

ABSTRACT

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RACE, REFORM, AND VIOLENCE IN
TEXAS PRISONS AND THE NATION, 1945-
1990

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This study, “Civil Rights on the Cell Block: Race, Reform, and Violence in Texas Prisons and the Nation, 1945-1990,” offers a new perspective on the historical origins of the modern prison industrial complex, sexual violence in working-class culture, and the ways in which race shaped the prison experience. This study joins new scholarship that reperiodizes the Civil Rights era while also considering how violence and radicalism shaped the civil rights struggle. It places the criminal justice system at the heart of both an older racial order and within a prison-made civil rights movement that confronted the prison’s power to deny citizenship and enforce racial hierarchies. By charting the trajectory of the civil rights movement in Texas prisons, my dissertation demonstrates how the internal struggle over rehabilitation and punishment shaped civil rights, racial formation, and the political contest between liberalism and conservatism.

This dissertation offers a close case study of Texas, where the state prison system emerged as a national model for penal management. The dissertation begins

with a hopeful story of reform marked by an apparently successful effort by the State of Texas to replace its notorious 1940s plantation/prison farm system with an efficient, business-oriented agricultural enterprise system. When this new system was fully operational in the 1960s, Texas garnered plaudits as a pioneering, modern, efficient, and business oriented Sun Belt state. But this reputation of competence and efficiency obfuscated the reality of a brutal system of internal prison management in which inmates acted as guards, employing coercive means to maintain control over the prisoner population. The inmates whom the prison system placed in charge also ran an internal prison economy in which money, food, human beings, reputations, favors, and sex all became commodities to be bought and sold. I analyze both how the Texas prison system managed to maintain its high external reputation for so long in the face of the internal reality and how that reputation collapsed when inmates, inspired by the Civil Rights Movement, revolted. My dissertation shows that this inmate Civil Rights rebellion was a success in forcing an end to the existing system but a failure in its attempts to make conditions in Texas prisons more humane. The new Texas prison regime, I conclude, utilized paramilitary practices, privatized prisons, and gang-related warfare to establish a new system that focused much more on law and order in the prisons than on the legal and human rights of prisoners. Placing the inmates and their struggle at the heart of the national debate over rights and “law and order” politics reveals an inter-racial social justice movement that asked the courts to reconsider how the state punished those who committed a crime while also reminding the public of the inmates’ humanity and their constitutional rights.

CIVIL RIGHTS ON THE CELL BLOCK:
RACE, REFORM, AND VIOLENCE IN TEXAS PRISONS AND THE NATION, 1945-1990

By

Robert T. Chase

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BY

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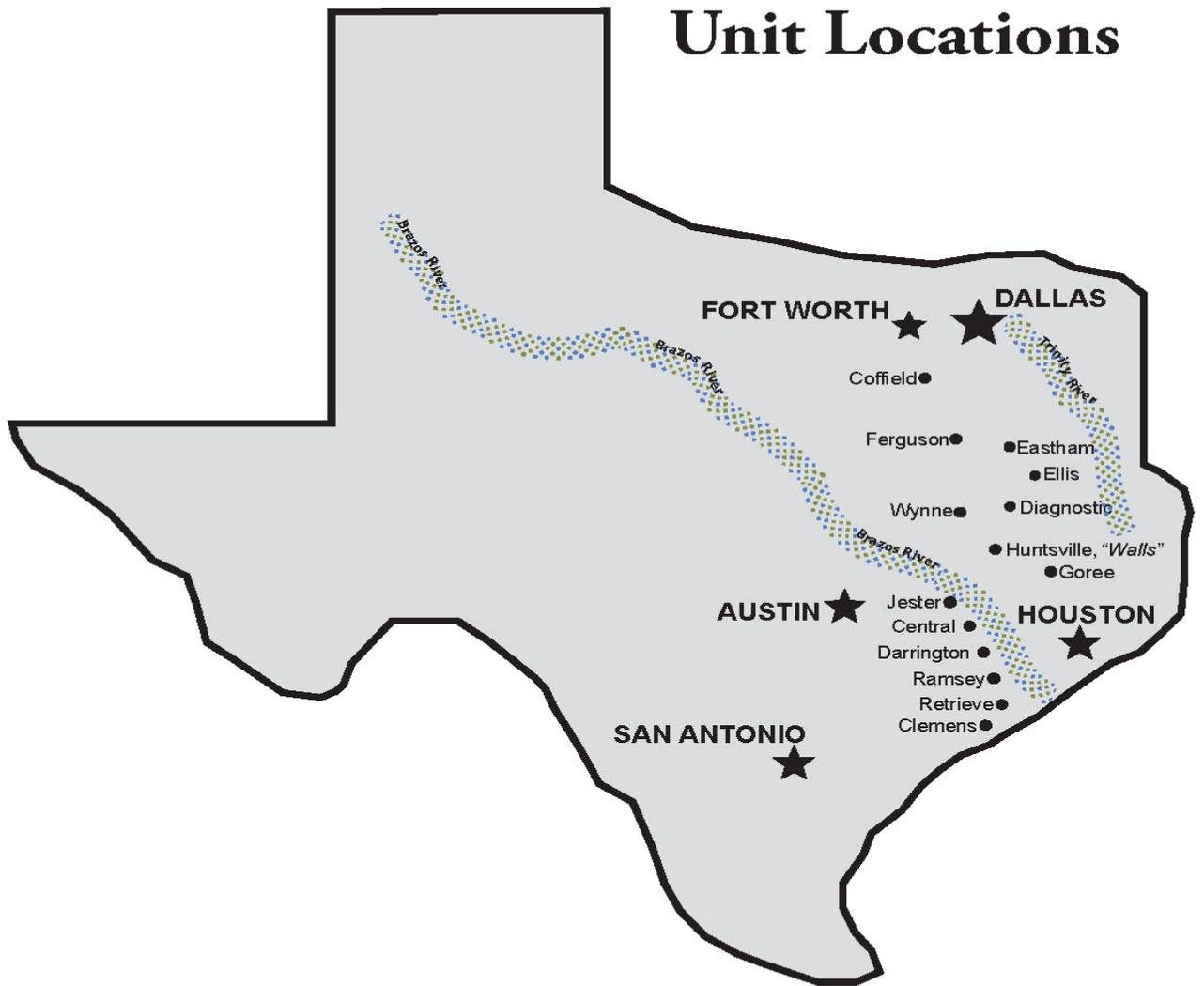
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ACKNOWLEDGEMENTS

Writing a dissertation on prison violence and the demand for prisoners' rights inevitably forces both the writer and its reader to encounter prison life as a site of terror, power, pain and anguish. I could not have countenanced such a project without accumulating the intellectual and personal debt of a great many people. Indeed, my development as a scholar owes much to the faith of those who believed in this project when it faced its most difficult obstacles. I owe a special debt of gratitude to Lawrence Levine, Jack Censer, and Roy Rosenzweig at George Mason University who during my master's studies introduced me to new ways of thinking about history through the lens of those on the fringe of society, but who always have so much to say. Sadly, neither Larry nor Roy could see the end product of my graduate career, but I remember fondly their lessons and I appreciate with thanks their willingness to train a former Washington, DC policy wonk to think like an historian.

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DEDICATION

TO THE INMATES OF THE TEXAS DEPARTMENT OF CORRECTIONS WHO DEMANDED THAT
INSTITUTIONS OF CRIMINAL JUSTICE ALSO BE INSTITUTIONS OF SOCIAL JUSTICE

FOR MY PARENTS
JOHN TERRY CHASE AND THE LOVING MEMORY OF SARA LEE HANNUM CHASE

INTRODUCTION

Along Highway I-45, an hour's drive north of Houston, motorists can't help but notice the billboards along the way pointing towards the Texas Prison History Museum and the promise to see "Old Sparky," the electric chair that sat 361 prisoners through their electrocution and death between 1924 and 1964. As visitors pull up to the museum they find a structure that mimics a real Texas prison. The walls are a distinctive red brick, the roof is crowned with razor wire, and a guard tower looms over the parking lot, complete with a manikin draped in the militaristic grey uniform of Texas prison guards. Within viewing distance of the museum and almost directly across from it, stands the ironically named Holliday unit, a real Texas prison that stands in such close proximity to the prison museum that it brings stark reality and historical tourism adjacent to one another. On some occasions, visitors may even catch a glimpse of a line of white suited prisoners working in the field no less than 100 yards from the museum, where a guard in grey atop his horse watches over the inmates as they hoe the land in make shift garden work that bears only a slight resemblance to the labor of an earlier generation of convicts who cleared the land, picked the cotton, grew the area's produce, and developed one of the state's largest agri-businesses.

Inside the prison museum, visitors find themselves following a bright yellow line that, in a real Texas prison, demarcates the separated space between guard and prisoner, free and prison-bound. The floors are made from hard concrete – the very same material that grounds convict feet inside the walls of Texas prisons. Visitors

wishing to experience the confinement that inmates live every day can step into a six-by-nine feet austere prison cell, closed in by steel bars and cluttered with a pair of bunks, a stool, a small toilet and sink. Along the wall is the “Contraband Exhibit,” which displays inmate improvised “shanks” (pieces of metal sharpened to make a knife), “slap-jacks” (balls of metal slivers or compressed paint placed into a sock), slingshots and make-shift bats. The “hardware” section displays the accoutrements of Texas prison discipline, including the characteristic ball-and-chain, tommy guns, billy clubs, and the infamous “bat” freely used by guards against inmates until it was outlawed in 1941. Photos from the Texas Prison Rodeo, the “Wildest Show Behind Bars,” which ran from 1931 to 1985, adorn the walls, with colorful rodeo programs displaying inmates in bright red shirts playing such games as “Convict Poker,” in which the last inmate to stay in his seat while a wild bull rushes the card table wins the cash pot, or “Hard Money,” in which forty inmates tried to pull a “bull Durham” tobacco sack from the horns of a raging wild bull for a cash prize of \$50.00. Visitors on most Fridays receive a guided tour by the Museum’s director, Jim Willet, who, as a former Texas warden, oversaw 89 executions and wrote an autobiography in which he interspersed chapters of his life with an execution tale offering his reflections on each inmate’s death.¹ On their way out, visitors can stop at the museum’s bookstore for books offering escape narratives, local histories of the prison, and a copy of *Meals to Die For*, a book of last meal recipes of those on death row. The Texas Prison History Museum conveys a deeply held sense of state pride and public fascination with the state’s prison system. Nearly 50,000 people a year enter this historic

¹ Jim Willett and Joe Rozelle, *Warden: Prison Life and Death from the Inside Out* (Albany, Texas: Bright Sky Press, 2004).

recreation of confinement. As its website announces to its visitors, the museum “offers an intriguing glimpse into the lives of the state’s least-loved citizens.”²

Through a series of wall panels that chronicle the history of Texas prisons, the museum presents a teleological and progressive historical narrative of prison reform. The most celebrated era of Texas prison management, according to the museum’s presentation, was the post-World War II period in which a modernization reform program resulted in an ordered, controlled, and humane system that lasted for three decades, from 1948 to 1978. In 1980, however, the museum’s progressive story is interrupted by a federal court order that ruled the Texas prison system as unconstitutional in the omnibus prisoners’ rights lawsuit *Ruiz v. Estelle*. The *Ruiz* decision demanded that Texas outlaw the practice of having inmates act as guards, and ordered the state to alleviate prison overcrowding, improve inmate health care, and grant inmates access to attorneys and legal representation. Rather than view the *Ruiz* decision as a decisive moment in the progressive march of Texas prison reform, however, the museum presents it instead as a decision that “would plague...TDC for the next two decades” because, they tell us, it plunged the Texas prison system into an era of gang violence, overcrowding, and minor prison riots and disturbances.³

² <http://www.txprisonmuseum.org/about.html>, accessed December 17, 2007. The Texas Prison Museum’s first iteration was a modest storefront in Huntsville. The new museum opened in November 2003 after the state raised more than \$1 million for the 10,000 square foot building. Critics of the museum claimed at its opening that it offered scant information on the *Ruiz v. Estelle* litigation that declared Texas prisons unconstitutional and that it glossed over the reasons for the 1980 deaths of Warden Wallace Pack and Major Billy Max Moore at the hands of inmate Eroy Brown, who, through three different trials, was acquitted for murder on the grounds of self defense. See Scott Nowell, “A Guarded Past: Texas’s Impressive New Museum Engages in a Little Escapism of its Own,” *Houston Press*, 9 January 2003; National Public Radio, *All Things Considered*, report on Texas Prison Museum by Janet Heimlich, June 26, 2002.

Little attention is paid to the prisoners' rights movement and its claim that the Texas prison system encouraged sexual violence and physical abuse. This absence mutes the voice of the prisoners and the historic importance of the prisoners' rights movement while castigating federal court ordered intervention as an unwanted and disastrous intrusion into state management. My study reconsiders such a narrative by returning the focus to the inmates themselves and by chronicling the prisoners' rights movement through the lens of civil rights.

As Benedict Anderson's *Imagined Communities* reminds us, the process of commemoration and memorialization that occurs within museums is "profoundly political...at such a deep level that almost everyone...was unconscious of the fact. It had all become normal and everyday. It was precisely the infinite quotidian reproductability of its regalia that revealed the power of the state."⁵ The power and reach of the Texas prison state is indeed astounding. In 1999, Texas had the nation's largest prison population – more than 160,000. Since 1990, Texas has led the nation with an average annual growth rate of 11.8 percent, which is nearly twice the annual average growth rate of other prison systems (6.1 percent). At 730 inmates per 100,000 residents, Texas claims the second highest incarceration rate among all 50 states (just behind Louisiana).⁶ Texas also leads the nation in its number of privatized prisons, super-maximum 23-hour-a-day cell "lockdown" prisons, prison construction,

³ For a review of the Texas Prison History Museum that critiques the museum's historical narrative and its negative appraisal of the *Ruiz* decision, see Alex Lichtenstein, "Exhibition Review: Texas Prison Museum," *Journal of American History* 2004 91(1): 197-200.

⁵ Benedict Anderson, *Imagined Communities: Reflections on the Origins and Spread of Nationalism* (New York: Verso, 1983), 183, 163-187.

⁶ The District of Columbia also has a higher incarceration rate than Texas.

and state sanctioned executions. These numbers reflect a prison building program that has its roots in the postwar construction of the nation's largest carceral state.

Criminologists, sociologists, and political scientists see the carceral state taking form only in the last quarter of the twentieth century as the prison population swelled to unprecedented levels.⁸ Political scientist Marie Gottschalk has defined the carceral state as having three distinct characteristics: “the sheer size of its prison and jail population; its reliance on harsh, degrading sanctions; and the persistence and centrality of the death penalty.”⁹ To these characteristics this study adds a fourth: the

⁸ For studies that attribute prison expansion to post-1980s politics, see Katherine Beckett and Theodore Sasson, *The Politics of Injustice: Crime and Punishment in America* (Thousand Oaks, CA: Pine Forge Press, 2000); Joseph Dillon Davey, *The New Social Contract: America's Journey from Welfare State to Police State* (Westport, CT: Praeger, 1995); Joseph Dillon Davey, *The Politics of Prison Expansion: Winning Elections by Waging War on Crime* (Westport, CT: Praeger, 1998); Theodore Caplow and Jonathan Simon, “Understanding Prison Policy and Population Trends” in *Crime and Justice: A Review of Research*, Vol. 26; Stuart A. Scheingold, *The Politics of Law and Order: Street Crime and Public Policy* (New York and London: Longman, 1984); and Katherine Beckett, *Making Crime Pay: Law and Order in Contemporary American Politics* (New York: Oxford University Press, 1997). For an overview of the role of law and order in presidential campaigns from the 1960s to the late-1970s, see James O. Finkenauer, “Crime as a National Political Issue, 1964-1977: From Law and Order to Domestic Tranquility,” *Crime and Delinquency* 24, no. 1 (January 1978): 13-27.

On the role that race and racial anxiety played in the creation of a post-1980s prison building boom, see Thomas Byrne Edsall with Mary D. Edsall, *Chain Reaction: The Impact of Race, Rights, and Taxes on American Politics* (New York: Norton, 1991); Michael W. Flamm, *Law and Order: Street Crime, Civil Unrest, and the Crisis of Liberalism in the 1960s* (New York: Columbia University Press, 2005); Tali Mendelberg, “Executing Hortons: Racial Crime in the 1988 Presidential Campaign,” *Public Opinion Quarterly* 61, no. 1 (Spring 1997): 134-57; Loic Wacquant, “From Slavery to Mass Incarceration: Rethinking the ‘Race Question’ in the U.S.,” *New Left Review*, 13, January-February 2002; Michael Tonry, *Malign Neglect: Race, Crime, and Punishment in America* (New York: Oxford University Press, 1995); Jerome G. Miller, *Search and Destroy: African-American Males in the Criminal Justice System* (Cambridge: Cambridge University Press, 1996); and, Marc Mauer, *Race to Incarcerate* (New York: New Press: Distributed by W.W. Norton & Co., 1999).

⁹ Marie Gottschalk, *The Prison and the Gallows: The Politics of Mass Incarceration in America* (Cambridge: Cambridge University Press, 2006), 1. In its construction of a carceral state, Texas led the nation in execution by death during the mid-1990s. My study, however,

centrality of racial anxiety both inside the prison and in the external world of politics. Racially disproportionate rates of incarceration accelerated in the nation's state prison systems during the post-civil rights era, as rates for imprisonment for African American men as compared to rates of incarceration for white men doubled in the fifty years since *Brown v. Board of Education*.¹⁰ Texas has followed this national pattern of racially disproportionate rates of incarceration. Although African Americans represented 12 percent of the Texas population in 2002, they made up 44 percent of the state's total prison and jail population. Latinos, meanwhile, made up 32 percent of the state's population in 2002 and accounted for 28 percent of its prison population, while whites made up 52 percent of the state population and only 31 percent of the prison population.¹¹

This work is a close case study of Texas, where the state prison system emerged as a national model for penal management. Prior to 1945, the northeastern penitentiary served as the national model for good prison management. Such penitentiary systems embraced the "rehabilitative ideal" and employed "scientific treatment," which ostensibly offered inmate redemption and emphasized parole, psychological treatment, and mental and physical recreation. Texas, however,

does not consider the death penalty in Texas, but focuses instead on the political and social struggle over prisoners' rights and prison management.

¹⁰ On racially disproportionate rates of incarceration in the late twentieth century United States, see Michael Tonry, *Malign Neglect: Race, Crime, and Punishment in America* (New York: Oxford University Press, 1995); Jerome G. Miller, *Search and Destroy: African-American Males in the Criminal Justice System* (Cambridge: Cambridge University Press, 1996); and Marc Mauer, *Race to Incarcerate* (New York : New Press : Distributed by W.W. Norton & Co., 1999).

¹¹ Allen J. Beck, *Prisoners in 1999* (Washington, DC: US Department of Justice, Bureau of Justice Statistics, August 2000).

fashioned the penological practice and theory of “control penology” that emphasized strict discipline, coercive labor, and corporal punishment. The success of the Texas prison system in the postwar period served as an example of the “southernization” of national prison management.¹³ In the 1970s, however, inmates challenged Texas’s national reputation as a model prison state through a tumultuous political battle and a series of long-running civil rights lawsuits that overturned prison management and reordered prison society.

These inmate civil rights lawsuits were part of a major shift in American criminal law where courts recognized that inmates could seek relief from inhumane and unconstitutional conditions through federal court order. Federal court intervention overwhelmingly occurred in southern state prison systems and in the new Sunbelt region. From 1965 to 1995, federal courts found six of the eleven states of the American South as having unconstitutional prison systems and ordered those state systems into federal receivership. Alabama, Arkansas, Mississippi, South Carolina, Tennessee, and Texas were all declared as having unconstitutional prison systems. Georgia and Louisiana, meanwhile, had their principal maximum security facility under similar federal court orders, and Florida had its entire system under court order.¹⁴ Only four of the thirty-nine states outside of the South, however, have been

¹³ On the “southernization” of politics and its relationship to the decline of labor unions in the post-World War period, see James N. Gregory, “Southernizing the American Working Class: Post-War Episodes of Regional and Class Transformation,” *Labor History* Vol. 39, No. 2, May 1998, 135-154; Bruce J. Schulman, *From Cotton Belt to Sunbelt: Federal Politics, Economic Development, and the Transformation of the South, 1938-1980* (New York: Oxford University Press, 1991); and Peter Applebome, *Dixie Rising: How the South is Shaping American Values, Politics, and Culture* (New York: Times Books, 1996).

¹⁴ Virginia remains the only southern state that did not have its prison system either declared unconstitutional or have its principal prison under federal court order.

subject to a similar intervention from the federal courts (Alaska, Delaware, New Mexico, and Rhode Island).¹⁵ Individual prisons in non-Southern states did come under court order, usually due to overcrowding, but federal courts declared few state prison systems outside of the South as unconstitutional.¹⁶ It was largely southern prison systems that experienced the scrutiny and control of federal court orders, and the *Ruiz* lawsuit in Texas was perhaps the most sweeping and profound of all. The Texas court case and most other prison litigation cases were due to the efforts of a social movement of prisoners demanding social justice and making common cause with attorneys from the National Association for the Advancement of Colored People's (NAACP) Legal Defense Fund. The prisoners' rights movement and the court room struggle over prison systems was therefore part of the civil rights revolution.

Studying the prisoners' rights movement contributes to new scholarship that reperiodizes the Civil Rights era into the 1970s while also considering how violence and radicalism shaped the civil rights struggle. It places the criminal justice system at the heart of both an older racial order and a prison-made civil rights movement that confronted the prison's power to deny citizenship and enforce racial hierarchies. By charting the trajectory of the civil rights movement in Texas prisons, my dissertation demonstrates how the internal struggle over rehabilitation and punishment shaped

¹⁵ Malcolm M. Feeley and Edward L. Rubin, *Judicial Policy Making and the Modern State: How the Courts Reformed America's Prisons* (Cambridge: Cambridge University Press, 1998), 40-41.

¹⁶ States that had no prison litigation whatsoever include: Minnesota, New Jersey, and North Dakota. Those states with limited prison litigation cases are: Maine, Massachusetts, Montana, Nebraska, Vermont, and Wyoming.

civil rights, racial formation, and the political contest between liberalism and conservatism.

Prison Violence: A Historical Tradition and Lingering Questions

Worldwide concern over the treatment of prisoners held at the US prisons of Abu Ghraib and Guantanamo has sparked a renewed interest in prisoners' rights. Indeed, some have drawn comparisons between domestic prison abuse and the scandal over treatment of US detainees in its "War on Terror." Photographic images of Abu Ghraib detainees that were circulated to the media in the spring of 2004 depicted acts of sexual humiliation and physical abuse by American soldiers against Iraqi prisoners. The images included dogs barking and snapping at the legs and exposed genitals of cowering detainees, who were stripped naked of their clothes. Other photographs showed inmates forced to simulate and engage in sexual acts, particularly acts of homosexuality and masturbation, and some detainees later claimed that they were sodomized with a baton and broomstick. Even more graphic pictures, such as those that showed detainees burned with phosphoric acid or covered in urine and excrement, were kept from the mainstream American press. The most iconic image was that of a hooded detainee forced to stand on a box with wires wrapped around his body and his hands stretched outwards, resulting in a statuesque image of perversion and abuse that seemed to best capture the scandal's shocking nature. With a mounting public relations disaster on its hands, the George W. Bush Administration explained to the world that these photographs of prisoner abuse did

not represent the United States military or American society.¹⁷ Indeed, Secretary of Defense Donald Rumsfeld told the press that the incident was “inconsistent with the values of the nation” and that such abuse was “certainly fundamentally un-American.”¹⁸ When pressed for an apology by the media during a May 2004 press conference, President George W. Bush admitted that he was indeed “sorry for the humiliation suffered by the Iraqi prisoners.” He continued, however, that he was “equally sorry that people seeing these pictures didn’t understand the true nature and heart of America.”¹⁹

But how aberrant was the abuse of prisoners at Abu Ghraib in the context of America’s own prison population? In a 2004 *New York Times* article, Fox Butterfield reminded his readers that “physical and sexual abuse of prisoners, similar to what has been uncovered in Iraq, takes places in American prisons with little public knowledge or concern.” Indeed, Butterfield’s investigation of domestic prison abuse caused him to report that “the corrections experts say some of the worst abuses have occurred in Texas, whose prisons were under a federal consent decree during much of the time President Bush was governor because of violence by guards against inmates and

¹⁷ Disciplinary actions for the incident resulted in the removal of seventeen soldiers and officers from duty. The US military charged and convicted seven of those soldiers with dereliction of duty, maltreatment, and aggravated assault and battery. They then court martialed, dishonorably discharged, and sentenced to federal prison time these soldiers. The military sentenced the worst of the offenders, Specialist Charles Graner and Specialist Lynndie England, to ten and three years in federal prison, respectively. It also demoted Brigadier General Janis Karpinski, the commanding officer of the prison, to the rank of colonel. Karpinski was the highest ranking officer that the US military disciplined for the incident.

¹⁸ “Iraq prisoner abuse ‘un-American,’ says Rumsfeld,” *Washington Times*, 8 May 2004.

¹⁹ Susan Sontag, “Regarding the Torture of Others,” *The New York Magazine*, 23 May 2004.

overcrowding” and because “guards were allowing inmate gang leaders to buy and sell other inmates as slaves for sex.”²⁰ The American official who planned the reopening of Iraqi prisons under US military control seemed to agree that Abu Ghraib resembled American prisons. Lane McCotter, a former director of the Texas prison system and one of three top Homeland Security consultants sent to Iraq to reopen Abu Ghraib, told the press that of all the prisons that the US established in Iraq, Abu Ghraib “is the only place we agreed as a team was truly closest to an American prison.”²¹

The Abu Ghraib scandal and questions as to the legal rights of detainees held at the Guantanamo prison have renewed questions about American domestic prisons and prisoners’ rights. Such lingering questions on the contemporary prison have motivated my own inquiries into prison history. What are the rights of those who commit a crime? Are they granted the same civil rights as all American citizens? What role do prisons play in the historical formation of racial hierarchy and power? Why are prisons, despite the best intentions of reformers, nearly always sites of physical and sexual violence? When do prison societies and internal economies create prisoner subservience and acquiescence to power, and when do they create a

²⁰ Fox Butterfield, “The Struggle for Iraq: Mistreatment of Prisoners is Called Routine in US,” *New York Times*, 8 May 2004.

²¹ McCotter’s statement was made before the Abu Ghraib scandal, and his comment was focused not on the treatment of detainees, but on the physical structure of the prison which had “cell housing and segregation” that was similar to American prisons. Nonetheless, his statement revealed his pride in establishing a prison in Iraq that attempted to replicate American standards and practices. McCotter’s original interview was published in the online magazine, “Corrections.com,” in January 2004. Butterfield, “Struggle for Iraq: Mistreatment of Prisoners is Called Routine in US,” *New York Times*, 8 May 2004.

foundation for prisoner resistance and politicization? What is the measure of success when managing prisons and prisoners? Is it a question of effective rehabilitation, retributive punishment, or simply custody and order? Why did the explosive and racially disproportionate prison growth occur in the 1980s and 1990s? And, finally, what roles have prisoners and the prisoners' rights movement played in the political dialogue over prison growth and prisoner treatment? A history of the nation's largest state prison population and the efforts of its prisoners' rights movement to expose racial hierarchy, sexual violence, and physical abuse reveals some unexpected answers to these questions. Indeed, my work concludes with the unexpected result that conservative politicians used a successful prisoners' rights movement as political rationale for prison expansion and the growth of the carceral state.

This dissertation begins with a hopeful story of reform marked by an apparently successful effort by the State of Texas to replace its notorious 1940s plantation/prison farm system with an efficient, business-oriented agricultural enterprise system. When this new system was fully operational in the 1960s, Texas garnered plaudits as a pioneering, modern, efficient, and business oriented Sun Belt state. The result was an agri-business operation that was so successful that state leaders and penologists could claim that they had successfully modernized the South and vanquished the ghosts of their past. Gone were the prison's public images of slavery, convict leasing, the lash and bat, "sexual perversions," and degradation. Rather than accept the albatross of their slave heritage and a prison system that served

as a living symbol of southern “backwardness,” Texans created instead a prison where such “bottom line” and business-like results as production, cost efficiency, and external images of order allowed the state to stake a claim to modernity.

But this reputation of competence and efficiency obfuscated the reality of a brutal system of internal prison management in which inmates acted as guards, employing coercive means to maintain control over the prisoner population. The inmates whom the prison system placed in charge also ran an internal prison economy in which money, food, human beings, reputations, favors, and sex all became commodities to be bought and sold. I analyze both how the Texas prison system managed to maintain its high external reputation for so long in the face of the internal reality and how that reputation collapsed when inmates, inspired by the Civil Rights Movement, revolted. The result was a series of inmate lawsuits in Texas that culminated in 1978 with *Ruiz v. Estelle*, which became the nation’s longest civil rights trial and most far-reaching prison litigation case. Scholarship on the *Ruiz* case has focused on its legal development in the courts, but it has not told the story of struggle from the perspective of the inmates themselves who constructed a prison-made civil rights movement on the cell block.²³ Telling the story of *Ruiz* through the

²³ The literature on litigated Texas prison reform in the postwar period has approached the subject from a variety of valuable perspectives, but none of them tell the story of prison reform from the perspective of a social movement and in the context of inter-racial social and political organizing. On the litigation and its effects on the prison system from the perspective of the courts and attorneys involved in the cases, see Steve J. Martin and Sheldon Ekland-Olson, *Texas Prisons: The Walls Came Tumbling Down* (Austin, Texas: TexasMonthlyPress, 1989); Malcolm Feeley and Edward L. Rubin, *Judicial Policy Making and the Modern State: How the Courts Reformed America’s Prisons* (Cambridge and New York: Cambridge University Press, 1998); and Frank R. Kermer, *William Wayne Justice: A Judicial Biography* (Austin, Texas: University of Texas Press, 1991). For a sociological account that offers the guard experience and the changing nature of inmate society from the perspective of criminologists, see Ben M. Crouch and James W. Marquart, *An Appeal to Justice: Litigated Reform of Texas Prisons* (Austin, TX.: University of Texas Press, 1989). For a critique of

lens of civil rights and grass-roots organizing reveals how the pre-*Ruiz* prison system depended on sexual violence, corporal punishment, and enforced racial hierarchy. This inmate Civil Rights rebellion was a success in forcing an end to the “reform” system but a failure in its attempts to make conditions in Texas prisons more humane. The new Texas prison regime, I conclude, utilized paramilitary practices, privatized prisons, prison expansion, and gang-related warfare to establish a new prison system that focused much more on “law and order” in the prisons than on the legal and human rights of prisoners.

Contribution to the Literature

“Civil Rights on the Cell Block” builds on prison historiography by bridging several disciplines, including a growing body of literature on Black and Brown Power movements and the reperiodization of the civil rights movement, political histories of “law and order” politics, cultural approaches to masculinity and sexual violence, histories of labor and racial hierarchies, criminal justice studies, and prison sociologies.

inmate disorder and a favorable account of Texas prison management from the perspective of political science, see John DiIulio, *Governing Prisons: A Comparative Study of Correctional Management* (New York: Free Press, 1987); and David M. Horton and George R. Nielson, *Walking George: The Life of George John Beto and the Rise of the Modern Texas Prison System* (Denton, TX: University of North Texas Press, 2005).

This study places the prisoner rights movement squarely in the civil rights mobilizing and organizing tradition. In doing so, my study joins new scholarship that reperiodizes the Civil Rights era by extending the civil rights “legacy” past 1968 and well into the 1970s.²⁴ Recent studies of black and brown power movements have emphasized grass-roots organizing and discovered that a previous generation’s focus on leaders created a false split between civil rights workers and black power advocates.²⁵ Rather than accept the conventional periodization of a “heroic” civil right movement from 1954 to 1965 and a destructive and radical black power phase

²⁴ On the conceptualization of the “long civil rights movement” see, Jacquelyn Dowd Hall, “The Long Civil Rights Movement and the Political Uses of the Past” and Kevin Gaines, “The Historiography of the Struggle for Black Equality Since 1945,” in *A Companion to Post-1945 America*, 211-234; Peniel E. Joseph, “Waiting ‘Till the Midnight Hour: Reconceptualizing the Heroic Period of the Civil Rights Movement, 1954-1965,” *Souls* 2 (Spring 2000), 6-17. For work that considers the civil rights and black and brown power movements into the 1970s, see Peniel E. Joseph, ed. *The Black Power Movement: Rethinking the Civil Rights-Black Power Era* (New York: Routledge, 2006); Komozi Woodard, *A Nation Within a Nation: Amiri Baraka (Le Roi Jones) & Black Power Politics* (Chapel Hill: University of North Carolina Press, 1999); Nikhil Pal Singh, *Black is a Country: Race and the Unfinished Struggle for Democracy* (Cambridge, MA: The Harvard University Press, 2003); Ula Taylor, “Elijah Muhammad’s Nation of Islam: Separatism, Regendering and a Secular Approach to Black Power After Malcolm X (1965-1975)” and Johanna Fernandez, “Between Social Service Reform and Revolutionary Politics: The Young Lords, Late Sixties Radicalism, and Community Organizing in New York City,” in *Freedom North: Black Freedom Struggles Outside the South, 1940-1980*, eds. Jeanne F. Theoharis and Komozi Woodard (New York: Palgrave MacMillan, 2003); and Scott Brown, *Fighting for US: Maulana Karenga, the US Organization, and Black Cultural Nationalism* (New York: New York University Press, 2003).

²⁵ For recent work on grass roots organizing among Black Power advocates, see Timothy Tyson, *Blood Done Sign My Name: A True Story* (New York: Crown Publishers, 2004); Matthew J. Countryman, *Up South: Civil Rights and Black Power in Philadelphia* (Philadelphia: University of Pennsylvania Press, 2006); Komozi Woodard, “A Message from the Grassroots: The Black Power Experiment in Newark, New Jersey,” and Reynaldo Anderson, “Practical Internationalists: The Story of the Black Panther Party in Des Moines, Iowa,” in *Groundwork: Local Black Freedom Movements in America* (New York: New York University, 2005), ed. Jeanne Theoharis and Komozi Woodard, 77-96 and 282-299; and Rhonda Y. Williams, “Black Women, Urban Politics, and Engendering Black Power” in *The Black Power Movement: Rethinking the Civil Rights-Black Power Era*, ed. Peniel E. Joseph (New York: Routledge, 2006), 79-104.

from 1965 to 1968, these scholars have argued instead that the two movements share a similar trajectory, a longer history, and have always been closely intertwined. What is absent from the recent historiography on Black and Brown Power movements, however, is the relationship between prisons and civil rights. Although scholars have written about such imprisoned Black Power intellectuals as Malcolm X, Eldridge Cleaver, and George Jackson, few have studied how the civil rights and Black Power organizing traditions have shaped the struggle for prisoners' rights and the resulting legacy of racially disproportionate prisons.²⁶ An important exception is the work of Eric Cummins, whose study of George Jackson, the Black Guerilla Family, and the Black Muslims in California's prison system has criticized the New Left's embrace of prisoners as "authentic working-class heroes."²⁷ In his study of California's New Left and its alliance with the prisoners' rights movement, Cummins charged that such an alliance naively tied radical political hopes to outlaws and violence, and thus doomed the New Left to political irrelevancy and revolutionary fantasy.

My study of Texas offers a different interpretation. I argue that the legacy of the civil rights movement and the Black and Brown power movements can be found in a successful inter-racial prisoners' rights movement of the 1970s.²⁸ This

²⁶ The work of Angela Davis, however, remains an important exception. On Davis and her own struggles with imprisonment, see Bettina Aptheker, *The Morning Breaks: The Trial of Angela Davis* (New York: International Publishers, 1975); Angela Y. Davis, *Angela Davis: An Autobiography* (New York: International Publishers, 1988); Angela Y. Davis (and other political prisoners), *If They Come in the Morning* (New Rochelle, NY: The Third Press, 1971); and Joy James, *The Angela Y. Davis Reader* (Malden, Mass: Blackwell, 1998).

²⁷ Eric Cummins, *The Rise and Fall of California's Radical Prison Movement* (Stanford: Stanford University Press, 1994), ix.

²⁸ For work that considers inter-racial organizations in the context of civil rights rebellions, see Jeffrey O.G. Ogbar, *Black Power: Radical Politics and African American Identity*

movement focused its efforts on revolution within prison society and government, not on revolutionary fantasies of overthrowing the nation state. My study contributes to prior scholarship on Texas prison litigation by changing the focus from civil rights attorneys and the courtroom to prisoners and their struggle on the cell block.²⁹

(Baltimore: The Johns Hopkins University Press, 2004), Chapter 6; Laura Pulido, *Black, Brown, Yellow and Left: Radical Activism in Los Angeles* (Berkeley: University of California Press, 2006); Yohuru Williams, "Introductory Comment: White Tigers, Brown Berets, Black Panthers, Oh My!" in *In Search of the Black Panther Party*, edited by Jama Lazerow and Yohuru Williams (Durham, NC: Duke University Press, 2006); Joel Wilson, "Invisible Cages: Racialized Politics and the Alliance between the Panthers and the Peace and Freedom Party," in *In Search of the Black Panther Party*, edited by Jama Lazerow and Yohuru Williams (Durham, NC: Duke University Press, 2006); David Barber, "Leading the Vanguard: White New Leftists School the Panthers on Black Revolution," in *In Search of the Black Panther Party*, edited by Jama Lazerow and Yohuru Williams (Durham, NC: Duke University Press, 2006); Jeffrey O.G. Ogbar, "Brown Power to Brown People: Radical Ethnic Nationalism, the Black Panthers, and Latino Radicalism, 1967-1973," in *In Search of the Black Panther Party*, edited by Jama Lazerow and Yohuru Williams (Durham, NC: Duke University Press, 2006); Kevin A. Leonard, "In the Interest of All Races': African Americans and Interracial Cooperation in Los Angeles during and after World War II" in *Seeking El Dorado: African Americans in California*, ed. Lawrence de Graaf, Kevin Mulroy, and Quintard Taylor (Seattle: University of Washington Press, 2001), 309-341; Lauren Araiza, "For the Freedom of Other Men': Civil Rights, Black Power and the United Farm Workers, 1965-1973" (Ph.D. diss., University of California, Berkeley, 2006); Robert T. Chase, "Class Resurrection: The Poor People's Campaign of 1968 and Resurrection City," Vol. 40, *Essays in History*, University of Virginia, 1998; Gordon Mantler, "Black, Brown, and Poor: Martin Luther King Jr., The Poor People's Campaign and its Legacies," (Ph.D. diss. Duke University, 2008); and Thomas F. Jackson, *From Civil Rights to Human Rights: Martin Luther King, Jr. and the Struggle for Economic Justice* (Philadelphia: University of Pennsylvania, 2007).

²⁹ The literature on litigated Texas prison reform in the postwar period has approached the subject from a variety of valuable perspectives, but none of them tell the story of prison reform from the perspective of a social movement and in the context of inter-racial social and political organizing. On the litigation and its effects on the prison system from the perspective of the courts and attorneys involved in the cases, see Steve J. Martin and Sheldon Ekland-Olson, *Texas Prisons: The Walls Came Tumbling Down* (Austin, Texas: TexasMonthlyPress, 1989); Malcolm Feeley and Edward L. Rubin, *Judicial Policy Making and the Modern State: How the Courts Reform America's Prisons* (Cambridge: Cambridge University Press, 1998); and Frank R. Kermer, *William Wayne Justice: A Judicial Biography* (Austin, Texas: University of Texas Press, 1991). For a sociological account that offers the guard experience and the changing nature of inmate society from the perspective of criminologists, see Ben M. Crouch and James W. Marquart, *An Appeal to Justice: Litigated Reform of Texas Prisons* (Austin, TX.: University of Texas Press, 1989). For a critique of inmate disorder and a favorable account of Texas prison management from the perspective of political science, see John DiIulio, *Governing Prisons: A Comparative Study of Correctional*

Studying the prisoners' rights movement, however, means having to reckon with the fact that those who made demands for justice, humane treatment, and their constitutional rights were also criminals, some of them violent ones. Not all politicized prisoners entered jail as political prisoners, as Angela Davis did. By revealing the extent of the brutality, violence, and racial hierarchy that was behind the external success of Texas prisons, my dissertation shows why the prisoners' rights movement demands for humane treatment and constitutional rights were so urgent. As my work focuses on the conditions of confinement and internal prison struggles, I do not dwell on the convictions and prior crimes of inmates. Instead, I focus on the role that violence and radicalism played behind bars in the struggle for prisoners' rights. My work thus contributes to a growing body of literature that reassess the role of violence and radicalism in movements that demand social justice and confront racial hierarchies with philosophies of self defense, political assertion, and sometimes with physical force.³⁰

Management (New York: Free Press, 1987); and David M. Horton and George R. Nielson, *Walking George: The Life of George John Beto and the Rise of the Modern Texas Prison System* (Denton, TX: University of North Texas Press, 2005).

³⁰ Recent scholarship has questioned whether nonviolence was always the reigning philosophy behind the grass-roots organizations of the civil rights movement. New work considers the role of self defense as having deep roots in the American South's civil rights movement that stretches back before the urban riots and racial unrest that swept the nation after 1965. These studies have caused scholars to reevaluate the conventional dividing line between "nonviolent civil rights" and the supposed "violent" black power movement as a false dichotomy. An evaluation of how "self defense" tactics were intertwined with civil rights organizing shows the ways in which the civil rights movement and the black power movement were intertwined rather than having contradictory philosophies, strategies, and tactics. On the role of self defense and violence in civil rights and black power movements, see Timothy B. Tyson, *Radio Free Dixie: Robert F. Williams and the Roots of Black Power* (Chapel Hill: University of North Carolina Press, 1999); Lance E. Hill, *Deacons for Defense: Armed Resistance and the Civil Rights Movement* (Chapel Hill: University of North Carolina Press, 2004); and, Curtis Austin, *Up Against the Wall: Violence in the Making and Unmaking of the Black Panther Party* (Fayetteville: University of Arkansas Press, 2006).

The prison is a central feature of contemporary American politics and society, yet the historical development of post-World War II prison systems and their relationship to politics and the state has been little studied. I argue that the historiographical debate over the “rise and fall of the New Deal Order” requires historians to consider how political debates over prison reform and the struggle over prisoners’ rights contributed to the crisis of postwar liberalism.³¹ My study also contributes to new political histories of “Sunbelt” politics by introducing the prison and prison modernization as crucial elements of southern transformation and conservative politics in the post-World War II period.³² In doing so, my study aims

³¹ For studies that analyze ideological shifts in liberalism over the course of the 20th century, see Steve Fraser and Gary Gerstle, eds., *The Rise and Fall of the New Deal Order, 1930-1980* (Princeton, NJ: Princeton University Press, 1989); Alan Brinkley, *Liberalism and its Discontents* (Cambridge, Mass.: Harvard University Press, 1998); and, Gary Gerstle, “The Protean Character of American Liberalism,” *American Historical Review*, Volume 99, Issue 4 (Oct., 1994), 1043-1073. On the collapse of “liberalism” in the post-war period, Godfrey Hodgson, *America in Our Time: From World War II to Nixon What Happened and Why* (New York: Random House, 1978); Byrne Edsall with Mary D. Edsall, *Chain Reaction: The Impact of Race, Rights and Taxes on American Politics* (New York: Norton, 1991); Kenneth M. Dolbeare and Patricia Dolbeare, *American Ideologies: The Competing Political Beliefs of the 1970s*, 2d ed. (Chicago: Rand McNally and Co., 1973); Gary Wills, *Nixon Agonistes: The Crises of the Self-Made Man* (Boston: Houghton Mifflin Co., 1969); and, Theodore Lowi, *The End of Liberalism: Ideology, Policy, and the Crisis of Public Authority* (New York: W.W. Norton and Co., 1969).

³² On the post-war shift from the political powerbase of the northeast to the influential New South and Sunbelt and its ties to twentieth century conservatism, see Alan Brinkley, “The Problem of American Conservatism,” *The American Historical Review*, Vol. 99, Issue 2, April 1994, 409-424; Lisa McGirr, *Suburban Warriors: the Origins of the New American Right* (Princeton: Princeton University Press, 2001); Richard White, “*It’s Your Misfortune and None of My Own*”: A New History of the American West (Norman: University of Oklahoma Press, 1991); Matthew D. Lassiter, *The Silent Majority: Suburban Politics in the Sun-Belt South* (Princeton, N.J.: Princeton University Press, 2006); Kevin Kruse, *White Flight: Atlanta and the Making of Modern Conservatism* (Princeton, N.J.: Princeton University Press, 2005); Matthew Lassiter, “The Suburban Origins of ‘Color Blind’ Conservatism: Middle-Class Consciousness in the Charlotte Busing Crisis,” *Journal of Urban History* 30 (2004): 549-82; and, Joseph Crespino, *In Search of Another Country: Mississippi and the Conservative Counterrevolution* (Princeton: Princeton University Press, 2006).

to substantiate Charles Bright's contention "that there exists a deep interconnection between the constitution of the political realm and the construction of carceral regimes."³³ As my manuscript will show, the prison also functioned as an enforcer of traditional racial hierarchies, which resulted in what scholars David Theo Goldberg, Michael Omi, and Howard Winant have described as a "racial state."³⁴ Yet even as the prison maintained racial hierarchies, prisoners attempted to transform the prison's rigid enforcement of racial identities and segregation through inter-racial protest.³⁵

An excavation of prison society and an analysis of prison reform and models of prison management overturns prior historiography that has stressed the progressive and teleological advance of prison reform and penology. According to the progressive and neo-progressive narrative of prison reform, a collection of Enlightenment thinkers, Evangelical activists, and middle-class reformers demanded the reform of the prison in the aftermath of late-eighteenth century revolutions. These reformers considered public punishment of the body, including hanging,

³³ Charles Bright, *The Powers that Punish: Prison and Politics in the Era of the "Big House," 1920-1955* (Ann Arbor: University of Michigan Press, 1996). See also Jonathan Simon, *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (Oxford: Oxford University Press, 2007).

³⁴ For theoretical approaches to the ways in which the state has constructed racial power, see David Theo Goldberg, *The Racial State* (Massachusetts: The Blackwell Publishers, 2002); Michael Omi and Howard Winant, *Racial Formation in the United States: From the 1960s to the 2000s*, rev ed. (New York: Routledge, 1995) (first edition published 1986), 70-86.

³⁵ Barbara Jeane Field's masterful analysis of the ways in which slavery and confinement constructed racial identity has influenced my approach to the ways in which the prison similarly constructed racial ideologies, even as racial identity and power continued to go through historical transformations (such as the prisoners' rights movement or the rise of prison gangs). Barbara Jeane Fields, "Slavery, Race, and Ideology in the United States of America," *New Left Review*, 181 [1990], 85-118.

whipping, and the scaffold, as relics of English monarchical rule that were poorly suited to the new ideals of American democracy and liberalism. By the eve of the Civil War, reformers replaced corporal punishment with the penitentiary, curtailed hanging, and eliminated the public stockade. By the early twentieth century, penologists emphasized rehabilitation over punishment, and the preferred reformatory to the chain gang. The progressive and neo-progressive interpretation therefore stressed the teleological evolution of American prisons from corporal punishment in the colonial period, to the “enlightened” nineteenth century adoption of the humane penitentiary, to the rehabilitative reforms of progressive modernism in the early-to-mid twentieth century.³⁶ Works in the progressive and neo-progressive tradition, however, have tended to focus on prison reformers and to become too celebratory regarding the achievements of reform. What these works have ignored are the internal workings of prison and the stubborn resistance of these workings to reforms aimed at ending prison violence.

My work also reevaluates Michel Foucault’s contention that the modern prison state preferred social control to corporal punishment. Foucault demonstrated how the

³⁶ For works in the progressive and neo-progressive tradition, see Blake McKelvey, *American Prisons: A History of Good Intentions* (Montclair, N.J.: Patterson Smith, orig. pub. 1936, rev. ed. 1977); Orlando Lewis, *The Development of American Prisons and Prison Customs, 1776-1845* (Montclair, N.J.: Patterson Smith, 1967); Negley D. Teeters, *The Cradle of the Penitentiary: The Walnut Street Jail at Philadelphia, 1773-1835* (Philadelphia: Lippincott, 1935); W. David Lewis, *From Newgate to Dannemora: The Rise of the Penitentiary in New York, 1796-1848* (Ithaca, New York: Cornell University Press, 1965); and, Lawrence Friedman, *Crime and Punishment in American History* (New York: Basic Books, 1993). The only historical work on the federal prison system remains a Whiggish account of “conscience” over coercion, see Paul W. Keve, *Prisons and the American Conscience: A History of U.S. Federal Corrections* (Cabondale, Ill.: Southern Illinois University Press, 1991). Progressive accounts of the Texas prison system include, Donald R. Walker, *Penology for Profit: A History of the Texas Prison System, 1867-1912* (College Station: Texas A&M University Press, 1988).

rehabilitative prison instilled discipline through a “suspension of rights.” Beginning in the mid-eighteenth century, Foucault argued, Western society rejected corporal and public forms of punishment because they did not fit with the bourgeois and liberal ideal of representative government. When the rise of bourgeois liberalism in the eighteenth century demanded the abolition of corporal punishment, punishment became “an economy of suspended rights.”³⁹ The denial of individual rights and liberty, which bourgeois society considered as both a right and property, became the new form of punishment. Prison therefore restrained the body and confiscated liberty, but it did not utilize physical pain against the body. Instead, prison managers imposed control through their power over the inmates’ access to or denial of recreation, education, and even therapy - all the essential elements of the modernized and rehabilitative prison. Prison administrators controlled and regulated time and space, and relied on panoptical surveillance so that no moment of prison life was totally “free.” They also insisted on conformity, controlled and monitored sexual behavior, and accumulated knowledge about prisoners in an effort to make inmates internalize and reproduce bourgeois values. Foucault’s analysis revealed the failure of the “Enlightenment project” to engender true humanity in its social institutions. His work challenged the bourgeois and reformist hope that scientific knowledge would lead to enlightened institutions and humane discipline. “The true objective of the reform movement,” concluded Foucault, “was not so much to establish a new right to punish based on more equitable principles, as to set up a new ‘economy’ of the power to punish.” The purpose of prison reform was therefore “not to punish less,

³⁹ Foucault, *Discipline and Punish*, 11.

but to punish better.”⁴⁰ Foucault’s analysis of the birth of the prison is a philosophical treatise of immense significance that inspired a generation of social and cultural historians to reexamine “humane” efforts at reform.

What is absent from the Foucauldian model, however, is the ways in which patterns of violence administered by the state continued alongside the development of “social control” techniques. Historians have applied the Foucauldian critique to nineteenth century prisons, but in general the social control school among all disciplines was limited by its one-sided analysis of power relationships that over-emphasized the power of prison administrators over prisoners.⁴¹ Moreover, an overemphasis on the institutional perspective has caused the Foucauldian critique to overlook deeply embedded traditions of physical violence and corporal punishment that were not displaced by social control methods.⁴²

Even the revisionist themselves have conceded some overstatements. David Rothman’s *Conscience and Convenience: The Asylum and its Alternatives in*

⁴⁰ *Ibid.*, 80-81.

⁴¹ On the “discovery” of the penitentiary in the 19th century, see David J. Rothman, *Discovery of the Asylum: Social Order and Disorder in the New Republic* (New York: Little, Brown and Company, 1971); Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850*, New York, 1978); Michel Foucault, trans. Alan Sheridan, *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1995). For historical accounts that rely on the Foucaultian critique, see Michael Meranze, *Laboratories of Virtue: Punishment, Revolution, and Authority in Philadelphia* (Chapel Hill, N.C.: University of North Carolina Press, 1996); and, Alexander W. Pisciotta, *Benevolent Repression: Social Control and the American Reformatory-Prison* (New York: New York University Press, 1994).

⁴² A notable exception among historians of social control is Andrew Pisciotta, whose history of the Elmira prison, its warden Zebulon Brockway, and the early twentieth century reformatory movement shows the way in which social control theories operated in tandem with corporal punishment. For a critical assessment of the Elmira Reformatory and Zebulon Brockway, see Pisciotta, *Benevolent Repression*.

Progressive America eschewed Foucault's theory of punishment and argued that historians must "examine what happened when programs were translated into practice. Then the historian parts company with the ideologue."⁵¹ In *Conscience and Convenience*, Rothman examined Progressive efforts to produce individualized assessments for prisoner evaluation and parole, an investigative effort that played on the muckraking "conscience" of reformers who hoped to improve the prison by treating prisoners as individuals, rather than social problems. The Progressive reform effort was thwarted, however, because of the "convenience" of institutional bureaucracy and state legislators who were unable and unwilling to carry out and pay for the costly and time intensive reforms. Although *Conscience and Convenience* failed to provide a deeper cultural analysis of Progressive motivations, it does warn historians not to interpret penal institutions simply from discourses. As Michael Ignatieff acknowledged, the revisionist interpretation, including his own work, contained "three basic misconceptions: that the state enjoys a monopoly over punitive regulation of behavior in society, that its moral authority and practical power are the binding sources of social order, and that all social relations can be described in the language of subordination."⁵² Moreover, the Foucauldian approach exaggerated the one-sided power relationship of prison administrators over inmates to such an extent that opportunities to reveal the shifting boundaries of power relationships and prisoner agency were lost.

⁵¹ David J. Rothman, *Conscience and Convenience: The Asylum and its Alternatives in Progressive America* (New York: Aldine de Gruyter, 1980).

⁵² Michael Ignatieff, "State, Civil Society and Total Institutions: A Critique of Recent Social Histories of Punishment," in Stanley Cohen and Andrew Scull, eds. *Social Control and the State* (New York: St. Martin's Press, 1983), 75-105.

Equally important, the advent of the Foucauldian thesis has split historians into two separate traditions of prison historiography that are limited by geographic and ideological boundaries.⁵³ Historians interested in discovering methods of social control focus almost exclusively on the prison systems of the northeast and Midwest. They ignore, much to their folly, the more corporal penal institutions of the South and southwest, a prison system that complicates and contradicts Foucault's thesis of the modern movement away from corporal punishment.⁵⁴ These social control historians, then, have failed to offer a comprehensive portrait of prison development in America. Historical discussions of race are also noticeably absent from studies of the northeastern prison, an acute problem that leaves the twentieth century dilemma of disproportionately black inmates without historical explanation.⁵⁵ Some of those who study northeast prisons make the unfortunate mistake of mirroring the viewpoint among penologists that the southern prison system should be dismissed as "backward" and inefficient. As this study will show, Texas did indeed draw upon its

⁵³ An exception to the geographic and ideological divide among historians of the prison is Michael Hindus's *Prison and Plantation: Crime, Justice, and Authority in Massachusetts and South Carolina, 1767-1878*. Michael Hindus, *Prison and Plantation: Crime, Justice, and Authority in Massachusetts and South Carolina, 1767-1878* (Chapel Hill, University of North Carolina Press, 1980).

⁵⁴ For an account of theoretical approaches that apply only to the northeastern prison, see Mark Colvin, "Applying Theories to the Rise and Consolidation of the Penitentiary in the Northeast," in *Penitentiaries, Reformatories, and Chain Gangs: Social Theory and the History of Punishment in Nineteenth-Century America* (New York: St. Martin's Press, 1997). For an analysis of the societal crisis that led to New York's adoption of the Auburn prison system as a measure of social control, see David J. Rothman, *Discovery of the Asylum: Social Order and Disorder in the New Republic* (New York: Little, Brown and Company, 1971).

⁵⁵ Historians of the prison have only recently reconsidered the issue of race and imprisonment, see Loic Wacquant, "From Slavery to Mass Incarceration: Rethinking the 'Race Question' in the U.S.," *New Left Review*, 13, Jan-Feb 2002.

“backwards” slave heritage and plantation agriculture. But it also fashioned its own “modern” regime of power that rigidly controlled prison society and greatly contributed to the system’s economic success through much of the twentieth century.

Historians of the New South, meanwhile, focus on the rise of convict labor and the political economy of the chain gang, without taking advantage of Foucauldian insights. The works of Edward Ayers, Alex Lichtenstein, David Oshinsky, and Matthew Mancini have shown the ways in which systems of racial domination can work in tandem with modernized economies.⁵⁶ The appeal of recent southern historiography for my own work is the collective demonstration that race-based prison labor was compatible with industrial development and a modernized economy.

⁵⁶ The conventional narrative of the southern prison is that the Civil War rendered the penitentiary system broken and financially ruined. The southern prison system was built to accommodate only white criminals, and the inclusion of black convicts, particularly during the racial turmoil of Reconstruction and Redemption, created uncontrollable prison populations. Beginning in the 1870s, most states fell back on their heritage of coerced labor, and leased convicts to private contractors in order to maintain racial domination and alleviate economic strain. Prior historiography concerning the New South concluded that the turn toward convict leasing left the southern economy mired in an inefficient tradition of plantation agriculture. For the conventional narrative of convict leasing, see C. Vann Woodward, *Origins of the New South, 1877-1913* (Baton Rouge, Louisiana: Louisiana University Press, 1951); Gavin Wright *Old South, New South: Revolutions in the Southern Economy Since the Civil War* (New York: Basic Books, 1986); Pete Daniel, *Breaking the Land: The Transformation of Cotton, Tobacco, and Rice Cultures Since 1880* (Urbana, Ill.: Illinois University Press, 1985); and, Mark T. Carleton, *Politics and Punishment: The History of the Louisiana State Penal System* (Louisiana: State University Press, 1971).

For the “revisionist” approach in southern historiography that sees the development of the convict lease as part of the “New South” modernization project, see Edward L. Ayers, *Vengeance and Justice: Crime and Punishment in the 19th-Century American South* (New York: Oxford University Press, 1984); Alex Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (New York: Verso, 1996); Matthew J. Mancini, *One Dies, Get Another: Convict Leasing in the American South, 1866-1928* (Columbia: University of South Carolina Press, 1996); Martha A. Myers, *Race, Labor and Punishment in the New South* (Columbus: Ohio State University Press, 1998); Karen A. Shapiro, *A New South Rebellion: The Battle Against Convict Labor in the Tennessee Coalfields, 1871-1896* (Chapel Hill: University of North Carolina Press, 1998); and, David Oshinsky, *“Worse than Slavery”: Parchman Farm and the Ordeal of Jim Crow Justice* (New York: Free Press, 1996).

Indeed, the dissertations of Paul Lucko and Robert Reps Perkinson have staked ambitious claims concerning the centrality of southern prisons to the nation's penological development. Both Lucko and Perkinson have offered new perspectives and insights on the history of the Texas prison system from Reconstruction through Progressivism. Perkinson, in particular, has concluded provocatively that "the birth of the Texas prison empire" suggests that the "genesis in slavery as opposed to Jacksonian Democracy...better explains the social function of the modern prison, and it provides a more credible base for analyzing its post-civil rights expansion and punitive retrenchment."⁵⁷ This study shares Perkinson's conclusion that the Texas prison model challenged the northern rehabilitative ideal during the post-World War period, but my emphasis on the prisoners' rights movement suggests that the court ordered intervention of the 1970s and 1980s created a post-civil rights prison system that fashioned a new carceral regime unlike past traditions that drew upon either the northern rehabilitative penitentiary or the southern plantation prison farm.

During the 1970s, New Left criminologists attempted to account for prison violence while utilizing Foucault's "social control" thesis to challenge the idea of the benevolent institution.⁵⁸ These criminologists argued that the rehabilitative reforms

⁵⁷ Robert Reps Perkinson, "The Birth of the Texas Prison Empire, 1865-1915" (Ph.D. diss., Yale University, 2001), 18. See, also, Paul Lucko, "Prison Farms, Walls, and Society: Punishment and Politics in Texas, 1848-1910 (Ph.D. diss., University of Texas at Austin, 1999).

⁵⁸ For the various arguments over the meaning of "social control" and the historiographical struggle among revisionists and their critics, see Stanley Cohen and Andrew Scull, eds. *Social Control and the State* (New York: St. Martin's Press, 1983); and, Thomas G. Blomberg and Stanley Cohen, *Punishment and Social Control* (New York: Aldine Gruyter, 2003). See also, Robert P. Weiss, "Humanitarianism, Labour Exploitation, or Social Control? A Critical Survey of Theory and Research on the Origin and Development of

of the 1950s and 1960s unintentionally expanded the power of the state into social and cultural areas of prison life that were previously unmonitored. While the aims of reformers might have been to lessen the disciplinary nature of the prison, the result was the expansion of state-control over the day-to-day life of the prisoner.⁵⁹ James Jacobs, a sociologist, further complicated the Foucauldian critique with his provocative conclusion that inmates actually yearned for authoritarian practices. In his study of the Illinois Stateville Penitentiary during the post-war period, Jacobs argued that the shift to the rehabilitative ideal and the rising tide of racial unrest and demands for civil rights caused prisoners to feel more “secure” under the authoritarian regimes of the 1940s than they had under the “liberal” prison of the post-war period. By viewing inmate anxiety over “security” as the principal cause of the Stateville riot, Jacobs turned social control theory on its head and argued that rehabilitative reform led to riot and disorder.⁶⁰ His work contributed to sociological explanations for prison violence and misrule that emphasize internal economies as central to good order, discipline, and control.

Prisons,” in *Social History* 12(3), 1987, 331-50; Paul Takagi, “The Correctional System,” in *Crime and Social Justice* 2, 1974; Alexander W. Pisciotta, “Corrections, Society, and Social Control in America: A Metahistorical Review of the Literature,” in *Criminal Justice History* 2, 1981, 109-30; and, Jonathan Simon, “The ‘Society of Captives’ in the Era of Hyper-Incarceration,” in *Theoretical Criminology*, 4(3), 2000, 285-308.

⁵⁹ For the New Left critique of the prison system among criminologists, see Stanley Cohen, *Visions of Social Control: Crime, Punishment, and Classification* (Cambridge, England: Polity Press, 1985); Jonathan Simon, *Poor Discipline: Parole and Social Control of the Underclass, 1890-1900* (Chicago: University of Chicago, 1993); Tony Platt and Paul Takagi, eds. *Punishment and Penal Discipline: Essays on the Prison and the Prisoners’ Movement* (Berkeley, CA: 1980); and, Jessica Mitford, *Kind and Unusual Punishment: The Prison Business* (New York: Alfred A. Knopf, Inc., 1973).

⁶⁰ James B. Jacobs, *Stateville: The Penitentiary in Mass Society* (Chicago: University of Chicago Press, 1977).

My work draws on such sociological studies of inmate society, even as I offer different conclusions. Historians have too often studied reformers and prison managers, but not prisoners themselves. Sociologists, on the other hand, studied the internal inmate society without showing how that society changed over time.⁶¹ By offering studies of individual prisons, sociologists have concluded that internal economies and an internal system of incentives and deterrents maintained stability and order in prison society. My study contributes to sociological literature by reconsidering the sociological claim that internal economies contribute to prison order and stability. By revealing internal economies as tools of administrative power, my study reveals how internal order was based on racial hierarchy and sexual violence.

Historian Larry Goldsmith has charged that too often scholars of the prison have adopted a “top down,” or “outside in” approach that removed guards and prisoners themselves from the larger struggle over prison life. Goldsmith called for a new perspective that historicizes the sociological approach towards inmate culture and views the prison “from the inside out.” Although still an emerging topic, recent

⁶¹ For the sociological model of inmate society, see Gresham M. Sykes, “The Structural-Functional Perspective on Imprisonment,” in Stanley Cohen, Sheldon L. Messinger, and Thomas G. Blomberg, eds., *Punishment and Social Control: Essays in Honor of Sheldon L. Messinger* (New York: Aldine de Gruyter, 1995); Gresham Sykes, *Society of Captives: A Study of a Maximum Security Prison* (Princeton, NJ: Princeton University Press, 1958); Richard McCleery, “Communication Systems as Bases of Systems of Authority and Power,” in Richard A. Cloward et al., *Theoretical Studies in Social Organization of the Prison* (New York: Social Science Research Council, 1960); Donald Clemmer, *The Prison Community* (Boston: The Christopher Publishing House, 1940); Donald Ray Cressey, *The Prison: Studies in Institutional Organization and Change* (New York: Holt, Rinehardt and Winston, 1961); and, Richard Cloward, *Theoretical Studies in Social Organization of the Prison* (New York: Social Science Research Council, 1960).

scholarship has taken up Goldsmith's call for a "post-revisionist" critique.⁶² Post-revisionists refuted the Foucauldian idea that prison reform amounted to social coercion and cultural domination. Reformers did not single-handedly propose and implement changes in prison management and disciplinary practices. Rather, prison reform was often the result of a historically contingent and negotiated struggle among a variety of actors, including prisoners, guards, reformers, custodial managers, and wardens. This study joins the post-revisionist effort to provide historical context to the sociological model of inmate society. It complements a number of recent dissertations that have turned the focus away from reformers and toward the prisoners themselves.⁶³ By studying prisons "from the outside in" and by offering the voice of inmates, my study contributes to recent scholarship that reveals how prisons have

⁶² Larry Goldsmith, "History from the Inside Out: Prison Life in Nineteenth-Century Massachusetts," *Journal of Social History* 31 (Fall 1997): 109-1125. For recent published work that has emphasized the experience and voice of prisoners, see Eric Cummins, *The Rise and Fall of California's Radical Prison Movement* (Stanford, CA: Stanford University Press, 1994); Milfred C. Fierce, *Slavery Revisited: Blacks and the Southern Convict Lease System, 1865-1933* (New York: Africana Studies Research Center, 1994); Mary Ellen Curtin, *Black Prisoners and their World: Alabama, 1865-1900* (Charlottesville: University Press of Virginia, 2000); Rebecca McLennan, "Punishment's 'Square Deal': Prisoners and Their Keepers in 1920s New York," *Journal of Urban History*, Vol. 29, No. 5, July 2003; and Rebecca McLennan, *The Crisis of Imprisonment: Protest, Politics, and the Making of the Penal State, 1776-1941* (Cambridge, NY: Cambridge University Press, 2008).

⁶³ Recent dissertations, in particular, have adopted the "inside out" approach. See, Cheryl Deloris Hicks, "Confined to Womanhood: Women, Prisons, and Race in the State of New York, 1890—1935" (PhD diss., Princeton University, 1999); Robert Reps Perkinson, "The Birth of the Texas Prison Empire, 1865-1915" (Ph.D. diss., Yale University, 2001); Ethan Blue, "Hard Time in the New Deal: The Cultures of Punishment in Texas and California in the 1930s," (University of Texas, PhD diss., 2004); Volker Janssen, "Convict Labor, Civic Welfare: Rehabilitation in California's Prisons, 1941-1971," (University of California, San Diego, PhD Diss., 2005); Heather Jane McCarty, "From Con-Boss to Gang Lord: The Transformation of Social Relations in California Prisons, 1943-1983," (University of California, Berkeley, PhD diss., 2004); and, Rebecca McLennan, "Citizens and Criminals: The Rise of the American Carceral State, 1890-1935" (PhD diss., Columbia University, 1999).

institutionalized violence and racial hierarchy. An analysis of how inmates responded to such violence also reveals the role that prisoners played in political debates over humane treatment and prison growth.

Chapter Summaries and a Note on Sources and Methodology

I begin my study in the immediate post-World War II period when Texas launched the nation's most expensive and largest reform program in the midst of a postwar prison crisis. As the nation experienced a postwar crime wave, southern prison systems looked to northern penologists to help them modernize southern punishment to make way for a "New South." Prison reformers developed a reform plan that reshaped Texas prisons by moving inmates from dormitories to newly constructed cell blocks. I argue that sexual anxiety over prison homosexuality motivated the movement from prison farms to cell blocks. I conclude that prison reformers developed "strategies of containment" that they hoped would control homosexuality and secure the prison through spatial isolation and social quarantine. In their quest to modernize, however, southern prison systems developed their own answers to prison management that blended low-cost business management with an emphasis on labor, corporal punishment, and inmate discipline. The postwar prison crisis, the reform vision, and the ways in which the successful reform plan was reshaped as a practical business mission are the subjects of Chapters One and Two of this study.

The passage of the reform program inaugurated within Texas prisons a modernization project that served as a national model for penal management from the late 1940s to the late 1970s. During this three-decade “golden age,” Texas administrators fashioned a guiding philosophy of prison management known as “control penology” that stressed prison labor, order, low cost government, and economic self sufficiency. I argue that prison managers, politicians, and penologists applied a metric of success based on a business model. This chapter introduces the prison as an important site for southern modernization and for postwar claims of a “Sunbelt” southern success story. Although Texas prisons were heralded as a model for southern prison systems looking to modernize and achieve self sufficient prisons, prisoners found ways to resist the control penology model and the arduous work regime. Texas’s control penology philosophy and the response it generated from inmates is the subject of Chapter Three.

Chapter Four contrasts with the first three chapters by showing how power operated within the internal prison society of male prisons during the heyday of control penology.⁶⁵ Drawing from oral histories, court-ordered interviews, private collections of prisoners, the working papers of the Joint Committee on Prison

⁶⁵ My work focuses on male prisoners and not female prisoners. The subject of women in prison is increasingly important as they have represented the fastest growing segment of the nation’s prison population since the mid-1990s. But during my period of study, their numbers were few – less than 300 women prisoners in the immediate postwar period and fewer than a thousand by the early 1980s. More important than numbers, however, is the ways in which my study explores prison society and culture as means to understand how power operated in prison and how such exertion of power shaped the prisoners’ rights movement. My study explores the male internal inmate society and its reliance on masculine notions of rough respectability and sexual violence as a means to enforce a power hierarchy. Female prison society in Texas operated quite differently than male prison society and it deserves more study than my own work could provide.

Reform, and the *Ruiz* court room testimony, this chapter takes the reader past prison walls to provide an intimate look at prison society. I argue that the external success of Texas prison management was due to the building tender system in which inmates acted as guards, who maintained inmate control at low cost. The price of the building tender system, however, was the welfare and humanity of the prisoners themselves. The building tender system was a hierarchical regime that constituted inmate society and shaped prison culture. It was a system of violence and domination that relied upon the economic incentives and deterrents of an internal prison economy, acts of sexual violence, and the power of racial hierarchy and brute physical force to maintain control, order, and discipline. It created a vicious sex trade in which building tenders were given the tacit approval from the prison administration to use their power to rape other inmates and engage in the buying and selling of inmate bodies as a sexual commodity that signified cultural standing and societal power. Chapter Four describes the divided nature of internal prison government between building tenders and other inmates, the internal prison economy, and the role that prison sexuality and violence played in maintaining internal power structures. I conclude that sexual violence and the cultural trauma from the ever present threat of prison rape served as a catalyst for inmate politicization and the prisoners' rights movement.

While the first four chapters weigh the external reputation of Texas prisons against its internal reality, the second half of the study shows how these contrasting narratives collided when inmates developed a prison-made civil rights movement. Taking prison systems to trial was a relatively new tactic for inmate activists because

until the 1960s most courts denied hearing court-room challenges from prisoners who were legally consigned as merely “slaves of the state.”⁶⁶ Beginning in the mid-1960s, however, the nation redefined the century-old legal tradition that federal courts employ a “hands off” approach when considering inmate complaints decrying the inhumanity and unconstitutionality of state-run prison systems. Texas inmates eagerly seized on this new opportunity and they placed the Texas state prison system in the very center of this national debate over prisoners’ rights and the role of the federal court in the administration of humane and constitutional prison systems.

Chapters Five and Six examine the origins of the prisoners’ rights movement and its development into a mass movement. Chapter Five tells of the struggle for social justice through the individual stories of inmate Fred Cruz, who taught himself the law and became the state’s leading voice for prisoners’ rights, and his relationship with his attorney Frances Jalet, who championed prisoners’ rights through a series of court lawsuits that opened the door to federal intervention. It analyses the legal and political struggle between the inmates’ claims of inhumanity and unconstitutionality against the prison administration’s claim that Texas had a model prison system that the federal judiciary should leave untouched. Chapter Six analyzes the political opportunities for reform in a post-civil rights era when newly elected African American politicians made common cause with the prisoners’ rights movement. It also considers the alliance of these post-civil rights politicians with several civil rights and black power veterans whose political and organizing activities eventually led to

⁶⁶ *Ruffin v. Commonwealth*, 62 Va. 790 (1871). The “hands off doctrine” stated that courts were “without power to supervise prison administration or to interfere with ordinary prison rules or regulations.” As ruled in, *Banning v. Looney*, 213 F. 2nd 771 (10 Cir. 1954).

convictions and prison terms. When confronted by the violent and brutal prison regime, these inmates continued their civil rights organizing and mobilizing activities behind prison bars as they organized their fellow inmates for what became a two-decade long struggle for prisoners' rights. Despite a momentary hope for political compromise, Chapter Six demonstrates the limitations of legislative reform when confronted by an inmate hostage crisis. It therefore highlights the difficulty of reforming prison systems through the state legislature and politics, which were susceptible to the whim of changing public opinion and individual acts of sensational violence.

Chapter Seven analyzes the political discourse of inmate resistance, mobilization, and organization. It considers how the prisoners earned the attention of the federal court by constructing an alternative narrative to the prison system's claim of modernization and a business success story. Through acts of self defense, thwarted riots, political organizing, a massive letter writing campaign, and an eventual system-wide work strike, an inter-racial movement of inmates opposed the modernization narrative with a slave narrative that attempted to persuade the public that Texas prisons were nothing less than an example of 20th century slavery. When the legislature failed to enact meaningful reform, prisoners turned to the federal court to seek relief from what they charged was a brutal and violent prison regime. The result of the prisoners' rights movement in Texas was *Ruiz v. Estelle*, which placed the entire Texas prison system on trial for unconstitutional practices. Chapter Seven places inmates and the prisoners' rights movement at center stage in the unfolding legal and political drama surrounding the *Ruiz* case. When the federal court declared

Texas prisons unconstitutional in the 1980 *Ruiz* decision, the state responded with intransigence and denial, which resulted in a decade-long conflict between the state government and the federal judiciary. By elevating the voice of the inmates themselves to the nation-wide struggle over how the state should redefine prisoners' rights, this chapter places the inmate voice squarely in the national debate over the power of the judiciary to intervene in state politics and take control of state-level institutions.

Chapter Eight traces the origins of the massive post-1980 prison growth to the struggle over the *Ruiz* decision and the development of "law and order" politics. This final chapter explores racial unrest, the unprecedented prison expansion program, and the ways in which the struggle over the prisoners' rights movement contributed to prison growth. I conclude that the state's eventual compromise to the *Ruiz* litigation and the two-decade long struggle over prisoners' rights in Texas created a new and greatly expanded prison regime that once again made the Texas prison system as a model and leader in American imprisonment.

My study pulls together a rich and wide array of sources, many of them privately held and never used in the study of prisons. These include: inmate writings and diaries; legal briefs and affidavits; papers of governors, prison administrators, civil rights attorneys, and state senators; courtroom testimony; unpublished working papers of a state legislative committee; African American prison work songs; and, my own oral histories of over thirty-five inmates, reformers, politicians, and prison administrators. The oral histories that I conducted allowed me to visit the Texas prison system, spend time within its walls, and interview the inmates who created

within the prison a social and political upheaval. Although oral histories are sometimes criticized as being susceptible to the whims of memory and the dangers of romanticization, they remain important sources to document those on the fringe of society whose stories and voices are often overlooked by traditional archival documentation.⁶⁷ Moreover, the *Ruiz* case generated over one hundred inmate testimonies that corroborated many of my oral histories. Finally, in an effort to document prison abuse, the inmates themselves left a paper trail of letters, affidavits, and depositions that they sent to prison activists and state politicians. The papers of governors and state politicians have archived and preserved many of these letters. In other cases, my work was informed by private sources and the families of inmates who shared private letters, writings, poetry, and the unpublished memoir of David Ruiz, whose lawsuit overturned the Texas prison system. Through a careful analysis

⁶⁷ For critical assessments of the problems that historians of oral history face when separating memory from history, see Paul Thompson, *The Voice of the Past: Oral History*, Third Edition (Oxford: Oxford University Press, 2000), esp. R.J. Grele, "A Movement without Aim: Methodological and Theoretical Problems in Oral History," chapter 4; A. Portelli, "What Makes Oral History Different," chapter 6; and the Popular Memory Group, "Popular Memory: Theory and Politics," chapter 7. See also, Elinor A. Maze, *Memory Theory: Personal and Social* and Sherna Berger Gluck, "Narrative Theory," in *Handbook of Oral History*, eds. Thomas L. Charlton, Lois E. Myers, and Rebecca Sharpless (Lanham, MD: Altamira Press, 2006).

On oral history as a social movement to document those often ignored by traditional methods of historical documentation, see Robert Perks and Alistair Thompson, eds., *The Oral History Reader* (New York: Routledge, 1998), esp. J. Bornat, "Oral History as a Social Movement," chapter 16; and, Perks and Thomson, eds. *The Oral History Reader*, esp. S. Schragger, "What is Social in Oral History," chapter 24. On the value of oral histories for criminologists and those studying criminal justice see John H. Laub, "Talking About Crime: Oral History in Criminology and Criminal Justice," *Oral History Review*, 12 (1984), 29-42.

of these sources, I am able to bring together the political debate over prison reform with the hidden history of sexual violence and exchange within prison society.

Within Texas prisons, the use of racial epithets was designed to uphold racial hierarchies and remind inmates of their subservient condition. I do not refrain from using the rough and sometimes crude language of the prison because racial epithets established relations of power and authority. Guards and prison authorities used racial language to belittle prisoners, while inmates used similar language when they attempted to confront the power of the prison. Texas inmates came from a diverse border state, and they maintained cultural, ethnic, and racial heritages that went beyond the prison system's simple classification system of "White," "Black," and "Mexican." In my own terminology, I employ African American and black interchangeably to discuss inmates of African descent. Similarly, I use the word Latino to discuss inmates with a Central or Latin American heritage. Anglo inmates are referred to simply as white, although my study does show the ways in which even this prison racial classification was sometimes contested. In my explication of internal inmate society and culture, I depict some graphic instances of rape and sexual violence. Although these stories may sometimes make for difficult reading, I believe that only direct appraisals of prison society can fully convey the power of the prison and how inmates experienced the reality of prison life.

Ultimately, this dissertation analyses the failure of reform. In the second half of the twentieth century, prison reform in Texas failed twice, once in the 1940s and again in the 1970s, but for very different reasons. In the late-1940s prison reform resulted in an economically productive and controlled system but failed to address

power hierarchies within prison society. The building tender system not only persisted but intensified during these years. It was the centerpiece of inmate culture, racial hierarchy, internal economy, and sexual domination. During the 1970s, an inter-racial movement of inmates and their external allies in civil rights organizations, the state legislature, and the court advanced a new round of prison reforms centered precisely on upending this abusive building tender system. But the inmates' and reformers' attempt to humanize the internal life of prisons was short lived, its achievements undone by a vastly expanding prison system that resulted in increased levels of inmate violence and gang organization that turned inter-racial cooperation into racial balkanization and violent competition. Both the 1940s and the 1970s attempt at reform failed to stem the persistence of violence that seemed to cling to the prison and to mark the very nature of American imprisonment.

CHAPTER 1.

“THE WORST PRISON SYSTEM OF ANY STATE IN THE NATION:

THE POSTWAR PRISON CRISIS AND THE REFORM VISION, 1941-1947”

Alongside the new penitentiaries, built quickly in response to the public’s desire, the old prison remained and housed a great number of the guilty. These seemed to become more unhealthy and more corrupting at the same rate as the new ones became healthy and devoted to reform. This double effect is easily understood: the majority, preoccupied with the idea of founding a new establishment, had forgotten the already existing ones. Everybody’s attention was turned away from the matter that no longer held their master’s, and supervision ceased. The salutary bonds of discipline were first stretched and then broken. And beside some prison that stood as a durable monument to the gentleness and enlightenment of our age, there was a dungeon recalling the barbarities of the Middle Ages.

-- Alexis de Tocqueville, *Democracy in America*

Don’t nobody know how much hell a man catch back in this lost valley. When I was leavin’ the Walls a man shook hands with me. He said, “Well, friend, where you goin’, I don’t go much.” That was Mr. Jesus Christ shook hands with me. This place was one lost valley. People with no understandin’, don’t know what understandin’ is. They think a man is a mule, don’t ever get tired. But I done some days I’d sooner been dead in hell with the wicked than hear that damned big bell ring. They’d make you go ahead on from sun to sun.

-- Anonymous Inmate of the Texas Prison System recorded in 1964, *Wake Up Dead Man: African American Worksongs from Texas Prisons*

In 1947, Marvin Brazer, a 17 year-old prisoner held at the Sugarland Prison Farm just outside of Houston, Texas, lay nude in his unlit solitary cell in “which there was no light and inadequate air.” A car thief from Dallas with a two-year sentence, Brazer was not a violent offender and had committed no disciplinary offense. Upon his arrival at the Texas prison system, Brazer was sent to the Darrington Farm, but after his protestations that his life was in danger there, the prison officials moved him to the Sugarland prison farm. Until 1947, most inmates of the Texas Prison System lived in dormitories and prison farms where they labored in cotton fields. The soil there was rich from the nutrients left by the wide swath of the Bravos and Trinity rivers, what inmates and prison administrators referred to as “the Bottoms” riverbed. Sugarland was also a prison farm where the prison administration housed inmates in open dormitories called the “tank.” When Brazer first entered the Sugarland “tank,” another inmate approached him with a knife in hand and asked Brazer if he “was going to be good to him tonight.” When Brazer denied his request, the other inmate told Brazer that he would sexually submit or be killed. In fear for his life, Brazer refused to return to the tank after dinner, causing E.F. Brewer, the convict keeper of the tank, to beat him. Desperate, Brazer asked “to be put in solitary confinement” to protect him from “those men abusing” him “in the form of sodomy” and even killing him.¹¹⁴ The fact that Brazer could find neither safety nor protection from the “convict keeper” shows that no authority, neither guards nor convict keepers, would insure that inmates were safe from rape and brutality.

¹¹⁴ Legislative Committee on Investigation of State Penitentiaries and the Farm System, Report on Texas Prisons, Beauford Jester papers, Texas State Library and Archives, Austin, Texas, (hereafter cited as Jester papers, TSLA), Box 4-14/113.

Brazer's harrowing tale highlights how the Texas prison system faced a postwar crisis centered on problems associated with the dormitory lifestyle, particularly sexual violence and a brutal guard force. Carceral institutions, whether they are juvenile reformatorys, insane asylums, or penitentiaries, tend to follow a repeated pattern of crisis, reform, and retrenchment in which politicians and citizen groups hope to find the lasting cure to the ills of incarceration. Between 1910 and 1950, Texas prison had four such cycles: the progressive campaign to successfully end convict lease in 1910; the failed effort to halt the whipping of convicts during the Oscar B. Colquitt (1911-1915) gubernatorial administration; and, the failed citizen effort during governor Dan Moody's administration (1927-1931) to transform Texas prison farms from the plantation system to a model that more closely resembled the northeast rehabilitative and reformatory prison.¹¹⁵ The onset of the Second World War caused the prison system to lurch into yet another period of crisis as the prison system became more violent, less productive, and unable to retain qualified personnel.

¹¹⁵ For the effort to eliminate the "bat" during the Colquitt Administration, see Paul Lucko, "The Governor and the Bat: Prison Reform during the Oscar B. Colquitt Administration," *Southwestern Historical Quarterly*, 2003 106(3): 396-417. On the effort to bring progressive-era "New Penology" to Texas, see Paul Lucko, "A Missed Opportunity: Texas Prison Reform during the Dan Moody Administration, 1927-1931," *Southwestern Quarterly*, January 2003, 397-417. For an interpretation that emphasizes how racialized labor scuttled progressive prison reform, see Theresa R. Jach, "Reform versus Reality in the Progressive Era Texas Prison," *Journal of the Gilded Age and Progressive Era* 4:1 (January 2005). On the anti-convict lease movement, see Donald Walker, *Penology for Profit: A History of the Texas Prison System, 1867-1912* (College Station: Texas A&M University Press, 1988); and, Robert Reps Perkinson, "The Birth of the Texas Prison Empire, 1865-1915" (Ph.D. diss., Yale University, 2001), 172-226.

This chapter explores how the onset of World War II contributed to the prison crisis of the 1940s. The chapter places the prison crisis in the context of the prison system's slave heritage and the ways in which prison administrators relied on corporal punishment to enforce order in the fields and satisfy the capricious whims of violent guards. In discussing the system's slave heritage, it considers how a racialized classification scheme developed racial hierarchies that determined the prisoners' housing and labor. Despite the prison administrators' emphasis on prison labor and self sufficiency, the prisons were largely inefficient and operated at a financial loss. Locked into a brutal and violent prison system, forlorn prisoners increasingly attempted escape and engaged in desperate acts of self mutilation.

In the midst of its prison crisis, Texas called on Austin MacCormick, a northern penologist who was drawn from the ranks of a rising class of experts who were steeped in what Ellen Herman has termed the postwar period's "romance of American psychology."¹¹⁶ The onset of the Second World War and the military's reliance on psychologists in the fields of recruitment, interrogation, morale, and intelligence created a lasting alliance between the state and psychological experts in which psychological concepts and expertise became accepted practices in postwar policy making and the broader political culture. Social scientists, in particular,

¹¹⁶ On the "rise of experts" and their use of psychological diagnoses for social problems during the postwar period, see Ellen Herman, *The Romance of American Psychology: Political Culture in the Age of Experts* (Berkeley: University of California Press, 1996); James H. Capshew, *Psychologists on the March: Science, Practice, and Professional Identity in America, 1929-1969* (Cambridge and New York: Cambridge University Press, 1999). On the rise of experts more generally and their centrality to the national security state of the postwar era, see Michael A. Bernstein and Allen Hunter, "The Cold War and Expert Knowledge: New Essays on the History of the National Security State," *Radical History Review* 63(2), Fall 1995.

employed diagnoses, practices, and concepts from clinical psychology and applied them to wider social problems and public policy solutions. The field of penology, particularly among northeastern penologists, had been influenced by medical concepts and psychology when they embraced the “therapeutic ideal” and employed “scientific treatment” during the progressive era.¹¹⁷ New York’s Elmira system, the world’s first reformatory prison for “youthful offenders,” developed in the progressive era a new philosophy of treatment and rehabilitation centered on “prison science” and the “medical model.” New York’s reformatory system brought important and long-lasting penological practices into America’s prison system, including indeterminate sentencing, parole, the classification and mark system, the military system of uniforms and rank, the wage compensation system, academic and vocational education, and treatment programs that included sports, counseling, clinical psychology, and recreation.¹¹⁸ Texas employed none of these practices, however. The severity of the postwar prison crisis caused Texas to consider alternative solutions from this new brand of postwar social science armed with expertise derived from psychological diagnoses and clinical practice.

This chapter considers an expert’s penological study of Texas prisons and a state legislative committee report which offered programmatic recommendations for a thorough reform of the Texas prison system. A close analysis of the penological and

¹¹⁷ On the “therapeutic ideal” and the medical model in northern penology, see David Rothman, *Conscience and Convenience: The Asylum and its Alternatives in Progressive America* (New York: Aldine de Gruyter, 1980), Chapters 2 and 4; Rebecca McLennan, “Punishment’s Square Deal: Prisoners and their Keepers in 1920s New York,” *Journal of Urban History*, Vol. 29, No. 5, July 2003.

¹¹⁸ For a critical assessment of the Elmira Reformatory and Zebulon Brockway, see Alexander W. Pisciotta, *Benevolent Repression: Social Control and the American Reformatory-Prison Movement* (New York: New York University Press, 1994).

legislative response to the postwar “prison crisis” reveals the ways in which sexual anxiety over prison homosexuality resulted in reform strategies of spatial containment and segregated space. By offering a close analysis of the reform vision, this chapter considers how prison reformers used medical language to diagnosis prison homosexuality as a social pathology and like a “disease.” Allan Berubé has argued that the military’s reliance on psychiatrists during World War II shifted the state’s focus from the act of sodomy as a criminal act to a psychological pathology. By substituting a clinical evaluation for a prior generation’s moral and religious judgment, psychiatrists employed by the state shifted the focus from the individual to a broadly applied homosexual “personality” type that was seen as a “perversion” that could be treated clinically.¹¹⁹ A similar medical diagnosis of prison homosexuality was central to the reform vision’s prescription for a better prison system in Texas.

“The System that Grew Up Backward:” The Prison Crisis of the 1940s

The Texas prison system’s reliance on agricultural prison farms, which housed inmates in open dormitories, was at the heart of its postwar prison crisis. In

¹¹⁹ On the ways in which psychology has used a medical language to diagnose and “treat” homosexuality, see Jennifer Terry, *An American Obsession: Science, Medicine, and Homosexuality in Modern Society* (Chicago: University of Chicago Press, 1999). On the ways in which psychiatrists employed by the military in the Second World War caused a shift in how the state approached homosexuality, see John D’Emilio, *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States* (Chicago: University of Chicago Press, 1983), Chapter 2; and Allan Berubé, *Coming Out Under Fire: The History of Gay Men and Women in World War Two* (New York: The Free Press, 1990), esp. Chapters 1, 6 and 10. On the political culture of sexual anxiety and the postwar crisis of masculinity, see K.A. Cuordileone, “Politics in an Age of Anxiety’: Cold War Political Culture and the Crisis in American Masculinity, 1949-1960,” in *Journal of American History* 87(2), 200, 515-45.

1945, the only prison in Texas that actually had cells similar to those in most northern penitentiaries was the “Walls” penitentiary, located in Huntsville, the prison system’s headquarters, the remainder of the general prison population lived in dormitories. In 1939, most of the system’s 7,000 prisoners (78 percent) lived in dormitories. In the 1940s, Texas had twelve prison farms dispersed around a 200-mile radius of Huntsville, along the cotton growing region of East Texas and the sugar land Gulf Coast region near Houston where prisons lined the river banks of the Brazos and Trinity rivers (see Table 1 and Figure 1 on pages 41, respectively). The largely farming and agricultural prison system had as its roots in the plantation and cotton-growing estates of the late 1880s.¹²⁰ By 1947, the prison system’s sprawling farms encompassed 73,010 acres on rich farming soil that was worth over \$5,000,000.¹²¹ The system employed over 500 people, including prison administrators, wardens, officers, and guards. Administratively, a general manager governed the prison system and he reported to a Prison Board made up of nine members appointed by the governor. Each farm, however, constituted a small fiefdom from which the governing warden ruled the field labor with a staff of guards that followed closely a military chain of command.

¹²⁰ On the development of the plantation state-run cash crop, see Perkinson, “The Birth of the Texas Prison Empire,” 99-110. On the Rusk penitentiary and the experiment in industrial prison labor, see Paul Lucko, “Prison Farms, Walls, and Society: Punishment and Politics in Texas, 1848-1910 (Ph.D. diss., University of Texas at Austin, 1999), 289-348; Perkinson, “The Birth of the Texas Prison Empire,” 151-165. On the development of the convict lease in Texas, see Walker, *Penology for Profit*; Lucko, “Prison Farms, Walls, and Society: Punishment and Politics in Texas, 1848-1910,” 191-239; Perkinson, “The Birth of the Texas Prison Empire,” 145-150.

¹²¹ “Texas Prison System Runs Gauntlet of Bad and Best in Nation’s Penal Institutions,” *Tyler Courier-Times*, 20 December 1947.

Table 1

| Prison Farms, Acreage, Locations, Population, 1947¹²⁴ | | | | |
|---|-----------------|--------------------------|----------------------------|---------------------------|
| Institution | Location | Inmate Population | Number of Employees | Acreage |
| Blue Ridge Farm | Hobby | 12 | 2 | n/a |
| Central Farm | Sugarland | 829 | 68 | 5,203 |
| Clemens | Brazoria | 527 | 33 | 8,118 |
| Darrington | Sandy Point | 326 | 31 | 6,770 |
| Eastham | Weldon | 172 | 21 | 12,910 |
| Ferguson | Midway | 14 | 2 | 4,344 |
| Goree | Huntsville | 131 | 7 | 967 |
| Harlem | Richmond | 603 | 67 | n/a |
| Ramsey | Otey | 744 | 59 | 15,089 |
| Retrieve | Snipe | 475 | 37 | 7,455 |
| Wynne | Huntsville | 522 | 160 | 1,913 |
| Huntsville Unit | Huntsville | 1,141 | 160 | n/a (walled penitentiary) |

The dormitories that housed inmates were cavernous rooms originally designed for 60 men, but habitual overcrowding meant that as many as 150 inmates might be housed in a single “tank.”¹²⁵ Each of these tanks, what penologist Austin MacCormick described as similar to “the hold of a ship,” encompassed approximately 2,500 square feet of floor space, providing only 16 to 25 square feet of floor space per man including toilet, washing, recreational and passage space.¹²⁶ In the tank, rows of double-deck bunks were jammed together, allowing

¹²⁴ The data was compiled from two sources, Letter to George W. Cox, M.D., State Health Officer from D.W. Stakes, General Manager, Texas Department of Corrections, November 4, 1947, Jester Collection, TSLA, Box 115/60-2; “Texas Prison System Runs Gauntlet of Bad and Best in Nation’s Penal Institutions,” *Tyler Courier-Times*, Tyler, Texas, December 20, 1947.

¹²⁵ “Behind the Walls,” *Daily Times Herald*, 20 December 1947; “Overcrowding and the ‘Tanks’ Are the Source of Many Problems Found in Texas Prison System,” *Tyler Morning Telegraph*, 29 December 1947; “Poor Housing, Pay for the Guards,” *Houston Post*, 13 September 1948.

¹²⁶ “Texas Prison System Runs Gauntlet of Bad and Best in Nation’s Penal Institutions,” *Tyler Courier-Times*, 20 December 1947.

prisoners to cross from one to the other without touching the floor. The tanks extended from a central corridor with individual wings running perpendicular through the center hall. At each wing of the prison, there was a “picket” – a space through which guards could roll a gate and enclose prisoners within each wing. While inmates lived in dormitories, so too did many of their guards who occupied rooms sometimes directly adjacent to the inmate living quarters. Such close living arrangements between keepers and kept meant that contraband was easily passed from guard to inmate. The porous nature of near cohabitation between guard and inmate was made worse by the onset of the Second World War as morale sank among the low-paid veteran guard force as conscription and the lure of better paying jobs in military industries decimated their ranks.¹²⁷

The “trustee” system also contributed heavily to the abundance of contraband. In Texas, inmates with better disciplinary records earned “trustee” status in which the prison administration gave those inmates more freedom and job tasks that often took them off the prison farm. Trustees could therefore easily move contraband from the fields to the prison farm. Moreover, the prison administration allowed the families of inmates to place money in an individual prisoner account which the inmate could then withdraw as much as \$5 every two weeks to purchase items from the prison commissary. The flow of actual currency resulted in a steady trade of contraband. “You could buy whiskey from the trusties traveling back and forth outside,” recalled one inmate. “Use to be whiskey hid all in the fields, buried in the fields. Stash it out

¹²⁷ Austin MacCormick, “Report on Texas Prisons,” 1947, Jester papers, TSLA, Box 4-14/113.

where you could go get a pint when you needed it. Send a trustee to get it.”¹²⁸

Indeed, the prison system’s lack of accountability was so poor that D.W. Stakes, the system’s manager, complained in the 1944 annual report that items were often missing from the prison and he surmised that trustees sold these items on the outside for contraband. Items as large as a truck had gone missing and were never found.¹³⁰ Marijuana, whiskey, cigarettes and other contraband therefore easily passed from hand-to-hand through the walls, over the fields, and past the gate.

Trustees included those inmates who worked inside the dormitories and on the prison farm. These trustees were known as “building tenders,” and their role was to help the prison administration enforce discipline and maintain control. Employing inmates in a “sub-boss” system dated back to the Reconstruction era.¹³¹ Indeed, until the convict lease was outlawed in 1910, the “sub-boss” system was praised as being good for future real-world job training.¹³² Texas followed a southern tradition of having “trusties” be openly armed. In Arkansas and Mississippi, such inmates were “trusty shooters” who oversaw field work and ensured that no inmate attempted

¹²⁸ Anonymous inmate, quoted in *Wake Up Dead Man: Hard Labor and Southern Blues*, by Bruce Jackson, (Athens: The University of Georgia Press, 1999) originally published as *Wake Up Dead Man: Afro-American Worksongs from a Texas Prison* (Boston: Harvard University Press, 1972), 9.

¹³⁰ Texas Prison System, *Annual Report of the Texas Prison Board of the Texas Prison System*, Huntsville, Texas, 1944.

¹³¹ State Legislature, Special Committee on Penitentiary, Report (Austin, 1871), TSLA, Austin, Texas.

¹³² *Report of the Commission Appointed by the Governor of Texas to Investigate the Alleged Mismanagement and Cruel Treatment of the Convicts* (Houston: A. C. Gray, State Printer, 10 April 1875).

escape.¹³³ In Texas, the prison guards oversaw inmate field labor, and the trustees, or building tenders, maintained oversight of the dormitories. This practice continued from the era of nineteenth century convict leasing through the mid-1980s.¹³⁴ Albert Race Sample's memoir of prison life concluded that building tenders maintained discipline and authority in the tanks through "their gang rapes, beatings and harassment of the weaker cons."¹³⁵ The building tenders, then, ruled the dormitories. Their power and influence in the prison system would only increase once the prison system replaced dormitories with cells in the postwar period.¹³⁶

The prison administration also divided and organized the prison farms through racial segregation. In 1909, the legislature formally segregated prisoners, putting African American ("Negroes") and Latino prisoners ("Mexicans") on separate farms or in racially segregated dormitories on the same prison farm. Clemens, Darrington,

¹³³ On trustees overseeing field labor in Mississippi, see David Oshinsky, *Worse than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice* (New York: The Free Press, 1996), 140-150.

¹³⁴ On the continued practice of trusty guards after the abolition of convict leasing, see Board of Prison Commissioners, *Annual Report*, (Austin, unpublished, 1914), printed in Texas State Legislature, Senate Penitentiary Investigating Committee, supplementary documents (Austin, 1915), TSLA, 4-2/1594b.

¹³⁵ Albert Race Sample's memoir, *Racehoss: Big Emma's Boy*, provides a chilling tale of sexual violence and brutality on Texas prison farms from 1955 to 1972. As an African American prisoner housed in a segregated dormitory, Sample's memoir is one of the few prison memoirs that reveal the raced space of Texas prison farms. For an account of prison life in the postwar period from the perspective of an African American inmate, see Albert Race Sample, *Racehoss: Big Emma's Boy* (New York: Ballantine Books, 1984), 164-5; On the building tender system in the 1930s before the postwar reforms, see Ethan Blue, "Hard Time in the New Deal: The Cultures of Punishment in Texas and California in the 1930s," (University of Texas, PhD diss., 2004), 235-301.

¹³⁶ Prison society and the power of building tenders during the postwar period is the topic of Chapter 4 of this study.

and Retrieve, for instance, housed only African Americans. Blue Ridge was “Mexican” and Eastham and the Walls housed only “Anglos.” The Central and Ramsey Farms held both Black and white prisoners, and later in the post-war period they held Latinos as well. Goree was the only women’s unit, and women numbered approximately 300 inmates through the first decade of the post-war period. The Wynne Farm, what inmates referred to in characteristically hyper-masculine terms as the “broke dick” farm, was for older inmates and those who could not keep up with the harsh labor regime.

A new prisoner classification program in 1936 ensured that the growing prison system would continue to segregate its inmates and their work assignments by race.¹³⁷ The 1936 system housed African Americans and Latinos by race, age, and whether or not the inmate was a first offender or a recidivist. White inmates, however, entered a much more complex classification system that assessed them on the basis of their physical ability, mental acuity and sanity, drug addiction, and sexuality identity (“homosexual” or “heterosexual”). White inmates could fall into a “rehabilitative group,” an intermediate group of those who were “doubtful cases for rehabilitation,” and a maximum risk group that included “those who have indicated

¹³⁷ Ethan Blue, “Hard Time in the New Deal: Racial Formation and the Cultures of Punishment in Texas and California in the 1930s” (Ph.D. diss., University of Texas, Austin, 2004), 79. Blue argued that the 1936 classification plan created a racial “universe” in Texas prisons that “produced social inequality even with the egalitarian vision that the New Deal era promised.”

extreme viciousness” and held “little regard for human life.”¹³⁸ Women inmates were segregated by race but underwent no additional classification.

The far more detailed efforts to classify whites were meant to identify those who could be given better and more responsible positions in the prison system. Only white prisoners were considered eligible for industrial jobs and for placement in the prison’s flagship institution, the “Walls.” While whites also worked the fields doing the same “scoop” labor as Blacks and Latinos, they were usually assigned to live on the prison farms that offered the best living space. Blacks and Latino prisoners meanwhile got the worst conditions, finding themselves posted to harsh cotton and sugar farms along the Gulf Coast. Edward Ayers has argued that nineteenth century southern prisons and the process of punitive justice was so transformative that it leveled racial markers and ethnic difference such that white inmates “were considered the lowest of their race” and that “racial lines blurred” to the point where whites and other minorities were treated equally as bad.¹³⁹ White inmates did face the prospect of losing their preferred status following their release from captivity, but within Texas prisons they maintained a claim to white superiority. As the prison system entered World War II, Texas mapped its prison farms through racial difference, and

¹³⁸ Folder “Rodeo Program 1939,” describes the classification plan, Texas Department of Correctional Justice (TDCJ), Texas State Library Archives (TSLA), (hereafter cited as TDCJ, TSLA) 1998/038-404.

¹³⁹ Edward L. Ayers, *Vengeance and Justice: Crime and Punishment in the 19th Century South* (New York: Oxford University Press, 1984), 207.

distributed its prison labor and rehabilitation services through prioritized skin privileges.¹⁴⁰

In designing both work patterns and discipline through corporal punishment, Texas prisons drew on the slave plantation heritage. A 1911 law authorized prison guards and wardens to whip men on the bare back and buttocks. Prison guards beat inmates with a leather strap, called the “bat,” which was typically two inches wide and twenty-four inches long and attached to a wooden handle. The use of the “bat” was so routine that “Boss” Lee Simmons (1930-1935), the Depression-era director of the Texas Prison System (TPS), once proudly bragged that “the bat to a prison

¹⁴⁰ For the ways in which “white skin privilege” conferred racial identity and power, see David Roediger, *Wages of Whiteness: Race and the Making of the American Working Class* (New York: Verso, 1997); Noel Ignatiev, *How the Irish Became White* (New York: Routledge, 1995); Grace Elizabeth Hale, *Making Whiteness: The Culture of Segregation in the South, 1890-1940* (New York: Pantheon Books, 1998); George Lipsitz, *The Possessive Investment in Whiteness: How White People Profit from Identity Politics* (Philadelphia: Temple University Press, 1998); and Richard Delgado and Jean Stefancic, eds. *Critical White Studies: Looking Behind the Mirror* (Philadelphia: Temple University Press, 1997).

