

BRYANT: Uh-huh. Okay well 100 (inaudible) what I initially said was 100-5, section 6, procedure which is page 2. That I feel has been a violation and this is why I feel that the, as far as the transfer...

SORENSEN: How is it a violation?

BRYANT: Okay the, okay...

SORENSEN: You said section 6, specifically what.

BRYANT: Procedure.

SORENSEN: Which one? I got it (inaudible), specifically.

BRYANT: The (inaudible) of section 8, wait a minute, sub-section 5a okay where it says that they must meet the requirements in section 5a which is maximum security B4 which he was on B4 but the part about the administrative segregation.

SORENSEN: Now that's not covered here. It says maximum security (inaudible) special management inmate as assigned.

BRYANT: But it states that they must submit it to a classification team to process in importance with DCR 100-1.

SORENSEN: Which just means the team has to be comprised (inaudible).

BRYANT: (Inaudible)

SORENSEN: No that's not how we classify our inmates in here. If you read 100-1 and I do not have a copy of it.

BRYANT: I have a copy of it.

SORENSEN: Okay that we specifically assign the custody level 5 (inaudible) what we call pink sheet, which is what I will refer this to, it is not done by 100-1b I believe which is the blue form. The DCR says, I'll read 100-5 procedure part a, "inmates assigned an inmate classification counselor will initiate classification of an inmate to meet the criteria in section 5b by completing section a of the classification assignment sheet, that's pink, (inaudible) the Team for processing in accordance with 100-1. Team processing, if the Team has to be (inaudible) properly the review process is done properly, if there's Headquarters review to be done properly, that sort of thing it's not a blue sheet transfer it's a pink.

HAWKINS: Can you override that and get him in to C5?

SORENSEN: Override what?

HAWKINS: The blue sheet, the instrument.

SORENSEN: We don't use a blue sheet at all. It's not used to send an inmate to

HAWKINS: To C5.

SORENSEN: Correct.

HAWKINS: Okay.

SORENSEN: The pink is used. An inmate theoretically could be moved from minimum C2 to max C5 with a pink sheet if the proper procedures are followed. It's always done, they are always as we call it, the (inaudible) paper prepared not a blue sheet.

HAWKINS: Now are you, are you questioning that procedure or what on his transfer to C5.

BRYANT: Well I, I thought that they were referring to the blue sheet from what I was (inaudible).

HAWKINS: Well frankly I thought they used it too. This is new to me.

SORENSEN: (Inaudible) moved in here under pink sheet, not under blue.

HAWKINS: Okay, alright. Any further questions (inaudible).

MATZ: I got to get something straighted out. Were you under criminal investigation.

HARRINGTON: During the time I that I was on administrative segregation?

MATZ: No before and during on administrative seg.

HARRINGTON: I remember during administrative segregation.

(Inaudible conversation in background)

MATZ: Wait a minute. You were on criminal investigation while on....

HARRINGTON: Administrative segregation.

MATZ: While on, okay.

HARRINGTON: Administrative segregation.

MATZ: Hold it, I just want to, while on ad seg and did you ever get a notice from the State's Attorneys Office.

HARRINGTON: No notice.

MATZ: Or anybody that you were no longer under investigation for criminal conduct.

HARRINGTON: Verbal, verbal never written, never received any results of that.

UNIDENTIFIED COUNSEL: I would like to make something clear. Mr. Harrington stated that he was informed by his counselor that he was under a criminal investigation. Mr. Harrington stated that he was informed by his counselor that he was under criminal investigation.

(Inaudible conversation)

MATZ: And what I'm getting at is, he keeps (inaudible) and what I'm getting at and if and when there was a criminal, when it was completed that's what I'm getting at.

HARRINGTON: I have no notice of (inaudible) results, verbal or written.

MATZ: Well the reason I asked the question is some cases similar with the riot they had a letter from the State's Attorney's Office (inaudible) that Mr. so and so was no longer under investigation or criminal charges will be filed and I was wondering if he got such a letter or if someone told him that he was no longer under criminal investigation. Well what, what happened, when was this criminal investigation completed?

SORENSEN: I don't know that there was anything really specific about Mr. Harrington and to this day as far as I'm concerned we were never notified formally or informally by the State's Attorney's Office in all cases.

MATZ: Some cases.

SORENSEN: In some cases yea but not all cases and I believe things came to an end criminally sometime in July, June or July of '89. When we finally got the word and that was all verbally, through the grapevine that this was over. All prosecution for the riot was over.

MATZ: So for the record he was placed on administrative segregation July 25 and he was transferred here.

SORENSEN: January (inaudible).

MATZ: So he was on administrative segregation from July to January. All pending.

UNIDENTIFIED COUNSEL: Criminal investigation.

SORENSEN: He was not transferred here pending criminal investigation.

MATZ: I know but prior to it he was still on administrative seg pending criminal investigation.

WARD: One question I'd like to raise. Is there a requirement on the DCR that the inmate be apprised of the ending date of a criminal investigation?

SORENSEN: (Inaudible) let me read, not to my knowledge.

WARD: Okay counsel anything else you'd like to add?

UNIDENTIFIED COUNSEL: Yes I would just like to state that because of the report I feel as though he should not have remained on segregation therefore if he would not have been on segregation he would not have been transferred.

UNIDENTIFIED COUNSEL: Everything was verbal from Major Thompson. There was never anything to support this claim of an alleged criminal investigation.

(Inaudible)

UNIDENTIFIED COUNSEL: And I think at that time all the emotions was high back then because of the incident that took place.

SORENSEN: I can't find anything in DCR 110-19 regarding an inmate should or shouldn't be assigned to the (inaudible).

HARRINGTON: What about the inmate request?

SORENSEN: It's not (inaudible) I mean it's silent as to you know the specifics of anything. I can (inaudible) there is no requirement to tell them or not tell them.

WARD: Okay counsel. What relief are you seeking?

UNIDENTIFIED COUNSEL: Okay he was working during tge time when he was placed on administrative segregation and he was also (inaudible) so the relief that I'm seeking would be those 10 days, 10 months times 18, times 18 months, which would be 180 credits that he would have gotten. Also he was making \$31. that times 18 would be \$500.

HAWKINS: (Inaudible) a month.

UNIDENTIFIED COUNSEL: (Inaudible) a month right and times 18 months would be \$558. and (inaudible) transferred.

HAWKINS: (Inaudible)

UNIDENTIFIED COUNSEL: \$558. and lastly transferred back to the Penitentiary.

HAWKINS: Can I ask one question Ms. Sorensen? Ms. Watkins says that had it not been for the fact that he was placed on segregation he would not have been transferred here. What's your answer to that?

SORENSEN: That's pure speculation. The DCR allows for it.

HAWKINS: Okay another question along with what Mr. Matz said. What would have been the justification had he not been on administrative seg.

SORENSEN: Well I'm reading from the pink sheet that was done on January 18. I, myself and the other classification people (inaudible) we know that at the time team recommends classification to max security C5 transfer to MCAC. Team (inaudible) over all institutional adjustments in current admin seg status. Okay and I don't know if you have (inaudible) oh good okay you do, reverse of that because (inaudible) and there was an incident report. It's not like there was nothing there okay. (Inaudible) he wasn't found not guilty or that the tickets were dismissed. There's an incident report it's in the file, it's here and the Team reviewed it.

UNIDENTIFIED COUNSEL: Was there any other incident reports on other inmates that was not transferred over here?

SORENSEN: I don't know. I mean I don't know that from a recall (inaudible).

UNIDENTIFIED COUNSEL: It stated his overall adjustment record. His last major infraction was on September 21, 1986.

SORENSEN: That was a major infraction too. That's alot of what we looked at not only the number of tickets and the frequency (inaudible). We were looking at the big things that we look for in terms of transfer to Super Max or multiple, I mean escapes or multiple escapes, the introduction of contraband into the institution. You will note what the ticket is for. Anything involving drugs or booze, assaults on inmates or assaults on staff. Those are the big kind of things that we're looking at. An inmate could have one infraction for one of those things and I would probably deem him appropriate for transfer here. If it was a judgement call, I mean there's all types of infractions and exceptions and in this case you know we had a variety of things to look at here. Again we had the incident report from the day of the riot and we also had his overall adjustment with you know it depends on who you're talking to, they are going to say well it is serious or it isn't serious, whatever the case may be. We did have a September '86 ticket that leads me to believe that something was trying to be passed down to the institution. He was found guilty of 18 which is (inaudible).

UNIDENTIFIED COUNSEL: (Inaudible) that was almost two years.

(Inaudible)

WARD: Do you have comments (inaudible).

(Inaudible conversation in background)

SORENSEN: I have one question in terms of the relief he was seeking. He was assigned as a library worker, is that a 10 day, is that a special project credit. That's not special project.

UNIDENTIFIED COUNSEL: He was in school also.

SORENSEN: He wasn't assigned to school though.

HARRINGTON: (Inaudible) college (inaudible).

SORENSEN: But is that college?

(Inaudible)

SORENSEN: No he was an assigned to library worker full time, removed from his school GED, that was April 14th '87 just for clarification.

HARRINGTON: (Inaudible) on a special project.

SORENSEN: That's not a special project.

(Inaudible conversation)

MATZ: Where was he working? You didn't tell us where he was working.

UNIDENTIFIED COUNSEL: Library work, he was working in the library at night.

(Inaudible)

UNIDENTIFIED COUNSEL: I have a question for Ms. Sorensen. Ms. Sorensen I'm sorry. Mr. Harrington stated that had he been in population instead of on admin segregation would he have been transferred.

HAWKINS: That's what I asked (inaudible).

SORENSEN: From lesser security or to greater security?

UNIDENTIFIED COUNSEL: To greater security.

SORENSEN: It's purely speculation it could have happened, you know the DCR allows for it to happen. There would be nothing to prohibit it.

(Inaudible)

SORENSEN: All inmates meet the criteria that on maximum security (inaudible) special management inmate. Special management inmates are (inaudible) in the front. We are looking at inmates who have (inaudible) may be a high escape risk, may have a history of institutional rule violations. That's absolute here in this case. (Inaudible).

(Inaudible)

UNIDENTIFIED COUNSEL: But I do not think that because they were so minor that that would warrant a transfer to greater security.

SORENSEN: It's speculation. I said the Team, the Team (inaudible) absolute (inaudible) it's subjective as members of the Team. I note that on Mr. Harrington and I believe it was only because it was the first day that we're doing them, there were not just three members of the Team there were four. As I stated there were four members, two classification supervisors and a (inaudible).

MATZ: When you were on administrative segregation you appeared before the Teams on these various (inaudible) did you ask anybody what the status of your criminal investigation was?

HARRINGTON: Of course every time I went up.

