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*Narrative of Neglect: Texas Prisons for Men*

BY J. KEITH PRICE AND SUSAN COLEMAN

Prisons, like the prisoners themselves, are often “[b]anished from everyday sight, they exist in a shadow world that only dimly enters [the public’s] awareness.”<sup>1</sup> During the 181 years of the Texas prison system’s existence, both the people and the policymakers have adhered to such a maxim. The hallmarks of the Texas correctional policy—the initial reluctance to establish prisons and chronic lack of oversight, coupled with the state’s well-documented fiscally conservative approach to social programs—have created decades of neglect, leading to what even Texas officials themselves have acknowledged as some of the worst prisons in the nation.<sup>2</sup>

The policy is a product of the state’s political culture, the Puritan work ethic, the Calvinistic belief in discipline, and a hint of Social Darwinism. Daniel J. Elazar’s classic model identified the political culture of Texas as individualistic-traditionalistic. Texans generally view government as “being instituted for strictly utilitarian reasons” with the effect that “public officials are normally not willing to initiate new programs or open up new areas of government activity on their own recognizance,”<sup>3</sup> which explains Texas’ long reluctance to establish a prison system and the aversion of policymakers to intercede in prison operations to end the abuse of inmates and corruption of the system. That reluctance squares with one of Elazar’s cultural indicators that government officials are “willing to [act] only when they perceive an overwhelming public demand for them to act.”<sup>4</sup>

While neglect by the state has been the dominant paradigm for Texas prisons, there have been brief spates of reform—internally and externally generated. Outside reformers, such as coalitions of church groups and related organizations, media investigations, and the courts through inmate-initiated litigation, have spurred most changes in the system. Other reformers have included influential, often charismatic,

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**Historical Eras of the Texas Prison System**

<b>Era</b>	<b>Years</b>
Early Beginnings	1829 - 1870
The Convict Lease System	1871 - 1910
Prison Farms	1910 - 1947
The Progressive Era	1948 - 1979
<i>Ruiz</i> Reform	1979 - 1992
Prison Bureaucracy	1992 - Present

prison administrators. Like the state itself, the prison system has a rich and textured history.

Spain and then Mexico established the first governmental entities in Texas, but neither the Spanish nor the Mexican governments created a penal institution in its Texas colony.<sup>5</sup> Texas was sparsely populated because many were unwilling to relocate to the territory and face the many challenges that were part of life on the frontier. However, a nearby pool of available immigrants, the independent and opportunistic Americans, was willing to dwell in this inhospitable land. Stephen F. Austin and other *empresarios* who received land grants to bring in new settlers screened the newcomers, but many persons of questionable character entered the Texas territory.<sup>6</sup> Law enforcement, and by extension corrections, was uneven, uncertain, and rough, and

lawlessness was rampant. Punishment was often by means of public whipping or even by hanging.

The Congress of *Coahuila y Tejas* passed a resolution in 1829 to establish the first prison in Texas.<sup>7</sup> A private contractor was to build and finance the prison, with labor provided by territorial convicts. He would also be required to train and supervise all prisoners whose sentences included forced labor. If a prisoner worked hard and successfully completed his sentence, he would be sent to the territorial town of his choice upon his release. No contractors responded to this economic opportunity, and the resolution passed into history. The territory of Texas thus remained without a prison.<sup>8</sup>

Following a brief revolution in 1836, Texas became an independent republic. Under Republic law, county jails housed all prisoners. An early example of the county jail system was San Augustine County, where public subscription built the jail. The first Congress appropriated \$15,000 under the "Sheriffs—Fees—Keeping Prisoners Act" to reimburse the counties for the prisoners' upkeep, but sheriffs felt funding failed to meet the Republic's responsibility. One sheriff, Henry M. Smith of Galveston County, billed the Republic \$864.63 for his expenditures on national prisoners. Congress debated legislation in 1841 to establish a national prison system, but the proposal failed.<sup>9</sup>

A second attempt to pass a penitentiary act in 1842 also died, iterating the pattern of neglect.<sup>10</sup> In December 1845, the Republic of Texas ceased to exist, and Texas became the twenty-eighth state of the United States of America.

One of the first topics of business for the new state was to address the issue of prisons; the First Legislature passed a penitentiary act in May 1846. Once again, Texas constructed no prison as the outbreak of the Mexican War the same year delayed implementation. After the war, the legislature once more tackled the issue of a penitentiary. It passed legislation declaring that "the new prison would be a place where inmates would be forced to abide by strict rules of behavior and discipline and would work so as not to be a burden on the state's taxpayers."<sup>11</sup> The Act authorized the governor to appoint three commissioners who were, in turn, to select a site for the state's first prison and to hire a superintendent to manage the institution. The statute provided that the prison should be located in a healthy climate and be near a navigable body of water for transportation of convict-made goods to market. The chosen location

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should contain no more than one hundred acres and could cost no more than five dollars an acre.<sup>12</sup>

The commissioners selected Huntsville, in Walker County, as the site for the new prison. The commissioners purchased 4.8 acres of land at the rate of \$22 per acre for the actual site and an additional tract of heavily-forested land for \$470 to support the construction. “The reasons for the choice of Huntsville remain a mystery. That the town was home to Sam Houston and other notable figures in early Texas [including Commissioner William Palmer] possibly played a part. Similarly, local support for the institution, demonstrated by the gifts of rock and timber, likely also had a favorable influence on the committee members.”<sup>13</sup> Community support and continued political clout contributed to the location of new prisons in close proximity to Huntsville until the building explosion in the 1990s. The Commission hired noted Austin architect Abner H. Cook to design the prison, to supervise the construction crews, and to manage the new penitentiary. Construction began on August 5, 1848.<sup>14</sup>

More than one hundred sixty years after the first settlers arrived and forty years after the first legislation was introduced, policymakers finally met their obligation to insure public safety by removing the worst lawbreakers from society and imprisoning them. The Texas State Penitentiary at Huntsville opened on October 1, 1849. The first prisoner was a convicted horse thief. The penitentiary housed three convicts by the end of 1849, and initially the population grew relatively slowly (seventy-five by 1855). However, it quickly became obvious that the public and their elected representatives were no more eager to financially support the prison than they were to create it initially.<sup>15</sup>

