

Litigated Reform of Texas Prisons

AN
APPEAL
TO
JUSTICE

Ben M. Crouch and James W. Marquart

FOREWORD BY JOHN IRWIN

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University of Texas Press, Austin

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Printed in the United States of America

First Edition, 1989

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Box 7819, Austin, Texas 78713-7819.

Library of Congress Cataloging-in-Publication Data

Crouch, Ben M.

An appeal to justice.

Bibliography: p.

Includes index.

1. Prisons—Texas. 2. Prison administration—Texas.
3. Prisons—Law and legislation—Texas. 4. Prisoners—
Legal status, laws, etc.—Texas. I. Marquart, James W.
(James Walter), 1954— II. Title.

HV9475.T4C76 1989

364'.973

88-29476

ISBN 0-292-70407-0

Ⓢ The paper used in this publication meets the minimum
requirements of American National Standard for Information
Sciences—Permanence of Paper for Printed Library Materials,
ANSI Z39.48-1984.

Foreword

BEN CROUCH and James Marquart have written a valuable book about the drastic changes in the Texas prison system in the last forty years. Until World War II, Texas, along with many other southern states, suffered from penological retardation. The cruelty of Texas prison regimens (from 1944 to 1948, 341 prisoners mutilated themselves by severing their Achilles tendons, breaking their arms, or cutting off their feet or hands to avoid the brutal work routines) was characteristic of other American prisons in the middle of the nineteenth century. In the late 1940s, Texas finally experienced its belated reform. The system's new director, Oscar Ellis, removed most of the excessive cruelty, although he continued to guide Texas in its own directions. Instead of adopting the rehabilitative ideal and transforming prisons into "correctional institutions," which many eastern, mid-western, and western states had done, Texas established a highly disciplined, harsh prison routine built around a profitable agricultural enterprise. Also, Texas kept its convict boss system. In several southern states, convict bosses, called building tenders in Texas, had been very important in maintaining control of prisoners. Although Ellis suppressed most of the extremely cruel, even murderous activities of the "BTs," he still chose to continue with BTs as a key control device.

The Texas system under Ellis and his successor, George Beto, experienced twenty years of stability and profitability. It was well known by those familiar with it for being rigid, austere, even mean and for not putting much effort into rehabilitating prisoners. However, other states' penologists recognized that the Texas prison agricultural program greatly reduced the cost of the system and that Texas maintained order among prisoners (no small accomplishment).

Texas' assault and murder rates, between prisoners and between prisoners and guards, remained low while they escalated in many other states. Also, Texas did not experience the prisoner strikes and riots that swept across the country in the late sixties and early seventies. What was not appreciated was the extent to which this order was maintained by the administration extending power to the building tenders, who ran roughshod over the general prison population, and by the guards applying physical force—"tune ups" and "ass whippings."

By the end of the 1970s, Texas was increasingly seen by other state prison administrators and state legislators as the model system. Most other states had given up on rehabilitation and were spending more and more money to house expanding, factious, gang-ridden prison populations, which they were unable to control. After he turned the administration over to W. J. Estelle in 1972, George Beto was increasingly called upon by desperate legislators and prison administrators in other states to advise them on how to run their prison systems.

However, the Texas system came apart in the 1980s. Two factors caused this. The first was overcrowding. Like those in many other states, Texas prison populations expanded rapidly and the state was unwilling to spend the money required to keep up with this expansion. Second, a 1972 lawsuit charging cruel and unusual punishment filed by one of the prisoner writ writers—David Ruiz—received the careful attention of William W. Justice, judge of the Federal District Court of the Eastern District of Texas. Judge Justice then presided over a protracted judicial review of the Texas system (which still continues) that forced Texas to drastically alter its prison system.

With considerable resistance and pain, Texas made the changes dictated by the courts and has stepped into the age of modern penology. In making this leap, the state has apparently coped with the new realities of prison administration: close judicial scrutiny, a drastically expanded prisoner population, and the invasion of nonwhite and female guards into the exclusive circle of white, rural "good ole boy" guards. Crouch and Marquart have described in great detail this difficult transition and the new system that has emerged. Many other states are experiencing the same strains as Texas and will have to make drastic changes in their prison systems. Perhaps the Texas system *will* be a model for other states and this book may become a valuable guide for prison change.

JOHN IRWIN

Preface

FEDERAL COURT intervention radically transformed one prison system, the Texas Department of Corrections (TDC). While we focus on litigation as the change agent, our primary concern is with the impact of that process on prison organization, the prisoners, and the staff. As such, the book is much more about the functioning of a prison than that of a court.