MATZ: And what answer did you get?

HARRINGTON: Continuing investigation.

(Inaudible)

WARD: Okay.

SORENSEN: Just for the record too Mr. Harrington will not be eligible for consideration for transfer from here until after February 18th.

HAWKINS: Why is that?

SORENSEN: He has to do 13 months here.

UNIDENTIFIED COUNSEL: (Inaudible)

MATZ: Even if the transfer is a problem.

SORENSEN: The Team here has, we cannot consider him until by DCR until (inaudible).

(Inaudible)

HAWKINS: Wait a minute. Is that a DCR? Just a minute please. You mean if as Mr. Matz said, Commissioner Matz said if we deem, or any other body deems that it was an improper transfer and whatnot he still has to stay 13 months?

SORENSEN: Hasn't been tested yet.

UNIDENTIFIED COUNSEL: Can I say something please?

(Inaudible)

UNIDENTIFIED COUNSEL: (Inaudible) inmates come here with less than 13 months.

SORENSEN: If their time is up. Well if their time is up we have no choice.

(Inaudible)

SORENSEN: Because we have no choice in that matter.

Nathaniel Harrington, #180801

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IGC No. 21719

HAWKINS: Okay.

WARD: Thank you.

STATE OF MARYLAND

INMATE GRIEVANCE COMMISSION

ORDER

In the Matter of Nathaniel Harrington, #180801
Maryland Correctional Adjustmetn Center (MCAC)

IGC No. 21719

Mr. Harrington contends that he was unjustly placed on administrative segregation and then transferred to MCAC based upon his alleged involvement in a disturbance/riot at the Maryland Penitentiary on July 25, 1988 -- and that he has never been apprised as to the results of the investigation conducted by Captain Ford.

Commissioners Hawkins, Matz and Ward heard this grievance on January 24, 1990 at MCAC. Representing the institution was Ms. Pamela Sorensen, Classification Supervisor. Representing Harrington was Ms. Deanne Watkins and Ms. Sheree Bryant of Legal Aid Bureau. Called as witnesses were Captain Patrick Ford and Mr. Ben Amara, Classification Counselor.

Prior to the taking of testimony all parties were duly sworn and given access to documents in the Commission's files relevant to the hearing.

Summary of the Proceedings

Ms. Bryant contends that Harrington was unjustly placed on administrative segregation pending an investigation. However, there was no documentation, rationale, or citation of a DCR to support this placement.

Ms. Sorensen informs the Commission that the Classification Assignment Sheet clearly states that an investigation was in progress during the time frame that Harrington was on segregation.

Ms. Bryant maintains that she has no problem with the inmate's placement on segregation with no written documentation supporting his remaining on segregation.

Captain Ford states that he wrote a report to Major Hollis Thompson on August 24, 1988 in regards to inmate Nathaniel Harrington. In this report Captain Ford cites the various reports submitted by officers at the disturbance plus testimony by the inmate. Along with these reports Captain Ford cites the decision by the Hearing Officer to reduce the infraction to an incident report because of lack of evidence.

Mr. Amara, who was a member of the Classification Team, stated that he was not aware of the report of Captain Ford.

Captain Ford declares that he submitted the report to Major Thompson, who was his supervisor. Basically, Captain Ford states he sees no justification for holding Nathaniel Harrington on administrative segregation.

Mr. Amara contends that at each meeting of the Classification Team he asked for reports to justify keeping Harrington on administrative segregation. He states he only received verbal reports from Major Thompson, never a written report.

Ms. Bryant contends that Harrington was transferred to MCAC because he was on administrative segregation, not because of the Instrument of DCR 100-1.

Ms. Sorensen maintains that inmates are not sent to MCAC because of the instrument score of DCR 100-1, only by the decision of a Classification Team. Since the inmate was under criminal investigation, the Team opted to send Harrington to MCAC.

Inmate Harrington argues that he was never presented with any documentation to show that he was under criminal investigation. He was never questioned by outside personnel, only Captain Ford of the Maryland Penitentiary. He was informed by his counselor that he was under criminal investigation. In addition, he was never told when the "so called" investigation was started or ended.

Findings of Fact

The Commission finds that:

1. The inmate was placed on administrative segregation pending an investigation of his involvement in a disturbance at the Maryland Penitentiary. This placement was justified and proper.
2. The continuance of inmate Harrington on administrative segregation is another matter.
3. Regulations stipulate that reports must be written and given to a Classification Team specifying a rationale for continuing an inmate on administrative segregation.
4. According to testimony of a Team member, Mr. Ben Amara, no written report was ever submitted to the Team that requested that inmate Harrington be kept on administrative segregation. This is a clear violation of DCR 110-19.
5. Only one report was written in regards to an investigation of inmate Harrington. This was written by Captain Ford to his supervisor, Major Thompson. This report stated that after investigation of the inmate's involvement in the disturbance of July 25, 1988, the Captain recommended removing the inmate from administrative segregation.

6. It appears that this report remained with Major Thompson and was never sent to the Classification Team to assist in their decision on Harrington's status on administrative segregation.
7. Since the inmate was remaining on administrative segregation for such a long period, this made him a "prime candidate" for transfer to MCAC.
8. Had the inmate been returned to general population after a reasonable period following an investigation, he would, possibly, never have been considered for transfer to MCAC.
9. The charges levied against the inmate for his involvement in the July 25, 1988 incident were reduced by the Hearing Officer because of a lack of substantial evidence. This appeared to have no effect on the Classification Team. The report written by the investigative officer, Captain Ford, apparently had no effect on Major Thompson.
10. There is no documentation in the files to show a criminal investigation ever took place.
11. There are no written reports from Major Thompson in the files to justify keeping the inmate on administrative segregation.
12. The Classification Team was remiss in not requiring written reports from the Chief of Security.
13. The transfer to MCAC was solely based on the inmate's alleged participation in the July 25, 1988 disturbance.
14. Mr. Harrington illegally remained on administrative segregation from 9/1/88 to 2/18/90 (18 months).

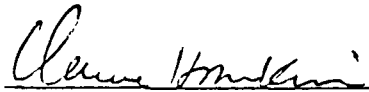
Conclusion

Based on the Findings of Fact, the Commission concludes that the grievance of Nathaniel Harrington is meritorious in part. The Commission concludes that the inmate was legally placed on administrative segregation pending an investigation of his involvement in a disturbance/riot on July 25, 1988. However, after an investigation was started and the inmate was absolved of an infraction, he should have been released from administrative segregation. The inmate remained over thirty days on administrative segregation before Captain Ford's report of August 1988. To continue that inmate on administrative segregation without written rationale was clearly a violation of due process for the inmate. Inmates should not be persecuted because of the "whims" of personnel staff or the omission of adherence to DCRs, as in the case of the Classification Team.

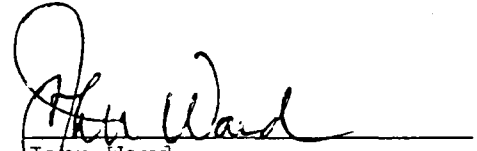
Disposition

Having concluded that the grievance of Nathaniel Harrington is meritorious in part, the Commission orders a reclassification hearing for the inmate. In addition, the Commission recommends that Mr. Harrington be awarded 90 credits lost by the inmate while on administrative segregation from September 1, 1988 until his release from administrative segregation. Also this Commission recommends that Mr. Harrington be awarded the sum of \$418.00 (pay from working and going to school lost while illegally kept on administrative segregation from the date of the report of Captain Ford plus 10 days to implement his recommendation for release from administrative segregation).

This 30th day of April, 1990.



Clarence Hawkins
Commissioner



John Ward
Commissioner

Concurring and Dissenting Opinion

Mr. Harrington's challenge to his initial placement on Administrative Segregation was resolved when his representatives agreed and admitted that his placement was proper and advised the panel accordingly. Thus, I agree with paragraph one (1) of the Findings of Fact.

Although not in chronological order, I respectfully disagree and dissent with the remainder of the Findings of Fact, a portion of the Conclusion and the Disposition as rendered by the majority for the reasons set forth herein.

In reviewing the Summary of Proceedings and the Findings of Fact, I note that the majority did not consider or overlooked crucial and important evidence and testimony.

For instance, paragraph five (5) of the Findings of Fact refers to the August 24, 1988 report by Captain Ford in which he recommended that Harrington be removed from segregation. However, the majority failed to make any mention of Captain Ford's later memo of September 15, 1988 wherein he countermanded his recommendation of August 24, 1988 and recommended that Harrington remain on administrative segregation. (See his memo to Major Hollis Thompson dated 9/15/88). So the comment in paragraph 5 that only one report was written by Captain Ford is inaccurate.

Then there is the testimony of Ms. Sorensen that the criminal aspect of Harrington's investigation was not resolved until the Spring of 1989, long after he was transferred to the MCAC in January of 1989 and when he was no longer on Administrative Segregation. This testimony came in unchallenged and uncontradicted. Criminal investigations are to be distinguished from internal investigations, those conducted by the institution or the Division of Correction. Generally, when an inmate is placed on Administrative Segregation pending an internal investigation, it should be completed within a reasonable time. However, when one is placed on Administrative Segregation pending a criminal investigation, the matter is totally out of the hands of the institution or Division of Correction, who do not maintain any control over the investigation. Thus, the length of such criminal investigations are matters for the investigating authorities and not the Division of Correction. And further, Mr. Harrington knew full well that he was being placed on Administrative Segregation pending the criminal investigation when he signed the Notice of Assignment to Administrative Segregation on July 27, 1988. Mr. Harrington did not allege that he did not know the purpose for his placement on Administrative Segregation nor did he allege that he was not given the opportunity to challenge his placement thereon at the Classification Hearing.

With respect to paragraph three (3) of the Findings of Fact, there is nothing in DCR 110-19 requiring that reports must be written and given to the Team specifying a rationale for continuing an inmate on Administrative Segregation, only the Team must provide a rationale for doing so. The Majority did not and can not cite the particular DCR or a section thereof requiring such procedure.

With reference to paragraph four (4) of the Findings, as no such written reports were required there was no violation of DCR 110-19 in that respect. And as the criminal investigation was still pending and continuing, each and every time Harrington appeared before the Team, his continued placement thereon was proper.

Paragraph six (6) of the Findings is of no validity since Captain Ford countermanded his memo of August 24, 1988 by his memo of September 15, 1988.

The Findings in paragraphs seven (7) and eight (8) are mere speculation and conjecture without any basis or proof thereof, and are purely self-serving.

The Majority's reference to the Adjustment Hearing and the fact that the charges were reduced to an incident report as noted in paragraph nine (9) of the Findings is totally irrelevant. Adjustment matters and hearings and classification matters and hearings are not equivalents. Adjustment hearings are punitive in nature while classification hearings are administrative in nature.