The legislature, at the behest of Governor Peter H. Bell in 1853, had crafted a partial solution—the establishment of a cotton and woolen mill within the prison walls. The income would offset the costs of the prison operations while also providing work for inmates.<sup>16</sup> “During the Civil War the penitentiary sold more than two million yards of cotton and nearly 300,000 yards of wool to both civilians and the government of the Confederate States of America. Wartime production made a profit of \$800,000.”<sup>17</sup> The prison also supported the Confederacy by housing Union prisoners of war. One of these, the ship’s carpenter from a federal vessel captured at Galveston, built the coffin of the prisoners’ frequent visitor, Sam Houston, who had left his office as governor of Texas rather

than support secession.<sup>18</sup>

The State Penitentiary at Huntsville, commonly known as “The Walls,” was the only prison in the eleven Confederate states that survived the war intact.<sup>19</sup> Like other prisons of the era, conditions at The Walls were grim. Conditions were unsanitary, and diseases spread rapidly. The food was poor and sparse. Discipline was carried out at the unfettered discretion of the guards and often included whipping and other forms of corporal punishment. Inmates could be assigned to the “dark cell,” a dank, dark, filthy cell without ventilation or light, opportunities for hygiene, or running water, and only bread and water as a diet.<sup>20</sup> Incarceration at The Walls amounted to “banishment from civilized society to a dark and evil world completely alien to the free world.”<sup>21</sup>

By the end of the Civil War, the number of convicts had increased from 146 to 264, and that number rapidly rose as lawlessness increased during the chaos of Reconstruction. The former Confederate state was in dire financial straits and had little money and less inclination to deal with convicts or their care. The legislature created a five-member Board of Public Labor in 1866 to administer the penitentiary, which consisted of the governor, secretary of state, comptroller, attorney general, and the state treasurer. The new Board acted immediately to lease one hundred prisoners to the Airliner Railroad and one hundred fifty prisoners to the Brazos Branch Railroad as laborers laying railroad track. The convict lease system had begun.<sup>22</sup>

The convict lease system presented an attractive solution to the cash-strapped state in the midst of Reconstruction. Ignored was the inherent conflict between the contractors who wanted to maximize their profits and minimize their labor costs and the state that wanted prisoners to have adequate food, clothing, and shelter. Because of the mistreatment of prisoners and the administrative difficulties, the first contracts were abandoned and the inmates returned to the prison.

The governor and legislature abdicated their responsibility for the prison operations and the welfare of the inmates in 1871 by leasing the entire prison system to Ward Dewey and Company, a well-regarded and successful business venture in Galveston. The lease required the contractor to house, secure, and care for all prisoners under the control of the company. The lease fee was first set at \$5,000, then \$10,000, and finally \$20,000 per year. Initially, the contractual arrangements

appeared successful. However, the company began to have financial difficulties, and the state was forced to repossess the penitentiary in 1877.<sup>23</sup>

The state subsequently negotiated a lease with Ed Cunningham and L. A. Ellis, landowners from the south and west of Houston, who utilized convict labor on their large agricultural holdings and also subleased the inmates to other landowners, small industries, and railroads. Cunningham and Ellis earned substantial profits from the leases, which convinced the legislature that prison labor was profitable, so the state resumed control of the prison system in 1883.<sup>24</sup>

Convicts also worked on state projects, such as building the state capitol in Austin. Between 1885 and 1887, approximately five hundred prisoners quarried granite and limestone or worked on the construction site. The International Association of Granite Cutters boycotted the job in protest of the use of convict labor in competition with free labor, so stone cutters from Scotland arrived to complete the work. Selected inmates were also trained to cut stone.<sup>25</sup> Prisoners at the Rusk Penitentiary, constructed to help develop iron-ore deposits in East Texas, manufactured the building's ornate interior cast-iron features in its twenty-five-ton blast furnace. To transport the stone from the quarry and the cast iron from the foundry to Austin, the inmates constructed railroads. They also built the Texas State Railroad from Rusk to Palestine between 1893 and 1909, and the prison system owned the line until 1921.<sup>26</sup>

Convicts assigned to state projects existed in the same dismal, cruel, and inhumane conditions as those leased to private entities. Self-mutilation, such as cutting off one's fingers or toes or otherwise injuring oneself to avoid the lease work, was commonplace, as was suicide. Texas inmates were generally not employed on roads, as was the custom in other southern states but, instead, worked in rural areas on farms, in mining operations, and in wood camps, essentially isolated from the public (and media) view. White and Hispanic inmates often went to the lumber camps, the mines, and the railroads while the state sent black inmates to farms, where they cut sugarcane, picked cotton, and worked in the fields. Inmates considered a high risk for escape in the fields were put into "the spur," an iron ankle band with "spurs" pointing upward that would interfere with an inmate's running, while others toiled with an iron two and a half pound ball and chain attached. Other

punishments included hanging by the wrists—from singletrees, from block and tackles, from windows, from ladders on cotton trailers—with toes barely touching the ground or in a squatting position for hours, generally in public areas, such as hallways, so that other inmates could observe. A similar practice that continued until the 1970s was prisoners being forced to stand on a barrel or some variation (milk cartons, coke bottles, oil drums) all night with the intent of causing severe leg cramps. If the inmate fell or stepped off, the time started again.<sup>27</sup> In a single year, 1876, with a prison population of approximately 1700, there were sixty-two deaths recorded and 382 escapes.<sup>28</sup>

Even as the system provided revenue for the struggling state, tales of the abuse of prisoners filtered out to the general public. An investigative report by the *San Antonio Express* revealed a long history of prisoner abuse, neglect, and hellish living conditions. It also documented mismanagement and corruption on the part of public officials. The report and a special session of the legislature ended the convict lease system in 1910.<sup>29</sup>