For studies showing how the racial category of “whiteness” could change over time or even be lost for an individual or ethnic group, see; Matthew Frye Jacobson, *Whiteness of a Different Color*; and Neil Foley, *The White Scourge: Mexicans, Blacks, and Poor Whites in Texas Cotton Culture* (Berkeley, 1997).

warden was like spurs to a cowboy.”¹⁴¹ The use of such corporal punishment clearly harkened back to the slave lash.¹⁴²

Guards used the “bat” to assert their domination and unquestioned authority over prison society. “As the leather’d leave, the hide’d leave with it,” recalled one African American inmate who lived through more than one disciplinary session with the infamous “bat.” The inmate vividly recalled that one man’s whipping with the “bat” served as a fateful reminder to the general inmate population. “You could tell all them what got whipped. They couldn’t set down, had to lay on their stomach and other that he couldn’t lay no other way. All the back part there would be just raw blood.”¹⁴³ “One time Captain Powell was whipping a boy with that bat,” recalled another African American inmate, “and he [the whipped inmate] kept a hollerin’, ‘Oh lordy, Oh lordy! And finally he [Captain Powell] bust him again and he [the inmate] say, ‘Oh lordy, Captain!’ And captain said, ‘I thought you’d get around to me

¹⁴¹ For an administrative and political account of the effort to turn-back prison reform in the 1930s, see Paul M. Lucko, “Counteracting Reform: Lee Simmons and the Texas Prison System, 1930-1935,” *East Texas Historical Journal* 1992 30(2): 19-30; and, Herman Lee Crow, “A Political History of the Texas Penal System, 1829-1951” (Ph.D. diss., University of Texas, 1964), 43-44. For a cultural history of Texas punishment and prisons in the 1930s, see: Ethan Blue, “Hard Time in the New Deal: Racial Formation and the Cultures of Punishment in Texas and California in the 1930s,” (University of Texas, Austin, PhD diss., 2004).

¹⁴² For the Texas tradition of slave punishment, particularly the use of the lash, see, Randolph B. Campbell, *An Empire for Slavery: The Peculiar Institution in Texas, 1821-1865* (Baton Rouge: Louisiana State University Press, 1989), 103-108, 145-53.

¹⁴³ Anonymous inmate, Jackson, 9.

directly.’ Cause he wanted him to know that Jesus wasn’t whippin’ him, it was *him* [Captain Powell] whippin’ him. And Jesus couldn’t help him neither.”¹⁴⁴

While dormitory lifestyle dominated the inmates’ nights, it was field work that dominated the prison day. In Texas, prison labor centered on agricultural work “from sunup to sundown” and from “can see to can’t.” At first sunlight, the early morning bell rang and the inmates rose, ate their breakfast, and then trotted as much as five to seven miles to the fields for a full day’s labor. “The way we had to walk and work then,” recalled one inmate. “We had to walk seven or eight miles to work, seven or eight miles back to dinner, same thing after dinner, same thing at quitting time. That was from sunup to sundown. Wasn’t no letup. And we worked Saturdays.” The pace of work after a long day meant that the five to seven mile trek back to the prison farm took its toll. As another inmate recalled,

you hit that road, boy, you’re on the way: you don’t tarry, and that was all day. You didn’t let up. The weak fell out, they’d haul them back. If one was just too weak to make it walking, he’d just hang on to his buddy’s shirttails or belt loop. Sometimes they’d hang onto the horse’s tail. Man, I seen as many as six or seven of them hanging onto his shirt, hanging on the boss’s stirrup and he says, ‘Latch onto that stirrup and hang on,’ and all of them would practically be dragging along though they were still on their feet. They could barely even fall down.¹⁴⁵

Inmates labored in a racially segregated line of white-suited prisoners. Perched on his horse overlooking the prisoners was a prison guard, who inmates of all races characteristically called in slave idiom their “Cap’n” or “Boss.” This prison “highrider” watched over the field work with a .30 caliber rifle clutched in his hands

¹⁴⁴ Ibid.

¹⁴⁵ Anonymous inmate, Jackson, 25.

and at the ready for any who might attempt escape. Inmates, meanwhile, worked a full ten hours in the fields each day, no matter the weather. As one inmate joked, “During that old time you work ten to twelve hours, as long as there was sun. Eight hours – I didn’t know what eight hours was then, you heard about it on the radio or something.”¹⁴⁶ Inmate labor included clearing the land, picking cotton, flat weeding, and logging. Cotton picking, however, was the prison’s chief cash crop. The six-day work week was rarely interrupted, as inmates worked through sickness, exhaustion, the Texas heat, summer storms, or winter frosts. Although sometimes the inmates ran back to the farm for supper, often they simply ate in the field. “Stand out in the field and eat your dinner,” recalled an African American inmate. “Be raining hard like it was before, raining hard like a cow pissing on a flint rock, wash the beans out a your plate. There wasn’t no sick. You don’t have a fever of 202, then you ain’t sick. Used to work people dead in the underworld down here.”¹⁴⁷

The deplorable living conditions, violence and brutality, and harsh field work only became worse during the Second World War. Wartime and the draft caused a precipitous drop in prison population, the number declining from 7,000 in 1939 to a war-time low of 3,394 inmates in 1944.¹⁴⁸ Although the prison population dropped

¹⁴⁶ *Ibid.*

¹⁴⁷ Anonymous inmate, Jackson, 1.

¹⁴⁸ In 1947, the year of Texas prison reforms, the total prison population numbered 5,700 on twelve prison units, which included one walled penitentiary and eleven prison farms encompassing a total acreage of 73,010. “Texas Prison System Runs Gauntlet of Bad and Best in Nation’s Penal Institutions,” *Tyler Courier-Times*, Tyler, Texas, 20 December 1947; Annual Report of the Texas Prison Board to the Governor, Honorable Coke Stevenson, Texas Department of Corrections, 1945 and 1946; *Texas Department of Corrections: 20 Years of Progress, 1947-1967*, Texas Department of Corrections, 1967.

to less than half its previous size, the wartime production demands remained high. War recruitment and the draw of wartime industries also resulted in a high turnover rate for guards and prison staff. Guards worked twelve-hour days and the state paid them low-wages compared to those for military and industrial work, usually between \$100 and \$130 a month.¹⁴⁹ A demoralized guard force increasingly brutalized inmates as the prison system demanded more labor out of fewer convicts. Beleaguered by press reports of guard incompetence, prison manager D.W. Stakes admitted in 1946 that his guard force was “aged and infirm,” “illiterate” and “others [were] sadists; others so unintelligent and incapacitated that they were a distinct menace to safety or society at large.” Despite such slim pickings, Stakes pleaded that “our need was such that we were forced to employ them and as a consequence, suffer escapes and other unnecessary reverses.”¹⁵⁰

A smaller and demoralized guard structure led to an increase in disciplinary problems. Throughout the 1940s, Texas prisons witnessed an increase in escapes, inmate violence, work stoppages, and self-mutilations in which inmates slashed their Achilles tendons so that they could avoid harsh prison labor, an act of inmate desperation and defiance euphemistically known as “heel stringing.” Desperate convicts also went to such extremes as cutting three fingers off one hand, breaking a leg, or placing lye in an open wound so as to insure infection and a festering abscess. Such desperate acts earned inmates a month or more of prison hospital bed rest away

¹⁴⁹ Crouch and Marquart, *An Appeal to Justice: Litigated Reform of Texas Prisons* (Austin, TX: University of Texas Press, 1989), 24.

¹⁵⁰ “Texas Prisons Called Humanity’s Junk Pile,” *San Antonio Express*, 18 November 1948.

from sweltering fields of labor. The practice of self-mutilation was a prison farm tradition that has its roots in inmate resistance to convict lease labor and bears resemblance to practices of suicide and self-destruction among enslaved captives during the Atlantic Slave trade.¹⁵¹ However, incidents of self-maiming increased during World War II and in the immediate postwar period. Between 1936 and 1940 there were 174 cases of self-mutilation, but between 1944 and 1948 there were 341 such incidents.¹⁵² In 1940, the variety of self-mutilations included twenty inmates with broken arms, two foot and one hand amputations. As the war progressed, self-mutilation increased. In 1942, ten inmates broke their arms, sixty-five committed “heel stringing,” and six used lye in their open wounds. By war’s end in 1945, the prison hospital recorded a record-high 126 self-mutilations.¹⁵³

Rising escape attempts and increased incidents of inmate violence contributed to a mounting prison crisis. In 1939, there were 54 escape attempts, but by 1945 the number of escapes more than doubled to 115. Escaping inmates faced the threat of being shot by the guards, beaten by building tenders (convict guards) once recaptured, or drowned in the Brazos River “bottoms” in what would be inevitably described as a failed “escape” attempt. Inmate-on-inmate violence was also on the rise. The prison

¹⁵¹ The practice of self-mutilation and even suicide among enslaved captives in the Atlantic slave trade has received recent scholarly attention. On suicide and self-destruction among the enslaved during the “Middle Passage,” see Marcus Rediker, *Slave Ship: a Human History* (New York: Penguin Group, 2007), 17-19, 212-213, 289-291; and Vincent Brown, *The Reaper’s Garden: Death and Power in the World of Atlantic Slavery* (Cambridge, Mass.: Harvard University Press, 2008).

¹⁵² Van Dyke, “Investigation of Self-Mutilation at the Texas Prison System,” 64, 90, 98.

¹⁵³ R.C. Koeninger, “What about Self-Mutilation?” *Prison World*, March-April 1951; Texas, Annual Reports, 1940-1942.

administration allowed money in the prisons, which gave rise to an internal inmate economy that contributed to violence and corruption. As one inmate recalled, “there was a lot of cash, everything was cash money” leading to “a lot of killing over little petty debts, petty thefts, money, hustling money to gamble.”¹⁵⁴ Perhaps the most publicized incidence of violence was the December 1948 decapitation of inmate Charles Redwine. While sitting at dinner, Redwine was beheaded in a single stroke with a cane knife by Earnest Jones, a kitchen convict worker, who harbored a grudge against Redwine. The press sensationalized the story and added to prison lore by reporting that the guards found Redwine’s body still seated at the dinner table with his cigarette burning and held between lifeless fingers.¹⁵⁵ Such was the frequency of violence and the fear of “snitching” in the dormitory environment that not a single inmate among the 200 fellow diners admitted to having witnessed such a brutal and swift decapitation. Jones, meanwhile, was punished by an extension of his sentence and simultaneously “rewarded” by Carl Luther “Beartrack” McAdams, a guard at the time of the incident, who made Jones a trustee when he became warden at Ramsey in 1951 because he felt that Jones was “a pretty good inmate. He had to kill him [Redwine] or be killed.”¹⁵⁶

¹⁵⁴ Anonymous inmate, Jackson, 9.

¹⁵⁵ *Texas Department of Corrections, 20 Years of Progress* (Huntsville, 1967), 98; “8-Time Loser Admits Decapitating Convict,” *San Antonio Express*, 16 December 1948; H. Heinecks, “Either Him or Me, Convict Declares in Describing Beheading at Prison,” *Fort Worth Star Telegram*, 16 December 1948.

¹⁵⁶ Carl Luther McAdams oral history with Cynthia Linzy, October 26, 1987, Texas Prison History Museum.

The increasing incidents of heel stringing, inmate violence, and escapes were occurring among a shrinking prison population. In 1939 there were 6,992 inmates, but by in 1945 the inmate population fell to 3,275.¹⁵⁷ Cost, meanwhile was also a pressing concern. Despite the prison system's emphasis on work, the agricultural labor regime was inefficient and poorly managed. In 1948, for example, the prison industries and farm operations covered only 57 percent of the system's operating cost, leaving the remaining 43 percent to the taxpayers. The marked increase of violence and inmate disruptions among a smaller inmate population caused some politicians and citizens groups to declare that the Texas prison system bordered on crisis and calamity. Indeed, in a December 1947 article the *Tyler Courier-Times* proclaimed the Texas prison system the "worst in the nation," that reeked of "brutality, self-mutilation, sexual perversion, incompetency, and petty graft, a cesspool of humanity." The media claimed that the Texas prison system "poisoned society" and served as "a source of shame and disgrace to the Lone Star State."¹⁵⁸ Indeed, the *Tyler Telegraph* declared the Texas prison farm as "the system that had grown up backwards."¹⁵⁹

¹⁵⁷ Austin MacCormick, "Report on Texas Prisons," 1947, Jester papers, TSLA, Box 4-14/113.

¹⁵⁸ The Tyler news article highlighted the difference between the proponents and opponents of the prison system as running the "gauntlet of bad and best" in the nation. "Texas Prison System Runs Gauntlet of Bad and Best in Nation's Penal Institutions," *Tyler Courier-Times*, 20 December 1947.

¹⁵⁹ "No. 2 of a Series: The Need for Adequate Housing. Overcrowding and 'The Tanks' Are the Source of Many Problems Found In Texas Prison System," *Tyler Morning Telegraph*, 29 December 1947.

Northern Penology in a Texas Prison: Austin MacCormick's Reform Vision

The prison reform effort began during the war, but it was not until the postwar period that reform gained popular and political momentum. As the war was coming to a close, the Texas Prison Board realized that returning veterans would likely trigger a return to pre-war levels of crime and a concomitant rise in the prison population. Following the war, crime rates did increase dramatically across the nation. In 1946 aggravated assault offenses increased 47 percent above the prewar average (1938-1941); rape 43 percent; negligent manslaughter 11 percent; and, murder 22 percent. Nonviolent offenses also increased. In 1946, auto theft offenses increased 29 percent above the prewar average; burglary 19 percent; robbery 19 percent; and petty larceny 4 percent. The crime rate seemed to be growing fastest in Texas. At the war's close in 1945, Texas recorded a total 53,000 criminal offenses. In 1946, however, the number of criminal offenses jumped to 60,650, which constituted a hefty increase of new convicts that threatened to overwhelm Texas prisons.¹⁶⁰ The press linked the postwar increase in crime rates with the prison crisis when one newspaper charged that the "crime wave" was the "handiwork of Texas Prison 'graduates'" who returned to prison following their initial release.¹⁶¹

In response to the wartime prison crisis and anticipating a postwar crime wave, the prison board in 1944 asked Austin MacCormick, director of the progressive

¹⁶⁰ U.S. Federal Bureau of Investigation, *Uniform Crime Reports*, Vol. XVII-Number 2, Annual Bulletin, 1946 (Washington, D.C.: Government Printing Office, 1947), 90; U.S. Federal Bureau of Investigation, *Uniform Crime Reports*, Vol. XVIII-Number 2, Annual Bulletin, 1947 (Washington, D.C.: Government Printing Office, 1948), 80-83, 87.

¹⁶¹ *Tyler Courier-Times*, "Texas Prison System Runs Gauntlet of Bad and Best in Nation's Penal Institutions," 20 December 1947.

Osborne Association in New York, to develop a long-term prison strategy to modernize the Texas prison system.¹⁶² One of the nation's leading penologists, MacCormick was a former commissioner of corrections for New York City, the assistant director of the Federal Bureau of Prisons, and the War Department's chief consultant on military prisons. By the end of his sixty-five year career as a penological expert, MacCormick had visited every state prison in the nation, and had served as an investigator and chief reformer for the prisons systems in Alabama, Arkansas, Louisiana, Mississippi, North Carolina and Texas.¹⁶³ The board's choice of a New York-based, progressive-era penological association to reform Texas's

¹⁶² When the Texas board contacted MacCormick in 1944, he was the executive director of the Osborne Association, a reform-oriented penological association headquartered in New York City. The Osborne Association, named for penologist and Albany, New York Mayor Thomas Matt Osborne, was founded in 1931 and was known among penologists as a leading institution in progressive prison reform. Osborne gained widespread notoriety in 1913 when he disguised himself as prisoner "Tom Brown" (convict number 33,333x) so that he could spend a week undercover in an investigative expose of New York's Auburn prison. Prior to his time as "Tom Brown," Osborne was a wealthy New York manufacturer, philanthropist, and Chairman of the New York State Prison Reform Commission. Following his time in prisons, Osborne was the warden at Sing Sing, and he later founded the Mutual Welfare League and the National Society of Penal Information, which studied federal and state prisons to obtain information on housing, administration, and discipline. For Osborne's efforts to instill citizenship through mutual welfare leagues and convict government in New York's prison system, see Rebecca Mary McLennan, "Citizens and Criminals: The Rise of American Carceral State, 1890-1935," (Columbia University, PhD diss., 1999), 242-338. For an analysis that considers gender and Osborne's role in formulating progressive notions of "political manhood," see Kevin P. Murphy, *Political Manhood: Red Bloods, Mollycoddles, and the Politics of Progressive Era Reform* (New York: Columbia University Press, 2008), Chapter 5.

¹⁶³ On McCormick's career in penology, see Robert J. Wright, "Austin H. MacCormick: A Memorial Statement," *Corrections Today* (January-February 1980), 60-61; R.M. Yoder, "Trouble Shooter of the Big House," *Saturday Evening Post*, 12 May 1951, 19-21.

southwestern prison farm system was a nod towards northeastern supremacy in penology and rehabilitation.¹⁶⁴

MacCormick's report addressed what he saw as four major problems in the management of Texas prisons: the outdated practice of agricultural work without industrial machinery; the tank lifestyle where inmates lived in large and open dormitories rather than cells; the prevalence of "perverts" and homosexuality; and, an overwhelming amount of violence and brutality, particularly the desperate practice among inmates of self-maiming. The report addressed the internal problems of prison society and life, most "notably escapes, perversion, assaults, self-mutilation, the bad influence of the worst prisoners on others." It drew attention to the "vicious circle of offenses and punishments," in which prison guards routinely engaged in savage beatings of inmates and the inmates, in turn, rebelled with their very bodies through attempted escape and self-mutilation. MacCormick also hoped to assist the prison system to cope with the expected post-war increase in prison population. The report recommended overhauling the system by reforming the agricultural program,

¹⁶⁴ On the north's predominance in fashioning the reformatory movement and the rehabilitative ideal during the progressive period, see David J. Rothman, *Conscience and Convenience: The Asylum and its Alternatives in Progressive America* (New York: Aldine de Gruyter, 1980); Mark Colvin, "Applying Theories to the Rise and Consolidation of the Penitentiary in the Northeast," in *Penitentiaries, Reformatories, and Chain Gangs: Social Theory and the History of Punishment in Nineteenth-Century America* (New York: St. Martin's Press, 1997); and, Alexander W. Pisciotta, *Benevolent Repression: Social Control and the American Reformatory-Prison Movement* (New York: New York University Press, 1994).

constructing facilities for 700 inmates, creating a vocational industrial training program for the inmates, and upgrading prison personnel.¹⁶⁵

The report was especially critical of the inadequate and poorly trained prison guard workforce. MacCormick charged that the prison guards were “unreliable” and “heavy drinkers” who “quit their jobs without warning.” Those who remained were “too inexperienced or incompetent to handle prisoners” and “others are brutal and use methods that bring a wave of disciplinary problems.” The report complained that the armed services had taken some of the “best men,” and that those who did not join the war effort as soldiers often left the prison for better-paying jobs in the war industries. MacCormick concluded that “when almost anyone can get a job at higher wages” that prison guards would inevitably abandon the prison system and that “very few men of the superior type are looking for a job in the prison field.” MacCormick’s experience as chief consultant to the War Department on military prisons buoyed his hopes that returning soldiers who “learned how to handle men” may well be “well suited to prison work.” In terms of administrative personnel, the report found that “many of those occupying administrative positions fall below the level of combined ability, training and experience required in a prison system.” Those whom MacCormick did consider as capable administrators were constrained by their unfamiliarity with the “more advanced prison methods” that existed in northeastern penitentiaries.¹⁶⁶

¹⁶⁵ Austin MacCormick, Report on Texas Prisons, 1947, Papers of Governor Beauford Jester, TSLA, Box 4-14/113.

¹⁶⁶ Ibid.

A second personnel recommendation was to depoliticize the prison system and place all prison employees under civil service, “from the General Manager to the least important employee.” MacCormick’s recommendation to move the prison out of Texas’s political patronage system was one of the more controversial aspects of his report. He believed strongly that “the prison systems of the country will never fulfill their true functions economically and effectively until they are taken out of politics.” The report listed the “leading prison systems of the country” that were administered strictly by civil servants as the Federal Prison System and the state systems of New York, New Jersey, Michigan, and California. In MacCormick’s mind, the path to modernization for Texas prisons ran north and west to the rehabilitative models of California and New York.¹⁶⁷

MacCormick hoped to end agricultural work for most prisoners and establish instead “a variety of productive industries, particularly those having direct or indirect vocational training value.” The report concluded that “it is an indefensible policy to operate what is practically a one-occupation employment program for the great majority of prisoners.” Employing men in the field failed to provide anything resembling rehabilitation or vocational training and, according to MacCormick, it also contributed to serious discipline problems. The report noted that prisoners working in the industries of Central Farm No. 2, for instance, “present few disciplinary problems, although the work is hard and hours are long.” The report concluded that putting men to work in industry instead of agriculture would cause other “men who

¹⁶⁷ Ibid.

have been chronic disciplinary cases” to “drop off the punishment rolls” and would start to pull “their weight in the boat instead of trying to scuttle it.”¹⁶⁸

The report concluded that the prison farm experience “is full of incidents that one can only view with revulsion” causing the Texas Prison System to be burdened with a “clouded reputation in the prison world.” Comparing the Texas prison system with those of Louisiana and Mississippi, MacCormick warned that if Texas continued with its overemphasis on field work “it must be willing to bear a reputation that is inconsistent with its position of leadership.” MacCormick’s solution to Texas prison woes centered on a change from political patronage to civil service; from dormitories and farms to cells and walls; and from agricultural labor to industrial work. Despite the force of MacCormick’s report and his sweeping reform vision, the Prison Board ignored his recommendations, largely because there was no political will and no financial well deep enough to overhaul the prison system.¹⁶⁹

Beyond the programmatic and personnel recommendations, the MacCormick report is a valuable source of information on the life of prisoners.¹⁷⁰ MacCormick conducted his work on the prison system largely unimpeded, a fact that diminished convict fears of being labeled a “stool pigeon,” an act that would earn them a “tune

¹⁶⁸ Ibid.

¹⁶⁹ “Minutes of the Texas Prison Board,” Texas Department of Correctional Justice collection (hereafter cited as TDCJ), TSLA, (March 1944-July 1945), 677.

¹⁷⁰ Steve J. Martin and Sheldon Ekland-Olson’s landmark study of Texas prisons and litigation provided a valuable overview of the MacCormick report, but their analysis focused on practical issues of management and does not fully deconstruct how MacCormick’s report revealed the modernization impulse nor the report’s focus on space and sexuality. See, Martin and Ekland-Olson, *Texas Prisons: The Walls Came Tumbling Down* (Austin: TexasMontlyPress, 1987), 15-18. See also, David M. Horton and George R. Nielsen, *Walking George: The Life of George John Beto and the Rise of the Modern Texas Prison System*, 50-52.

up,” convict slang for a beating, at the hands of prison guards. The MacCormick report stressed that “no attempt has been made by the prison authorities to conceal or belittle the serious disciplinary problems.” Further, the MacCormick report emphasized that “records of all types have been thrown open to the undersigned” and “personnel have been encouraged to talk frankly and appear to have done so.” Even rarer, MacCormick reported that the prison system gave him “complete freedom” to interview prisoners “privately or in the presence of others.” In a system that typically demanded loyalty among its staff and threatened inmates who spoke against the prison system with severe punishment, the promise to openly review prison records, and speak directly and unimpeded to prison staff and inmates alike was indeed a rare opportunity.¹⁷¹

Fears of Contagion, Strategies of Containment: Homosexuality, Bodies, and Space

MacCormick’s report was especially revealing about three aspects of 1940s life in Texas prisons: homosexuality, self mutilation, and the control of space. The report’s emphasis on the “spread” of prison homosexuality, which MacCormick referred to as a “perversion,” shows the ways in which reformers believed that social behavior, particularly sexuality and sexual violence, operated like a “disease” and “contagion.” MacCormick was also concerned and fascinated with acts of bodily self-mutilation. The solution to “perversion” and self-mutilation was to separate inmates from each other in cells. Reformers rejected common social space and

¹⁷¹ Austin MacCormick, Report on Texas Prisons, 1947, Papers of Governor Beauford Jester, TSLA, Box 4-14/113.

embraced instead individualized space. Such an effort was aimed at containing, segregating, and quarantining “contagious” inmates and bad behavior.

MacCormick wrote that housing prisoners in dormitories led to “the problem of perversion” which “is always present in dormitories” because the “free mingling of men of varied types” caused “perversion” to “spread” from one inmate to the next. “The pervert,” continued the report, “get their weaker, more suggestible, or more impulsive fellows into trouble.” McCormick did not distinguish between consensual homosexual relations and rape. Homosexuality was simply a perversion and could be nothing less than coerced or an act of “bestiality” by depraved criminals.¹⁷²

MacCormick’s emphasis on “the crime of sodomy” and his inability to separate rape from consensual relationships showed the ways in which prison reform expressed sexual anxiety over the fear of prison homosexuality. MacCormick likened the “bad influence” of “perverts” to a contamination that “spreads through a tank-full of prisoners as a few drops of powerful poison spreads through a tank-full of water.”¹⁷³

The media also covered prison homosexuality as if it was contagious. In a special

¹⁷² Austin MacCormick, Report on Texas Prisons, 1947, Jester, TSLA, 4-14/60.

¹⁷³ MacCormick’s fear that one bad prisoner could act as a “poison” to the larger prison body builds on what historian Michael Meranze has termed “mimetic corruption.” Meranze’s study of the development of prisons in Philadelphia argued that reformers established the penitentiary in the early 19th century because they feared that criminals would literally infect the body politic and normal citizens. Meranze defined this fear as “mimetic corruption” which, in his words, was “where the very presence of embodied criminality overwhelmed spectators’ virtue and led them to identify with and replicate criminality.” In this way, “the body was not only subject to various penal technologies; its very presence and materiality had the capacity to disrupt the orderly dissemination of virtue.” Just as Philadelphia’s early national prison reformers used the language of disease and social contagion to construct prisons, so too did MacCormick rely on a similar medically-inspired dialect to argue for the creation of cells and confined spaces for Texas prisoners. See, Michael Meranze, *Laboratories of Virtue: Punishment, Revolution, and Authority in Philadelphia, 1760-1835* (Chapel Hill: The University of North Carolina Press, 1996), 8-9.

newspaper series on prison life in the “tanks,” the *Tyler Morning Telegraph* pointed out that “only a small percentage of admissions are perverts but they force themselves on others who in turn become addicted” to prison homosexuality. The media warned its readers that “perverts” are “diseased and they spread the disease” and thus threaten the prison’s overall “security.”¹⁷⁴

MacCormick’s fear that “perverts” threatened “security” mirrored a similar postwar argument in Washington, D.C. among national politicians. Historians of gender and sexuality have revealed how the postwar “Red Scare” campaign to remove communists from the federal government was intertwined with an even more aggressive political crusade to expose, persecute, and expunge homosexual workers from federal positions.¹⁷⁵ The result of this “Lavender Scare” was that more homosexuals were purged from the federal government than suspected communists.

¹⁷⁴ “No. 2 of A Series: The Need for Adequate Housing. Overcrowding and ‘The Tanks’ Are the Source of Many Problems Found In Texas Prison System,” *Tyler Morning Telegraph*, 29 December 1947.

¹⁷⁵ For work on the role of the state in the suppression of gay culture into “the closet” during the 20th century, see John D’Emilio, *Sexual Politics, Sexual Communities: The Making of the Homosexual Minority, 1940-1970* (Chicago: University of Chicago Press, 1983); John D’Emilio, *Making Trouble: Essays on Gay History, Politics and the University* (New York: Routledge, 1992); George Chauncey, *Gay New York: Gender, Urban Culture, and the Making of a Gay Male World, 1890-1940* (New York: Basic Books, 1994); Allan Berubé, *Coming Out under Fire: The History of Gay Men and Women in World War II* (New York: Free Press, 1990); Elizabeth Lapovsky Kennedy and Madeline Davis, *Boots of Leather, Slippers of Gold: The History of a Lesbian Community* (New York: Routledge, 1993).

On the Cold War’s political culture and the effort to persecute and expunge homosexuals from the federal government, see David K. Johnson, *The Lavender Scare: The Cold War Persecution of Gays and Lesbians in the Federal Government* (Chicago: University of Chicago Press, 2004); Robert Dean, *Imperial Brotherhood: Gender and the Making of Cold War Foreign Policy* (Amherst: University of Massachusetts Press, 2001); Geoffrey S. Smith, “National Security and Personal Isolation: Sex, Gender, and Disease in the Cold-War United States,” *International History Review* 14 (May 1992): 307-37; and, K.A. Cuordileone, *Manhood and American Political Culture in the Cold War* (New York: Routledge, 2005).

The fear that “perverts” in government positions posed serious “security risks” permeated postwar political culture. As David Johnson concluded in his study of the 1950s purge of homosexuals from government jobs, Republicans in Congress paired their “moral panic” over homosexuality with Cold War anxiety over national security.¹⁷⁶ The result, according to Johnson, was that the “containment of sexuality was as central to 1950s America as containing communism.”¹⁷⁷ Like the federal administrators who purged homosexuals from federal government, Texas prison reformers warned of a “moral panic” in their effort to “contain” and stop the “spread” of prison homosexuality.

A second major impetus for prison reform was the concern with self-mutilation. MacCormick called such acts “a common practice in the Texas prison System” and “almost unheard-of in other prison systems.” MacCormick called this practice “the most baffling” problem in Texas prisons because “of the difficulty of putting a stop to the practice under present conditions without recourse to punishment which seem to have the effect of increasing rather than reducing it.” Self-mutilation, MacCormick realized, was not simply an act of self destruction; it also served as a way of escaping for a time the physical brutality of inmate keepers. McCormick cited “an inevitable pattern” and a “vicious circle of offenses and punishments” that prisoners “working in the fields and living in dormitories would inevitably attempt escape,” only to have the

¹⁷⁶ On the ways in which “moral panics” infuse political culture, see Gayle Rubin, “Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality,” in *The Lesbian and Gay Studies Reader*, eds. Henry Abelove, Michèle Aina Barale, and David M. Halperin (New York: Routledge, 1993), 3-44; Michael Paul Rogin, *Ronald Reagan, the Movie and Other Episodes in Political Demonology* (Berkeley and Los Angeles: The University of California Press, 1987).

¹⁷⁷ Johnson, 11.

prison guards capture them and subject the inmates to corporal punishment. The beaten convict then “register[s] his bitterness and gets away from the farm for a while by self-mutilation; by cutting his heel-string, breaking his arm, slashing his wrists.” The report called these self-mutilating men “psychopaths, but not insane,” because their primary motivation was to “get away from the farm.” Further, the report correctly ascertained that self mutilation was “an expression of their feeling of resistance toward the whole prison system, their bitterness over their sentences, resentment toward police, prosecutors, judges, and jailers in general, and the underlying, smoldering sense of frustration and defeat that so many prisoners have without being able or willing to express it in words.”¹⁷⁸ MacCormick was simply appalled at how common and public the practice was:

The reason behind most of our troubles is due to the whole life in the tanks...and it results in something that is not encountered anywhere else in the country except Georgia, —self-maiming—, and they claim that some ex-Texans prisoner started it there. They break their arms, cut their heel strings and there is on record a case of where men cut off hands and feet....They all give reasons but there are plenty of reasons that they do not give. Sometimes, a man does it to get away from the farm; sometimes to get out of the tanks; sometimes because of activities of perverts; sometimes they are forced to do it by others who are going to keep the mutilations going on; sometimes, apparently, a bunch draw names out of a hat and the loser has to do it. There have been as high as a hundred in the last year. And none anywhere else that I know of. It has attacked Texas like a peculiar tropical disease; it is as contagious as can be.¹⁷⁹

MacCormick’s diagnosis of self-mutilation divided self-mutilating inmates into two types. The first were those “who are physically not up to the demands of long hours of hard outdoor work.” The report considered this type of inmate “weighted

¹⁷⁸ Austin MacCormick, “Report on Texas Prisons, 1947,” Jester Collection, TSLA, Box 4-14/113.

¹⁷⁹ Austin MacCormick, Tape Transcription, March 3, 1947, Jester Collection, TSLA, Box 4-14/113.

down and depressed” and someone who had fallen to the “influence of a chronic trouble-maker” or, worse, had “fallen prey to an aggressive pervert.” McCormick considered these inmates a “pitiable group” and categorized them as either “psychopaths,” “homesick boys,” or “older weaklings.” The report concluded that these types of inmates should be dealt with “humanely” and “understandingly,” rather than from the “punitive viewpoint.”¹⁸⁰

The second type included those physically strong enough for the field work and “mentally tough enough” to survive in prison society, but resistant to prison work and guard brutality. These prisoners, according to the report, developed resistance from a well of “deep lying” and they therefore lacked “the necessary moral stamina even if they have the necessary physical strength.” The report also regarded rural inmates as having a heartier character than urban types who were characterized as “unstable” and more prone to manipulative acts of self mutilation.¹⁸¹

McCormick’s observations concerning the “pattern” of resistance and subjection between inmate and prison authority resembles acts of resistance that

¹⁸⁰ Austin McCormick, “Report on Texas Prisons, 1947,” Jester Collection, TSLA, Box 4-14/113.

¹⁸¹ Although race was not a major theme or consideration of the report, McCormick did offer the intriguing suggestion that the “problem convict” was usually white and urban. Minority prisoners, according to the report, were “used to farm work or to hard manual labor” and they therefore “accept it as an inevitable part of the prison sentence.” Minority prisoners, however, were anything but docile and accepting of their predicament. The majority of work stoppages and hunger strikes through the 1940s occurred on the Harlem, Ramsey, and Retrieve farms, which housed largely African American and Latino prisoners. Unlike the coordinated work strikes in the 1970s, the sit down and hunger strikes of the 1930s were nearly always short lived acts of rebellion that lacked organization and system-wide leadership. Still, their absence in the McCormick report betrays his inclination to view rural minorities as less threatening and more accepting of their convict role. Austin McCormick, Report on Texas Prisons, 1947, Jester Collection, TSLA, Box 4-14/113.

theorists and historians Michel de Certeau, James C. Scott, and Robin D.G. Kelley have termed as working-class “everyday” resistance, a “hidden transcript,” and a pattern of “infra-politics” in which the disenfranchised and less powerful practiced defiance, struggle, and conflict through everyday life and working-class culture against those holding power, authority, and mastery over their lives and work.¹⁸² Living under the control and authority of their keepers in a comprehensively authoritarian and brutal prison regime left inmates little recourse other than to rebel with the one thing that they still owned and controlled, namely their own bodies. Self-mutilation, however, stretches the very boundaries of “infra-politics,” “everyday resistance,” and “hidden transcripts.” While it confounded and frustrated the power of prison keepers, self-mutilation must also be understood as a self destructive act that wrought physical, and sometimes lasting, harm to inmate bodies. It was indeed a survival tool and a means of resistance, but it brought only a temporary respite at the price of much physical pain and suffering.

The best means to “contain” self-mutilation and “perversion,” according to MacCormick, was the separation of inmates into enclosed spaces. MacCormick believed that building cells would protect the “weak” inmate while simultaneously isolating “manipulative” inmates. “Texas has paid dearly for that policy,” MacCormick wrote, for the policy of “employing on its prison farms” and “housing in open dormitories, men who in most prison systems would not be permitted, let alone required, to work and live outside a walled institution of the maximum security

¹⁸² See, Michel de Certeau, *The Practice of Everyday Life*, trans. Steven Randall (Berkeley, Calif., 1985); James C. Scott, *Domination and the Arts of Experience: Hidden Transcripts* (New Haven, Conn., 1990); and, Robin D.G. Kelley, “We Are Not What We Seem”: Rethinking Black Working Class Opposition in the Jim Crow South,” *Journal of American History* 80 (June 1993): 75-112.

type.”¹⁸³ Individualized cells and the closure of public and shared space would, MacCormick believed, lead to stability through inmate segregation and containment.

Legislative Response

In response to the MacCormick report, the state legislature convened in April 1947 a special legislative committee, the Legislative Committee on Investigation of State Penitentiaries and the Farm System. Three senators and nineteen representatives composed the Committee. State Senator Wardlow Lane and State Representative Sam Sellars served as its chairs. The committee visited the farms, freely interviewed inmates, and toured both the regular tanks and the inmates in solitary confinement. The legislative committee delivered a series of sharply critical observations with far more examples of individual brutality than the MacCormick report. In particular, the report cited rampant brutality, filthy living conditions, overly cruel treatment in solitary confinement, sodomy and self-maiming. The state legislature committee couched the argument for prison reform in humanitarian and personal terms by providing a more intimate abuse narrative full of individual examples of brutality that provide a rare portrait of the prison farm.

The legislative committee cited the tanks and the housing of prisoners in dormitories as major contributors to what they considered as a “deplorable prison system” where acts of “human depravity,” particularly homosexuality, reigned over convict’s everyday lives. On the Wynne farm, for instance, the committee noted that the tanks constituted a space where “crime is further bred” and that the worst of these

¹⁸³ Austin MacCormick, “Report on Texas Prisons, 1947,” Papers of Governor Beauford Jester, TSLA, 4-14/113.

crimes was sodomy, which was “committed regularly and consistently.” In its visit to the Darrington prison farm, which the Committee called the farm with the “most desperate criminals on the whole system,” the Legislators reported that the “greatest crime going on in the prison was the crime of sodomy among the men.” Further, the Committee went to great lengths to reveal their view that homosexuality and violence were intrinsically linked. The Committee reported that “one man related he was attacked at night by 28 men – had been held at point of a knife at his throat and made to submit.” After relating the rape, the Committee concluded that many men “have their ‘girls’ and fight over them,” making sodomy “the crime of crimes” that was “prevalent at every place.” The Committee’s report cited the conclusion of Captain Hinds of the Darrington Unit that “only when separate cells are provided would the crime of sodomy be stamped out.” Mirroring the MacCormick report, state legislators concluded that the only thing that would stop the “spread of homosexuality” was closing the farms, and building cells and walls instead.¹⁸⁴ Reformers therefore responded to sexual “contamination” with “strategies of containment” that would control homosexuality and secure the prison through spatial isolation and social quarantine.¹⁸⁵

¹⁸⁴ Legislative Committee on Investigation of State Penitentiaries and the Farm System, Report on Texas Prisons, Jester papers, TSLA, 4-14/113.

¹⁸⁵ As Nayan Shah demonstrated in his masterful study of the spatial and racial formation of Chinatown in turn-of-the-century San Francisco, public health officials articulated a language of contamination and “strategies of containment,” which allowed the state to control, segregate, and racialize social space. MacCormick adopted a similar language when he described Texas prison conditions. See, Nayan Shah, *Contagious Divides: Epidemics and Race in San Francisco’s Chinatown* (Berkeley: University of California Press, 2001).

In addition to formal sessions with the “bat,” prison guards routinely used corporal punishment without charging the inmate with an offense and without granting an official disciplinary hearing. The men on the Wynne Unit, for instance, complained that they were routinely subjected to “severe beatings and of continuous cursing by the guards.” At the Darrington prison farm “brutality was very prevalent.” The inmates reported that the guards “routinely cursed” them and “beat them in the fields with rubber hoses.” Inmates also complained that the guards frequently used tear gas as a means to punish the entire prison farm for one man’s violations. “If any one man causes trouble,” stated the legislative report, “tear gas in large quantities is shot in the cells and all the men suffer for the wrongs of one man. This was the most consistent gripes of all the men.” At night, silence was enforced and there was no talk allowed above a whisper “without the use of tear gas by the guards.” On the Darrington prison farm, the use of tear gas against all inmates was even more widespread. Tear gas was used “every night” and canisters were put into the air circulators so that it could “blow down on them over the entire building.” It was an atmosphere in which “men were treated worse than animals.” One man who had served time in a German prison camp alleged that “all indications were that this farm was far worse than a German or Jap prison camp during the entire war.”¹⁸⁶

An equally dreaded punishment was the prison’s reliance on solitary confinement. Inmates found guilty of a disciplinary offense were put into the “hole,” a small, unlit cell without toilet where they subsisted on only bread and water and one full meal every thirty-six hours. The cases of prisoners Kenneth Clem and Cecil

¹⁸⁶ Legislative Committee on Investigation of State Penitentiaries and the Farm System, Report on Texas Prisons, Jester papers, TSLA, 4-14/113.

Bear reveal the nature of the solitary experience. The committee found Clem on the Darrington Farm in his pitch dark solitary cell where he was “handcuffed for the period of two days with no blanket to sleep on, and his hands behind his back in such a way that sleep must have might near impossible.” The guards gave Clem water and one piece of bread every eight hours and a full meal only once every 36 hours. A full meal, according to the committee report, consisted of “4 spoonfuls of water gravy, 1 spoonful of beans, small piece of dry salt bacon, 3 biscuits and water. No milk or coffee.” This was the standard solitary diet until 1971. It is no wonder then that the committee described Clem as a “pitiful sight” who “cringed from fear of the committee” and was just “a boy who almost cried when being talked to by the committee.” In the next cell, the committee found Cecil Bear from Houston who was confined to solitary because he refused to work and attempted self mutilation. Bear reported that in addition to being fed only once every 36 hours that the prison guards had repeatedly beat him with a rubber hose. Bear also claimed that Captain Easton had told him that he would remain in solitary for 30 days handcuffed. Bear also related how the guards “cursed the men continuously and beat them in the fields with rubber hoses for talking to each other and for other minor reasons.” Inmates in the field at the Darrington farm corroborated Bear’s claims that men were put in solitary confinement for little or no reason, and that prison guards left them handcuffed and naked in solitary cells for days on end.¹⁸⁷

A particularly acute problem in confinement was the inability to sleep. The solitary cells were often overcrowded with as many as six men handcuffed together,

¹⁸⁷ *Ibid.*

making sleep impossible because, as the committee reported, there was “not enough room to lie down – its too crowded.” The wearing of handcuffs for such long periods of time also lead to deep sores on the wrists of the offending inmates, which, the committee reported, “were horrible to look at.” The committee cited one case in particular of an inmate who had been in solitary confinement for four days and had deep sores on his wrists caused by the “rubbing of the handcuffs when he attempted to lie and sleep.” Prison guards and officials showed little interest in the physical suffering or maladies of such inmates. After showing the captain the sores, the captain told the offending inmate to “dash some mercurochrome” on the sore and “get to work in the fields.” The committee found that “there were too many of these types of sores and blisters and raw rubbed sores on feet going unattended to and appearing infected and in horrible condition.”¹⁸⁸

Those inmates not in solitary confinement lived in poor health conditions that exacerbated health problems stemming from the lack of adequate medical treatment. The clothing on the Darrington prison farm, for instance, was “filthy” and clean clothes were given out only once per a month. Shoes, furthermore, were “old and worn out” or improperly fitted, causing massive blisters. Blisters on many of the men’s feet resulted in “horrible, dirty, open infected sores with no evidence of medical care.” The committee further reported that “the skin was rotting away and yet the men were forced to work all day standing on these sore feet.” Others simply worked barefoot because “their feet were so infected and they couldn’t wear shoes.” For those who did receive medical attention, the committee found it “poor” at best and administered by a reportedly incompetent physician. Dr. Austin, an 80-year old

¹⁸⁸ *Ibid.*

resident physician who was in charge of four prison farms, was the only prison physician and the committee found him simply “too old to give the proper attention to the men” and “the worst hated man in the institution.” Even the unit’s captain reported that Dr. Austin was “about useless as a doctor.” As an example of the poor medical care, the committee cited the case of one man who had his teeth pulled out twenty-four months before the committee visit and yet he still had no false teeth. The prison guards forced the inmate to eat regular meals without being given neither “teeth nor soft foods to compensate.” “Medical attention surely is needed at this institution,” the committee concluded.

The Committee also cited the near ubiquity of self-mutilation that had “spread” across the prison system. “Many men had cut off their fingers, mutilated their feet and cut the tendons of their legs in hopes of getting shipped from this institution,” reported the committee. Another man who had cut three of his fingers off, was “taken directly to the dispensary and bandaged, but was then beaten for 30 minutes with a hose for mutilating himself.” The inmates’ reasons for self-mutilation, according to the report, had less to do with psychological self-destruction than a practical desire to escape constant beatings and the fear of death in the cotton fields of East Texas. The inmates claimed that they could not “stand the beatings of the guards and took this way out to keep from being killed in the fields by the guards.” The committee concluded that “this story was told over and over again word for word by many of the convicts.”¹⁸⁹

Conclusion

¹⁸⁹ *Ibid.*

The MacCormick report and the conclusions of the legislative committee represent a moment when prison reform was taken seriously by both reformers and politicians as both a humane and a modernizing endeavor for southern prison management. In his cover letter for the committee report, Representative Sam Sellar lamented that after reviewing “many penal institutions throughout the nation” he was forced to come to the sad conclusion that “we have the worst prison system of any State.” Although the committee acknowledged that “these men [prisoners] have violated the laws of society” and should therefore “be punished for their crimes,” the legislators also conveyed their humane impulse that insisted that prisoners are still “human beings and should be treated as humans and not beasts.”¹⁹⁰

The severity of the postwar prison crisis highlighted the “backwards” condition of southern prison farms. By calling on a northeastern reformer to overhaul their system, the prison board hoped to counter negative images of the prison farm with a modernized penitentiary. MacCormick, steeped in progressive penology, offered a reform vision that perceived the prison crisis in medical and clinical terms. In MacCormick’s eyes, dormitory and communal living threatened to “spread” homosexuality and brutalization to a “contaminated” general inmate population. The reformers’ solution was to contain and isolate “perverts” and “aggressive” inmates by building cell blocks and enclosed spaces. Anxiety over prison homosexuality was not the only motivation for reform. The reformers also displayed a genuine interest in protecting inmates from sexual violence and physical abuse. Moving inmates from

¹⁹⁰ State Representative Sam Sellars to Beauford Jester, Jester papers, TSLA, Box 4-14/113.

public spaces to separate spaces had an unintended consequence, however. While the reformers hoped to control and safeguard inmates through spatial reconstruction, they failed to consider how the movement from farms to cells might shift the balance of power within prison society. For while the prison warden and his officers controlled field labor, the control of the prison building was dependent on building tenders. And yet both the committee and MacCormick failed to address the building tender system in their reform vision. Their approach to prison reform thus focused on reshaping the prison farm into a modern penitentiary, rather than on the social structures that ordered and controlled prison society.

Such an external emphasis on prison space and containment had profound consequences. For, as geographical theorist Edward Soja reminds us, “space can be made to hide consequences from us, how relations of power and discipline are inscribed into the apparently innocent spatiality of social life, how human geographies become filled with politics and ideology.”¹⁹¹ Reformers, however, never foresaw that their spatial reform agenda might actually increase internal brutality and corruption. But they also did not have the luxury of being able to see ten years down the road. In the anti-tax climate of the postwar, it was not clear whether Texas voters would support any kind of reform plan at all.

¹⁹¹ The subject of spatial formation and how it changed relations of power within Texas prisons is explored further in Chapter 4. For geographical scholarship that discusses spatial formation and relations of power, see Edward W. Soja, *Postmodern Geographies: The Reassertion of Space in Critical Social Theory* (London: Verso, 1989), 6; Mike Davis, *City of Quartz: Excavating the Future in Los Angeles* (New York: Vintage Books, 1992); Michael Foucault, “Of Other Spaces,” *Diacritics* 16, 22-27 (translated from the French by Jay Miskowicz); Michael Foucault, “Questions on Geography,” in C. Gordon (ed.), *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*, 63-77; D. Gregory and J. Urry, eds. *Social Relations and Spatial Structures* (London: Macmillan; and New York: St. Martins, 1985); David Harvey, *The Condition of Postmodernity: An Enquiry into the Origins of Cultural Change* (Cambridge: Blackwell, 1990, esp. 201-239).

CHAPTER 2

“A FERVENT, EVANGELISTIC PLEA: THE CITIZEN’S CAMPAIGN FOR PRISON REFORM, 1947-1949

Political historian George Green aptly called the 1946 political campaign between Beauford Jester and Harold Rainey as a choice between Jester as the “establishment” candidate and Rainey as “the last truly liberal candidate in the state’s history to have any significant press support.”¹⁹² As president of the University of Texas, the beleaguered Rainey had fought a losing battle with Governor Coke Stevenson and the Board of Regents over academic freedom. James Allred (1935-1939), a New Deal governor, named Rainey as university president, but the subsequent administrations of W. Lee “Pappy” O’Daniel (1939-1941) and Coke Stevenson (1941-1947) stacked the Board of Regents with increasingly conservative businessmen who viewed the university as a liberal institution that fomented, in their minds, “communistic” teaching, liberal admission policies for African Americans, and “a nest of homosexuals” on the faculty.¹⁹³ The Board of Regents, particularly Orville Bullington and Dan Harrison, clashed with Rainey over academic freedom, leading to a public struggle and a hearing that resulted in Rainey’s dismissal in

¹⁹² George Norris Green, *The Establishment in Texas Politics: The Primitive Years, 1938-1957* (Westport, Conn: Greenwood Press, 1979), 95.

¹⁹³ For the struggle between Rainey and the University of Texas Board of Regents, see: George Norris Green, *The Establishment in Texas Politics*, 83-89; Howard Rainey, *The Tower and the Dome* (Boulder: Pruett, 1977); Ronnie Dugger, *Our Invaded Universities* (New York: W.W. Norton, 1974); Alice Cox, “The Rainey Affair: A History of the Academic Freedom Controversy at the University of Texas, 1938-1946” (Ph.D. diss., University of Denver, 1960).

November 1944.¹⁹⁴ In addition to his defense of academic freedom, Rainey was also an avid New Dealer and, in the spring of 1946, he announced his candidacy for governor on a platform of academic freedom, labor union rights, and civil rights.¹⁹⁵ Rainey's opponents included lieutenant governor John Lee Smith; former railroad commissioner Jerry Sadler; state Attorney General Grover Sellers, and, Beauford Jester, the son of a former state senator and lieutenant governor, a well-connected corporate lawyer, and a prominent member of the state Railroad Commission. Of the four, Smith was the political star, but his campaign, while backed by powerful corporate interests, projected what Green called "an image of extremism" that relied on race-baiting and communist scares that did not sit well with the Texas establishment. Jester, as the leading moderate candidate, won the secret backing of Coke Stevenson and a promise from the sitting governor that the establishment powers of Texas would support his election bid. Jester's more moderate and status-quo campaign allowed him to place first in the election with 443,000 votes, but not to knock out Rainey, whose 291,000 votes forced a run-off.¹⁹⁶ In the runoff election,

¹⁹⁴ The struggle over academic freedom began when a newly appointed board under Governor O'Daniel questioned the English department's decision to place John Dos Passos's *U.S.A.* on the supplementary reading list for its English majors. The fight expanded when the Board attempted to terminate Dr. Robert Montgomery of the economics department who promoted New Deal economics, but was accused of communism.

¹⁹⁵ In the *Smith v. Allwright* case of 1944, African Americans had gained the right to vote in the Democratic primary and 1946 would be the first year that they could exercise that right. Adding further to growing debate over civil rights and Jim Crow, Heman Sweatt, an African American student, began a public campaign in February 1946 to enroll in the University of Texas law school.

¹⁹⁶ In the initial election, Jester won 443,000 votes; Rainey won 291,000; Sellers 162,000; Sadler 103,100; and Smith 102,900.

Jester won handily with 701,000 votes compared to Rainey's much weaker showing (355,700).

Following Rainey's defeat and with Jester's moderate "establishment" administration firmly in place, Austin McCormick decided that the time was right to bring the issue of prison reform to the public's attention. McCormick continued to press for reforms in Texas, despite the prison board's initial failure in 1944 to implement his suggestions. In the spring of 1947, McCormick began a letter-writing campaign to Texas newspapers and sent an urgent telegram directly to the governor. In his telegram, McCormick urgently informed the governor-elect that Texas had "more self mutilations than all other prison system in the country put together" and "more escapes in a few months than the whole federal prison system has in a year." Moreover, McCormick cited the "rampant sex perversion" and "frequent stabbings and occasional murders" as having resulted in an "intolerable state of affairs." Noting the political sensitivity of his telegram, McCormick admitted that he "would not have wired you except for conviction that present split board may not agree."¹⁹⁷ In response, Governor Jester called a general meeting in his office on March 3, 1947 which included McCormick, all the members of the Prison Board, the prison's general manager, D.W. Stakes, and the secretary of state. During the meeting, McCormick reiterated, point-by-point, the conclusions of his report and repeated to the Governor and the Board that the Texas Prison System had an "extraordinary and a critical problem."¹⁹⁸

¹⁹⁷ Austin McCormick to Governor Beauford Jester, Western Union telegram, August 28, 1947, Jester papers, 4-14/113.

¹⁹⁸ Austin McCormick, Tape Transcription, March 3, 1947, Jester Collection, TSLA, Box 4-14/113.

By going around the board and directly to the public and the governor, MacCormick triggered a political reform movement that swept across the state. While MacCormick's report was analytical, his letters to newspapers and in private meetings were more polemical. Two other influential voices, state legislators interested in MacCormick's claims and discontented Prison Board members who wanted to take the issue directly to the public, joined MacCormick's growing reform crusade. In response to the governor's March meeting with MacCormick and the Board, the state legislature convened in April 1947 the Legislative Committee on Investigation of State Penitentiaries and the Farm System. The committee report, issued in April, mirrored MacCormick's conclusions and added significant political weight to the calls for reform. By the fall of 1947, the Prison Board felt the mounting pressure for prison reform and, after several testy letter exchanges, fired the TPS' General Manager, Major D.W. Stakes in early November. "There will be no peace for any of us until we obtain the services of a forceful, fearless, conscientious, energetic executive for this position," confided Board Chair W.C. Windsor in a private letter to Jester. But, continued Windsor, "with the right man, all our troubles will dry up quickly."

The board's nation-wide search for a new prison manager centered on O.B. Ellis, the forty-five year old manager of the Shelby Prison Farm in Tennessee. Ellis's management of Shelby earned the board's attention because it served as an example of southern agricultural efficiency combined with inmate discipline and order. The Shelby farm was orderly with few incidents of guard brutality, escapes, or

prison riots. Moreover, its operation was profitable.¹⁹⁹ When Ellis started as manager, it held 600 inmates on a 5,000 acre farm with cash receipts of \$54,000. By the time Ellis received his visit from the Texas Prison Board, however, he had turned it into a remarkable agri-business operation with \$403,487 in cash receipts, resulting in a \$173,287 profit.²⁰⁰ The Board pinned their hopes on Ellis, so much so that Windsor compared Ellis to the Texan legends Sam Houston and Davey Crockett who had “made their name immortal in Texas history. Mr. Ellis has a similar opportunity, and it is my belief that he will fulfill our greatest expectations.”²⁰¹ Board member B.A. Stufflebeame told the press that Ellis’s prison “looks more like a fine southern plantation than a prison farm. The buildings are spotless, the grounds attractively landscaped and the morale of the prisoners high. The whole layout is the most impressive I’ve ever seen.”

The Board hired Ellis in November and he pledged with much publicity and fanfare that he would make “the Texas prison system the best in the nation.” Memphis residents were so familiar with Ellis’ success that their own *Commercial Appeal* declared that his “creative accomplishments at Shelby Penal Farm have been so many, so far reaching and so widely known that it is almost unnecessary to comment on them.”²⁰² The *Tyler Morning Telegraph* praised Ellis’ “missionary

¹⁹⁹ Shelby County Penal Farm (monograph), 1946, Sam Houston State University archives.

²⁰⁰ W. Flower, “Texas Solution Seen in Model Penal Farm,” *Dallas Morning News*, 4 December 1947.

²⁰¹ Letter from W.C. Windsor, chairman of Texas Prison Board, November 1947, Prison Board Minutes, TSLA.

²⁰² *Commercial Appeal*, Memphis, 26 November 1947.

spirit” and declared that Texans should look forward to his ability to “operate independently of the tax dollar” and that the Board’s selection of Ellis “may well go down into the annals of Texas history as an important milepost.” Board Chairman W.C. Windsor similarly chimed to the press that he expected “a new era of outstanding achievement.”²⁰³

On February 21, 1948 Ellis delivered to the board his ambitious reform plan, with the carefully worded title: “To Protect Society from the Criminal and the Criminals from Each Other.” The lengthy report and memorandum included a “five point plan,” which stressed rehabilitation and vocational training; new buildings with cells, inmate segregation, and better classification; increased salaries for guards; the modernization and mechanization of Texas prison farming; and, a commitment to operate a low-cost, “self sustaining” prison system. Ellis’ “five point” plan came however with a costly \$4.2 million price tag. The costliest portion of Ellis’ plan was the \$1.6 million outlay for the building of cell blocks on the various prison farms.²⁰⁴

The press applauded the Ellis plan. *The Tyler Daily* summarized the public’s reception of the Ellis five-point plan when it called it “more modern, more humane, and more nearly self sustaining.”²⁰⁵ In an editorial titled “Give Ellis a Chance,” the *Houston Press* addressed the high price tag of reform from a business perspective. “If the blueprint of such an investment were to be laid before the directors of a private

²⁰³ “State Prison Program,” *Dallas Morning News*, 7 December 1947.

²⁰⁴ Texas Department of Correctional Justice, Texas Prison Board, “A Program for the Improvement of the Texas Prison System,” (Huntsville, 1945, 1998/038-127.

²⁰⁵ *The Tyler Daily*, Newsclippings, 1947, Prison Board Minutes, TSLA.

corporation, a board of business men would jump at the chance to put up their money. Investors, given free labor with materials and equipment produced at cost, would get two dollars in value for every dollar cash they spent on their plant. It seems hard to believe that any reasonable body of men could reject such a proposal.”²⁰⁶

A Fervent, Evangelistic Plea: The Populist Campaign for Humanitarian Reform

The task of selling Ellis’s ambition overhaul plan to the legislature still remained, however. Prison board member B.A. Stufflebeame had grown tired of the slow pace of reform and the lack of political will and, in response, devised a plan to take the many private conversations over prison reform and put them before the public.²⁰⁷ Often flanked by state legislators and supported by local community organizers, Stufflebeame traveled the state and made stump-like speeches in a “statewide public lobby of plain citizens” to push the state legislature to abolish the “unspeakable conditions in the prison system which are a shameful disgrace to the state.” The Texas Junior Chamber of Commerce supported Stufflebeame’s state-wide barnstorming tour to Houston, Dallas, Fort Worth, San Antonio, Waco, Corpus, Christi Beaumont, Abilene and Wichita Falls. At each stop, Stufflebeame delivered a

²⁰⁶ “Give Ellis a Chance,” *Houston Press*, 4 March 1948.

²⁰⁷ Stufflebeame, appointed by Governor Jester to the prison board only a few months before Ellis’s appointment, asserted that he accepted appointment only upon receiving absolute assurance both from the governor and from W.C. Windsor of Tyler, board chairman, that there “would be positively no political strings attached” and that he would be given a completely free hand “to serve all the people of Texas according to his best judgment.” Jester’s appointment of Stufflebeame reveals the governor’s role in placing a reform voice on the Prison Board, but even the governor was taken aback by Stufflebeame’s public campaign.

similar speech. The local newspapers covered it in great detail, publishing large portions of a speech that the press marketed to the public as a meeting so graphic and “lurid” that it was “for men only.” Stufflebeame had spoken to entice; the topic deemed to be most off-limits to women was prison homosexuality.²⁰⁸

“Disgrace! Shameful! Crime against the decent instincts of society! Shocking beyond belief!” these were the words that reporters used in their front-page headlines describing Stufflebeame’s speech. In his description of the tanks filled with “older prisoners, incurably hardened criminals,” Stufflebeame painted a picture of rampant homosexuality. “There, on their bunks, were 12 or 15 of these veteran prisoners, each with a young man on his lap, being caressed and fondled,” proclaimed Stufflebeame. “These, I learned from the warden, these boys were their ‘sweethearts’ ... That was my first observation, my first knowledge, of the most degraded and vicious sex-perversion to which human beings can sink. But it pervades the entire system.”

Stufflebeame’s exhortations resembled what one journalist called “a fervent, evangelistic plea” that reads like a progressive-era expose account of filth, violence, and barbarity. Stufflebeame told his audiences that his first visit to Texas prisons had “hounded me since that hour” and that he “bawled like a baby” after first viewing the “indescribable degradation and filth, and waste, existing in the prison system as

²⁰⁸ “Prisons Rotten System, Says One of Board,” *Fort Worth Press*, 5 March 1948; “Texan Brawls Like a Baby after Tour of the State’s Prison Farms,” *Jacksonville Journal*, 4 March 1948; “Convicts Live in Stinking Filth,” *Wichita Falls Record News*, 23 April 1948.

we found it.” Stufflebeame’s remarks are those of a traveler who has just returned from a strange, exotic, and dangerous place.

Another tank contained only young men, aged 20 to 25, at another unit. I was warned not to go in there, for it was dangerous. Upon my entrance, there as elsewhere, the convicts came running to their bars like chickens coming for corn. Each one hopes faintly for some slight relief from any visitor. The stench was terrible. Toilets were stopped up. Overhead water pipes leaked copiously. There were 75 men in there, and only 66 bunks. How could they manage to bed down 75 men in 66 bunks? One of the boys explained it. He said there always were enough of them up walking in an effort to keep warm and to take up surplus.²⁰⁹

In describing the kitchen and the convicts’ food, Stufflebeame related that wet clothes hung drying over boiling stove pots and just nearby the “open toilets reeked.”

Regarding prisoner meals, Stufflebeame related that there had been “no change of menu in seven months” and that the kitchen staff allowance was only a half-pound of meat “carcass weight” daily per man. The result was a sparse stew which Stufflebeame described as a “little bowl of slimy water” with “maybe an occasional shred of stringy meat.” Stufflebeame proclaimed to his standing-room only audience that “I couldn’t have eaten a bit of that mess if I had been starving.” Regarding the prison uniforms, Stufflebeame related how he found “boys pounding and rubbing their shirts on the cement floor. They said they were trying to get some of the filth out of them, that they couldn’t stand it any longer.” The garments that prisoners wore was “so rotted it came off in fingers, bit by bit, like an old tow sack water-rotted in a gutter.” Despite the fact that these inmates had begged for new uniforms for months, the warden said that they had obtained none. The convicts asked

²⁰⁹ Ibid.

Stufflebeame for only one favor: to publicize and find a way to end prison sadism and violence.

“That guard up there,” they said. “Make him quit shooting down here among us.” They showed me the marks in the wood work, and picked out .38 caliber slugs remaining from firing the day before. As we left, I protested to the warden. As he was sneering, “Just convict talk!” we heard the sound of a shot. I hurried back into the building, he following. A boy’s ankle had been shattered by a .38 caliber slug from that guard’s gun. No one offered aid. The boy was subject to death by shock. He was carried up stairs for first aid by a convict – who bandaged the ankle. No sedative, no opiate of any kind was available – not even an aspirin tablet. They never had anything like that, they said.

It is still doubtful that the leg can be saved. And the guard? Here is a letter he wrote me – relating that he was suspended, and wanting to know just how long I recommend for him to be suspended –for shooting that boy. Suspension was an unexpected aftermath, and he expected to be back on his job soon!²¹⁰

The papers followed Stufflebeame’s tour and reported that he had standing-room only audiences and was given “a rousing hand shaking ovation” at every stop. The newspapers ginned up popular support for a letter-writing campaign and for lobbying efforts for the Ellis plan. One newspaper reminded its readers that “responsibility rests with the citizens of the state. It is they who have permitted their indifference to create the deeply objectionable system.” The *Wichita Falls Record News* lamented, “The story told by Stufflebeame was terrible. It was sickening at points, but we sincerely hope he comes back to speak in Wichita Falls. We hope the city packs the municipal auditorium with thinking citizens to hear him.” Another proclaimed that “the shocking story of conditions in the Texas prison system...revealed a blot and a stench that must be removed with all possible speed and thoroughness. None were prepared to hear so revolting an account. And none,

²¹⁰ *Ibid.*

we dare say, came away without a feeling that something must be done.”²¹¹ The press generally sympathized with Stufflebeame, while acknowledging that Stufflebeame’s crusade would only succeed through the pressure of citizens groups and a “people’s lobby.” A *Houston Press* editorial reminded its readers that:

There has never been any powerful group battling at a legislative session for adequate prison appropriations. Most legislators don’t think there ever will be. Such pressure can come from only one source – the people themselves. A people’s lobby can force the next Legislature to put in the money. When the people of Texas, acting through their church groups, their civic groups, as individuals, demand a decent prison system they will get it. Any Texan who really knows what he has for a prison system today will get so mad he’ll do something about it. The *Press* hopes that a lot of Texans will get very mad, and tell their legislators and legislative candidates about it.²¹²

The public did indeed become angry. Between the fall of 1947 and the summer of 1948, the combined effect of the MacCormick and legislative reports, the Ellis hire, and Stufflebeame’s barn storming spurred a grass-root and state-wide letter writing and media campaign among citizen groups to seek prison reform.

The letter-writing campaign blended three reform impulses. First, many of the letters drew comparisons between the Texas prison system and Nazi concentration camps. Although these comparisons were undoubtedly hyperbolic, they reflected the public’s genuine concern that the conditions on Texas prison farms were so brutal that they were somehow un-American and foreign. Second, the letters’ ambivalence about the prospects for reform reveal anxiety and speak to what cultural historian William Graebner has identified as “an age of doubt.” Graebner argued that Americans in the 1940s were caught between the enthusiasm for wartime triumph and

²¹¹ *Dallas Morning News*, 20 June 1948.

²¹² “Give Ellis a Chance,” *Houston Press*, 4 March 1948.

a postwar boom economy, on the one hand, and feelings of doubt, anxiety, and insecurity stemming from the atomic bomb, the Cold War, and the Holocaust, on the other.²¹³ These reform letters conveyed a similar sense of pessimism and doubt that reform might ever come to fruition, despite the urgency of the reform mission. The letters are often anxious and insistent, but they are rarely if ever hopeful. The second theme of these letters, despite their collective tone of doubt and anxiety, stressed a humanitarian outlook that saw prisoners not just as criminals, but as fellow human beings. Third, these letters envisioned reform as a vehicle to modernize the American South. This argument inserted prison reform into the more practical language of modernization, cost efficiency, and business-like effectiveness. Texans therefore cast the reform impulse as both a humanitarian and a practical concern.

Concerned Texans wrote letters that revealed their fear that prisons threatened to make America less democratic, less free, and, ultimately, less American. After reading one of MacCormick's articles in the *Dallas News*, state representative C.M. McFarland wrote Jester that "Texas, as a Christian State, and an exponent of Democracy cannot afford to follow in the footsteps of the Nazis and eliminate our prison population by a slow process of starvation. This is unthinkable in our vaunted American way of life."²¹⁴ Similarly, Dr. Viola Kemmel posed with dismay this question to Governor Jester: "Are not our prison chambers of torture worthy of the name of concentration camps in Germany and Japan during this last war? Such as

²¹³ William Graebner, *The Age of Doubt: American Thought and Culture in the 1940s* (Boston: Twayne, 1991).

²¹⁴ Representative C.M. McFarland to Beauford Jester, December 15, 1947, Jester papers, TSLA, 4-14/113.

have defied all description.”²¹⁵ In urging its members to support the Ellis plan, the Chamber of Commerce evoked the recent memory of the Holocaust. “Texas prisons have been described as worse than concentration camps,” they warned.

Most letters generally called for humane treatment to prisoners, while also blending this humanitarianism with a practical desire for cost effectiveness, self sufficiency, and an emphasis on work. A letter from Mrs. G.A. Shaper noted that “Christian citizens” would fight for prison reform even if the cost was higher taxes. “I as a taxpayer and citizen,” declared Shaper, “am surely willing to pay a little more taxes to help right this deplorable condition.” As Mrs. Shaper insisted, “each individual is sacred” and “worthy of human treatment regardless of his color or the fact that he is a prisoner.” Sharper, like so many other letter writers, did not merely seek prison reform solely for the purpose of humane treatment. She also wanted a cost efficient prison. Sharper reminded Jester that “a weakened body and one with sores such as has been described” would be physically unable to work in prison fields. Proper treatment therefore “could be an asset” to the system’s efficiency and cost effectiveness.²¹⁶ Similarly, while Mrs. C.A. Barr did not “especially like taxes of any kind,” she felt that “appropriations should be increased” for the prison system.

Although Stufflebeame’s speech was “for men only,” it was largely women’s Christian groups who wrote vociferous letters to the governor. As part of the state-wide effort, the Texas State Council of Methodist Women sent copies of the Legislative Committee report and the Ellis Plan to its co-religionists across the state.

²¹⁵ Dr. Viola Viola Kimmel to Governor Beauford Jester, May 12, 1947, Jester papers, TSLA, 4-14/113.

²¹⁶ Mrs. G.A. Shaper to Governor Beauford H. Jester, October 16, 1947, Jester papers, 4-14/113.

“Write the Prison Board and give them your support,” insisted the Methodist organization. “Tell them you expect and will appreciate a humane, sane, and Christian prison.” Joining the State Council of Methodist Women in their crusade were organizations both large and small, state-wide and local, which sent organizational petitions and resolutions demanding reform to their state legislators and the governor. These citizen groups included the Jaycees, the San Antonio Council of Churches, the Adult Women’s Bible Class of the First Christian Church of San Marcos, the Knights of Columbus, Wichita Falls Rotarians, Women’s Society of Christian Services, and, the Texas Joint Chamber of Commerce.²¹⁷ As the chairman of the Jaycees insisted: “Our job is to give wide publicity to these degenerate conditions. We must make the legislature know that the public is behind the demand for \$4 million to put the Ellis Plan in operation.” Similarly, a mass letter to the Knights of Columbus from its president implored members to consider the prison system “a black record of stupidity, gross brutality, and human tragedy” that, until recently had gone unnoticed. But through “first hand knowledge” Texans had been shown “that the bad conditions which have existed in the past cannot be exaggerated.” “For the sake of humanity,” pleaded the letter, “if it is at all possible, I sincerely trust you will find it consistent to endorse this overall program. For a long time most of us did not know the facts. Now that we know them, can we tolerate them longer?”

²¹⁷ The following groups sent a supportive measure resolution to Governor Jester’s office: the San Antonio Council of Churches, Harold Kilpatrick, Executive Secretary; Women’s Society of Christian Services, resolution of support 20 July, 1948. Signed by Mrs. B. Huval and Mrs. J.R. Hennon.

Male-oriented organizations tended to highlight the importance of discipline in any reform mission. The Dallas Junior Chamber of Commerce reminded its members that “coddling of prisoners has no place in the Ellis Plan.” It pointed out that the Ellis plan “proposes to protect society from criminals, to punish the criminal, and to offer hope that a small group of prisoners can be salvaged.” Their support hinged on the idea that “prison labor properly equipped can do this on a self sustaining basis, making the things they need and raising all of their own food.” The group also understood that reform impulses were fickle and that political interest was finite. “If worthwhile results are to be obtained,” warned their newsletter, “some aggressive organization of statewide scope and prestige, must spearhead the betterment movement and keep public interest from dying down.” The Junior Chamber of Commerce put their group forward as an organization well suited to reform politics because their members were “young men who are active in the business and professional world and who are public spirited.” Moreover, the Junior Chamber of Commerce saw their brand of reform as a “practical” mission that sought a business-oriented prison system, not “air castles with public money.”²¹⁸ The calls for reform were a matter of state pride and showed a characteristically competitive impulse to build a prison system that ranked “first” in the nation. As a March 1, 1948 editorial in the *Dallas Morning News* explained:

The State Prison System has been the most troublesome agency – the one to be the least proud of – in the whole Texas administrative system. Sometimes the system has been handicapped by a poor director, sometimes by a poor director, sometimes by a poor board, sometimes by a poor Governor, sometimes by a neglectful Legislature. Always, it has been handicapped by public misunderstanding and neglect. As a result, our proud Lone Star State is

²¹⁸ Junior Chamber of Commerce, *The Petomist*, March 30, 1948.

anything but “first” in the matter of a prison standard in comparison with what other states are doing.²¹⁹

Family members of inmates also wrote to Jester and the State Legislature making claims of inmate abuse. Mrs. Lillie B. Atchison, whose brother was an inmate on the Retrieve farm, pleaded with Jester that “the boys” are “treated like animals.” She made sure to communicate to Jester that “the boys are scared to death if they talk they are beat nearly to death or worse.” She also noted that while her brother was in prison for getting drunk and then “getting in trouble,” that he had since been intoxicated three times and had used marijuana once while in prison. Atchison tried to convey the porousness of the prison farm to the outside world and the ways in which guards supplied contraband to inmates. “Last summer I owned a café in Huntsville,” relayed Atchison. “A guard came in the café drunk with a pint of liquor he said ‘I am going to take your brother a drink, what do you think about that?’ I asked him to promise me he wouldn’t, but I found later he did. Gov. Jester what is the use of putting the boys in prison when the men over them can’t be trusted? The boys don’t get off the Farm and their families aren’t allowed to touch them so how do they get it?”²²⁰ In another letter, a Mrs. Riley wrote about her husband who was used as human bait so that the prison administration’s trained dogs might learn to better track escapees.

I visited my husband Easter Sunday at Harlem Farm C 2 Richmond, Tex. I noticed peces [sic] of flesh torn out his lefs [sic] by dog’s there. They are using him as dog trainer. He runs while the dogs run after him. He is forty-nine yrs of age. He is afraid to say any-thing – afraid that they will mistreat

²¹⁹ *Dallas Morning News*, editorial, 1 March 1948.

²²⁰ Mrs. Lillie B. Atchison to Beauford Jester, Jester papers, TSLA, Box 4-14/113.

him. Please send some one out there to investigate his condition. It is'ant [sic] that he doesn't want to do what is required of him it is that he wants some better job where he wouldent [sic] be eaten on by these dogs.²²¹

This letter also offers evidence that inmates caught up in the racialized classification system could lose their status as “white.” Written as if it occurred to Mrs. Riley as an afterthought, she included in the letter’s “P.S.” that her husband was wrongly classified as an incorrect “race.” “Most these folks out on prison farm call my husband a Mexican. But he is no Mexican. He is French. I know he bourne out in LA. Of course a Mexican is a human same any other. But Frank Ripley is French.”²²² Frank Ripley’s plight highlights the importance of the racial classification system and the ways in which prioritized skin privilege shaped a prisoner’s condition and safety. Indeed, had the prison system chosen to classify Frank Ripley as a French “white” inmate as opposed to a French “Mexican,” it would be unlikely that he would be used as human fodder for trained hunting dogs.

Some letters writers demanded that Prison Board members be replaced. Mrs. C.A. Barr, for instance, was indignant at the prison for doing “nothing about the disgraceful condition” of the prison system. “It is almost beyond belief,” wrote Barr, “that six of the nine men of the Prison Board would vote to retain farm managers who are brutal and declare they will continue in the way they are going.”²²³ At the Texas Junior Chamber of Congress state convention in 1948, its president presented a resolution that “every delegate to the State Convention will go back to their

²²¹ Mrs. Frank Riley to Beauford Jester, Jester Collection, TSLA, Box 4-14/113.

²²² *Ibid.*

²²³ Mrs. C.A. Barr to Beauford Jester, May 25, 1947, Jester papers, TSLA, 4-14/113.

respective communities and carry the message to their local people.” Further, every local chapter was to “go on record by telegram” to the governor and their state senator that they supported the Ellis Plan. One local paper expressed the hope that Stufflebeame’s speech “should make the system have its proper part in every voter’s political thinking. The politicians will get busy quickly enough when the public has this question on its conscience.” *The Abilene Reporter* noted that it was time that the state legislature reform “the relic of the Dark Ages which we call our prison system.” The article appealed to the public that moving the legislature was dependent “on how hot a fire the people build under the law makers.”²²⁴

In addition to the letter-writing campaign to the governor, reformers also lobbied state legislators. The radio station KPAC at Port Arthur, Texas, for instance, broadcast an announcement that read, word-for-word, the five-point program and included a plea from the announcer “to do your share...contact the Governor, your State Representatives and Senators” to create “a self-supporting institution.” As an editorial in *The Dension Texas Herald* reminded its readers that prison reform in Texas had tried and failed before. “There has been much talk especially during the last legislative session in regard to the shameful situation in Texas prisons. Loud conversation on the matter goes back through the years.” Noting that Texans “are weary of prison system betterment pledges for political purposes” the paper warned “let’s do something about it, Mr. Jester. Put the ‘People’s Path’ into action. Into action, sir, before the ‘People’s Path’ incurs the people’s wrath.”²²⁵

²²⁴ *Abilene Reporter*, news clipping, Jester papers, TSLA, 4-14/113.

²²⁵ *The Dension (Tex) Herald*, 5 September 1947.

One open letter in particular threatened the credibility of the prison system and the Prison Board. S.E. Barnett, a former Superintendent of Printing with the TPS, offers an example of a former prison administrator turned whistle-blower. Barnett tendered his resignation on August 31, 1946 after having worked in the prison system for fifteen and a half years. Addressing his open letter to M. Riley Wyatt, the chairman of the Board, Barnett charged that: "If you have been aware of these brutalities all along, Mr. Wyatt and have made no effort to stop them, then I would say you have no business on the Prison Board. And the same thing can be said for the other Board members." In regards to the prison administration, Wyatt charged that prison system possessed a "unequaled record" of financial mismanagement, and he cited the 1944 Annual Report which showed a net loss of \$1,500,675, which amounted to a per man loss for the year of \$436 for every inmate in the Prison System. Wyatt's vituperative letter was especially damaging because it showed the public that many of the inmate's complaints concerning brutality were indeed justified:

You certainly cannot lay a claim to rehabilitation or a reformative institution. You should know that building tenders have beat the heads of their fellow prisoners almost to a pulp. You should know that inmates have had knives plunged into their hearts while others slept by because they were some farm managers' 'stool pigeons.' You should know that inmates have been almost devoured by dogs in the fields and have been brutally handled in other ways. You should know that inmates have been taken from the farms by the farm managers, or their wives, to work on nearby personal property. You should know that inmates on the farms were forced to live and sleep in dirt and filth and slime that bed bugs and other vermin almost took over some of the farm barracks. If you didn't know of these things, then WHY didn't you?

It is up to the Prison Board, Mr. Wyatt, to banish brutality in the Texas Prison System. But are the members of the Texas Prison Board capable of doing that?²²⁶

Barnett warned that prison reform can erect “the finest buildings that money can buy” but that the failure to end the practice of inmates serving as guards (building tenders) would mean that Texas would “still have the rottenest system on earth.” “It takes more than fine buildings to make a modern prison system,” Barnett admonished.²²⁷

Initially, however, Ellis claimed that he would diminish the power of the building tender system and he insisted that inmate-on-inmate brutality would not be tolerated. In a June 3 1948 letter to state representative James C. Spencer, Ellis responded to Spencer’s charge that Ellis had removed building tenders from their position, and therefore caused instability in the tanks:

You [Spencer] referred to certain employees, such as building tenders, having been taken off their job in the prison creating disciplinary problems.
BUILDING TENDERS WERE PRISONERS AND NOT EMPLOYEES.
[emphasis in the original] For years inmates armed with dirks and blackjacks have been used to rule the tanks. A few weeks ago, two inmates at the Central Farm got in a fight. A building tender named Earl B. Hunter, an inmate with a long record, took up the fight and with a pair of homemade knuckles beat one of the boys head into a pulp. I issued an order to all farm wardens to disarm all building tenders, and that employees not inmates should be responsible for the discipline of prisoners. This is a practice that has been discontinued for many years in all the better institutions of this country....I do not believe the people of Texas want and approve of this kind of practice.²²⁸

²²⁶ S.E. Barnett to M. Riley Wyatt, September 1947, Jester Collection, TSLA, 4-14/113.

²²⁷ *Ibid.*

²²⁸ O.B. Ellis to Representative James C. Spencer, June 3, 1948, Jester papers, TSLA, 4-14/113.

Ellis therefore promised that the building tenders would be stripped of power and arms. Such an order insulated him from public criticism that his plan did not dismantle the building tender system. His insistence on work and a cost effective prison, however, meant that the building tender system continued because it allowed the prison system to keep operating costs low by hiring as few guards as possible. Reformers therefore failed to address the building tender system and they accepted the prison administration's claim that building tenders were not armed and that they had no disciplinary authority over other inmates.

*“An Efficient and Business-like Prison:”
The Prison Board and the Model of Prison Efficiency*

While the letter writing campaign gained political attention, board members were busy reshaping the prison reform message behind closed doors. Several members of the Prison Board, for instance, responded to the campaign with indignity and incredulousness. During the late summer and through the fall of 1947, Board members sent a flurry of letters to the governor, themselves, and to MacCormick. In this process, three Prison Board groups emerged: status quo supporters (W. Albert Lee and Barney Harrison); crusading reformers (B.A. Stufflebeame, T.N. Wheat, and French M. Robertson); and, moderate reformers (W.C. Windsor, the chair, T.R. Havins, J.E. Wheat, and Bronson Morgan).²²⁹

²²⁹ As part of the struggle over prison reform, there was also an internal board struggle over who should sit as its chair. This struggle pitted Albert Lee against J.E. Wheat and represented a struggle between status quo politics versus change. On March 28, 1947, Board Chair W.C. Windsor wrote to Jester that there was “no likelihood of Albert Lee or Barney Harrison resigning soon. “I am convinced that Albert Lee will not resign until he is positive all chance of his leadership is lost. It appears that he is more interested in certain personalities within the organization, and personal publicity, than he is in the welfare of the TPS. Major Stakes and the Asst. Mgr seem to comply with his every wish...Barney

The choice of MacCormick, a northeastern expert, to review Texas prisons struck many on the Board as an impeachment of southern management, and as an example of unwanted intrusion by a northern and “naïve” expert. W. Albert Lee, a board member, wrote other members of the board and the governor in August. He insisted that after having talked to “numerous prisoners as well as prison officials” that he had “not even gained, by inference, the idea that any excessive brutality or management evils existed in the Prison System.” Lee attempted to besmirch MacCormick’s use of inmate sources and thereby repeated a refrain that would be heard whenever the public encountered the prospect of prison reform. “Those who do not know, [emphasis in the original]” insisted Lee, “are inclined to believe an inmate’s testimony over that of an employee.” In characterizing MacCormick as someone who may not “know” Texas prisons, Lee highlighted MacCormick’s outsider status. Lee went on to characterize MacCormick’s report as one imbued with “sympathy” for the “underdog” in which “emotions [emphasis in the original] leads us to believe what he [the convict] tell us.” But, admonished Lee, “if these ‘reputable sources’ are based on convict testimony given to some sympathetic character” then “such testimony isn’t worth a dime.” Lee offered the simple, but effective, refrain that criminals and prisoners are liars by nature, and that those who believe them are

Harrison will likely pursue whatever course Albert Lee follows.” Further, in a July 14, 1947 letter from Bronson Morgan to T.N. Whitehurst, Morgan related that: “If Mr. Lee is chosen Chairman of the Board I think this will indicate to the employees that the Board’s policy is to permit any sort of illegal brutality and cruelty which any employee wishes to administer. If Judge Wheat is chosen this will indicate to all concerned that the policy of the board is to be firm but just and fair.” Bronson Morgan to T.N. Whitehurst, July 14, 1947, Jester papers, TSLA, 4-14/113.

naïve and easily fooled. “Mr. MacCormick has been misled,” charged Lee.²³⁰ In another letter, Board Member T.R. Havens concurred that there was a “great amount of misinformation” because “convicts don’t tell the truth.”²³¹

Indeed, Board Member J.E. Wheat directly addressed the outsider and northeastern bias that many on the Board believe that MacCormick had brought with him. In a letter to MacCormick, dated September 3, 1947, Wheat noted that “You know the War Between the State States is still on, and it is impossible for the north to win a political battle in the southern states.” Wheat admitted that the governor and the members of the Prison Board privately acknowledged the “truthfulness of what you have said,” but that it was “not good politics to admit it.” Further, he felt that most of the Board resented MacCormick’s private wire to the Governor. He also offered the pessimistic admission that “the fight has been lost for any improvement in the administration” other than “to secure some good buildings.” Wheat admitted to Jester that “I do not know of anything worse than the Texas System during the last twenty or the last one hundred years. The French Penal Colony on Devil’s Island might have been worse but I doubt it.”²³²

Despite having their doubts, both Lee and Havins agreed that the prison system needed to dismantle the dormitory system in favor of individual cells. “The Retrieve Farm is a mistake,” admitted Havins. “Those men ought to be within the walls at Huntsville” and the “Darrington Farm literally smells. It is a disgrace to the

²³⁰ W. Albert Lee to Board Members, August 1947, Jester papers, 4-14/113.

²³¹ T.R. Havins to Beauford Jester, August 1947, Jester Collection, 4-14/113.

²³² J.E. Wheat to Austin MacCormick, September 3, 1947, Jester papers, TSLA, 4-14/113.

state. I know both the law and the Constitution are being violated there every day.”²³³ And, at the Ramsey Farm, Havins noted that the field guards carried bull whips on their saddles and he suspected that “the Negroes feel them.” Lee also agreed with MacCormick’s conclusion that the dormitories “bred” further crime. “If we can get the lowest element of the prison population segregated and can keep it from spoiling all the rest,” concluded Lee, “I think that a definite stride will have been made.” In a September 5, 1947 letter to Jester, Board Member L.T. Murray agreed that “our first and foremost need” is to move away from the dormitory living arrangement towards cells so that “the inmates can be properly segregated.” “As far back as I can remember,” confided Murray, “the Texas Prison System has been subjected to severe public criticism.” For Murray, cost savings was as important an issue as humane treatment. “It is my belief,” he wrote, “that a modern prison system in the long run will cost the state less money than the present sprawling makeshift.”²³⁴

The Board hoped to turn Stufflebeame’s populist crusade for reform into an “administrative” and “business” issue. Senator James E. Taylor responded to Stufflebeame’s speeches by sending a letter that Jester characterized as “a veiled warning that you and other members of the Public Relations and Publicity Committee of the Board should heed.” T.R. Havins confided privately to Jester that Stufflebeame had not consulted him or the other members of the board, and, as a result “resentment has been aroused in certain quarters.” He charged Stufflebeame with “carrying on a one-man-campaign” that was based “on the wrong concept.”

²³³ T.R. Havins to Beauford Jester, September 8, 1947, Jester papers, TSLA, 4-14/113.

²³⁴ L.T. Murray to Beauford Jester, September 5, 1947, Jester papers, 4-14/113.

Others on the Board, however, were more careful as to how they couched their criticism of Stufflebeame and his growing base of grass-roots and media supporters. "I have read with interest your talk at Dallas and several other places as reported by the Press," wrote Board Member Bronson Morgan to Stufflebeame, "and I want to compliment you on the job you have done as bringing to the people the conditions that existed in the prison." Morgan emphasized how the other Board members were "deeply appreciative of your tireless efforts" in which the entire Board owed "a great deal to the Press all of whom have striven hard to give us the right kind of publicity" and that their articles were surely written in "a spirit of helpfulness." The real purpose of Morgan's letter, however, was "to sound a note of warning." Morgan worried that "the press is playing up in the headline [on] the chaotic conditions" and that the public "is reading only the headlines." Moreover, Morgan feared that the public was fast becoming "skeptical of our ability to improve conditions" and that many citizens might soon "lose confidence in our management." As a result, Morgan suggested that the Board move away from Stufflebeame's populist crusade. "The time has come to start selling the public on the manager's ability" and on "what we are going to have in the way of a model prison for Texas. We have spent six months telling the people how bad it is...we should spend the next nine months painting a beautiful picture of what we are going to have in Texas in the way of a Prison System."²³⁵

Jester wrote Stufflebeame in June 1948 and instructed him to stop his public appearances. In response, Stufflebeame promised, "I will begin to let up. I will

²³⁵ Bronson Morgan to Stufflebeame, March 9, 1948, Jester papers, TSLA, 1948, 4-14/113.

immediately change my approach to the problem.” Still, he wanted Jester to know that that “in every speech I have made I have given you the greatest political breaks that you have had this year.” In a carefully worded statement, Stufflebeame reminded Jester that “in every place I have appeared and I have talked to some fifteen or twenty thousand top men in the State of Texas – I have had members of the Legislature on the platform with me, and invariably they have told me that my approach to the problem was the only way on earth by which we could this job done and get the people and the legislature aroused.” Realizing that his speeches had made both Jester and the Board politically vulnerable, Stufflebeame defended his position by insisting that “at no time” did he discuss “the problem of the Texas Prison System in such a way as to enable my hearers to in any way fix a definite responsibility for the conditions that existed down there on any board or individual.” Stufflebeame ended on a more critical note when he reminded Jester that his speech told “a pretty hard story” that took “a lot of guts and a little brains” to tell.²³⁶

Board member J.E. Wheat understood that Stufflebeame had aroused the public and provided much needed pressure on the state legislature. The trick, he thought, was putting the genie back in the bottle and controlling the message. In a private letter to Jester that summarized the Board’s response to Stufflebeame, Wheat confided to Jester that “the only purpose that can be served by arousing public sentiment, as Stufflebeame had done, was to secure the legislature’s commitment.” What would be “more effective,” however, would be for the governor to present the Ellis plan as “an administrative measure,” and not as a by-product of a populist

²³⁶ B.A. Stufflebeame to Beauford Jester, May 18, 1948, Jester papers, TSLA, 1948, 4-14/113.

crusade. Citing the recent passage of the Gilmer-Aikin bill, which restructured public schools, Wheat argued that “the effective use of a public pressure group” resulted in “a very unwise piece of legislation.” Wheat thought that the Board needed to avoid being seen as having given in to the prison reform movement, who, he alleged, many saw as “crusaders” attempting “to render a Christian service to the poor unfortunate victims.” He felt that there was danger in being cast as too sympathetic to inmates, making the prison system susceptible to charges of running a “country club” and giving inmates “a real vacation.”²³⁷

Wheat’s solution to charges that they were building a “soft” prison system that coddled convicts was to present the plan “entirely as a method of making the institution self-supporting.” Wheat assured the governor that “no member of the Board has any political ambitions” nor any desire to “obtain any publicity,” and that their “only desire is to see a state institution put upon an efficiency and business-like basis.” What resulted then was a political movement for a “business solution” to the problem of Texas prisons.²³⁸ Progressive reformers, as David Rothman has shown, have often been torn by “conscience and convenience,” between moral convictions for progressive prison reform and practical realities requiring concessions to prison administrators.²³⁹ Texan reformers of the post-war period felt no such disjuncture between “conscience and convenience.” By blending a humanitarian appeal with conservative principles that demanded efficient government, Texans forged a new

²³⁷ J.E. Wheat to Beauford Jester, May 18, 1948, Jester papers, TSLA, 4-14/113.

²³⁸ Ibid.

²³⁹ David J. Rothman, *Conscience and Convenience: The Asylum and its Alternatives in Progressive America* (Boston: Little, Brown, 1980).

kind of reform movement, one that would judge successful reform through “external” results. Their brand of reform did not place the reformer inside the prison, inquire as to the means of how prison discipline and order was achieved. It simply deemed that order be achieved and prisons be made self-sustaining.

Combining the populist demand for a humane prison with an “administrative” business plan for a model prison enterprise allowed the Prison Board to secure political support. The state legislature, which only months before lacked political will, therefore passed the prison reform package for \$4.2 million with a unanimous vote. The passage of the Texas prison reform bill was a tremendous victory for reformers and a testament to the state’s dedication to its prison system. Indeed, the \$4.2 million outlay was the nation’s largest single appropriation for the reorganization of a state prison system, with the exception of the reorganization of the Federal Prison System in 1930. On March 7, 1949, Governor Jester signed the prison expenditure into law, insuring that Texas would have the financial wherewithal to construct a prison business empire.

CHAPTER 3.

“THE CROWN JEWEL OF CORRECTIONS:”

CONTROL PENOLOGY, PRISON LABOR AND THE CONSTRUCTION OF A PRISON BUSINESS EMPIRE, 1948-1978

A great problem in American prisons is finding something constructive for the inmates to do. In many prisons, especially in the north and east, they warehouse convicts – they keep them in cells and permit them to lie around all day long. Every able man in our department works. And he works hard...If we don't do anything else in the Department of Corrections we at least teach them the dignity of work and the necessity of work.

-- George Beto, Director of Texas Department of Correction, 1962-1972;
“Manpower, Motivation, and Management – The Key to Our Future”

They've got this place so regulated that there's no chance to screw up. Here, every decision, even the tiniest one, is made for you...It's like running a poultry farm. There's good feed, the cages are clean, they wash down the animals, but it's all mechanical. Honor, integrity, decency – these are the human things that there is no attempt to instill. It's the antithesis of the outside world, where you have to take some measure of responsibility for yourself. They turn out great prisoners here – but broken people.

-- Frank Leahy, Texas Inmate, 1978

The passage of the Ellis Plan in 1948 marked the beginning of the nation's most ambitious reform program to replace a notorious plantation/prison farm system with an efficient, business-oriented agricultural enterprise system. Indeed, the state's 1948 \$4.2 million outlay was the nation's largest single appropriation for the reorganization of a prison system, with the exception of the reorganization of the Federal Prison System in 1930. When this new system was fully operational in the 1960s, Texas garnered plaudits as a pioneering, modern, efficient, and business oriented Sun Belt state. Texas prisons went from what the *Tyler Courier Times* aptly termed the "worst in the nation" and "a modern version of the Black Hole of Calcutta" that was "the source of shame and disgrace to the Lone Star State," to what Austin MacCormick, the nation's leading post-World War II penologist, called "the best in the nation" and the "national prison yardstick."²⁴⁰ The "national prison yardstick" that measured Texas prisons against other systems used a metric that considered work, order, control, productivity, economic self sufficiency, and low cost government as the measure of good prison management. These were the key elements that comprised "control penology," the guiding philosophy of Texas prison management.

Many external observers, particularly southern politicians and penologists, viewed the Texas prison system only through a narrow business model. From an external vantage point, it seemed that prison administrators had embarked on a remarkable thirty-year period of success from 1948 to 1978 in which Texas prisons became a regional and national model of efficiency and order that marked a "golden

²⁴⁰ "Texas Prison System Runs Gauntlet of Bad and Best in Nation's Penal Institutions," *Tyler Courier Times*, 20 December 1947.

age” for Texas prison management. Political scientist John J. DiIulio attributed the success of the Texas prison system to its implementation of a “Madisonian conception of the prison as a constitutional government.” DiIulio described Texas prisons as “benevolent, paternalistic despotisms” whose precepts included an emphasis on work and discipline; a paramilitary organization among guard and administrative personnel, in which personnel strictly adhered to clear lines of hierarchical authority; and the maintenance of internal order through prompt and clear punishment.²⁴¹ Drawing on Edmund Burke’s philosophy that “good order is the foundation of all good things,” DiIulio heralded the Texas “control model” as the nation’s ideal system and concluded that “prison managers may govern best who govern most.”²⁴² Work discipline and self sufficiency were key aspects of prison modernization and the evolving control penology model. This chapter therefore analyzes the organization and regimentation of fieldwork and how prisoners found means to resist what they saw as enforced patterns of “slave labor.” An analysis of field labor shows the ways in which labor relations constructed a hierarchical and privileged work regime within the prison.²⁴³ It also examines the role that prison

²⁴¹ John J. DiIulio, *Governing Prisons: A Comparative Study of Correctional Management* (New York: The Free Press, 1987), 179.

²⁴² *Ibid.*, 7, 44.

²⁴³ This chapter considers how work and prison labor structured inmate society in a hierarchical and privileged system. Most prison scholarship approaches 20th century prison society from the perspective of social control, criminal behaviors, prison-guard relationships, and rehabilitative programs, but prison scholars of the 20th century prison have ignored prison labor and the ways in which that labor structured and dominated prison life. A parallel absence also beset slave scholarship, which until the 1990s, paid little attention to the study of slave labor and offered instead trenchant studies of slave society, culture, families and religion. These studies, as Ira Berlin reminded scholars, took slave labor for granted and viewed slave culture from the vantage point of “the quarter, household, and church, rather than field and workshop.” As Berlin wrote, “slavery was first and foremost an institution of

modernization played in the formation of a post-war New South and Sun Belt ideology.²⁴⁴ It considers how prison administrators fashioned an external economic success story and the guiding management philosophy that they employed to build a Texas prison business empire.

coerced labor. Work necessarily engaged most slaves, most of the time.” Berlin’s observations on the ways in which labor structured slave society could be equally applied to the study of Texas prisoners, whose daily life was consumed with work and wherein management’s chief concern was discipline to achieve productive labor. For work that emphasized slave culture, religion, and family, see Eugene D. Genovese, *Roll, Jordon, Roll: The World the Slaves Made* (New York, 1974); Herbert G. Gutman, *The Black Family in Slavery and Freedom, 1750-1925* (New York, 1976); John W. Blassingame, *The Slave Community: Plantation Life in the Antebellum South*, rev. ed. (New York, 1979); Lawrence W. Levine, *Black Culture and Black Consciousness: Afro-American Folk Thought from Slavery to Freedom* (New York, 1977); Albert J. Raboteau, *Slave Religion: The ‘Invisible Institution’ in the Antebellum South* (New York, 1978); Michael Gomez, *Exchanging our Country Marks: The Transformation of African Identities in the Colonial and Antebellum South* (Chapel Hill: The University of North Carolina Press, 1998); Sylvia R. Frey and Betty Wood, *Come Shouting to Zion: African American Protestantism in the American South and British Caribbean to 1830* (Chapel Hill: The University of North Carolina Press, 1998). On the study of slave labor as a means to shed light on slave society, see Ira Berlin, “Labor and the Shaping of Slave Life in the Americas,” in *Cultivation and Culture: Labor and the Shaping of Slave Life in the Americas* (Virginia: University Press of Virginia, 1993), 1.

²⁴⁴ The chapter contributes to the emerging historiographical debate between historians of the South who prioritize race and racist ideology as the reason for the modern South’s conservative turn, and a more recent body of scholarship that emphasizes class, economic issues, and “colorblind” politics. Historians who prioritize race and racist ideologies argue that southern conservatism was largely a response to the Civil Rights Movement. Moreover, scholars advocating this “backlash” and “southern strategy” thesis maintain that the “rise” of conservatism has moved beyond the South and has made national politics and culture in its own image. Recent scholarship, however, has challenged the “southern strategy” thesis by arguing that such an interpretation discounts the South’s tectonic demographic and economic transformations. Shifts in population and economy from rural to urban, and from agricultural work to a service-sector economy, resulted in a more sophisticated urban and suburban electorate. Examples of work that have emphasized class and economic issues over racial backlash, include: Byron Shafer and Richard Johnston, *The End of Southern Exceptionalism* (Princeton: Princeton University Press, 2006); Matthew D. Lassiter, *The Silent Majority: Suburban Politics in the Sun-Belt South* (Princeton, N.J.: Princeton University Press, 2006); Kevin Kruse, *White Flight: Atlanta and the Making of Modern Conservatism* (Princeton, N.J.: Princeton University Press, 2005); Matthew Lassiter, “The Suburban Origins of ‘Color Blind’ Conservatism: Middle-Class Consciousness in the Charlotte Busing Crisis,” *Journal of Urban History* 30 (2004): 549-82; and, Joseph Crespino, *In Search of Another Country: Mississippi and the Conservative Counterrevolution* (Princeton: Princeton University Press, 2006).

*“From the Gutter to a Level of Respectability”:
The Construction of a Prison Business Empire*

Between 1948 and 1961, the year of prison director O.B. Ellis’s death, Texas approved nearly \$19 million to improve and “modernize” its prisons. Drawing from such state largesse, Ellis launched a major penal reform program that modernized agricultural production and initiated industrial production, while also hardening Texas’s penal discipline. In an acknowledgement of his success with the Texas legislature, Austin MacCormick trumpeted in a 1949 letter to Ellis, “This is a very momentous time in the history of the Texas prison system.”²⁴⁵ MacCormick’s excitement over the reform package was especially valuable to Texas prison administrators as MacCormick had previously been the nation’s foremost critic of the Texas prison farm system and he served as the state’s chief architect and reformer during the immediate postwar period. Over the course of the next twenty years, the success of Texas prisons was measured through the prism of control penology’s central tenets. Control penology established four indices of improvement: 1) self-sufficiency and a low-cost prison; 2) building cells over farms; 3) efficient farm production; and, 4) low rates of escapes, self-mutilations, work strikes, and riots.

Prison upheaval and rioting became a particularly important issue as overcrowded prisons nationwide erupted into postwar riots. In 1952 and 1953, there were over forty prison riots across the country, which amounted to more prison riots during that eighteen-month period than there had been over the past twenty-five

²⁴⁵ Austin MacCormick to O.B. Ellis, June 14, 1949, Governor Beauford Jester papers, Texas State Library and Archives (TSLA) Box 4-14/113, hereafter cited as Beauford papers, TSLA.

years.²⁴⁶ Texas, however, suffered from no riots or unrest at this time. The prison system could also point to a significant decline in self mutilations and prison escapes, both of which had been perennial problems during the war.²⁴⁷ Following the 1948 reforms, “heel stringing” declined from 119 cases in 1946 to zero in 1953, while prison escapes decreased from 126 in 1947 to 16 in 1953 (see Table 2).

Further, Texas prisons were nearly self-sufficient and extremely low-cost, facts that caught the eye of cost-conscious politicians leery of rehabilitative programs with high price tags. In 1951, the average daily cost of maintaining a prisoner in 44 states was \$2.23 and the cost increased to \$3.59 in federal prisons, while the cost per an inmate in Texas was a very low 49 cents.²⁴⁸ The low-cost prison remained a steady feature through the late 1970s. In 1963, for instance, the prison system operated at a cost to the taxpayers of \$1.47 per-man-per day, while the national average was \$3.50 per-man-per-day.²⁴⁹ As late as 1978, the state of Texas spent only \$47 million to hold 23,614 prisoners, far less than what New York and California

²⁴⁶ For an analysis of the 1952-1953 riots, see Richard A. McGee, *Riots and Disturbances in Correctional Institutions* (Washington, D.C.: American Prison Association, 1952); Austin H. MacCormick, “Behind the Prison Riots,” *The Annals of the American Academy of Political and Social Science*, 293 (1954): 18-19; Gresham M. Sykes, *The Society of Captives* (Princeton, NJ: Princeton University Press, 1958); and, McKelvey, *American Prisons: A History of Good Intentions*, (Montclair, NJ: P. Smith, 1977), Chapter 13.

²⁴⁷ Department of Corrections, *Twenty Years of Progress* (Huntsville: Texas Department of Correctional Justice, 1967).

²⁴⁸ “Texas Prison System Changes Afford New Hope for Inmates,” *Houston Chronicle*, 21 February 1954.

