The Women's High Security Unit in Lexington, KY

Jan Susler
THE WOMEN'S HIGH SECURITY UNIT IN LEXINGTON, KY

By Jan Susler*

This article centers on Baraldini v. Meese, 691 F.Supp. 432 (D.D.C. 1988), a case that arose as a result of Congressional and public inquiry into the conditions at the Federal Correctional Institution at Lexington, Kentucky, Female High Security Unit ("Lexington HSU" or "the HSU"), a subterranean unit housing a small population of political and social prisoners in a segregated and highly restricted setting of small group isolation. The combination of public pressure and Congressional inquiry produced only minor changes in the conditions. A team of lawyers filed suit on behalf of three women, Silvia Baraldini, Susan Rosenberg, and Sylvia Brown, seeking immediately to enjoin continued placement in the HSU. The suit asserted that placement in the unit violated the prisoners' First Amendment rights of expression and association, that placement without prior hearing violated Fifth Amendment due process rights, and that the conditions violated the women's Eighth Amendment right to be free from cruel and unusual punishment.

A correctional psychologist concluded after evaluating the Female High Security Unit at Lexington HSU:

This program sets up a hierarchy of objectives. The first of these is to reduce prisoners to the state of submission essential for their ideological conversion. That failing, the next objective is to reduce them to a state of psychological incompetence sufficient to neutralize them as efficient, self-directing antagonists. That failing, the only alternative is to destroy them, preferably by making them desperate enough to destroy themselves.8

Under the laws of the United States, the government can imprison those convicted of crimes, and where there is evidence that a prisoner has posed a threat to security in previous institutions, can increase security. However, labelling a prisoner a security threat based solely on associations she had prior to conviction with organizations called "terrorist" by the government is unconstitutional. Prison officials may impose restrictions tailored to meet real threats to security, but may not impose restrictions based on a prisoner's political beliefs or associations, or based merely on speculation and conjecture. As Alejandra placed in the unit on May 7, 1987. The Bureau of Prisons ("BOP") rejected her for placement after the first referral in spite of her numerous escapes. She has no political affiliations. Likewise, Debra Brown, the only woman in the U.S. facing three death sentences, was the fifth prisoner placed in the unit on January 15, 1987. Two other women arrived shortly before the unit closed: Bonnie Kelley, placed as a witness protection case, not a high security case, based on her cooperation with the government against a co-defendant; and Lynette Fromme, assigned following her conviction for a walk-away escape from FCI Alderson, W. Va., which was not alleged to have had assistance from outside groups. These social prisoners chose not to participate in the litigation.

3. The development of psychological syndromes resulting from isolation has been documented in the 19th and early 20th centuries in Europe and with U.S. prisoners of war in Korea. See Stuart Grassian, A REVIEW AND DELINEATION OF A CLINICAL SYNDROME (unpublished). Such brainwashing techniques have also been used in Korean and Chinese prisons. See Richard Korn, The Effects of Confinement in HSU, August, 1987, 15 SOCIAL JUSTICE 8-19 (Spring, 1988).

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1. The team of lawyers included Jan Susler and Michael Deutsch, Peoples Law Office, Chicago, IL; Adjoa Aiyetoro and Alexa Freeman, ACLU National Prison Project, Washington, D.C.; Elizabeth Pink, Brooklyn, NY; Mary O'Melveny, New York, NY; Margaret Ratner and Joan Gibbs, Center for Constitutional Rights, New York, NY.

2. Susana Rosenberg and Alejandrina Torres were the first to arrive at HSU on October 29, 1986. They were later joined by Sylvia Baraldini. All three women are in prison for politically motivated acts or conspiracies to act against the United States government. Alejandrina Torres, is a Puerto Rican independentista who claimed status under the international law of prisoners of war and refused to recognize the jurisdiction of the United States courts. She did not participate in the litigation. The third plaintiff, Sylvia Brown, was placed in the unit because of a history of escapes from several prisons. Brown was placed in the unit on May 7, 1987. The Bureau of Prisons ("BOP") rejected her for placement after the first referral in spite of her numerous escapes. She has no political affiliations. Likewise, Debra Brown, the only woman in the U.S. facing three death sentences, was the fifth prisoner placed in the unit on January 15, 1987. Two other women arrived shortly before the unit closed: Bonnie Kelley, placed as a witness protection case, not a high security case, based on her cooperation with the government against a co-defendant; and Lynette Fromme, assigned following her conviction for a walk-away escape from FCI Alderson, W. Va., which was not alleged to have had assistance from outside groups. These social prisoners chose not to participate in the litigation.