Offsetting the darkness, to a limited degree, of this period of Texas corrections was the administration of Superintendent Thomas Goree. Goree, a lawyer, initiated basic education classes taught by fellow inmates and gathered a library of several thousand volumes for prisoner use. For the first time, Texas' prisons employed a classification scheme when officials mandated that first-time and non-violent offenders, as well as vulnerable inmates, be segregated from more hardcore and experienced criminals. Goree also advocated the use of indeterminate sentencing and the use of "good time", which inmates would earn by engaging in good behavior, by taking advantage of educational programs, and, of course, by working. Prison administrators of the time served at the pleasure of the governor, and Goree was not reappointed in 1893 by Governor James Hogg because he had not supported Hogg's candidacy.<sup>30</sup>

The end of the convict lease system deprived the state of income, but it had shown prison officials and others that agricultural work was an ideal form of labor for unskilled prisoners.<sup>31</sup> The Civil War had devastated Texas' economy. Many plantation owners sold their lands due to the end of slavery or, like small landowners, lost property to bank foreclosures, high taxes, low prices for crops, the depletion of livestock herds, lack of available and cheap labor, and the inability to

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move their products to market because the means of transportation had been destroyed.<sup>32</sup> The state, with a ready supply of free labor, saw this as an opportunity to cheaply amass substantial amounts of land, on which they essentially continued the plantation system, one staffed by inmates rather than slaves.

The state acquired the first farms, the Central Farm and the W.F. Ramsey I Farm, in 1908 amid discussions that the convict lease system should be ended.<sup>33</sup> In two waves, the state purchased the Wynne, Harlem, Clemens, Imperial, Ramsey, Darrington, Retrieve, Blue Ridge, Eastham, and Shaw Farms. The prison farms occupied over 81,000 acres by 1921. The prison had entered the era of state-owned, convict-worked agricultural programs.<sup>34</sup>

The prison farm era continued the brutality of the convict lease period. Whippings persisted as did the use of the “bat,” a twenty-four inch leather strap, four inches wide with a wooden handle.<sup>35</sup> Particularly popular in the 1920s was the use of the “pole,” a piece of wood beveled upward with rough edges that the inmate would be forced to straddle for hours without his feet touching the ground.<sup>36</sup> Against this background, the 1923 legislation assigning the responsibility for all executions to the Texas Prison System instead of the counties and mandating the use of the electric chair instead of hanging went virtually unnoticed.<sup>37</sup>

Investigations of the prison system were common; legislative committees examined the system in 1913, 1915, 1923, 1925, and 1928. Each reported the same problems of mismanagement and prisoner abuse that had been so common during the convict lease system.<sup>38</sup> The first real reform effort followed the visit of a group of legislators and Governor Daniel Moody to the prison in January 1930. The Governor declared the prison was “not fit for a dog,” and initiated changes beginning with the appointment of Marshall Lee Simmons as general manager of the Texas Prison System.<sup>39</sup> Simmons had served as a member of the Prison Board and well knew the problems of the troubled system.

Simmons, who had a reputation as a charismatic leader, took on the task of reforming the system and manufacturing a positive public image. One of Simmons’ creations, The Texas Prison Rodeo, actually did improve the public perception of the prison. The Rodeo became known as the “fastest and wildest rodeo in Texas.” It included performances by celebrities and dangerous feats by prison cowboys. The rodeo drew immense crowds, earning as much as one-half million

dollars a year, before it ended in 1984 because the arena was structurally unsafe.<sup>40</sup> Other public relations tools were a baseball team that played semi-professional teams from oil companies, choirs that performed outside the walls, and a radio show broadcast from the prison. Simmons' other initiatives included a massive cleanup of the prison and improved living quarters and food; more respectful treatment of inmates; improved but still limited educational opportunities; and the introduction of new industries, such as the Justin Book Company, the license plate factory, and improved agriculture production. The living quarters for correctional staff were enhanced, and a sick leave policy also implemented.<sup>41</sup> However, criticism of Simmons for the continued brutal treatment of prisoners, especially the use of the "bat," finally forced his departure in 1935.<sup>42</sup>

At the time of Simmons' departure, Texas and the United States were in the midst of the Great Depression, and Texans were much more concerned with their own daily welfare than the conditions of the state's prisoners. Due to economic pressures, the legislature wanted the prison to become more self-supporting by selling additional agricultural and prison industry products. However, the Congress of the United States had passed a law that prohibited the sale of prisoner-made goods to anyone other than state agencies.<sup>43</sup> Loss of this revenue source made the future of Texas' prisons extremely grim, especially given the lack of strong leadership by the legislature and prison administration. It was as if the 7,000 prisoners in Texas were forgotten souls.<sup>44</sup> As a result of the inaction, Texas prisons continued to be some of the worst in the United States.<sup>45</sup>

Negative assessments of Texas prisons plagued the state. The Texas State Council of Methodist Women persuaded the legislature in 1944 to retain Austin MacCormick, the nation's leading authority on prison reform, to investigate the system. MacCormick visited each prison and farm and provided a detailed report of his findings.<sup>46</sup> He documented three categories of serious failings: 1) Inhumane treatment of prisoners with bad living and working conditions, along with brutal discipline, leading to mutilations and excessive escape attempts, as well as inadequate medical and rehabilitation programs; 2) Inefficient administration and poorly qualified and trained personnel; and 3) Inefficient production because of antiquated farming methods and few industries.<sup>47</sup> The report drew the attention and ire of many influential

individuals and groups, including Governor Beauford Jester, numerous legislators, and some prison board members, which resulted in a new prison board. The new board charged the new General Manager, O. B. Ellis from Shelby County, Tennessee, to reform Texas prisons and bring modern agricultural practices to the system.<sup>48</sup> With this move and the legislation that abolished corporal punishment in prisons, the state of Texas finally began to abandon the principle articulated in *Ruffin v. Commonwealth* (1871) that “[the prisoner] is for the time being the slave of the State.”<sup>49</sup>

### **Benchmarks in Texas Prison Growth**

<b>Year</b>	<b>Prisoners</b>	<b>Year</b>	<b>Prisoners</b>
1849	3	1855	75
1860	182	1866	264
1870	489	1878	1,738
1890	3,199	1900	4,109
1912	3,471	1939	7,000
1940	6,070	1945	3,270
1947	3,270	1950	6,424
1953	7,781	1962	11,890
1972	15,709	1978	22,439
1983	36,769	1988	39,664
1990	48,320	1994	91,875
1999	149,930	2006	152,889

Source: Paul M. Lucko, “Prison System,” in *Handbook of Texas Online*. Texas State Historical Society. (<http://www.tshaonline.org/handbook/online/articles/jjp03>), accessed November 8, 2010; Texas Department of Criminal Justice, <http://www.tdcj.state.tx.us/index.htm> (accessed April 20, 2008).