Our account presents what Texas prisons were like prior to reform, why and how they changed, and what they have become after years of litigation. Critical to this account, of course, is rich and accurate information about prereform TDC; without such information we could not confidently characterize the extent and nature of change. The detailed analysis of conditions in TDC prior to the reforms does not derive from some natural experiment we had the wit to devise. Instead, we were simply in the right place at the right time, doing research in TDC years before the litigation became salient.

Our analysis draws on data and field notes from as early as 1973, when Crouch conducted a short survey of prison officers, the first in a series of projects involving guards and the general problem of control in prisons. In 1976, he spent half the summer employed as a uniformed officer in TDC's Ferguson prison unit. Then, through 1979 and 1980, with the help of Marquart, he conducted a series of surveys and interviews of recruits at TDC's Training Academy and of veterans on most prison units. From 1981 through 1983, Marquart worked as a uniformed officer in TDC's Eastham Unit. Beyond developing insight into daily prison rounds, he gained a unique understanding of how the inmate guard, or "building tender" (BT), system operated. The timing of this participant observation at Eastham

allowed him to observe and record the dismantling of the BT system and the unit's initial efforts to comply with the court's directives. In addition to these specific projects, in the late 1970s and early 1980s we regularly visited many units and conducted hundreds of informal, unstructured interviews with TDC administrators, officers, and prisoners. The understanding of TDC's organizational culture, as well as the informant contacts that we developed over these years, proved invaluable as we focused on the impact of the reforms.

Because of the special contacts made in the Eastham Unit and because that unit was, according to both prison officials and court monitors, representative of the "old" TDC, we conducted a series of structured interviews there in late 1984 and early 1985. Seventy prisoners and forty officers were selected on a quasi-random basis for taped, in-depth interviews about the impact of the reforms. Although these interviews were done in a single unit, the insights gained were confirmed through many less formal interviews in other units across the system. Indeed, between 1984 and 1986, we interviewed staff and prisoners in nearly all TDC units, with the only exceptions being the few very low security units and the female units. Consequently, all data and references pertain to male prisoners and officials.

We augmented these interviews with data from two surveys designed to tap staff and prisoner perceptions of the reforms. The officer survey, completed in late 1986, involved 439 respondents from across the system (a 51 percent return rate). In early 1987, we completed a survey of 460 prisoners in eight of TDC's largest and most secure units, those with which the court was most concerned. Prisoners who had entered TDC between 1978 and 1982 constituted the population from which the ultimate sample was drawn on each unit. Of the approximately 75 prisoners randomly selected per unit, 10 to 15 percent either refused to participate or, more often, could not be easily brought from a work station or other activity. We looked to these quantitative data to corroborate insights developed from interviews.

Finally, we utilized a wide range of documentary data. Information on the early history of Texas prisons came in large part from newspapers and institutional records contained in the Texas prison museum located at Sam Houston State University. Invaluable in developing details and an accurate chronology of events from the late 1970s was a complete file of prison-related newspaper clippings maintained in the Texas Collection of the Houston Public Library. From TDC we secured institutional records on personnel changes, prison populations, disciplinary infractions, "death logs," and prison



Location of prison units of the Texas Department of Corrections.

gang membership and activities. From the special master's office came reports on compliance progress and problems.

These varied sources of information provided windows through which we viewed a complex and diverse institution undergoing change at all levels in over two dozen units. Though through the book TDC is spoken of as a wholistic system, its component units reflect much diversity in size and character. Our conclusions are thus not equally applicable to every unit and do not apply to the female units at all. Moreover, there were many streams of change and not all progressed at the same pace. We thus faced the difficult and regularly frustrating task of trying to capture the modal or most fundamental elements of change, of trying to discern general patterns among the welter of discrete, situation-specific events. This, of course, is the perennial problem of longitudinal research on organizational change. The results are never perfect, and our effort is certainly no exception. We tried, however, to present a balanced perspective and to project comprehensibly the details of individual experiences against the broader organizational and political realities that mark litigated prison reform.

If we offer a balanced and useful account of the Texas prison experience, it is in large part due to the generous assistance of a number of people. Those who read and reacted to all or part of the manuscript include John DiIulio, Neal Shover, Jim Estelle, George Beto, Geoff Alpert, Jim Burk, David Ward, Fred Wolinsky, Andy Collins, Steve Dial, and Mike Brodsgaard. Nancy Crouch edited various drafts of the manuscript. The Public Policy Resources Laboratory at Texas A&M University and the Criminal Justice Center at Sam Houston State University each provided financial and other support at various times during the research.