With respect to paragraph ten (10) of the Findings, there is no requirement that the investigation conducted by an outside agency should be placed and documented in the files of the institution. There was sufficient reference to the criminal investigation when Mr. Harrington was placed on Administrative Segregation and each and every time he appeared for his segregation reviews. It would stretch one's credulity for Mr. Harrington to give the impression that he did not know he was under criminal investigation for his alleged participation in the disturbance. The fact of the matter is that there was a criminal investigation that was not completed until Spring of 1989 according to the undisputed testimony of Ms. Sorensen, and by that time, he was no longer on Administrative Segregation as previously noted herein.

Further, Mr. Harrington had the opportunity to call and examine Major Thompson with respect to any aspect of his grievance in which Major Thompson may have been involved, but he failed to avail himself of that opportunity.

Paragraphs eleven (11) and twelve (12) of the Findings are also totally without basis. No written reports were required from Major Thompson to justify keeping Mr. Harrington on Administrative Segregation. As noted in the Summary of Proceedings, Mr. Amara, who participated in each segregation review hearing as a Team member, testified that he received verbal reports from Major Thompson. It is obvious, therefore, that the information he received was that the criminal investigation was still in process because that was the rationale for keeping Harrington on Administrative Segregation. Had he received information to the contrary, there would have been no basis to continue to keep him on Administrative Segregation. As there was sufficient basis for keeping Harrington on that status, the Team was not remiss in its duties.

The Findings in paragraph thirteen (13) that Harrington's transfer was solely based on his alleged participation in the disturbance is contrary to the testimony and evidence produced at the hearing. It is a bald statement without proof. Ms. Sorensen disputed this allegation at the hearing hereof, testifying that Mr. Harrington fell within the guidelines and criteria of DCR 100-5, and it was not based solely on his alleged participation in the disturbance; and Mr. Harrington failed to prove otherwise. She also noted that he was not transferred by way of DCR 100-1 but by a Team using the pink sheet.

In the absence of Proof by Mr. Harrington that DCR 110-19 was violated or that he was caused to remain on Administrative Segregation illegally, paragraph fourteen (14) of the Findings is also totally without basis.

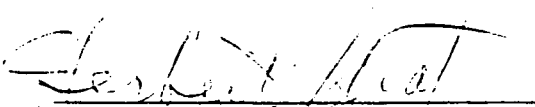
I further disagree with the Majority's comments in the Conclusion that because Harrington was absolved of the infraction, he should have been released from Administrative Segregation because of my reasons previously set forth herein. Further, as to the comment that Mr. Harrington's due process was violated, it is again totally without basis. He never made any charge or such allegation and he failed to prove such violation.

Finally, I find the use of the word "persecuted" in the Conclusion to be inappropriate, totally unwarranted and again self-serving. Mr. Harrington never made such a charge and no evidence was presented in that regard, and I feel that it should be deleted.

In reviewing the Order I note that the Majority did not address Mr. Harrington's complaint that he was never notified as to the result of the investigation by Captain Ford. The answer thereto is that there is no requirement that the inmate be apprised of the result of the investigation. It is ironic that Mr. Harrington never testified that he asked Captain Ford or anyone for the result of the investigation. In any event, it is obvious that as Mr. Harrington was not charged or indicted for his alleged participation in the riot, that it was the opinion of the investigating authorities that criminal proceedings were not warranted.

For all the reasons set forth herein, I find Mr. Harrington's grievance to be without merit and recommend that it be dismissed.

Respectfully submitted.


Herbert Matz
Commissioner

Nathaniel Harrington
Maryland Correctional
Adjustment Center

- 8 -

IGC No. 21719

DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES

ORDER OF THE SECRETARY

Having carefully reviewed both the majority findings of fact, conclusions and recommendations of Commissioners Hawkins and Ward, and the dissenting opinion and proposal of Commissioner Matz, and having carefully considered each, I hereby adopt the dissenting opinion of Commissioner Matz and do further direct that the grievance of Nathaniel Harrington be and the same is hereby dismissed as being without merit.

I further adopt the opinion of Commissioner Matz as my reasons for dismissing the grievance as being nonmeritorious, except Mr. Matz's editorial comments.

I further find that the file and the factual observations of Commissioner Matz clearly reflect that there was credible evidence on the part of the institution that was not considered and/or disregarded by the majority and without any explanation by the majority.

This 8th day of May, 1990.


SECRETARY



WILLIAM DONALD SCHAEFER
GOVERNOR

MELVIN A. STEINBERG
LT. GOVERNOR

BISHOP L. ROBINSON
SECRETARY

STATE OF MARYLAND
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

SUITE 310, PLAZA OFFICE CENTER
6776 REISTERSTOWN ROAD
BALTIMORE, MARYLAND 21215-2341
(301) 764-4000
TTY FOR THE DEAF: 486-0677

RECEIVED
MAY 8 1990
INMATE GRIEVANCE COMMISSION

May 8, 1990

Mr. Nathaniel Harrington, #180801
Maryland Correctional Adjustment Center
401 E. Madison Street
Baltimore, Maryland 21202

Dear Mr. Harrington:

Enclosed is a copy of the Order resulting from the recent hearing of your complaint by the Inmate Grievance Commission.

Very truly yours,

Bishop L. Robinson
SECRETARY

BLR/mca

Enclosure

CC: Inmate Grievance Commission
Ms. Pamela Sorensen

STATE OF MARYLAND
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES
DIVISION OF CORRECTION

WILLIAM DONALD SCHAEFER
GOVERNOR

MELVIN A. STEINBERG
LT. GOVERNOR

BISHOP L. ROBINSON
SECRETARY

FROM	MARYLAND PENITENTIARY 954 Forrest Street Baltimore, Maryland 21202	AGENCY NAME & ADDRESS
	CAPTAIN PATRICK FORD, 8-4 SHIFT CAPTAIN	NAME & TITLE
	ADMINISTRATIVE SEGREGATION RECOMMENDATION	SUBJECT

ARNOLD J. HOPKINS
COMMISSIONER

ELMANUS HERNDON
DEPUTY COMMISSIONER

JAMES N. ROLLINS
WARDEN

BERNARD SMITH
ASSISTANT WARDEN

To: MAJOR HOLLIS S. THOMPSON, ACTING SECURITY CHIEF Date: AUGUST 24, 1988

RE: INMATE NATHANIEL HARRINGTON #180-801/D-216

SIR:

Per your order, the above named inmate was interviewed by me. The purpose was to establish justification for inmate Harrington being continued on Administrative Segregation.

Inmate Harrington claims he had went to school in the morning of July 25, 1988. He said he went to lunch when the school was called and then went to the weight room. Inmate Harrington claims he does this almost everyday. Inmate Harrington said he had just come out of the weight room when he saw a disturbance in #4 Yard. He said Officer R. O. White CO II was letting some people in the school. When he ran toward the school, the door was locked. He said Officer R. O. White would not let anyone else in the building. Inmate Harrington claims he stood with other inmates along the building. When the officers came through the Crisis Clinic, they were ordered into the bleachers. He remained there until ordered to leave.

Inmate Harrington claims not to have taken part in any of the disturbance which occurred on July 25, 1988.

In reviewing inmate Harrington's basefile, I found an infraction notice written by Officer Darryle Gunthrope CO I. Officer Gunthrope wrote in the notice that he was definitely one of the inmates he observed carrying a baseball bat both in #3 Yard and #4 Yard. However, the infraction notice was reduced to an incident report by Hearing Officer Patricia Briggs. The reason for the reduction was stated that inmate Harrington was in #4 Yard coming toward the school door. This was observed and testified to by Officer R. O. White CO II (School OIC). Also, the hearing officer stated that Officer Gunthrope did not see inmate Harrington commit any wrong act.

EXHIBIT #	1
Grievant	Inst. ✓
IGC No.	21719
Date	1/24/90

PAGE #2

INMATE NATHANIEL HARRINGTON

CAPTAIN PATRICK FORD

AUGUST 24, 1988

Although inmate Harrington was not seen committing an act of disturbance, Officer Gunthrope did see him with a baseball bat. My feelings are why would he have a bat and did he use it on an officer before he was observed by Officer Gunthrope. Due to the lack of evidence and the fact that he could not be identified as actually participating in the disturbance, I see no justification for holding inmate Harrington on Administrative Segregation.

This report was written for your information and evaluation.

Inmate's Name Nathaniel Hamilton No. 190801 Date of Infraction 7/28/88

II. HEARING OFFICER DECISION/RECOMMENDATION

Decision: Guilty Not Guilty Dismissed Guilty of Rule: Reduced But not Guilty of Rule:

Charge(s) 3, 4 Reasons: 14.0 understates

the report is written the fact of white getate the members of hearing in filed to get in to the prison of 0. Also note that indicates the severity of but does not indicate what occurred due by the delay in tickets being written on 7/25/88. as 14.0 fails at reduce is warranted

Recommend: Lose _____ Days GCT; Industrial Time for Month of _____

Commissioner to Take _____ Days GCT (Document Time Taken on Each Charge): _____

Remove: PRS Work Release Return: PRS MHC MCIH MCTC MP MCI

Segregation Sentence _____ Days, Including Time Spent Prior to Hearing (Document Time for Each Charge): _____

Cell Restriction _____ Days or Probation _____ Days from _____

Other Penalty Reduced to an Incident

Reasons: _____

Sanction is appropriate under the continuing discipline

Decision and Recommendation to Inmate Yes Inmate Objects: Yes No Date 8-4-88

III. MANAGING OFFICER ACTION

Approved Disapproved Hearing Officer Richard J. Briggs Sentence Reduced to _____ New Proceedings Ordered

Reasons: _____

INMATE NOTIFIED 8/15/88

Decision Suspended Due to Following Technical Violation of Adjustment Procedure:

Signature: James H. Fox Date 8/16/88

Inmate Notified of Managing Officer's Decision Date _____

STATE OF MARYLAND
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES
DIVISION OF CORRECTION

WILLIAM DONALD SCHAEFER
GOVERNOR

MELVIN A. STEINBERG
LT. GOVERNOR

BISHOP L. ROBINSON
SECRETARY

F R O M	MARYLAND PENITENTIARY 954 Forrest Street Baltimore, Maryland 21202	AGENCY NAME & ADDRESS
	CAPTAIN PATRICK FORD, <i>PF</i> 8-4 SHIFT DUTY CAPTAIN	NAME & TITLE
	ADMINISTRATIVE SEGREGATION RECOMMENDATION	SUBJECT

ARNOLD J. HOPKINS
COMMISSIONER

ELMANUS HERNDON
DEPUTY COMMISSIONER

JAMES N. ROLLINS
WARDEN

BERNARD SMITH
ASSISTANT WARDEN

To: MAJOR HOLLIS S. THOMPSON, ACTING SECURITY CHIEF Date: SEPTEMBER 15, 1988

RE: INMATE NATHANIEL HARRINGTON #180-801

SIR:

Prior to this report, I had made a report and recommendation concerning the above referenced inmate. This inmate has since sent me a copy of the adjustment hearing report (See Attached). The infraction was reduced to an incident report. Thus, this does not mean that inmate Harrington was not involved. Therefore, I recommend he remain on Administrative Segregation.