After World War II, a new era in Texas prisons arrived, led by Ellis and sustained by his immediate successors. Ellis faced the daunting task of reforming a system deeply in debt, which had over 73,000 acres of

farm land but purchased food each year, and which had lost the support of the public and the policymakers.<sup>50</sup> Ellis proposed what came to be known as the “Ellis Plan.” The Plan included initiating rehabilitation programs, improving living conditions for prisoners, creating a more scientific prisoner classification system, improving working conditions for guards, starting a prison industry program, and modernizing farming techniques.<sup>51</sup>

Ellis met his goals. Prison infrastructure improved as inmate labor built new prison industries, such as fences and gun towers to improve unit security, and kitchens, laundries, and other support facilities to provide better nutrition, clean clothes for inmates, and more sanitary living conditions. The prison also constructed new cellblocks, in addition to dormitories, which provided a safer environment, and added televisions to the common areas. Ellis also fired many brutal and corrupt staff employees and at the same time, he tripled salaries for correctional staff; and benefits such as social security and retirement plans, became part of the compensation package. The prison also built housing for staff and provided benefits, such as barber and laundry services for the newly-mandated standardized uniforms.<sup>52</sup> Ellis also mended strained relationships with the legislature that had frayed when previous officials had not only denied the truth of the MacCormick’s report but also had continued to be obstructionists.<sup>53</sup> The prison system changed its name to the Texas Department of Corrections, and Ellis also received the new title of Director. He did not simply delegate, but also led the prison system, based on the information he acquired from his many visits to the various prisons and farms of the system.<sup>54</sup>

Dr. George Beto became the Director and Chief of Chaplains following the sudden death of Ellis on the eve of a Board meeting in November 1961. Beto, a former Lutheran minister and university president, had served on the Illinois Parole and Pardon Board, as well as the Board of the Texas Department of Corrections. Like his predecessor, he believed in directly managing the prison and frequently arrived at prisons without warning to visit and observe; a predilection led to the nickname of “Walking George.” During his visits, he often visited directly and informally with inmates as they went about their activities. However, his use of force to resolve a work stoppage early in his tenure left no question as to who was in control of the prison.<sup>55</sup>

One of Beto’s greatest accomplishments was the creation of the

Windham School District, the first prison-based school system in the nation. All inmates with only a sixth-grade reading level became students, and were offered the opportunity to obtain a General Equivalency Degree (GED) at state expense. Beto also contracted with colleges and universities to provide classes at the prison and was the moving force in the development of Sam Houston State University's criminology program with its emphasis on research in corrections.<sup>56</sup> His concern for prisoners spurred the creation of a diagnostic center, where incoming inmates underwent extensive medical, mental, educational, personality, and aptitude testing to help determine their occupational abilities and other needs.

Beto clearly understood that the reality of managing Texas' prisons required the balancing of conflicting interests—humane treatment of prisoners and economic benefit to the state—along with expertise in media relations and mastery of legislative relations. He increased the number of prison industries and convinced the legislature to require state agencies to purchase agricultural and industrial products from the prisons and to encourage local governments to do so as well. The new products and services included furniture, janitorial supplies, school desks, bus renovations, and public record data conversions. He also expanded agricultural operations and continued Ellis' pattern of modernization.<sup>57</sup> The ordered, clean, and economically Beto-directed prison system became a model for the rest of the world. However, despite his sterling reputation among politicians and penologists, critics decried Texas' prisons as a modern plantation system powered by prisoner slaves, as well as the continued use of the building tender system that allowed prisoners to supervise and discipline other prisoners. Furthermore, he was criticized for his harassment and punishment of inmates filing lawsuits against the system.<sup>58</sup> Understanding that the corrections world as he knew it was disappearing and adhering to his promise to his wife to serve only ten years, Beto retired in 1972 with the correct prediction that “[t]hings are going to get worse before they get any better.”<sup>59</sup>

Beto's hand-chosen successor was W. J. Estelle. Estelle, a former warden at California work camps and in Montana, clearly understood his mandate was to maintain the status quo of a highly-effective prison as measured by its low costs, low incidence of reported violence, high rate of inmate employment, and general cleanliness of the prisons. However, the surface placidness abruptly ended on July 24, 1974, when

three gun-wielding inmates seized the library, and the longest prison siege with hostages in national history began. Two of the seventeen hostages, women teachers for the Windham School District, were killed as they were used as body shields by the prisoners during their escape attempt eleven days later.<sup>60</sup> In addition, criticisms of Estelle's continued use of building tenders, along with complaints of malfeasance in terms of government contracts, were becoming louder. Pressures from the expanding prisoners' rights movement was about to change the Texas prison system forever, an issue destined to be decided in federal court.

World War II had changed the structure of American society. The scope of the conflict had allowed minorities and women to assume roles in society previously closed to them. The civil rights movement of the 1960s grew to also encompass the rights of women and captives in total institutions, such as penal and mental facilities, as part of the broader social movement.<sup>61</sup> Courts had traditionally taken a hands-off approach to prisoner claims, and had deferred to the expertise of the officials in management of the prisons. Federal courts especially were wary, given the nature of the federal system, to intervene in the operations of state prisons. In the landmark decision of *Cooper v. Pate* (1964),<sup>62</sup> the United States Supreme Court confirmed that prisoners could sue for protection of their constitutional rights under The Civil Rights Act of 1871, more commonly known as 42 U.S.C. § 1983, in federal court, and Texas prisoners and their jailhouse lawyers quickly acted.

