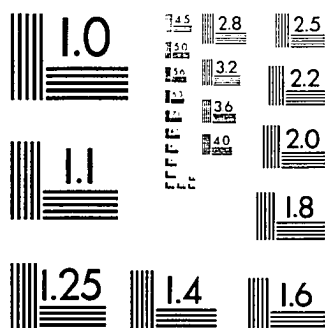


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THE UNIVERSITY OF OKLAHOMA
GRADUATE COLLEGE

A HISTORY OF THE OKLAHOMA PRISON SYSTEM
1967-1983

A DISSERTATION
SUBMITTED TO THE GRADUATE FACULTY
in partial fulfillment of the requirements for the
degree of
DOCTOR OF PHILOSOPHY

By
CLYTA FOSTER HARRIS
Norman, Oklahoma
1985

A HISTORY OF THE OKLAHOMA PRISON SYSTEM

1967-1983

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A HISTORY OF THE OKLAHOMA PRISON SYSTEM

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HISTORY OF THE OKLAHOMA PRISON SYSTEM

1967-1983

CHAPTER I

INTRODUCTION

For I was in prison, and ye came unto me.

--Matthew 25:36

From 1890 until 1908, convicted criminals in Oklahoma Territory (and after 1907 the State of Oklahoma) were transported to Kansas for imprisonment. For twenty-five cents per day per inmate--eventually increased to forty cents--Oklahoma's outlaws were provided frontier style hospitality.

Conditions at the prison in Lansing, Kansas, were so inhumane that Kate Barnard, Oklahoma's first Commissioner of Charities and Corrections, was outraged after paying an unannounced visit to the facility in August of 1908. Miss Barnard, a political activist who campaigned hard for social reform, charged Kansas authorities with "corruption, brutality, and graft in their operation of the prison."¹ Her vivid descriptions of systematic torture of inmates by use of the "crib," the "waterhose," and other forms of brutality permeated correspondence and official Charities and Corrections reports. The reports shocked the

¹Charities and Corrections Report, 1908, p. 11, quoted in John A. Conley, "A History of the Oklahoma Penal System--1907-1967," unpublished Ph.D. dissertation, Michigan State University, 1977, p. 9.

Legislature and Governor Charles N. Haskell into action, and plans were made to move the inmates to McAlester.

Construction began on Oklahoma State Penitentiary in May of 1909 on 1,926 acres purchased in 1904 from the Choctaw Indian tribe. Warden Robert W. Dick supervised fifty convicts on the construction project and built a walled fortress of concrete and steel, with a capacity for 640 inmates.

Within a year after construction began on the penitentiary, Commissioner Barnard launched a crusade for a state reformatory for younger offenders. Some 300 long-term inmates were sent to Granite from OSP to begin construction. Hardened convict gangs literally dug their prison from a nearby mountain, and by 1914 Oklahoma State Reformatory in Granite was completed. The cuts and bruises sustained from the rough edges of the rock inspired many gruesome tales. One story tells of the crushing death of an inmate in a rock crusher. OSR gained the nickname "Little Alcatraz" in the 1940s because of its population of 300 life termers and an additional 600 inmates with lengthy sentences.² Convict chain gangs carved boulders from the mountain as hard labor punishment until 1949.

Creation of Department of Corrections

From the beginning of the corrections system, political patronage produced instability among employees. The Governor, as chief executive of the State, was also chief administrator of the patronage system. The penitentiary and reformatory were

²"History," Oklahoma Department of Corrections Annual Report, 1974-75, pp. 23, 29.

integral parts of this system. Every four years, a new governor meant a "90 percent turnover . . . [in employment within] departments and institutions."³ The patronage system also kept salaries low, because lawmakers were aware of the limited competence of personnel who worked in the prisons and were unwilling to appropriate funds for better salaries. The salary levels of corrections employees did not improve significantly until after the creation of the Department of Corrections in 1967. The old system obviously "got what it paid for," in quality of prison employees. Graft and corruption ran rampant among all levels of personnel. Sixty percent of the employees were between fifty and seventy years of age. Guards worked twelve hours a day, seven days a week, and on an alternating schedule of thirty days on and thirty nights on. Under such circumstances, it is little wonder that the positions did not attract more highly qualified personnel.⁴

During the administration of Governor Raymond Gary (1955-1959) a House investigation into the penal system did little for penal reform in the State. Governor Gary did not take a strong stand for reform, and most of the legislature was "too close to the forest to see the trees."⁵ Numerous prison riots throughout the country during the early 1950s prompted a study about the causes of these riots. The results of this study by the American Prison Association prompted the warden of OSP to comment that the same basic conditions existed "under our system."⁶ The

³H. O. Waldbey, The Patronage System in Oklahoma (Norman: The Transcript Co., 1950), p. 13. Quoted in Conley, p. 108.

⁴Ibid.

⁴Conley, p. 102.

⁵Ibid.

House invited the Oklahoma Citizens Committee on Delinquency and Crime to provide input, marking the first time a citizens' organization had become involved in reform initiatives. The Committee's report concluded that the State had not invested highly in a statewide penal system; and because services were so inadequate, direct actions should be taken to create a state department of corrections.

The report was issued late enough in the Gary administration that the Governor had no opportunity to act on it. Governor Gary's successor, J. Howard Edmondson (1959-1963), recommended in his first address to the Legislature that a department of corrections be established. The House and Senate drafted bills, but they were never enacted. Once again the Legislature failed to address the needs in the penal system.⁷

The National Council on Crime and Delinquency (NCCD) was commissioned to study the penal system and make recommendations during the administration of Governor Henry Bellmon (1963-1967), Oklahoma's first Republican governor. The NCCD philosophy was one which encouraged rehabilitation, humane treatment of prisoners, and alternatives to incarceration. Its investigation found that the Board of Public Affairs, which administered the penal system, concentrated primarily on the business aspects of the prison system and "ignored the larger problems of correction."⁸ Two priorities existed in Oklahoma corrections, according to NCCD: (1) OSP and OSR should cease to operate independently of one another, and (2) the Board of Public Affairs should

⁷Ibid., p. 104.

⁸Ibid., p. 105.

separate itself from the control of the penal system.⁹

On May 8, 1967, under the leadership of newly elected Governor Dewey Bartlett (1967-1971), the Legislature passed the Oklahoma Corrections Act of 1967. House Bill 566 created the seven-member Board of Corrections, with one member from each of the state's Congressional Districts and a seventh member appointed at large. Not more than four members were to be of the same political party. Since Governor Bartlett was Republican, the first Board was comprised of four Republican members and three Democratic members. The Act created three divisions--a Division of Institutions, a Division of Probation and Parole, and a Division of Inspection--each to be supervised by a Deputy Director. Specific powers were delineated for each administrative position. The Act became effective July 1, 1967.

A. E. Pontesso. Arnold E. Pontesso was appointed the first Director of the new Department of Corrections on August 2, 1967, but he did not assume his new job until October 16. The 52-year-old Pontesso was a 28-year veteran of the federal prison system, and retired as warden of El Reno Federal Reformatory just prior to beginning his job as Director of Oklahoma Corrections. The new director praised Governor Bartlett, saying he was more interested in corrections than any previous governor of Oklahoma.¹⁰ He pledged to follow the guidelines advocated by the NCCD report on Oklahoma corrections, saying they were all, "good, sound suggestions" and that he would go about it "slowly and

⁹"Corrections in Oklahoma, A Survey, Part I, Adult Correctional Institutions, Probation and Parole," National Council on Crime and Delinquency, 1966.

¹⁰"Scientific Approach to Problems Pledged," Tulsa World, August 2, 1967.

scientifically."¹¹ Pontesso was "very caustic," saying what he thought and offending many people, especially politicians.¹² Moreover, Pontesso was politically unwise, and he openly expressed the attitude: "I don't need Oklahoma; Oklahoma needs me."¹³

He began the first community treatment center at the Thunderbird Motel in Oklahoma City as a pilot program, and with little fanfare. Then, using federal Law Enforcement Assistance Agency (LEAA) funds, he leased land in Tulsa for an additional Community Treatment Center (CTC). He also made plans for opening one in Shawnee. There was one major problem: He failed to tell city fathers of his intentions, and they learned about it by reading their newspapers. The Department paid the lease on a Tulsa motel for nine months before breaking the contract; land was never leased in Shawnee. Neither CTC was ever opened. Deputy Director John Grider said "A. E. Pontesso was ten years before Oklahoma's time--not his time."¹⁴

Frank Johnston. Pontesso lasted only about three years before he was forced to resign. He was replaced by Leo McCracken who worked as

¹¹Ibid.

¹²Personal interview with John Grider, Deputy Director of Corrections, May 30, 1985. Hereafter referred to as "Grider."

¹³Ibid.

¹⁴Pontesso stated after leaving Oklahoma that its prison system would have to be rated as the worst in the United States. Some years later he was called to Oklahoma by the Justice Department and the ACLU to testify as an "expert witness" in the Battle case. After touring every facility in the state and viewing the vast improvements which had been made, he was deposed and asked if it was still the worst prison he had ever seen. He responded that it was not. After that, he was "no longer useful to the opposing side [Justice Department and ACLU]. That's why they didn't use him." "Grider."

Acting Director for 18 months, "which was too long."¹⁵ Finally, the Republican dominated Board of Corrections, under Dewey Bartlett hired a Pennsylvania penologist as the second Director. Frank Johnston lasted only ten days. When David Hall became Governor and suddenly gained a Democratic majority on the Board because of a board member's resignation, he appointed Irvine Ungerman from Tulsa, LeRoy Kirk from Oklahoma City, and Helena Reiger from Enid to the Board. The first order of business for the new Board was to rescind the appointment of Frank Johnston.

Leo McCracken. Senator Gene Stipe, a powerful McAlester politician, initiated a bill in the Legislature, lowering the qualifications for the Director of Corrections. Some observers believe this bill was passed so that Leo McCracken could be appointed Director. "We certainly weren't dissatisfied with Leo, and we wanted to be in a position to hire him, if that's what we decided to do," said one lawmaker, "But at no time did we tell any member of the Legislature that we intended to hire Leo. We made no commitment of any kind."¹⁶ At any rate, Leo McCracken was made Director of Corrections, a position he held until after the riot in 1973.

Governor David Hall Administration--Pre-Riot¹⁷

Governor David Hall, a former prosecutor from Tulsa County, ran for election with a promise that he would be tough on crime. He pledged

¹⁵"Grider."

¹⁶"McCracken Denies Pressure, Admits Hall is 'Boss Man,'" Tulsa World, December 9, 1971.

¹⁷The post-riot Hall administration will be covered in Chapter III.

never to sign a parole for an offender who had been convicted of drug abuse or of a violent crime. When he was elected Governor in 1971, he was the first Democratic governor since J. Howard Edmondson.¹⁸ Hall's stated position on corrections was one of reforming the system. In an address before the Legislature, Governor Hall said, "We have dual goals in this field [corrections]--to reduce the overcrowding of our correctional institutions and to accomplish true rehabilitation."¹⁹ In his address to the Legislature in 1973, just seven months before the disastrous riot and fire, Governor Hall observed: "The penal system has a long history of neglect. We have reversed that trend and sponsored a far-reaching program of rehabilitation."²⁰ He asked the Legislature to increase the capacity at the Quachita facility from 70 to 140 inmates, quoting impressive statistics. "We have graduated 225 from Quachita with only 2 percent failure. Comparitively, we have 30 percent recidivism from other institutions."²¹

New Facilities. During the Hall administration the Lexington Correctional Center was added to the list of prisons in the State. Opened in 1971, the Lexington facility was a collection of wooden barracks hastily constucted during late World War II days as an annex to

¹⁸Technically, George Nigh was the last Democratic governor before Hall. When J. Howard Edmondson resigned in 1963 to assume the unfilled Senate seat vacated by the death of Senator Robert Kerr, George Nigh became Governor for one week.

¹⁹Governor David Hall, Legislative Address, January 4, 1972, in Governor David Hall Collection, Division of Archives, Oklahoma Department of Libraries, Oklahoma City, Oklahoma.

²⁰Governor David Hall, Legislative Address, January 2, 1973, in Governor David Hall Collection, Division of Archives, Oklahoma Department of Libraries, Oklahoma City.

²¹Ibid.

the Navy Base in Norman. When it was no longer needed as a Navy base, it became an annex to Central State Hospital (mental institution) in Norman. The Lexington facility, with an initial capacity for 120 men, would prove to be a valuable acquisition in the years ahead.

Mabel Bassett Correctional Center was opened in Oklahoma City during 1974 to house maximum and medium security women inmates. The Hall administration opened several additional community treatment facilities, including Enid Community Correctional Center and Lawton Community Treatment Center in 1973, and Tulsa Community Treatment Center and Muskogee Community Correctional Center in 1974.

Diagnostic Center. First conceived as a part of the statewide penal reform plan in 1967, the diagnostic center, being built outside the walls at McAlester, had been under construction for about a year when David Hall became Governor. The center had been started with the use of inmate labor, and had already cost the state \$750,000. An additional \$800,000 was needed to complete the job because of blunders, unskilled convict labor, and occasionally deliberate sabotage on the part of disgruntled inmates.²² Originally designed as a six-story structure, the building was only a small fraction of the way to completion in early 1973, with the foundation, the first floor, and a part of the second floor completed. No work had been done on it in the past five months. In March of 1973, Governor Hall asked the Legislature to appropriate \$50,000 to the construction, and ordered work to be started immediately for completion within fourteen months. One prison official expressed a fear that "we're going to get some convicts killed on it."

²²"Work Halts, Costs Rise on Key Penal Building," Tulsa Tribune, March 8, 1973.

Even if work were resumed on the building, "I'm not sure the . . . thing wouldn't fall down before we got to the top."²³

When the plans were first drawn, more than a dozen convicts with the the necessary skills to complete the job were resident in the prison. Over the years, however, these inmates had been paroled or transferred to other institutions, leaving only one convict brick layer to work on the building--and he had recently been assigned to a work-release program. The work that had already been completed was of poor quality. Bricks from the prison brickyard were crooked. "You pick up 10 bricks, you have 10 different shapes and sizes[,]" said Burl Self, the employee in charge of the construction.²⁴ Walls were crooked, bricks were laid "sloppily," and a 1,050-gallon hot water tank had to be laid on its side to fit into the room prepared for it. "Whoever heard of a hot water tank working laying [sic] down?" asked one official.²⁵

Penal experts had recommended that the much needed diagnostic center be located near a metropolitan center from which professional mental health and diagnostic employees could be hired. Senator Gene Stipe once again was blamed for using his influence, this time to keep the center in his district.²⁶ The selling point which was ultimately responsible for its location at McAlester was that inmate labor would cut costs of the building by \$500,000. A bond issue of \$1 million had

²³Ibid.

²⁴"Work Halts . . ." op cit.

²⁵Ibid.

²⁶Speculation abounds about Stipes' "railroading" activities related to the Prison; but it is not always clearly evident whether the accusations against this politically powerful and influential man were correct.

been issued in 1968 to build the center; but in 1973 nearly \$750,000 of that amount had been spent.²⁷ Even if the Legislature appropriated the \$50,000 requested by Governor Hall, another \$750,000 would be required to complete the structure.

Despite its many problems, Governor Hall was eager to have the building opened and asked the Corrections Department to complete it by May 1974. He saw the center's capabilities of offering much needed services for inmates. Hall's target date was unrealistic, but his intentions were good.

Perhaps Governor Hall was on the right track in his corrections ideology. Given enough time, he might have effected a change in the prison system. Had the riot not occurred when it did, the state might have seen some impressive changes in corrections during the next few years. But the riot did "come down," and corrections reform in Oklahoma was--depending on the viewpoint of the observer--set back many years or finally set on the right course by the disturbance which became the catalyst for real change in Oklahoma's corrections system.

The primary focus of this study begins during the Hall administration. The study deals with the historical aspects of the penal system since 1967--the date of the creation of the Department of Corrections. It is limited to the history of the system and includes no attempts to philosophize about reform, theories of penology, or other non-historical points.

The initial date of 1967 was chosen for two reasons: (1) The Department of Corrections was created during that year by the enactment

²⁷Ibid.

of H.B. 566; and, (2) A comprehensive history of the system from pre-statehood to 1967 was completed in 1977.²⁸

Much detail is given to the years between 1972--the initial Battle v. Anderson suit--and 1983--the year in which Judge Luther Bohanon withdrew from the federal court case and the case was dismissed. Additionally, the riot and fire at Conner Correctional Center occurred during 1983; and some attention is paid to comparing it with the 1973 riot at Oklahoma State Penitentiary.

²⁸Conley, "A History."

CHAPTER II

BATTLE V. ANDERSON, THE FEDERAL LAWSUIT

If anything ail a man so that he does not perform his functions, if he have a pain in his bowels even—for that is the seat of sympathy—he forthwith sets about reforming the world.

--Thoreau

Battle v. Anderson is one of the two most important events in the history of Oklahoma's penal system. Most experts agree that the lawsuit, combined with the Oklahoma State Penitentiary riot and fire of 1973, prompted more prison reform than any person or group might ever have accomplished. While Battle was not the first prison suit to be filed in Oklahoma, it received the most attention. The case was one of a number which had been filed; in fact, Battle himself had filed cases previously. After the passage of the Civil Rights Act of 1964, inmates in Oklahoma and all over the country began filing complaints. Judges Luther Bohanon, Fred Daugherty, and Edwin Langley had jurisdiction over the Eastern District in Oklahoma, with Judge Langley serving as Chief Judge of the Eastern District. Because Judge Langley was in the Muskogee area frequently he proposed to take the prison cases himself and handle them in lots. And he did. Langley would go to the Federal District Court in Muskogee, put the inmate plaintiff on the stand, let him tell his story, and then dismiss the case.¹ The Federal Court was

¹Personal interview with Judge Luther Bohanon, May 30, 1985. Hereafter referred to as "Bohanon."

very reluctant to become involved in state proceedings or problems--prisons, jails, municipalities, or schools. Federal Courts appeared to be wary of state corrections. Additionally, few attorneys were willing to take on such cases for a variety of reasons: little or no funds, their unpopularity, and the requirement that the Civil Rights Division of the Justice Department prosecute such denial of constitutional rights. It was the Justice Department staff which finally brought about the successful adjudication of the case, as well as the prosecution of similar cases in Arkansas, Mississippi and other states.² After a time, Judge Langley had seen so much that he began to think some of the allegations might have merit; so he consolidated a number of cases and asked the American Civil Liberties Union to supply an attorney to represent the inmates.³ Just as it appeared some action might be taken, Judge Langley died. After his death, Judges Bohanon and Daugherty divided Langley's remaining docket by odd and even numbers, with Bohanon taking the odd numbers. Battle v. Anderson, having case number 72-95, fell to Judge Bohanon.

Despite Bohanon's liberal reputation, he conservatively ruled against the plaintiffs several times during the year before trial. He refused for a time to certify the case as a class action suit. He denied American Civil Liberties Union (ACLU) attorney Mary Bane access to the prison following the riot in 1973 to continue taking depositions for the federal court case; and he issued a number of rulings which made

²The Mississippi case was Gates and U.S. v. Collier, et al., and the Arkansas case was Finney, et al. v. Arkansas Board of Corrections.

³Personal interview Louis Bullock, American Civil Liberties Union attorney, May 22, 1985. Hereafter cited as "Bullock."

it difficult for the plaintiff. Few people thought anything would ever come of the case. In fact, participants in the National Prison Project, who had done much of the litigation, became convinced that the attitude of the Court was such that their time was better spent on other work and withdrew from the case. Attorneys Mary Bane and Stephen Jones and Justice Department attorneys continued working on the case, spending weeks taking depositions inside Oklahoma State Penitentiary prior to the riot and fire. These depositions were key to the success of the case. The turning point came in the weeks immediately before the trial. Judge Bohanon, a voracious reader, took the depositions home, read them, and was outraged at the way inmates were treated. Ironically, the most damning depositions were not those of the inmates, but rather those of the prison staff in which they admitted what was happening at the penitentiary.⁴

Bobby Battle, #75621

William Robert Eugene Battle, a self-educated black man who dropped out of school after the sixth grade, entered Oklahoma State Penitentiary in 1969 to serve his fourth term behind bars. First sentenced to five years for robbery with firearms, Battle had served subsequent sentences for second degree burglary, carrying a concealed weapon following a felony conviction, and grand larceny.⁵ Conditions in 1969 were such that inmates were unable even to "acquire basic human needs."

⁴Ibid.

⁵I interviewed Bobby Battle in August of 1983 in a restaurant where he was working just east of the State Capitol. In March of 1984, Battle was hired to work on an Oklahoma County highway crew; but in 1985, he returned to prison, this time to El Reno Federal Reformatory on a drug related charge. Bobby had been a free man for four years.

Bobby felt motivated to become involved in "trying to find a solution to eradicating the dehumanizing treatment that people were receiving while imprisoned at that particular time."⁶ He began almost immediately to formulate his perceptions of the problem. Described by those who know him as "brilliant," "likeable," and a "survivor behind bars," Bobby Battle does not consider himself an unsung convict hero of prison reform in Oklahoma. He does hope that the impact of the suit from a legal and humane standpoint will provide initiative to others--not just prisoners, but oppressed persons--to take steps to free themselves from that oppression. He hopes the success of his venture will "give rise to enough motivation and assurance that you don't have to be an F. Lee Bailey, . . . [or] to be white, black, or green. All you need is a problem and a desire to seek out your rights."⁷ Other observers have varying opinions about Bobby Battle. Louis Bullock considers Bobby a "hero";⁸ Deputy Director of Corrections John Grider says Battle is "a nobody who just happened to be on the scene when it was popular to sue

⁶Telephone interview with Bobby Battle, June 15, 1985.

⁷Ibid.

⁸"Bullock." Bullock said of Bobby Battle: "The man is charismatic; he has a phenomenal amount of courage and intelligence. If it had not been for his courage and his intelligence the lawsuit would never have gotten off the ground. He went through some incredible terror in persuing it. I think history has shown that Bobby does better in institutions than outside." When Battle has been called a "hero" he has been very modest about it. He has said "Oh, if I hadn't done it, someone else would have." Personal interview with Bobby Battle, August 1983. Bullock disagrees with this. "I don't think that's really true. Perhaps somebody might have found [another inmate] to use for a plaintiff; but the fact is that Bobby carried a lot of the weight on his own shoulders. What he did really made it possible for the lawsuit to be heard." "Bullock."

somebody;"⁹ and Judge Bohanon feels that he was "just a name, and [the] fact that he was black had more to do with the Department of Justice getting in than if he'd been white."¹⁰

Almost nobody would dispute that Bobby Battle is a leader. He was responsible for staging a sit-down strike in 1970, and for organizing several hunger strikes in 1972. He convinced Black Muslim inmates to insist upon their right to religious freedom. In 1970 he submitted a list of inmate grievances to Department of Corrections officials--a list which was the predecessor of his civil rights suit.

The list of grievances was prompted by an altercation between a prison guard and an inmate. Several inmates, including Battle, witnessed Captain B. E. Mann, a 275-pound correctional officer, pull 90-pound inmate Raymond Fowler out of a disciplinary hearing, kick him, and beat him with a gas gun.¹¹ The following afternoon a few hundred inmates refused to return to their cells from the yard in protest of Mann's action. The next day, officials asked inmates to prepare a list of grievances for official consideration and to select spokesmen to present these grievances. Bobby Battle and five other inmates were selected by their peers to draw up the list of inmate grievances and to submit them to top corrections officials. The grievances included: (1) a request for the dismissal of Captain Mann; (2) establishment of inmate

⁹Personal interview with John Grider, Deputy Director, Department of Corrections, May 30, 1985. Hereafter referred to as "Grider."

¹⁰"Bohanon."

¹¹"Deposition of Inmate Bobby Battle," in Division of Archives, Oklahoma Department of Libraries, Office of the Attorney General, Federal Case, RG 1-8, p. 28. Hereafter referred to as "Battle Deposition."

law libraries; (3) increased medical services for inmates; (4) improved communications between staff and prisoners in the form of an inmate committee; (5) improvement of conditions on death row; (6) better quality and quantity of food in the mess halls; (7) parole modifications; (8) rehabilitation programs; (9) equal job opportunities for black and white inmates; (10) better religious programs, visitation procedures and facilities, and canteen privileges; and, (11) the re-evaluation and revision of the current set of inmate rules.¹²

Top corrections officials, including Leo McCracken, Deputy Director of Institutions, OSP Warden Ray Page, and Corrections Director Arnold Pontesso, met to consider this list of grievances and submitted a reply to the list. In defense of the Department, these gentlemen stated that officials had "worked diligently to improve penal conditions, . . . initiate new rehabilitation programs, and protect individual rights. . . ."¹³ They expressed shock and disappointment that such demands were presented to the administration "with implied threats of violence if not met promptly."¹⁴ Indicating that inmates were "not in a position to present demands," (although they had been asked by the administration to do so), the committee alienated inmates further by using a condescending tone in addressing the problem.

If the inmate population at McAlester is so immature and irresponsible that a list of petty grievances is worth sacrificing the

¹²"Inmate List of Grievances," submitted to OSP Warden Ray Page, May 3, 1970, from Stephen Jones Collection, Western History Collection, University of Oklahoma, Norman, Oklahoma, Box 7.

¹³"Answer to Inmate List of Grievances of May 1, 1973," in Stephen Jones Collection, Western History Collection, University of Oklahoma, Norman, Oklahoma, Box 7, p. 1.

¹⁴Ibid., p. 2.

progress that had been made, the population then forces the administration to meet force with force and initiate new measures which will be more repressive than ever before.¹⁵

Having thus generally berated the inmates, officials addressed each grievance in much the same way. They reported that a committee of "responsible, impartial" members of the penitentiary staff had met to investigate Captain Mann's conduct. The committee recommended that Mann be reinstated at no loss of time, because he was "performing his duties in a manner that was necessary to control the situation and for the protection of the officers as well as the inmates."¹⁶

Responding to the demand for a prison library, the group reported that plans had been made six months previously to provide a library; some of the books had been ordered, a few had been received. Inmates were not, however, to purchase their own books, because this could enable certain "talented" inmates to become professional writ writers, thus providing another opportunity for the more gullible inmates to be defrauded of their few assets. Furthermore, the courts might then be flooded by "frivolous" writs. While legal correspondence courses were available, officials thought it not "feasible to encourage those incarcerated to waste money on this activity, due to restrictions governing the practice of law."¹⁷ Arrangements had been made to provide a typewriter and clerical services for inmates using the law library.¹⁸

¹⁵Ibid.

¹⁶Ibid, p. 2

¹⁷Ibid.

¹⁸Hand-written documents from Bobby Battle to his attorneys and other legal persons are plentiful in the Stephen Jones Collection. In more than one instance, he apologized to his correspondents for having to hand write his messages, but indicated that he had been denied the

To answer inmates' complaints about inadequate medical care, the committee quoted from a report dated June 7, 1969, in which the Oklahoma Medical Association called the medical program at the penitentiary "more than adequate . . . and of high quality." The conclusion of officials, then, was that this complaint had "absolutely no validity."¹⁹

Stating that inmate committees have a tendency to become corrupt and to "prey on the population they are supposed to represent," officials dismissed this suggestion as being "unwarranted and impractical,"²⁰ refusing even to consider it.

The complaint that cruel and inhumane treatment was given to inmates in maximum segregation was "calyorically [sic] denied." Adding that inmates select this type of confinement by their own misconduct, the report stated that further concessions in maximum security would not be considered.²¹

Plans had been in process for some time to enlarge visiting facilities and improve visitation procedures; however the request for privacy was termed ". . . not only frivolous (sic) but impractical."²²

Other "answers" included statements that canteen prices were fair and reasonable (on \$2 per month?); that adequate religious representation was provided (adequate by whose standards?); and that no discrimination was practiced in assignment of inmate jobs (evidence clearly

privilege of using the typewriter. Stephen Jones Collection, Western History Collection, University of Oklahoma, Box 7.

¹⁹"Answers to Inmate Complaints," p. 2.

²⁰Ibid.

²¹Ibid., p. 3.

²²Ibid.

shows otherwise).

Less than one week after the grievances were submitted to prison officials, Battle was accused of inciting a riot by breaking a canteen window and ripping a slat from a small fence. He was "arrested," along with about 150 other inmates who were considered by officials to be leaders of the "rebellion." These men were placed in solitary confinement for periods of up to eighteen months. Bobby Battle was sent to the "dungeon," a holding area in the prison basement which was once used to house death row inmates. Battle testified in deposition that he was denied medical treatment for several physical conditions he suffered while in the dungeon--dizziness, pain in his ears, eyes, and head, and bleeding through his kidneys.²³ When he was released two months later, Battle began researching and writing his now famous civil rights case, Battle v. Anderson. He spent the bigger part of the next two years preparing the lawsuit and studying similar suits around the country. It was almost two years before the suit first came to trial in Judge Bohanon's court.

Summary of Pre-Trial Activities--April 1972 to March 1974

On April 24, 1972, Battle filed the pro se complaint in U.S. District Court at Muskogee, Oklahoma. On July 27, 1972, the plaintiff filed an amended complaint on behalf of himself and other inmates in which he alleged deprivations of civil rights as secured by the Federal Constitution and Civil Rights laws. The original suit included the following alleged civil rights violations:

²³"Battle Deposition," p. 31.

. . . deprivation of the right to due process and equal protection of the laws, to free speech, to petition for the redress of grievances, to have access to the courts, and to be free from cruel and unusual punishment.²⁴

In the complaint, Battle sought injunctive relief to remedy the alleged misconduct of the defendants²⁵ on behalf of all members of the plaintiff class. In addition, he sought monetary damages for himself. The list of allegations was expanded in subsequent months, as the ACLU and the Department of Justice became involved in the case.

On March 15, 1973, the next significant date for the case, Judge Edwin Langley granted the United States' Motion to Intervene pursuant to Title IX of the Civil Rights Act of 1964. The United States Department of Justice was granted this permission because of alleged racial segregation in inmate housing and job assignments. Attorneys for the Department of Justice and for the defendants,²⁶ along with Stephen Jones and Mary Bane, ACLU attorneys, began taking depositions of witnesses almost immediately in preparation for trial of the case. In addition to the depositions, the parties conducted extensive pretrial discovery,

²⁴Battle v. Anderson, 376 F.Supp. 402 (1974), p. 407. Hereafter referred to as Battle, 376, F.Supp. 402.

²⁵Named as original defendants were Leo McCracken, Director of Corrections, Park J. Anderson, Warden, and Sam C. Johnston, Deputy Warden of Oklahoma State Penitentiary. As personnel changes were made within the institution and the Department of Corrections, additional names were added to the list of defendants. Additionally, Captain Black, Danny Nace and Otis Campbell, Correctional Officers at the State Penitentiary were added as defendants.

²⁶Attorneys for the plaintiff-intervenor, U.S. Department of Justice, Washington, D.C. were Jesse H. Queen, Quinlan J. Shea, Jr., Thomas R. Sheran, Charles N. Ory, and Margie A. Utley. Attorneys for the defendants included Paul Crowe, Kay Karen Kennedy and Kenneth Deleshaw, Jr., Assistant Attorneys General, Oklahoma City, Oklahoma, for defendants Leo McCracken, Roy Sprinkle, Sam C. Johnston, Captain Black, Danny Nace, and Otis P. Campbell. As Warden Park J. Anderson was no longer a state employee, he could not be represented by the Attorney General's office;

including inspections and investigations by attorneys, FBI agents, and experts in penology.²⁷

Almost one year later, at a pretrial hearing held March 4 and 5, 1974, the Court allowed the United States' motion to amend its complaint. The amended complaint alleged that in addition to the original civil rights violations, the defendants had subjected inmates to further violations of their civil rights. This expanded list of complaints against the defendants, along with the investigations and depositions which preceded the trial, constituted eighteen bound volumes which were marked as Exhibits 1 through 161 in the Trial of Merits, held March 14 and 15, 1974 in McAlester.²⁸ Based on the depositions, exhibits, and oral testimony heard at the trial, Judge Bohanon consolidated five similar cases with Battle v. Anderson to be tried as one case.

Allegations, Supporting Evidence, and Court Orders

After trying the merits of the case, Judge Luther Bohanon issued the following Findings of Facts and Order for Remedial Action.²⁹

therefore, his attorney was Willard Gotcher, of the firm of Stipe and Gotcher, McAlester, Oklahoma.

²⁷Complete texts of the depositions are available in the Attorney General's Collection previously cited. This collection, in the Department of Libraries in Oklahoma City, consists of twelve large file boxes of materials from the Oklahoma Attorney General's office. Additionally, some of the materials are available in the Stephen Jones Collection, Boxes 1-6.

²⁸These additional alleged violations are detailed in Judge Bohanon's Memorandum Opinion issued May 30, 1974.

²⁹Because of the massive volumes of materials generated in the case during its eleven-year period, this section of the chapter will be a summary of allegations, examples of supporting evidence and court orders concerning each allegation.

Racial Segregation and Discrimination

Allegation. The lawsuit alleged that racial discrimination was practiced in inmate housing and job assignments, and in employment practices in the Oklahoma Prison System, and specifically at Oklahoma State Penitentiary in McAlester.

Supporting Evidence and Findings. Oklahoma State Penitentiary was a racially segregated institution. The Oklahoma Human Rights Commission, at the request of State Representative A. Visanio Johnson³⁰, conducted an investigation to determine whether racial discrimination indeed existed prior to the riot and fire of 1973. Fifty former inmates were interviewed to determine their perceptions of racism at OSP. These interviews and further studies revealed: (1) that no significant programs existed to deal with racial prejudice and discrimination at the Penitentiary; (2) that some members of the correctional officer force had been guilty of open displays of racial contempt against Blacks, and apparently with the knowledge of prison administrators; (3) that racism among prisoners was further provoked by the total absence of black guards; and, (4) that the Department of Corrections had not used any aggressive recruiting practices to hire more representatives of the black population. While it was impossible to say conclusively that black inmates suffered harsher discipline than Whites, the Commission determined that the possibility of such condition existing should not be overlooked by the Department.³¹

³⁰ Representative Johnson was Bobby Battle's former attorney, and had heard many of Battle's complaints of injustice.

³¹ Preliminary Report of Investigation, Oklahoma Human Rights Commission. Office of the Attorney General, Federal Cases, RG 1-8, Division of Archives, Oklahoma Department of Libraries.

Perhaps the most significant statistical information to come out of the Commission's investigation was that only 6 of 412 OSP employees (1.5 percent) prior to the riot were black. Of these 412 employees, 350 were Corrections Officers (3 of the 6 Blacks were Corrections Officers). Census data for that time period indicated that 6.1 percent of Pittsburg County was Black, and that the unemployment rate among the Black and Indian population was approximately 16.4 percent, compared with 6.2 percent unemployment for Whites. Although the Indian population of the county was lower than the Black population (4.1 percent Indian to 6.1 percent Black), Indians represented a larger percentage of the work force than Blacks at OSP--17.7 percent (73 Indian employees). The Commission reported that discrimination against Blacks existed in the employment of prison personnel. Furthermore, it would seem that the almost total exclusion of Blacks could have a relationship to findings related to discrimination in classification and assignment procedures, thus causing the population to be under-represented in the prison industry. While Blacks comprised 29.5 percent of the prison population, they made up only 14.5 percent of the prison industry work force.³²

Of the 50 former inmates questioned, 84 percent agreed that disciplinary treatment of Blacks was worse than that of Whites; 90 percent said corrections officers treated Blacks more harshly than Whites; 100 percent said that Blacks were referred to as "Niggers"; and 88 percent felt that more black corrections officers would make black inmates feel more secure. Among the Blacks was a sub-population which suffered even worse discrimination than the general Black population--the Nation of

³²Ibid.

Islam (Black Muslims). A total of 74 percent of the interviewees felt that the Black Muslims were treated worse than other Blacks.³³

Other evidence indicates the staff, and at least some of the inmates, were convinced that segregation was necessary because "it conform[ed] to the desires of the inmate population--Black and White."³⁴ That a continued desire for racial "supremacy" still existed among some inmates was apparent by the imaginary line which existed on the yard past which no black inmate dared venture without a guard. Likewise, a white inmate carefully avoided crossing this boundary without good reason and when necessary only with a guard.

Yet not all inmates favored racial segregation. One white inmate participant at the Wilburton Conference commented on residential segregation: "I have a very good [black] friend, . . . Why can't we room in F cell house? I don't see any difference between him and me. He has a number just like me."³⁵ Indeed the integration of the inmate canteen proved that there was more inmate tolerance of racial integration than officials believed. This integration was effected with no racial incidents or disciplinary problems.

In his Memorandum Opinion of May 30, 1974, Judge Bohanon found that "Prior to the . . . riot, the policy and practice . . . was to maintain a prison system segregated by race and by means of which Black inmates were

³³Ibid., p. 7.

³⁴"The View from Wilburton: A Report to the Oklahoma Crime Commission on the Oklahoma Crime and Corrections Workshop of June 23-30, 1972." Archives Division, Oklahoma Department of Libraries, 8-S-16-9, 1972-73, p. 24. Hereafter referred to as "View."

³⁵Ibid., p. 27.

subjected to discriminatory and unequal treatment."³⁶ All areas of the institution were racially segregated--housing, recreation facilities, dining rooms, barber shops, reception center. Upon reception into the prison, inmates were assigned to housing according to race, except in the maximum security units where those under disciplinary punishment were confined to a single cell. Black inmates also faced discrimination in job assignments and were punished more severely and more frequently than were white inmates.

In a policy statement issued by the Department of Corrections on October 20, 1972, department officials declared official policy to be "that all of its correctional facilities would be integrated"³⁷ in order to achieve equal rights and opportunities for all inmates. An operations memorandum issued the same day detailed the procedures to be followed to implement the policy statement. Both documents were found by Judge Bohanon to have been "completely ignored by the Warden at the Oklahoma State Penitentiary . . . [and] racial segregation continued unabated."³⁸

Departmental officials apparently realized that racial segregation and discrimination did not stop at the convict level, and the policy

³⁶Battle, 376 F.Supp. 402, p. 410.

³⁷Ibid., p. 411.

³⁸Ibid. In a document prepared by the Department of Corrections to answer the proposed decree, officials defended their racial practices-- "It is . . . the policy of the Board of Corrections that race will not be a consideration in any assignments to housing, jobs, recreational areas, etc." Officials conceded that a more "definitive policy should be written," but that it was not appropriate to dictate which inmates "team up in recreational games. The Warden would, however, eliminate separate recreational areas. Additionally, in the mess hall, inmates would be seated in the order in which they were served in the line.

statement ordered administrators to begin recruitment of minority employees because of a "need to increase minority personnel at every level" Administrators also were to insure "fair treatment of minority personnel."³⁹

Court Order. Judge Bohanon frequently noted in the Memorandum Opinion that many of his orders were based on conditions before the riot. Following the riot and fire of 1973 all inmates had, for the first time, been lined up in random order and confined to cells without regard for race. The Judge, feeling the time could conceivably come when the former discriminatory practices would again be prevalent, issued his orders based on how things were expected to be after the prison returned to normal following the riot. He ruled that all future housing assignments be made in accordance with a system which ignored the race of the individual and that all inmate requests for transfers from one housing unit to another should be processed without regard for the race of the inmate making the request.⁴⁰

Bohanon further ordered the racial composition of all housing units should approximate that of the inmate population as a whole. The warden was to report quarterly to the Director of the Department of Corrections on a quarterly basis a "detailed justification" for any 10 percent deviation in either direction in the racial composition of housing units.⁴¹ Bohanon issued a similar order regarding the racial composition of inmate job assignments. Officials were to maintain records,

³⁹Battle, 376 F.Supp. 402, p. 411.

⁴⁰Ibid., p. 428.

⁴¹Ibid.

which included the identity of the person making each housing or job assignment in the future. If job promotions were available to inmates, the records should also include the names of all inmates considered for the position and the reasons for selecting the person promoted.

The Judge ordered that affirmative action procedures be formulated and implemented to overcome "the effects of past discrimination in the operation of housing, dining and recreational facilities, job assignments and the disciplinary system."⁴² He ordered the defendants to formulate and submit within a plan within sixty days for the total eradication of any present segregation and other forms of racial discrimination and for precluding "the reinstatement of any discriminatory practices which were in effect prior to [the riot]."⁴³

Disciplinary Confinement and Denial of Due Process

Allegation. Battle v. Anderson alleged that inmates were denied the right of due process when assigned to disciplinary cells prior to a disciplinary hearing as punishment for alleged infractions of rules. The suit further charged that inmates were confined in dark, unventilated and unsanitary cells without means of mental or emotional diversion for prolonged periods.

Supporting Evidence and Findings. A "Manual for the Guidance of Inmates" was reportedly issued to each inmate upon his arrival at Oklahoma State Penitentiary.⁴⁴ In a section titled "Disciplinary

⁴²Ibid., p. 429.

⁴³Ibid.

⁴⁴"Manual for the Guidance of Inmates," Oklahoma Department of Corrections. This undated manual carries the name of Leo E. McCracken, Director of Corrections preceding Director Park A. Anderson. Its

Program," procedures for dealing with disciplinary action against unruly convicts are explained. Following the prescribed procedures, an employee was to submit a misconduct report to his supervisor and notify the inmate in writing of the charges against him. The report would then be investigated and forwarded to the three-member disciplinary committee for processing at the next weekly meeting. The inmate could explain his action and even have a fellow prisoner or an officer present the case for him. The inmate could not, however, cross-examine a witness or be represented by an attorney.

Types of action to be taken by the disciplinary committee ranged from having the case suspended or dismissed or the defendant judged not guilty (in the case of a minor offense), to the more drastic withholding of jail time credits, loss of good time credits, and maximum segregation (for a major offense). Procedures were spelled out in detail for appeal and review of cases. No mention was made at any time, however, of criteria for judging whether one had committed a "minor" offense or a "major" one. No policy existed which limited punishment to specified rules infractions. Some infractions were included in employee manuals, but not in the Inmate Handbook; others were listed nowhere, but were frequently punished. In several instances inmates were punished for violating such unwritten rules as assisting or being assisted by an

periodic "revision" consisted, at least some of the time, in changing the cover from blue to green, printing the new Director's name and Governor's name, and re-issuing the same manual. The purported intent of the Manual was to inform all incoming inmates of rules, regulations, and procedures to be followed. Bearing in mind that many of the convicts were illiterate and others just did not care to read, one might wonder how many inmates ever actually read the manual. Hereafter referred to as "Inmate Manual."

inmate in legal matters--a constitutionally protected activity.⁴⁵ Additionally, no time constraints were placed on the length of the "sentence" to the disciplinary unit. In fact, some inmates received "indefinite" sentences to the various disciplinary units and entered detention not knowing how long their stay would be.⁴⁶

Depositions, letters, and other evidence indicate that the disciplinary hearing and review procedure could take from a day or two to a full week. An inmate who committed a punishable offense on Saturday, for example, could conceivably be held until the following Friday before being given a chance to defend himself against the charges. Meanwhile, what was the accusing officer to do with the alleged offender? Official corrections policy permitted "pre-hearing detention in serious cases only";⁴⁷ but in reality inmates charged with rules violations were automatically confined in segregation prior to a hearing. In many cases, the inmate was locked up in maximum security immediately following the alleged offense. By the time the Committee met the following week, the inmate might have spent several days in a "punishment" area.⁴⁸

The Department of Corrections had published rules governing proceedings at disciplinary hearings; however, these rules did not require that the disciplinary committee consist of disinterested parties. Hearings were frequently held before committees partially comprised of

⁴⁵Battle, 376 F.Supp. 402, p. 411.

⁴⁶Ibid., p. 412.

⁴⁷"Inmate Manual," pp. 9-11.