This report was written for your information and evaluation.

PF:tvs

cc: File

JOSEPH B. TETRAULT, ESQUIRE
PRISONER ASSISTANCE PROJECT
LEGAL AID BUREAU, INC.
809 E. BALTIMORE STREET
BALTIMORE, MARYLAND 21202

STEVEN G. HILDENBRAND
ASSISTANT ATTORNEY GENERAL
DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONAL SERVICES
6776 REISTERSTOWN RD., SUITE 312
BALTIMORE, MARYLAND 21215-2341

MR. NATHANIEL C. HARRINGTON #180801
954 FORREST STREET
BALTIMORE, MARYLAND 21202

NOTICE SENT IN ACCORDANCE WITH MARYLAND RULE B-12

NATHANIEL HARRINGTON #180801

Docket:

vs.

Folio:

SECRETARY OF PUBLIC SAFETY AND
CORRECTIONAL SERVICES

File: 90190075/CL116244

Date of Notice: 8/13/90

STATE OF MARYLAND, ss:

I HEREBY CERTIFY, That on the 13TH day of AUGUST
Nineteen Hundred and NINETY, I received from the Administrative
Agency, the record, in the above captioned case.

SAUNDRA E. BANKS, Clerk
Circuit Court for Baltimore City

CC-39

NOTICE SENT IN ACCORDANCE WITH MARYLAND RULE B-12

NATHANIEL HARRINGTON #180801

Docket:

vs.

Folio:

SECRETARY OF PUBLIC SAFETY AND
CORRECTIONAL SERVICES

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CC-39

NOTICE SENT IN ACCORDANCE WITH MARYLAND RULE B-12

NATHANIEL HARRINGTON #180801

Docket:

vs.

Folio:

SECRETARY OF PUBLIC SAFETY AND
CORRECTIONAL SERVICES

File: 90190075/CL116244

Date of Notice: 8/13/90

STATE OF MARYLAND, ss:

I HEREBY CERTIFY, That on the 13TH day of AUGUST
Nineteen Hundred and NINETY, I received from the Administrative
Agency, the record, in the above captioned case.

SAUNDRA E. BANKS, Clerk
Circuit Court for Baltimore City

CC-39

NATHANIEL HARRINGTON

APPELLANT

v.

SECRETARY OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES

APPELLEE

IGC NO. 21719

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*

IN THE
CIRCUIT COURT
FOR
BALTIMORE
CITY
CASE NO. 90190075/CL116244

FILED
AUG 13 1990

CIRCUIT COURT FOR
BALTIMORE CITY

* * * * *

ANSWER TO AMENDED PETITION

The Secretary of the Maryland Department of Public Safety and Correctional Services, Appellee, by his attorneys, J. Joseph Curran, Jr., Attorney General of Maryland, and Steven G. Hildenbrand, Assistant Attorney General, in Answer to the Amended Petition¹ filed by the Appellant, says:

1. The allegations set forth in paragraphs 1 through 23 of the Amended Petition provided by the Appellant are generally admitted, except for the following. Appellee denies the allegation in paragraph 5 of the Amended Petition that at the August 4, 1988 prison adjustment (disciplinary) hearing that Correctional Officer White "testified to the effect that Appellant was not involved in the disturbance of July 25, 1988." Appellee also denies any allegation or contention that the allegations contained in paragraphs 1 through 23 are sufficient to reverse the May 8, 1990 decision of the Secretary of Public

¹ Appellant's counsel and appellee's counsel have agreed that as the Amended Petition includes the substance of the allegations contained in the original Petition that it is not necessary for Appellee to file a separate Answer to the original Petition and that Appellee's Answer to the Amended Petition will be considered as an answer to both Petitions.

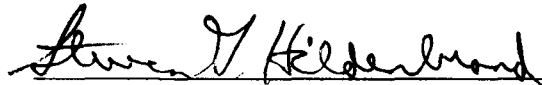
Safety and Correctional Services.

2. Appellee denies the allegations in paragraphs 24 and 24.a. through 24.e.

3. Further answering said Appeal, Appellee states that a review of the decision of the Secretary of Public Safety and Correctional Services will show that decision is based on substantial evidence, is not arbitrary or capricious, and is consistent with and not in violation of applicable provisions of State and federal constitutional and statutory law.

WHEREFORE, the Secretary prays that his decision be affirmed.

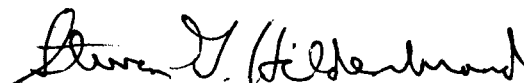
J. JOSEPH CURRAN, JR.
Attorney General of Maryland



STEVEN G. HILDENBRAND
Assistant Attorney General
Department of Public Safety and
Correctional Services
6776 Reisterstown Road
Suite 312
Baltimore, Maryland 21215-2341
Tel: 764-4072

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of August, 1990, that a copy of the foregoing Answer to Amended Petition was mailed by first class U.S. mail, postage prepaid, to Joseph B. Tetrault, Esquire, Prisoner Assistance Project, Legal Aid Bureau, Inc., 809 E. Baltimore Street, Baltimore, Maryland 21202.



STEVEN G. HILDENBRAND
Assistant Attorney General

(D)

NATHANIEL HARRINGTON, No. 180801 : IN THE
 Appellant : CIRCUIT COURT
 v. : FOR
 BISHOP L. ROBINSON, Secretary : BALTIMORE CITY
 Public Safety & Correctional : Case No.: 90190075/GE 106 244
 Services, :
 Appellee :
 IGC No.: 21719 :
 oOo

FILED
AUG 1 1990
CIRCUIT COURT FOR
BALTIMORE CITY

**AMENDED PETITION FOR REVERSAL OF
 ADMINISTRATIVE AGENCY DECISION**

Appellant Nathaniel Harrington, by his attorney, Joseph B. Tetrault, pursuant to Md. Rule 2-341(a) and Md. Rule B2(e), respectfully submits this Amended Petition for Reversal of Administrative Agency Decision, and states the following:

1. Appellant, in proper person, perfected this appeal July 9, 1990, and had previously attempted to file a pro se Petition for Reversal of Administrative Agency Decision.

2. Appellant, now represented by counsel, wishes to "set forth a better statement of facts concerning any matter already raised in a pleading." Md. Rule 2-341(c). Such amendments "shall be freely allowed when justice so permits." Id.

3. On July 28, 1988, Appellant was served with a Notice of Infraction charging him with violations of prison disciplinary rules 3 & 4, namely, "[i]nciting, creating, participating in,

being involved in any manner, or committing any mutinous act, riot, or disturbance," and "[m]aking or possessing of any weapon or any other article which has been modified into a weapon."^{1/} Notice of Infraction or Incident, attached as Exhibit 1.

4. Prior to being served with the Notice of Infraction, however, Appellant had been placed on administrative segregation on July 27, 1988. The rationale for this placement was that "[a] criminal investigation is pending in your case." Notice of Assignment to Administrative Segregation, attached as Exhibit 2.

5. At an adjustment hearing held at the Maryland Penitentiary on August 4, 1988, Correctional Officer Roy White testified to the effect that Appellant was not involved in the disturbance of July 25, 1988. Adjustment Report, p.1. attached as Exhibit 3. The matter was reduced to an incident report. Id., p.2.

6. On August 8, 1988, however, Appellant was "approved" for placement on administrative segregation on the basis of the rationale of the Notice of Assignment to Administrative Segregation, Exhibit 2. Classification Assignment Sheet, August 8, 1988, pp. 1-2, attached as Exhibit 4.

7. Appellant remained in segregation for approximately 18 months.

^{1/} Division of Correction Regulation ("DCR") 105-1, p.2.

8. On January 18, 1989, Appellant's classification team recommended and Warden James N. Rollins approved the transfer of Appellant to the Maryland Correctional Adjustment Center ("MCAC" or "SuperMax"). One of the reasons given for the transfer was Appellant's "current admin[istrative] segregation status." Classification Assignment Sheet, January 18, 1989, p.1, attached as Exhibit 5.

9. Upon information and belief, Appellant was transferred from the Penitentiary to MCAC almost immediately thereafter.

10. Appellant then filed the grievance which is the subject of this appeal.

11. The Inmate Grievance Commission held a hearing on this matter at MCAC on January 24, 1990.

12. By order dated April 30, 1990, the Inmate Grievance Commission found, by a two-to-one margin (Commissioner Matz, concurring and dissenting), that although Appellant's initial placement on administrative segregation was proper, his continuation on administrative segregation was a clear violation of DCR 110-19, a copy of which is attached as Appendix A.

13. The reason for finding a clear violation of DCR 110-19 was that no written report requesting that Appellant be continued on administrative segregation was ever submitted to the classification team. See DCR 110-19.IV.A.4.c.

14. The Inmate Grievance Commission also found that a report of Appellant's involvement in the July 25, 1988 disturbance written by Capt. Ford to Acting Security Chief Major

Thompson, which recommended that Appellant be removed from administrative segregation, was never forwarded by Major Thompson (whose verbal instructions caused Appellant's continuation on administrative segregation, see Classification Assignment Sheet, December 16, 1988, p.1, attached as Exhibit 6) to the classification team so that Appellant could be removed from administrative segregation.

15. The Inmate Grievance Commission further found no documentation of any criminal investigation of Appellant, nor any written reports from Major Thompson justifying Appellant's continuation on administrative segregation.

16. The Inmate Grievance Commission further found that the charges that Appellant was involved in the July 25, 1988 disturbance were reduced to an incident report because of a lack of substantial evidence that Appellant was involved in the riot.

17. The Inmate Grievance Commission further found that Appellant's transfer to MCAC was based solely on his alleged involvement in the July 25, 1988 incident, and that, had he been returned to the general population within a reasonable period of time following Capt. Ford's investigation, it would have been highly unlikely that Appellant would even have been considered for such a transfer.

18. The Inmate Grievance Commission found that Appellant was illegally continued on administrative segregation from September 1, 1988, to February 18, 1990.