²⁴⁹ George Beto, “The Case for Prisons,” *Texas Police Journal*, August 1964, George Beto Collection, Sam Houston State University, 1-4/45, hereafter cited as Beto, SHSU.

Table 2. Inmate Population, Escapes, Mutilations, Deaths, 1939-1963

| Inmate Population, Escapes, Mutilations, Deaths, 1939-1963 ²⁵² | | | | | |
|---|---------|---------|-------------|------------------------------|-----------------------------|
| | Av. Pop | Escapes | Mutilations | Inmates Killed By Inmates | Inmates Killed By Guards |
| 1939 | 6,992 | 54 | n/a | 3 | 8 |
| 1940 | 6,687 | 55 | n/a | 3 | 3 |
| 1941 | 6,011 | 81 | n/a | 5 | 6 |
| 1942 | 5,433 | 92 | n/a | 4 | 1 |
| 1943 | 4,292 | 151 | n/a | 3 | 1 |
| 1944 | 3,461 | 103 | n/a | 2 | 6 |
| 1945 | 3,275 | 115 | 126 | 7 | 2 |
| 1946 | 3,850 | 124 | 87 | 4 | 3 |
| 1947 | 5,099 | 126 | 87 | 5 | 9 |
| 1948 | 5,760 | 91 | 49 | 8 | 7 |
| 1949 | 5,987 | 49 | 28 | 6 | 2 |
| 1950 | 6,302 | 56 | 18 | 4 | 3 |
| 1951 | 6,616 | 25 | 15 | 3 | 3 |
| 1952 | 6,828 | 29 | n/a | 2 | 0 |
| 1953 | 7,414 | 16 | 0 | 4 | 1 |
| 1954 | 8,248 | 28 | n/a | 2 | 0 |
| 1955 | 8,715 | 9 | 0 | 1 | 1 |
| 1956 | 8,995 | 18 | n/a | 0 | 0 |
| 1957 | 9,781 | 24 | 0 | 3 | 2 |
| 1958 | 10,550 | 18 | n/a | 1 | 0 |
| 1959 | 10,953 | 5 | 0 | 0 | 3 |
| 1960 | 11,308 | n/a | n/a | n/a | n/a |
| 1961 | 11,820 | 15 | 0 | 0 | 1 |
| 1962 | 12,203 | na | n/a | n/a | n/a |
| 1963 | 12,304 | 16 | 0 | 0 | 2 |

spent on 18,000 and 20,000 inmates, respectively. New York's prison system costs were \$218 million and the California prison system costs were \$269 million.²⁵³

²⁵² Data compiled from: Texas Department of Corrections, "Annual Report, 1963," Texas Department of Criminal Justice, TSLA; TDC Board meeting minutes, November 1963, TDCJ, TSLA.

²⁵³ On the eve of the 1971 Attica riot and at the very height of New York's experiment with the rehabilitative prison, the state's Department of Correctional Services operated twenty-one correctional facilities, including prisons, hospitals, reformatories, work and environmental conservation camps, and a narcotics rehabilitation center, with a staff of over

Texas prisons were also productive, which explains the prison system's low cost. In 1948, the prison industries and farm operations covered 57% of the system's operating cost. Three years into the Ellis program, the prison experienced an increase in work productivity that amounted to 77% of the prison system's total cost. When asked about these astounding numbers by a journalist, Ellis remarked that his successes were due to his emphasis on work. "The solution is to give them both the incentive and knowledge of how to work." And, from the inmate's perspective, Ellis noted that: "The more you produce the more you will have to eat and the better you will live. Soon men who had picked 60 to 70 pounds of cotton a day started picking 300 pounds."²⁵⁴ Over the course of the next decade, agricultural improvements led to a more productive and a more diversified produce base. In 1947, the TPS had 22,000 acres under cultivation and the crop schedule called for 7,000 acres of corn, 7,000 acres of cotton, 7,000 acres in feed crops, and 1,000 acres in edibles. By 1959, however, the TPS had 36,000 acres under cultivation and the crop schedule included a far more diversified produce base with 52 different crops, including 3,700 acres of edibles. Texas prisons had become one of the state's biggest agri-business, so much so that the *County Farmer*, which conducted a state-wide poll of agriculturalists and

7,650 people and an annual budget of more than \$100 million. The cost of such a vast therapeutic network nearly bankrupted the New York prison system and did nothing to deter the 1971 Attica prison riot, causing Governor Nelson Rockefeller, the very embodiment of New York liberalism, to abandon "scientific treatment" and the state's traditional rehabilitative approach. For statistics concerning the size of New York's prison system in 1971, see: *Attica: The Official Report of the New York State Special Commission on Attica* (New York: Praeger Publishers, 1972). For comparative statistics on Texas, California, and New York prisons in 1978, see: "Texas Prisons 1975-Present," Vertical Files, newspaper clippings, Center for American History, University of Texas, Austin.

²⁵⁴ Ellis quoted in Ray Holbrook, *Nashville Tennessean*, "Former Tennessean Revolutionizes Texas Prison System," 21 February 1954.

state farmers, recognized Byron Frierson, the prison's agricultural director, as "Texas Farmer of the Year" for 1957.²⁵⁵

The prison's greatest cash crop by far was cotton. By 1962, the prison system yielded \$2,000,000 from its 10,000 acres of cotton cultivation. In that year, Texas prisoners harvested 12,000-to-14,000 bales of cotton from the system's five gins, which ran 24 hours a day and turned out 700 bales daily. The increase in cotton production was the key to the system's profitable success. During the twenty-year period from 1928 through 1947, the TPS planted 258,748 total acres of cotton for a total yield of 113,148 bales or an average of .44 bales per acre. From 1947 to 1967, however, the TPS reduced its total acreage planted to 188,675 acres and yet production increased to 178,404 bales for an average per-acre production of .945 (See Table 2). Such high production levels meant that individual inmates picked between 200 and 300 pounds of cotton per a day.

The high productivity levels caused notice among the media who praised the Texas system for having moved from "one of the most barbarous hellholes in the nation" to a system that was now "pulling itself up by its own bootstraps."²⁵⁶

Similarly, a 1955 *Houston Post* editorial, entitled: "The Prisons: In Seven Years They've Gone From Bad to Good," proclaimed that "no longer are there scenes of

²⁵⁵ Frierson, a native of Haskell County's open farm lands, graduated from Texas A&M was hired by Ellis in 1949 and he remained a career TDC employee for over twenty years. "Texas Biggest Farmer," *Houston Chronicle Magazine*, 15 February 1959; "Grows Almost Everything: Texas' Biggest, Best Farmer in Prison," by Walter B. Moore, *Dallas Morning News*, 23 January 1969.

²⁵⁶ "Former Tennessean Revolutionizes Texas Prison System," Ray Holbrook, *Nashville Tennessean*, 21 February 1954.

| Fiscal Year | Cotton Average | Bale Yield | Average Yield Per acre | Cotton | Cotton Seed | Total Production |
|----------------------|-----------------------|-------------------|-------------------------------|-----------------|--------------------|-------------------------|
| 1947 | 4,650 | 2,215 | 0.476 | \$266,955.93 | \$70,157.79 | 437,113.72 |
| 1948 | 7,160 | 3,441 | 0.481 | 548,898.26 | 101,698.79 | 650,597.05 |
| 1949 | 10,850 | 3,821 | 0.352 | 432,291.79 | 55,927.53 | 588,219.32 |
| 1950 | 7,200 | 4,031 | 0.56 | 817,097.40 | 157,462.04 | 974,559.44 |
| 1951 | 11,419 | 10,409 | 0.912 | 1,809,834.23 | 272,753.05 | 2,082,587.28 |
| 1952 | 13,135 | 10,980 | 0.84 | 2,020,808.24 | 370,016.66 | 2,390,824.90 |
| 1953 | 14,770 | 12,352 | 0.84 | 1,939,381.89 | 267,720.08 | 2,207,101.97 |
| 1954 | 9,135 | 10,929 | 1.196 | 1,863,175.94 | 296,966.41 | 2,160,142.35 |
| 1955 | 7,283 | 11,512 | 0.158 | 1,786,731.75 | 200,690.89 | 1,987,322.64 |
| 1956 | 6,927 | 9,580 | 1.383 | 1,504,568.76 | 234,787.92 | 1,739,356.68 |
| 1957 | 6,954 | 9,924 | 1.427 | 1,483,255.62 | 235,400.19 | 1,728,655.81 |
| 1958 | 6,724 | 8,755 | 1.302 | 1,416,030.86 | 154,560.21 | 1,570,591.07 |
| 1959 | 8,625 | 7,727 | 0.895 | 1,028,267.99 | 125,338.02 | 1,153,606.01 |
| 1960 | 12,504 | 10,111 | 0.809 | 1,466,710.65 | 186,257.57 | 1,652,968.22 |
| 1961 | 12,050 | 6,394 | 0.53 | 1,031,695.66 | 131,349.85 | 1,163,045.51 |
| 1962 | 10,000 | 11,604 | 1.16 | 1,879,703.90 | 272,847.98 | 2,152,551.88 |
| 1963 | 9,503 | 9,893 | 1.041 | 1,574,652.39 | 252,388.67 | 1,827,041.06 |
| 1964 | 9,347 | 11,381 | 1.217 | 1,626,420.66 | 238,518.90 | 1,864,939.56 |
| 1965 | 9,421 | 10,587 | 1.124 | 1,522,021.40 | 225,547.01 | 1,747,568.41 |
| 1966 | 7,813 | 6,916 | 0.886 | 709,629.46 | 234,002.08 | 943,631.54 |
| 1967 | 7,855 | 8,047 | 1.024 | 893,659.62 | 179,087.89 | 1,072,747.51 |
| Totals | 193,325 | 180,619 | | \$27,831,792.40 | \$4,263,379.53 | \$32,095,171.93 |
| Avg. Per year | 9,250.90 | 8,600.90 | 0.934 | \$1,325,323.44 | \$203,018.07 | \$1,528,340.56 |

old-fashioned, worn out equipment. Instead, everything points to an operation that is in keeping with modern practices established by free-world ‘enterprises.’”²⁵⁸ Some newspapers practically beamed with state pride over the improvements. “The Huntsville unit shines, it is so clean,” gushed the *Dallas News*. “Even the old brick,

²⁵⁸ “The Prisons: In Seven Years They’ve Gone From Bad to Good,” *Houston Post*, Don Reid, Jr., 30 January 1955.

some of it laid in the walls before the turn of the century, is shellacked and glistens like brass. Flowers grow on every available spot on earth.”²⁵⁹

The prison also engaged in cost effective industrial work, although this aspect of Texas prison labor received less attention. By 1962, the prison system had 13 industries

employing on average 800 convicts. The industries included textiles, shoes, garments, mop and broom mattresses, pillows, brick manufacturing, canning, meat packing, and manufacture of all license plates. The industrial sector was also economical. In 1962, industrial inmate labor cost was estimated at 15 cents an hour, which was based on the \$1.50 day cost per an inmate divided by the 10-hour work day. Unlike most prison systems, however, the state did not pay Texas inmates for their labor. This kept production costs extremely low. License plates, for instance, were produced at 13 cents a set. More than six million sets were produced in 1963. Other items were equally as low. A pair of prison trousers cost \$1.60 to produce; a shirt cost \$1.55; dresses ranged from \$2.60 to \$4.15. A standard prison mattress (single-bed size) cost only \$8.13 and a pillow 85 cents. In 1962, the canning plant turned out more than 85,000 cases of 13 different types of canned vegetables.²⁶⁰

This productive prison system was also expanding. In 1959, the prison opened a new Mental Hospital at Wynne Farm outside Huntsville, called the Wynne Treatment Center. In 1962, the vision of “segregating” youthful offenders from older

²⁵⁹ *Dallas News*, Dick West, 3 June 1955.

²⁶⁰ The canning operation turned out spinach greens at a total cost of \$2.13 a case (six number 10 cans), a case of corn for \$2.86 and a case of green beans for \$2.28. “Reduce Waste in Prison Labor, Study Groups Urge,” Gayle McNutt, *Houston Post*, 1 September 1962.

Table 4. Texas Prisons: Year Founded, Location, Size

| Prison | Year Founded | Location | Size (acreage) | Prison Capacity | Type of Inmate |
|--------------------|---------------------|---------------------------|-----------------------|------------------------|--------------------------------------|
| Central (Imperial) | 1908 | Sugarland | 4,459 | 700 | 1st Time Offender Over 20 |
| Clemens | 1901 | Brazoria | 8,116 | 1,000 | 1st offenders, 17-23 |
| Coffield | 1965 | Anderson County | 22,433 | 4,000 | Nonviolent offenders |
| Darrington | 1918 | 24 miles south of Houston | 6,770 | 780 | Recidivists, 22-25 |
| Diagnostic | 1964 | Huntsville | 93 | 790 | All Incoming inmates |
| Eastham | 1917 | Walker County | 12,970 | 2,224 | Maximum Security |
| Ellis | 1963 | Walker County | 11,672 | 1,722 | Maximum Security Multiple Recidivist |
| Ferguson | 1962 | Midway, Texas | 4,355 | 1,122 | 1st offenders, 17-23 |
| Goree | 1900 | Huntsville | 889 | 585 | Female |
| Huntsville (Walls) | 1849 | Huntsville | 47 | 2,013 | 1st offender over 25 w/good records |
| Jester (Harlem) | 1885 | Richmond | 5,011 | 924 | Ones who release date are near |
| Ramsey | 1908 | Brazoria County | 16,844 | 1,879 | Recidivists over 25 |
| Retrieve | | Brazoria County | 6,754 | 1,000 | Multiple Recidivist |
| Wynne | 1883 | Walker County | 1,412 | 2,300 | Older Inmates Recidivist |
| Mountainview | 1975 | Gatesville | 97 | 645 | Female |

convicts came to fruition when the prison system opened the Ferguson Unit, near Huntsville, for younger inmates. Like most construction projects, the new prison was built almost entirely by convict labor and, according to its architect George L. Duhl, the new Ferguson prison was built for a third of the cost of what a similar unit

would cost if they had contracted with a private construction company.²⁶² In 1963, the prison system dedicated a new unit to O.B. Ellis with the 1963 completion of the Ellis Unit in Walker County, some 12 miles northeast of Huntsville. TPS purchased 7,951 acres of land for the Ellis Unit in 1959 from the Gabriel Smither estate of Huntsville. The new unit cost \$4.5 million to build, although TPS estimated it would have cost nearly \$15 million had they not used inmate labor.

In recognition of such cost efficiency and order, the penological establishment heralded Texas as a leader in prison management. E.R. Cass, General Secretary of the American Prison Association, for instance, suggested in a letter dated July 6, 1953, to Governor Gordon Persons of Alabama that Texas was a model for prison improvement. Cass noted that the Texas system had gone from being “justly condemned” and a “vicious prison system” to a “very remarkable change for the better.” Indeed, Cass also wrote a congratulatory note to Governor Allan Shivers of Texas that the TPS “had been raised from the gutter to a level of respectability.” Cass saw such progress as occurring not just state-by-state, but as a regional movement across the South in which Texas was the leader. “One by one the southern states are moving forward in prison affairs. Louisiana is on the march; so in Georgia; and I am sure you want Alabama to do likewise.”²⁶³

Such praise caught the attention of Austin MacCormick, president of the Osborne Association, whose reform advocacy made the 1948 reform package possible. MacCormick returned to Texas in 1954 for another review. Following his

²⁶² “New Prison Unit for Young Offenders Opens,” Don Reid, Jr, *Houston Post*, 18 June 1962.

²⁶³ E.R. Cass to Gordon Peters; and, E.R. Cass to Allan Shivers, April 17, 1953, Prison Board Minutes, July 1953.

visit, MacCormick went before the American Prison Association's annual convention in Philadelphia and announced that Texas ranked alongside California and the Federal prison system as one of the three best prison programs in the nation. In a letter dated November 2, 1954 to Ellis, MacCormick wrote that the Texas prison system had experienced "progress which has probably not been surpassed in an equal period of time by any other prison system in the country." What impressed MacCormick "most immediately and forcibly" was the improvement in business management.

I am so accustomed to seeing, as I visit prisons in various parts of the country, listless and inefficient or partially idle prisoners, and little effort to keep prisoners productively employed for their own good and in the interests of the taxpayers that it was a welcome relief to see the opposite of those conditions in your system.

To prison administrators in other sections of the country, especially in the many prisons where idleness is widespread and earning from prison labor do not come within gunshot of the annual budget, it will seem almost unbelievable that the cash revenue of your system since 1951 has averaged more than \$2,000,000 a year, in contrast with an average amount of less than \$500,000 a year deposited in the treasury by the system prior to 1948.

MacCormick proudly told Ellis that "prison administrators in states where only a handful of prisoners work on farms would view with admiration and envy" the production value. MacCormick's final note of praise, which he "kept until the end of this letter for extra emphasis," was an invitation to Ellis and the Prison Board to stake a symbolic claim to modernity and national success. "The Texas Prison System (TPS) has now reached a level of quality and a degree of dignity where its title and your title of General Manager are no longer appropriate," explained MacCormick. "Texas now has more than a prison system [emphasis in the original], and you have far more than the managerial functions your title implies. As you know, a correctional system as large and important as yours in other states would frequently

be in a Department of Corrections, and the executive head would have the title of Commissioner or Director. The former of these two titles seems to me to be the better one.” The Board pursued MacCormick’s recommendation and by 1957 the legislature changed the name of the Texas Prison System to the Texas Department of Corrections (TDC); the Texas Prison Board became the Texas Board of Corrections; and, the title of General Manager was changed to Director. These appellations, in MacCormick’s evaluation, were more than mere euphemisms. Indeed, they were titles that staked a claim to modernity, and heralded the rise of Texas from punitive plantation farm to the modern age of “correctional justice.” Texas gained national recognition in 1958 when O.B. Ellis became the first southerner to be elected as president of the American Correctional Association.²⁶⁴ By 1968, some twenty years after his initial foray into Texas prison reform, MacCormick reflected on the two decades of progress. “I saw the Texas Prison System Come up from close to the bottom of the rating list to its present position in the top half-dozen, and in many ways in the ‘top half of the top half.’ ...Nothing in my entire career of 50 years in the correctional field has given me such satisfaction as the remarkable transformation that has taken place.”²⁶⁵

A Taylorized Prison: The Ellis Work Regime, Field Labor, and Control Penology

²⁶⁴ O.B. Ellis, “The President’s Page,” *American Journal of Correction* 20, no. 5 (September-October 1958); O.B. Ellis, “Correctional Growth through Co-operative Effort,” Presidential Address, 1959, *American Journal of Correction* 21, no. 5 (1959): 6-8, 30-33.

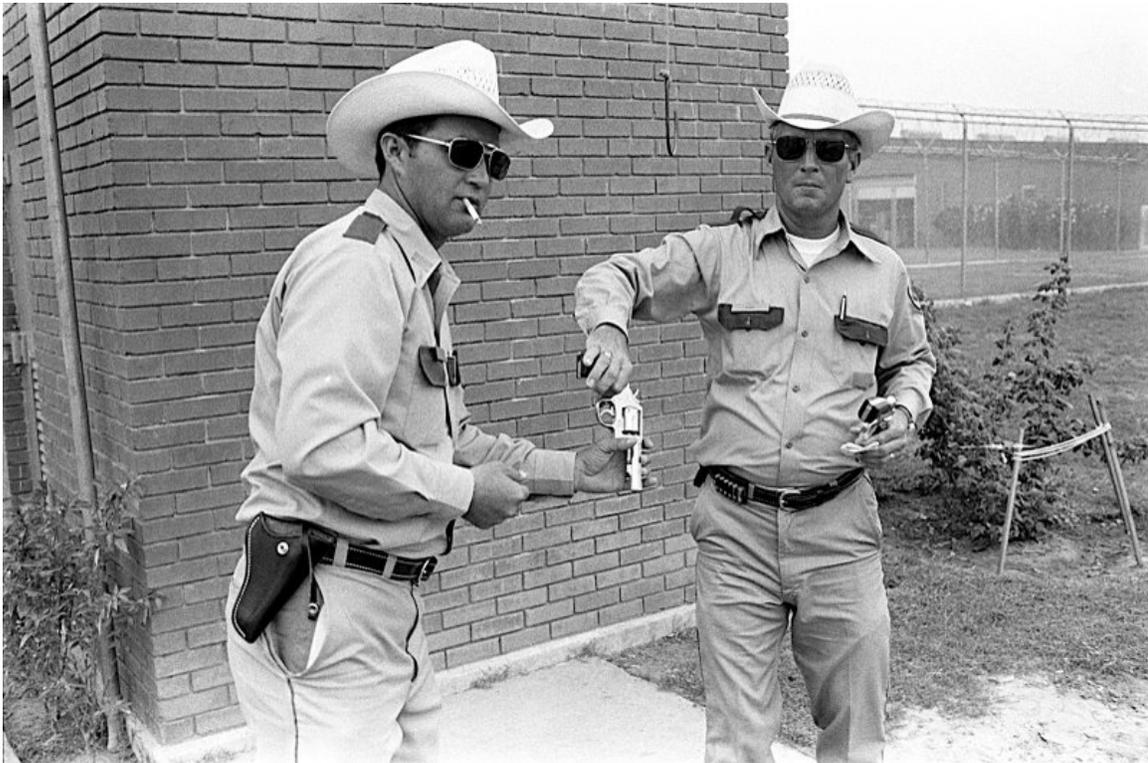
²⁶⁵ Austin MacCormick to Dr. George Beto, February 28, 1968, TDCJ, Prison Board minutes, February 1968, TSLA.

The Ellis reform plan reorganized the prison administration with a blend of business administration and strict paramilitary hierarchy. The Director of the prison system reigned over all divisions. Underneath him were four assistant directors, who were responsible for agriculture, construction, custody, and treatment. Beneath the assistant directors were the individual wardens. Each warden ran his unit as a fiefdom, in which his officer corps was organized from assistant warden to major, captain, and lieutenant. Before the Ellis plan, guards had no uniforms, morale was low, brutality was frequent, and corruption and graft were common. During the first eighteen months of his tenure, Ellis replaced over fifty prison staff from guard to warden with his own hand-picked prison personnel. Ellis outfitted the new prison staff in paramilitary grey uniforms and developed in them a sense of camaraderie and pride.²⁶⁶ By implementing such administrative incentives as a “Warden of the Year” award, Ellis contributed to high morale among the prison staff, many of whom spent their entire careers in the prison system. The wardens similarly demanded loyalty from their officers, who often followed them from prison to prison when a warden transferred.

One of the key elements of control penology was a tightly knit kin network of loyal employees drawn from local East Texas communities who guarded the prison system from both the prisoners on the inside and from any intrusion by unwanted outsiders. Ellis retained life long career employees to ensure high morale and an intense sense of *esprit de corps* among prison staff. Promotions came almost exclusively from within the ranks of prison guards. The prison system frequently

²⁶⁶ O.B. Ellis, *Annual Report to the Texas Prison Board* (1949), TSLA.

bypassed the minimum hiring and educational requirements for its wardens so that it could continue to ensure employee loyalty by promoting from within. In 1974, for instance, the Joint Committee on Prison Reform found that 29 percent of the wardens did not possess a college degree and one had not completed high school. Moreover, 53 percent of the assistant wardens did not possess the state's minimum educational qualifications for their position. The discrepancy between educational requirements and rank was even sharper when considering the prison officers, in which 81 percent of the majors, 91 percent of the captains, and 94 percent of the lieutenants did not meet the state's minimum educational requirements for their positions. The same was true for those working more directly in



Photograph 1. Texas Prison Guards, August 1978, Ellis prison²⁶⁷

²⁶⁷ Photograph courtesy of Bruce Jackson, copyright protected.

counseling and rehabilitation. The legislative committee found that over 67 percent of the prison's psychologists, psychiatrists, and social worker staff did not meet the state's requirement to have a college degree from a four-year college or university with a master's degree in psychology or sociology.²⁶⁸

Although prison wages remained low, Ellis offered other informal incentives and emoluments to insure loyalty. Texas prisons were unique in that the agricultural bounty from prison labor allowed prison officials and staff access to free food. Moreover, senior prison officials earned community prestige and respect when the prison system gave them free homes that were staffed by "house boys," an inmate position filled only by African American prisoners, who provided the families of senior officers, wardens, and prison officials with a full-time, live-in domestic servant. The Joint Committee on Prison Reform found a series of informal work incentives and unaccounted perks to prison officials that "included free housing, laundry and dry cleaning services, haircuts, shoe shines, a tremendous amount of food at an extremely low rate, for example, prime beef at thirty cents a pound or eggs at fifty cents a dozen."²⁶⁹ The Joint Committee for Prison Reform estimated that in 1974 the value of such benefits for higher ranking officials was \$21,000 a year. For the lower ranking officers, "who were entitled to generally having their uniforms

²⁶⁸ Testimony of John Albach, Staff Director for the Joint Committee on Prison Reform, Center for American History, *Ruiz* Special Master, MAI 8/J88; Joint Committee on Prison Reform, Texas Legislature, "Final Report of the Joint Committee on Prison Reform, 63rd Legislature, December 1974."

²⁶⁹ Testimony of John Albach, Staff Director for the Joint Committee on Prison Reform, Center for American History, *Ruiz* Special Master, MAI 8/J88.

cleaned, possibly being able to have a space in a trailer park, if there was room, or living in bachelors quarters, in addition to a limited number of surplus vegetables that they would buy, the value of that would be about \$18,000.00 a year.”²⁷⁰ Prison guards were thus more than employees; rather they were part of a tightly-knit community that derived their societal rank, status, and livelihood from their position within the prison. Such benefits encouraged an insider mentality that jealously guarded Texas prisons from outside intervention and investigation.

Securing loyalty among his staff allowed Ellis to create a prison environment where order and control ensured effective prison labor. Behind the programmatic recommendations and the massive economic request of the 1948 Ellis Plan was a new correctional philosophy based on Ellis’s firmly held conviction that work was necessary as both rehabilitation and as effective management. Work represented more than an occupation and a time oriented task to fill the inmate’s day and keep him out of trouble. Inmate labor regimented and controlled every aspect of prison life, and it became the prison system’s *raison d’etre*. “The prison day should be divided into three parts, a time for work, a time for sleep and a time for profitable use of leisure hours,” insisted Ellis. While Texas law forbade inmates working more than ten hours a day, Ellis made it clear that:

I BELIEVE ABLE-BODIED MEN ARE ENTITLED TO NO CONSIDERATION UNTIL THEY HAVE WORKED THIS TEN HOURS (emphasis in the original). After the man has done his work and had his sleep, there are still six hours left in the prison day. It is this six hours that creates most prison problems. It is this six hour period that has branded some institutions as schools of crime. I believe that all educational, recreational and

²⁷⁰ *Ibid.*

religious training should be carried on as extracurricular activities, something in addition to the work period.²⁷³

In addition to working prisoners ten hours a day, six days a week, Texas was one of less than half a dozen states that did not pay inmates even a nominal wage for their work.²⁷⁴

By emphasizing prison labor and work, Ellis reenergized the southern tradition of prison labor, which convict leasing had stained. Ellis fashioned instead a widely acclaimed labor system that stood in marked contrast to the national trend in penology to emphasize rehabilitation. Between the late nineteenth century and World War II, contract labor came under legislative assault.²⁷⁵ The Hawes–Cooper Act of 1929, the Ashurst-Sumners Act of 1935 and the Sumners-Ashurst Act of 1940 made interstate commerce in prison-made goods illegal.²⁷⁶ Most states, including

²⁷³ “To Protect Society from the Criminal and the Criminals from Each Other: The Five-Point Prison Plan,” O.B. Ellis memorandum, TDCJ, Prison Board minutes, February 1948, TSLA.

²⁷⁴ In 1978, for instance, the states that did not pay inmates even a nominal wage included: Texas, Arkansas, Mississippi, Georgia, and Maine. Within a few years of the survey, Mississippi and Maine started a pay program for their prisoners. By way of comparison, California paid inmates between 50 cents and \$2.60 an hour; New York between 25 cents and \$2.30; and Illinois paid the most at 40 cents up to \$7 an hour. See, CURE Report, authorized by CURE member Gonzalo Barrientos and by Bruce Hupp, Senator Chet Brooks collection, 1991/068-29, CURE file, TSLA.

²⁷⁵ The impetus behind the legislative effort to restrict convict labor came from two sources: the progressive movement to end the south’s convict lease system and northeastern labor organizations who felt that profitable convict labor threatened free labor and collective organization. For the protest of organized labor, particularly in the northeast, against convict labor, see Glen A. Gildemeister, *Prison Labor and Convict Competition with Free Workers in Industrializing America, 1840-1890* (New York: Garland Publishing, 1987).

²⁷⁶ Ethan Blue analyzes the political struggle and federal debate over the 1929 Hawes-Cooper Act and concludes that it was “a “process of respectable white male working class identity formation” for free laboring citizens that simultaneously “racialized” and defined criminals as “among the formally excluded populations” of immigrants and African Americans. For the federal debate over the Hawes-Cooper Act and an analysis of working-

Texas, also prohibited the sale of prison-made goods. Where prison labor existed, it was largely focused on public works and paid by state funds. Prisons in the northeast therefore turned increasingly to therapeutic rehabilitation over labor, and adopted such practices as probation, parole, psychiatry, social work and recreational activities like baseball, television, and radio.²⁷⁷ On Texas prison farms, however, such rehabilitative programs were virtually nonexistent. Prison labor ordered the lives of prisoners. Although Texas state law forbade the sale of prison-made goods, there was no prohibition on prison labor geared towards the prison system's own self sufficiency.

A key tenet of "control penology" was to work the newly arrived inmates in the field and use the system of "promotions" to building and indoor factory work as incentives for hard labor. From 1948 to 1978, more than half of the prison

class formation vis-à-vis prisoner exclusion, see Ethan Blue, "Hard Time in the New Deal," (University of Texas, Austin, PhD diss., 2004) 138, 118-139.

²⁷⁷ For the northern emphasis on the rehabilitative prison, see David J. Rothman, *Conscience and Convenience: The Asylum and its Alternatives in Progressive America* (New York: Aldine de Gruyter, 1980); Alexander W. Pisciotta, *Benevolent Repression: Social Control and the American Reformatory-Prison Movement* (New York: New York University Press, 1994); Nicole Hahn Rafter, *Partial Justice: Women in State Prisons, 1800-1935* (Boston: Northeastern University Press, 1985); and, David Garland, *Punishment and Welfare: A History of Penal Strategies* (Hants, England: Gower Publishing Company Ltd., 1985). On New York's adoption of the "new penology," see Rebecca McLennan, "Citizens and Criminals: The Rise of the American Carceral State, 1890-1935" (Columbia University, PhD diss., 1999); and, Rebecca McLennan, "Punishment's 'Square Deal': Prisoners and their Keepers in 1920s New York," *Journal of Urban History*, Vol. 29 No. 5 (2003): 597-619. It is important to note that while Progressive and New Deal-era federal law constricted convict labor, it obviously did not end prison work altogether. Some state systems, particularly California, blended together rehabilitative programs with a continuing emphasis on inmate labor. On prison labor in California, see Ethan Blue, "Hard Time in the New Deal: Racial Formation and the Cultures of Punishment in Texas and California in the 1930s," (University of Texas, Austin, PhD diss., 2004), 99-151; Volker Janssen, "Convict Labor, Civic Welfare: Rehabilitation in California's Prisons, 1941-1971," (University of California, San Diego, PhD Diss., 2005).

population labored in prison fields. Fieldwork acted as a kind of boot camp for new convict recruits and a proving ground where inmates could demonstrate their work ethic and productivity levels. Inmates who worked hard, remained obedient, and showed leadership might earn a “promotion” to an inside job. As the first Warden of the Ferguson Unit, Jack Kyle recalled that job assignments were under the absolute control of prison staff.

We had a system that we thought was absolutely foolproof...what I had set up was that the men that came to prison, they're going to the fields and go to work. If they're physically able to do so, they're going to work outside. And from outside, you're going to have the opportunity to get a job inside...Well, that made sense to the convict as well as the officer, because they knew that if they were going to get a job, they had to please the officers. That's all they had to do—just do a good job...that system worked fine because it allowed those people to know that if they worked, did what they were told, stayed out of trouble, they were going to get out of that field. Wasn't anything wrong with the field work, but it's tiresome and it's hot.²⁷⁸

If an inmate disrespected the guards' authority, however, the prisoner could be kept in the field indefinitely.

Field labor was a particularly difficult and unfamiliar adjustment for the increasing number of inmates who hailed from urban areas. In 1940 the state population was 45 percent urban and 55 percent rural, but by 1980 the urban population had grown to 80 percent and rural population dwindled to 20 percent.²⁷⁹ Convictions in the postwar period were therefore increasingly drawn from urban

²⁷⁸ Jack Kyle, interview with the author, June 25, 2005, transcribed by the Institute of Oral History, Baylor University, Waco, Texas, hereafter cited as IOH, Baylor.

²⁷⁹ United States Department of Commerce, *Sixteenth Census of the United States: 1940, Population, Vol. II, Part 6* (Washington, DC: United States Government Printing Office, 1943), 761; United States Department of Commerce, “Census Population: 1980,” (Washington, DC: United States Government Printing Office, 1983), 45-11.

populations. By 1970, for instance, the inmate population of 14,000 was overwhelmingly populated by former urban dwellers, with the urban areas of Harris and Dallas counties alone accounting for 2,536 of the total 3,904 of new inmates.²⁸⁰ Most of these inmates had received little education, lacked job skills, and were young. A 1971 survey of the inmate population found that: “Of the total population of 16,500, 96 percent were school drop outs, 60 percent (using a strict definition) came from broken homes; 18 percent were illiterate; the average grade level of achievement being the 5th, with an average I.Q. of 80; 20 percent were mentally retarded, almost 1 percent actively psychotic, 40 percent with no sustained record of prior employment, 50 percent under the age of 25; 42 percent Black, 38 percent Anglo and 20 percent Mexican.” Former Houston resident and African American inmate Arthur Johnson recalled with shock his first visit to Texas prison fields in 1962 at the age of 19 for a conviction of burglary: “You know, I had never seen no cotton in my life. Well, I mean except in books or on TV. So you had to get a certain weight. If the officer told you he wanted two hundred pounds of cotton at the end of the day you had to get two hundred pounds of cotton, or they was going to whip you or make you stand on the wall all night with no breakfast and catch you out the next morning.”²⁸¹

Fieldwork consisted of a range of outdoor labor that can be divided into four main tasks: cotton crop, lesser crops, logging, and flat weeding. Cotton cultivation

²⁸⁰ The number of new arrivals in 1971 for each county was as follows: Harris: 1,331; Dallas 1,205; Tarrant 407; Bexar 379; Travis 218; McLennan 149; Nuece 111; Jefferson 104. See “Outline of Address: The Complexion of the Texas Prison Population,” by George Beto, 1970, Beto collection, SHSU, 1-4/38.

²⁸¹ Arthur Johnson, oral history conducted by author, March 20, 2008, Institute of Oral History, Baylor University.

was a year-round endeavor.²⁸² Prisoners plowed the fields in January and planted cotton during the months of February and March, while plowing and hoeing of the cotton crop continued through June. The harvesting of the crop began in the late summer and continued through December. Inmates also cultivated lesser crops, such as garden vegetables, potatoes, and all the prison's edibles. Additionally, prisoners fed, penned, branded, and butchered the prison system's vast herd of livestock, including hogs, chickens, and cattle. During the winter months, inmates cleared the land by using hand saws and axes to cut down the area's thickly rooted trees. When inmates were not involved in the cotton or sugar cane crop, they engaged in what they called "flat weeding," which was a predominant type of field labor done with a hoe (an "aggie" in prison terminology). Flat weeding included such labor as clearing brush, digging ditches,

²⁸² On the planting season for cotton harvesting in East Texas during antebellum slavery, see Randolph B. Campbell, *An Empire for Slavery: The Peculiar Institution in Texas, 1821-1865* (Baton Rouge: Louisiana State University Press, 1989), 118-122.



Photograph 2. Picking Cotton, October 1965, Ramsey²⁸³

irrigation, building roads, uprooting ground before planting, following a tractor to break up clods of collected earth, and chopping cotton.

Inmates worked under strict supervision and a tightly managed work regime that included inmate oversight and discipline over the labor of their fellow prisoners. Inmates worked from “can see to can’t see” or, as inmates ominously noted, from “can shoot to can’t shoot.” Inmates rose at 5:00 to 5:30 AM for breakfast, which generally finished by 5:45 AM, and they assembled to work in the fields by 7:00 A.M. The work-day was a full ten hours and lasted until late afternoon when they returned to the building for supper. Inmates worked a six-day week until 1953 when Ellis

²⁸³ Photograph courtesy of Bruce Jackson, copyright protected.

changed the work policy so that inmates worked six-day work weeks for only a month in the spring planting season and for two months during the fall harvest. While in the field, inmates worked in squads or “lines” that were segregated by race. The order, regimentation, and production demands of prison labor were shared by all prisoners, regardless of race. The prison administration selected a pair of veteran prisoners, known as the tail and lead row, to keep the line moving apace and production levels high. The lead row, usually a man of some stamina who moved quickly through the field, would lead the line constantly forward by doing his work at a rapid pace. The tail row, meanwhile, would also be a fast worker and he would press the line from its rear so that those in the middle, known as “the swing,” would never have a chance to fall behind or slow the line. An armed guard watched over the prisoners on horseback, while an inmate called the “striker,” who was one of “the biggest and roughest guys in the squad,” ensured that other prisoners continued working and did not fall behind.²⁸⁴

When the line produced too little, it was the line leaders who would answer to the Field Major. These line leaders, in turn, exacted their own brand of inmate discipline when production quotas remained unmet. Inmate Lawrence Pope described the tail/lead row as “enforcers. Like in – under slavery, they had the drivers that were blacks, slaves and their job was with whips, to whip the other slaves into working harder and faster. Well, you had the tail row and lead row out in the field, and that was precisely what they were there. They had no whips, but if you did not go fast enough to satisfy them, they had a perfect authority to go back and jump

²⁸⁴ Jerry Quate, oral history conducted by the author, March 12, 2007, IOH, Baylor.

on you right in the field with the officer looking on, and it was condoned.”²⁸⁵

Sociologist Ben Crouch, who worked as a Texas prison guard in the 1970s, concurred that field officers allowed prisoners to continue fighting. “Field officers seem also less concerned about the fights that occur regularly,” concluded Crouch. “It is not uncommon for the two inmates to be allowed to ‘duke it out.’”²⁸⁶ Control penology’s work discipline thus had a corollary among the inmates.

The placement of new inmates in the field caused many to experience health problems and constant fatigue. Bobby Lee Mudd, a white inmate who first entered the prison system at age 19 in 1969 with a five-year drug conviction for possession of a single marijuana cigarette, recalled the shock of the field work routine during his first few days in prison. Mudd described his first working day as a Texas prisoner at

²⁸⁵ Lawrence Pope, oral history conducted by John Wheat, Lawrence Pope papers, Center for American History (CAH), 318. On the use of enslaved African Americans who worked as “field drivers” in Texas cotton fields during the antebellum period, see *Empire for Slavery*, 57.

²⁸⁶ Crouch’s fieldwork led him to work “undercover” in the Texas prison system as a guard. Crouch argued that prison guards in Texas operated under different social norms and rules. Those that worked in the field operated less formally and ruled inmates through “the boot,” whereas those that worked in the building relied on more formal measures of discipline and operated by “the book.” See, Ben M. Crouch, “The Book vs. The Boot” Two Style of Guarding in a Southern Prison,” in *The Keepers: Prison Guards and Contemporary Corrections* (Springfield, Illinois: Charles C. Thomas Publisher, 1980, 207-224.



Photograph 3: Running to Work, Ramsey, 1978²⁸⁸

the Ferguson unit for young offenders as a moment of frantic activity, disorientation, and physical exhaustion. His words and recollection capture the experience that so many new inmates faced and his recollection of that experience is recorded here at length:

The steel door opened with such force it jarred me awake...Out the cellblock we ran. From there we ran out an exit door to the back stab and came to stop at the backgate. Here the individual hoe squads lined up in order – 1, 2, 3, 4, etc. I was in 4 hoe. Pairing up we walked through the backgate. An inmate

²⁸⁸ Photograph courtesy of Bruce Jackson, copyright protected.

in front of me had his cap knocked off his head by the field lieutenant. Slaves are to remove their hats when walking by the master. This was not a written policy but it was a policy nevertheless. Once out the gate we were at a run again... We ran down a dirt road where the field officer (the boss as he was called) yelled at us to keep up with each other... We ran for what seemed to be several miles. We were told to line it up... The lead row set the pace and the others had to keep up. The wooden handle ripped the skin from your hands. You had blisters on top of blisters. It was 6:30 in the morning and we would work till eleven and stop for lunch. You got two water breaks in the morning and two in the afternoon. You turned back out at 1 PM and worked til 5 PM. That morning three inmates collapsed from heat exhaustion. They were dragged away from their squad and, if they were lucky, the waterboy would throw cold water on them. That afternoon others would collapse as well. I remember my clothes were dripping wet with sweat. My hand bleeding.²⁸⁹

Field guards thus demanded a frantic work pace, and when they did not think the line moved swiftly enough then punishment was assured. Inmate Michael Eubanks, a white inmate who first came to prison in 1975 from Houston with a four-year conviction for auto theft, recalled how the work would leave his body callused and constantly sunburned. “The field work was pretty bad,” recalled Eubanks. “It was rough. When you’re working in a hoe squad, and you’re like flat weeding, you’re what they used to call a ‘nut to butt.’ You’re up against the guy’s back in front of you. You get blisters all over your hands, on the palms of your hands and fingers, from handling this aggie until you finally get calluses. But at the same time, on the backs of your hands, they’re rubbing up against the guy’s waistband and the back of his shirt, so it’s rubbing your hands—the backs of your hands raw too... And as you’re working—you’re working at a fast pace. You get blisters on your feet, and you’re out there in the sunlight all day long—there was no such thing as sunscreen back then. I looked like a lobster most of the time. I was blistered—sunburned and

²⁸⁹ Robert Lee Mudd, unpublished prison writings and private papers, in the author’s possession.

blistered a lot.” Despite physical exhaustion and work-related ailments, prisoners had to continue working. If a prisoner attempted to call attention to work-related injuries, what inmates referred to as “falling out,” his pleas fell on deaf ears. Inmate Eubanks spoke of the price that inmates paid if they tried to “fall out” and avoid the field:

If you fell out [stopped working], the first thing they’d do is the guard would ride over there with his horse and try to get the horse to step on you. If the horse stepped on you, and you moved—you were in trouble. You weren’t hurt—you were faking. If you didn’t move, well you got stepped on, and then they’d have the water boys come over and get you and drag you over by the water trailer or somewheres and wait till the pick-up come down and pick you up. What we called the taxi. And they’d take you into the building. Guys suffered from heat stroke, heat exhaustion, and some guys just couldn’t handle it anymore.²⁹⁰

Many inmates employed images of enslavement and coarse racial language and epithets to describe the field labor experience. Bobby Mudd spent ten of his thirty years of incarceration working in the field, a labor that he called “the purest form of slavery existing in this country today.” “The [field] line is not considered a job,” Mudd continued. “It has historically been used as a form of reprisal for misconduct or, for the newly arrived, it was used to condition you. Not physically, but mentally. Borrowing from slave terms, inmates working in the line are field niggers. Once they feel they have you conditioned then you’re given a job – many times in factories – and then you become a house nigger.”²⁹¹ In the minds of many white inmates, the rigors of prison labor and the debasement of prison life made their experience one of “enslavement” that they viewed as decoupled from race. Their use of coarse racial language applied equally to all inmates, regardless of skin color, also

²⁹⁰ Eubanks, oral history, IOH, Baylor University.

²⁹¹ Unpublished excerpt from Robert Lee Mudd’s prison memoir, in the author’s possession.

shows how many Anglo inmates perceived their imprisonment as a loss of white skin privilege.

Once inmates became used to the labor, they could earn “promotions” and “compensations.” One black inmate displayed pride concerning his squad, which often received work outside of the field because it was composed of veteran workers with a valued reputation. “After you get broke in, it still can wear you down, but it’s not the same. It’s not impossible any more. And something else: the higher squads that these

guys are in, they get other breaks. Like maybe they got some trucks to load or something while the rest of them are working, well they go unload the trucks. You get some compensations.” Owning very little else, inmates sometimes felt that they could at least own the reputation that they were “strong men” who could master hard work while other men were seen as “weak.” As one black inmate noted, “A guy says, ‘Well, I can do it a little better than Bill, and it makes me feel that’s the only consolation I can get.’”²⁹²

In order to instill effective work and high production demands, the field guards often initiated cotton picking contests. Inmate Guadalupe Guajardo recalled that: “They use to have contests for Stacy Adams shoes. Whoever picked the most cotton during the season—we’d compete, and if there was a tie they would put you out there in the row—two of you picking, see how—how much you would pick, see. I won me a pair.”²⁹³ Petty awards were also given as a means to ridicule the prisoner and remind him of his lowly status. During a 1964 interview, one African American

²⁹² Anonymous inmate, quoted in Jackson, 35.

²⁹³ *Ibid.*

prisoner spoke with pride about how hard he worked picking cotton so that he might gain rewards or a “promotion.” But his effort ended when he “won” one of the cotton picking contests: “The captain called us up to the picket. He said, ‘Give me my three best cotton pickers here.’ Me and Willie Lawrence and old Foots, we three went up there. ‘Seein’ the way you picked, I’m gonna give you all the prize. He say, ‘You split this.’ He gave us a quarter. After that I never picked for no prize, that broke it up.”²⁹⁴

Work also drove classification and an inmate’s placement on one farm or the next. Ellis’s new disciplinary methods depended on an assessment of an inmate’s labor and work ethic. Displacement and reassignment therefore replaced the bat and the rubber hose as Ellis’ disciplinary tools. “A system of promotion and demotion could be cycled,” explained Ellis. “In other words, if a prisoner is in Class 1, assigned to Huntsville with a good job and then made a mistake or was indifferent to his job assignment, he would be demoted to a farm unit and a boy on a farm unit who had built a good record could be promoted to his place. The same thing would be true at Central. A man who did not appreciate his job and who not do a good job would be demoted to Ramsey and a man from Ramsey promoted to take his place.”²⁹⁵ To implement his program, Ellis institutionalized the point incentive program (PIP), which graded all inmates on work, conduct, attitude and participation in the various prison programs. Prison administrators required a score of 80 to promote an inmate for parole or for a trustee position. The PIP program proved to be a potent tool, and

²⁹⁴ Anonymous inmate, quoted in Jackson, 10.

²⁹⁵ *Ibid.*

sometimes weapon, in the prison system's struggle with rebellious inmates in the 1960s and 1970s. By "promoting" or "demoting" an inmate based on his work ethic, Ellis' vision prioritized one farm over the other and thereby insured that prison administrators might consider some farms as more habitable and hospitable than those that contained "hard cases." Prisoners would realize this difference too, of course, and such revelations generated both fears of and hopes for a transfer. Moreover, prisoners with a history of disobedience and a poor work record could expect to be assigned to the "toughest" farms, a policy that eventually developed inmate élan and a culture of resistance.

As part of the progressive movement to individualize punishment and sentencing decisions, most states, particularly those in the north, had implemented indeterminate sentencing, probation, and parole laws by the 1920s. Texas had no such system.²⁹⁶ Until 1957, there was no court monitored or board appointed system

²⁹⁶ For the Progressive era origins of parole and indeterminate sentencing, see David J. Rothman, *Conscience and Convenience: The Asylum and its Alternatives in Progressive America* (New York: Aldine de Gruyter, 1980), 43-82. On the Progressive era reformatory movement, see Alexander W. Pisciotta, *Benevolent Repression: Social Control and the American Reformatory-Prison Movement* (New York: New York University Press, 1994).

Under executive clemency the governor could issue a pardon and a prisoner was freed from the remainder of his sentence and regained full citizenship. In 1893, the legislature passed a law that created a two-member Board of Pardons Advisors to alleviate the governor's office from the burden of reviewing clemency pleas. In 1929, the executive clemency was reformed yet again when the legislature replaced the Board of Advisors with a Board of Pardons and Parole whose members were appointed by the governor and then ratified by the Senate. The 1957 law, passed with the full support of Ellis and the TPS, created the Division of Parole Supervision, which provided a much stronger enforcement capacity for the Board of Pardons and Parole.

The practice of suspended sentence allowed the convicting judge to deliver a sentence but release the convicted into society as a free man. Such an indiscriminate sentencing system was fraught with charges of graft and corruption. As part of the postwar prison reform effort, the Texas Legislature in 1947 passed the Adult Probation Law, which removed the practice of the suspended sentence in favor of a formal system of probation and created the

that would hear a prisoner's appeal to shorten his sentence. Instead of relying on a formal board, Texas employed a point system administered exclusively by prison officials. Inmates with good prison records could earn earlier release from their initial sentence. Under this so-called "good time" law, inmates earned additional time taken away from their sentence for every day they labored. At the behest of the prison administration, the state legislature established three classes of "good time." Class I provided that an inmate earns 20 extra days time for each month served on his sentence, as long as that inmate maintained a clear conduct and work record. The prison administration immediately placed newly arrived inmates in Class I. Class II allowed an inmate to receive 10 extra days time for each month served. Class III required that an inmate serve his time day for day without any allowances.²⁹⁷

No inmate, inside or out, could leave his job once he was reassigned. The two hundred inmate labor force that worked in the cotton textile mill, for instance, had to suffer noise, extreme heat, and lint-filled air, no matter the health effects. Even Prison Board member Dr. George J. Beto admitted "that textile mill works night and day – seven days a week. It never shuts down and it's a beastly place to work – noisy, hot and those men draw 2 for 1. And I think it would be extremely difficult for us to secure the cooperation from the inmates and to secure the production which we secure without this liberal good time law."²⁹⁸ The prison administration therefore

Texas Board of Pardons and Parole which oversaw the newly established parole system. On the creation of the probation and parole system in Texas see, David M. Horton and Ryan K. Turner, *Lone Star Justice* (Austin: Eakin Press, 1999), 274-278 and 303-307.

²⁹⁷ Texas Department of Corrections rules and Regulations Chapter II, Sec. 2.52, cited in "Labor and Industry Working Paper," by Van Mendoza, Joint Committee on Prison Reform.

²⁹⁸ Beto, untitled speech, Beto papers, SHSU.

rewarded such hazardous work assignments with the promise of potential freedom. Inmates working in the mill earned two days credit for every day that they worked in the mill; any day that the inmate did not work he was denied the extra days credit towards his prison sentence. Prison officials could also revoke a prisoner's PIP points. Inmates who lost PIP points faced restrictions on their ability to go to school or take part in other recreational activities. Worse, however, was the loss of "good time." Inmates who refused to work, participated in a work strike, or any other form of collective action faced charges of "mutiny" or "aggravation to mutiny" which could result in a month or more in the hole and the permanent loss of "good time." The price of collective organization was an inmate's potential freedom.

In an Ellis-run prison, recreational time and rehabilitative activities were rare. Ellis' notion of education was almost purely vocational and geared towards practical approaches to work. The master plan given to the Board in 1948 envisioned two objectives for education in which there would be a formal school for illiterates and a "second directed study correlated with work assignments." Ellis' educational philosophy was that learning should contribute to the work of a prison farm. "A boy working in the welding shop should be taught how to read blueprints and some physical characteristics of metals. A boy working with dairy cattle should have a course in feeding, breeding and the like," explained Ellis. Indeed, in the new era of Texas prisons work became "rehabilitation." Although Texas prisons had always practiced hard field labor, Ellis developed a correctional philosophy that advocated labor as rehabilitation.

Work performance therefore determined where inmates lived, how they were categorized, and whether or not they were favored. The PIP program, “good time,” and the trustee system allowed the prison administration to maintain control, discipline, and order. It also gave an unfree and unpaid labor force the incentive to meet the high production demands of prison overseers who expected nothing less than a high-yield and effective crop. Control penology thus blended traditions of slave labor with the hopes of a modernized prison that fashioned a Texan brand of discipline, order, and prison labor geared towards effective prison production.

Fieldwork: Agency and Resistance

Inmates laboring in the fields found both overt and less obvious means to resist the harsh prison labor regime. In 1964, the folklorist Bruce Jackson visited Texas prisons to record African American work songs that existed only in the field lines of black prisoners. In addition to recording work songs, Jackson also conducted interviews with African American field workers that provide examples of inmate resistance and agency. Although all inmates, Black, white, and Latino, found ways to resist the labor regime through short lived work strikes, the Jackson interviews with African American inmates provide one of the few sources of inmate resistance prior to 1968. Thus patterns of resistance among black inmates are highlighted here.

African American inmates found unique ways to defy the power of their keepers by playing to the supposed superiority of their white captors. Whenever confronted by white guards demanding deference, black inmates put on a false portrayal of their own supposed inferiority by engaging in what black inmates termed

“playin’ the Jeff game” or “playin’ at Sambo.” During one of his recordings with an African American inmate, a guard, apparently threatened by Jackson’s presence, attempted to exert his authority over the inmate by asking him if he was “going home” that weekend, which was a play on words intended to remind the inmate of his lasting confinement. The inmate responded first to the guard and then privately to Jackson: “”No suh, I don’t think I’m goin home this weekend. The warden told me I had to work, boss, I can’t make it.”” And then privately to Jackson: “See, that’s what I tell you. When you been in the joint a long time you know how to address all the officers and bosses like that. That boss, he asked me was I goin’ home this weekend. He know I can’t go home. So I told him, ‘No, boss, I can’t go. I got to work this weekend.’ That’s the way things go like that. You get smart with ‘em.”

Black inmates also relied on communal labor and helped one another in their work. Field guards and officers typically demanded production quotas for each line. When an individual could not meet his share of the quota, African American prisoners might revert to “weighin’ up” the scale of picked cotton, which meant placing rocks and other heavy items into the cotton sack to increase its weight. As one inmate recalled, “they’d weigh up rocks and this and that, they weigh up dogs. They’d have an old pet hound out there and they’d weigh that hound up in the sack. They had that old hound out there that they weigh forty or fifty times a week. They’d put him in there to make their weight and that old hound would never say a word until they dumped him out of the sack.” The fact that African American inmates could “weigh up” the sacks without having an inmate “snitch” to the field guard is testament to racial solidarity. Indeed, when one inmate could not meet the labor

demands, another inmate might make up the difference. This was particularly true if the two had created a sexual relationship. As one African American pointed out, “The average man back in those days, generally, he’d pick around five or six hundred [pounds of cotton]. That was ‘steppin’ it.’ On the average he’d pick three-fifty, four hundred. And he have trouble there if didn’t get up there and give a bit more weight...a man would pick three or five hundred pounds for himself and he’d pick four or five hundred pounds for his sissy, so you wouldn’t tell how much he was picking. Every time he goes to the scales the captain would holler, “Ring that bell!” what he meant was ring that bell when you weigh up over a hundred.”³⁰¹

Although African American inmates shared a communal response to prison labor, the practice of sharing weight, particularly picked cotton weight, could also entrap an inmate in an unwanted sexual advance if he habitually relied on another’s work. New field laborers with less experience, stamina, and skill to keep up with the field work sometimes paid faster workers with commissary goods, usually a “blue bag” which referred to the blue bags of Maxwell House coffee. Owing another inmate for his labor often meant that that he had to give something in return, and if that inmate had nothing to give, he sometimes had to pay in sexual favors and with his body

Black field squads were also unique in that they sang work-songs in the tradition of slave songs that timed their labor, belittled their keeper, and gained a much needed

³⁰¹ Anonymous inmate, quoted in Jackson, 10.



Photograph 4: Logging while singing, March 1966, Ellis³⁰³

respite from a long day's work.³⁰⁴ Only black inmates sang work songs and that tradition continued until the racial integration of the work line in the late-1970s. The rhythm of axes and hoes hitting the ground in unison provided the beat for these work

³⁰³ Photograph courtesy of Bruce Jackson, copyright protected.

³⁰⁴ On the African American practice of work songs both during antebellum slavery and in the early 20th century, see Lawrence W. Levine, *Black Culture and Black Consciousness: Afro-American Folk Thought: From Slavery to Freedom* (New York: Oxford University Press, 1978). For work on the musical and political import of prison work songs in Texas, see Bruce Jackson, *Wake Up Dead Man*; Ethan Blue, "Beating the System: Prison Music and the Politics of Penal Space," in Alison Bashford and Carolyn Strange, eds. *Isolation: Place and Practices of Exclusion* (London: Routledge, 2003), 56-70. Jackson collected the majority of the prison work songs at the Ramsey, Ellis, and Wynne prisons.

songs, and the lead singer provided lyrics that spoke to loss, heart ache, and secreted resistance. Although there was always a lead singer, someone who knew the words by heart and who could improvise with ease, the entire line engaged in a “call and response” rhythm that told personal stories with communal understanding and empathy. As one inmate revealed, “In the river songs you tell the truth about how you feel, you know, but can’t express it, see, to the boss. They really be singing about the way they feel inside. Since they can’t say it to nobody they sing a song about it.” Tools of survival, community, and resistance, the work songs also provided a shared space to sing of individual isolation, loneliness, and despair. The song “I’m in the Bottom” carries a double meaning that places the singers in the geographical location of their labor, namely the alluvial riverbed bottoms of East Texas, and the symbolic “bottoms” of endless work, fatigue, and anguish:

I’m in the bottom, oh lord
I’m shovelin dirt
I’m getting tired
It’s in the mornin’
I’m shovelin’ cinder
It’s in the evenin’
It’s for the captain
I started achin’
All in my shoulder
The boss don’t believe it
Here in my side man
I’m hurtin all over
Take me to the buildin’
I need some water
My heart is achin’
Boss say I’m fakin’
What I’m gonna do, man
Gonna write my mother
Tell her see the governor
Ask him do somethin’

I can't move now.³⁰⁵

Work songs also subverted and confronted the authority of their keepers without the knowledge of the guards. While the song “Jody” is mostly about the loss of an inmate’s girlfriend to a free man, its lyrics also belittle the guard above them on horseback by questioning the value of his work and job position as opposed to the inmates’ actual labor:

Boss on a horse and he’s watchin’ us all
Better tighten up, [if you] don’t we’ll catch the hall
Wonder if the major will go my bail
[Or] give me twelve hours standing on the rail
I see the captain sittin’ in the shade
He don’t do nothin’ but he get paid
We work seven long days in a row
Two packs a Bull and a picture show.³⁰⁶

Resentment over punishments are featured in the words “standing on the rail” and “catch the hall,” which refer to the punishment of standing on a long piece of wood for hours at a time or standing in the hall overnight for failure to work hard enough, both common punishments in such a work-oriented culture. Similarly, the stanza “two packs a Bull and a picture show” ridicules the system of incentives, as that stanza refers to two packs of cigarettes (Bull Durham) and the weekly Saturday film night. Such resentments could not be heard in regular speech and the work songs provided the rare opportunity to air

³⁰⁵ Lyrics to “In the Bottoms” can be found in Jackson, 217.

³⁰⁶ Lyrics to “Jody” quoted in Jackson, 172.



Photograph 5: Chopping in tandem, March 1966, Ellis Prison³⁰⁸

discontent against the guards without fear of reprisal. As one inmate revealed, “I mean, you know, long time ago when the penitentiary was kind of rough they used to sing songs about the bosses, captains, sergeants, lieutenants, whatever they think about them, that’s what they’d sing about them.”³⁰⁹ Like slave drivers of a prior generation, the guards seemed content to have the work songs control the day’s work rhythm, despite the content of the lyrics. Albert “Racehoss” Sample, an African American inmate from 1955 to 1972, observed in his published prison memoir that

³⁰⁸ Photographic image courtesy of Bruce Jackson, copyright protected.

³⁰⁹ Anonymous inmate, quoted in Jackson, 18.

the work song provided the inmate community with a sense of control over their labor and a surreptitious contempt with the work demands of their keepers: “Boss Deadeye [the overseeing guard] sat on his horse contented. “When them ol’ niggahs is sangin, ever thang’s awgiht [sic].’ With his shot gun laid across his arms, he listened as we sang and sang.”³¹⁰

Black inmates also relied on the rhythm of the songs to control the labor and make work a community effort that would leave no single man behind. Controlling the timing of work and slowing it down when necessary with the rhythm of the hoes was called “rockin easy.” Among African American inmates, these songs also gave them a kind of singular wisdom and pride in their work that they felt none of the White or Latino prisoners could claim. As one inmate proudly observed, “They call it ‘rockin, rockin dead easy.’ That’s what they call it when they start singin’ the river songs. Did you ever notice that when they really doin’ it white guys never did do it? Why didn’t they? The way they work, they works a lot different. The way we do it, we do it by time. We have a steady rock. Everybody raise their axe up and come down at the same time, just rock...I guess work by time. I can do a whole lot more work workin’ by time than I can workin’ loose.” Maintaining a tandem rhythm could also be an opportunity to get a much needed rest without raising the suspicion of the guards:

When you’re working the convicts get tired and they say, ‘Come on, you all, let’s rock awhile,” and they get together, you know, and that’s the way they fool the boss. They come down with their axe and they work like it’s stuck, they be resting, see. Then they take it, carry it out, hang it, carry it over their head real high: they resting. And they drop. But they ain’t hitting as hard as

³¹⁰ Albert Sample, *Racehoss*, 165.

they would if they's working...They ain't doin' much. They rocking. That's called "Rocking along easy." And it's a lot different than just a steady hack. We're the ones that ever rock, you know. Mexicans, white guys, I don't think they know nothing about it 'cause I think it originated from us.³¹¹

The songs therefore gave black prisoners the freedom to collectively express spiritual hope, personal resentment, collective resistance, and physical exhaustion. Work songs were, as Lawrence Levine has called them, a "communal instrument" that created for prisoners, just as it had once done for slaves, "an improvisational communal consciousness." And, as Bruce Jackson has theorized, prison work songs gave inmates a sense of ownership over their labor that was otherwise denied. "The songs change the nature of the work by putting the work into the worker's framework," observed Jackson. "By incorporating the work with their song, in effect, co-opting something they are forced to do anyway, they make it *theirs* in a way it is otherwise not."³¹²

Inmates in the "white" and "Mexican" lines found different ways to resist the labor regime. They did not employ the work song tradition, but they did help one another in their work in exchange for commissary items or simply as an act of racial solidarity. The practice of self-maiming had become less frequent since the 1948 reforms, but it had not disappeared altogether. As late as July 1977, Michael Jewell, a white inmate, wrote to Senator Chet Brooks and explained why he turned to the tradition of self-mutilation:

³¹¹ Anonymous inmate, quoted in Jackson, 19.

³¹² Lawrence Levine, *Black Culture and Black Consciousness*, 215, 202-217, 233-270.

I found an old razor blade in my cell and severed the main tendon in my left leg that runs up from the heel, cutting into it. I did so deliberately so that I would not have to continue working in the fields and suffering the abuses already mentioned. This was not an original idea. I merely followed the example of many men before me, who chose to maim themselves rather than suffer the abuses of field work...Senator, please consider how disagreeable a thing must be for one to chose self-mutilation as a preferable alternative. In prison slang, the act is popularly known as 'heel stringing.' Dozens of men have done it over the years. A factual record which poignantly suggest that there must be some truth to the charge that field work as it exists on the Ellis Unit is a form of cruel and unusual punishment. Senator, please consider how disagreeable a thing must be for one to chose self-mutilation as a preferable alternative.³¹³

Some prisoners continued the practice of self-maiming as a means to confront prison authority and as a way to avoid prison labor, although it occurred with far less frequency than before the reform period.

The most direct and confrontational form of resistance was the work strike, what inmates referred to as a "work buck." Prior to 1978, these work strikes were uncoordinated, lacked leadership, and were relatively rare, but given the totality of the work regime these brief moments of collective resistance suggest a deep undercurrent of discontent. White, black, and Latino inmates engaged in short lived work strikes throughout the postwar period. Latino inmates, in particular, engaged in some of the period's most notable work strikes, particularly the "work bucks" of 1957 and 1961. Both of these strikes involved Latino inmates on the Harlem prison farm and both were ended within less than a day.

These acts of daily resistance and communal agitation allowed inmates to find ways to survive the rigors of prison work and life. For the most part, however, these were individual acts of resistance or, in the case of the African American work songs,

³¹³ Michael Jewell to Senator Chet Brooks, July 1977, Papers of Senator Chet Brooks, 1999/136-21, "Michael Jewell file," TSLA.

communal acts of survival. Texas administrators prided themselves on their ability to avoid prison riots, prolonged work strikes, and any semblance of disorder or organized resistance. Such was the comprehensive nature of “control penology” and its insistence on a regimented and tightly controlled work regime. In the 1970s, however, the prisoners’ rights movement would build upon these acts of daily resistance to forge an inter-racial coalition who engaged in sustained, coordinated, and organized acts of collective resistance aimed at upending the prison system’s power hierarchy.

“Houseboys” and Domestic Servitude

The prison system also divided African American men by making some of the longer-term convicts serve as live-in domestic servants to the system’s top administrators and wardens. These domestic servant positions, known by prison officials and guards as “house boys,” could only be staffed by African American men. The practice has its origins in the East Texas slave plantation in which enslaved women waited on tables, cleaned clothes, and did household chores and enslaved men served as gardeners, hostler, and carriage drivers.³¹⁴ By the early twentieth century, male African American inmates had been pressed into both the male and female service roles that enslaved African Americans had provided during slavery.³¹⁵ The

³¹⁴ *Empire for Slavery*, 123.

³¹⁵ See Joyce Brown with Jay Gaines, *Joyce Ann Brown: Justice Denied* (Chicago: Noble Press, 1990); Jan Howe Gregory, “Persistence and Irony in the Incarceration of Women in the Texas Penitentiary, 1907-1910” Master’s thesis, Rice University, 1994.

practice survived until 1980, when a federal court order declared the Texas prison system unconstitutional.

The use of “house boys” was prevalent in the 1940s, 1950s, and 1960s, even though prison directors viewed the tradition with caution. In 1951, director Ellis issued a memorandum to all wardens warning them that “the use of houseboys is hazardous at its best. Through the years there have been a number of prison officials killed, or members of their families killed, by trusty servants.” “Houseboys,” according to the 1951 memorandum, should not be allowed to become too familiar with the family that they served. Incidents of impropriety and rule infractions centered on sexual anxieties and on fears that cultural patterns of racial subservience were not thoroughly obeyed. The rule infractions listed in the 1951 memo included employee wives who drove inmates “to the building for their grocers,” a “wife and houseboy sitting in the living room conversing,” an inmate listening to radio and television programs with the prison employee’s family, and the case of a “houseboy” who interrupted a “business conversation about prison operations” to “give his views.” Indeed, sexual anxiety over inmate domestic servants nearly threatened to end the “houseboy” practice. In 1965, a TDC memorandum to all wardens cited “two serious incidents” that involved “houseboys and sex.” The memorandum did not state the specific nature of the incidents, but they were serious enough that the prison director, Dr. George Beto, promised to remove all inmates as domestic servants if there was “another serious houseboy incident.”³¹⁶ Instead of ending the practice,

³¹⁶ Dr. George Beto to all Wardens, October 14, 1965, TDC memorandum no. 14-65, TDCJ, 1998/038-62; Ellis’s 1951 memorandum to all wardens is repeated and copied in Dr. Beto’s 1965 memorandum.

however, Beto permitted a “grandfather” clause that allowed officials who kept “houseboys” at the time of the memorandum to continue the practice. As late as 1978, there were fifty-five remaining homes that used “house boys,” all of whom were male African American inmates, as live-in servants.³¹⁷ Available records on the “house boy” system are few. Personal recollections and oral histories are among the few means available to reconstruct the existence and operation of the system.

The Combs family and their relationship with the family “house boy” provides an intriguing glimpse into the shared life of keeper and kept that maintained the domestic tradition of racial subservience through much of the 20th century. Charlie Combs III grew up with a house boy, as his father, Charlie Combs, Jr., was superintendent of prison construction at various units, including Diagnostic, Eastham, Goree, Darrington, and Ferguson, from 1955 until his death in 1968. Most houses near the prison were a two-story duplex with an adjoining garage that could be converted into an apartment or have an upstairs room where the inmate lived. Typically “house boys” had a life sentence, often for murder, because the prison administration believed that these inmates were more trustworthy and less likely to attempt escape than inmates with shorter sentences. Combs recalled that most “house boys” had “good records in prison, but they were usually doing a long time like life. Murderers made good trustees because you knew that they going to be around for a long time.” “House boys” were a precious commodity and a status symbol for high-ranking TDC employees. A particularly “good house boy,” one with a trustworthy reputation, might earn the attention of other high-ranking prison officials who would

³¹⁷ “55 Texas Prison Officials Said to Use Black Houseboys,” *Houston Chronicle*, 13 February 1976.

arrange to have that “house boy” as their own servant. “If you got a real good house boy,” Combs recalled, “you usually lost him shortly because the warden would get him. And he’d get reassigned.”

An inmate with the racially charged nickname of “Coon” worked for the Combs family for nearly a decade, from 1958 to 1968. Coon, or “Coonie” as the family often referred to him, had earned that nickname because he captured wild animals, from raccoons to armadillos, and barbequed them; it seems just as likely that the name had a double meaning given its racial connotation. “Coonie” lived in the upstairs apartment over the family garage and everyday he made breakfast for Charlie, Jr. at 4:30 AM. “Coonie” then spent his day cleaning, doing laundry, gardening, and preparing for supper. Charlie Combs, III reflected on the tension between the family’s general affection for “Coonie,” and for the inmate’s role as the family’s live-in servant and “house boy.” “In a sense they were a slave, and I mean I never thought about that when I was a child and we had this ‘house boy’...but as a child, you don’t really see it from that standpoint. That’s just somebody that puts your dirty shoes out on the back porch in the evening and you get up the next morning, and they’re all cleaned and shined...but you never did think of them as a slave – they became a member of your family.” Indeed, “Coonie” even shared a place among the Combs family on Christmas morning, although he had to stand at the entryway to the family room. Combs remembered that, “We got up at the crack of dawn on Christmas Day and he would already be there. And, I guess have the coffee ready and then when mom and dad got up, then when we started opening presents, he’d just move his chair in...And he’d just come put his chair right in the

doorway...and he was just included in this semi-circle. And he had his presents under the tree and as everybody got a present, he got his present. One of the main things was a carton of cigarettes.” After the death of Charlie Combs, Jr., “Coonie” was reassigned to Jack Kyle, former warden of the Ferguson unit and later TDC’s assistant director of business, a high-ranking position second only to the director of TDC. The Combs family continued to stay in contact with “Coonie,” and when he was paroled the Combs family arranged to have him work for one of the Combs boys’ brother-in-law at Hardy Lumber Company near Huntsville.

As the press, politicians, and out-of-state prison administrators extolled the economic success of Texas prisons, few proponents took the time to look into the homes of prison officials who maintained black prisoners as personal servants. Indeed, among proponents of the prison system the role of “house boy” was considered a privilege and a rare opportunity to leave the confines of the cellblock for the partial freedom of a prison official’s home. Within the extended prison community that included the homes of prison officials, “houseboys” were used as a status symbol that conferred respect and authority among white families who were prison officials. And, as the case of the Combs family suggests, some measure of familial relationship was established between keeper and kept, although always as a measure of supposed white “superiority” and as a means to belittle black men.

*“A Bible in One Hand, and a Bat in the Other”:
Dr. George Beto and the Expansion of Control Penology*

On November 12, 1961, the prison system's director O.B. Ellis collapsed and suffered a fatal heart attack during a traditional Sunday evening dinner with Prison Board members. Ellis was only fifty-nine and his death came as an unexpected surprise to the Board, who soon thereafter commenced a search for a new director with the hope that they might maintain continuity and a smooth succession. Within eight days of Ellis' death, the Board turned to one of its former members, Dr. George J. Beto. At six feet, four inches and known for wearing his characteristic grey Stetson hat and a spur tie clasp with the initials GJB at its center, Beto was an imposing figure, both physically and intellectually.

Born a son of a Lutheran minister in 1916 in St. Louis, Missouri, Beto was a product of Lutheran schooling, including Concordia College, a preparatory school in Milwaukee, Wisconsin (1930-1935) and Concordia Seminary, St. Louis (1935-1937). He earned a bachelor's degree at Valparaiso University, a private Lutheran university in Valparaiso, Indiana (1939); a Master's Degree in history at the University of Texas, Austin (1944); and a Ph.D. in Educational Administration, also at the University of Texas (1955).³¹⁸ His educational career included twenty years at Concordia College in Austin, Texas, which was a college in name only and served since its founding in 1926 as a Lutheran preparatory high school for boys. While at Concordia Austin, Beto served as a history and religion teacher, what the school titled a "professor," from 1939 until 1949, and then as the school's president from 1949 to 1959. As president of Concordia Austin, Beto oversaw its transition to a junior

³¹⁸ Beto's master's thesis in history was titled, "The Marburg Colloquy of 1529: A Textual Study" and his dissertation was titled, "Arguments Found in the Literature for the Continued Existence of the Protestant Church-Related Liberal Arts College." Additionally, he completed his Ph.D. language requirement in Latin, which was a reflection of the six years of Latin he received as part of the classical liberal arts curriculum of Concordia College.

college in 1951; admitted the college's first black student, Henry Sorrel, in 1953; and, started a modest program of coeducation, with the first women matriculating in September 1955.

George Beto was no liberal, however, and while president at Concordia Austin he became active in conservative state politics. Since Reconstruction, the Democratic Party governed Texas. In the 1950s, the Texas Democrats were divided between New Deal liberals and conservative Democrats, a struggle that had national implications when conservative Texan Democrats broke party ranks in 1952 to support Republican Dwight D. Eisenhower for President. In 1952 Governor Allan Shivers, who served as Beauford Jester's Lieutenant Governor and succeeded Jester following his sudden death in 1949, faced a tough primary season against his opponent Ralph Yarborough, a powerful Texan politician and a liberal New Dealer. When Beto threw his support to the more conservative Shivers, he was rewarded following Shivers' victory with an appointment to the Prison Board.³¹⁹ As Beto later recalled, Shivers called the Concordia president after the election and told Beto that "he understood I was a friend" and that "he liked to have his friends do things for him." "It was Beauford Jester's policy and his policy to appoint prominent businessmen to that Board," Shivers reminded Beto, but he believed that the theologian and academic "could make some contribution."³²⁰

³¹⁹ Shivers defeated Yarborough in the 1952 July primary by winning 224 of the 245 counties, although Yarborough managed to pick up 488,000 votes (36 percent of the electorate). For the struggle over whether Texas, a traditionally one-party Democratic state, would support the presidency of Republican Dwight D. Eisenhower, see Allan F. Dobbs, *Yellow Dogs and Republicans: Allan Shivers and Texas Two-Party Politics* (College Station: Texas A&M University Press, 2005).

During his six-year tenure on the Board, Beto earned the respect of his fellow members by heeding Governor Shivers' advice that he not be a "disruptive influence on the Board" and that he continue the Board's practice of fully supporting Ellis who was "doing a good job" because, in everyone's estimation, "the prison had made remarkable progress."³²¹ Equally important, Beto cultivated a partnership and close friendship with fellow board member Hubert Hadison (HH) "Pete" Coffield, who had made a \$50 million dollar fortune leasing land to Texas oil tycoons. As treasurer of the state's Democratic Party, Coffield amassed even greater influence and power when he became the Prison Board chairman in 1956, a position he retained until his retirement in 1974.³²² Beto's contributions to the board included the launching of the prison's education reform, originally titled the Texas Training Institute, and the creation of a chapel at the Walls. Beto had also earned his "bones" as a tough-minded proponent of "control penology" when he and Coffield famously confronted and put down a 1957 inmate work strike.

On the first day of cotton picking season, Saturday March 1957, 300 Latino inmates on the Harlem Prison Farm # 1 in Sugar Land, just southeast of Houston, sat down on a humid Texas summer day and refused to work. The inmates had a minimal quota that day to pick 160 pounds of lint cotton, but this was Saturday and the inmates were determined to make demands for a five-day work week. Four years

³²⁰ George J. Beto quoted in Craiq Copeland, "The Evolution of the Texas Department of Corrections," (Sam Houston State University, master's thesis, 1980), 222.

³²¹ *Ibid.*

³²² Lewis Nordyke, "Pete Coffield: a Friend of Good Boys and Convicts," *Texas Parade* (June, 1959); "Pete Coffield: He and Columbus Took a Chance," *The Dallas Morning News*, 2 January 1966.

previously, in 1953, Ellis had changed the six day a week work policy so that inmates worked only five days a week, except for a month in the spring planting season and two months during the Fall harvest. The inmates felt that even the restricted six day work week remained unfair, especially because the planting and harvesting seasons made for particularly hard work. In response to the inmate unrest, Ellis notified Board members H.H. Coffield and George Beto about the strike and they both immediately traveled to the Harlem Farm to help calm the situation. While the strike was put down after only one day, it represents a rare moment of inmate solidarity and collective action against the Ellis work regime. It also offered Beto an opportunity to confront prisoners in the field and thereby expand his reputation beyond his stereotypical image as a quiet and studious academic and theologian. Beto had also earned the support of Austin McCormick, who supported him as successor for Ellis in 1961.³²³

Although Beto was a great admirer of Ellis, he was also influenced by the legendary Joseph Raegan, the warden who presided over Stateville Penitentiary, Illinois for nearly forty years from 1936 to 1976. Two-years prior to his appointment as Texas prison director, Beto had accepted a 1959 appointment as president of Concordia Lutheran Seminary in Illinois. While there Beto continued his interest in penology and state politics, and not long after his arrival he was appointed to the Illinois Board of Pardons and Paroles, which provided Beto an introduction to Raegan. Sociologist James Jacobs, whose book *Stateville: The Penitentiary in Mass Society* offers the most comprehensive study of Raegan's prison management,

³²³ Austin McCormick to George Beto, Beto collection, SHSU, 4/14.

characterized Raegan as developing a closed prison system in which the “stable social order at Stateville depended upon gaining a larger measure of economic, political and moral autonomy. The absence of interference by outside forces enabled him to develop his authoritarian system of internal order which reached its full elaboration by the early 1950’s.”³²⁴ Beto admired the ways in which Raegan cultivated political patronage and yet still managed a prison system that accorded him great personal authority without external intervention or interruption. The Illinois system differed from the Texas prison model in that it did not employ inmates in the field nor did it employ inmates as guards. Raegan, however, fashioned a highly disciplined and controlled prison society that Beto admired. The Prison Board, particularly Coffield, knew about Beto’s relationship with Raegan, and believed that Raegan’s ordered, authoritarian, and closed management style blended well with the Ellis work regime. Beto had thus garnered the trust and interest of the key figures who would decide Ellis’s succession.

Eight days after Ellis’ death, the Board sent a telegram to Beto, informing him that “The Texas Board of Corrections today unanimously elected you director. Our action has the support of the governor [Price Daniel, elected 1957] and the entire official family plus the prison administrators.” So eager was the Prison Board to hire Beto that it had to offer the position twice, as the Board of Trustees of Concordia Theological Seminary was “reluctant to grant Dr. Beto a peaceful dismissal to accept an office outside of the church.” The prison board remained undeterred and mollified the Concordia board of trustees by offering Beto the concurrent

³²⁴ James Jacobs, *Stateville: The Penitentiary in Mass Society* (Chicago: University of Chicago Press, 1977), 29.

appointments of Prison Director and Chief of Chaplains. With Concordia's blessing, Beto accepted the dual positions and continued the control penology prison legacy as a self-avowed "disciple" of O.B. Ellis.³²⁵

The appointment of a theologian and educator as prison director for a system so grounded in the tenets of control penology and agri-business initially seemed counterintuitive and was not without challengers. Inmates realized this, of course, and they challenged the new administration almost immediately. On only his second day in office, Beto's authority was threatened by thirty Latino prisoners on the Number One Hoe Squad at the Harlem Unit who conducted a work strike. The inmates sat down in the fields, and insisted that they be allowed to speak to Beto. Soon thereafter, other inmates joined their protest. The guards refused to give in to their demands and so the 300 striking inmates stayed in the fields over night and remained surrounded by prison guards and officials. After failed talks with the striking inmates, Beto called "five or six" wardens together to find a solution to the increasingly tense situation that had become, in Beto's words, a "test of me, because some of the wardens didn't know me, they didn't know what I would do." Beto responded forcefully and quickly by placing his wardens on horseback armed with wet rope and instructed them "to go out and put number one squad to work" and to "use whatever force was necessary." Beto remembered that in his response to his order, "There was a flurry of excitement and then the number one hoe squad went to work in a hurry and the rest of the inmates followed."³²⁶ Prison lore among the

³²⁵ George Beto to Mrs. O.B. Ellis, November 15, 1961, George Beto Papers, Sam Houston State University (SHSU), hereafter cited as Beto papers, SHSU.

³²⁶ Board Meeting Minutes, March 1957, TDCJ, TSLA.

striking inmates was that Beto arrived on the scene and pronounced, “Gentleman, I can go either way, with the bat or with Bible. Which would you prefer?” While Beto later averred that the “bible and bat” story was nothing less than convict legend, its truthfulness is less important than the image that Beto cultivated as being a religious and intellectual man while remaining a stern prison administrator committed to discipline, order, and work.³²⁷ Beto remained true to the Ellis conviction that “prisons furnished an opportunity to introduce the individual to the benefits of the disciplined life” and that “rehabilitation should include a constructive work experience.” Beto repeatedly stressed in his speeches and meetings with the press that, “confinement serves a constructive purpose in teaching the dignity and necessity of labor.”³²⁸

While the work regime remained unchanged during the new administration, Beto broadened the parameters of control penology by incorporating what he called his own “philosophy of corrections.” In speeches he gave across the state, Beto outlined his belief that prisons must instill in criminals what society failed to teach them. He believed that American society was increasingly lawless and the result was a “deterioration of American character.” Beto also believed that modern society was experiencing “an erosion of moral fiber” in which “we worship the wrong gods; we burn incense at the wrong altars; we have misplaced values; we consider the wrong

³²⁷ For a biographical account of Beto’s life and his role in fashioning control penology see, David M. Horton and George R. Nielson, *Walking George: The Life of George John Beto and The Rise of the Modern Texas Prison System* (Dallas: University of North Texas Press, 2005).

³²⁸ Dr. George Beto quoted in Copeland, “Department of Corrections,” 232.

things important.” He concluded that stemming the “rising tide of criminality” meant that prison management’s crucial test was to successfully “reintegrate” the criminal back into society as a citizen and thus “preserve ourselves as a nation.” In his estimation, the current “moral crisis” had become so acute that nationhood and the “American character” remained at stake:

America will last only as long as there are Americans: Americans who believe and practice that man’s word is as good as his bond, Americans who believe and practice the sanctity of marriage, Americans who believe and practice the integrity and solidifying character of the American home, Americans who live and move and have their being in the presence of a personal God...only as long as we as individuals and as a nation remain dedicated to these concepts can we stem this rising tide of criminality, and at the same time preserve ourselves as a nation.³²⁹

Beto believed that he presided over a system that might better the nation by bringing order to what he saw as the lawlessness of 1960s society. During the 1960s, the nation experienced sharp increases in crime, particularly violent crimes. In 1963 there were 190 violent crimes per 100,000 persons. By 1968, however, the rate increased to 298. When Beto retired in 1971, the rate of violent crimes had more than doubled the 1963 rate, reaching 396 crimes per 100,000 persons. Murder rates, in particular, had grown sharply as the number of murders doubled between 1962 and 1972. Between 1967 and 1968, the crime rate in Texas increased from 1,500 crimes per 100,000 persons to 2,000 crimes per 100,000 persons. Beto linked such rising crime rates with his perception that the 1960s had become a movement decade of “long hairs” and “liberal do-gooders” who contributed to a “lawless” antiwar

³²⁹ George Beto, “The Case for Prisons,” speech given at the annual 1964, Texas Police Conference in El Paso, reprinted in *Texas Police Journal*.

movement, a radical student protest movement, and dangerous urban racial riots.³³⁰ In a letter to Chicago Mayor Richard Daley written in the aftermath of the 1968 Chicago Democratic Convention, Beto revealed his view that control penology could partner with law and order politics. When Mayor Daley insisted that Chicago would remain “The City that Works,” despite the “lawlessness and disorder” from outraged student protestors, Beto supported Daley’s hard-line approach to putting down protest. “I am persuaded that your approach,” wrote Beto, “which involved meeting insolent disrespect for law and order with force, is the only solution to the problem of lawlessness in this country.”³³¹

Despite the fact that Beto supported racial integration as president at Austin Concordia seminary, he was hesitant to embrace racial integration in the prison system as his wardens, officers, and guards were nearly all-white. Indeed, Beto blocked the appointment of Holiday, a well known preacher, by Governor John Connally as the first African American to serve on the Texas Prison Board. In fact, he actively lobbied key state legislators against the appointment. In a March 1963 letter to State Senator A.R. “Babe” Schwartz, whose district included the largely black inmate populations of Retrieve and Clemens prisons, Beto warned that the “problem in controlling negro inmates is an extremely difficult one” and that the appointment of a “negro” to the Board, “regardless of how fine an individual may be,” would be “just an open invitation to negro inmates to foment discord, strikes, and riots” because they would believe that “they will have a negro on the board to

³³⁰ As discussed in Chapter 5, Beto was the subject of a number of civil rights complaints from prisoners, and in his testimony in *Dreyer v. Jalet* he referred to prison reformers as “liberal do-gooders.” *Dreyer v. Jalet*, 1972.

³³¹ George Beto to Richard Daley, August 30, 1968, Beto papers, SHSU.

champion their cause.”³³² Despite his resistance to Holliday’s appointment, Beto did hire the first black prison guard, Euriah Mayes, in 1962 to work at the Ferguson prison. But over the decade of Beto’s tenure, only fifty-one African Americans and thirty-two Latinos were employed in Texas prisons as guards and wardens compared to 2,162 whites.³³³ While his biographers characterized Beto as one of those “brave Texans who led the way in championing racial equality,” his record of racial integration among the prison staff was minimal and his outright resistance to Holliday’s appointment speaks to his general fear that racial empowerment and integration at the highest level of the prison system ran the danger of fomenting race riots and lawlessness among the prisoners themselves.³³⁴

Prison management, according to Beto’s philosophy, was in the midst of a historic shift that required prison administrators to think about how they might better the nation by turning criminals into future citizens. In a speech entitled “The Case for Prisons,” Beto explained that prisons and prison management were undergoing a historical “evolutionary process of the four Rs,” which he characterized as “Revenge, Restraint, Reform, and Reintegration.” Society’s “revenge’ on criminals was characterized by the stockade, noose, and lash all of which served, in Beto’s eyes, as “a prime example of man’s inhumanity to man.” The institutionalization of the prison as a fixture in nineteenth century society marked what Beto called “the period of

³³² George Beto to A.R. Schwartz, March 26, 1963, Brown Defense papers, private collection of William Habern, and in author’s possession.

³³³ A.P. Manning to George Beto, February 2, 1971, Beto papers, SHSU; Horton and Nielson, 138.

³³⁴ Horton and Nielson, *Walking George*, 42.

restraint.” The period of “reform” heralded a moment when “the calloused conscience of society was pricked,” causing prisons to embrace “inmate humanitarianism” during the early twentieth century. Beto believed that he lived in the “era of reintegration” in which “the avowed and not always attained goal” was the return of the offender back into society. While living in the era of “reintegration,” Beto’s philosophy of corrections blended together the “evolutionary process of the four Rs.” Beto acknowledged that the older and more brutal means of punishment had not been entirely eclipsed, and that prison reform was a job never finished. “We shall not – in the foreseeable future – shake off the vestiges of our past. Society will continue to demand some Revenge; some Restraint will be required; and as long as we have institutions manned by human beings, Reform will be required.” In an estimation of Beto’s speeches and prison philosophy, *The Dallas Morning News* trumpeted in a March 1965 editorial titled “A Return to Values” that “the time has come for more preaching” and that “crime reduction will take years of conscious, concerted effort dedicated to the basic principles upon which this nation was founded.”³³⁵

Beto followed the Ellis plan and emphasis on work, but he stressed the need to include prison education as part of the Texas prison model. Prison education, Beto believed, was an essential “reform” and he relied on it as a means to instill prison order while also reintegrating the inmate back into American society. Prison education became a coveted prize and a respite from field labor, although admission was based on PIP points and remained tied to an inmate’s work record. In 1956,

³³⁵ “A Return to Values,” *The Dallas Morning News*, 22 March 1965.

Texas unveiled its Education Program, which Beto, as board member, devised along with Dr. H.E. Robinson of the Texas Education and Dr. Elliott Bowers, of Sam Houston State Teachers College. By 1964, more than 3,000 inmates received a high school education and successfully passed the General Education Development (GED) test. College education credits were nonexistent, however, and most of the educational courses emphasized vocational and practical skills. In 1965, Beto replaced the General Education Development (GED) program with the Adult Basic Education Program, which offered classes taught by twenty-two full-time certified teachers from first through ninth grades. By 1968 the prison system established an accredited and independent school district, named the Windham School District for Prison Board member James Windham, in which each prison was its own school and the Prison Board acted as the school district's board of trustees.³³⁶ As an educator Beto took prison education seriously and offered a different path than the Ellis emphasis on vocational training. "Vocational education does not do anything for a man's motivation," Beto argued. "You can spend \$1,000 to train an alcoholic to be drag-line operator and you've still got an alcoholic drag-line operator."³³⁷ Beto therefore insisted that education was compulsory for inmates who tested lower than a fifth grade education level. By 1970, 8,000 inmates earned the equivalent of a high school diploma. Between 1970 and 1978, compulsory prison education resulted in the granting of more than 10,000 high school diplomas or equivalency certificates. In 1965 Beto launched a two-year junior college program allowing inmates an

³³⁶ The Windham School district was officially sanctioned by Senate Bill No. 35 to take effect on September 1, 1968.

³³⁷ Krajick, *Corrections Magazine*, 1978.

associate's degree by taking college-level courses in the prison through Alvin, Lee, Brazosport and Henderson County junior colleges.³³⁸ Four-year college programs became available by 1966, and in 1969 the first inmate earned a bachelor's degree, followed by another 18 inmates by 1978. As with all aspects of "control penology," the education program was low cost. In its first year, the Windham School District had a budget of two million dollars and it employed a school superintendent, six principals, 174 classroom teachers, thirty-four vocational teachers, four counselors, and eight librarians and nurses.³³⁹ After the initial allotment, the prison system provided only space, utilities and maintenance, while school costs were paid by state educational agencies. In an estimation of Beto's educational and vocational training program, Dr. Garland S. Wollard, director of education for the U.S. Bureau of Prisons, extolled the educational improvements: "Texas is definitely providing the leadership that most of the states should follow in establishing educational and vocational programs within their prisons."³⁴⁰

As a theologian and minister, Beto incorporated religion and modest rehabilitative programs into his educational incentives. Despite the role that Christian organizations played in the '48 reform movement, religion remained strikingly absent from Texas prisons prior to Beto's administration. Indeed, during the Ellis regime the prison system retained only one full-time, accredited chaplain. Beto hoped to improve upon that record, and thus in May 1963 he supervised a major revision in the

³³⁸ "Texas Prison Training Among Best: Convict Program Ranges from Job Skills to College," by Stan Redding, *Houston Chronicle*, 8 July 1970.

³³⁹ Horton and Nielsen, *Walking George*, 131.

³⁴⁰ Krajick, *Corrections Magazine*, 1978.

religious program by augmenting the Chaplains Standards to insist that chaplains must have college and seminary degrees. Moreover, Beto sought the support of the Texas Council of Churches to boost its funding of prison chaplains and he awarded PIP points to those inmates who attended religious services. By the time of Beto's retirement in 1971 the prison chaplaincy had increased from just a single clinically trained chaplain in 1961 to thirteen trained chaplains.³⁴¹ Another rehabilitative tool that Beto utilized was the Alcoholics Anonymous program. In 1963 1,404 speakers from 60 cities, spoke to the 2,395 active AA members in prison. Prison administrators cited that the success of this program could be found in the fact that only 1.6 percent of the AA group who were paroled or released returned to prison as parole violators. Beto therefore expanded control penology to include a broader rehabilitative mission centered on the belief that the role of a prison was to instill a renewed sense of morality and self-discipline so that criminals might reenter society as productive citizens. Although the educational program, chaplain services, and AA represented some rehabilitative measures, Texas spent relatively little on rehabilitation programs. Prison labor remained the hallmark of Beto's administration. Dr. Windel Dickerson, the prison's chief of psychological services, aptly described the Texas rehabilitation simply as "work therapy." "We're not in the business of reconstruction or rehabilitation," admitted Dickerson. "We're largely crisis-oriented here. We feel that it's enough to keep the inmate functional enough to participate in education and in the work therapy program."³⁴²

³⁴¹ Horton and Nielsen, *Walking George*, 135.

³⁴² "Profile Texas," by Kevin Krajick, *Corrections Magazine*, 1978, 13.

The system remained just as productive, cost efficient and orderly under Beto as it had under Ellis, perhaps more so since Beto emphasized industrial production and had the political acumen and wherewithal to convince the 58th legislature to support and pass Senate Bill 338, The Prison-Made Goods Law, on September 1, 1962. This law required other state institutions to buy prison products, if the State Board of Control certified that they were competitive in quality and price. The law permitted the prison system to establish a revolving fund for revenues from these sales, using the funds to purchase supplies, equipment and other necessities. This law propelled prison production through the 1970s and ensured that Texas prisons would continue its cost effective business plan. By the time of Beto's retirement in 1972, the cost per an inmate remained one of the nation's lowest, at \$3 per convict per day. In 1970, the Texas prison industries put 1,300 men to work and grossed \$2 million a year. By 1972, the system's seven industrial factories had tripled to twenty one shops and produced goods well in excess of six million dollars. In 1976, for instance, TDC industries produced more than \$8.5 million in outside sales to state agencies and turned a profit of \$900,000.³⁴³ Prison industries relied on the system's agricultural resources to make such items as shoes from the leather of prison-owned cows, clothes from its cotton fields and textile mills, and boxes, brushes, brooms, and mops made of prison-produced wood, straw and cotton fibers. The bulk of prison labor, meanwhile, remained dedicated to high-yield farm work on over 100,000 acres of land that grossed over \$5 million annually.³⁴⁴

³⁴³ *Ibid.*

³⁴⁴ At the end of Beto's tenure, the agri-business Texas prison empire included 15,000 beef and dairy cattle, 17,000 hogs, 112,000 chickens, 3,000 turkeys, 345 horses, 290 mares,

Such high-yield prison production remained reliant on the trusty system. Over the course of his administration, Beto continued the Ellis policy of relying on the good-time law and the PIP system as an effective control mechanism to ensure a highly diffuse level of prison labor, inmate hierarchy, and order. Beto understood that “liberal good time laws” were not so much for the prisoner’s benefit, as for the prison administration’s ability to control and motivate inmate labor:

The most important commodity to a convict is time. In Texas if a man comes to the penitentiary, the day he comes – he’s made a first class prisoner, which means he earns 20 extra days a month as long as he behaves himself. For every 30 he serves, in other words, he knocks 50 off his sentence. And then if he’s a second class prisoner, he earns 10 extra days a month. If he’s recalcitrant, he serves it day for day, 30 days. And he can build up this time – we can take away from him and we can also restore it. It makes an excellent lever or motivation device for us. In addition to that, the law allows us to make certain men what is known as state approved trustees, which does not mean that we place confidence in them, it means because of their willingness to behave themselves in the type of work that they do – we can give them 30 extra days a month and they can knock off 60 days for every 30 they serve. And in an operation such as ours – where we are geared to production, this device is extremely important.³⁴⁵

Beto thus continued the building tender system, despite the fact that he publicly declared that he did not “believe in any form of brutality or corporal punishment.”³⁴⁶ Building tenders not only insured control and discipline within the prison building, but it had become economically imperative to retain the building tender system so as to ensure continuity with the Ellis regime’s low cost. By having inmates serve as guards and turnkeys, the Texas prison system maintained the nation’s lowest guard-

10,000 cultivated catfish, and 387 man-hunting dogs. Annually, the farms yielded 819,490 dozen eggs, 83,500 pounds of cheese, four million pounds of potatoes, 3,500 bales of cotton, and 500,000 bushels of corn. Stan Redding, “Prison Work Programs Protect Inmate and Taxpayer,” *Houston Chronicle*, 9 July 1970.

³⁴⁵ Dr. George Beto, untitled speech, Beto papers, SHSU, Box 4/15.

³⁴⁶ “13,000 Inmates Call him ‘The Man,’” *Lutheran Layman*, October 1, 1965.

to-inmate ratio. By 1978, Texas had a twelve to one inmate-to-guard ratio, while the national average was four inmates to every guard. Moreover, the ability to have so few guards while still maintaining strict discipline and absolute control was a point of pride among the prison staff. “I been in that hall on the Ramsey Farm eating breakfast at 5:00 in the morning,” recalled Warden “Wildcat” Anderson. “And there would be a lieutenant in the center hall. And maybe one officer in the hall. And we’d lead 1,500 inmates. One in the tower and three officers. And that would be it. We would not have an employee working a cell and... you could sit there and they could come down that hall and it was quiet.”³⁴⁷ Warden C.L. “Beartrack” McAdams, who served the prison administration from 1935 until 1971, agreed: “the building tenders is the only way. In other words, the inmates know how to impose on one another.”³⁴⁸

Conclusion

When Beto retired in 1971, the prison board replaced him with Ward James (WJ) Estelle who, at the age of 41, had more than twenty years of experience in corrections. Estelle continued the prison system’s emphasis on labor and discipline. Control penology therefore governed Texas prison management through three successive administrations. The apogee of control penology occurred between the mid-1950s through the late-1970s. Assessing the cumulative administrations of Ellis, Beto, and Estelle, the *Christian Science Monitor* declared that Texas was under the

³⁴⁷ Unpublished oral history with Wildcat Anderson, TPHM.

³⁴⁸ Cynthia Linzy, oral history with Carl Luther McAdams, October 26, 1987, TPHM.

tutelage of “a highly disciplined industrial dynasty.” Similarly, the *Dallas Morning News* enthusiastically declared that, “The Texas system has been lifted to a top position.” Such high praise vaunted Texas prisons as a model for other states. “Texas prison authorities are host to a continual stream of visitors from other states looking for their secret. Because its Department of Corrections is autonomous, and because unions do not oppose the prisoner work program, Texas is able to run its shops like a business,” crowed a *Houston Post* article in October 1977.³⁴⁹ Declaring that Texas had “the best operation in prisons today,” Wesley Bolin, Arizona’s governor, fired his prison administrators in 1977 and borrowed two top Texas prison administrators to reorganize the Arizona system along the lines of the control penology model. Other administrators also expressed their interest in the control penology model. “Frankly, I’m envious of a lot of their programs,” confessed David Evans, head of the Georgia Correctional System. “They have a unique situation down there – they have a lot of land and strong legislative support – so there are things you just can’t duplicate anywhere else.” Paul C. Phelps, head of the Louisiana prison system, similarly concluded that, “A lot of states have a lot of things to learn from Texas, if they will only listen.” Indeed, Lewis Fudge, the senior planner for California’s Department of Corrections, visited the Texas prison system in 1973 and 1976 as part of an effort to reduce California’s prison costs, which were four times as high as the Texas prison budget to hold nearly the same number of prisoners. Fudge concluded that comparing Texas to other state systems was “like comparing the

³⁴⁹ John Barbour, “America’s Prisons Overflowing, But Texas makes them work,” *Houston Chronicle*, 23 October 1977.

General Motors Corp with a local department of welfare.”³⁵⁰ In a letter to Jim Estelle, Fudge wrote to his former colleague that “I cannot extol the Texas virtues too strongly” and that he was “mightily impressed” by the Texas “system that bears close examination.” Fudge remained “convinced that a part of our medications must be along Texas lines.”³⁵¹ Indeed a 1978 *Corrections Magazine* featured article crowned the Texas prison system “as the greatest system in the nation. George Beto and Jim Estelle sit, in a sense, as the crown prince and archduke of American corrections.”³⁵² Once an object of scorn among penologists, Texas therefore shed its “backwards” reputation in the post-war period, and was heralded as a model for the nation and the “crown jewel of corrections.”

The claims that Texas made for productive correctional management applied to a wider vision of a modernized and resurgent American South. Indeed, when Beto addressed the members of the Southern States Prison Association in 1964 he articulated the role of the prison in the south’s resurgence:

Last year in Boston, at the annual meeting of the American Correctional Association, a distinguished and revered penologist was reported to have said: “South of the Mason-Dixon line, there are no corrections.”

We resent that observation. While we are unwilling to make any invidious comparisons between Northern and Southern corrections, we are of the firm persuasion that corrections in the South have entered a new day...I want to plea with all of you to hold your heads high, to rid yourselves of the feeling of inferiority which has in the past characterized Southern corrections

³⁵⁰ “Former California Official praises TDC as the ‘General Motors’ of Prisons,” *Dallas Morning News*, 2 August 1979.

³⁵¹ Fudge to Jim Estelle, April 15, 1974, Cushing Memorial Library, Texas A&M University, Estelle papers, “Ruiz file.”

³⁵² “Profile Texas,” by Kevin Krajick, *Corrections Magazine*, 1978, 13.

and accept with pardonable pride the work you are doing – for the future of American corrections belongs to you and your colleagues.

I have a college boy son who on occasion facetiously states, “The South will rise again.” As far as corrections are concerned, the boy is wrong; the South has risen.³⁵³

The South had indeed risen and its dominance of prison management set a standard of expansive and cost efficient state power that the nation was soon to follow. The vast expansion of the Texas prison state in the last quarter of the twentieth century has its roots in the 1940s prison reform movement that created a planned prison success story. Unlike the progressive-era reform movement, the postwar reform effort fashioned a governing philosophy of Texas prison management that resulted in high-yield agricultural production, cost efficiency, and absolute order. When prison administrators implemented control penology over the course of thirty years, the result was an agri-business operation that was so successful that state leaders and penologists could claim that they had successfully modernized the South and vanquished the ghosts of their past. Gone were the public images of slavery, convict leasing, the lash and bat, “perversions,” and degradation. Rather than accept the albatross of their slave heritage and a prison system that served as a living symbol of southern “backwardness,” Texans created instead a prison where such “bottom line” and business-like results as production, cost efficiency, and external images of order allowed the state to stake a claim to modernity.

³⁵³ Dr. George Beto, “Address to the Southern Prisons Association,” Keynote address, New Orleans, Louisiana, April 1964, Beto papers, SHSU.