The hostile environs of the Southern District Court of Texas that had jurisdiction over most of the prison system and the Fifth Circuit Court of Appeals meant that prisoners were generally unsuccessful. However, the case of *Cruz v. Beto*,<sup>63</sup> which challenged Beto's barring of attorney Frances Jalet-Cruz from the prison, heralded the end of the system's untouchable status. In June 1972, David Ruiz filed a handwritten lawsuit against the Texas prison system, asking for declaratory and injunctive relief for violations of prisoners' constitutional rights.<sup>64</sup> Although Ruiz actually filed the lawsuit while incarcerated at the Wynne Unit, the petition focused on conditions at Eastham Unit, known as the "end of the road for prisoners" and for "'the Eastham way' of doing things: one part head knocking, one part line toeing, and two parts hard laboring."<sup>65</sup> That Ruiz chose to challenge the conditions at Eastham was significant as it was one of two prison units located in the jurisdiction of the Eastern District of Texas, where Judge William Wayne Justice presided. Justice

was known to be receptive to controversial and complex litigation. He had ordered Texas schools to desegregate,<sup>66</sup> forced the reorganization of the Texas Youth Council reform schools that confined juvenile offenders,<sup>67</sup> and required the local junior college to admit students with long hair.<sup>68</sup>

Concerned about the activity of the jailhouse lawyers, Beto moved the most active ones to the Wynne Unit, supervised by one of his trusted lieutenants, Warden C. L. McAdams. There, McAdams placed them in the same cellblock and assigned to a “hoe squad” where they chopped cotton. The move had unintended consequences. The jailhouse lawyers combined their talents and produced a series of civil rights complaints.<sup>69</sup>

Ruiz’s lawsuit was consolidated in 1974 with seven others and styled *Ruiz v. Estelle* for purposes of trial. Together, the petitions encompassed nearly all of the Texas Department of Corrections operations, and the suit became the largest prisoner suit in history.<sup>70</sup> That same year, the United States was appointed as *amicus curiae* and later intervened as a plaintiff. In addition, the courts approved a motion that permitted the action to become a class action.<sup>71</sup>

At the time the trial convened, the stakes were high as one of every ten prisoners in the United States was in the Texas prison system.<sup>72</sup> The trial was moved from Tyler to Houston, located in the Southern District, because of “substantial logistical and security concerns generated by the prospect of transporting and housing hundreds of inmate witnesses, most of whom were confined in the Southern District.” However, Justice remained the trial judge.<sup>73</sup> According to Justice, following the years of discovery by the parties, “consumed 161 trial days, [during which] 349 witnesses have testified, [and] approximately 1530 exhibits [were] accepted into evidence . . . May I express the hope that none of us are involved in [a trial] of this length again.”<sup>74</sup> William Bennett Turner, the nation’s leading prisoner rights attorney, represented the inmates. The state fought long and hard to overcome Turner’s attacks. However, some state practices, such as the prison’s use of force and prisoner building tenders became impossible to defend.<sup>75</sup>

Justice finally issued his lengthy ruling in 1980. The *Ruiz* findings declared that confinement in Texas prisons equated to “cruel and unusual punishment” that violated the Eighth Amendment of the U. S. Constitution in five categories: overcrowding, security and supervision, health care, discipline, access to courts, and other conditions of confinement, such as sanitation, fire and work safety, and hygiene.<sup>76</sup>

The ensuing remedial orders and negotiated agreements forced the state to abandon its former practices and initiate extensive reforms. One of the requirements was the removal of inmate building tenders, an order that had an immediate and dramatic effect on the prison system. The building tenders, or non-paid enforcers, had permitted the state to employ a minimal numbers of correctional officers, which saved thousands of dollars each year. However, the building tenders were difficult to supervise or control. They could not be disciplined or fired as could an employee, and many of these “inmate guards” became a law unto themselves.<sup>77</sup>

The loss of the building tenders created a new problem—a power void in the cellblocks. Cliques and then prison gangs that had plagued California, Arizona, and New Mexico exerted ever more control inside the prisons, and cellblocks became places where the strong continually preyed on the weak. The numerical replacement of building tenders with correctional officers also took the state years and billions of dollars to accomplish. The intermediate effect was a rash of assaults and murders unlike any that the prison system had experienced in the past.<sup>78</sup>

During the trial and the enforcement stages, the prison system continued its obfuscatory, intransigent, and obstructive ways. Officials intentionally misled the appointed Special Master Vincent Nathan, the governor, the attorney general, members of the Board of Corrections, Judge Justice, and the public about compliance. Following a July 1987 hearing, Justice issued a contempt order with fines of up to \$800,000 a day. Although never enforced, the threat certainly achieved its goal; and the newly-elected governor, Bill Clements, announced to the legislature that Texas would begin immediate compliance. Through August 1988, as required in the Civil Rights Act of the losing party, the state paid the lawyers and firms who represented the plaintiffs \$3.9 million, and another \$4.9 million was spent to defray the costs of the master’s office.<sup>79</sup>

The effect of the litigation was a restructuring of inmate society, revision of use-of-force policies, protection of access to courts, and creation of a modern prisoner health care plan. Estelle resigned in 1983, ending an era of change that began with Ellis in 1948, but the litigation continued.<sup>80</sup> “After decades of litigation and reform, reams of stipulations and decrees were reduced to a brief final judgment in 1992. Many issues were closed out, and others were the subject of only

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global mandates.”<sup>81</sup> In June 2002, thirty years of litigation in the case now styled *Ruiz v. Johnson* were terminated, followed a few years later by the death of David Ruiz.<sup>82</sup>

The state of Texas began the lengthy process of implementing the massive changes ordered by the federal lawsuit, changes that would take decades and cost billions of dollars. The newly titled Texas Department of Criminal Justice faced the challenges of evolving public policy. Southern states, including Texas, had seen huge population growth with increased levels of crime; and politicians met the public’s demands “to get tough” on crime by imposing longer and harsher sentences, especially in drug cases. The result was a remarkable transformation of the Texas prison system.<sup>83</sup> In the 1990s alone, prison population increased 204.1 percent, or by approximately 100,000 inmates, with a concomitant increase of 124 percent in the number of correctional officers. The state built seventy new prisons, and, in a departure from established policy, scattered them across the state rather than in close proximity to Huntsville.<sup>84</sup>