There are also many people who over the years have been especially valuable in helping us understand the world of TDC and who regularly gave us reality checks for our ideas. A number of present and former TDC staff members deserve special mention: Oscar "Slim" Savage, Leonard Peck, David Myers, Billy McMillian, Ricky McMillian, Ed Turner, Keith Price, Jim MacDonald, James Warren, J. R. Minyard, Kevin Dover, Mike Hallmark, Junior Herring, and Gary Kessler. Former and current prisoners whose help should be specifically acknowledged include Paul Maness, Vernon Johnson, Raymond Hafti, Steve Wilson, Leroy Lafoon, Toby Galloway, Benny Strickland, Jack Friday, Tom Pederson, and Leroy Curlin. Without the cooperation of these and many others, this book would not have been possible.

We gratefully acknowledge the contributions to our work made by

each of these people and organizations. Of course, responsibility for any errors contained herein is our own.

Through the years of work on various parts of the project, and especially during the past three when most of the writing was done, we received tremendous support from our families. Thus, to Nancy, Caren, and Amy and to Cecelia, John, and Jessica we dedicate this book.

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1.

Prison Order and Litigated Reform

As the rights model expands the rights of service recipients, the autonomy of service providers is correspondingly reduced. [Providers] are required entirely to restructure their behavior and their services.¹

SINCE THE early 1960s, prison reform advocates have aggressively used the courts to extend prisoners' rights and generally improve life behind the walls. Reflective of a broader societal trend to seek legal remedies for personal and collective problems,² the number of suits filed against prison authorities has grown dramatically. In 1966, for example, 219 suits were filed by prisoners; by the late 1970s, nearly 10,000 were being filed annually.³ With at least 80 percent of the state prison systems having experienced some type of court order to reform, judicial intervention has become a widespread correctional reality.⁴

Court intervention in prisons has certainly had a significant impact on prison organizations, prisoners, and correctional staff. But there is little consensus on the nature of that impact. In a recent analysis, John DiIulio points out several different characterizations of intervention outcomes.⁵ Some observers see judicial activism as highly disruptive, promoting instability and violence. Others credit the courts with improving prison conditions. Still others draw attention to the marked bureaucratization of prisons that seems to follow intervention. None of these characterizations of court activism is adequate alone; at the same time, depending on the nature and extent of intervention, they may all be, in some measure, correct.

Although court activism has extensively influenced prisons, we have relatively little systematic information on the process and the consequences of that activism. Some intervention research in specific prisons is, of course, available.⁶ That work, however, varies widely in scope and depth while offering little insight into how prisons and prison relations change over a protracted period of decree implementation. Thus, there is a need, as Malcolm Feely and Roger Hanson argue,⁷ for in-depth case studies of the impact of judicial reform within individual prison systems. Accordingly, we present a case study of the litigated reform of the Texas prison system.

Prison Reform in Texas

In 1972, a Texas prisoner named David Ruiz filed a suit against the Texas Department of Corrections (TDC) and its director, W. J. Estelle, Jr. In that suit, Ruiz complained that the state's prisons were, among other things, physically deteriorated, dangerous for prisoners, and overcrowded. That suit, *Ruiz v. Estelle*,⁸ would become the most comprehensive civil action suit in correctional law history.

After years of legal conflict and a lengthy trial, presiding Federal District Judge William W. Justice ruled in favor of the plaintiff. In his written opinion, the judge attacked a public agency that had developed a reputation for being austere but fair, highly efficient, safe, and orderly. That reputation derived from good public relations and nearly thirty years of relative tranquility at the time of the trial. Indeed, from the early 1950s through the late 1970s, legislators, citizens, and the media in Texas generally approved of TDC's traditional philosophy that hard work and strict discipline were good for the state and for the prisoners.

Judge Justice, however, found little in TDC that was good for prisoners. His scathing opinion detailed, among other problems, TDC's denial of adequate legal and medical services and failure to protect prisoners from the brutality of guards and inmate elites, called "building tenders," all in overcrowded facilities. For the judge, these conditions rendered unconstitutional TDC's control system, management style, and physical structure. He thus ordered reforms involving conditions of confinement (fire and work safety, sanitation), overcrowding, access to courts, medical care, discipline procedures, and prisoner supervision and control. The judge appointed a special master to oversee the reform process. Implementation of these reforms set in motion fundamental transformations of prison relations, organizational and control structures, and TDC's public image.