19. The Inmate Grievance Commission concluded that Appellant's grievance was meritorious in part.

20. The Inmate Grievance Commission concluded that Appellant's right to due process of law was violated.

21. The Inmate Grievance Commission recommended that Appellant be reclassified and that Appellant receive the 90 industrial, educational, and special project credits^{2/} he would have received had he not been illegally detained on administrative segregation, and that Appellant receive the sum of \$418.00 in lost wages attributable to the period of illegal continuation on administrative segregation.

22. By order dated May 8, 1990, however, Appellee Secretary Robinson adopted the dissenting opinion of Commission Matz and ordered Appellant's grievance dismissed as being without merit.

23. Such order of the Appellee constitutes the final decision of the Inmate Grievance Commission for purposes of judicial review. Md. Ann. Code Art. 41, §4-102.1(i) (1989 Cum. Sup.).

24. The decision of Secretary Robinson reversing the order of the Inmate Grievance Commission is in error for the following reasons:

- a. The language of DCR 110-19 requiring investigative reports to be submitted to the classification team is mandatory and must be adhered to by the Division of Correction and its officers;

^{2/} See Md. Ann. Code Art. 27, §700(c), -(d), & -(f) (1987 Rep. Vol.).

- b. The direct result of the failure to adhere to DCR 110-19 in this case was Appellant's illegal continuation on administrative segregation, in solitary confinement, for close to 18 months;
- c. Appellant's illegal continuation on administrative segregation violated his rights to both procedural and substantive due process as guaranteed by the Fourteenth Amendment to the United States Constitution and Art. 24 of the Maryland Declaration of Rights;
- d. The findings of the Inmate Grievance Commission, in its order dated April 30, 1989, were based on substantial evidence and were not clearly erroneous;
- e. The action of Appellee Robinson in reversing the Inmate Grievance Commission was not based on substantial evidence, was clearly erroneous, and, further, was arbitrary and capricious.

WHEREFORE, Appellant prays that the decision of Appellee Robinson reversing the Inmate Grievance Commission's Order of April 30, 1988, be reversed, and that this Court order that Appellant receive the 90 industrial, educational, and special project days he would have received had he not been illegally

continued on administrative segregation, and that this court order that Appellant be awarded the sum of \$418 in lost wages which he would have earned had he not been illegally continued on administrative segregation, and grant any other and further relief the nature of the cause may require.

Respectfully submitted,



Joseph B. Tetrault
Counsel for Appellant
Prisoner Assistance Project
Legal Aid Bureau, Inc.
809 E. Baltimore Street
Baltimore, Maryland 21202
Telephone: (301) 539-0390

Maryland Division of Correction

MDS Pen
Institution

D216

Notice of Infraction or Incident

I. Name *Nathaniel Harrington* No. *180801* Date of Infraction *7-28-88* Time *12:00 P.M.*
A report has been filed charging you with the following violation(s):

Major: Rule # *3 AND 4* Minor: Rule # _____
(See reverse side for explanation of Rule #)

State Facts (What Happened): *Sir, while making security rounds within the segregation unit, Officer Lenthrop positively identified inmate Harrington as one of the inmates within #3 yd in possession of a baseball bat during the disturbance, which took place on 7-25-88 in #3 and #4 yds. at approx 1:00 p.m.*

Reporting Officer *Samuel Lenthrop COI*

The report, as stated, has been reviewed by the Shift Commander and the following action has been taken:
 Approved Disapproved Reduced to an Incident Report (State Reasons) Informal Disposition (State Disposition)

Referred to the Hearing Officer

Shift Commander's Signature *[Signature]* Date *7/28/88* Time *108* A.M. P.M.

I accept reduction to Incident Report Yes No I accept Informal Disposition Yes No

Inmate's Signature *Nathaniel Harrington* Number *180801* Date _____

II. SERVICE NOTICE

Served by *Sgt. E. Russell* Title *CO III* Date *7/28/88* Time *1:30 P.M.*
In acknowledgement of the charge(s) presented: I do not want to be represented I do want to be represented, and request

the following person(s): Representative: _____ Witnesses: _____

NOTE: If you are currently on probation by virtue of a previous adjustment violation, please be aware that your probation may be revoked by committing another offense and all sanctions deferred as a result of that probation may be added to those received, if you are found guilty of a current offense.

Name _____ Number _____ Date _____

III. WAIVER OF 24-HOUR NOTICE

I understand that I must be given 24-hour notice before an adjustment hearing in order to prepare my case. I may waive this requirement by signing this section:

Inmate's Signature _____ Date _____

SEE BACK FOR RIGHTS AT HEARING & RIGHTS OF APPEAL

DIVISION OF CORRECTION
NOTICE OF ASSIGNMENT TO ADMINISTRATIVE SEGREGATION

DATE: 7/27/88

INSTITUTION: Inj Pen

Harrington Nathaniel 180801
Last Name First Name M.I. Number

7/27/88 11:12am
Date/Time of Placement

Wags J. Farrell, 84 Dept. Prisoner
Per

It has been determined that reasons exist (as categorized below) to remove you from the general population and (temporarily) assign you to administrative segregation pending classification team action. You will be seen by the classification team within 96 hours of your placement on administrative segregation (excluding weekends and holidays) and given the opportunity to be heard as to whether or not you should be continued in this status.

Reason (Check applicable category)

- To prevent escapes, reasons exist to believe you are an escape risk.
- You are under sentence of death.
- Reasons exist to believe you are dangerous to the security of the institution, and/or inmates, and/or staff.
- A criminal investigation is pending in your case.
- Other (specify) _____

Distribution

Original — Classification
Copy — Inmate

I have read (or have had read to me) and acknowledge receipt of a copy of this notice.

Nathaniel Harrington 180801
Inmate Signature

Notice Served by Sgt. M. Reid

Date/Time 7-27-88 3⁰⁰ PM

Inmate's Name Nathaniel Harrington No. 180801 Date of Infraction 7/28/88

I. ADJUSTMENT HEARING ACTION

Date of Hearing 8/4/88 Time 10:15 A.M.

Proper Notice Given Notice Signed Hearing Within 96 Hours Postponed

Reason _____

Inmate Refusal to Appear for Hearing _____

Representation Requested no Name & No. Regent C. Hopkins a Rep. Rep. Accepts yes

Adjustment Report Read to Inmate yes Pleas: Guilty Not Guilty No Plea

Additional Witnesses Requested no Name(s) off White as witness - name for New York

Reporting Officer's Statement: (See Notice of Infraction)

Inmate's Statement: I was in 4 yard when I left

of work - off the white can see the

off white was in the building at the school to

make Court - I was on the bench -

the white let old guy in & had to bring up

I work in library he eld - I never went -

3 yard - I was locked up on Wednesday -

the 27th

I was about 25 ft off the door - Police came & started

shooting - we were escorted to the block

Witness(es) Statement: _____

off the white - work in the library - I can't remember

if I saw him in the 4 yard area - He tried

to come in the area - (School) I did see him

the 4 yard - now that you bring it up - The

Cell Guy & Taylor I did let him in -

Inmate's Name Nathaniel Harrington No. 180801 Date of Infraction 7/28/88

II. HEARING OFFICER DECISION/RECOMMENDATION

Decision: Guilty Not Guilty Dismissed Guilty of Rule: _____ But not Guilty of Rule: Reduce

Charge(s) 3, 4 Reasons: H.O. understands

the report is written, the fact off. White states
he remembers Harrington tried to get in to the school
H.O. also states officer indicates he saw A of bat but
does not indicate what occurred & why the delay in
tickets being written on 7/25/88. H.O. feels all records
is warranted

Recommend: Lose _____ Days GCT; Industrial Time for Month of _____

Commissioner to Take _____ Days GCT (Document Time Taken on Each Charge): _____

Remove: PRS Work Release Return: PRS MHC MCIH MCTC MP MCI-J

Segregation Sentence _____ Days, Including Time Spent Prior to Hearing (Document Time for Each Charge): _____

Cell Restriction _____ Days or Probation _____ Days from _____

Other Penalty Reduced to an Incident

Reasons: _____

Sanction is appropriate under the
continuing guidelines

Decision and Recommendation to Inmate Yes Inmate Objects: Yes No Date 8-4-88

III. MANAGING OFFICER ACTION

Approved Disapproved Sentence Reduced to _____ New Proceedings Ordered

Reasons: _____

INMATE
8/15/88
8/16/88

Decision Suspended Due to Following Technical Violation of Adjustment Procedure: _____

Signature: James H. Rose Date 8/16/88

Inmate Notified of Managing Officer's Decision

**VISION OF CORREC. DN
CLASSIFICATION ASSIGNMENT SHEET**

EXHIBIT 4

Name Nathaniel Harrington No. 180801 DOB 4-10-62 Housing B

Assignment Library Worker Current Security Status MAX Date Assigned 4-23-88

ACTION BEING CONSIDERED: Administrative Segregation Placement

BACKGROUND:
Current Offense(s) Murder I; Handgun Violation; Attempted RWDCW

Current Sentence(s) Life and 70 yrs. CC From 2-2-85

Detainer(s) 7-25-86 Parole and Probation Retake warrant # 159221

Escape History None indicated

Date of Last Parole Hearing None 2-7 or 2-7A None Decision None

Date of Last Major Adjustment 2/16/88 Guilty of Rules(s) 10, 11, 33

Sanctions Reprimand

Additional Information/Justification Mr. Harrington is appearing before the team for placement on Administrative Segregation per the attached Administrative Assignment Notice which indicates subject

Signature Alfred Wade Title CCM Date 7/28/88

RECOMMENDED ACTION: Assign Admin Segregation

Action/Reasons Pending investigation due to recent disturbance at M.D. Pen

MEMBERS OF CLASSIFICATION TEAM (Name and Title) Date 8/8/88 9⁴⁵am

	Concur	Non-Concur
1. <u>[Signature]</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. <u>Ben [Signature], CC II</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. <u>[Signature]</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. _____	<input type="checkbox"/>	<input type="checkbox"/>

Reasons for non-concurrence _____

Approve	Disapprove	<u>[Signature]</u> Assistant Warden/Unit Manager	<u>8/8/88</u> Date
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>[Signature]</u> Warden	<u>8/9/88</u> Date
<input checked="" type="checkbox"/>	<input type="checkbox"/>	(Forward if Applicable)	
<input type="checkbox"/>	<input type="checkbox"/>	Commissioner	Date

A summary investigation is pending your case. White,
recommends placement in light of pending investigation is a
result of institutional need on 7/25/58.