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The United States has historically asserted that the treatment of its prisoners is humane, and that it has no political prisoners. Looking to Cuba and other countries, the U.S. has claimed that prisoners there, especially political prisoners, are abused and treated inhumanely. However, a recent human rights report on Cuban prisons reveals that the women's prison, which houses a population of 600, boasts not only good facilities for activities, working conditions and cells (including punishment cells), but also courteous and respectful relations between officials and prisoners. Furthermore, in Cuba, “political prisoners” are not singled out for different punishment.

The fundamental issue presented by Baraldini v. Meese is the failure of the United States government to admit to the existence of political prisoners and the existence of a policy to single them out for special — and harsher — treatment because of their beliefs and affiliations.

Lexington HSU in its Historical Context — One Phase in a Continuing Strategy

Torres, Baraldini, and Rosenberg are not the first political activists to be singled out for punitive treatment. Retaliatory prison conditions for political people are part of the U.S. government's historical efforts to destroy those who oppose the U.S. government as well as the movements they represent. While the HSU and other prisons, such as USP Marion, are architecturally adapted to accomplish this objective, a physical plant is not crucial to meeting the government's end. Other effective tactics include placing long term prisoners in pretrial detention facilities or frequently shuffling prisoners from one cell to another, one prison to another.

The U.S. has a long history of attempts to crush the Puerto Rican independence movement. The independence movement has been a focus of government repression since the U.S. invaded in 1898. Within the last several years, Puerto Rico has been considered by the United States to be a continuing strategy.
government to be "the Achilles Heel of the United States." In reaction to militant opposition, the U.S. government has often resorted to violent action. Examples include the 1937 massacre at Ponce; the violent suppression of the 1950 Nationalist uprisings; and the imprisonment in the 1950s in U.S. prisons of many who took militant nationalist actions — including Rafael Cancel Miranda, Oscar Collazo, Irving Flores, Lolita Lebron, and Andres Figuerroa Cordero — many who led the party — including Pedro Albizu Campos and Juan Antonio Corretjer — and thousands who merely held Nationalist sympathies.

In 1960, the FBI formalized its domestic counterintelligence program, COINTELPRO, to destroy the independence movement both in Puerto Rico and the U.S., stating its interest to be in disruption, not "mere harassment." Agents proceeded to create factionalism by planting defamatory articles in newspapers, collecting intelligence on the personal lives of movement leaders, and preparing divisive and defamatory false letters.

Attacks on the independence movement are ongoing, and include the maintenance by the Puerto Rican police of files on thousands of supporters of independence, labeled by the police as "subversives"; the convening of U.S. grand juries to "investigate" the FALN and concurrent imprisonment without charge of subpoenaed independence activists who refused to testify, invoking a principle of non-collaboration with the government's attempts to destroy their movement; and the prosecution in the U.S. of public independence activists and militants for the expropriation of seven million government-insured dollars, following years of highly intrusive and illegal video and audio surveillance.

The U.S. has developed a strategy to repress such movements, turning to a form of domestic counterinsurgency. In 1978 in Puerto Rico, military and counterintelligence experts from countries experienced in counterinsurgency, including those who implemented efforts to destroy the Red Army Faction in West Germany, the Tupamaros in Uruguay, and the Irish Republican Army were called together to a secret conference to consult with the U.S. on its "problem" in Puerto Rico. From this conference emerged a strategy for Puerto Rico which envisioned the extensive use of high technology and electronic surveillance, the criminalization of pro-independence activity, the use of unprecedented "security" measures at trials of independentistas, denial of the movement's access to the media, and isolation of prisoners to separate them from their movement and deny them their political identities.

The Black liberation movement, from Martin Luther King to Malcolm X to the Black Panther Party ("BPP"), was also targeted by the FBI's COINTELPRO program, in a design to "expose, disrupt, misdirect, discredit, or otherwise neutralize the activities of black nationalist hate-type organizations and groupings, their leadership, spokesmen, membership and supporters." The then FBI director, J. Edgar Hoover, viewed the BPP as the "single greatest threat," which should become the subject of imaginative and hard-hitting counterintelligence measures aimed at crippling the BPP. COINTELPRO tactics used against the Black Liberation Movement, the Puerto Rican Independence Movement, and the American Indian Movement shared common features: surveillance and intelligence gathering, fabricated correspondence, false propaganda, disinformation, false reports, infiltration by agent provocateurs, snitch-jacketing, etc.