⁴⁸Battle, 376 F.Supp. 402, p. 412.

the officer who had brought the charge initially or a person who had investigated the charge, hardly impartial judges.

Punishment facilities consisted primarily of "Weed Row," the most frequently used form of institutional punishment; "The Rock," a maximum segregation facility to which a convict might be sentenced for an indefinite period from several months to a few years; and "The Hole," a much feared solitary-confinement cell to which one might be sent for a 72-hour disciplinary period. The usual stay on "Weed Row," which derived its name from the time when gangs were used to cut weeds around the prison, was five weeks. In 1973 inmates worked little, if any; rather they spent time in cells with no reading materials, radios, or other diversions. Canteen purchases were limited to six dollars every two weeks; and inmates were allowed to shave and shower twice weekly,

"The Rock," known officially as maximum segregation, was a lock-up facility intended for inmates accused of major breaches of conduct-- assault on a guard or another inmate, escape, or narcotics charges. "Sentences" ranged from seven to eighteen months or more. Inmates' heads were shaved. Frequent tear gassings occurred in these areas. The only amenities were mattresses placed directly on the floor or on a concrete slab. Cells were rat and roach infested; lighting and ventilation were terribly inadequate. Visitation and correspondence privileges were even more severely limited on "The Rock" than among the general population. Following the riot of 1973, all inmates except those assigned to work details were detained in maximum segregation for almost eleven months. Isolation cells in maximum security were furnished like the other cells, but they were sealed off from the rest of the unit by a small window or "bean hole" which could be closed to isolate the

occupant completely and to seal out all light and ventilation.

"The Hole" was a dank, unlighted, musty area. Located in a sub-basement next to the electric chair and Death Row, these cells were used for 72-hour detention and were stripped of all fixtures except latrines and faucets. Inmates confined here were deprived of food, clothing, bedding, and toiletries. Although Governor David Hall ordered "The Hole" closed in September of 1982, the cells were maintained and remained available "in substantially the same condition as before for future use at any time this or any subsequent administration so decides."⁴⁹

After spending several hours inside "The Hole," Preston Trimble, District Attorney of Cleveland, McLain and Garvin Counties, commented:

The "Hole" is a concrete hole. Only a stool. Drinking water is outside through the bars. Paper cups. Two gallon bucket. The toilet paper is wet. . . . The place stinks of urine. Real prisoners are sentenced for 72 hours. I could learn to live like that. I would hate you."⁵⁰

Inmate George Clark's only visit to "The Hole," occurred during a time when a grand jury investigation had increased pressure on prison officials, forcing guards to write a report each time they used tear gas. A guard became "piqued" during his rounds and discharged a tear gas shell to silence noisy inmates. When his supervisor told him he would have to make a written report, Clark says the guard "picked a cell at random and reported the inmate in residence for rowdy conduct.

⁴⁹Battle, 376 F.Supp. 402, pp. 412-13.

⁵⁰Trimble was one of several people who spent a night on "lock-down" status during the summer of 1972 during the Wilburton Workshop. "View," p. 3.

Unfortunately, he chose [Clark's] cell."⁵¹ On Friday following his 72-hour sentence in "The Hole," Clark was escorted to the weekly institutional court consisting of the Deputy Warden, a Captain, the Classification Officer, and the Chaplain. Clark was advised that he was charged with creating a disturbance and asked how he pled. "I said 'Not guilty.' [The officer] said, 'Well, don't do it again. We are going to let you off this time. Next case.'"⁵² How could Clark be "let off"? He had already served his seventy-two hours in "The Hole." His is one of many stories of ex post facto inmate trials.⁵³

Court Order. In his Memorandum Opinion of May 30, 1974, Judge Bohanon found that the disciplinary system within Oklahoma State Penitentiary failed to meet constitutional requirements "in almost every possible regard."⁵⁴ He believed the best system for discipline was one that was universal and was carefully constructed to deal appropriately but fairly with all types and degrees of infractions which might be committed. He decided, however, to make no effort to prescribe a complete set of rules, or even to set detailed guidelines. He instead ordered the attorneys for the parties--plaintiff, plaintiff-intervenor, and defense--to fashion and submit to the Court a "detailed, comprehensive

⁵¹George Clark, "Insight on the Inside: Oklahoma State Penitentiary Before the Riot," in Hallway, p. 12. Holland Hall School, Tulsa, Oklahoma, August 15, 1973. Clark was the former editor of The Eye Opener. Hereafter referred to as "Insight."

⁵²Ibid.

⁵³These files exist in the various Governor's Collections in the State Department of Libraries and in the Stephen Jones Collection.

⁵⁴Battle, 376 F.Supp. 402, p. 430.

disciplinary system"⁵⁵ within sixty days. The Court's purpose would be to insure that the system agreed upon was constitutional in all respects, yet adequate to fulfill disciplinary needs.

The Judge further ruled that while counsel for parties were constructing a plan, an interim set of rules must be applied: (1) No inmate was to be disciplined except for violation of a written rule. (2) No summary punishment was to be given, although a correctional officer could reprimand or warn an inmate that the continuation of a particular violation could result in a disciplinary charge being filed against him. (3) Inmates were to be given official written notices of charges against them prior to a hearing. (4) No significant disciplinary action was to be taken without a hearing during which the inmate would be allowed to defend himself. (5) The disciplinary committee had to be impartial; no person involved in bringing charges or in investigating those charges was to sit on the committee which would determine the guilt or innocence of the inmate being charged. (6) There was to be no delay in hearing charges against an inmate.

If an inmate were to be sentenced to an indefinite disciplinary term, a panel was to conduct a review of the case on a regular basis. Inmates on disciplinary lockup were not to receive significant additional restrictions or sanctions. The only exception to placing an inmate in pre-hearing detention would be a case in which his presence in the general population posed an actual threat to the institution. In such cases, pre-hearing detention of more than forty-eight hours (seventy-two if a weekend ensued) would be a violation of the Court

⁵⁵Ibid.

Order.⁵⁶

The Memorandum Opinion also dealt with more specific types of discipline and with conditions of confinement which still existed because of the riot and fire ten months earlier. Any future use of the subterranean "Hole" was specifically forbidden.⁵⁷ Judge Bohanon ordered the defendants to submit to the counsel for the plaintiff and the plaintiff-intervenor and to the court within 60 days a proposed set of regulations to govern future use of isolation cells in maximum security. These regulations were to detail conditions and treatment to be provided inmates, and a maximum time limit for such confinement. A statement from medical authorities indicating that such confinement would not constitute unusual physical or psychological risk was to accompany the set of regulations.⁵⁸

The Judge also ordered that all inmates of the Penitentiary who had been on 24-hour lockdown for the ten months following the riot be "afforded a reasonable time" outside their cells on a daily basis for exercise and recreation.⁵⁹ This was to start within ten days from the date of the Court Order. Additionally, within sixty days of the order, an expert in nutrition was to conduct a study of the diet furnished inmates. The study was also to address the issue of providing Muslim

⁵⁶Ibid.

⁵⁷Bohanon felt strongly that keeping this isolation area in its original condition was perhaps an invitation for a future administration to resume its use as a disciplinary measure. Battle, 376 F. Supp. 402, p. 431.

⁵⁸Ibid., p. 432.

⁵⁹Chapter III, in dealing with post-riot problems, details reaction to this order and the resulting resignation of the Acting Warden.

inmates with meals containing no items prepared with pork or pork by-products, in accordance with their religious beliefs.

Use of Chemical Agents

Allegation. Battle charged that the use of chemical agents as punitive rather than as control devices was cruel and unusual punishment, and that prison officials randomly used chemical agents, such as tear gas and mace, to demonstrate their control over inmates.

Supporting Evidence and Findings. In January of 1973, the Department of Corrections issued an official directive⁶⁰ regarding the use of force in dealing with inmates, including the use of chemical agents. This policy dictated that only reasonable and necessary force should be used against an inmate. Gas was to be used only to prevent serious injury or loss of life. Seven increments of force were listed in the statement, with "use of chemical agents" ranked fifth in priority.⁶¹

Despite these directives, chemical agents continued to be used as a punitive measure for behavior such as "loud singing in cells, refusing to get haircuts or to shave, possession of contraband (instant coffee), destruction of state property (breaking of plastic spoons)."⁶² Gassing Reports, even after the issuance of the order, include documentation of

⁶⁰Policy Statement 7302.1, Oklahoma Department of Corrections, January 4, 1973.

⁶¹Ibid. Priorities of force were (1) physical restraint; (2) show of force; (3) use of physical force other than weapons fire; (4) use of high pressure water; (5) use of chemical agents; (6) fire by selected marksmen; and, (7) use of full fire power. No one priority of force was to be enlisted without first using a lower numbered one.

⁶²Battle, 376 F.Supp. 402, p. 414.

such incidents as could hardly constitute an immediate threat to life or property, despite the limiting directive from the Department of Corrections⁶³ Ironically, Judge Bohanon's order to halt inmate gassings came on May 30, 1974, just one week after Governor Hall had banned gassings following the May 23 death of inmate Robert B. Forsythe as a result of a gassing incident.⁶⁴

Chemical agents characteristically affected individuals other than those for whom they were specifically intended. Quite frequently inmates in cells adjacent to the person against whom the gas was directed also suffered drastically as the gas obeyed natural law and spread itself evenly in the available volume of air.

Court Orders. Finding that prison officials had routinely received reports of the "improper use of chemical agents [but] failed and refused to take any corrective action,"⁶⁵ Judge Bohanon ordered the cessation of unjustified use of chemical agents in any manner other than authorized by the January 4, 1973, policy statement from the Department of Corrections. While he did not totally prohibit use of chemical agents, he did

⁶³The following excerpts from the "Gassing Reports" indicate the apparent indiscriminate nature of the use of this form of punishment. "Inmate subject started yelling out of his cell, calling a patrolman a pig and cussing the trooper. [The officer] . . . after warning [the inmate] several times to stop the disturbances, then shot inmate subject with a .12-gauge tear gas gun to stop the disturbances." "Gas Reports" 1-12-74. Office of the Attorney General, Federal Cases, RG 1-8. State Archives Division, Oklahoma Department of Libraries. "Inmates . . . started hollering and rattling the doors of their cells. A total of seven .12-gauge shots was required in order to quell the disturbance." "Gas Reports," 12-31-73. An inmate in Maximum Segregation was maced "for causing a disturbance and refusing to clean cell up. Also he was banging his cell door." "Gas Reports," 2-14-73. See also Battle, 376 F. Supp. 402, p. 433.

⁶⁴Further details of this incident are given in Chapter III.

⁶⁵Battle, 376 F. Supp. 402, p. 415.

set stringent guidelines for their use. Gas or mace might be used in a case in which an actual and imminent threat of death or bodily harm was present; to quell a riot or a threatened riot involving large numbers of inmates; or to thwart an attempted escape. When chemicals were used, innocent inmates in close proximity to the incident were to be protected as much as possible. Gas and mace could no longer be used to enforce silence or other rules or regulations of the penitentiary. No longer was "shaking the cell doors" a legitimate excuse, as long as the doors remained secure.⁶⁶ Such types of rules infractions were to be processed through the disciplinary system with due process safeguards. When chemical agents were justifiably used, a report was to be presented by the Warden to the Director, with copies to all attorneys of record in the case, within three days of the incident. The Judge made it clear that he was not condemning the use of chemical agents in justified situations, "but where reasonable men might differ on the kind or degree of necessary force."⁶⁷

Inadequate Medical and Dental Care

Allegation. The Plaintiff charged that medical care was inadequate to meet health care needs and in violation of prohibition against cruel and unusual punishment.

Supporting Evidence and Findings. Health care facilities prior to the riot were almost nonexistent. One physician from McAlester was paid

⁶⁶Department of Corrections Point Papers, Proposed Decree, Battle v. Anderson, 72-95, May 1974. "When inmates start a vociferous, door-shaking confrontation, it forms the catalyst for a general disorder of this same sort." The implications are that conditions become unsafe under such conditions.

⁶⁷Battle, 376 F.Supp. 402, p. 433-34.

to come into the prison one-half day each week to serve as the Chief Medical Officer. Two other doctors, with only institutional licenses, were on the staff. These individuals were not licensed to practice independently in Oklahoma, but only under the supervision of a fully licensed physician. When an inmate was sent to the reception center, he was routinely given a "physical" by an inmate medic who frequently listed only a description of the convict and any peculiar identifying characteristics--scars, tattoos, physical abnormalities.⁶⁸ Many other "medical" administrations were performed by "unlicensed, untrained, and unqualified correctional officers . . . as well as inmate personnel."⁶⁹ Such unlicensed individuals also screened medical complaints to determine which inmates were to be allowed to see a physician and receive medical treatment. Thus, many such privileges could be purchased for a price from inmate personnel. The inadequacy of the medical facilities was bad enough to be thought to pose an actual and potential threat to the physical health and well-being of the inmate population;⁷⁰ and if this were true for routine medical treatment, one can only imagine the problems which might exist in the case of a medical emergency.

Dental care was equally as inadequate as medical care, with the most common type of "treatment" being an extraction in cases of extreme discomfort. Even this level of care was performed by a series of part-time dentists until July of 1973, when a full-time dentist was hired.

⁶⁸"View," p. 31; Battle, 376 F.Supp. 402, p. 415; "1973 'Big Mac' Sparks Decade-Long Building Binge," in "Riot to Riches." Reprinted from Tulsa Tribune series, July 1983.

⁶⁹Battle, 376 F.Supp. 402, p. 416.

⁷⁰Ibid.

No trained support personnel were available to assist him. His equipment was old and outdated, and he did well just to handle emergency dental work. Dr. David Matthews, in a deposition for the Battle case, was questioned about such procedures as root canal work. He testified that extraction was the typical therapy used rather than root canal work, because "Warden Anderson felt there was so much other emergency work there was no time to be offered for that type of specialized dental care. [Also] . . . no equipment was provided by the institution" for root canal work. Dr. Matthews testified further that Warden Anderson had told him on the first day he worked at the prison (February 1972) that it was an "institutional policy that [an inmate] have at least a twenty-year sentence before he be allowed to have a filling." While Matthews admitted that he had never seen this policy in writing, he was sure that "if it is institutional policy, it must exist somewhere in written form."⁷¹ He indicated that he did not always abide by that policy and that he did work on many people with less than a twenty-year sentence.

Almost half of the average "in-patient population at the Penitentiary [was] hospitalized for psychiatric reasons"; yet, the only professional psychiatric assistance available was a weekly visit by a visiting psychiatrist. The most common "treatment" offered temporary relief for the psychological distress through sedation.⁷² The reporter

⁷¹Deposition of Dr. David Matthews, December 19, 1973, Division of Archives, Oklahoma State Department of Libraries, Office of the Attorney General, Federal Cases RG 1-8, pp. 16-17.

⁷²Battle, 376 F.Supp. 402, p. 415. Also, personal interview with Dr. Irwin Hall, Chief Psychologist, Department of Corrections, July 20, 1983. Hereafter referred to as "Dr. Hall."

who transcribed the proceedings of the 1972 Wilburton Workshop indicated that during his visit to the McAlester yard, he encountered several inmates who had "clearly undergone severe psychotic breaks, but who were neither transferred nor segregated from the general prison population to receive any special attention."⁷³ Inmate George Clark, editor of The Eye Opener, wrote that a significant number of "psychopathic personalities" were incarcerated in the prison.

When a disturbed inmate "shorts out," he is sent to the N-P [neuro-psychiatric] ward, given thorazine (a depressant) until he settles down, and then is returned to the population. . . . I know of an inmate who regularly "drifted off," completely out of touch. He spent his sentence shuffling back and forth between the N-P ward and the yard. The day he was discharged, he was brought from the ward--still spaced out--given a suit of khakis, \$25, and a bus ticket to his home town and sent back to society. Rehabilitated and cured, one supposed.⁷⁴

Court Orders. Judge Bohanon ruled that the deficiencies in the medical and dental area had posed and continued to pose a threat to inmate health and physical well-being. He ordered the Department of Corrections to formulate a comprehensive plan to provide adequate routine and emergency medical care (including psychiatric care) for all inmates. The plan was to include an in-patient medical facility and was to comply in all areas with the regulations of the Oklahoma State Department of Health. Staffing provisions for the facility were to include 24-hour-a-day nursing care, a full-time Chief Medical Officer; a full-time doctor, or its equivalent; adequate medical support staff, dental and dental support staff, and a staff member to be responsible for insuring adequate psychiatric care was provided to inmates. Until

⁷³"View," p. 35.

⁷⁴ "Insight," p. 4.

the plan was formulated, Bohanon ordered that each inmate who reported to sick call be seen by a fully-qualified medical doctor or health paraprofessional. No longer could an untrained inmate or staff member prohibit an inmate from going on sick call.⁷⁵

Mail Censorship and Limitations on Publications

Allegation. Battle alleged that the practice of censoring inmates' incoming and outgoing mail and the restriction of privileged correspondence with attorneys, courts, and governmental agencies was a violation of his civil rights. The suit alleged, furthermore, that restrictions on free flow of information to inmates in the form of general circulation newspapers and magazines was a violation of the First Amendment rights of inmates.

Supporting Evidence and Findings. For many years convicts had been severely limited on the amount and types of mail they could send or receive. The "Manual for Guidance of Inmates" stated that restrictions would not be placed on the number of letters to and from authorized correspondents, "except as necessary for security and control, prevention of unreasonable excesses, or to prevent delays in processing mail."⁷⁶ In actual practice, however, personal correspondence was limited to a list of five immediate family members,⁷⁷ and these individuals had to be approved by the Classification Office. Certain restrictions were placed on the individuals with whom an inmate could

⁷⁵Battle, 376 F.Supp. 402, p. 4.

⁷⁶"Manual," p. 7.

⁷⁷Battle, 376 F.Supp. 402, p. 417

correspond. He was prohibited from corresponding with former inmates or family members of current inmates. The inmate was permitted, according to the Manual, to correspond with members of his immediate family who were confined in another state penal institution, if approved by both wardens. A correspondence file in the Stephen Jones Collection contains numerous letters, birthday cards, and Christmas cards from Bobby Battle's wife, which were denied to Battle because his wife, who was an inmate at the Women's Facility in McAlester, was not on his list of "approved" correspondents.⁷⁸ In another related incident, in February of 1972, Bobby requested that his sister-in-law be added to his visitation and correspondence list so he could ask her to bring his daughter to see him the next time she visited his wife. The request was denied on March 6, 1972, with the comment that "Another person on your approved visiting list may bring your daughter to visit."⁷⁹

While only inspection was specified by institutional policy, reading was not clearly prohibited. Routine reading of mail was indeed practiced for the purpose of discovering and rejecting mail containing "gossip" and "improper language."⁸⁰ Battle's files also contain letters from relatives regarding his or their personal lives. These letters were refused as containing too much "gossip."⁸¹

⁷⁸Bobby Battle's correspondence file, in Stephen Jones Collection, Western History Collection, University of Oklahoma, Box 3.

⁷⁹Ibid.

⁸⁰Battle, 376 F.Supp. 402, p. 418.

⁸¹Bobby Battle's correspondence file, in Stephen Jones Collection, Western History Collection, University of Oklahoma, Box 3.

Delay of legal mail was a particularly trying problem. During a deposition of Deputy Warden Harold Wilson, the deposing attorney queried Mr. Wilson about two letters from him to one of his inmate clients, a Mr. Jones. Attorney Fred Gilbert had mailed Jones two letters dated November 23. While he was at the prison on December 10, Gilbert discovered that these letters had not been delivered to the inmate. When the attorney asked about the letters, Wilson went into his office, found them on his desk, and gave them to Mr. Gilbert to deliver to the client. When questioned about their late delivery, the Deputy Warden indicated that he was just too busy to do all the logging of incoming and outgoing legal mail and "it couldn't go anywhere without my signature on it."⁸² That the letters were opened and out of their envelopes when they were handed to Attorney Gilbert was a clear indication that the privileged nature of the attorney/client relationship was being virtually ignored. Wilson indicated that the opening was an institutional policy, although he was not certain of its reason.

Judge Bohanon cited a Department of Corrections document dated February 2, 1973, in which the defendants purportedly recognized a need for a limited amount of freedom of privileged correspondence. The Judge observed that the defendants had never fully implemented their policy decision regarding privileged correspondence; in fact, such continued to be "opened, read, copied, recorded, and/or rejected."⁸³ Another barrier to the confidentiality of privileged correspondence was a failure to

⁸²Deposition of Deputy Warden Harold Wilson, Office of the Attorney General, Federal Cases, RG 1-8, Division of Archives, Oklahoma Department of Libraries.

⁸³Battle, 376 F.Supp. 402, p. 418.

provide notary services in certain secured areas of the institution. Legal documents emanating from those areas of the prison could not be sealed by the inmates, as they were required to submit the documents for notarizing, and that notarizing was done outside the presence of the inmate who signed the document.⁸⁴

Another point of contention regarding mail service was frequent delays of legal mail. A letter from Attorney A. Visanio Johnson to Bobby Battle indicated that Battle's last letter to Johnson was dated September 6; however, Mr. Johnson did not receive it until September 27. His comment was "Apparently the prison officials are not relaying your information to this office immediately."⁸⁵ Ironically, Mr. Johnson's reply, dated October 14, was not received by Battle until October 26. Another letter dated September 23, 1971, reached Battle on October 4, 1971.⁸⁶ Battle also felt that his outgoing legal correspondence was unduly delayed. In a letter from Battle to Warden Ray Page,⁸⁷ as far back as 1970, Battle indicated that he had sent legal correspondence by "Certified Mail" but had not received a return receipt. Correspondence files also contain a letter from the National Law Office in Washington, referring to Battle's previous inquiry on inmates' rights. The writer

⁸⁴Ibid.

⁸⁵A. Visanio Johnson to Bobby Battle, October 14, 1971, in Stephen Jones Collection, Western History Collection, University of Oklahoma, Box 7.

⁸⁶Bobby Battle correspondence file, Stephen Jones Collection, Western History Collection, University of Oklahoma, Box 3.

⁸⁷Bobby Battle to Warden Ray Page, January 6, 1970, in Stephen Jones Collection, Western History Collection, University of Oklahoma, Box 7.

thanked him for his request and told him to write to: [The name and address had been removed with a razor blade!]⁸⁸

In addition to the restrictions placed on correspondence, inmates were allowed to receive only such periodicals as appeared on the "approved periodical list." Such list did not exist in reality; determinations were made on a case-by-case basis by penitentiary personnel, and with absolutely no standards or procedures.⁸⁹

Court Orders. Judge Bohanon ruled that any restriction of privileged mail was a violation of the First Amendment rights of inmates and that the confidentiality of any inmate's outgoing correspondence to a legal entity--court, attorney, or government official or agency--should be protected.⁹⁰ All incoming correspondence from these sources was permitted to be inspected for contraband, but only in the presence of the inmate to whom it was addressed. Its delivery to the inmate addressee, furthermore, was not to be delayed.

Regarding other inmate correspondence, the Judge approved of what he termed "recent, significant improvements" in Department of Corrections policies.⁹¹ He stipulated, however, that the defendants should submit modifications of the existing policies regarding inmate

⁸⁸Bobby Battle correspondence file, Stephen Jones Collection, Western History Collection, University of Oklahoma, Box 3.

⁸⁹Battle, 376 F.Supp. 402, p. 29. Department of Corrections officials felt they should have the right to determine which publications and newspapers would be allowed, as "it is an established fact that numerous 'underground' newspapers and periodicals are published by organizations of questionable ethics and have no place in an institutionalized society." DOC Point Paper, Proposed Decree, p. 7.

⁹⁰Battle, 476 F.Supp. 402, p. 416.

⁹¹Ibid., pp. 434-35.

correspondence within sixty days. These revised policies should indicate that no inmate would be subjected to any "arbitrary limitations" on the number of approved correspondents or their identities.⁹²

The Department was given sixty days to devise a plan for the Court's approval regarding general circulation publications. The plan was to include all rules with which the inmate should comply to subscribe to any newspaper or magazine. The decision to exclude any publication was allowable only as required by the "needs of security, good order, or rehabilitation."⁹³ Any such decision was to be made by the Warden or Deputy Warden in compliance with the applicable court order. The decision to exclude any publication was to be made solely on the basis of the content of the specific publication, and the Warden was to prepare a detailed statement as to why a specific publication was excluded.

Denial of Freedom of Religion

Allegation. Battle v. Anderson alleged that inmates, especially those of those of the Muslim faith,⁹⁴ were denied the right to gather for corporate religious services. Further, the suit alleged that inmates who could not eat pork because of their Muslim faith, were not provided with pork free meals, another denial of their civil rights. Members of the Muslim sect at the institution also complained that their religious principles had been offended by their integration with the

⁹²Ibid., p. 435.

⁹³Ibid.

⁹⁴Native American Indians later alleged religious discrimination, demanding beads and gourds for use in religious ceremonies and permission for a "medicine man" to perform the ceremonies.

non-Muslim population.

Supporting Evidence and Findings. Catholic and Protestant inmates at the institution had, until the riot, been afforded opportunities to gather for group services. The penitentiary compound had a chapel in which these services could be conducted. A Catholic priest was a regular employee, and Protestant ministers were available to conduct group services or individual religious counseling on a limited basis. The Muslim inmates, however, were denied any opportunity to gather for group religious services.

Because the Muslim inmates' beliefs prohibited eating any form of pork, they frequently refused to eat the food; thus, their diet contained inadequate protein. Pork was one of the many food products produced on the premises of the prison. As a result many meals within the penitentiary were prepared with pork or pork by-products, or seasoned with pork drippings. In its natural state, pork was easily recognized; however, those foods which were seasoned with pork were frequently more difficult to detect. To the demand for pork-free meals, corrections officials answered that they would do their best to provide food items complimentary with the Muslim diet, but could hardly visualize a separate dietary program for such a small number of inmates. Adding that they were sympathetic with the Muslim group, officials suggested that these people seek dispensation from the head of their religious order to eat what was provided them.⁹⁵

Further restrictions placed primarily on the Muslim population included the prohibition of various Muslim publications, among them Elijah

⁹⁵Point Papers, Proposed Decree, p. 7.

Muhammad Speaks and The Message to the Black Man in America. These were specifically prohibited by a departmental policy statement dated April 25, 1968,⁹⁶ which included no factual justification for the exclusion of the publications.

Why, or for how long, Muslims in particular had been denied religious freedom is unclear; one might consider the location of McAlester in an area commonly referred to as the "buckle of the Bible Belt," as a factor.

Court Orders. The Court ordered the defendant to cease interfering with provisions for spiritual counseling and group religious services for all inmates and all religious groups. Inmates were to be notified immediately that they were allowed to subscribe to and receive religious publications, unless such publication clearly presented a "threat to security, discipline and good order within the institution that cannot otherwise be overcome."⁹⁷ The Muslim inmates were to be allowed immediately to subscribe to the two previously prohibited publications. Furthermore, they were to be advised of any food item which contained pork or pork by-products. The defendant was further ordered to devise a plan within sixty days which would provide for religious counseling and group services for all inmates, regardless of religious belief.

Official Reaction to Court Orders

While they chose not to appeal the case, state officials were definitely taken by surprise when Judge Bohanon set himself up as a "watchdog" of the prison system and injected himself so deeply into the

⁹⁶Ibid., p. 419.

⁹⁷Ibid., p. 436.

daily operations of the system. Officials had contended for years that they had no funds to run the prison as they would have liked to do. Bohanon, however, indicated that a lack of funds would no longer be an acceptable excuse for not complying with his directives.

For several days, officials declined to comment on the court orders until the Board of Corrections, in a statement issued by Chairman Irvine Ungerman on June 4, indicated that the Judge's orders would be complied with "as closely as possible."⁹⁸ The highest priority, according to Ungerman, would be providing a reasonable amount of exercise for the prison inmates who had been on lockdown status for ten months since the riot. The Board indicated, however, that it would be impossible to comply with the order for daily exercise, religious services, and medical care within the short period of time the Judge had allowed. Acting Warden Sam Johnston indicated it would require at least 60 to 120 days to fence the exercise areas before he could offer daily exercise for inmates. Judge Bohanon replied that he could put up the fences himself within forty-eight to seventy-two hours.⁹⁹ Ungerman also reported that it would be 120 days before the chapel could be rebuilt to provide religious services for inmates. Furthermore, it would be about eight months before medical facilities could be upgraded to comply with Bohanon's orders. There would be no refusal to cooperate in any way; but time and financial constraints made immediate compliance impossible.¹⁰⁰

⁹⁸"Prison Officials to Obey Some Orders from Judge," in Tulsa World, June 4, 1974.

⁹⁹Ibid.

¹⁰⁰Ibid.

Efforts to Comply With Court Orders

During the next few months, efforts were made through the Department of Corrections to comply with the Judge's orders, at least on paper. On June 6 a policy statement was issued allowing all convicted felons to "own, receive, and possess legal periodicals, law books, and other legal reference materials published for the use and/or edification of those with an interest in the affairs of the judiciary."¹⁰¹

Later that summer officials issued a policy statement covering general circulation publications and correspondence, permitting inmates

. . . to enter subscriptions directly to the publisher for any general circulation publication . . . available to the citizens of the free world. . . [A] decision to exclude a publication(s) should not be made except as required in the maintenance of good order; . . .¹⁰²

Another policy statement granted each inmate "unrestricted correspondence privileges in accordance with certain guidelines."¹⁰³ Among these guidelines were the provision that all outgoing mail could be sealed by the inmate and would not be inspected; incoming general correspondence would be opened and checked for contraband, but not read or censored in any way; and outgoing legal mail could be sealed and placed in a special box by the inmate, and would be logged by corrections officials.

¹⁰¹Policy Statement 8100.1, Department of Corrections, June 6, 1974, p. 1. For some years, all institutions would not have complete sets of law books. An anonymous source told of going into various institutions, examining the law books on the shelves, and "marking" a few so that he could check the theory that they might have been moved from one institution to another. Surely enough, a few weeks later, he was in another institution, checked the same volumes, and discovered his identifying "mark" in the books. It is believed that this practice has stopped and that each institution has its own set of legal reference materials now. Personal interview, July 19, 1983.

¹⁰²Policy Statement 8000.2, Department of Corrections, July 12, 1974.

¹⁰³Policy Statement 8000.3, Department of Corrections, July 17, 1974.

Incoming legal mail would be opened only in the presence of the inmate, checked for enclosures, then given to the inmate.

The Department also issued policy statements to address other aspects of the Judge's court order, and officials felt that this was at least a beginning of compliance. Attorney Quintan Sheay, Attorney for the United States Department of Justice contended that while policy statements had been prepared to comply with the court orders, this was not a case of dealing with the constitutionality of policy statements, but with "the constitutionality of day-to-day conditions at Oklahoma State Penitentiary."¹⁰⁴

Hearings--May 1974 May 1977

During the next few years, evidentiary and compliance hearings were held about every six months to keep the Court informed of progress. Judge Bohanon was, for the most part, complimentary of the Department's efforts to comply with his orders. With a few exceptions Bohanon found the state to have made significant progress in the areas outlined in the May 1977 order. One notable exception was the area of medical care, in which he found the defendants not in compliance. On May 30, 1974, defendants were ordered to submit a comprehensive medical plan within sixty days. A first draft outline for a medical plan was presented on October 15, 1976, but apparently never completed. Once again Bohanon directed corrections officials to present a medical plan within sixty days.¹⁰⁵

¹⁰⁴Battle v Anderson, Proceedings of Compliance Hearing, October 21, 1974, pp. 4-5.

¹⁰⁵The second order for a medical plan was issued on May 24, 1977.

Other significant instances of non-compliance occurred in October 1974 and in April 1975, when defendants were found by Judge Bohanon to be "interfering with Plaintiff and Plaintiff-Intervenor's access rights to the Department."¹⁰⁶

Most rulings coming out of the hearings were relatively insignificant, placing only minor hardships on the system to bring it into compliance. Two years after the original court order, however, principles in the case experienced a foreshadowing of significant issue. In hearings held on May 4, 1976, and October 14-15, 1976, the plaintiff and plaintiff-intervenors presented evidence about a previously unaddressed problem in the prison system--the problem of overcrowding. While Judge Bohanon did not issue any orders at these hearings, he did indicate that population levels and conditions were intolerable and that he would consider issuing an injunction against the state if the problem were not solved. The failure to address this problem adequately would haunt corrections officials in the form of additional court decisions for many years.¹⁰⁷

¹⁰⁶Battle v. Anderson, 447 F.Supp. 516 (1977), p. 517.

¹⁰⁷In order to maintain the chronological integrity of the study, three additional significant Battle decisions will be discussed in chapters dealing with the respective governors who were in office at the time of the court orders. These will include the May 1977 order, in which double-celling was forbidden and square footage requirements for residential space were specified (Boren administration); the December 1981 decision, in which double-celling was permitted, but with a fine assessed at \$1000 per day (Nigh administration); and December 1983. the final hearing in which Judge Bohanon removed himself from the case (Nigh administration.)

CHAPTER III

RIOT AND FIRE OF 1973

Violence is essentially wordless, and it can begin only where thought and rational communication have broken down.

--Thomas Merton

State and local newspaper headlines heralded the hottest national issues throughout the late spring and early summer of 1973, Watergate and the energy crisis: "Nixon Refuses to Release Whitehouse Tapes," "Alternate-Day Gasoline Rationing Begins." Late in July, however, Oklahoma's newspapers turned to events in progress much closer to home--the riot and fire at Oklahoma State Penitentiary in McAlester. In the sweltering afternoon heat of July 27, 1973, convict tempers smouldered then burst into flames, flames which would literally spread throughout the buildings around the "Big Mac" compound.

The changes brought by one weekend of violence did more to alter the penal system than any other single event in the history of state corrections. Three inmates were dead; twenty-four buildings were severely damaged or totally destroyed, with total damage estimated at \$20 million to \$30 million.¹

¹"1973 'Big Mac' Riot Sparks Decade-Long Building Binge," in "Riot to Riches." Reprinted from a Tulsa Tribune series, 1983.

Conditions Preceding the Riot

What conditions led to this most costly devastation? The answer is as multi-faceted and as complex as the people who have been asked the question are numerous. Depending on the perspective of the individual--inmate, prison employee, or state official--the opinions vary. Yet one inmate noted "how officials viewed the prison made little difference in the end. Whether the average inmate's way of looking at things was accurate has little importance. This was the way inmates believed things to be. To them, these were the realities."²

Despite the filing of Battle v. Anderson³ the previous year, the system still had many real or perceived inadequacies. Mail was severely limited and censored. Visitation was limited to two hours each month, with prisoners and visitors cramped elbow-to-elbow in a "stifling sweat box"⁴ with thirty or forty other inmates, all straining to keep their conversations private. Inequities in prison sentences for the same or similar crimes was a severe point of contention. It was not unusual for one inmate to be serving twenty-five, thirty, or fifty years while another might be serving one, two, or five years for the same crime. Overcrowding was an ever-present problem. OSP, built in 1908 to house 1,100 prisoners, held almost double that number in July 1973. Although racial segregation had been "banned" the previous year, it was still

²George Clark, "Insight on the Inside: Oklahoma State Penitentiary Before the Riot," in Hallway, Tulsa, Oklahoma: Holland Hall School, August 15, 1973. Hereafter referred to as "Insight."

³The federal law suit was filed in 1972, but did not go to court until 1974. Battle v. Anderson, et al. 376 F.Supp. 402 (1974). See Chapter II for details of federal suit. Hereafter referred to as Battle, 376 F.Supp. 402.

⁴"Insight."

being enforced by "boss" inmates, if not by the guards themselves. Add to these factors widespread idleness because of a shortage of jobs, little or no training for prison guards, severely inadequate health care facilities, race riots, food strikes, tear gassings, and the officials' alleged "failure to communicate."⁵ with prisoners; and one insignificant spark was all that was needed to start the holocaust.

Possible Causes for Uprising

In retrospect, it is clear that the problems had been brewing for several months, or maybe even for a few years. Ironically, the uprising occurred at the time when conditions for reform were the most promising of the system's entire history. People close to the scene believe that those "promises" may have been at least one factor contributing to the unrest. Only two months before the riots, the Oklahoma State Legislature had approved the largest appropriation for prisons in the state's history--\$9,387,993, an increase of 57 percent over the previous year's budget. While the fires burned, Governor David Hall commented that "all the initiative taken by the legislature and the people of Oklahoma is being destroyed by the inmates."⁶

Overcrowding. Oklahoma State Penitentiary, with a capacity for about 1,100 inmates, had a population of almost 2,200 in the summer of 1973. Of this number, 1,706 were behind the walls, and the remaining inmates were in the trusty unit outside the walls. One of the only two major penal institutions in the State, OSP had suffered from

⁵"Insight," p. 2.

⁶"It Was a Long, Long Night for Hall," Tulsa Tribune, July 28, 1973.

overcrowding for several years. The reasons for the increase in Oklahoma's prison population are speculative. The 1969 Annual Report noted that the most significant feature of that year was the continued increase in inmate population. The report attributed this increase to several factors, among them a tendency in some jurisdictions in Oklahoma to impose longer sentences, upgraded probation services that increased the possibilities of return to prison for those who broke the conditions of their probation, and more stringent parole requirements which placed increased stress upon productive accomplishments as a basis for consideration for parole. The refusal of Governor David Hall to sign parole recommendations for drug offenders or those convicted of a violent crime may have been a contributing factor. Not coincidentally, the increase in drug abuse throughout the country had also affected Oklahoma's prison population. The net effect was a larger inmate population than at any time since the years immediately following World War II. Whatever the reasons, population at OSP had increased from 2,905 to 3,940 since the creation of the Department of Corrections in 1967.⁷

Various groups and individuals had attempted to bring the overcrowding to the attention of corrections officials, legislators, and the public in 1972. That summer, the Oklahoma Crime Commission conducted an eight-day workshop--the Wilburton Workshop--to provide a coordinated look at the criminal justice system in Oklahoma by "dispensers of justice, the administrators of justice, and the ultimate consumers of

⁷Annual Report, Department of Corrections, 1969, p. 21.

justice."⁸ Invitations were issued to various interest groups--representatives of local police departments, Oklahoma State Highway Patrol, district attorneys, defense attorneys, judges, probation and parole officers, corrections officials, and legislators--to come together and study the criminal justice system in the state of Oklahoma. Two of these interest groups were conspicuously absent: No defense attorneys accepted the invitation to attend the workshop; furthermore, only one state senator, and not a single representative attended.⁹

One of the findings of this group was that "manifest overcrowding [was] a real grievance."¹⁰ Inmate George Clark described the problem most graphically:

McAlester is badly overcrowded. It is a seething rabbit warren of compressed humanity. On any given day, the yard is packed with inmates jostling, squirming, dodging one another, looking for a space to talk or drink a coke or just get a breath of fresh air.¹¹

It would seem that inmates at McAlester that summer were consciously or unconsciously rushing toward disaster, much as lemmings instinctively rush to the sea as a form of population control.

OSP Security Personnel. For many years before the passage of the Oklahoma Corrections Act of 1967, the hiring of corrections officers was

⁸"The View from Wilburton: A Report to the Oklahoma Crime Commission on the Oklahoma Crime and Corrections Workshop of June 23-30, 1972," p. 3. Division of Archives, Oklahoma Department of Libraries, Hereafter referred to as "View."

⁹Senator John McCune was the only state senator present. Personal interview with John Grider, Deputy Director of Department of Corrections. June 4, 1985. Hereafter referred to as "Grider." Also see "View," p. 5.

¹⁰"Ibid., p. 30.

¹¹"Insight," p. 1.

controlled by political patronage. When the rest of the state's employees were placed under the Merit System, prison employees were exempted from the revised hiring practices. It was not until the passage of the Corrections Act of 1967 that minimum employment standards were set. Even then some employees were retained who did not meet these standards. Salaries were low--\$390 a month on the average. Local zoo keepers made \$450 per month.¹² Both the educational level and I.Q. level of guards fell far below the same averages among the "new breed" of convict. A consultant for American Correction Association referred to the guards as "functionally illiterate, or nearly so."¹³

These undereducated, untrained, unskilled individuals had long resorted to clubbings, beatings, and gassings in an effort to control obstinate inmates. Even the slightest infraction of a rule--written or unwritten--was enough to precipitate a mace attack. A more severe infraction was punishable by a 72-hour lockup in "The Hole," before that hideous disciplinary unit was closed by Governor David Hall in September of 1972.¹⁴ Guards rarely had to answer for such cruel punishments; but in 1973 even the guards began to feel that their power was being eroded. "The Hole" was closed, a slight degree of control was placed on indiscriminate macings and tear gassings, and guards felt threatened by inmates whom they could no longer intimidate.

¹²Personal interview with Dr. Irwin Hall, Chief Psychologist, Department of Corrections, July 20, 1983. Hereafter referred to as "Dr. Hall."

¹³"Riot to Riches," p. 3.

¹⁴"View," p. 1.

In addition to being undereducated, ill trained, and unskilled, the security staff was also severely inadequate in number. The existing staff was at least thirty to thirty-five percent fewer than the number required to maintain adequate supervision and control. The monthly turnover rate was eight to nine percent, particularly among lower echelon security personnel.¹⁵

The violence within McAlester was alarming. From January 1970 until the riot and fire of July 27, 1973, records show nineteen violent deaths, forty stabbings, and forty-four serious beatings of inmates. Much of this violence was attributed to the severe shortage of convict supervision. Frequently only one guard was assigned to an entire cell-house, or maybe only one or two guards to control the entire general population on the prison yard.¹⁶

More Causes of Discontent. Continued racial segregation and discrimination, censorship and restriction of mail, inadequate health care, unsanitary and unappetizing food preparation, and temperatures above 100 degrees were factors which contributed either directly or indirectly to unrest at OSP immediately preceding the riot. Inmate idleness worsened boredom and inactivity. For every available job, at least six convicts waited to be assigned. Theoretically, every able-bodied inmate had a job to which he was assigned for at least a part of the day, but Deputy Warden Sam Johnston admitted that most of the jobs were "busy work."¹⁷

¹⁵Battle, 376 F.Supp. 402, p. 410.

¹⁶Ibid.

¹⁷"Our Failing Prisons: Costly in Every Way." Reprinted from a Tulsa Tribune series, January 10-17, 1973, p. 1. Hereafter referred to as "Our Failing Prisons."

Idleness caused many of the convicts' to be assigned to the yard where additional problems were spawned. Narcotics traffic and beer making were commonplace, according to inmate George Clark. Gambling, loan sharking, and power plays of "convict bosses" became a vicious circle. While gambling was illegal and money was prohibited, gamblers used matchsticks or talley sheets to keep track of winners and losers. Gambling debts were payable either with cash (frequently smuggled in by visitors) or coupons which were redeemable at the canteen. Those who could not pay quickly became victims of loan sharks whose interest rates were reputedly 50 to 100 percent per month--"borrow \$1.00, pay back \$1.50 two weeks later."¹⁸ Further failure to pay frequently resulted in serious problems. Inmates would beg, borrow, or steal just to pay interest on their loans, a practice which frequently resulted in assaults, rapes, and even murders. The convict bosses who "owned" the gaming tables had from 50 to 150 inmates in their "gangs." Prison officials were aware of these practices and even relied on these bosses to help break up problems brewing among inmates. During a two-week period of unrest at the prison in late 1972 when rumors of riots were rampant, some officials credit inmate leaders with maintaining order.¹⁹

¹⁸"Riot to Riches," p. 2; "Our Failing Prisons," p. 1; "Insight," p. 5.

¹⁹Some people on the inside discredited this report. "Over the last year discipline at Mac has been non-existent. Officials assume that their "enforcers" are still running things. One well-known [boss] was reputed to control over 150 men. . . . Although officials reported that this inmate was helpful in breaking up the food strike in January, in fact when he went to a cell block--at the request of officials--to threaten and cajole inmates into eating, he was hissed and booed out of the cell house." "Insight," p. 3.