In another drastic reversal from the past, communities clamored for prisons, and politicians eager to be seen as tough on crime and as providing economic boosts to their constituents were more than happy to assist. Towns recognized that prisons were, in many ways, model corporate citizens. They consume few natural resources, are permanent, unlikely to close their doors or move, and the labor force is steadily employed. In 1990, the Texas Comptroller of Public Accounts estimated the addition of a large prison payroll (800 jobs or more) and its multiplier effect would generate \$59 million, while smaller prisons (260 jobs) would produce a \$20.4 million total spending effect.<sup>85</sup> By 2000, it was noted that the \$91 million budget amounted to \$3 million spread across the state each day with another \$3 million per day in operating expenses.<sup>86</sup>

The prison system that had once been a minor state agency located in rural east Texas morphed into a huge government operation, albeit one without strong leadership as there was a revolving group of directors during this period.<sup>87</sup>

**Table 3**  
**Texas Prison Leadership**

<b>Years</b>	<b>Name</b>	<b>Title</b>
1848 – 1850	Abner H. Cook	Superintendent
1850 – 1858	James Gillaspie	Superintendent
1858 – 1859	James H. Murray	Superintendent
1859 – 1866	Thomas Carothers	Superintendent
1866 – 1867	James Gillaspie	Superintendent
1867 – 1869	Thaddeus O. Bell	Superintendent
1869 – 1869	C. E. Morse	Superintendent
1869 – 1870	N. A. M. Dudley	Superintendent
1870 – 1877	A. J. Bennett	Superintendent
1878 – 1888	Thomas J. Goree	Superintendent
1894 – 1899	L. A. Whatley	Superintendent
1899 – 1902	J. S. Rice	Superintendent
1902 – 1907	Searcy Baker	Superintendent
1907 – 1911	Jacob A. Herring	Superintendent
1911 - 1927	The Texas Prison Commission	NA
1927 – 1928	H. Walker Sayle	Acting General Manager
1928 – 1929	W. H. Mead	General Manager
1929 – 1930	W. A. Paddock	Acting General Manager
1930 – 1935	M. Lee Simmons	General Manager
1935 – 1935	Dave R. Nelson	General Manager
1935 – 1941	O. J. S. Ellingson	General Manager
1941 – 1948	D. W. Stakes	General Manager
1948 – 1957	O. B. Ellis	General Manager
1957 – 1961	O. B. Ellis	Director
1961 – 1962	Jack F. Heard	Acting Director
1962 – 1972	George J. Beto	Director
1972 – 1983	W. J. Estelle	Director

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1983 – 1984	Dan V. McKaskle	Acting Director
1984 – 1985	Raymond V. Proconier	Director
1985 – 1987	O. L. McCotter	Director
1987 – 1989	James A. Lynaugh	Institutional Director
1989 – 1994	James A. Collins	Institutional Director
1994 – 1995	D. Wayne Scott	Institutional Director
1995 – 2001	Gary Johnson	Institutional Director
2001 - 2003	Janie Cockrell	Institutional Director
2003 - 2006	Doug Dretke	Correctional Institutions Division Director
2006 - 2009	Nathaniel Quarterman	Correctional Institutions Division Director
2009 - Present	Rick Thaler	Correctional Institutions Division Director

Source: Texas Prison Museum, “Texas Prison System Leadership” (Huntsville, TX: Texas Department of Criminal Justice File Document, 2008).

The nation’s third largest criminal prison system today houses more than 172,000 prisoners in ninety-six facilities, employs more than 40,000 (28,500 security staff alone), and the costs more than \$2.8 billion per year.<sup>88</sup> The expanded role of the agency includes the oversight of over 400,000 offenders in community supervision and 80,000 offenders on parole.<sup>89</sup>

The Texas prison system has undergone a dramatic metamorphosis over the years. For many years the state neglected its prison facilities and underfunded their staffs. Today’s prison system little resembles the old as Texas has met the “evolving standards of decency” mandated by the Constitution and the courts.<sup>90</sup> The newer physical facilities are built in pods, using modern technology of cameras and electronic controls instead of the telephone-pole cellblock construction although dormitories remain a mainstay. There are hospital, diagnostic, and mental health units, as well as units with programs for the aggressively mentally-ill, for the intellectually impaired, and for both youthful and

elderly offenders. The system also maintains separate units for inmates from low to high risk, administrative segregation, and, of course, death row. The living conditions are clean, and the food is edible and nutritious. Where brutality once reigned, discipline is administered primarily by hearings with minimal due process at least, and the penalty is often a loss of privileges or segregation in a clean, well-ventilated, lighted cell, where inmates receive the same meals as other prisoners. Use of force is strictly regulated and monitored. Texas has grudgingly accepted reform,<sup>91</sup> and continuation of the transformation is insured by multiple layers of scrutiny, internal and external. Texas' prison operations are no longer shrouded and hidden from the public.

In spite of such sweeping changes, some things remain constant—correctional policy is subject to the vicissitudes of politics and the public's engagement. The prison is authoritarian, and the goal is control. Work remains a primary part of prisoners' lives. Life is still harsh and discipline, strict.<sup>92</sup> Seeds of neglect have begun to creep back into the prison. *The Houston Chronicle* reported in 2008 that correctional officer salaries were so low that vacancies numbered over 4,000.<sup>93</sup> Prisons previously dedicated as therapeutic communities and drug treatment facilities have been converted to traditional prisons.<sup>94</sup> The prison has less staff dedicated to treatment and rehabilitation. One of the authors of this paper, a retired Texas prison warden, issued reduction-in-force papers to one-third of the teachers and all of the drug counselors at his unit as one of his last acts before his retirement. Further insight into the reappearance of neglect of Texas is revealed by examining the fiscal resources of a similar correctional system. Texas spent \$2.8 billion in 2009 on the Department of Criminal Justice while California invested \$9.8 billion for the same period on its Department of Corrections and Rehabilitation.<sup>95</sup> Texas has made remarkable changes over the years as its prisons have evolved, but the question is whether the cycle of neglect will once again become the dominant paradigm.