The *Ruiz* intervention in TDC is remarkable for the range of issues addressed and for the fact that ultimate reform altered almost every aspect of prison operation. But it is remarkable for another reason as well, namely, the extent to which the decrees were resisted by prison officials at all levels and, at least in the beginning, by state officials. That resistance cost millions in legal fees to fight the intervention, and the agency's credibility with the legislature suffered. It also contributed to hundreds of injuries and dozens of deaths within the prisons.

Our study of this complex and often painful reform process is

guided by several basic questions. The first concerns the organizational, political, and cultural factors that affect compliance and resistance to court-ordered reform. As we previously noted, in Texas, resistance to change was great and, in turn, costly. We will examine the basis for that resistance and the conditions that ultimately prompted compliance.

The second question concerns the stages and dynamics of the reform process. Of particular interest here will be the impact that court-ordered changes have on the keepers and the kept. Staff and prisoner accommodations to mandated changes, especially control structures, can mean uncertainty at best and heightened danger at worst. We will also look at the organizational problem of balancing constitutional law and prison order. In a democratic society, law and order in the justice system are always, at least potentially, in conflict.⁹ We will explore how this problem was "solved" before and during the decree implementation process.

The final question concerns the nature of the prison social order that is emerging in the postlitigation period in TDC. We will describe that order and how it differs from past prison orders. A key issue will be whether changes as perceived by officials and prisoners after years of litigation constitute fundamental or only superficial reform.

Texas prisons, for several reasons, offer a particularly appropriate setting for examining questions about the impact of litigated reform. First, TDC is one of the largest state prison systems in the country, second in size only to the California system. Because of its size and complexity, the Texas system faces the political, economic, and demographic exigencies that all large state prison systems face. Second, although Texas prisons certainly experienced pressures from overcrowding in the late 1970s, reforms resulted almost exclusively from Judge Justice's orders. The opportunity exists then to examine reforms that are primarily traceable to court intervention. Third, TDC enjoyed, both in the state and across the nation, a reputation for organizational efficiency and effective prisoner control. That reputation not only encouraged resistance to change but also ensured state and national attention for the implementation process.¹⁰

Finally, the Texas prison experience of moving by court order in a relatively short period from isolation, autonomy, and paternalism toward a more constitutional prison parallels the experience of other state prisons over the past twenty-five years. In this respect, TDC arguably serves as a microcosm for American corrections. To the extent that it does, an examination of the Texas experience provides

the basis for a better understanding of how court decrees have actually changed prisons.

The Courts and American Prisons

Prior to the 1960s, the judiciary took a "hands off" approach toward prisons, viewing prisoners as "slaves of the state" who lost all rights upon conviction.¹¹ Bolstering this posture among federal and state judges were the beliefs that intervention might encourage so many cases that the judiciary would be swamped, that court officials lacked the expertise to direct prison change, and that judicial tinkering would undermine prison order and control. The most persuasive rationale for the limited court interest in prison conditions was the separation of powers doctrine, which might be violated if the courts (judicial branch) intervened in prisons (executive branch).¹² At the same time, some prison administrators successfully cultivated an institutional image that "everything was OK" and, therefore, that prisoners' complaints or suits were not only frivolous but also the work of malcontents and troublemakers.

That courts actively avoided intervention had fundamental implications for prison conditions. Citizens, and most of their elected representatives, have historically been uninterested in prison conditions as long as the facilities were orderly, quiet, and not too expensive.¹³ Sensing the public's priorities, legislators spent little time or money on prisons, and wardens understood that order came first; prisoner amenities and programs were a very distant second. As a result, physical deterioration, absence of due process, poor medical care, abuse, and despair among prisoners were often the rule in American prisons, at least through the first half of this century.¹⁴

The hands off doctrine of the courts also indirectly shaped the way prison staff related to and controlled prisoners. Legal isolation meant not only few rights and poor living conditions for prisoners but also autonomy for prison officials. This autonomy typically translated into extreme discretion for the security staff in handling prisoner problems and problem prisoners. Strict obedience was expected, and prisoners were regularly subjected to highly particularistic treatment and coercion of all types.¹⁵ The practices of Joseph Ragen and his minions at Stateville prison in Illinois or those of officials in the traditional Alabama and Arkansas prisons well illustrate this discretion, especially in regard to prisoner control.¹⁶

Of course, although officials prior to court intervention often employed various types of force to gain prisoner compliance, that force could never achieve complete compliance. There were then, and