The Texas prison system, however, suffered from a split personality. While penologists, politicians, and much of the public heralded the Texas prison system as a harbinger of modernity, the internal prison society bristled under the authoritarian grasp of a brutal and violent prison regime. The creation of walls and cells resulted in a spatial formation that organized, disciplined, and controlled prisoners outside of the prying eyes of the public. The key to the Texas brand of “control penology” was thus not simply the prison system’s economy, but the way in which the prison administration ordered, controlled, disciplined and worked the internal prison society and hidden inmate economy. The Texas prison state depended on an internal government of prisoners who ruled over their fellow inmates. This system of control and exchange created hierarchical racial formations that brutalized inmates. The public, however, hardly knew that such a system existed. So long as profit, order, and cost effectiveness remained the measure of success, there was little public desire to probe behind prison walls.

CHAPTER 4

“HIDDEN ECONOMY UNDER CHAINED HANDS”:

INTERNAL ECONOMIES, PRISON HOMOSEXUALITY, AND SEXUAL VIOLENCE, 1945-1978

The only way to escape from the ethnocentric naiveties of economism, without falling into populist exaltation of the generous naivety of earlier forms of society, is to carry out in full what economism does only partially, and to extend economic calculation to *all* the goods, material and symbolic, without distinction, that present themselves as *rare* and worthy of being sought after in a particular social formation – which may be “fair words” or smiles, handshakes or shrugs, compliments or attention, challenges or insults, honor or honours, powers or pleasures, gossip or scientific information, distinction or distinctions.

Pierre Bourdieu, *Outline of A Theory of Practice*

See, the whole thing (internal prison society) is a pretty physically-based thing. It's a very predatory system and this, I think, is a very important thing to note, that predatory is the common denominator for all of it. The strong prey upon the weak, and the weak are in a terrible position...If they succumb to the predation, it only gets worse, and predation is social; it's sexual; it's economic.

Lionel Lippman, Former Inmate of the Texas prison system

In April 1978 a 23-year old inmate was repeatedly raped by building tender Charles Robertson, who insisted that the younger inmate was his “wife” and his “property.” Through his position as Building Tender (BT), Robertson arranged to have the major’s book keeper, an inmate named McChristy, move Robertson into the cell with the younger inmate. For the next five to six weeks, the inmate was forced to engage in coerced sexual activity with Robertson “many times.” After a prison officer nearly caught them together, the prison administration parted them, but Robertson continued to harass the young inmate. On July 1, 1978, Robertson arranged to have the young inmate run into him in the washroom so that he could reclaim his “property.” The young inmate’s affidavit claimed that:

Robertson began to fondle me all over and when my penis failed to get an erection he got angry. Robertson fellated me for approximately half an hour, during which time I attained only a partial erection for stimulation. He was mad and told me that since I was not going to cooperate with him, he would get his pleasure in other ways. He hit me several times in the stomach and chest and knocked me back into the commode. He then pushed his penis at my face ordering me to suck it, I did not respond. He then hit me several more times. Robertson, then told me to turn around and bend over on the commode, I hesitated and he again hit me. He pulled me to my feet and spun me around; grabbed my pants and pulled them down. I struggled to get away, it was then that Robertson pulled a home-made knife from his pocket. Placing the knife at my throat, he forced me to bend and proceeded to rape me.³⁵⁴

The Building Tender’s near immunity to official punishments, access to weapons, and control of the internal economy also gave them the power to rape without much fear of inmate reprisal or official rebuke. The case above of an unnamed victim of BT Robertson’s sexual violence illustrates that sexual and gender identity could be bought, sold, and determined by the internal prison economy.

³⁵⁴ Affidavit, anonymous Texas inmate, Papers of Senator Chet Brooks, TSLA, 1999/136-20.

Such power was sanctioned by the prison administration and often an act orchestrated by prison officers as informal payment that continued the prison system's racial hierarchy and internal order. This chapter analyzes how the internal prison economy created a divided inmate power structure that ruled the prison system through the threat of brutality and sexual violence.

Although the press and penologists pointed to business productivity and advances as the reasons for the improving reputation of Texas prisons, a critical reason for Texas's rise in corrections was its internal government of inmates ruling other inmates. The prison system divided the inmate population between those who worked in the field and those who worked in the building. Lawrence Pope, a former banker turned bank robber and an inmate of both the federal and Texas systems, noted that the Texas prison system was based on a "slavery type of operation." Pope bluntly told an interviewer, "you had the field niggers, and then they had the house niggers. Well, the building tenders in the building were – had the role of being the house niggers under the old slavery system, you see."³⁵⁵ The use of stark racial stereotypes, particularly coarse images of enslavement, became the political language that inmates used when they wanted to call public attention to the divided nature of Texas prison society and the conditions of their imprisonment.

The Building Tender (BT) system was a hierarchical, almost feudal, system of violence and domination in which inmates owed allegiances to other more powerful inmates who, in turn, owed fealty to prison guards and officers. The

³⁵⁵ Lawrence Pope, oral history conducted by John Wheat, 317, Lawrence Pope Collection, Center for American History, University of Texas, Austin, Box 4C982.

Texas prison system relied on a closely knit nearly all-white guard structure with kin networks drawn from the local community, while it divided the inmate society by race and ruled it with inmate “snitches” and specially selected building tenders, or BTs as they were known, who served the prison administration as security forces. BTs acted as guards, enforcers, spies, and turnkeys and engaged in routine beatings, maiming, and murder of other inmates, an enforcement process known euphemistically as “tune-ups” or “head strumming.” In return for their service, the prison administration gave BTs almost total control of the prison wing and certain privileges, including: private cells in a vastly overcrowded prison system; separate shower times, which were especially important since the shower was often the site of inmate-on-inmate violence; food from the guards’ better prepared mess hall; “running a store,” in which BTs used their private cells to stock commissary items that they resold to other inmates at loan shark barter prices; and a system of sexual domination, in which the prison administration looked the other way when BTs raped other inmates or selected a “punk” for a longer-term relationship from the administrative wing where homosexual inmates were segregated.³⁵⁶

³⁵⁶ The following chapter relies on oral histories, court room testimonies, court monitored inmate interviews, and legal affidavits to show how the internal prison economy operated. But for explicit testimony that shows the privileges of building tenders, see the following trial transcripts. On the building tender’s ability to have single cells and choice of cell assignment and cell partner, see David A. Christian at 149, 288, Center for American History, University of Austin Texas, Papers of the Special Master Ruiz, MAI 8/J93, hereafter cited as CAH; William Forrest at 1, CAH, MAI 9/J91; Hill at 12, CAH, MAI 8/92; James Lagermaier at 41-42, MAI 8/J98; Walter Harvey Ballard at 32, 36, CAH, MAI 8/J88; Francisco Guerra at 21-22, CAH, MAI 8/J91.

On the BTs ability to have more personal property, including clothes, stereos and pets, see John Albach at 118, 207, CAH, MAI 8/J88; Arnold E. Pontesso at 113-114, CAH,

Building tenders drew their ranks from a racially segregated prison society, in which members of any of the three major racial classifications – “Blacks,” “Whites,” “Mexicans,” – could become a building tender. White inmates, however, ruled the hierarchical building tender system as typically white inmates served as the prison’s “head building tender,” an inmate whose comprehensive power and influence within prison society was derived from his close working relationship with a prison administrator, usually a warden, assistant warden, or a prison major. Moreover, inmate bookkeepers and office administrators, who in some instances had the influence and power to move inmates from one cell or wing to another, were often white inmates. White inmates therefore had a greater ability to exert power through the abuses of the building tender and trusty system.

The postwar reform effort to house inmates in cells rather than dormitories and to build new and modern prisons had the unexpected and unplanned effect of enhancing the power, prestige, and influence of building tenders. When George Beto became prison director in 1961, seventy five percent of the prisoners still lived in dormitories, what inmates called the “tanks.” By 1964 that number

MAI 8/J94; Jeters at 78-82, CAH, MAI 8/J102; David A. Christian at 103, CAH, MAI 8/J96; Francisco Guerra at 51-52, CAH, MAI 8/J91.

On the building tender’s close relationship to top prison officials, particularly assistant wardens and majors, see John Albach at 118, 207, CAH, MAI 8/J88; Arnold E. Pontesso at 113-114, CAH, MAI 8/J94; Jeters at 78-82, CAH, MAI 8/J102; David A. Christian at 103, CAH, MAI 8/J96; Francisco Guerra at 51-52, CAH, MAI 8/J91.

On the building tender’s access to weapons, ability to “run a store,” manage a sex trade, and freely engage in prison rape, see James Eckles at 24-31, 42-44, 45-48, 234-235, 239-241, MAI 8/J-91; Guerrant at 14, 50, 87, MAI 8/J-92; Francisco Guerra at 18-19, 161-163, 165-170, MAI 8/J-91; Rosa Lee Knight at 24; Paul Crosson at 28, 29, 72-73, MAI 8/9-96; Simonton at 27-30, MAI 8/J-88; Gibson at 46, at 134, MAI 8/J-92; Eddie James Ward at 143, MAI 8/J-95; Hubbard at 150-153, MAI 8-92; Lovelace at 49-52, MAI 8/J-98; Robles at 32, 97, 113-114, MAI 8/J-99; Oscar Turner at 35, MAI 8/J-99.

dropped to sixty percent, and by the late 1970s, the majority of prisoners lived in cells rather than dormitories.³⁵⁷ Building tenders used the new spatial formation to move freely when other inmates could not, to control more effectively the internal inmate economy by stockpiling commissary goods in their private cells, and to use their influence and power to change the living arrangements of other inmates from one cell or wing to another in a vicious sex trade. The cell block living arrangement, in short, enhanced their power.

The building tender system was more than an internal security mechanism; it was an integral part of inmate culture that shaped the prisoner's world. Studies of prison society, particularly those done from sociological perspectives, have emphasized how internal and unwritten rules create a "prison community. The prison, in sociological eyes, was a functionally integrated social system in which administrative control was contingent on the subtle acquiescence of the inmates. Effective prison management depended on the tacit approval and acceptance by inmates in an internal system of incentives and deterrents that maintained the peace outside of the law and public knowledge. Riot and misrule occurred only when internal social rules were violated.³⁵⁸ David B. Kalinich's study of the inmate

³⁵⁷ David M. Horton, *Walking George: The Life of George John Beto and the Rise of the Modern Prison System* (College Station, TX: University of North Texas Press, 2005).

³⁵⁸ For the sociological model of inmate society, see Gresham M. Sykes, "The Structural-Functional Perspective on Imprisonment," in Stanley Cohen, Sheldon L. Messinger, and Thomas G. Blomberg, eds., *Punishment and Social Control: Essays in Honor of Sheldon L. Messinger* (New York: Aldine de Gruyter, 1995); Richard McCleery, "Communication Systems as Bases of Systems of Authority and Power," in Richard A. Cloward et al., *Theoretical Studies in Social Organization of the Prison* (New York: Social Science Research Council, 1960); Donald Clemmer, *The Prison Community* (Boston: The Christopher Publishing House, 1940); Donald Ray Cressey, *The Prison: Studies in Institutional Organization and Change* (New York: Holt, Rinehardt and Winston, 1961); and, Richard

economy in State Prison Southern Michigan, for instance, offered the standard sociological conclusion that the hidden prison economy allowed a “flow of contraband [that] contributes to stability in the prison community by supporting an informal power structure that supports order and to some extent deals with the material and psychological needs of the residents.”³⁵⁹ In his study on inmate violence, sociologist Kevin Wright concurred that “the informal culture of inmates promoted stability and helped contain violence. The inmate code discouraged exploitation of other inmates and promoted an individualized form of adaptation. In return for greater privileges and the most desirable jobs, high-status inmates joined the custodial staff in keeping peace in the facility.”³⁶⁰ Donald Clemmer, a pioneer in the study of prison society, defined the “unwritten inmate code” as a cultural ethic that sustains and gives substance to the “prison community.” Clemmer wrote about the “inmate code” in his groundbreaking 1940 work the *Prison Community* in this way:

The fundamental principle of the code may be stated thus: Inmates are to refrain from helping prison or government officials in matters of discipline, and should never give them information of any kind, and especially the kind which may work harm to a fellow prisoner. Supplementary to this, and following from it, is the value of loyalty among prisoners in their dealings with each other. This basic idea constitutes the prisoners’ code.³⁶¹

Cloward, *Theoretical Studies in Social Organization of the Prison* (New York: Social Science Research Council, 1960).

³⁵⁹ David B. Kalinich, *The Inmate Economy* (LexingtonBooks: Michigan State University, 1980), 5.

³⁶⁰ Kevin Wright, “The Violent and Victimized in the Male Prison,” in *Prison Violence in America* edited by Michael C. Braswell, Reid H. Montgomery, Jr., and Lucien X. Lombardo (Cincinnati, OH: Anderson Publishing Co., 1985, 1994), 106.

³⁶¹ Donald Clemmer, *The Prison Community* (Boston, Mass: The Christopher Publishing House, 1940), 152.

Clemmer's inmate code does not adequately describe the Texan building tender system, however. The BT system functionally and systematically divided the inmate society against itself by empowering one smaller and elite group of inmates against the general inmate population.

An analysis of Texas's internal prison economy must consider how a society without economic capital created a system of economic exchange that led to power hierarchies and personal domination. Sherry Ortner's description of "prestige societies," Pierre Bourdieu's ideas on "symbolic capital," and Louis Dumont's classical formulation of "hierarchical societies" are useful for understanding the distribution of power and capital in a prison society. Ortner's study of gender and sex in Polynesian society demonstrates that power relationships in non-material economies are often "hidden" and can be best understood as "prestige systems" that define hierarchical, sexual and gender relationships. Although the Polynesian society that Ortner describes is a familial pattern of hierarchy that involves both men and women, my study of prison economy focuses on a "prestige system" among men only, although such a system was articulated in gendered terms. Despite that difference, however, Ortner's definition of "prestige societies" remains a valuable tool when considering the internal prison economy. Ortner argues that nonmaterial economies are often organized around "mutual reciprocities and obligations" in which "inferiors owe goods and service to superiors, but superiors also have reciprocal obligations to inferiors: nobles oblige." Revealing the "hidden" nature of the internal prison economy takes up Ortner's suggestion that "to anchor the analysis in the

prestige system...is to anchor it in *cultural* definitions of personal and social value, rather than in externally defined criteria.”³⁶²

In a similar vein, Pierre Bourdieu’s *Outline of a Theory of Practice* argues that the division between cultural or spiritual power, on the one hand, and capital or economic power, on the other, is an artificial division in pre-capitalist societies, an argument that works equally well in modern-day prisons where material wealth is circumscribed by incarceration and where reputation and badges of respect provide a kind of symbolic capital that Bourdieu might well recognize. Where Bourdieu employed the concept of symbolic capital to demonstrate the processes of social and cultural reproduction, particularly in the realm of education, I deploy the same concept to analyze how inmates determined who was worthy or unworthy of “respect.” Educational achievement, according to Bourdieu, requires subscribing to a series of societal norms that include such non-academic characteristics as intonation, accent, or gait, which provide the educated with a kind of “symbolic capital” that enhances their ability to retain material wealth. By the same token, prisoners had to affect certain cultural behaviors in order to earn their credit as figures deserving respect. Latino prisoners, for instance, had to learn the “Pachaco” (meaning “tough”) walk, which included wearing their trousers low, strutting with their feet, and responding to any look of disapproval as an opportunity to fight for respect -- actions that Bourdieu might call a struggle for “symbolic capital.” A study of prison

³⁶² Sherry B. Ortner, “Gender and Sexuality in Hierarchical Societies: The Case of Polynesia and Some Comparative Implications,” in Sherry B. Ortner and Harriet Whitehead, eds., *Sexual Meaning: The Cultural Construction of Gender and Sexuality*, 306-361; Louis Dumont, trans. Mark Sainsbury, *Homo Hierarchius* (Chicago: University of Chicago Press, 1970). See also, Sherry B. Ortner, “Identities: The Hidden Life of Class,” *Journal of Anthropological Research* Vol. 54, No. 1 (1998).

life and society would do well to heed Bourdieu's admonition that scholars must "abandon the dichotomy of the economic and the non-economic which stand in the way of seeing the science of economic practice as a particular case of a *general science of the economy of practice*, capable of treating all practices, including those purporting to be disinterested or gratuitous, and hence non-economic, as economic practices directed towards the maximizing of material or symbolic profit."³⁶³ This chapter explores the building tender system as an internal economy of power in which money, food, human beings, reputations, favors, and sex all became commodities to be bought and sold.³⁶⁴

In his cultural history of Texas and California prisons in the 1930s, Ethan Blue first employed Bourdieu's "symbolic capital" as a way to understand prison hierarchies during the Depression and New Deal era. While my work draws on Blue's method of analysis and is indebted to his use of Bourdieu, it is important to note that the postwar period was markedly different than earlier eras for two reasons. First, the postwar period is the first time that the prison system achieves national and economic success, which was a point of pride that deeply entrenched prison administrators against any criticism of their system. Second, the postwar period changed the physical structure and living space of prisoners as the system increasingly housed prisoners in cells rather than dormitories. As this chapter will

³⁶³ Pierre Bourdieu, trans. Richard Nice, *Outline of a Theory of Practice*, (London: Cambridge University Press, 1977), 183.

³⁶⁴ In order to reconstruct the internal prison economy and the hidden patterns of exchange, this chapter relies on oral histories, inmate letters to state legislators, inmate affidavits, and the trial transcripts of the *Ruiz vs. Estelle* case. The *Ruiz* case is the subject of Chapter 7 of this study.

demonstrate, the structure and spacing of cells was essential to the internal prison economy and the increasing power of building tenders. Moreover, while it is true, as Blue concludes in his Depression-era study, that the division of inmates against themselves “undermined the creation of any horizontal sense of prisoner solidarity” and rendered “transformative resistance” as “nearly impossible behind bars,” the postwar period marks an important shift.³⁶⁵ The reformist creation of walls and cells accelerated the building tender’s abusive power in the postwar period, so much so that terrorized prisoners were ripe for civil rights revolution in the 1970s. When the civil rights revolution hit the streets in the 1950s and 1960s, it also made its way into the cellblock to inspire prisoner resistance and solidarity in the 1970s.

Entering Prison: Prisonization and a Culture of Violence

Chained together, leg by leg, traveling usually on a bus without air conditioning, prisoners arrived at the designated prison where classification officials documented and stripped them of their former identity, family, friends, and home. Prisoners typically describe the first-time journey and arrival as a jolting introduction to the prison that they characterize as being marked by confusion and fear as prisoners consider the loss of freedom and their sentence of lasting confinement. This bus-ride journey from freedom to incarceration aboard the “Blue Bird” bus was one of self-transformation, a process that prisoners termed “up on the chain” or “riding the chain bus.” Two walled gates were crowned by rings of barbed wire that surrounded prisoners upon arrival. Indeed, prison administrators designated every

³⁶⁵ Blue, “Hard Time in the New Deal: The Cultures of Punishment in Texas and California in the 1930s,” (PhD diss., University of Texas, 2004), 239-240.



Photograph 6: Strip Search, 1978, Ellis Prison³⁶⁸

prison as “maximum security.” The reforms of 1948 and heavy state investment in prison construction created new prison buildings, made of a characteristic red-brick with a design that featured a long, straight and wide main hall through the entire prison. Wings of cells and dormitories ran perpendicularly through the great hall’s center, a layout that prisoners and guards called the “telephone pole” design.³⁶⁹ Hard concrete constituted the prison floor. A bright yellow line ran down the center of the main hall, representing the carefully guarded line that divided the walking space between guards and prisoners. Once inside the building, prison guards demand new

³⁶⁸ Photograph courtesy of Bruce Jackson, copyright protected.

³⁶⁹ Before 1980, the exception to the “telephone pole” design was the Coffield Unit, built in 1965. Coffield was designed in a series of spokes that extended outward from the central building. At the time, it was the prison’s largest unit, with a capacity to hold 4,000 inmates. The prison was named for prominent prison board member H.H. Coffield.

arrivals to give their name, age, conviction and sentence so that each could be recorded. Many inmates felt that this process caused them to leave their prior identity at the prison threshold to be recovered only upon their exit. Once registered and documented, inmates were then stripped of their clothes, given a full body search, and told to file down a nearby hall to have their heads shaved. Stripped of anything that might suggest individuality, guards provided inmates with the all-white prison uniform. This process became for some a ritual that reinforced the feeling that their past identity had been written over by a new white outfit of “blankness” and uniformity. Their newly inscribed convict number, which all inmates memorized as if it were a birth name, became their only designation among guards while convicts replaced birth names with catchy nicknames. At the end of the in-take process, many inmates experienced a near total loss of identity. They became unknown persons without a history, a community, or even a name and donned instead their new identity as products of the prison.³⁷⁰

In some of the toughest prisons, a line of guards met prisoners at the “back gate” with brutality and threats of violence. Inmate Billy Wayne “Redbird” McCarter, a white inmate who spent more than twenty years in prison, remembered

³⁷⁰ Michael Wayne Eubanks March 13, 2007, Alvarro Luna Hernandez March 23, 2007, Stephan Blanchard March 14, 2007, Lewis Barnes, Robert Lee Mudd, March 30, 2007, Jerry Quate March 6, 2007, Walter Siros June 15, 2005, Eddie James Ward, Oral histories conducted by the author, Institute of Oral History (IOH), Baylor University, hereafter cited as IOH, Baylor. In the course of my research, I sent out a questionnaire to over 100 inmates in the Texas prison system who had been confined since at least 1975. I received 40 responses to my questionnaire, maintained ongoing correspondence with inmates who have been incarcerated since the 1960s and 1970s, and conducted oral histories with over 35 inmates. I have drawn on some of that material here: Walter Siros interview with the author, June 15, 2006; Cecil Norris (former Texas inmate from 1959 to 1979) interview with the author, June 18, 2006; Larry Casey (long-time Texas inmate) letter to the author, 6-18-06; Michael Eubanks (Texas inmate since 1977), letter to the author, April 2, 2006.

his introduction to the Ellis Unit during the 1960s as calculated violence meant to show newly arrived inmates that no disorder would be tolerated: “When you came to this unit, the first thing that happened is that they had what they called a ‘Welcoming Committee.’ It was about six bosses. And they’d come out to the back gate, and they had pick handles or axe handles and some of them had baseball bats. ‘Bam’! They start right on in, beatin’ that ass, but they would give you a real good whoopin’ too. There wasn’t no doubt in your mind what was gonna happen to you if you done wrong.”³⁷¹ Whether inmates routinely experienced such introductory violence, most inmates quickly learned about the centrality of violence to prison order and authority.

Texas prisoners invariably described their first few weeks of “doing time” as a singularly important moment that would forever dictate their place in their new “prison community.” Scholars of prison society, particularly sociologists, concur that an inmate’s introduction to the prison is a defining moment in their placement in prison society.³⁷² Donald Clemmer described the prisoner’s acculturation process as

³⁷¹ Billy “Redbird” McCarter, interview in “*Writ Writer: One Man’s Journey for Justice*,” a documentary film by Suzanne Mason; Billy “Redbird” McCarter, oral history conducted by Jim Willett, May 22, 2003, Texas Prison History Museum.

³⁷² There is some disagreement among sociologists, however, as to whether prison creates a “new culture” and a separate “society of captives” or whether inmates maintain their “free world” cultures and adapt them to the prison environment. Those that argue that prison creates its own society utilize “deprivation theory,” which locates the formation of prison culture within prison walls as a reaction to the ways in which prison perpetually denies inmates their freedom, constrains their ability to form social relationships, and interrupts prior cultural habits, practices, and beliefs. “Importation theory,” on the other hand, argues that theories of deprivation deny the individual inmate’s history and his pre-prison cultural and societal mores. Donald Cressey and John Irwin, two of the pioneers of importation theory, concluded that “there has been a glossing over of the older notion that inmates may bring a culture with them into prison.” My own work is informed by both schools of thought. Prisoners do not stay in prison forever, and external and “free world” cultural practices and societal shifts, such as the influence of the civil rights movement or changing societal perceptions concerning “sexual predators,” change and impact prison culture and society. By the same token, however, the prison inherently operates differently than free society and

characterized by either “prisonization” or being “swallowed up.” Clemmer explained the feeling of being swallowed whole by the prison as a process of compulsive anonymity. He defined it thusly:

Many of the men feel “swallowed up” when they first come to the prison...The new man is intensely aware of his number which is stenciled on every garment he wears. He is never referred to by name. He is one of a thousand men who silently file out of the cell house twice daily. He is one of a hundred workers in a gang. He is one of the 1,200 who eat in the dining room. The height and thickness of the walls, the mass of the buildings, the impersonal contacts with officials and inmates, all contribute to this feeling of being “swallowed up.” His family and friends are far away. The routine of prison life for the first few weeks absorbs him. A few men never recover from the effects of the “swallowing up” process, and seem to lose a sense of their own individuality.³⁷³

Prisonization, according to Clemmer, was an inmate assimilation process that mirrored the immigrant experience in which new arrivals to American shores faced state and societal pressures to Americanize. Although Clemmer’s Americanization analogy is facile in its unconvincing comparison of the immigrant and inmate

prison culture is constantly shaped, contested, and reformed by shifts both within the prison and from without. For the “deprivation model,” see Gresham Sykes, *Society of Captives: A Study of a Maximum Security Prison* (Princeton, NJ: Princeton University Press, 1958); Erving Goffman, “On the Characteristics of Total Institutions: The Inmate World,” in *The Prison: Studies in Institutional Organization and Change*, edited by Donald Cressey, (New York: Holt, 1961); Ronald L. Akers, Norman S. Hayner, and Werner Gruninger, “Homosexual and Drug Behavior in Prison: A Test of the Functional and Importation Models of the Inmate System,” *Social Problems* 21 (1974):411-422; Akers, Hayner, and Werner, “Prisonization in Five Countries: Type of Prison and Inmate Characteristics,” *Criminology* 13 (1977): 527-554; and, Rose Giallombardo, *Society of Women: A Study of a Women’s Prison* (New York: Wiley, 1966). For works emphasizing the “importation model,” see John Irwin and Donald Cressey, “Thieves, Convicts, and the Inmate Culture,” *Social Problems* 10 (1962): 142-155; John Irwin, *Prisons in Turmoil* (Boston: Little Brown, 1980); Clarence Schrag, “Some Foundations for a Theory of Corrections,” in *The Prison: Studies in Institutional Organization and Change*, edited by Donald R. Cressey, (New York: Holt, 1961); and, Barry Schwartz, “Pre-Institutional vs. Situational Influence in a Correctional Community,” *Journal of Criminal Law, Criminology and Police Science* 62 (1971):532-542.

³⁷³ Clemmer, *The Prison Community*, 102.



Photograph 7: “Telephone pole” prison hall layout (note the painted line that divides walking space between inmates and guards), Ellis, 1978³⁷⁵

experience, it remains a valuable way to consider how newly arrived inmates acclimated themselves to the unfamiliar social strata and cultural mores of the prison. Clemmer defined prisonization as the “acceptance of an inferior role, accumulation of facts concerning the organization of the prison, the development of somewhat new habits of eating, dressing, working, sleeping, the adoption of local language, the recognition that nothing is owed to the environment for the supplying of needs, and the eventual desire for a good job.”³⁷⁶ Effective prisonization was thus the process by which inmates acknowledged that they had become “wards of the state” and

³⁷⁵ Photograph courtesy of Bruce Jackson, copyright protected.

³⁷⁶ *Ibid*, 300.

stripped of citizenship. Moreover, prisonized inmates accepted that the prison constituted a new world with its own social order and a community with unwritten rules, social mores, and hierarchy.

In Texas prisons, inmates had to contend with two sets of unwritten social rules. The first was dictated by what sociologist Gresham Sykes called the “total power” of their keepers, who insisted on inmate acquiescence to the work hierarchy that separated those who worked in the prison building from those that labored in the field. Sykes defined the “total power” of inmate administrators as the ability to shape inmate behavior with a system of rewards and punishments that was so absolute that “no inmate could afford to ignore their demands for conformity.”³⁷⁷ Among the prisoners, however, an unwritten code governed inmate behavior and measured inmate identity against perceptions of manly honor and respect, which inmates earned through violence and physical confrontation. The “defects of total power,” according to Sykes, was that the inmate code and a sense of “con loyalty” mitigated the prison administration’s absolute rule. In Texas prisons, however, the building tender system bridged the gap between the “defects” of the prison administration’s government and the supposed solidarity among inmates.³⁷⁸ There was little “defect” in the “total

³⁷⁷ Gresham Sykes, *Society of Captives: A Study of a Maximum Security Prison* (Princeton, NJ: Princeton University Press, 1958), 277.

³⁷⁸ Clemmer also identified hierarchical stratifications of prison society, which he labeled as “Cons, Politicians, and Trustees.” Cons were at the lowest rung of the social hierarchy and were made up of the general inmate population, while “trusties” and “politicians” were favored by the prison administration with better jobs and social status. Although Clemmer identified these social stratifications, the “inmate code” continued to bind these positions and thereby fashioned a single “prison community.” Moreover, Clemmer did not analyze these positions as part of the internal power structure within prison society that

power” of Texas prison keepers because the “inmate code” was made less cohesive than in other prison systems because of the building tender system, which was an orchestrated division of the prison society. Such a regime of power and control forged an ethic of violence, sexual rapaciousness, and hierarchy that defined the internal society of Texas prisons.

Internal Government: Prison Politicians and the Building Tender System

Inmates who worked inside the building usually had some influence and seniority and were known as “politicians,” and together they formed a “building crew.” A building crew was composed of such positions as building tender, porter, turnkey, floor boy, book keeper, hall tender, count boy, and dorm tender or attendant. The court appointed Special Master who oversaw the enforcement of the *Ruiz* decision in the 1980s defined a building tender as an inmate “responsible for the smooth administration of a given wing or dormitory,” who acted as “middle management,” and whose function was “both administration and enforcement.”³⁷⁹

Building tender Bertrand Jerome Bennett provided a more apt description: “I was like

imparted control and dominance. Few prison systems, however, maintained something similar to the building tender system which maintained comprehensive power and oversight of the inmate population. For instance, Clemmer explained that inmates who broke the inmate code had to do so surreptitiously, and not as part of their public, official, and sanctioned position as internal prison authority. As Clemmer observed: “When inmate ‘stool pigeons’ who violate the code wish to communicate with guards, they endeavor to do so without being seen. This further signifies the potency of the mores.” Clemmer, 153.

³⁷⁹ “First Monitor’s Report of the Factual Observations to the Special Master,” General Counsel Office for the Texas Department of Correctional Justice (GC-TDCJ), *Ruiz*, Texas State Library and Archives (TSLA), 2004/016, hereafter cited as *Ruiz*, TSLA.

the police in that tank, you know.”³⁸⁰ Inmate Michael Wayne Eubanks, a white inmate who first came to prison in 1975, further defined building tenders as “the forerunners of today’s prison gangs. Except they didn’t fight for color or club name or anything like that. They fought just as their clique to protect their authority that they had over prison.”³⁸¹ Typically, each unit had a “head building tender” who worked directly for the highest ranking prison officer, usually the major or the assistant warden, and he had a crew of subordinate building tenders. Each row of cells along a prison wing had at least one building tender, which typically meant that there was usually one building tender for every sixty inmates. Although the number varied on each unit and in each wing, there were typically three to five building tenders for every cell block. Beneath building tenders were porters, turnkeys, and floor boys. In each prison unit of inmates, there were usually 150 to 200 “politicians.” Prior to 1980, there were few available records that provided an exact count as to how many building tenders there were in each prison unit. The 1980 *Ruiz* decision, however, resulted in a series of court-ordered studies that provided some sense of the size and proportionality of the building tender system. Once court appointed monitors started to inspect the prison units, the prison administration changed the name of BTs to Support Service Inmate (SSIs), which was a euphemism

³⁸⁰ *Ruiz* Office of Special Master Records, Testimony of Bertrand Jerome Bennett, *Ruiz vs. Estelle*, CAH, MAI 8/J-88 (hereafter cited as *Ruiz* Special Master, CAH, and Box number).

³⁸¹ Michael Wayne Eubanks, oral history conducted by the author, March 13, 2007, Institute of Oral History (IOH), Baylor University, hereafter cited as IOH, Baylor.

| Unit | Number of SSIs | Total Inmate Capacity | % of SSI's to General Pop. |
|--------------------|-----------------------|------------------------------|-----------------------------------|
| Beto | 270 | 1,595 | 18 |
| Central | 61 | 700 | 6.8 |
| Clemens | 172 | 1,000 | 14 |
| Coffield | 283 | 4,000 | 9 |
| Darrington | 114 | 780 | 9.3 |
| Diagnostic | 79 | 790 | 9.5 |
| Eastham | 189 | 2,224 | 6.1 |
| Ellis | 233 | 1,722 | 8.8 |
| Ferguson | 164 | 1,122 | 7.5 |
| Gatesville | 143 | 900 | 15.6 |
| Goree | 36 | 585 | 4.1 |
| Grimes County | 0 | n/a | 0 |
| Hilltop | 14 | 240 | 5.8 |
| Huntsville (Walls) | 195 | 2,013 | 9.3 |
| Jester I | 12 | 924 | 2.5 |
| Jester II | 52 | 340 | 14.5 |
| Mountainview | 77 | 500 | 15 |
| Retrieve | 193 | 1,000 | 20.2 |
| Ramsey I | 277 | 1,879 | 13.1 |
| Ramsey II | 117 | 1,460 | 7.9 |
| Wynne | 295 | 2,300 | 13.1 |

meant to disguise building tenders as janitors. In 1981, the court monitor's first report on the building tender system provided the number of BTs throughout the prison system. It listed 2,976 support service inmates, 9.75 percent of the total inmate population of 30,523. The number of support service inmates for each prison is also represented below: An inmate became a "politician" through a complicated set of informal networks, bribery, reputation, or just simply size and brute strength. Walter

³⁸² "First Monitor's Report of the Factual Observations to the Special Master," Report on Section II, D of the Amended Decree Granting Equitable Relief and Declaratory Judgment, *Ruiz*, 2004/016. The report spanned the period April 20, 1981 to October 9, 1981. In the defendants job assignment log compiled on September 25, 1981 there were 2,976 support service inmates listed which represented 9.75% of the total inmate population of 30,523.

Siros, for instance, was a white inmate in the Texas prison system from the late 1950s until the late 1980s, and his ability to become a building tender was entirely dependent on an inmate patron. Paul Lux, a fellow convict, was never a building tender himself, but he ran the domino game in the evenings on the Eastham Unit, which allowed him to earn a series of reciprocal favors to amass power and influence. After working six months picking cotton in the fields, Siros desired an inside job. He sought Lux's help. Lux explained to Siros that during the next visit with his grandmother he should instruct her to leave \$20 behind a mirror in the visiting room bathroom, which a trustee (another inmate "politician") would then pick up. After taking a portion of the money for himself, the trustee would then present the remainder to the count boy who would then place Siros' name on the job list. This is what happened; a week later Siros became an Eastham building tender.³⁸³ If an inmate did not have access to outside funds, as Siros did, then they often turned towards a barter economy. Another building tender named Kenneth Hayes testified that he had no money, and so turned instead to an exchange of goods:

I spoke to Arky [his prison mentor] about the situation and he asked me what I had to give up, which was convict slang for what money I had or commissary or cigarettes or things of this nature. The end result was that I had bought a new pair of tennis shoes at the Diagnostic Unit which cost twelve or fourteen dollars. I gave those to Arky and a couple of cartons of cigarettes, or the equivalent and he talked to the major on the unit and approximately, two days later, I was assigned to the building crew.³⁸⁴

In return for maintaining control in the tanks and doing the bidding of the prison administration, the prison hierarchy, particularly the prison major and warden,

³⁸³ Walter Siros, oral history conducted by the author, June 15, 2005, IOH, Baylor.

³⁸⁴ Testimony of Kenneth Hayes, Oct 30, 1978, *Ruiz* Special Master, CAH, MAI-8/J92.

granted building tenders certain privileges, both formal and informal. First, inmate politicians were considered a “trustee” of the prison system, and they therefore officially earned higher rates of “good time” than other inmates, which reduced their overall sentence.³⁸⁵ Second, inmate politicians, whether they were building tender, floor boy, or bookkeeper (count boy), worked inside the building, and therefore they avoided the grueling “sun-up to sun-down” work regime in Texas cotton fields. The third perk was a series of day-to-day informal privileges. James Eckles, a prison guard who worked on the Wynne, Ramsey, and Ferguson farms, testified in the *Ruiz* case that one of the greatest privileges of building tenders was simply freedom of movement. “Most of them had the run of the building,” explained Eckles. “They could go just about anywhere they wanted to inside the compound. They had commissary privileges whenever they wanted them. They had cooking utensils within the wings. They had stereos, radios, record players, tape decks, things that a regular inmate would not have.”³⁸⁶ Typically, building tenders carried “blue cards” that stated that they were “pass runners” who could freely move from cell block to cell block. In the Ramsey prison farm, for instance, Assistant Warden D.A. Christian signed these cards, which provided building tenders with unlimited access to various

³⁸⁵ Article 6184L of The Revised Civil Statutes of Texas established that prisoners with a good prison record might gain additional time off of their initial sentence for every day served in prison. Article 6184I, The Revised Civil Statutes of Texas; Wayne Oakes, Committee Staff, Joint Committee on Prison Reform, “Custody and Security Working Paper.”

³⁸⁶ Testimony of James Eckles, *Ruiz* Special Master, CAH, MAI-8/J91.

prison wings.³⁸⁷ Building tenders also received more Point Incentive Program (PIP) points, which allowed them to engage in more rehabilitative and recreational activities. Walter Siros, a former building tender, recalled that: “You got three points for going to church. You got points for school if you could get in it. Then you got points for going to the craft shop which was almost unbelievable to get in to—I mean, cause you know, where you build saddles and spurs and rings and purses, but building tenders automatically got a hundred and nineteen points a month by just being a building tender.”³⁸⁸

In addition to PIP, trustees could gain time time off their criminal sentence for early release. Texas’s unique “good time” law allowed inmates to earn additional time taken away from their sentence for every day they labored. At the behest of the prison administration, the state legislature established three classes of “good time.” Class I provided that an inmate earned 20 extra days time for each month served on his sentence, as long as that inmate maintained a clear conduct and work record. The prison administration immediately placed newly arrived inmates in Class I and worked them in the field. Class II allowed an inmate to receive ten extra days time for each month served. Class III was the worst class in the system and it required that an inmate serve his time day for day without any allowances.³⁸⁹ Building tenders, however, were generally considered a State Approved Trusty (SAT), providing them

³⁸⁷ Letter from Steve Blanchard, inmate number 213745, to Gail Littlefield, attorney, Civil Rights Division, United States Department of Justice, November 24, 1973, Papers of State Senator Ron Cloward, Box 1981/217-93, TSLA.

³⁸⁸ Siros, oral history conducted by the author, IOH, Baylor.

³⁸⁹ Texas Department of Corrections rules and Regulations Chapter II, Sec. 2.52, cited in “Labor and Industry Working Paper,” by Van Mendoza, Joint Committee on Prison Reform, CAH, MAI 9-J85.

| Table 6 Trustee Status (1977) | | | | |
|--|-------------------------|---------|--------------------------|---------|
| Class | Building Service | | All Other Inmates | |
| | Number | Percent | Number | Percent |
| SAT III | 519 | 75.99 | 7,875 | 38.5 |
| SAT II | 4 | 0.58 | 1,758 | 8.59 |
| SAT I | 2 | 0.29 | 469 | 2.29 |
| Class I | 142 | 20.79 | 9,075 | 44.36 |
| Class II | 1 | 0.15 | 144 | 0.7 |
| Class III | 14 | 2.05 | 556 | 2.72 |
| Unknown | | | 98 | 0.48 |
| Total | 683 | | 20,458 | 100 |

even more “good time” than Class I inmates. There were three categories of State Approved Trusty Classifications, and all three classes earned 30 extra days for each month served.³⁹¹ In 1977, 75 percent of all inmates that worked in the building were designated as State Approved Trustees (SAT) III, the highest class, while only 38 percent of those that worked outside held that high classification (see Table 6 above). Inmates could often differentiate a building tender from another inmate simply by his appearance. BTs characteristically wore their shirts untucked and they often wore skull knit caps or had BT emblazoned on the back of their shirt. Correction Officer Francisco Guerra, Jr. recalled that, “Inmates were not supposed to walk down the hall in say house shoes. They were supposed to be properly dressed. A BT could walk up and down the hall with a shirttail untucked, with a tee shirt, with house shoes, with

³⁹¹ The principles and rules of “good time” can be found in, Article 6184I, The Revised Civil Statutes of Texas; and, Wayne Oakes, Committee Staff, Joint Committee on Prison Reform, “Custody and Security Working Paper,” Ruiz Special Master Collection, Center for American History, University of Texas, MAI 8/J-85.

his shirt unbuttoned, with a cowboy hat and cowboy boots and never be stopped by an officer and never run the chance of being written up.”³⁹² While the prison denied freedom, the ability to express oneself freely in dress was a point of pride among the prison population and accorded individual BTs a certain measure of respect and exclusivity.

Perhaps the most important distinction between BTs and the rest of the prison population was that the prison administration armed BTs. The prison administration did not provide guns, but made baseball bats, riot batons, and regulation hunting knives regularly available. Building tenders also made their own weapons and were allowed to keep such weapons as lead pipes, “shanks” (pieces of loose metal sharpened hard enough to make a two-inch blade), and “slapjacks” (a loose leather pocket filled with lead). Court appointed special monitor David W. Arnold noted in his September 21, 1981 interview with a building tender that the inmate showed him a series of weapons given to him by the prison administration. The inmate told Arnold that, “now when I first got this job several years ago at that particular time I was given a weapon. Something like this, except it was a billy-club, riot club.” Arnold went on to report that the “inmate is now showing me a long wooden toilet brush. Now he is showing me a very sharp knife that he just pulled out from under his bed. Inmate is handing me a lead pipe with tape at the end of it. It’s about 8-10 inches long. Another knife is also under his mattress.”³⁹³ BTs were able to keep their weaponry,

³⁹² Testimony of Francisco Guerra, Jr., *Ruiz* Special Master, CAH, MAI-8/J2.

³⁹³ General Counsel Office for the Texas Department of Correctional Justice (GC-TDCJ), “Inmate statements,” David W. Arnold interviews, *Ruiz* interviews, TSLA, 2004/016-1.

despite periodic “shake downs” on their unit. James Lagermaier, a former BT, pointed out that “politicians were notified prior to a shakedown, and in most cases their weapons were removed to another cell block or to another location or even to the major’s office until the shakedown was completed and then returned to them afterwards.”³⁹⁴

Inmate guards used their home-made weapons to mete out punishment, often without sufficient proof or reason. “There is also the most brutal type of punishments, physical force, brutal because it leaves mental as well as physical scars for the rest of the inmates’ life,” concluded the 1973 Joint Committee on Prison Reform (JCPR). “Here the prison officials and Building Tenders use their fists, axe handles, billy clubs, leaded rubber hose, horse bridles and reins, gun butts, black jacks and baseball bats.” The JCPR provided the following blunt conclusion concerning the administration’s reliance on BTs to deliver punishment.

Inmate guards are totally ignorant of mental and emotional problems and human needs. Consequently, inmate behavior is interpreted by inmate guards (B.T.’s) in strict accord with limited concepts and impulsive opinions or judgments. Prison officials are only concerned about the B.T.’s willingness to inform on other inmates, to enforce rules, and to suppress any form of resistance by the prison population when it tries to resist, protest or appeal for outside relief (e.g. to officials of this Committee, the Courts, State Officials, or their families). The administration guarantees the B.T.’s prosecution immunity, provisions or weapons, and physical assistance by other armed inmate guards. Prosecution immunity includes granting an inmate guard the arbitrary power to convict and punish any inmate suspected of any rule infraction even when a suspicion never goes beyond the rumor stage.³⁹⁵

³⁹⁴ Testimony of James Lagermaier, *Ruiz* Special Master, CAH, MAI 8/J98.

³⁹⁵ “Building Tender System: Supplemental Report,” working paper by John Albach, Joint Committee on Prison Reform, Records of the Special Master *Ruiz vs. Estelle*, CAH, MAI 8/J-85.

The close relationship between building tenders and the guards, particularly the officer staff, allowed the BTs to administer non-violent punishments as well. Inmates were often cited for such minor offenses as not working hard enough (cited as laziness); talking in the squad; leaving grass in the picked cotton; disrespecting an officer; disrespectful acting; “bad eyeing” the officer; refusing to obey an order; and, most often, fighting with another inmate. Punishments for such minor violations were often done at the behest of building tenders who informed the prison administration of any sign of disrespect or disregard for prison hierarchy. The punishments were calculated efforts to cause the offending inmate public humiliation and to ensure control through public example. Building tenders who accused other inmates of stealing, for instance, could initiate the punishment of “advertising.” Inmate Stephan Thompson explained during the *Ruiz* trial that “advertising was where inmates had to wear signs on their chest and on their back with certain slogans or things wrote [sic] on it. For instance, an inmate would be out in the field, and if he got caught eating a strawberry or cucumber or something like that and he got caught, he went before a disciplinary committee for that, and they would sentence him to, say, eight hour or twenty-hours or forty-eight hours advertising, and they would have inmate bookkeepers tape signs on the inmate’s back.”³⁹⁶ Thompson related one incident in which a hungry inmate who stole a chicken had to stand against the wall for 36-hours and hold a dead chicken by the neck until it started to decompose in his hands. Other minor punishments included “standing on the wall,” in which a prisoner stood with his toes and nose touching a brick wall for four to six hours; “riding the

³⁹⁶ Testimony of Stephan Thompson, *Ruiz* Special Master, CAH, MAI 8/J-92.

rail” in which an inmate stood on a 2x4 that was placed edgewise approximately a foot from the floor; “riding the box,” in which he stood on top of a box that was stood on its edge; or, “shelling peanuts,” which was a common punishment in which a prisoner had to shell a “Texas gallon” of peanuts overnight.³⁹⁷ Inmates who were caught in homosexual relationships might be humiliated by having to hold each others’ penis in the open hallway for all to see.

Other public punishments took the form of torture. In his memoir recounting his prison experience from 1955 to 1972, Albert “Racehoss” Sample depicted in gruesome detail how he and other African American inmates were frequently punished for small infractions by being cuffed and left hanging from cell bars with “toes barely touching the floor” for hours at a time. “After an hour, a couple of the cuff hangers started groaning,” Sample wrote of the first time he experienced such torture. “I bit my lip to keep from crying out too. I thought about what that lying boss told the captain, ‘All this nigguh’s dun all day long is look up in the sky an count birds. Cap’n, I had to beg this nigguh to git him to go to wek [sic].’ The pains shot through my arms; I dug my teeth deeper into my bottom lip until I tasted the blood inside my mouth.” After the sixth hour of this punishment, one of the other inmates hanging alongside Sample could take such torture no longer. He began “moaning louder and louder, violently jerking and pulling against his cuffs” and “pitching, straining, and pulling as hard as he could” in the futile hope that he might break free

³⁹⁷ The descriptions of such punishments were made by a variety of inmates; see Frances Jalet, “The Ellis Report,” November 6, 1968, in author’s possession, with permission by Robert Reps Perkinson who received a copy of the confidential report from the personal papers of attorney William Bennett Turner; Lawrence Pope, oral history conducted by John Wheat, Pope papers, CAH, 366.

and end the agony of hanging from cell bars. After struggling for several minutes and crying out in pain, the frustrated inmate “bit into his wrists as if they were two chocolate éclairs, growling and gnawing away like a coon, with its foot caught in a steel trap.”³⁹⁸

“Hanging from the cuffs” was a racialized and sexualized punishment. Sample depicted how inmates found with illegal weapons got “the lighter punishment” of standing on the soda water boxes for a few hours. But that those with “forbidden jack off materials” were forced to hang from the cuffs “all night long.” In one case, Sample related how fellow African American inmate Kotch Tom was forced to hang from the cuffs all night for having a photograph of a white woman in his locker. The woman, however, was Kotch Tom’s wife who he met and married in Germany while serving overseas in the US Army. Kotch Tom had gone to prison for sitting next to his wife on a bus leaving from the Fifth Ward of Houston, a largely poor and working-class African American community. When the bus driver stopped the bus and demanded that no black man should sit next to a “white woman,” Kotch Tom attempted to explain that she was his wife. Dismayed by such outright defiance of white superiority, the bus driver reacted to this claim of racial miscegenation by slapping Kotch Tom, causing Tom to draw his pocketknife and stab the driver to death, which was an act of incredulous and murderous rage that caused the state to sentence Tom to a lifetime in Texas prisons. Both outside and inside the prison,

³⁹⁸ Albert Race Sample, *Racehoss: Big Emma’s Boy* (Austin, Texas: Eakin Press, 1984), 141.

Sample wistfully observed, the Texas criminal justice system policed the parameters of white superiority.³⁹⁹

Lawrence Pope, an inmate who spent time in both the Federal prison system and in TDC, noted that the single, most important difference between the two was that the traditional “convict code” against snitching was absent in Texas. “In the Federal, it was just anathema to snitch,” Pope recalled, “and it was a killing offense if they could get to you. But in TDC I went down there and sitting there shelling [peanuts as punishment] and this inmate got up and hollered at the officer there, “Hey Boss!” Then he pointed to this inmate such-and-such and he was snitchin’ him off right there, to everybody around him. Man, in the Federal, that would be – you would be dead.”⁴⁰⁰ Public punishments were intended to mock the inmate and make him look foolish in the eyes of other prisoners. In an environment when inmates owned so little and fought over so much, the need to protect their reputation could mean the difference between life and death. Damaging an inmate’s reputation was therefore a potent tool that lent building tenders and bookkeepers credibility while diminishing the reputation of rival inmates.

Building tenders occasionally showed mercy and good judgement. Inmate Jerry Quate remembered how one of the prison system’s most notorious and powerful building tenders at the Eastham unit, Sonny Evans, saved Quate from a vicious beating. At the Eastham prison in 1969, Quate was approached by two building tenders who were apparently jealous of Quate’s high status kitchen job. Even more

³⁹⁹ Sample, *Racehoss*, 149.

⁴⁰⁰ Lawrence Pope, oral history conducted by John Wheat, Pope papers, CAH, 364.

irksome to this pair was Quate's open affection toward his boyfriend, an inmate with the name of "Peaches" Moralez. Quate recalled that in 1969 he was sitting in the "day room," which was the open recreational space for inmates, with his arm around "his homosexual." Like many inmates who discuss their relationship with another male inmate, Quate saw his partner as a "homosexual" and a "punk" but did not see himself that way. Because of his open embrace of "Peaches" Moralez, building tenders Brazelton and Cripps began a savage beating against Quate. Sonny Evans, the head building tender, intervened and, in Quate's words, "stopped me from getting killed that night, 'cause they would have beat me to death."⁴⁰²

These moments of mercy hardly made BT rule less arbitrary. The BTs enforced their own brand of the "convict code," and the unwritten rules of order and complicity changed, depending on the personality of the BT and the situation. In recalling his first trip to Eastham, inmate Eubanks felt the arbitrary nature of building tender authority keenly. On arrival, the head building tender on the cell block "tells you how it's going to be," which meant that "you're going to do what you're told down on the cellblocks. You were going to go in your cell when you're supposed to, come out when you're supposed to, and when they call work, you take off running when they call your squad. You go to chow when you're supposed to. You follow the rules. And those rules were not written down. Those were the convict rules. And those rules changed whenever they felt like changing them."⁴⁰³

⁴⁰² Quate, oral history with the author, IOH, Baylor.

⁴⁰³ Eubanks, oral history with the author, March 13, 2007, IOH, Baylor.

Although the BTs were prisoners, they often carried greater authority within the prison cells than the guards. Francisco Guerra, a former prison guard, angrily lamented in his resignation letter, “An officer even daring to object to BT conduct is subject to heavy rebuke, sensor and transfer to the least desirable units.” Further, Guerra testified in the *Ruiz* case that although the prison hierarchy was based on military rank that went sequentially from Corrections Officer (CO) I and II, to sergeant, lieutenant, captain, and major, the real prison hierarchy was different. “Most of us,” noted Guerra, “felt that it really should have went C.O. I, C.O. II, building tender, sergeant, lieutenant, count boy, captain, major.”⁴⁰⁴ Even then, a particularly powerful head building tender often carried more sway than anyone besides the prison major. Charlie Combs, a prison guard in the 1970s, similarly recalled that building tenders trained and controlled low-ranking guards: “when the building tender told you to open a cell, you opened the cell. I mean you basically worked for the building tender...the inmates trained you.” The Joint Committee on Prison Reform observed the comprehensive power of BT governance with the following conclusion:

The Building Tenders not only control the daily prison work production, noise level in the unit, daily personnel activities of the inmate population, amount of food consumption by inmates in solitary confinement, selection of radio and T.V. entertainment, freedom of movement in the wings of the prison, sanitation conditions in the inmate and guard living quarters, the spread of rumors and the degree of medical assistance – but they also possess more keys to open and close the doors and gates inside the prison walls than all of the prison guards put together.⁴⁰⁵

⁴⁰⁴ Testimony of Francisco Guerra, *Ruiz* Special Master, CAH, MAI 8/J-91.

⁴⁰⁵ “Building Tender System: Supplemental Report,” working paper by John Albach, Joint Committee on Prison Reform, Records of the Special Master *Ruiz* vs. Estelle, CAH, MAI 8/J-85.

BTs saw themselves as protectors and as peace administrators. In a 1981 interview, one building tender argued that despite his record of violence, he received no punishments because he was busy “keeping the peace.” The BT had four official violations for “fighting with a weapon; fighting without a weapon; creating a disturbance, use of abusive language” and yet he never lost his job nor had he ever served any time in solitary. Another building tender admitted in a 1981 interview that his power within the prison cell was comprehensive and could be exercised with arbitrary authority.

Nobody knows what’s going on other than the building support service, building tenders, you know. And if there’s anything that goes on in here that we feel like the man should know then we’re supposed to go out there, or [go to] this head building tender, with the problem. Now it’s his discretion as to whether he takes this problem to the man or not. I mean, if I want to make me two or three gallons of chaulk [home made alcohol] I just make it, and I get drunk, I don’t beat nobody up, you know, but at the same time if I want to get drunk and beat somebody in the head, I can do that too.⁴⁰⁶

The administration’s response to charges of abuse often shifted the blame from the building tender to the uncontrollable nature of the general inmate population. The prison system’s attempt to dismantle the psychiatric ward at the Wynne prison in 1961 offers one example of such a response. When Warden “Beartrack” McAdams took over the Wynne Unit in 1961 as warden, the “most distressing problem” was the 382 psychotic patients who were not working and remained “locked away in cells” at what was then the Wynne Treatment Center. Some of these inmates had been confined in a cell for as long as six years and many, according to McAdams, had been used “for experimental purposes” by the Texas

⁴⁰⁶ “Transcript of inmate interviews,” conducted by Court Monitor, Arnold Porter, TSLA, TDCJ, General Counsel, Ruiz 2003/016-1-10.

Research Institute of Mental Science, a branch of Baylor Medical School. McAdams wanted to return these inmates to the fields in what he called a “Modified work program.” In developing his back-to-work plan “inmate helpers were recruited, most of them former patients themselves” whose job was to “chase down” other inmates “who suddenly decide to runoff across the field, without hurting them.” McAdams defined the “chief function” of building tenders in the Treatment Center as “providing protection for weaker patients from the stronger, more violent ones, seeing after the patients’ basic needs and guiding them in normal civilities.” In less than a year, McAdams’ program dismantled the Treatment Center and reintegrated the 382 patients back into the general inmate population. But, as McAdams noted in his report, the “very nature of 2 tank” and its patient inhabitants “practically guarantees incidents of unexpected violence.” When one of these “guaranteed incidents of unexpected violence” erupted, one inmate died and another was badly injured. In defense of his building tenders, McAdams argued that:

Our main concern is to protect all the other patients from the few who become periodically dangerous. It is for that reason that we have selected capable building tenders and nurses who live right in the dormitory with the patients and sleep side by side with them...When patients like Melvin Austin Sadler become manic, it is for the building tenders to whom the weaker, more timid, patients turn to for protection. It is the building tender’s job to subdue the manic patient, without injuring him, if at all possible, and to restrain him until he becomes manageable. Melvin Austin was subdued in such a fashion, without any bodily injury being inflicted upon him. He died from overexertion, which no one could prevent.

| State | Period | Homicides | Year Average | 1974 Inmate Population | Homicide Rate per 100,000 |
|------------|-----------|-----------|--------------|------------------------|---------------------------|
| California | 1973-1976 | 66 | 16.5 | 22,163 | 74.4 |
| Colorado | 1973-1976 | 10 | 2.5 | 1,987 | 126 |
| Florida | 1973-1976 | 30 | 10 | 8,414 | 118 |
| Minnesota | 1973-1976 | 5 | 1.67 | 1,387 | 120 |
| Missouri | 1973-1976 | 23 | 5.7 | 3,243 | 177 |
| New York | 1973-1976 | 7 | 1.75 | 12,684 | 14 |
| Oklahoma | 1973-1976 | 14 | 3.5 | 2,984 | 117 |
| Texas | '73-1976 | 4 | 1 | 16,683 | 6 |

Similarly, James Sadler was “subdued in the only manner available – outfighting him.”⁴⁰⁹ The prison administration thus argued that building tenders were the “protectors” of inmate society and a beneficial force that protected the meek. In defense of the building tender system, the prison administration liked to point out that Texas prisons had the nation’s lowest homicide rate. While this was true, the incidents of rape and beatings often went unreported for fear of retribution from the building tenders.

When inmates did complain to officials, their plea usually fell on deaf ears.

Michael Jewell’s September 1976 affidavit, co-signed by nineteen other inmates of

⁴⁰⁸ *Sourcebook for Criminal Justice Statistics*, U.S. Department of Justice, (Washington, DC: Government Printing Office, 1973, 1974, 1975, 1976); Bruce Jackson to Alvin J. Bronstein, November 23, 1978, Clements Papers, Texas A&M; “Readings on Violence,” Treatment Directorate Research and Development Division, TDC, Special Project No. 16 May 77, Texas A&M, Clements Papers, Box 10.

⁴⁰⁹ C.L. McAdams, “Report of the Wynne Treatment Center,” TDC, held in the private collection of the law firm Habern, O’Neill, and Pawgan, Huntsville, Texas and in author’s possession.

the Ellis prison on wing G-15 and sent to state Senator Chet Brooks, shows how the prison administration responded to such complaints. Jewell's affidavit complains of several incidents involving building tenders, including one incident on August 24, 1976, in which an "inmate was allegedly caught in sex malpractice [and] was brutally beaten by all four of the building tenders whose names are Joe Thompson, Robert Skinner, Lee Skinner, and Pat Guilliard, and Lt. Robert ("Bobby") Forrest. The victim, James Adams Jr. was leaving the wing peacefully and offered no resistance when he was attacked." Although the affidavit did not mention what the "alleged sex malpractice" might have been, the most commonly prosecuted sex offenses were either masturbation or sodomy. Jewell and fellow inmates filed a formal grievance over Adams. As a result, Jewell was taken from his cell at 3:30 AM to meet with Warden Cousins, who told Jewell that he had "to be crazy for making such a complaint" and that Jewell was becoming an "agitator." Jewell was then explicitly told that he had better "separate from the other agitators in G-15" and conduct himself in a way that "would give a favorable impression" towards the parole board. As Jewell explained, "what was intimated was that if I continued to report violations of the law, I need not harbor any hope of making parole." The warden's attitude toward Jewell and other inmates who complained was one of "disgust for those who appealed to him for help" and it was made "crystal clear" that pressing the issue further would "place our heads on the chopping block." Upon return to his cell, Jewell was then confronted by building tender Pat Guilliland who warned the "agitators" to "let things ride," which meant that they "better not give him and his cronies any excuses to attack." Jewell was left with a sense of impending threat, daily unease, and

hopelessness that his pleas for relief might ever gain official attention: “Every time I leave my cell, I do so with the feeling that I’m entering a jungle, and the beasts could spring from behind any bush. The building tenders here have created a situation wherein one cannot feel safe, where tension is so thick you can drive nails into it, where there is no peace, nor freedom from fear. We simply cannot live under such conditions.”⁴¹⁰ The building tender system rendered inmate objections meaningless to an administration that rarely took their claims seriously. In truth, prison administrators were beholden to building tenders and the role that they played in perpetuating the prison’s internal order and hidden prison economy, for this role made possible the prison system’s external success.

Internal Economy: Running a Store and Managing a Corporation

The internal prison economy in Texas was centered on the BT system and on three mechanisms of exchange and control: scrip and a barter system; a system of respect and reciprocity; and, outward displays of power, brutality, and extortion. After the 1948 reforms, TDC forbade currency and “hard money” among prisoners. Instead, “scrip” or “coupons” served as money in the prisons. Every two weeks, each inmate could draw as much as \$20.00 from his account which was divided into scrip books (called “chocho books by the inmates) of \$1, \$5, \$10, and \$20 denominations.⁴¹¹ Of course, only inmates lucky enough to have outside family members or friends place money in their account could draw scrip. The scrip

⁴¹⁰ Papers of Senator Chet Brooks, TSLA, 1999/136-21, “Michael Jewell file.”

⁴¹¹ Sample, *Racehoss*, 145.

allowed inmates to buy and trade commissary goods, and served as currency in card or domino games.

Regular inmates, however, did not visit the commissary. Instead, the building tender on the cell block took a shopping list from each inmate and filled it as the other inmates worked in the fields. No matter how many items the BT bought for each inmate, it was customary that inmates leave one dollar blank on their scrip book, so that the BT could fill it with an item of his choice. Even though Texas prisons were vastly overcrowded, building tenders almost always had their own cell, unless they chose to fill it with a “punk.” They stockpiled commissary goods in these cells. As supplies dwindled in the two week interval between the arrival of new scrip, the building tender would then sell his items to other inmates at a 2-for-1 or 3-for-2 price, depending on the physical size of the purchaser and his reputation. This was called “running a store.”⁴¹²

Inmate Kenneth Hayes testified at the *Ruiz* trial that running a store was a privilege granted only to BTs. “Running a store is illegal at TDC,” he explained. “The building tenders on Ramsey were licensed by the Building Captain and the Major and everybody in a position of authority to run a store. They would buy from the regular commissary, the TDC commissary, and they would sell to the convicts in

⁴¹² In the course of my research, I sent out a questionnaire to over 100 inmates in the Texas prison system that had been confined since at least 1975. My 2005 appearance on Houston’s KPFT “Prison Radio” program allowed me to begin correspondence with inmate activists still in Texas prisons. I received 40 responses to my questionnaire, and I have drawn on some of that material here, particularly: Walter Siros interview with the author, June 15, 2006; Cecil Norris (former Texas inmate from 1959 to 1979) interview with the author, June 18, 2006; Larry Casey (long-time Texas inmate) letter to the author, 6-18-06; Michael Eubanks (Texas inmate since 1977), letter to the author, April 2, 2006.

the tank for the interest rate from draw day to draw day.”⁴¹³ Further, the BTs used their relationship and authority with the guards to insure that no competition would arise. James Lagermaier recalled that:

Well, the politicians ran what we call the stores. This was the distribution of cigarettes, selling items two for one, loaning an inmate items on credit based on commissary or a promissory note, and they controlled the stores. They controlled any distribution of tobacco or borrowing at all in that particular cell block they live in, and if they thought somebody else was in the business other than themselves, they would oftentimes initiate a shakedown just so that particular inmate’s store could be confiscated and turned over to the politicians.⁴¹⁴

In addition to stores in each row of cells, there were also “corporations,” which was a series of stores made into one economic unit that comprised a line or an entire wing. Typically, a “corporation” consisted of five to six building tenders who banded several stores together so that they might share in the profit and have greater numbers when it was necessary to use physical brutality for enforcement and debt collection. Moreover, building tenders had access to an inmate’s accounts through the bookkeeper, and they could therefore keep an inmate in perpetual debt. Inmate Michael Eubanks explained how one building tender by the name of “Oilcan” Harry had access to the withdrawal box that contained the withdrawal slips of other inmates. Harry would remove and throw away the slips of those “he figured he could prey upon.” Once that inmate ran out of money, Harry would offer to lend them items at a 2-for-1 price over the course of several months until they fell deeply into his debt. Eubanks explained how revolving debt worked in prison: “If you had a twenty dollar

⁴¹³ Testimony of Kenneth Hayes, Oct 30, 1978, *Ruiz* Special Master, CAH, MAI 8/92.

⁴¹⁴ James Lagermaier testimony, December 21, 1978 and April 3, 1979, *Ruiz* Special Master, CAH, MAI 8/J98.

scrip book or a thirty dollar scrip book, all you could spend was half of it per a week. So you'd owe more than you were going to get—more than you had coming in. Eventually, after they did this to you two or three times, you would owe more money than you were going to get in even if you got a thirty dollar scrip book. You may owe fifty or sixty dollars...So, he's got to still borrow some more."⁴¹⁵

Inmates who did not pay their debt were punished swiftly and often in public. Through their close association with count boys and book keepers, BTs often knew just how much money each inmate had in his account. Building tender Siros recalled an incident in 1963 where one inmate owed \$100 to one of the corporations and he continued to plead penury, despite the fact that the corporation on the unit knew that he had over \$300.00 in his account. The result was that the BTs took the inmate into the washroom, a space that was exclusive to BT control, and they “whupped him, I mean really whupped him. And he was a pretty boy too. But they pound his face down on the knobs of the sink. They really missed his face up. Knocked his teeth out. Twenty or thirty stitches. But an example was made and ain't nobody cheated that store again.”⁴¹⁶

Stripped of all other possessions, inmates fought over commissary items or some seemingly small slight. These were not petty insults, however. An inmate's ability to keep personal items, such as a gallon of ice cream, cigarettes, a jar of peanut butter, sandwich meat, or even something as simple as chewing gum was the only act of possession an inmate was allowed. These small everyday items accorded an

⁴¹⁵ Eubanks, oral history with the author, March 27, 2007, IOH, Baylor.

⁴¹⁶ Siros, oral history conducted by the author, June 15, 2005, IOH, Baylor.

inmate a semblance of self-control, ownership, authority, and even dignity. Establishing a “reputation” meant asserting masculinity, control over one’s body, and declaring a willingness to use violence to maintain that control. Inmates who willingly used violence to prove their “manliness” earned a reputation demanding respect and the title “character” or “good people,” whereas inmates who did not resort to violence were seen as “weak.” In the external world outside of prison, the accumulation of material goods, homes, and domestic lifestyle conferred middle-class respectability.⁴¹⁷ Prisoners, by contrast, embraced their own working-class ethic of “toughness” where status and identity were determined by one’s public “reputation,” willingness to fight for “respect,” and the ability to maintain sexual control over one’s body.⁴¹⁸ “Anybody who came down here in the sixties,” insisted inmate Arthur

⁴¹⁷ On middle-class gender identity and the nineteenth century’s “crisis” of the middle class, see Gail Bederman, *Manliness and Civilization* (Chicago: University of Chicago Press, 1995), 5-20; E. Anthony Rotundo, *American Manhood: Transitions in Masculinity from the Revolution to the Modern Era* (New York: BasicBooks, 1993), 223-227, 244-246. On the postwar period’s development of the other-directed, supposedly feminized, “organizational” man, see David M. Potter, *People of Plenty: Economic Abundance and the American Culture* (Chicago: University of Chicago Press, 1954); E. Franklin Frazier, *Black Bourgeoisie* (Glencoe, IL: Free Press, 1957); John Kenneth Galbraith, *The Affluent Society* (Boston: Houghton Mifflin, 1958); David Riesman, with Nathan Glazer and Reuel Denney, *The Lonely Crowd: A Study of the Changing American Character* (New Haven: Yale University Press, 1950); Herbert Marcuse, *One-Dimensional Man: Studies in the Ideology of Advanced Industrial Society* (Boston: Beacon, 1964); Daniel Bell, *The Cultural Contradictions of Capitalism* (New York: BasicBooks, 1976). For a critique of the middle-class anxiety over masculinity during the 1950s, see James Gilbert, *Man in the Middle: Searching for Masculinity in the 1950s* (Chicago: University of Chicago Press, 2005). On the role that consumption, domesticity, and suburbanization played in forming male identity and middle-class gender roles, see Gary Cross, *An All-Consuming Century: Why Commercialism Won in Modern America* (New York: Columbia University Press, 2000); Elaine Tyler May, *Homeward Bound: American Families in the Cold War Era* (New York: Basic Books, 1989); and, Jessica Weiss, *To Have and to Hold: Marriage, the Baby Boom, and Social Change* (Chicago: University of Chicago Press, 2000).

⁴¹⁸ On working-class violence and its connection to honor and masculinity, see Elliot J. Gorn, “Good-Bye Boys, I Die a True American,” *Journal of American History* 74 (September 1987): 388-410; Bertram Wyatt-Brown, *Southern Honor: Ethics and Behavior in the Old South* (New York: Oxford University Press, 1982); Michael Kaplan, “New York City

Johnson, “and tell you that they didn’t have to fight, then they lying. Because everybody got to fight.”⁴¹⁹ The building tender system worked within that hypermasculine prison ethic and yet its sexual rapaciousness also mitigated working-class honor by empowering an elite group that threatened the general population’s ability to retain perceptions of “respect.”

Owning an Inmate: Prison Homosexuality, the Sex Trade, and Sexual Violence

Every prison had a “protective custody” wing, which held inmates who were endangered from known grudges, and those who were considered “weak,” mentally retarded, insane, or openly gay. When an inmate arrived in the Texas prison system, the classification unit determined if an inmate was overly “effeminate” or “weak.”

Tavern Violence and the Creation of a Working-Class Male Identity,” *Journal of the Early Republic* 15 (Winter 1995): 591-618; Thomas W. Gallant, “Honor, Masculinity, and Ritual Knife Fighting in Nineteenth-Century Greece,” *American Historical Review*, 105 (April 2000): 359-382; Peter Spierenburg, “Masculinity, Violence, and Honor,” in *Men and Violence*, ed. Pieter Spierenburg (Columbus, OH, 1998), 1-29; Howard P. Chudacoff, *The Age of the Bachelor: Creating an American Subculture*, (Princeton, NJ: Princeton University Press, 1999), 227-228; Elliot Gorn, *Manly Art: Bare-Knuckle Prize Fighting in America* (Ithaca: Cornell University Press, 1986), 185-196; Shani D’Cruze, “Unguarded Passions: Violence, History, and the Everyday in *Everyday Violence in Britain, 150-1950*,” ed. Shani D’Cruze (Harlow, UK: Longman, 2000), 14-16; Carolyn Conley, *Melancholy Accidents: The Meaning of Violence in Post-Famine Ireland* (Lanham, MD: Lexington Books, 1999), 18; Jeffrey S. Adler, *First in Violence, Deepest in Dirt: Homicide in Chicago* (Cambridge, Mass: Harvard University Press, 2006), esp. 26-44. On the development of a working-class masculinity as a counter narrative to the middle-class ideal during the postwar period, see George Lipsitz, *Time Passages; Collective Memory and America Popular Culture* (Minneapolis: University of Minnesota Press, 1990); Richard Slotkin, *Gunfighter Nation; The Myth of The Frontier in 20th Century America* (New York: Atheneum, 1992); Karen McNally, *When Frankie Goes to Hollywood: Frank Sinatra and American Male Identity* (Chicago: University of Illinois Press, 2008); George Lipsitz, *Rainbow at Midnight: Class and Culture in the 1940s* (Urbana: University of Illinois Press, 1994); James Gilbert, *A Cycle of Outrage: America’s Reaction to the Juvenile Delinquent in the 1950* (New York: Oxford University Press, 1986); Rupert Wilson, *American Tough: The Tough-Guy Tradition and American Character* (Westport: Conn.: Greenwood Press, 1984).

⁴¹⁹ Arthur Johnson (aka Haneef Pasha), interview with the author, IAH, Baylor, March 20, 2007.

Such inmates were housed in the protective wing of the prison farm, known by inmates as “sissy wings.” Former inmate Ray Hill described the response he received when he openly expressed in 1970 his sexuality to a classification psychologist during the in-take process: “They bark; we respond. They make notes on your responses and bark some more. When I responded to the question: ‘Do you get fucked by other men?’ with ‘Sometimes but there is usually more to it than that,’ he was a little taken aback. He was not expecting a no-guilt response. In 1970, he had never encountered an out and proud gay person.”⁴²⁰ Hill’s voice is particularly poignant because he was an openly gay prisoner in a world that defined homosexual roles through a hypermasculine prism in which inmates saw themselves as aggressive “wolves,” passive “punks,” or flamboyant “queens” or “fags,” but not “openly gay.”⁴²¹

On the Ramsey II Unit during the 1960s and 1970s gay inmates called their wing “Montrose,” a playful allusion to Houston’s upscale gay neighborhood. Ramsey II had six wings and two cellblocks to house 900 inmates, but the protected wing was a closed off space that only building tenders could access. Unlike the other

⁴²⁰ Ray Hill quoted in *Rebels, Rubyfruit and Rhinestones: Queering Space in the Stonewall South* (New Brunswick, NJ: Rutgers University Press, 2001), 213.

⁴²¹ Hill’s memory of his self identification as an “out and proud gay person” was a rarity in 1970s prison culture. The 1970s represent, according to Regina Kunzel, a moment in which “to be *homosexual* and to be *gay* were emerging as two different things – the first simply descriptive of a sexual orientation and the second embodying a set of norms and values.” In her analysis, the effort among gay activists in the 1970s to educate prisoners on the difference between sexualized roles and a “gay identity” and consciousness was confounded by varying concepts of what constituted homosexuality. “Prison sexual culture,” Kunzel concluded “could be more capacious, heterogeneous, and troubling in its queerness than could be easily accommodated by an emerging gay rights movement.” On the difference between prison’s assigned and sexualized gender roles and the post-Stonewall effort to create among prisoners “lessons in being gay,” see Regina Kunzel, “Lessons in Being Gay: Queer Encounters in Gay and Lesbian Prison Activism,” *Radical History Review*, Issue 100 (Winter 2008): 11- 30. Hill, oral history with the author, November 8, 2005, IOH, Baylor; Sears, *Rebels, Rubyfruit, and Rhinestones*, 51-52, 212-216; “Jailhouse Talk,” *Mother Jones*, November/December 2002, 44-49, 90-91.

wings of the prison, the “punk wings” collected inmates of all races. Hill explained that in “Montrose” inmates were less likely to face racist animosity and the exploitation that inmates experienced in the regular population: “Because we had black inmates, we had Hispanic inmates, we had people that couldn’t even speak English, and we also not only got the gay ones, but we also got the crazies—if you weren’t crazy enough to be sent to the limited space in the treatment center which was a unit for people with severe mental handicaps then where you lived was in the punk wing. Because otherwise, if you were retarded, or otherwise mentally handicapped, you would be tragically exploited by other inmates. But in the punk wing, we weren’t so exploitive.”⁴²² Mentally disturbed inmates were viewed as “weak” and “effeminate” and thus prison administrators placed them on the “punk wing” along with homosexual inmates. The Joint Committee on Prison Reform reported that “one of the most salient complaints” among mentally disturbed inmates was that housing them in the “punk wing” resulted in “disrespect to his manly pride” that left them with a permanent “homosexual jacket,” which was a reference to both their official prison record and their overall reputation in prison society.⁴²³ Within “Montrose,” however, Hill operated a cigarette rolling business in which he employed the mentally handicapped inmates to roll cigarettes that he would then sell for commissary items. The cigarette rollers kept half the profit, and Hill took the other half. Hill described his cigarette rolling operation as a “family” and as a way to

⁴²² Hill, oral history with the author, November 8, 2005, IOH, Baylor.

⁴²³ “Treatment of the Mentally Ill and the Mentally Retarded – Working Paper,” submitted to the Joint Committee on Prison Reform, by Jim Gibson, committee staff, CHA, *Ruiz* Special Master, MAI 8/J-85.

protect inmates from sexual exploitation: “Uncle Ray, you know, he’d put you in the cigarette business and that way you were independent. You didn’t have to depend on those other people for necessities. Then if you wanted to sell or give your ass away, then that was your decision. You know, that’s not my business. But what was my business is I didn’t see any need for you to have to do that to survive.”⁴²⁴

⁴²⁴ Prior to his 1970 conviction, Ray Hill was a gay rights activist who co-founded in 1967 Houston’s branch of the gay rights organization the Promethean Society. Hill was an early proponent of gay pride and he came out to his parents while still in high school in 1957, a decision he made after his high school librarian had coyly given him as a gift a brown-paper bag wrapped copy of Walt Whitman’s *Leaves of Grass*. Following a brief career as a teenage evangelist, Ray Hill traveled the country and spent time in the early-to-mid 1960s on the campuses of Tulane University and Columbia, where he was influenced by the lectures of such leftwing stalwarts as Salvador Allende and C. Wright Mills, William S. Woods, and Haley Thomas. Beginning in the late 1960s, however, Hill created an inter-state fencing operation, which he used to continue the lavish lifestyle he had become accustomed to as a popular evangelical speaker. Hill also thought of himself as the “gay Robin Hood,” as he used some of the proceeds from his fencing operation to fund antiwar and gay rights activism. His fencing operation, in his words, “specialized in something queens know something about, antiques, art, jewels, and electronics.” In 1969, however, Hill’s operation was finally discovered and he was convicted in 1970 on a twenty-eight-year concurrent sentence. While sentenced to the Ramsey II prison in Otey, Texas, Hill became a bookkeeper for construction, a position of some influence that insulated him temporarily from the reach of building tenders. By utilizing the law library and making a cogent legal argument, Hill was able to reduce his sentence on appeal and he was released from prison in 1975. Since his release, Hill has remained out of prison and he became a local prison celebrity as the host of Houston’s “Prison Radio Show,” broadcast from Pacifica’s KPFT station. Many of the prisoners held in the Gulf Coast region eagerly tune-in each Friday night from 9:00 to 11:00 PM. During the program’s first hour, the Prison Radio Show features a guest and a themed topic for discussion on prison issues. The second hour of the show, however, has callers calling in from across the state to send messages to family members in prison, as Texas prisons still do not allow prisoners to have access to telephones of any kind. Hill, oral history with the author, November 8, 2005, IOH, Baylor.



Photograph 8: Protective custody (“punk/sissy”) wing, Clemens prison, 1984⁴²⁶

Prison sex, especially outside of the “punk” wing, was often the product of obligations, favors, and debts. Inmates who were not considered “queer” or openly gay could be enticed into homosexual relationships for commissary items or for having another inmate help with their field work. These inmates were called “turned outs.” Hill elaborated:

These are people who were straight when they got to prison, but either fell into some kind of trap like, “Here, I’ve got a candy bar for you,” or “Here, I’ve got a cup of coffee for you,” or, “This is an illegal cigarette and I got it for you,” whatever—you get obligated. That’s how sex in prison gets started is with obligations. I’m going to protect you from somebody else. Guess what the cost of the protection is going to be? So the deal is that people get obligations and then they get pulled into a trap where they get into the sex game. And once you get in to the sex game, everybody knows it. No privacy. Where you going to hide?⁴²⁷

⁴²⁶ Photograph courtesy of Alan Pogue, copyright protected.

⁴²⁷ Hill, oral history with the author, November 8, 2005, IOH, Baylor.

In some instances, those inmates regarded as “queens” might flout the authority of their prison keepers while also calling the attention of other inmates to their body by “tightening up,” which meant tailoring their prison uniforms to make it tighter in the seat and around their calves.

Outside of the “punk wings” homosexuality was put on public display as a kind of mocking celebration. Inmates recall that in the late-1960s and mid-1970s several prisons, particularly Eastham and Ramsey, had an “Open House” on Christmas Eve in which “drag queens” held a public and open procession down the general population wing of cellblocks. Eubanks recalled Open House in Eastham this way:

You could go in and visit your friends down on another cellblock or a dorm or anything. Well the homosexuals would be brought in dresses, blouses, bras and they’d stuff them with toilet paper, fishnet stockings, wigs, high heeled shoes, and they would get dressed out to the nines. And they’d make the rounds from one cellblock to another and everything—get on top of the domino tables—the game tables in the day rooms—dance—I mean they’d put on some shows. The New York City Rockettes got nothing on some of those old things man...the sex was rampant during open house. Eastham was a strange world.⁴²⁸

Eubanks also claimed that inmates received a marriage certificate and even a marriage ceremony from Eastham’s Chaplain Solomon. Such a marriage certificate would often be accompanied by official TDC “property papers” that “showed ownership of the inmate.” Other inmates have also spoken of “field marriage” ceremonies where a high rider would mockingly perform a marriage ceremony

⁴²⁸ Eubanks, oral history with the author, March 27, 2007, IOH, Baylor.

between two inmates in the field.⁴²⁹ In the African American tank on the Retrieve prison, Albert “Racehoss” Sample related how Retrieve’s warden, who the black inmates called “Big Devil,” married two African American inmates because “sumtimes marryin has a way uv settlin crazy-assed niggahs down [sic].” The ceremony between inmates “Pork Chops” and “Flea Brains” was performed by the unit’s reverend and included a pair of wedding bands made from old metal nuts. In audience was the unit’s warden, many inmates and guards. Sample recounted how they “put the rings on each other’s fingers and Rev pronounced them ‘man an wife.’ After which, Big Devil ordered them to embrace,” to which “most of the audience exploded in laughter” and “showered the newlyweds with food scraps.” Sample explained that, “The cons and bosses were really enjoying the warden’s show. Especially us, because it afforded the opportunity, however short-lived, to go acceptably berserk without fear of punishment.”⁴³⁰ While it may seem improbable that TDC would sanction homosexual marriages or Christmas-eve “drag queen” shows, these “performed” acts of public mockery were intended to objectify and belittle “sissy” or “weaker” inmates while asserting the supposed “maleness” of the more aggressive inmate. Equal and consensual relationships, as Hill noted, are difficult in such a predatory environment because “if you’re going to have a husband and a wife, that means you’ve got to have a relationship. To have a relationship

⁴²⁹ On the practice of issuing and making prison-made “marriage” and “divorce” certificates among female inmates, see Alice M. Propper, *Prison Homosexuality: Myth and Reality* (Lexington, Mass: LexingtonBooks, 1981), 1-9, figures 1-1 and figures 1-2 showing example of marriage certificates.

⁴³⁰ Sample, *Racehoss*, 181-182.

you've got to have trust, and that's what's missing in prison is trust. Trust and privacy just do not exist...there are no relationships there. Sex is a commodity.”⁴³¹

The most odious feature of the internal economy was therefore the BT's trade in sex and human ownership, a process of physical domination and symbolic capital that had the power within the prison to ascribe sexual and gendered identity to inmates. BTs relied on a system of reciprocal favors, scrip, and promises of protection to count boys and book keepers so that they could be kept abreast of available information on all inmates. The close relationship with book keepers allowed BTs to move inmates from one cell, row, or wing to another, which became a particularly powerful tool when the BT wished to use that privilege to move a homosexual inmate into his cell. In order to get a homosexual into his cell, BTs sometimes paid money to the count boy, or they might simply call in a debt or a favor. “These count boys,” wrote a former building tender to the Special Master's office for the *Ruiz* case, “can move an inmate or get them moved to where they want them to go. Money is given to the count boy and then he will move this person. I paid one count boy to move someone off a protection tank (gym) to three tank when I had my job. It cost me sixty (60) dollars. These count boys do as they want and the major lets them. I have a homosexual in here who I care a lot about but I am told to stay away from him. These count boys have them but nothing is said. And the man knows they have them. I even had one count boy threaten to ‘dust me’ if I didn't leave mine alone. This same count boy has his in the cell with him.”⁴³² Similarly,

⁴³¹ Hill, oral history with the author, November 8, 2005, IOH, Baylor.

Jerry Quate recalled how at Eastham head building tender Jack Friday pulled inmates from the “punk wing” into his own cell just as he might any other commodity: “We have a wing for homosexuals. If Jack Friday, he was about half of a homosexual, wanted one, he would get one. He would walk over there and get one of them homosexuals out, take him to his cell and keep him all weekend if he wanted to.”⁴³³ For some inmates, owning a “punk” was about status rather than sex. Inmate Jerry Quate recalled that: “Back then, it was a front—a macho deal. If I had what I call my punk, well you know, I’m supposed to be a big macho man. And a lot of us had them, but now, a lot of them did have sex with them, but I wouldn’t. Now see, I was married when I come to the penitentiary in ’68. And in fact, she waited for me when I got out in 1971, she was still there for me. All right, but it was just an ego thing, you know. And we’d sit out in the day room and I’d go to the commissary and buy him ice cream and stuff, you know, anything he wanted, and just talk to him. And it was just an ego thing.”⁴³⁴ Whether or not Quate had sex with other male inmates, his words speak to the masculine culture that accorded respect and status to a male who maintained control, dominance, supervision, and care of another inmate. The internal inmate economy in Texas was therefore central to a power structure that ascribed identity to inmates as either “strong” or “weak,” masculine or feminine along

⁴³² Former Building Tender letter to David W. Arnold, Office of the General Counsel, Texas Department of Correctional Justice, “Inmate statements,” David W. Arnold interviews, TSLA, 2004/016-1-10.

⁴³³ Quate, oral history with the author, IOH, Baylor.

⁴³⁴ *Ibid.*

gendered definitions of sexuality and sexual behavior that went beyond the literal act of homosexual sex.⁴³⁵

The BTs' near immunity to official punishments, access to weapons, and control of the internal economy also gave them the power to rape without much fear of inmate reprisal or official rebuke. Inmates who resisted rape could expect severe consequences. When an inmate named Gilbert resisted BT Charles Robertson's repeated attempt to take away Gilbert's commissary along with unwanted sexual demands, Robertson paired with William "Butch" Ainsworth, another building tender, to force Gilbert to submit. Ainsworth was well known in the prison for his 1969 jail break in Galveston County when he and four other prisoners escaped from the jail and took hostages, including a sheriff's deputy, who was shot and left for

⁴³⁵ Prison sexual mores and practices are similar, in some ways, to the working-class sexuality that George Chauncey so artfully described in his work *Gay New York*. In the prewar working-class neighborhoods of the Bowery, the Village, Times Square and Harlem, sexual identity was determined not by homosexual sex, but through the public display of either masculine or feminine gender traits and through the private sexual act of being either sexually receptive or penetrative. In this way, men engaging in homosexual sex could choose to become what Chauncey terms a "third sex" by acting as an effeminate and receptive "fairy" or by retaining the masculine image of a penetrating "normal man," what working-class men referred to as a "trade" or a "wolf." Chauncey concluded that today's binary between hetero and homosexual was absent in gay and working-class New York in the pre-World War II period. Further, Chauncey argued that the creation of a post-World War II hetero-homosexual binary was due to a crisis in middle-class culture stemming from: the development of a corporate work culture that changed previously autonomous workers into bureaucratic employees; an increase of women in the public sphere; and, the triumph of Cold War culture centered on the middle-class family ideal. While Chauncey concluded that "the state built a closet in the 1930s and forced gay people to hide in it," this study of Texas prison society reveals that the state's effort to enclose an increasing number of working-class males behind prison walls may well have created prison societies that replicated and mirrored the working-class sexual habits and society of pre-war New York City.⁴³⁵ Seen through the lens of sexual and gendered relationships, my study reconsiders Chauncey's periodization by showing how his conceptualization of a "third sex" continued to operate in the nation's postwar prisons. Sexual violence, however, is largely absent from Chauncey's working-class gay New York while it suffuses the cell blocks and working-class world of Texas prisons. George Chauncey, *Gay New York: Gender, Urban Culture and the Making of the Gay Male World, 1890-1940* (New York: BasicBooks, 1994), 9.

dead. Although the sheriff's deputy survived, Ainsworth was tried and convicted for attempted murder and sentenced to thirty years. TDC assigned Ainsworth to Eastham and while there he became a building tender of such notorious repute that Eastham's Warden Bobby Taylor called him "the most violent inmate he had ever known."⁴³⁷ Ainsworth was also a self mutilator and in 1974 he used an axe to chop off three fingers from his left hand. In a failed attempt to earn a transfer from Eastham, Ainsworth had his severed fingers delivered to a guard.⁴³⁸ When Gilbert refused to submit to their sexual demands, Ainsworth and Robertson attempted to electrocute the inmate by wrapping a wet blanket around him and then they pressed an exposed extension cord against the wet blanket. When this failed, Ainsworth and Robertson forced Gilbert's feet into the commode and then placed the exposed wires into the water, which caused Gilbert "to scream from extreme pain, to begin to tremble, even to cry, and to submit to the homosexual acts."⁴³⁹ After torturing and raping Gilbert, Ainsworth and Robertson then forced Gilbert to sign his commissary book over to them.⁴⁴⁰ This gruesome act of torture and sexual violence was part of the

⁴³⁷ Testimony of Bobby Taylor, *Ruiz v. Estelle*, *Ruiz* Special Master, CAH, MAI 8/J-95.

⁴³⁸ "Man Alleges Vendetta by Police, then Convicted of Burglary, by John Makeig, *Houston Chronicle*, March 16, 1986; "Ainsworth's 99-year Prison Term Affirmed," by Terri Cook, *Galveston News*, February 8, 1986; "'Butch' Ainsworth Wounded," by Joel Kirkpatrick, *Galveston Daily News*, April 28, 1984; "Gay Inmates were Assigned as Porters, Warden Testifies," by Rebecca Galvan, *Houston Chronicle*, May 23, 1989.

⁴³⁹ Lawrence Pope to David Arnold, re: violations of building tender agreement, Pope papers, CAH, 4C771; Lawrence Pope to Board of Corrections, re: William "Butch" Ainsworth (213700), Lawrence Pope Collection, CAH, 4C771.

⁴⁴⁰ Judge William Wayne Justice, memorandum opinion, *Ruiz v. Estelle*, Papers of Frances Jalet-Cruz, CAH, 94/042-16.

comprehensive power of building tenders who used their position within the internal prison economy to assert a reign of sexual terror over fellow inmates.

Sociologists have argued that the reported ubiquity of rape in prison is a social misconception and that the actual occurrence of rape is, in fact, rare.⁴⁴¹ These studies, however, make no attempt to distinguish whether or not inmates are engaging in consensual relationships, a sex trade, or rape. Consensual homosexual relationships in prison are rarely explored, while the categories of “homosexuality” and “rape” are frequently misinterpreted as a “consensual relationship,” which leads to lower tabulations of prison rape.⁴⁴² Moreover, the literature does not take into account the impact of underreporting, the reluctance of inmates to discuss rape, and attitudes of indifference to rape allegations among prison staff.⁴⁴³ Prison rape in

⁴⁴¹ For scholarship on the rarity of rape in prison, see: Davis “Sexual Assaults in the Philadelphia Prison System,” in *Corrections: Problems and Prospects* (2nd ed.) edited by D. Peterson and C. Thomas (Englewood, Cliffs, NJ: Prentice-Hall, 1968), 102-113; Daniel Lockwood, *Prison Sexual Violence* (New York: Elsevier, 1980); P.L. Nacci & T.R. Kane, “Sex and Sexual Aggression in Federal Prisons,” *Federal Probation*, 1984 48(1):46-53; Wayne S. Wooden and Jay Parker, *Men Behind Bars: Sexual Exploitation in Prison* (New York: De Capo Press, 1982). As a reflection of the paucity of reliable statistical data on prison rape, the George W. Bush Administration signed into law on September 4, 2003 the Prison Rape Elimination Act of 2003 (P.L. 108-79), which requires the Bureau of Justice Statistics (BJS) to collect data on sexual assault within correctional facilities as part of an effort to “eliminate” prison rape. See US Department of Justice, Office of Justice Program, “Data Collections for the Prison Rape Elimination Act of 2003,” June 30, 2004, Bureau of Justice Statistics, Status Report.

⁴⁴² On prison homosexuality, see: Peter C. Buffum, *Homosexuality in Prison* (Washington, DC: U.S. Department of Justice, Law Enforcement Assistance Administration, 1972); J. Fishman *Sex in Prison* (London, England: John Lane, The Bodley Head, 1951); G. Kirkham “Homosexuality in Prison” in *Studies in the Sociology of Sex*, edited by J. Henslin, (New York, NY: Appleton-Century-Crofts, 1971), 325-344; C. Weiss and D. Friar, *Terror in the Prisons* (New York, NY: The Bobbs-Merrill Company, Inc., 1974). For work that considers consensual homosexual relationships among female inmates, see Alice M. Proper, *Prison Homosexuality* (Lexington, Mass: DC Heath and Company, 1981).

⁴⁴³ For an analysis that considers underreporting of male rape, see Helen M. Eigenberg, “Rape in Male Prisons: Examining the Relationship Between Correctional

Texas is even more difficult to assess by reviewing reported incidents because the informal power of building tenders routinized sexual exploitation. The legal affidavits and oral histories of prison rape that are offered here are a product of inmate frustrations and their eventual politicization over the shame and fear they experienced. Indeed, the letter of one anonymous inmate to the court appointed monitor shows how shame, humiliation and fear kept this particular inmate from reporting his rape:

I was a victim of a homosexual assault on two separate occasions while I was in disciplinary lock up by two building service inmates. These inmate had access to building keys and they had the authority to open my solitary door at any given time...These building service inmates should never have had the power to open my cell door. This shows you that if these inmates had this kind of authority in lock up that they do as they want on the whole unit...I am very ashamed of what happened and I have not informed my wife of what took place. I had also not told any TDC official of the assault because I feel my life would indeed be in danger if I remained on the same unit with these two inmates.⁴⁴⁴

Moreover, when inmates attempted to fight back against the building tender system or call attention to sexual intimidation, they were labeled as “agitators” and given official punishments. Inmates with little other choice often responded with violence against the building tender system. In a 1977 letter to Senator Chet Brooks, James Adams, who had been in prison since the 1948 reforms, described how over three decades he turned to violence to combat what he saw as the sexual violence of the building tender system:

Officers’ Attitudes Toward Male Rape and their Willingness to Respond to Acts of Rape,” in *Prison Violence in America*, 145-166.

⁴⁴⁴ Anonymous inmate to W. David Arnold, Monitor, 10-31-81, TSLA, TDCJ, *Ruiz*, General Counsel Papers, 2004/016-1-10.

My prison record shows that I had possession of a weapon in 1958, but it don't say that I obtained the weapon (a knife) to defend myself from assault by Rudolf Polk, a 270 pound building tender, who had threatened me with a blackjack because I told him to stay out of my cell trying to play with my penis and fondling my cell mate and trying to force him to commit sex acts.⁴⁴⁵

James Adams' letter reveals that inmates who resisted the BT system were not always heroic. In many instances they used violence as much as the system they struggled against. Inmates fought for their own sense of individual honor and societal "respect" in a system that inherently accorded power through violence.

Prison administrators were certainly aware that prisoners lived or died based on the ability to retain "respect" among other inmates. A key element of earning and retaining respect was the ability to demonstrate one's sexual prowess and control over one's body. The prison administration sought to undermine this pursuit of control, often by exploiting the tenuous nature of an inmate's reputation. Stephan Blanchard was a self-described liberal and one of the few white inmates on the Ramsey prison farm who supported the efforts of inmate activists of the 1970s. In 1974, Warden Lanier of the Ramsey prison farm offered Blanchard early release if he signed an affidavit against the inmate activists. Blanchard recalled that "I was asked to sign statements against" activists "on saying that I had been coerced into joining them to give them legitimacy because of my race, because I was white, and at the time, it was just browns and the blacks on this farm that were really actively engaged."⁴⁴⁶ When

⁴⁴⁵ James Adams to Chet Brooks, Sept 12, 1977, TSLA, Brooks, 1999/136-8.

⁴⁴⁶ Steven Blanchard, oral history interview with the author, March 14, 2007.

Blanchard refused, he was moved to seven wing, which was an all-black wing on the racially segregated Ramsey prison. Blanchard recounted what happened next:

I was taken into an empty cell in seven wing, which was an all black line wing, and a few hours of listening to the various catcalls, and race crap that was coming from black inmates walking by, my door was rolled and...this black head building tender came into my cell, followed by many others and the fight was on. And I was raped. And I couldn't even see his face. I was raped by one guy, and this head building tender told me, 'That's a gift, writer.'"⁴⁴⁷

While Blanchard never turned away from inmate activism, the use of racial animosity and sexual violence irrevocably changed him. "It turned me from being a socially aware liberal into, I don't want to say racist, but a racialist conservative," Blanchard admitted. "My whole life, the beatings couldn't do it, the promises couldn't do it, but that shit – that rape did it in a heartbeat."⁴⁴⁸ Salvador Gonzales, a former building tender turned inmate activist, corroborated Blanchard's rape and recounted how the prison administration offered Blanchard to Gonzalez as a sexual object if Gonzalez would end his association with inmate activists and return to work as a building tender.⁴⁴⁹ Gonzalez turned down Assistant Warden Christian's offer

⁴⁴⁷ *Ibid.*

⁴⁴⁸ *Ibid.*

⁴⁴⁹ In addition to sexual intimidation and rape, physical violence was also used against Blanchard to scare him away from joining the civil rights litigation. During the *Ruiz* trial, Jerry Ben Ulmer testified that Major John Holmes of the Ramsey unit solicited Ulmer in the summer of 1975 to "scare off" some *Ruiz* witnesses. A convict guard provided Ulmer with a knife that he then used to slash inmate Stephan Blanchard about the neck and arms. When state attorney Harry Walsh asked Ulmer: "Why didn't you kill Blanchard?" he was met with the mocking response. "Why take his life," testified Ulmer "when all you want to do is scare him off." After slashing Blanchard, Ulmer testified that he met Major Holmes and the "the major smiled and just said 'later.'" Ulmer testified that he was not punished for this act of violence. Ulmer's testimony shows how building tenders understood that violence was an acceptable form of intimidation and control, while murder was unnecessary. *Houston Chronicle*, October 7, 1978.

and thereafter he and the other activist inmates attempted to expose the sexual trade and violence in the Texas prison economy and the building tender system.⁴⁵⁰

When sexual bribes and the effort to use race as intimidation failed, TDC moved some of the more vocal activist inmates to the homosexual or “sissy” protective wing, even though these inmates were not gay and TDC had never classified them as such. The Joint Committee’s Working Paper on Homosexuality alleged that “the so-called protection tank [for homosexuals] is for punishment rather than protection. Inmates who do not conform to the attitudes of prison officials have also been placed on the block. This takes the form of humiliation for the inmate and serves to weaken his credibility with the general inmate population...those classified as homosexuals who...have civil suits filed against T.D.C. and who demand respect as human beings are put on a homosexual tank and harassed daily by prison officials.”⁴⁵¹ The Joint Committee on Prison Reform therefore concluded that “jail house” lawyers were also housed in the homosexual wing as part of an orchestrated effort to label these agitators as “effeminate” or “unmanly.”⁴⁵²

Housing some of the inmate activists in the protective custody wing for homosexuals exposed the most ardent prison activists to perhaps the worst horror of the internal inmate economy -- a human sex trade and, in some cases, the literal ownership of fellow inmates. In a letter of July 10, 1978 to W.J. Estelle, director of the prison systems, inmate David Ruiz forwarded an affidavit concerning BT Charles

⁴⁵⁰ Testimony of Salvador Gonzalez, *Ruiz* Special Master, CAH, MAI 8/J-91.

⁴⁵¹ Joint Prison Reform Committee Working Report, “Homosexuality in TDC,” CAH, Records of the Special Master *Ruiz vs. Estelle*, MAI 8/J-85.

⁴⁵² *Ibid.*

Robertson's rape of another inmate and explained that the literal owning of one inmate by another was an issue that he intended to expose. "You and your high ranking staff have opposed writ writers [inmate lawyers] with all the force you can muster and in some cases brutal force have been used," wrote Ruiz. "You preach rehabilitation to society and the news media, however, it seems to me that you do not practice what you preach. This is to inform you that I will continue in seeking prison reform, regardless of the hardships I must endure."⁴⁵³ Fellow inmate activist and "jail house" lawyer Salvador Gonzales sent a similar letter demanding that the public learn of the internal world of the Texas prison system.

What is really happening in this prison, society refuses to believe because they really believe in a humane world, and it is my prayer that the Legislature will investigate the conditions and operation of this prison and bring to light the many wrongs and dehumanization conditions that exist here...No one wants to be enslaved. To be powerless, to be subject to the arbitrary exercise of power, to not be recognized as a human being, is to be a slave...an object, a number, a thing, or worse a no-thing.⁴⁵⁴

By placing activist inmates on the protected wing for homosexual prisoners and by offering them the bodies of other inmates as sexual bribes, the prison administration exposed the most radical inmates to a vicious sex trade in human bodies and personal dignity. When Ruiz and other inmate activists made their case against the building tender system, they often pointed to instances of rape as the worst horror of the internal prison economy.

Conclusion

⁴⁵³ David Ruiz to W.J. Estelle, July, 10, 1978, TSLA, Papers of Chet Brooks, 1999/136-20.

⁴⁵⁴ Salvador Gonzales to Senator Chet Brooks, July 29, 1973, TSLA, Papers of Senator Ron Cloward, 1981/217-93.

Social science has analyzed prison homosexuality and sexual and gender roles through a timeless lens.⁴⁵⁵ Some sociologists and criminologists, in particular, have reverted to the comfortable assessment that prison homosexuality is entirely situational, in which prisoners in a same-sex and “total institution” turn to homosexuality purely out of physiological need.⁴⁵⁶ Moreover, those that adopt the “situational homosexuality” approach assign gender roles by sexual penetration, so that those in the dominant and penetrative position become “wolves” and thereby are sexually “normal men,” and those in the submissive role are seen as “punks” or “fags.” This was true to a point. Building tenders were certainly “wolves” and hypermasculine. But to stress situational homosexuality is to ignore the regime of sexual brutalization which occurred.⁴⁵⁷ Repeated violence against individuals spread “collective trauma” throughout the inmate community, undermining communal trust

⁴⁵⁵ While prison homosexuality and rape has not yet found its historian, recent scholarship has begun to give sexual violence a history. For a history of sexual violence, the role of race, and the rape of women in early America, see Sharon Block, *Rape and Sexual Power in Early America* (Chapel Hill: University of North Carolina Press, 2006); Susan J. Brison, *Aftermath: Violence and the Remaking of Self* (Princeton: Princeton University Press, 2002); and, Miranda Chaytor, “Husband(ry): Narratives of Rape in Seventeenth Century,” *Gender & History* 10 (1999): 1-25.

⁴⁵⁶ For a critique of the supposed difference in prison sexual culture between “situational” and “true” homosexuality, see Regina G. Kunzel, “Situating Sex: Prison Sexual Culture in the Mid-Twentieth Century United States,” *GLQ*, Vol. 8 No. 3, (2002): 253-270; Estelle B. Freedman, “The Prison Lesbian: Race, Class, and the Construction of the Aggressive Female Homosexual, 1915-1965,” *Feminist Studies*, Vol. 22, No 2 (Summer 1996); Elise Cherner, “Segregating Sexualities: The Prison ‘sex problem’ in twentieth-century Canada and the United States,” in Alison Bashford and Carolyn Strange, eds. *Isolation: Places and Practices of Exclusion* (London: Routledge, 2003), 71-85.