(Endnotes)

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<sup>2</sup> Texas Department of Criminal Justice, *The Evolution of Modern Texas Corrections* (1996). VHS. 14 min.

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<sup>3</sup> Daniel J. Elazar, *American Federalism*, 3<sup>rd</sup> ed. (New York: Harper and Row, 1984), 115-116.

<sup>4</sup> Daniel J. Elazar, *American Federalism*, 116.

<sup>5</sup> Rupert Norval Richardson, Ernest Wallace, and Adrian N. Anderson, *Texas: The Lone Star State*, 3<sup>rd</sup> ed. (Englewood Cliffs, NJ: Prentice-Hall, 1970), 15, 39.

<sup>6</sup> R. Craig Copeland, "The Evolution of the Texas Department of Corrections" [master's thesis, Sam Houston State University, 1980], 5.

<sup>7</sup> R. Craig Copeland, "The Evolution of the Texas Department of Corrections," 6.

<sup>8</sup> Lee Simmons, *Assignment Huntsville: Memoirs of a Texas Prison Official* (Austin, TX: University of Texas Press, 1957), 48-49.

<sup>9</sup> Lee Simmons, *Assignment Huntsville: Memoirs of a Texas Prison Official*, 49.

<sup>10</sup> Paul M. Lucko, "Prison System," in *Handbook of Texas Online*. Texas State Historical Society. (<http://www.tshaonline.org/handbook/online/articles/jjp03>), accessed November 8, 2010.

<sup>11</sup> Paul M. Lucko, "Prison System."

<sup>12</sup> Paul M. Lucko, "Prison System."

<sup>13</sup> Donald R. Walker, "Texas State Penitentiary at Huntsville," in *Handbook of Texas Online*. Texas State Historical Society. (<http://www.tshaonline.org/handbook/online/articles/jjp03>), accessed November 9, 2010.

<sup>14</sup> Paul M. Lucko, "Prison System."

<sup>15</sup> Paul M. Lucko, "Prison System."

<sup>16</sup> Donald R. Walker, "Texas State Penitentiary."

<sup>17</sup> Paul M. Lucko, "Prison System."

<sup>18</sup> M. K. Wischart, *Sam Houston: American Giant* (Washington: Robert B. Luce, Inc., 1962), 650.

<sup>19</sup> Walker, "Texas State Penitentiary."

<sup>20</sup> Gary Brown, *Texas Gulag: The Chain Gang Years* (Plano, TX: Republic of Texas Press, 2002), 50.

<sup>21</sup> *Holt v. Sarver*, 309 F. Supp. 362, 381 (E.D. Ark.1970).

<sup>22</sup> Paul M. Lucko, "Prison System."

<sup>23</sup> Donald R. Walker, "Convict Lease System," in *Handbook of Texas Online*. Texas State Historical Society. (<http://www.tshaonline.org/handbook/online/articles/jjp03>), accessed November 9, 2010.

<sup>24</sup> Donald R. Walker, "Convict Lease System."

<sup>25</sup> John G. Johnson, "Captial Boycott," in *Handbook of Texas Online*. Texas State Historical Society. (<http://www.tshaonline.org/handbook/online/articles/jjp03>), accessed November 23, 2010.

<sup>26</sup> Donald R. Walker, "Texas State Penitentiary."

<sup>27</sup> Gary Brown, *Texas Gulag*, 156.

<sup>28</sup> Steve J. Martin and Sheldon Ekland-Olson, *Texas Prisons: The Walls Came Tumbling Down* (Austin, TX: Texas Monthly Press, 1987), 7; Lucko, "Prison Systems."

<sup>29</sup> Donald R. Walker, "Convict Lease."

<sup>30</sup> Texas Department of Criminal Justice, *Texas Department of Criminal Justice* (Paducah, KY: Turner Publishing Company, 2004), 13.

<sup>31</sup> Donald R. Walker, "Convict Lease."

<sup>32</sup> Rupert Richardson, et al., *Texas*, 221.

<sup>33</sup> Texas Department of Criminal Justice, *Texas Department of Criminal Justice*, 61, 105.

<sup>34</sup> J. Keith Price, "O. B. Ellis and the Golden Era of Texas Prisons," *Texas Corrections* (4<sup>th</sup> quarter 2006): 4.

<sup>35</sup> Steve J. Martin and Sheldon Ekland-Olson, *Texas Prisons*, 14.

<sup>36</sup> Gary Brown, *Texas Gulag*, 157.

<sup>37</sup> Texas Department of Criminal Justice, *Texas Department of*

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*Criminal Justice*, 26.

<sup>38</sup> David M. Horton and Ryan K. Turner, *Lone Star Justice: A Comprehensive Overview of the Texas Criminal Justice System* (Austin, TX: Eakin Press, 1999), 224.

<sup>39</sup> Steve J. Martin and Sheldon Ekland-Olson, *Texas Prisons*, 12; Price, "Ellis," 4.

<sup>40</sup> David M. Horton and Ryan K. Turner, *Lone Star Justice*, 225-226.

<sup>41</sup> Lee Simmons, *Assignment: Huntsville*, 66-69, 85-90, 103, 108-113; Lucko, "Prison System."

<sup>42</sup> J. Keith Price, "Ellis," 4.

<sup>43</sup> *Hawes-Cooper Act*, Act of Jan. 19, 1929, 45 Stat. 1084 (1929); *Ashurst-Summers Act*, Pub. L. 74-219, 49 Stat. 494 (1935); *Walsh-Healy Act*, Pub. L. 74-846, 49 Sta. 2036 (1936).

<sup>44</sup> Texas Department of Criminal Justice, *Texas Department of Criminal Justice*, 15.

<sup>45</sup> Texas Department of Criminal Justice, *Evolution*.

<sup>46</sup> Texas Department of Corrections, *Texas Department of Corrections: 30 Years of Progress* (Huntsville, TX: Texas Department of Corrections, 1977), 24.

<sup>47</sup> Texas Department of Criminal Justice, *Texas Department of Criminal Justice*, 35.