13. Nationalist Party members and sympathizers who had gathered in Ponce to peacefully protest the jailing of the Nationalist leaders and commemorate the abolition of slavery were gathered in Ponce to peacefully protest the jailing of the Nationalist leaders and commemorate the abolition of slavery were gathered in Ponce to peacefully protest the jailing of the Nationalist leaders and commemorate the abolition of slavery were gathered in Ponce to peacefully protest the jailing of the Nationalist leaders and commemorate the abolition of slavery were gathered in Ponce to peacefully protest the jailing of the Nationalist leaders and commemorate the abolition of slavery were gathered in Ponce to peacefully protest the jailing of the Nationalist leaders and commemorate the abolition of slavery were gathered in Ponce to peacefully protest the jailing of the Nationalist leaders and commemorate the abolition of slavery were gathered in Ponce to peacefully protest the jailing of the Nationalist 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fabrication of evidence, and assassination. An FBI memo spelled out the goals of destroying the self-determination efforts of Black people, including "preventing the rise of a messiah," preventing leaders from gaining respectability by discrediting them, and preventing the development of organizations, especially among youth.

Pursuant to the COINTELPRO program, Panther leaders were murdered (Fred Hampton and Mark Clark were killed as they slept in their own beds by Chicago police and State's Attorney's police, who had received a diagram of the apartment where these men slept from an FBI informant provocateur) and many were framed with criminal charges which have resulted in two decades of imprisonment, including Geronimo ji Jaga Pratt, Herman Bell, Albert Nuh Washington, Anthony Jailil Bottom, Dhoruba al-Mujahid Bin Wahad (formerly Richard Dhoruba Moore), Sundiata Acoli, and sn Clark Squire. Treated more harshly than non-political prisoners, these men have been placed at the most maximum security prisons available, including USP Marion, isolated in segregation units for years on end, and transferred frequently between prisons.

No Pedestal Here: The Focus on Women and the Creation of HSU

The late 1970s and early 1980s witnessed a greater number of women in federal prison for politically motivated acts related to the Puerto Rican independence movement and the Black liberation and anti-imperialist struggles. Although there was no reason the Bureau could not integrate these women into general population, it refused to do so. Instead, it created two options: housing the sentenced women in the Metropolitan Correctional Centers, pretrial detention facilities designed for short-term stays, or placing them in Davis Hall at FCI Alderson, W. Va., and later in Davis Hall's pre-HSU experimental unit, the Cardinal Unit. Virtually all the women convicted in 1980-81 of FALN related activity have been held in one or both of these alternatives. However, the lack of programs and other inadequacies, including the neglect of the women's health in the restrictive settings, combined with a public human rights campaign waged by the Puerto Rican independence movement and its supporters, led the Bureau to abandon these options. Many of the politically-affiliated prisoners and prisoners of war were ultimately placed in the general population at the Federal Correctional Institution, Pleasanton, in Dublin, CA, where they have since functioned without incident in this open environment.

Prison officials effectively conceded that treatment of these women would be unrelated to their in-prison conduct, by continuing to seek a more restrictive and isolated setting in spite of the women's exemplary conduct. On October 29, 1986, this restrictive setting became a reality—the Female High Security Unit (HSU) opened in the federal prison in Lexington, KY. This prison within a

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prison apparently had as one of its purposes to isolate and break women members of militant movements who the government would call "terrorist.

BOP spokespersons readily admitted to Congress

31. Lolita Lebron was in Davis Hall, as were Assata Shakur and Rita (Bo) Brown in the 1970s. In the 1980s, the Bureau of Prisons instituted the Cardinal Unit—electronically monitored cages housing only Maria Haydee Beltran Torres and Ida Luz Rodriguez, completely isolated from all other prisoners (and even from each other at first) for close to one year. The women were confined to cells 24 hours a day, deprived of all programming, all human contact, and much needed medical attention. The women's placement in the Unit was not based on their in-prison conduct, which had been exemplary. Rather, they were assigned because of their political beliefs and associations (the government claims they are members of the FALN).

32. Deposition of former Bureau of Prisons Director, Norman Carlson (May 27, 1988).

33. The women convicted of FALN-related activity assumed the position of prisoner of war under international law, citing their status as combatants in an anti-colonial war against the U.S. See U.S. v. Maria Haydee Beltran Torres, No. 77-CR-0680 (S.D.N.Y. 1977); U.S. v. Carlos Alberto Torres et al., No. 80-0736 (N.D. II 1980).

34. It is significant that the government chose to perform this experiment on women, which appears to be guided by two sexist notions. First, officials seemed to believe that political women would be easier to break than their male counterparts. Second, there seems to be the idea that women who break with the traditional role in this patriarchal society and choose instead to fight for a non-exploitative society warrant special punishment, to "cure" them of their "errant ways." This also makes examples of the women and seeks to thereby deter other women from following in their footsteps.


http://digitalcommons.law.yale.edu/yjll/vol1/iss1/5
and to the press that the HSU was designed to deal with “terrorists.” To this end, the BOP drafted criteria for placement in the Unit:

A prisoner's past or present affiliation, association or membership in an organization which has been documented as being involved in acts of violence, attempts to disrupt or overthrow the government of the United States . . . is a factor considered by our staff in assessing the security needs of any inmate.