Disgruntled OSP inmates began staging frequent hunger strikes in 1972. On July 13, a five-day strike began to protest alleged lack of proper food and inmate medical treatment. On January 22, 1973, the vast majority of the 1,875 inmates--approximately 1,700--refused to eat. This three-day strike was ostensibly staged in an effort to convince federal prison officials to take over the state prison system. Officials believe, however, that it was an attempt by convicts to gain recognition for their complaints by a group of state lawmakers who had scheduled a visit to the prison later that week to examine the need for additional funds for the penal system.²⁰

Ironically, this visit by state legislators was thought by some observers to have been a part of the cause for the riot and fire. Eighteen state legislators, accompanied by newsmen, went into places in the prison rarely seen by anyone other than the inmates and prison guards. They listened to inmate complaints about the drabness of the food, visited the protective custody unit and there saw one man who had been confined for more than four years. They heard temporary residents of "The Rock" complain that there was no procedure for confining them and that terms were indefinite, and talked to one man who had lost the sight in one eye after a tear gassing.

Following the tour, corrections administrative personnel met with the legislators to talk about problems that existed in the operation of the facility. Warden Anderson reported that one day during the previous week only four guards had been available to supervise over 1,800

²⁰"Hunger Strike Hits State Prison," Tulsa Tribune, January 22, 1973; "Insight," p. 11.

convicts on the yard. During the briefing, Deputy Warden Sam Johnston graphically demonstrated one problem by dumping homemade knives and ammunition on the table--contraband collected during the lawmakers' just completed tour. Corrections officials reported that they had asked for increased funding from the legislature to hire 137 additional personnel, including 86 guards. Mr. Johnston stated that the Department of Corrections should finish the preparation of the Ten-Year Master Plan within the next two months; but one key legislator noted the need for concern about the more immediate needs. "They talk about ten-year plans, and these people have to worry about how they are going to get by tomorrow and the next day."²¹

The eighteen legislators returned to Oklahoma City, leaving behind them in McAlester hopes for some improvement in prison conditions. Indeed the legislature did approve the largest appropriation in history, but even this fell short of what was needed to effect significant change. When the legislature adjourned in May, inmates at McAlester were optimistic that finally something might be done to improve conditions. To an inmate, though, "a million dollars to repair a power plant and another million or so to hire more guards didn't represent much in the way of reform. The inmate was not aware of all the new reforms, because no one bothered to tell him."²²

²¹Rep. John Miskelly, D-Oklahoma City, Chairman of the House Appropriations and Budget Committee, "Solons Delve into Dark Areas of State Prison," Tulsa World, January 28, 1973.

²²"Insight," p. 3. During the riot, it was revealed that the "communication" system to the inmates regarding the "reforms" proposed by that year's legislature were posted on bulletin boards throughout the compound. By the inmates' own admissions, they had not read them, nor did they care what the bulletins said. They felt a need for a more

The Wilburton Workshop may have raised false expectations for inmates. According to one corrections official, the inmates who participated in that 1972 conference were told repeatedly that they were being abused.

I think that inflamed their minds. I think they went back and said, "Look, we have this cross-section of people from Oklahoma down here, and they're saying we're being abused." You tell an inmate that, and the inmate will feel that he has the support of citizens of Oklahoma; and he will riot, he will tear things down.²³

Many officials attribute the unrest and resulting riot to a third circumstance. The Department of Justice and the American Civil Liberties Union had sent lawyers into the prison to depose convicts and prison personnel for the Battle v. Anderson case. In fact, Mary Bane, ACLU attorney, and attorneys from the Justice Department were inside OSP deposing prisoners at the time the riot began. The realization that the court was finally beginning to take notice of the alleged abuses in the system further stirred inmates to perceive the inadequacies which had existed and which previously had been tolerated by both inmates and officials. Inmates who before had felt powerless to effect change now were spurred on by hope. "Extreme hopes are born of extreme misery";²⁴ and inmates at McAlester that summer suffered through the cycle of extreme hope and extreme misery.

The apparent absence of concern and lack of positive action, as perceived by inmates, sent a clear message to the population: "Nothing

personal type of communication between inmates and administration in the form of an inmate committee. See Chapter II for this item in "List of Inmate Grievances," May 3, 1970.

²³"Grider."

²⁴Bertrand Russell, "The Future of Mankind," Unpopular Essays, 1950.

will be changed." The Wilburton Workshop report summed it up earlier that year:

OSP is an archaic facility, and . . . a continuing policy of reliance on OSP as the primary correctional resource in the Oklahoma criminal justice system is at best counter-productive, and at worst potentially explosive."²⁵

In the spring of 1973, inmate George Clark echoed this prediction: "If this official attitude prevails, I foresee a long, hot troubled summer at the Pen."²⁶ How prophetic both of these statements proved to be!

The Riot and Fire

The afternoon of July 27, 1973, was probably not a target date for the riot to be staged, although takeover plans had been being formulated for some time. One inmate said it was supposed to have "come down" in 1972. Deputy Warden Sam Johnston said that a riot had been planned for a few months. Prison officials were aware of it, they had told numerous people they needed help, that the situation was serious. "But planned for that particular moment? It was somewhat of a spur of the moment deal."²⁷ The yard was crowded that afternoon with hundreds of idle

²⁵"View," p. 5.

²⁶"Insight," p. 44.

²⁷Deputy Warden Sam Johnston, in Dan Potter, "Three Days in July: An Oral History of the Riot and Fire of July 1973, Oklahoma State Penitentiary, McAlester," Division of Archives, Oklahoma Department of Libraries, Oklahoma City, Oklahoma, 1973, p. 134. Dan Potter was commissioned to conduct this oral history in which he interviewed 72 individuals about their roles in the riot and fire. The collection consists of the original tapes of the interviews and over five hundred pages of typed transcripts of those tapes. The original intent was to provide eye-witness accounts of the three-day takeover of the Oklahoma State Penitentiary and to deposit those tapes and documents in the Division of Archives of the Oklahoma State Libraries. No record exists of any publication of the manuscript or any parts of it. Hereafter referred to as "Potter".

inmates, many of whom were drunk, "glued up," or otherwise high on some type of drug. If idle hands are the devil's workshop, then Big Mac was a factory for disaster that afternoon.

Inmate Don Sheffield told of overhearing a group of about fifteen fellow inmates trying to recruit someone to become involved in what he termed "something drastic [that] was about to take place."²⁸ These fifteen inmates wandered around for some time trying to recruit additional prisoners to join them in their attempted takeover. When one potential recruit refused to join them, Sheffield said they told him, "Well, if you don't want to go along with it, why don't you just get over to the West Yard with the niggers."²⁹ Because he was aware the guards in a nearby guard tower were watching the intent discussion, Sheffield tried to get away from the group by going to the latrine. Some of the instigators also went to the latrine, and Sheffield reported that he continued to hear parts of the conversation. One of the original group suggested killing half a dozen of the prison personnel and taking the others hostage, while certain others were arguing against hurting anybody. "At this point they said, 'Well, all right, if we're going to do it, let's go do it.' And that's when it happened."³⁰

At about 2:30 p.m. the group proceeded to the inmate mess hall, where they attacked Lieutenant Thomas Payne and Captain C. C. Smith. Both men were hospitalized with stab wounds. Six or seven armed inmates started taking hostages. After about five minutes, Sheffield reported

²⁸Inmate Don Sheffield (an alias), in "Potter," p. 10.

²⁹Ibid.

³⁰Ibid., p. 13.

hearing the first call over the public address system: "We've taken over. We've got weapons. We've got hostages. It's a revolution. Come on and help us."³¹ Within fifteen minutes after the first hostages were taken, there was little doubt that a full-scale riot was in progress. Rioting inmates kicked corrections officers and kitchen personnel out of their chairs and held hostages captive by using homemade knives and other weapons.

Ironically, some of the hostage taking was apparently done for the protection of certain prison personnel. Several hostages reported being "protected" from hostile inmates by their inmate captors. Correctional Officer Eddie Johnson said that one convict held a knife to his throat, but told him it was just for show. Johnson said that he "kissed me on the ears and said nobody was gonna mess with me. All I know him by is Buzzard."³²

Other hostages didn't fare so well. Officer Earl Welch, upon hearing commotion in the mess hall, ran to the rescue of inmate cook John Bordeaux, who was being beaten by rioting inmates. Welch said he had little chance to escape, as the inmates left Bordeaux, surrounded Welch, and began beating him. He lost his watch, broke his glasses, and reportedly took about thirty-five blows. "I think they was [sic] all right handed. All hit me on that side of the head."³³ During the period from 2:30 until 4:00, many people were reported unconscious or beaten up with bloody bodies and black eyes.

³¹Ibid., p. 29.

³²Correctional Officer Eddie Johnson, in "Potter," p. 20.

³³Correctional Officer Earl Welch, in "Potter," p. 22.

Inmate Jack Barber. working as an inmate clerk in the Security Captain's office, received two telephone calls from other inmates trying to protect him. When he left the Chief's office, he stopped at the mess hall where the violence had begun and later described evidence of the great carnage which had taken place there. "There was already blood all over the tables in there. It looked like a butcher shop. There there was enough blood in there for 10 human beings to [have been] drawn and quartered."³⁴

The key hostage proved to be Deputy Warden Sam Johnston, who suddenly went from second man at OSP to number one hostage. Apparently well respected by many inmates, Johnston was both used and protected by his captors. The inmates took him onto the yard several times during the early hours of the riot for their own protection while they seized other hostages. Ordered to open the maximum security area and release the inmates housed there, Mr. Sam was able to talk the prisoners out of it because of the danger posed by these high risk inmates both to other inmates and to officials.

As the afternoon progressed, many of the inmates found stashes of homemade beer and other intoxicants and became drunk. Some looted the medical supplies in the hospital area and began taking any kind of drugs available. Still others spent time in the paint shop, sniffing glue and paint thinner. These intoxicants served only to worsen the problems. Inmate Dale McDonald admitted, "I was drinking . . . just homemade

³⁴Inmate Jack Barber, in "Potter," p. 31.

beer."³⁵ His first order of business after hearing what was going on was to arm himself with a knife. This was apparently a fairly common occurrence. A knife was not always an offensive weapon, but could sometimes be a defensive object. Even innocent bystanders had to protect themselves from the more violent rioters. Said Inmate Jack Barber:

You must remember that you've got glue sniffing punks with shanks two feet long. They want to be somebody. This is the first time in their life . . . that they could look up at the tower and cuss the square man [guard] out, knowing that he ain't gonna shoot 'em. Now, this is the type I'm talking about, and these people are also dangerous.³⁶

Frequently inmates who were innocent of any wrongdoing in instigating the riot or even in following the lead of the instigators were "sucked into action" by their own curiosity. Inmate Arvin Wood was in his cell reading when he heard the announcement of the takeover. Along with other cell house mates, Wood wandered onto the yard to see what was happening. He was later confined to maximum security for nine months as a supposed instigator of the riot.³⁷

Paradoxically, the thing that was intended by some of the inmates for their own protection actually became a lifesaving device for some of hostages. Several inmates broke into the men's clothing area, took blue

³⁵Unidentified hostage as told to Oklahoma State Bureau of Investigation Director, Frank Hagedorn during an interview with released hostages, in "Potter," p. 459.

³⁶Inmate Jack Barber, in "Potter," p. 33.

³⁷Personal interview with ex-offender Arvin Wood, June 28, 1985. Wood, now a gainfully employed, upstanding citizen of Lexington, is in the process of applying for full pardon. He felt that his acquaintance with the "California boys," a group of convicts from that state, was the reason for his being implicated in instigating the riot. He had known several of these inmates when he lived in California; but he was also very well acquainted with the "Oklahoma City boys" from his days on the street. According to Wood, he did not associate with either group to a large degree; but he was well known among both groups.

inmate clothing, and forced certain of the hostages to dress as inmates. This was ostensibly done to keep guards from firing into the compound for fear of hitting corrections personnel; however, this disguise protected at least two employees who were hidden by friendly inmates in their own cells overnight. Since the rioting inmates did not know the two employees on sight, they believed them to be other prisoners and did not assault them. When the first opportunity came for cooperative inmates to leave the main compound and congregate in the industrial area, hostages Jack Hall and Eddie Johnson, in prison clothing, walked through the gates to eventual freedom. They reported one tense moment when highway patrolmen, believing them to be prisoners, pinned them against the wall with shotguns and bayonets. They narrowly escaped being sent to the city jail before being identified by prison personnel.³⁸

The first of three casualties occurred at 4:30 p.m. when three inmates entered the West Cell House, took Elwoodrow Lee Brooks, a 26-year-old black man to the male clothing area, stabbed him repeatedly, and beat him to death. Throughout the three-day ordeal, many additional deaths were reported. A "body" reportedly lay on the yard for several hours, but officials were unable to get in to remove it. When the yard was finally secured on Sunday, the "body" was gone. One unidentified hostage story perhaps explains so many erroneous accounts of more than three deaths: "I really think there were a lot of people laying [sic] down on the ground faking death, and I'm sure that as they saw all these

³⁸Hostage Eddie Johnson, in "Potter," pp. 461-62.

[bodies]. . . they assumed them to be dead."³⁹

By late afternoon a contingent of troopers from the Oklahoma Highway Patrol were on duty, along with OHP Chief Jerry Matheson. Chief Matheson described the atmosphere when he arrived as one of mass confusion. He ordered his men to cover the perimeter to try to prevent escapes. Other officials arrived at the scene--Senator Gene Stipe from McAlester, Irvine Ungerman, Chairman of the Board of Corrections; Wayne Lawson, Commissioner of Public Safety; Frank Hagedorn, Director of Oklahoma State Bureau of Investigation; and Lieutenant Colonel Paul Staples, Oklahoma National Guard. These men, along with Paul Crowe, from the Attorney General's Office and OSP Warden Park Anderson, met for a planning conference at 5:30 p.m.

OSBI reports indicate that by 5:35 the hospital had been seized and additional hostages taken, bringing the number of hostages to fourteen. By 6:00 all buildings in the north side of the main security area were burning. The print shop, chapel, library, and sign plant were destroyed. The plasma clinic, book bindery, broom and mattress factory, bakery, and mess hall were burning. All of the industrial area was either destroyed or burning. Inmates roamed freely everywhere except the main administration area. At 6:20 the hospital was burning. By 7:30 the canteen had been torched. Some twenty-one officers were now held hostage, ten of whom were dressed in inmate uniforms.

Commissioner Lawson reported that he did not have enough troops to enter the prison and free the hostages. He had 180 officers and forty-two military policemen, but at least 150 more troops would be needed to

³⁹Hostage Eddie Johnson, in "Potter," pp. 461-62.

enter the compound. Lawson reported that the Oklahoma National Guard was mobilizing the 180th Infantry with 700 men.⁴⁰

To complicate matters even further, telephone service was limited because inmates had seized an outside telephone line in the firehouse and were placing calls all over the country. Chief of Security Bob Jones ordered, "Don't make them mad by cutting off the phone; keep them in a good humor."⁴¹ At some point before dark, the power plant was destroyed by inmates throwing wrenches, nuts and bolts into the generator. For several hours the only source of light was that from the burning buildings. It was this darkness which further discouraged officers from going into the compound after the hostages. The cover of darkness also made conditions worse on the yard. Many inmates used the darkness as an opportunity to find and take revenge on fellow inmates against whom they had personal grievances. Others plundered the cells of some of the "wealthy" inmates and took their personal belongings.

Governor David Hall was in a Colorado airport that Friday afternoon getting ready to board a plane for the trip back to Oklahoma City when he was paged for a message. His first thought was that something was wrong with a member of his family; however, he was given the word that a major uprising was under way at McAlester. Press Secretary, Ed Hardy was the main contact person from the Governor's office until Governor Hall arrived in Oklahoma City at about 6:30 p.m. Upon his arrival at

⁴⁰ Much of this narrative is condensed from "OSBI Log, Oklahoma State Penitentiary, McAlester, Oklahoma, July 27-28, 1973," Archives Division, Oklahoma Department of Libraries, and from interviews and telephone logs in "Potter."

⁴¹ OSBI Log, p. 2.

the Capitol, the Governor announced his plans to remain there for the night, rather than going to McAlester.

Prison inmates had formulated a list of demands to be delivered to the Governor, including a demand for live television coverage, a visit by Governor Hall to the cell block to discuss grievances, an American Civil Liberties Union attorney, and newspaper reporters. These demands were relayed to the Governor through Corrections Board Chairman Irvine Ungerman, who advised Hall to refuse to meet all demands. Officials advised the Governor to state unequivocally that he would not meet with the inmates until the hostages were released and all inmates returned to their cells, that the Governor promise to be on the scene to meet with representatives of the inmates within twenty-four hours after they returned to their cells and released the hostages, and that no amnesty would be discussed until all inmates were returned to their cells and all hostages released. At 7:45 the Governor was reportedly preparing a statement to the inmates to "release all hostages and restore order, whereupon he [would] appoint a committee to investigate their complaints."⁴² When Warden Anderson and Chairman Ungerman read the statements to them, the inmates refused to accept it. Officials decided that since the hostages were intermingled with prisoners, it would be safer to secure the area until daylight before taking action to free them.

During the evening, sixty-one inmates were removed from the administrative protection unit and taken to Stringtown. Other inmates not on the yard--primarily those who had been in the Rotunda or the Captain's Office when the riot broke out--were sent to Holdenville, Pittsburg

⁴²Irvine Ungerman, Chairman of the board of Corrections, in "Potter," p. 176; also see OSBI Logs, p. 4.

County Jail, and McAlester Jail. Some of these were potential targets for trouble because other inmates believed them to be "snitches."

Throughout the logs and interviews, references were made to the lack of coordination of efforts among officials on the scene: "No systematic flow of information is going to command personnel; planning is fragmented; no consistent command post procedures, no rumor control, or chain of command established."⁴³ Ed Hardy also felt that there was a weak link in leadership: "25 people with 28 plans of action."⁴⁴ Rightfully the Warden should have been in command, but Mr. Anderson hesitated to take charge, and other officials were reluctant to usurp his powers.⁴⁵ After Hardy arrived at OSP at around 11:00, he called the Governor and expressed his concern that no one seemed to be in charge. Governor Hall told Hardy, "You tell Wayne Lawson he is in command." Lawson had been Commissioner of Public for only twelve days. From that point on, according to Hardy, "things started to smooth out."⁴⁶

Mr. Hardy quickly became aware of still another potential problem in command headquarters. The place was literally swarming with newsmen, each trying to get his story on the wire before all the others. Radio reports were being monitored by rioting inmates on the yard. One report said that six Black Muslims were involved as ringleaders of the riot.

⁴³OSBI Logs, p. 3.

⁴⁴Ed Hardy, Governor's News Secretary, in "Potter," p. 296.

⁴⁵Senator Gene Stipe, who was on the scene, felt that Warden Anderson was never given the chance to take charge, but that other officials usurped his power. Presonal interview with Senator Gene Stipe in McAlester, July 13, 1985. Hereafter referred to as "Stipe." Other interviews and logs indicate that he was hesitant to issue the orders that needed to be given to settle the riot.

⁴⁶Ed Hardy, in "Potter," p. 296.

While this was not true, it could have caused an explosive situation among the Muslim population in the prison compound.⁴⁷ Another report told of bodies in the chapel and mass sex mutilations in the yard. In addition to erroneous reports being made, no order existed for press briefings. Hardy quickly made some enemies among news reporters when he asked all of them to go to the highway patrol mobil meeting room for a briefing. He then ordered them kept out of the prison. The Press Secretary briefed the press every thirty to forty minutes, and at one point attempted to appease them by having Irvine Ungerman tell of his macing attack earlier in the evening. Newsmen were not allowed back inside the prison until the next day.

The shortage of manpower was still very much evident at 10:30 p.m.--eight hours after the trouble had begun, and officials began recruiting additional assistance. The Tulsa Police Department sent twenty-five or thirty men with equipment to the scene. A helicopter from the Oklahoma City Police Department flew over the penitentiary grounds with a floodlight, while another helicopter loaded with tear gas hovered nearby. Some 250 troops were poised to strike if necessary.

Meanwhile, back on the yard the rioting continued. More buildings were torched; inmates threatened to burn New Cell House F, which would also have doomed the Rotunda. Inmates began knocking locks off control boxes in the East Cell House, and 300 to 400 inmates tried to storm Tower #8. They did succeed in bombarding the tower with molotov cocktails. The hostages, now totaling twenty-two, were moved from the

⁴⁷Deputy Warden Sam Johnston later said that the Muslims had nothing to do with the riot. In fact, he said they stayed as far away from it as possible. Johnston, in "Potter," p. 247.

burning mess hall and taken to F Cell House where they were broken into four groups to further hamper rescue operations. Cell houses were looted by inmates; and at 12:45 a.m. inmate Robin Lee Durrough, a 25-year-old black man was stabbed to death by another inmate on the second tier of the East Cell House.⁴⁸

The fire bombing of Tower #8 prompted officials to try to make contact with guards in that tower and in Tower #11. Ten hours after the riot had begun, the men in those towers had received no relief, no support, no food or water, and no radio communications. OSBI officials recommended "immediate relief and radio communications be established and reenforcements placed on Towers #8 and #11."⁴⁹ When a report was received that inmates had ladders and were planning to go over the wall at Tower #8, guards from Tower #8 fired shots into the crowd below. Inmate captors immediately sent word to Warden Anderson to stop the guards from firing or three hostages would be killed. Finally, hostage Sam Johnston requested that the firing be stopped.

After midnight many of the rowdy inmates had passed out from drunkenness or drug induced sleep. In stark contrast to the death and destruction all around them, a group of inmates played basketball in the recreation area. The OSBI report at 1:35 a.m. stated that the yard was "settling down and quiet."⁵⁰

Taking advantage of this lull in the rioting, Commissioner Wayne Lawson began to issue instructions to officers for regaining control of

⁴⁸"Potter," pp. 294, 296, 335; OSBI Logs, pp. 5-7.

⁴⁹OSBI Logs, p. 5.

⁵⁰Ibid., p. 8.

the prison. The Commissioner's plans called for the military to enter from the west and the Rotunda area, while other squads were to enter through the Rotunda itself. Oklahoma Highway Patrol units were to enter through the east gate. Special attention was to be directed to the West Cell House and F Cell House.⁵¹ The entire 180th Battalion was on the scene with a task force ready to go in and retake the prison. By 4:30 a.m. all troops were on the scene, and it was becoming clear to newsmen that something was about to happen. Ed Hardy, finding it more and more difficult to brief them without compromising the operation, did not go back to the mobil unit until around noon on Saturday.

Hardy urged that the planning sessions be held openly, rather than in secret, to take advantage of the trusty's grapevine. "Jump-off" time was set for 7:30 a.m. Hardy commented, ". . . somebody's going to be dead, the hostages probably, but a lot of prisoners are going to be dead, too." Luckily the grapevine functioned.⁵²

At 5:50 a.m. Ed Hardy told Joe Carter in the Governor's office that the attack would begin at 7:30 a.m. unless the Governor said "No." Sam Johnston had informed Warden Anderson that an assassin had been assigned to each hostage and that any movement to retake the prison would result in immediate death to all hostages. Talking to Hardy with a knife at his throat, Johnston urged restraint. "Whatever you do, don't let them come in here. Just give me time. I can talk them out of it . . ."⁵³ But the clock ticked on toward 7:30, and the preparations continued.

⁵¹Ibid.

⁵²Hardy, in "Potter," pp. 369-70.

⁵³Ibid., p. 375.

At 6:15 a.m. Ed Hardy talked by telephone to Governor Hall and read him a new list of requests handed down from the convicts.

1. We demand total amnesty for the so-called ring-leaders. In short, if this riot had not come down today, it surely would have come about eventually by some other so-called ring-leaders. In other words, this institution was way overdue for this blow-up. Whose fault is that?
2. We demand an immediate Inmate Council, governed entirely by the inmate population, by popular vote of these same said inmates.
3. An Inmate council will perform two functions: (1) They will be a direct link to the Administration, representing the inmates' point of view. (2) It will be mandatory that the Inmate Council is represented in all institutional proceedings. (3) We demand that we be allowed to converse with Justice Department attorneys and also an attorney representing the Civil Liberties Union immediately. We want some kind of mediator, and the above mentioned representatives are the only ones at this time that we feel that we can trust.
4. We demand that Mr. Dale Gossett be placed on immediate suspension until such time as the Committee can meet with you personally. This man's father was killed by a convict and he has shown nothing but animosity toward convicts since his employment at this institution. Who is responsible for the hiring of this man? For God's sake, why is he allowed to play God?
5. When all of the above requests or demands are met, we will release the hostages and will then sit down and try to meet some understanding with you and your staff. No one is more concerned with the existing problems behind the walls than ourselves. We have to live here!

Signed: Convicts of the McAlester Penitentiary⁵⁴

During the 6:15 a.m. telephone conversation, Ed Hardy told the Governor that he did not believe they would be able to save the hostages; in fact, he would not be surprised to lose them all. Warden

⁵⁴"Rioting Inmates' Demands," Tulsa Tribune, July 28, 1973. See also transcripts of telephone calls between OSP and Governor's Office, in "Potter," pp. 382-83. Because of its unique nature the entirety of the inmates' "List of Demands" is included in the text. Dale Gossett (Item #4) was a Classifications Officer at OSP about whom there had been many complaints since he was hired. It was generally believed among the convicts that his father had died at the hand of an inmate while at Oklahoma State Penitentiary during the late 1930s. The elder Gossett had been taken hostage and was beaten during an uprising in 1936 while he was an employee at OSP. At the time of his death he was a deputy sheriff in a nearby county. Gossett's death was ruled a suicide.

Anderson had informed Hardy that the hostages were all well aware of the facts regarding hostage situations. As a part of new employee orientation, correctional officers were apprised of official policy regarding hostage taking and any negotiation with the terrorists. Signs were posted all over the compound: "If you are a hostage, you will not be negotiated for." Calling it a "harsh, cold fact," and promising to try to save them, Hardy told Governor Hall that they would definitely lose some of the hostages. The Governor did not change his instructions to Ed Hardy, and the 7:30 grew nearer.⁵⁵

Shortly after daybreak, Senator Gene Stipe was still optimistic that an all-out assault could be avoided. He felt it was a good thing to show evidence of the ability to launch an attack, to demonstrate to everyone inside that "there wasn't anybody leaving; that their time was limited, too," but that it would not be necessary to attack.⁵⁶

At 6:35 a.m. Governor Hall still demonstrated a hesitancy to strike when he asked Irvine Ungerman for his assessment of the situation. Ungerman responded that the Governor was playing God. On the one hand, Sam Johnston was trying to work out a deal with the inmates; but on the other hand, "[if] you knuckle under this time, you'll knuckle under forever." He advised that efforts be made to "talk them down within the last 30 minutes." The Governor responded by asking "[Are you saying] if we can talk them down within our deadline go ahead; but if we can't, then go ahead with our plan?" Ungerman replied, "I don't see any other

⁵⁵Telephone logs in "Potter," p. 375.

⁵⁶"Stipe," July 13, 1985; also see Senator Gene Stipe in "Potter," p. 411.

way to do it."⁵⁷

The period from 7:00 until 8:30 a.m. was perhaps the most crucial time of the entire three-day period. Negotiations never ceased. Lawson, Ungerman, and McCracken continued to try to reason with the inmates. Sam Johnston, on the telephone to Bob Jones, Chief of Security, told him that the inmates' demands were really not that much out of line. Johnston did not believe people planning the attack knew what they would have been walking into. It would have been a literal inferno. Inmates had saturated blankets with five gallons of hot grease to make the floor slippery for any "invasion" troops, and to make the place more flammable. Johnston himself was surrounded by ten gallons of naptha and one hundred" molotov cocktails." "So the first people who would come through, we're dead, they're dead."⁵⁸

Everything was still set for the 7:30 move when Ed Hardy spoke with the Governor at the last minute:

I looked at my watch. It was 7:26 a.m., and I went to the door and motioned to Commissioner Lawson. I said, "The Governor says go." Then I went back and got my gas mask, and maybe a minute went by, and I think it was Ungerman came in and said. "They've released four hostages." Less than a minute before this thing is to begin. "They've released four hostages as a gesture of good will."⁵⁹

A new deadline was set for 8:15 a.m. while telephone crews attempted to patch in a telephone line for Governor Hall to talk to Sam

⁵⁷Irvine Ungerman, in "Potter," pp. 385-86.

⁵⁸Johnston, in "Potter," pp. 419-20.

⁵⁹At some point during the night the hostage total had reached 22; however, some hostages were released because of various health reasons, leaving 19 hostages in the main body. The release of the first four hostages as a gesture of good will left 15 hostages. Hardy, in "Potter," p. 425.

Johnston and the inmates who were holding him. An elated Sam Johnston asked officials to leave him alone while he negotiated with the prisoners. Shortly before 8:00, the inmates asked that the highway patrol troopers who were standing guard in the Rotunda be replaced by National Guard troops as a gesture of good will from officials.⁶⁰ The request was granted.

Attorney General Larry Derryberry and Chairman Ungerman conferred about the legalities of criminal charges against the instigators of the riot. Ungerman had advised the prisoners that neither he nor the Governor would grant amnesty; instead, the District Attorney of Pittsburg County would decide whether or not to prosecute. He did assure them that as head of the Board of Corrections he would personally guarantee no one would be beaten or abused as a result of the riot. The Attorney General told him to advise the inmates further that lawyers would be available for the proposed conference between them and the Governor and to consult with individual prisoners. Warden Anderson asked for and was granted a promise that a number of National Guard troops would remain at the prison to see that instructions were carried out with no abuse.⁶¹

Shortly after 8:00 a.m., officers were instructed to enter the industrial area to receive inmates leaving off the yard. As approximately 250 inmates exited via the east gate, they dropped their weapons--hammers, screwdrivers, and homemade knives. Suddenly OSP

⁶⁰ Apparently there was a great deal more animosity and distrust among inmates toward highway patrol troopers (or any law enforcement officers) than toward National Guard troops. This was a small concession on the part of corrections officials, but one that was apparently effective in demonstrating goodwill on their part.

⁶¹ "Potter," p. 445.

officers began firing their weapons into the air, perhaps as a scare tactic. Each time, they were ordered to cease firing, but Oklahoma Highway Patrol officers indicated that the order had to be repeated to OSP personnel at least three times. Eventually all OSP guards in towers were instructed to lay down their guns, apparently so the temptation to fire would be reduced. Four more hostages were released at 8:30. At 10:40 a group of 150 to 500 inmates attempted to surrender at the West Gate, but it took thirty minutes for officers to reach a decision on whether to accept their surrender. Ambulances came and went, taking injured prisoners to hospitals.

With the hostage count down to eleven, negotiations continued. At 11:10 Ungerman reported to the Governor that the inmates wanted to release all hostages except for the Deputy Warden and that they wanted only one television station--Channel 9 from Oklahoma City--to interview them and film the hostage release. Although Johnston agreed to stay with the prisoners after the release of the other hostages, the Governor would agree with neither of the requests. A telephone line was finally established to Deputy Warden Johnston. During a conference call from the Governor's office, Johnston requested that the Governor speak with one of the inmates, because they realized the integrity of his word and his personal prestige. The Governor refused to talk. Wayne Lawson at this point suggested that Hall go on radio to promise he would be there later that day. The inmates felt that if the Governor gave his word publicly, he would not back down. He refused to do that, too.

Hall finally agreed to speak by telephone to an inmate picked by Sam Johnston. Inmate Danny Kuykendall talked with the Governor and told him they needed some reassurances that they would be treated right. If

he would just "put it on the air," they could come to some agreement. They also wanted to keep Sam Johnston, not as a hostage, but as a volunteer.⁶² The Governor refused to back down. He told Kuykendall:

Danny, I cannot permit Sam to stay in there. No deal. You must show your good faith about releasing those hostages before I can talk. I will then, as Governor of the State, come to the prison and bring the people you have requested. Then, I will fly to McAlester and meet with the committee you recommend.⁶³

Kuykendall acquiesced: "OK. All right, Mr. Hall."

The Governor indicated to Wayne Lawson that it was all right to limit television coverage to Channel 9; it was not an issue with him. Ed Hardy, though, remembering that he had already alienated the press the previous night, decided differently. He told Kuykendall, who demanded the Channel 9 newsman: "Take them all or you get none of them. It's unfair to those newsmen." "Well, Mr. Hardy," said Kuykendall, "we're at the end of our rope. We're going to have to trust somebody."⁶⁴

Hardy walked directly out the front door of the prison after talking with Governor Hall and Danny Kuykendall. According to his report,

. . . those newsmen came alive in that yard across the street. All they wanted was to get their hands on me. I said "Get your cameras. Get your gear. You're going inside the prison, right now." And that, for me, fortunately knocked down all the animosity.⁶⁵

After explaining to them what had occurred, Hardy led newsmen into the Rotunda, where he reassured himself that all hostages had been released,

⁶²Director of Corrections Leo McCracken, in "Potter," p. 474; Kuykendall, in "Potter," p. 513.

⁶³Telephone logs in "Potter," p. 484.

⁶⁴Kuykendall, in "Potter," p. 513.

⁶⁵Hardy, in "Potter." p. 522.

opened the door, and let the newsmen inside the prison. News coverage lasted only for about five to eight minutes. Hardy confessed to some continued apprehension about the whole thing.

I was scared to death all the time they were in there something was going to happen. All those television lights, you could see it, stirring it all up again. Finally I said, "That's it, gentlemen." They left the Rotunda.⁶⁶

It was 12:30 p.m., and all the hostages were free. When asked why the inmates were finally persuaded to release the hostages, Leo McCracken said he thought they were finally convinced that "we were acting in good faith." Kuykendall's answer to that question was "there wasn't anything else we could do."⁶⁷

The meeting with the inmates and the admission of television and newspaper reporters into the prison earlier in the day were three of the four demands placed on Hall and to which he agreed. A fourth demand was not met. The inmates had requested that a representative of the American Civil Liberties Union be present at the meeting and to confer with prisoners afterward. Upon learning of the prisoners' demand, Mary Bane, who had been inside the compound the previous day when the riot erupted, presented herself at the Administration Building with a request that she be allowed inside. After a ninety-minute wait with no response to her request, she approached Warden Anderson and was asked to leave the Administration Building. Over an hour later Ed Hardy informed her that she would not be able to enter the building. She was also excluded from a press briefing about the release of the hostages later

⁶⁶Ibid.

⁶⁷McCracken, in "Potter," p. 474; Kuykendall in "Potter," p. 513.

in the day. During the time she spent inside the prison on Saturday, Ms. Bane reported hearing many guards threatening reprisals against individual inmates for the rioting. This increased her concern about the need for inmate representation.

Transcripts of telephone calls between the Governor and the Press Secretary earlier that morning indicate that Hardy himself had recommended that neither Tom Sheran, civil rights attorney with the U.S. Attorney General's Office, nor Mary Bane be admitted to the meeting "because they have been here for months and visited with many of these men, and they might have contributed to this."⁶⁸

The Governor's reponse was that he did not see how any added participation on their part could help at all.⁶⁹ Assistant Attorney General Paul Crowe told Bane that she would not be the ACLU attorney present at the meeting between the Governor and the inmates because of her participation in the present action (Battle v. Anderson). Ms. Bane then called the Oklahoma City office of the ACLU and learned that they had in no way been contacted for an attorney. Later in the day, she was informed that Mr. Eric Grove was the ACLU representative. Oklahoma City ACLU officials denied that Grove was their representative, although he was a member of the ACLU. Attorney Stephen Jones, who had worked with Ms. Bane on the Battle case, later charged that the Governor merely "used" Eric Groves to satisfy the prisoners' request, but Groves denied knowing he was being used in this way. On Monday following the riot, Jones and Bane requested a federal court order to prevent officials from

⁶⁸Telephone logs in "Potter," p. 484.

⁶⁹Ibid.

questioning prisoners at the riot torn prison until those prisoners had had council appointed to represent them.⁷⁰

At 4:30 Saturday afternoon, Governor Hall arrived at the prison and, along with other high ranking state officials, met with a nine-man group of convicts, thus keeping a part of the pledge he had made as a condition for the release of the last eleven hostages. Following the meeting with the convicts, Governor Hall said he felt that "ignorance" of the recent rules and policy changes at the prison was one of the reasons for the riot. He added that a new communications system would keep inmates informed of changes. While Hall did not discuss specifics of the inmates' grievances, he did indicate that they involved medical care, uniform rules of punishment and detention, and living conditions within the prison. He charged inmate representatives with the responsibility to communicate with their fellow inmates about the information exchanged and the agreements reached in the meeting. Irvine Ungerman supported Hall's belief that a lack of knowledge of recent policy changes inside the prison was "one big factor" in the uprising.⁷¹

The hostages had been released, and most of the inmates' demands had been met; but the riot was still not over. On Saturday night and Sunday morning, reports were received of new fires in the compound. The Governor announced that hard-core convicts had weapons in their cells and would likely kill non-participating convicts if they were returned to the prison. At 11:00 p.m. on Saturday, convicts charged the

⁷⁰Affidavit of Mary Bane, Stephen Jones Collection, Western History Collection, University of Oklahoma, Box 7. "ACLU Seeks Court Order: Inmate Quizzing Ban Asked," Tulsa World, July 30, 1973.

⁷¹"Hall, Inmates Confer, Move Toward Peace," Tulsa World, July 29, 1973.

Administration Building, forcing guards out of all but the walls of the prison. Another group of inmates set fire to the northeast cell block from which 31 prisoners had been moved earlier to the prison at Stringtown. Officials believed the new outbreak was likely caused by inmates looking for informers.

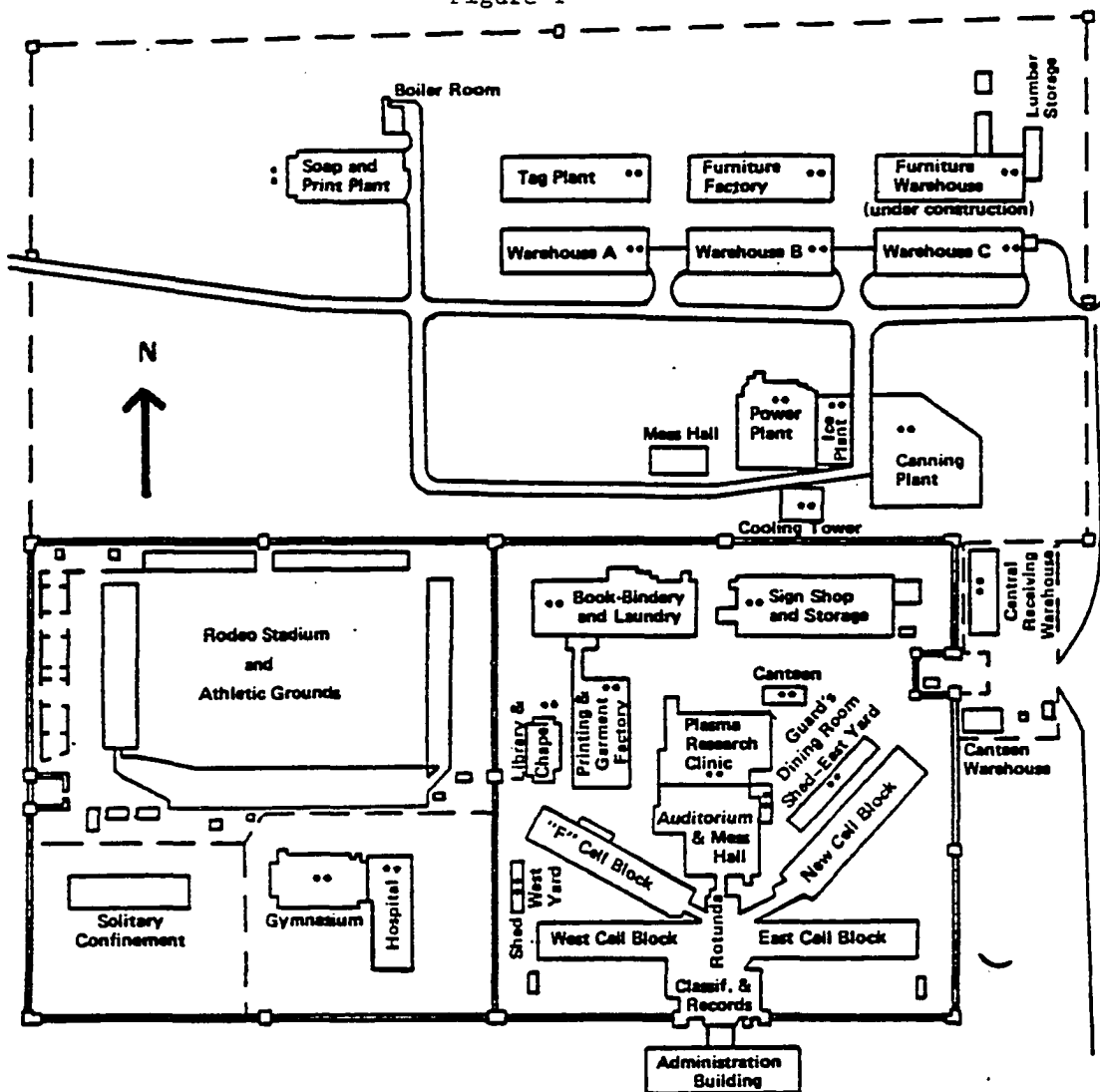
Oklahoma Highway Patrol troopers and National Guardsmen entered the prison at 9:30 a.m. on Sunday to begin sweeping the compound and looking for bodies, weapons, and hiding inmates. At one point Department of Public Safety Commissioner Wayne Lawson was accosted by a convict, whom he kicked in the face and disarmed.⁷² An additional 1,000 guardsmen were called to McAlester to relieve those who had been on duty since Friday. The National Guard would stay until all was secure and officials could be certain of no further violence, however long that would take. The following Sunday, August 5, the last guardsmen left.

The Aftermath of the Riot

During the week following the riot and fire at Oklahoma State Penitentiary, officials began combing the ruins looking for more bodies. On August 1--four days after the worst of the violence had ended--a third inmate body was found. Charles Clifford Palmer, a white male, had been stabbed to death behind the latrine in the East Yard. A fourth inmate who was reported to have been killed during the early part of the rioting was found to have died of a heart attack rather than from injuries. Numerous rumors of as many as twenty or thirty dead bodies were dispelled as the week progressed.

⁷²"Violence Erupts Again at Prison; Cellblock on Fire," Tulsa World, July 29, 1973. "A Chronological Review of Prison Riot," Tulsa Tribune, July 30, 1973.

Figure 1



Division of Institutions

RIOT DESTRUCTION AT OKLAHOMA STATE PENITENTIARY
JULY, 1973 ¹

¹Data provided by Construction and Maintenance Unit.

**Indicated buildings were destroyed by fire during the disruption in July of 1973: Soap and Paint Plant; Tag Plant; Furniture Factory; Canning Plant; Cooling Tower; Central Receiving Warehouse; Book Bindery and Laundry; Sign Shop and Storage; Library and Chapel; Printing and Garment Factory; Plasma Research Clinic; Canteen; Guard's Dining Room; Sheds in East and West Yards; Gymnasium; and Hospital. (Solitary Confinement, also called "The Rock", was subsequently destroyed by fire in the fall of 1974).

———— Double-Lines indicate wall.

- - - - - Dash-Lines indicate fence.

On Monday, July 30, a pouring rain helped to put out the last of the fires which still smouldered throughout the compound; but that same rain brought further distress to many inmates who remained within the walls amidst the rubble. More than 600 prisoners huddled in the rain in the industrial area, still hesitant to re-enter the cell blocks because they feared reprisal from other inmates.