<sup>48</sup> Steve J. Martin and Sheldon Ekland-Olson, *Texas Prisons*, 20.

<sup>49</sup> *Ruffin v. Commonwealth*, 62 Va. 790, 794 (1871).

<sup>50</sup> J. Keith Price, "Ellis," 6.

<sup>51</sup> Steve J. Martin and Sheldon Ekland-Olson, *Texas Prisons*, 19.

<sup>52</sup> J. Keith Price, "Ellis," 8.

<sup>53</sup> Texas Department of Criminal Justice, *Texas Department of Criminal Justice*, 35.

<sup>54</sup> J. Keith Price, "Ellis," 6.

<sup>55</sup> David M. Horton and George R. Nielsen, *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), 111-113.

<sup>56</sup> David M. Horton and George R. Nielsen, *Walking George: The Life of George John Beto and the Rise of the Modern Texas Prison System*, 155.

<sup>57</sup> David M. Horton and George R. Nielsen, *Walking George: The Life of George John Beto and the Rise of the Modern Texas Prison System*, 121.

<sup>58</sup> Michelle Childers, *The Ruiz v. Estelle Class Action Suit: A Retrospective Policy Analysis of Efforts to Improve Health Care in Texas Prison*, PhD diss. (University of Texas at Austin, 2005), 190; Ben M. Crouch and James W. Marquart, *An Appeal to Justice: Litigated Reform of Texas Prisons* (Austin, TX: University of Texas Press, 1989), 123.

<sup>59</sup> David M Horton and Lee K. Turner, *Lone Star Justice*, 152.

<sup>60</sup> James P. Sterba, "Official Defends Texas Siege Toll," *New York Times*, August 5, 1974.

<sup>61</sup> Dean J. Champion, *Corrections in the United States: A Contemporary Perspective*, 4<sup>th</sup> ed. (Upper Saddle, NJ: Pearson Prentice Hall, 2005), 399.

<sup>62</sup> *Cooper v. Pate*, 378 U.S. 546 (1964).

<sup>63</sup> *Cruz v. Beto*, Civil No. 71-H-1371 (S.D. Tex. filed March 18, 1976).

<sup>64</sup> Carl Reynolds, "The Final Chapters of *Ruiz v. Estelle*," *Corrections Today*, 64 no. 3 (2002), 108.

<sup>65</sup> Aric Press, Daniel Pedersen, Daniel Shapiro, and Ann McDaniel, "Inside America's Toughest Prison," *Newsweek*, October 6, 1986, 48.

<sup>66</sup> Frank R. Kemerer, *William Wayne Justice* (Austin, TX: University of Texas Press, 1991), 117.

<sup>67</sup> Frank R. Kemerer, *William Wayne Justice*, 145.

<sup>68</sup> Frank R. Kemerer, *William Wayne Justice*, 90-91.

<sup>69</sup> David M. Horton and George R. Nielsen, *Walking George*, 150.

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<sup>70</sup> *Ruiz v. Estelle*, 550 F.2d 238 (5<sup>th</sup> Cir. 1974); Carl Reynolds, “The Final Chapters,” 108.

<sup>71</sup> *Ruiz v. Estelle*, 503 Supp. 1265 (S.D. Tex. 1980).

<sup>72</sup> Frank Kemerer, *Justice*, 356.

<sup>73</sup> *Ruiz v. Estelle*, 503 Supp. 1265, 1276 (S.D. Tex. 1980).

<sup>74</sup> Steve J. Martin and Sheldon Ekland-Olson, *Texas Prisons*, 168.

<sup>75</sup> Steve J. Martin and Sheldon Ekland-Olson, *Texas Prisons*, 168.

<sup>76</sup> *Ruiz v. Estelle*, 503 Supp. 1265 (S.D. Tex. 1980).

<sup>77</sup> James W. Marquart and Ben Crouch, “Judicial Reform,” 198.

<sup>78</sup> James W. Marquart and Ben Crouch, “Judicial Reform,” 142.

<sup>79</sup> Frank Kemerer, *Justice*, 391-396.

<sup>80</sup> Michelle Childers, *Ruiz v. Estelle*, 188.

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<sup>82</sup> Michael King, “Criminal Intent: As *Ruiz* ends, Texas Prisons—and the AG—Still Aren’t Rehabilitated,” *Austin Chronicle*, June 21, 2002, <http://www.austinchronicle.com/gyrobase/Issue/column?oid=95448> accessed November 29, 2010; Associated Press, “David Ruiz, 63, Convict Who Won Reform With Handwritten Lawsuit, Dies,” *New York Times*, November 15, 2005.

<sup>83</sup> Michelle Childers, *Ruiz v. Estelle*, 239.

<sup>84</sup> Texas Department of Criminal Justice, *Closing of a Millennium—Reviewing the Past Decade* (Huntsville, TX: Texas Department of Criminal Justice, 2002), i.

<sup>85</sup> Texas Comptroller of Public Accounts, “Communities Vie for Prisons” *Fiscal Notes* (January 1990).

<sup>86</sup> Carl Reynolds, “Cell Block Boom: The Impact of Texas Prison Expansion,” *Texas Business Review*, February 2000, [www.utexas.edu/depts/bbr/tbr/Feb.00.Reynolds.html](http://www.utexas.edu/depts/bbr/tbr/Feb.00.Reynolds.html), accessed November 4, 2010.

<sup>87</sup> Paul M. Lucko, “Prison System.”

<sup>88</sup> William J. Sabol, Heather C. West, and Matthew Cooper, *Prisoners in 2008*, (Washington: Bureau of Justice Statistics, 2009), 17-18; Texas Department of Criminal Justice, *Annual Review 2009* (Huntsville, TX: Texas Department of Criminal Justice, 2010), 6, 11-12, 23-24.

<sup>89</sup> Texas Department of Criminal Justice, *Annual Review 2009*, 28.

<sup>90</sup> *Trop v. Dulles*, 356 U.S. 86, 101 (1958).

<sup>91</sup> *Sandin v. Conner*, 515 U.S. 472, 485 (1995).

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