With these criteria, the government could effectively punish prisoners based on their “affiliation[s], association[s] or membership[s].” And under such criteria, the BOP justified the disparate treatment of the women at Lexington HSU.

The Women of Lexington HSU

In accordance with the government's underlying purpose at HSU, Alejandrina Torres was one of the first two women placed in the unit. She had received a 35-year sentence for seditious conspiracy — conspiring to use force to oust the U.S. from Puerto Rico — and related charges. The conspiracy involved the FALN. She and her three codefendants were alleged to have planned expiations to finance armed actions against U.S. military sites, conspired to free an FALN member from prison, and stockpiled weapons and explosives. The government has stated that Torres' offense and her political affiliation are indistinguishable.

For similar political reasons, the government placed Susan Rosenberg in the HSU at the same time. The initial document recommending her transfer to the unit states:

Rosenberg has been associated with the FALN, Black Liberation Army, and other terrorist groups. She also was thought to have been involved in an [sic] 1981 Brinks Armed Car Robbery and has previously been linked to the Joanne Chesimard [Assata Shakur] escape in 1979. She also has threatened in open court to take her armed revolution behind prison walls.

Rosenberg is serving a 58 year sentence for possession of weapons, explosives and false identification.

Likewise for Silvia Baraldini, an Italian nationalist imperialist whose initial transfer document states:

Ms. Baraldini is a member of the May 19th Communist Party which is sympathetic to the radical groups including the New African Freedom Front and the FALN. She participated in the successful 1978 escape of JoAnne Chesimard [sic] from the New Jersey State Women's Prison. Members of her group have participated in numerous armed robberies where police officers were wounded or killed.

Baraldini is serving 43 years — 3 for criminal contempt following her refusal to collaborate with government efforts to secure her testimony at a grand jury investigating the FALN and the Puerto Rican independence movement; and 40 for a RICO (Racketeering Influence Corrupt Organizations) conspiracy, for her participation with a group waging armed actions in the name of ending oppression of Black people within the U.S. She was convicted of participating in the prison escape of Assata Shakur, otherwise known as Joanne Chesimard. The other women who comprised the tiny population seem to have been placed in the HSU to mask the political nature of the unit.

The Conditions at the Lexington HSU

The treatment of the women at Lexington HSU illustrates government imposition of strict security measures in an exaggerated response to its biased beliefs about prisoners with left political affiliations. Moreover, the incarceration of these women was demonstrably more restrictive than that of prisoners serving equally lengthy sentences, yet who lacked similar political associations, even where those non-political women had histories of escape. Designed to house 16 women, the unit never held more than seven, and for the bulk of its two year life held only five.

The physical layout of the prison was calculated to demoralize the prisoners. Built in a basement, virtually no natural light penetrated. Metal grates covered the few windows, blocking out any light and obscuring the view to the outside. The women could not freely walk about...
the small living space. A dozen or more surveillance cameras watched their every move. One hour a day they were allowed into an outdoor concrete recreation area, ringed by bricks and high wooden walls, equipped with a video surveillance camera but no recreation equipment, and accompanied by a guard. The unit also lacked programs and productive work opportunities.

The women described their harassment and sexual assault by prison guards. Following every recreation hour, female guards required the women to submit to a strip search. The shower, within the range of a camera, for close to a year lacked a shower curtain. At times, male guards stood and watched them shower, and would walk into the women's cells unannounced as the women sat on the toilet or were in various stages of undress. Male guards inappropriately pat-searched the women frequently, termed "personal patdown searches" by the court. In addition, the women were shackled, handcuffed and accompanied by four prison guards on their scheduled visits to the prison doctor and dentist, followed by a strip search upon return to the unit. Medical attention was afforded only after long delays, and even then was delivered while shackles were in place and while a male guard was at their side or within eyeshot — even for procedures which required undressing.

The rules prohibited contact with prisoners other than those few in the HSU, though the prison which housed the HSU contained over 1,000 prisoners in a minimum-medium security general population. The rules also prohibited most contact with anyone outside the unit — phone calls were limited to two brief calls a week, and visits restricted to immediate family. This worked a special hardship: Baraldini's immediate family lived in Italy, and Rosenberg is the only child of elderly parents in New York. The government's definition of immediate family narrowed the possible visits in Torres' case, ruling out her son-in-law and grandchildren. The hours of visitation were restricted, as was the space available for visitation. Contact by mail was also restricted; incoming mail, including that containing political literature, was often rejected or just never delivered.

The room temperature was inadequate in winter, and the staff did not provide appropriate clothing. The women were given drab beige uniforms, culottes, so that they would look "feminine." Fire safety was not accommodated. Hot water was rarely available for bathing.