At least twenty-four structures had been damaged at the hands of the inmates; only four buildings remained intact. Among the structures remaining were the main Administration Building, less than four years old; "The Rock," the maximum security unit used to house the most troublesome convicts temporarily; a small warehouse outside the main walls in which were stored products sold in the canteen; and the four cell blocks which were connected by the Rotunda.⁷³ Even the individual cell blocks did not escape destruction. Mattresses and personal belongings were piled onto walkways and trampled, along with prison records and other state property. In addition to the rain, many millions of gallons of water from broken water mains soaked the ruins.

Further damage assessments revealed all contents had been incinerated, leaving only the empty, twisted shells of the buildings standing. Metal desks intended for schools were destroyed; church pews being refinished were in ashes. The canteen was totally gutted and its roof was gone. Only the blackened walls remained in the art studio. The chapel, hated by some inmates and considered to be a symbol of the institution, was in ruins. The young Catholic priest, The Reverend Don Brooks, wandered across the yard carrying a blackened silver communion

⁷³"Rubble Combed for Bodies," Tulsa Tribune, July 30, 1973.

chalice. "I finally found it," he muttered, "It's all that's left of the Chapel."⁷⁴ Inside the license tag factory, 2.6 million 1974 automobile tags were destroyed, along with materials for 700,000 others and the machinery which was used to manufacture tags for all vehicles in the state.⁷⁵

One of the most immediate needs was food. Food for all other correctional institutions in the State, with the exception of Oklahoma State Reformatory at Granite, had been stored at McAlester and was destroyed, thus creating shortages at the other institutions. One reporter wrote of the horrible stench of large quantities of decaying meats in refrigeration units near the kitchen. The butcher shop contained the rotting carcasses of ninety hogs killed the day before the riot, fifteen beeves and untold numbers of chickens. Red Cross units supplied three meals for 1,556 inmates on Monday.⁷⁶ A temporary field kitchen was set up by Tuesday, and plans were made to begin serving limited hot foods to the remaining inmates. Three months passed before kitchen facilities were well enough renovated to provide hot meals on a regular basis. One inmate complained on October 7 that two cold sandwiches a day were not enough to sustain him and his fellow convicts, saying, "I can't sleep at night because my empty stomach hurts."⁷⁷ It

⁷⁴"Unbelievable Destruction." Tulsa Tribune, July 30, 1973.

⁷⁵Officials talked initially of using 1973 tags for another year and attaching a sticker tab to indicate 1974 renewal. Eventually, however, out-of-state contractors produced tags for the following year. "73 Tags May Be Used Next Year." Tulsa Tribune, June 30, 1973.

⁷⁶More than 200 inmates had been transferred to other penal institutions or city or county jails.

⁷⁷"Convicts Blame Hunger for Sleepless Nights," Sunday Oklahoman, October 20, 1973.

was not until October 23 that inmates began to eat hot meals again.

An Okmulgee Civil Defense unit set up a complete emergency hospital and dental service in the prison gym, and medical supplies were delivered on Wednesday. Another 200 inmates were moved out late Tuesday afternoon, lowering the total population to 1,300, according to Press Secretary Ed Hardy. Hardy also assured newsmen that he was "very, very certain no one escaped,"⁷⁸ a statement which returned to haunt him later in the week when it was discovered that three inmates had escaped. One of the escapees was Oklahoma's most notorious criminal at that time, Rex Brinlee, who had hidden in a 6-foot hole until he could scale the wall. Brinlee was caught in Louisiana the following week but released after 30 hours in an identity mix-up. Apparently he had "borrowed" someone else's identification.⁷⁹ It was several months before he was returned to custody in Oklahoma.

Some 200 low security risk inmates were put to work on a cleanup detail; and on Friday, August 3, exactly one week after the beginning of the riot, officials began returning inmates to cells. Two or three inmates were assigned to some cells, and padlocks were the only security on cell doors. While conditions were better than they had been over the weekend, more stabbings and firebombings occurred as late as August 4. This activity was confined to the East Cell House, where eighteen convicts, suspected to be ringleaders in the violence, were celled.

⁷⁸"More Inmates Feared Dead as Ashes Combed," Tulsa World, July 31, 1973.

⁷⁹"Brinlee Hoaxes Officers Again," Oklahoma Journal, August 9, 1973.

A report dated August 14 indicated that inmates had their first shower and change of clothing and could expect to have clean clothing and a shower at least weekly. The industrial area was almost totally cleaned; steam was expected to be available later in the week for the kitchen, but it would be at least thirty days before the dishwasher would be repaired. Officials were considering the use of paper and plastic utensils as an alternative to leasing a dishwasher. The population was now down to 1,130, with only two men to a cell in the East and West Cell Houses. All inmates had blankets and mattresses; and repairs to locking mechanisms were about 20 percent completed.⁸⁰

Despite the gloomy reports of damage to property and lives, some positive stories emanated from the otherwise negative scene. Inmate Doyle Elmer Puckett, a 28-year-old Tulsa convict, also known as "Alligator," was cited for heroism and credited with saving the lives of at least two hostages. Prison Counselor Danny Kennedy told of Puckett's holding a knife to the throat of another convict who had threatened Kennedy's life. "If he dies, you die," Puckett told the other convict. Puckett was later recommended for clemency for his part in saving Kennedy's life and the life of another prison employee, J. E. Martin. In exchange for his life, Kennedy promised to tell the captors' side of the story and to explain that "they are men, not caged animals."

Kennedy also noted that many hostages were embittered by their belief that much of the burning and killing could have been avoided so easily.

⁸⁰ Minutes of Special Task Force Committee on Penal Institutions, August 14, 1973, p. 4. Stephen Jones Collection, Western History Collection. University of Oklahoma, Box 6.

This thing could have been stopped 30 minutes after it started. All it would have taken was for the Governor to walk out on the Rotunda and talk to them. They just wanted to talk to the Governor.⁸¹

Another positive aspect which rose as a phoenix out of the ashes of destruction was the prospect of building newer, more modern facilities in locations less remote than McAlester, with potentially more rehabilitation programs, psychiatric evaluation, and other sorely needed services. Officials agreed that Oklahoma State Penitentiary should be retained only as a maximum security institution with a population of 400 to 500 inmates, and with only one man per cell.

Letters and editorials poured into the state's newspapers and the Governor's office. Almost without exception, writers of these communications urged officials to seize the opportunity to rebuild a more modern rehabilitative system rather than to continue merely warehousing prisoners for punishment and revenge. They emphasized the futility of retaining a system in which inmates were returned to society more embittered than ever against that society. They deplored a system in which the primary "training" offered the inmate was by other, more experienced convicts--how to crack a safe, forge a check, or otherwise continue a life of crime. Instead they advocated a system in which job training and academic achievement would be more important factors for granting parole than giving blood or merely flattening time. They urged that the State not repeat the mistakes of the past, but make an effort to "create a prison system that is not easier for the convict, but far

⁸¹"Convict Cited for 'Heroism,'" Tulsa Tribune, July 30, 1973.

more productive in terms of changing his attitudes."⁸²

Jim Kester, State Director the of National Council on Crime and Delinquency, urged complete demolition of the McAlester facility. He predicted further disasters if the State opted for the quick and easy way out of the current problems by restoring more of the same. Such option he thought would be "a fifty-year step into the past. McAlester was a failure before it burned; we must not rebuild that failure at the cost of millions of tax dollairs, only to restore this monument to past failures."⁸³

The Department of Corrections, in a planning proposal for intermediate needs, recognized the opportunity which was presented through a "crisis situation" as "an occasion to develop a model correctional system."⁸⁴ One notable exception to the general call for moving the facility from McAlester was State Senator Gene Stipe in whose district the penitentiary was located. Stipe wanted the prison to be rebuilt on a full-scale basis but with segregation for different classifications of prisoners. He cited as his reasons for such a suggestion the availability of land and some buildings already existing at McAlester, plus the support of the local citizenry for such a facility to be built in

⁸²Letter to Governor David Hall from Jenkin Jones, Jr., Editor of Tulsa Tribune, August 2, 1973, in Governor David Hall Collection, Division of Archives, Oklahoma Department of Libraries.

⁸³Letter for statewide distribution to NCCD members from Jim H. Kestee, State Director, National Council on Crime and Delinquency, in Governor David Hall Collection, Division of Archives, Oklahoma Department of Libraries.

⁸⁴"Oklahoma Department of Corrections Planning Proposal," presented by Director of Corrections, Leo McCracken to Legislative Committee, August 14, 1973, in Stephen Jones Collection, Western History Collection, University of Oklahoma.

their community.⁸⁵

The Official Report

A Special Task Force Committee on Penal Institutions, created by the Executive Committee of the Oklahoma State Legislative Council, began a series of investigative meetings on Tuesday, August 7. This group, chaired by Representative David Riggs and Senator Bob Trent, consisted of fifteen members--six from the Senate and seven from the House of Representatives, plus the chairmen--and held eleven sessions between August 7 and September 21, 1973. Representatives of the Dallas Regional Office of the Law Enforcement Assistance Administration (LEAA) touring the prison at the request of Governor David Hall for technical assistance, recommended the total evacuation and abandonment of the McAlester facilities; building of more modern facilities in metropolitan areas to house medium and minimum security inmates; and the conversion Oklahoma State Reformatory at Granite into a maximum security unit.⁸⁶

Fred Moyer, Director of the National Clearinghouse for Criminal Justice Planning and Architecture, recommended the abandonment of construction work on the Diagnostic Center because of its location away

⁸⁵"Stipe to Push Big Prison at McAlester," Oklahoma Journal, September 21, 1973.

⁸⁶Attachment II to "Minutes of Special Task Force Committee on Penal Institutions," August 7, 1973, letter to Mr. James Gleason, Deputy Director, Oklahoma Crime Commission, from Dallas Regional Office of the Law Enforcement Assistance Administration, August 1, 1973, in Stephen Jones Collection, Western History Collection, University of Oklahoma, Box 6.

from a metropolitan center with adequately trained personnel. Additionally, its six-story, vertical design would require increased staff to observe and control movement on each floor. He also recommended that young offenders not be mixed with life-termers. Moyer's final recommendation was to bulldoze the remaining hazardous buildings at McAlester, saying conditions were not unlike those left by bombing in Europe in World War II. He reported further that the cost to incarcerate a felon is three times as much as to supervise him in a community-based program. Therefore, the latter type of program would be a viable alternative to some of Oklahoma's prison woes. Moyer believed that only twenty to forty percent of inmates need to be behind walls, and that studies have shown that eighty percent of inmates can be safely paroled. Because most of the eighty percent released have no trade or profession, two-thirds of them return to prison. Moyer's recommendation was that money be spent on parole rather than on prisons.⁸⁷

A post-riot status report from the Department of Corrections listed the total worth of destroyed or damaged structures, excluding the partially completed Diagnostic and Evaluation Center, at \$10,000,000; equipment \$2,970,000; supplies and materials, \$1,227,022; for a total assessed damage of \$14,197,022, a figure far lower than the initial \$30,000,000 estimate. The estimated total value of the remaining buildings and structures at OSP was listed as \$22,814,649.⁸⁸

⁸⁷Attachment III to "Minutes of Special Task Force Committee on Penal Institutions, August 7, 1973," Letter to Governor David Hall from Frederic D. Moyer, Director, National Clearinghouse for Criminal Justice Planning and Architecture, August 3, 1973, in Stephen Jones Collection, Western History Collection, University of Oklahoma Box 6.

⁸⁸Exhibit A, in "Oklahoma Department of Corrections Status Report," Stephen Jones Collection, Western History Collection, Box 6.

The same document reported the status of industrial and agricultural operations at the Penitentiary. These two operations supplied not only needed items to all other correctional facilities in the State (except for Oklahoma State Reformatory), but also showed net profits for the institutional operation. The industrial operation netted \$395,797.17 during fiscal year 1973, in addition to the \$232,866.85 value of goods furnished to adult correctional institutions in the state. The agricultural operation showed a net profit of \$152,199.57, plus \$687,073.50 in goods supplied to other institutions.⁸⁹ All of these figures--net worth of remaining structures and net profits and values of industrial and agricultural operations--combined to make a convincing argument for leaving at least a part of the penitentiary

The Diagnostic and Evaluation Center, under construction since 1970, was an additional item to be considered in assessing the worth of the facilities remaining at McAlester. Originally proposed as a six-story building, construction had been halted after the erection of only three floors. In March of 1973 the Department had compiled figures indicating that of \$294,872 was needed to complete the facility; however, materials and supplies with an estimated replacement value of \$44,000 had been destroyed in the fire. Costs for contract labor at \$274,998, when added to total materials costs of \$338,872, resulted in an estimated total expenditure of \$613,870.

On the other hand, if the decision were made to abandon the project at the McAlester site for use as a Diagnostic and Evaluation Center, the

⁸⁹Ibid., p. 4.

structure could be capped off at three floors. For this, officials felt that the \$316,000 remaining in a Hero Bond Fund was sufficient to complete the building which would then provide a medical facility for the Department with 16,500 square feet of usable and severely needed space. The proposal was that the first level accommodate dental care and medical examination facilities, while the second floor serve as a kitchen and dining area. The third floor could then become a fifty-bed hospital unit, accessible to both male and female population and to the trusty unit at McAlester as well as the three other corrections installations in the Eastern District--Stringtown, McLeod, and Quachita. This proposal would also free sufficient security steel for the construction of 150 cells and security doors for use at another site. Most experts agree that this was one of the best developments which followed the infamous riot and fire of 1973, as it opened the door for a reception and assessment facility to be located closer to a metropolitan area, where trained personnel would be more readily available.

The report gave a more revealing picture of the penitentiary in November: All cell houses, with the exception of F Cell House, had been repaired using inmate labor under the supervision of the OSP staff. All perishable food items had been removed and buried under the supervision of the Oklahoma State Health Department. Unspoiled food was distributed to other correctional facilities. Salvage operations resulted in tons of steel and other metals to be made available for sale. The demolition and removal of destroyed industrial buildings was sixty percent complete. Transfers of prisoners to other correctional facilities, in addition to early releases by the Governor of those inmates with ninety days or less remaining on their sentences, had resulted in a population

of 930 at OSP. No newly convicted male felons had been received by the Department of Corrections since the riot; they were still being housed in county facilities. Tons of food and clothing had been received and distributed; a field-type laundry had been placed in operation at the penitentiary. Portable freezing and cooling units had been requisitioned, but not yet received. The two women's facilities had assumed the cooking responsibilities in order to free male personnel to prepare the main kitchen and dining room for use as soon as possible. Electrical and heating repairs were being completed to provide heat for cell blocks and steam for the kitchen. A visiting room was being prepared and would soon be ready; and the exercise yard had been thoroughly cleaned, raked and searched with metal detecting devices. Approximately thirty-eight employees had left the institution with no notice at the outset of the riot and had not returned; thirty-six new staff members had been hired to replace them.⁹⁰

The Special Task Force committee completed its investigation on September 21, 1973, and submitted its report and recommendations. Their most significant recommendations dealt with seven areas: probation and parole; maximum security; community based treatment; diagnosis, classification and segregation; personnel; inmate programs to combat idleness; and, inmate treatment and living conditions.⁹¹

Probation and Parole. The committee proposed, among other things, an increase in the budget to provide a 50 percent increase in personnel

⁹⁰Ibid., pp. 6-7.

⁹¹"Special Report and Recommendations," Special Task Force Committee on Penal Institutions, September 21, 1973, Stephen Jones Collection, Box 6.

to do pre-sentence investigation of all felony cases. They also asked the legislature to call for a vote of the people to approve a full-time pardon and parole board and that the Probation and Parole Division be transferred to the supervision of such a board, should it be established.⁹²

Maximum Security. The committee found that maximum security is by far the most expensive kind of institution to build and the kind in which it is most difficult to rehabilitate prisoners. Because Oklahoma housed far too many people in its two "fortress" prisons, the committee recommended the retention of only one maximum security prison, for a population of no more than 300 to 350 offenders, and that it be the McAlester facility. They also recommended that McAlester function only as a maximum security prison, and not as a dual maximum-medium facility. Any farming operation could still be done by eligible prisoners, as long as they were segregated from the maximum security inmates.⁹³

Community Based Treatment. Because 75 to 80 percent of those incarcerated in Oklahoma are from urban areas, the committee recommended that medium-minimum security community based treatment facilities be located in or near urban areas where they could be properly staffed. They also suggested accelerating plans to open small work release programs in communities around the state.⁹⁴

Diagnosis, Classification, and Segregation. The failure properly to "diagnose, classify, and segregate the offenders committed to its

⁹²Ibid., pp. 2-4.

⁹³Ibid., pp. 4-5.

⁹⁴Ibid., pp. 5-6.

custody" was cited as "perhaps the greatest fault of the Oklahoma Corrections system. . . ." The violent and non-violent offenders were kept together, first offenders with habitual offenders, young with old, long termers with those with short sentences, and "the psychotic or criminally insane mingled freely throughout."⁹⁵ These factors were believed to be a great influence on the high recidivism rate among Oklahoma incarcerates. The committee recommended that a diagnostic-reception center be constructed in the Oklahoma City or Norman area, and that space be provided in such center for treatment and custody of the criminally insane. They recommended against the present plans to complete the diagnostic center at McAlester and urged using the partially constructed building as a medical facility as suggested in the Department of Corrections' proposal.

Personnel. Calling the 1967 Corrections Code "sound," the committee found little need for additional corrections' legislation; however, they did believe that the State had fallen short in implementation and administration of the code. Failure to provide adequate manpower to operate the prison system and Probation and Parole Division, lack of insistence upon most qualified personnel, unwillingness to provide sufficient funds to hire and retain qualified personnel, failure to provide adequate in-service training for non-administration staff, and failure to keep administrative officials abreast of "current correctional thinking," were also listed as faults of the system. The committee recommended upgrading all administrative and non-administrative personnel and specified degrees and training necessary for each category

⁹⁵Ibid., pp. 6-8.

of employee. They also recommended that salaries be made commensurate with standards which had been established.⁹⁶

Inmate Programs. Inmate idleness, improper emphasis and financial support for educational programs, and lack of counseling for inmates were believed by the committee to have been among the direct causes of prisoner disturbances. Recommendations of the committee included providing a "meaningful" job for every inmate, basic remedial education, counseling services, drug and alcohol abuse programs, vo-tech and rehabilitation programs for training, and the need for expanded and supplementary academic programs.⁹⁷

Inmate Treatment and Living Conditions. The committee recognized the state's obligation to provide incarcerates with the essentials of life and health and fair and humane treatment, saying, "We have not always met this obligation." Areas of neglect--violence, drug traffic, sexual deviations, rackets, insufficient family contact, gambling, and sale of human rights--were listed as practices which "should be eliminated immediately and any persons guilty should be prosecuted."⁹⁸ The committee recommended (1) that competent medical services and balanced diets be provided for every inmate; (2) that fair and constant discipline be maintained, with written rules and regulations, and observance of "due process" in their enforcement; (3) that visitation be increased and under more nearly normal conditions; (4) that censorship of mail be limited to security purposes only; (5) that sound measures be

⁹⁶Ibid., pp. 8-10.

⁹⁷Ibid., p. 14.

⁹⁸Ibid., p. 14.

taken to minimize or eliminate practices of loan sharking and sexual deviation; (6) that the office of Associate Chaplain be created to permit a minister of any recognized religious faith to have access to prison institutions (without compensation); (7) that no more than one inmate be confined to any cell; that all institutions fairly and equitably observe the statute governing credits allocable to inmates for "good time;" (8) that temporary isolation cells be made secure but humane; (9) that inmates be barred from offices in which inmate records or other security matters might be compromised; (10) and that improved recreational areas and equipment be made available in all institutions.⁹⁹

Many of the committee's recommendations were implemented during the following months; while others were given lots of lip service. Overall, however, the aftermath of the most costly tragedy in Oklahoma's prison history might be construed to be a "blessing in disguise" for the state's corrections system. The riot and fire, coupled with federally mandated changes resulting from Battle v. Anderson, did more to change the nature of the prison system than any other single event in history.

The Minority Report

A minority report, submitted to the Task Force by a small group of "dissenters" called the official report "a glaring example of scapegoatism at its worst . . . [and] a flagrant attempt to avoid letting responsibility rest where it belongs--with the legislature."¹⁰⁰ Noting

⁹⁹Ibid., pp. 13-16. Paraphrased and condensed.

¹⁰⁰"Minority Report and Recommendations" Special Task Force Committee on Penal Institutions, September 21, 1973, Stephen Jones Collection, Western History Collection, University of Oklahoma, Box 6.

that legislators had been told on innumerable occasions that conditions at McAlester were bad, the report quoted parts of Senator Gene Stipe's address to the 1973 legislative session on the opening day. In that speech, Stipe had alerted lawmakers to the problems inside the state prison. Propheying impending disaster and foreseeing an attempt to place the blame on "convenient whipping boys," Stipe had warned:

. . . as it comes to the attention of the people of Oklahoma, I want all of us to understand where the responsibility lies; and it won't lie with the Board of Corrections. . . . It won't lie with the Warden or with the Director of the Department of Corrections. It will lie with this legislature and the chief executive of this state.¹⁰¹

State Corrections Director Leo McCracken and OSP Warden Park Anderson had also told the the legislature of difficult circumstances and deplorable conditions behind the walls.¹⁰² No member of the legislature should have been surprised at "the inevitable" after so many predictions of its coming. The report further charged that the legislature ignored the warnings and rejected the recommended remedies because of lack of funds. This "ill-advised economy" had cost the State more than \$20 million and created a state of emergency in the prison.

The "Final Report" discovers that conditions at McAlester were bad. Then, having re-discovered the Pacific Ocean, it goes on to re-invent the wheel. It makes recommendations . . . all of which had been made . . . many times . . . but were not accomplished because of lack of funds.¹⁰³

The report then commended the Board of Corrections, the Governor, and all law enforcement agencies who worked to lessen the adverse

¹⁰¹State Senator Gene Stipe, Address to the Oklahoma State Legislature, January 3, 1973.

¹⁰²"Minority Report," p. 1.

¹⁰³Ibid., p. 2.

effects of the riot. Finally, pointing out that land to build was already available in McAlester and that the prison had public acceptance there, the minority recommended McAlester as the logical location for rebuilding the prison, but with buildings and facilities for all classes of prisoners--minimum, medium, and maximum.

One Year Later

The year immediately following the riot and fire was miserable both for the inmates and for the staff of Oklahoma State Penitentiary. Between July of 1973 and June of 1974 the administration of the prison changed hands three times. An investigation following the riot led to the resignation of Warden Park Anderson in November. He was temporarily replaced by Sam Johnston, former Deputy Warden, who had also been the key hostage during the riot.

Both Anderson and Johnston took a hard line against the inmates and actually held a "lock 'em up" attitude toward the entire population, with the exception of a few "workers" who were entrusted with helping to clean and rebuild portions of the burned-out prison. Conditions continued to be as bad as, if not worse than, before the riot. Inmates were kept on 24-hour lock-down; all personal effects were taken away and stored in warehouses in McAlester. They were limited to five books per month; permitted to take a shower once a week; subjected to frequent gassings; denied outside exercise privileges, religious services, special diets, and visiting privileges. For eight months all inmates except those on maximum security were served one or two meals every other day in the mess hall, provided adequate security was available. While many of these restrictions were necessary immediately following

the riot because of limited security, the prolonged continuation of such practices was questionable.

Events of May and June of 1974 started the changes in prison conditions. Judge Bohanon's court orders of May, 1974, included orders to close "The Hole" as a maximum security disciplinary unit; to provide religious services for Black Muslims, Protestants, and Catholics; to limit the use of chemical agents except in "exceptional" situations; and to arrange for immediate exercise privileges for inmates.¹⁰⁴

The latter two orders started a chain of events which very quickly changed the nature of the prison. Because of an inadequate number of security personnel--according to the Judge himself "at least 30 to 35 percent less than the level required to maintain adequate supervision and control"¹⁰⁵--guards felt threatened when ordered to unlock cells and let inmates onto the yard to exercise. Additionally, the limitation on the use of tear gas and mace threatened further to weaken their control over unruly inmates. As a result, in early June of 1974, guards threatened to strike. They did, in effect, strike for a few days, refusing to do anything other than just show up for work.

¹⁰⁴See Chapter II, Battle v Anderson, for more details regarding the May court orders. While Bohanon had ordered an almost immediate provision for convict exercise, Johnston balked at the order, saying it would take at least 120 days to provide safe facilities outside the cell houses. Bohanon quipped that he could build the fences himself within 48 to 72 hours. On June 17, 1974, following Bud Wilson's appointment as Acting Warden, the inmates got their first bit of sunlight for almost 11 months. There were no reports of violence; in fact, some inmates had tears in their eyes. The most damage done was that many of the men suffered sunburns from their first exposure to the sun. "Prisoners Get First Sunlight in a Year," Tulsa Tribune, June 17, 1974. The first religious services following the riot were held on June 24, 1974, in the dining hall. In attendance at the three different services were 62 Catholics, 145 Protestants, and 19 Muslims. Tulsa World, June 24, 1974.

¹⁰⁵Battle, 402, p. 410.

This threatened strike of security personnel and another, even more serious matter, prompted the resignation of Acting Warden Sam Johnston. In May inmate Robert G. Forsythe of Oklahoma City was found dead in one of the cells forty-eight hours after guards had fired tear gas into "The Rock" where he was housed. Another three inmates were hospitalized for a week. Danny Kuykendall, inmate spokesman during the hostage negotiations the previous year, suffered injuries but was treated and released as a result of the same gassing incident. State Medical Examiner, Dr. A. Jay Chapman, ruled the death "accidental," but found it to have been caused by "severe inflammation of the entire airway from the area of the larynx and including the lungs."¹⁰⁶ During the weeks following the gassing death, FBI officials and the press were reportedly denied entrance to the prison, because officials feared they were conducting a criminal investigation of the gassing incident. It was also rumored that a "hush" order had been placed on prison personnel regarding the incident. Acting Director of Corrections John Grider denied that anyone had been barred from entering the prison or that such a "hush" order existed, and the investigation was finally conducted. Two employees were transferred to other correctional facilities and one was fired in connection with the gassing.¹⁰⁷ Under such pressure, Sam Johnston resigned from the position of Acting Warden.

Harold "Bud" Wilson, chosen as one of the top 15 penologists in the country by the Ford Foundation in 1973, was brought back to McAlester

¹⁰⁶"Autopsy Ties Con's Death to Gassings," Tulsa World, May 24, 1974.

¹⁰⁷Ibid.

from the Lexington facility on June 7, 1974, to serve as Acting Warden. Ironically it was the new Acting Warden who had been eased out by Warden Anderson in 1973 because of changes he had tried to make to stem the tide of inmate unrest at McAlester. Apparently well liked and respected by inmates who felt that he had their best interests at heart, Wilson was lauded by inmate George Clark in 1973 as "one of the few progressive 20th Century penologists at the prison."¹⁰⁸ There had been a lot of "yard talk" about a possible riot if Wilson were transferred; and the racial troubles and food strikes of early 1973 "had their origins in the transfer of this man."¹⁰⁹

While Wilson initially indicated that he did not want to become permanent "boss" of Big Mac, guards and inmates noted changes within the first week after his arrival, and they were glad he had taken the job. Convict Larry Fink, editor of the prison newspaper Eye Opener until the fire burned the printing facility, said of the new Warden's arrival "You can see hope in here that hasn't been here for a long time. We dined in the mess hall yesterday, just like he [Wilson] said we would."¹¹⁰ While a few emergency repairs had been made immediately following the riot, few additional repairs and improvements were evident. With Wilson's arrival, a sudden increase in activity began at the penitentiary--dining, library, and shower facilities were being prepared. He promised that by November prison life should be back to normal.

¹⁰⁸"Insight," p. 3.

¹⁰⁹Ibid., p. 4.

¹¹⁰"Wilson Changing OSP Picture," Tulsa World, June 15, 1974.

New fiscal year appropriations which began pouring into the prison at about the same time as Wilson's appointment helped to effect widespread improvements. The total population at OSP was 750 in July 1974, down 1,000 from the time of the riot; and Wilson promised to try to get it down to 650 by the end of August. Wilson personally talked to each convict about his individual complaints; and many of them expressed confidence that they would be treated "like men again." Food handling was upgraded, with later dinners and larger portions to accommodate the Black Muslims who because of religious beliefs ate only one meal each day. Every convict was eating at least one meal daily in the mess hall, with promises of more in the near future. By August 6 Wilson planned for every man to eat breakfast and dinner in the mess hall.

All inmates were allowed two to three hours daily on the yards--four areas which were fenced and opened in June. Inmates finally had two sets of clothes for the first time in eleven months. A central heating system was installed to provide heat for the cells, and cool air circulated from the basements through the cells. Inmates were allowed to reclaim some possessions in early August, although it was only a few personal effects and legal papers. Two full-time employees and five "jailhouse lawyers" were on duty in the legal library, and legal books had been ordered. Basic education classes began for fifteen inmates under twenty-one years of age, with hopes to expand to thirty inmates within a few days. The guard force was still at about the same strength as before the riot; however, the average age was much lower, pay had been improved, and some guards were upgrading their education or getting their G.E.D.

One of Wilson's most drastic changes was the release of all inmates from "The Rock." Sixteen inmates were released, including Bobby Battle, who were being confined as "trouble makers" because of their roles in filing federal law suits or their alleged involvement in the riot.

A more subtle change made by Acting Warden Bud Wilson was perhaps indicative of the vast difference in his attitude from that of former prison chiefs. Wilson removed a display of antique prison paraphernalia which had decorated the walls in the warden's office and "hid the things in a closet."¹¹¹ Indicating his embarrassment about the display--a ball and chain, leg shackles, bulky locks and ornate keys--Wilson said this was not his idea of corrections. His stated goal was to prove "that a maximum security prison can have a rehabilitative atmosphere."¹¹² He also indicated a desire to get the prison running normally again by November, but he was referring to rehabilitating men, not constructing buildings. His philosophy was that physical facilities are the least important thing about a prison. The rehabilitative program and treatment the inmate gets, according to Wilson, are more important than where he sleeps. Right or wrong, he had some new and fresh ideas for the administration of Oklahoma State Penitentiary.

Wilson proposed a Jaycee chapter for interested inmates, Alcoholics Anonymous, Black History and American Indian Heritage groups. He also felt that the place would be "normal" only when there were college courses through talkback television system, high school courses for men over twenty-one who wanted G.E.D., a good educational program for the

¹¹¹"Wilson Changing 'Big Mac' Picture," Tulsa World, July 27, 1974.

¹¹²Ibid.

men under twenty-one, and an effective counseling program.¹¹³ Along with these changes came a noticeable difference in the attitudes of inmates and guards. Wilson's directives to both groups were: (to inmates) "Keep your hands off my guards if you want to stay off "the Rock"; (to guards) "Keep your hands off my inmates if you want to keep your job."¹¹⁴

One of the highlights of the summer was a free performance by Johnny Cash. Despite 100 degree heat, Cash sang in the Rodeo Arena for two hours to a crowd of 850 to 900 inmates, including women and trustees. Punning, Cash called this a "Con-cert," and told the inmates he was there because he "cared about [them] as persons." While this was a great morale builder among inmates, Wilson received a degree of criticism for allowing such an event to occur.

Despite Wilson's popularity and apparent effectiveness, he was not appointed permanent Warden. Acting Corrections Director John Grider indicated a desire to wait until the new Director was hired and allow him to appoint the Warden for McAlester. Russell Lash came from Indiana in August of 1974 to assume the duties of Director on a permanent basis; and immediately he and Wilson began to have difficulties. Soon after Lash's appointment, some 600 of the 799 inmates sent Governor David Hall a petition favoring the permanent appointment of Wilson as Warden. Lash

¹¹³Ibid.

¹¹⁴Ibid. While Wilson was fair with inmates and employees, he was also strict about enforcing discipline when it was needed. Dale Gossett, Chief of Classifications, whose name had figured prominently in the inmate demands during the hostage crisis, was transferred to the Oklahoma City office after a convict was freed in error because his records had been tampered with, probably by another inmate. This was considered a breach of duties, since inmates were no longer supposed to be allowed in the Classifications Office.

had been Director for less than a month when he found "grounds" to criticize Wilson severely for his lax security. On a Saturday evening in early September, the Warden allowed the Jaycee chapter to have a dinner to which outsiders were invited. Calling this a breach of security, Lash made his displeasure known; and although he denied pressuring Wilson to resign, saying "I think he has done a masterful job," he criticized him for "slack security." Wilson submitted his resignation almost immediately, with an explanation that he was accepting a faculty position at Connors College in Wilburton, Oklahoma.

Roy Sprinkle was appointed interim warden until November 1, 1974, when the Corrections Board approved Richard Crisp to head Big Mac. Crisp, a former military man, was one of three former military personnel appointed by Lash almost immediately after he took office. Crisp had been brought into the state some weeks before and placed in a position in another correctional institution. Some people believed he was being kept "on hold" until such time as Lash could get rid of Wilson and offer the Warden's job to Crisp.¹¹⁵ Warden Crisp was the fifth person to serve in that position since the riot--Anderson, Johnston, Wilson, Sprinkle, and Crisp. Lash ordered Crisp to begin a cleanup of booze, dope, and sex. Convicts who had apparently enjoyed their new-found freedom under Bud Wilson's administration began to revert to former, violent tendencies. One of the worst incidents occurred when "the rock" was burned. Inmates who had once tasted a degree of freedom found the renewed repression a bitter pill to swallow. At the risk of corrupting Cicero, one might say, "Freedom regained and again suppressed bites with

¹¹⁵ Anonymous source, July 8, 1985.

keener fangs than freedom never gained."¹¹⁶

Ten Years Later

The majority of the issues which precipitated the OSP riot and fire of 1973 had been well addressed ten years after the uprising. That event, plus the federal court case which required almost constant attention from March of 1974 through December of 1983, did much to call the inequities of the system to the attention of the Oklahoma State Legislature, Department of Corrections, and the taxpayers of the State of Oklahoma.

Statistically, the most obvious changes in the system were the dramatic acceleration in inmate population throughout the state, substantial increases in the budget of the Department, and the expanded number of correctional facilities within the system. The overall population in all state facilities had increased from 3,892 at the end of the 1973 calendar year¹¹⁷ to 7,480 at the end of 1983. The legislative appropriation for corrections in 1973 was \$9,387,993, a 57 percent increase over the previous year's appropriation; for 1983 the total corrections budget was \$89,857,698, nearly ten times more than the total for 1973.

Even more significant than these statistics was the increase in the number of corrections institutions in the state during the same ten-year period. In 1973 there were two major institutions--Oklahoma State

¹¹⁶Cicero, De Officiis (44 B.C.): "Freedom suppressed and again regained bites with keener fangs than freedom never endangered."

¹¹⁷This figure was down somewhat from the pre-riot total because of early releases--Christmas commutations, early paroles, etc. Statistics derived from "End of Calendar Year Total System Population from 1950 through 1983," Department of Corrections Quarterly Statistical Report, First Quarter FY 84, p. 2.

Penitentiary and Oklahoma State Reformatory, plus three satellite institutions--Stringtown, McLeod, and Quachita, and two community treatment centers-- one in Oklahoma City and one in Tulsa. In 1983, there was one maximum security institution, thirteen medium/minimum institutions, and eight community treatment centers.

Some of the same problems which had plagued the system in 1973 were still hampering it in 1983. According to one official,¹¹⁸ the department was growing too fast to keep up with the needs of the inmates. Overcrowding was a problem, with many of the facilities double-celled almost to capacity. Inmates and officials complained of shortages--shortages of food, clothing, and personnel. Sexual abuse among inmates was still a reality; idleness challenged inmates and officials alike, with six men for each job assignment; drug traffic was evident in some areas. There was, once again, talk of a possible uprising at Oklahoma State Penitentiary. This time, however, the talk of unrest and possible trouble came primarily from the news media. Throughout the summer, numerous news stories appeared in radio, television, and in newspaper reports telling of continued bad conditions in the prison system and predicting riots and violence as the tenth anniversary of the 1973 uprising approached. Deputy Director John Grider commented:

That was all the media talked about. Editorials were written, Every time you picked up a newspaper there was talk about the Penitentiary. On July 27, 1983, the media was calling in, "Is anything happening down at the penitentiary?" They were wanting it to happen; and they had predicted it. Nothing happened.¹¹⁹

¹¹⁸"Grider."

¹¹⁹Ibid.

While "nothing happened" at McAlester, that same official credits the media "hype" with having been at least partially responsible for the uprising which occurred less than one month later at another state institution.¹²⁰

While admitting that the system was not perfect in 1983, corrections officials argued that vast improvements had been made since 1973 and that additional changes were being implemented which would continue to improve conditions in the prison system throughout the state. Almost without exception people interviewed believed that the riot and fire of 1973, while costly to the state, was a turning point in corrections. In answer to the question, "How do you visualize the system if the riot and fire had not occurred?" Bobby Battle said, "Had it not been for the riot [prison reform] would probably still have been 10, 15, maybe 25 years away."¹²¹ Deputy Director John Grider answered, "We'd still be in the Dark Ages."¹²² The evidence overwhelmingly supports their opinions.

¹²⁰The Conner Correctional Center riot and fire are covered in more detail in Chapter IV.

¹²¹"Battle Interview."

¹²²"Grider."

CHAPTER IV

GOVERNOR DAVID BOREN'S ADMINISTRATION--1975-1979

Old houses mended, cost little less than new, before
they're ended. --The Double Gallant

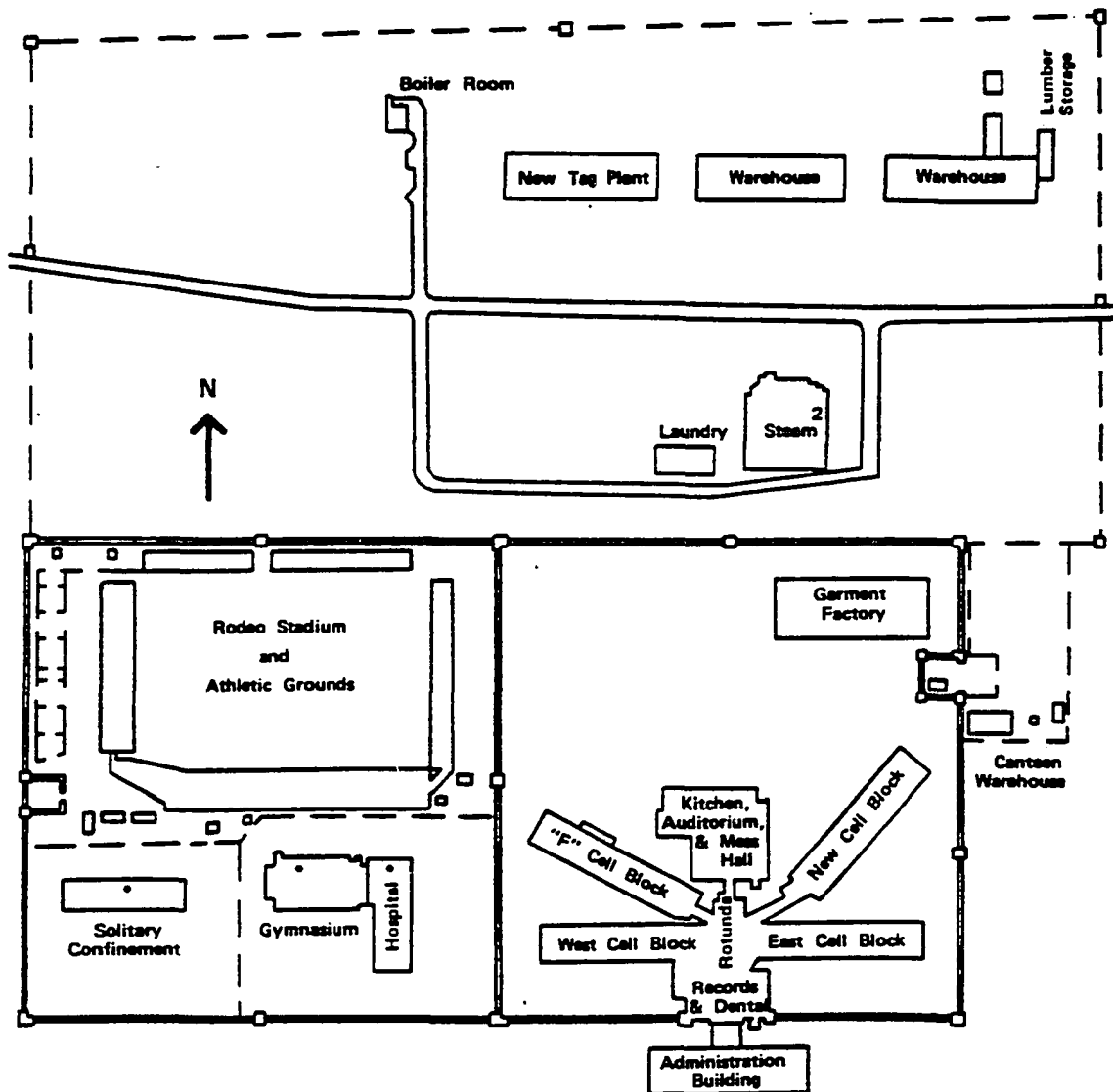
In the fall of 1974, David Lyle Boren and his "Broom Brigade" marched into the capitol and the history of Oklahoma. By the following spring, however, Oklahoma's youngest elected Governor faced the consequences of some of Oklahoma history not of his making. Governor Boren inherited two mammoth problems in corrections. First, the Oklahoma State Penitentiary still had not recovered from the disastrous effects of the riot and fire some fifteen months before his election. Little reconstruction work had been done at the prison, other than emergency work done after the riot to provide for inmates' immediate needs. A few projects were undertaken by Acting Director Bud Wilson. Figure 2 shows the small amount of construction which had been completed by July of 1975--two years after the riot. Moreover, the prison system was under a federally mandated court order which charged the state to change conditions in its prisons. This court order, issued just six months prior to Boren's election, dealt with the entire corrections system, and specifically with Oklahoma State Penitentiary.

The new Governor's concern with Oklahoma's prison system did not develop after his election to office, or even with the announcement of his candidacy. As a young professor of political science at Oklahoma

Figure 2

Division of Institutions

FACILITIES AT THE OKLAHOMA STATE PENITENTIARY
AT THE CLOSE OF FISCAL YEAR 1975¹



¹Data provided by Construction and Maintenance Unit.

²Currently being renovated following destruction by fire.

Double lines indicate wall.

Dash lines indicate fence.

²The Steam Plant building will be demolished after the completion of an on-going contract with Public Service of McAlester and after the boiler in the Boiler Room has been moved to a new location.

Baptist University in Shawnee, David Boren taught a class on corrections reform during a mini-semester in 1970. Professor Boren toured all the prison facilities in the state with his students, and that sparked the beginning of his interest in correctional reform. As a captain in the National Guard, Boren had been called to duty at OSP during the riot and fire of 1973. Although they were stationed on one of the walls of the prison, his unit was issued no ammunition for their weapons. He jokingly wondered whether Governor Hall had put him down there "in the hopes that as a potential [gubernatorial] opponent, [he] might get done in."¹ Captain Boren was also State Representative Boren; and as a member of the Legislature, he had the obligation as well as the opportunity to examine the state's correctional problems. Thus Boren's earlier interest in and exposure to corrections probably predisposed him as Governor to try to change and improve the system.