MARYLAND DIVISION OF CORRECTION
Classification Assignment Sheet

Name HARRINGTON, NATHANIEL DOC No. 180801 Institution MARYLAND PENITENTIARY

Current Assignment ADMIN. SEG. Date Assigned 8-3-88 Current Security Level MAX Current Custody Level C4

A. ACTION BEING CONSIDERED: CLASSIFICATION TO MAXIMUM SECURITY C-5 - TRANSFER TO MCAC

SENTENCE: LIFE + 20 YRS. CS From 2-2-85 Offense MURDER I; HANDGUN VIOLATION; ATTEMPTED RMDW

Detainer(s) 7-25-86: P & P Warrant #159221-Revoked on 10-9-86- Allowed 14 Mos. Street Time

Escape History NONE RECORDED

Date of Last Parole Hearing NONE AS YET Decision N/A

Current Mandatory Release Date: LIFER as of _____

Date of Last Adjustment 9-21-86 Guilty of Rules(s) 18 (Contraband-Something Red like Ballon)

In Visiting Room but Swallowed It)
Sanctions 30 days Segregation Sentence from 9-21-86. Lose 10 days GCT. Commissioner

Additional Information Subject was approved for placement on Administrative Segregation on 8-8-88

because of subject's involvement in the 7-25-88 Institutional Riot pending Results of

Criminal Investigation. On 10-31-88 Major Thompson, Acting Security Chief advised

Prepared by A. Benjamin O'Amara Title CC III Date _____

B. RECOMMENDED ACTION: Jem recommends classification to max sec

Rationale C-5 Transfer to mcac. Jem notes overall institutional adjustment and current admin segregation status

C. MEMBERS OF CLASSIFICATION TEAM (Name and Title) Date Jan 15, 1989

	Concur	Non-Concur
1. <u>[Signature] CSI</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. <u>[Signature] CSI</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. <u>[Signature] Warden</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. <u>[Signature] CC III</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reasons for non-concurrence _____

D. Approve Disapprove

Assistant Warden Unit Manager
James H. Rollin
Warden
(Forward if Applicable)
Commissioner
Date 1/15/89
Date _____
Date _____

SANCTIONS: approved the deduction of 5 days Good Conduct on 10-17-86

ADDITIONAL INFORMATION: both Counselor and Subject that Subject is going to remain on Administrative Segregation. Reason was given to Counselor by Major Thompson.

- 7-25-88:---Subject was alleged to have involved in the Institutional Riot which left several Correctional Officer, and other Staff members seriously injured.
- 7-28-88---Infraction Violation for the 7-25-88 Institutional Riot. Reduced to Incident Report
- 2-16-88---Guilty of Rules #10 (Unauthorized Lateness for School); #11 (Out-of-Bounds); #23 (Disoney Direct Order). Reprimand.
- 8-21-88---Guilty of Rule #11 (Out-of-Bounds).. Council & Reprimand.
- 9-21-86---Guilty of Rule #18 (Contraband-Something Red like a Ballon was passed to Subject during visiting hours by Visitor, Mr. Camphor. Subject swallowed it before it could be retrived). 30 days Segregation Sentence from 9-21-86. Recommend revoke 10 days GCT. Commissioner approved the deduction of 5 days Good Conduct Time on 10-17-86.

MARYLAND DIVISION OF CORRECTION
Classification Assignment Sheet

Name HARRINGTON, NATHANIEL DOC No. 180801 Institution MARYLAND PENITENTIARY

Current Assignment ADMIN. SEG. Date Assigned 8-8-88 Current Security Level MAX Current Custody Level C4

A. ACTION BEING CONSIDERED: ADMINISTRATIVE SEGREGATION MONTHLY EVALUATION

SENTENCE: From Offense

LIFE + 20 YRS. CS 3 2-2-85 MURDER I; HANDGUN VIOLATION; ATTEMPTED RWDW

Detainer(s) 7-25-86; P & P Warrant #159221-Revoked Hearing on 10-9-86. Allowed 14 Mos. Street Time.

Escape History NONE RECORDED

Date of Last Parole Hearing NONE AS YET Decision N/A

Current Mandatory Release Date: _____ as of _____

Date of Last Adjustment 9-21-86 Guilty of Rule(s) 18 (Contraband)

Sanctions 30 days Segregation Sentence from 9-21-86. Lose 10 days GCT. Commissioner approved

Additional Information Subject was approved for placement on Administrative Segregation on 8-3-88 because of his involvement in the 7-25-88 Institutional Riot and pending Results of Criminal Investigation. RECOMMENDATION: No change as per verbal advise of Major Thompson

Prepared by A. Benjamin E. Amara Title CC III Date 12-15-88

B. RECOMMENDED ACTION: No change

Rationale I am recommending no change in subject's status until an investigation is completed as to his involvement in the 7/25/88 disturbance.

C. MEMBERS OF CLASSIFICATION TEAM (Name and Title)		Date	Concur	Non-Concur
1.	<u>[Signature]</u> <u>CC III</u>	<u>12/16/88</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2.	<u>[Signature]</u>		<input checked="" type="checkbox"/>	<input type="checkbox"/>
3.	<u>Ben Amara, CC III</u>		<input checked="" type="checkbox"/>	<input type="checkbox"/>
4.			<input type="checkbox"/>	<input type="checkbox"/>

Reasons for non-concurrence _____

D. Approve Disapprove

[Signature] Assistant Warden, Unit Manager 12/21/88
Date


Date

(Forward if Applicable) _____
Date

Date

Date

SANCTIONS: the deductio 5 days Good Conduct Time on 17-86.

 <p style="text-align: center;"> DIVISION OF CORRECTION REGULATION STATE OF MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES </p>	<p>DCR NO. <u>110-19</u></p> <p>DATE <u>September 15, 1986</u></p> <p>SUBJECT: <u>CUSTODY AND SECURITY</u></p> <p>TITLE: <u>Administrative Segregation</u></p>
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- I. References: DCR 105-2; DCR 100-1; DCR 110-4; DCR 220-10
- II. Applicable to: All Institutions
- III. Purpose: To establish administrative segregation as a management tool which enables the institutions, under certain conditions and by established procedures, to remove certain inmates from the general population and place them in special housing.
- IV. Definitions: Time Frames - Holidays and weekends are to be excluded in the determination of all time periods specified in this DCR.

V. Policy:

It is the policy of the Division of Correction to utilize administrative segregation when an inmate requires close supervision and segregation from the general inmate population, for either short or extended periods of time. Administrative segregation may be used to ensure the safety and security of the institution, the staff or the general inmate population.

VI. Procedure:

- A. The procedure outlined below shall be used in placing inmates on administrative segregation. The reason for its use shall be clearly indicated in the subject inmate's base file and attendant classification materials.
1. Wardens or designees are permitted to authorize immediate placement on administrative segregation pending classification team action, provided there is reasonable cause, consistent with the non-punitive purposes of this policy and regulation.
 2. Administrative segregation is to be used for custody and control purposes and not for punitive reasons. Administrative segregation shall be used for reasons such as:
 - a. To prevent escapes, where reason exists to believe the inmate to be an escape risk.
 - b. When an inmate is under sentence of death, where such housing is deemed necessary.
 - c. When reasons exist to believe an inmate is dangerous to the security of the institution, and/or inmates, and/or staff.

- d. Pending criminal investigations.
- e. Prior to the adjustment hearing, when the inmate has been charged with an infraction or violation, and one of the above conditions exists or where custody and control is an obvious factor. All inmates placed on temporary segregation pending adjustment action shall be assigned administrative segregation status. Retention of administrative segregation status will be considered by the adjustment team at the time of sentencing in accordance with the procedures set forth herein.

3. Notification

- a. Within forty-eight (48) hours after placement on administrative segregation, the inmate shall be provided written notice specifying the reason for same. The "Notice of Assignment to Administrative Segregation" (Appendix 1) shall be used for this purpose and shall be signed by the inmate, who shall be provided a copy. The original of this form shall be retained and forwarded to the classification team for use at the initial hearing.
- b. Pending adjustment cases
 - (1) Service of the Notice of Infraction (adjustment report) shall satisfy the 48-hour administrative segregation notification requirement.
 - (2) In such cases, the Notice of Infraction shall indicate that administrative segregation was ordered prior to the adjustment hearing and the reasons for this.
 - (3) At any time prior to the adjustment hearing, the decision to place the accused inmate on administrative segregation may be reversed by the warden, assistant warden, or a shift commander, and the inmate returned to the general population pending the adjustment hearing.

4. Disposition at initial hearing.

- a. Within ninety-six (96) hours after placement on administrative segregation, the inmate shall be seen by the classification team and given the opportunity to be heard as to whether or not he/she should be continued in this status.
- b. The classification team shall consider available alternatives to continued administrative segregation when meeting with the inmate. The classification team will advise the inmate of its decision and reasons for same at the hearing. The team

action shall be documented on a classification assignment sheet (DC Form 100-1).

- c. An investigative report shall be prepared and made available to the classification team at the initial hearing or as soon as possible. This report shall include all information pertaining to the placement of the inmate on administrative segregation and recommendations concerning the change in status.
- d. Pending adjustment cases
 - (1) Conduct of the adjustment hearing shall satisfy the 96-hour initial hearing requirement.
 - (2) In such cases, if a disciplinary segregation sentence is not recommended by the hearing officer, the hearing officer shall include as part of its disposition a recommendation to the warden relative to the need for continued administrative segregation, the inmate shall, upon the warden's review, be returned to general population.

5. Warden's review

- a. The recommendation of the classification team or the hearing officer shall be reviewed by the warden within five (5) working days and the inmate shall be advised in writing of the warden's decision. The classification assignment sheet (DC Form 100-1) will be placed in the inmate's base file after review.
 - b. Cases recommended for removal from administrative segregation shall not be released until the classification team's decision is approved by the warden. The warden may, however, approve release from administrative segregation even in the absence of a favorable recommendation from the classification team or hearing officer.
 - c. Inmates placed on administrative segregation pending adjustment action who are not sentenced to disciplinary segregation and who are not approved for release from administrative segregation by the warden will receive an initial review hearing by the classification team within 96 hours of the warden's final decision.
6. If the classification team's decision is adverse to the inmate, the inmate shall have the same right of further review as provided in DCR 105-2.
7. An inmate placed on administrative segregation may remain so confined for as long as there is a need in the particular case.

- a. After the initial review by the classification team, the classification team will review the case every thirty (30) days to determine the need for retention in this status.
 - (1) The classification team shall actively consider all available alternatives to continued administrative segregation.
 - (2) Based on its assessment of the case, the classification team shall recommend intervention, as needed, by appropriate treatment staff, such as the psychologist, chaplain, social worker or addictions counselor.
- b. Additionally, at any time during an inmate's confinement on administrative segregation, the warden or other appropriate staff may request the classification team to review the inmate's continued need for this status. Upon the classification team's review, the warden may approve the inmate's return to the general population.
- c. Inmates may be released from administrative segregation without classification team action only upon the authorization of the warden, except as aforementioned.