The attitude of the guard staff toward the women varied between harassing them and ignoring them. The women were completely dependent on the guards for their every need, including having to ask for sanitary napkins one or two at a time, or moving from the cell area to the day room area of the unit. Guards taunted the women that they would never leave the HSU, telling them they had one way tickets. The women were systematically deprived of sleep during one three month period. These conditions clearly had no rational relationship to the Bureau's stated purpose of preventing escape from external assault by "terrorist" groups. A psychiatrist hired by the Bureau as an expert witness arrived at the same conclusion.

Special limitations applied to the HSU that pertained to no other federal prison. No other prison in the BOP is closed to the public, as was Lexington. Even at Marion, the highest security prison for men in the system, the Bureau, needing to respond to public pressure about rampant human rights violations there, regularly hosts public relations tours from high school and university classes and other groups. Yet Bureau officials rebuffed requests for delegations to the HSU from the National Lawyers Guild, the American Public Health Association, a group of prominent women from Kentucky, and others, claiming the unit was not open for public inspection. Also unlike Marion, journalists were either turned away completely, or had their integrity impugned, being told they could not bring their tape recorders or cameras lest they smuggle contraband. Furthermore, HSU was the only maximum security prison for women in the federal system. At other BOP federal correctional institutions with general populations of women (including women with equally lengthy sentences and convicted of violent crimes and escape), conditions were substantially less restrictive. The women freely move about within the compound; have access to outside recreation over four hours daily (including team activities); are strip searched only after

contact with people from the street; have a variety of
work settings to select from and people with which to in-
teract (including virtually unrestricted visits from friends
and relatives); have access to the phone for 15 hours
daily, are permitted to wear their own clothing and pos-
sess a quantity of personal property; and are not locked
down in their cells, even at night. 66

These policies and restrictions took their toll on the
women held at HSU. Reports and testimony from psy-
chology and psychiatry experts documented that they
suffered symptoms flowing from the lengthy detention in
the restricted environment, otherwise known as small
group isolation. The symptoms fell into four categories:

1) Sensory disturbances. They became hypersensitive
to external stimuli and often experienced a dysesthetic
response. For example, the smell from the food trays dis-
gusted them, their appetites were diminished, and they
lost weight. They also experienced perceptual distortions,
seeing spots and shapes, often mistaking them for objects.

2) Disturbances of affect. They experienced overt
panic attacks and free floating anxiety. This category in-
cludes depression.

3) Difficulty in thinking and concentrating. These
symptoms include not just an inability to read but to fo-
cus one's attention. The disability in one case reached the
point of profound apathy and withdrawal.

4) Disturbances of thought content. Here, the women
were obsessed with rage as well as with the state of their
bodies and minds, fearing the deterioration that was
occurring.

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dence movement both in Puerto Rico
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disruption, not "mere harassment."

Such symptoms in a restricted environment constitute
a syndrome which was documented in German literature
as early as the late 1800s, and gained some attention in
the U.S. after U.S. soldiers were held in small group iso-
lation in Korean POW camps, and was lately docu-
mented by Amnesty International when in 1980 it de-
nounced the Federal Republic of Germany's small group
isolation of Red Army Fraction (RAF) political
prisoners. 67

The symptoms experienced by the women at HSU in-
creased with the length of exposure to the restricted con-
ditions. 68 Nor was the women's suffering lost on Burea-

The Court has little doubt that Unit Manager
Figlestahtahler and other personnel at the High Securi-
ity Unit were well aware of plaintiffs' various com-
plaints regarding staff treatment and the psycholog-
eal effects that they suffered. 69

Moved by the similarity of the HSU to the German
experiments with the RAF prisoners, Amnesty Interna-
tional dispatched an observer from the United Kingdom,
who noted about the HSU:

Even though those concessions had been
made, the bureau still operates a unit
that in many respects, measures below
acceptable standards for federal prisons.

The conditions and regime are deliberately and gra-
uitously oppressive. The constant and unjustified
use of security chains, the repeated strip searching,
the almost total lack of privacy, the claustrophobic
lack of sensory stimuli, and freedom of movement, pos-
sessions, choice of activities and incestuously small
range of contacts cannot be other than debilitating
. . . There is no need for these prisoners to be at
HSU. . . . There is overwhelming evidence that the
prisoners at HSU have deteriorated physically and
psychologically during their custody there. There
has to be a prospect that one or more will finally
resort to suicide should their custody at HSU be
prolonged. I conclude therefore that HSU should
close forthwith. 70

Addressing the Eighth Amendment issue of whether
the treatment at Lexington HSU constituted "cruel and
unusual punishment," the district court found there had
been no "unnecessary and wanton infliction of pain." 71