Governor Boren's Philosophy of Corrections

As Governor, Boren believed the state should have a comprehensive program for corrections, not simply to lock people up and to keep society secure from those criminals who might pose a threat. He was concerned about the quality of life and the security of the prisoners themselves: Did they have enough cell space? Were they safe? Could they be secure, or were the prisons the kinds of old facilities the inmates could take over? Was there improvement and professional growth for guards and other staff so they were less likely to become participants in such wrong-doing themselves as smuggling contraband or abusing

¹Personal interview with Senator David Boren, July 29, 1985. Hereafter referred to as "Boren."

prisoners? In short, Boren recognized the need to implement programs which not only confined people securely, humanely, and in a professional manner, but ultimately released a "rehabilitated citizen."²

To implement that philosophy, Governor Boren expanded vocational training so inmates could be released with a better chance of not becoming repeat criminals. He also wanted to provide facilities with some degree of segregation between the older, repeat criminals and those who were younger, less violent, first offenders, so the latter were not further corrupted by the former. He wanted to expand work release programs and community treatment facilities; and he wanted to provide an inmate with the opportunity to re-establish contact with his family before being released. His ultimate goal, had he stayed in office for another term, was to have every person phased out through work release-- with no one

. . . let out through the prison gate, so to speak. Even if you had somebody you didn't have a very good chance with, certainly you didn't have any worse chance by trying to give them training. They're going to go out anyway, was my theory; so why not take them out through work release."³

Russell Lash Controversy. David Boren probably could not have found anyone in Oklahoma who agreed less with his philosophy than Director of Corrections Russell Lash. About a month after taking office, Boren demanded Lash's resignation. But Lash, supported by the Board of Corrections, refused to resign. Reports of the requested resignation quote the Governor as saying he requested the Director to step down because of "refusal to furnish an accounting of how taxpayers' money was

²Ibid.

³Ibid.

spent."⁴ Boren says simply that Lash had "very odd ideas." There were reports that Lash was allowing trustees to work on inmate records (which had been forbidden by Judge Bohanon in 1974). Lash's military background apparently did little to improve his public relations skills. His militaristic attitude toward the guards had stories circulating that he would have them "almost goose-step marching."⁵ Boren appealed to the Board of Corrections: "As Governor I'm held accountable to get all of these things done, and I've got to have someone as Director that I can have some confidence in."⁶ It was clear that the Governor and the Director would never agree on corrections operations. Within a few days of his refusal to step down at Boren's request, Lash announced his resignation, to become effective on Easter of that year. He said the Oklahoma plan might "require several different types of directors to get the state corrections system running smoothly in the new direction."⁷ and that it was time for a director more "in tune" with the Governor's philosophy.

Public sentiment ranged from support to strident opposition to the Governor's "removal" of Russell Lash. One letter expressed fear of "not the Boren Broom, but the Boren Axe."⁸ John Grider again was appointed

⁴Untitled manuscript in Governor David Boren Collection, Archives Division, Department of Libraries, 8-T-7-1.)

⁵"Boren."

⁶Ibid.

⁷"State Gets \$3 Million in U.S. Aid for Prisons," Tulsa Tribune, February 12, 1975.)

⁸Unsigned letter in correspondence file. Governor David Boren Collection, Archives Division, Department of Libraries. The Boren gubernatorial campaign had loudly proclaimed his objective to "sweep out the old guard." Symbolic of this goal was the "Boren Broom Brigade,"

to serve as Acting Director while Boren and the Board searched for that person who was "in tune" with his philosophy on corrections.⁹

Ned Benton. Dr. F. Warren Benton was Project Director for the development of the Oklahoma Corrections Master Plan.¹⁰ Benton was bright, energetic, honest, a dreamer, and he "knew how to build".¹¹ On August 20, 1975, the Board hired the 26-year-old Illinois man to implement his Master Plan; as he admitted, "It's a lot easier to write a plan than it is to implement one."¹² His impact on Oklahoma corrections, however, was phenomenal. Governor Boren called his Master Plan

. . . a sound, basic plan which worked toward the goals that I wanted. He stressed rehabilitation, as well as security and punishment; smaller institutions, as well as, which are more manageable, more secure, and much more flexible in terms of programs; institutions located near urban areas where more work release programs, skill training, and social services were available to meet the inmates' needs."¹³

Dr. Benton was an architect, not a penologist; but he compensated for his lack of experience in penology by being well motivated, widely read, and basically sound in terms of his goals for the correctional

supporters who expressed their approval of his candidacy by displaying ornately decorated brooms and proclaiming "I'm a Boren Believer."

⁹Grider had already served as Acting Director for several months, between the resignation of Leo McCracken in 1973 and the appointment of Russell Lash in 1974. See Chapter III, "Aftermath of the Riot and Fire."

¹⁰F. Warren Benton, Ph.D., Project Director, Oklahoma Corrections Master Plan, sponsored by the Oklahoma Crime Commission and developed by the National Clearinghouse for Criminal Justice Planning and Architecture, Department of Architecture, University of Illinois at Urbana-Champaign, 1974.

¹¹Personal Interview with Deputy Director of Corrections Jonn Grider, May 30, 1985. Hereafter referred to as "Grider."

¹²Ibid.

¹³"Boren."

system in Oklahoma. Deputy Director of Corrections John Grider stated that if Benton had not been Director, Oklahoma would "still be ten years behind where we are today."¹⁴ Larry Meachum, who succeeded Benton as Director, called Benton "the first real Director of the Department of Corrections, because he was a public entity "who caused the Department to be viewed as a department, both politically and publicly."¹⁵ Because he was an architect and did not know about the operations of corrections, he chose not to participate extensively in the day-to-day management of the Department. In fact, Benton pointedly told a reporter,

I'm not going to be a [Russell] Lash style director. . . . I'm not going to run down to McAlester and whip the prison into shape. I would be a fool to do that. I would look like an idiot in two days.

I recognize where I've got some strengths and where I've got some weaknesses on this job. I told the wardens I'm not an experienced warden and I really don't know how to run their institutions.

I do know certain things about how to run their institutions, and I do know certain standards and certain goals that I expect them to achieve, but frankly, it is a strategic issue of how I go about meeting those goals and objectives.¹⁶

In fact, he had a written policy that gave each of the three Deputy Directors an equal vote with him as the Director. He gave himself only one vote and did not override or intervene if he disagreed with a particular vote. He had been brought to Oklahoma primarily to implement the Master Plan and to build three new prisons which were completed during his tenure. The construction was a master stroke in itself. From its inception, the completion of a new prison facility is

¹⁴"Grider "

¹⁵Personal Interview with Director of Corrections, Larry Meachum, July 22, 1985. Hereafter referred to as "Meachum."

¹⁶"Benton Has His Own Style", Tulsa Tribune, September 13, 1975.

traditionally believed by corrections administrators to require from five to seven years. Benton essentially built three institutions--Lexington Assessment and Reception Center, Joseph Harp Correctional Center, and Conner Correctional Center--and had them open in four years.¹⁷

Benton received much criticism for his construction program and for his budget administration. He took the Department from a budget of \$18 million to \$52 million in less than four years. Obviously, much of this budgetary increase was a direct result of opening of the new institutions, but the very fact that he was able to accomplish this with the Legislature was surprising.

His Master Plan was, according to Meachum, "good corrections. It's good corrections theory; it's good corrections ideology."¹⁸ Benton knew from the outset that his success or failure in achieving goals and objectives would be a "strategic issue." Success depended not upon the adequacy of the Plan--it enjoyed considerable praise--but upon Ned Benton's skills in guiding the Plan through the perilous territory known as the Oklahoma Legislature. Yet the Master Plan became a "report card of failure."¹⁹ Any politician who did not like Benton could easily plan an ambush at the pass. All of the Director's agendas were on the table. He could in no way disassociate himself from any of them--after all, he wrote the Plan. Both politicians and corrections subordinates were able to block or frustrate him on any item in the Master Plan, because they

¹⁷"Meachum."

¹⁸Ibid.

¹⁹Ibid.

knew exactly where he stood. Thus, the Plan largely became his map to failure, not to success.

Another factor which contributed to Benton's failure to implement the Plan totally was the change of administrations while he was Director. Usually the priorities of one Governor's administration are not the same as those of a subsequent administration. This change in administration may have left Benton without the base of support he needed to implement the Master Plan.

Ned Benton was young and impulsive, and lacked most of the political skills and experience necessary for dealing with the Legislature. He was straight forward and sometimes not diplomatic. He was further handicapped by regional cultural differences which only exacerbated the other problems. One observer's comment illustrated the point well: "He took to wearing a cowboy hat and cowboy boots, but still looked like a Ph.D. from Massachusetts in a cowboy hat and cowboy boots."²⁰ If no quarter had been asked, certainly none was offered. In February of 1976, just six months after his appointment as Director, Benton clashed with Senators Gene Stipe from McAlester and Jim Hamilton from Poteau. In a meeting of the Senate Public Safety and Penal Affairs Committee, Senator Hamilton asked Benton why renovation at OSP had not been completed in the two and one-half years since the riot. Hamilton was concerned that a federal judge might begin "telling us to do some of these things." Benton reminded Hamilton that he had been Director for only six months, adding that he felt more work had been done in that time "than in all the time before. I'm very pleased with that record,

²⁰Undated, untitled newspaper clipping.

and I think you should be." Stipe answered that Benton was painting "with a broad stroke. Now let's get down to the nitty gritty. I want some figures." Benton retorted: "Have you ever asked me for those figures?"²¹

In the same meeting, Stipe rebuked Benton for trying to field questions Stipe had directed at the architects who were present. "I have plenty of questions for you, Dr. Benton, but you're going to have to wait your turn. One thing you'll learn with age is patience." The 26-year-old Director replied, "I'm finding reservoirs I never knew I had."²² This attitude won him a lot of political enemies and was greatly responsible for his ultimate demise as Director. He was never to lose Boren's support, as the Governor continued to push for implementation of the Master Plan as long as he was in office. It was this cooperation between the two which made possible the tremendous strides in construction and reconstruction during the Boren administration. Together these men were responsible for planning, building, and occupying the first new prison construction in Oklahoma since OSR in Granite was built in 1914. This construction included Lexington Assessment and Reception Center and Joseph Harp Correctional Center, both in a rural area east of Lexington; and Conner Correctional Center, north of Tulsa in Hominy.

²¹"Benton, Stipe Clash Over Prison Progress," Tulsa Tribune, February 5, 1976.

²²Ibid.

BATTLE II. Boren's BATTLE Battle

During the years following the Battle court order of 1974, evidentiary and compliance hearings were held about every six months to keep the Court informed of progress in the case. Judge Bohanon was, for the most part, complimentary of the Department's efforts to comply with his orders. In hearings held on May 4, 1976, and October 14-15, 1976, evidence was presented concerning a previously unaddressed problem in the prison system--overcrowding. While Judge Bohanon did not issue any orders at these hearings, he did indicate that population levels and conditions were intolerable and warned he would consider issuing an injunction against the state if the problem were not solved.

In April, 1977, the Plaintiffs (Battle, et al.) asked the Court for emergency supplemental relief with overcrowding. The Plaintiff-Intervenor (U.S. Department of Justice) then requested an evidentiary hearing regarding overcrowding and conditions of confinement. The hearing was held on May 23-24, 1977, and the resulting court order came to be known as Battle II. At the hearing a mockup of a cell--an actual scale model of a typical McAlester prison cell--stood in the courtroom as a constant reminder of the housing units afforded prison inmates.²³

Three "expert witnesses" were called to testify at the hearing. Theodore Gordon, an environmental health specialist, testified about conditions of confinement, health dangers associated with the facilities, and problems associated with water, fire, sewage, and utilities within the system. Fred Moyer, an architect and Director of the

²³Battle v. Anderson, 447 F.Supp. 516 (1977), pp. 516-526. Hereafter referred to as Battle, 447 F.Supp. 516.

National Clearinghouse for Criminal Justice Planning and Architecture²⁴, testified on architectural and design needs within the various facilities and various national standards for space needs in prisons. Finally, Charles Robert Sarver, a former correctional administrator and at the time a Professor of Law and Sociology at the University of Arkansas, testified about management problems inherent in a system so overcrowded. He also told of some prison officials' admitting to him their concern about the overcrowding problem.

The testimonies of the three expert witnesses and the mockup prison cell, were apparently a sufficient basis for Judge Bohanon to make his decision. Bohanon began by complimenting Warden Crisp and Dr. Benton on their "good leadership." He added that their trouble was not of their own making; rather, its genesis was inadequate funding. Protesting that the Federal Courts are always reluctant to intervene in states' problems, especially in prison operations, the Judge noted that on five separate occasions since the May 1974 ruling, he had found the state to be not in compliance with his orders or to be obstructing the orderly resolution of the case. On each occasion, he had chosen to "give deference to prison officials." He added, "In time, however, "deference

²⁴Fred Moyer was the individual who had been called in following the riot to survey damage to OSP and had recommended "bulldozing" the entire facility. Even more interesting is the fact that he was Ned Benton's boss when Benton was with the National Clearing House for Criminal Justice Planning and Architecture. The Corrections Board later hired Moyer's architectural firm to participate in estimating costs of construction and renovation projects designed to comply with court orders. Moyer, who testified against the state in this May, 1977, hearing, reputedly received 23 percent of the 6.7 percent fee for all renovations and 4.7 percent of the fee for all new construction. This raised some legislative eyebrows in 1979 when other problems arose which forced Benton's eventual resignation. Letter from Representative Carl Twidwell to Governor George Nigh, June 8, 1979.

becomes negligence."²⁵ The Judge noted a large percentage of inmates were idle, with neither jobs nor programs to fill their time. Further, there was an inordinate number of inmates in segregative classifications--protective custody, disciplinary segregation, administrative segregation--a condition which did not exist at the time of the original litigation.²⁶ These circumstances constituted a situation in which inmates were literally warehoused within institutions, according to Bohanon.

Yet a potentially more crucial problem existed--that of prison overcrowding. Table I shows the design capacity, critical capacity, and population on May 24, 1976 for each institution and community treatment center. Citing recent figures, Judge Bohanon found that the degree of idleness was critical in all institutions, but most serious at

TABLE I²⁷

CORRECTIONAL FACILITY	DESIGN CAPACITY	CRITICAL CAPACITY	CURRENT POPULATION	% OF DESIGN CAPACITY	% OF CRITICAL CAPACITY
OSP	874	1,977	1,949	223%	99%
OSR	219	682	629	287%	92%
Lexington	296	449	464	157%	103%
Ouachita	163	246	205	126%	83%
McLeod	156	258	266	171%	103%
Stringtown	246	391	388	158%	99%
CTCs	317	490	324	102%	66%
Women's Facility	29	77	74	255%	96%

²⁵Battle v. Anderson, 447 F.Supp. 516 (1977), p. 518. Hereafter referred to as Battle, 447 F.Supp. 516.

²⁶The original litigation occurred less than one year after the riot; and all inmates were on maximum segregation (lockdown status) because of the lack of repairs to the damaged institution.

²⁷Battle, 447 F.Supp. 516, p. 520.

McAlester, where on April 28, only 581 of the 1506 inmates (34%) were assigned to jobs or programs. Furthermore, the overall population of the prison system had increased by 200 inmates from March until May, with no relief in sight. He quoted Dr. Ned Benton, Director of Corrections:

Our prison system can be considered to be similar to a pipe which receives water on one end and releases it on the other end. If more water is forced into the front end than is released from the back end, the pipe will burst.²⁸

Another critical finding of the Court was that each resident, by the Department of Corrections' own figures, should have been provided sixty square feet of cell space or seventy-five square feet of dormitory space. This was defined by the Department and was found to be "the absolute minimum, humanely permissible" by the expert witnesses at the hearing.²⁹ Figures of March 7, 1977, showed that 4,440 inmates were in residence in Oklahoma prisons. Of these, 1,020 were housed in areas of less than twenty square feet, and 1,098 in areas of from twenty to thirty-nine square feet--far less space than the Department's own minimal requirement.

The Judge noted that the riot and fire at McAlester occurred under such conditions of overcrowding, and that a more recent incident had occurred at Oklahoma State Reformatory under conditions of 25 percent overcrowding.³⁰ Many of the problems of overcrowding, according to

²⁸F. Warren Benton, in The Oklahoma Department of Corrections Contingency Plan, quoted in Battle, 447 F.Supp. 516, p. 521.

²⁹Battle, 447 F.Supp. 516, p. 520.

³⁰Two incidents had occurred at Granite, one in October of 1975, in which inmates hostages were taken, and another in April of 1977, in which inmates tried to burn the East cellhouse dorm. The damage was confined to smoke damage and a few people being hit with light bulbs.

Judge Bohanon, were self evident. These inherent problems included: (1) fiscal strain--the Department of Corrections realized a significant per capita decrease in the food budget in Fiscal Year 78 because of overcrowding; and (2) security problems--incidents of assault, extortion, homosexual behavior, and escapes increase with overcrowding.

A football coach at the University of Oklahoma once remarked that "three things can happen with a forward pass, and two of them are bad." With overcrowding in prisons, the odds get even worse. One of two things can be expected to happen, and both are bad--either the concept of security totally breaks down, or the inmates face increased lockdown and repression of activities. Quality and quantity of programs and activities are strained by increased population levels. Increased tension and fear among inmates are evidence by the number of inmates who request protective custody when institutions are overcrowded. When OSP had a population of 972 inmates in June of 1975, 44 inmates (4.5 percent) requested protection; when the population was 1,522 on May 12, 1977, 140 inmates (9.2 percent) requested protection.³¹

The Judge enumerated the problems existing in conditions of confinement in each institution, including temperature ranges, water and sewage problems, fire hazards, and inadequate utilities. He noted further that such environmental and safety problems were worsened by the existing overcrowded conditions. Before issuing the Court Order, he reprimanded the defendants for their conduct since the original order of May 1974. The most recent event had occurred just prior to the hearing when "experts" for the plaintiff and plaintiff-intervenor were

³¹Battle, 447 F.Supp. 516, pp. 521-22.

prohibited from visiting with wardens of the various institutions. Instead of being allowed to converse directly with the wardens,

counsel were required to relate expert's questions to Derendant counsel who would pass the question to the warden. If Defendant counsel thought the question proper, then the warden was permitted to answer the question, otherwise not.³²

Bohanon construed this conduct to be a willful attempt to prevent experts from gathering the truth, and wondered if only the tip of the iceberg had been discovered, actual conditions much worse than those presented to the court.

Stating that good intentions on the part of the Department of Corrections were not enough and that the continued unconstitutional confinement of inmates was a violation of their civil rights, the Court felt compelled to order that³³ beginning in August, 1977, the State was to reduce the inmate population at Oklahoma State Penitentiary at the rate of 100 inmates per month until the population numbered 800 inmates. It was to reduce the population at Oklahoma State Reformatory at the rate of 50 per month until the population reached 450 inmates. While not ordering the abandonment of any facility, the Judge did order that each inmate should be provided a minimum of sixty square feet in a cell, and seventy-five square feet in a dormitory. Furthermore, no more than one person per cell was to be permitted, except in the large cells in the F cellhouse at OSP, in which two inmates would be acceptable. Finally, no institution in which the water and sewage facilities failed to meet state and federal requirements would remain open at the end of fifteen months.

³²Ibid., p. 524.

³³Ibid., pp. 518, 526. The Court Orders are paraphrased.

In conclusion, Bohanon indicated that if the defendant showed good faith and diligence in accomplishing the above goals, the Court might entertain an application for temporary relief from the order in the future. This provision would provide some welcome relief in years to come.

Reaction to the Court Order

Within one day after the May 23-24 hearing and even before the written order was issued, consequences of the Court orders began to be felt across the state. On May 25, Osage County officials in Pawhuska tried to transfer a newly convicted murder to the McAlester facility only to be told, ". . . you can't send one unless one is coming out."³⁴ City and county jails immediately began to fill to capacity, leading one official to observe that it was just as unconstitutional to overcrowd city and county jails as to overcrowd the state penal facilities. Both Boren and Benton later supported admitting inmates as usual while the case was on appeal.

Attorney General Larry Derryberry announced plans to appeal the court's decision with the Tenth U.S. Circuit Court of Appeals in Denver. Derryberry predicted that the appeal would be successful, but added that even if the ruling were to be upheld, the State would not begin turning prisoners loose on the street to comply with the order.³⁵ Even while predicting the court order would be overturned, Derryberry added that the State would have to upgrade its prison system, regardless.

³⁴"No Room at Penitentiary for Convicted Murderer?" Tulsa World, May 25, 1977.

³⁵"Derryberry Sees Reversal of Ruling," Tulsa World, May 26, 1977.

Meanwhile, Louis Bullock, ACLU attorney for the plaintiff, predicted the order would be upheld and without much delay.³⁶

Corrections Director Ned Benton had told a Senate subcommittee the previous month that 600 to 800 convicts could be released immediately without endangering society. Benton was challenged by Corrections Board members to provide a list of those inmates for early parole consideration. Even the Governor had some apparent reservations about Benton's figures. When asked if he was ruling out the possibility of outright releases for 20 percent of the population, Boren quipped, "Find them [the inmates who should not be there] for me. They are not there for having perfect attendance in Sunday School."³⁷

Boren, while stopping short of saying he would defy Bohanon's order for drastic reductions at McAlester and Granite, called the ruling "usurpation of the powers of state government by the federal court." He called Bohanon's actions a total disregard for the safety and security of the people of the state. "A federal judge, elected by no one, chooses to substitute judgement for the democratic process. I would have thought good faith counted for more."³⁸ Boren did not disagree with Judge Bohanon that the system needed relief from overcrowding; however, he did object to wholesale release of inmates who were not ready to return to society. He had told Corrections Board members in January of 1975, shortly after becoming Governor, that the State could

³⁶Ibid.

³⁷"Judge Tells State to Cut 2 Prisons' Inmate Totals," Tulsa World, May 25, 1977.

³⁸Ibid.

not continue to aggregate such great numbers of prisoners in one location. In pushing his 1976 programs for two new facilities, one at Hominy and one at Lexington, he said the new facilities would provide added space for 1,200 additional inmates and relieve overcrowding. However, the prison population had risen from 2,800 in 1973 to 4,600 in 1977.³⁹

In a statement released on May 27, Governor David Boren announced an accelerated plan for prison construction which, along with other efforts, would reduce prison population below the federally mandated limits within fifteen months. He repeatedly stressed that this was not a plan for compliance with the court order, since he did not believe the state should be under a compliance plan. Within fifteen months, according to the statement, the state could provide 2,070 new spaces, with about one-third of these becoming available before the end of 1977. Some 1,450 spaces were already programmed or actually under construction; another 620 were proposed. He outlined three phases of his prison program so that the people would "know exactly what we are doing."⁴⁰

The Department would first carry through with existing plans. The state's good faith was evident in the massive increase made in funding for corrections. During the four years prior to his election, the Governor said, \$41 million was spent on corrections; in his first three years as Governor, almost \$103 million had been allocated for corrections, not only for "brick and mortar," but also for expanded probation,

³⁹"Boren Prison Stance Hit," Tulsa World, May 26, 1977.

⁴⁰"Statement of Governor David L. Boren," May 27, 1977, in Governor David Boren Collection, Archives Division, Oklahoma Department of Libraries.

community treatment centers, and restitution programs. Current construction would provide 1,450 new spaces by August of 1978, with 1,200 spaces at Hominy, Lexington, and Joseph Harp; 150 spaces in additional dormitory space at Stringtown, McLeod, and Hodgens; and 100 spaces at the Oklahoma City Community Treatment Center.

Within that time, an additional 620 spaces could be added by accelerating existing plans of the Department of Corrections. This could be done with General Revenue money and Public Works Funds without straining the state's budget. Governor Boren's success in meeting the financial demands of significant corrections reforms and new construction was made easier by the tax bonanza from the state's oil boom in the mid-70s. One can only speculate about how much political "blood" would have had to be spilled to accomplish as much after the recession and financial straits of the early 1980s.

A third phase of the program would involve changing docketing procedures of the Pardon and Parole Board which would allow the Board to consider all inmates who might safely be paroled. The docket would be increased from 150 per month to 500 per month, with special consideration being given to three categories of inmates: (1) those who had served at least one-fourth of their sentence; (2) non-violent first offenders, who would be considered for parole four months earlier than normal; and (3) first-time DWI offenders who had served four months.⁴¹

Governor Boren added that he sincerely hoped the Federal Court would not put the State under any order, but would allow the people to determine policies and implement programs. Surely when all was said and

⁴¹ Ibid., pp. 3-4.

done, the Federal Government would give our "good faith a chance to work. We cannot work miracles, but our state's own constitutional and legal processes are best suited to attack the problem."⁴² The plan which called for building \$2.8 million in prison facilities ahead of schedule, would also serve "as an insurance policy" if the State were to lose in court.⁴³

After announcing this plan, Boren repeated his contention that Judge Bohanon should not issue any more court orders. He felt another order would "take the steam out of the state's efforts" at prison reform.⁴⁴

During the next week, the Governor met with officials of the U.S. Justice Department to discuss efforts to see that no further federal court orders were issued. He told the press that Justice Department officials were "very positively impressed" with the state's efforts to relieve prison overcrowding. Louis Bullock quickly accused Boren of attempting a "political fix" by trying to nullify the court order of May 24. Bullock suspected the Governor of striking a deal with the Justice Department to get them to convince Bohanon not to issue a final court order implementing his May 24 edict. Saying it would be "an incredible switch," Bullock noted that the Justice Department had recommended in open court that Bohanon "lock the door" of OSP and the

⁴²Ibid., pp. 4-5.

⁴³"State Accelerating Prison Construction to Cut Inmate Count," Tulsa World, May 28, 1977.

⁴⁴"Boren Opposes Any New Court Order On Prisons, Tulsa Tribune, May 29, 1974.

Reformatory in Granite.⁴⁵ Contrary to Bullock's suspicions, the Justice Department urged that the court order stand.⁴⁶

Assistant Attorney General Paul Crowe submitted a plan to the Court on June 13, 1977, detailing all the proposals in Boren's statement;⁴⁷ but--Boren's efforts notwithstanding--Judge Luther Bohanon issued a formal written order on June 14, 1977, supporting his verbal order of May 24-25.⁴⁸ The District Court (Bohanon) found the deteriorated condition of the penal facilities, "coupled with a serious problem of overcrowding, . . . constituted cruel and unusual punishment under the Eighth Amendment of the United States Constitution." The State appealed the decision. On August 23, 1977, the Tenth Circuit Court of Appeals affirmed the finding, but remanded the case for closer monitoring of the state's effort to comply with the court order.⁴⁹

The State complied until late in December, when it requested a stay of the order from the District Court. Judge Bohanon granted the request for a stay in hearing on February 7, 1978, pending a compliance report from the plaintiff and plaintiff-intervenor. This Joint Compliance Report was presented at an evidentiary hearing on August 14 and 15, 1978, and indicated that the state was in "substantive compliance" in the areas of religion, mail, and disciplinary rules. In all other

⁴⁵"Boren Says U.S. Government Impressed by Prison Efforts," Tulsa World, June 4, 1977.

⁴⁶Battle v. Anderson, 564 F.2d 388 (10th Cir. 1977), p. 401. Hereafter referred to as Battle, 564 F.2d 388.

⁴⁷Battle v. Anderson, Defendant's Proposed Plan, June 13, 1977.

⁴⁸Battle, 564 F.2d 388;

⁴⁹"Prison Litigation: A Battle," Tulsa World, May 8, 1983.

areas, the defendants were in noncompliance with the Court's orders.⁵⁰

In the 14 months since Battle II, the prison population had been cut by 213 inmates, with McAlester being reduced by 356 and Granite by 186. The Department had also added 540 beds, including the 400-man A & R unit at Lexington. After the stay of the court order in February of 1978, OSP's population had been reduced by thirty-two inmates, and Granite's had risen by sixteen. The following chart was submitted to the Court to illustrate the capacities as of May 1977, when the original order was issued and August 1978, the time of the Compliance Hearing. It also shows actual population at four points in time: (1) at the time of the original order (May 1977); (2) at the time of the February hearing (when the stay was granted); (3) one year after the original order (May 1978); and, (4) shortly before the August hearing (July 31,

PRISON CAPACITIES/POPULATION⁵¹

<u>Institution</u>	<u>Design Capacity</u>		<u>Actual Population</u>			
	<u>5/77</u>	<u>8/78</u>	<u>5/23/77</u>	<u>2/7/78</u>	<u>5/1/78</u>	<u>7/31/78</u>
OSP	874	874	1,918	1,597	1,555	1,523
Inside	655	655	1,551	1,227	1,209	1,195
Farm	159	159	248	269	255	254
Women's	60	60	119	101	91	74
OSR	321	321	684	482	499	498
Lexington	296	400	485	526	688	633
Hodgens	163	163	215	222	224	243
McLeod	156	206	279	297	311	321
Stringtown	246	296	395	410	445	453
WTF (wcmen)	29	29	73	66	29	36
CTC	<u>317</u>	<u>487</u>	<u>439</u>	<u>486</u>	<u>522</u>	<u>533</u>
Totals	2,402	2,868	4,463	4,132	4,252	4,250

⁵⁰Battle v. Anderson, Joint Compliance Report. August 14, 1978.

⁵¹Battle v. Anderson, 457 F.Supp. 719 (1978). Hereafter referred to as Battle, 457 F.Supp. 719.

1978). The Hearing further revealed that over 60 percent of inmates at OSP were housed in thirty-three square feet or less (some as little as twenty square feet), with none housed in more than forty square feet. Many cells were double occupied.

The Court, based on its findings that overcrowding was still excessive, ordered the state to reduce all housing to one man to a cell by April 1, 1979 in OSP and OSR. Bohanon also re-issued the order that August 1, 1979, inmates in other prisons were to be provided at least sixty square feet for a cell or seventy-five square feet for dormitory space.⁵²

Construction/Reconstruction Legislation

One of the first actions⁵³ David Boren took as Governor was to secure funds from the Law Enforcement Assistance Administration (LEAA) for improving the state's correctional facilities. In February of 1975, less than one month after taking office, Boren traveled to Washington where he met with LEAA spokesman Richard Valde and secured a promise for an immediate \$3 million matching grant for corrections. The LEAA would provide \$3 million in federal funds, to be matched by \$4 million in state funds. This \$7 million was to be used to improve security at McAlester and to start a new reception center adjacent to the Central State Hospital grounds in Norman. House Bill 1545 (Hall administration)

⁵²Several other orders emanated from this Hearing, the most significant of which included the order to close all wooden dormitories to habitation by December 1, 1979, the breaking of ground for the construction of replacements of the East and West Cell Houses at Granite and McAlester by November 1979, and the permanent closing of those cell houses for habitation by May 1, 1981.

⁵³The very first act he performed was to push a bill through the Legislature which ended the inheritance tax on widows.

had appropriated \$1 million for construction of the facility;⁵⁴ but no bricks would be laid in Norman. Ostensibly because of inadequate sanitary lift stations, city officials of Norman opposed the location of the assessment and reception center in that city. In reality, private citizens also campaigned against the location of a correctional facility in their city.

During the next legislative session (Boren's first), Senate Bill 87 changed the location of the proposed center from Norman to "presently owned state land in central Oklahoma" and reappropriated the \$1 million and an additional \$2.4 million for this purpose.⁵⁵ Thus, the groundwork was laid for construction of additional facilities prior to the hiring of Ned Benton as Director.

Three New Prison Facilities--Lexington,

Joseph Harp, Conner

The Boren administration, under the direction of Ned Benton, planned, built, and occupied the first new prison facilities to be built in the state since Oklahoma State Reformatory was built in 1913. House Bill 1758 approved the planning and design of two medium security correctional facilities and the construction and equipping of the first of the facilities--Lexington Assessment and Reception Center. The second facility was to be located within thirty-five miles of Tulsa. Hominy was the location finally chosen.

⁵⁴House Bill 1545, 35th Legislature, Second Regular Session, 1974, p. 602.

⁵⁵Senate Bill 87, 35th Legislature, First Regular Session, 1975, p. 570.

Passing the construction bill was not easily accomplished; in fact, it passed **by one vote**. Senator David Boren related the story of how the House roll call was kept open for three hours while Representative Irving was flown in from McAlester to cast the deciding vote. The vote was that close!⁵⁶

Construction was begun on LARC during Fiscal Year 1976, with completion during 1978. The purpose of the Center was to provide a centralized, system-wide service for "the initial reception, evaluation, and classification of all male offenders committed to the Department."⁵⁷ Newly received inmates were retained at the reception facility long enough for completion of a series of diagnostic studies to be conducted. Included in these studies were assessments of inmates' medical, dental, social, psychological, vocational, educational, and security needs. With the information derived from these evaluations, an individual incarceration program was developed and became the foundation of his cumulative case history while under the custodial care of the Oklahoma Department of Corrections. After completion of the initial assessment and reception process, the inmate was assigned to another institution or to the minimum security section of the Center. Single celled, the Assessment and Reception Center had the capability of processing 60 persons per week of providing housing for an additional 240 inmates in its medium security area.

⁵⁶"Boren."

⁵⁷Oklahoma Department of Corrections Annual Report, Fiscal Year 1977, p. 31. The total cost of LARC was \$12,252,000, of which \$3,452,000 came from federal sources and \$8,800,000 from state appropriations.

Calling it a "historic occasion for the State of Oklahoma,"⁵⁸ Governor Boren dedicated the Lexington Assessment and Reception Center in February of 1978. The Governor remarked that no classification is needed in a system in which each inmate is treated exactly like all other inmates and all institutions are alike. He pointed out in his dedicatory address that the new building by itself would not improve the classification process. A broad new range of alternatives was now available for those who were committed to prison--"from immediate assignment to a community treatment center with no traditional imprisonment, to assignment to highly secure incarceration at the penitentiary."⁵⁹

New procedures were developed to assure that each prisoner was routinely considered for reclassification every 120 days, so that each inmate might have an opportunity to be assigned to the most appropriate setting for his needs. Before a prisoner left LARC, he would have a complete plan for his incarceration, so that he could know exactly what was expected of him and what to expect if he maintained a good record. All dental and medical conditions were treated in an effort to solve such problems before the transfer of the inmate. Even more significant, prisoner types were separated so that new prisoners would not be exposed to hardened criminals. Officials hoped this would allow the first-term offender a chance for swift rehabilitation in a community-based program, rather than being sent to a traditional institution.

⁵⁸Press Release, undated, in Governor David L. Boren Collection, Archives Division, Oklahoma Department of Libraries, p. 1.

⁵⁹Ibid.

In many instances prisoners were employed in construction projects and actually saved the state more than the cost of their imprisonment. At the Lexington facility, 12 prisoners erected the fencing for \$20,000. A commercial contractor had bid the fence at \$70,000. Each prisoner saved approximately \$4,200 during an eight-month period; the cost of their imprisonment during the same time was \$3,140.

The next two phases of construction--Joseph Harp Correctional Center in Lexington, and Conner Correctional Center in Hominy--were begun during the 1977 fiscal year and completed in September of 1978 and October of 1979, respectively. The design on both was called the "most modern in correctional architecture" and received awards from the American Institute of Architects and the American Correctional Association.⁶⁰ The housing units were constructed in clusters of two-story buildings, each housing forty inmates. Each eighty-inmate housing area had its own dining hall and classroom area. Individual cells were nearly eighty square feet--more than the seventy-five square feet mandated by Bohanon's court order. Inside each housing unit was a glass-enclosed control console, from which a guard could lock or unlock any or all of the cell doors with a flip of a switch. A specially marked button could be pushed to activate a red light on top of the housing unit, thus alerting the tower guard of trouble inside the unit.

These two facilities, along with the Assessment and Reception Center, provided 1,200 additional spaces in the correctional system. These bed spaces greatly relieved the overcrowded conditions at Oklahoma State Penitentiary and the Oklahoma State Reformatory. By May of 1979,

⁶⁰Department of Corrections Annual Report, FY 1979-80, p. 28.

the system had achieved the lowest population levels at these two institutions in many years--945 at OSP and 425 at OSR.

The construction of Joseph Harp Correctional Center and Conner Correctional Center cost \$13 million each. Both were medium security institutions; but officials claimed that the only way anyone would ever escape would be through carelessness on the part of employees. The windows had no bars; but were made of four, one-quarter-inch panes of glass which could neither be sawed nor broken, "An inmate could beat on these windows until he was tired and not make a dent."⁶¹ And the Titanic was unsinkable! Within two months after the Conner facility opened its doors for residents, this "shatterproof" window glass began breaking.⁶² Inmate Morris A. McKorvey described his feelings about the "modern" glass which substituted for bars:

Progress⁶³

No longer bars
but wretched panes
of window
smudged with ancient grit
and paint splattered spiral cracks
spread in kaleidoscopic trails
across the glass.

⁶¹Senior Captain Clovis Thompson, in "Our Newest Prison," Tulsa Tribune, May 30, 1979.

⁶²"Conner: 'Boondoggle, Lemon,'" in "Riot to Riches." Reprinted from a Tulsa Tribune series, 1983, p. 8. During a tour of Joseph Harp Correctional Center in 1983, this writer observed large cracks in window panes, as well as ply-wood "windows" where glass once had been.

⁶³Morris A. McKorvey, No. 94499, Lexington Correctional Center, in Department of Corrections Annual Report, FY 1979-80.

A few feet beyond
 no longer bars
 the cold grey chain link
 crowned by barbed wire
 conspires to obscure the view
 of maples aligned along the road
 so close away.

Unfortunately, broken window panes were not the only problems with the three new institutions. The problems with Conner began long before it was opened for residents. The WRG Construction Company of Tulsa won bidding to do earth work and build the dormitories in 1977. A Kansas firm, awarded the \$5.5 million contract for building the administration building, kitchen, laundry, and other structures, withdrew from its contract, claiming a bidding error had caused it to under-estimate the price by about \$253,000.⁶⁴ Because Powell Construction Company of Tulsa agreed to do the job at the same price bid by the Kansas firm, the Board selected Powell, which was not one of the original bidders, without reopening the bidding.

Work began in June of 1977; and the following month violence between WRG crews and Powell crews (open shop/closed shop) halted the work for a few weeks before workers were fired and the violence stopped. The WRG work was completed after about a year, but utility hookups had not been built. Temporary power lines and space heaters had to be used to keep winter temperatures from damaging the buildings. A combination of broken underground conduits, crushed sewer and water mains, leaking roofs, water and heat breakdowns plagued the prison during the first year. The \$125,000 microwave security system at several institutions

⁶⁴Ibid. Details of this bidding "error" and the subsequent refusal to honor the bid are also contained in Governor David Boren Collection, Division of Archives, Oklahoma Department of Libraries.

frequently failed. Cell doors without windows had to be remodeled at a cost of nearly \$100 a door for 1,600 new doors. Steel doors installed on the front of shower stalls were removed immediately after the new prisons opened when officials realized guards would be unable to monitor showers and prevent inmates from attacking one another. Security control centers were designed for security as well as for "aesthetics," but the aesthetic open gap between steel frames allowed inmates to slide mop or broom handles between the frames and hit electronic control buttons to open all cell doors.

Oklahoma, which had not built a new prison since 1913, built three prisons virtually at the same time and with the same floor plan. "The first one had problems, and we duplicated those problems at the others because we were building too fast," said Deputy Director John Grider.⁶⁵

Community Treatment Centers

Governor David Boren has been called a "brick and mortar person;" but building was certainly not his top priority for corrections. He called the building of an additional 1,200 bed spaces for prisons "the minimum we could do and even begin to have any relaxation from the Court, or considering the number of inmates we had and the health and safety problems we had."⁶⁶ In his own mind, Boren pushed just as hard for work release. He recalls the opposition from Representative Sandy Sanders of Oklahoma City when the work release center was begun in the motel in northwest Oklahoma City. Equally as bad were the problems in

⁶⁵"Construction Orgy Bloated with Waste," in "Riot to Riches." Reprinted from a Tulsa Tribune series, 1983, p. 7.

⁶⁶"Boren. "

Tulsa during the opening of the Horace Mann Community Treatment Center. He spent "a lot of political capital . . . fighting to get work release sites."⁶⁷

An evaluation of the Community Treatment Program in 1977 provided revealing statistics in the areas of program failure, recidivism, and cost.

Failure. The number of inmates in CTCs increased from 35 in 1970 to 859 in 1976, with no increase in failure rate. The 1976 return rate was approximately 15 percent, compared to 30 percent in the past.⁶⁸ The escape rate was reduced from 5 percent to 3.9 percent through 1976, and to below 3.0 percent in 1977.⁶⁹

Recidivism.⁷⁰ Of the CTC inmate population 75 percent are not violent offenders, but property offenders and substance abusers, who traditionally have the highest recidivism rate. Despite this high risk population, the recidivism rate in CTCs declined from 27.1 percent in 1974 to 21.3 percent in 1975, and had reached only 9.8 percent at the time of the study.

⁶⁷Ibid.

⁶⁸The only other program with data available at the time of this study was the Massachusetts program, in which the failure rate was 40 percent, compared with Oklahoma's failure rate of 15 to 30 percent. Figures derived from "Department of Corrections' Response to the 1977 Crime Commission Evaluation of Community Treatment Program," 1977. Hereafter referred to as "CTC Response."

⁶⁹Most "escapes" from CTCs involve an inmate not returning from his job or from authorized pass on time. Stated in a more positive manner, an "escape" rate of 3 percent means that 97 percent of the inmates in the CTCs chose not to walk away despite opportunities to leave.

⁷⁰These figures look good on paper, but corrections officials admit recidivism is a very difficult subject to study because of all the variables involved.

Cost. The CTC program cost the tax payer less money than did traditional incarceration. The average cost per inmate per day in 1976 in the CTC was \$12.99, as compared to \$13.23 for the traditional institution. Even more significant, since the inception of the CTC program, inmates had paid a cumulative total of \$776,411 to the state toward their room and board, \$534,182 State and Federal taxes, \$478,597 to their families, \$726,470 on personal expenses, and saved more than \$1,293,000. The cost for building a prison was \$30,000 per inmate; while CTCs could be set up for \$2,500 per inmate.⁷¹

All of these areas, plus the intrinsic value in allowing the inmate to return to society with a job and to readjust to his family before actually returning home, make the Community Treatment Program a very attractive alternative to traditional incarceration. Senator Boren obviously takes much pride in the positive strides which were made in community-based treatment during his term as Governor.

Other Significant Programs

Psychological services, vocational training, and GED high school equivalency programs also saw significant increases during the Boren administration. In addition, Correctional Officer Training curriculum was expanded to provide a solid foundation for a quality correctional officer staff. Oklahoma City's Sun Tide Motel, a small and rundown facility, housed the first training center for new employees. All new correctional employees undergo seven weeks of training and sixteen weeks of on-the-job experience before becoming permanent employees. The first

⁷¹CTC Response.

restitution bill was passed during the Boren administration, as an alternative for non-violent offenders. During Fiscal Year 1978 restitution payment collections totaled \$279,795.47, with restitution disbursement payments of \$259,725.75.⁷²

Other Construction and Reconstruction

Prison construction costs from 1975 to 1983 totaled more than \$72,723.964. Of this amount \$69,745,465 (95 percent) was a direct result of court related building. Figure 3⁷³ illustrates the total cost of construction and the amounts which may be attributed to court orders.