⁴⁵⁷ As Regina Kunzel has argued, historians must “situate” prison sexual culture in time and in a social setting that considers prison homosexuality alongside cultural shifts and external political pressures. By doing so, historians can reconsider what Kunzel has called the “rhetorical strategy” that has rendered prison rape as “inevitable and somehow therefore less troubling, an expression of nature rather than of a particular culture.” Regina G. Kunzel, “Situating Sex: Prison Sexual Culture in the Mid-Twentieth Century United States,” *GLQ*, Vol. 8 No. 3, (2002): 253-270.

and collective identity.⁴⁵⁸ Yet collective trauma among the inmate population also created general outrage and an eventual response. Inmates such as Ruiz and Gonzalez might not have personally experienced prison rape, but their words speak to a collective and shared sense of having lived in a traumatic environment in which they understood that what happened to another fellow inmate, might just as easily happen to them. Collective trauma in a prison environment becomes a means to understand how prisoner collectivity, outrage, and politicization resulted in the face of a comprehensive power structure that previously ruled prison society with little interruption and near absolute control.

The development of an internal inmate economy created more than simply the subtle acquiescence of inmates to prison authority. The exchange of goods, knowledge, services, sex, and even human beings was at the core of an economic

⁴⁵⁸ The use of “collective trauma” as a catalyst to a shared sense of inmate outrage does not, in this instance, broaden its meaning to include those who had no experience within prison walls. It does include, however, inmates who lived in a shared community in which they similarly experienced, saw, or heard about the prison system’s everyday systematization of sexual violence. As Jeffrey C. Alexander has defined it, “‘Experiencing trauma’ can be understood as a sociological process that defies a pain or injury to the collectivity, establishes the victim, attributes responsibility, and distributes the ideal and material consequences. Insofar as traumas are so experienced, and thus imagined and represented, the collective identity will become significantly revised.” On “collective trauma” and its cultural power to impart communal identity, see Jeffrey C. Alexander, Ron Eyerman, Bernhard Giesen, Neil J. Smelser, and Piotr Sztompka, eds. *Collective Trauma and Collective Identity* (Chicago: University of Chicago Press, 2004), 22; and, Antonius C.G.M. Robben and Marcelo M. Suarez-Orozco, eds., *Cultures under Siege: Collective Violence and Trauma* (Cambridge: Cambridge University Press, 200). For a critique on the problematic application of “cultural trauma” to historical analysis, see Wulf Kansteiner, “Genealogy of a Category Mistake: A Critical Intellectual History of the Cultural Trauma Metaphor,” *Rethinking History* 8 (2004): 193-22. For a historically based application of “collective trauma” to slavery and the formation of black identity, see R. Eyerman, *Cultural Trauma: Slavery and the Formation of African American Identity* (New York: Cambridge University Press, 2001). For its application to the Civil Rights Movement and a sense of shared identity towards community mobilization, see Danielle McGuire, “‘It Was Like All of Us Had Been Raped’: Sexual Violence, Community Mobilization, and the African American Freedom Struggle,” *Journal of American History*, 2004, Vol. 91, No. 3, 906-931.

system that depended on brutality, violence, graft, and extortion, leaving no room for anything resembling “rehabilitation.” Sociologists may well be correct that prison hierarchies and attendant internal prison economies do, in fact, bring a certain measure of “order.” The type of order that prison hierarchies offered, however, exacted its own price in terms of human suffering. “See, the whole thing is a pretty physically-based thing,” observed inmate book keeper Lionel Lippman. “It’s a very predatory system and this, I think, is a very important thing to note, that predatory is the common denominator for all of it. The strong prey upon the weak, and the weak are in a terrible position...If they succumb to the predation, it only gets worse, and predation is social; it’s sexual; it’s economic.”⁴⁵⁹ Seen through the lens of the internal prison economy, the external economic success of the Texas prison system was built upon the foundations of the BT system and the hidden prison economy. Both were part of a power system that traded in not only commissary goods, but also in human dignity and personhood. As inmates influenced by the civil rights movement came to recognize how the internal prison economy and society operated as a mechanism of physical control, racialized hierarchy, and sexual violence, a prison-made civil rights revolution erupted and thereby challenged the public image of Texas as the nation’s model prison system.

⁴⁵⁹ Testimony of Lionel W. Lippman, *Ruiz* Special Master, CAH, MAI 8/J-102.

CHAPTER 5

JAIL HOUSE ATTORNEYS, BUILDING TENDERS, AND SLAVES OF THE STATE:

THE EVOLUTION OF A PRISON-MADE CIVIL RIGHTS MOVEMENT, 1967-1972

A convicted felon, whom the law in its humanity punishes by confinement in the penitentiary instead of with death, is subject while undergoing that punishment, to all the laws which the Legislature in its wisdom may enact...He has, as a consequence of his crime, not only forfeited his liberty, but all his personal rights except those which the law in its humanity accords to him. He is for the time being a slave of the State. He is *civiliter mortuus*; and his estate, if he has any is administered like that of a dead man.

Ruffin v. Commonwealth, 1871

For too long the guns have been silent and the fires within the camp have grown cold. The lesson of history has once more repeated itself: the desire for peace is mistaken for weakness and the child oppression is born. Tolerance at times is prudent but there is a point where tolerance must end and resistance to begin. Without resistance there can be no freedom and liberty, for the history of liberty is a history of resistance. The time to march is almost here, the fires must be rekindled, and the soul made ready for the trial. The theater is small but the objective is the survival of man within himself and nothing must be spared...to win.

“Memo: Theater of Operations,” 1966, the diary of Fred Arispe Cruz

In November 1966, Fred Arispe Cruz sat naked in the darkened cell of Ellis prison's solitary wing. Cruz was a frequent visitor to solitary, but the incident that resulted in this particular stay seemed to him as something truly unjust, as the cause was the guards' discovery of the United States Constitution in his cell.⁴⁶⁰ Cruz had been a prisoner in Texas since 1961, when he arrived at the Harlem prison on a pair of 35 and 15 year convictions for aggravated robbery. Within his first year as a prisoner in the Texas Department of Corrections (TDC), Cruz had petitioned the Prison Board to reduce his field labor so that he could concentrate on his legal effort to appeal his conviction. The Prison Board denied his request, but Cruz continued legal work on his appeal and became one of the earliest inmate pioneers who learned the law and acted as his own "jail house attorney." Texas prisoners who acted as their own attorneys wrote appeals and writs of habeas corpus that sought court-ordered intervention to seek relief from what they argued was an unjust and illegal detention.

Among fellow inmates, Fred Cruz was known as a "writ writer" but among the prison administrators he was simply called an "agitator." Cruz became an avid student of the law, mastering legal precedents, rules, and procedures, and his reputation among other inmates, particularly in the Latino wing and the Black Muslim tank, became such that other inmates sought him out to help them work on the appeals process. As Cruz's fame grew from 1962 to 1966, so too did the animosity of his captors, who increasingly viewed him as a threat to the prison system's otherwise comprehensive control and power. Prison administrators barred

⁴⁶⁰ "Minutes of the Texas Board of Corrections" (1966), 3733, November 27, 1966, TDCJ, TSLA.

Cruz, and any other “writ writer,” from keeping legal material in his cell, on the grounds that it was illegal for any inmate to work on the case of fellow inmates. When the prison administrators found the U.S. Constitution in Cruz’s cell, they argued that the framing document for American government constituted “legal material” and they subsequently cast Cruz once again into the darkness of solitary confinement. Placing Cruz in solitary for his legal activities sparked a prison-made civil rights movement that would dominate Texas prisons for the next twenty years.

This chapter charts how one man’s journey started an entire prison population on a path towards political mobilization and social justice. It considers how inmates housed in a racially segregated and antagonistic environment joined together to create an inter-racial alliance. In doing so, it contributes to new scholarship on the Civil Rights Movement that explores the degree to which this movement made possible opportunities for inter-racial organization, particularly between Latinos and African Americans.⁴⁶¹ By charting the trajectory of civil rights in Texas prisons, this chapter

⁴⁶¹ For work that considers inter-racial organizations in the context of civil rights rebellions, see Jeffrey O.G. Ogbar, *Black Power: Radical Politics and African American Identity* (Baltimore: The Johns Hopkins University Press, 2004), Chapter 6; Laura Pulido, *Black, Brown, Yellow and Left: Radical Activism in Los Angeles* (Berkeley: University of California Press, 2006); Yohuru Williams, “Introductory Comment: White Tigers, Brown Berets, Black Panthers, Oh My!” in *In Search of the Black Panther Party*, edited by Jama Lazerow and Yohuru Williams (Durham, NC: Duke University Press, 2006); Joel Wilson, “Invisible Cages: Racialized Politics and the Alliance between the Panthers and the Peace and Freedom Party,” in *In Search of the Black Panther Party*, edited by Jama Lazerow and Yohuru Williams (Durham, NC: Duke University Press, 2006); David Barber, “Leading the Vanguard: White New Leftists School the Panthers on Black Revolution,” in *In Search of the Black Panther Party*, edited by Jama Lazerow and Yohuru Williams (Durham, NC: Duke University Press, 2006); Jeffrey O.G. Ogbar, “Brown Power to Brown People: Radical Ethnic Nationalism, the Black Panthers, and Latino Radicalism, 1967-1973,” in *In Search of the Black Panther Party*, edited by Jama Lazerow and Yohuru Williams (Durham, NC: Duke University Press, 2006); Kevin A. Leonard, “In the Interest of All Races’: African Americans and Interracial Cooperation in Los Angeles during and after World War II” in *Seeking El Dorado: African Americans in California*, ed. Lawrence de Graaf, Kevin Mulroy, and

places the prisoner rights movement squarely in the civil rights mobilization and organizing tradition. It also contributes to historiography on Latino organizing and the ways in which Latino communities created an ongoing civil rights movement among Spanish speaking communities.⁴⁶² Other works on the prisoner rights movement in Texas have offered important perspectives on the legal implications of the various trials and how numerous civil suits proceeded. These works, for the most part, tell the story from the vantage point of the judicial system, civil rights attorneys, and the prison administration.⁴⁶³ This chapter contributes to that body of literature by adding the perspective of the prisoners themselves and by placing their struggle in the broader context of civil rights, inter-racial organizing, and black and brown power movements. Indeed, it argues that the logical progression of the civil rights revolution was to have its demands for full citizenship and human recognition move from the streets onto the cell block. What other group in America after 1965 was so overtly and legally denied their civil rights but prisoners? This study of a prison-made civil right movement therefore joins new scholarship that reperiodizes the Civil

Quintard Taylor (Seattle: University of Washington Press, 2001), 309-341; and Lauren Araiza, "'For the Freedom of Other Men': Civil Rights, Black Power and the United Farm Workers, 1965-1973" (Ph.D. diss., University of California, Berkeley, 2006); Robert T. Chase, "Class Resurrection: The Poor People's Campaign of 1968 and Resurrection City," Vol. 40, *Essays in History*, University of Virginia, 1998; Gordon Mantler, "Black, Brown, and Poor: Martin Luther King Jr., The Poor People's Campaign and its Legacies," (Ph.D. diss. Duke University, 2008); and Thomas F. Jackson, *From Civil Rights to Human Rights: Martin Luther King, Jr. and the Struggle for Economic Justice* (Philadelphia: University of Pennsylvania, 2007).

⁴⁶² See, for example, Carlos Munoz, Jr. *Youth, Identity, Power: The Chicano Movement* (New York: Verso, 1989); Armando Navarro, *Mexican American Youth Organization: Avant-Garde of the Chicano Movement in Texas* (Austin: University of Texas Press, 1995); Lorena Oropeza, *Raza Si! Guerra No! Chicano Protest and Patriotism During the Viet Nam War Era* (Berkeley: University of California Press, 2005); Rosales, F. Arturo, ed. *Testimonio: A Documentary History of the Mexican American Struggle for Civil Rights* (Houston: Arte Publico Press, 2000).

⁴⁶³ See footnote 19.

Rights era by extending the civil rights “legacy” past 1968 and well into the 1970s, where civil rights, the black freedom struggle, and inter-racial organizing remained a living and still breathing movement.⁴⁶⁴ It also contributes to newer literature on the importance of social movements and civil rights in the American West and Southwest.⁴⁶⁵ An acknowledgement of the “long civil rights movement,” as Jacquelyn Dowd Hall put it, also has the promise to eschew traditional bifurcations that falsely situate the “nonviolent civil rights movement” as being at odds with a

⁴⁶⁴ On the conceptualization of the “long civil rights movement” see, Jacquelyn Dowd Hall, “The Long Civil Rights Movement and the Political Uses of the Past” and Kevin Gaines, “The Historiography of the Struggle for Black Equality Since 1945,” in *A Companion to Post-1945 America*, 211-234; Peniel E. Joseph, “Waiting ‘Till the Midnight Hour: Reconceptualizing the Heroic Period of the Civil Rights Movement, 1954-1965,” *Souls* 2 (Spring 2000), 6-17. For work that considers the civil rights and black and brown power movements into the 1970s, see Peniel E. Joseph, ed. *The Black Power Movement: Rethinking the Civil Rights-Black Power Era* (New York: Routledge, 2006); Komozi Woodard, *A Nation Within a Nation: Amiri Baraka (Le Roi Jones) & Black Power Politics* (Chapel Hill: University of North Carolina Press, 1999); Nikhil Pal Singh, *Black is a Country: Race and the Unfinished Struggle for Democracy* (Cambridge, MA: The Harvard University Press, 2003); Ula Taylor, “Elijah Muhammad’s Nation of Islam: Separatism, Regendering and a Secular Approach to Black Power After Malcolm X (1965-1975)” in *Freedom North: Black Freedom Struggles Outside the South, 1940-1980*, eds. Jeanne F. Theoharis and Komozi Woodard (New York: Palgrave MacMillan, 2003); Johanna Fernandez, “Between Social Service Reform and Revolutionary Politics: The Young Lords, Late Sixties Radicalism, and Community Organizing in New York City,” in *Freedom North: Black Freedom Struggles Outside the South, 1940-1980*, eds. Jeanne F. Theoharis and Komozi Woodard (New York: Palgrave MacMillan, 2003); and Scott Brown, *Fighting for US: Maulana Karenga, the US Organization, and Black Cultural Nationalism* (New York: New York University Press, 2003).

⁴⁶⁵ On social movements and civil rights in the American West, see Neil Foley, *The White Scourge: Mexicans, Blacks, and Poor Whites in Texas Cotton Culture* (Berkeley: University of California Press, 1997); Mark Brilliant, “Color Lines: Civil Rights Struggles on America’s Racial Frontier, 1945-1975” (Ph.D. diss., Stanford University, 2000); Matthew C. Whitaker, *Race Work: The Rise of Civil Rights in the Urban West* (Lincoln: University of Nebraska Press, 2005); and, Robert Self, *American Babylon: Race and the Struggle Postwar Oakland* (Princeton, NJ: Princeton University Press, 2003).

black and brown power tradition that is typecast as radical, violent, and ultimately self-defeating.⁴⁶⁶

Portia for the Poor and the Writ Writer:

The Origins of Writ Writing and the Evolution of Prison Radicalism

Fred Cruz was born in 1940 and raised in San Antonio, Texas in a Latino “barrio” neighborhood that was mired in poverty, crime, and the underground drug trade. Cruz’s father abandoned the family, leaving his mother, Sarah Arispe Aguilar, to raise Fred and his older brother. Without any means of support, the family remained poor. The Cruz brothers turned towards drugs and then crime as an escape route from poverty. Fred Cruz discovered marijuana at an early age, dropped out of school by eighth grade, and became a heroin junkie by age 15. Throughout his teen years, he engaged in small robberies to support his growing drug habit. Violence also followed his criminal path. The police fired on Cruz’s brother and killed him during a botched robbery. In 1957, at seventeen, Cruz engaged in a pistol drawing contest with his best friend, accidentally shooting and killing him. The state did not charge him for this crime, but four years later the courts convicted him on two counts

⁴⁶⁶ See footnote 25.

of aggravated robbery, sentencing him to TDC with a pair of 15 and 35 year sentences.

TDC sent Cruz to the Harlem prison, a unit near Houston along the Gulf Coast where the fertile ground produced bountiful harvests of sugar cane and cotton. The Harlem prison was largely agricultural and held mostly Latino prisoners. Within his first year in the Harlem prison, Cruz spent what little free time he had away from field labor on the legal appeal of his conviction. Each prison had a small law library -- what inmates and prison guards referred to as the “writ room” -- but no inmate could retain legal material in his cell. Access to the law library was restrictive and its hours of operation irregular. Despite the limitations of the law library and its scant legal material, Cruz taught himself the law, wrote his own appeal, and acted as his own attorney. The Harlem prison was known for its resistance to TDC authority, particularly when 300 Latino inmates sat down in a work strike in 1961 to test Dr. Beto’s ascension as prison director. Cruz did not participate in that strike, but he did build upon the atmosphere of unrest among Harlem’s Latino inmate population. Indeed, Cruz represented a new generation of inmates who turned to the law and thereby confronted TDC in the courtroom rather than in the fields of prison labor. Beginning with his effort to appeal his conviction, Cruz studied Supreme Court decisions in the early 1960s that overturned the century-long legal silence imposed on inmates.

In the second half of the twentieth century, the nation’s courts revisited the criminal justice tradition that denied prisoners the rights of citizenship and legal recognition. Prior to World War II, the law considered inmates as “slaves of the

state” and courts, at both the state and federal level, maintained a “hands-off” doctrine of nonintervention regarding the conditions of state captivity. The state therefore denied inmates’ ability to turn to either state or federal courts to seek legal redress for their captivity or for the conditions of their confinement. The legal tradition that denied prisoners the ability to seek court-ordered intervention and relief has its origins in Emancipation and the struggle over Reconstruction. While Emancipation may have freed the slaves, the legal definition of civil death and the difference between free and unfree continued into the 20th century. The 13th Amendment abolished slavery, except in regards to prisons. The amendment decreed: “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.” While the 13th Amendment abolished the private ownership of human beings, it expanded the states’ control over the lives and work of convicted criminals. A pair of Supreme Court decisions affirmed this expanded power of the state over incarcerated criminals. In the 1866 case *Pervear v. Massachusetts*, the Supreme Court ruled that prisoners had no constitutional rights and that the Eighth Amendment’s “cruel and inhumane” punishment clause did not apply to convicted criminals.⁴⁶⁷ The 1871 Virginia decision - *Ruffin v. Commonwealth* - ruled that convicted criminals are “for the time being a slave of the State. He is *civiliter mortuus*; and his estate, if he has any is administered like that of a dead man.” For the next seventy years, most state courts abided by the “hands off” and “enslavement” doctrine in which no inmate could legally challenge either his conviction or the conditions of his confinement.

⁴⁶⁷ *Pervear v. Massachusetts*, 72 U.S. (5 Wall.) 475 (1866).

In the aftermath of World War II, the “hands-off” doctrine faced a number of challenges that rose to the level of the Supreme Court. As the nation waged a global war in the name of democracy and freedom, the Supreme Court reevaluated the question of citizenship for inmates in a series of legal challenges that asked state and federal courts to reconsider whether the Eighth Amendment’s “cruel and unusual punishment” clause applied to state prisoners. In 1945, the Supreme Court upheld in *Coffin v. Reichard* a federal appeals decision stipulating that an inmate had a right to appeal for habeas corpus relief based not just on conviction but on the “conditions of confinement.” A second case that challenged the “hands-off” doctrine was the 1958 case, *Trop V. Dallas*. Trop, a soldier stationed in Morocco, left his post briefly and the US military summarily charged him with desertion, punished him with a dishonorable discharge, and later denied him a US passport. The Court ruled in favor of Trop, stating that denying his citizenship rendered him “stateless.” Such an act, concluded the court, constituted “cruel and unusual punishment” as stipulated in the Eighth Amendment.⁴⁶⁸ In 1961, the Supreme Court reconsidered the role of federal courts over individual states in *Monroe v. Pape* and concluded that federal courts had jurisdiction over state officials when the state infringed on individual rights protected by the Constitution.⁴⁶⁹ Although that case was not about prisons or prison rights, it paved the way for state convicts to petition federal courts for more humane treatment by relying on an 1871 United States civil rights statute, Article 42, Section 1983, of

⁴⁶⁸ *Trop v. Dulles* 356 US 86 (1958).

⁴⁶⁹ *Monroe v. Pape*, 365 U.S. 167 (1961).

the United State Code.⁴⁷⁰ Behind many of these landmark cases was a network of outside legal organizations, such as the National Association for the Advancement of Colored People (NAACP) and the American Civil Liberties Union (ACLU), who pioneered these rights-based cases and pressed for legal recognition of prisoners.⁴⁷¹

The decisions in *Coffin*, *Trop*, and *Monroe v. Pape* opened the door to inmates seeking to challenge the “hands off” doctrine. In the 1963 *Jones v. Cunningham* decision, the Supreme Court had to decide the legal fate of inmates themselves, and, following the precedent established two years earlier in *Monroe v. Pape* the court ruled that inmates had the right to file a writ of habeas corpus to challenge both the legality and conditions of their imprisonment.⁴⁷² This ruling reversed the Supreme Court's nearly, century-long "hands-off" policy regarding federal interference in state prisons.⁴⁷³

⁴⁷⁰ Section 1983 of the Civil Rights act of 1871 stipulates that “Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.” *Time Magazine, The Shame of the Prisons*, January 18, 1971.

⁴⁷¹ For new work on the development of rights-based organizations among civil rights attorneys during the 1940s, 1950s, and 1960s, see Charles Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective* (Chicago: University of Chicago Press, 1998); and Jack Greenberg, *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil*. On the NAACP's efforts to revisit the 13th Amendment to advance the rights of black workers in the 1940s and 1950s, see Risa L. Goluboff, *The Lost Promise of Civil Rights* (Cambridge, Mass: Harvard University Press, 2007).

⁴⁷² *Jones v. Cunningham*, 371 U.S. 236 (1963).

⁴⁷³ On the Supreme Court's historic shift away from the notion of prisoners as “slaves of the state” and its rejection of the “hands off” doctrine and its embrace of prisoners as citizens with a right to be heard in court, see “Beyond the Ken of the Courts: A Critique of Judicial Refusal to Review the Complaints of Convict,” *The Yale Law Journal* 72 (506-558); John A. Fliter, *Prisoners' Rights, The Supreme Court, and the Evolving Standards of Decency* (Westport, CT: Greenwood Press, 2001); John A. Filter, *Prisoners' Rights: The Supreme*

Once the Supreme Court established that prisoners possessed the right to file writs of habeas corpus appealing their convictions and conditions of confinement, prisoners began to identify civil rights which, they argued, the courts were obliged to protect. In 1964, Joe Ragan, the warden of Illinois's Stateville penitentiary and Dr. George Beto's mentor, barred a Black Muslim prisoner named Thomas X Cooper from having access to the Qur'an. The prisoners' rights movement took up Cooper's cause and prevailed upon the court to rule in favor of Cooper and to establish the rights of inmates to challenge the practices of state prison officials in federal court.⁴⁷⁴ The 1964 Cooper decision ignited a nation-wide civil rights movement for prisoners, doing for prisoner rights what *Brown vs. Board of Education* had done ten years earlier for education and civil rights.⁴⁷⁵ Within a decade, the Supreme Court's

Court and Evolving Standards of Decency (Westport, Conn.: Greenwood Press, 2001); John DiIulio, Ed. *Courts, Corrections, and the Constitution: The Impact of Judicial Intervention on Prisons and Jails* (New York: Oxford University Press, 1990); "Prison Reform Revisited: The Unfinished Agenda," *Pace Law Review* 24, no. 2 (2004); and Malcolm Feely and Edward L. Rubin, *Judicial Policy Making and the Modern State: How the Courts Reform America's Prisons* (Cambridge: Cambridge University Press, 1998). In her dissertation "States of Incarceration: Prisoners' Rights and US Prison Expansion After World War II," Kim Gilmore argued that prisons were "miniature states" that maintained their own set of policies, economies, and laws. Her work on the intervention of federal courts in the state prison systems of Arkansas and Illinois shows the ways in which "federal courts, along with inmates, guards, wardens, and lawyers have all played a fundamental part" in restructuring the prisons as "miniature states." See Kim Gilmore, "States of Incarceration: Prisoners' Rights and US Prison Expansion After World War II," (Ph.D. diss., New York University, 2005).

⁴⁷⁴ *Cooper v. Pate* 378 US 546 (1964).

⁴⁷⁵ My work on the prison's social movement to demand that the courts consider inmates as citizens and not "slaves of the state" draws upon recent scholarship that has reconsidered how the law constructed race and practiced racial discrimination. Those who employ "critical race theory" have advanced the literature by questioning how legal traditions, precedents, and rulings have inscribed racial categories and racism into law. Historians have also considered how the law constructs and consecrates societal notions of race. On historical constructions of race as consecrated by the courts, see Ian Haney-Lopez, *White by Law: The Legal Construction of Race* (New York: New York University, 1996); Nikhil P. Singh, *Black is a Country: Race and the Unfinished Struggle for Democracy* (Cambridge, Harvard

Justice Bryon White firmly declared in the 1974 prisoners' rights case, *Wolff v. McDonnell*, that "there is no iron curtain drawn between the Constitution and the prisons of this country."⁴⁷⁶ In the aftermath of *Cooper v. Pate*, the number of prisoner rights suits dramatically increased from 218 in 1966 to almost 18,500 in 1984.⁴⁷⁷

Inspired by the Court's recognition of prisoners' rights, Cruz's writ writing soon evolved beyond the effort to appeal his conviction to focus on the conditions of his confinement. Between the years 1966 and 1967, Cruz kept a meticulous record of

University Press, 2004); and Matthew Frye Jacobsen, *Whiteness of a Different Color: European Immigrants and the Alchemy of Race* (Cambridge, Mass.: Harvard University Press, 1998). For a theoretical approach that considers racial formation and the role of the state and law, see David Theo Goldberg, *The Racial State* (Malden, Mass.: Blackwell Publishers, 2002); and Michael Omi and Howard Winant, *Racial Formation in the United States: From the 1960s to the 1990s* (New York: Routledge, 1994). On critical race theory from the perspective of law and legal studies, see Kimberle Crenshaw, *Critical Race Theory: The Critical Writings that Started the Movement* (New York: New Press, Distributed by W.W. Norton & Co., 1995); Richard Delgado and Jean Stefancic, eds., *Critical Race Theory: The Cutting Edge* (Philadelphia: Temple University Press, 2000); Richard Delgado, *Critical Race Theory: An Introduction* (New York: New York University Press, 2001); and, Dorothy A. Brown, *Critical Race Theory: Cases, Materials, and Problems* (St. Paul, MN: Thomson/West, 2007).

⁴⁷⁶ *Wolff v. McDonnell*, 414 U.S. 539 (1974), 555-556.

⁴⁷⁷ Other important cases of the 1960s include *Holt v. Sarver* in Arkansas and *Pugh v. Locke* in Alabama. In *Holt v. Sarver* inmates challenged the practice of forced physical labor and corporal punishment in the form of whipping. In 1969, Judge J. Smith Henley ruled that the Arkansas prison system was unconstitutional. See, *Holt v. Sarver I*, 300 F. Supp. 825. In 1970 in *Holt v. Sarver II*, 309 F. Supp. 362, Judge Henley ruled the entire Arkansas prison system unconstitutional and ordered the State Correction Board to devise a plan of action. In that same case in 1971, Judge Henley enjoined the Arkansas prison from preventing the inmates' access to court and from inflicting cruel and unusual punishment upon them. On the Arkansas decision and its impact on prison management in that state, see Kim Gilmore, "States of Incarceration: Prisoners' Rights and US Prison Expansion After World War II (Ph.D. Diss. New York University, 2005), Chapters 4 and 5, 116-223; Steve J. Martin and Sheldon Ekland-Olson, *Texas Prisons: The Walls Came Tumbling Down* (Austin: Texas Monthly Press, Inc., 1987). The Arkansas struggle for prisoners' rights differs from the Texas story because Arkansas prison administrators sought prison reform and court ordered litigation, while Texas prison administrators fought tooth-and-nail the grass-roots prisoners' rights movement and court ordered intervention.

his daily activities in a hand-written diary. Cruz's diary was a two-volume notebook that recorded every day of his confinement, and his thoughts concerning his legal struggle. On the first page of the 1966 volume, Cruz pasted a picture of the Supreme Court and then individual photos of Justices Felix Frankfurter and Hugo Black. Underneath the photograph of the Supreme Court, Cruz copied the poem *Invictus*, translated from Latin as the "unvanquished" (or "unconquered") by William Earnest Henley, which reads, in part, "Out of the night that covers me, Black as the Pit from pole to pole, I thank whatever gods may be for my unconquerable soul. In the fell clutch of circumstance, I have not winced nor cried aloud. Under the bludgeoning of chance, my head is bloody, but unbowed." Cruz's diary and personal writings show that he drew upon a deep well of resistance, self awareness, pride, and a growing sense that his legal endeavors might well have lasting and historic importance.

In prison, Cruz, who had dropped out of school by the eighth grade, became a voracious reader, devouring both legal and philosophical texts. In 1966 and 1967, his diary records that he had read such works as Jean Paul Sartre's *Existentialism and Human Emotion*, Martin Heidegger's *German Existentialism*, texts on Plato and Aristotle, and, such contemporary and revolutionary tracts as Frantz Fanon's *Wretched of the Earth*. In his diary, Cruz made a special note of Fanon's conclusion: "Violence is a cleansing force. It frees the native from his inferiority complex and from his despair and inaction; it makes him fearless and restores his self respect." Cruz's diary represents an ongoing conversation with himself that steeled his nerves for the coming struggle as he drew upon legal and revolutionary inspirations. In the margins of his diary, Cruz jotted down quotes from such historical figures as Thomas

Jefferson, William Jennings Bryan, and John F. Kennedy. In a series of entries with such titles as “Crime and Punishment” and “The American Commitment,” Cruz wrote short think pieces that demonstrated his artful prose, clarity of thought, and growing sense of frustration with his captivity. In his second to last entry for 1967, his piece on “Crime and Punishment” reads, in part, as follows:

What about this matter of crime and punishment, anyhow? You can trace it all down through the history of man. You can trace the burnings, the boilings, the drawings, and quarterings, the hanging of people in England at the crossroads, carving them up and hanging them as examples for all to see. We can come down to the last century where nearly two hundred crimes were punishable by death. You can read the stories of hanging on a high hill, and the populace for miles around coming out to the scene, that everybody might be awed into goodness. Hanging for pick pocketers, and yet more pockets were picked in the crowd that went to the hanging than had been known before....Cruelty breeds cruelty. If there is any way to kill evil and hatred and all that goes with it, it is not through evil and hatred and cruelty; it is through charity and love and understanding... You cannot cure the hatreds and maladjustments of the world by killing and punishment. You may here and there cure hatred with love and understanding; but you can only add fuel to the flames by cruelty and hate. What is our society’s idea of justice? “Give criminals the same mercy they give to their victims.” If the state is not kinder, more humane, more considerate, I am sorry I have lived so long.⁴⁷⁸

Cruz’s studies focused on societal and historical tensions between rehabilitation and punishment. His writing reflected upon how the state ought to respond to criminals and the meaning of justice and citizenship for prisoners. His hunger for study, education, and written reflection caused Cruz to conclude that Texas prisons were entirely punitive and that his keepers abused their power. Cruz considered the kind of “transformative violence” that Franz Fanon advocated, but he chose instead a nonviolent path of resistance through legal confrontation rather than physical force.

⁴⁷⁸ Diary of Fred Cruz, 1967, Papers of Frances Jalet Cruz, Center for American History (hereafter cited as CAH), University of Texas, Austin, 94-042/2.

As Cruz sought new material to satisfy his intellectual curiosity, he also developed a spiritual hunger for a guiding philosophy and a personal religion. Cruz discovered Eastern philosophy and spirituality as a source of inspiration and personal transformation. His readings on spirituality centered on a growing interest in Buddhism and it included such works as Joseph Campbell's *The Masks of God: Primitive Mythology*, Swami Vishnudevenda's *The Complete Illustrated Book of Yoga*, and Rammurti S. Mishra's *Fundamentals of Yoga*. Cruz appreciated and admired the ways in which Buddhism insisted on the pursuit of truth and an acceptance of reality. Cruz found these aspects of Buddhism particularly appealing given his predicament as a prisoner struggling to bring the reality of prison experience to the wider public.⁴⁷⁹ By 1966, Cruz converted to Buddhism. His desire to practice Buddhism, however, became a source of conflict between Cruz and the prison administration. For Cruz, the discovery of Buddhism coincided with his legal pursuits of civil rights for prisoners.

Inspired by Thomas X. Cooper's legal battle at Stateville penitentiary over his constitutional right to religious freedom and his ability to read the Qur'an, Cruz began a similar campaign within TDC.⁴⁸⁰ Cruz's writs demanded access to legal counsel, the freedom of religious worship, and the ability to correspond with the Buddhist Church. In 1966, his struggle had earned the attention of the prison system's

⁴⁷⁹ *Ibid.*

⁴⁸⁰ On Thomas X Cooper's legal challenge against the Stateville Penitentiary for the state's denial of his religious freedoms, see James B. Jacobs, *Stateville: The Penitentiary in Mass Society* (Chicago: University of Chicago Press, 1977), 52-73; and Kim Gilmore, "States of Incarceration: Prisoners' Rights and US Prison Expansion After World War II," (Ph.D. Diss. New York University, 2005), Chapter 6, 224-282.

director, Dr. George Beto, who moved Cruz from Harlem to Ellis. Dr. Beto first encountered Fred Cruz in 1962 at the segregation unit of the Walls prison, a special unit that housed “300 to 350 alleged incorrigibles” in what Beto described as “a prison within a prison.” Those housed in the segregation unit lived in permanent solitary, apart from the rest of the prison population in an isolated and desolate wing. (Inmates referred to it as the “Little Shamrock,” whose name mocked the inhospitality of prison because it was a perverse inversion of Houston’s Shamrock, a premier hotel for high-rollers.⁴⁸¹) Beto closed down “Little Shamrock” in June 1962 because, in his words, “it bothered me to see three hundred fifty people not working, locked up, listening to the radio -- in bearing the label of incorrigible – I don’t like to use the term incorrigible because a man may be incorrigible today and not tomorrow.”⁴⁸² Beto was known for his daily surprise visits throughout the prison system where he would inspect the various prisons and meet individually with prisoners to discuss their grievances, a habit that earned him the nickname of “Walking George” among the prison administration and “Promising George” among many inmates for his failure to make good on his assurances. On one of his surprise tours of the “Little Shamrock” wing, he met with Cruz briefly to discuss his legal situation. Beto would later reflect that upon first meeting Cruz he found him insolent and a “nonconformist who looked at other people as being stupid.”⁴⁸³

⁴⁸¹ Glenn McCarthy, a millionaire oil man, established the Shamrock Hotel on South Main Street in Houston.

⁴⁸² Testimony of George Beto, *Dreyer v. Jalet*, Beto Papers, Sam Houston State University, 1-2/1.

⁴⁸³ “Beto Describes Fred Cruz Cruz as Nonconformist,” *Houston Chronicle*, 26 May 1972.

Thereafter, TDC moved Cruz to the Ellis prison, which was a newly built, maximum security prison near Huntsville that housed recidivists, “agitators,” the lowest classification of inmates, and those on death row. When Beto took over the prison system in 1961, one of his first acts was to dismantle the isolation unit at the Walls (the “Little Shamrock” wing) and place inmates with a poor disciplinary history at the newly constructed Ellis prison. Billy Wayne “Red Bird” McCarter, an inmate with over four decades of prison sentences in TDC, recalled, “Everybody that come to this unit [Ellis] was brought from another unit. And they was classified as a malcontent, an escapee, an agitator, or an instigator, or a Muslim.”⁴⁸⁴ Overseeing the Ellis prison was Warden “Beartracks” McAdams, who was a career TDC employee and Ellis loyalist who bolstered the prison system’s reputation among both inmates and the press. When appearing before reporters, the imposing 6’2, 220 lbs. McAdams struck them as “a big man with a velvet voice, a cherub’s face and a hulking frame,” who, “despite the paunch,” “can move like a mongoose when there is trouble brewing.”⁴⁸⁵ Inmates described McAdams in less benevolent terms as a “dead shot, hits like a mule kicking, and makes tracks like a big old bear.”⁴⁸⁶ McAdams was born in the heart of the prison region in Walker County. He was a third-generation Texan whose family had come to Texas with Sam Houston. McAdams

⁴⁸⁴ Billy Wayne “Red Bird” McCarter, oral history with Jim Willett, Texas Prison History Museum (TPHM).

⁴⁸⁵ “Big Beartracks McAdams Works a Miracle While Building a Prison,” *The Houston Chronicle*, Jan. or June 1963, McAdams file, Texas Prison History Museum, Huntsville, Texas, hereafter cited as TPHM.

⁴⁸⁶ *Ibid.*

had first joined the prison system in March 1935 as a guard at Wynne, but he quit in protest in 1941 to become a Dow Chemical Company plant security agent. McAdams was “depressed” over the “lax manner” of the prison administrators; he was particularly distressed over internal corruption and the lack of hierarchical organization among his superiors. After Dow, McAdams became a Huntsville police officer from 1946 to 1948. But the Ellis Plan “really convinced” him to return to the prison system.⁴⁸⁷ McAdams served the Texas prison system as guard, dog sergeant, field guard, assistant warden, and warden in a career that spanned nearly thirty years.⁴⁸⁸ He received the name “Beartracks” while a guard at Wynne in the 1930s because the inmates there thought he was as “big as a bear” and yet his constant patrolling of the “tanks” caused him to seemingly be “everywhere at once” while leaving “his tracks wherever he goes.”⁴⁸⁹ Local newspapers heralded him as a hero when he reportedly “cleaned out a barricaded cellblock with a baseball bat” and for his ability to track down escaped convicts, causing one reporter to remark that

⁴⁸⁷ “Big Beartracks McAdams Works a Miracle While Building Prison,” *Houston Chronicle*, Jan. or June 1963, McAdams file, TPHM; “Change at Ramsey: Smither Unit to Acquire Warden McAdams in May,” March 1961, McAdams file, TPHM; Carl L. McAdams resume, compiled by Wilma Manos and Beverly Johnson, TPHM.

⁴⁸⁸ From 1935 to 1941, McAdams served as a guard at the Wynne Farm. He was promoted to assistant warden at Wynne upon his return in 1948 and he became the Warden at Ramsey in 1951 and stayed at that position until 1961 when he George Beto hand-picked him to oversee the construction of the Ellis unit from 1961 to 1964. McAdams then became the first warden at Ellis from 1964 until 1969, when he was transferred to Wynne where he remained warden until his retirement in 1971.

⁴⁸⁹ “Warden McAdams’ Career Traces Colorful TDC History,” by Doug Murdock, newsclipping, C.L. “Beartracks” McAdams file, TPHM.

“McAdams has brought in more than 30 of the escapees himself, and is still hunting the missing man.”⁴⁹⁰

McAdams was also a proponent of the building tender system. Whatever prison McAdams oversaw, he always brought with him the head building tender and white inmate Robert Barber. Indeed, when McAdams retired in 1971, Barber was released from prison later that year. As inmate Billy Wayne “Redbird” McCarter recalled, “He [McAdams] believed in them building tenders. Back when he was a warden...he had some rough building tenders that would literally beat people to death, Robert Barber...they furnished them baseball bats, brass knucks, shanks with brass knucks, they would literally beat you to death...or if you got cross ways with the administration and they put the word out to do something to you and they would.”⁴⁹¹ Lawrence Pope, one of the inmates at Ellis and a prison rights activist, noted that Barber “was Beartracks’ right-hand man.” Pope recalled that Barber “actually ran that unit” and that “he could himself fire just an ordinary officer you know, a correctional, CO 1, CO 2, and there are reports that he actually did fire these officers, just tell ‘em ‘Pack your shit and git, I don’t want you on this farm.’ And this he had the authority to do it, Bear Tracks backed him up 100%. And he was a psychotic killer type, and he had been into all kinds of brutality.”⁴⁹² Inmate Carl Robbins, a white prisoner at Ellis, lived across from Barber’s cell and he remembered

⁴⁹⁰ “Big Beartracks McAdams Works a Miracle While Building Prison,” *Houston Chronicle*, Jan. or June 1963, McAdams file, TPHM.

⁴⁹¹ Billy “Redbird” McCarter, oral history conducted by Jim Willett, May 22, 2003, Texas Prison History Museum.

⁴⁹² Lawrence Pope, oral history conducted by John Wheat, Lawrence Pope Collection, Center for American History, University of Texas, Austin, Box 4C982.

the ways in which Barber's brutality was aimed against African Americans in a kind of prison-made white terror: "He'd come in at night, bloody, I mean just bloody, he would change his clothes in the cell. 'What'dya been doin'?' [Robbins would ask and Barber responded] 'I been whipping niggers all night, All night!'"⁴⁹³ Al Slayton, a writ writer who was close to Cruz, put Barber's reputation even more bluntly "he was a bad person. This guy was a gun smoking hoodlum. He wasn't afraid of anything or anybody. He would kill you at the drop of a hat."⁴⁹⁴

The terror that building tenders created sometimes extended beyond the prison's walls. When Barber was released in 1972, Al Slayton shot him dead at a drive-in movie theater. Upon his release in 1972, Slayton learned that Barber had planned to kill him for personal differences and because of Slayton's activities as a writ writer. "Robert had made plans to kill me and back then I was married. He'd kill me and my wife," Slayton recalled. "So I became very paranoid. Extremely paranoid...And the way Robert would kill you, you'd just be sitting and all of a sudden, bam, a bullet goes through your body." Slayton and his wife arranged to meet Barber at the local drive-in movie theater. When Barber turned around in the car with a .38 in his hand, Slayton was ready. "I shot him right in the forehead," Slayton vividly recalled. "Shot him five times. He fell out of the car."⁴⁹⁵ When the police and Texas Rangers apprehended Barber, he had shot one of the Texas Rangers.

⁴⁹³ Carl Robbins, interview in "*Writ Writer: One Man's Journey for Justice*," a documentary film by Suzanne Mason.

⁴⁹⁴ Al Slayton, oral history with Robert Perkinson, July 2002, in author's possession and used with Robert Perkinson's permission.

⁴⁹⁵ *Ibid.*

That Ranger offered to testify on Slayton's behalf to Barber's reputation for deadly and swift violence. His moving testimony included the court room display of the scar on his stomach left behind from Barber's attempt to kill him. Such testimony resulted in Slayton's acquittal as an act of self defense. However, the state gave Slayton two years at Leavenworth's federal prison for illegal possession of a gun. Barber's death demonstrates that the worst building tenders displayed a wanton brutality and a mentality of invincibility that sometimes stretched outside of the boundaries of prison gates. The long-time working relationship between Barber and McAdams also demonstrates the degree to which prison administrators relied on violent inmates to maintain order and control.

The McAdams administration frequently sent Cruz to solitary for pretty reasons as part of a concerted effort to silence his outreach beyond prison walls. Cruz chronicled McAdams's use of brutality and its chilling effect upon the prison environment:

During his employment as an officer of the Texas Department of Corrections and as Warden of the Ellis Unit, the history of Carl L. McAdams clearly shows that his administrative attitude is based on an unwavering belief in the efficiency of brute force and further reflects that this unrestrained power is geared to expose inmates to a continuous process of humiliating degradation designed to repress individual distinctions, sense of values and morals, and to destroy self-esteem. And in the last analysis of Warden McAdam's philosophy, his tenure as overseer of the Ellis mirrors a program intended to inflict as much mental anguish as possible, lower morale and plunge men into darkest despair. If he can succeed in convincing men that he has more authority in their lives than the courts and if he can generate a constant state of fear, then, and only then, does he feel he is

extracting payment from law violators.⁴⁹⁶

Within the prison, “Beartracks” and, even more directly his head building tender Robert Barber, became the very symbol of fear and terror among the inmates. In such an atmosphere, Fred Cruz quickly emerged as McAdams’ foremost adversary.

Prisoners who wrote to outside organizations complaining of prison conditions and requesting assistance or investigation faced derision, scorn, and outright attempts to silence them from prison authorities. One of the earliest recorded attempts to reach civil rights organizations to enlist their support in a nascent prisoners’ rights movement occurred from 1947 to 1952 when David C. Rook, an African American inmate, attempted to tell the National Association for the Advancement of Colored People (NAACP) about the ways in which black prisoners faced unrelenting brutality and discrimination. Rook and his fellow prisoners at Ramsey did not demand freedom, but instead focused their pleas for humane treatment. In one such letter, an inmate asked NAACP director William White if their “debt to society” also included being “beaten and run like dogs or cattle merely because we are in prison?”⁴⁹⁷ His outreach effort had reached such levels that the Prison Board’s September 1952 meeting commented that Rooks’ attempt to “file thousands of papers of photo static copies of material...at our expense” had just about “exhausted our patience.” “He has written the President of the United States, the Attorney General of the United States, the Director of the Federal Bureau of

⁴⁹⁶ Diary of Fred Cruz, 1967, Papers of Frances Jalet Cruz, Center for American History (hereafter cited as CAH), University of Texas, Austin, 94-042/2.

⁴⁹⁷ Anonymous prisoner to Walter White, 14 November 1947, Governor’s Papers of Beauford H. Jester, TSLA.

Investigation, numerous federal courts, numerous state courts, the National Association for the Advancement of Colored People, legal aid clinics, lawyers, and others.” The Board concluded that Rooks must be silenced because “Rooks is an irresponsible, psychopathic Negro.” To limit his correspondence, the Prison Board cited two cases *Homer B. Adams v O.B. Ellis* and *Sigel v. Ragen*, involving inmate correspondence rules in both Texas and Illinois, in defense of its decision to limit inmates to five persons on their correspondence list and three letters a week. Only family members could appear on the correspondence list, however. Moreover, inmate correspondence, even with an inmate’s attorney, was opened, read, scrutinized, and could subject an inmate to official punishments or unofficial “head strummings” (beatings by building tenders).⁴⁹⁸ Inmates could not openly criticize the prison system in this correspondence and no communication with media was allowed.

Though the Rooks incident made it nearly impossible to enlist outside assistance, Cruz would not be deterred. On Valentine’s Day in 1967, Cruz was called before the Major Wallace M. Pack, Assistant Warden Joseph Walker, and Warden McAdams for his attempt to send a certified letter to American Civil Liberties Union (ACLU) Attorney John Farra. McAdams told Cruz that “we know who you have been talking to and who you can’t talk to.” He accused Cruz of lying about the conditions of his confinement and he promised that the letter would be sent to Dr. Beto. In his diary entry for that day, Cruz reported that at the meeting “the envelope with forty cents postage was returned to me. I accepted it with the clear

⁴⁹⁸ *Homer B. Adams v O.B. Ellis*, 194 F.2d 483 and *Sigel v. Ragen*, 180 F.2d 785, cert. den. 339 U.S. 990, rehearing den 390 U.S. 847; Prison Board Meeting Minutes, Texas Department of Corrections (TDC) collection, TSLA, September 1954.

understanding that I was not withdrawing my letter from the United State Mail depository and that letter was being seized against my will and without my consent.” Cruz then related what transpired: “As I started to leave towards the door, Mr. Walker said: ‘We are taking this letter away from you and keeping it. We may have some use for it later on.’ To which I responded with: ‘You probably will.’ The Warden then rose to his feet shouting: ‘Making threats! Put him in solitary!’” Because of that incident, Cruz then spent the next fifteen days in solitary.⁴⁹⁹

Cruz records a deep and lasting sense of despair, depression, and illness from his time in the darkened and isolated solitary cell. Inmates in solitary confinement were placed in a bare and unlit cell, with a steel bunk bed that on many occasions did not have a mattress, and a hole in the middle of the floor serving as the toilet. Until 1970, the prison administration placed inmates in solitary on a strict bread and water diet in which guards gave inmates a “full meal” only once every three days. Cruz’s thoughts on those days spent in solitary provide a rare glimpse of the price that inmates paid for any effort to reveal the inequities of captivity:

February 15, 1966, Tuesday, Solitary Confinement: Nothing to do. I just laid down and meditated. The printing crew was giving solitary a paint job. The paint fumes got real bad and started making everybody sick. I started experiencing cramps and severe pains in my stomach.

February 17, 1966, Thursday, Solitary Confinement: I got a breakfast tray this morning. It was practically nothing. All it had was one fried egg, a little gravy, and some oatmeal without any sugar; with two slices of bread. I have started suffering from diarrhea. My whole body system feels extremely weak and I feel so lazy I can hardly move. I just lay on the bed cursing the darkness not caring if the sun don’t shine.

February 19, 1966, Saturday, Solitary Confinement: Tried to make sick call again this morning but everyone went by like a streak of lightening. I’m

⁴⁹⁹ Diary of Fred Cruz, 1967, Papers of Frances Jalet Cruz, Center for American History (hereafter cited as CAH), University of Texas, Austin, 94-042/2.

feeling pretty bad now. The doors are open and the noise is worse than having the doors closed. These people in here talk endlessly and don't say a thing worth listening to. Thought for the day: If a bus stopped in front of my cell and the devil was driving it on a way trip to hell, I would get right on it.

February 20, 1966, Sunday: Solitary Confinement: I got my second tray this morning. It was the same as Thursdays'. I'm getting sicker than hell. The cell doors are still open. Everybody is busy talking about nothing at the same time. Thought for the Day: I wish somebody would come in and shoot us all dead.

Following his solitary stay, Cruz prepared himself for what he considered a "war" with the prison officials. By May 1967, Cruz's letter to ACLU attorney Farra had still not been mailed and Warden McAdams told Cruz that if he wanted to use the writ room again, that he would have to sign a paper stipulating that if he did "anything wrong up there" that he would never again request to use the writ room. Signing such a statement circumscribed Cruz's ability to practice law and he knew that the threat was vague enough that any small infraction or unsubstantiated accusation would cost him his access to the law library for the duration of his confinement. This was an unacceptable proposition for Cruz, who refused to sign the statement and decided to up his resistance rather than capitulate. In a memo to himself, titled "Theater of Operations," Cruz planned his next phase of resistance:

Under the circumstances the proper thing to do is first notify John Farra of existing conditions; second, consult with family to determine the strength of support; third, inform the court on the abridgements of my rights; fourth, maintain a state of readiness to cope with any eventuality that might arise because once the line is drawn I must stand prepared to defend it against invasion of all hazards. For too long the guns have been silent and the fires within the camp have grown cold. The lesson of history has once more repeated itself: the desire for peace is mistaken for weakness and the child oppression is born. Tolerance at times is prudent but there is a point where tolerance must end and resistance to begin. Without resistance there can be no freedom and liberty, for the history of liberty is a history of resistance. The time to march is almost here, the fires must be rekindled, and the soul made

ready for the trial. The theater is small but the objective is the survival of man within himself and nothing must be spared...to win.⁵⁰⁰

Cruz's effort efforts to notify the ACLU failed, but he managed to get a letter to Frances T. Freeman Jalet, a white attorney who graduated from Columbia and Georgetown law schools and who worked for the Office of Economic Opportunity. She also held a prestigious Reginald Heber Smith fellowship, which allowed her to train in poverty law at the University of Pennsylvania Law School. Prior to coming to Austin, Jalet had raised five children from her first marriage, run her own private practice, and worked as a staff attorney for Cornell University's New York State Law Revision Commission. Jalet moved to Austin, Texas in 1967 to began work for the Legal Aid and Defender Society of Travis County. Shortly after her arrival, the *Austin-American Statesman* dubbed this fifty-seven year old mother of five children and noted lawyer as the "Portia of the Poor," a reference to the character in Shakespeare's *The Merchant of Venice*, who disguised herself as a man and a lawyer so that she could defend an imperiled man in court. Cruz contacted Jalet and asked her to meet with him to discuss his case.

On October 26, 1967, Jalet arranged an initial visit with Cruz at the Ellis prison. Cruz's diary reported, "her legal aid under Office of Economic Opportunities is restricted to civil cases. She is helping in her free time at personal expense."⁵⁰¹ Jalet further told Cruz that she had discussed his case with Beto, who "stated that at one time he had felt sympathetic towards my cause because he felt that I had suffered

⁵⁰⁰ Diary of Fred Cruz, 1967, Papers of Frances Jalet Cruz, Center for American History (hereafter cited as CAH), University of Texas, Austin, 94-042/2.

⁵⁰¹ *Ibid.*

unfairness, but that his inquiries had revealed that I was actually guilty, and that as a consequence he had changed his opinion on the matter.” Moreover, Beto had “attempted to convey the impression to her [Jalet]” that Cruz was a “crafty individual.” Cruz ended his first meeting with Jalet by noting that she had a daughter in Thailand who was also studying Buddhist Zen. Cruz wrote that he “found her to be a very nice person with a charming personality. Her views are very liberal and seems to have a vast resource of understanding and compassion for the plight of man.”⁵⁰² For her part, Jalet saw that prisons represented an ideal opportunity for her to practice poverty law for those who needed help most. Jalet found Cruz to possess an impressive intellect and a charming personality. In her notes concerning her first meeting with Cruz, Jalet wrote: “Fred Cruz is handsome. He is witty. He is charming...He can think. He can persuade. He can write. But he is human and makes mistakes and he admits them. He transcended doctrine. He worked with inmates where he could...He is not afraid. He drew no limits for himself, including death. It didn’t take much to arouse my interest in joining in with him...but even so my impression of Fred was that of an extraordinary man.”⁵⁰³ From the first moment that they met, there was a personal and intellectual attraction, appeal, and mutual respect shared between Cruz and Jalet (they would later strike up a romance and marry).

Soon after the visit, Jalet wrote to Beto that she couldn’t “understand what led to Mr. Cruz’s confinement in solitary for two weeks in November and for another two in December. As a minister, I am sure you would be a champion of freedom of

⁵⁰² *Ibid.*

⁵⁰³ Cruz v. Beto, Appendix volume IV, 77-1641, Defendants’ Exhibit 55, Beto Papers, SHSU.

religious belief, and for that reason, of course, as I understand it, you gave prompt recognition to the young man's right to follow Buddhism when he made this desire known, but why is he forbidden to discuss Buddhism with others? If its tenets, which I'm told in some respects are akin to those of Christianity, offer solace to him, they may well do so for others. And if there are one or two or three or a group wishing to meet together in the unit chapel, should that not be permitted also?"⁵⁰⁴ Jalet's letter provoked Beto's ire. Once Jalet began working with Cruz, she provided him with additional legal background on the Supreme Court's recent recognition of prisoner rights. By 1968 Jalet had begun litigating for prisoners' rights, not only on Cruz's behalf but for a growing cadre of other TDC inmates intent on bringing the abuses of TDC to light. This marked the beginning of one of the most radical crusades in American prison reform and jurisprudence history.

The initial result of Jalet's investigation was the "Ellis Report," a fifteen page type written "confidential" report sent to Anthony G. Amsterdam of the NAACP Legal Defense Fund in New York City on the advice of University of Pennsylvania law professor Howard Lesnick. In her November 6, 1968 cover letter to the document, Jalet wrote that she was "deeply distressed" over the "denial of their [prisoners'] constitutional rights," particularly its treatment of African American and Latino prisoners, and from "the mistreatment that they regularly receive" which constituted a "pattern of repression, harassment and even torture, that is shocking." She stated that inmates live "in constant fear," "fear of punishment in the form of deprivation of privileges, loss of good time, humiliations and indignities, and

⁵⁰⁴ *Ibid.*

beatings; fear of solitary where when incarceration is prolonged starvation or even death can result.”⁵⁰⁵ Jalet believed that the Texas prison system maintained a mask over its brutality by presenting itself publicly as a national model for correctional management. She warned that despite the brutalities existing behind prison walls, the average visitor to Ellis “senses none of this” as the worst horrors of the prison system remained “hidden – much of it buried in the dungeon-like (all-dark) cells of solitary.” Jalet believed that the prestige of Dr. George Beto among the public and penologists was a “mask of respectability” and that he used his good name and public presence “to obscure the truth from interested eyes.”⁵⁰⁶

The Ellis Report drew upon Fred Cruz’s experience, which he disclosed in his meetings with Jalet. It therefore focused on aspects of prison abuse that Cruz knew all too well, including solitary, denial of religious freedom, denial of access to the courts, mail censorship, discrimination based on race, and the intimidation, brutality, beatings, and sadism that resulted from the building tender system. The report was culled from a number of prisoner accounts, interviews, and written testimonials, including one “beautifully presented report [which] is 60 pages long, naming about sixty prisoners who would testify.” The report described solitary as a “subterranean windowless cell completely in the dark, with nothing to do and no equipment to keep oneself clean – no soap, toothbrush, etc; with no food except bread (three slices a day) and water with a ‘repast’ every 72 hours consisting of a few vegetables – no meat.” Jalet objected not just to the condition of confinement, but to its duration.

⁵⁰⁵ Frances Jalet to Anthony G. Amsterdam, November 6, 1968, “The Ellis Report,” in author’s possession.

⁵⁰⁶ *Ibid.*

Solitary confinement was never supposed to go beyond 15 days, but her report cited instances in which “at the end of 15 days (the normal durational period) the outer cell door (made of solid steel) is opened – but the prisoner is still behind bars in the inner cell – and this is considered ‘release from solitary.’” But after “one or two days and a few meals, the door is shut again and he is kept there another fifteen days.” Jalet cited instances of inmates being kept in solitary for over 45 days.⁵⁰⁷

The report also highlighted the degree to which prison administrators denied inmates access to the courts. “Legal assistance to prisoners is forbidden,” the report concluded. “The presence of legal materials of any sort – books, papers, pleadings, is considered ‘contraband’ and confinement in solitary is the fate of the possessor.” Not only were inmates barred from keeping legal material in their cell, but the limited law library, known as the “writ room,” was not open during regular hours and it was open for no more than “two hours some evenings or on Saturdays for the brief period.” At other moments, the writ room might be closed “for weeks at a time” and most legal briefs and entreaties were censored and “many are never mailed.”

Jalet also cited religious intolerance as prevalent throughout the prison system, particularly in the denial of religious services for Black Muslims. The report noted that the prison’s main house of worship, the Chapel of Reconciliation, was a “supposedly non-denominational religious edifice” but that in actuality it offered church services for “adherents of the Christian faith only.” Drawing upon Cruz’s frustrations to gain religious services as a Buddhist, Jalet wrote that “Prisoners of the Jewish Faith go into town; those who profess Islamic or Buddhist beliefs are denied the right to worship.” “Especially harsh,” continued Jalet, “is the treatment accorded

⁵⁰⁷ *Ibid.*

Black Muslims who are singled out for punishment in solitary and locked up in isolated pales ‘until they get their thinking straight.’”⁵⁰⁸

In prisons throughout the nation, particularly in New York and California, thousands of African American inmates seeking empowerment, community, and spiritual fulfillment amid the despair of prison’s ever-present threat of violence converted to the Nation of Islam (NOI) and adopted the teachings of Elijah Muhammad. Malcolm X’s spiritual, personal, and intellectual conversion while spending six years in Massachusetts’s Charlestown Prison, Concord Reformatory, and Norfolk Prison served as an inspiration to African American prisoners across the country. When Malcolm X emerged from prison in 1952, he regarded his religious conversion to Islam as a personal and political transformation. The NOI seized on Malcolm’s prison conversion and actively recruited black inmates on that basis. By 1960, registered adherents to NOI numbered between 50,000 and 250,000.⁵⁰⁹ The nation’s prison population was no small contributor to that growth. Confined to the prison environment, many black inmates found good reason to join the NOI and partake in its promise of religious spirituality, a protective community, and martial techniques for self defense.⁵¹⁰

⁵⁰⁸ *Ibid.*

⁵⁰⁹ E.U. Essiem-Udom, *Black Nationalism: A Search for Identity in America* (Chicago: University of Chicago Press, 1962), 378. Manning Marable, *Race, Reform, and Rebellion: The Reconstruction in Black America, 1945-1982* (Jackson: University of Mississippi Press, 1984), 60.

⁵¹⁰ On Black Muslims in America, see Hans A. Baer, *The Black Spiritual Movement: A Religious Response to Racism* (Knoxville, TN: University of Tennessee Press, 1984); Eric C. Lincoln, *The Black Muslims in America*, 3rd edition (Grand Rapids, MI: William B. Eerdmans, 1994); Clifton E. Marsh, *From Black Muslims to Muslims: The Transition from Separatism to Islam, 1930-1980* (Metuchen, NJ: Pathfinder, 1984); Aminah Beverly McCloud, *African American Islam* (New York: Routledge, 1995); Edward E. Curtis, *Black*

Black Muslims constituted a small but important group in TDC during the 1960s. The comprehensive power of the building tender system rendered any attempt at gang organization nearly impossible. TDC recorded no gang activity prior to 1983. The Black Muslims, however, organized themselves around their religion and they remained a difficult organization for building tenders to dismantle. The first appearance of Black Muslims in the 1950s caused concern among TDC prison officials and their initial response was to send individual Black Muslims to different prisons in an attempt to limit their ability to congregate and organize. Upon their initial encounter with the “Negro Muslim Movement,” the Prison Board related their fears that this group was foreign to Texas and would foment violence in its prisons. During a March 1961 Prison Board meeting, the board received an overview on Black Muslims in TDC and they concluded that a “sizeable group of the Negro Muslims would like to do violence to the white people” and that “the black Muslims do not believe in heaven or hell and that it is their policy to get everything that they can out of life.”⁵¹¹ As a response, the Ellis Administration did not allow inmates to correspond with Elijah Muhammad, they restricted their meetings, and they dispersed

Muslim Religion in the Nation of Islam, 1960-1975 (Chapel Hill: University of North Carolina Press, 2006); William Banks, *The Black Muslims* (Philadelphia: Chelsea House Publishers, 1997). On Black Muslims in California’s prison system, see Eric Cummins, *The Rise and Fall of California’s Radical Prison Movement* (Stanford, CA: Stanford University Press, 1994), Chapter 5, 63-92. On Malcolm X’s prison term as a transformative experience, see Malcolm X with Alex Haley, *The Autobiography of Malcolm X* (New York: Ballantine, 1964). On NOI and black power after Malcolm X, see Ula Taylor, “Elijah Muhammad’s Nation of Islam: Separatism, Regendering and a Secular Approach to Black Power After Malcolm X (1965-1975)” in *Freedom North: Black Freedom Struggles Outside the South, 1940-1980*, eds. Jeanne F. Theoharis and Komozi Woodard (New York: Palgrave MacMillan, 2003)

⁵¹¹ Prison Board Meeting Minutes, March 1961, TDCJ, TSLA, 1998/38-11.

Black Muslims across the prison system. But Dr. Beto's administration changed the policy of disbursement when he collected the Black Muslims from across the system and placed them onto the same wing of the Ellis prison during the mid-1960s.⁵¹² Doing so allowed Beto to claim that he was permitting the Black Muslims to freely practice their religion, while also strengthening TDC's pattern of controlling inmates through "segregation" and "isolation." The placement of the Black Muslims at Ellis also had the advantage of putting them under the direct authority and control of "Beartracks" McAdams and his head building tender Robert Barber, whose reputation for racial terror was known by every inmate in TDC. Jalet concluded that "to my personal knowledge legal papers sought to be filed to enforce the religious rights of Muslims simply disappeared – were never mailed." One prisoner in particular who Jalet found to be "more persistent and courageous than the rest" sought permission to hold Muslim services and for his efforts he was "brutally assaulted and is repeatedly placed in solitary charged with 'agitating.'"⁵¹³ The building tenders in the "Muslim Tank" were not followers of Islam and they included such notoriously violent African American building tenders as Ernest Rows, Benny Cole, and Cecil "Big Guinea" Smith.

The prospect of an alliance between the Black Muslims and Frances Jalet's clients was something TDC hoped to avoid by closely monitoring and segregating the Black Muslims. Yet Fred Cruz continued his effort by relying on other inmates to

⁵¹² Testimony of George Beto, *Drever v. Jalet*, Beto Papers, Sam Houston State University, 1-2/1; "Prison Hits at Muslim Recruiting," *Austin American Statesman*, 11 July 1963.

⁵¹³ Frances Jalet to Anthony G. Amsterdam, November 6, 1968, "The Ellis Report," in author's possession.

deliver legal materials and writs to the Black Muslims. On one occasion in 1967, “Redbird” McCarter was caught delivering one of Cruz’s writs to the Black Muslims and, as a punishment, “Beartracks” McAdams charged McCotter, a white inmate, as a “civil rights worker” and moved his cell assignment to G-13, the Muslim tank. When McCarter had to work a seven day work week alongside his new African American cell mates, he joined the Black Muslims in an effort to “tear this tank up,” overthrow the building tenders, and barricade the doors shut. The revolt was short lived and the guards recovered control over the tank through force, causing McCarter to suffer a broken collar bone and over 60 stitches. After a stay in the hospital, TDC thereafter removed McCarter from the Black Muslim tank and sent him to solitary as an “agitator.” When he was visited by Jalet, McCarter followed the “convict code” of silence and refused to admit that he had even been part of the riot, despite his cast and obvious wounds. The prospect of racial division and fear was a constant weapon in the arsenal of TDC.⁵¹⁴

Because of such incidents, Jalet remained particularly attuned to racial discrimination and the prison’s practice of segregating the inmates by race as a means to maintain racial authority through targeted, racialized violence. The report offered several individual stories of racial brutality to make its point. In one incident, the guards terrorized an entire African American work gang when it failed to make a corn harvesting quota because a rainstorm made the corn field extremely wet. Inmates simply found it too difficult to drag the heavy sack filled with harvested corn across

⁵¹⁴ Billy Wayne McCarter oral history, conducted by Jim Willett, May 22, 2003, Texas Prison History Museum, Huntsville.

the muddied ground. When the inmates could not meet the quota, “the angry guard knocked down some of the men with his horse, whipping them with the reins, he cursed them as he rode.” After inmates complained of the unfair beatings, Warden McAdams arrived with guards armed with “baseball bats, steel pipes, water hoses and black jacks” and “without warning” attacked the group of black prisoners. After the “severe beating” the inmates lined up across the road with a pick-up truck behind them and the guards ordered them to run towards the field as fast as they could, or face being run-over by the speeding truck trampling up behind them. “Two prisoners couldn’t make it and were knocked down; they were picked up and spread across the hood of the truck for all prisoners to see.” The reporting inmate then quoted Warden McAdams’ response: “You niggers ain’t bucking on me.”⁵¹⁵

Violence was meted out to inmates in a knowingly public and brutal fashion for seemingly small infractions. The Ellis Report related one such incident in which an inmate was arrested in the field for fighting with another inmate, handcuffed, and then forced to run for two miles as “the Major rode his horse with his pistol pointed at me through the woods” and he “cussed me, threatened to kill me and tried to make me escape from his custody.” When the inmate refused to attempt escape, the major and another guard “stomped on the handcuffs that were on my wrists, kicked me, hit me and cussed me.” Following the beating, the guards gave the inmate solitary for 21 straight days.⁵¹⁶

Building tenders and the degree to which they used their power to foster racial animosity and enforce racial hierarchy earned a great deal of attention in Jalet’s

⁵¹⁵ *Ibid.*

⁵¹⁶ *Ibid.*

report. The report cited one case in particular that highlights the racial power of white building tenders. Jalet interviewed an unnamed Latino inmate who served as an eyewitness to a beating that rendered another Latino inmate witless and mentally unrecognizable. The eyewitness reported that his fellow Latino inmate was “sitting in the hall waiting to be punished for some minor infraction of the rules,” when a white Building Tender passed and called him a “sorry Mexican” and told him “When I walk by you stand up, Mexican.” When the inmate told him “to go to hell,” the building tender returned and brought with him a “negro turn-key” and the night warden and together the three, both prison guard and building tenders, beat the Latino inmate until “he barely resembled a human being.” The inmate who reported the incident to Jalet claimed that the beaten Latino inmate “would be much better off dead” because the beating incident rendered him “a stark, raving idiot now hidden from public view in the treatment center on the Wynne Farm. He doesn’t even know who he is.”⁵¹⁷

Upon submission of her report to the NAACP, Anthony Amsterdam put Jalet in contact with William Turner, a Harvard law school graduate and a newly hired NAACP staff attorney. After reading Jalet’s evocative exposé of Texas prisons in the confidential “Ellis Report,” Turner agreed to join Jalet in her effort to bring litigation against the Texas Department of Corrections. Together, Jalet and Turner created a formidable legal team to pursue and litigate Cruz’s longstanding claims.

From 1968 to 1972, Jalet and Turner pursued Cruz’s complaints through a series of court challenges. The first was *Novak v. Beto*, in which Cruz and fellow co-complainant Ronald Novak challenged solitary as “cruel and inhumane” punishment

⁵¹⁷ *Ibid.*

largely because of the restricted diet, length of solitary stay, and enclosure in total darkness. The case also revisited and challenged the constitutionality of prison rules that prohibited “writ writers” from giving legal assistance to fellow inmates. In a bitter loss for the inmates, the state district court decided in favor of TDC on both charges, ruling that the Texan brand of water and bread diet on solitary did not violate the Eighth Amendment and that the prison’s law-libraries were sufficient enough that no prisoner need assist another in preparing legal appeals.⁵¹⁸ Other losses experienced by Turner and Jalet that year included *Rocha v. Beto*, in which Jalet unsuccessfully pursued for a second time the question of legal materials in an inmate’s cell. Further, Jalet failed in *Woolsey v. Beto* to convince the court that punitive work assignments and solitary punishment were unconstitutional.

Undeterred by their initial losses, Jalet and Turner focused their next case on Cruz’s access to legal material and his right to practice his religion freely. Initially filed on May 21, 1970, the case *Cruz v. Beto I*, was decided in 1972 once again in favor of TDC. The court accepted Beto’s argument that Cruz was attempting to “influence and control” other inmates through his alleged proselytizing of Buddhism. The court ruled that, “There are many reasons why one prisoner should not counsel another in legal and religious matters. One which comes to mind quickly is the ‘influence’ and ‘control’ which one inmate might gain over another. Such a situation on a large scale could lead to a ‘convict-run’ and not a state-controlled prison.” The court’s ruling mirrored Beto’s earlier testimony in *Novak v. Beto* that he did not want

⁵¹⁸ “Jail house Lawyers Lose right to ‘practice,’” *Houston Post*, 14 October 1970; “Use of Solitary in Texas Prisons Upheld by Judge,” by Fred Harper, *Houston Chronicle*, prisons news clipping file, CHA.

Cruz assisting inmates in the preparation of writs because “he could develop an unconscionable control over other inmates by setting himself up as a lawyer. I would like to amplify, your honor. I live in mortal fear of a convict-run prison.”⁵¹⁹ But the Supreme Court overturned this reasoning in 1972 by declaring that no prison could deny a prisoner a right to worship in a manner consonant with his faith. Although Jalet and Cruz lost more often than they won in those early years, the mounting number of cases against TDC grounded in claims of abusive inmate treatment caused the previously vaunted reputation of TDC to come under scrutiny.

TDC struck back by orchestrating a suit of three inmates accusing Jalet of “indoctrinating prisoners with revolutionary ideas” and conspiracy to commit violence against inmates. The inmates charged that Jalet orchestrated violence and directed her clients to beat those inmates that refused to join them in their efforts against TDC. The suit is remarkable for its target of an attorney, rather than the prison system. All three of the accusers were of the highest class of inmate and therefore earned the highest rates of “good time.” Two of them were building tenders and one of them was a “trustee.” The state paroled Freddie Dryer, a building tender at Ellis, before the case went to trial and he never testified. Donald Lock, a trustee, testified against Jalet and then later admitted that his testimony was false. Lock recanted his testimony and told the court: “It’s a lie. Mrs. Cruz has done nothing. She’s tried to help me. She’s tried to help the entire prison population.”⁵²⁰

Moreover, Lock claimed that TDC assistant director W. Dee Kutach and Warden McAdams pushed him to make the false allegations by discriminately suggesting that

⁵¹⁹ Testimony of George Beto, *Novak v. Beto* 320 F. Supp. 1206, 1209 (1970).

⁵²⁰ “Another Planet,” by Karen Northcott, *Texas Observer*, 7 July 1972.

filing such a suit might earn him his freedom. “They don’t come out and tell you to do it,” Lock confessed. “But you just get the way these people talk you know what they mean. I knew that filing was my only way out.”⁵²¹ The testimony in the case was a series of charges and counter-charges in which TDC claimed that Jalet and Cruz were gaining an “immoral control” over other inmates, and in which Jalet and Cruz responded with lurid accusations of TDC’s reliance on brutality and racial violence.⁵²² The acrimony of the testimony and its revelations concerning prison society caused presiding Judge Carl O. Bue to remark “frankly I’ve never seen a case like this before...for the past six weeks, as a member of the judiciary, I have felt that I have lived in another planet.”⁵²³ Judge Bue concluded that there was no evidence that Jalet was fomenting a prison revolution and the court delivered the first victory for Jalet and Turner.⁵²⁴

As TDC was fighting legal cases in court, the nation experienced a spiraling crime rate and many other state prison systems faced open uprisings that soured the public on prisoners’ rights and gave some credence to Beto’s fears that Jalet was “indoctrinating prisoners with revolutionary ideas.”⁵²⁵ There were five prison riots

⁵²¹ *Ibid.*

⁵²² *Dreyer v. Jalet*, Beto papers, SHSU, 1-2/1.

⁵²³ Judge Carl O. Bue opinion *Dreyer v. Jalet* quoted in “Another Planet,” by Karen Northcott, *Texas Observer*, 7 July 1972.

⁵²⁴ “Mrs. Cruz Exonerated on Conspiracy Charge,” by Fred Harper, *Houston Chronicle*, 19 September 1972.

⁵²⁵ For both analytical and narrative accounts of the prison riots of the late 1960s and early 1970s, see Charles E. Silberman, *Criminal Violence, Criminal Justice* (New York: Random House, 1978); Tom Wicker, *A Time to Die* (New York: Quadrangle, 1975); Mark Colvin, *The Penitentiary in Crisis: From Accommodation to Riot in New Mexico* (Albany, NY: State University of New York, 1992); Bert Useem and Peter Kimball, *States of Siege:*

in 1967; fifteen in 1968; twenty-seven in 1970; thirty-seven in 1971; and forty-eight in 1972, the most prison riots in any single year in American history. The September 1971 Attica prison riot, in particular, alarmed the nation's prison managers as nearly 1,300 of the prison's approximately 2,200 prisoners rioted and seized control of the prison, taking thirty-nine correction officers hostage for over four days. The Attica revolt ended in a bloody state police assault ordered by Governor Nelson Rockefeller that resulted in thirty-nine deaths, including twenty-nine inmates and ten correctional officers and civilians. As the state-appointed commission noted in 1972, the "state police assault which ended the four-day prison uprising was the bloodiest one-day encounter between Americans since the Civil War."⁵²⁶ Although state police forces killed most of the protesting inmates, the media, fed by false state allegations, incorrectly depicted the inmates as killing one another, which caused a public backlash against the growing prisoners' rights movement.⁵²⁷

As riots roiled the nation's prisons, the country also experienced an alarming increase in crime. Crime rates increased steadily from 190 crimes per 100,000

U.S. Prison Riots, 1971-1986 (New York, Oxford: Oxford University Press, 1989); and James B. Jacobs, *Stateville: The Penitentiary in Mass Society* (Chicago: University of Chicago Press, 1977).

⁵²⁶ *Attica: The Official report of the New York State Special Commission on Attica* (New York: Praeger Publishers, 1972).

⁵²⁷ In an unpublished article, Heather Thompson shows how Governor Nelson Rockefeller and the New York State prison system manipulated the media to present a false portrayal that depicted inmate-on-inmate violence during the Attica riot as the cause of inmate deaths rather than the state's bloody assault. Thompson argues that such media manipulation by the state created a false memory of Attica that turned the public against prisoners' rights. Attica became, according to Thompson, the clarion call for a more political punitive environment that demanded a "law and order" state. Heather Thompson, "Rethinking Political Transformation in Postwar America: The Attica Prison Uprising of 1971, Labor, Liberalism, and the Rise of the Right," unpublished article, cited with Thompson's permission.

persons in 1963, to 298 in 1968, and 396 by 1971.⁵²⁸ Beginning with Barry Goldwater's 1964 presidential election bid, popular opinion reflected political calls for "law and order." A 1968 Gallup Poll, for instance, found that Americans saw crime and lawlessness as the single most pressing domestic problem. A Harris Poll, moreover, found that on the eve of the Democratic National Convention in 1968, nearly 81 percent of Americans believed that law and order was imperiled.⁵²⁹ In response to the public's perception of lawlessness, President Lyndon Johnson established The President's Commission on Law Enforcement and the Administration of Justice, which issued executive-level recommendations highlighting the nation's concern with the rising crime rate. Congress, meanwhile, enacted the Safe Streets and Crime Control Act of 1968, which offered federal monies to state and local government for innovative crime prevention programs and further efforts at rehabilitation. At the same time, Congress in 1968 created the Law Enforcement Administrative Agency (LEAA) with a budget of over \$8 billion for the development of additional police, courts, and prisons.⁵³⁰ These programs propelled prison growth and provided the financial wherewithal to construct "law and order" America.

⁵²⁸ Platt and Takagi, eds., *Punishment and Penal Discipline: Essays on the Prison and the Prisoners' Movement* (Berkeley, CA: University of California Press, 1980); Bert Useem and Peter Kimball, *States of Siege: U.S. Prison Riots, 1971-1986* (Oxford: Oxford University Press, 1989), 14, 18.

⁵²⁹ Reported in Thomas E. Cronin, Tania Z. Cronin, and Michael E. Milakovich, *U.S. v. Crime in the Street* (Bloomington: Indiana University Press, 1981) 60, 69; Useem and Kimball, *States of Siege*, 15.

⁵³⁰ On the role of the LEAA and its impact on crime and the expansive criminal justice system, see Malcolm Feeley and Austin Sarat, *The Policy Dilemma: Federal Crime Policy and the Law Enforcement Assistance Administration* (Minneapolis: University of Minnesota Press, 1980); Parenti, *Lockdown America*.

Beto followed these developments with great interest and some concern. The day of the New York state police assault at Attica, Beto was speaking before the national governors' conference at San Juan, Puerto Rico. Calling the Attica revolt a "tragic and horrible example of the convict-run institution," Beto associated the New York uprising with his growing anxiety over Cruz's dissension and Jalet's legal efforts. Unlike other states, Texas experienced no prison riots and near absolute control over its prison population. The occasional "work buck" in Texas was quickly put down, usually through enforced violence, and such work strikes never spread beyond any single prison and never included more than a handful of inmates during any given incident. Attica and the shooting and subsequent death of California inmate George Jackson on August 21, 1971 were foremost in the minds of Texas prison managers in the Fall of 1971. Jackson had been incarcerated in California's prison system since 1961, where he developed a leftist political philosophy and advocated black political awakening behind prison bars. On 16 January 1970 the state of California charged that Jackson, along with fellow inmates Fleeta Drumgo and John Clutchette, had murdered guard John V. Mills in retaliation for guard O.G. Millers' alleged murder of three black inmates. The state held the trio of suspects in Soledad's maximum security cell block and the case received nationwide attention as the press soon dubbed the three inmates the "Soledad brothers." Confined in a solitary cell for 23-hours a day, Jackson used the time to publish in 1971 the popular political tract of his prison letters *Soledad Brother*, which earned him even greater notoriety. His death on August 21, 1971 during an alleged escape attempt brought further national attention to prison radicalism.⁵³¹ The state of California defended

⁵³¹ For a critical assessment of how the New Left "constructed" George Jackson as a

Jackson's killing by claiming that inmate Jackson's attorney, Stephen Bingham, had smuggled a pistol concealed in a tape recorder into the prison and gave it to Jackson. Bingham was later acquitted from having played any part in the Folsom escape attempt. Administrators elsewhere, including Beto in Texas, used the Bingham case to warn the courts that "the seeds of unrest exist in every penal institution, and are being compounded by a few lawyers – some financed by federal anti-poverty funds – who make prison administration more difficult by stirring up malcontents behind the walls."

Eight Hoe: Sowing Seeds of Dissent

Less than a month after Attica and two months after the Jackson slaying, Beto barred Jalet from Texas prisons and from corresponding with Texas inmates.⁵³² Beto argued that Jalet's "continued and frequent visits" as well as her "continued correspondence with inmates" made it "impossible" for him "to guarantee tranquility within the institutions and the protection of inmates."⁵³³ But within a month Beto was forced to lift the bar on Jalet's visitation and correspondence with her inmate clients. He insisted, however, that TDC collect her clients onto a single prison and

revolutionary hero, see Eric Cummins, *The Rise and Fall of California's Radical Prison Movement* (Stanford, California: Stanford University Press, 1994), Chapter 7, 151-186.

⁵³² The struggle between Beto and Jalet had become intensely personal, with allegations that Beto had used his influence to create problems between Jalet and the director of the legal aid office, which caused her to be transferred in 1968 to Dallas and, eventually to lose her position. Jalet continued working on prison reform through a Houston law clinic. Ekland-Olson, *Texas Prisons*, 38.

⁵³³ Memorandum to all Wardens from Dr. George Beto, *Dreyer v. Jalet*, 349 F. Supp. 452, 488 (1972), Plaintiffs' exhibit, Beto Papers, SHSU, 1-2/1.

house them on a separate wing. Beto chose the Wynne prison, and once again paired Cruz and “that whole writ writing crew” with Warden “Beartracks” McAdams.

The collection of “writ writers” was designated “Eight Hoe Squad” for their field line number, and it contained all twenty-seven of Jalet’s inmate clients. They lived and worked together from November 5, 1971 through October 1972, sowing the field in the day and sowing dissension at night. TDC gave this group few privileges and difficult job assignments. The inmates of “Eight Hoe” lost all their good time and thus faced longer sentences than the rest of the regular population. Within the prison, TDC also denied these inmates commissary privileges, sports, recreational activities, and access to education. In response, Jalet and twelve of her clients filed *Cruz v. Beto II*, which claimed that the segregation of “Eight Hoe” and the denial of privileges to these inmates were unconstitutional.⁵³⁴ *Cruz v. Beto II* was far more personal than Jalet’s previous prison reform cases. Indeed, Jalet aimed her charges directly at its director, George Beto, and her suit demanded \$750,000 in damages for her inmate clients and \$50,000 for herself. In a crushing blow to Beto’s personal and professional reputation, Judge Carol O. Bue, Jr. of the U.S. district court ruled in 1976 against TDC and ordered Beto to pay \$10,291 in damages to the inmates and Jalet. Although the state of Texas paid the actual damages, the state was barred by law from paying the \$27,825 in attorney fees, which required Beto to pay the attorney costs from his own pocket. *Cruz v. Beto II* vindicated Frances Jalet and Fred Cruz and publicly embarrassed George Beto. The case was so focused on Eight Hoe’s

⁵³⁴ *Cruz v. Beto II* included the following members of Eight Hoe: Fred Cruz, James E. Baker, Felipe Barbosa, Guadalupe Guajardo, Allen L. Lamar, Edward S. Mauricio, Herman G. Miller, Ernesto R. Montana, Roger Earl Pirkle, Lawrence C. Pope, David Robles, David Ruiz, Alvin D. Slaton, Amado Soto, and Anthony M. Zilka.

particular circumstances and so personally motivated as a contest between Jalet and Beto, however, that it did little to promote prisoner rights to the wider prison population. But what developed internally, within the prison, during the year of Eight Hoe's seclusion and isolation was a close-knit cadre of inmate leadership and a mounting prisoners' rights movement.

"Eight Hoe" was unique in that it housed black, white, and Latino inmates together in an otherwise racially segregated prison system. While TDC hoped to isolate these writ writers, what developed from Eight Hoe was a tightly-knit organization of radicals and prison attorneys who collaboratively shared their legal knowledge and dedication to prison reform. Together these inmates made common cause with other prisoners across the Texas prison system, particularly with such noted African American inmate activists as Eddie James Ward held at the Ramsey prison, the former defense minister of an Austin-based black power organization, and Ernest Marion McMillian, a former Morehouse student, civil rights veteran, and an active member of Student Nonviolent Coordinating Committee (SNCC). With outside help from Frances Jalet, these inmates taught themselves how to confront TDC in the courtroom, and they made it their goal to bring the internal prison economy to public attention. This inter-racial coalition of inmates, some of them civil rights veterans and former members of SNCC, therefore carried the civil rights revolution from the streets to the cell block.⁵³⁵

⁵³⁵ Although these inmates developed an inter-racial coalition, many of their leaders were Latino. My dissertation therefore builds on recent work that considers how Latinos contributed to and shaped the civil rights rebellion of the mid-twentieth century. For work on Latinos and civil rights, see Zaragosa Vargas, *Labor Rights are Civil Rights: Mexican American Workers in Twentieth-century America* (Princeton: Princeton University Press, 2005); David G. Gutierrez, *Walls and Mirrors: Mexican Americans, Mexican Immigrants,*

One of the leading members of the inmate group was Lawrence Pope, a white fifty-two year old former banker turned bank robber and a former prisoner originally sentenced to the Federal prison system. Lawrence Pope was born in July 1918 and grew up in the shadow of the penitentiary in Huntsville, Texas. The prison system was central to the social, economic, and even political life of the local Huntsville community. Many of its citizens depended on the prison for their jobs, which created a local kin-network of families with deeply rooted economic and social ties to the prison system. “One of the worst things about the Texas prison system is the nepotism that is there,” commented Pope. “So many of the people are relatives to each other, they’re relatives of people who work on other units, they’re married – they’re intermarried there, and there are cases where there are three-and-four generation employees there. For instance, a guard that I was under on the Wynne farm was Ron Nighton. His father, J.E. Nighton – I went to school with him in Huntsville, I knew him. His Dad later worked for the prison system. His grandfather was on the Wynne Unit, where we were, at the time I knew Ron Nighton.”⁵³⁶

and the Politics of Ethnicity (New York: Oxford University Press, 1993); Matt Garcia, *A World of its Own: Race, Labor, and Citrus in the Making of Greater Los Angeles, 1900-1970* (Chapel Hill: University of North Carolina Press, 2001); George Lipsitz, *Time Passages: Collective memory and American Popular Culture* (Minneapolis: University of Minnesota Press, 1990); Lipsitz, *Rainbow at Midnight: Labor and Culture in the 1940s* (Urbana: University of Illinois Press, 1994); Luis Alberto Alvarez, “The Power of the Zoot: Race, Community, and Resistance in American Youth Culture, 1940-1945” (Ph.D. Dissertation, University of Texas at Austin, 2001); Neil Foley, *The White Scourge: Mexicans, Blacks and Poor Whites in the Texas Cotton Culture* (Berkeley: University of California Press, 1997); and Emilio Zamora, *The World of the Mexican Worker in Texas* (College Station: Texas A&M University Press, 1995).

⁵³⁶ Lawrence Pope, oral history conducted by John Wheat, Lawrence Pope Collection, Center for American History, University of Texas, Austin, Box 4C982.

Pope's family was not part of the prison establishment, however, and they worked instead in the local banking business.

Pope followed his maternal grandfather into the banking industry and by the late 1950s had become executive vice president of the Gulfgate State Bank in Houston. Pope made \$12,000 a year, a sum he felt was insufficient to support a family, especially since his wife, Geraldine, suffered from multiple sclerosis. Things became more difficult after Gulfgate Bank fired Pope for "inefficient operation." He then founded West National Bank, and served as its president until his three partners sold their shares. Creditors and auditors of the bank then began to identify questionable loan and accounting practices. In 1960 Pope was pushed out of West and, at the age of 42, was on the verge of divorce and bankruptcy. Desperate, Pope bought a .38 revolver and a used black Ford and turned to crime in a bizarre series of bank robberies. Without disguise, Pope walked into the First State Bank of Thornton and demanded at gunpoint all of the bank's cash. Pope then proceeded to take the female bank teller and the bank owners, Jack and Laurene Bennett, into the vault, where he forced the two women to undress and assume lewd and sexual poses while he snapped pictures with a Polaroid camera. Pope threatened to provide the sexual photos to the newspapers if they tried to identify him. The following day Pope followed the same ritual at Farmers' State Bank in Schalenberg, Texas. He was tracked down by police the next day and, following his trial, the state gave Pope a fifty-year sentence in Federal Prison.⁵³⁷

⁵³⁷ "The Banker Who Robbed Banks," by Joe Morgenstern, *The New York Times Magazine* (November 12, 1989) 55-56, 73-75.

Housed in Leavenworth's federal penitentiary, Lawrence Pope became frustrated with his inability to seek information on his case, a problem he soon remedied by learning the law and writing writs. Pope thought of himself initially as a scribe. He and others similarly interested in writ writing would go to the law library and hand-copy entire volumes of legal procedures. "We'd go up there and spend our whole time just copying stuff out of the law books – to have it in handwriting so you could have it in your cell, and then you'd go back to your cell," Pope recalled.⁵³⁸ Within his cell, Pope accumulated 15 handwritten note books of legal material -- a true marker of what a difference access to law libraries and permission to have materials in one's cell could make. Pope's writ writing started in earnest when he attempted to write a letter to the U.S. probation office in San Antonio, Texas to receive a pre-sentence report on his case. The federal prison system refused to send his letter, however. In response, Pope wrote in long-hand a suit against the Federal prison system, which became *Hope v. Kavoii*. When his case was dismissed during trial, Pope took it to the 10th circuit court of appeals in Denver. This he lost, too, but not before Thurgood Marshall, who at the time was the Solicitor General for the United States, ordered the warden of Pope's prison to guarantee his right to send a letter to his probation officer. The warden unhappily obliged. As his reputation as a writ writer grew, the Federal Prison system decided in 1969 to transfer Pope into the custody of the Texas prison system. With a copy of Pope's record and his noted writ writing, TDC sentenced Pope to the Ellis prison, which was the same prison that held

⁵³⁸ Lawrence Pope, oral history conducted by John Wheat, 317, Lawrence Pope Collection, Center for American History, University of Texas, Austin, Box 4C982.

Fred Cruz and was known by Pope and other federal prisoners as “the Alcatraz of the TDC system.”

Upon Pope’s arrival at Ellis on March 26, 1970, assistant warden Bobby Taylor, the field major, Oscar Savage, and a “huge building tender” singled Pope out as an “agitator” and “writ writer.” Taylor assigned Pope to B3 Wing, which was an all-Latino wing in the segregated Ellis prison. Housing Pope in an all-Latino wing was a calculated attempt to use racial animosity and intimidation against writ writers. Pope recalled his first introduction to building tenders on that wing as an explicit warning from TDC that his legal activities must cease. “There were three building tenders there...it was just practically death to talk law – to discuss law, to discuss anything pertaining to law in T.D.C.”⁵³⁹

Pope quickly witnessed what looked like near-racial warfare in which white building tenders targeted African American inmates. Within a month of his arrival, Pope witnessed a struggle on April 12, 1970 between Latino and African American inmates against a gang of white building tenders and guards. The struggle started when building tenders assaulted a pair of Black Muslims. Pope recalled this incident as the catalyst for his involvement in the prisoners’ rights movement in Texas:

Well, these two black dudes walked into the cell block and they [the building tenders] were layin’ for ‘em. And they jumped on ‘em, and hit this one guy in the head with an iron pipe and he went down. Lorenzo Davis [one of the two Black Muslims] stood over him and was fighting off the building tenders. Well, there were some Chicanos in there – in the wing in the day room, and they joined into the deal, and there was a big, big fracas there. They called in the building tenders from the other wings – the surrounding wings. And they couldn’t handle it, so then they brought the officers.⁵⁴⁰

⁵³⁹ *Ibid.*

⁵⁴⁰ *Ibid.*

Grabbing weapons from the “big sack full of baseball bats” at the guard picket, the building tenders “came in with their baseball bats and quelled them all.” “When they finally let us out of the mess hall,” Pope recalled, “I walked out and immediately outside the mess hall door, I saw – not just some spots of blood, I saw pools of blood. And it lead all the way up to the B3 wing, right where I was going, and I followed this trail of blood up there. I walked into that day room, and it was a shambles. These great, heavy tables that they use had been turned over and banged around, the TV had been broken, the benches were turned over...These huge, heavy benches. It’d take two or three guys just to lift them. And they had broken those things off to use as weapons against the building tenders and against the guards. Blood everywhere. Windows – these heavy glass windows had been broken out, and blood everywhere – even up on the ceiling – there was blood up there.” Following this incident of racial violence and near open warfare, Pope decided that the building tender system was something he had to expose. Pope regularly wrote Anthony J.P. Farris, a U.S. attorney in Houston, with a series of documented abuses concerning the building tender system. When comparing his experience in the federal prison system with Texas, Pope felt that it was the harshness of the Texas system that created among inmates a life-long anger and a sense of radicalism.

In Texas, the concept of imprisonment is quite different from, say, in the Federal. In the Federal, they accept the fact that you are there as punishment. But in TDC they add another thing – that you are there for punishment and they do make your life as miserable and just make it hell on earth. And this why I feel that any person who is incarcerated in TDC has just minimum chances of ever becoming a halfway normal citizen and keeping out of trouble, because of the very nature of it, of incarceration... You’re so frustrated and so angered by the things that can happen to you over there in TDC that well, you have a bitterness, an anger, toward the society that put you in this position and subjected you to this treatment. And, to me, this is why so

many inmates are radicalized while in prison – because of the very nature of the treatment they receive.⁵⁴¹

Pope’s level of activism also determined his good relations with the Latino and African American prison population. On the Latino B2 wing where TDC housed Pope, there were benches that were customarily reserved for different Latino groups from various geographical locations with individual benches that were carefully guarded by those from El Paso, San Antonio, and Houston. Uncharacteristically, however, these Latino groups allowed Pope to sit with them and they opened up to him. “They looked on me with a little more favor,” Pope recalled. “Anglo in that deal – ordinarily he was just the lowest of the low, but I had come as a writ writer – apparently some of them knew of some of my activities as a writ writer in the feds.”⁵⁴² These Latino inmates were in touch with Cruz and Jalet who soon thereafter took Pope as one of her clients.

The racial animosity that TDC hoped to foster within Eight Hoe never materialized. Instead the new living arrangement opened up previously closed avenues for inter-racial cooperation. Pope remembered that living with the other members of “Eight Hoe” created “a rigidly segregated bunch. It was a disciplinary offense for any inmate to be caught talking to us or passing us anything, or vice versa, for us to talk to or pass anything to any other inmate.” Housing Jalet’s clients together was an attempt by TDC to segregate and isolate while hoping that racial animosity and in-fighting would break the group part. “They could’ve single-celled us,” Pope recalled. “you know, put us just in there, the bunks were already there.

⁵⁴¹ *Ibid.*

⁵⁴² *Ibid.*

They took out the first bunks – made those cells unusable – and move ‘em back and double-bunked us, and they made it a definite point to mix the races and black with white, black with Chicano, Chicano with white, and so forth – and this was to cause friction – create friction and it did. Three inmates left our group and went over and they didn’t want Frances Cruz for their attorney any longer, so they were removed from our group.” Pope recalled that despite the initial desertion of three members of Eight Hoe that the inmates, for the most part, navigated the attempt to incite racial violence by fostering inter-racial cooperation instead:

We were very much in solidarity and with each other and well, whatever the squad decided to do, why, everybody went along with, there was no dissension or problems. They [TDC] tried to create it and did everything they could to create it, but it just didn’t happen. And that disappointed them very much that it didn’t happen. They thought we’d get into all kind of difficulties but we didn’t. They wanted fights to start out and maybe even a cutting or something or other, you know, but it didn’t. It didn’t happen that way. We were very cohesive and cooperative with each other.⁵⁴³

Fellow Eight Hoe inmate Guadalupe Guajardo, who first came to prison in 1966 for killing a police officer during a disputed Pan de Campo celebration in San Diego,

agreed

that living on Eight Hoe “was just like a family. That’s the worst thing that the

directors

could have done. Dr. Beto done. He got all the best brains together. That’s where he messed up. If he would have separated us, it would have been different, but he put

all

⁵⁴³ *Ibid.*

the brains together.”⁵⁴⁴ Pope also recalled the heightened level of legal activity within Eight Hoe. “We had all filed different lawsuits, and there many of them that were going on, and those of us who were the more or less writ writer types, well, we were just going night and day, you know, every chance we could, doing the bit of legal work on these different things.”

The relationship that developed between Jalet and her clients on Eight Hoe also had a personal dimension. “Sometimes instead of talking about law,” inmate Carl Robbins remembered fondly, “we talked about sex, and that was good therapy for us convicts that was buried away in a cellblock and hadn’t even saw a woman or touch a woman in 5, 6, or 7 or 10 years. Just the smell of her perfume. All of us was in love with her. Every one of us.”⁵⁴⁵ The inmates on Eight Hoe enjoyed an abiding sense of camaraderie with one another and their interaction with Jalet provided them with a teacher, a champion, and a friend. Although many of her clients might have had feelings for Jalet, it was Fred Cruz that developed a more intimate relationship with Jalet. The two created an enduring bond of mutual respect that blossomed into a personal relationship. Cruz had a common law wife, Bartola Perez Mendez, with whom he had a daughter; Mendez was incarcerated during the 1960s at Goree, the

⁵⁴⁴ Guadalupe Guajardo, interview with the author, held at Baylor University, Institute for Oral History (IOH), March 8, 2007.

⁵⁴⁵ Carl Robbins, interview in “*Writ Writer: One Man’s Journey for Justice*,” a documentary film by Suzanne Mason.

woman's prison.⁵⁴⁶ But through their legal work together, Cruz and Jalet formed a bond of partnership, mutual respect, abiding trust, and love that surpassed the prison bars that separated them.

Beginning in the early 1970s, four major class action lawsuits emanated from "Eight Hoe:" 1) *Lamar vs. Coffield*, challenging Texas's rigid system of racial segregation of inmates and charging that TDC practiced discriminatory hiring practices for its guards; 2) *Guajardo v. McAdams*, challenging TDC's right to open an inmate's legal correspondence; 3) *Corpus and Sellars v. Estelle*, demanding the right of prisoners to serve as their own legal counsel, thus eliminating the "jailhouse lawyer" prohibition; and, most importantly, *Ruiz vs. Estelle*, an omnibus lawsuit demanding decent medical care; the dismantling of the convict guard system; adequate protection for inmates against unjustified beatings, sexual assaults, and extortion; adequate and hygienic living space; safe working conditions; and prisoner access to the courts and counsel.⁵⁴⁷ *Ruiz vs. Estelle* placed nearly all aspects of TDC on trial. The case subsequently became the largest and longest prisoners' rights suit in the history of American jurisprudence.

Insurgency's Advance, Beto's Fall

⁵⁴⁶ According to Cruz's letter to Beto, Bartola Mendez was expected to be released from Goree sometime in 1968. Fred Cruz to George Beto, May 18, 1968, Jalet Cruz papers, CHA, 94/042/1.

⁵⁴⁷ See *Lamar v. Coffield*, 951 F.Supp. 629 (S.D.Tex.); *Guajardo v. McAdams*, 349 F. Supp. 211 (1972) and *Guajardo v. Estelle*, 580 F. 2 d. 748 (1978); *Corpus v. Estelle*, 409 F. Supp. 1090 (1975) and *Corpus v. Estelle*, 551 F. 2d. 68 (1977).

After a year of confinement, TDC disbanded Eight Hoe in October 1972 and dispersed Jalet's clients throughout the prison system. George Beto, meanwhile, had grown weary of the struggle with Jalet and her inmate clients. The mounting number of cases filed against the system had damaged TDC's reputation, but Beto always managed to remain a figure of state-wide respect. Even when the court in *Cruz v. Beto II* determined that TDC's punitive treatment of the inmates of Eight Hoe was unconstitutional, the judge was careful in his decision to highlight Beto's otherwise "outstanding administration of Texas prisons."⁵⁴⁹ Indeed, the penological community honored Beto when it elected him president of the American Correctional Association during its centennial celebration in 1970 and the University of Texas honored him the same year with a Distinguished Alumnus award. Nevertheless, Beto retired as director in TDC in 1972, returning to education as a distinguished professor in the criminal justice department of Sam Houston State University in Huntsville, Texas. After his retirement in 1991, Sam Houston State University honored Beto with the dedication of the George J. Beto Criminal Justice Center in his name. Although Beto later claimed that he had always set a ten-year time limit on his administration, the timing of his departure came at the height of his personal and legal battles with Jalet. Many inmates of Eight Hoe viewed Beto's departure as a personal victory. "I always felt that this is the thing that broke Dr. Beto," admitted Lawrence Pope. "Right after that he – it was realized that he made a terrible, terrible mistake by putting us all over there together. Some of us were writ writers, some were not, but it was a very horrible mistake for him to put us all over there together and we certainly took advantage of it...all the major litigation arose right out of that group.

⁵⁴⁹ "Former Prison Boss Ordered to Pay Inmates," *Houston Chronicle*, 20 March 1976.

And, by putting us together, it enabled us to work together and to converse and to join our mutual knowledge and experience.”⁵⁵⁰

Whether Beto knew that the building tender system engaged in abuses and brutality is an issue of debate among his biographers and prison scholars. Within the first two years of assuming the directorship, Beto issued a memorandum to all wardens on November 8, 1963 stating that the use of building tenders was an acceptable “long standing policy,” as long as his wardens adhered to the policy that “at no time are inmates to be used to perform duties in the area of punishment and discipline.”⁵⁵¹ Beto’s memorandum allowed TDC to have an official policy that outlawed building tenders as “convict guards” while it also had the unofficial impact of allowing the practice to continue at the discretion of individual wardens. Moreover, the building tender system existed not as a result of official TDC policy, but as a result of unofficial practice that had grown up around it. On the one hand, there are those that have characterized Beto as a “prisoner of an obdurate subculture he thought he had abolished” and a man who “was not a total master of his system because he was selectively informed by those that ran his system below him.”⁵⁵²

⁵⁵⁰ Lawrence Pope, oral history conducted by John Wheat, 317, Lawrence Pope Collection, Center for American History, University of Texas, Austin, Box 4C982.

⁵⁵¹ George Beto to Wardens of TDC, memorandum, November 8, 1963. Beto Papers, SHSU, 1-2/1. The entire memorandum reads as follows: “To all wardens: Gentleman, recently there was an unauthorized use of building tenders in the Department. All of you are familiar with the long standing policy of the Department of Corrections as far as the use of building tenders or wing attendants is concerned. I would at this time unequivocally reiterate that policy. While it is no prohibition against the use of wing attendants or building tenders, at no time are inmates to be used to perform duties in the area of punishment and discipline. This responsibility rests and must continue to rest solely with custodial officers.”