66. These prisons include the Federal Correctional Institu-
tions at Pleasanton, California, Lexington, Kentucky, and Al-
derson, West Virginia, the three main women's prisons in the
federal system existing at the time.
67. Stuart Grassian, PSYCHOPATHOLOGICAL EFFECTS
OF SOLITARY CONFINEMENT (unpublished).
68. Amnesty International, PRISON CONDITIONS OF PER-
SONS SUSPECTED OR CONVICTED OF POLITICALLY MOTIVATED
CRIMES IN THE FEDERAL REPUBLIC OF GERMANY: ISOLATION
AND SOLITARY CONFINEMENT (May, 1980).
69. In his follow up study, correctional psychologist Richard
Korn found that the women had deteriorated to the point of
danger. Richard Korn, The Effects of Confinement in HSU: A
Follow-Up, November, 1987, 15 SOCIAL JUSTICE 25 (Spring,
1988).
70. Baraldini, 691 F.Supp. at 446.
71. Amnesty International, THE HIGH SECURITY UNIT,
LEXINGTON FEDERAL PRISON, KY 15 (August, 1988).
72. Only once before in the history of U.S. prisons has Am-
nesty International observed and/or condemned a prison in the
U.S. In 1987, Amnesty International found the U.S. Peniten-
tiary at Marion, IL to violate the United Nations Standard
Minimum Rules for the Treatment of Prisoners. Amnesty Inter-
national, ALLEGATIONS OF ILL-TREATMENT IN MARION PRISON,
ILLINOIS, USA ? (May, 1987).
73. Baraldini, 691 F.Supp. at 446, quoting Estelle v. Gam-
ble, 429 U.S. 97, 103 (1976).
Nevertheless, the Court was clearly troubled by the conditions in the HSU, viewing the BOP's last minute, insignificant modifications of the conditions not just as too little, too late, but rather a sorry response and "a shameful reflection on the Bureau's administration . . . . Even though those concessions had been made, the Bureau still operates a unit that in many respects, measures below acceptable standards for federal prisons." The Court expressed that the "defendants' sluggish response to plaintiffs' requests [for medical attention] borders very close to neglect", noted the defendants' "gross insensitivity," and concluded that "at times the treatment of plaintiffs has skirted elemental standards of human decency." The Court also warned the defendant prison officials not to repeat these substandard conditions of the HSU at the new, larger women's high security unit at Marianna, Florida.

Two factors seem to have influenced the Court in deciding that the Unit "at best meets the bare Eighth Amendment standards." The first was a recent opinion of the D.C. Circuit substantially limiting application of the Eighth Amendment. Given the decision in Occoquan, Judge Parker was obliged to "determine whether the essential mainstays of life have been denied to the prisoners," which the Occoquan court specified as "food, shelter, health care and personal security." The second and possibly more influential factor was the BOP's promise to promptly close the HSU.

Retaliation and Punishment for Political Beliefs and Associations

The issue arising from the program at Lexington HSU is whether the unit was designed to house women who posed a security threat, or was in fact an isolation camp to break prisoners affiliated with movements and organizations condemned by the government.

The Bureau criteria for placement in the unit purported to be neutral and based on security considerations:

Candidates for placement in this unit are those females whose confinement raises a serious threat of external assault for the purpose of aiding the offender's escape.

It was neither. Official Bureau statements and the transfer documents of Baraldini and Rosenberg, written by

Rosenberg testified that she was told by the HSU unit manager that there was only one way she could win her release from the unit: to give up her political affiliations.

Bureau officials, established that the women were selected because of their political associations, and referred to them as "terrorists." Defendant BOP officials' correspondence with congressional representatives and statements to the media acknowledged the women's politics as a factor relevant to their placement. Every transfer document written by the defendants emphasized Baraldini's and Rosenberg's associations with groups the government considered to be terrorist.

Moreover, Rosenberg testified that she was told by the HSU unit manager that there was only one way she could win her release from the unit: to give up her political affiliations. The release criteria stated that release would occur when the initially qualifying criteria no longer applied. Where the initially qualifying criteria were one's political affiliations, the message is clear. Furthermore, the defendants testified that if they received

81. The discussion in this section, as far as it refers to the case, concerns only Susan Rosenberg and Silvia Baraldini, the women placed in the HSU because of their associations. While Alejandrina Torres' placement was based on her associations, she did not participate in the litigation, and the defendants successfully blocked the plaintiffs from discovery as to non-plaintiffs.


83. Stott, PLANNED WOMEN'S PRISON HIT (cited in note 36); Baraldini, 691 F.Supp. at 437.

84. Bureau of Prison's Director Michael Quinlan's letter to U.S. Representative Robert Kastenmeier (September 30, 1987); Bureau of Prisons Former Director Norman Carlson's letter to U.S. Representative Robert Kastenmeier (October 9, 1986); Stott, PLANNED WOMEN'S PRISON HIT (cited in note 36).