B. Operational Procedures

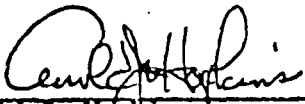
Consistent with the non-punitive custody and control purposes of administrative segregation, the conditions of confinement afforded to inmates so assigned will approximate those in the general population.

1. Housing/Movement/Personal Property/Commissary-Inmates assigned to administrative segregation shall be:
 - a. housed in single cells (the exception to this will be for inmates who are placed on administrative segregation temporarily, pending adjustment team action);
 - b. Escorted whenever they leave their designated housing area (the use of restraint equipment shall be discretionary on the part of the shift commander);
 - c. Authorized to retain and/or acquire, via continued access to commissary privileges, the same possessions allowed in the general population; certain possessions may be excluded for the security of the inmate, staff or the institution if approved by the shift commander. Exclusions shall be documented in the base file and on the "Record of Adminis-

trative Segregation Confinement," and said property will be secured for safekeeping and subsequent return to the inmate in accordance with DCR 220 - 10.

2. Hygiene - Inmates assigned to administrative segregation shall be:
 - a. Allowed the same hygienic items as general population with the same exclusion provision as in 1. above;
 - b. Allowed regular shaves and hair cuts, and showers twice a week;
 - c. Allowed regular clothing, linen and bedding exchange.
3. Exercise - Inmates assigned to administrative segregation shall be allowed an exercise period of at least one (1) hour per day.
4. Library - The librarian or other designated staff person shall, on a regular basis, take library requests from inmates assigned to administrative segregation and provide these inmates with books, magazines, and newspapers.
5. Health Care - Inmates assigned to administrative segregation shall be provided equal access to the full range of health care services available to the general population.
6. Classification Services - At least one classification counselor will be responsible for providing requisite classification services.
7. Education and Legal Services - Inmates assigned to administrative segregation shall be allowed access to educational and legal materials.
8. Visits
 - a. Administrative segregation inmates shall be allowed the same number of visits as the general population and the visits shall be for the same duration.
 - b. Although close security is essential and the use of a separate visiting area is preferable, the location of visits is discretionary.
9. Religious Activities - Inmates assigned to administrative segregation shall be allowed access to chaplaincy services.

- 10. Food - Inmates assigned to administrative segregation shall be fed the same food as the general population, but shall be fed in their cells.
 - 11. Mail - Policies and procedures pertaining to inmate correspondence and the movement of inmates' mail shall not be abridged by virtue of an inmate's assignment to administrative segregation.
 - C. Information relative to each administrative segregation inmate's status will be systematically provided to appropriate institutional staff for entry on the relevant OBSCIS screen(s).
 - D. Each warden will be required to implement a written institutional directive to operationalize this regulation.
- VII. Attachments: Appendix 1, Notice of Assignment to Administrative Segregation, DC Form 110-19a (May '82)
Appendix 2, Record of Administrative Segregation Confinement, DC Form 110-19b (May '82)
Appendix 3, Management Audit Form.
- VIII. Rescission: DCR 110 - 19, May 1, 1982; Appendices 1 and 2 remain in effect.



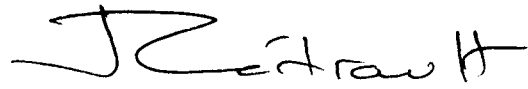
Arnold J. Hopkins
Commissioner

Distribution

- A
- C - without appendix 3
- D - " " " "
- L - " " " "

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of August, 1990, a copy of the foregoing Amended Petition for Reversal of Administrative Agency Decision, with attachments, was mailed, postage prepaid, to Steven G. Hildenbrand, Assistant Attorney General, 6776 Reisterstown Road, Baltimore, Maryland 21215.



Joseph B. Tetrault

NATHANIEL HARRINGTON, #180801 : IN THE
Appellant : CIRCUIT COURT
v. : FOR
BISHOP L. ROBINSON, Secretary : BALTIMORE CITY
Public Safety & Correctional :
Services, : Case No.: 90190075/CL116244
Appellee :
IGC No.: 21719 :

4
cl

FILED
AUG 1 1990
CIRCUIT COURT FOR
BALTIMORE CITY

oOo

REQUEST FOR ENTRY OF APPEARANCE

To The Clerk:


Pursuant to Md. Rule 2-231(b), kindly enter my appearance on behalf of the Appellant in the above-captioned case.



Joseph B. Tetrault
Prisoner Assistance Project
Legal Aid Bureau Inc.
809 E. Baltimore Street
Baltimore, Maryland 21202
Telephone: (301) 539-0390

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of August, 1990, a copy of the foregoing Request for Entry of Appearance was mailed, postage prepaid, to Steven G. Hildenbrand, Assistant Attorney General, 6776 Reisterstown Road, Baltimore, Maryland 21202.


Joseph B. Tetrault

Nathaniel Houston (3)

Plaintiff

IN THE
CIRCUIT COURT
FOR
BALTIMORE CITY

Case #

v.

Sec'y of Public Safety

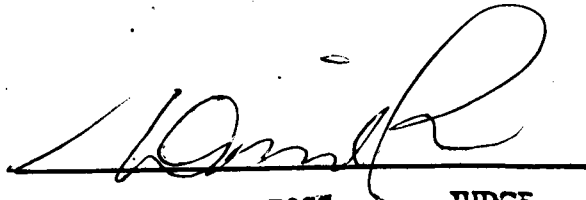
Defendant

* * * * *

ORDER

Upon the foregoing Affidavit, it is this 9 day of
July, 1990, by the Circuit Court for Baltimore City,

ORDERED that plaintiff is granted leave to proceed
without advance payment of court costs.



DAVID ROSS
JUDGE

JUDGE

2

IN THE MATTER OF
NATHANIEL HARRINGTON #180801
954 FORREST STREET
BALTIMORE, MARYLAND 21202
APPELLANT

IN THE CIRCUIT COURT
FOR
BALTIMORE CITY

-VS-

SECRETARY OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES
6776 REISTERSTOWN ROAD
BALTIMORE, MARYLAND 21215
APPELLEE

CASE NO:

DOCKET:

I.G.C. NO: 21719

MOTION TO PROCEED WITHOUT PAYMENT
OF COST

APPELLANT NATHANIEL HARRINGTON, RESPECTIVELY
MOVES THIS COURT FOR AN ORDER PERMITTING HIM TO
PROCEED WITH THIS APPEAL WITHOUT THE PAYMENT OF
COSTS OR PROVIDING SECURITY THEREFOR HIS SUPPORTING
STATEMENT OF INDIGENCY IS ATTACHED.

Nathaniel Harrington

IN THE MATTER OF
NATHANIEL HARRINGTON #180801
954 Forrest St.
Baltimore, Maryland 21202

Appellant

-vs-

Secretary of Public Safety
AND Correctional Services
6776 Reisterstown Road
Baltimore, Maryland 21215

Appellee

I. G. C. No: 21719

IN THE Circuit Court

FOR

Baltimore City

CASE NO: _____

DOCKET: _____

STATEMENT OF INDIGENCY AND PRAYER
TO PROCEED WITHOUT PAYMENT OF COSTS

I, Nathaniel Harrington, am the appellant in this appeal. I believe this appeal has merit. I do not have a source of income nor do I have any assets and I am unable to pay the costs of proceeding with this appeal or to provide security therefor. I hereby request therefore, that this court permit me to proceed without the payment of, or provision of security for costs.

I do solemnly declare and affirm under penalty of perjury that the above statements are true and correct.

Nathaniel Harrington #180801
954 Forrest St.
Balt. MD 21202

IN THE MATTER OF
NATHANIEL HARRINGTON #180801
954 Forrest St.
BALTIMORE, MARYLAND 21202
Appellant

vs-

SECRETARY OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES
776 Reisterstown Road
BALTIMORE, MARYLAND 21215
Appellee

I.G.C. NO: 91719

IN THE CIRCUIT
COURT
FOR

BALTIMORE CITY
FILED

JUL 9 1990

CIRCUIT COURT FOR
BALTIMORE CITY

CASE NO:

90190075

DOCKET: CL116244

Order for Appeal

To The Clerk:

PLEASE ENTER AN APPEAL TO THIS COURT FROM
THE ORDER DATED 4 MAY 8, 1990 OF THE INMATE
GRIEVANCE COMMISSION IN THE MATTER OF NATHANIEL
HARRINGTON #180801.

KINDLY SET THE APPEAL DOWN FOR A HEARING
AND DIRECT A SUMMONS TO THE AGENCY, INSTRUCTING SAID
AGENCY TO TRANSMIT TO THIS COURT ALL ORIGINAL OR
CERTIFIED COPIES OF ORIGINAL PAPERS AND EXHIBITS,
INCLUDING ANY TRANSCRIPT OF TESTIMONY, UPON WHICH
ACTION WAS TAKEN BY SAID AGENCY IN CONNECTION

ACW

with this proceeding

Nathaniel Harrington #180801

CERTIFICATION

I HEREBY CERTIFY THAT, ON THIS 1 DAY OF JUNE 1990, A COPY OF THE ORDER FOR APPEAL IN THE ABOVE-CAPTIONED CASE WAS MAILED, POSTAGE PRE-PAID TO THE APPELLEE, SECRETARY OF PUBLIC SAFETY AND CORRECTIONAL SERVICES, 6776 REISTERSTOWN ROAD, BALTIMORE, MARYLAND 21215, AND THE MARYLAND INMATE GRIEVANCE COMMISSION, SUITE 302, 6776 REISTERSTOWN ROAD, BALTIMORE, MARYLAND 21215.

Nathaniel Harrington #180801

IN THE MATTER OF
NATHANIEL HARRINGTON #180801
954 Forrest St.
BALTIMORE, MARYLAND 21202

APPELLANT

-vs-

SECRETARY OF PUBLIC SAFETY
AND CORRECTIONS & SERVICES
6776 Reisterstown Road
BALTIMORE, MARYLAND 21215

APPELLEE

I. G. C. NO 21719

IN THE Circuit
Court for
BALTIMORE City

CASE No: _____

Docket: _____

PETITION FOR REVERSAL OF ADMINISTRATIVE AGENCY
DECISION

APPELLANT, NATHANIEL HARRINGTON hereby alleges that:
1. ON August 4th, 1988, I WAS BROUGHT BEFORE
ADJUSTMENT TEAM HEARING OFFICER Patricia Briggs AND
TRIED ON AN adjustment team report charging me with
the violations of rules 3 AND 4 stemming from a
July 25, 1988 incident:

According to the notice of infraction I WAS
ALLEGEDLY IDENTIFIED AS BEING A PARTICIPANT IN A
MAJOR disturbance with a BASEBALL BAT IN MY
POSSESSION. This report WAS SUBMITTED BY OFFICER
DARRYLE GUNTHROP COI.