⁵⁵² Hans Toch, “Books in Review: Governing Prisons: A Comparative Study of Correctional Management,” *Society*, May/April 1989.

These scholars argue that “to properly appraise Beto’s contribution to penology, it is only reasonable to assume that his desire was to eliminate all abuses.”⁵⁵³ Social psychologist Hans Toch concluded that Beto was “a humane, civilized man, intolerant of brutality” who “did not know at the time of his tenure that his presumed well-oiled, benevolent regime encompassed lawless practices.” On the other hand, however, there are those, particularly prisoners, who claim that the man known as “Walking George” had to have known about the routine abuse and terror of the building tender system. Beto visited prisons unannounced to his staff on a daily basis and he typically talked with inmates in the yard to discuss their problems, which also earned him the nickname of “Promising George” since few of his assurances concerning inmate grievances were ever met. Beto’s biographer agreed that, “It was the BT system that Ellis and Beto perpetuated that was most out of step with Beto’s general philosophy.” Moreover, many inmates claim that Beto was present when they were beaten. Others, like Pope and Cruz, claimed that they had many opportunities to directly confront Beto and that they questioned him as to why they had been beaten.⁵⁵⁴

⁵⁵³ David M. Horton and George R. Nielson, *Walking George: The Life of George John Beto and the Rise of the Modern Texas Prison System* (Denton, TX: University of North Texas Press, 205), 143.

⁵⁵⁴ Lawrence Pope’s oral history relates one incident in which he discussed with Beto the brutality of the building tender system. Pope’s memory of the incident shows the ways in which Beto often implicitly threatened building tender violence by using their presence in his meetings with inmates without ever explicitly ordering the beatings or overseeing any beatings himself: “After another incident of a beating of a black inmate, Dr. Beto called me out for an interview over this letter that I’d written to Frances Cruz [Jalet at the time]. And he called me out to this little office and he walked in and Dr. Beto was there, and Warden Cousins was there, and again right behind me was a great big building tender – and if I’d even said anything out of line, why, they’d given him the nod and he just – mopped up the floor with me. So Dr. Beto told me, ‘On advice of counsel, I’m not going to send this letter

While Beto may not have known the extent of the abuses, he certainly understood that the continued success of Texas prisons was dependent on the building tender system and that such a system was not incongruous with the control penology model that he embraced. Indeed, Beto himself summed up the prison administration's rationale for the building tender system by offering the promise of control:

Either you pick their leaders, or they do. In any contemporary prison, there is bound to be some level of inmate organization, some manner of inmate society...The question is this: who selects the leaders? Are the inmates to select them? Or is the administration to chose them or at least influence the choice? If the former, the extent of control over organized and semi-organized life is lessened, if the latter, the measure of control is strengthened.⁵⁵⁵

During the *Dreyer* trial against Jalet, Beto told the court that “building tenders are inmates who are carefully selected because of their attitude. They are inmates who recognize that the welfare of it all depends on a certain amount of peace in prison. They are people who have pretty well proven that they want conformity to the rules for themselves.” Yet these were the very same inmates who also ran an internal prison economy and upheld a racial hierarchy that was dependent on sexual violence as a tool of enforcement. Moreover, when Arkansas faced scrutiny over allegations

out to Mrs. Cruz. The attorney tells me you're not seeking her assistance. You're offering yourself as a witness, and we do not have to permit that letter to go out, so I'm refusing it to send it out.” Pope then asked Beto: “when are you gonna stop the beatings on this unit?” And there was dead silence, and I fully expected that building tender to just jump on me right there. But – he wouldn't have without a nod from the warden, you know, but – Cousins was sitting there, and there was just a dead silence and I fully expected all hell to break loose.” Lawrence Pope, oral history conducted by John Wheat, 317, Lawrence Pope Collection, Center for American History, University of Texas, Austin, Box 4C982.

⁵⁵⁵ George Beto quoted in John DiIulio, *Governing Prisons: A Comparative Study of Correctional Management* (New York: The Free Press, 1987), 112.

that its trusty system abused inmates, the state of Arkansas hired Beto in 1967 as its outside consultant. Ironically, Beto suggested that Arkansas simply do away with its trusty system and hire more guards and expend the money to train them.⁵⁵⁶ Beto insisted that “a stupid guard can undo in less than a minute what it takes a qualified psychologist or psychiatrist six months or a year to achieve.”⁵⁵⁷ Had Beto applied to his own administration the same professional advice that he offered the Arkansas prison system, then perhaps the court-ordered intervention of the 1970s might have been avoided. At the least, Beto’s professional advice in the Arkansas prison case demonstrates that he was aware that the southern trusty system could be horribly abusive. Yet when it came to defending his own use of trustees, Beto inverted the reality of prison society and turned the building tender system on its head when he testified that: “I personally am strongly persuaded that the minimum amount of forced homosexuality in our department, the minimum amount of forcing inmates to give up their commissary, the items that they buy at the little canteens, is due to the presence of building tenders.”⁵⁵⁸ The building tender system and the control it accorded over inmate behavior was thus at the very heart of Beto’s “philosophy of corrections” and its removal had become unthinkable. Indeed, when Beto faced “agitators” and “writ writers,” his first line of defense was to place difficult inmates under Warden “Beartracks” McAdams whose reliance on the notoriously violent head building tender Robert Barber was well known. In a strange twist of irony, the

⁵⁵⁶ For Beto’s role in the Arkansas prison investigation, see Kim Gilmore, “States of Incarceration,” (Ph.D. diss., New York University, 2005), 159-161.

⁵⁵⁷ “Prison Potential Far Exceeds Actuality, Investigators Told,” *Arkansas Gazette*, 30 April 1967.

⁵⁵⁸ *Dreyer v. Jalet*, Beto papers, SHSU, 1-2/1.

continued economic success and the growing legend of Texas prisons made prison management beholden and indeed even imprisoned by the building tender system.

By 1974, Jalet had handed the broader prison reform effort over to William Bennett Turner so that she could concentrate on the defense of her clients and personal reputation in *Cruz v. Beto II*. With great legal skill, Jalet arduously pursued Cruz's appeals to get back the "good time" that TDC stripped from him because they viewed his legal efforts as "agitation." On March 9, 1972, Frances Cruz won an appeal of Cruz's robbery case. After ten years of imprisonment, Fred Cruz walked out of TDC and into freedom. Later that month, Fred Cruz and Frances Jalet married.

Following his 1972 release, Fred Cruz continued to be an outspoken advocate for prison reform, but his true talent was his ability to navigate the law. Cruz continued writing for prison reform and he was active in the 1974 legislative reform and lobbying effort. In the Latino newspaper *Papal Chicano*, Cruz announced in June 1972 the formation of the Jail and Prison Coalition, with himself as president. Its purpose was to unite those outside of the prison and those still in prison for a state-wide lobbying effort at prison reform. In his appeal to Latino readers, Cruz provided a trenchant observation that captured the stark contrast between the external image of Texas prisons and the reality that he and his fellow inmates experienced. "There have been some external changes in the Texas prison system in the last 15 years. The buildings are more modern, housing conditions, food and clothing have improved. This is the scale on which Texas prisons are measured and rated as 'progressive.'" But, Cruz admonished, "this does not take into the account the treatment accorded prisoners as human beings." He promised to help launch a state-wide effort "to bring

about a humane prison system based on justice, tempered with mercy and compassion that will give men hope for the future.”⁵⁵⁹ But within a few years of his release, Cruz’s old demons came back to haunt him. Jalet helped Cruz find positions as a paralegal with several firms, but Cruz found his efforts frustrated because he never managed to shake his addiction to heroin. Despite his freedom and marriage to Jalet, Cruz relapsed and his addiction to heroin slowly eroded his marriage and his legal talents. In 1977, only five years after their marriage, Jalet and Cruz divorced. In 1987, Fred Cruz was found dead at 47 of a drug overdose. Frances Jalet-Cruz died seven years later in 1994 at the age of 84.

Cruz and Jalet’s shared legacy gave voice to the previously voiceless inmates whose situation was dire but largely unknown by the wider public. Together, their work brought needed public attention to the brutalities and injustice of TDC’s prisons. Their collective effort served as notice to the other inmates that prisoners had a champion outside of the prison and that the courts were paying attention. Over the course of the next decade, the legal struggles of Cruz and Jalet inspired a prisoner rights movement that spread across the prison system like wildfire.

⁵⁵⁹ “Pagina de Fred Cruz: Remember the Prisoners,” *Papal Chicano*, June 1-7, 1972, Jalet Cruz papers, CHA, 94/042/1.

CHAPTER 6

THE HOPE OF COMMUNITY CORRECTIONS HELD HOSTAGE: THE POLITICS OF PRISON REFORM AND THE REALITY OF PRISON VIOLENCE, 1972-1974

The question of prisoner rights is a question of human rights, as well. The Texas Department of Correction is a closed and arrogant system. Prisoners in this state are not afforded their constitutional rights, nor are they afforded their human rights. Despite all the propaganda of the TDC and the constant posing of rehabilitation as the purpose here, the objective fact is that constitutional rights is a joke, rehabilitation is a joke, and human rights are a joke.

-- Texas Inmate Allan Lamar, 1974

When Beto retired in 1972, the prison board replaced him with Ward James (WJ) Estelle who, at the age of 41, had more than twenty years of experience in corrections. Estelle was a product of the California prison system as was his father who was a career employee of the California Department of Corrections. Estelle worked his way up the California prison system from his first position in 1952 as prison guard at Folsom State Prison to administrator of California's prison camp operations, an experiment in rehabilitation and conservation.⁵⁶⁰ However, Estelle felt that the California rehabilitative model was too accommodating to its prisoners and he grew impatient with the "tolerance that California had for violence in its system."⁵⁶¹ In 1970 he left the California Department of Corrections and became warden of Montana's Deer Lodge prison. The Montana prison was small. Estelle administered a lone, antiquated prison first opened in 1869 and oversaw a total inmate population of 276. He first met Beto at the American Correctional Association in 1970 and soon thereafter Beto contacted Estelle about working for him as his assistant director. After their meeting, Beto introduced Estelle to the prison board as a successor who would insure continuity and stability. As Estelle later reflected on his hire, he remarked that "I don't think I was brought in here to revolutionize or dramatically change a system that had already had some proven success in the way of

⁵⁶⁰ On California's prison camp and conservation program in the postwar period, see Volker Janssen, *Convict Labor, Civic Welfare: Rehabilitation in California's Prisons, 1941-1971*, (University of California, San Diego, PhD Diss., 2005), 455-509.

⁵⁶¹ Ekland-Olson, *Texas Prisons*, 60.

efficiency and effectiveness.”⁵⁶² Montana’s Governor Forrest Anderson praised Estelle as having “revolutionized the philosophy” of the Deer Lodge prison and changed “the theory of the institution’s program from that of merely ‘aging’ [inmates]” to “positive reconstruction of the person’s life through training.” Moreover, Governor Anderson pointed out that “Warden Estelle’s success at Deer Lodge unquestionably has been his good relations with the news media. He trusted them and they have respected him. This good relationship has extended to guards and other members of the prison staff.”⁵⁶³ With so many inmate civil rights suits making their way into court and onto the front pages of newspapers, Estelle’s “good relations” with the press made him an attractive candidate to replace Beto. Indeed, the Texas press said as much in an editorial titled “Prison System Gets Good Man.” The editorial acknowledged that, “these are volatile times for prison systems” and that “there is more unrest among prisoner ranks than ever before in history.” “Even in a well-operated system such as Texas boasts, a problem could flare suddenly,” the editorial warned. The paper praised Estelle as a potential replacement for Beto because he offered “superb credentials” and he “has shown great skill and good judgment” in his twenty-year career in prison management.⁵⁶⁴

Estelle promised to keep the control penology work-regime intact while offering a slightly different approach to how TDC handled “writ writers.” Within two months as director, Estelle disbanded Eight Hoe and dispersed Jalet’s clients

⁵⁶² “Lifer,” *Houston City Magazine*, April 1982, 81.

⁵⁶³ “Montana’s Loss is Texas’s Gain,” press clipping file, unnamed newspaper and no date, Clements Papers, Texas A&M University.

⁵⁶⁴ “Prison System Gets Good Man,” press clipping file, unnamed newspaper and no date, Clements Papers, Texas A&M University.

throughout the prison system. As Pope recalled, Estelle employed disbursement as a new tactic against inmate “agitation.” “He [Estelle] shipped us every which way, we just went into all points of the compass. Some of the guys went to Ellis, some stayed on Wynne, I went with two others down to Retrieve unit, and we were just scattered out.”⁵⁶⁵ Dispersing Eight Hoe militants across the prison system lessened the writ writers ability to communicate and consolidate their efforts. But it also had the effect of spreading the prisoner rights movement more broadly across the system.

This chapter charts the trajectory of the prison reform movement from a few writ writers to a broader movement that made common cause with allies outside of the prison. It tells the tale of several inmate activists and how their prior work in civil rights and black power movements shaped their effort to mobilize and organize their fellow prisoners. This chapter also considers how the civil rights revolution in the external world of politics brought African American politicians to the cause of prison reform. It therefore situates the internal story of prison mobilization and racial violence alongside the external world of political reform and legislative politics.

*Political Reformers and Black Power Revolutionaries:
The Father’s Day Incident & the Ramsey Rebellion*

Estelle faced his first great test as the new director when the tenuous labor arrangement of constant prison fieldwork ruptured in 1973. On Sunday June 17, 1973 Warden Bobby Taylor ordered prisoners at the Retrieve prison to harvest a crop of nearly rotten sweet corn. Retrieve was part of the alluvial swath of land outside of Houston where its majority African American prison population harvested the cash

⁵⁶⁵ Lawrence Pope, oral history conducted by John Wheat, Lawrence Pope Collection, Center for American History, University of Texas, Austin, Box 4C982.

crops of corn and sugar. Taylor was a former McAdams disciple who had worked as the assistant warden at Ellis. Prisoners there alleged that he beat several inmates in 1970. Taylor's June 17 order to work on Sunday angered inmates because TDC had always observed that day as a day of rest and visitation with families. The work order was even more egregious as it was Father's Day. Thirteen of the three hundred prisoners ordered to the field on Father's Day refused to work and remained in their cells. That night, Warden Taylor placed ten of the thirteen prisoners into administrative segregation. The following day, ten of those who refused to work were told to file down a gauntlet of officers. The inmates were then beaten by guards armed with lead-lined rubber hoses, baseball bats, and ax handles. The beaten prisoners were then taken to the field, some without shoes and others just in their under shorts, and forced to labor in the hot summer sun. Some prisoners reported being beaten again in the field and returning to the prison with severe blisters. When the prisoners returned to the cell blocks at the end of the day, the warden met with them individually and told them that "unless they caused more trouble that there wouldn't be anything like that happen again" and that "we would forget it."⁵⁶⁶ However, TDC's practice of making violence against African American prisoners routine and quickly "forgotten" was becoming more difficult to sustain in an era of civil rights.

One of the prisoners who refused to work that day was civil rights veteran Ernest

⁵⁶⁶ *McMillan v Estelle*, testimony of Bobby Taylor.

McMillan, who alerted the public to the Father's Day beating and encouraged political awareness. Born in 1945 in one of Texas's oldest black communities in North Dallas, McMillan hailed from a middle class home, where his grandfather, Dr. W.R. McMillan, was a well known member of the local community. Dr. McMillan, the son of a former slave, was the founder of the McMillan Sanitarium, one of the first African American owned mental health clinics in Dallas. McMillan's father was a pastor of a United Methodist Church in Newnan, Georgia. What captured Ernest McMillan's attention was the racial inequality he saw all around him during his youth. In 1962, during his senior year at Booker T. Washington High School, McMillan joined the National Association for the Advancement of Colored People (NAACP) Youth Council and became active in local organizing. When he graduated from high school, he followed his father to Georgia and enrolled in Morehouse College. While there McMillan became increasingly disenchanted with the NAACP because he found its level of protest to be "mediocre," "lukewarm," and "ho-hum." He later complained that the NAACP idea of protest was to "dress up in your tie, go down to the movie theater, stand in line, ask for a ticket, they would refuse to give it to you, you'd go back to the end of the line and come back up again. That was the extent of protest for desegregating the movie theater, for example."⁵⁶⁷

McMillan found more direct and vocal forms of protest in the Student Nonviolent Coordinating Committee (SNCC). "SNCC," he observed, "was about organizing grassroots people and helping them to build their own structures and being a part of the community with them, and helping them realize their goals which may

⁵⁶⁷ Ernest McMillan, oral history with the author, April 4, 2007, Baylor University, Institute for Oral History, hereafter cited as IOH, Baylor.

be, you know, freedom schools or voter registration and elected officials.” At the age of 18 he became a SNCC field secretary and served as a community organizer for voter registration in Georgia canvassing the more rural parts of the state. McMillan faced mounting racial violence and direct white resistance. “You had shoot outs,” he recalled, “people chasing you, running you off the road, shooting up houses, injuring people, beating people up in demonstrations, arresting you if you had your shirt tail out.” When a friend and SNCC co-worker was killed in Mississippi, McMillan began to embrace black power as a more effective means to create self determination.

There was no adequate response to address murders and false imprisonment and bombings and Ku Klux Klan activities, so we had to begin to become seriously engaged in organizing for our own destiny being built and shaped. And that meant self-determination, that meant organizing for the community, to get the improvements. So, It meant you just couldn't go about desegregating them and sitting next to people or having access to a college. You really had to have economic, political power to bring about those kind of changes. And that's what the Black Power movement is all about. Its just a natural, logical extension of the struggle to advance the people.⁵⁶⁸

Following the passage of the Voting Rights Act in 1965, McMillan returned to Dallas so that he could enroll at the University State College, which later became the University of Texas, Arlington. While in school, McMillan retained his activist streak and founded and presided over the campus organization Student Congress on Racial Equality (SCORE), which aimed its activism against the practice of “Old South week” on campus and against racial discrimination in the university environment where the university routinely flew the Confederate flag, segregated its dorms, and in which professors practiced classroom and grading discrimination. For his efforts, the university suspended McMillan and so he returned to community organizing in Dallas. As the anti-Vietnam war movement gained momentum in 1966,

⁵⁶⁸ *Ibid.*

McMillan turned his attention to military induction centers in Dallas where his organization intercepted young men and provided them with anti-war leaflets that instructed them how to earn school deferments by pre-registering two years in advance for Divinity School. He then organized a SNCC chapter in South Dallas and published the local newspaper, *Black Discipline*, which was a newspaper given to local college students that advocated black history studies and the right to wear African garb on local Dallas campuses. At its height, McMillan's SNCC chapter in Dallas had over two-hundred activist members.

The assassination of Dr. Martin Luther King in April 1968 caused McMillan to join with many other black activists in the assessment that "things weren't working" and that greater militancy was sorely needed. In an effort to link civil rights to economic inequality, McMillan organized an economic boycott of the white-owned OK supermarket. McMillan and SNCC charged that the white-owned store was "ghetto gouging" and that it routinely profited from the local black community by marking up prices and selling spoiled produce and meat. In the attempt to link economic and racial inequality, McMillan and Matthew Johnson, another SNCC activist, held a demonstration against the store in which they told their fellow thirty to fifty demonstrators to fill their shopping cart with food and then walk out of the store. Some other items, such as eggs and a single milk bottle in McMillan's case, were intentionally smashed and broken, causing over \$200 in damages of store merchandise.⁵⁶⁹ The state charged McMillan and Johnson as leaders of the demonstration and found guilty of destruction of private property over

⁵⁶⁹ *Ibid.*

the value of fifty dollars, which was a felony offense with a normal sentence of two to twenty years, for which the state gave McMillan a ten year sentence.⁵⁷⁰

After three months in the local jail, McMillan was temporarily released on bail, only to find that he was also wanted on draft evasion charges. McMillan then fled to Canada and then Africa. McMillan's hopes to find a new home in Africa were short lived, however. McMillan was "romantic about Africa" and felt that "this is always the mother land." After stepping off the plane, he kissed the continent's soil and eagerly looked forward to making human connections and expanding his militancy to include the colonized people of Africa. Not too long after his arrival, McMillan reconsidered his choice and began to long for his return to the United States where he could continue his organizing efforts. Although he abandoned his hopes of remaining in Africa, Ward left the continent with a transnational experience that renewed his energy to organize black resistance at home in the United States. Without his passport, McMillan returned to the United States and was in the midst of organizing when the police arrested him in Cincinnati when an informant "snitched" on him. McMillan was then transferred to TDC in 1970 and housed at the Ramsey prison.

⁵⁷⁰ For an analysis that considers McMillan's role in the OK supermarket demonstration as part of a local, Dallas trend that rejected SNCC and militant violence, see Brian D. Behnken, "The 'Dallas Way': Protest, Response and the Civil Rights Experience in Big D and Beyond," *Southwestern Historical Quarterly*, July 2007, Vol. CXL, No. 1, 1-29. Behnken concludes that "clearly SNCC was unwelcome in Dallas" and that "the lack of violence in Dallas...suggests at the very least that scholars have overemphasized the role of violent behavior in racial change in the civil rights movement." An analysis of the prisoner rights movement, however, shows the ways in which McMillan and former SNCC members continued to forge a vibrant inter-racial movement in Texas. For an account of the OK Supermarket demonstration as "symbolic of how the civil rights movement in Dallas remained fractured," see Martin Dulaney, "Whatever Happened to the Civil Rights Movement in Dallas, Texas?"

McMillan's arrival on Ramsey brought a veteran organizer and a political prisoners to the prison system, but on the day of the Father's Day incident McMillan was not looking to achieve organization or active resistance. When he and ten others refused to work, their efforts were not coordinated and there was no leadership. "This was an individual decision," McMillan insisted. "Hey, we're not going to work, for whatever reason. Somebody may have been up for religious reasons, somebody may not have felt well, somebody may have had their feet hurt, or maybe don't want to work period. But, I know what my reason was—I don't work on Sundays, you know. And I also expected a visit, so it's like, I guess call it religious grounds. I'm not going to work on Sunday." Despite his protestations it seems clear that his civil rights experience and prior militancy influenced his steadfast refusal to work on Father's Day. McMillan and the others knew full well that their refusal to work was likely to elicit a punitive and possibly violent response. Once the beating occurred, it created a wider élan among the inmates, particularly among black prisoners and it roused McMillan to action. McMillan recalled the Father's Day "massacre" as a bitter moment of terrorized racial violence:

We started hearing them [TDC guards] start hollering and screaming, "Get up out of there you sorry son of-a-bitch. Now get your ass out, get up nigger!" Then people screaming and hollering. You could hear them open up the cell. I put on my shoes, I had my back up to the wall, cause I heard they were getting closer and closer opening up cells and hollering and screaming. And then I seen somebody come to my window opened up, and I knew I was going to be next...I was called out of my cell. I was struck several times with a rubber hose and an ax handle and beat, and I was told to run...There may have been twelve to fifteen guards within that hundred yards spread out evenly, like one every ten to twenty yards distance, screaming and hollering, "Keep moving. Don't stop. Go faster!" They would direct us toward outdoors...we could see other prisoners working and they brought them to observe us getting

this retribution of justice from them. They were beating us as we were picking up the corn.⁵⁷¹

While the prison administration hoped to keep the incident quiet, McMillan determined to bring the “massacre” to light. As a black power proponent and community organizer, McMillan had followed the efforts of Jalet and Cruz with great interest. He had also followed state politics and the recent creation of a legislative committee to investigate the court room allegations against TDC.

The notoriety of Jalet’s running court battles had raised the public’s awareness concerning the full extent of the power that building tenders exercised within the prison. Horrified by the court-room revelations of brutality, Charlie and Pauline Sullivan, a former Catholic priest and nun, in 1972 formed Citizens United for Rehabilitation for Errants (CURE), which was a prisoner reform organization aimed at bringing rehabilitative ideas and practices into Texas prisons. The Sullivans had met in Minnesota when Charlie Sullivan took a leave of absence from the church to attend the University of Minnesota. Pauline was a 31-year old nun teaching in Minneapolis, and soon after they met the two became romantically involved. Together they left the church and married in 1970. Over the course of the next year, the couple engaged in various movement activities, from the May Day anti-Vietnam war strike in 1971 in Washington, DC, where they were among the more than 15,000 protestors arrested, to hunger strikes at the local San Antonio jail. Upon their return from the May Day demonstration, the Sullivans dedicated themselves to prison reform by organizing \$3 bus trips to bring indigent family members to East Texas so that they could visit with inmates who lived as far as 200 miles away. Bishop Patrick

⁵⁷¹ *Ibid.*

F. Flores of San Antonio was CURE's biggest sponsor, and he helped raise their profile when he became Archbishop of San Antonio and later the head of the Catholic Church in Texas. From a small apartment in San Antonio, the Sullivans produced a newsletter that advocated rehabilitative and humanitarian prison reforms. Drawing on the experience of transporting hundreds of indigent families to far-away prisoners, CURE emphasized "community corrections," which meant an emphasis on parole, half-way houses, work release programs, and the construction of smaller prisoners in urban areas across the state. Even the name of the organization was designed to emphasize "rehabilitation" for those who were "errants," meaning those "who made mistakes." The terms prisons and criminals were replaced by a humanistic response to crime.⁵⁷² They also created a lobbying effort to press the state legislature to pass a bill that would outlaw the use of building tenders. The Sullivans turned their chartered buses towards Austin and gathered together family members of prisoners to lobby for prison reform at the state capitol, the very building that prison labor helped construct during the convict lease period.

⁵⁷² "CURE: Poor, yes, but determined," *Austin American Statesman*, 21 February 1977; "Couple Core of Prison Reform Lobby," by Jon Standefer, *The Houston Post*, 27 February 1977. In May 1975, CURE held a constitutional convention. The CURE's objective as stated in its constitution was to convince legislators and the public that "Crime can most effectively be diminished by providing errants with information on existing rehabilitative programs, by promoting the creation of additional rehabilitative programs, by developing correctional alternatives, by illustrating to errants that members of our society and government are concerned with their problems and by convincing errants that change can be more effectively accomplished through the exercise of their constitutional rights of free speech, freedom to associate, freedom to petition the government for a redress of grievances and other orderly activity rather than through crime and violence." By 1977, CURE boasted 1,500 member and by 1985 the organization had grown to 2,500 members and it became a national organization for rehabilitation headquartered in Washington, DC. New York Prison Association, Grenader Special Collections, State University of New York, Albany, CURE, Box 68, Series 7; "The Constitution of Citizens United for Rehabilitation of Errants, Lawrence Pope papers, CAH.

By the spring of 1973, the state legislature, under intense lobbying pressure from CURE, introduced a bill to ban building tenders and a second bill to create a legislative committee to investigate inmate charges of abuse. Fred Cruz, who Jalet had freed from prison in 1972, testified during a March 1973 hearing held by the House Committee of Criminal Jurisprudence on the proposed anti-tender bill. “If a prison guard beats up a prisoner,” Cruz explained to the committee “the prisoner has recourse through the federal courts by using the personal damage suit against the guard. If you file against another prisoner, there is not much recourse. The prison administration puts it off as just another fight between two prisoners.”⁵⁷³ Charlie Sullivan testified that he had arranged over “four thousand” visits between family members and that he was corresponding with over fifty inmates. In all his contact with inmates, Sullivan testified that “the biggest number of complaints has been with the building tenders.” Estelle, meanwhile, supported the bill and claimed that TDC already had such a policy that forbade building tenders from having authority over other inmates. In 1963, TDC director George Beto issued an internal TDC memorandum that stated to all wardens that “while it is no prohibition against the use of wing attendants or building tenders, at no time are inmates to be used to perform duties in the area of punishment and discipline. This responsibility rests and must continue to rest solely with custodial officers.”⁵⁷⁴ Estelle pointed to that policy during the legislative debate and argued that the bill only “added statutory emphasis

⁵⁷³ Fred Cruz, testimony before Committee on Criminal Jurisprudence, House of Representatives, 63rd Legislature, March 28, 1973.

⁵⁷⁴ George Beto to Wardens of TDC, memorandum, November 8, 1963, Beto Papers, SHSU, 1-2/1.

to what we consider a long standing policy.” Estelle argued that TDC banned the abusive power of building tenders as long standing policy that had its origins in the Ellis reforms of 1948 and Beto in his 1963 memorandum reinforced that policy.⁵⁷⁵ Without much opposition, the legislature passed House Bill No. 1056 which prohibited any inmate to act in a supervisory or disciplinary role over other inmates. The successful passage of the bill did not conclusively end the building tender practice, however. It had the same loophole as Beto’s 1963 memorandum as it did not outlaw the use of building tenders altogether or dismantle the hierarchical social structure internally. Indeed, the limited nature and specific wording of the bill allowed TDC to continue employing inmates as building tenders as long as they did not have “supervisory or disciplinary authority of inmates.” TDC claimed that building tenders were simply building janitors and turnkeys with no ability to punish or supervise any other inmate. When the power of the building tender system continued despite the law, it placed the burden of proof back upon the inmates.

A month after the House passed Bill No. 1056, the Senate passed Concurrent Resolution No. 87, which sanctioned a joint committee on prison reform to investigate inmate allegations of abuse. The political will and pressure to pass such an investigative committee came from Texas State Senator A.R. “Babe” Schwartz and the Houston Chapter NAACP president Reverend C. Anderson Davis. In 1972, Reverend Davis requested that the Prison Board and TDC hire African American personnel at all levels, including two assistant directors, the next warden appointment, and one African American assistant warden at each unit. Davis also envisioned

⁵⁷⁵ W.J. Estelle to Chet Brooks, October 15, 1973, read in its entirety into the testimony of Eddie Bernice Johnson, *Ruiz* Special Master, CHA, MAI 8-J102.

inmate participation in the pursuit of civil rights. He requested that the Board consider the establishment of an inmate council for self-government and that TDC allow inmates to establish NAACP chapters at each prison. In a letter to Prison Board Chairman H.H. Coffield on December 20, 1972, Board Member David Allen provided the Board's disapproving response. The Board argued that affirmative action hires, particularly at the level of warden and assistant warden, "in and of themselves would be discriminatory" and that such a proposal conflicted with TDC's current policy to hire "qualified personnel...without regard to race, religion, or creed."⁵⁷⁶ Director Estelle, the Prison Board concluded, should decide if inmates could form an inmate council and NAACP prison chapters. Estelle vigorously opposed the establishment of NAACP chapters. Reverend Davis's request fell on deaf ears and he turned instead to sympathetic politicians in the legislature to pursue racial discrimination through the formation of a legislative investigative committee.

In April 1973 the state legislature established the Joint Committee on Prison Reform (JCPR), which was chaired by Texas reformer State Senator Chet Brooks and included such liberal stalwarts as Mickey Leland and Eddie Bernice Johnson. The creation and composition of the JCPR owed much to successes of the civil rights movement in electing minority candidates who pursued a progressive agenda. Indeed, Leland and Johnson were among a group of recently elected minority politicians known as the "People's Five." In 1972, Texas changed its districting rules and allowed State House of Representatives and Senators to be elected from single-member districts. This decision resulted in the election of five minority

⁵⁷⁶ David D. Allen to H.H. Coffield, December 20, 1972, Board of Corrections, general correspondence, November, December 1972, TDCJ, TSLA, 1998/038-55.

candidates, including Mickey Leland, Craig Washington, Anthony Hall, Benny Reyes, and Cecil Bush. Opportunities for African American candidates had grown since Barbara Jordon's 1966 victory in her state senate campaign, which made her the first African American state legislator in Texas since Reconstruction. The election of the "People's Five" in 1973 brought numbers and strong advocates to political issues that mattered most to the African American community. Prison reform was foremost on the agenda of the "People's Five," and although Leland was new to the halls of the Capitol, he became its vice chairman and newly elected House representative Eddie Bernice Johnson joined him on the committee.

The JCPR produced a series of working papers and a final report. John Albach, a graduate of University of Texas's law school and formerly with the Center for the Advancement of Criminal Justice at Harvard Law School, served as the committee's staff director and his staff produced a series of sixteen unpublished working-papers on a variety of topics, ranging from prison homosexuality to the building tender system and prison education. Although these working papers remained unpublished, the staff presented them to committee members during its public hearings on the prison system. Under pressure from CURE's lobbying efforts, the state legislature also created the Citizens' Advisory committee, which Charlie Sullivan chaired and it included twenty-five prominent citizens with mixed racial and ethnic backgrounds hailing from the fields of law, medicine, education, the church, journalism, labor, and a home-maker. For good measure, the Citizens' Committee also included a former TDC inmate and a former member of the Texas Board of

Corrections. Both the JCPR and the Citizen's Advisory committee were to each produce a final report with legislative recommendations after a one year investigation.

The state legislature formed the JCPR only one month before the Father's Day beating and McMillan saw his opportunity to bring the "massacre" into the political arena. McMillan and his mother managed to get a letter to Frances Jalet and she helped McMillan contact sympathetic committee members, particularly Leland and Johnson who visited the beaten prisoners. Upon their arrival to the prison, Johnson was initially "impressed with the cleanliness, the neatness, the attractiveness of the grounds" and since this was her first time that she had ever visited a prison she was "very surprised to see it appear physically looking as pleasant." But once she had contact with the inmates and heard their stories concerning the beatings, she felt "overwhelmed with the oppressive environment that seemed to prevail."⁵⁷⁷

Following their visit, Johnson and Leland found two inmates with their heads and Afros shaved and two others who had "bruises on their bodies, shoulders, and backs."⁵⁷⁸ After seeing physical evidence of abuse, Leland and Johnson defied TDC's wishes to keep the incident a secret. Instead, the committee sent a press release that publicized the incident and provided inmate narratives and allegations of abuse.⁵⁷⁹ Leland and Johnson told the press that "each prisoner was beaten severely, two were bleeding, and one 58-year man with a known record of hearing pathology [was beaten so badly he] was unable to perform the work. He blacked out, in fact,

⁵⁷⁷ Eddie Bernice Johnson, Ruiz Special Master, MAI 8/J-102.

⁵⁷⁸ *Ibid.*

⁵⁷⁹ Statement to the Press, Joint Committee on Prison Reform, July 20, 1973.

and attempts by another prisoner to aid this person were rewarded by further beatings to both.”⁵⁸⁰ Another inmate, the legislators reported, had a “tumor on his shoulder, the size of a baseball.”⁵⁸¹ Leland was visibly angry. “It’s just inhuman to use any kind of baseball bat or ax handle or rubber hose to force somebody to work and say that work is rehabilitation instead of punishment,” Leland admonished. “I think its absolutely horrible for people – whether they be prisoners or whatever – that they be subjected to the type of treatment that these men were subject to.”⁵⁸²

Estelle, meanwhile, denied the charges and characterized the prisoners as “mutinous inmates” and asserted that the inmates were the ones who assaulted the prison guards.⁵⁸³ “When I see 265 men going to work and 10 others not going,” Estelle admonished, “there is little question in my mind that you’ve got a mutinous situation.” Estelle claimed that his people were in their right to use “necessary force” because, by law, “mutinous situations can be met with necessary force to put them down.”⁵⁸⁴ Moreover, Estelle refused to allow media their requests to interview the beaten inmates.⁵⁸⁵ Estelle angrily denounced the beaten inmates and the ensuing investigation: “Those men [the beaten inmates] were fortunate that he [Warden

⁵⁸⁰ “Legislators Call for Probe into Alleged Prison Beating,” *Dallas Morning News*, 14 September 1973.

⁵⁸¹ *Ibid.*

⁵⁸² *Ibid.*

⁵⁸³ TDC Memorandum No. 201, June 29, 1973, TDCJ, TSLA.

⁵⁸⁴ “‘Mutinous Situation’: Prisons Chief Upholds Beatings of 10 Inmates,” *Houston Chronicle*, 31 July 1973.

⁵⁸⁵ “Estelle Back in Inmates Interview Ban in Beatings Case,” *Houston Chronicle*, 18 July 1973.

Taylor] was their warden, and not the Director.”⁵⁸⁶ In a private memorandum to Estelle, Warden Taylor reported that he ordered the beating because of his fear that the work refusal of ten inmates would lead to a prison-wide strike. “It was found out that some of these ten inmates had spread the word through the building that if the rest of the inmates...would just quit... then the Administration couldn’t mess on them,” wrote Warden Taylor.⁵⁸⁷ Warden Taylor continued: “seeing the unrest it was causing in part of the inmate population I ordered [the officers] to arm themselves with rubber hose and night sticks and get ready to put the ten inmates to work...some of the inmates received cuts on their heads and bruises about their bodies, but all were able to go to work.” Taylor reported that seven of the inmates told him that “they would just rather try to forget what had happened” and that “they got what was coming to them.” Three of the inmates, however, remained unrepentant. One told Taylor that “he would work until he decided to quit again” and “that the only thing that I could do to him would be to whip him or kill him and that he had been beat a lot worse than this before and that he was not afraid to die.” Another inmate boldly told Taylor that “he would try to do everything in his power to see that I was paid back for it.” A third inmate, likely McMillan since he said his father was a minister, promised Taylor that “he would try to go through the courts the next time instead of taking matters in his own hands.”⁵⁸⁸

⁵⁸⁶ *McMillan v. Estelle*, testimony of W.J. Estelle, Jr.

⁵⁸⁷ Bobby L. Taylor to W.J. Estelle, Jr., inter-office memorandum, June 18, 1973, TDCJ, TSLA, 1980/020-31.

⁵⁸⁸ *Ibid.*

McMillan was true to his word and contacted Frances Jalet to file a suit alleging that the beating constituted “cruel and unusual punishment.” Jalet filed the civil rights lawsuit *McMillan vs. Estelle* on behalf of McMillan. During the trial, Estelle continued to deny the veracity of the inmate account. “I don’t believe in that. I don’t believe it happened,” Estelle testified.⁵⁸⁹ Despite TDC’s repeated denials, the court concluded that the assault upon the prisoners “constituted a flagrant deprivation of their civil rights.”⁵⁹⁰

Only days before the Prison Reform Committee convened its hearings on the “Father’s Day Incident,” another incident occurred in early November 1973 at the Ramsey prison. As word of what the inmates called the “Father’s Day massacre” spread across the prison system, a group of prisoners at the Ramsey prison responded by plotting rebellion. Eleven inmates, some of them with a history of civil rights activism and self-defense, banded together and decided to confront the brutalities of the prison system through violence. Ramsey’s prison administration was beholden to the building tender system. Indeed, its warden, James “Wildcat” Anderson, had been named in *Dreyer v. Jalet* as the prison official who recruited the building tenders to bring suit against Jalet. Wildcat’s assistant warden, David Christian, was so infamous among the inmates for utilizing building tenders that one prisoner characteristically charged that “violence followed Christian like a shadow.” The inmates believed that Warden Anderson and assistant warden Christian responded to the wave of inmate litigation against TDC by orchestrating building tender assaults

⁵⁸⁹ *McMillan v. Estelle*, testimony of W.J. Estelle, Jr.

⁵⁹⁰ Joint Committee on Prison Reform, Hearings of November 15, 1973; *McMillan v. Estelle*, Findings of Fact and Conclusion of Law.

against minority prisoners. Beginning in mid-October 1973 and continuing for three weeks, there were at least one savage beating a week. White building tenders, for instance, had beaten Eddie Jeffrey and then used sharp razors to cut off his sizable Afro. Inmate Eddie James Ward reported that the building tenders had threatened him that “he was next to be beaten up.” Only the night before the attempted rebellion, another African American inmate, named Simonton, was “jumped on” by a pair of white building tenders, Billy White and Billy Preston. African American inmates viewed these attacks as part of a larger pattern of increased brutality aimed at quieting the disaffection among minority inmates.⁵⁹¹

On November 8, 1973 at 10:30 AM the guards took these inmates to the “writ room” and granted them two hours of legal work. The inmates had not gone to the writ room with the intention of plotting a rebellion, but once there they discussed the beatings collectively and decided, in Eddie Jeffrey’s words, that “We’re going to have to stop it the best way we can.” These inmates were particularly vulnerable to building tender assault because their legal activities placed them in “administrative segregation,” where they lived in individual cells apart from the general population. Building tenders, however, had full access to these individual cells. When the beatings would occur, typically five to six building tenders would storm into the cell, which gave the individual African American inmates little chance to fight them off. Their time in the writ room represented the only opportunity that these inmates had to converse with one another. After a brief discussion concerning the increased beatings, these inmates decided that when they emerged from the writ room that they

⁵⁹¹ “Confidential Staff Report,” John Albach, Staff Director, JCPRR, memorandum to members of JCPR from John Albach, “Tension at the Ramsey Unit,” May 23, 1974, *Ruiz Special Master*, CAH, MAI 8/J-99

would turn the tables on the building tenders and “make them wup us or we wup them.” Four of the inmates opted out of the plot, but the other seven felt that they had no choice but to strike back through violence. Six of the inmates were African American and one of them was Latino.⁵⁹²

Although the inmates knew that only seven inmates could not possibly take over the prison, they felt isolated and without much other recourse other than to attack those who had attacked them.⁵⁹³ The inmates planned to use a hidden knife and a body building weight bar to assault the building tenders when they exited the writ room. On the way out of the writ room, Eddie Jeffrey managed to hide a pocket knife in his boot which escaped Officer Nichols’ attempt at a strip search. Jeffrey first stabbed building tender Lawrence Wynne, who was an African American prisoner whom TDC classified as a 4th class medical condition, meaning he was medically incapable of taxing physical work, and his official job was “wing barber.” Jeffrey countered that Wynne “weighed about 300 pounds and was plenty strong” and that he had joined the other BTs in beating Jeffrey a week earlier. Other building tenders rushed to their defense and the uprising was quickly put down causing several prisoners to suffer broken bones and bruised bodies from the bats, clubs, and knives that were employed to quell the momentary rebellion.⁵⁹⁴

Among the inmates who plotted the rebellion was Eddie James Ward, an activist on the campus of the University of Texas, Austin, a former Marine, and the defense minister for the black power organization the United Community Front

⁵⁹² *Ibid.*

⁵⁹³ Eddie James Ward, oral history with the author, March 22, 1007, IOH.

⁵⁹⁴ *Ibid.*

(UCF). Ward was another inmate who was swept up in the Vietnam war and the tumultuous struggle for civil rights. In the Fall of 1962, at the age of 17, Ward joined a series of nonviolent sit-ins at Woolworth. Despite the racial injustice he witnessed in Texas, Ward remained nonviolent and thought of himself as a patriot. Inspired by President John F. Kennedy's 1960 inaugural address, Ward joined the Marine Corps to serve his country and to earn the education benefits that he would otherwise never afford. Following boot camp, Ward had a year-long combat tour in Vietnam from 1964 to 1965 that forever changed his outlook on violence and race. "I mean Vietnam exposed me to more violence than I ever even thought about seeing," Ward recalled. During his service in Vietnam, Ward and a group of soldiers captured a Viet Cong prisoner near Da Nang on the border with Laos. Following the prisoner's interrogation, Ward's fellow soldiers "pushed him [the prisoner] out of the helicopter" which, in Ward's words, "really threw me off" and "tripped me out." The Vietnam War also exposed Ward to racial disparities that he previously ignored. "I was asking questions that everyone thought that I shouldn't ask, and I was seeing things. I was seeing racism, you know, I was recognizing racism. When I was young, I didn't recognize racism. When I got to be back in the back of the bus when I was young, coming up in Austin it didn't even register on me that it was a race act. But, when I came back I knew that it was a racist act. So the things that I was seeing, I was more worldly aware of what I was seeing than I was when I left." What caused Ward to go through a personal transformation in Vietnam was watching how white soldiers treated Vietnamese prisoners. "The way they treated the Vietnamese," Ward recalled. "The way they imprisoned them. I mean, man, it was terrible. I mean it

was rough...why is it we trying to get these people to go with our way of thinking, why are we doing it this way? Them guys I was with on the tour, we went out, you know, and we captured prisoners and they'd be killing prisoners. We did a lot things we shouldn't have."⁵⁹⁵ Ward's wartime experience in Vietnam politicized him and he joined the ranks of many Vietnam veterans who felt disenchanting against the war and raised their voices in the anti-war effort as "new winter" soldiers.⁵⁹⁶ For Ward, the Vietnam War also opened his eyes to the racial discrimination that he saw all around him and the need for African Americans to embrace self defense, community organizing, and black cultural pride.

When Ward returned from Vietnam in 1966, the black power movement had captured his imagination and inspired Ward's renewed civil rights activity. Back in Austin, Ward came into contact with Larry Jackson, a local community organizer and SNCC member. Together, Ward and Jackson formed the United Community Front (UCF), which was affiliated with SNCC. The UCF also patterned itself on the local community efforts of the Black Panthers and they began in 1968 a local breakfast program and day care center on Twelfth Street in their newly established headquarters, "the Revolutionary Club." Ward was the UCF's minister of defense, and his job was to maintain the stockpile of weapons and help organize training classes in armed self defense. Although the UCF patterned themselves on the Black

⁵⁹⁵ *Ibid.*

⁵⁹⁶ On the politicizing impact of the Vietnam war on some veterans, see Richard Moser, *New Winter Soldiers: GI and Veteran Dissent During the Vietnam Era* (New Brunswick, NJ: Rutgers University Press, 1996); Christian Appy, *Working-Class War: American Combat Soldiers and Vietnam* (Chapel Hill: University of North Carolina Press, 1993); and Wallace Terry, ed. *Bloods: An Oral History of the Vietnam War, by Black Veterans* (New York: Random House, 1984).

Panthers, it was a local organization that eschewed national control and its aim was autonomous control within the immediate black community. Ward explained that, “we wanted control, see because the Black Panthers, they wanted us to sell papers and stuff and send the proceeds to them. But we wanted control. That’s the one thing that I always pushed for.”⁵⁹⁷

In 1969, however, Leonard Meadows, Tommy Ray, and Ray’s wife approached Ward to participate in a burglary with them to steal the deposits of the Texas Warrant Company in Austin, which was a credit union for state employees. Neither Meadows nor Ray were part of the UCF and the burglary for them was simply a way to maintain their heroin addiction. Ward had access to automatic weapons, particularly Soviet-made AK-47s, and they convinced him to be part of the crime so that he could gain more money to fund the UCF, which after three years of breakfast and daycare programs was rapidly running out of funds. Ward was the only one of the four who was caught for the robbery, as Tommy Ray and his wife tipped the police off against Ward after the couple had a fight over whether or not Ward was sleeping with Ray’s wife. Ward was given an astounding 101-year sentence for his part in the burglary. The prosecutor in Ward’s case recalled that Ward’s militance and cultural embrace of black power added to the sensationalism of his trial and his harsh conviction. “Eddie James Ward walked into that courtroom wearing a dashiki, an afro and a hostile attitude,” recalled Ward’s prosecutor, “and he scared those 12 white middle Americans to death, so they put him in the pen for 101.”⁵⁹⁸ Ward defiantly refused to turn over Meadows and the Rays to the police and he turned

⁵⁹⁷ Ward, oral history with the author, IOH.

⁵⁹⁸ Don Fisher, “Ward: A Radical View from 101 Years Alone,” *Austin Today*, December 1975, 32-38.

down a seven-year sentence offered in exchange for a guilty plea. “I don’t think no one in the world is to the left of me,” he told a reporter at the time of his trial. “I can’t be moderate. I realize there is a time for compromise, and sometimes a historical retreat is necessary. But I’m not going to accept a Jimmy Hoffa-type condition on any parole. I’m not going to sell out to oppress the masses for self-interest. I feel that anyone who does this is not really sincere in those things he professes, or those things he’s running around telling everyone about or trying to expose to the masses. What is not good for him is definitely not good for the masses...I’m not going to sell it out. I’m going to maintain.”⁵⁹⁹

Once inside the prison, Ward understood that Hobbesian laws of racial victimization and violence ruled life within TDC. “It was ruled by a mass – who was the baddest,” Ward remembered. “You know, who had the most muscles. They should dominate. It was black on black and white on white and Mexican on Mexican.” Ward surrounded himself with a clique of fellow black power militants who advocated self defense and actively resisted the building tender system. “The first thing I done was circle the wagons,” Ward recounted. “Everybody knew me from Austin. And when I got there I just got those people together that I knew that I could trust and circled the wagons. No, I wasn’t afraid. I was a Marine. I was never been afraid. You know, I’ve always been afraid of my activities, of myself. How far would I go. And when I was young, I had no boundaries of what I would do for justice. And that was my fear, but once I seen it [the prison] once my eyes set on that, I wanted to change it.” Ward was particularly disturbed by the building tender’s

⁵⁹⁹ *Ibid.*

ability to rape other men without reprisal. “I’m not going to sit around there and let the man, anybody in authority, rape, anybody that puts up resistance is not going to be raped in my presence.”⁶⁰⁰

Ward further defended himself by reaching out to those outside of prison who might help his cause. Ward developed a close and personal relationship with Janet Stockard, who was an anglo UT law student, a self-defined “hippie,” and a “movement lawyer” who had come into contact with prisoners through CURE’s social work. Stockard visited Ward the day after the incident and found Ward with bloody gauze around his head and badly beaten. Ward told Stockard that three building tenders had rushed into his cell the day after the incident to seek retribution by beating him. She immediately called Mickey Leland of the JCPR who had Ward moved to the prison hospital for his wounds and for protection. Leland then ordered JCPR staff to visit Ramsey and investigate. Warden Anderson met the JCPR investigators upon their arrival and asked them “to report that these building tenders risked their lives to save others and that this was a good example of the good in the building tender system.”⁶⁰¹ Moreover, Warden Anderson emphatically insisted that the men on Ramsey were “violent and dangerous men” who were “not in here for singing too loud in church on Sunday.”

The inmates told a different story, however. The committee staff found Ward “in his cell covered with blood caused by head wounds. Ward was transferred to the

⁶⁰⁰ Ward, interview with the author, IOH.

⁶⁰¹ “Confidential Staff Report,” John Albach, Staff Director, JCPRR, memorandum to members of JCPR from John Albach, “Tension at the Ramsey Unit,” May 23, 1974, *Ruiz Special Master*, CAH, MAI 8/J-99

prison hospital at the Walls on Saturday.” The other inmates on his wing corroborated Ward’s account about the building tender assault. Inmate Lonnie Flowers, for instance, told JCPR staff that since Warden “Wildcat” Anderson had taken over at Ramsey, he had “drastically cracked down on the inmates” and things had become “very explosive,” the prison environment was “very tense now at Ramsey, and without something to look forward to, the inmates are more likely to riot.”⁶⁰² The JCPR report stressed that there was “tremendous pressure on the inmates, pressure on the BTs to be hard on the inmates.”⁶⁰³ In a November 11, 1973 letter to state Senator Ron Clower, inmate Steve Blanchard described the tension at Ramsey, his hopes for peace and nonviolence within the prison, and pleaded for the legislature to intervene. “It is fairly common knowledge what Warden W.V. Anderson is trying to do on this unit,” Blanchard wrote. “His ‘special’ mission to break-up all of the ‘writ writers and agitators’ is resulting in people being seriously injured and may result in more serious incidents if the unbearable pressure does not cease. The main idea everyone had in mind was for a peaceful change in our archaic penal system... We want peaceful change. But we need outside help. This is why we are imploring you to help us!”⁶⁰⁴

In their attempt to interview the prison staff at Ramsey, the committee staff faced intransigence, denials, recriminations, and repeated attempts to block their investigation. Warden Anderson was “exceedingly reluctant” to permit Officer

⁶⁰² *Ibid.*

⁶⁰³ *Ibid.*

⁶⁰⁴ Steven Blanchard to Senator Ron Cloward, November 11, 1973, Papers of Ron Cloward, TSLA, 1981/217.

Chalmers, one of the guards involved in the incident, to talk to committee staff. He did, but when he learned that JCPR had taped the interviews, Warden Anderson and assistant warden Christian “marched into the room” and “demanded the tape of Mr. Chalmers.” John Albach reported that the JCPR “did not release the tape. Both were intensely angry.”⁶⁰⁵

In response to Ward’s beating, attorney Janet Stockard filed a civil rights suit on behalf of Ward. Stockard alleged in her suit that TDC barred her clients from correspondence with her and members of the state legislature. Moreover, her suit claimed that Warden Anderson and assistant warden Christian provided building tenders with authority over fellow inmates and that the eleven building tenders who assaulted her clients utilized “cruel and unusual” punishment against their fellow inmates.⁶⁰⁶ Stockard’s suit, *Ward v. Estelle* filed on December 19, 1973, was the first civil rights action aimed directly at the building tender system.

TDC attempted to thwart Stockard’s outside “interference” and placed her clients in solitary, censored their mail, made Stockard wait for hours to meet with her clients, confiscated her tape recorded interviews, and moved her clients suddenly from one prison to another on the day of her visitation. Stockard’s relationship with Ward also became intimate, mirroring the personal relationship between Cruz and Jalet.⁶⁰⁷ Stockard later claimed that her clients had also warned her that TDC had

⁶⁰⁵ “Confidential Staff Report,” John Albach, Staff Director, JCPRR, memorandum to members of JCPR from John Albach, “Tension at the Ramsey Unit,” May 23, 1974, *Ruiz Special Master*, Center for American History (CAH), University of Texas, Austin (hereafter cited as CAH), MAI 8/J-99

⁶⁰⁶ *Ward v. Estelle*, C.A. 73-H-1721, SD/Tex, Houston Division.

gone so far as to plan her murder by having a car run her off the road on the late-night, two lane return drive from rural Brazoria to Austin.⁶⁰⁸ Although such an allegation may simply be part of the exaggerated “convict grapevine” of misinformation, it was clear that TDC openly attempted to prevent Stockard from having access to her clients.

TDC followed the same line of attack against Stockard that Beto had used against Jalet: that she was fostering “revolutionary insurrection.” Warden Anderson and Assistant Warden Christian, for instance, alleged that Stockard’s clients were members of the Symbonese Liberation Army (SLA) and that they had hatched a plot to murder prison officials. Mirroring the allegations that the California prison system made in the George Jackson shooting, TDC charged that Stockard was plotting to smuggle guns to Ward as part of an open prison insurrection. Stockard contributed to the hyperbolic allegations when she held a press conference during a July 3, 1974 demonstration on the steps of the state capitol in Austin. Stockard charged that prison officials would murder her clients during a TDC orchestrated “riot.”⁶⁰⁹ While Ward was an active part of the black power movement, he was not an SLA member and it was unlikely that Stockard, who was more a counterculture hippie than an armed insurrectionist, would supply her clients with weapons. Murder within Texas prison

⁶⁰⁷ Stockard and Ward never married, but they did carry their in-prison romance to the “free world” for a brief time in the early 1980s. Ward, interview with the author, IOH; Janet Stockard, conversation with the author, October 16, 2008.

⁶⁰⁸ Ward, interview with the author, IOH; Janet Stockard, conversation with the author, October 16, 2008.

⁶⁰⁹ “Officials ‘Plot’ Client’s Murder” and “Impending Bogus Riot Allegedly Schemed to Cover Deaths,” *Austin American Statesman*, 4 July 1974.

was always a possibility, but the Texas prison system maintained the nation's lowest murder rate and it seemed unlikely that TDC would attempt to murder Stockard or her clients when they had so many other means of intimidation at their disposal. Nevertheless, the heated exchange between both groups only heightened the tension within the prison and it also brought more public speculation and political scrutiny than TDC wished.

*The Hope of Community Corrections Held Hostage:
Political Reform and the Carrasco Hostage Crisis*

Out of this growing war between keepers and kept, a political opportunity for a compromise was momentarily in the offing and then just as quickly lost. In December 1974, both the JCPR and the Citizens Advisory committee issued their comprehensive reports that included over 160 recommendations for prison reform. The JCPR report, which the staff culled together from over 1,000 pages of interim reports and hearings, provided a comprehensive overview of TDC. It focused its many recommendations on three areas of prison reform: lack of medical care, the building tender system, and racial segregation.

JCPR members felt confident that the issue of medical care might elicit enough public empathy to help their reform recommendations gain passage. On medical care, the report found that TDC's employment of inmates as "nurses" pointed to the "glaring need for more doctors." "When one considers that two physicians are the only full-time physicians serving TDC's over 17,000 inmate population, one must seriously question the priorities of the TDC administration," the report concluded.

JCPR staff director John Albach later testified about his dismay when he first learned that inmate “nurses” performed operations on other fellow inmates. “Very frankly, I had come out of an operating room that I had walked into and suddenly found out that there was an inmate on the operating table, an inmate giving the anesthetic and an inmate performing the surgery. I asked about it, because inmates had told us about it, but, frankly, I didn’t believe that such a thing happened.”⁶¹⁰ The prison’s Dr. Astone confirmed to Albach that inmates did indeed perform surgery and that the “convict doctor” who performed the surgery was inmate Applegate, who was a former truck driver who learned to operate “by watching and eventually by doing. He had absolutely no formal medical training.”⁶¹¹ The report cited the use of “convict doctors” and the lack of health care as one of the most pressing issues for humane inmate treatment.

The TDC Treatment Center for the mentally ill was another “glaring example” of inadequate care in which “tranquilizer and hypnotic drugs are used primarily to control inmates, not to treat them.”⁶¹² TDC had attempted to build a hospital for the mentally insane in the 1950s, but its effort failed to pass muster in the state legislature. As a result, TDC housed the Treatment Center at the Walls prison and it offered 82 single cells with a 132 beds. A JCPR working paper reported that these inmates “were frequently prescribed medications” that kept them heavily sedated. The medications typically included the mood altering drugs Thorazine (100-200 mg),

⁶¹⁰ Testimony of John Albach, *Ruiz v. Estelle, Ruiz Special Master Records*, CAH, MAI 8/J88.

⁶¹¹ *Ibid.*

⁶¹² “Final Report of the Joint Committee on Prison Reform,” 63rd Legislature, December 1974.

Mellaril, Artane (2-5 mg), Chlorale Hydrate (500 mg), and Valium. T Because the Treatment Center housed so few inmates, TDC also placed mentally ill inmates in the protected wings of individual prisons known by inmates as “sissy wings” and “punk wings.” The JCPR working paper reported that a chief complaint among mentally disturbed inmates was that housing them in the “punk wing” resulted in “disrespect to his manly pride” that left them with a permanent “homosexual jacket.”⁶¹³ The Treatment Center also “experimented” with a device called the neurotrone machine, which was a Soviet made device that delivered a mild form of electro-shock therapy to inmate patients. Another JCPR working paper noted that an “inmate nurse” operated the neurotone machine and that “he did not have a background in psychology and he basically taught himself how to the run the machine.”

The JCPR’s allegations about electric shock therapy stirred up the recent discovery that an Alabama prison warden had used electric shock therapy in domestic prison torture. At the Cummins prison farm in Arkansas, Warden Jim Burton had used a device called the “Tucker Telephone” as a means to torture and discipline inmates. The “Tucker Telephone,” according to an Arkansas State Police investigation, was “an electric generator taken from a ring type telephone, placed in sequence with two dry cell batteries, and attached to an un undressed Inmate strapped to a treatment table...by means of electrode to a big toe and the second to the penis, at which time, a crank was turned sending an electric charge into the body of the

⁶¹³ “Treatment of the Mentally Ill and the Mentally Retarded – Working Paper,” submitted to the Joint Committee on Prison Reform, by Jim Gibson, committee staff, CHA, Ruiz Special Master, MAI 8/J-85.

inmate.”⁶¹⁴ Such horrific findings in Arkansas led to the nation’s first “totality of prison conditions” lawsuit, known as *Holt v. Sarver* decided in 1970 and affirmed in 1971, which caused the federal court to declare the Arkansas state prison unconstitutional and to place the state prison system into federal receivership.⁶¹⁵ The JCPR’s findings on TDC’s poor medical care thus reminded the media and state legislators that prison reform was urgently needed if Texas was to avoid the kind of court ordered intervention that Arkansas experienced.

The JCPR authors, including Leland and Johnson, saw their role in prison reform as bringing civil rights and humanity to prisoners. Much of its focus on racial discrimination can be attributed to Leland and Johnson’s ability to successfully communicate with minority prisoners who were victims of mounting racial violence. Although TDC claimed that it was already well on the way to racial integration within the prison system, the JCPR concluded that more than 56% of all inmates lived in racially segregated living units. The report noted that the degree of racial segregation varied on each unit as follows: Ramsey II (100 percent), Central (97 percent), Clemens (93 percent), Darrington (89 percent), Eastham (55 percent), Jester I (86 percent), Ferguson (82 percent), Jester II (74 percent), Retrieve (74 percent), and Ramsey I (53 percent).⁶¹⁷ Moreover, the JCPR stressed that field work assignments

⁶¹⁴ Kim Gilmore, “States of Incarceration,” (Ph.D. diss., New York University, 2005), 153.

⁶¹⁵ On the legal development of the *Holt v. Sarver* court case in Arkansas, see Feeley and Rubin, *Judicial Policy Making and the State*, 51-80; and Gilmore, “States of Incarceration,” (Ph.D. Diss., New York University, 2005), 116-223; *Holt v. Sarver*, 309 F. Supp. 362 (1970); and, *Holt v. Sarver II*, 442 F. 2 d. 304 (1971).

⁶¹⁷ “Racial Practices under criticism,” *Houston Chronicle*, December 22, 1974; “Final Report of the Joint Committee on Prison Reform, 63rd Legislature, December 1974.”

were entirely segregated and that “even in a wing which is racially and ethnically mixed, inmates who share a cell are almost always of the same race or ethnic background.” The JCPR also cited that TDC employed a largely white security staff, which the committee viewed as a detriment to race relations within the prison. The final report cited the racially discriminatory practices of low-level correctional officers as “especially critical” since prison guards “directly shape the inmates’ environment.” The report also found the highest levels of TDC officials as complicit in racial discrimination. “Rather than making an aggressive effort to stop discrimination and segregation at the unit level, the Department appears to tacitly support those practices. No real effort has been made to force unit Wardens to conform with the requirement of law or TDC policy.” Moreover, the JCPR noted that while over 60 percent of the prison population was either African American or Latino, there were no black or Mexican American chaplains. Eight of the system’s 16 chaplains were Baptist and there was no Imam to serve the needs of the Black Muslim community.

Estelle countered the JCPR’s critique of racial segregation by arguing that the inmates themselves were the source of resistance to racial integration. “We have Black Muslims who insist upon staying together,” Estelle defended TDC to the press. “If we mixed them with other inmates, we could expect trouble. We could also expect trouble if we put some whites with blacks. But we do not practice racial discrimination.”⁶¹⁸ Warden Bobby Morgan of Ferguson similarly told reporters that the JCPR did not understand the stark racial reality of segregated prison life:

⁶¹⁸ Carl Freund, “Behind these Walls, Huntsville: A Mirror,” *Houston Chronicle*, November 28, 1974.

“Inmates tend to segregate themselves by races during their free time.”⁶¹⁹ Upon the report’s public release, an anonymous prison guard was quoted in the *Dallas Morning News* with the crude admission that summed up TDC’s response to charges of racial discrimination: “We don’t practice discrimination here. We treat niggers just like whites.”⁶²⁰

The JCPR also understood that racial violence and discrimination within the prison system was intricately linked to the building tender system. “Some wardens use racial segregation as another mode of punishment,” the report concluded. “An inmate of one race was assigned to live in a wing with inmates all of another race. This was done to a number of so-called ‘writ writers’ as punishment. There is no excuse for this practice.”⁶²¹ The report also understood that the TDC’s continued use of building tenders contradicted the 1974 63rd Legislature’s House Bill 1056 that outlawed the use of supervisory inmates. The report concluded that during the two-year study the staff “was told repeatedly that BTs are used to enforce discipline and to carry out physical punishment” and that “the staff has seen too many ‘incident reports’ ...to believe that these allegations are unfounded.”⁶²² The report acknowledged that “there are not an adequate number of TDC guards to properly supervise TDC’s large prison population without considerable reliance on building

⁶¹⁹ *Ibid.*

⁶²⁰ *Ibid.*

⁶²¹ “Final Report of the Joint Committee on Prison Reform, 63rd Legislature, December 1974.”

⁶²² *Ibid.*

tenders” and that “complete elimination of the ‘BT’ system will require determination on the part of TDC to comply with the law and end the brutal system it sponsors.” It would also require that the state legislature approve a large sum to hire new guards to replace the building tenders. JCPR co-chair Leland expressed his desire that the prison reform consider the humanity of inmates in its reevaluation of TDC:

We’re still living in the dark ages, whether we want to accept it or not. Even though we talk about idealistic things like rehabilitation or correction, we still are faced with the fact that the public is grossly ignorant of the fact that the inmate population – even though its committed fouls against the society we live in – is still made up of human beings. We fail to treat them as human beings. I for one feel that all people, regardless of the mistakes they make in life, should at least be given the right to humane treatment.⁶²³

The Citizen Advisory committee report was similarly concerned with racial discrimination, poor health care, and the brutality of the building tender system. The Citizen’s report, however, provided a far sharper critique that was aimed against TDC’s agri-business model and the clustering of prisons into a single geographic and rural area. Under Charlie Sullivan’s guidance, the Citizen’s Advisory committee conducted a nine-month study of TDC in which they “encountered substantial TDC opposition” from a “closed system, hidden from public view.”⁶²⁴ Despite the difficulties in investigating such a guarded prison environment, the Citizen’s committee made more than 150 recommendations in a 280-page report.

The Committee criticized the state’s prison system as “a victim of its own history” in which “large, rural prison farms, concentrated in a single part of the state” offered only “a single kind of maximum security correctional model.” Moreover,

⁶²³ Kathi Miller, “Lawmaker gloomy on prison reform,” *Star Telegram*, Austin, 9 December 1974.

⁶²⁴ “Citizen’s Advisory Committee Final Report,” released November 25, 1974.

TDC used “unpaid prisoner labor” to farm “tens of thousands of acres of rich east Texas land” that resulted in no useful vocational training for inmates in an increasingly urban and industrialized world. “For too many, manual field labor is the only work experience ever obtained in their stay at TDC,” the Citizens’ report noted. The report concluded that, “it is difficult to see how the ability to do field work equips ex-prisoners to compete for jobs in the urban labor markets to which they will return.”⁶²⁵

The Citizen’s Advisory report argued that while TDC may have become efficient since the 1948 reforms, it was not modern because it was inhumane and too focused on running an agri-business rather than offering inmate rehabilitation. The particular target of the report’s ire was the Coffield prison. Although Coffield was the first TDC prison to utilize a modern wheel-spoke design, the prison followed the traditional East Texas agri-business model. TDC built the new prison near Huntsville on over 18,000 acres of land with a massive inmate capacity of 4,000 and with the unusually large price tag of \$20 million. The committee recommended a moratorium on construction of a “high-cost, traditional, rural prison farm facilities” that “dramatically restricts TDC’s ability to recruit and hold able and diversified staff, especially minorities.”⁶²⁶

To replace agri-business prisons, the Citizens Advisory committee recommended “community corrections,” by which it meant a “broad, modern corrections program” providing “diversified alternatives” such as probation, parole,

⁶²⁵ *Ibid.*

⁶²⁶ *Ibid.*

halfway houses and correctional centers located in local communities. It argued that “keeping the offenders in or near the community from which they come will provide a minimum of disruption of family life” and thereby “avoid the negative impact of massive institutionalization.” Other recommendations from both the JCPR and the Citizens Advisory report included: ending racial segregation, hiring minority employees, allowing inmates (particularly African Americans) to grow their hair as they pleased, payment of wages to inmates, a grievance system for inmates, increased mail and visitation privileges, experimentation with conjugal visits, a provision for impartial disciplinary committees and for prisoner appeals, abolition of solitary confinement in its present “inherently cruel and debilitating” form, and an end to “corporal punishment, beatings, physical threats, and intimidation” at the hands of building tenders.⁶²⁷ As Leland remarked to the press, what both committees hoped to achieve was to effectively “urbanize” the prison system. “We find that even though our system compares favorably to the other systems throughout the country,” Leland reminded the press “we’re falling far short of being a correctional institution. We’re falling far short of really doing the things that are necessary to return the inmate population back to the streets of our cities...and making them responsible citizens.”⁶²⁸

The Citizens Advisory committee’s emphasis on parole and “community corrections” had some support within the highest levels of TDC. Indeed, prison director Jim Estelle had repeatedly told the press that at least 40 percent of the 17,000 inmate population did not need to remain in prison and that they could instead be

⁶²⁷ *Ibid.*

⁶²⁸ “Lawmaker gloomy on prison reform,” by Kathi Miller *Star Telegram*, Austin, 9 December 1974.

paroled or transferred to a community-corrections model.⁶²⁹ “Communities and the state together have got to seek some alternatives to imprisonment,” Estelle told the local press. He believed that prisons should be reserved only for those offenders who TDC deemed violent and dangerous to the community. “When we use them [prisons] for anything else, I think we are walking down a road of social and economic bankruptcy,” Estelle declared. Estelle continued to emphasize the TDC work tradition, but he believed that a rising prison population made a work-release system for prisoners increasingly necessary. “I am a believer in a system of restitution in which a convicted person has to work to repay the money he stole or embezzled. More prisoners should stay in local prisons and work at jobs in the community to make restitution.”⁶³⁰ Estelle had not abandoned his commitment to the control penology and agri-business model in the East Texas prison system, but he was troubled by the growing prison population and interested in the possibility of experimenting with “community corrections” for inmates with minimal criminal and behavioral records.

Initial press accounts and editorials, particularly those from large city papers, also responded positively to the committees’ ideas. An editorial in *Dallas Morning News* highlighted the stark difference between the committees’ vision for prisons and TDC’s current management practices. “Texans must decide what they want their prison system to do: Punish, rehabilitate or both. And then they must either be prepared to support the system adequately or be prepared to live with the

⁶²⁹ “Citizens Group asks prison system change: Effective rehabilitation sought,” *Houston Post*, 27 November 1974.

⁶³⁰ “End of a Prison’s Dark Ages,” by George Carmack, *San Antonio Express*, 27 January 1974.

consequences.”⁶³¹ The *Houston Post*, on the other hand, placed the Citizen’s advisory report in the broader historical trajectory and irony of postwar prison reform. “The irony of the citizens’ committee report is that the TDC is itself the product of reform efforts. The Texas system has served as the model for other penal systems and has been widely praised for its efficiency and progressiveness. Now the advisory panel warns that those gains are jeopardized if still more reforms are not forthcoming.”⁶³² The *Austin American Statesman* editorial staff found the committees’ recommendation to pay inmates a wage as “eminently fair, workable and productive.”⁶³³ Another article in *The Houston Post*, meanwhile, found that the recommendations for better inmate medical care amounted to “prescriptions for the kind of medicine the TDC needs in large doses to cure its ailing inmate health care program. The legislature must see to it that the medicine is administered by appropriating the money to pay for it. Only then will this shameful situation be improved.”⁶³⁴ The *Houston Post* editorial admitted that some might see the recommendations as “coddling criminals.” “But the most effective penology is that which returns the largest number of lawbreakers to society as productive, law-abiding citizens,” the newspaper editorialized. “The legislature should not ignore the work of the citizens’ advisory committee on prison reform.”⁶³⁵

⁶³¹ “Footing the Bill,” *Dallas Morning News*, 9 December 1974.

⁶³² “Bars to Reform,” *Houston Post*, 6 December 1974.

⁶³³ “Eminently Fair Prison Reform,” *Austin American Statesman*, 23 December 1974.

⁶³⁴ “Right Prescription,” *Houston Post*, 15 December 1974.

⁶³⁵ *Ibid.*

Others, however, condemned the JCPR and the Citizens Advisory Council reports. State Senator Walter “Mad Dog” Mengden, a disaffected JCPR committee member, argued that the recommendations, if implemented, “would cause the greatest crime wave in the history of the world because every person would have a tremendous incentive to want to go to prison in order that he could enjoy all the tremendous benefits in it.” Calling himself a “strong believer in law and order,” Mengden promised to do all in his power to see that many of the recommendations were not implemented. Mengden vituperatively charged that “The [JCPR] staff consisted of the most grotesque collection of radical activists ever put together under one roof east of Berkeley.”⁶³⁶ Mengden believed that the JCPR staff “displayed a profound sympathy for the criminal element and intense hatred for the (TDC)” and that the staff had “acted as cheerleaders for the convicted murderers, rapists, burglars, and armed robbers and showed no interest in protecting society from such individuals.” Indeed, during the course of the year-long legislative investigation the JCPR dismissed two staff members for “extremely strong emotional bias.” The JCPR fired staff member Ernesto Andrade for being too sympathetic to the prisoners and it similarly discharged staff member Wayne Oakes for being too quick to defend TDC. JCPR committee staff director Albach felt that Andrade “was completely and totally blinded by his bias against TDC” and that “he was unable to discern the difference between what the inmates told him and what actually existed.”⁶³⁷ Co-chair Leland later agreed that “Mr. Andrade appeared to be too pro-inmate” and that he “expressed

⁶³⁶ “Prison Reform Panel Rapped,” *Houston Post*, December 18, 1974.

⁶³⁷ Testimony of John Albach, *Ruiz v. Estelle*, *Ruiz* Special Master Records, CAH, MAI 8/J88.

an extreme support of the inmate population, those who appeared to be more dissident than objective.”⁶³⁸ On the other hand, Leland also found that “Mr. Oaks tended to support almost wholeheartedly...the position of the Texas Department of Corrections.”⁶³⁹

Although Leland later admitted that the committee staff suffered from bias on both sides, his comments to the press at the time of the report’s release demonstrated his frustration with Mengden’s allegations. Leland feared that public infighting on the JCPR committee might hurt the political chances for legitimate reform. “Senator Mengden is joking or he has lost his mind, for this was indeed an act of lunacy,” Leland charged to the press. In his press conference, Leland claimed that Mengden had never once during the committee’s many months of study “raised a point of disagreement over any staff member” and that the senator was maliciously “trying to destroy all our efforts.” Leland issued a public challenge against such charges: “I defy Walter Mengden to prove any of his foul allegations and personal attacks against any member of our staff.”⁶⁴⁰ Leland was particularly angered by Malden’s opposition to a JCPR recommendation that called for a ban on prison discrimination against prisoners on the basis of “political beliefs.” Mengden countered by saying that there were certain inmates preaching and organizing “revolution.” When the committee questioned the proposed ban, Leland expressed disgust that it would “appease a reactionary like Walter Mengden” by tossing overboard “the basic American

⁶³⁸ Testimony of Mickey Leland, *Ruiz v. Estelle*, *Ruiz* Special Master Records, CAH.

⁶³⁹ *Ibid.*

⁶⁴⁰ “Prison Reform Panel Rapped,” *Houston Post*, 17 December 1974.

principles of democracy.”⁶⁴¹ Leland and Mengden also clashed how to interpret the importance of Black Muslims in prisons. “The staff made a great deal of the fact that the Black Muslims form the largest religious group in the TDC,” said Mengden. “I think that’s sort of interesting when you compare that with the low percentage that Black Muslims have in society as a whole.”⁶⁴² Mengden thus hinted at a belief that race, Islam, and criminal activity were linked. Mickey Leland dismissed such statements as “ludicrous and ridiculous.”⁶⁴³

The JCPR recommendations to pay prisoners a wage and to legislate the hiring of minority prison guards were also contentious issues. Mengden sharply criticized the JCPR recommendation that inmates earn a small wage. “Prisoners are not working for a living – they are working as part of their punishment. Criminals are in prison for punishment,” Mengden declared. David D. Allen, a former member of the Texas Board of Corrections and a member of the Citizens Advisory panel, made common cause with Mengden’s critique. Allen charged that the Citizens’ report was “totally devoid of any recommendation relating to the tremendous progress” and the “good work” of Texas prisons over the past thirty years. Allen was particularly vocal over the report’s “ridiculous and self defeating” recommendation that TDC hire minority employees rather than hiring “qualified people.”⁶⁴⁴

⁶⁴¹ *Ibid.*

⁶⁴² *Ibid.*

⁶⁴³ *Ibid.*

⁶⁴⁴ “Houston Lawyer Raps Citizen Panel on Prison Reform,” *Houston Chronicle* 2 November 1974.

In light of these battles, the press wondered whether the “thinly veiled antagonism between state prison officials and the legislature’s prison reformers” would result in any lasting legislation. The *Sunday Express News* editorialized that such open antagonism and perpetual intransigence “shows that the men in charge of our prisons believe that prison reform represents a direct, almost personal affront to themselves.”⁶⁴⁵ Some members of the Citizen Advisory committee also expressed their frustration with TDC’s intransigence and halting effort to block the committee’s desire for surprise prison inspections. “It said in the beginning that if we had to give prior notice [of visits], we wouldn’t play. We said if we had to do that, we couldn’t DO A GODDAM THING. I’m outraged,” declared an unnamed University of Texas law professor and committee member.⁶⁴⁶ On the other hand, the *Express News* editorial suspected that “much of the responsibility rests with the reform movement itself. The reformers have seriously crippled themselves with the adversary relationship they helped to create between their movement and the established prison system.”⁶⁴⁷ Attacked by journalists and betrayed by dissenting committee members, some members of the committee complained that they had been “treated like orphans all along” and that they should express “our resentment and anger at what’s happening.”⁶⁴⁸

⁶⁴⁵ “Prison Reform Movement Needs to Accentuate the Positive,” *Express-News* editorial, 22 September 1974.

⁶⁴⁶ “Citizen Prison Committee Sizzles,” *San Antonio Light*, 22 September 1974.

⁶⁴⁷ “Prison Reform Movement Needs to Accentuate the Positive,” *Express-News* editorial, 22 September 1974.

⁶⁴⁸ “Citizen Prison Committee Sizzles,” *San Antonio Light*, 22 September 1974.

What doomed prison reform, however, was the specter of violence that hovered over the prison system. Four months before the committees released their reports, the public was fixated on a prison hostage crisis that damaged the otherwise growing political traction for prison reform. In the summer of 1974, three inmates, Frederico “Fred” Gomez Carrasco, Rudolfo “Rudy” S. Dominguez, and Ignacio “Nacho” Cuevas had smuggled guns into the Walls prison at Huntsville. Carrasco was the group’s leader and he had a long history as a major narcotics trafficker across the Mexican and US borders. A year earlier, Carrasco was involved in a shoot out with a dozen plainclothes officers at the *Tejas* motel in San Antonio. The assault and his subsequent apprehension led to a sensational trial in which the state convicted him on January 9, 1973 for assault with intent to murder. The state convicted Carrasco and gave him a life sentence. As a major player in the narcotics trafficking world, indeed as a prominent member of the Mexican Mafia, Carrasco was known on the streets of South Texas Hispanic communities as *el Jefe* and *el Viejo*. For his life of crime, Carrasco had previously served time in the Federal reformatory at El Reno, Oklahoma; the Federal Penitentiary in Leavenworth, Kansas; and the United States Penitentiary in Terre Haute, Indiana. A TDC “psychological summary” found that Carrasco possessed “high intelligence, cunningness, and total disregard for existing social and moral values.” The report claimed that Carrasco “had been involved in the murders of 50 people” and that he “is a very smooth and polished individual who uses his confidence, graciousness, and gentlemanly manner to conceal his less desirable social traits.” The psychological summary concluded that Carrasco was a “masterful manipulator of people” and “psychopathic to an extreme degree.”⁶⁴⁹

⁶⁴⁹ “Brief Psychological Summary of Inmate Frederico Gomez Carrasco,” Estelle

Indeed, Carrasco used his street influence to build a following within TDC's Walls prison, which was the system's flagship penitentiary located in Huntsville. Carrasco convinced Dominguez and Cuevas to join in his plot to smuggle arms, hold hostages, and attempt a daring escape. On July 24, 1973 Carrasco, Dominguez, and Cuevas used their positions in the Windham School district library at the Walls unit to hold eleven hostages at gun-point for an eleven-day hostage crisis that captured the state's attention.⁶⁵⁰

While TDC publicly aired their fear that activist attorneys might smuggle guns to inmates, the real threat came from TDC's own insistence on maintaining a racially hierarchical and subordinate inmate "trustee" system. In a strange twist of irony, Lawrence James Hall, an African American inmate in TDC on a life sentence, smuggled the guns by using his position as Assistant Director Alton Akins' "houseboy" to get two .357 magnum pistols, one .38 revolver, and a couple hundred rounds of ammunition into Carrasco's hands. As a "houseboy," Hall's job was to act as Akins' domestic servant, but Hall used his position towards his own ends and he frequently smuggled Carrasco's drugs into the prison. In the summer of 1974, Carrasco's out-of-prison operative Benito Alonzo pressed Hall into delivering the guns by making threats to expose Hall and have him lose his valued "trustee" status as a "house boy."

papers, *Ruiz* case files, Texas A&M University.

⁶⁵⁰ The hostages were employees Glen D. Johnson, Ronald W. Robinson, Aline V. House, Novella M. Pollard, Linda G. Woodman, Elizabeth Y. Beseda, Julia C. Standley, Bertha M. Davis, Ann Fleming, Bobby G. Heard, and Anthony Branch; Father Joseph O'Brien; and four inmates, Martin Quiroz, Henry Escamilla, Steve Robertson, and Florencio Vera.

Under threat of exposure and with an additional threat made against his family members, Hall agreed to deliver the arms into the prison. Prison officials frequently “lived off the state,” as inmates put it, by eating food from the prison commissary. “House boys” delivered the food without oversight from the prison commissary to the homes of prison officials. Hall used these delivery opportunities to smuggle the weapons into the Walls prison. He packed the ammunition in a pair of drained peach cans, placed the .38 in a rotted ham, and hid the two .357s in meat wrappers. Once at the gate, Hall told the attending guard that Assistant Director Atkins was returning the spoiled meat to the commissary and he passed by the guard without arousing suspicion. Carrasco’s reliance on a highly placed “house boy” to deliver arms into the prison shows the ways in which these African American inmates were anything but subservient to a “trustee” system geared towards instilling racial subordination. It also demonstrates that the real threat for smuggling arms to prisoners came not through activist attorneys, but through TDC’s over-reliance on a “trustee” system that depended on racially subordinate traditions of domestic service.⁶⁵¹

On August 3, 1974, the Carrasco hostage crisis ended in tragedy. Direct telephone negotiations between Carrasco and Governor Dolph Briscoe, Director Estelle, Warden H.H. Husbands, and Carrasco’s attorney Ruben Montemayor had continued throughout the eleven day hostage crisis and siege. Outside the Walls library, state police cars lined the street, Texas Rangers were positioned with high-powered rifles in strategic positions, TDC guards in full riot gear lay in wait, and a police helicopter circled anxiously overhead. The prisoners in the general population

⁶⁵¹ Texas Rangers, “Report on Attempted Escape,” Huntsville, Texas, July 24-August 3, 1974, Houston, 1974.

were kept in complete lockdown, held in their cells all day, and given hand-delivered brown bag lunches. The tension at the Walls was palpable. In the course of the negotiations, Carrasco had demanded nothing less than his freedom. Through an interpreter, Estelle and Governor Briscoe apparently gave in to his demand that they deliver an armored truck so that he and his fellow inmate co-conspirators could escape. Carrasco, Dominguez, and Cuevas, meanwhile, allowed two of the hostages to be freed as a sign of good faith. To get safely from the prison in the armored truck, the inmates built a clumsy rolling shield that was constructed with portable blackboards and books. The three moved down the library's ramp at 9:30 PM with eight of the remaining hostages tied to the make-shift shield.

Estelle and Governor Briscoe had no intention of allowing the hostage takers to escape. TDC planned to use fire hoses with two-thousand feet of highly pressurized water to press the hostages down to the ground while a 13-man team of Texas Rangers and a dozen police officers subdued Cuervas, Carrasco, and Dominguez. Inside the shield with the three inmates were four hostages, three female librarians handcuffed to the prisoners and Father Joseph O'Brian, the prison's Roman Catholic priest. As the inmates huddled behind their makeshift shield and wore welded steel masks, TDC guards turned the high powered water cannons on the inmates. Gunfire erupted, although from what quarter, whether from Rangers or prisoners, remains unclear.⁶⁵² In the ensuing firefight, hostages Elizabeth Y. Beseda, who taught reading and math at the prison, and Julia C. Stanley, a prison librarian,

⁶⁵² Two of the hostages claimed that law officer fired first, while another hostage claimed that the first gunshots came from the inmates. See, "Carrasco Questions," *Texas Observer*, September 6, 1974, 1-3.

were shot and killed while Father O'Brien sustained a critical gunshot wound. In a blaze of gunfire and mayhem, Carrasco and Dominguez were also shot and killed. Unhurt behind the shield were Novella Pollard, a hostage and inmate and conspirator Ignacio Cuevas.⁶⁵³

The press widely covered the Carrasco hostage crisis and its tragic conclusion. The Associated Press member newspapers voted the story as the number one newspaper item for 1974.⁶⁵⁴ The press portrayed Carrasco as a villainous murderer, a capricious drug lord, and a man without honor who killed two innocent women in a suicidal blaze. In Latino folklore, however, Carrasco's confrontation with the law made him a cultural hero to some and his story joined the *corrido* folklore tradition. Folklorist and cultural theorist Americo Paredas defined the *corrido* tradition as one of intercultural conflict on the border between Mexico and Texas "in which the hero defends his right and those of other Mexicans against the *rinches* [Texas Rangers]." *Corrido* folklore celebrated the manly honor of those who confronted the *rinches*, even if that confrontation ended in death. Paralleling the *corrido* folklore expression that an individual's masculine honor dictated that he must fight against the overwhelming and usually fatal power of the law and the state, Carrasco had sworn during the hostage negotiations that "I can guarantee you that if I die, I die with honor."⁶⁵⁵ Indeed, Carrasco's death inspired nearly a dozen *corridos* narratives.⁶⁵⁶

⁶⁵³ For narrative accounts of the siege see Aline House, *The Carrasco Tragedy, Eleven Days of Terror in the Huntsville Prison*; and William T. Harper, *Eleven Days in Hell: The 1974 Carrasco Prison Siege at Huntsville Texas* (Denton, Texas: University of North Texas Press, 2004).

⁶⁵⁴ "Prison Shootout Ranked," *Houston Post*, December 12, 1974.

⁶⁵⁵ Carrasco tapes, Texas Department of Criminal Justice, Archives and Information Services Division, Texas State Library and Archives Commission, 199/113, audio 40.

Whether he was seen as a cultural icon and victim of the state, or murderous drug lord without honor, Carrasco's hostage crisis heightened the public's fascination with prisons.

The issue that captured the prisoners' attention, however, was how Carrasco died. Huntsville's medical examiner, J.W. Beeler, claimed that Carrasco and Dominguez shot themselves after shooting and killing the two hostages. However, both the Texas Civil Liberties Union and John Albach, staff director of the JCPR, received a letter from an inmate claiming that two other inmates witnessed prison guards shooting the wounded Carrasco and Dominguez twice each in the head at point-blank range.⁶⁵⁷ What gave the letter some credence was that it was written immediately after the incident, before the media announced who died and who survived during the hostage crisis. Moreover, many inmates questioned why someone with Carrasco's violent and notorious record was placed at the Walls, which was reserved for inmates with good records. Inmates also wondered why a known

⁶⁵⁶ Americo Paredas, *Folklore and Culture on Texas American Border* (Austin: University of Texas, Austin, 1993), 28.

⁶⁵⁷ Frank X. Leahy, one of the inmates at the Walls, relayed a discussion to Senator Oscar H. Mauzy of three inmate witnesses who claimed that Carrasco was allegedly killed by Ranger Captain G.W. Burk at point-blank range after the shooting at already occurred. "Senator, I'm typing rather rapidly trying to simply get my thoughts on paper, exactly as these things were related to me...Now it is not known – probably never will be, whether Carrasco and Dominguez were dead after the initial shooting, but – this Ranger Captain G.W. Banks ran up – Carrasco was laying on his back – the helmet still on, and kicked his helmet off, then at point blank range blew the top of Carrasco's head with his own (Capt. Burk) .357 magnum. He then turned and kicked Dominguez helmet off and blew the side of his head off with the same .357 magnum – and he then turned to where Ignacio Cuevas (the survivor) lay, and aimed his pistol at him. By this time, however, two medical men were bending over Cuevas." Convict stories were dismissed out of hand, however, and the investigation sided with the official Ranger report that the hostage taking inmates were killed during the initial firefight. Frank X. Leahy to Oscar H. Mauzy, Senator, August 8, 1974, Papers of Ron Cloward, TSLA, 1981/217-93.

drug kingpin with a long record of incarceration was given such a soft job at the Walls library.⁶⁵⁸ The question of how the guns were smuggled into the prison was also not solved until 1974 when Alonzo, captured on a drug charge, confessed to using “house boy” Hall to get the guns into Carrasco’s hands.⁶⁵⁹ Moreover, many inmates correctly surmised that after the bloody Carrasco affair that TDC would ratchet up security and clamp down on “dissenters.” “Already there is some deceptive cover-up,” inmate Frank Leahy warned in his letter to state Senator Ron Clower. Leahy felt that “the handwriting is pretty much on the wall that they [TDC] will attempt to manipulate this tragedy” and thereby “sabotage the legitimate Prison Reform efforts” and “tighten down the screws on all the dissenters.”⁶⁶⁰

With allegations of a conspiracy swirling in the air and fears that some prison guards might seek retribution against inmates, the JCPR inserted itself into the state investigation. “We’re not trying to investigate the situation as a criminal matter,” Leland told an incredulous House Administration Committee that had previously warned the JCPR to suspend its inquiry. During the hearing, Representative George Preston of Paris, Texas admonished Leland that “you were to study prison reform and

⁶⁵⁸ “Carrasco Questions,” *Texas Observer*, 6 September 1974.

⁶⁵⁹ For his role in delivering the guns to Carrasco, Benito Alonzo was given a life sentence, well beyond the normal second degree felony sentence of two-to-twenty years for intent to facilitate an escape. Alonzo had two prior felony convictions, felony theft and burglary. Alonzo’s confession also revealed Hall’s role as the arms delivery man. Hall was already serving a life sentence and for his role in delivering the guns he was another given another life sentence in 1984. At age fifty-seven, Hall died while still confined in prison on April 6, 1993. “Supplier of Guns to Carrasco to Get Life in Prison, Jury Says,” *The Austin American Statesman*, February 13, 1978; Harper, *Eleven Days in Hell*, 300.

⁶⁶⁰ Frank X. Leahy to Senator Ron Clower, Papers of Ron Clower, TSLA, 1981/217-93; “Carrasco Inquiry Court Suffers from Cover-Up,” *San Antonio Express*, 18 December 1974.

not the criminal acts down there.” Representative Bill Hollowell of Grand Saline threatened the committee’s funding when he told Leland that “you’re going to abide by the resolution [which created the JCPR to investigate prison reform] that was passed by the House or you’re not going to get the money. A committee such as yours is purely for remedial legislation. We would not permit the state district attorney to come up here and interfere with legislative matters.”⁶⁶¹

Following the disastrous Carrasco crisis, the state legislature became increasingly hostile to prison reform. Lieutenant Governor Bill Hobby, a proponent of TDC and a critic of the JCPR, felt that the committee had “exceeded their authority” by injecting themselves into the Carrasco inquiry. Hobby actively pressed the legislature to deny the JCPR their funding request. The JCPR’s overall funding was slashed by over 75 percent, causing the JCPR’s annual budget to drop from \$36,536 (\$18,200 from each house) to \$9,700. Staff salary, for instance, fell from \$10,368 to \$6,550, which meant that Albach would have to make serious cutbacks with his investigators. Far more damaging was the drastic cuts made in the travel budget. Even if the staff were willing to operate with fewer members and with less pay, a significant travel budget remained essential to allow the largely Austin-based committee staff to visit and inspect East Texas prisons. While the committee had requested \$3,000 for staff travel, they received only a paltry \$150. Such minimal funding hampered the JCPR’s efforts to the point of irrelevancy.⁶⁶²

Conclusion

⁶⁶¹ “House Panel Won’t Drop Carrasco Investigation,” *San Antonio Light*, 27 September 1974.

⁶⁶² “Hobby Denies Blocking Problem,” *Austin American Statesman*, 30 August 1974.

The public and political sentiment for prison reform withered under the shadow of Carrasco's prison violence. Although the passage of prison reform along the lines of the JCPR's recommendations would have been a difficult political struggle, there was some indication that the Cruz-Beto court battles had exposed TDC as a brutal system that needed some measure of reform. The legislature's 1973 passage of HB 1056 outlawing "supervisory and disciplinary authority" of one inmate over another and the near-simultaneous creation of the JCPR and Citizen's Advisory committee demonstrated that the public and the legislature were sympathetic to inmate claims of rampant abuse and racial violence. However, the eleven day Carrasco hostage crisis and the subsequent deaths of two innocent female staff members reminded the public that prisons held some dangerous and violent criminals. The political and public sympathy for the plight of prisoners that had been generated by court battles, press coverage, and JCPR hearings had suddenly diminished. As JCPR Chair Senator Chet Brooks noted, "the Carrasco affair provided an excuse to people that were hostile to the committee and gave them an excuse to stop coordinating. Inmate interviews were stopped, harassed."⁶⁶³

In the aftermath of a hostage siege by three Latino inmates, racial anxiety and fears of extending civil rights to violent criminals tinged the public and political response to legislative prison reform. A citizen letter to the *Austin American Statesman* said as much: "I feel Mr. Brooks [chairman of JCPR] used the ill fated prison break at Huntsville as a means to gain publicity through our most excited news media. Mr. Leland? Now what is his game? All his noise seems to be about prison

⁶⁶³ "Prison Probers Protest," *San Antonio Express*, 19 September 1974.

reform (and I believe for blacks only). I think that any group from our esteemed legislative group at Austin is a very poor choice to put in charge of prison reform.”⁶⁶⁴ Exhausted by controversy and under threat to lose funding, Mickey Leland resigned himself to the fact that the Carrasco affair had heightened the public’s unease in hearing prisoner complaints of abuse. “It put the people of the State of Texas in a frame of mind that was already potentially there, but I think what has been enhanced is that punishment is better than rehabilitation. But I’m not going to mess with it any further. That incident...did so much damage to our committee that I would not like to refer to it anymore. I don’t want any further damage done. I’d just like the dead to stay dead.”

In 1975 the legislature passed only one of the 160 recommendations from the JCPR and Citizens’ Committee reports. In light of the growing racial animosity in Texas prisons, the 1975 state legislature repealed the 1927 statute that required racial segregation in Texas prisons and they passed a largely symbolic law that prohibited discrimination of prisoners based on race. Even this measure, however, was largely due to the pending court case of *Lamar vs. Estelle*, which charged that TDC’s racial segregation was unconstitutional and that its hiring practices were racially discriminatory. The hope for community corrections was dead, however. It died on the ramp leading to the Walls library with Carrasco. The opportunity to stem prison growth had darkened and then withered away under the shadow of prison violence. The failure to mount a significant legislative reform package led to wider calls for “law and order” politics and set the stage for continued prison growth. Moreover, the

⁶⁶⁴ Letter to the editor, *Austin American Statesman*, 30 August 1974.

JCPR's failure and the public response to the Carrasco incident fueled TDC's resistance to inmate claims for more humane treatment. It hardened the resolve of Wardens and officers who utilized the building tender system to renew control, discipline, and order. Within the prison, it served as notice to the inmate community that their only hope for reform was wider prisoner mobilization and to turn away from the legislature and towards the courts.

CHAPTER 7

CIVIL RIGHTS ON THE CELL BLOCK: THE PRISONERS' RIGHTS MOVEMENT AND THE STRUGGLE FOR JUSTICE, 1974-1981

On December 18, 1865, the 13th Amendment to the US Constitution was ratified to abolish slavery... That vulnerable institution has continued, however, in penitentiaries throughout the country. Texas Department of Corrections is probably the best example of slavery remaining in the nation today... One gets a strong feeling that TDC exists not to punish offenders or deter others from committing crimes, not to rehabilitate criminals, but to perpetuate the plantation as the largest agribusiness operation in the state.

--Arnold Pontesso, US Justice Department, 1978

Slavery, man, human slavery.

- anonymous Texas inmate, *Corrections Magazine*, 1978

On June 26, 1972, David Resendez Ruiz finished and notarized his twelve-page, hand-written complaint against the Texas Department of Corrections (TDC). Ruiz's petition called attention to the prison's lack of medical care, the brutality of building tenders, and the practice of self mutilation. Ruiz wrote the complaint while he was confined to a year of administrative segregation in the Retrieve prison. He filed it, however, while held at the Eastham prison in the Eastern court division which delivered his petition to Judge William Wayne Justice. The delivery of his petition provided Judge Justice with a comprehensive complaint that accused TDC of injustices that Judge Justice suspected were unconstitutional. The filing of Ruiz's writ in 1972 became the omnibus lawsuit *Ruiz v. Estelle*, the longest and largest prisoners' rights trial in the nation's history.

It also started a mass movement within the prison that initiated a new phase for prisoners' rights in Texas. Indeed, the legislature's failure in 1974 to enact any meaningful change caused the prisoners' rights movement to widen and expand its tactics to include massive resistance through work strikes and letter writing campaigns. It was no longer just a few activist writ writers and their attorneys. Between 1974 and 1978, the prisoners' rights movement had expanded to a mass movement that incorporated prisoners across the system. Its tactics utilized both the civil rights movement's call for civic inclusion and humane justice and the labor movement's tactic of achieving demands through work strikes. This mass movement assisted the litigation effort by documenting abuses through a massive letter writing

campaign that provided inmate plaintiff attorneys and the courts with lengthy and detailed affidavits, depositions, and petitions.

This chapter shows how the struggle for prison reform became a mass movement across the system through acts of self defense, thwarted riots, political organizing, letter writing, and an eventual system-wide work strike. It moves the history of prison reform beyond the courtroom and inside the walls of Texas prisons. The chapter begins with the story of David Ruiz, whose twelve page handwritten lawsuit became the omnibus civil rights case *Ruiz v. Estelle*. By telling Ruiz's story, this chapter considers the terror of racial violence, the necessity of self defense, and the agony of self mutilation. Inmates employed a militant brand of self defense that was spurred by gendered ideals of rough masculinity to confront the racial violence that they experienced at the hands of building tenders.⁶⁶⁵ A reign of sexual violence and the constant threat of brutalization also resulted in the agonizing practice of self mutilation, which stretched the very boundaries of notions of "hidden transcripts" and "everyday resistance." This chapter therefore joins a growing literature that reevaluates how racial violence, self defense, and notions of rough masculinity shaped the civil rights revolution and the ongoing black and brown power movements.

⁶⁶⁵ On self defense and the question of violence in the civil rights and black power movement, see Timothy B. Tyson, *Radio Free Dixie: Robert F. Williams and the Roots of Black Power* (Chapel Hill: University of North Carolina Press, 1999); Lance E. Hill, *Deacons for Defense: Armed Resistance and the Civil Rights Movement* (Chapel Hill: University of North Carolina Press, 2004); Curtis Austin, *Up Against the Wall: Violence in the Making and Unmaking of the Black Panther Party* (Fayetteville : University of Arkansas Press, 2006). New scholarship has also begun to consider how gender and sexuality shaped civil rights and the black power movement, see John D'Emilio, *Lost Prophet: The Life and Times of Bayard Rustin* (New York: Free Press, 2003); Laurie Beth Green, *Battling the Plantation Mentality* (Chapel Hill: University of North Carolina Press, 2007); and Steve Estes, *I Am A Man!: Race, Manhood, and the Civil Rights Movement* (Chapel Hill: University of North Carolina Press, 2005).

Equally important, this chapter considers the struggle over prison management between the state government and federal judiciary. The mobilization and organization of prisoners contributed to the crumbling of the old order and the beginning of a new.

*Tough with a Knife, Hell with a Writ:
David Ruiz and The Origins of Ruiz v. Estelle*

Born to migrant workers on May 15, 1942 and dying on November 12, 2005, David Resendez Ruiz spent all but eleven of his sixty-four years in captivity. Ruiz was the third youngest of thirteen children born to Carlos Martinez Ruiz and Maria Resendez Ruiz. The family traveled daily from Austin, Texas, their home, to surrounding counties to work in the fields of large farmers and farm owners. When times were particularly tough, they would travel as far as Arizona, Colorado, Michigan, Minnesota, North Dakota, Oklahoma, and Wisconsin to find temporary work as “stoop laborers,” but the return trip would always bring them home to Austin.⁶⁶⁷ Ruiz experienced confinement early in life, at age eleven, when the state consigned him in 1953 to the Gatesville Reformatory School for Boys for stealing from shoeshine and newspaper boys. Like many carceral institutions in Texas, Gatesville was a chronically violent place. Ruiz returned to the same reformatory three times before the state finally tried him as an adult in 1959 for burglary and car theft, a charge for which he was found guilty and sentenced to a term of twelve years. He remained in Texas prison from 1960 until 1967, when he was released on parole.

⁶⁶⁷ On the migratory pattern and working conditions of Tejano cotton harvesters during this period, see Zaragosa Vargas, *Labor Rights are Civil Rights: Mexican American Workers in Twentieth-Century America* (Princeton: Princeton University Press, 2005), 18-27.

Ruiz thereafter met and married Rose Marie, but within the year he returned to prison for armed robbery, for which the state gave him a twenty-five year sentence.⁶⁶⁸

Violence marked Ruiz's first stay in Texas prisons, particularly knife fighting. In his unpublished memoir, "Tough with a Knife, Hell with a Writ," Ruiz reflected on his early prison experience in the east Texas cotton fields and how he decided upon a path of violence as his first means of resistance:

The field work was brutal, the first two weeks I barely made it day to day. At the end of each day I was completely exhausted. A work squad is combined of 25 or 30 prisoners and managed by a guard on horseback armed with a .38 pistol. Most guards were ignorant and did not know how to act in a humane manner toward the prisoners, most likely because they came from the backwoods of Texas. All guards used degrading language when speaking to or ordering a prisoner. The Chicanos were called "meskins," blacks were called "niggers," and whites "old thangs," with all kinds of sons of bitches added. Most guards carried long wood clubs or leather reins to beat the prisoners if they fail to stay up with squad of prisoners working on a line. The guards did not hesitate to knock a prisoner on the head with a club or reins if he could not stay up with the squad. I got several tests of the club and reins. When speaking to a guard out on the fields, the rules were, a prisoner took his cap or hat off and said "yes sur" or "no sur" when addressing the guards....After several months of seeing all such misery, I made up my mind that I would oppose the prison system the only way I knew by rebelling and violence.⁶⁶⁹

In his first two years at the Ramsey farm (1960-61), Ruiz was involved in no less than ten fights with other prisoners. In perhaps the most striking example of his rage and violent past, he stabbed another Chicano inmate over eighteen times. "I was stabbing blindly," recalled Ruiz. "And all I can remember is hearing the knife as it went in and crunched bones. I think I stabbed him in the neck and was holding his head up to

⁶⁶⁸ "David Ruiz: Profile of a Writ Writer," by Eric Hartman, *Texas Observer*, 22 September 1978, 6-7.