86. Testimony of Susan Rosenberg, Transcript at 76-77 (June 7, 1988).

87. Gil Ingram Memorandum (September 2, 1986); HSU Institutional Supplement (December 3, 1986).
information that a plaintiff were no longer affiliated with the organizations, they would consider releasing them from the HSU.88

A key post order for staff at the HSU informed them that the unit was created for women who warranted higher security because of, among other things, their membership in organizations.89

The defendants claimed that the women were selected because they were escape risks, that the groups the women associated with would assault the prison to free them. Yet the evidence established that neither Baraldini nor Rosenberg had ever conspired or attempted to escape, nor had they actually escaped.90 The defendants even admitted that they had no information of any threat of external assault to free the women, and that they had never possessed any such information.91 In addition, the defendants testified consistently that they had no knowledge about the so-called terrorist groups they claimed these women affiliated with.92 Nor had they taken any action to update information about the women after their convictions.93 The defendants also conceded that women who had actually escaped from BOP custody, including one in a helicopter, were not referred for transfer, or their referrals for placement had been denied. Most remained in general population, while 11 of the 16 cells at the HSU remained unoccupied.94

Plaintiffs’ eminent corrections experts concluded after examining the political women’s prison files that nothing in their in-prison conduct distinguished them from other women who were convicted of violent crimes, given equally lengthy sentences, and who remained in general population.95 The Court found the criteria for placement in the unit violated the First Amendment both on their face, as vague and overbroad, and as applied to Baraldini and Rosenberg. The Court enjoined the defendants to place these women in the general population of a women’s federal correctional institution, and to promulgate new criteria which did not take into account a prisoner’s political beliefs and associations.

Finding that the criteria for placement in the unit were overbroad, the Court held that the government’s focus on prior associations, and consequent restriction of the women’s political expressions, violated the First Amendment.96 The Court affirmed the prisoners’ right to believe, for example, in independence for Puerto Rico or in communism, and stated:

It is no crime for Baraldini and Rosenberg to be members of leftist political organizations, even if those groups have engaged in unlawful pursuits in the past. Since it cannot be inferred automatically from their former memberships that they unqualifiedly subscribe to every aspect of the groups’ conduct, their placement in the High Security Unit cannot be justified without more credible documentation than that found in the Bureau’s records.97

Furthermore, the Court found that the government’s interest in preventing escape could have been accommodated in less restrictive ways.98 The line between those placed at HSU and those remaining in the general population was “blurred,” and thus too vague to pass constitutional muster.99

The Court also determined that placement of Baraldini and Rosenberg in the HSU served no legitimate penological purpose, but rather constituted an exaggerated response to security concerns. In arriving at its decision, the Court performed a Turner v. Safley100 analysis, looking at four factors:

1) Whether there is a “valid, rational connection” between the prison regulation and the legitimate, neutral governmental interest.
2) If alternative means of exercising the constitutional right remain open to prison inmates.
3) The impact an accommodation of the asserted constitutional right would have on guards and other inmates, and on the allocation of prison resources.
4) The absence of ready alternatives.101

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88. Deposition of Gil Ingram at 55-56 (May 26, 1988); Deposition of Robert Figlestahler at 169-170 (May 23, 1988).
90. Deposition of Gil Ingram at 31 (May 26, 1988); Deposition of Michael Quinlan at 61 (May 26, 1988); Deposition of Rob Roberts at 153 (May 24, 1988); Deposition of BOP Western Regional Director Jerry Williford at 46 (May 24, 1988).
91. See Post Orders (cited in note 89).
92. Deposition of Gil Ingram at 54 (May 26, 1988).
93. Deposition of Gil Ingram at 154 (May 26, 1988); Deposition of Rob Roberts at 153-154, 155 (May 24, 1988).94. Deposition of Gil Ingram at 31-32 (May 26, 1988); Deposition of BOP Southeast Regional Director Gary McCune at 56-57 (May 27, 1988); Deposition of Rob Roberts at 179-180 (May 24, 1988).
95. For example, prior to transfer to HSU, plaintiff Baraldini had successfully served 27 months in the general population of the Federal Correctional Institution at Pleasanton, an open, coed prison, where she mingled with hundreds of other prisoners. Deposition of Gil Ingram at 29 (May 26, 1988); Deposition of Silvia Baraldini at 25-26, 33, 37 (May 21, 1988); Deposition of Michael Quinlin at 61-65 (May 26, 1988); Deposition of Plaintiff’s expert Louise Brown at 37 (May 21, 1988); Deposition of Jerry Williford at 35 (May 24, 1988).
97. Id. at 439.
98. Id. at 440. For example, the evidence established that at FCI Pleasanton, the prison operated a close accountability program which, while it restricted a woman’s movement, allowed her to remain in the general population. See FCI Pleasanton Memorandum (December 19, 1984).
Under the first factor, the regulations here, according to the Court, were not neutral but rather focused on the women's political views and associations. Under the second factor, the Court found that Baraldini and Rosenberg had no alternative — only renunciation of their associations could win their release; therefore continued expression and association was discouraged. Third, the government offered no evidence of adverse impact of placing the political women in general population. The women's prior experience in general population and their unremarkable disciplinary records convinced the Court of the contrary. Finally, the existence of "ready alternatives" renders the regulation an exaggerated response.