In 1975, the Oklahoma Board of Corrections hired Dr. F. Warren Benton as Director of the Department of Corrections. Within less than four years, the corrections budget had risen from \$18 million to \$52 million, much of this a direct result of construction. Benton set out to build a constitutional prison system; and he succeeded in this attempt to a much greater degree than any director before him. As with most change, however, many people cannot differentiate between the problems and the progress inherent to change. Commenting on the criticism of Ned Benton, Senator Boren said: "There were some things we might could have done better; but under the circumstances [court orders], I think we had no options other than to build quickly."⁷⁴

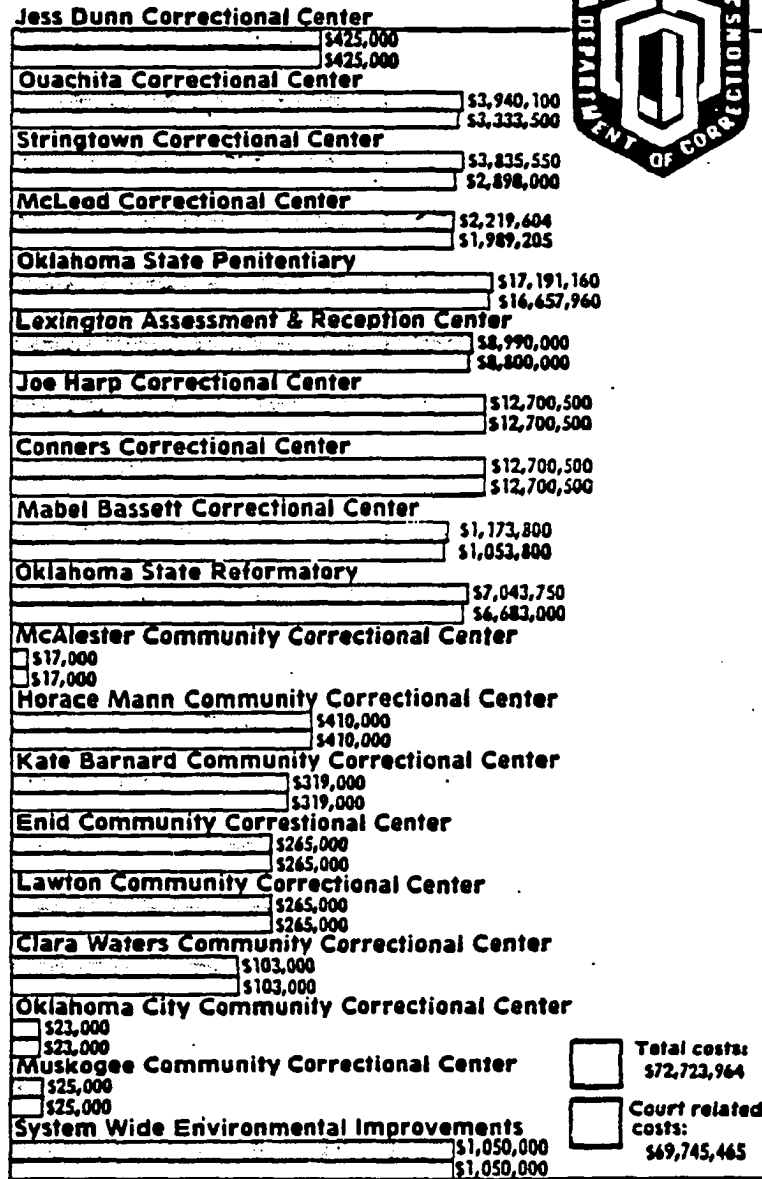
⁷²"Activities of the Restitution Accounting Unit," Department of Corrections Annual Report, Fiscal Year 1978, pages not numbered.

⁷³Tulsa Tribune graphic, in "Riot to Riches." Source of information: Oklahoma Department of Corrections. Used by permission.

⁷⁴"Boren."

Figure 3

Prison construction: 1975-1983



Tribune graphic

When he left office in 1979, Governor David Boren had not perfected the prison system in the State of Oklahoma; but he had, indeed, come a long way toward making it one of the best in the nation. By his own admission, he would have preferred to spend the money on highways or mental health or education than on corrections; but he recognized a need, and he did his best to meet that need. Boren, Benton, and Bohanon--three men who frequently clashed on issues--worked together to bring the Oklahoma prison system from the "dark ages"⁷⁵ into the 20th century role of a model corrections system.

⁷⁵"Grider."

CHAPTER V

GOVERNOR GEORGE NIGH'S ADMINISTRATION--1979 TO 1983

In prison, those things withheld from and denied to the prisoner become precisely what he wants most of all.
--Eldridge Cleaver

Which Oklahoma Governor served the shortest term in the state's history? Which Governor served the longest term in the state's history? The answer to both questions is George Nigh. When United States Senator Robert Kerr died unexpectedly on January 1, 1963, Governor J. Howard Edmondson resigned with only one week remaining in his term. Lieutenant Governor George Nigh became Governor and appointed Edmondson to complete Kerr's senatorial term. Nigh, who had been Lieutenant Governor for six years and who would continue in that office for another ten years, hardly had time to become involved in corrections during his mini-administration. But his time came eighteen years later when Governor David Boren announced his candidacy for the Senate in 1978. George Nigh won a full four-year term of his own; and in 1982 he was re-elected to a second term. He thus became the first Governor of Oklahoma ever to serve two terms.

David Boren had inherited a "mammoth problem" when he became Governor in 1975. The same "mammoth" was waiting to jump into George Nigh's lap the minute he sat down in the Governor's chair in January 1979. That three new prisons were well on their way to completion was

the only bright spot on the corrections horizon. The prison system was still under a federal court order resulting from the Battle v. Anderson lawsuit. The last major court order had been the one in which Judge Luther Bohanon had ordered the State to provide for single celling in both Oklahoma State Prison and Oklahoma State Reformatory by August of 1979. Furthermore, cell space had to comply with the 60/75 ruling. Overcrowding was still a burdensome problem, with population at the end of calendar year 1978 (just days before Nigh took office) at 4,168 in a system whose design capacity was 2,673.¹ Ned Benton was still Director of Corrections but was beginning to fall more and more into disfavor with the Legislature and other state officials. To make matters worse, a hearing on the appeal of Judge Bohanon's last order was set for February--only one month after Nigh took office. The Appeals Court refused to affirm, reverse, or modify Bohanon's September 1978 order; instead, they remanded the case back to the District Court for further hearings. The Court retained jurisdiction in the case and directed the District court to certify a supplemental record of findings and conclusions not later than May 1, 1979.

The Governor's Philosophy on Corrections

George Nigh grew up literally in the shadows of the State Penitentiary at McAlester; and having served sixteen years as Lieutenant Governor, Nigh was hardly new to the problems inherent in the prison system. During his campaign for Governor many of his opponents "cursed"

¹Because of Christmas commutations, this figures is down somewhat from the total system population a few weeks prior to the end of the year. "End of Calendar Year Total System Population from 1950 through 1983," Department of Corrections Quarterly Statistical Report, First Quarter FY 84, p. 2.

Judge Bohanon and accused George Nigh of being "soft on crime." Even some of Nigh's advisors felt he should "go down on the courthouse square and attack Judge Bohanon so [he] could be strong for law and order."² That would hardly have fit the George Nigh image as the "nice guy;" it just was not his style. He also felt that the time would come when as Governor he would have to face the Judge in the court room. When that time did come, Nigh was much more comfortable facing Judge Bohanon "having been elected Governor not having attacked him than to stand there as Governor having called him an S.O.B. and a dirty old rat."³ Furthermore, he felt that as Governor he should set an example by upholding the law--and that included court orders.

That is not to say that George Nigh agreed with the Federal Court's intervention into the state's operation of the prison system. He believed many of the demands of the Court were stringent and not quite fair to the State. He also advocated a federal policy under which individual judges would not decide what is or is not appropriate for incarceration. He thought it ironic that when he went to national governor's meetings he was frequently told that Oklahoma had the outstanding correctional system in America. Yet, Oklahoma was under the shadow of a Federal Court order, and other states were not.

The Governor was appalled to realize that the public image of corrections philosophy in the state was to "lock 'em up and punish 'em

²Personal interview with Governor George Nigh, July 25, 1985. Hereafter referred to as "Nigh."

³Ibid.

and throw the key away;"⁴ That does not make him "soft on crime." He believes in strong, swift, severe punishment--even the death penalty. But he also believes that if the long-range goal is to return the criminal to society, the state's obligation must be to return him to society as a better person. one better prepared to fit into society and less antagonistic toward that society.

Governor Nigh advocates strong programs, especially those in the area of treatment for alcoholics, drug abusers, the mentally deficient, and the mentally ill. His theory is that if a convict were brought into a prison with appendicitis, he would be treated for that appendicitis. By the same token, if he were to enter with mental illness, mental retardation, alcoholism, or drug addiction, he should receive rehabilitative treatment and hopefully a cure. He should be punished for his crime, but every effort should be made to rehabilitate him for successful return into society. To that end, the thrust of the Nigh administration has been "building programs, not building prisons."⁵

Director Ned Benton

Governor George Nigh chose to retain Dr. Ned Benton as Director of Corrections and to support his programs. Benton had, along with the Nigh's predecessor David Boren, planned, funded, and built three completely new prisons during the previous four years as well as developing plans for additional construction and renovation at other

⁴Ibid.

⁵Ibid.

institutions.⁶ In planning and seeking funding for the construction, however, Benton had made some bitter enemies among state lawmakers, enemies who would eventually become his nemesis.

Two months into the Nigh administration, lawmakers accused Benton of being uncooperative in trimming the corrections appropriation request. After initially requesting \$72 million for the new corrections budget, Benton submitted a request for a \$13.6 million supplemental appropriation. Official reaction to Benton's leadership ranged from virulent opposition to strong support. House Speaker Dan Draper stopped short of calling for Benton's removal in March of 1979, but said that taking Benton's prison reform recommendations at face value would be "a grave and very expensive mistake."⁷ Senators Rodger Randle and John McCune felt that firing Benton might endanger the state's efforts to get the Federal Court order lifted, since Judge Bohanon had repeatedly praised Benton's work as Director.⁸ Governor Nigh and the Board of Corrections repeatedly voiced their support for Benton.

Events for Ned Benton reached crisis proportions late in March of 1979, when Deputy Director of Community Services Paul Inbody talked privately with Speaker Dan Draper about the Department's budget request. The "private" discussion was the topic of headlines in the Daily Oklahoman the next day. Inbody was fired the same day, and he subsequently labeled Benton's supplemental appropriations request a "ripoff"

⁶Joseph Harp and Conner were still under construction, but the credit for having built them can go to the Boren administration.

⁷"Angry Lawmakers Take Aim at Benton's Power, Budget," in Tulsa Tribune, March 13, 1979.

⁸"Legislative Panel Votes to urge Firing of Corrections Chief." Tulsa World, June 8, 1979.

to the taxpayers that's unparalleled." Inbody charged Benton had "padded" the \$13.6 million request by asking for funding for projects which were not required in the court order. He also alleged that many of the projects in the supplemental request were already funded and, in some cases, already under construction. When he was asked if he agreed with Draper's charge that Benton was trying to deceive legislators by padding his budget request, Inbody answered: "No question about it."⁹

At a hearing of a special legislative committee investigating the Corrections Department, Inbody accused Director Benton of "malfeasance, dishonesty and empire building. I accuse him of dishonesty that would have cost taxpayers five or six million dollars."¹⁰ He said that Benton had schemed to trick the Legislature into approving budget items that were "ridiculous" and of joking about "the rednecks in the Legislature." His attitude toward the Legislature had been one of "contempt and manipulation," said Inbody. Because legislators were not "as stupid as he thinks," Inbody said the State had already saved \$7 million.¹¹ He further revealed that Benton had planned to "lay low" until the Legislature adjourned before pushing for American Corrections Association accreditation.¹² Inbody contended that Benton had tried to mislead

⁹"Corrections Deputy Fired," Tulsa Tribune, March 30, 1979.

¹⁰"Inbody Rips Benton, claims Wrongdoing, Dishonesty in Office," Tulsa World, April 26, 1979."

¹¹Ibid. The \$7 million reference was to funds but from the \$13.6 supplemental appropriation request.

¹²Lawmakers had opposed this accreditation application because they felt the ACA standards would be even more stringent than Judge Bohanon's court orders regarding prisons. According to Inbody, Benton had said "They'll [legislators] just get mad at me, and they've been mad at me about a lot bigger things." Ibid.

lawmakers over the selection of a site to replace the John 3:16 Mission in Tulsa. Benton had told legislators that as many as fifteen sites were under consideration; but Inbody said only one site was being considered, and "we've already negotiated the price."¹³ As a concrete example of Benton's alleged deceptions, Inbody charged that a \$75,000 item for roof repairs at Horace Mann Community Treatment Center in Tulsa was left in the budget request, although the roof was to be repaired with the aid of the Tulsa School Board.¹⁴

Paul Inbody wasn't the only corrections official making accusations, however. Dr. Benton, testifying at the same special committee hearing, asked Governor Nigh to authorize an OSBI investigation of Inbody's activities as Deputy Director for Community Services. Benton accused Inbody of using state employees and materials in his private business, conducting private business "on state time", and improper use of a state car. He told reporters that he had decided to dismiss Inbody before he knew of the Deputy Director's visit with House Speaker Dan Draper.¹⁵ He also denied Inbody's charges that he had used the Federal Court order as a pretext to "pad" the budget request. Regarding the \$75,000 request to repair the roof of the Horace Mann facility, Benton insisted that Inbody had apparently modified the original plan but

¹³This community treatment center had been ordered closed because of unsafe conditions. To date it has not been relocated and likely never will be. Tulsans are great supporters of corrections reform, but traditionally fight to prevent prison facilities from being located in their own back yard. Ibid.

¹⁴"Benton Disputes 'Pretense' Charge," Tulsa Tribune, May 8, 1979.

¹⁵"Inbody Rips Benton, . . ." op cit.

"failed to notify his staff."¹⁶

A Special Committee on the Correctional System was created by House Joint Resolution No. 1034, on April 12, 1979, to conduct a comprehensive investigation into the "operation, procedures, policies, rules, regulations, financing needs and other matters . . ."¹⁷ relating to the Department of Corrections, the Board and the Director. Specific items under investigation by the committee, which met for eleven days and heard testimonies from seventeen witnesses, were the dismissal of Dr. Inbody, the Corrections Department budget request, and the selection of consultants and architects for corrections construction projects.

Dr. Inbody's Dismissal. Following four days of testimony from Benton, Inbody and departmental staff concerning Dr. Inbody's personnel record, performance evaluations, travel claims, and involvement in the Tulsa County District Attorney's Alcohol Abuse Program, the committee found that Dr. Inbody had "knowingly abused his position" with the Department and that his termination was justified.¹⁸ Dr. Benton, however, was at fault for having allowed Inbody to continue those practices which he had questioned earlier in one of Inbody's personnel evaluations. Benton had made little or no attempt to monitor Inbody's activities after the personnel review in question. This led the committee to believe that Inbody's termination following his meeting with legislative leadership might have been prompted by a desire [by

¹⁶"Benton Disputes 'Pretense' Charge," op cit.

¹⁷"Report of The Special Committee on the Correctional System," June 7, 1979.

¹⁸Ibid., p. 6.

Benton] to discredit Dr. Inbody's statements to the Legislature."¹⁹

Selection of Consultants and Architects. Because of the inflated figures in the Supplemental Appropriation request submitted to the Legislature, the Committee investigated the selection and the estimates of the architects upon whose figures Benton based his request. Legislators were also concerned that one of the architects included Fred Moyer, a corrections consultant who was Benton's supervisor at the time the latter was preparing the Master Plan. Additional concern was voiced about Moyer's selection, as he had testified **against the State** in the Federal Court trial in which many of the prison changes were mandated. After reviewing the estimates, the Committee found many discrepancies and "grossly inflated" figures in the original estimates presented by Moyer and by Murray Jones Murray, Inc.²⁰

Corrections Department Budget Request. The Committee found that Dr. Benton had submitted some items in the Supplemental Appropriations request and had represented them as necessary to comply with the Federal Court order when they were, in fact, not necessary. Sworn testimony indicated that some items requested were indeed already completed or already under construction. When Benton had been asked on numerous occasions if any items could be deleted from the request, he had answered consistently that they could not. The committee, feeling that the Department of Corrections "must have a Director who is able to establish a sense of trust and credibility with the Legislature," requested that the Board of Corrections immediately terminate Dr. Ned

¹⁹Ibid., p. 7.

²⁰Ibid., pp. 9-10.

Benton from employment as Director of the Department of Corrections.²¹ In its final recommendations, the Committee called for a complete audit of the Department of Corrections by Tom Daxon, State Auditor and Inspector.²²

On June 22, two weeks following the publication of the Committee's report, Dr. F. Warren Benton submitted his resignation, effective in August, as Director of the Oklahoma Department of Corrections. He announced that he would be taking a position as Associate Professor of Public Administration at City University of New York. As a parting remark, Benton attacked his main political foe, House Speaker Dan Draper: "His effort to eliminate me through an orchestrated and premeditated smear campaign has failed." Draper responded that the "inaccuracy of Dr. Ned Benton's departing statement is consistent with the inaccuracy of his budget request."²³ Benton left the post with the

²¹The vote of the Committee to oust Benton was 8-2. The Board of Corrections later conducted its own investigation into accusations against Benton, and labeled the Committee's investigation a "witchhunt"

²²The audit of the Department of Corrections was completed in mid-1980, after Larry Meachum had been appointed Director. The auditors, however, determined "that there was really no way of determining if any money had been misappropriated or embezzled." There were no records to determine exactly what had been spent. There was no system. There was an "appearance of a system" in the form of a line item budget. Officials "knew what they were supposed to be spending on food, educational supplies, diesel. . . . but all that was paper. If somebody wanted to spend money and there was any line item with money in it, [he] just bought what [he] wanted out of that item. . . . So when you looked at 'How much money are we spending on food?' nobody knew." Auditors said there was no way to trail the Department to determine how money had been spent. "We don't think anybody's stolen anything or misappropriated it, but who can tell?" Personal interview with Larry Meachum, Director of the Department of Corrections, July 22, 1985.

²³"Benton Steps Out of Corrections Post," Tulsa Tribune, June 22, 1979.

longest tenure of any Director of Corrections and with complete support from the Department of Corrections and from Governor George Nigh.

On his first day in the Director's job, Benton had called the position "the corrections job of the century. I expect there will be some dust kicked up, but when the dust settles, I'll still be there."²⁴ Some dust had indeed been kicked up, but even the "winds coming sweeping down the Plains" could not blow far enough and fast enough for it to reach Ned Benton when it settled. Later that year the Department virtually scrapped the Oklahoma Corrections Master Plan, the blueprint for excellence which was the hallmark of Benton's administration. Although widely acclaimed in March of 1974 when it was adopted, the Master Plan was literally replaced by the Battle v. Anderson court orders which, oddly enough, did not go nearly as far as the recommendations in the Master Plan. One of the most notable recommendations called for a prison reduction from 3,800 to 2,200; however Oklahoma had 4,335 inmates in the system when the Master Plan was abandoned.

Larry Meachum, Director--1979 to 1983²⁵

Corrections Board Chairman William Thompson of Ada announced that a search would begin immediately to find a replacement for Benton. "The man who takes his position has some big shoes to fill," said Thompson.

²⁴"Benton Ends Critical Term as Director of Corrections," Tulsa World, August 15, 1979.

²⁵At the time of this writing (1985), Larry Meachum still held the position of Director of Corrections; but this narrative will cover his administration only for the period of 1979 through 1983.

Larry Meachum apparently was not as concerned with shoe size as he was with putting the right foot forward. In one of his first interviews after being named Director of Corrections for the State of Oklahoma, the former acting director of the Massachusetts Department of Corrections made some statements obviously intended to do just that. "I look forward to working with the Legislature," was a good step toward avoiding any expectation of confrontational behavior with members of that body such as had marked the administration of his predecessor. "Your first responsibility is security," moved the other foot in the right direction to get nods of approval from both the legislature and the public in the State of Oklahoma. And in response to an inquiry about the generally resented Federal Court order hanging over the Oklahoma system, "I hope to bring it out," was just the right blend of modesty and confidence to satisfy a certain judge about his intentions. When he announced Meachum's appointment, Chairman Thompson voiced his praise of "a new spirit of cooperation between the board and the Legislature."²⁶

The pendulum principle was at work again. If Ned Benton was an expert architect and amateur penologist, Larry R. Meachum was his mirror image. Benton became director in his mid-twenties with very little human relations experience; Meachum was on the slippery side of forty with a decade of experience in every kind of prison system imaginable. The recently departed director carried a Ph.D, while the newcomer brought his diploma from Piedmont Bible College in Winston-Salem, North Carolina. The author of Oklahoma's Master Plan started at the top, and his successor worked his way there from his first job as a youth

²⁶ "New Corrections Chief Praised," Tulsa World, September 10, 1979.

rehabilitation counselor in 1969, near Creedmore, North Carolina.

Meachum's rapid rise from youth counselor to Acting Director of the Massachusetts Department of Corrections was not a fluke. A former North Carolina Corrections Commissioner described him as a "young man who showed great promise."²⁷ Apparently Meachum fulfilled expectations well, as he was promoted three times in the North Carolina system. When his boss, Frank Hall, moved to Massachusetts in October 1973, he invited Meachum to follow him from the frying pan into the fire.

The move proved to be a good one. It was a challenge, but Hall had no doubts about his protege's abilities:

Everyone has weaknesses, but I don't know what his is. . . The state's [Massachusetts] corrections system was in complete chaos. . . I called it a war zone. It wasn't long after the riot at Attica (N.Y.) and the same thing on a smaller scale was going on in Massachusetts. I brought Larry here to be superintendent of the medium security institution at Norfolk which is the largest prison in the state. He did an outstanding job. . . he's terrific under stress in crisis situations.²⁸

Meachum proved Hall right. His mastery of several crisis situations finally put him at the head of the state's corrections operations as acting director for several months before he ultimately decided to remove himself from consideration for the permanent position.

Perhaps Larry Meachum already knew where he was going, but simply chose to remain quiet and unobtrusive as he pursued his objective. He was good at that. In response to a question posed after the announcement of his selection for the Oklahoma job he quipped, "Ask me after I've been the Oklahoma director about two weeks and I might be able to

²⁷ Ibid.

²⁸ Ibid.

tell you where we're going."²⁹ If Larry Meachum did not know where he was going, at least he knew who was going with him--a legislature and a judge.

The Continuing Saga of BATTLE V. ANDERSON

The February 1979 hearing in the Court of Appeals had directed Judge Bohanon to certify a supplemental record incorporating his findings and conclusions to that Court no later than May 1, 1979. This required a hearing in April of 1979 in Judge Bohanon's court. Governor Nigh readily admitted one of his goals when he became Governor was to "get us out from under that court order;"³⁰ but he surprised the corrections officials and the Judge by making an appearance at the April hearing. Not only did Nigh attend and testify, but he also took with him House Speaker Dan Draper and Senate President Pro Tempore Gene Howard. "Defendant's increasing commitment to meaningful prison reform was evidenced by constructive, enlightening appearances in open courtroom proceedings" by this trio of political leaders," praised Bohanon.³¹ The "good faith" commitments from the State's elected leadership persuaded Bohanon that the state would now proceed to rectify unconstitutional conditions still present in the state's penal facilities. Bohanon granted "reasonable extensions of time within which to achieve constitutional compliance, since there exists a good faith

²⁹Ibid.

³⁰"Nigh."

³¹Battle v. Anderson, "Order Approving Defendant's Proposed Plan," May 4, 1979.

intention to utilize such time for constructive, not obstructive ends.³²

This hearing was the first positive reaction the State had received from the Court. Governor Nigh was enthusiastic about

. . . the courtesy with which I was treated, the extension of time [Bohanon] granted, the fact that he realized I couldn't be held accountable for everything and that I was making a good-faith effort--that the Legislature was making a good-faith effort. I think the Court was surprised that common sense could be used in corrections.³³

The Judge was so well pleased by Nigh's appearance that he allowed the Governor to testify without being sworn under oath. He then refused to allow ACLU attorney Louis Bullock to cross-examine Nigh.³⁴

During the next eighteen months periodic compliance hearings and evidentiary hearings were held at about six-month intervals. At a hearing in June of 1980, Bohanon indicated that the S had made much progress, but it still had a long way to go to be in total compliance. He said that things were still not "hunky, dunky, rosy and sugar." At the same hearing, all parties to the litigation addressed the question of the court's appointing a special master to oversee the progress being made in the system. Judge Bohanon concluded that "a master is not needed and that one should not be appointed."³⁵ Again on January 22, 1981. the plaintiffs, the plaintiff-intervenor, and the defendants appeared before the Court saying they had all agreed that

. . . the lawsuit is ready to enter into a new phase, i.e., the submission of the case to a court-appointed monitor who will

³²Ibid., p. 3.

³³"Nigh."

³⁴"Prisons Motion Filed," Tulsa Tribune, December 3, 1981.

³⁵Battle v. Anderson, "Order Denying Appointment of Special Master," June 26, 1980, p. 1.

monitor compliance with the court's prior orders, thus obviating the need for routine compliance hearings.³⁶

The Court had previously ordered the State to come into compliance with the standards of the American Correction Association (ACA), American Public Health Association (APHA), and the 1976 Life Safety Code. The three parties had, at the request of the State, created a single document which was reflective of the various aspects of the standards of these three accrediting entities. They asked that the Court's Fact Finder be presented this stipulation of standards and a bound copy of Battle decisions, and that the combined packet would "represent the bench mark by which the Fact Finder [should] measure the compliance of the defendants.³⁷ This time Bohanon agreed to appoint the Fact Finder.

The Judge requested the Justice Department attorney and the attorney from the Oklahoma Attorney General's office to submit nominations.³⁸ The defendants and the plaintiff-intervenor put together a list of names, including Henry John Albach, a Texas attorney who just happened to be a member of the Texas group of American Civil Liberties Union. Louis Bullock admitted to having a "few misgivings" about Albach's appointment, since he was a member of the ACLU. He felt this

³⁶Battle v. Anderson, "Stipulation of the Parties Concerning Standards, January 22, 1981, p. 1.

³⁷Ibid., p. 2.

³⁸According to Louis Bullock, Bohanon specifically requested the "the United States and the defendant to get together and select a Fact Finder." Bullock didn't participate in any formal fashion in the selection process at all. "At that point the Judge and I were not seeing eye to eye." Personal interview with Louis Bullock, Attorney for the Plaintiff, May 22, 1985. Hereafter referred to as "Bullock."

would present much the same problem as "having the coach's kid on the team," but the State decided that John Albach was their choice.³⁹

The District Court and the Federal Appeals Court complimented the Governor, the State Legislature, and the Department for responding to the crisis "with dispatch and outstanding leadership."⁴⁰ Even with the new prisons and their increased capacity, however, formidable increases in crime resulted in another period of prison population much in excess that envisioned by the Department.⁴¹

On December 1, 1981, the Board of Corrections declared that an emergency existed in prison housing and requested the Attorney General to petition Judge Bohanon's court for a "modification of existing orders precluding double celling and for permission to temporarily permit double celling in thirty-one units at four Oklahoma prisons."--Joseph Harp, Lexington A & R Center, Conner, and Mabel Bassett.⁴² The average number of inmates held in the state prison system in 1981 was 5,163, while the system had only 4,813 beds. The difference between the figures exists because of a record number of 307 inmates kept in county

³⁹Ibid. Some time later there was criticism both of Bullock and of Benton because of Albach's appointment; however, neither had any apparent voice in the matter.

⁴⁰Battle v. Anderson, 708 F.2d 1523 (1983), p. 1526. Hereafter referred to as Battle, 708 F.2d 1523.

⁴¹Senator Gene Stipe says that prison populations will always rise to meet available spaces. Personal interview with Senator Gene Stipe, July 13, 1985. Director of Corrections cited a study from Cambridge, Massachusetts which found that "prisons built are full within three years and at 130 percent capacity within five years. . . . Another principle that has been followed is that when [states] build new prison space to replace other prison space, they . . . fill up both of them--the old and the new." "Meachum."

⁴²Battle, 708 F.2d 1523, p. 1526.

jails during the year, a situation which had critically overcrowded twenty county jails.⁴³ Bohanon had said in a July 20 hearing that he might allow double celling in those cells containing more than sixty square feet of space, if inmates could be let off restricted status and out of their cells from 6:30 a.m. until 9:30 p.m. The three new facilities had a combined total of 1,074 cells which measured more than sixty-three square feet.⁴⁴ Director Meachum suggested as a temporary measure until Judge Bohanon could make a disposition of the request, inmates could be housed in classroom space and on gymnasium floors without violating the court order.⁴⁵

Bohanon was livid. Despite his earlier suggestion that he might consider allowing double celling, he blasted Director Benton and the Board of Corrections. Claiming they had known since 1979 that overcrowding would develop and had done nothing about it, the Judge demanded officials show why they should not be held in criminal contempt of his court order regarding overcrowding. He set December 22 as the date for the officials to answer to the contempt allegations--the same date he was to hear a request by the Department that they be allowed to

⁴³Letter to Govenor George Nigh, from Director Larry Meachum, December 4, 1981.

⁴⁴"Board Seeks Quick Prison Space Gains," Oklahoma City Times, December 1, 1981. On December 9, officials at Lakeside High School at Granite. the first accredited prison school west of the Mississippi, were notified that the school building should be emptied of school materials and ready to begin housing 80 inmates by the next day. Because of inadequate water and sewage treatment facilities to accommodate more than 400 inmates, Connors was to be the last of the three new institutions to be double celled.

⁴⁵"Judge Wants Justification for Prison Overcrowding," Tulsa World, December 12, 1981.

double cell in 310 cells. The contempt threat caught state officials totally by surprise, especially Governor Nigh, who had recently said that Oklahoma's corrections problems were history. George Nigh prepared to return to Judge Bohanon's court for the second time since being elected Governor. He hoped to demonstrate the state's good faith by making a "voluntary, self-initiated appearance" in Federal Court. He said he would make no specific recommendation regarding double celling but would present a "historical update" of efforts to comply with Federal Court orders.⁴⁶

Corrections Director Larry Meachum testified before Judge Bohanon on Tuesday, December 22, that "unprecedented" overcrowding problems were beyond his control. He told the Judge that the system had taken in 1,000 more inmates during the past year than it released. The Director then admitted that he had ordered double celling of more than 60 cells on December 8 and 115 cells on December 9 at Lexington Assessment and Reception Center, in direct violation of the court order.⁴⁷ He had, however, ended the double celling on the advice of the Attorney General. Anything he might have done, Meachum contended, would have been a violation of Bohanon's orders.⁴⁸

Governor Nigh testified that he fully intended to comply with court orders concerning prison reform. He said the State had not changed its commitments, "it just needs more time." Bohanon was obviously pleased by

⁴⁶"Governor to Testify at hearing," Muskogee Phoenix and Times Democrat, December 22, 1981.

⁴⁷"Prison Issue Becomes Big Numbers Game," Tulsa Tribune, December 23, 1981.

⁴⁸"Judge Clears Prison Chiefs of Contempt," Daily Oklahoman, December 23, 1981.

Nigh's appearance in court, but he told the Governor, "If overcrowding continues, your troubles will grow. To crowd inmates in like cattle-- this is unconstitutional. There is no justification for mistreatment."⁴⁹

Bohanon praised the Director for acting to correct overcrowding in county jails in which state inmates were housed. He told the Governor, "You have changed my mind to some extent about what I was going to do today." He then dismissed criminal contempt charges against state officials. He did not, however, dismiss civil contempt charges, stating that he would rule later on that charge and on whether to allow double celling of inmates to be resumed.⁵⁰

House Speaker Dan Draper's indignant reaction to the Judge's ruling on the following day was: "He has flipped his lid!" Judge Bohanon agreed to allow limited double celling for one year, but imposed a \$1,000 fine for each day prisoners were housed two to a cell, a potential of \$365,000 in fines over the next year. If at the end of that year the inmate population was not under control and single celling population was not under control and single celling resumed, the state must face a doubling of the \$1,000 fine.⁵¹ Draper said he would prefer to appeal the ruling to the 10th U.S. Circuit Court of Appeals in Denver; Senate President Pro Tempore Marvin York said he would not be reluctant to consider the same thing. Larry Meachum said he would make no decision on double celling until he could talk with the Governor and

⁴⁹Ibid.

⁵⁰Ibid.

⁵¹"State Ponders Next Move in Prison Flap," Tulsa Tribune, December 24, 1981.

legislative leaders. Nigh said the state would continue efforts to try to comply with the court order, but refused to comment on the fine. A "reliable source" said an idea was being discussed in the Governor's office that to pay the \$365,000 in fines would cost less than to finance construction of new prisons. The fines for one year would be less than 3 percent of the \$13.3 million in capital improvements proposed by Governor Nigh for Fiscal Year 1983.⁵² State officials had a while in which to formulate a plan, since the Judge's order would not become effective for ten days. The Judge once again indicated if the state were to come into compliance, he was open to "modifying his order on the fine."⁵³

In modifying his previous 60/75 requirement and his single celling order, Judge Bohanon stated that the Legislature must "quit dragging its feet . . . and provide one of three options to answer the overcrowding question."⁵⁴ Fact Finder John Albach provided the three alternatives suggested by Bohanon. The alternatives included (1) reducing the number of incoming inmates by softening laws governing non-violent offenders; (2) increasing the number of inmates leaving the prison system; and (3) building new prisons.⁵⁵

State newspapers editors called Bohanon "the imperial magistrate" and "King Luther." One editor noted that Governor Nigh's 1982

⁵²"Draper Says Judge has 'Flipped Lid,' Oklahoma City Times, December 24, 1981.

⁵³"State Ponders Next Move, . . ."

⁵⁴"Limited Double-Celling OKd; Fine Threatened," Tulsa World, December 4, 1981.

⁵⁵Ibid.

corrections budget was "conspicuously lacking in any major prison expansion." Nigh had called construction "my lowest priority, my last choice." The Governor preferred, instead, to spend nearly \$5 million to renovate the dangerously delapidated quarters of the Corrections Department, "on the not unreasonable premise that 'law-abiding state employees' deserve at least equal consideration with convicted felons in their work environment."⁵⁶ The same editor noted that the average "law-abiding citizen" who is footing the bill for corrections, may wonder that convicts deserve something that "wasn't available to members of the armed services during or nation's wars." He suggested "slit-trench latrines and tents with a guarded perimeter. . . . No problem with minimum square footage per inmate, and plenty of fresh air."⁵⁷

On December 27, Larry Meachum called for "some answers quickly" about risking a fine by double-celling inmates. He refused to make the decision himself, without some directive from elected officials.⁵⁸ He indicated that pending that decision, he would receive no more inmates into the system. Conditions at facilities in which prisoners were sleeping in makeshift quarters were deteriorating. At Granite inmates barricaded themselves within a dormitory and refused to leave until they were faced by guards in riot gear. At McLeod, where forty inmates were housed in an abandoned dining facility, an emergency squad had to quell an uprising. "I wish I hadn't done it" [created the 200 temporary

⁵⁶"What One Man Hath Wrought," Editorial, Daily Oklahoman, December 24, 1981; "A Year of Grace for Corrections," Editorial, Tulsa Tribune, December 24, 1981.

⁵⁷"What One Man Hath Wrought."

⁵⁸"Faster Answer Sought on Housing Convicts," Tulsa World, December 27, 1981.

beds], said Meachum.⁵⁹

On January 8, 1982, the Court withdrew its \$1,000-a-day fine for double celling. On January 12, Judge Bohanon agreed to permit double celling at the four prisons, but indicated the system would "be unconstitutional for a temporary period of time, until double celling is no longer used."⁶⁰ The Judge noted that the conditions in the four Oklahoma prisons in which double celling was to be instituted "differ[ed] significantly from the conditions which existed in Ohio. . . when the Supreme Court of the United States upheld double celling."⁶¹

Corrections officials continued single celling because the Attorney General's office told them that double celling, although allowable, was unconstitutional and would leave the department exposed to lawsuits if inmates were injured or chose to complain that their civil rights were being violated. Meanwhile, representatives of the Attorney General's office were in Denver attempting to clarify questions regarding Bohanon's decision on double celling. Finally, a three-judge panel agreed to remove the objectionable sections from Bohanon's order. It was a bitter-sweet victory for Meachum, who said he would start double celling immediately; but even this would not suffice for long. He would have to return to Federal Court within six weeks to ask for permission to double cell more inmates.⁶²

⁵⁹"Inmates Still One to Cell," Daily Oklahoman, January 13, 1982.

⁶⁰Battle, 708 F.2d 1523, p. 1526.

⁶¹Ibid.

⁶²"Inmates Still One to Cell."

On January 27, 1982. Judge Bohanon chose to lift his finding of unconstitutionality by double celling alone. His decision was based on the Rhodes v. Chapman case. In June of 1981, the 6th District Court (Ohio) in Chapman v. Rhodes⁶³--after applying the "totality of conditions" and the "shock the conscience" testing--that if all other conditions within the institution were adequate to meet inmates' needs, double celling did not in and of itself constitute a violation of the Eighth Amendment's protection against cruel and unusual punishment. The decision was appealed to the 6th District Court of Appeals which upheld the decision of the District Court.⁶⁴

The Attorney General filed a motion on April 6, 1982, seeking "immediate and permanent relief from the prohibitions against double celling throughout the Oklahoma penal system."⁶⁵ During the evidentiary hearing on April 23, the State submitted a very convincing affidavit for the Superintendent of the Southern Ohio Correctional Facility, which was the defendant institution in the Rhodes v. Chapman. Superintendent Ronald C. Marshall, who had toured each Oklahoma correctional facility, testified that "without exception" those facilities "met or exceeded the standards of his Ohio institution." In his opinion, inmates in the Oklahoma system had as much or more freedom than did prisoners at his facility, and were confined to their cells much less than his prisoners were. Additionally, he said the Oklahoma facilities were freer of pests and vermin than his facility, the sizes of the cells equalled those at

⁶³Chapman v. Rhodes, 624 F.2d 1099 (6th Cir. 1980).

⁶⁴Ibid.

⁶⁵Battle, 708 F.2d 1523, p. 1526.

the Ohio facility, the recreational, medical, and canteen facilities, chapels, industrial and job training opportunities equalled or exceeded those of his institution when double celling was approved.⁶⁶

The Supreme Court specified that before conditions could be held to constitute cruel and unusual punishment, they must meet one of three criteria: (1) punishment "grossly disproportionate to the crime;" (2) wanton and unnecessary infliction of pain; or (3) deprivation of the minimal civilized measures of life's necessities.⁶⁷ The majority decision in Rhodes had ruled that "harsh or restrictive conditions of confinement are part of the punishment criminal offenders justly receive because the Constitution does not mandate comfortable prisons. Justice Powell, wrote for the majority that "To the extent that such conditions are restrictive and even harsh, they are part of the penalty that criminal offenders pay for the offenses against society." The majority did believe that "old, deteriorated, deplorable facilities" and "sordid conditions of existence" might constitute cruel and inhumane punishment. Powell noted that although such terms accurately described the Oklahoma system immediately after the 1973 riot and fire, "such is not the case now."⁶⁸

Based on testimony, depositions, and Supreme Court decisions, Judge Bohanon agreed that Oklahoma no longer fit the "unconstitutional" category, even in the area of double celling. This time the relief offered by the District Court was enough to bring a deep sigh of relief from all

⁶⁶Battle, 708 F.2d 1523, pp. 1533-34.

⁶⁷Rhodes v. Chapman, 452 U.S.337, 101 S.Ct. 2392 (1981), p. 2399. Hereafter referred to as Rhodes, 452 U.S.

⁶⁸Ibid.

corrections officials. Judge Bohanon, in a "master stroke,"⁶⁹ granted the state permission to double cell "indefinitely but not permanently." When asked why he granted "indefinite" authority to double cell, the Judge said "I didn't want to say double celling would always be legal. When I said 'indefinite,' I meant that if the double celling becomes unconstitutional, the door is open. If I'd made it temporary, I'd have had appeal on my hands; but when I made it indefinite, it was until they violate the Constitution."⁷⁰

In September of 1982, a convicted burglar from Cleveland County became the 2,000th prisoner to be double celled in the prison system, a dubious distinction, indeed.⁷¹ On October 4, Judge Bohanon conducted a detailed hearing during which he took notice that the Legislature had appropriated approximately \$93 million for prison construction and improvements to bring the system into compliance. Much to the consternation of Louis Bullock, ACLU attorney for the plaintiff, Bohanon demanded that he (Bullock) now show evidence of non-compliance.⁷²

⁶⁹"Bullock." "I admired his cunning in doing that. The State wanted permanent permission. I argued for temporary; in fact, I wanted a definite date that it would end. . . . Bohanon, being the smart cookie that he is said, 'Well, I'm not going to give you permanent permission, and I'm not going to tell you that you're going to have to stop today or tomorrow; but I'm going to make it indefinite.' That was the right call."

⁷⁰"Bohanon." It is interesting to note that Judge Bohanon made his only visit to a state correctional institution on Thursday, April 29, 1982, three days after his granting "indefinite" authority for the state to double cell inmates in the system. After his trip to McAlester he commented, "I was surprised, amazed and delighted. What I found looked very good. . . . it was much better than I'd ever dreamed."

⁷¹"State Prison Agency Underscores Crowding as 2,000th Inmate Doubles Up," Daily Oklahoman, September 24, 1982.

⁷²Battle, 708 F.2d 1523. p. 1532.

The burden of proof was on was on the plaintiff. Bullock described the system as one in a state of "crisis," opposed double celling, and requested that the Court place a "cap" on the number of prisoners incarcerated in the state's facilities. Despite Bullock's argument, Bohanon was convinced that the State was generally in compliance except for overcrowding, which alone might place the system in the "twilight" of constitutional. Noting Bohanon's "twilight" observation, the Appeals Court attributed it to the state's failure to adhere to Bohanon's 60/75 rule because **"there do not now exist any unconstitutional conditions in the Oklahoma State Prison System."**⁷³ [Emphasis added.] On May 6, 1983, Tenth Circuit Court of Appeals complimented Judge Bohanon for the "skill and fortitude exercised over the past ten years in administering this difficult and demanding case. That Court then affirmed in full Judge Bohanon's orders."⁷⁴

Following the Conner Correctional riot and fire in August of 1983,⁷⁵ 611 of the 748 Conner inmates were bused to Oklahoma State Penitentiary in McAlester. bringing the population at the state's only maximum security institution to 1,074. Judge Bohanon quickly ruled that no more than 525 inmates could be housed at McAlester. He ordered a compliance hearing for September 19 to determine if living conditions within the prisons still met constitutional standards.⁷⁶ Governor Nigh was the final witness at the nine-day hearing, and he asked the Judge to

⁷³Ibid., p. 1533.

⁷⁴Ibid., p. 1540.

⁷⁵The Conner riot and fire is covered later in this chapter.

⁷⁶"Judge Orders Prison Hearing," Tulsa World, September 1, 1983.

return control of the prison system "to the people of Oklahoma."⁷⁷ Bohanon told Nigh the state still had to clear two major hurdles before he could release his hold on the 11-year-old case: (1) close the two condemned cellblocks at the state penitentiary;⁷⁸ and (2) rebuild the law library at the riot-torn Conner facility.⁷⁹ The Judge said he would rule on the constitutionality of the prison system within thirty days. He promised that "the time [was] coming" when he would no longer interfere with the operation of the prison system, a statement similar to one he had made four years previously when he expressed the hope that he could step aside in 1983.⁸⁰

In a surprise move in early December, 1983, the U.S. Justice Department announced that it considered the state's prison plan to be constitutional. The Justice Department, acting as Plaintiff-Intervenor, previously had sided with the ACLU for the Plaintiff. A few days later, on December 7, 1983, Judge Bohanon announced that he was stepping out of

⁷⁷"Bohanon Refuses to Release Hold on Prisons," Tulsa World, September 30, 1983.

⁷⁸Governor Nigh recalled that the Court had ordered the F Cell House not to be used, and prison officials started to tear it down. He ordered them to save it, "because . . . we may need a backup someday in case of an emergency. While we'd be out of compliance if we actually housed people there, there certainly should not be anything wrong with saving it in case of an emergency. . . we weren't trying to use it; and as soon as we could [after the Conner riot], we moved the inmates out." "Nigh."