⁶⁶⁹ Ruiz unpublished memoir, "Tough with a Knife, Hell with a Writ," in author's possession, given with permission of Rose Marie Ruiz upon David Ruiz's death in 2006.

go around and cut his head off. My foot was on his body.” Ruiz only stopped when his fellow inmates called out, “David, David, stop; he’s already dead!”⁶⁷⁰

Ruiz not only inflicted violence on others; he also maimed himself. He mutilated himself no less than fifteen times before 1978, particularly when he was in solitary. Ruiz routinely smashed the light bulbs of his solitary cell and often used the glass shards to slash his wrists and tendons, covering his cell and his body in blood. In the original writ that started his case, David Ruiz explained that self-mutilation was an act of desperation that he used to call attention to the brutality that prisoners experienced at the hands of TDC and the BT-system.⁶⁷¹ The BT-system was complicated for Ruiz because many of the building tenders were drawn from the ranks of people he had known from his time in reform school. One of the head building tenders on his unit was a former friend from Gatesville, and Ruiz blamed the prison administrators for using the lure of power to turn his fellow convict and former friend against him. “They started working together to turn all the building tenders into that category of people,” Ruiz recalled. “The one that started turning the building tenders...all over the system into snitches and beating up prisoners—abusing the other prisoners — that philosophy was wrought by Warden McAdams. He’s the one that implemented the building tender system that turned them into nothing but

⁶⁷⁰ *Ibid.*

⁶⁷¹ David R. Ruiz, Inmate Number 198698, vs. Billy G. McMillan, Assistant Warden, Frank McCarty, Captain, and Warden E.Z. Harelson, Eastham Unit, Texas Department of Corrections, United States District Court, Tyler Division. This item is the original writ which became *Ruiz vs. Estelle* in 1974 after it was joined by several other inmate complaints. Original writ from David Ruiz’s private papers, and currently in author’s possession.

sadists and snitches—cowards that depended on the officers to back them up so they could have that authority.”⁶⁷²

Ruiz’s first act of resistance was to participate in a brief 1961 work-strike that occurred at Ramsey within the first few months of Dr. George Beto’s directorship. Ruiz explained his participation in the work strike as the only means he had to resist the violence he experienced while working in the fields of prison labor:

I knew it [the beatings by guards] was wrong and that’s why I was rebellious. And that’s why I participated when one of the initiators got the work stoppage, because I knew that I was giving them all I had. I would work like a slave every day to keep them off my back. And most of us did that, you know, so we wouldn’t have any hassles. And then, the field guard, they was abusing his authority because he was impatient and accusing prisoners of not working and beating up somebody, and I mean, that horse tried to run you over. It was wrong. But, the only thing that I knew what to do is oppose him, and they had the guns, they had the men in power.⁶⁷³

For his participation in the strike, Ruiz was sent for the first time to solitary. When he returned from the 15-day starvation diet, the other Latino inmates collected their commissary together to share with the returning inmates. Ruiz recalled the solidarity of his fellow inmates whenever someone returned from solitary: “Everybody would pitch in, you know, what he could, candy bar, a soda, a big bag of coffee, candy, so when you got out, they would give you that bag. If there was two or three of you, well, you all would split it.”⁶⁷⁴

Reflecting on how he came to be a writ writer, Ruiz wrote that by the late 1960s he began to focus his rage on the building tender system, which he saw as the

⁶⁷² David Ruiz, oral history with Robert Reys Perkinson, 2004, in author’s possession and with permission of Robert Perkinson.

⁶⁷³ *Ibid.*

⁶⁷⁴ *Ibid.*

root of all the evils in TDC: “I came to hate those prisoners who did the officers’ dirty work mainly to receive extra privileges or a soft job and I did not like the weak prisoners much either because some would not even fight back because of fear of the outcome if they did.”⁶⁷⁵ When questioned by an Eastham guard as to why he engaged in such violent behavior towards building tenders, Ruiz responded with characteristic defiance: “I ain’t a trouble maker, but I won’t run from trouble. I will meet trouble half way and if forced upon. I will take orders from officers and not building tenders; and if I am ever assaulted by a building tender, book keeper or turnkey, they better kill me because I ain’t taking no more beating and I been ready to die since the first day I entered this shithole prison.”⁶⁷⁶ Such defiance soon earned Ruiz a reputation of high respect and regard among prisoners, particularly the Latinos, while the prison administration saw Ruiz as a “trouble maker” and “disturbed.” As Ruiz’s reputation grew, prison officials moved him from one prison farm to another, until finally, TDC assigned Ruiz to Ellis where he became one of Jalet’s clients. He was also housed with the Eight Hoe group at Wynne, a maximum security unit, and home to an entire wing of prison activists and “jailhouse attorneys.” There Ruiz, who entered prison nearly illiterate, learned to turn his energies away from violence and towards legal redress, and he subsequently became one of the prison systems’ most ardent and famous writ writers.

When Estelle dispersed Eight Hoe inmates, he sent Lawrence Pope and David Ruiz to Retrieve, a largely African American and Latino prison. TDC moved Pope to

⁶⁷⁵ Ruiz unpublished memoir, “Tough with a Knife, Hell with a Writ,” in author’s possession, given with permission of Rose Marie Ruiz upon David Ruiz’s death in 2006.

⁶⁷⁶ *Ibid.*

an all-black wing with building tender L.D. Hilliard as his cellmate. Hilliard had previously been in charge of the protective custody wing (“sissy” wing). Pope recalled that Hilliard was “one of the worst building tenders” and that “he carried two dirks in his belt that had been brought in by an officer from the free world.” In his role as BT for those housed on the protective custody wing, Hilliard routinely used his position of power and “got all the sex he wanted, whether the inmates wanted it or not.” Pope saw his placement with Hilliard as an explicit racial and sexual threat from TDC. Pope recalled the housing situation with some lingering anxiety: “Now this was putting a black person in a cell with a white person, and at that time the cell blocks were very rigidly segregated. You had the 1 block, 2 bloc, those were black cell blocks. Then you had 3 block and 4 block, and they were mixed Chicano and White – but they were very, very rigidly segregated. At one time, they put me over in the No. 1 cell block – I was the only white person in there. This was at a time when I was having some legal deals with them and filing suits on them, which I filed many of them – and they wanted to –trying another ploy to shut ol’ Lawrence Pope up, so they put me over there in this all-black cell block. I was the only white person in there.” Pope was able to avoid trouble as the other African American prisoners on that wing had little love for Hilliard who sold himself as a writ writer to fellow black prisoners and then subsequently charged them in commissary items to write appeals that he never actually filed. As Pope recalled, Hilliard “was thoroughly hated by – just everybody, his own black people and – he had ripped them off, and everybody – he was just a thoroughly hated guy.”⁶⁷⁷

⁶⁷⁷ Lawrence Pope, oral history with John Wheat, Pope Collection, CAH.

TDC placed Ruiz, meanwhile, in a solitary cell for nearly a year, when he was caught in 1973 for bringing a spoon into his cell to construct a sharpened weapon. Pope recalled the effect of that year on Ruiz: “I think he was mentally affected by this one solid year of being in this cell, never going any place, never doing anything. It was while he was there that he drew up his lawsuit that became” the *Ruiz v. Estelle* lawsuit that would upend Texas prisons.⁶⁷⁸ Ruiz’s hand-written, twelve page petition called attention to the lack of medical care, the brutality of building tenders, and the practice of self mutilation. In his petition, Ruiz explained that self-mutilation was an act of desperation that he used to call attention to the brutality that prisoners experienced at the hands of TDC and the BT-system. Ruiz also explained that it was the only way to be released from solitary confinement, a release that might be particularly important to the inmate if he had a pending case or a need to communicate with his lawyer in a timely fashion. The writ narrates how Ruiz came to be locked up in solitary for a year. In 1969, he attempted to break up a fight in September of 1969 between an African American inmate, who was wielding an axe with apparent intent to kill, and a Latino inmate. TDC then blamed Ruiz for inciting jailhouse violence and sentenced to a series of long stays in solitary confinement. TDC subsequently moved him to a particularly rough wing, known as A-line, which included a group of notorious building tenders. Ruiz explained in his petition his decision to self-mutilate himself on October 10, 1971 with the following explanation:

Plaintiff [David Ruiz] was frighten [sic] for his life and weak from lack of food and inhuman treatment that he had to endure the past 12 months. Plaintiffs spirits were very low and plaintiff knew that he could not endure much suffering in solitary confinement or in A-line jail. Fearing for his life

⁶⁷⁸ *Ibid.*

because of the threats and cruel treatment by the Assistant Warden, officials and building tenders, plaintiff had good reason to be frightened. Plaintiff had seen other prisoners brutally [sic] beat by building tenders with the help of officials and plaintiff knew that said Assistant Warden would have something done to plaintiff if the letter was not wrote in the week the plaintiff had to write it in. To escape from this cruel and brutal treatment, plaintiff on the night of October 10th 1971, took a razor blade and brutally [sic] cut in two the tendons of his right foot and also mutilate both his arms.⁶⁷⁹

Only such a radical act of self-mutilation, Ruiz believed, would allow him to escape solitary for the relative safety of the hospital at the Walls prison, where he could avoid the impending threat he felt from the building tenders and where he could safely confer with his attorney, who, at the time, was working on Ruiz's appeal. His appeal failed and after brief hospital stays, TDC returned Ruiz to solitary.

While David Ruiz spent his year in solitary writing his petition about past treatment, Judge William Wayne Justice was sorting through a host of prisoner petitions. As a US federal judge, Justice oversaw the Eastern District of Texas and two of TDC's thirteen prisons. Eastham was one of the two prisons in Justice's district and so when Ruiz filed his civil rights complaint on June 29, 1972 from Eastham it went directly into Justice's hands. Justice had earned a reputation as an activist judge through his intervention in pressing four contentious public school desegregation cases in which public school systems in Tyler, Texas, openly refused court-ordered racial integration. He also issued unusual court orders that enforced such school discrimination issues as having a local high school hold a more racially inclusive cheerleader election and ordering Robert E. Lee High School to remove the

⁶⁷⁹ David R. Ruiz, Inmate Number 198698, vs. Billy G. McMillan, Assistant Warden, Frank McCarty, Captain, and Warden E.Z. Harelson, Eastham Unit, Texas Department of Corrections, United States District Court, Tyler Division. This item is the original writ which became *Ruiz vs. Estelle* in 1972 after it was joined by several other inmate complaints. Original writ from David Ruiz's private papers, and currently in author's possession.

Confederate flag and forsake its fight song “Dixie.” He gained even more notoriety as an activist judge when he presided over the case, *Morales v. Turman*, which was a class-action suit filed by juvenile offenders against the Texas Youth Council (TYC).⁶⁸⁰ The *Morales* charges against TYC brought to court many of the same charges that inmates had made against TDC, including lack of access to attorneys and allegations of excessive corporal punishment. Justice ruled in favor of the juvenile offender in *Morales* and this decision earned the interest of prisoners making similar pleas for court intervention against TDC.⁶⁸¹

Beginning with his appointment to the East Texas District in 1969, Justice oversaw a number of hearings on prisoner petitions that he found compelling but ultimately unsatisfying. “I wasn’t satisfied because what the prisoners were saying about getting beaten up and about inferior medical care and that kind of thing had the ring of truth about it.” During a 1972 speech at Southern Methodist University’s law school, Justice declared his willingness to consider prison class-actions suits as a matter of civil rights: “Should prisons not aim to protect the public and to deter and rehabilitate the criminal without abandoning the civilized idea that we treat our fellow man, even those who have deviated from society’s norm, with some dignity and compassion?...we would do less than our constitutional duty were we to refrain” from hearing state prison cases in federal court.⁶⁸² Ruiz’s twelve-page, hand-written petition caught Justice’s eye as it explicitly addressed the brutality of the building tender system and the lack of medical care, two issues that made TDC vulnerable to a

⁶⁸⁰ *Morales v. Turman*, 326 F.Supp 667 (E.D. Tex. 1991)

⁶⁸¹ Frank Kemerer, *William Wayne Justice: A Judicial Biography* (Austin: University of Texas, Austin, 1991), 145-181; *Morales v. Turman*, 326 F.Supp 667 (E.D. Tex. 1971)

⁶⁸² *Texas Law Review* 51 (1973): 720.

legal argument that it operated an unconstitutional prison system. On April 12, 1974, Judge Justice consolidated six additional prisoner petitions with Ruiz's original petition as part of his orchestrated effort to develop a pending lawsuit against TDC.⁶⁸³ Justice also ordered the United States Department of Justice to appear as amicus curiae and six months later it joined the suit as co-plaintiffs. During the Ruiz trial, civil rights division lawyers Gail Littlefield, Charles Ory, and David Vanderhoof represented the Justice Department. In recognition of his prior work with Jalet, Justice also reached out to William Bennett Turner of NAACP's Legal Defense Fund (LDF) as the attorney for the prisoner plaintiffs. Justice had first met Turner during the 1972 conference at Southern Methodist University and he had been impressed with Turner's persuasive argument that courts must reconsider prisoners' rights. Turner was joined by Stanley Bass, a NAACP Legal Defense attorney, and Sam Biscoe of Dallas. By 1974, Judge Justice granted Turner's motion to convert the case into a class action lawsuit, *Ruiz v. Estelle*. Ruiz's initial petition now was a civil rights claim that represented the entire prison population of 15,000 against all of TDC and its thirteen prisons.

Justice chose Ruiz's petition from many writs and affidavits to serve as the catalyst for a class-action lawsuit on behalf of all prisoners. Ruiz, however, brought personal charisma and charm to the movement and during the court case he became something of an outlaw media darling. The choice of Ruiz as figure head for the prisoner rights movement was also burdened with his history of violence and self

⁶⁸³ The other inmate complaints consolidated into the *Ruiz* civil suit included L.D. Hilliard, Ernesto Montana, Herman Randall, Leandro Pado, O.D. Johnson, and Arthur Winchester.

mutilation. While the press did not cover Ruiz's past violence, TDC's attorneys attempted to discredit Ruiz in 1979. During the trial, little known charges came to light that Ruiz had allegedly sexually assaulted an 18-year old inmate on November 12, 1978 at the Harris County Detention Center while waiting to testify in his case. In a letter to Governor Bill Clements, the inmate, Emiliano Figueroa Magana, offered to testify that Ruiz was a "revolutionary" who "almost killed me when I refused to allow him to attack me sexually."⁶⁸⁵ The eighteen-year old Magana offered inmate Andres Hernandez, a fellow inmate with a 50 year murder sentence, to serve as witness to the incident. "Since David Ruiz has many followers," Magana worried, "Andres and I are in constant danger. If we are not free soon, we will withdraw our charges." Magana promised that "once set free, we will continue our charges against David Ruiz." Upon learning of Magana's charges and his testimony in return for freedom, the inmate plaintiff attorney, William Bennett Turner, wrote to the governor's office. "We have learned that there were certain correspondence between the alleged victim, Emiliano Figueroa Magana, and the governor's office," Turner wrote. "I am writing to ask that you furnish us with copies of all correspondence."⁶⁸⁶ When Magana learned that he would remain in prison and that "there is nothing that can be done until after the appeal" and that it would take "at least two years," he dropped his

⁶⁸⁵ Emiliano Figueroa M. and Andres Hernandez to Governor William Clements, translated by Good Neighbor Commission, May 1, 1979; Emiliano Figueroa Magana to Governor William Clements, February 29, 1979, Governor Clements Records, General Counsel's File, *Ruiz*, Texas A&M University, Box 21, Folder 64.

⁶⁸⁶ William Bennett Turner to David Dean, Counsel to the Governor, June 3, 1980, Governor Clements Records, General Counsel's File, *Ruiz*, Texas A&M University, Box 21, Folder 64.

charges. “I don’t think I want to continue testifying the case against David Ruiz, and I’m going to drop the charges against him,” Magana promised.⁶⁸⁷

Some suspected that Magana’s charges were similar to the false allegations of Donald Lock and Freddie Dreyer that were made seven years earlier against Frances Jalet in the case *Dreyer v. Jalet*. A prison system that routinely granted favors and privileges to favored inmates could easily generate false allegations against David Ruiz. Indeed, Magana later admitted that he was approached while in the jail by an “anglo man in civilian clothes,” whom he could not identify. Moreover, Jack Heard, a former TDC administrator, served as the jail’s top keeper and sheriff. Magana claimed that he was told that Ruiz was to be placed in his cell and that Magana should then claim rape in return for his freedom. “I was to compose a story that he [Ruiz] tried to sexually abuse me or that he tried to kill me,” Magana admitted in his 1981 testimony.⁶⁸⁸ Magana’s false allegation against Ruiz shows the extent of corruption within prison and the ways in which sexual violence or even the allegations of sexual violence were used as a weapon against writ writers.

During the trial, TDC repeatedly brought up Ruiz’s own violent past and his history of self mutilation as a way to discredit the prisoners’ charges of sexual violence by building tenders. Violence among the inmate proponents of prison reform did cast some aspersions on the legacy of a prison reform movement that staked its claims on humane treatment and justice before the law. Sometimes the very prisoners who demanded humanity and decried abusive treatment had committed

⁶⁸⁷ Emiliano Figueroa Magana to William LaRowe, no date given, Governor Clements Records, General Counsel’s File, *Ruiz*, Texas A&M University, Box 21, Folder 64.

⁶⁸⁸ “Accuser Testifies Ruiz Target of ‘Put-Up’ Story,” *Houston Post*, 7 January 1981.

acts of violence themselves. Although Ruiz had committed acts of violence, by 1974 he had committed himself to a legal rather than a violent resolution of prison evils. Among the general prison population David Ruiz had become a hero, the David who challenged the TDC goliath.

*Slaves of the State Revolt:
Prison Mobilization and Organization*

“Akeys! Comrades! Carnales! Brothers! Ndugus’! The puppets of Wildcat’s confinement has struck a subversive blow to Comrade [anonymous inmate, likely Eddie James Ward]. A comrade who asserted his rights. Our right! In a court of law so that the oppressive forces of this administration can be thrown asunder...So the prisoners of this slave camp, and all the slave camps of TDC can be liberated.”⁶⁸⁹ In 1973, this is the political tract that greeted some of the Ramsey prisoners the day after the House had passed HB 1056, the bill that outlawed the use of building tenders in a supervisory or punitive capacity. Inmate John Eduardo Swift, an active member of the Black Panthers and a veteran of the black power movement, wrote the tract. Michael Jewell, a white inmate and writ writer, recalled that Johnny Swift served the prison community as a pioneer in political and community organizing. “Johnny was much more than a writ writer. His forte was mentoring to other blacks, even those under sentence of death. He exhorted them not to lay up on their asses and wait for the needle, but to study law and fight for their lives. And to write politicians and the media to tell their stories, and to complain of how they lived. Johnny survived the

⁶⁸⁹ Inmate political tract, inmate correspondence and writings, *Ruiz*, TDCJ, Office of the Special Counsel, TSLA, 2004/016-55.

rigors of life on Seg [administrative segregation] by helping to keep others afloat.”⁶⁹⁰ Swift was one of many prisoners who mobilized and organized within the prison system a grass-roots prisoners’ rights movement. The aim of this movement was to assist the “writ writers” and organize fellow inmates to resist actively the building tender system through self defense, collective organization, and a system-wide letter writing campaign to judges, state legislators, the governor, the media, and civil rights attorneys. These inmates joined the “writ writers” legal efforts by creating incidents and demanding public attention for their cause. Their hundreds of letters, affidavits, and depositions became, in some cases, the material that the plaintiff attorneys used in making their argument against TDC in *Ruiz v. Estelle*. Indeed, the movement had entered a new phase and incorporated mass mobilizing and organizing tactics aimed at assisting the attorneys and the court who were pursuing inmate civil rights on their behalf.

The movement was politically astute and aware that recent legislative measures, such as the bill that supposedly outlawed the authority of building tenders, were hamstrung by the public’s wariness to support prisoner rights. “Yesterday a ‘bill’ was passed and made ‘law’ House Bill 1056, but HB 1056, has not, and will not be recognized,” the tract declared.⁶⁹¹ The tract called the placement of inmates in administrative segregation a “political move” to subvert the JCPR inquires. It accurately predicted that TDC would use the 1973 uprising at Ramsey to gain legislative “support needed by this antagonistic, totalitarian system to be able to

⁶⁹⁰ A 17-page letter to the author, Michael Jewell to Robert Chase, November 1, 2008, in author’s possession.

⁶⁹¹ Inmate political tract, inmate correspondence and writings, *Ruiz*, TDCJ, Office of the Special Counsel, TSLA, 2004/016-55.

continue with their arbitrary power and subjugation and further to obliterate the truth.” The tract charged that the Justice Department, the JCPR and the Texas legislature were too meek and beholden to “political expediency” to use their “power and authority to eradicate our condition immediately.”⁶⁹²

The various tracts argued that prisoners of all races must “unite immediately” to “struggle for liberation and self determination that can only be carried out effectively by collective prisoners.” Swift’s tract after the 1973 Ramsey incident attempted to organize a system-wide letter campaign to state legislatures and the US Justice Department of Civil Rights Division. Its goal was to “raise at least 2,500 letters protesting these individuals and the use of administrative segregation.” The objectives of the letter writing campaign was to create an “abundance of letters [that] will mount the necessary pressure on the recipients and force them to abandon their belief in political expediency” while also “simultaneously forcing the identification of the prisoners collective power base [the building tenders].” Inmates across the system responded and sent hundreds of letters. TDC had lost its battle to muzzle inmate complaints and correspondence during its legal battles with Jalet and in the *Guajardo v. Estelle* case. Swift implored inmates to organize collectively and to write letters individually that told of their worst prison experiences.

He can no longer stand and say, that’s HIS problem! “We” can NO LONGER say its NOT ME! Because everyday ITS “YOU” and “ME” who is and always has been subjected to trumped up charges, to the same, that has befallen “HIM: will befall you and me!!...Let us start now!! Be MEN!!! And FIGHT!! The Struggle!! Must be joined by ALL! Akeys! Comrades! Carnales! Brothers! Ndugus! Arise, arise, Strike! For your lives and liberties. Now is the day and the Hour. Let every SLAVE on the Ramsey 1 SLAVE CAMP do this and the days of the “Slave Holder” are numbered... You cannot

⁶⁹² *Ibid*

be more oppressed than you are. You cannot suffer greater cruelties that you have already. Let OUR motto be: Resistance! Resistance! Resistance!⁶⁹³

One of the most daring and helpful aspects of the movement was its purposeful listing in political proclamations the names of building tenders and those fellow endangered “comrades” and “slaves” that TDC held in solitary confinement and administrative segregation. In what had been an otherwise controlled prison environment, the listing of names of building tenders for all inmates to see was a bold and dangerous act. Previously no inmate would directly confront the power of building tenders and break the tradition of silence and submission to the system of “snitching” and orchestrated “head strumming.” Swift’s many petitions implored inmates to expose building tenders by having the courage to name them specifically in their letters. He hoped to build the case for prison reform from within by supplying a host of names, incidents, and charges that could later be explored by the attorneys and the Justice Department during the *Ruiz* inquiries. Inmates responded and hundreds of subsequent letters told individual stories of racial and sexual violence and personal narratives of abuse. These letters contributed to a system-wide whistle blowing operation that provided a host of full-length depositions, affidavits, and petitions.

The movement also attempted to restore the “convict code” of inmate loyalty against the prison administration. Sociologists have defined the “unwritten inmate code” as a cultural ethic of “convict loyalty,” in which no inmate may “snitch” on another inmate. “Con loyalty,” according to sociologies of the prison, normally

⁶⁹³ TDCJ, Office General Counsel, Ruiz, “Inmate writings and correspondence,” 2004/016-55.

created a cohesive “prison community” that set inmates apart from prison administrators and guards.⁶⁹⁴ Under the rule of building tenders, however, “con loyalty” had been torn asunder by privileging some inmates as “snitches” and as prison administrators. Swift felt that the division of the inmate population between privileged inmates and the general population generated weakness. “The situation as I see it, is very simple, you are either with us or against us, there is no middle ground.” Swift therefore attempted to instill the subculture of the “convict code” and “con loyalty” as a political act to ensure collective organization.

We are all aware of snitches and the enormous power and influence they possess, but we continually display indifference and a dangerously self-defeating characteristic when we do nothing about them. They are able to operate and continue their subversive activities, openly in most cases, because we do much to encourage them. We must not cease our recognition of snitches, but actively censure, criticize, and condemn all snitches and any one that maintains friendly relations with them.⁶⁹⁵

Swift’s movement was inter-racial and it advocated self defense. Swift was a frequent writer to state House representative Eddie Bernice Johnson and sought her advice as to how he might mobilize a racially segregated prison population with a long history of racial animosity. “By all the measurable indices,” Swift wrote to Representative Johnson “group consciousness among the Spanish-speaking minority is far below that of the Black community. The Panther Party has revealed that the Chicano community both admires and appreciates the heightened Black militance. But clearly, from an objective point of view, an alliance would be to the people’s

⁶⁹⁴ See Donald Clemmer, *The Prison Community* (Boston, Mass: The Christopher Publishing House, 1940), 152.

⁶⁹⁵ Inmate political tract, inmate correspondence and writings, *Ruiz*, TDCJ, Office of the Special Counsel, TSLA, 2004/016-55.

advantage.”⁶⁹⁶ His political tracts attempted to make common cause with Latino inmates in particular. Swift, who had trained in the martial arts, was a proponent of collective self defense, but he eschewed the idea of a prison riot and random violence that might only hurt the prisoner rights movement. In a February 1978 letter to Senator Chet Brooks, Swift wrote explicitly about self-defense and the less desirable choice of prison riot as a political option. “It is my opinion that every man has a right to defend his life when barbarically threatened.” But, Swift acknowledged, he and his fellow inmates had “only two essential weapons to challenge and struggle against repressivism and racism in prisons: political letters and civil rights suits. There is an extended measure, of course, brutal confrontation, but such, in my opinion, is borne out of total desperation.”⁶⁹⁷ Swift may not have embraced violent tactics, but he and other inmate revolutionaries did engage in revolutionary hopes to overthrow his keepers. These hopes caused those in TDC and many in state government to dismiss the movement and its aims. Within the prison community, however, revolutionary language and hopes helped to forge a united movement out of what had been a dispirited and internally divided prison population.

The movement hoped to find educated inmates for leadership roles, but it also inspired the collective organizing of inmates who did not have the education or the inclination to become writ writers. Indeed, Swift’s tracts and individual letters show his lingering fear that other prisoners might distance themselves from the fate of writ writers and that they might embrace instead the con colloquialism that each “man

⁶⁹⁶ *Ibid.*

⁶⁹⁷ Johnny E. Swift to Chet Brooks, February 2, 1978, Papers of Chet Brooks, TSLA, 1999/136-20.

does his own time.” In a population where few had more than a high school education and where self esteem was often low, Swift attempted to instill confidence and inspire participation among all inmates. “Of course not everyone is destined for leadership, nor is everyone qualified to file a writ, write to the legislature, news media, Judges, or the Justice Department, but anyone can help by offering stamps, writing materials, or the loan of a typewriter or a signature to a petition...Anybody can be a hero.” Swift’s aim was to broaden the movement beyond a few active writ writers and make it a system-wide effort at collective resistance.

We must intensify our efforts in recruiting additional members to the struggle by establishing communications, coordination, and rapport between the different wings and extending the spirit of awareness. We must continue to actively support, in every way possible, the vanguard of the movement, the writ-writers, and all others who seek prison reform through protests, class-actions, affidavits, and letters to the legislature.⁶⁹⁸

Swift was not alone in his political mobilization and organizing effort. Other inmate groups joined the movement, including such inmate organizations as the Prisoner Solidarity Committee, Prisoners United, the JailHouse Lawyers Association (JHLA), and Allied Prisoners Platform for Legal Equity (APPLE). These groups were typically small and composed of three or four core members who wrote tracts and petitions. Inmates then sent these tracts outside of the prison and they also disseminated them among the general inmate population. In a mass letter, titled “Dear Citizen,” Ramsey prison’s JHLA explained why their members had given up on politics and politicians, and had turned instead toward the courts as a last ditch effort to seek redress:

⁶⁹⁸ *Ibid.*

For several years now, we have been attempting to raise the public's and the legislature's awareness to the adverse reality of prison life through letter-writing campaigns. As a result of these efforts, the Joint Committee on Prison Reform was selected by the 63rd Texas Legislature to investigate the many complaints of maltreatment issuing from the Texas Department of Corrections...However, there is considerable lack of interest and some outright opposition among the more conservative elements of the Legislature regarding the Joint Committee's recommendation. As such, there is little chance that the 64th legislature will produce the legislation necessary to secure the standards urgently needed. Therefore, it is of paramount importance to the inmate writ-writers (jailhouse lawyers) to challenge the various unlawful practices, policies and procedures of the Texas Department of Correction through court litigation...Court litigation is nevertheless the inmates' sole alternative outside of rioting and we have decided to continue our quest for reform and justice through this medium.⁶⁹⁹

The JailHouse Attorney Lawyers Association included an executive board of inmates and a citizens coordinating committee. Its stated purpose was to write legal writs for indigent inmates and to raise money for legal activities from out-of-prison and "free world" contributors. The JHLA established a fund from its "free world" board members that financed the payment of court filing fees, the purchase of law books, the photocopying of legal citations, typewriters, postage, stationary and other legal material.⁷⁰⁰ One of the distinctive characteristics of the inmate letter-writing and legal campaign was the enormous amount of time and energy that such a campaign required. Without access to a mimeograph machine or a photocopier, inmates typically hand-copied the same letter and the same affidavit to as many as five different recipients. For many inmates, these letters constituted assurance that

⁶⁹⁹ "Inmate correspondence and writing," *Ruiz* case files, General Counsel, TDCJ, TSLA, 2004/016-55.

⁷⁰⁰ Letter announcing formation of JHLA and "Duties and Responsibilities of Citizen Members of JHLA, inmate correspondence and writing, TDCJ, General Counsel, *Ruiz*, 2004/016-55.

they might survive the prison experience. Inmate Michael Jewell expressed how his organizing efforts and political letter writing was motivated by a survival instinct:

I had a list of a couple dozen people like Senator Brooks, Rep. Mickey Leland, Federal Judge Henry B. Gonzales, Judge Sarah T. Hughes, Patricia Gail Littlefield at the Civil Rights Division of the Justice Department, and the Sullivans at Texas CURE. Out of scores of people I wrote I retained these because I always asked them to write to W.J. Estelle and Warden Cousins to confirm or deny my allegations. This was critical to me because I wanted the officials to know that prominent outsiders were aware and interested in what they were doing. If nothing else, I am convinced that those who responded kept me alive and relatively unscathed.⁷⁰¹

APPLE, meanwhile, was a hard edged, left wing political organization that issued such tracts as “Ally or Die,” which was a proclamation issued to fellow “members of a totally enslaved class” in which “we are total slaves inside and disenfranchised wage-slaves outside.” Inmates Henry Lerma, David Edwards and Carrol Maride formed Prisoners United and they pressed prison reform by sending a series of signed inmate petitions to state legislators. One petition, signed by 28 inmates, stated, “Since the introduction of the Bill (1056) TDC Administrative officials have intentionally and willfully closed their eyes and ears to this law and have further increased their building tender system as a means to make the conditions of confinement more oppressive than intended by law.” Prisoners United charged that TDC was “stretching the Constitution beyond its breaking point” and that “concealment, deception, and cover-up has become a way of life” within TDC culture.

⁷⁰¹ Michael Jewell to Robert Chase, November 1, 2008, a 17-page letter to the author in author’s possession.

There are some of the undersigned who have witnessed, and have been victims of the injustices perpetrated against other inmates by building tenders. They saw there a contest thus produced which created bitterness, hatred, fear, revenge and ferocity that has seldom been equaled; they witnessed the whole framework of humanity shaken, justice denied, delay and brought into disrepute, crime stalking unreduced and unpunished and the best interests of society shattered or crushed and they cannot remain silent.⁷⁰²

All of these inmate groups adopted similar language whose purposeful tactic was to construct a counter-narrative to TDC's modernization success story by presenting their own narrative of a "backwards" prison system tied to slave practices, racial brutality, and plantation labor. References to TDC as a "slavocracy" littered inmate letters, which explicitly called attention to unpaid prisoner work as slave labor. Moreover, inmates argued that their own agricultural stoop labor occurred on the grounds of former plantations and that their harvesting of cash crops was no different than the work of 19th century slaves. The Prison Solidarity Committee, for instance, sent out a handbill titled: "Texas Prisoners Resist Texas Slave System." The handbill derisively charged that the conditions of imprisonment in Texas "are the prison conditions of a century ago, of the pre-Civil War era...It is scarcely what a reasonable person would expect to find in 1978 with a reputation for modern methods and proud structures." The handbill mocked TDC's claims of modernity when it stated that "the distance from the prison farms of East Texas to the NASA Space Center is greater than the distance from the Earth to the Moon." TDC's rise as a model of correctional management among prominent penologists and state prison managers was therefore contested in a public struggle over the prison's national image.

⁷⁰² Inmate political tract, inmate correspondence and writings, *Ruiz*, TDCJ, Office of the Special Counsel, TSLA, 2004/016-55.

The Prisoner Solidarity Committee (PSC) was a collection of prisoners, state legislators, labor union representatives, ACLU representatives, La Raza representatives, Brown Berets, and prisoner rights activists from across the country.⁷⁰³ Its leader was Salvador Gonzales, a writ writer and life-long friend of David Ruiz. The PSC produced a six-page handbill that provided a history of the Texas prison system, a letter of appeal from David Ruiz, and a summation of the issues in the Ruiz case. Ruiz's letter offered a personal message meant to remind the wider public that inmates were more than criminals and that the prison system dehumanized inmates and turned them into objects.

Who are the prisoners in TDC? Some are white, some are brown, some are black. Almost without exception, we are the poor people of Texas; and without exception we are all human beings. I am sure that each of you realizes that each of us is human. We share the same feelings; we love, we feel joy, we feel pain, we know sorrow and we have dreams, hopes and desires for a better tomorrow. Progressive programs and humane treatment that may come about if this suit is won will surely encourage the inmates to participate in their rehabilitation with joy and hope.⁷⁰⁴

⁷⁰³ Its sponsors included: state representative Ben Reyes of Houston, state senator Carlos Traun of Corpus Christi, Ray Hill of the Human Rights League, Gargland Jagers of the Black Secretariat of the Roman Catholic Archdiocese of Detroit, Diane Goldberg of AFSCME Local #140 (Houston), Demetrio Lucio AFSCME Local 1550 (Houston), Lorenzo Cano, Harris County Raza Unida Party (Houston), Antonio Orendain of the Texas Farmworkers Union, Rado Rosales of the Brown Berets (Houston), L.C. Dosey of the Southern Coalition on Jails and prisons, Inc., Ron Welch of the Mississippi Prisoners Defense Committee, Eddie Sandifer of the Mississippi Alliance for Human Rights, Ruby Tobias of the Mississippi Council on Human Relations, Tom Soto Prisoner Solidarity Committee and representative of Attica prisoners, Eduardo O. Canales of Centro Aztlan, and Allen Ginsburg (the noted poet).

⁷⁰⁴ "Prisoners Resist Texas Prison Slave System," handbill, Prisoner Solidarity Committee, in author's possession.

Of course prisoners were not slaves and important historical distinctions marked each type of confinement as unique and different.⁷⁰⁵ But by drawing analogies and comparisons between prison and slavery, activist inmates knowingly confronted TDC's modernization success story with a morality tale that equated modern-day prisons with the archaic memory of the brutality and inhumanity of nineteenth century slavery.⁷⁰⁶ As prisoners repeatedly reminded the courts and state legislators, they had been legally consigned as "slaves of the state," toiled daily in unfree prison labor on the grounds of 19th century plantations, and experienced "civil death" as long as they remained prisoners. As one inmate put it, "Slavery, man, human slavery." Indeed, Arnold Pontesso, Oklahoma's former director of corrections and an administrator of the Federal Bureau of Prisons, adopted the inmate's use of slave imagery in their language of dissent when his 1977 report declared that:

The venerable institution of slavery still exists in Texas with huge plantations operated by the State and made bountiful by the unpaid labor of thousands of convicted felons. One gets the strong feeling that TDC exists not for the protection of society, not to punish offenders or deter others from committing crimes, not to rehabilitate criminals, but to perpetuate the plantation as the largest agri-business in the state.⁷⁰⁷

⁷⁰⁵ In *Slavery and Social Death*, Orlando Patterson explicitly defined prisoners as having an entirely different restriction in their liberties than slaves. Patterson's trenchant definition argued that slavery was a "permanent, violent domination" of those born into slavery who subsequently were made the life-long victims of white supremacy and a coerced labor system controlled by private ownership and sanctioned by the state. Prisoners, on the other hand, were not born into their condition and their confinement was due to their crime against society. Most prisoners could expect to return to society as full citizens and no inmate, of course, was imprisoned from birth. Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge, Mass: Harvard University Press, 1982), 13. For scholarship stressing the historical similarities between slavery and prison confinement, see Kim Gilmore, "Slavery and Prison – Understanding the Connections," in *Social Justice* 27(3), 2000, 195; and Loic Wacquant, "From Slavery to Mass Incarceration: Rethinking the 'Race Question' in the U.S.," *New Left Review*, 13, Jan-Feb 2002

⁷⁰⁶ "Prisoners Resist Texas Prison Slave System," handbill, Prisoner Solidarity Committee, in author's possession.

Some of the letters argued that the transition from freedom to confinement rendered all prisoners, regardless of race, to the same condition. Thomas W. Shaw's September 1974 letter to state Senator Ron Cloward, for instance, showed the ways in which prison stripped some Anglo inmates of their white skin privilege. "Men leave here every day who have been humiliated, belittled, abused, beaten up and reduced in manhood," Shaw protested. "I never in my life realized until I entered this system, what it must be to be born BLACK, or be Spanish-American. However, since the system operates on the concept of slave master principles of 100 yrs. ago, I have found out for myself how it must feel to be black."⁷⁰⁸ Anglo inmates who felt that imprisonment cost them their "whiteness" often couched their critique of the prison system in a racialized language that employed crude racial epithets and charged that life in a Texas prison was nothing less than modern-day slavery.⁷⁰⁹

⁷⁰⁷ Expert Report Security, Arnold Pontesso, Prepared for U.S., Plaintiff-Intervenor, filed February 18, 1977.

⁷⁰⁸ Thomas W. Shaw, Ellis to Ron Clower, Sept 30, 1974, Papers of Ron Clower, TSLA.

⁷⁰⁹ For a historical evaluation of white slavery, see Gunther Peck, "White Slavery and Whiteness: A Transnational View of the Sources of Working-Class Radicalism and Racism," *Labor* 1 (2004): 41-63.

Figure 2. Prisoner Solidarity Committee Pamphlet, "Prisoners Resist Texas Prison Slave System"



**Slavery was abolished in 1865,
but not in Texas prisons . . .**

"On December 18, 1865, the 13th Amendment to the U.S. Constitution was ratified . . .

"That vulnerable institution was continued, however, in penitentiaries throughout the country. Texas Department of Corrections is probably the best example of slavery remaining in the nation today."

"The most overpowering impression is the immense size of the facilities and the well-kept farms of thousands of acres."

"One gets a strong feeling that TDC exists not to punish offenders or deter others from committing crimes, not to rehabilitate criminals, but to perpetuate the plantation as the largest agribusiness operation in the state."

Quoted from: Arnold Pontesso, U.S. Justice Department, Consultant, writing on "Ruiz v. Estelle"

In Ruiz lawsuit...

**Prisoners resist
Texas prison slave system**



What you can do to bring rights to prisoners in Texas

- We need people to help distribute leaflets to publicize the case.
- Arrange to have a member of our organization speak before your group, family, or friends. 713/864-2852
- We desperately need contribution (\$) for envelopes, stamps, paper, etc. 713/864-3802
- Most importantly, we need people to attend the court sessions.

Please clip and return to: Prisoner Solidarity Committee, P.O. Box 52115, Houston, Tx. 77052 713-988-1111

Name _____
 Address _____
 City/State/Zip _____

Partial list of sponsors

Ben T. Reyes, State Representative (Houston)/Carlos Truan, State Senator (Corpus Christi)/Ray Hill, Human Rights League (Houston)/Garland Jagers, †Executive Director, Black Secretariat of the Roman Catholic Archdiocese of Detroit/Diane Goldberg, †AFSCME Local #140 (Detroit)/Demetrio Lucio, †AFSCME Local 1550 (Houston)/American Civil Liberties Union (Houston)/Lorenzo Cano, Harris County Raza Unida Party (Houston)/Antonio Orendain, Director, Texas Farmworkers Union/National Lawyers Guild (Houston)/La Raza Legal Alliance(Houston)/Rado Rosales, Brown Berets (Houston)/L.C. Dorsey, Associate Director of the Southern Coalition on Jails and Prisons, Inc./Ron Welch, Attorney, Mississippi Prisoners Defense Committee/Eddie Sandifer, Chairperson, Mississippi Alliance for Human Rights/Ruby Tobias, Mississippi Council on Human Relations/CASA-HGT (San Antonio)/Tom Soto, Prisoners Solidarity Committee and negotiator for Attica prisoners (New York)/Eduardo O. Canales, Director, Centro Aztlan (Houston)/Allen Ginsburg, Poet.

†Organizations listed for identification purposes only.
 (This brochure was produced in Sept. 1978 by the voluntary labor of members of the Prisoner Solidarity Committee.

In 1924, the Committee on Prisons and Prison Labor condemned the Texas Prison System for inadequate medical care, unusual and brutal punishment, and for its unqualified personnel. Now 54 years later, it is 1978 and the Ruiz v. Estelle case is raising the same questions. Isn't it time for a change?

On December 28, 1975, the rhetoric escalated to violent rebellion when fifteen African American inmates, many of them Black Muslims, attempted to take over the Ellis prison with sharpened down spoons. In 1975, R.M. Cousins, the same warden who took over for McAdams at Wynne, was the Ellis warden. The Major on Ellis was L.A. Steele, who had a reputation for violence against black inmates. Inmate Michael Jewell recalled that Steele, who was 6'3 and weighed well over 350 lbs., was one of the "most sadistic officials I ever had the displeasure of dealing with. He loved violence."⁷¹⁰ In an interview with Justice Department consultant Arnold Pontesso, Inmate Rester Ray Ballard told the investigators that, "they were mistreating us, jumping on us, the building tenders and officers. We'd work all day in the fields and some of us they'd tell to catch the back gate so they could give us a [disciplinary] case, you know a field case for not working." Inmate Ballard contended that black inmates would get 3 to 4 days of cell restriction while white inmates who TDC charged with the same offense would "get 2 or 3 hours cell restriction." Ballard felt that African American inmates, particularly Black Muslims, were targets of racial violence. "I didn't ever see no white dude come out of the office all bloody, like he had been jumped on," Ballard argued. "The only thing I seen was just black dudes getting mistreated." The inmates had drawn up grievances and demands that TDC remove Warden Cousins and Major Steele from the unit, which TDC promptly ignored.⁷¹¹ A group of building tenders put down the failed

⁷¹⁰ Michael Jewell to Robert Chase, November 1, 2008, a 17-page letter to the author in author's possession.

⁷¹¹ Ruiz, 2004/016-55, Unit Inspections, Inmate Interviews, 1976; "Texas Department of Corrections: Inspection of Security and Control Procedures in all Institutions, July-August, 1976," by Fred T. Wilkinson, Corrections Consultant, *Ruiz*, CAH, 2004/016-55.

rebellion by using “pipes and sticks” against the rebelling inmates. TDC placed the fifteen insurrectionists in solitary on three 15-day convictions for a total of forty-five days. The inmates claimed that while in solitary the building tenders beat them “every other day.” The abortive efforts of the Black Muslims ended in further violence against the inmates by building tenders, which served as a reminder that violent retaliation by prisoners only bred more violence. It sowed the seeds for what inmates would call a “peaceful riot” in the form of a system-wide work strike.

A Path of Expansion: Prison Overcrowding

It was thus not just political rhetoric that was heated. The prison environment from 1972 to the opening of the *Ruiz* trial in 1978 had grown more violent, overcrowded, and dependent on building tenders. Law and order politics and “get tough” on crime policies contributed to the overcrowding. The call for “law and order politics” on the national level has its origin in the 1964 presidential campaign of Barry Goldwater and in the public’s response to growing crime rates in the 1960s.⁷¹² At the state level, Texas politicians responded by passing in 1967 a new penal code that restricted inmate eligibility for parole only after serving one-third of their sentence. Previously, inmates served only one-fourth of their sentence before they

⁷¹² On the historical and political development of “law and order” campaigns at the national level, see Michael W. Flamm, *Law and Order: Street Crime, Civil unrest, and the Crisis of Liberalism in the 1960s* (New York: Columbia University Press, 2005); Rick Perlstein, *Before the Storm: Barry Goldwater and the Unmaking of the American Consensus* (New York: Hill and Wang, 2001); and, Robert Alan Goldberg, *Barry Goldwater* (New Haven: Yale University Press, 1995).

became eligible for parole. The 1967 law therefore kept prisoners in TDC for longer periods of time.

A decade later, a second law propelled prison growth. A year before the Ruiz case was heard in federal court, Governor Dolph Briscoe passed a “law and order” crime package that extended prison stays for violent criminals. The 1977 state legislature’s Senate Bill (SB) 152 stripped the “good time” policy away from all inmates who committed a felony with a deadly weapon. Before 1977, Texas state law allowed all convicted inmates, except those under the death penalty, to be considered for parole after they served one third of their sentence or 20 years, whichever was less. The new law stipulated that inmates convicted with a violent felony serve “day for day” the first third of their sentence. Inmates called it serving full “hard time,” rather than “good time.” The law also diminished the judiciary’s sentencing power. Prior to the 1977 law, both judges and juries had discretion to suspend sentences of less than 10 years and to place defendants on probation. The Briscoe law, however, stripped judges of the power to grant probation for violent crimes.⁷¹³ Signaling a shift from “prisoners’ rights” to “victims’ rights,” the bill also included restitution to the victims of a crime as a condition of parole.

When Briscoe first introduced his “law and order” crime package, he frequently cited the fact that 67 percent of offenders released from TDC were arrested for a new offense within three years of their release.⁷¹⁴ Governor Briscoe was also

⁷¹³ The violent crimes included aggravated kidnapping, aggravated rape, aggravated sexual abuse, and aggravated robbery or use of a deadly weapon other than a firearm during the immediate flight from a felony.

⁷¹⁴ “Briscoe for Curbing Convicts’ Release” *Houston Chronicle*, 8 April 1976.

responding to a shift in public sentiment that demanded longer prison sentences for convicted criminals. In a 1977 Texas Crime Poll of 1,000 citizens conducted by Sam Houston State University's criminology department, 56 percent of respondents felt that inmates should serve the full sentence and only 12 percent thought that violent inmates should receive probation.⁷¹⁵ Even more compelling was the fact that 86 percent of those polled agreed that violent criminals should receive no probation. The issue of "victims' rights" also received a boost when 62 percent of respondents said that victims of crime were not treated fairly by the criminal justice system, while 75 percent of the respondents felt that the criminal justice system treated defendants and prisoners fairly.⁷¹⁶ Governor Dolph Briscoe reflected the public sentiment when he declared that, "The time has come for Texans to demand the rights of the accused be no greater, extend no longer, be no more carefully defined than their own rights as citizens of Texas and of the United States. The time has come for government and the courts to announce the rights of the law abiding citizens."⁷¹⁷ An editorial in the Herald of Perryton Texas seemed to agree: "after all, the criminal has had his rights protected long enough. Now it's our turn."⁷¹⁸

⁷¹⁵ "Texas Crime Poll," Fall 1977 survey, Texas Criminal Justice Center, Sam Houston State University, Papers of Ron Clower, TSLA, 1981/217-125.

⁷¹⁶ Those numbers shift slightly when race was considered. Seventy-seven percent of white respondents felt that the criminal justice system treated defendants fairly, while only 65 percent of black and 68 percent of Mexican Americans agreed. Moreover, only 18 percent of whites felt that defendants were not treated fairly, while 31 percent of both black and Mexican Americans respondents felt that defendants were treated unfairly.

⁷¹⁷ "Get Tougher on Criminals," *Register*, Gatesville, Texas, 12 July 1976.

⁷¹⁸ "Anti Crime Bill," *Herald*, 26 July 1976.

The 1967 change in the penal code and the 1977 crime package contributed to a dangerously overcrowded prison system. Indeed, the prison population in 1978 had doubled since Cruz and Jalet first initiated the litigated reform crusade a decade earlier in 1968 (see Table 1 below). Many inmates could expect to live in double and triple bunked cells meant for only one inmate. When the federal court handed down the *Ruiz* in December 1980, there were more than 5,000 inmates without beds and who slept nightly on the prison's hard, concrete floor.

The number of building tenders also grew. In 1974, there were approximately 800 building tenders throughout TDC, which made up 4.7 percent of the 17,000 inmate population. By the time of the trial, however, there were 2,265 building tenders making up 9 percent of the 25,000 general inmate population. Indeed, when the case opened in 1978 TDC employed one uniformed guard for every 12 inmates, which was the lowest guard-to-inmate ratio in the nation. Such an imbalance created an uneasy comparison to the national average of 1 guard for every 5 inmates. The inmate mobilization effort and the simultaneous increase in building tenders also led to more incidents of self defense, violence, and unrest. TDC reported that between 1970 and 1977 the number of annual inmate infractions doubled from 124 to 234.⁷¹⁹ The overcrowding and expanded reliance on building tenders made for an explosive prison environment. On the eve of the Ruiz trial in 1978, the years of mobilization efforts that began with Fred Cruz's writ writing in the late 1960s finally came to fruition.

⁷¹⁹ "Shortage of guards is a major problem in state's prison system," *Houston Chronicle*, 9 September 1978. Texas Research League, *Houston Chronicle*, 9 September 1978.

| Table 8. TDC Prison Population, 1967-1980 | | | | | | | | | |
|--|-----------------|-------------------------|-------------------|--------|-----|--------|-----|----------|-----|
| Year | Texas Gen. Pop. | Inmate Rate Per 100,000 | Inmate Population | White | % | Black | % | Hispanic | % |
| 1967 | 10,838,502 | 113.61 | 12,313 | n/a | n/a | n/a | n/a | n/a | n/a |
| 1968 | 10,945,000 | 111.6 | 12,215 | n/a | n/a | n/a | n/a | n/a | n/a |
| 1969 | 11,144,700 | 113.26 | 12,622 | n/a | n/a | n/a | n/a | n/a | n/a |
| 1970 | 11,196,730 | 128 | 14,331 | n/a | n/a | n/a | n/a | n/a | n/a |
| 1971 | 11,428,000 | 139.91 | 15,989 | n/a | n/a | n/a | n/a | n/a | n/a |
| 1972 | 11,649,000 | 134.94 | 15,719 | n/a | n/a | n/a | n/a | n/a | n/a |
| 1973 | 11,794,000 | 143.77 | 17,073 | 5,888 | 38 | 6,668 | 43 | 2,442 | 16 |
| 1974 | 12,050,000 | 139.69 | 16,833 | 6,664 | 38 | 7,695 | 45 | 2,764 | 16 |
| 1975 | 12,237,000 | 154.74 | 18,935 | 6,706 | 38 | 7,926 | 45 | 2,987 | 17 |
| 1976 | 12,487,000 | 165.91 | 20,717 | 7,586 | 38 | 8,942 | 45 | 3,450 | 17 |
| 1977 | 12,830,000 | 174.89 | 22,439 | 7,982 | 38 | 9,363 | 44 | 3,850 | 18 |
| 1978 | 13,014,000 | 188.84 | 24,575 | 9,155 | 38 | 10,353 | 43 | 4,423 | 18 |
| 1979 | 13,385,077 | 198.15 | 26,522 | 9,839 | 39 | 10,837 | 43 | 4,650 | 18 |
| 1980 | 14,228,383 | 210.04 | 29,886 | 10,679 | 38 | 12,068 | 43 | 5,168 | 19 |
| Source: 1980 Annual Statistical Report, TDC | | | | | | | | | |
| Ruiz Discovery, Overcrowding, 2004/015-31, CAH. | | | | | | | | | |

A Peaceful Riot: The Workstrikes of 1978

At daybreak on October 4, 1978, the inmates of the Ellis prison farm, which was situated in the heart of the cotton growing region of East Texas, shuffled out of their prison cells for another day of grueling hard labor. Most prison guards expected fit inmates to pick between 200 and 300 pounds of cotton that day. As the inmates worked the field in racially segregated rows of Black, white, and Latino lines of prisoners, a prison guard high rider, what inmates referred to as the “boss man,” sat perched above them on his horse, with a .30 caliber rifle clutched in his hands and his face shaded from the morning sun by his Stetson hat. On this particular day, however, nine inmates refused to work and sat down in a work strike in support of the

Ruiz trial, which the court was to convene within the week.⁷²⁰ Despite the guards' sharp barks and insistent demands that the inmates return to work, the inmates remained steadfast and by mid-afternoon another 408 inmates sat down in solidarity. One of the first nine inmates who started the work buck in the fields of Ellis prison wrote to Senator Chet Brooks and told him that the price he paid for his participation in the strike was his chance at freedom through the loss of his accrued "good time":

On Oct 4th 8 comrades and myself threw off our cotton sacks while out in the cotton fields and told the overseer that we refused to work. All of us 9 quit at the same moment, for the same reason, which was to show our support for the brothers in court (David [Ruiz] vs. Estelle). The 9 of us were immediately whisked away on a bus so that others would not see us and join us. We were put on Segregation to await the Kangaroo court to try us for refusing to work. From our segregation cells we can see as the men go to work. The following day (the 5th) as men were on their way to work some 148 just sat down and refused to go to work. Chicanos, blacks, whites! It was a united front to show support for the trial. By the 6th there were close to 600 of us on strike here on Ellis. All in support of the trial. The 9 were sent to solitary confinement for refusing to work. They let all 9 of the original strikers out except Butch Mendez and Marcelino Jaramillo. Who were charged as ringleaders agitating mutiny. Then after 3 days they brought kangaroo court right to our solitary door and tried us right there. I told them that I was being punished 4 times for 1 offense since all of my good time was taken, I am to remain in 3rd class status, and two trips (15 days a trip) to solitary.⁷²¹

TDC similarly charged Michael Jewell, a white inmate and one of the first to strike, as a "mutineer" and they sentenced him to permanent segregation for acting as one of the group's leaders. While Jewell had written and disseminated tracts as a writ writer

⁷²⁰ Butch Mendez, Ellis Unit, Inmate number 256311, to State Senator Chet Brooks, Chairman, Joint Committee on Prison Reform, December 15, 1978, Papers of Ron Chet Brooks, TSLA, Box 1999/136.

⁷²¹ *Ibid.*

and political organizer, he felt that he “did no brilliant planning or organizing to accomplish the strike. I was just the match in the grass.”⁷²²

By the following day, October 5, the strike spread to the Darrington prison farm, where a work strike involving over three hundred inmates escalated when the inmates turned from the field to march back towards their prison unit, only to be fired upon by the Assistant Warden resulting in “superficial buckshot wounds” to three inmates. As news of the work strike spread across the prison system, the farms at Coffield, Ellis, Clemens, Darrington, Eastham, and Ramsey I and II also erupted into disturbances and work strikes throughout the next week. Inmate Michael Eubanks, one of the first to strike at the Eastham prison farm, recalled that the prisoners chose to begin the strike in the fields and not in the actual prison unit out of self protection and fear. “It was generally accepted that beginning the strike in the fields was better than refusing to go to work from the building,” recalled Eubanks. “The BT’s (convict guards) controlled the building but not the fields. Plus, when an inmate went to work in the fields he was given what amounted to a large, heavy duty garden hoe, referred to as a ‘aggie,’ which could be used as either an offensive or defensive weapon.”⁷²³

Although the threat of violence and riot overshadowed the prison at all times, especially during a work strike, the first five days of the strike remained peaceful.

The prison strike started at Ellis prison through inter-racial coordination and

⁷²² A 17-page letter to the author, Michael Jewell to Robert Chase, November 1, 2008, in author’s possession.

⁷²³ “Strike at Eastham,” unpublished letter and account of the 1978 strike, Michael Eubanks (Texas inmate since 1977), letter to the author, April 2, 2006.

planning. Alvarro Luna Hernandez, one of the inmates involved in coordinating the strike, recalled that “we had been organizing months before that” and that “we had a little manifesto that we started distributing.” “Attica was our model. We felt that we had to make a stand. The time was now because the publicity was there and we were tearing down the walls...we felt that the time was now to expose TDC.”⁷²⁴ At Ellis, there were two groups of inmates involved in the work strike. Sitting in the field were several hundred inmates refusing to work. Within the walled fence, but outside of the building, were another 150 to 200, which was the group that Hernandez joined. Out in the field at Eastham, striker Eubanks remembered that “it wasn’t a planned strike. There was kind of a rumored attempt at making—I say rumored attempt at planning it. There was guys going around talking for a couple of days before then, about man, we need to lay it down [term for strike]. We need to stop. We need to strike. Because the Ruiz case had just gone to trial.”⁷²⁵

The strikers hoped that the media would cover the “work buck” and that state-wide media coverage would inspire inmates on other prisons to engage in a system-wide strike. “We’ll use the media—their own media to spread the word to the other units,” Hernandez recalled “and the other units hopefully will follow suit, and that’s exactly what happened. I mean even the women at the Goree Unit—of course, Goree Unit was a women’s facility then—even the women started to protest.”⁷²⁶ As the strike reached its second day, the prison guards refused to feed the inmates and used hunger as a lure to get the prisoners back into the building. Fellow striker and white

⁷²⁴ Alvaro Luna Hernandez, oral history with the author, March 23, 2007, IOH.

⁷²⁵ Michael Wayne Eubanks, oral history with the author, March 27, 2007, IOH.

⁷²⁶ Alvaro Luna Hernandez, oral history with the author, March 23, 2007, IOH.

inmate Robert Mudd recalled the excitement of the media attention and yet also the strains of hunger: “a Channel 2 helicopter flew over at one point and we made signs with our black socks—they were giving us black socks back then, and we put ‘No water—no food.’ And they had set up video cameras up on the roof, and they were filming us, and they had this long pole with a microphone on it, and they would stick this microphone out over the yard when we were having meetings. Each—group had a representative—blacks had a representative, the whites had a representative, and the Mexicans had a representative.”⁷²⁷

During these meetings, inmates would have the opportunity to stand before their fellow inmates to air grievances, keep the strike momentum, and pass the time. Hernandez conceived of these impromptu strike speeches as “an extension of the prison reform movement, an extension of the civil rights movement, an extension of the political consciousness of a certain segment of society that were just thrown in the slammer and forgotten. And that’s how we felt. And that’s why we spoke about human rights and we spoke about revolution and we found inspiration in Attica. We found inspiration in George Jackson and with the things that he was saying.”⁷²⁸ For Hernandez, these meetings were the culmination of years of internal prison mobilization for a collective strike. “We tore the carts and everything and we had bonfires at night and it was beautiful. I mean, from the revolutionary perspective, I saw Attica. That’s what I saw. Fires were going and then we would all have a chance to speak. You want to speak, get up there and just kind of lecture the people

⁷²⁷ Robert Mudd, oral history with the author, March 30, 2007, IOH.

⁷²⁸ Alverro Hernandez, oral history with the author, March 23, 2007, IOH.

about, well, the importance of the struggle and why we have to do what we have to do.” Indeed, the unity of the prisoners spread to even those that were not striking. When the prison administration refused to feed the striking inmates, those prisoners who were not on strike inside the building broke the windows and passed food to the strikers.⁷²⁹ Wilbur Collins, an African American inmate on Ellis’s death row who was known as “Wolf” for his temperament and “Kojak” for his shaved skull, recalled how even the death row inmates contributed their food to the strikers. “It was beautiful, really, the total unity that was behind this. Because the guys on H 18, which was directly across from J-23 [death row], they passed blankets and food out. And they would bring a food cart to death row. On death row we would eat every other meal. Everyone on death row agreed. If we eat breakfast, we wouldn’t eat lunch. We’d place our food on fix up trays and pass them across the hallway to the turnkey and they would pass them to the guys on H-18 and they would then pass them out the window to the back slab” where the strike was taking place.⁷³⁰

Moreover, the strike mixed previously segregated inmate populations without incident and with peaceful racial solidarity. “There was no love loss among the races back then,” Mudd recalled “but at that point we were very unified in what we were doing as far as the strike. It was for the Ruiz trial, you know.” Hernandez had a similar memory: “During those two weeks, there was no racial tension whatsoever, and there was black inmates, Hispanic inmates, white inmates, and it was just like solidarity there.” Inmate unity in support of the Ruiz trial was such that it also kept the inmates from rioting or having violence break out among themselves. For

⁷²⁹ *Ibid.*

⁷³⁰ Wilbur Collins, oral history with the author, March 21, 2007, IOH.

Hernandez, the fact that the inmates remained nonviolent showed that victory for the prisoner rights movement was finally in reach:

We felt that we had TDC on the run, and of course, remember one of the objectives was to show the public our humanity. To show the public that hey, we're not animals. You know, we've got TDC on the run. We're in court. We've got one of the best judges in the country. William Wayne Justice. He's going to hear us. He's got right in here—inmates like us, or people who are oppressed, so everything's in our favor. Should we tear this place down? Should we try to take it over? And then we used the example of what the Muslim brothers tried to do when they tried to take over the [Ellis] building, and it didn't work. So, we'll just sit—we'll riot peacefully, but if they start jumping on us, if they come in here with building tenders, then we have no choice but to try and take over. Cause we were armed. We were armed out there. We were armed to the teeth. But we were not going to initiate it. Except in self defense.⁷³¹

On Tuesday, October 10, the work strike escalated towards violence when 1,500 inmates on the Coffield Unit barricaded themselves inside their cell blocks. These inmates used blankets to tie their cell doors open and they barricaded the openings to the cell blocks with mattresses, while also smashing T.V. benches, glass panes, mops and brooms to make a series of lances from which they formed a defensive phalanx. In response, the Texas Department of Corrections (TDC) decided to storm the building, first using tear gas, and then sending in corrections officers to quell the uprising. By the end of the week, the work-stoppage and prison uprising had occurred on six of the prison system's fifteen units, and had involved nearly 1,500 convicts, approximately 15 percent of the 29,000 total inmate population. Before it ended, it resulted in thirty-four prisoners and eighteen guards being injured.⁷³²

⁷³¹ Hernandez, oral history with the author, March 23, 2007, IOH.

⁷³² *Dallas Times Herald*, "3 Inmates Injured by Warning Shots from Prison Guards," 9 October 1978; *Dallas Times Herald*, "TDC Head Refuses Comment on Prisoner Strike," 10 October 1978; *Fort Worth Star Telegram*, "Convicts in Other Facilities Join Prison Work



Photograph 9: David Ruiz emerging from court, 1978⁷³³

The work stoppages and short-lived riot on the Coffield Unit occurred on the second day of the *Ruiz* trial, causing Robert DeLong, general counsel for TDC, to sound the alarm during a closed-door court session:

Never before in the history of TDC has there been a work stoppage that spread to more than one unit. This is the first time....They [the inmates] seem to have gained a feeling of support because nothing has been done, and severe

Stoppage,” 11 October 1978; *Dallas Times Herald*, “Texas Prisons: Overcrowded, Edgy, and Under Fire,” 5 October 1978; *Houston Chronicle*, “Riot by 1,500 Inmates Acknowledged,” 19 October 1978.

⁷³³ Photograph courtesy of Alan Pogue, copyright protected.

measures have not been taken. We have attempted to discipline people on an individual basis with one disciplinary case of one inmate who has never had a disciplinary report before, and some have been punished severely trying to break the system, but the situation is not working... They seem to believe or perceive it as helpful to the Ruiz case at this point... There is obviously no question if things do get out of hand, the thing can be resolved, but force will have to be used, and hopefully that is what everybody is trying to avoid. We don't want to have another Attica or anything of that sort in Texas if it can be helped.⁷³⁴

Although Texas did indeed avert an Attica-like riot, the courtroom drama and cause celebre of the Ruiz case caused state-wide consternation and a historic change in the prison system, both in its internal structure and in its external and public image.

Justice and the State: The Struggle Over Who Rules Prison

The sensational Ruiz trial began in October 1978 and included nearly two years of testimony from 349 witnesses, of which over 100 were TDC inmates, and lengthy expert testimony from activists, academics, psychiatrists, and penologists. Judge Justice had to decide if the Texas prison system was “the best example of slavery remaining in this country,” as Arnold Pontesso of the Justice Department contended, or if TDC was “superb, a worthy state counterpart to the well-administered and progressive federal bureau of prisons,” as Fred Wilkinson former director of the Federal Bureau of Prisons put it.⁷³⁵ The stark difference between the model image of TDC and the reality of prison life as alleged by inmates pointed to a

⁷³⁴ Robert DeLong, Testimony of Julian Griego and In-Chambers Conference, October 16, 1978, David R. Ruiz, et. al. vs. W.J. Estelle, Jr., et. al., CAH, MAI 8/J-92.

⁷³⁵ Expert Report Security, Arnold Pontesso, Prepared for U.S., Plaintiff-Intervenor, filed February 18, 1977; “Inspection of Security and Control Procedures in all Institutions, Fred T. Wilkinson, prepared for the TDC, filed March 10, 1977.

monumental clash over what constituted effective prison management. Indeed, the trial represented a clash of cultures and ideologies between a punitive control penology model and the rehabilitative ideal. As Judge Justice noted in the conclusion to his memorandum opinion, “the trial of this action lasted longer than any prison case – and perhaps any civil rights case – in the history of American jurisprudence. In marked contrast to prison cases in other states, the defendant prison officials have refused to concede that any aspect of their operations were unconstitutional, and vigorously contested the allegations of the inmate class on every issue.”⁷³⁶

On December 12, 1980 Judge Justice ruled in favor of the prisoners with a damning indictment of the Texas Department of Corrections (TDC). After what was then the longest civil rights trial in U.S. judicial history, the court declared the Texas prison system unconstitutional. The court concluded that Texas prisons were overcrowded and understaffed, that inmates had poor medical and mental health care, and that prisoners were exposed to random abuse and violence, often uncontrolled, by guards and other inmates. Justice’s opinion was lengthy at 249 double-spaced pages with 219 footnotes. Its critique was sharp. Justice concluded that “the climate in TDC was one of fear and trepidation, engendered by the occurrence of frequent physical and sexual assaults, intimidation, bribery, and rule by threats and violence.” Justice’s memorandum opinion conveyed the tumultuous nature of the trial and his words revealed that the prisoners’ decade-long effort to bring TDC’s brutality to light had finally succeeded:

It is impossible for a written opinion to convey the pernicious conditions and the pain and degradation with which ordinary inmates suffer within TDC

⁷³⁶ Judge William Wayne Justice, memorandum opinion, Papers of Frances Jalet-Cruz, 94/042-16.

prison walls – the gruesome experiences of youthful first offenders forcibly raped; the cruel and justifiable fears of inmates, wondering when they will be called upon to defend themselves against the next violent assault; the sheer misery, the discomfort, the wholesale loss of privacy for prisoners housed with one, two, or three others in a forty-five-square-foot cell or suffocating packed together in a crowded dormitory; the psychological suffering and wretched physical stress which must be endured by those sick or injured who cannot obtain adequate medical care; the sense of abject helplessness felt by inmates arbitrarily sent to solitary confinement or administrative segregation without proper opportunity to defend themselves or to argue their causes; the bitter frustration of inmates prevented from petitioning the courts and other governmental authorities from relief from perceived injustices.⁷³⁷

Despite the ruling, TDC protested and sought to overturn the ruling. Over the course of the first six months after the ruling, Estelle repeatedly criticized the federal court. He used the media to complain that Justice believed “lying inmates” over hard-working guards and TDC officials. Estelle vehemently charged that Justice’s ruling “read like a cheap dime-store novel” and that the memorandum opinion displayed a “crass, gross, almost incredible lack of literary skills.”⁷³⁸

Some in the public shared Estelle’s view of the *Ruiz* ruling and denounced the imposition of the federal judiciary into their state government. In an editorial letter to the press, one angry citizen cited the 10th article to the Constitution. “This amendment [sic, article] means,” insisted the writer, “that the prison system of Texas is nobody’s business but Texas’ and Texans’ – and the federal government has no authority to interfere.” A similar letter in the *Houston Post* suggested that the newspaper print the entire US Constitution as “obviously Judge Justice has not read it. Otherwise, he would know that the federal government has specific limits to its

⁷³⁷ *Ibid.*

⁷³⁸ “Prison Director Lambasts Judge Justice’s Partiality, Literary Skills,” *San Antonio Express*, February 21, 1982; William P. Barrett, “Lifer,” *Houston City Magazine*, April 1982, 75.

power, and that constitutional amendments, not a judge's ruling, is required to grant it more power."⁷³⁹ Another letter provided an even more abrupt suggestion: "Only nine federal judges have ever been impeached. Let's make Federal Judge Wayne Justice No. 10."⁷⁴⁰ In some quarters, resentment drew on the public's growing animosity over the imposition of federal power over state control. As one letter writer put it, "The Civil War was lost by the seceding states, but this should not mean that we lost our Constitution."⁷⁴¹ Judge Justice's sweeping condemnation of the Texas prison system stirred lingering southern resentment and anger at federal power and its enforcement of civil rights issues.

Despite the growing political firestorm over litigated prison reform, TDC still faced the power of a court order and the prison system had little choice but to make some concessions. On 3 March 1981, TDC reluctantly agreed to a consent decree that implemented a plan to meet Justice's ruling in the areas of health care, terms and conditions of solitary confinement, use of chemical agents, work safety and hygiene, and disciplinary hearings for administrative segregation. The building tender system, however, remained unaddressed and TDC continued to claim that it did not exist as a power structure within the prison. TDC did rename the BTs Support Service Inmates (SSIs). Their duties, power, and social system within the prison remained the same, despite the court order.

⁷³⁹ Letter to the editor, *Houston Post*, 29 January 1981.

⁷⁴⁰ "Sound-Off: Texas prison Texas' Business, he says," news clipping file, Brown defense, in author's possession.

⁷⁴¹ *Ibid.*

In April 1981, Judge Justice issued a remedial order demanding that TDC reorganize its prison system by constructing new, smaller prisons near urban communities. These prisons would house no more than 500 prisoners and would be within fifty miles of a metropolitan area with a population of at least 200,000. The order barred TDC from building large prisons in the traditional East Texas region where prisoners had toiled in agricultural labor. Justice's 1981 remedial order thus sought to institute what legislative prison reform failed to do in 1974 with the JCPR and Citizen committee's recommendations. Attorney General Mark White was aghast at the order and predicted that it would cost the state as much \$4 billion to decentralize and reorganize Texas prisons according to Justice's new designs.⁷⁴² TDC appealed Judge Justice's decision to the 5th Circuit Court of Appeals in New Orleans on 1 June 1981.

The Court of appeals issued a mixed decision on June 23, 1982. The appeals court reaffirmed the Ruiz decision that TDC operated an unconstitutional prison that violated the Eighth Amendment's prohibition against "cruel and unusual punishment" and that TDC denied prisoners due process and full access to the courts. It also upheld Justice's prison ruling limiting each prison in TDC to 95 percent of its total capacity. But the fifth circuit also agreed with the state's claim that Justice's court-ordered remedies were too intrusive. The court thus concluded that reorganizing Texas prisons into smaller, decentralized prisons in urban areas was beyond the Federal court's power. Moreover, it concluded that the Federal court had no power

⁷⁴² "Texas Told to Cut Prison Population or Reject Inmates," by Richard Vara, *Houston Post*, 21 April 1981; "White Says Decision Likely to Cost State Millions," by Felton West and Richard Vara, *Houston Post*, 13 December 1980.

to insist that TDC reduce its overcrowded prison population through increased use of parole, accelerated good time, and weekend furloughs. As inmate plaintiff attorney William Bennett Turner put it, the Fifth Circuit Court of Appeals “gave each side half a loaf.”⁷⁴³ The appeals court couched its decision in medical language and argued that Justice’s remedial order “administers a massive curative dose” when “a lesser therapeutic measure” would suffice.⁷⁴⁴ While TDC declared victory in regards to the appeals decision, the Fifth Circuit did uphold Justice’s fundamental conclusion that TDC operated unconstitutional prisons.

Judge Justice was thus free to take additional measures to ensure that TDC carried out his orders to dismantle the building tender system. Justice responded by ordering a Special Master, Vincent Nathan, to routinely investigate the prison and implement full compliance. Nathan, a former law professor at the University of Toledo and a court appointed former special master for prisons in Ohio and Georgia, assembled a staff of investigators who made 142 investigative trips in its four months of operation. These investigations resulted in a series of reports that confirmed that the SSI title was simply a euphemism and that the building tender system continued despite the court order.

TDC drew the battle lines as state management of the Texas prison system was in crisis. The dictates of the federal judiciary and the desires of the state bureaucracy left the prison system in a tug of war. Law and order politics had resulted in a dangerously overcrowded prison system and it contributed to the

⁷⁴³ Turner quoted in Martin and Sheldon-Olson, 217.

⁷⁴⁴ *Ruiz v. Estelle*, 679 F. 2d 1115 (5th Cir. 1982), p. 1132.

standoff between Judge Justice and TDC. The racially repressive building tender system, meanwhile, remained in place in defiance of state law and the courts. As the new decade of the 1980s dawned, TDC confined inmates to a dangerously overcrowded prison system that seemed immune to the law and reform.

Conclusion

In the 1970s, the world of Texas prisons was in conflict. The prisoners themselves had brought attention to their cause and thrown the old prison order into crisis. Writ writers like Fred Cruz started a civil rights revolution in Texas prisons that civil rights and black and brown power veterans advanced through prison mobilization, organization, and legal documentation. Their public outreach campaign earned the interest of civil rights attorneys Jalet and Turner and it provoked a sense of moral indignity and outrage from Judge Justice. Their cumulative efforts were thus part of a national shift in criminal law that placed Texas at the center of a national debate over prisoners' rights of citizenship and legal recognition.

The incorporation of the prisoners' rights movement into the broader civil rights struggle extends the civil rights movement well into the 1970s. Indeed, those inmates who were veterans of the civil rights and Black Power movements felt that their struggle behind bars was intrinsically linked to their organizing experience out in the streets of free society. An analysis of the prisoners' rights movement as part of the Civil Rights Movement also highlights the degree of racial and sexual violence that maintained older traditions of racial hierarchy. Inmates confronted the prison's system of racial and sexual brutalization through nonviolent means in the courts and through massive letter-writing campaigns that hoped to generate external political

support. When legislative reforms failed to enact any meaningful change, frustrated inmates also resisted through violence and self defense. Inmates were thus not always heroic in their demand for justice.

Indeed, many inmates held revolutionary fantasies that saw themselves as the vanguard of a radical New Left movement. In his study of California's radical prisoners' rights movement, historian Eric Cummins has argued that the New Left allies of the prisoners' rights movement romanticized prisoners, particularly such inmates as George Jackson and Eldridge Cleaver who advocated Black Power, and irrevocably tied the New Left's radical political vision to violent criminality. Cummins charged that California's New Left latched onto society's outlaws as a way to reinvigorate radical politics by elevating inmate activists as the movement's "authentic" and masculine working-class heroes. This romanticization, according to Cummins, was a "naïve casting of prisoners as society's potential leaders" and it became, in his estimation, "one of the fatal mistakes leading to the demise of radical politics" in the world outside of prison.⁷⁴⁵ The Texas prisoners' rights movement, however, was less interested in the revolutionary dreams, hopes, and fantasies of those living beyond prison walls. Instead, the Texas prisoners' rights movement grounded its demands and revolutionary vision on what they saw as correctable injustices within their own prison society. The Texas inmates' allies included a collection of liberal attorneys, politicians, activists, and even a federal judge whose aim was to overthrow the brutal practices of TDC. These were not New Left

⁷⁴⁵ Eric Cummins, *The Rise and Fall of California's Radical Prison Movement* (Stanford: Stanford University Press, 1994), ix.

revolutionaries. Their struggle was in the court room and their efforts depended upon the just application of constitutional rights and the law.

Inmates, meanwhile, did couch their language in New Left radicalism, but their demands centered on a revolution within prison society and government. Theirs' was not a prison abolitionist movement, and while it drew upon revolutionary language and ideals, it also employed in its letter writing campaign practical appeals to humane treatment and the legal recognition of constitutional rights. But when moral suasion reached its limits and when the legislature offered meaningless laws without any impact, then some of the most desperate inmates turned to acts of self defense, self mutilation, and violence. As Lance Hill persuasively argued in his study of the "myth of nonviolence" and the role that the Deacons of Defense played in the civil rights movement, "when appeals to reason and morality fail, oppressed people will turn to coercive methods of disruption, force, and violence."⁷⁴⁶

Despite some violent incidents in the Texas prisoners' rights movement, one of its most distinguishing characteristics is the degree to which inmates in a sexually rapacious and racially violent system confronted that system through other means than brute force. Inmates waged a public relations struggle with TDC over the prison system's claim of progress by countering the prison modernization narrative and success story with slave imagery and their own alternative narrative that attempted to expose Texas prisons as a form of "twentieth century slavery." The inmate outreach campaign to legislators and litigators required inmates to make a persistent, cogent, and persuasive case without resorting to a wide-spread prison riot and violent revolt.

⁷⁴⁶ Lance Hill, *Deacons for Defense*, 273.

Indeed, the work strike of 1978 remained nonviolent for ten days and it did not result in the kind of violent uprising that so characterized the prison riots of the late-1960s and 1970s. In the words of Alva Luna Hernandez, the Texas inmates “rioted peacefully” and their demands for “humanity” and to be treated humanely and not as objectified “convicts and criminals” was heard. Their victory in Ruiz resounded across the nation’s courts and in its prisons. Civil rights had indeed come to the cell block and planted its legacy behind prison walls.

CHAPTER 8

“THE LARGEST PRISON CONSTRUCTION PROGRAM IN THE HISTORY OF THE WORLD:” THE DEFEAT OF THE OLD ORDER AND THE RISE OF THE NEW, 1981-1990

Human law is law only by virtue of its accordance with right reason, and by this means it is clear that it flows from eternal law. In so far as it deviates from right reason it is called an unjust law; and in such a case, it is no law at all, but rather an assertion of violence.

-St. Thomas Aquinas, *Summa Theologiae*

Prisons are partial geographical solutions to political economic crises, organized by the state, which is itself in crisis.

-Ruth Wilson Gilmore, *Golden Gulag*

Self defense, all the way.

-Eroy Brown, Texas inmate

Following the *Ruiz* decision, a sense of crisis gripped TDC as the building tender system was under severe attack and prison officers were losing authority to an organized inmate protest movement. The fallout from *Ruiz*, in the short term, was to diminish the authority of the keepers and to encourage protest among the kept. In the midst of the internal struggle between keepers and kept, the state refused to comply with Judge Justice's court order, leading to a political struggle between state government and judiciary authority. The uncertainty about order was exacerbated by a growing inmate population. The demolition of the old racial hierarchy within Texas prisons that was upheld by the power of the building tender system caused a change in prison society and its racial order in the aftermath of *Ruiz*. The prisons were once again on the precipice of crisis and disorder. In the midst of this crisis, the nation experienced unprecedented prison expansion over the decades of the 1980s and 1990s.

Why did prison growth explode after 1980? Prison scholars have disputed the conventional wisdom that prison growth in the post-1980 period is largely a product of a corresponding rise in crime rates. They point out that the fastest rate of crime occurred in the 1960s, not during the boom phase of prison building in the 1980s and 1990s. Moreover, during the 1960s incarceration rates nationally were falling just as crime rates were increasing. Crime rates continued to rise in the 1970s, but they

declined in the late-1980s and 1990s, just as the incarceration rate was booming.⁷⁴⁸

Scholars have thus shown that the rising incarceration rate and the dropping crime rate of the late-1980s and 1990s are inversely related.⁷⁴⁹ Indeed, many scholars have shown dismay over the “social myth” that has falsely correlated a rising crime rate as parallel to the past two decades of national prison boom.⁷⁵⁰ The remaining explanations for the prison boom are: the public has become more punitive; racial anxiety in the aftermath of a successful civil rights movement caused a reactionary prison build-up; the increase of the drug trade and mandatory drug sentencing laws;

⁷⁴⁸ On the drop in the crime rate and the rising incarceration rate as a function of tougher sentencing laws for drug possession and dealing, see Alfred Blumstein and Joel Wallman, eds., *The Crime Drop in America* (New York: Cambridge University Press, 2006). Marie Gottschalk also concludes that “The steepest increase in crime in the United States occurred during the 1960s, when the rate of imprisonment was falling. After that, crime rates rose in the 1970s, declined in the early 1980s, rose in the early 1980s, and declined from the early 1990s onward. During this twenty year period, the incarcerated population was continuously increasing.” See Marie Gottschalk, *Prison and The Gallows: The Politics of Mass Incarceration in America*, 26; Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley: University of California, 2007), figures on 8 and 9 for California’s rates of crime and imprisonment; Franklin Zimring and Gordon Hawkins, *The Scale of Imprisonment* (Chicago: University of Chicago Press, 1991), 122; Marc Mauer, *Race to Incarcerate* (New York: New Press, 1999), 82.

⁷⁴⁹ David Garland, *Punishment and Modern Society: A Study in Social Theory* (Chicago: Chicago University Press, 1990); Stuart A. Scheingold, *The Politics of Law and Order: Street Crime and Public Policy* (New York and London: Longman, 1984); Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley: University of California Press, 2007), 17-18; Gottschalk, *The Prison and The Gallows*, 23-26; Franklin E. Zimring and Gordon Hawkins, *The Scale of Imprisonment* (Chicago and London: University of Chicago Press, 1991); and Franklin E. Zimring and Gordon Hawkins, *Incapacitation: Penal Confinement and the Restraint of Crime* (New York: Oxford University Press, 1995).

⁷⁵⁰ Samuel H. Pillsbury, “Why Are We Ignored? The Peculiar Place of Experts in the Current Debate About Crime and Justice,” *Criminal Law Bulletin* 31 (July/August 1995): 305-306; John Dillon Davey, *The New social Contract: America’s Journey from Welfare State to Police State* (Westport, CT: Praeger, 1995), Chapter 5; Victor E. Kappeler, Mark Blumberg, and Gary W. Potter, *The Mythology of Crime and Criminal Justice*, 3rd ed. (Prospect Heights, IL: Waveland, 2000), 30-36.

that elite policy makers and politicians have “whipped up” fears over violent crime to create a “backlash” prison building movement to shore up their political base; and that economic interests in local communities have spurred the construction of a modern-day prison-industrial complex.⁷⁵¹

⁷⁵¹ On the public demand for “lock ‘em up” policies, see John J. DiIulio, Jr., “Are Voters Fools? Crime, Public Opinion, and Representative Democracy,” *Corrections Management Quarterly* I, no. 3 (1997): 1-5; and William J. Bennett, John J. DiIulio, Jr., and John P. Waters, *Body Count: Moral Poverty...and How to Win America’s War Against Crime and Drugs* (New York: Simon & Schuster, 1996).

On the “backlash” theory of political elites whipping up a political fury for “law and order” politics, see Katherine Beckett and Theodore Sasson, *The Politics of Injustice: Crime and Punishment in America* (Thousand Oaks, CA: Pine Forge Press, 2000); Joseph Dillon Davey, *The New Social Contract: America’s Journey from Welfare State to Police State* (Westport, CT: Praeger, 1995); Joseph Dillon Davey, *The Politics of Prison Expansion: Winning Elections by Waging War on Crime* (Westport, CT: Praeger, 1998); Theodore Caplow and Jonathan Simon, “Understanding Prison Policy and Population Trends” in *Crime and Justice: A Review of Research*, Vol. 26; *Prisons*, Michael Tonry and Joan Petersilia, eds. (Chicago and London: University of Chicago Press, 1999), 63-120; Stuart A. Scheingold, *The Politics of Law and Order: Street Crime and Public Policy* (New York and London: Longman, 1984); and Katherine Beckett, *Making Crime Pay: Law and order in Contemporary American Politics* (New York: Oxford University Press, 1997). For an overview of the role of law and order in presidential campaigns from the 1960s to the late-1970s, see James O. Finkenauer, “Crime as a National Political Issue, 1964-1977: From Law and Order to Domestic Tranquility,” *Crime and Delinquency* 24, no. 1 (January 1978): 13-27.

On the role that race and racial anxiety play in the creation of the prison building boom, see Thomas Byrne Edsall with Mary D. Edsall, *Chain Reaction: The Impact of Race, Rights, and Taxes on American Politics* (New York: Norton, 1991); Tali Mendelberg, “Executing Hortons: Racial Crime in the 1988 Presidential Campaign,” *Public Opinion Quarterly* 61, no. 1 (Spring 1997): 134-57; Loic Wacquant, “From Slavery to Mass Incarceration: Rethinking the ‘Race Question’ in the U.S.,” *New Left Review*, 13, Jan-Feb 2002; Michael Tonry, *Malign Neglect: Race, Crime, and Punishment in America* (New York: Oxford University Press, 1995); Jerome G. Miller, *Search and Destroy: African-American Males in the Criminal Justice System* (Cambridge: Cambridge University Press, 1996); and, Marc Mauer, *Race to Incarcerate* (New York : New Press : Distributed by W.W. Norton & Co., 1999). For an account of the drug war and its impact on the carceral state from a rigorous historical perspective, see Eric C. Schneider, *Smack: Heroin and the American City* (Philadelphia: University of Pennsylvania Press, 2008).

The Neo-Marxist perspective on the “prison-industrial” complex comprises a growing literature among sociologists, criminologists, and contemporary authors. See, for instance, David F. Greenberg, ed., *Crime and Capitalism. Readings in Marxist Criminology* (Philadelphia: Temple University Press, 1993); Ruth Wilson Gilmore, “Globalisation and US Prison Growth: From Military Keynesianism to Post-Keynesian Militarism,” in *Race & Class*

This chapter offers a state-level study with broad, national implications that contributes to the ongoing dialogue among scholars of prison growth by examining the centrality of racial conflict to prison expansion. It places race and racial conflict at the center of the political discourse over “law and order” politics and “get tough” on crime policies. Moreover, it includes the voices and actions of the prisoners themselves who contributed to prison growth in unexpected ways. In the political debate over court ordered reform, conservative politicians developed “backlash” law and order politics. Finally, this chapter considers the complexity of a successful prisoners’ rights movement and the role that federal court litigation played in the construction of the nation’s largest carceral state.

Murder at the Bottoms: The Race Trial of Eroy Brown

On Saturday April 4, 1981, Major Billy Max Moore and Warden Wallace Pack took inmate Eroy Brown down to the “bottoms” riverbed just outside of the Ellis prison at Turkey Creek, a tributary of the Trinity River in Walker County.⁷⁵² Brown

[*Great Britain*] 40(2-3), 1998-1999, 171-88; Paul Knepper and Robert J. Lilly, “The Corrections-Commercial Complex,” *Crime & Delinquency* 39(2), 1993, 150-166; Eric Schlosser, “The Prison-Industrial Complex” *The Atlantic Monthly*. 1998; Joseph T. Hallinan, *Going Up the River: Travels in a Prison Nation*, (New York: Random House, 2000); Tracy F.H. Chang and Douglas E. Thomkins, “Corporations go to Prisons: The Expansion of Corporate Power in the Correctional Industry,” *Labor Studies Journal*, 27, 1, Spring 2002; L. Randall Wray, “A New Economic Reality: Penal Keynesianism,” *Challenge* 43, no. 5 (September-October 2000): 31-59; and, Mike Davis, *Ecology of Fear* (New York: Metropolitan Books, 1998).

⁷⁵² What follows is Brown’s claim as to how events that day transpired drawn from his own testimony. Eroy Brown testimony, second trial, November 2, 1982, 56, Brown Defense papers, The Lawfirm of Habern, O’Neil, and Pawgan (hereafter cited as Brown Defense), copy in author’s possession and with permission of William T. Habern.

was an African American inmate with two prior terms in TDC and he was also a trustee, Moore's bookkeeper, a minor writ writer and a tire shed foreman. In his position as tire shed foreman, Brown gave tires, tubes, butane bottles and free repair to Moore's friends, many of them TDC employees, at the state's expense. When Moore denied Brown a weekend furlough to celebrate his 30th birthday at home, he became increasingly agitated and wrote to his sister that "these white folks got me with rocks in my jaws always working!! Working the shit out of me and steadily keep denying me for furlough."⁷⁵³ In his frustration, Brown spent the morning of April 4 complaining of "all he had done for Moore" to other inmates in the tire shed. As he vented his frustration, Brown even threatened to tell of Moore's tire giveaway. Standing at the door of the tire shop was prison guard Bill Adams, who overheard Brown's complaints to the other inmates.

Upon hearing Brown's veiled threat of exposure, Adams subsequently ordered Brown into the truck for "running his head" (talking too much) about the tire operation. Because it was Saturday, Major Moore was fishing along the Trinity River when Adams found him and told him what Brown had said. Suddenly, Moore and Adams turned on Brown, cursed him, beat him and forced him out of his shoes while stomping on his bare feet with their heavy boots. Brown described his desperation as "Mr. Adams went on hitting me and every time I raised up, he would stomp on my feet. They kept hitting me and kicking me there, and I started weeping then."⁷⁵⁴

⁷⁵³ "Inmate's letter hint of anger building up in him," *Dallas Times Herald*, 12 April 1981.

⁷⁵⁴ Eroy Brown testimony, second trial, November 2, 1982, 56, Brown Defense papers, The Lawfirm of Habern, O'Neil, and Pawgan (hereafter cited as Brown Defense Papers), copy in author's possession and with permission of William T. Habern.

Moore then called to the Ellis prison on the radio and asked Warden Wallace M. Pack to join them. When Pack arrived by car, Adams felt that he was no longer needed and he subsequently left the area and returned to his duties. Upon Pack's arrival, Brown noticed that the warden was carrying a snub-nosed .38 caliber pistol, which no prison guard or official was supposed to have within the prison. Moore grabbed Brown and swung him around to the side of the car and made him place his hands on the car top and spread his legs. Pack then came around from the back of the car and aimed the pistol at Brown's head directly against his exposed temple. Moore and Pack then attempted to handcuff Brown as they cursed him with a series of racial epithets and threatened him for "running his head."

Just as Moore fastened the iron handcuff around Brown's left wrist and as he attempted to place the other handcuff on the right wrist, a struggle ensued over the gun that ended with two shots being fired, one of them into Eroy's foot and another directly into the head of Major Moore, which killed him instantly. The fight between Pack and Brown continued for several more minutes as they struggled for the gun that had fallen in the nearby creek. During the struggle, Pack was shot in the elbow, and Brown repeatedly pressed the Warden's face into the creek and a nearby mud-filled ditch. Yet the fight continued. "He just kept on wanting to fight," Brown claimed. "He kept on. Man, I begged and I pleaded with him. He just kept on."⁷⁵⁵ His face pressed into muddied water, Warden Pack suffocated and died in a roadside ditch with Eroy Brown's hands pressed against his neck and shoulders.

Later that afternoon, a spokesman of the Ellis prison told the huddled press that had come to the Ellis prison on reports of a murder that "we've got a situation

⁷⁵⁵ *Ibid.*

here...in the bottom.”⁷⁵⁶ The situation was that Warden Wallace M. Pack and Major Billy Max Moore lay dead, murdered in the “bottoms” riverbed. There was no mystery as to who killed the two TDC employees. Inmate Eroy Brown had confessed to shooting Major Moore in the head and drowning Warden Pack. Never before in the history of the Texas prison system had an inmate killed a warden and no security staff employee of the prison had been shot by an inmate since 1900, except for the Carrasco hostage crisis of 1974 in which two civilian librarians died. In response to the charges, Brown declared that it was “self defense, all the way.” His pending defense trial threatened to renew the *Ruiz* charges concerning racial violence that had only just concluded in Judge Justice’s decision four months earlier. The ensuing defense trial of Eroy Brown thus drew media attention and public fascination across the state. It also contributed to the political environment of unrest within the prison community and it affirmed reactionary fears among law and order politicians and some in the public that federal intervention into the state’s prison system ultimately resulted in lawlessness, violence, and misrule.

The Brown defense trial angered the local Huntsville community, which believed that Brown was nothing less than a cold blooded killer. In his first public response to the incident, James Estelle angrily predicted that there would be less of a public outcry for the deaths of two prison employees than there had been during the tumultuous *Ruiz* trial over inmate rights. “I guarantee you there aren’t going to be any marches on the courthouse,” Estelle promised, “any wailing or gnashing of teeth,

⁷⁵⁶ “TDC Ellis Warden, Supervisor Slain,” *The Houston Post*, 5 April 1981,

any sackcloth and ashes over this.”⁷⁵⁷ Indeed, the aim of Brown’s defense team was to shift the onus of the deaths from Brown to the way in which the prison system fostered racial violence. Brown’s attorneys included William T. Habern, a trial attorney at 31 whose father was a former Texas inmate, and Craig Washington, one of the celebrated “People’s Five” minority candidates elected to the state senate in 1973. Habern was a criminal attorney and the former executive director of the Texas Criminal Defense Lawyers Project, which was the educational arm of the Texas Criminal Defense Lawyer’s Association (TCDL.). He thought of himself as the inside “producer” of the Brown defense, but that Washington remained “the leading man and the star.”⁷⁵⁸ The son of a union organizer, Washington was an outspoken member of the “People’s Five” who joined such post-civil rights minority politicians as Eddie Bernice Johnson and Mickey Leland in protesting how TDC administered its prisons and treated minority prisoners. Washington’s eloquence promised that the Brown case would garner wide-spread press coverage.

As the two sides prepared for trial, Washington held numerous press conferences in which he contended that Eroy Brown was a “victim of a system.” “In my judgment,” declared Washington, “the prison system is part and parcel of the trial. I find very little difference between the people who enforce the laws and the people who break the laws.”⁷⁵⁹ Washington’s partner in Brown’s defense, William Habern, agreed that “it will come down to a story about the bottoms. It’s no secret our case is

⁷⁵⁷ Newsclipping file, Brown defense.

⁷⁵⁸ William T. Habern interview with the author, November 5, 2005, IOH.

⁷⁵⁹ “Inmate is a ‘victim’ of system,” by Stan Jones, *Ft. Worth Star Telegram*, 8 November 1991.

a self-defense case. The bottoms is a place where people are taken to be beaten.”⁷⁶⁰ Inmates had long claimed that the bottoms riverbed was the site of unofficial “head strummings” where TDC guards had beaten and disciplined inmates. TDC vehemently denied that such practices ever occurred and dismissed them as a series of tall tales and convict lore. Inmate Alan Wade Johnson disagreed, however. He wrote to the press editor of a local newspaper: “Why do the officials go to pains to disclaim any knowledge of what happens in the river bottoms at the Ellis and other units of TDC, when at one time or another they have used the place too? Among us inmates it’s a well known place where inmates are reprimanded –by severe beatings.”⁷⁶¹ During the trial, Aubrey Eugene Komurke, who also testified during the *Ruiz* and *Guadajaro* trials, defined the “bottoms” as a punitive space outside of the law and prying eyes: “the bottoms generally means the area away from the building, specifically, the river bottoms. Most of the units, the farm units which I have been on, or assigned, are bordered by one of the rivers. The bottoms refers to that area, but it is actually in effect, any area away from the building proper. Any area some distance from the living area.”⁷⁶² The “bottoms” analogy also carried a double meaning in African American prison work songs. It symbolized not only the

⁷⁶⁰ “Trial may give glimpse of life in Texas prisons,” news clipping file, Brown Defense papers; “Prison murder called a case of self-defense,” *Daily Sun*, 22 November 1981, in author’s possession.

⁷⁶¹ Alan Wade Jonson, TDC 255182, letter to the editor, newspaper clipping, Brown Defense, in author’s possession.

⁷⁶² Testimony of Aubrey Eugene Komurke, February 15, 1982, *State of Texas v. Eroy Brown*, Brown Defense papers, in author’s possession.

geographic place of the river “bottoms” but also the prisoners’ sense of being at society’s very bottom.

The Eroy Brown defense also resurrected the decade long struggle between writ writers and building tenders. Pack’s appointment as Warden of Ellis just weeks before the incident reflected his loyalty as a career TDC employee with 19 years of service. He rose steadily through the ranks after his initial appointment as a correctional officer in 1961. He had been promoted to lieutenant in 1964, made captain by 1966, became a major in 1967 and an assistant warden in 1977. Pack had served as Warden “Beartracks” McAdams’ Major at the Ellis and Wynne unit when TDC was at the height of its struggle to silence writ writers. During the trial, the defense called former writ writers and activist inmates who testified about Pack’s reliance on building tenders. Former inmate and writ writer Alvin Slaton, for instance, testified that in 1969 Pack stood by while two building tenders beat inmate Harold Melvin Blunt with blackjacks until blood splattered on the ceiling. Slaton then testified that Pack and the building tenders returned six hours later and placed Blunt in a straitjacket and hung him from the cell bars. Slaton was a former Jalet client and a writ writer, and he had served time with Fred Cruz. He also was the inmate who shot and killed McAdams’ head building tender Robert Barber when both were out of prison in 1972. Although Slaton revealed scars on his wrists during the trial from what he claimed were handcuff scars left by Pack, the prosecution under cross-examination revealed that Slaton was a frequent self mutilator who had scars up his entire arm from his stays in mental institutions in both the state and

federal penitentiary.⁷⁶³ Fourteen inmates, meanwhile, refused to testify for fear of retribution.⁷⁶⁴ Unlike the *Ruiz* case, there was no protection from the federal court and the presiding judge declared eight inmates in contempt of court for refusing to testify after they were subpoenaed by the defense.⁷⁶⁵ Dr. George Beto also returned to the fray when he testified for the prosecution. Beto called Pack a “deeply religious” man whom he considered non-violent and benevolent. Moreover, Beto testified that he named Pack as an officer at the Wynne Treatment Center for mental patients because he “observed that Pack was particularly gifted in helping prisoners with mental problems.”⁷⁶⁶ Beto denied receiving any prisoner complaints about Pack and denied the claims made by such inmates as Slaton. Washington and Habern, however, attempted to place Pack’s reputation on trial as a TDC employee who engaged in the system’s tradition of racial violence.

The prosecution pinned its hopes on maintaining the trial’s focus on the day of the murders. In their hope for a conviction, Pack’s family hired Mike Hinton as special prosecutor to help the beleaguered Walker County district attorney Mike Ward who was overwhelmed by Washington’s court room star power. Hinton had a high reputation after his successful conviction of a notorious murder case in which a

⁷⁶³ Slaton had been confined in a federal penitentiary, an Oklahoma penitentiary and a mental institution in Missouri. “Brown Trial: Defense witnesses say warden had reputation for violence toward inmates,” *The Houston Post*, February 17, 1982; “Brown witness admits mutilation, but sticks to story,” *Dallas Time Herald*, 24 February 1982.

⁷⁶⁴ “8 inmate witnesses declared in contempt for refusing to testify at Brown trial,” *The Houston Post*, 16 February 1982.

⁷⁶⁵ The inmates included Ben W. Lacy II, Kenneth M. Pallend, Robert L. Dunbar, Clinton R. Derry, David R. Waller, Dale Lee Tedenick, Joe B. Peacock, and Victor H. Ramirez.

⁷⁶⁶ “TDC officials say Pack not violent,” *The Houston Post*, 24 February 1982.

Houston man placed a high premium life insurance policy on his son and then poisoned his son's Halloween candy. Hinton highlighted Eroy Brown's criminal past and the fact that two long-standing TDC employees had died at the hands of a three-time convicted criminal. The state attempted to demonstrate that Brown was angry for not getting his furlough because he wanted to get out for a weekend sexual encounter. Hinton also argued that Brown was a habitual three-time criminal who was high and drunk that morning from marijuana and "chock" (prison-made alcohol), although Brown's blood tests for alcohol were negative. Two inmates, Levi Dusan and James Soloman, testified that from the banks of the river they were able to witness the event. They both testified that Brown was able to break Moore's hold, grab Pack's pistol, and shoot Moore directly and intentionally. One of the two inmates testified that he then saw Brown chase Pack to a drainage ditch which caused the two men to fall while struggling.⁷⁶⁷

The defense hoped to place TDC on trial rather than Brown. During the closing arguments on February 26, 1982, the courtroom held a packed house with white prison guards from Huntsville seeking punitive justice on one side of the aisle and African Americans from Galveston hoping for restorative justice on the other. Self defense, in Washington's telling, became more than a simple legal strategy. In TDC's system of racialized violence, self defense was more than a cliché, it became an inherent right. "What if you are an inmate at TDC and you know about people coming up missing at the bottoms," Washington asked the jurors in his closing argument. "And all of a sudden Major Moore does a flip job on you and handcuffs

⁷⁶⁷ "Defense to call first witness in TDC inmate trial today," by Richard Vara, *Houston Post*, news clippings, Brown defense, in author's possession.

you. From Eroy Brown's standpoint, they didn't do it to scare him, they did it to kill him. That is the quintessential manifestation of the case – it's kill or be killed. I think a dog on the street has a right of self-defense." The case also centered on a racial appeal that equated Texas prisons with slavery. The defense painted race onto the legal canvas of the Brown trial by having a series of African American inmates testify for Brown, which contrasted with the near all-white cast of TDC officials and investigators who testified for the state. Brown's testimony was filled with the memory of what Pack and Moore had said to him that day and his testimony highlighted how their language was littered with racial epithets and threats. In one instance, Brown testified how the two TDC employees referred to their ability to continue old racial hierarchies through racial violence: "Mr. Moore said, 'Nigger, you ain't going to be able to tell no one what goes on here. We still do away with niggers like you down here.'"⁷⁶⁸ Indeed, during his closing statements Washington adopted the "slave imagery" that inmate protestors had used to make their case during the *Ruiz* trial. "There was no marijuana," insisted Washington. "He [Brown] was out there for one reason, for 'running his head' about Master Moore." Washington closed with a personal plea that attempted to humanize Brown: "Follow the truth, follow the law and you'll walk him [Brown] home. Let justice be done though heaven may fall."⁷⁶⁹

Worried by the defense's largely successful effort to refocus the trial on TDC rather than on the murders of Pack and Moore, special prosecutor Hinton charged that "TDC has been on trial because the reputation of two of their finest has been

⁷⁶⁸ Brown testimony, second trial, Brown defense and in author's possession, 98.