Clearly shocked by the government's program at the HSU, the Court ended its opinion with these words:

"Consigning anyone to a high security unit for past political associations they will never shed unless forced to renounce them is a dangerous mission for this country's prison system to continue."

It is one thing to place persons under greater security because they have escape histories and pose special risks to our correctional institutions. But consigning anyone to a high security unit for past political associations they will never shed unless forced to renounce them is a dangerous mission for this country's prison system to continue.  

THE AFTERMATH

After months of ignoring Baraldini's requests for medical attention for gynecological problems, the defendants at last allowed treatment, only to find that she had a rare and very aggressive form of uterine cancer. Ignoring Judge Parker's order, the defendants continued to treat her as a high security prisoner throughout the ordeal of two operations and internal radiation.

The defendants have refused to comply with Judge Parker's unambiguous order that they place the political prisoners in the general population of a women's federal correctional institution. Instead, they have transferred Baraldini and Torres to various federal Metropolitan Correctional Centers (MCC's), with the full knowledge that these pretrial detention facilities, designed for short term stays, are not general population prisons where convicted prisoners serve their sentences.

Another of the defendants' actions also flies in the face of the Court's order. The injunction requires the defendants "to ignore and nowise consider an inmate's political views or affiliations in their decisions to transfer any prisoner to the new high security unit at Marianna, Florida." Yet on January 20, 1989, the defendants sent Carol Sauzier Manning to this new unit, a northamerican political activist recently convicted of seditious conspiracy, for her participation in actions with the United Freedom Front, another group considered by the government to be "terrorist" and using force against the United States. Manning, like Baraldini, Rosenberg, and Torres, has no in-prison conduct which could justify the placement, only a set of politics and associations "pro-" 

moting some ideas that some government officials did not favor."  

In their arguments on appeal challenging the district court's injunction, the defendants acknowledged their reliance on the women's political views and associations and defended such reliance, asserting that the women's politics are indistinguishable from the offenses for which they were convicted. The defendants reasserted the defense, rejected by the district court, that their concern was with the women's contacts with groups that might try to free them; regardless of the groups' ideology.

CONCLUSION

The government conducted an experiment with this political prison. While the women suffered greatly, they were not broken, and the news of these conditions caused outrage. For example, the Puerto Rican legislature passed a unanimous resolution condemning the U.S. government for violating the human rights of Alejandrina Torres. The U.S. received censure from groups as varied as Amnesty International, members of the European Parliament and the Italian Parliament, the National Lawyers Guild, the American Public Health Association, the United Methodist Church, and the United Church of Christ. Even at the U.S.-U.S.S.R. summit of 1988, the
Soviet media raised the conditions at Lexington's HSU and the existence of political prisoners in the U.S.\textsuperscript{114}

The government therefore decided to "phase out" the HSU, announcing the intended closure months in advance of the actual closure, apparently in the hope of avoiding further censure. Yet the closure of the HSU brings only another phase of the experiment, not an end. The "mission" of the HSU, the BOP says, is merely being transferred to a new high security unit, this one inside a new men's federal prison in Marianna, Florida.\textsuperscript{116} The mission still involves special, punitive treatment for women political prisoners.

While the newest phase has proved to be above ground, and to have a population of one hundred, the concern for the human rights of the women cannot abate. A high level of attention and pressure from the public had a definite impact on the government's conduct at the HSU. Just as the decision to close the HSU can be attributed to vocal opposition and the litigation, such vigilance can temper the conditions at the HSU's successor at Marianna, and influence how the government treats political prisoners in the future.

\textsuperscript{114} UPI Moscow, "Soviets Charge U.S. Has Political Prisoners," Washington Post at A21 (May 28, 1988). The newspapers asserting these charges included Pravda, the Communist Party newspaper; Izvestia, the government newspaper; Trud, the trade union newspaper; and Sovetskaya Rossiya, the Communist Party newspaper of the Russian Soviet Republic.

\textsuperscript{115} Baraldini, 691 F.Supp. at 449. See note 76.