⁷⁹Recent legislation signed by the Governor to repair Conner did not include funds to rebuild the law library. Meachum testified that the Legislature's refusal to rebuild the library was an example of a "punitive mood" found in some circles. Nigh later told reporters that a dining hall would be converted into a law library at Conner. "Bohanon Refuses to Release Hold . . ."

⁸⁰Ibid.

the case "before the question of constitutionality was settled."⁸¹ He transferred the case to U.S. District Judge Frank Seay, of Muskogee. Director of Corrections Larry Meachum said he was told the Judge had quit because he "felt his integrity and objectivity had been impugned." The Judge himself said simply that his intervention had "taken a toll" on him.⁸² The prison system which had held 3,200 inmates in 1975, bulged with more than 7,500 at the end of 1983, almost certainly a disappointment to the aging magistrate who had adjudicated the case for nine of its eleven years.

The Conner Riot and Fire--August 29, 1983

The "Chronology of Events in the Conner Correctional Center Riot"⁸³ ticks off the developments of August 29, 1983. with a pithy rhythm reminiscent of Sergeant Joe Friday's terse narratives on "Dragnet."

"Time--3:37 p.m.; Event--Received 18 inmates from other facilities; Conditions--Routine/Normal, 100° F. outside temperature; Action Taken--Began in-processing.

"Time--4:20 p.m.; Event--Inmate Count; Action Taken--Inmates Counted.

"Time--4:58 p.m.; Event--Inmate recount, 1 inmate could not be located; Action Taken--Inmates recounted.

⁸¹"Bohanon Withdraws From Prison Case," Tulsa World, December 8, 1983.

⁸²Ibid.

⁸³Chronology of Conner Correctional Center Riot, August 29, 1983." Oklahoma Department of Corrections, September 6, 1983. Hereafter referred to as "Chronology."

"Time--5:00 p.m.; Event--Normal feeding time; Action Taken--Feeding delayed due to count problem."⁸⁴

With the thermostat at 100°, 747 hungry, short-tempered felons packed into quarters designed for 400, with 18 more being crowded in, August 29, 1983. was not a good day to be forced to delay the evening meal to play hide and seek with one inmate. Probably no one knew that better than corrections staff members. When the missing inmate was discovered in N unit at 6:03 p.m., the distribution of food began almost immediately. Normally the inmates were released from their dorms (160 per dorm) in shifts of 40 for meals, but this evening all 160 residents of each dorm were released at 6:03 p.m. because of the hour's delay in completing the count. The barbequed beef flowed freely--too freely. Although 1,040 portions had been prepared, it became obvious by 6:30 that it was not going to serve all 747 prisoners.

The log reports that the kitchen added two officers at 6:30 p.m. to start cooking beef patties for the units--beef patties which would apparently remained unserved. The 6:50 p.m. entry reads "Ran out of food in Unit Q." There is a direct correlation between hot temperatures and hot tempers. Ten minutes later the conditions report noted ominously "inmates becoming restless."⁸⁵ Although the food service was completed by 7:30 p.m., normal service would not now suffice to calm the tension which was building by the minute. The inmates were belligerently demanding more food and refusing to leave the yard as ordered. The situation was gaining a momentum of its own.

⁸⁴Ibid., pp. 1-2

⁸⁵Ibid., p. 3.

Sometime during the next half hour both inmates and staff crossed the point of no return. At 8:00 p.m. Warden Tim West initiated emergency plans and ordered all employees to report for duty. It had been ten years, one month and two days since Oklahoma's corrections personnel had seen Hell open up for business within the walls at OSP in McAlester. When the sun next rose, few of them would take comfort in the fact that on August 29, 1983. Lucifer's bill would total only \$3 million--one-tenth of the \$30 million tab for his last mid-summer's eve party on July 27, 1973.⁸⁶

The "party" was over by 7 a.m. Photos in that afternoon's newspapers strangely resembled stills from the slapstick movie Animal House after the infamous fraternity party--clothes scattered around the yard, pages in books and papers blowing in the wind, exhausted Air National Guard firemen sprawled on the ground like drunken students "sleeping it off." But a picture of George Nigh quickly reminded the reader that this was history not fiction. With his hands on his hips, his eyes fixed in a stare and his jaw set firmly, the Governor's expression could only be described as a cross between heartsick disbelief and restrained fury.

Disbelief and fury were probably the the predominant emotions around the state as Corrections personnel transported 611 Conner inmates to OSP and 125 to Lexington. The Governor and the Legislature set about the task of deciding what to do about this most unwelcome turn of events. Governor Nigh decided on a special session to expedite getting Conner back into operation. After wrangling over various methods of

⁸⁶"Prison in Ruin," Tulsa Tribune, August 31, 1983. See Chapter III for complete details of the 1973 riot and fire.

financing, the legislature finally agreed on a \$2.5 million appropriation. Not everyone was satisfied. Representative Mike Lawter of Oklahoma City called on the house to "vote this thing down and go home." He invited the members to activate the National Guard company which he commanded, issue bullets, and "we will take care of the inmates."⁸⁷

Lawter's remarks were more than just an indication of the level of silliness which can sometimes mark debate on the floor of the Oklahoma Legislature. The Conner riot was a lose-lose situation. Corrections reform in Oklahoma has always been an uphill fight. The big burn at OSP in 1973 probably helped move things forward by exposing intolerable conditions which created circumstances favorable to reform. Conner did no such thing. It was a modern \$12 million facility which people perceived as having been destroyed because a few criminals threw a temper tantrum over a late meal. Moreover, the public impression had been created that it was a riot-proof institution. Corrections Director Larry Meachum observed that

When you have a midnight shift operated by 17 or 18 officers with 750 inmates, those 17 or 18 people can never contain 750 people if they want to create a disturbance. There is no such thing as a riot-proof institution.⁸⁸

Meachum believed that the ultra-modern design of the plant might have contributed to the riot by minimizing contact and communication between inmates and staff, and then when twice its capacity of prisoners were squeezed into Conner it became dry kindling awaiting a spark. "[T]hat creates its own problems, too. So the blessing has been the

⁸⁷"Lawmakers Expect Special Session of Prison Riot Repairs," Tulsa Tribune, August 31, 1983.

⁸⁸"Meachum."

curse; and the curse is the blessing. I am a believer that people who do not learn from history will then repeat it."⁸⁹ What goes around comes around?

Other Corrections Events in the Nigh Administration

Contrary to appearances, the Nigh administration's activities in the realm of corrections from 1979 through 1983 were not totally confined to the issues associated Battle v. Anderson court case. In fairness, several other major projects and issues addressed during the first Nigh administration should be noted.

Parole Consideration. The Governor points proudly to his "speedy" action on paroles. Because Oklahoma's parole process has no statutory time limit for action by the Governor following a recommendation by the Pardon and Parole Board, inmates might wait for months to learn if they had been approved for parole. Nigh said uncertainty caused a "hardship on the inmate, because he never knew."⁹⁰ If the inmate had received a promise of a job after parole, frequently the job would have been filled before the Governor signed the parole.

Despite his efforts to improve this time differential, even Governor Nigh was forced to postpone his decisions on paroles occasionally. In October of 1983, Director Meachum asked that the Governor be removed from the parole process. In a joint resolution proposed to the Legislature and with Governor Nigh's full support, Senator John McCune called for a constitutional amendment taking the governor out of the

⁸⁹Ibid.

⁹⁰"Nigh."

process.⁹¹ The Senate approved the resolution, but when the House delayed the vote, McCune expressed little hope for its passage. "It's still alive, but not kicking very much," he said.⁹²

Creation of Additional Prison Bed Space. To create additional prison bed spaces, the Nigh administration acquired three institutions from the Department of Human Services--Taft, Helena, and Boley. Jess Dunn Correctional Center at Taft opened in 1981 as a minimum security institution with a capacity for 300 men. James Crabtree Correctional Center at Helena also opened in 1981 as a minimum security institution with plans to make it medium security. Its rated capacity was 130 men. Boley Correctional Center, another minimum security center, opened in July of 1983, equipped to handle 400 inmates. Additional cell houses and dormitory spaces were constructed throughout the system; but frequently the benefits from these additional bed spaces were "cancelled out" by the closing of older housing units. OSP, for example, closed the East and West cell houses in 1983, thus losing 617 beds. Construction of additional units and the transfer of the women's ward into a male trusty building gave the penitentiary a net loss of about 250 beds. Losses at OSR were partially offset by new construction, with that institution achieving a gain of 49 beds.⁹³

Prison Industries. Senate Bill 292, passed by the Oklahoma State Legislature in 1983, authorizes the use of prisoners' services in

⁹¹"Meachum Wants Governor Out of Parole Process," Tulsa World, October 7, 1983.

⁹²Ibid.

⁹³"Oklahoma Prisons: The Overcrowding Problem," Oklahoma Department of Corrections, 1981, p. 3.

Oklahoma State Industries (OSI). The mission of OSI was to (1) "train and employ inmates, and (2) reduce the cost of state government."⁹⁴ Owned and operated by the State, OSI was and is funded directly from revenues generated by inmate services and inmate produced products. These products and services are sold to state agencies, subdivisions of government, and non-profit charitable organizations, and include seventeen programs at five institutions--drapery and garment construction, data entry, furniture and corrugated boxes. Agricultural operations are also controlled by OSI and include production of dairy products, eggs, beef, and pork and crops such as feed grains, soybeans and hay. Senate Bill 292 also **requires** state agencies to purchase some items from OSI, such as desks and office furniture, contributing greatly to the growth of the industries.⁹⁵ The program employed a total of 560 inmates at the end of Fiscal Year 1983, at an average monthly pay of \$35 per inmate.⁹⁶

ACA Accreditation. May of 1982 was a significant month in the history of Oklahoma corrections. It was then that Jess Dunn Correctional Center received accreditation from the American Correctional Association. Dunn was the last of five institutions to be accredited in 1982, having been preceded by Mabel Bassett, Stringtown, and McLeod Correctional Centers and Oklahoma State Penitentiary.⁹⁷

⁹⁴"Overview," Oklahoma Department of Corrections, 1985, p. 28.

⁹⁵Senate Bill 292,

⁹⁶"Oklahoma State Industries," Oklahoma Department of Corrections Annual Report, 1983, p. 3.

⁹⁷Legislative officials had once objected to the state's seeking ACA accreditation, fearful that that body might impose more stringent criteria than even the Bohanon Court had done. Idaho, the first

Thus, Oklahoma became the first state to achieve full accreditation of its system and the first state to have a maximum security prison fully accredited. ACA accreditation for maximum security institutions requires the institution to meet 465 standards. OSP complied with the majority of the standards, including seventeen mandatory items which carried a stipulation that to fail one would be to fail all seventeen.

Staff Development Center. The Staff Development Center, originally housed in the Sun Tide Motel in Oklahoma City, moved to its new facilities at Jess Dunn Correctional Center in Taft on July 18, 1980. The Officer Basic Training program was changed at that time to include from 200 to 300 hours of instruction. Previously, each facility was responsible for training its personnel. The new program assigns thirty-five Correctional Officer Cadet positions to the Staff Development Center. Following five weeks of training, a Cadet is assigned to a facility for sixteen weeks of on-the-job training. The Cadet then returns to the SDC for two more weeks of classroom training. After successful completion of the six-month basic training period, the Cadet is promoted to Correctional Officer I, and assigned to a correctional facility.

Other training programs at SDC include a three-week program for new Correctional Case Managers, a two-week course for Probation Parole Officers, and in-service seminars for other employees within the Department.⁹⁸ The Center was dedicated officially as the George Nigh

Corrections Department to be accredited had only one prison and the central department--not a system. Since its full accreditation, Oklahoma has been "viewed nationally . . . as either the leading correctional system or one of the leading correctional systems in this country." "Meachum."

⁹⁸"Staff Development Center," Oklahoma Department of Corrections, Annual Report, 1981, pp. 76-77.

Staff Development Center on February 25, 1982. During FY 1982 employees spent the equivalent of 20,300 employee days in training sessions.⁹⁹

Women Offenders. Until 1973, the Women's Unit outside OSP was the state's only correctional institution specifically for women. Mabel Bassett Correctional Center, adjacent to the Department of Corrections Administration Building in Oklahoma City, was opened in 1973, and housed all maximum and medium security female offenders except for two who were on Death Row, which for women was a holding cell at Lexington A & R Center.¹⁰⁰ Women inmates enter the system at Lexington Assessment and Reception Center in the same way as male offenders. From the A & R they are transferred to Mabel Bassett, Horace Mann Community Treatment Center in Tulsa or Clara Waters Community Treatment Center in Oklahoma City.

Louis Bullock thinks that treatment for female inmates is not equal to that of male inmates. He contends that their facilities and services are inferior to those of the male population.¹⁰¹ Judge Bohanon, on the other hand, said that on his last contact with the system, he felt the women had nothing to complain about. "Mabel Bassett wasn't what it

⁹⁹Figure 4 illustrates types of courses and number of participants served during the first fiscal year after the opening of the Center. "Staff Training Statistics--Fiscal Year 1982, George Nigh Staff Development Center," Oklahoma Department of Corrections, Annual Report, 1982, p. 9.

¹⁰⁰Two women were on Death Row in 1983 and were housed at the Lexington Assessment and Reception Center. Construction of new maximum security cells at Mabel Bassett was intended to be used for housing these two women Death Row inmates, as well as any additional women who might subsequently be sentenced to death for a crime. This new maximum security area was scheduled for completion early in 1984.

¹⁰¹"Bullock."

Figure 4

Staff Training Statistics – Fiscal Year 1982
George Nigh Staff Development Center

Course	Hours in Course	Number of Sessions	Number of Participants	Total Training Man-Hours
Correctional Officer Cadet Basic Training Part I	230	16	531	122,130
Correctional Officer Cadet Basic Training Part II	80	14	277	22,160
Case Manager Basic Training	120	4	45	5,400
Support Contact Basic Training	80	3	33	2,640
Basic Clerical Training	12	4	82	984
Advanced Clerical Training	12	6	142	1,704
Chemical Agents Seminar	8	1	28	224
Probation and Parole Supplemental Basic	80	1	23	1,840
First-Line Supervisory Skills	40	3	64	2,560
Interpersonal Skills	40	3	15	1,800
Educational Services Seminars	10	4	49	1,920
Health Services Workshops	10	4	150	6,000
Rational Behavior Training	40	2	20	1,600
Parenting and Family Integration	40	2	20	800
MMPI Training	16	1	29	464
Introduction to Psychodrama	12	1	31	372
Client Management Classification Workshop	20	3	30	1,800
Fire Safety Officer Seminar	20	1	35	700
Time Calculation Workshop	10	1	32	320
Food Services Seminar	10	2	25	500
Deity Living Skills Workshop	6	1	27	162
Training Coordinators Workshop	6	1	23	138
Anatomy of a Setup	4	1	24	96
Report Writing	4	1	19	76
Management Seminars	8	9	68	4,896
Case Manager Supervisors and Records Clerks	10	1	44	440
Water and Waste Water Systems Operators Seminar	12	1	10	120

Source: Director, Staff Development Center.

should be, but they were building; they were spending money."¹⁰² Corrections Director Larry Meachum talked at length about female incarceratedants:

The problem with women in corrections has been referred to as the "Madonna/whore syndrome." Women get the best of all possible worlds. They get things men never get, and they get treated like the Madonna. They get treated professionally, and with almost the condescending, chauvinistic protectionism. The women get the benefit of being put on the pedestal.

On the other hand, they get treated as the whore; they get treated contemptuously. They get treated like "there's not enough of you to defend and justify the resources that we would put here the males; therefore, you don't get this... because there's not enough of you to justify the program."¹⁰³

In 1983, the subject of parity among women and men offenders was a complex issue; and in some respects the easiest policy would have been to provide more programs similar to those offered men and to create "men-type" conditions. But then, according to Meachum, the "Madonna" would be lost in an institutionalized atmosphere. There was no infirmary at Mabel Bassett; neither was there an intermediate mental health care unit. Vocational programs were not as comprehensive; and the ones which were available were the traditional stereotypical programs for women--cosmetology, keypunch, secretarial. Yet, the only way vocational program offerings could have been increased would have been to take some of the women off productive jobs and put them into training programs.

At the time of Meachum's interview, Mabel Bassett had the highest employment rate in the entire system. There was "literally no idleness" in that prison. It had more training programs and industries than any

¹⁰²"Bohanon."

¹⁰³"Meachum."

other institution.¹⁰⁴ Both medium and maximum security female inmates were distinguished by the wearing of their own personal clothing. "That's part of the Madonna thing."¹⁰⁵ Meachum's theory is that to dress the women in inmate garb would be to create an institutional mentality, and an institutional environment. "Why . . . create an environment that's not healthy, when the one you've got is not creating a problem for you?"¹⁰⁶

On the subject of an infirmary and an intermediate mental health clinic, Meachum felt that "whatever you have, you use."¹⁰⁷ Medical facilities were readily available through private physicians or clinics or at the Oklahoma Memorial Hospital. Similarly, privately contracted intermediate mental health services were available locally or at Central State Hospital in Norman. Male prisoners in remote rural areas did not have the alternative of using other medical or mental health facilities. "Why make the taxpayers pay for something that I would probably use once or twice a year if I didn't have it, and would probably use all the time if I did?"¹⁰⁸ Meachum had the same philosophy about an on-site clinic. "You create the [problem] by meeting the need. What do I do when I have

¹⁰⁴Some industries were being moved to Joseph Harp because of a shortage of women inmates to do the jobs. "Grider."

¹⁰⁵"Meachum."

¹⁰⁶Ibid.

¹⁰⁷Ibid.

¹⁰⁸Meachum asked a doctor to "look at how much money it would cost me to build an intermediate mental health clinic . . . and staff it around the clock for a year." He then compared that cost with the cost from a private provider in the area and determined that he could save the taxpayers "much money" by paying for such services on an "as-needed basis." "Meachum."

a cold? I go home [or to my housing unit], take some aspirin and drink some juice. Or, I go to work. . . . That's the way the world operates." Without a clinic an inmate has the same choices. If a clinic were available, inmates would have a cold and be "locked up" because they might be contagious.¹⁰⁹

The Director's conclusion about the issues of parity for women offenders was that "we have done more than we have for the males instead of less than. It's not exactly equal."¹¹⁰

Alternative or Creative Sentencing

Programs and Legislation

Because of the constant growth of populations within correctional institutions, the Board of Corrections, corrections administrative officials, the Governor, and the Legislature began to look for new and innovative corrections methodologies, especially those which could be used with first-time, non-violent offenders. A few of these had been initiated by 1983 and were apparently enjoying a certain degree of success.

Community Service Sentencing Program. A Tulsa County Program--Community Service Sentencing Program--was a cooperative effort with the Tulsa Metropolitan Ministries and could be initiated by a judge, district attorney, or probation and parole officer. At a first sentencing, prospective clients were screened and matched with a non-profit service agency, government agency, or other organization, with the hope of achieving maximum benefit to both parties. Here they serve a minimum of

¹⁰⁹Ibid.

¹¹⁰Ibid.

20 hours or a maximum of 1,000 hours within a five-year period.¹¹¹

Release on Own Recognizance. In Oklahoma County, the Release on Own Recognizance Program was a pre-trial diversion program in cooperation with the Department of Corrections, Division of Probation and Parole, and Oklahoma County Commissioners. After a thorough screening by Probation and Parole staff, county jail inmates were released to their own recognizance until trial. At the end of the first year of operation (FY 1983), 807 clients had been screened, 462 were released. Only twenty clients (4 percent) failed to appear for a scheduled court hearing. Bonds were forfeited and warrants issued for their arrest.¹¹²

120-day Judicial Review. Two significant pieces of legislation which were hoped to release prison populations were passed by the 1983 Legislature. Senate Bill 127, which became effective on November 1, 1983, allowed the court to modify sentences within 120 days after initial sentencing. After that 120 days, the court decides whether further incarceration would benefit the inmate. No records were available to determine its effectiveness.

Non-Violent Intermediate Offender Act. The second piece of legislation, one which Larry Meachum called a "proud achievement," is House Bill 1395, the Non-Violent Intermediate Offender Act. Passed in 1983, it was not to take effect until 1984. Under the Act, a new category of felon was created--the individual aged eighteen to twenty-one who has

¹¹¹"Community Service Sentencing Program," Department of Corrections Annual Report, 1983, p. 47.

¹¹²Ibid.

been convicted of a non-violent crime. The Act provides that such offenders receive a sentence to an "indeterminate period of probation supervision or confinement."¹¹³ Under this law, a rehabilitation plan must be prepared and filed with the court clerk. If neither the district attorney nor the offender objects to the plan, it is deemed approved by the court. Failure of the offender to abide by the plan could be the basis for transfer to a correctional institution.¹¹⁴

Officials felt this act would have two major benefits: (1) to reduce the number of receptions at Oklahoma prison facilities, and (2) to prevent the young, first-time offender from being influenced by older, more experienced inmates in other institutions.

The first term of Governor George Nigh proved to be one of the two administrations most actively involved in corrections in the history of Oklahoma. Battle v. Anderson, the Conner riot and fire, construction, double-celling, new training and educational programs, acquisition and remodeling of three facilities "inherited" from the Department of Human Services, completion of two of the three new prisons, and many other projects kept the administration very much involved in the corrections process. His re-election in 1983 made George Nigh the first Governor of Oklahoma ever to serve two consecutive terms in Oklahoma. He realized the advantages this second term would give him in terms of corrections:

So I would say that in my administration--and frankly because I was re-elected and I had more time--we not only began the programs; but I'm probably the only Governor in the history of the

¹¹³Ibid., p. 48.

¹¹⁴House Bill 1395, April 21, 1983, pp. 11-12.

state who's seen the fulfillment of those programs. That's really very rewarding.¹¹⁵

The rewards are not only for George Nigh, but also for the Oklahoma taxpayer who sees corrections' dollars being spent wisely; to Department of Corrections employees who finally can have the sense of having accomplished something positive; and to the inmate who has a better opportunity to achieve rehabilitation and successfully re-enter society as a productive citizen.

¹¹⁵"Nigh."

CHAPTER VI

CONCLUSION

Inasmuch as ye have done it unto one of the least of these
my brethren, ye have done it unto me. --Matthew 25:40

Many things can be said about a prison system which has admittedly come "out of the dark ages and into the 20th century"¹ over a sixteen-year period--from a budget of about \$5 million in 1967² to a budget of \$97.5 in 1983; from a population of 2,905 in 1967 to a population of 7,480 in 1983³. During that time, the physical plant expanded from a system with two main institutions, OSP and OSR; two satellites, Stringtown, and McLeod; and no community treatment centers, to a system with one maximum security institution, OSP; thirteen medium/minimum institutions; and eight community treatment centers. Figure 7 indicates the growth in numbers of locations from 1973 to 1983.⁴

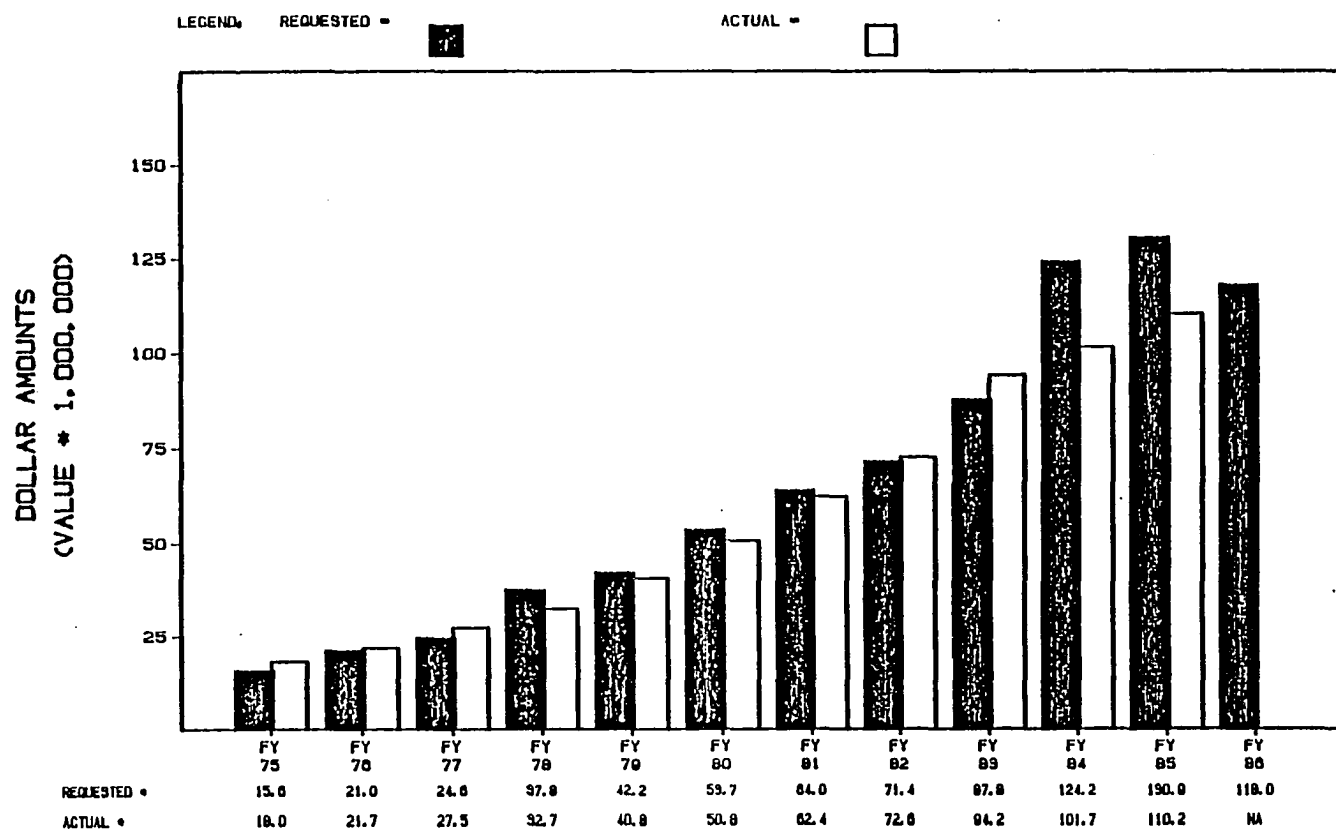
¹"Personal Interview with John Grider, Deputy Director of Department of Corrections, May 30, 1985.

²The \$5 million figure is an estimate from John Grider. Budget figures for the years 1967 through 1972 not available in Department of Corrections files. See Figure 5, for a graph depicting budget requests and actual budget figures from 1975 through 1986.

³See Figure 6, for a graph depicting end of calendar year population from 1950 through 1984.

⁴"The Growing System," in "Riot to Riches." Reprinted from Tulsa Tribune series, July 1983. Figure 5 depicts all Department of Corrections locations, including administrative offices and Probation and Parole Offices.

FIGURE 3. BUDGET REQUEST AND ACTUAL WORK PROGRAM BY FISCAL YEAR
FROM 1975 THROUGH 1986



NOTE: ACTUAL WORK PROGRAM FOR FY86 NOT AVAILABLE

* NOTE: VALUES ARE DIVIDED BY 1,000,000.

FIGURE 1. END OF CALENDAR YEAR TOTAL SYSTEM POPULATION FROM 1950 THROUGH 1984

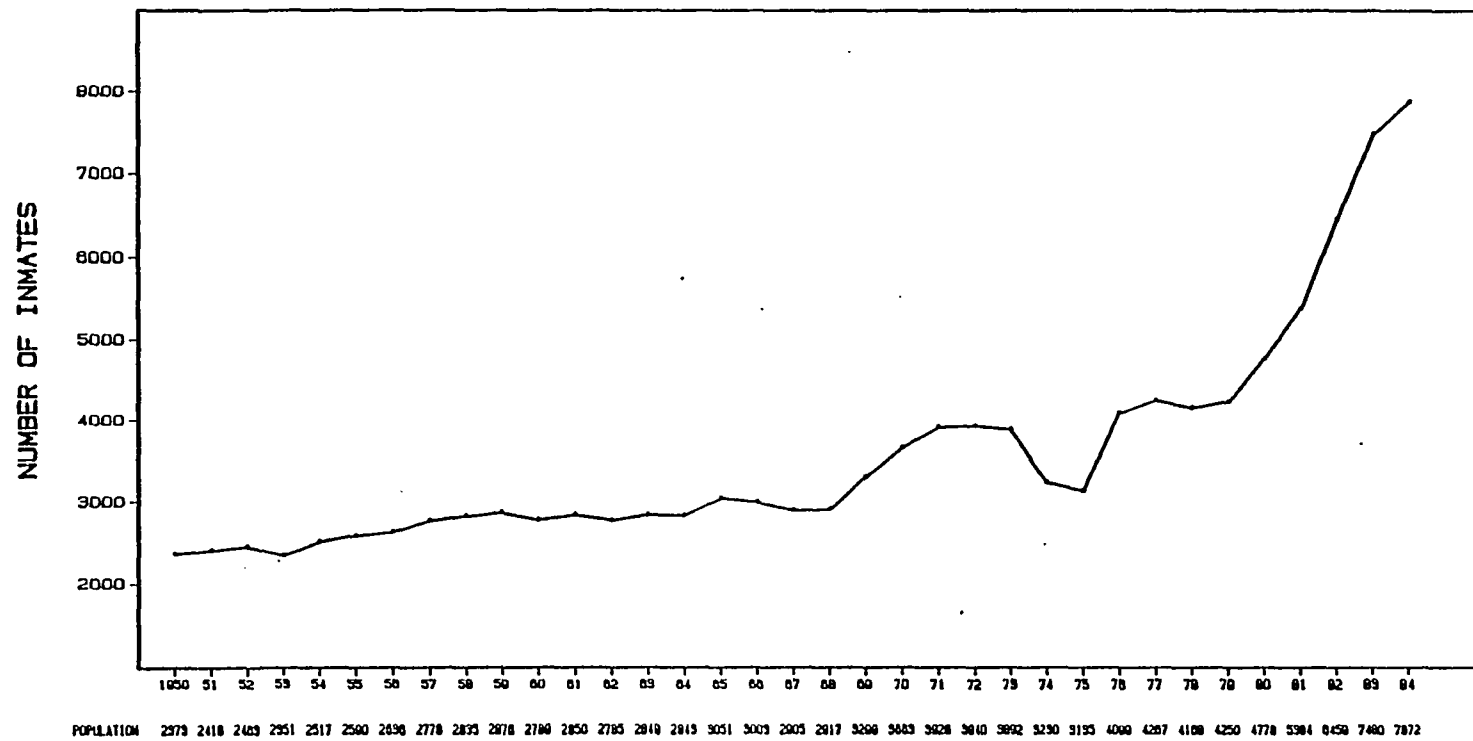
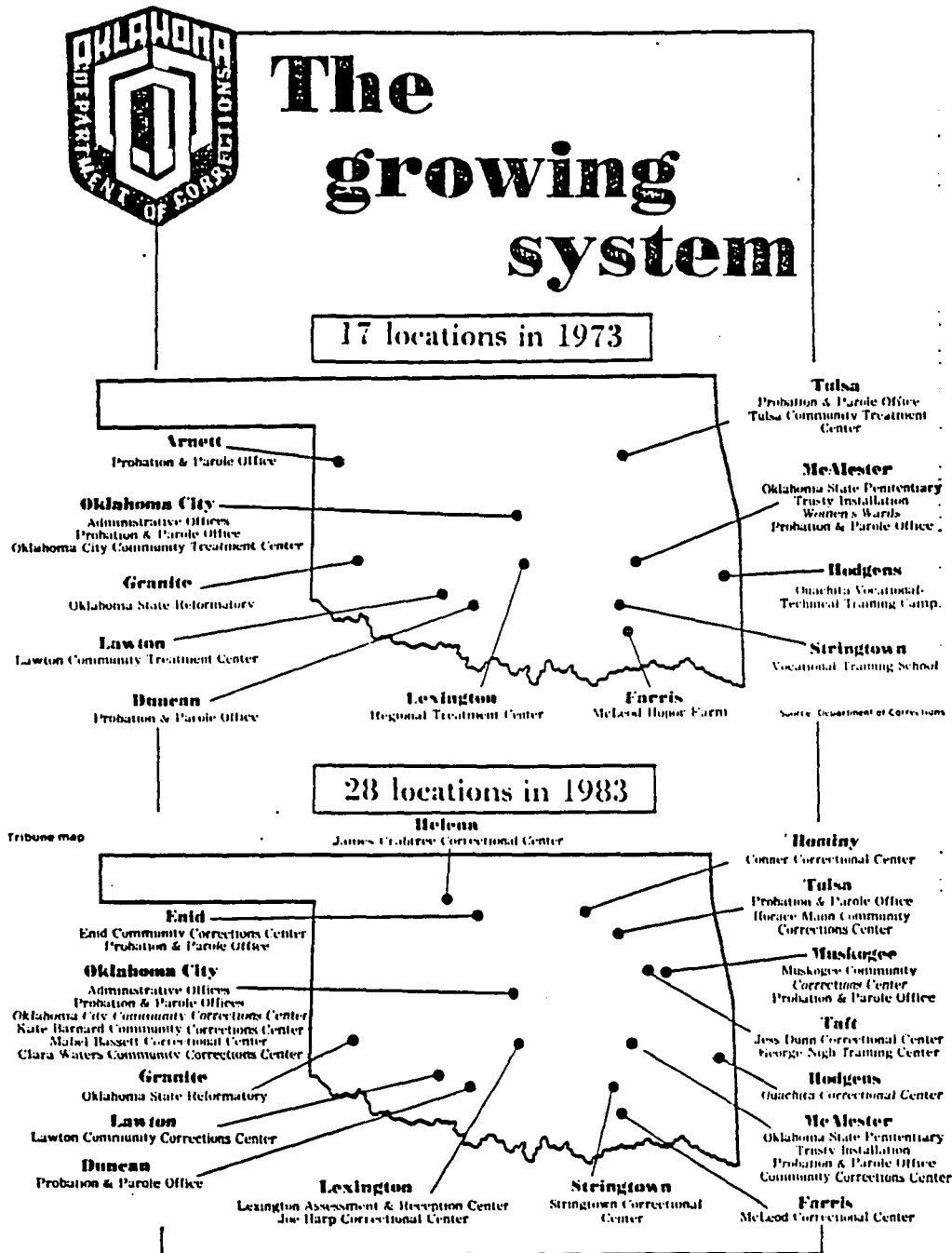


FIGURE 6

FIGURE 7



Improvement has been generally recognized. "There's been a dramatic change in the past few years," said Governor Nigh. "Like right now, Director Meachum is riding high on support in the Legislature . . . I would hope the shift in corrections will continue to be what we've tried to put into place--that's in programs, [not buildings]."⁵ Judge Luther Bohanon believes that the Legislature and the Governor "are now convinced that they have a constitutional responsibility toward all inmates, and thus . . . the Legislature will be mindful of its constitutional duties toward the prison inmates."⁶

Larry Meachum, Director of Corrections, sees a pendulum swinging through the present to the future:

Court litigation is backing off. . . . to the point that [we may] allow some things to redevelop that are probably not going to be healthy and will eventually cause another cycle of problems. One of the nice things about pendulum swings is that the extremes of one swing purge the evils of the previous swing; and I need now to swing back a little bit and purge some of the evils of my successes.⁷

From the other side of the bars, former OSP inmate Bobby Battle sees "a more positive system, a better system for prisoners in the future. . . . With the progressive type of schooling that corrections people have nowadays, you can look to see some real changes."⁸

Changes in the system did not come without excessive pain, exorbitant expenditures, and even death. From human misery came a riot marked by death and destruction; and a law suit of eleven years' duration. The

⁵Personal interview with Governor George Nigh, July 25, 1985.

⁶Personal interview with Judge Luther Bohanon, May 30, 1985.

⁷Personal interview with Larry Meachum, Director of Corrections, July 22, 1985.

⁸Telephone interview with Bobby Battle, June 4, 1985.

destruction demanded the expenditure of tens of millions of dollars to rebuild an almost totally destroyed facility, while the law suit prompted even more costly construction--construction which started a seemingly endless cycle of increased prison construction to relieve overcrowding, followed by more construction to relieve still more overcrowding. Despite the increases in construction, prison bedspace requirements were projected as deficit figures in a 1982 study originating in the Department of Corrections. Figure 8 graphically illustrates the increasing need for prison bedspace through 1986.⁹ It is an endless circle; and one in which "what goes around, comes around."

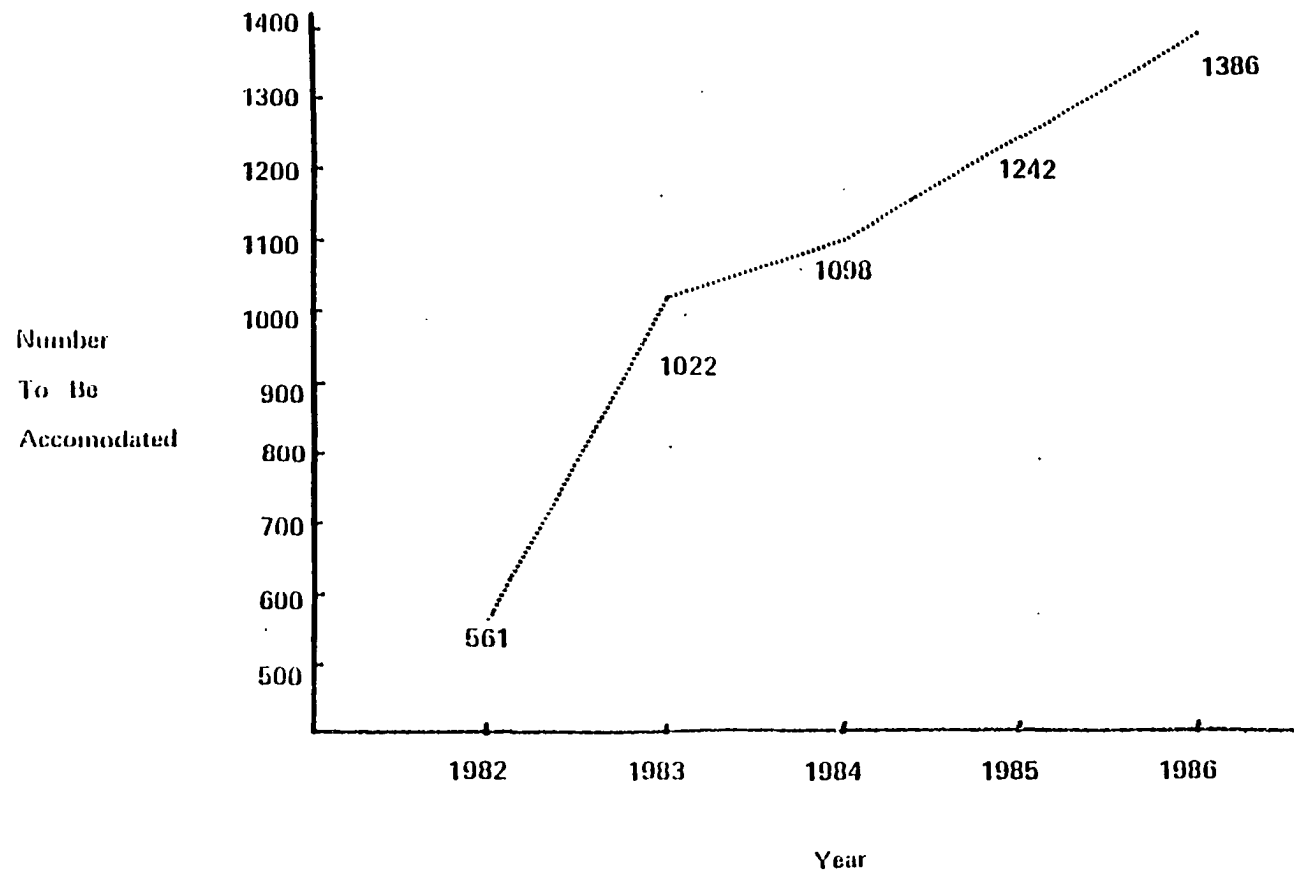
Alternatives to Incarceration

Some of the most positive predictions for the future of Corrections in Oklahoma are inspired by proposed programs or recently passed legislation dealing with alternatives to incarceration. Most of these innovative programs are a direct result of corrections officials' trying to meet the challenges of overcrowding. Obviously, prison populations increase when receptions exceed releases. Figure 9 illustrates the difference between the number of inmate receptions and the number of inmate releases during the Fiscal Year 1983.¹⁰ The system received 28 percent more inmates than it released during that year. Some suggested or enacted alternatives to prison incarceration appear to offer some relief for this problem.

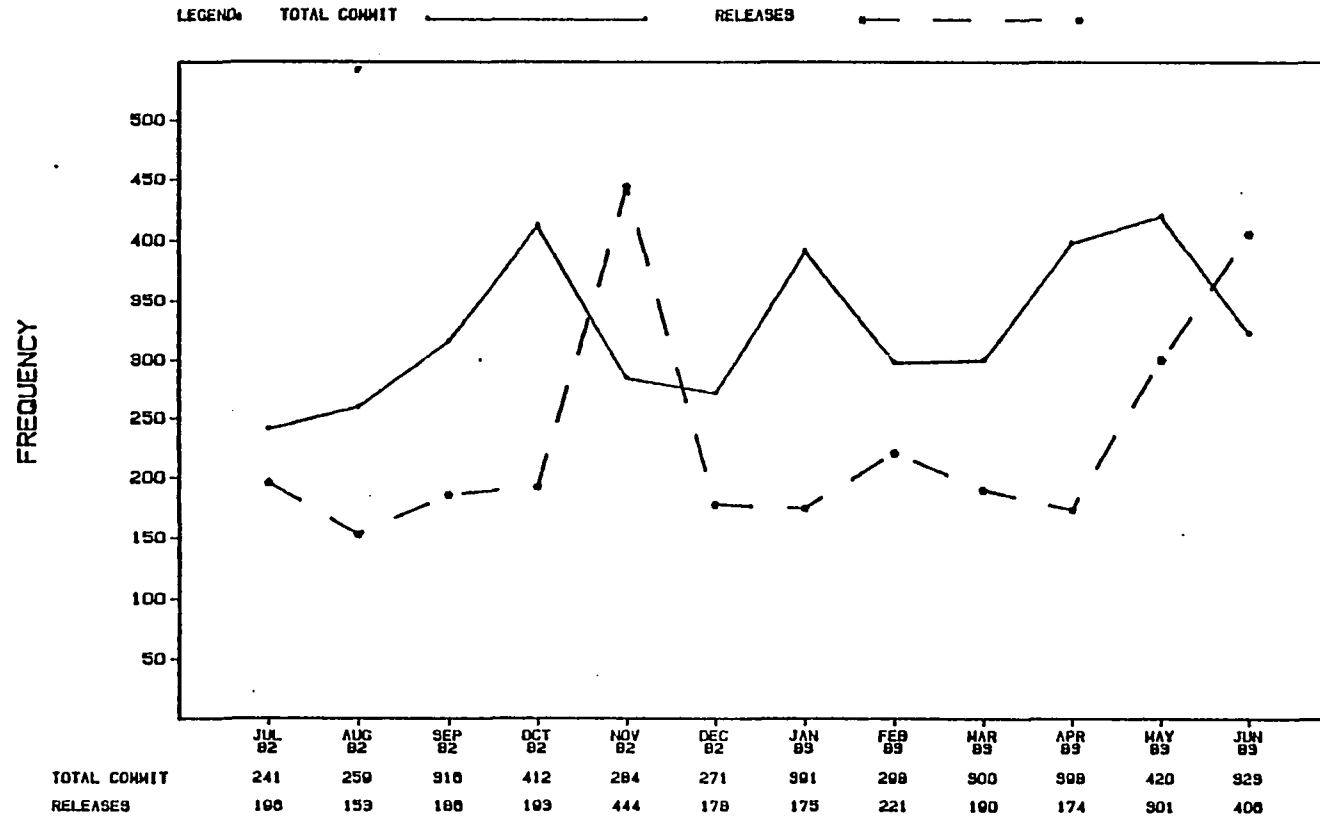
⁹"Oklahoma Prisons: The Continuing Prison Overcrowding Problem," Oklahoma Department of Corrections, January 11, 1982, p. 12.