⁷⁶⁹ "Brown jury hears final arguments," by Patti Kilday, news clipping, Brown defense, in author's possession.

completely assailed. We have been hearing the trial of [Warden] Wallace Pack. It's been a long time since we heard anything about the state versus Eroy Brown. I have never heard anything so despicable in my life as a layman or a lawyer." Hinton characterized the testimony of inmates as "scurrilous innuendos" made "by people who could care less about the meaning of an oath. " Hinton closed by charging that "Wallace Pack has been dragged through worse slime than that in which he ended up dead."⁷⁷⁰

The jury, composed of seven men and five women, three African Americans, and one Latino, ended in deadlock 10-2 in favor of Brown's acquittal and the case was declared a mistrial.⁷⁷¹ Brown was tried again for Pack's murder in November 1982 and a jury of six whites, four African Americans and two Latinos acquitted him. He was tried for yet a third time for the shooting of Billy Max Moore, and an all-Latino jury found him not guilty. Brown completed the remainder of his sentence and was free for less than six months before he was arrested again for armed robbery of a 7-11 convenience store. He spent his fourth prison term in the federal penitentiary for fear of retribution in TDC.

The deaths of Warden Pack and Major Moore and the subsequent trials of Eroy Brown contributed to the political climate of crisis both inside and outside the prison. The self defense murders of Pack and Moore at one of TDC's most politicized and inmate organized prisons symbolized that the traditional pattern of

⁷⁷⁰ "Brown jury hears final arguments," by Patti Kilday, news clipping, Brown defense, in author's possession.

⁷⁷¹ "Brown murder case ends in mistrial, *The Galveston Daily News*, March 5, 1982; "Brown case ends in mistrial," by Richard Vara and Steve Olafson, *Houston Post*, news clipping file, Brown defense, in author's possession.

racial violence by prison officials against black inmates would no longer be tolerated in the post-Black Power era of self-defense and active resistance. Brown was not known as a Black Power veteran or open advocate of self defense, but his actions signaled to others that the old order upheld through racial violence and hierarchy was crumbling. The Brown murders inaugurated TDC's worst year for work strikes, racial disorder, and riots since the 1930s. Outside of the prison, the acquittal of Brown in the murder of two high-ranking TDC employees caused a political backlash. It signaled that the *Ruiz* decision had given inmates the false belief that they could disrupt the otherwise controlled and ordered universe of Texas prisons. The Brown case reflected the public's growing disenchantment with the courts and it contributed to a rising law and order chorus demanding that state control of prisons remain with the state legislature and bureaucracy.

The Battle of Tent City and Work Strikes: The Prison in Crisis

Within the prison, the inmates themselves were hopelessly locked in an overcrowded and increasingly volatile system. Their hopes for outside relief from the courts and the legislature were frustrated at every opportunity. Following the sweeping *Ruiz* ruling, inmates sensed that the ground had shifted underneath TDC's feet and that the uneasy "peace" between guards and inmates was in jeopardy of descending into chaos. Inmates therefore pressed for a resolution to the crisis through the only remaining means available to them: violence, riot, and work strikes. Within the first year of Justice's 1980 decision, the state witnessed a wave of prison work-stoppages, minor riots, and unrest that rippled through the Texas prison system.

Although TDC recorded only six major disturbances between 1973 and 1980, the prison system experienced eleven such disturbances in the first six months of 1981 alone. Three weeks after Eroy Brown killed the Ellis prison major and warden, 2,208 inmates out of a total population of 3,050 prisoners staged a massive work strike at Ellis. The strike was due to frustration with TDC's lack of complicity to the court order, overcrowding, and the fear of racial reprisal stemming from the Brown case. Following the *Ruiz* case, inmates also felt a moment of opportunity to press their claim for more humane treatment.

Despite the roiling tensions, the strike remained peaceful. The inmates demanded that the state replace director James Estelle and TDC's entire administrative staff. The strike had started with a press story's coverage on the overcrowded conditions and the number of inmates sleeping on the floor. The story quoted forty-five year old guard G.P. Hardy's callous assessment that: "Hell, these people were brought up in crowded homes. They are used to crowds. These people were raised by prostitutes and slept on the floor."⁷⁷² Hardy's comment may have prompted the strike, but the conditions for unrest had more to do with the TDC's thumbing its nose at the *Ruiz* court order. As another guard noted, Ellis was a "short fuse, a stick of dynamite" just ready to go off. "They've [the inmates] been wanting to do it [stage a work stoppage] for a long time. That newspaper story just set it off," noted another guard.⁷⁷³

⁷⁷² Glenn Smith, "Officials not sure yet of reasons for work stoppage by 2,200 at Ellis Unit," *Houston Chronicle*, 30 April 1981.

⁷⁷³ *Ibid.* See also Bill Deener, "Inmate Strike at Ellis Prison Eases as 600 Answer morning Work Call," *The Dallas Morning News*, 1 May 1981; Glenn Smith, "Mood after Ellis unit work stoppage is quiet but tense," *Houston Chronicle*, 7 May 1981.

Indeed, the Ellis strike was a planned and orchestrated event that was put into motion by a prison organization called the First Inmate Reform Strike in Texas (FIRST). FIRST distributed a pamphlet that initially called for a work strike on April Fool's Day 1981 but then events had passed the date and the pamphlet called for the strike to occur "later in the month." The pamphlet announcing the strike had no author, although its language and design is similar to the work of Black Panther veteran Johnny Swift. Swift had remained at Ellis during the *Ruiz* hearings and, sometime in the mid-1970s, TDC moved him from general population to the administrative segregation wing on Ellis's Death Row, even though he was not scheduled for execution, which was part of TDC's strategy to isolate and segregate inmates who attempted political organization and "agitation."

By 1981, the original writ writers and inmate activists had departed, leaving the prisoners' rights movement to a new generation of inmate activists. Following the *Ruiz* trial, Judge Justice had ordered TDC to allow all *Ruiz* inmate witnesses who wished to transfer to the Federal penitentiary system to do so. Within the prison, this transfer meant the loss of 81 writ-writers and activists who represented the intelligentsia of the prisoners' rights movement and included those with the most experience in inmate organizing and mobilizing. Most of the former inmates of "Eight Hoe," including Lawrence Pope, Eddie James Ward, Allen Lamar, and David Ruiz, were in the Federal prison system for less than two years before they gained their freedom.⁷⁷⁴ Despite the loss of the original writ writers, inmates remained

⁷⁷⁴ While many of the writ writers and prison activists left prison for freedom, they claim that prison never quite left them and many returned to prison within a decade. Ernest McMillan, the victim of the Father's Day Massacre, left prison in 1974 and he was one of the few activist inmates never to return. He remain engaged in prison reform, however, and

inspired by the 1978 strike and they attempted to carry that spirit into the new decade of the 1980s.

Materialist needs and political demands related to full compliance with *Ruiz* prompted the 1981 strike. FIRST aimed its organizing tract against what it called “Estellism,” which it defined as TDC’s stubborn reluctance to obey the court order and instead enforce its rule through a “reactionary dictatorship of a petty-bourgeois, who think cruelty is the cornerstone of rehabilitation.” FIRST implored that it was “the task of all inmates to free themselves from Estelle” and that inmates “must be made conscious of themselves as a political force.” FIRST called on all inmates, “Blacks, Browns, Yellows, Reds, and Whites” and “gays and straights,” to ally and “rally the support of families, friends, sympathizers, legal and political groups” to once again press for prison reform. “What is to be done?” the pamphlet queried in its Leninist tone:

worked for a time documenting inmate abuses and answering inmate letters as a member of Representative Eddie Bernice Johnson’s legislative staff. In 1983, McMillan, along with community leaders Joe Briggs and Judy Wagner, founded Houston’s Fifth Ward Enrichment program (FWEP) which attempted to address in the local, African American community such social problems as teenage pregnancy, crime, high school dropouts, and fatherless homes. FWEP’s purpose was to “empower boys to become responsible young men and productive members of their family and community.” McMillan retired in the Spring of 2007 from FWEP after 23 years of service to the Fifth Ward community. Ernest McMillan, oral history with the author, Institute of Oral History (IOH), Baylor University; “A Changing of the Guard at FWEP,” *The Nickel Express*, Spring 2007, Vol. 7, No. 1.

For his testimony as a *Ruiz* witness, the court transferred Eddie James Ward to the federal prison system and soon thereafter released. He returned to the federal prison system on a drug dealing case and he remained there from 1990 to 2004. He served out his sentence and returned to free society, but within seven months returned to prison, this time to Texas, on a parole violation. Eddie James Ward remains in the Texas prison system as of the date of this study. Eddie James Ward, oral history with the author, IOH, Baylor. Lawrence Pope, meanwhile, made prison reform his life and upon his release he joined CURE and became its nominal head in Texas when Charlie and Pauline Sullivan established CURE as a national organization in Washington, DC in 1986. Pope died of a heart attack in 1988, while still working for prison reform through CURE.

Strike! Of course. We the inmates must strike! We must pose an inmate general strike, and, perhaps an inmate culture strike! We must not participate in any kind of workage for the prison system whatsoever. We must bring all field work to a complete halt, stop all factory work, stop all kitchen work, stop all laundry work, stop all office work, stop all hospital work, stop building all new prisons and bring all inside and outside workage to a complete halt! Take to your cells and dormitories and sit completely down.⁷⁷⁵

In preparation for the strike, FIRST organized inmates and established communes in the wing and cell blocks of all TDC prisons. “Each wing and dormitory should agree upon selecting at least two inmates from its class to represent them,” the pamphlet instructed. “For instance, if there’s Blacks, Chicanos, Indians, Whites or others living in a cell-block or dormitory to say, the Blacks should have two Black inmates represent them, two Chicano inmates representing the Chicanos, same applies for the Indians, Whites, and Others. And those selected inmates should work together as one. They must educate and organize every inmate possible in their wing or dormitory.” Moreover the commune leaders had to be “politically bright and strong willed” and they had to coordinate with other commune leaders from wing to wing and cell block to cell block. The pamphlet initially called for a letter writing campaign, but it had acknowledged that in the aftermath of *Ruiz* that letter writing had become futile and that inmates had little recourse but to strike.⁷⁷⁶

The pamphlet stressed, however, that FIRST was “not a revolutionary uprising; it is not a radical movement; and it is not to overthrow the prison system!” Rather, it was a program that had both political designs to achieve the ouster of Estelle and material interests aimed at gaining inmate privileges. Materialist concerns

⁷⁷⁵ “FIRST Edition 1981, March, Critique of the Estelle Program,” TDCJ papers, Director’s Office, July-Nov., 1982, TSLA, 1998/038-60.

⁷⁷⁶ *Ibid.*

centered on inmates' desire to wear and buy free world clothes, shoes, jewelry, and tape recorders. The pamphlet also called for identity politics by demanding such "rights of identity" as the ability to grow an inmate's hair and to wear whatever cultural garb they wished. Moreover, the strike resurrected the seemingly lost cause of minimal inmate pay for prison labor. The inmates hoped to ameliorate the public's growing concern for "victims' rights" by offering half of their proposed pay to their victims. FIRST demanded "the rights of all inmates to be paid at least \$1 an hour for all labor, and a program should be set up so the inmate can pay restitution to the victim...but no more than half of an inmate's pay can be entitled to at least 50 cents an hour."⁷⁷⁷

Fifteen inmates at Eastham and thirty-two inmates at Darrington joined the Ellis strikers during the April 29 general strike. On June 25, 70 inmates in the typing pool of the Wynne prison refused to go to their jobs. On August 11 a parolee and an inmate at the Wynne prison filed a federal court lawsuit claiming that they had been bitten and permanently scarred while working as "dog boys" to train TDC guard dogs. On August 18, 20 Ellis inmates began a hunger strike to protest working conditions. On September 30 two inmates on Retrieve prison mutilated themselves with razor blades in protest when a building tender assaulted a prisoner in solitary confinement. The following day, the prison's lieutenant placed nine building tenders in the hall before the lunch-time meal. When those building tenders assaulted the same inmate on his way to the meal, 200 to 300 inmates rushed to his support by smashing windows and refusing to return to their cells. By October 2, 190 Retrieve

⁷⁷⁷ *Ibid.*

prisoners “violently resisted” the attempt to press them back into their cells by guards and building tenders. On the same day there was a 113-inmate stoppage at Ramsey II. By October 19, 160 Ellis inmates began a month-long work stoppage. On November 18 and 19, nine inmates and four officers were injured at the Darrington prison when 500 prisoners set fires, fought with guards and broke windows.⁷⁷⁸

Inmates called the biggest battle, however, “the battle of tent city” in which a two-hour riot swept over the tents at Eastham. Overcrowding had reached such a critical level that in the fall of 1981 Governor William P. Clements agreed to a TDC plan to house inmates in vast “tent cities” that sprawled just outside of prisons that were too full to house any more prisoners. By the fall of 1981 there were 1,200 men housed in tents and at its height the tent population ultimately reached nearly 4,000. The Eastham prison maintained one of the prison system’s largest “tent cities.” On the morning of November 20 it erupted into riot when two building tenders harassed six Latino prisoners. In the traditional control model, building tenders could expect to terrorize other inmates, particularly racial minorities, without fear of reprisal or revolt. In the post-*Ruiz* prison, however, their power was more tenuous and susceptible to challenge. The other inmates in the yard thus struck back and fought the building tenders back into the main building. A full-scale riot broke out in the prison yard, where some 270 prisoners torched the tents and used mattresses as

⁷⁷⁸ “Internal Violence, Disturbances, and Escapes,” Warden’s meeting, 3 February 1984, TDCJ, in author’s possession; “Inmates strike at Ellis prison as 600 answer morning work call,” *Dallas Morning News*, 1 May 1981; “Mood after Ellis unit work stoppage is quiet but tense,” *Houston Chronicle*, 7 May 1981; “Prison riot inquires guard, 15 inmates,” *Houston Chronicle*, 3 October 1981; “Disturbances reported at 2 TDC prison units,” *Houston Post*, October 1981; “400 TDC inmates riot at Darrington facility,” *Houston Chronicle*, 20 November 1981; “Error let inmates out, riot followed,” *Houston Post*; “Texas prison system: A rough year for TDC, and no relief in sight,” *Houston Chronicle*, 6 December 1981.

barricades. The fire spread quickly across the yard and the smoke pillowed above the prison. Inside the building, meanwhile, 60 guards formed a riot squad to quell the mayhem. The main shock troops, however, were not TDC employees but 150 building tenders assembled under head building tender Sonny Evans, who ordered his men to tie white bandannas around their heads to differentiate building tender from inmate during the ensuing melee. The building tenders were armed and carried trash can lids as shields and pipes, clubs, and weight lifting bars as weapons.

Former TDC captain Keith Price described the moment before the charge as if it was the last seconds before a pitched military battle. “The adrenaline’s really flowing,” Price recalled. “Flowing so much it’s spooky.”⁷⁷⁹ As the guards and building tenders stormed the compound, the rioting inmates scattered and attempted to head back into the building.⁷⁸⁰ Blocking their way, however, was a line of building tenders who had formed a “whopping line” that created a gauntlet through which the rioting inmates had to pass to get back inside the building. In an exposé story titled, “Inside America’s Toughest Prison,” *Newsweek* reported what happened next: “As they tore the ubiquitous white cloth made in the prison factory, the tenders growled, a kind of primal cry...The only way to the safety of the gym was down that gauntlet, and the rioters, now edging toward panic, began running through. Inmate Ronnie Roland was inside the main building as the ‘whopped’ staggered in. ‘Some of the guys you couldn’t recognize, and a lot were unconscious. I wasn’t sure if they was alive or dead.’ The inmates who could walk staggered back to the cell blocks, the

⁷⁷⁹ Aric Press, “Inside America’s Toughest Prison,” *Newsweek*, 6 October 1986.

⁷⁸⁰ *Ibid.*

others were carried inside to wait for ambulances.” One of the rioters reported how he experienced that day’s violence: “there were guards and inmates with clubs lined up against this fence with room to get by. We was told to run down the fence and if we was not fast enough the clubs was used. This was when I was hit in the head.”⁷⁸¹ Rather than reestablishing BT power, however, the “battle of tent city” became instead the building tender’s last gasp and final violent demonstration of their waning reign.

The Collapse of the Old Regime

The public’s response to the prisoner rights movement was to claim that inmates had received their fair day in court, and that the intervention of a federal judge into state affairs had turned a system of order into chaos. The acrimony and struggle over who controlled state prison management stoked the fires of law and order politics. It particularly served the purposes of Attorney General Mark White as he prepared himself for his 1982 campaign for the governorship. White had been the attorney general during the *Ruiz* proceedings and he remained a steadfast force in resisting the 1980 decision. Signaling a political shift from prisoner rights to “victim rights,” Attorney General Mark White, who had political aspirations to return the governorship back to Democratic rule, warned:

We have a very serious and dangerous situation...I feel this is directly attributable to the actions of the federal court that has given prisoners the mistaken notion that they don’t need to obey the rules and regulations of the prison system. So far it seems that every one of these federal officials takes the side of the prisoners. I’m tired of our law enforcement people putting their lives on the line to arrest people only to find out that a federal judge wants them all to have private rooms. Too many people are crying tears for

⁷⁸¹ Anonymous inmate, quoted in Martin and Ekland-Olson, *Walls Came Tumbling Down*, 204.

the prisoners and not for the victims...I'm sick and tired of hearing from the little whining devils.⁷⁸²

After a tumultuous year, TDC filed on 25 January 1982 a motion to discharge the Special Master for “gross misconduct.” Attorney General Mark White charged that the disturbances across the prison system were due not to the continuation of the building tender system, but to the intrusion of federal authorities into the state institution. “The activities of the special master and his staff,” White charged, “are clearly the cause of inmate disturbances at TDC.” Governor Clements agreed that the Special Master and his staff had “invaded the prisons” and that they were acting as “father confessor” to the inmates and “causing real unrest.”⁷⁸³ In a TDC memorandum notifying wardens of the effort to oust Vincent Nathan and his investigative staff, Estelle argued that the “officious and intrusive” investigation endangered the “safety and security of our units.”⁷⁸⁴ Indeed, TDC’s dismissal motion accused the Special Master’s office of “undermining discipline and fostering unrest” and “scheming with inmates to thwart prison discipline.” The state’s recriminations against the Special Master mirrored Beto’s argument a decade earlier that Jalet was fomenting riot and revolt through her legal actions. Outside influence, according to TDC, impaired control and challenged order.

Meanwhile, Judge Justice fired back when he escalated the pressure on TDC by calling a seven-day contempt hearing on the building tender system on March 15,

⁷⁸² Saralee Tiede, “Texas Prisons: A Wave of Inmate Unrest,” *Dallas Times Herald*, November 22, 1981.

⁷⁸⁴ Interoffice communication, Estelle to All Wardens, January 25, 1982, TDCJ, in author’s possession.

1982. During the hearing, streams of building tenders and general population inmates testified that building tenders still ruled the cell blocks. The prison board, meanwhile, had lost its longtime chairman H.H. Coffield who had reigned over the board from 1955 until his retirement in 1977. The absence of a strong figure on the board allowed Jim Estelle to take “up the void.” As one anonymous board member protested, “He [Estelle] very autocratically ran the entire system, including the Board.”⁷⁸⁵

The 1978 election of Bill Clements as governor, however, had caused a shift in board members from entrenched Democrats to Republicans with less allegiance to TDC’s past record of economic success. Clements’ appointment of Harry Whittington and Robert Gunn to the board brought two Republican voices of dissent who questioned TDC’s standard denials. Whittington, who would later become known as the victim of Vice President Dick Cheney’s errant shot gun during a hunting mishap in February 2006, pursued his own investigations into the building tender system by questioning guards and inmates through private inquiries. “The staff kept denying we had them,” Whittington told the press upon reflection of his skepticism. “They kept saying that building tenders were just inmates who swept the floors. But these guys had keys. If I came into prison as a new inmate and saw some guy with a key, I would know he had some kind of authority...But nobody would admit the system existed and when we finally did settle it, we agreed in May of 1982 to hire 4,000 guards. That turned out to be 3,000 short, so that tells you who was running the system.”

⁷⁸⁵ Unnamed board member quoted in Crouch and Marquart, 140.

In May 1982 the board, under pressure from the prisoners and the public, approved an agreement to dismantle the building tender system. The consent decree barred SSIs (formerly BTs) from having weapons of any kind and strictly limited their duties to clerical and janitorial work. More effective was the clear stipulation that compelled TDC to deny 60 percent of the current SSI's their "building tender" positions. The new inmates selected as SSIs had to have a nonviolent record and no record of sexual assault. The court accelerated compliance for the prisons with the worst record of building tender abuse, namely Eastham, Ellis, and Ramsey. These prisons had to comply by January 1, 1983, whereas the rest of the system had to comply by January 1985.⁷⁸⁶ During this period, the court still maintained oversight. Meanwhile, the issues of overcrowding and unconstitutional prison conditions remained unresolved.

The 1982 building tender consent agreement marked the beginning of the end for the old TDC order. TDC dismissed and forced into early retirement a number of old practitioners of the control penology model. Estelle fired Warden R.M. Cousins, the protégé of McAdams and a career TDC employee for 28 years, in October 1983 when Cousins ordered his guards to beat inmate Charles Richard Bell, a convict who attempted to escape. The field officers at Coffield prison whipped Bell with horse reins, leaving marks across his back, and they used their horse to trample him with hoofs to the bare ground. Cousins gave the order against Bell when he told his men to "do something to his ass" over a prison radio that was heard by inmates, leaving Estelle with little choice but to dismiss the long-time warden. Donna Brobry,

⁷⁸⁶ "TDC Board votes to dismantle BT system," *Houston Post*, April 17, 1982.

William Bennett Turner's partner in the *Ruiz* litigation, remarked in hopeful reflection to the press that: "I hope the obviously deserved termination of this warden ushers in a new period where violence and brutality by prison guards is no longer tolerated."⁷⁸⁷

Exhausted and embattled by his tug-of-war with the court, inmates, and state politics, Estelle had announced his retirement two weeks prior to Cousins' firing. Although Estelle was scheduled to serve for another six months, a series of mismanagement charges arose that forced him to leave only four days after he fired Cousins. The source of those charges was Lawrence Pope, the former writ writer and prominent member of Eight Hoe. Pope stayed active in prison reform and he joined CURE upon his release. The notoriety of the *Ruiz* case, the increasing prison population, and worried family members with loved ones in prison caused CURE's ranks to swell. By 1977, CURE boasted 1,500 members and by 1985 the organization had grown to 2,500 members. In 1986, Charlie and Pauline Sullivan established CURE as a national organization headquartered in Washington, DC. Pope was CURE's first inmate hire and he brought with him to CURE's office 17 carefully filed boxes of prison documentation. From CURE's local Austin office, Pope wrote dozens of "poison pen" letters to state officials, politicians, and the TDC administration that continued the inmate tradition of documenting abuses.⁷⁸⁸ "Prison reform," Pope resolutely claimed, "is my life. It's what I am all about."⁷⁸⁹

⁷⁸⁷ "Warden Fired for Telling Guards to Beat Prisoner," *Dallas Times Herald*, 12 October 1983.

⁷⁸⁸ Aware of the historic nature of prison reform and the ever present need for documentation, Pope culled together his files and maintained a well-documented collection of newspaper clippings, affidavits, and letters on writ writers, abused inmates, TDC guards and officials, building tenders, and gang members. His papers include files on such diverse topics as prison construction, the rise of gangs, privatization, AIDs in prison, and the banking industry. Prior to his death from a heart attack in 1988, he conducted an 800-page oral

In his new position, Pope found a news article that mentioned Estelle's holding in a land company known as Ten-K Inc. that also had a \$2.7 million construction contract with TDC. Pope reported that information to prison board member Harry Whittington and state representative Ray Keller, chairman of the House Law Enforcement Committee. Keller's committee launched an investigation into TDC's financial dealings and they found evidence of corruption, graft, and serious financial mismanagement.⁷⁹⁰ The committee agreed that Estelle's construction contract to Ten-K was unethical. It concluded that cost overruns in TDC construction may have cost state taxpayers "tens of millions of dollars." It also cited an estimated \$1.8 million in prison equipment that was missing, including such items as a deep fat fryer and a caterpillar tractor. Moreover, the committee discovered that TDC officials kept two accounting ledgers, one that was given to the legislature and another that was kept from state officials that calculated the actual perks of employees. Keller angrily concluded that these discoveries were either "the end product of total incompetency or they're deliberate, neither one of them is acceptable." On his departure, Estelle resigned himself to his fate as he told the press that "I have tried to serve Texas with competence, integrity and all the sense of duty I

history with archivist John Wheat and he donated his papers to the University of Texas, Austin's Barker Center (now known as the Center for American History).

⁷⁸⁹ "Prison-reform work gives banker a break with the past," by Candice Hughes, *Austin American Statesman*, 30 August 1982.

⁷⁹⁰ "Mattox Assigns Lawyers to Audit Probe," *Houston Chronicle*, 17 December 1983; "TDC Investigating Payroll Practices," *Houston Chronicle*, 27 January 1983; "TDC Finances: Out of Control," *Houston Post*, 22 January 1984.

posses.”⁷⁹¹ But as he bid the press core farewell, he could not hide his lingering resentment: “I am not feeling sorry for myself. I’m just angry. Character assassination and guilt by association are not new to this world.”⁷⁹² Within a year of Estelle’s bitter resignation, four assistant directors resigned or retired and five career TDC wardens departed. The old order had fallen.

After an interim period with D.V. “Red” McKaskle serving as acting director, Governor Mark White and the TDC prison board replaced Estelle by hiring as its new director Raymond K. Proconier, who had been a state prison director for the Virginia, California and Utah prison systems. Proconier’s work in New Mexico, where he was hired to improve prison conditions in the aftermath of the nation’s most deadly prison riot in 1980 at Santa Fe, piqued TDC’s interest. The Santa Fe riot was the nation’s most violent prison incident, in which inmates took 12 guards hostage, and initiated a horrific blood-letting of “snitches” in which the rioters tortured, raped, dismembered, decapitated, or burned alive their fellow inmates. The rioters murdered thirty three fellow inmates and injured more than 200, including the 12 guards who were taken hostage.⁷⁹³ Lane McCotter, who was hand-picked by George Beto and rumored to

⁷⁹¹ David Hanners “Estelle angry over wrongdoing allegations,” *Dallas Morning News*, 3 February 1984; “Abuses of TDC perks uncovered” associate press news clipping; “Estelle Ends job quietly,” news clipping, in author’s possession.

⁷⁹² “Estelle angry over wrongdoing allegations,” by David Hanners, *Dallas Morning News*, 3 February 1984.

⁷⁹³ For a narrative account of the New Mexico riot see, Roger Morris, *The Devil’s Butcher Shop: The New Mexico Prison Uprising* (University of New Mexico Press, 1988). Sociologist Mark Colvin has argued that the New Mexico riot occurred because of a shift in prison management and prison society in which inmate leaders were stripped of power by new administrative designs. Colvin’s analysis concluded that “accommodation” to inmate leadership actually produced a “stable” prison society and deterred riot. He concluded that, “As accommodations, which had induced inmate leaders’ cooperation and given them sources of nonviolent power over other inmates, are dissolved, inmate leaders are no longer

serve as Procnier's successor after his two-year contract ended, joined Procnier as Deputy Director.⁷⁹⁴ McCotter was a career military officer and he had served as former US Army Commandant of the Disciplinary Barracks at Fort Leavenworth, Kansas and as a military police officer in the 18th Military Police Brigade during his 1968-1969 tour in Vietnam. Colonel McCotter had supervised military police combat operations and had overseen the confinement of US prisoners and prisoners of war. The military honored him with the Legion of Merit, the Bronze Star, and the Vietnam Cross of Gallantry with silver palms.⁷⁹⁵ Together, Procnier and McCotter promised to clean house in the face of *Ruiz* and they offered a "tough justice" vision for prison management. "What we have to establish in this department is that we are the tougher of the two groups [inmates and guards]," explained Procnier. "Once we get that established, we won't have to prove it."⁷⁹⁶

The end of Estelle's administration and the demise of building tenders resulted in an upheaval in the guard structure. Previously, TDC drew its ranks from the local rural community where they had employed largely white guards and officers. These guards received not only their basic pay, but such emoluments from

able to provide a stabilizing or cohesive influence over the inmate social structure. Relations among inmates themselves become more coercive as nonviolent sources of power dry up and replaced with violence." The Texas prison case, however, provides a different example where "accommodation" to inmate leadership kept order at the price of a despotic and violent reign of inmate power. Mark Colvin, *The Penitentiary in Crisis: From Accommodation to Riot in New Mexico* (Albany, NY: State University of New York Press, 1992), 40.

⁷⁹⁴ McCotter's first experience with TDC occurred in 1970 as he was earning his master's degree in criminology and sociology at Sam Houston State University. While enrolled in the master's program, McCotter accepted an internship with TDC while Beto was in the last year of his directorship.

⁷⁹⁵ "New TDC chief called outspoken, innovative," *Dallas Morning News*, 22 May 1984; "Deputy Director has Military Background," 22 May 1984.

⁷⁹⁶ "TDC director vows get-tough policy to reestablish order," *Houston Chronicle*, 25 May 1984.

the prison as housing, food, haircuts, domestic service, and laundry services. Most of these services, which the Joint Committee on Prison Reform (JCPR) estimated to be worth as much as \$18,000 a year, came to a halt under the *Ruiz* decree.⁷⁹⁷ Beginning in 1978, moreover, TDC had initiated a massive affirmative action hiring program to employ urban minorities. Moreover, TDC settled a sex-discrimination lawsuit in 1982, which required that women employees must constitute at least 14.3 percent of the prison's security staff. TDC guards had no union of their own, although the Texas State Employees Union (TSEU) had tried to recruit from the prison, and their wages remained low through the 1980s.⁷⁹⁸ New and untested guards and the introduction of female security personnel contributed to an increase in guard-to-inmate contraband, charges of sexual exchange, and drug trafficking.⁷⁹⁹ Proconier's new administration also promised to "clean house," and during 1984 he fired several long-time employees for beating allegations, including Warden David Christian, who

⁷⁹⁷ Testimony of John Albach, Staff Director for the Joint Committee on Prison Reform, Center for American History, Ruiz Special Master, MAI 8/J88.

⁷⁹⁸ TSEU started its unionizing drive in 1984 and by 1986 they had unionized 2,000 TDC employees. Marquart and Crouch, *An Appeal to Justice*, 178.

⁷⁹⁹ On the relationship between female guards and male inmates and its impact on prison society, see Lynn E. Zimmer, *Women Guarding Men* (Chicago: The University of Chicago Press, 1986); and Joycelyn M. Pollock, *Sex and Supervision: Guarding Males and Female Inmates* (Westport, Conn: Greenwood). On changes within the Texas prison guard subculture during this period, Ben M. Crouch and James W. Marquart, "On Becoming a Prison Guard," in *The Keepers: Prison Guards and Contemporary Corrections*, edited by Ben M. Crouch (Springfield, Illinois: Charles C. Thomas Publisher, 1980), 63-110; and, Ben M. Crouch "The Book vs. the Boot: Two Styles of Guarding in a Southern Prison in a Southern Prison" in *The Keepers: Prison Guards and Contemporary Corrections*, edited by Ben M. Crouch (Springfield, Illinois: Charles C. Thomas Publisher, 1980). On the increase in drug traffic due to new guards, see Crouch and Marquart, *An Appeal to Justice*, 158-159, 189-191.

had served TDC for 19 years and was one of the perpetrators of the Father's Day incident of 1973 as Retrieve's assistant warden.⁸⁰⁰ These changes caused the prison guard staff to expand drastically. Indeed, the number of security staff more than tripled from 2,500 in 1979 to 9,000 by 1985.⁸⁰¹ Sociologists Ben M. Crouch, also a former TDC guard, and James W. Marquart argued that the influx of new guards, particularly women and minorities, "undermined the traditional officer subculture" that had so characterized the pride of TDC since the Ellis reforms of 1948.⁸⁰²

*A New, Savage Frontier:
Gang Violence and Paramilitary Prisons*

The 1982 decision and the Special Master ensured that the internal prison economy centered on building tenders collapsed within a few years of the court decision. Tragically, however, greater levels of violence, gang warfare, and drug trafficking replaced the building tenders and their internal prison economy. Before the *Ruiz* case, there were few gangs in Texas prisons and little drug traffic, but, to the consternation of liberal reformers, the dismantling of the building tender system and the internal prison economy left a void that violent prison gangs soon filled. Between 1983 and 1986, assaults on guards increased by 565 percent. In 1984 and 1985, 693 prisoners were stabbed and fifty-two murdered.

⁸⁰⁰ "6 Prison Officers Fired in Inquiry on Beating Claims," *Austin American Statesman*, 7 February 1984

⁸⁰¹ Marquart and Crouch, *An Appeal to Justice*, 155.

⁸⁰² Crouch and Marquart, *An Appeal to Justice*, 179. Crouch and Marquart's research on the demise of the officer and guard subculture was based on oral histories with guards and on a random sample of 460 inmates in eight TDC units. Their work remains the most comprehensive source on the guard subculture and is cited here as such.

Among the dead was long-time inmate activist and organizer Johnny Swift. On August 8, 1983, death row inmate James Doomachete, notorious for having killed three other inmates and stabbing a guard, moved without escort from his cell on Ellis's death row past three gated doors that were normally locked. He then found Swift in the day room where he was awaiting a legal visit. Using a dried pork bone, Doomachete murdered the unsuspecting Swift who was also housed on death row, although he had not committed a capital crime. Inmate Michael Jewell, also housed on death row at the time, recalled that Swift's death was widely rumored among the inmates as an orchestrated hit: "on the day Johnny Swift was murdered, the picket officer, who was barred off from the wing, opened Doomachete's door with no escort present, allegedly for him to shower. Doomachete left his cell fully clothed and armed with what early accounts called a 'free world buck knife.' It later turned into a 'pork bone.' The gates on all three landings were conveniently left unlocked, as was the Day Room door...I know Johnny never suspected trouble and never saw it coming. He didn't have a chance to defend himself."⁸⁰³ Wilbur Collins, another inmate on death row during Swift's murder, held a similar conviction that Swift's murder could not have occurred without some level of administrative help. "Somehow, allegedly, accidentally," Collins bitterly recalled, "someone had forgotten to close Doomachete's cell. Doomachete came out of his cell...climbed from one row to three row up the stairs, and there is supposed to be locked doors at 1 row stairs and another locked door at 2 row stairs to prevent the guys at 2 row from going to 3 row. Both of these doors was unlocked...Swift was set up."⁸⁰⁴ Whether orchestrated

⁸⁰³ Michael Jewell, 17-page type written letter to the author, November 1, 2008.

conspiracy or just another act of random prison violence amid strange circumstance, Johnny Swift's murder silenced the prison's loudest voice for active prisoner organization and mobilization.

The rising rate of murders across the system owed less to conspiracy and more to mounting racial gang violence. Prison gangs are largely a postwar phenomenon and most sources trace the first prison gang to the Gypsy Jokers, a motorcycle club, based in Washington state's Walla Walla prison during the mid-1950s.⁸⁰⁶ In the mid 1960s, African American gangs developed from the urban ghettos of Chicago and Los Angeles and they had a significant impact inside state prisons.⁸⁰⁷ George Jackson's Black Guerilla Family, for instance, developed a Marxist revolutionary ideology that led to the riot at Folsom of 1971. Latino gangs, such as the *Nuestra Familia* and the Mexican Mafia, also fought for their share of the drug trade. White gangs, meanwhile, terrorized the California prison system with a philosophy of white

⁸⁰⁴ Wilbur Collins, interview with the author, IOH, Baylor.

⁸⁰⁶ Ethnic gangs in America had their origins in the street gangs of mid-nineteenth New York, where immigrant youths banded together for self protection against nativist violence, see Herbert Soburg, *Gangs of New York* (New York: Garden City Publishing Co., 1927). On the historical development of urban gangs in the 1950s outside of prison, particularly in New York City, see Eric C. Schneider, *Vampires, Dragons, and Egyptian Kings: Youth Gangs in Postwar New York* (Princeton: Princeton University Press, 1999).

⁸⁰⁷ Chicago gangs included the Blackstone Rangers, the Devil's Disciples (also known as the Black Gangster Disciple Nation), and the Conservative Vice Lords. James Jacobs, *Stateville: The Penitentiary in Mass Society* (Chicago: The University of Chicago Press, 1977).

superiority and racial terrorism that spawned such gangs as the Aryan Nation and the Aryan Brotherhood.⁸⁰⁸

While other prison systems experienced gang organization in the 1960s and 1970s, TDC had no such organizations until the mid-1980s. In 1983, TDC reported the existence of only a single gang with membership between 56 and 77, which in a prison population of over 37,000 constituted less than one percent of the total prison population. Within two years, however, TDC recorded 1,400 gang members in eight different gangs.⁸⁰⁹ By 1987, they made up more than 3 percent of the total inmate population. The first “Texas” gang was a group of displaced Texas inmates in the California prison system that formed in 1978 the Texas Syndicate (TS) as a way to protect themselves as state outsiders in California’s gang-ridden prison system. By 1982, the Texas Syndicate had begun to organize within TDC. The most prominent gangs in 1985 were the TS who had 296 Latino members, the Texas Mafia (white) with 110 members, the Aryan Nation (white) with 287 members, the Mexican Mafia (Latino) with 351 members, *Nuestro Carneles* (Latino) with 47 members, the Mandingo Warriors (black) with 66 members, the Self Defense Family (black and inter-racial) with 107 members, and the *Hermanos De Pistolero* (Latino) with 21

⁸⁰⁸ On the development of gangs in California as an outgrowth of the “convict boss” system, see Heather Jane McCarty, “From Con-Boss to Gang Lord: The Transformation of Social Relations in California Prisons, 1943-1983,” (University of California, Berkeley, PhD diss., 2004), 103-158; and Eric Cummins, *The Rise and Fall of California’s Radical Prison Movement* (Stanford, CA: Stanford University Press, 1994), 136-37, 139-40, 155-56.

⁸⁰⁹ Sonny Buentello was the first TDC employee to track inmate gangs as a form of early gang intelligence gathering. Robert Fong’s dissertation provides the data and the citation for these numbers. His dissertation cites an anonymous member of the Gang Task Force of TDC as his source. Robert S. Fong, “A Comparative Study of the Organizational Aspects of Two Texas Prison Gangs: Texas Syndicate and Mexican Mafia, (PhD diss., Sam Houston State University, 1987), 11-12; and, Crouch and Marquart, *An Appeal to Justice*, 209.

members.⁸¹⁰ These gangs operated with a paramilitary structure that issued orders, made hits, and attempted to vie with each other for control of an expanding prison drug trade.

The development of gang activity centered on the drug trade within prison, but it also had a relationship to the crumbling of the old racial structure that had previously been secured by the building tender system. Although the ranks of building tenders included all races, white inmates were particularly advantaged by the BT-system as they reigned over the prison system as head building tenders. The building tender system's collapse diminished the power and prestige of white inmates. In response, white inmates turned towards gang organization as a means to reassert their prior dominance. The prison's first official memorandum that acknowledged the existence of the Aryan Brotherhood was issued in late 1984.⁸¹¹ The Aryan Brotherhood Texas (ABT) was based on the California Aryan Brotherhood, which had been active since the late 1960s. It was ruled by a council, or steering committee, who made gang laws, anointed new members, and ordered "hits" on other gang members or individual inmates. Sociological researchers Terry

⁸¹⁰ The data on gang membership is derived from Fong's study. Fong, "A Comparative Study of the Organizational Aspects of Two Texas Prison Gangs: Texas Syndicate and Mexican Mafia, (PhD diss., Sam Houston State University, 1987), 11.

⁸¹¹ Sonny Buentello issued the memorandum that acknowledged the Texas AB. His early intelligence work on gang activity informed the work of sociologists Terry and Mary Pelz and James Marquart in their pioneering study of the Texas AB. It also informs my own brief summary of racial gangs in Texas. Buentello's memorandum read as follows: "Recently, an illegal organization has emerged within the Texas Department of Corrections, which in some respects can be considered an 'off-shoot' of the 'Aryan Brotherhood' organization which can be found in various other states." Mary E. Pelz, James W. Marquart, and C. Terry Pelz "Right-Wing Extremism in the Texas Prisons: The Rise and Fall of the Aryan Brotherhood of Texas, *Prison Journal*, Vol. 71 Issue 2 (Fall-Winter 1991), 23-37, 27.

Pelz, Mary Pelz, and James Marquart have argued that the AB was responsible for as much as 32 percent of all inmate homicides in TDC in 1984 and for 40 percent of all gang homicides.⁸¹²

White gangs in Texas formed in the hopes of restoring the power of white superiority in the face of minority activism inspired by civil rights agitation. In an early history of the Aryan Brotherhood, an inmate named “Red” stated that the dismantling of the building tender system “brought about the beginning of the AB...because the black inmates, being in the position of numerical superiority, used this superiority of numbers and the fear it caused among most white inmates to start robbing and sexually assaulting the weaker inmates.”⁸¹³ Without fear of reprisal from building tenders, minority inmates asserted themselves and disrupted the system’s racial order. “Young black inmates started coming into TDC thinking they could push white inmates around just because they had civil rights now,” complained inmate “Gold,” one of the original founders of the AB in Texas. “They were rude and disrespectful to white inmates and in prison all you have is your respect.”⁸¹⁴ Even members of the prison board seemed to echo the sentiment of reverse racial victimization that AB members decried. “What we had here was a situation where

⁸¹² Mary E. Pelz, James W. Marquart, and C. Terry Pelz “Right-Wing Extremism in the Texas Prisons: The Rise and Fall of the Aryan Brotherhood of Texas, *Prison Journal*, Vol. 71 Issue 2 (Fall-Winter 1991), 23-37.

⁸¹³ Pelz, Marquart, and Pelz “Right-Wing Extremism in the Texas Prisons: The Rise and Fall of the Aryan Brotherhood of Texas,” 28. One of the authors of the Texas AB study was a former TDC employee, which provided these sociologists with access to over 3,000 letters from and to Aryan Brotherhood members during the period 1984 through 1991. Their pioneering work on the AB provided the words of AB members that are cited here.

⁸¹⁴ *Ibid.*

blacks were taking advantage of the whites and asking for protection,” prison board chairman Robert Gunn declared to the press in 1984. “We had naïve country white boys alongside city-smart blacks and that is the battle that is being fought now.”⁸¹⁵ Such sentiments played into racial stereotypes of the “tricky” black city dweller and it inverted the reality of prison life under the building tender system where black inmates were susceptible to white authority and domination.

Among white gangs, murder of minority inmates became a “holy cause” to regain the “lost status” of white inmates. AB members circulated pamphlets, leaflets, and drawings that promised a return to power for white inmates. One in particular exemplified the murderous nature of this racial struggle and his words evoked the violence of committing murder as analogous to the passion of sex: “the smell of fresh human blood can be overpowering but killing is like having sex. The first time is not so rewarding, but it gets better and better with practice, especially when one remembers that it’s a holy cause.”⁸¹⁶

As the white gangs attempted to restore racial superiority through murder and white terror, black inmates formed such self defense groups and racially integrated gangs as the “Self Defense Family,” whose name speaks to its purpose. Many African American inmates felt that the years of racial subservience had added to a lingering sense of bitterness in the 1980s. “Yeah, we got an attitude towards whites,” one black inmate admitted to sociological researchers James Marquart and Ben Crouch. “Why not? The reason I say this is because the whites have always more or less run this farm [Eastham]. This place has always been a white boy’s farm, so our

⁸¹⁵ “Racial tensions blamed in surge of TDC violence,” *Houston Chronicle*, 9 August 1984.

⁸¹⁶ *Ibid*, 31.

attitude is kind of bitter. We washed the floors around here long enough and seen the white boys make trusty quicker than any of us. Yeah, we got a bad attitude awright. So what about it?”⁸¹⁷ Of course, black inmates were involved in the drug trade too, and groups like the Mandingo Warriors competed with the other gangs for their share of narcotics traffic. The demise of the building tenders, the removal of writ writers and activists from TDC, the attempt to racially integrate the prison system, and the rise of racial gangs created a new prison society and culture centered on racial competition.⁸¹⁸

While the prisoners’ rights movement of the 1970s was organized along inter-racial lines, the mid-1980s generation reorganized into a balkanized racial prison where inmates of each racial group collected together to wage a war of survival on each other. In reflection of the difference between the politicized inmate society of the 1970s and the viciousness of mid-1980s gang warfare, former writ writer and current inmate Stephan Blanchard wistfully aired his regret and a personal sense of defeat:

I was so sad at what we’d wrought... [In being part of *Ruiz*] I thought I would have the opportunity to build a prison system of meaning and instead we chose cannibalism, and the gangs came. And the violence came with gangs. And we started feeding on ourselves—just animals feeding on ourselves. Instead of the residual idealism of the rights movement, all that we had tried to accomplish—I felt defeated, and we didn’t do anything, but set it up for tyranny in another form. And it was the letter tyranny, the EME, the TS, the AB, the AC, the ANs—all the gangs, and their letters of hate. And we created a monster that’s

⁸¹⁷ Anonymous inmate, Marquart and Crouch, *An Appeal to Justice*, 193.

⁸¹⁸ On the impact of racial integration in Texas prisons during the 1990s, see Chad Trulson and James Marquart, “The Caged Melting Pot: Toward an Understanding of the Consequences of Desegregation in Prisons,” *Law & Society Review*, Vol. 36, No. 4 (2002), 743-782; and, Chad Trulson and James W. Marquart, “Racial Desegregation and Violence in the Texas Prison System,” *Criminal Justice System*, Vol. 27, No. 2, 2002, 233-255.

grown to this 160 something thousand bed monstrosity. Why we just failed. We got rid of the building tenders, that's all that we did. And they've been replaced by staff—not as overtly brutal, but more subtle—more psychological oriented in a state that doesn't care. And among prisoners that don't care.⁸¹⁹

Critics of the *Ruiz* decision have frequently blamed the intervention of the Federal court and Justice's ruling for the rise of gangs in Texas. The *Ruiz* case, they argue, had created a social breakdown within prison society, diminished the guard's subculture, and created such agitation among prisoners that many felt entitled to confront their keepers through violence, riot, and misrule.⁸²¹ Although not critics of the *Ruiz* decision, sociologists Ben Crouch and James Marquart have extensively studied the sociological impact of *Ruiz* and they argue that gangs arose in the absence of building tenders. This is not a finding that this study refutes, but their appraisal of the building tender system situates it as a “co-option of the kept” where elite inmates served as “negotiators” for guards and an extension of security staff. Their work acknowledges the brutality that was revealed in the *Ruiz* case, but their appraisal of building tenders tends to cast them in the role of elite “mediators” and “managers” who only became “out of control” when the prison system grew too large in the mid-to-late 1970s.⁸²² But inmates had been complaining about the building tenders and

⁸¹⁹ Stephan Blanchard, interview with the author, March 14, 2007, IOH.

⁸²¹ Prison scholars adopting this critique of *Ruiz* decision include: John J. DiIulio, *Governing Prisons: A Comparative Study of Correctional Management* (New York: The Free Press, 1987); and David M. Horton and George R. Nielson, *Walking George: The Life of George John Beto and The Rise of the Modern Texas Prison System* (Dallas: University of North Texas Press, 2005).

⁸²² On Marquart and Crouch's approach to building tenders as “co-opted” inmates, see Marquart and Crouch, *An Appeal to Justice*, chapter 3. For their argument that the building tender system became “out of control” due to prison expansion in the mid-1970s, see Marquart and Crouch, *An Appeal to Justice*, 114-116. On the effect of *Ruiz* on prisoner control after 1980, see James Marquart and Ben Crouch, “Judicial Reform and Prisoner

documenting abuse throughout the postwar period, and particularly during the mid-1960s, before the prison system experienced the massive prison expansion of the post-1977 period. This study therefore suggests that building tenders had always been abusive, although I argue that the construction of cell blocks accelerated their power and gave them enclosed and partially hidden space for secreted abuse. My work also suggests that the perpetual abuse of building tenders came to light only as the civil rights revolution and notions of minority empowerment made its way into prison and demanded attention.

While the gangs arose out of a power vacuum, the *Ruiz* case did not create overcrowded prisons and the conditions of violence.⁸²³ Moreover, such an argument ignores the ways in which building tenders operated a despotic society and economy within the prison. To suggest that *Ruiz* created gangs is to diminish the power that building tenders had within prison society. Although building tenders drew their ranks from all races in their effort to control racially segregated cell blocks, it was white inmates who held the most influence and power with white prison officers. When the warden, assistant warden, or major had a problem on his hands, he frequently turned to such white head building tenders as Sonny Evans, Jack Friday, Butch Ainsworth or Robert Barber to solve the problem. Building tenders therefore ruled prison society through the physical enforcement of white superiority and racial hierarchy.

Control: The Impact of *Ruiz v. Estelle* on a Texas Penitentiary,” *Law & Society Review*, Vol. 19, No. 4, (1985), 557-586.

⁸²³ On the impact of overcrowding on prison violence in Texas, see Sheldon Ekland-Olson, “Crowding, Social Control, and Prison Violence: Evidence from the Post-Ruiz Years in Texas,” *Law and Society Review*, Vol. 20, No. 3 (1986), 389-422.

However, building tenders cannot be classified as just another type of “gang.” They are distinct from a prison gang for three core reasons: their ranks drew upon all races in a racially segregated environment, they worked for the administration, and their comprehensive control limited the trade of narcotics. Nonetheless, building tenders controlled and operated the internal prison economy, which included a sex trade, and their power within the prison remained absolute and unchallenged until the civil rights revolution of the 1960s. Because the violence and brutality of the building tender system was done in the service of the control penology model, the actions of building tenders went largely unrecorded until inmates themselves documented the abuses. When the grass-roots prisoners’ rights movement challenged building tenders on the cell block and in the court room, their ability to maintain old racial hierarchies collapsed. As a result, racial gangs arose in Texas just as they had in nearly every prison system across the nation. Gangs were instant enemies of the state and TDC recorded their violence through gang intelligence units whose mission was to track gang activity, identify members, and attempt to control illicit activity and outbreaks of targeted violence.

Unlike the writ writer movement, racial gangs in Texas created racial dissension rather than inter-racial organizing for explicitly political purposes. Moreover, their aim was to promote the drug trade, protect one another from other gangs, and to uphold notions of distinct racial identity or, in the case of white gangs, racial superiority. As the Texas prison system became racially balkanized through the rise of gangs, the opportunities for the kind of inter-racial organizing and mobilizing that so dominated inmate society in the 1960s and 1970s diminished. The

tradition of writ writing continued among some inmates, but the era of organized system-wide work strikes and joint civil rights actions could not compete with a prison system riddled with inmate-on-inmate racial violence and an unmitigated drug trade.

Gang warfare during the mid-1980s contributed to unprecedented levels of prison violence and hastened the mounting prison crisis. As brutal as the building tender system had been, murders were rare in the control model as Texas maintained the nation's lowest murder rate. Indeed, TDC recorded only 17 murders during the entire decade of George Beto's administration (1961-1971). The control model's low cost and self sufficient system, moreover, could not keep pace with the costs associated with the *Ruiz*'s ruling on better conditions for inmates. Between 1976 and 1986, for instance, the annual cost per inmate had quadrupled, from \$2,186 per year in 1976 to \$9,150 in 1986.⁸²⁴ In the post-*Ruiz* environment, the prison had become murderous, unstable, and costly.

Only 13 months into his two-year contract, director Raymond Procnier announced his retirement. "I just run out of gas. I'm tired...I never anticipated this – resigning – but I never anticipated the magnitude of this job either. This system is about three or four systems in one." Telling the press that he could "only go to the trough so many times," Procnier resigned with the confession that "this job is 10 or 50 times more difficult that I had anticipated. Probably 100 times would have been more accurate." In sympathy with Procnier's exhaustion, prison board chairman Robert Gunn compared managing TDC in the post-*Ruiz* environment to "a person

⁸²⁴ TDC Fact Sheet 1986; and Fong, 7.

who has been in a massive car wreck” and that he believed Proconier’s short directorship had seen Texas “through the recovery.”⁸²⁵

In the hopes of controlling and stemming the unrest, TDC subsequently ushered in a new prison regime by promoting as its new director Lane McCotter, a retired career military police officer, two tour veteran of the Vietnam War, and former director of the U.S. military prison at Fort Leavenworth. It was rumored that McCotter had been Governor White’s first choice all along.⁸²⁶ In response to the inmate unrest, McCotter’s first act as prison director was to declare “war” on the prison gangs in 1985 by forming SWAT-like prison guards based on military units with the name of Special Operations Response Teams (SORT). SORT teams generally consisted of six-man teams, including a sniper and a negotiator. These paramilitary guards answered directly to McCotter and dressed in black or dark blue combat fatigues and wore steel combat boots, carried steel riot batons and became notorious among inmates for inflicting physical abuse without any outward or observable physical signs of violence. As one inmate put, “There isn’t a time when SORT comes down here that someone doesn’t get the hell beat out of him.”⁸²⁷

In the course of his “war,” McCotter initiated a new era of prison management and ordered nearly 17,000 inmates into lockdown, which reordered the Texas inmate

⁸²⁵ “Top Aide named prison chief as boss resigns,” by Linda Anthony, *American Austin Statesman*, 18 June 1985.

⁸²⁶ Martin and Ekland-Olson, *Walls Come Tumbling Down*, 243.

⁸²⁷ “Team of Last Resort,” *Houston Chronicle*, October 21, 1985; “Special squads to help guard unruly inmates,” *Austin American Statesman*, 31 August 1984.

society.⁸²⁸ McCotter advanced the use of administrative segregation (ad-seg) and what became known as “super” segregation cell blocks. These were cordoned off cell blocks with individual cells, known among inmates as a series of “prisons within prisons.” The new areas locked violent or gang-affiliated prisoners away in a single cell for 23-hours a day. In 1983, there were 345 inmates in administrative segregation, but under McCotter’s regime the population of ad-seg increased five-fold to 1,860. By 1987 those housed in ad-seg increased to 3,055, while inmate deaths dropped in 1986 to five.⁸²⁹ Most of the assaults, however, happened on the ad-seg wings, where unruly inmates used common items, such as sharply rolled paper, to fashion spears, spikes, and other dangerous weapons that they shot with deadly efficiency through the wire mesh of their new cages. The mounting prison population and the violence of racial gangs created new levels of savagery as the prison devolved into a barely contained wilderness of violence. In the eyes of prison administrators, prisoners became a new breed of home-grown domestic “savages” and prisons became a new kind of enclosed “frontier.”⁸³⁰ In the post-Vietnam era,

⁸²⁸ “Lockdown: New TDC Director Brings ‘Ultimate Control’ to State’s Violence=Plagued Prison System,” *Tyler Morning Telegraph*, 26 August 1984.

⁸²⁹ Robert Fong, “A comparative study of the organization aspects of two Texas prison gangs: Texas Syndicate and Mexican Mafia,” (PhD diss., Sam Houston State University, 1987), 15; George Camp and Camille Camp, *The Corrections Yearbook* (South Salem: Criminal Justice Institute, 1983-1987); Les Layman, “Offender Classification in Texas State Prisons,” Master’s Thesis, Sam Houston State University, 47.

⁸³⁰ As part of this terrain of heightened savagery, a new development in prisons across the nation was the flinging of an inmate’s feces and urine at prison guards. In Texas, the earliest press coverage of such vile acts of bodily resistance centered on the public’s growing anxiety over the 1980s discovery of the AIDs “epidemic.” TDC started to track AIDs patients beginning in 1984. By 1987, Texas had the nation’s fourth highest AIDs prison population with 166 documented cases and 17 deaths (16 male inmates, one female) from the deadly virus. New York had the nation’s worst AIDs outbreak in its prison population with 494 inmate AIDs patients and 303 deaths from the auto-immune disease. In

McCotter's mid-80s paramilitary regime represented society's attempt to tame this new violent "frontier" of prisons by reasserting military honor and thereby attaining victory at home.⁸³¹

McCotter's heavy hand, however, was called into question when several inmates died in custody under violent circumstances, causing Judge William Wayne Justice to threaten to fine the state \$1,000 a day if improvements were not made.

June 1987, an 18-year old TDC inmate splashed his urine and blood on three guards and a nurse as he was attempting self-mutilation and suicide on his arms and wrists. A year later, inmate and AIDS patient Curtis Weeks was convicted of attempted murder when he spit on a guard in his attempt to spread his bodily affliction. In the contemporary prison, the flinging of bodily waste at guards is common place at high security risk prisons. The viciousness of the prison environment was thus stricken by its own social disease. "Prisons try to deal with AIDS issue," *Ft. Worth Star Telegram*, 31 May 1987; "Jury indicts inmate who spit on officer," *The Huntsville Item*, 26 August 1988; "Calm urged as fear of AIDS spreads among TDC guards," *Houston Chronicle*, July 22, 1987; "Dentist says he was fired over AIDS rift," *Austin American Statesman*, 17 August 1987; "TDC workers fearful of exposure to AIDS," *Houston Chronicle*, 21 July 1987; "2 guards, nurse splattered with bloods from AIDS carrier," *Huntsville Item*, 22 July 1987; "Dentist Citing AIDS fears fired at TDC," *Houston Chronicle*, 17 August 1987.

⁸³¹ Cultural historians of the post-war world have argued that the discovery of atomic weaponry rendered the American "war story" of noble victory against an aggressive "Other" as turning to "triumphalist despair" once the nation realized that total victory in war could also lead to nuclear Armageddon. The contradictions between noble victory and military misadventure intensified during the Vietnam War when Americans faced not only defeat, but the prospect of losing its good guy narrative war story in the shadow of American neo-imperialism. Richard Slotkin's cultural analysis similarly argued that Americans seek "regeneration through violence" and a "savage war" in which brutality renews the American character, spirit, and nobility. I want to suggest here that in the 1980s and 1990s massive prison growth facilitated an internally constructed and contained "frontier" that held what prison authorities believed to be a new breed of home-grown domestic "savages" that only could be tamed through domestic para-militarism. On the role of militarism in a post-Vietnam age, the "savage frontier" in American imagination and culture, and the crisis of "victory culture," see Andrew J. Bacevitch, *The New American Militarism: How Americans are Seduced By War* (Oxford: Oxford University Press, 2003); Richard Slotkin, *Gunfighter Nation: The Myth of the Frontier in Twentieth-Century America* (New York: Atheneum, 1992); William Gibson, *Warrior Dreams: Paramilitary Culture in Post-Vietnam America* (New York: Hill and Wang, 1994); and, Tom Englehardt, *The End of Victory Culture: Cold War America and the Disillusioning of a Generation* (New York: BasicBooks, 1995). On the application of military practices to criminal justice and prison management, see Scott Christianson, "Correctional Law Developments: Prison Labor and Unionization – Legal Developments," in *Criminal Law Bulletin* 14(3), 1978, 243-247.

While McCotter used heavy-handed tactics against violent inmates, he relied on “good time” for less violent inmates to keep the prisons from becoming too crowded. In a March 1986 memorandum to all wardens, McCotter announced his new policy that all newly received inmates were to gain the highest good-time status of State Assured Trustee (SAT) IV, which allowed them to earn 40 days toward their sentence for every 30 served.⁸³² Previously, incoming inmates were given a classification that allowed them to earn only 20 days of good time for 30 days served. Such an action provoked the ire of Bill Clements who was running again for governor in 1986 in a renewal of the 1982 campaign between White and Clements. Promising that he wanted “action and not talk” about controlling prisons, Clements promised to fire McCotter if elected, put in his own people on the prison board, and enact a “complete restructuring of the Texas criminal justice system.”⁸³³ Clements won and McCotter resigned under extreme political pressure.

The trajectory of Lane McCotter’s career is worth additional consideration because it embodied the shifts in prison management from custodial to military practice, to the privatization of the prison, and to the ways in which domestic and military prisons influenced one another. After his departure from TDC in 1987, McCotter became Cabinet Secretary of the New Mexico Corrections Department from 1987 to 1992 and as Director of the Utah Department of Corrections from 1992 until 1997, when McCotter resigned his post following the controversy that erupted

⁸³² “TDC staff, early release policy under attack,” *Dallas Times Herald*, 24 October 1986.

⁸³³ “Candidates offer prison solutions,” *Houston Chronicle*, 30 October 1986; “McCotter Should be Fired, Clements Says,” *Huntsville Item*, 24 October 1986.

from the death of Michael Valent, a schizophrenic inmate, who the prison guards bound naked to a restraint chair for over sixteen hours for refusing to take a pillowcase off his dead. Although the prison administration claimed that Valent died at the hands of other prisoners, an unknown videotape surfaced which showed otherwise. Valent's death resulted from blood clots that formed in his immobilized legs and blocked an artery to his heart. McCotter thereafter followed the trend towards privatization of prisons and became director of Corrections Business Development for the private, Centerville Utah-based prison and education company Management & Training (MTC). In view of his successful management of the nation's third largest privatized prison company, Attorney General John Ashcroft selected McCotter in 2003 as one of three advisers sent to establish the U.S. military prison Abu Ghraib in Iraq. Although McCotter never managed Abu Ghraib, his role as a consultant resulted in debate on the floor of the U.S. Senate. "There are many questions begging for answers," remarked New York's Senator Chuck Schumer. "Mr. McCotter's selection also raises serious questions about the role that was played by civilian advisers in setting prison policies, designing training programs for prison guards and directly influencing the environment in which the horrible abuses at Abu Ghraib took place." McCotter's role in Texas and later in Abu Ghraib shows the ways in which military and domestic prison practices came to influence one another in taming the domestic "frontier" of savage prisons and in forging the new frontier of prisons and conviction-less confinement in the nation's "war on terror."⁸³⁵

⁸³⁵ For McCotter's role in the death of inmate Michael Valent see, "Fade Back to the Sixteenth Century: Restraints at the Utah State Prison," Jencie Anderson, ACLU Staff Attorney, ACLU Reporter Summer 1997. For McCotter's role in Iraq, see Department of Justice, "Department of Justice Sends 25 Advisors to Iraq in Support of Provisional Authority

*Law and Order Politics:
Victims' Rights and Prison Expansion*

As prisoners reordered prison society through gangs and violence, the question of how to manage the Texas prison system became a central issue in the gubernatorial campaigns of 1982 and 1986. The campaign of 1982 between incumbent Governor William Clements and the Democratic challenger Mark White centered on acrimony over the *Ruiz* case and on prison overcrowding. White charged that Governor Clements' veto of \$30 million for prison construction funds in 1979 contributed to delays in prison construction and overcrowding. Moreover, White charged that Bill Clements' "get tough on crime" policies were hypocritical, as the Clements administration oversaw the paroling of 12,038 inmates. Clements defended his administration and cited that he had vetoed nearly 22 percent of the paroles recommended by the 3-member pardons and parole board, which was twice as many as any previous governor. Under Clements' administration, the legislature passed 14 of his 16 anti-crime laws. "No legislative session in modern history has passed more potent, far-reaching laws to combat crime and the cancerous drug traffic in our state," Clements argued. The political argument became personal when

Effort to Reconstruct Criminal System, www.usdoj.gov; "Ex-head of TDCJ Set Up Iraq Jail: Checkered Career Raises Questions," *Houston Chronicle*, May 14, 2004. For Senator Schumer's criticism of McCotter's role in Abu Ghraib, see "Schumer: Prison Official with Checkered Past Put in Power at Abu Ghraib," press release May 13, 2004, office of Senator Charles E. Schumer, New York.

Clements charged that White was “incompetent” during the *Ruiz* hearings and that as attorney general White agreed to court demands on the *Ruiz* settlement that were “contrary” to the designs of TDC. White returned fire by telling the press that Clements had “gone off the deep end” in “playing politics” and was “talking through his hat.”⁸³⁶ The situation became so terse between them that Clements publicly stated to the media that he considered getting outside legal counsel. White retorted, “I hope that if the governor hires outside legal counsel, he gets better legal advice than he has had from his own inside counsel. I am sorry that he didn’t have better inside legal counsel when he vetoed the prison appropriations bill two years ago.”⁸³⁷

Despite the personal acrimony of the 1982 campaign, White rode a tidal wave of Democratic victories in 1982 in which democratic candidates defeated thirteen Republican state governors. Across the nation voters responded negatively to Reaganomics, double-digit unemployment, and concerns that the Reagan Administration was going to reform Social Security. White won a clear victory with 53.2 percent (1,697,870 votes) to Clements 46 percent (1,465,937 votes). White’s election as governor in 1982 signaled that the public had grown weary of prisoner complaints, liberal and “radical” activists and attorneys who were charged as “outsiders,” and intrusive and “overzealous” federal judges.

The 1986 Texas gubernatorial campaign repeated some of the same charges and it elevated the prison issue to even greater levels of political acrimony. It also foreshadowed the role that race, gender and prisons played in the 1988 presidential

⁸³⁶ “Clements, White argue; TDC Chief Caught in Middle,” *Houston Post*, 20 February 1981.

⁸³⁷ *Ibid.*

campaign between Governor Michael Dukakis and Vice President George Bush. During the 1986 gubernatorial campaign, Clements argued that White and McCotter had embraced an “early release policy” in easing restrictions on parole and making good-time available for all new incoming inmates. Clements’ tough “law and order” solution was to extend prison sentences, increase prison construction, and restrict parole. Both White and Clements hoped to claim the mantle of being “tough” on crime and neither was easily cast as the traditional “soft” liberal when it came to prison management. Indeed, both administrations had strenuously opposed Judge Justice’s court-ordered reforms. But it was Clements who felt that law and order was the “hot button with the people of Texas” and he promised to build a new prison system based on longer prison terms and more prisons. “The most sensitive issue is law and order, crime, drugs, and most importantly, early release,” Clements often told the press.⁸³⁸ Indeed, Clements told a meeting of state-wide sheriffs that: “Mark White has an early release program that’s putting thousands back on the streets. Hard-core felons are being released from our prisons at an unprecedented rate and White’s lack of leadership is to blame.” During his campaign ads, Clements featured a woman named Susan Key who was mugged in Dallas’ swanky and socialite Highland Park neighborhood. The man who mugged Key was a former TDC inmate who had been released under White’s parole program. White protested that Clements’ charges on early release were nothing less than an “absolute fraud” and that “we are trying to build more prisons.”⁸³⁹ He also charged that Clements’ veto in

⁸³⁸ “Clements cites white as being soft on crime,” *Houston Post*, 23 October 1986.

⁸³⁹ *Ibid.*

his first term of a \$30 million, 5,000-bed prison “made no sense,” that it was “reprehensible,” and that “it created disorder.”⁸⁴⁰ White’s campaign responded in kind to the Clements ad by featuring in White ads 19 men on death row who were “personally paroled” in the first Clements administration (1978-1982) and who committed capital murder after their release.⁸⁴¹ Both the White and Clements “get tough on crime” ads thus pioneered the 1988 presidential ads created by Bush campaign manager Lee Atwater. Presidential candidate George Bush’s 1988 Willie Horton ads, which had such titles as “Weekend Passes” and “Revolving Door,” featured the release of Horton on a weekend prison furlough under a program supported by Governor Dukakis. While on furlough, Horton subsequently raped a local woman after assaulting her fiancé.⁸⁴²

The 1986 Texas gubernatorial campaign also highlighted the role that conservative women’s groups would play in facilitating a political climate that demanded an expanded and more punitive prison system. In addition to being a Clements supporter and star of his anti-crime ad, Susan Key was also the co-chairman of the Associated Texans Against Crime Forum (ATAC), a Dallas-based women’s lobbying organization that turned women’s rights issues into tough policies on crime and extended prison sentences. The head of ATAC was Susan Collins, a local

⁸⁴⁰ “White attacks Clements veto,” *Austin American Statesman*, 23 October 1986.

⁸⁴¹ “Neither White nor Clements did well in running prisons: System turns political football in race” by Mark Sanders, *Houston Post*, 30 October 1986.

⁸⁴² On the use of racial anxiety and gendered fears to promote a new right agenda during the 1988 presidential campaign, see Thomas Byrne Edsall with Mary D. Edsall, *Chain Reaction: The Impact of Race, Rights, and Taxes on American Politics* (New York: Norton, 1991); Tali Mendelberg, “Executing Hortons: Racial Crime in the 1988 Presidential Campaign,” *Public Opinion Quarterly* 61, no. 1 (Spring 1997): 134-57.

Dallas-area Highland Park socialite whose prior organizing credentials included the chairman of the Cattle Baron's Ball, chairman of the USA Film Festival Board, and chairman of the cultural Chamber of Commerce. ATAC was formed in 1984 and its members included civic organizations, politicians, and more than "400 experts and law enforcement practitioners," including its first chairman Senator J.E. "Buster" Brown. Its primary goal was to raise public awareness over "victims' rights" and lobby key state legislators against the early release of inmates and for the construction of new prisons. For these efforts, ATAC boasted a sizable lobbying budget with \$200,000 in its coffers in 1986. In 1984, ATAC conducted 12 public hearings in major media markets across Texas that demanded the construction of more prisons and more prison time for convicted criminals. At these hearings "local police chiefs, sheriffs, prosecutors, judges, and representatives of victim's groups testified on recommendations to improve the criminal justice system in Texas."⁸⁴³ Under Collins' direction, ATAC also held luncheon meetings with prominent women from "social and professional circles." Key was often featured as a speaker and her words stoked growing concern about violent crimes: "Parole is the main problem we now have. It's just a method of prison population management...They say they don't release violent criminals, but they released the man who attacked me." Key's words and her role in the Clements campaign showed how the public embraced victims' rights. "We

⁸⁴³ Associated Texans Against Crime (ATAC), "The Texas Criminal Justice System: Improvements that should be made," January 1985, an independent project of the Texas Foundation for Conservative Studies, Dallas, Texas, in author's possession.

have such a sympathetic idea about the perpetrators of crime and we never think of the victim,” Key complained.⁸⁴⁴

Women’s groups had historically played a leading role in prison reform, as they were the vanguard of progressive and humanistic reform movements in the 1920s and again in the 1948 reform plan.⁸⁴⁵ During past reform eras, Texas women’s groups and largely women led Christian organizations had decried the inhumanity of the prison and they advocated society’s Christian duty to treat inmates humanely. By the 1980s, however, conservative women’s groups demanded a more punitive response to the criminal and a more humane response to crime’s victims.

This justified interest in “victims’ rights” also spurred a reactionary campaign to build more prisons, expand the prison population, and demand harsh sentencing laws just at the moment when crime was actually decreasing. Conservative politicians thus co-opted political calls for victims’ rights as part of their coordinated “law and order” campaigns that created a punitive political environment and contributed to the emergence of the carceral state.⁸⁴⁷

⁸⁴⁴ Ron Boyd, “Crime Fighters: Dallas socialites campaign for victims’ rights,” and “Society women becoming new force in anti-crime,” *Unique*, 7 September 1986.

⁸⁴⁵ On the role of women in the effort to bring progressive-era “New Penology” to Texas, see Paul Lucko, “A Missed Opportunity: Texas Prison Reform during the Dan Moody Administration, 1927-1931,” *Southwestern Quarterly*, January 2003, 397-417. On the role that women’s groups played nationally in humane prison reform and the campaign against lynching, see Estelle Freedman, *Their Sisters’ Keepers: Women’s Prison Reform in America, 1830-1930* (Ann Arbor: University of Michigan Press, 1981); and, Jacquelyn Dowd Hall, *Revolt Against Chivalry: Jessie Daniel Ames and the Women’s Campaign Against Lynching* (New York: Columbia University Press, 1979).

⁸⁴⁷ On the role of “victims’ rights” in the construction of the carceral state, see Gottschalk, *The Prison and the Gallows*, chapters 5 and 6.

Facing a barrage of critical ads on the faltering oil economy, high unemployment, growing tax rates, and questions over parole and prison overcrowding, White's 1986 gubernatorial reelection bid crumpled and Clements declared victory with a 52.7 percent plurality.⁸⁴⁸ Although White tried to vie with Clements as a law and order candidate, he could not adequately respond to the charge that he embraced early release and that White's administration lacked Clements' sweeping vision for new prison construction.

In his second administration, Clements moved away from the pattern of denial and resistance to court ordered reforms of its prison system. Instead, he embraced the coming changes and offered a new vision for prisons. With the building tender issue settled, what remained for the Justice court in 1985 and 1986 were the unresolved and increasingly acute problems of overcrowding and the employment of new guards. In a 1986 contempt hearing, Justice declared that "TDC unquestionably has not reached compliance" and that it was "unmistakable" that "TDC has been habitually and inexcusably dilatory in fulfilling its obligations." Following the hearing, Judge Justice's ninety-six page conclusion determined that TDC was in contempt of court and he threatened fines of up to \$800,000 a day for continued noncompliance.⁸⁴⁹ In an acknowledgement of the coming fall 1986 election, Justice delayed the fines until April 1, 1987, which would give whoever won the gubernatorial campaign time to speed compliance. The initial state response was the characteristic anger over the authority of the federal court. "It takes really considerable arrogance on the part of a

⁸⁴⁸ Barta, *Bill Clements: Texian to his Toenails* (Austin, TX: Eakin Press, 1996), 334.

⁸⁴⁹ *Ruiz v. McCotter*, Memorandum Opinion and Order, December 31, 1986.

judge to fine the citizens of Texas,” Lieutenant Governor William Hobby angrily lectured the press after Justice’s ruling. “The whole concept of fines on the citizens of Texas by a non-elected official is distasteful in the extreme.”⁸⁵⁰

In his new gubernatorial victory, however, Clements offered an uncharacteristic olive branch to Judge Justice. Clements suggested a “meeting of the minds” between the plaintiff attorneys and the state in Judge Justice’s chamber. The protagonists in the near decade long struggle emerged from the January 9, 1987 meeting with a series of compliance agreements that satisfied all parties. In his State of the State address to the 70th Legislature, Clements declared peace: “the lawsuit is over...We must get in compliance as quickly as possible. We have no choice.” Federal oversight of Texas state prisons continued until 2002, but the ongoing warfare between Justice and the state in the court room and in the court of public opinion had ceased. By 1989 Judge Justice closed the Special Master’s office after a near decade of direct supervision.

Compliance with *Ruiz*, however, suited Clements’ broad law and order vision. Within thirty days after he took office, Clements sought a \$12.6 million emergency appropriation to begin compliance with Justice’s order that forbade TDC from housing more than 95 percent of its capacity prison population. Rather than restricting prison population, however, Clements used this court order as rationale to build more prisons so that TDC would not have to release its prisoners. Clements used the crisis over *Ruiz* compliance to ask the 1987 legislature for funds to create 8,000 new beds at a cost of \$213 million. The flagship prison in his prison expansion

⁸⁵⁰ “Hobby calls judge arrogant for fining TDC,” *Houston Chronicle*, 15 January 1987.

plan was the newly proposed \$67 million 2,250-bed Michael prison in Palestine, Texas. The Michael prison heralded the future for prisons in Texas. It was outside of the old agricultural corridor of Houston and Huntsville and it was a modular design that allowed for greater control of inmates, known by its more menacing “supermax” title. Clements called it his first “cookie cutter” prison that would become part of an \$800 million prison expansion plan. “The only problem with the Michaels Unit,” Clements declared “is we only have one of them.”⁸⁵¹ Until the new units could be built, Clements had devised a rotating incarceration plan whereby 150 nonviolent inmates would be released each day as 150 new inmates would arrive into the system. “This management plan will establish equilibrium on both sides of the state prison doors,” Clements promised. Clements called it a coordination where “the right hand knows what the left is doing and vice versa.” But he promised, “one way or another, we will build more prisons.”

Clements was indeed true to his promise. In three years under his second term as governor, Clements proposed and received legislative approval for 24,000 new beds for incoming prisoners with a \$547 million price tag (\$213 million in 1987 for 8,000 beds and \$324 million in 1989 for 11,000 beds).⁸⁵² Public supported bonds paid for these new prisons, rather than new taxes. His successful passage of his criminal justice plan included the punitive measures of mandatory “hard time” over “good time” for recidivists, parole on the condition of compulsory drug testing and treatment, asset seizure for drugs dealers, a uniform crime database, and lengthy

⁸⁵¹ “Clements vows prison woes to end by ’91,” *Houston Post*, 6 October 1987.

⁸⁵² “Clements touts \$1 billion prison-building program,” *Dallas Times Herald*, 6 October 1987; “Clements vows prison woes to end by ’91,” *Houston Post*, 6 October 1987; “Prison growth proposal may ease overcrowding,” *San Antonio Express*, 8 July 1987.

prison terms for aggravated assault with a deadly weapon against a police officer.⁸⁵³ Charles Terrell, the head of Clements' Texas Criminal Justice Task Force, recalled the astounding success of the Clements program and how it was a joint effort by lobbying interests, the legislature, and the public: "We passed 29 pieces of anti-crime legislation that set the tone for the future. We set into movement the largest prison construction program in the history of the world. By our group, by the governor alone? Hell, no. You have to have people in leadership positions; the public's got to support it with votes on bond issues; But he [Clements] set it into motion and it has carried forward."⁸⁵⁴ Indeed, from 1987 to 1993 the state legislature allocated nearly \$3 billion for new state prisons. Between 1993 and 1996, Texas built twenty-six new prisons and purchased six private facilities housing five-hundred men each. The new prison construction plan included five prisons modeled on the Michaels design of having 2,250 man "maximum security units" and nine 1,200 man "medium security" units.⁸⁵⁵ By 1995, Clements' prison building plan resulted in nine prisons of the Michael "cookie cutter" and "supermax" security design.⁸⁵⁶ It was indeed "the largest prison construction program in the history of the world."

⁸⁵³ Barta, *Bill Clements*, 369.

⁸⁵⁴ Barta, *Bill Clements*, 370.

⁸⁵⁵ Texas Department of Criminal Justice, Unit Profiles, published by TDCJ Executive Services, July 1999, cited in Layman, "Offender Classification in State Prisons," 52; Clay Robison, "Election '93/Texas Giving Nod to More Prisons, Mental Hospitals/Thumbs Down on Bonds for State Businesses," *Houston Chronicle*, November 3, 1999.

⁸⁵⁶ These "supermaximum" prisons are Stiles, Clements, Robertson, Allred, Telford, Hughes, Polunsky, Connally, and McConnell. Alicia Frezia-King to Robert Chase, December 5, 2008, "Open Records Request, Texas Department of Criminal Justice (TDCJ).

Clements proposed that to manage such a vastly expanded prison system that TDC and the state's probation and parole offices join together under a new administrative rubric as the Texas Department of Criminal Justice (TDCJ), which was enacted on September 1, 1989. This consolidation fit Clements' political vision and made good his campaign promises to groups like ATAC that prison management and parole would operate in a coordinated fashion so as to avoid early release of violent offenders and to deliver punitive sentences with longer prison time. The administration of TDCJ was handed over to James Lynaugh, who took over the administrative reins of TDC in 1987 after McCotter's dismissal. Lynaugh, a career accountant with the state's controller office, offered a new order of bureaucratic efficiency and practical business acumen. "The TDC is a \$400 million-a-year operation. That is a business," Lynaugh flatly proclaimed to the press on the day of his appointment.⁸⁵⁷ The 1980s saw the hiring and firing of four directors in a single decade, whereas the old control penology model had encouraged stability – only three directors across thirty-five years.

The 1989 state legislature heralded the new regime of prison management by passing Senate Bill 251, which sanctioned privately owned companies to operate privatized prisons. SB 251 authorized the state to contract with private firms and counties for the construction, management, maintenance, and operation of minimum and medium security private prisons that housed fewer than 500 inmates. These prisons had to be operated at no less than 10 percent less than what it would cost for state operation. In 1987, TDC contracted with Corrections Corporation of America (CCA), the nation's largest privatized prison firm founded in Nashville, Tennessee in

⁸⁵⁷ Martin and Eklund-Olson, *Walls Come Tumbling Down*, 247.

1984, and with Beacon-Wackenhut, the world's largest security firm, to operate four 500-man pre-release centers that housed minimum and medium security inmates within two years of their release dates.⁸⁵⁸ Since the 1987 decision to allow privatized companies to operate prisons, Texas has held more prisoners in private prisons than any other state in the nation, 18,720 prisoners in 2006.⁸⁵⁹ Texas has fewer prisoners in terms of the proportion of inmates in private facilities to their total inmate population, which was 10.1 percent in 2006.⁸⁶⁰

Since the *Ruiz* decision of 1980, the Texas prison system has grown from a population of 30,000 inmates on 14 prison farms to five times that size by 1999 in 91 prisons. By 1999, Texas had outpaced California with the largest prison population in America: 163,190. Beginning in the 1980s, Texas also imprisoned racial minorities at disproportionate rates. Throughout the post-World War period, Texas had maintained steady rates of imprisonment for black, white, and Latino offenders. But by century's end in the year 2000, the incarceration rate in Texas for Latinos was twice as high as that for whites (1,152 Latinos per 100,000 residents compared to 694 for whites). The state

⁸⁵⁸ Daniel N. Mateson, III and Steven T. Hudson, "Private Prisons: The Texas Experiment," *Lyceum: The Journal of Texas Lyceum*, Summer 1988.

⁸⁵⁹ As of November 30, 2008, TDCJ holds 15,185 prisoners in private facilities out of a total inmate population of 156,070. Alicia Frezia-King to Robert Chase, December 5, 2008, "Open Records Request, Texas Department of Criminal Justice (TDCJ), in author's possession.

⁸⁶⁰ "Percent of Prisoners in Private Facilities," Bureau of Justice Statistics, 2001; Dana Joel, "A Guide to Prison Privatization," Heritage Foundation, *Backgrounder #650*, May 24, 1988; Meredith Martin Roundtree, "Private Prisons White Paper," Prisons and Jail Accountability Project, ACLU, March 31, 2003; TDCJ White Paper: Privatization of TDCJ Facilities, in author's possession.

Table 9. TDC Total Population: 1980-2000⁸⁶³

| Year | Black | White | Hispanic | Other | Total |
|-------------------|--------|--------|----------|--------|---------|
| 1980 | 12,302 | 10,959 | 5,282 | 0 | 28,543 |
| 1981 | 13,211 | 11,494 | 5,608 | 2 | 30,315 |
| 1982 | 15,048 | 13,013 | 6,331 | 1 | 34,393 |
| 1983 | 16,050 | 13,785 | 6,932 | 2 | 36,769 |
| 1984 | 15,430 | 13,392 | 6,945 | 5 | 35,772 |
| 1985 | 15,667 | 13,976 | 7,669 | 8 | 37,320 |
| 1986 | 15,784 | 14,016 | 8,382 | 64 | 38,246 |
| 1987 | 16,721 | 13,950 | 8,864 | 117 | 39,652 |
| 1988 | 17,199 | 13,688 | 8,658 | 119 | 39,664 |
| 1989 | 18,854 | 13,644 | 9,004 | 124 | 41,626 |
| 1990 | 23,192 | 15,147 | 10,643 | 175 | 49,157 |
| 1991 | 23,540 | 14,564 | 11,319 | 185 | 49,608 |
| 1992 | 24,499 | 14,666 | 12,223 | 204 | 51,592 |
| 1993 | 30,464 | 18,008 | 15,598 | 243 | 64,313 |
| 1994 ^A | 37,547 | 21,880 | 19,705 | 13,537 | 92,669 |
| 1995 ^B | 58,110 | 33,818 | 30,999 | 5,541 | 128,468 |
| 1996 | 61,137 | 36,770 | 34,005 | 811 | 132,723 |
| 1997 | 62,868 | 38,767 | 36,349 | 657 | 138,641 |
| 1998 | 65,469 | 42,516 | 37,625 | 659 | 146,269 |
| 1999 | 65,908 | 45,731 | 37,410 | 635 | 149,684 |
| 2000 | 65,351 | 47,048 | 38,055 | 638 | 151,092 |

incarcerated African Americans, meanwhile, at 5 times the rate of whites in Texas (3,734 per 100,000).⁸⁶⁴ In the two decades since Governor Clements brokered the 1987 “peace” with Judge Justice, Texas had fashioned the nation’s largest carceral state (see table 9 above).⁸⁶⁵

⁸⁶³ Source: Open Records Request, TDC Population 1980 to 2000, Alicia Frezia King to Robert Chase, December 5, 2008, Texas Department of Criminal Justice (TDCJ), in author’s possession.

⁸⁶⁴ “Race and Incarceration in the United States,” Human Rights Watch Press Backgrounder. (New York, New York: Human Rights, 2002); “Race and Imprisonment in Texas: The Disproportionate Incarceration of Latinos and African Americans in the Lone Star State,” Justice Policy Institute, Jason Ziedenberg and Vincent Schiraldi researchers; Michael J. Coyle, “Latinos and the Texas Criminal Justice System,” National Council of La Raza, 2003, Statistical Brief, no. 2.

The Prison Litigation Reform Act and the End an Era

The thirty-year era of federal court intervention on behalf of the prisoners' rights movement came to an abrupt end in 1995. In the wake of the "conservative revolution" of 1994, the conservative members of the new 104th Congress considered how it might curb "frivolous prison lawsuits," restrict the power of "liberal Federal judges," and return control of prisons to state legislatures. In 1995 Senate Majority leader Bob Dole and Arizona Senator John Kyl introduced the Prison Litigation Reform Act (PLRA), an act intended to "discourage frivolous and abusive prison lawsuits" and to return the control of the prisons to "responsible parties," meaning state government.⁸⁶⁶

PLRA sought to diminish the inmate's ability to file lawsuits in federal court by restricting the fees that attorneys could accrue from their representation. PLRA stipulated that inmate plaintiff attorneys could not be awarded an hourly rate greater than 150 percent of what court-appointed attorneys made in criminal cases. Additionally, the total attorney fee could not exceed more than 150 percent of the final judgment, no matter how small the final award. Moreover, the attorney fee must first be derived from up to 25 percent of the prisoners' damage award. By stipulating that relief in a civil action "extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs," the PLRA also restricted the power and scope of federal intervention. The PLRA restricted the duration of

⁸⁶⁵ Since 1978, Texas and California are the top two states with the nation's largest prison population.

⁸⁶⁶ S. 1279, 104th Congress (1995), The Prison Litigation Reform Act (PLRA); Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321.

federal relief by terminating the court's involvement automatically two years after the court order, unless the court issued a written finding saying explicitly that violation of rights had continued. It also empowered the state prison defendant by allowing the state prison system to request termination after two years. Whenever the state filed a termination motion, the court granted a stay on relief and federal oversight until the court ruled on the motion within 30 days.

PLRA was also aimed at prisoners themselves as it required inmates to exhaust "such administrative remedies as are available," which meant that they had to file a formal grievance within the prison and lose all their appeals before they could petition the federal court. More importantly for prisoners of limited means, as so many inmates often are, PLRA restricted *in forma pauperis*, which had previously allowed inmates to file a civil rights complaint without paying associated fees, some of them quite costly. Under the new law, inmates with trust fund accounts or who were paid nominal wages for their labor had to pay some of the fees. Indigent inmates labored under a "three strikes" rule, which barred indigent inmates from free filing if they had three prior lawsuits dismissed.⁸⁶⁷ Finally, PLRA limited the amount of fees that a court-appointed monitor (Special Master) could expect to receive.

If Texas writ writers had labored under such a restrictive law, inmates like Fred Cruz, who filed many unsuccessful writs before being heard, would have been silenced. During the *Ruiz* era, inmate litigants could attract high-profile attorneys like NAACP's William Bennett Turner not only because of the justice of their cause,

⁸⁶⁷ On the courts' response to the PLRA and its restrictions, see Barbara Belbot, "Report on the Prison Litigation Reform Act: What Have the Courts Decided So Far?," *The Prison Journal*, Vol. 4, No. 3. (September 2004): 290-316.

but because Turner could eventually expect a fair award, which he eventually received from the state at more than one million dollars. When state prison systems resisted litigation, as Texas did during *Ruiz*, the plaintiff attorney had to absorb all expenses and delayed their award until court resolution, which was a costly endeavor. Moreover, the ability of the state to request termination after two years meant that state intransigence and noncompliance, as Texas had experienced in the *Ruiz* case, would be rewarded with the prospect of repeated stays of the order and early termination. PLRA was thus carefully aimed at limiting the ability of inmates ever again to file a civil rights complaint as comprehensive, sweeping, and lasting as the *Ruiz* litigation.⁸⁶⁸

In the limited floor debate over the measure, Senator Dole assured legislators that the PLRA would restrain “liberal Federal judges” from intervening in state affairs.⁸⁶⁹ Proponents of the law argued that the intervention of the Federal court stripped state government of their constitutional right to manage their own prisons. Moreover, the proponents of the law argued that the Supreme Court’s retreat from the “hands off” doctrine had created an overly permissive environment in which federal judges were overwhelmed by frivolous complaints from inmates with too much time

⁸⁶⁸ On the practical effect of PLRA on the filing of inmate lawsuits in federal court, see Matthew T. Clarke, “Barring the Federal Courthouse to Prisoners,” in *Prison Nation: The Warehousing of America’s Poor*, edited by Tara Herviel and Paul Wright (New York: Routledge, 2003), 301-314.

⁸⁶⁹ 141 Congressional Record S14,413-414 (daily ed. September 27, 1995) (statement of Senator Dole). On the debate between state power and judicial oversight on the floor of the Congress and how the Supreme Court may have to reconsider future rulings, see Thomas Julian Butler, “The Prison Litigation Reform Act: A Separation of Powers Dilemma,” *Alabama Law Review*, 50 (Winter 1999); Linda Greenhouse, “How Congress Curtailed the Courts’ Jurisdiction,” *New York Times*, 27 October 1996; John R. Dunner, editorial, “Unconscionable Limits on Prisoners’ Lawsuits,” *Washington Post*, 8 November 1995.

on their hands. To make their point, proponents of the PLRA inserted into the Congressional Record a top ten list of “frivolous lawsuits” that read like a David Letterman script for a night-time television gag. On the “top ten list” were such claims as an inmate who alleged that his prison manager’s insistence that he listen to country and western music constituted “cruel and unusual punishment,” a lawsuit claiming that an inmate was served melted ice cream, an inmate suing because he was served crunchy instead of creamy peanut butter, an inmate suing because he was served “hacked up” cake for dinner, and an inmate lawsuit that demanded that he receive LA Gear or Reeboks shoes instead of the Converse brand.⁸⁷⁰ Without any acknowledgement of the tremendous increase in prison population, Dole repeatedly cited an “alarming explosion” in prison civil suits in which inmates will “litigate at the drop of a hat.” Some, like Senator Joe Biden and Associate Attorney General John Schmidt, acknowledged that there were too many frivolous prison litigation suits, but argued that the passage of the PLRA threatened to do away with the ability of meritorious lawsuits to reach federal court. Indeed, Senator Ted Kennedy strenuously objected and called the law “patently unconstitutional, and a dangerous legislative incursion into the work of the judicial branch.” John R. Dunne, a former New York state senator and former U.S. assistant attorney general for civil rights, similarly warned in his *Washington Post* editorial that passage of the PLRA “would exact a high fiscal and human cost” and that it would bar the court from ensuring that

⁸⁷⁰ On the frivolity of some prisoner rights suits and a deconstruction of such a claim, see Cindy Chen, “Prison Litigation Reform Act of 1995: Doing Away with More than Just Crunchy Peanut Butter,” *St. John’s Law Review*, Winter 2004.

the nation's prisons were "acceptable to a civilized society."⁸⁷¹ Worse still, Dunne argued, was the "subtle, but even more insidious" effect that the bill might have on "preventing the courts from upholding the rights of racial minorities."⁸⁷²

Nonetheless, in the midst of the "conservative revolution" of the mid-1990s a newly elected congress passed the PLRA and it was signed into law by President Bill Clinton on April 26, 1996.⁸⁷³

The final nail in the coffin of litigated prisoners' rights came from House Speaker Tom DeLay, whose Texas district encompassed the old prison farms of Sugarland. In 1997 House Speaker Tom DeLay authored new language amending the PLRA and inserted into it a spending bill awaiting President Clinton's signature. In a reference to Judge Justice, Delay promised that he would "end the Tyler jurist's reign of error" by diminishing the power of the court and enhancing the power of state legislatures. DeLay's amendment to the PLRA granted individual legislators the right to intervene in prison lawsuits and required all federal courts to abide by the 10th Constitutional Amendment which provided states the authority over state prison systems. Moreover, his language diminished the duration of prisoner rights' suits by stipulating that future relief from the court could be ordered only when "the violation of prisoners' constitutional rights are current and ongoing." Finally, it mandated that federal judges must rule in a "timely fashion." Upon the introduction of such new restrictive language, DeLay declared to the press that "Texas should be in control of

⁸⁷¹ John R. Dunner, editorial, "Unconscionable Limits on Prisoners' Lawsuits," *Washington Post*, 8 November 1995.

⁸⁷² *Ibid.*

⁸⁷³ 141 Cong. Rec. S2296 (statement of Sen. Kennedy).

its prison system, not a federal judge.”⁸⁷⁴ The “conservative revolutionaries” in Congress thus used the power of the national legislature to restrict the reach of the federal judiciary and circumvent the court’s power by returning control to state legislatures. Three decades of court intervention ended in swift reactionary revenge.

Conclusion

The construction of the Texas carceral state was a product of conflicting interests between groups that were not always aligned with the goals of “law and order” politics and “get tough on crime” policies. The struggle over prisoners’ rights contributed to what some political scientists refer to as the “backlash thesis” of conservative and reactionary politics. Citizen lobbying groups on both the left and the right, politicians on all sides, the judiciary, and the inmates themselves engaged in a struggle to redefine whether inmates, despite their crimes, were fully incorporated into the nation as citizens with equal rights. It was a struggle for legal recognition, citizenship, and humanity. When the inmates themselves took matters into their own hands, they called attention to their cause and received the hope of relief through the federal court. When the state of Texas quashed their hopes and ignored the power of the court, inmates once again took matters into their own hands and pressed their cause through more violent and turbulent means. The resulting collapse of the old prison order occurred just as the prison system was undergoing overcrowding due to stricter sentencing and parole laws. Moreover, the rise of racial gangs in the absence of the old racial hierarchy of building tenders created a savage prison environment

⁸⁷⁴ Michelle Mittelstadt, “Rider would limit court in prison cases,” *Austin American Statesman*, November 21, 1997.

where inmates violently struggled for both a new racial order and for the reimposition of the old. The prison state was in crisis. The specter of violence, riot, and misrule within the prison fed reactionary anxiety among the public that society had entered a dangerous and lawless age. An anxious public heeded the calls of political elites who offered law and order solutions to ease societal perceptions of pending chaos. Reactionary politics thus built the new and far more expansive carceral state in Texas on the fears generated by the crumbling of the old prison order.

In the new prison system, inmates no longer toiled in fields of agricultural labor, nor did they live under the threat of racial and sexual violence perpetrated by the building tenders' attempt to instill order and control. The struggle for prisoners' rights also gave inmates the right to counsel, better medical care, and freedom from state sanctioned racial hierarchies and institutionalized racial subordination. It did not, however, end violence between and among inmates, nor did it anticipate the degree of growth that prisons would experience. The prison system that Texas fashioned after the *Ruiz* case ended the "control penology" model and what emerged from its ashes was neither the rehabilitative penitentiary of the northeast nor the plantation prison farm model of the old American South. Instead, Texas was in the forefront of a new prison Sunbelt landscape that made up the nation's ever expansive prison industrial complex. Stephan Blanchard, a white writ writer and *Ruiz* supporter who was often a target of sexual violence under the building tender regime, was transferred to federal prison in 1979 and he returned to Texas prisons on a separate conviction in 1996. As a prisoner of both the old order and the new, he reflected contemplatively on the changes that *Ruiz* had wrought for inmates like himself. His

words attest to the gains and losses in *Ruiz*, and the ambivalent and sometimes bitter feeling that so many prisoners share over the condition of their own humanity and their lasting confinement:

We endured too much brutality, too much hurt, too many broken promises and lies to roll over now, and say it was all in vain. Because all of it wasn't. Whether it was personal growth, whether it was the removal—the effective removal of prisoners [BTs] and guards, whether it was the medical care that's one hundred times better now, whether it's the law libraries that are beautiful, or whether it is the yards that now exist, because until I left in 1979, there was no outside recreation. It didn't exist on this farm. If you went outside, you had a hoe in your hand. You were sitting on a trailer with an armed guard fixing to get off and pull cotton. You know, we have yards now. We have contact visits, and my entire time in TDC, I never once, from '69 to '79, touched a family member, a loved one. I mean never. I'd visit through the goddamn piece of bullet proof plexi-glass and a screen mesh overlap so that you couldn't get a fingernail through to touch another fingernail. We have that [contact visitation] now. That's not something that's trivial to me. My sitting in that visiting room holding hands with my young daughter, telling her that Renee DesCartes was a mathematician and not a philosopher, is wonderful. It didn't exist back then...a lot of people don't understand—can't conceptualize a prisoner sewing a wound up—can't conceptualize never touching a loved one—can't begin to think of needing to go to the law library, and there wasn't one—don't understand that if you weren't quiet and standing at attention, you might be beat up by three or four building tenders while everyone else moved aside so they could do it.

So it hasn't been all in vain, but it didn't end up as I think we envisioned. We turned on ourselves. I don't think I can stress that enough. We went from charging the man with demands for humane treatment—not for special treatment—just for humane treatment, to not be brutalized.—to be brutal our own selves and against our own people. And by that I mean prisoners. You know, we're a sub-culture. We're a family that nobody wants.⁸⁷⁵

Perhaps the greatest irony of the prisoners' rights movement was that its very success in removing the old order paved the way for the new. The eventual acceptance of the *Ruiz* court order allowed state leaders to claim that they removed the prison system's most vicious and brutal features and that the state now recognized the rights of prisoners and that its prisons were humane. A prison system that

⁸⁷⁵ Stephan Blanchard, interview with the author, March 14, 2007, IOH, Baylor.

claimed it was free of brutality became less susceptible to alarmist charges against its ever expansive growth. As Margo Schlanger has provocatively suggested, “by promoting the comforting idea of the ‘lawful prison,’ the litigation movement may have smoothed the way for even harsher sentences and criminal policies.”⁸⁷⁶ Worse yet for prisoners’ rights was the passage of such federal laws as the PLRA, which constricted the courtroom rights and legal recognition of prisoners to the point of having lost nearly all that they had struggled so hard to gain.

⁸⁷⁶ Margo Schlanger, “Beyond the Hero Judge: Institutional Reform Litigation as Litigation,” *Michigan Law Review* 97 (May 1999). Marie Gottschalk has made the same argument. “The dense network of interest groups and organizations that initially gave the prisoners’ rights issue such traction developed in complicated ways that ultimately hastened the rise of the carceral state.” See, Gottschalk, 166. My work suggests that the prisoner rights movement in Texas initially had public support, but that the duration of the struggle eventually turned many in the public away from prisoners and towards the emerging “victim’s rights” platform of tougher sentencing and more prison construction. See also Malcolm M. Feeley and Edwin L. Rubin, *Judicial Policy Making and the Modern State: How the Courts Reformed America’s Prisons* (Cambridge: Cambridge University Press, 1998).

Steel on Steel: The Epilogue of David Ruiz

In his final years before his death from cancer in November of 2005, David Resendez Ruiz, still locked behind Texas prison bars, seemed to grasp that his legacy of prison reform would live much longer than he would. Following the trial, the court transferred most *Ruiz* witnesses into the Federal prison system for their own protection. Within a few years, most of the *Ruiz* witnesses were released from prison. David Ruiz, however, could not escape his lifetime of institutionalization and he ended his chance for freedom when he returned to TDC in 1986 for armed robbery.⁸⁷⁷ Despite his personal failings, Ruiz understood that his role in Texas prison reform was historic and that it would be documented in future histories.⁸⁷⁸ Whether exaggerated or not, Ruiz's memoir claims that as a result of the trial he spent 4,825 hours in solitary confinement; received 214 "brutal beatings;" suffered 104 attempts by TDC officials to persuade him to make a deal and drop all legal proceedings in return for his freedom; 1,460 days in isolation; suffered over 75 false accusations by Texas prison officials; and, perhaps the most painful for Ruiz, TDC refused to allow Ruiz out of solitary confinement for the funeral of his father, despite prison regulations that allowed a prisoner to attend a parent's funeral services.

Toward the end of his life, Ruiz spent his remaining two years attempting to prove that TDC knew of the cancer that was eating his body, but denied him medical treatment until it was too late. Over time, Ruiz retreated from prison reform,

⁸⁷⁷ "Ruiz Convicted of Aggravated Robbery," *Austin American Statesman*, December 7, 1985.

⁸⁷⁸ David Ruiz, "Tough with a Knife, Hell with a Writ," unpublished memoir, in author's possession.

although he continued to seek legal redress for what he suspected was TDC's intentional medical negligence aimed at ending his life while still in prison. As the years passed, Ruiz developed an interest in poetry and drawing. His artwork depicted revolutionary images of Zapata, modern images of Chicanos with their defiant fists in the air, and proud images of Native American chieftains and shaman. Like his artwork, Ruiz's unpublished poem, *Steel on Steel*, is punctuated with a sense of abiding pride, anger, and irony.⁸⁷⁹ The poem depicts Ruiz's imaginary conversation with a TDC guard. His words connect past and present by conveying his sense that the effort to reveal the hidden world of Texas prisons was indeed historic. More than historic, his efforts at prison reform carried for Ruiz the irony that history would ultimately judge the prison system that had judged him so unfairly all his life.

Steel on Steel
By David R. Ruiz

Night Shadows dance on the wall,
I hear the sound of steel on steel
Echo and re-echo
Through these cold cells.

Officials pace the catwalks,
Counting and recounting,
"Ruiz, are you there?"
Yes, I am still here.
You laugh. I hear it
Echo and re-echo
Through these sad cells.

"Ruiz, what do you see,
alone in that cell at night?"

⁸⁷⁹ There are several drafts of this unpublished poem in David Ruiz's personal papers. What follows is a poem titled "third draft" and it appears to be the final copy.

I see your face without its mask,
I see ships full of Blacks in chains,
I see the slaughter of my
Ancestors –
Mexicans and Indians,
I see you steal their lands,
You sit on the face of the poor
In the free world you lock us in
With the sound of steel on steel
That echoes and re-echoes
Through these lonely cells.

I see you try to break us
See you isolate and kill,
Then call us killers,
Call us violent so we escape
A little while: drink, drug
Ourselves, for which you
Lock us in again, the
Sound of steel on steel
Echoes and re-echoes
Through these bitter cells.

“Ruiz, you just one Meskin. You
lost your youth, your hair is gray.
What do you think you gained?”

I’m the *huevon* Mexican, cell-taught,
Self-taught, the original writ-writer,
Chained up and locked down
For a lifetime. I’m the Mexican
Who never gave up, who fought till
Every prisoner, guard, and lawyer
In America knows me.
I taught myself to use your tools: I’m Ruiz,
Unbroken for all your torture,
All your shackles and steel on steel
That echoes and re-echoes
Through these dark cells.

When the Eagle killed the Serpent
A Nation was born; where the people rise
My Nation is born: I am
Whole in The People’s Nation.
The People will judge you, not me.

You are the one trapped in the sound of steel on steel
Which echoes and re-echoes through these empty cells

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