AT ADJUSTMENT HEARING ON August 4, 1988 THE
CHARGES LEVIED AGAINST APPELLANT FOR HIS ALLEGED
INVOLVEMENT IN THE July 25, 1988 INCIDENT WERE

reduced to an incident report by the hearing officer because of lack of substantial evidence.

2. ON July 27, 1988 Appellant was placed on administrative segregation pending an investigation of his involvement in a disturbance at the Maryland Penitentiary by Major T. Purnell. The placement was justified and proper.

a. The continuance of Appellant's stay on administrative is another matter.

3. According to D.C.P. 100-19 4.b. The classification team shall consider available alternatives to continued administrative segregation when meeting with the inmate. The classification team will advise the inmate of its decision and reasons for same at the hearing. The team action shall be documented on a classification assignment sheet (D.C.P. Form 100-1).

a. There is no documentation in the files to show a criminal investigation ever took place.

b. There are no written reports from Major T. Purnell nor Major Thompson in the files to justify keeping the Appellant on administrative segregation.

c. Appellant illegally remained on administrative segregation from 9/1/88 to 2/18/90 (15 months)

4. Appellant petitioned the Inmate Grievance Commission for a review of his complaint.

5. ON JANUARY 24, 1990, a hearing was held before the Inmate Grievance Commission. Commissioners

Hawkins, Matz and Ward heard the grievance.

6. Appellant contended at that hearing that:

a. He was unjustly placed and KEPT on administrative segregation and transferred to M.C.A.C.

b. He has never been apprised to the results of the investigation conducted by Captain Ford.

7. In a decision dated April 30th, 1980,

Commissioners Clarence Hawkins and John Ward found:

a. The inmate was placed on administrative segregation pending an investigation of his involvement in a disturbance at the MD. Penitentiary. This placement was justified and proper.

b. The continuance of inmate Harrington on administrative segregation is another matter.

c. Regulations stipulate that reports must be written and given to a classification team specifying a rationale for continuing an inmate on administrative segregation.

d. According to testimony of a team member, Mr. Ben Amara, no written report was ever submitted to the team that requested that inmate Harrington be kept on administrative segregation. This is a clear violation of DCR 110-19.

e. Only one report was written in regards to an investigation of inmate Harrington. This was written by Captain Ford to his supervisor, Major Thompson. This report stated that after investigation of the inmate's involvement in the disturbance of July 25, 1988

The Captain recommended removing the inmate from administrative segregation.

F. IT appears that this report remained with Major Thompson and was NEVER sent to the Classification Team to assist in their decision on Harrington's status on administrative segregation.

G. Since the inmate was remaining on administrative segregation for such a long period, this made him a "prime candidate" for transfer to M.C.U.C.

H. Had the inmate been returned to general population after a reasonable period following an investigation, he would, possibly, never have been considered for transfer to M.C.U.C.

I. The charges levied against the inmate for his involvement in the July 25, 1988 incident were reduced by the Hearing Officer because of lack of substantial evidence. This appeared to have no effect on the Classification Team. The report written by the investigative officer, Captain Ford, apparently had no effect on Major Thompson.

J. There is no documentation in the files to show a criminal investigation ever took place.

K. There is no written reports from Major Thompson in the files to justify keeping the inmate on administrative segregation.

L. The Classification Team was remiss in not requiring written reports from Chief of Security.

m. The transfer to M.C.A.C. was solely based on the inmate's alleged participation in the July 25, 1988 disturbance.

n. Mr. Harrington illegally remained on administrative segregation from 9/1/88 to 2/18/90 (18 months).

8. Commissioners Hawkins and Ward concluded that the grievance of Nathaniel Harrington was meritorious in part. The commission ordered a reclassification hearing for the appellant. In addition, the commission recommended that appellant be awarded 90 credits lost by the inmate while on administrative segregation, also the commission recommended that the appellant be awarded the sum of \$418.00 pay from working and going to school lost while illegally kept on administrative segregation.

9. After reviewing both the majority findings of facts, conclusions and recommendations of Commissioners Hawkins and Ward, and the dissenting opinion and proposal of Commissioner Matz, Secretary of Public Safety and Correctional Services, Bishop Robinson came to the conclusion that appellant's grievance was without merit and dismissed it. This decision was ordered on May 8, 1990.

10. After reading Commissioners Ward and Hawkins decision, Commissioner Matz disagreed and recommended that the decision along with grievance be dismissed without merit.

11. Pursuant to Article 41, Section 201 (A), the Commission's order of dismissal is a final decision of the Secretary of Public Safety, Correctional Services for the purposes of judicial review. Appellant noted this appeal pursuant to Article 41, section 5047 (1).

12. Appellant contends that he is entitled to a reversal of the Order of the (Secretary of the Inmate Grievance Commission) for the following reasons:

a. The majority of the Commissioners ruled in the Appellants favor.

b. There were never any written reports stating why appellant should be kept on Administrative Segregation which was a clear violation of DCR 110-194b.

c. Appellant was illegally kept on Administrative Segregation for a period of 18 months.

wherefore Appellant prays that the decision of the Inmate Grievance Commission or the Secretary of Public Safety and Correctional Services be reversed.

RELIEF

For relief I request the following:

a. I be awarded 90 credits lost while my stay on Administrative Segregation.

b. THAT I BE AWARDED the sum of \$418.00 pay from working and going to school lost while illegally kept on Administrative Segregation.

Respectfully Submitted:

Nathaniel Harrington #80801

Appellant

Ms No. 33 (LEAVE BLANK) SEPTEMBER TERM, 1991

TRANSCRIPT OF RECORD

FROM THE

CIRCUIT COURT FOR BALTIMORE CITY

Judge: HONORABLE ELLEN L. HOLLANDER

IN THE CASE OF

NATHANIEL HARRINGTON

Appellant

vs. Inmate Grievance Commission

[REDACTED]

[REDACTED]

[REDACTED]

Appellee

TO THE

COURT OF SPECIAL APPEALS

JOSEPH B. TETRAULT, ESQUIRE
PRISONER ASSISTANCE PROJECT
LEGAL AID BUREAU, INCORPORATED

FOR APPELLANT

72402328

809 EAST BALTIMORE STREET (301) 539-0390
BALTIMORE, MARYLAND 21202

J. JOSEPH CURRAN, JR., ATTORNEY GENERAL OF MARYLAND
STEVEN G. HILDENBRAND, ESQUIRE

ASSISTANT ATTORNEY GENERAL

6776 REISTERSTOWN ROAD

FOR APPELLEE

BALTIMORE, MARYLAND 21215 (301) 764-4072

Filed 5/16/91 (LEAVE BLANK)

Nathaniel Harrington vs. Secretary of Public Safety and Correctional Services

Index (Continued)

<u>Items</u>	<u>Pages</u>
Appellant's Reply Memorandum, filed, (11)	154 - 158
Memorandum Opinion and Order filed; the Decision of the IGC is hereby "Affirmed," Costs Waived, filed, (12) (Hollander, J.)	159 - 169
Application For Leave to Appeal to the Court of Special Appeals on behalf of the Plaintiff, Nathaniel Harrington, filed, (13)	170 - 207

NATHANIEL HARRINGTON

PLAINTIFF

VS.

SECRETARY OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES

DEFENDANT

NO. 90190075/CL116244

PAGE:

DOCKET:

**IN THE
CIRCUIT COURT FOR
BALTIMORE CITY**

Sandra E. Banks, Clerk

CERTIFICATE BY CLERK OF THE COURT, TO TRANSCRIPT OF RECORD.

State of Maryland, Baltimore City, Set.:

I, Sandra E. Banks, Clerk of the Circuit Court for Baltimore City, hereby certify that the foregoing is a true transcript, taken from the record and proceedings of the said Court, in the Therein entitled cause.

I further certify that all counsel of record, heretofore, have been notified to inspect the foregoing transcript of record, prior to its transmission, and that said counsel have had ample opportunity for such inspection.

In testimony whereof, I hereunto set my hand and affix the seal of the Circuit Court for Baltimore City aforesaid, on this day of 2nd. day of May, 1991.

COSTS PAID IN THE CIRCUIT COURT FOR BALTIMORE CITY:

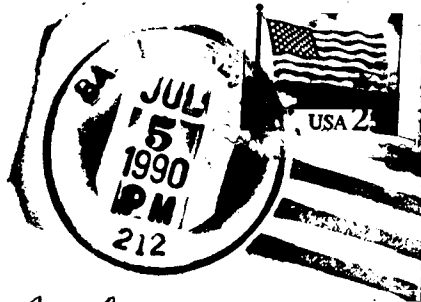
SEAL OF
THE COURT

Transcript of Record	\$	
Open Court Costs		COSTS WAIVED
Total Costs	\$	

Stenographic Testimony	-	
Court Reporter(s)	-	NONE

Sandra E. Banks
Clerk of the Circuit Court for Baltimore City

Mr. Nathaniel C. Harrington #180801
954 Forrest Street
Baltimore, Maryland 21202



Joseph H. H. Kaplan Admin. Judge
Circuit Court / Baltimore City
111 North Calvert Street
Baltimore, Maryland 21202

D. Lee
2-1-10
Image 236

From: Jennifer Hafner
To: Ray Connor, Doris Byrne, Sheila Simms, Edward Papenfuse
Date: Monday, February 01, 2010 9:55:48 AM
Subject: MSA SC 5458-82-150

I have added five additional cases to this work order which need to be pulled and scanned. They are -

DUMBELLS ASSCS, ETAL V CONSUMER PROTECTION Box 739 Case No. 90059044 [MSA T2691-3376, OR/11/12/24]
File should be named msa_sc5458_82_150_[full case number]-####

WINTER, ETAL VS PIJANOWSKI, ETAL Box 783 Case No. 90081076 [MSA T2691-3420, OR/11/12/68]
File should be named msa_sc5458_82_150_[full case number]-####

POINDEXTER VS ALEXANDER & ALEXANDER Box 927 Case No. 90164037 [MSA T2691-3564, OR/11/14/44]
File should be named msa_sc5458_82_150_[full case number]-####

LEBSON MD VS BOARD OF MUNICIPAL Box 959 Case No. 90184037 [MSA T2691-3596, OR/11/14/76]
File should be named msa_sc5458_82_150_[full case number]-####

HARRINGTON VS SECRETARY OF PUBLIC SAFETY Box 969 Case No. 90190075 [MSA T2691-3606, D. Lee
OR/11/15/2]
File should be named msa_sc5458_82_150_[full case number]-####

2-1-10 Image 236