¹⁰"Frequency of Receptions and Releases During Fiscal Year 1983." Oklahoma Department of Corrections Annual Report, 1983.

Figure 9
PROJECTED BEDSPACE DEFICITS 1982-1986



**OKLAHOMA DEPARTMENT OF CORRECTIONS
FREQUENCY OF RECEPTIONS AND RELEASES DURING FISCAL YEAR 1983**



SOURCE: WEEKLY INMATE ACCOUNTING SHEETS

NOTE: RECEPTIONS = NEW COMMITMENTS, REVOKED PAROLES, REVOKED SUSPENDED SENTENCES, AND RECEIVED FROM OTHER JURISDICTIONS.

NOTE: RELEASES = PAROLES, DISCHARGES, AND OTHER (e.g., TO OTHER JURISDICTIONS, DEATHS, ETC.).

FIGURE 9

"Cap" Legislation. Legally known as "Oklahoma Prison Overcrowding Emergency Powers Act," Senate Bill 445 is more commonly referred to as "cap" legislation. This law allows the governor to declare a state of emergency if the prison population exceeds 95 percent of capacity for thirty consecutive days. When such an emergency is declared, the Director of Corrections is empowered to "grant sixty (60) days of emergency time credit to any person confined in the prison system who [meets three criteria]. These criteria are (1) a medium or lower security level inmate, (2) first-time offender, and (3) incarcerated for a non-violent offense."¹⁰ This is one of the most controversial pieces of corrections legislation ever passed in Oklahoma. Governor Nigh opposed its passage initially, vowing he would veto any such legislation; however, he eventually concurred with its enactment.

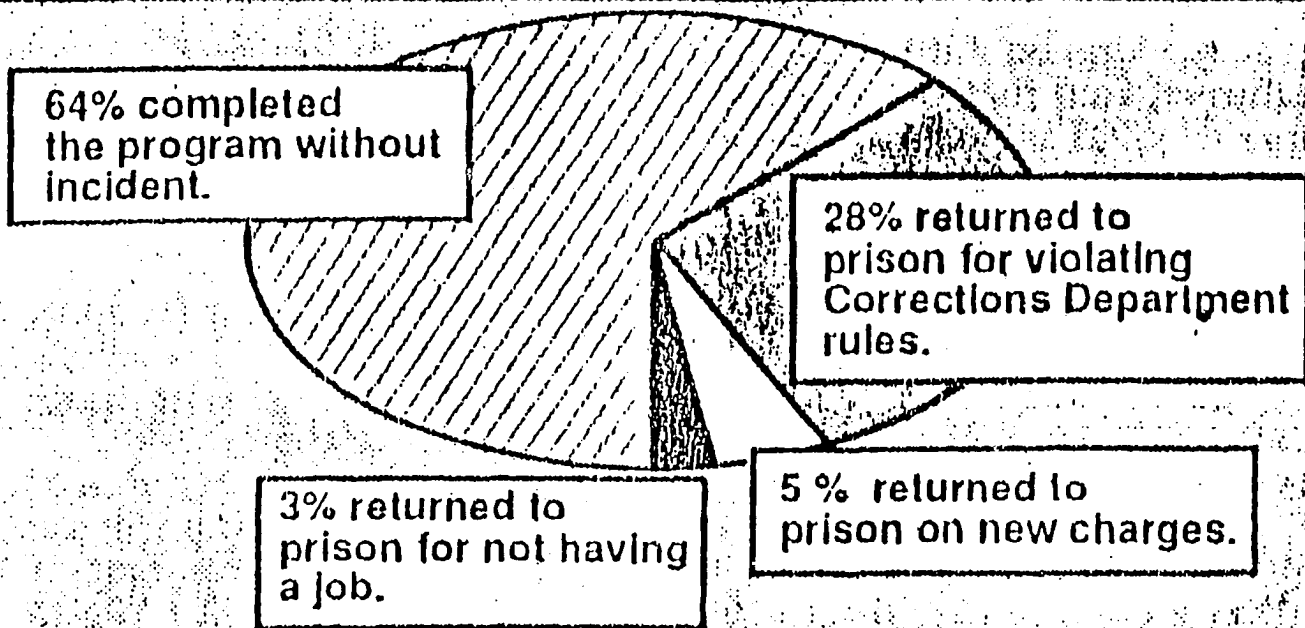
House Arrest Program. First implemented in April of 1981, the House Arrest Program had 121 inmate participants during its first thirteen months. A total of 105 inmates terminated from House Arrest--eighty-two terminated by parole, eleven were discharged, one was denied parole and returned to a correctional facility, and eleven were returned to facilities for disciplinary reasons. Another sixteen inmates remained in the program at the end of FY 1982.¹¹

¹⁰Senate Bill 445, "Oklahoma Prison Overcrowding Emergency Powers Act," 2d regular session, 1984, p. 347.

¹¹The program seemed to have fallen into disuse until Fiscal Year 1984, during which time it was revived and expanded. It is another extremely controversial program among state officials and the public. Fear of having violent offenders released to this program before they are "rehabilitated" creates uncommon resistance to its use. Figure 10 depicts recent statistics (1985) for House Arrest. "Where the Convicts Have Gone," Tulsa Tribune, August 6, 1985.

Where the convicts have gone

Of 2,300 inmates who have participated in house arrest through June:



Source: Oklahoma Department of Corrections.

Tribune graphic

FIGURE 10

Specialized Offender Accountability Program. This program was developed in response to the Non-Violent Intermediate Offender Act and the 120-Day Judicial Review Act, both passed in 1983. It is used to ensure that "punishment and treatment of offenders is perceived as fair and just by all concerned, including the victim and the community," and includes such accountability provisions as restitution, community service, intensive supervision, drug or alcohol abuse programs, employment requirements, and residential stipulations.¹²

Post Conviction Mediation Program. The first of its type in the country, this program allows victims of crime to have an unprecedented role "in formulating the punishment of an offender."¹³ During a ten-months period, over 900 victims were contacted for their input, with about 80 percent choosing to mediate with their offenders. Out of 250 mediation hearings, 97 percent were resolved to the satisfaction of the victim. Perhaps even more impressive is that less than 2 percent of the offenders who mediated had recidivated at the time of this study.

AIDD and TASC. Alternatives to Incarceration for Drinking Drivers (1981) allows the chronic alcohol offender to be placed within a "controlled environment" to receive rehabilitative services. Treatment Alternatives to Street Crime was designed for use as an option for offenders who have substance abuse problems. As an alternative to incarceration, or as a condition of a deferred or suspended sentences, TASC staff members help offenders to receive treatment from community agencies or counselors, and then monitor treatment and abstinence.

¹²"Inmate Program Initiatives," op cit., p. 13.

¹³Ibid., pp. 14-15.

Work Release. Carefully screened and selected inmates at community treatment centers are certified as eligible to work at jobs within the community. About sixty-five or seventy inmates in each CTC gain valuable work experience, and the department receive a portion of their income in support fees. During a recent ten-month period, Work Release participants contributed \$65,000 per month in program support payments.¹⁴

When asked about the success of these alternatives, John Grider answered that "There are bugs in the programs; but [they're] a relief valve. Yes, they're working, because they're popping the relief valve on the prisons." Perhaps the apparent success of the programs lends an entirely new meaning to the old axiom that "stone walls do not a prison make, nor iron bars a cage." Participants in these alternatives to incarceration literally carry their "punishment" with them everywhere they go.

Other Inmate Programs. Other programs for inmates include Sex Offender Treatment Program, Premenstrual Syndrome Study, Rational Behavior Training, Basic Integration Program, Interpersonal Communication Skills Training, Daily Living Skills, Prisoners' Run for Child Abuse, Parenting Programs, and Religious Programs.¹⁵ An increased use of vo-tech programs is reflected in the number of inmates enrolled in state and area vo-tech programs in recent years. More than 450 inmates have participated in training programs for building trades, welding, microfilming, data processing, plumbing and carpentry. Further

¹⁴Ibid., p. 16.

¹⁵Ibid., pp. 15-16.

expansion of these training programs is planned for the near future.¹⁶

Programs Still in Planning Stages. No other department in the entire world, according to Director Meachum, has ever tried the use of the Dispute Mediation Program for Post-Incarceration. Similar to the Post-Conviction Mediation Program, this program allows mediation with victims after the offender had been incarcerated. Another innovative program, although not original to Oklahoma, is the use of Video Justice. During arraignments, pre-trial hearings, actual trials, and sentencings, video monitors allow the judge and the offender to see and talk to each other. The defense attorney may elect to be with the offender or in the court room with the judge. Improved security, decreased transportation costs, and time savings are the most obvious benefits of this program.¹⁷

Among the most obvious conclusions to be reached from this study are those regarding the roles of two events and two governors' administrations in bringing the Oklahoma prison system to its current level of excellence. The 1973 riot and fire at OSP necessitated new construction and modernization at that institution. Ultimately, renovation and new construction followed throughout the system. The eleven-year long federal court case further stimulated building and renovation of existing structures across the state.

¹⁶"Inmate Program Initiatives," Oklahoma Department of Corrections, Overview, January 1985, p. 13. The notable lack of concentration in this study on educational opportunities within the prison system is attributable to a recent dissertation which dealt education programming within the system. Clint Longacre, "An Analysis of the Oklahoma Department of Corrections Adult Basic Education and General Education Development Teacher Training Needs," Ph.D. Dissertation, University of Oklahoma, College of Education, 1981.

¹⁷The only information available on these two new programs was in the interview with Director Meachum. "Meachum."

Even more significant than the physical construction, however, were reforms mandated by Battle v. Anderson court orders--reforms which effected quality of life within the prisons. Neither of these single events--the riot and fire or the court case--would likely have effected the wide-spread changes which have occurred within the corrections system, but the two together became a catalyst for system-wide change and reform.

Governors David Boren and George Nigh demonstrated that effective leadership in top levels of state government can result in legislative funding even of unpopular programs, such as prison construction and reform. While the Governor is the traditional leader of the people of the State, the area of prison expenditures is one in which he is perhaps most likely to encounter opposition from his constituents. People in general do not want to spend money on prisons; however, they are more willing to support and accept prison reforms during times of economic prosperity than during times of austerity. Both Boren and Nigh were blessed by being elected during a time of relatively strong financial prosperity for the State. The boom in the petroleum industry, revenue sharing funds, and other massive federal spending created a climate favorable to the spending which was necessary within the corrections system. While court mandated reforms were hardly avoidable, they were more easily effected because of Oklahoma's financial condition at the time.

Oklahoma has much reason for pride in the progress it has achieved in corrections since the creation of the Department of Corrections in 1967. It is encouraging to note that the Department is not resting on its laurels or depending upon its past successes to guarantee its

future. New programs and legislation are being proposed each year which apparently will continue to make Oklahoma's prison system a model for corrections nationwide for the foreseeable future. It is a continuing challenge, demanding a continuing effort; for after all, Le plus que les choses changent. le plus que les choses restent le même.¹⁸

¹⁸"The more things change, the more things stay the same."

APPENDIX

CONTENT ANALYSIS OF INTERVIEWS

Each interviewee was asked a common core of 15 questions, in addition to questions directed at him individually. The following page depicts typical answers given by each interviewee. In some cases, the subject did not feel qualified to answer a question; therefore, the number of of responses on each question may vary.

Following the Content Analysis is an edited text of each interview. Because some comments were "off the record," they are not included in the edited versions. Additionally, many questions and detailed answers which did not apply directly to the core questions were omitted from the printed text.

Several additional people were interviewed,¹ In addition to the 7 subjects whose interviews are printed. Some of the excluded interviews were conducted as long as two years before the core questions were constructed, making it impractical to include them in the text or the content analysis.

¹Persons interviewed but whose interviews are not included in the text include Leroy Wilson, Arvin Wood, Senator Gene Stipe, Dr. Irwin Hall, Windsor Ridenour, and Jim Hopper.

CONTENT ANALYSIS

QUESTION	TYPICAL ANSWER	SIMILAR RESPONSE	DIFFERENT RESPONSE
1. What was the purpose for the creation of the DOC?	To provide centralized management of system	4	2
2. What were primary results of creation of DOC?	Brought unification and direction to the system	4	2
3. What was the effect of Gov. David Hall (former prosecutor) on corrections?	Increased population and antagonism because of his policy not to parole drug and violent offenders	8	0
4. Impact of Battle on corrections since 1972?	A major catalyst for change	7	0
5. Was Battle an "unsung convict hero" of prison reform in Oklahoma?	Yes No	1 4	0
6. Why was Battle ignored during the year following its filing?	Backlog of cases Death of Judge Langley Lack of interest	2 1 5	1
7. If Courts had taken stand on Battle, could the riot and fire likely have been avoided?	Likely Unlikely	3 2	2
8. If there had not been a riot and fire, how likely are the chances of Battle's having been acted upon?	Likely Unlikely	4 1	2
9. What effect did riot and fire have on corrections in the state?	Second major catalyst for change	6	1
10. How do you visualize the system if the riot and fire had not occurred?	Status quo Change was inevitable	3 4	
11. Did the zeal of the Boren administration for construction help or hinder corrections?	Helped Hindered Neutral	6 0 1	
12. Did the riot and fire of 1973 force placement of a higher priority upon prison construction and reform than would have been given without the highly publicized conflicts?	Yes No Neutral	5 1 1	
13. How has the Nigh administration implemented compliance with federal court orders?	Has totally complied Has partially complied Has not complied	2 4 0	
14. What long-term impact will the Conner Correctional Center riot and fire have on future of corrections?	Much impact Little impact None at all	0 4 2	
15. What future projections may be made for corrections based on recent legislation and court litigation?	Further progress Regression Maintain status quo	3 1 3	

CORE QUESTIONS FOR INTERVIEWS

1. What was the purpose for the creation of the Department of Corrections?
2. What were the primary results, if any, of the creation of the Department of Corrections?
3. How did the administration of Governor David Hall, a former prosecutor, affect corrections in Oklahoma?
4. What impact has Battle v. Anderson, along with the resulting Bohanon court decisions, had on corrections since 1972?
5. Was Bobby Battle, himself, a type of "unsung convict hero" of prison reform in Oklahoma?
6. Why was Battle virtually ignored during the year following its filing?
7. If the Courts had taken a definitive stand on Battle, could the riot and fire of 1973 likely have been avoided?
8. Conversely, if there had not been a riot and fire, how likely are the chances of Battle's having been acted upon?
9. What effect did the Oklahoma State Penitentiary riot and fire of 1973 have on corrections on the state?
10. How do you visualize the system if the riot and fire had not occurred?
11. Did the zeal of the David Boren administration for construction help or hinder corrections in Oklahoma?
12. Did the riot and fire of 1973 force placement of a higher priority upon prison construction and reform by the Governor than would have been given without the highly publicized conflicts?
13. How has the George Nigh administration implemented compliance with federal court orders?
14. What long-term impact, if any, will the Connors Correctional Center riot and fire of August 1983 have on the future of corrections in Oklahoma?
15. What future projections may be made for corrections in Oklahoma, based on recent legislation and court litigation?

BOBBY BATTLE INTERVIEW

June 4, 1985

1. What was the purpose for the creation of the Department of Corrections?
 - A. The purpose for the creation of the Department of Corrections was to more or less streamline the Oklahoma corrections system. There was no standard of procedure under the old system; and by bringing into view the Department of Corrections, it sort of streamlined the central offices in Oklahoma City, the record offices, and then it put most of the satellite institutions in line with one type policy, as opposed to each warden or superintendent running his facility as he saw fit. Uniformity, more or less, is what it brought about. It was a step in the right direction, I think. They had separate budgets; in fact, almost everything was separate. One facility would be doing one thing, and another one would be doing just the opposite. Budgets were different, and it was just an unworkable plan that they had prior to the introduction of the Department of Corrections.
2. What were the primary results, if any, of the creation of the Department of Corrections?
 - A. The results primarily were that when a policy statement or a memorandum came down from the heads of the Department of Corrections, it went to all departments. as opposed to applying to [one specific building]. Whatever rules and regulations came down that affected the staff and the residents of the institutions, it applied blanketly [sic], as opposed to skipping with a hit and a miss here and there. You could know what was expected of you at that point. It knocked out a lot of what we termed as "lip service rules." There were a lot of lip rules, unwritten rules; and when the Department of Corrections came into being, that took away a lot of the discretionary lip rules, unwritten rules. You did have a policy to go by, some type of standard procedures.
3. How did the administration of Governor David Hall, a former prosecutor, affect corrections in Oklahoma?
 - A. I think he had some effect on the system. and I would say there were both positive and negative effects. I think overall the negative effects outweighed the positive effects; because by him being a former prosecutor (and he was a hard line prosecutor), he felt that you should be punished to the max for whatever crime you were convicted of.
4. What impact has Battle v. Anderson, along with the resulting Bohanon court decisions, had on corrections since 1972?

- A. For Oklahoma and abroad, the Battle vs. Anderson suit has proved to be a viable tool that would push corrections in the more progressive fashion, as it should be in accord with the times. Overall I think it's a tool that was needed and one that will be in corrections for a long time to come. . . . We do have a few prison organizations that are left that are strong in the struggle for prison reform, such as, the National Prison Project, the NAACP, and those types of organizations. There're going to always be here, and they're going to be the one to always keep the Battle vs. Anderson case alive. And you can always look at the fact that if we have a hundred judges left throughout the country, you can almost rest assured that you're going to five to six Bohanons. Together with those things, we'll always be able to enjoy some benefits of Battle vs. Anderson. Who knows, it might be revived under another name?
5. Was Bobby Battle, himself, a type of "unsung convict hero" of prison reform in Oklahoma?
- A. Let me answer that this way. I don't look at myself as no hero or no outstanding character as far as that suit is concerned; but I would hope that from what the suit did, the impact of the suit from a legal standpoint and from a humane standpoint, I would hope that the suit would always, first of all, provide the initiative to others--not only prisoners but anybody confronted with oppression. I would hope that the suit would give rise to enough motivation and assurance that you don't have to be an F. Lee Bailey, and you don't have to be white, you don't have to be black, you don't have to be green. All you need is a problem and a desire to seek out your rights. Those are the things that I looked at in the suit more--not nothing personally for Bobby. I'm happy to be the one that did it; I'm very pleased with that, but not to the extent that I feel somebody should look up to me because I'm Bobby Battle and I do have a landmark decision in prison reform. I don't look at it that way.
6. Why was Battle virtually ignored during the year following its filing?
- A. Because, in my opinion, it was something new that was filed into the Federal Court of the Eastern District of Oklahoma. And they had never dealt with an issue like that. At first everybody thought it was fun and games; because all of the other suits that had been filed over there were dismissed without any type hearing whatever. That's when Judge Langley had predominately the control over the Battle vs. Anderson suit. I don't think they really knew how to get out from under it, because I had tied the Justice Department in with the suit. . . . They couldn't just up and dismiss it without somebody having something to say; so I think that's why it lay dormant for so long.
7. If the Courts had taken a definitive stand on Battle, could the riot and fire of 1973 likely have been avoided?

- A. I doubt it. I've thought about that several times. I think maybe that had the Court acted more quickly, there might have been a chance to prevent the riot. The suit was filed in '72, and we got a decision in '74. We spent right at three years in pre-trial.
8. Conversely, if there had not been a riot and fire, how likely are the chances of Battle's having been acted upon?
- A. I think the riot more or less gave rise to the suit itself. With the allegations and complaints against the state of Oklahoma, the riot fortified those allegations. What I mean by that is that once the prison was taken over and burned down, like it was, and the reason behind it, I think that the general public became aware that that, Hey, there are serious atrocities within that system down there. People don't burn a penitentiary down or take over a penitentiary just to be doing those things. There has to be a legitimate reason behind it; and I think the riot caused some ears to listen that would not have listened had it not been for the riot. I think that gave rise to the law suit; because it motivated a lot of people--legislators, senators, judges--it at least got them interested in well, what is going on down there. Let's see what's going on. They have a suit pending, and yet they've burned the penitentiary down. Something is going on down there. Let's see what it is. Just by motivating those people to get involved and to check was an enhancement to our chances of being heard. So the riot played a part, I'd have to say positive and negative. But I think overall, the riot helped the suit.
9. What effect did the Oklahoma State Penitentiary riot and fire of 1973 have on corrections on the state?
- A. For that time and period, '73 until about '80, it had a dynamic effect on corrections; because it allowed the corrections people to really look at the system and get a full view of what will happen when there's a gross breakdown within the system, like not providing jobs for the prisoners, the idleness, the overcrowding, the inadequacy of facilities, the staff, and whatever. They had a bird's-eye view of that, and from the riot of '73 they should have never been able to get back into that position again, even though they did it on a small scale [at Conner].
10. How do you visualize the system if the riot and fire had not occurred?
- A. Well, I would have to say that had the riot not occurred, I don't think there would have been the progressive level that we are on now in corrections. I think Oklahoma has one of the most progressive programs in corrections. I think Oklahoma is rated somewhere about number one, within the top three anyway. I've had a chance to go back into the system and view some of the living facilities and some of the physical sites for prisoners, and I think they have a good system. Had it not been for that riot, I'm sure they

wouldn't have made the moves as quick as they did. I think those moves would probably still have been ten, fifteen, maybe twenty-five years away.

11. Did the zeal of the David Boren administration for construction help or hinder corrections in Oklahoma?
 - A. I think overall Boren's administration really helped corrections, as opposed to harming it; because we only had at that particular time, if I recall, we only had a few people that had been governor that had any eye for corrections. Boren hit right at the time when corrections was at its lowest ebb and was being aired constantly. So, I would have to say that he made some major steps into change.
12. Did the riot and fire of 1973 force placement of a higher priority upon prison construction and reform by the Governor than would have been given without the highly publicized conflicts?
 - A. I think without the publicity surrounding Oklahoma corrections, I don't think anything would have occurred. At least, not as fast as it did. So there were definitely some positive aspects.
13. How has the George Nigh administration implemented compliance with federal court orders?
 - A. I think [Governor Nigh] was caught between a rock and a hard spot in a lot of instances insofar as the corrections system was concerned. I think basically there's a lot of things that he wanted to do in corrections, but was not at liberty to do it for his political ties with his constituents. And then again, sometime I could see the Nigh administration trying to encourage the Judge, more or less, to circumvent things that should have been brought or should have been settled. . . . I don't think Nigh's administration was as influential as Governor Boren's administration. I think there was a lot of political play between corrections and Nigh's administration, more than the actual relief that came down to the corrections system itself. I think during some of the better part of Nigh's administration, the correction system was used as a political tool, more or less, even though there were a few things that trickled down from it, like . . . well whatever. And those were primarily a direct result of the court decision. It wasn't anything that the administration took a stand to do.
14. What long-term impact, if any, will the Conner Correctional Center riot and fire of August 1983 have on the future of corrections in Oklahoma?
 - A. Well, I think the impact of the Conner riot should carry one's attention back to the 1973 McAlester riot. It should always put thought in corrections people's minds: Let's not ever get back into the situation that created the Conner's riot. Now we have double proof that those same elements became apparent in 1973 at the McAlester riot; and for some reason or another, we allowed

those same ingredients to slip back into view again at Conners. So let's do whatever we need to do in order to prevent those ingredients from ever surfacing. The problem is they go back and they make changes within the physical site of the institution. They're going to correct the food; they're going to correct the plumbing, and whatever, but if they go back and overcrowd that system by population, then they've defeated their own purpose. The two riots themselves should have shown that you cannot take a house that's built for five people and expect to house ten people in it--not even eight. Because what you do, you break down your entire system; and that's from your guard force clear on through your physical site. When you overwork the system--and I used the term once with Warden Murphy--I used the analogy of a dishwasher. A dishwasher is designed to hold so many plates, so many cups, so many spoons, so many glasses, so many forks, so many knives. When you overload that dishwasher, some of those utensils and chinaware is not going to get clean. Some's going to get broken, some's going to come out half clean; and this is what happens when you overload Conners or any other system. And that's what they're doing.

15. What future projections may be made for corrections in Oklahoma, based on recent legislation and court litigation?
 - A. I see a more positive system, a better system for prisoners in the future; but what I see more so is, I see room for further education of corrections people. I mean the administration, people that are going to be becoming involved in corrections and law enforcement. I think we're going to see a complete turnaround with the courts, a complete turnaround with the parole board and the parole system. The laws in the state of Oklahoma--there's got to be a revision of all the judicial system, the courts, the legislative system, the parole system, and the corrections system. This is what your court action and other legislation is going to do; and once you get a combination of those types of things together, and with the progressive type schooling that corrections people have to have now-days, you can look to see some real changes.

JUDGE LUTHER BOHANON INTERVIEW

May 30, 1985

1. What was the purpose for the creation of the Department of Corrections?
 - A. To operate the Oklahoma corrections system; that is, to punish and hopefully rehabilitate persons found guilty of violating state laws.
2. What were the primary results, if any, of the creation of the Department of Corrections?
 - A. A better system of confinement of law violators.
3. How did the administration of Governor David Hall, a former prosecutor, affect corrections in Oklahoma?
 - A. It is my belief that when Governor David Hall made the statement that he would never,,never release a certain type of criminal it created such a deep animosity within the prison walls that it hastened the riot of 1973.
4. What impact has Battle v. Anderson, along with the resulting Bohanon court decisions, had on corrections since 1972?
 - A. The Battle case has focused attention on the issues of unconstitutional treatment of prisoners; such as, the denial of adequate food, clothing, medical care, education, access to courts, due process of law, the elimination of segregation, and other human rights issues.
5. Was Bobby Battle, himself, a type of "unsung convict hero" of prison reform in Oklahoma?
 - A. No. He was just a name. He had had some help by some of the other inmates he'd pulled in. I think he had five or six complaints that he had filed in the District court over there. I do think this: The fact that he was black had more to do with the Department of Justice getting in than if he'd been white. . . . The reform of the treatment of Oklahoma prisoners should be credited to the Civil Rights Division of the U.S. Department of Justice. Their staff brought about the successful adjudication of the Battle case. . .
6. Why was Battle virtually ignored during the year following its filing?
 - A. Well, it was ignored because they didn't have the money and they had no experience with the court interfering with what the State

did. . . . Hostility was everywhere--newspapers and everywhere. They didn't want the government to interfere or have anything to do with it. So you've got to measure what you can do with what the hostility is. You don't want to stick your neck out and not be able to get the job done. You've got to do it, and you've got to have patience. My belief is that Battle and his type of persons were ignored because there was no attorney willing to take on such legal prosecutions: (1) for want of funds, (2) its unpopularity, and (3) it required the Civil Rights Division of the Justice Department to staff and prosecute such denial of constitutional rights. The ACLU was of substantial assistance after the May, 1974, order of the court which was not appealed.

7. If the Courts had taken a definitive stand on Battle, could the riot and fire of 1973 likely have been avoided?
 - A. Yes. I believe so because prisoners are looking for court assistance in their denial of constitutional treatment. Oh, yes. If it had been early enough. Oh, yes. If the government had gotten in there and the Court had made some order, oh yes. The fact that the Court was in there for that long period of time was the answer to the prayer of the destitute that "We're going to get relief." And they did get relief. They got better food, better medical attention, liberty for good behavior. They got exercise; they got teaching; they got learning; they got access to courts. There's a whole list of stuff that they began to get; and when they did, it answered their complaint.
8. Conversely, if there had not been a riot and fire, how likely are the chances of Battle's having been acted upon?
 - A. Yes. Yes, it would have. The fire didn't do anything more than accelerate it and make known that there was a serious problem. It called it to the attention of the public. Yes, the fire helped it, but it would have been done anyhow. The Civil Rights Division of the Justice Department was on the job taking depositions on the day of the riot, so it is my belief that in time any court would have made the proper orders to rectify the unconstitutional treatment of the inmates.
9. What effect did the Oklahoma State Penitentiary riot and fire of 1973 have on corrections on the state?
 - A. In my belief that it alerted the Oklahoma State Legislature that something was seriously wrong in the operation of the prison system.
10. How do you visualize the system if the riot and fire had not occurred?
 - A. The constitutional rights of the inmates would have n due time been attained because of the services rendered by the Civil Rights Division of the Justice Department through the Civil Rights Act of

1964.

11. Did the zeal of the David Boren administration for construction help or hinder corrections in Oklahoma?
 - A. David Boren's administration, through its construction program, helped tremendously to bring about a better corrections system, though overcrowding is still a major problem. The cost of housing is great, and prison population continues to grow faster than there is space available for their confinement.
12. Did the riot and fire of 1973 force placement of a higher priority upon prison construction and reform by the Governor than would have been given without the highly publicized conflicts?
 - A. Yes. The riot and fire caused a legislative realization as well as governor leadership that they had a responsibility when considered in the light of the professional services rendered by the Civil Rights Division of the Justice Department.
13. How has the George Nigh administration implemented compliance with federal court orders?
 - A. In my opinion Governor George Nigh's administration has been very wise and considerate of the prison problem and issues and has done much to implement the federal court orders, certainly as much as legislative appropriations would allow. Of course, there is much left to be done.
14. What long-term impact, if any, will the Conners Correctional Center riot and fire of August 1983 have on the future of corrections in Oklahoma?
 - A. It is my belief that the Conner Correctional Center riot and fire was caused by improper feeding schedules, lack of skilled guards and personnel, and the devastating heat of the daylight sun which lingered far into the night. The fire and riot has all but been forgotten. Staff is now more alert to approaching problems of this kind.
15. What future projections may be made for corrections in Oklahoma, based on recent legislation and court litigation?
 - A. The Oklahoma Legislature, as well as the Governor are now convinced that they have a constitutional responsibility toward all inmates and thus the future projection is that the legislature will be mindful of its constitutional duties toward the prison inmates.

SENATOR DAVID L. BOREN INTERVIEW

July 29, 1985

1. What was the purpose for the creation of the Department of Corrections?

A. The Department was created before my time, and I don't really feel qualified to answer that question.
2. What were the primary results, if any, of the creation of the Department of Corrections?

A. No answer
3. How did the administration of Governor David Hall, a former prosecutor, affect corrections in Oklahoma?

A. I don't know whether it was Governor Hall's experience as a former prosecutor or what, but he basically had the attitude, even after the prison riot, that he didn't want to spend money on corrections, that the essential element was punishment, and that he really wasn't too concerned about conditions then. I think maybe Hall's attitudes as a prosecutor really gave him something of a mental block about taking that on.
4. What impact has Battle v. Anderson, along with the resulting Bohanon court decisions, had on corrections since 1972?

A. The Battle case and also helped set the stage for change in Oklahoma corrections. I think that overall it was probably a blessing, as far as improving the corrections system. That might surprise you that I said that.
5. Was Bobby Battle, himself, a type of "unsung convict hero" of prison reform in Oklahoma?

A. No answer
6. Why was Battle virtually ignored during the year following its filing?

A. I think that at first in a case there's always a tendency to ignore things and to buy more time from the Court. When you're a Governor and legislators pressed with other budgetary needs, you just kind of hope if you could delay a little bit then it will go away or that the Judge will soften his order. I think in the beginning they played for time. They didn't want to have to spend the money. They played for time.

7. If the Courts had taken a definitive stand on Battle, could the riot and fire of 1973 likely have been avoided?
 - A. Again, would you have had the political support necessary to really implement the court order apart from the riot and fire? I don't know; it would have been more difficult. The two things really came together.
8. Conversely, if there had not been a riot and fire, how likely are the chances of Battle's having been acted upon?
 - A. The Court ordered the state under immense pressure, plus the riot and fire and how that helped the whole state see what a terrible problem we had.
9. What effect did the Oklahoma State Penitentiary riot and fire of 1973 have on corrections on the state?
 - A. The riot and fire obviously did just bring things to a head. It probably made it easier to create a climate to get something done. People had widespread disagreement about what ought to be done. Some said just sting up barbed wire, and you remember all those comments, but at least it did help, I think, in setting the stage where that we had to do something.
10. How do you visualize the system if the riot and fire had not occurred?
 - A. Even those that didn't support rehabilitation as a goal could see that we didn't even have a safe and secure system. So you got the support not only of what you might call the "reformers," those who believed in rehabilitation and trying to salvage the younger inmate; but you got the hardliners who just wanted to make sure we had a safe prison that the inmates weren't running and so on and so forth. So you got the combined support of the two groups.
11. Did the zeal of the David Boren administration for construction help or hinder corrections in Oklahoma?
 - A. When I came into office, we had not, as you know, rebuilt the McAlester Prison, except to make just minimal repairs. So we had a situation in which there had not been any new cell space built for years. I would say that I really don't think we had any choice, especially in terms of the Court Order. We were so overcrowded, and you know before you can even look at anything else, you've got to make sure your system is secure--secure even for the inmates, so they're not killing each other and being brutalized by the guards, or dying in a fire, or . . . We had to do that.
12. Did the riot and fire of 1973 force placement of a higher priority upon prison construction and reform by the Governor than would have been given without the highly publicized conflicts?

- A. The critics refer to me as a "brick and mortar" person. Number 1, that was not my choice. We were so behind and had neglected just the basics so much, and you had to have that before you could do anything. You couldn't separate inmates or begin rehabilitation programs or anything. Critics say that I probably shouldn't have built all three new prisons at the same time and with the same plan. I'm not sure that I had a lot of options. Even with addition 1,200 bed spaces, the Judge was threatening to hold me in contempt. I had to press ahead, and 1,200 was the minimum we could do and begin to have any relaxation from the Court. Plus, it was the minimum we could do considering the number of inmates we had and the health and safety problems we had. We had to do it. The [construction] was just a necessary evil. We had to do those things, because of the lack of concern.

It was a justifiable criticism that we ended up with two prisons at Lexington side by side, and that we ended up with all three of them fairly well out in the rural areas. I had very much hoped to get them closer in to Oklahoma City and Tulsa. Of course, I had also very much hoped not to have a concentration of 800, even if they were separate units, that close to each other. to get the Assessment and Reception in Norman, and Norman wouldn't

13. How has the George Nigh administration implemented compliance with federal court orders?
- A. I don't really feel qualified to comment on what's happened since; because I just haven't followed it.
14. What long-term impact, if any, will the Conner Correctional Center riot and fire of August 1983 have on the future of corrections in Oklahoma?
- A. No answer
15. What future projections may be made for corrections in Oklahoma, based on recent legislation and court litigation?
- A. I have a sense that there has not been the expansion . . . Had I stayed on another term, I hoped to really expand. My goal was that every single person phased out would eventually be phased out through work release. No one would be let out the prison gate, so to speak. Even if you had somebody you didn't have a very good chance with, certainly you didn't have any worse chance by trying to give them training. They're going to go out anyway, was my theory; and why not take them out through work release?

The other goal I had was that any person who had any opportunity or chance that they might still be of working age on the outside and didn't have a skill, I wanted to see us put the emphasis on the vocational training.

Then I would have liked to see us to some more innovative things, in terms of developing work opportunities behind. We'd started a little bit with our farm down at McLeod in canning and so on, where they were at least beginning to get the place self sufficient in terms of food production; but I really thought there might have been some further expansion of opportunitites to keep people occupied and busy.

LOUIS BULLOCK

May 22, 1985

1. What was the purpose for the creation of the Department of Corrections?
 - A. Historically, the Department of Corrections had a real problem with each warden being king; and we even see some of that left over today. We didn't have a Corrections Department; we had a bunch of little corrections departments. The warden at McAlester ran a little series of camps and then the warden at Granite ran a few camps; and those folks would individually go to the Legislature for their appropriations, and it was just mass confusion. [The Legislature] attempted by the Department of Corrections act to centralize that and make it into a true department where there could be some budget oversight and program oversight.
2. What were the primary results, if any, of the creation of the Department of Corrections?
 - A. I think it has given us the goals that it set out or it has strengthened it [the Department]. The other thing that it's enabled us to do is it gives us a vehicle for actually determining corrections policies. We now have a unified system so that we know what our total bed spaces are. We have a system so that we can use different units for different things. You just couldn't operate in 1983 the way that we did in the early 60's.
3. How did the administration of Governor David Hall, a former prosecutor, affect corrections in Oklahoma?
 - A. Perhaps [his "lock 'em up and throw away the key" philosophy] accelerated overcrowding. But if you look at the charts, though, it's been pretty steady. What [that philosophy] has done more than that is prevented us from finding solutions to the overcrowding.
4. What impact has Battle v. Anderson, along with the resulting Bohanon court decisions, had on corrections since 1972?
 - A. That's a broad question, but first it has had a massive change in the lives of the inmates--the day-to-day existence. While it still is not what they might like, or even what it should be, it is massively different. From 1972 when it was filed until actually '77, the main emphasis of the lawsuit had been on prison procedures. It had changed access to courts; it had changed racial segregation; it resulted in changes in due process; free exercise of religion; people's access to mail and to magazines, and all of those types of things. After '77 the lawsuit began looking at the physical environment that inmates were housed in; and that's probably where most of the people today when they think of the

lawsuit begin to focus. Starting in 1977 we really began rebuilding the physical plant of the department, and I think that was largely because of the lawsuit and its emphasis on the physical plant.

5. Was Bobby Battle, himself, a type of "unsung convict hero" of prison reform in Oklahoma?
 - A. Oh, yeah! Bobby was a hero; there's just no other way to put it. The man is charismatic; he has a phenomenal amount of courage and intelligence. If it had not been for his courage and his intelligence, the Battle v. Anderson lawsuit would never have gotten off the ground. He went through some incredible terror in pursuing it. I think history has shown that Bobby does better in institutions than outside. [When Bobby has been called a "hero" he has been very modest about it. He will say, "Oh, if I hadn't done it, someone else would have." But I don't think that's really true. Perhaps somebody might have found somebody else to use for a plaintiff; but the fact is that Bobby carried a lot of the weight on his own shoulders. Because of what he did, it really made it possible for the lawsuit to be heard. I've seen him and consulted with him in probably the last 18 months. Bobby has a real interest in [the case]. It carries his name, and he has some strong ideas about what needs to be done.
6. Why was Battle virtually ignored during the year following its filing?
 - A. The case was originally one of a number of cases which had been filed. Judge Langley, who was at that time the Chief Judge of the Eastern District, began to believe that there must be something here. Prison lawsuits or inmate petitions had really been ignored. He consolidated a number of cases and asked the ACLU if they could supply an attorney to represent the inmates. So it shows that the court, frankly, was not really impressed with the problem or the case.
7. If the Courts had taken a definitive stand on Battle, could the riot and fire of 1973 likely have been avoided?
 - A. I . . . believe that it could have been avoided; and that really would have changed Oklahoma corrections. I think that if the court had come in and moved with firmness early that McAlester never would have burned. I think if you hadn't burned McAlester, you never would have burned Conner.
8. Conversely, if there had not been a riot and fire, how likely are the chances of Battle's having been acted upon?
 - A. I think it would have been. I think that what changed Bohanon, and you've got to remember after the riot Bohanon's attitude toward the Plaintiff's case didn't change. It was only when Bohanon saw what the evidence was of the conditions which existed prior to the riot

that his attitude changed.

9. What effect did the Oklahoma State Penitentiary riot and fire of 1973 have on corrections on the state?
 - A. Well, I think one thing is that, as I said, it put a mark of violence on the system. This is a very riot prone system. We've had two of the worst riots in the nation's history in this system; and every year we have significant disturbances. They had a fire and they've had hostage situations at McAlester; they've had three or four riots at McCloud; of course, Conner; they've had Joe Harp; they've had a couple at Granite. This is an extremely explosive prison system.
10. How do you visualize the system if the riot and fire had not occurred?
 - A. I think the most obvious thing is that if the riot and fire hadn't occurred, you wouldn't have had the three new prisons down at Lexington and at Conner.
11. Did the zeal of the David Boren administration for construction help or hinder corrections in Oklahoma?
 - A. I think that it helped. I'm not one who believes that the new institutions should not have been built. Now, I do not believe we should build any more. We had never built a prison in this state since we built McAlester and Granite; and we needed some good institutions that could do the work load of the department. There's never really been an analysis since Benton did his plan--The Master Plan--as to what should be done with corrections. Since Ned Benton we seem to have a fear of studying the problem; and that lack of thought I think we're seeing in Oklahoma corrections.
12. Did the riot and fire of 1973 force placement of a higher priority upon prison construction and reform by the Governor than would have been given without the highly publicized conflicts?
 - A. I think the riot helped in that (I don't know whether riots ever help), but certainly the riot was a vehicle for showing the need to build something else. It was because of the riot that you had Benton's Master Plan developed. So, it did provide an opportunity to study corrections in this state; and I think it is unfortunate that in the decade that's passed, we haven't ever renewed that study. It did shrink the size of McAlester to start with; and that was the most dramatic effect. At the time of the riot, there were like 1200 inmates in McAlester. Well, today, there are 500. According to court order was that it be reduced to 500 and that it be single celled. Perhaps the single celling orders have changed, but I don't know that they've ever lifted the 500 cap on it.
13. How has the George Nigh administration implemented compliance with federal court orders?

- A. Well, I think that when Nigh appeared before the judge he did an unprecedented thing. He promised to comply with the court orders. Well, [most of the issues of the orders] have been addressed; but I'm not at all satisfied that we've solved them. I think we still have serious problems with equal protection for women inmates. Their facilities are inferior and the services that they get are inferior. They're sort of the unseen population in the corrections situation. We still have serious problems with access to courts. You get a lot of inmate complaints; and they're put into legal jargon that none of us can understand. The lawyers and judges cannot even figure out what the inmates are talking about. That isn't meaningful access to courts. Meaningful access means that you get something to the court that the court can understand so that it can tell whether there is a problem or whether you're dreaming. You need trained legal assistants. And it has to be really independent of the Department. There are still serious efforts in this Department which are made to limit access to courts--everything from inmates who have been punished for access to courts to just petty harrassments of the the price for legal mail or access to books or access to xerox machines, and all of those things.
14. What long-term impact, if any, will the Conner Correctional Center riot and fire of August 1983 have on the future of corrections in Oklahoma?
- A. Well, the Conner riot really has not made a difference. They are still loading up the institutions and have not recognized the limits; and you look at the current prospect and you don't see any real hope for the future. There's still a concept of "lock 'em up and throw away the key." As for the current situation, the most disturbing thing about what we see now is the fact that no one has really looked at the system and determined what the needs are, what the problems are, and what we should do in the future. I would have thought that the Conner riot would have opened some eyes.
15. What future projections may be made for corrections in Oklahoma, based on recently legislation and court litigation?
- A. We've launched into the house arrest and the cap legislation--extremely haphazardly. House arrest--there's no philosophy behind that. I think the people of this state are understandably frustrated with corrections. Corrections should punish people, and corrections should try to rehabilitate the people; but we go to such things as house arrest without any concept of where they fit into those goals. We just do it, and we do it because we have a perception we need bed spaces and we don't have any idea of where they're coming from or where we need them or how to get them. No one has looked at the prison population and said, "All right, we have this many murderers and a study of the murderers reveals that their average sentence is such and such; and of these, so many would have to be classified as dangerous upon release, and so many of them have to be classified as **not dangerous upon reception**

[emphasis added]. We need to sort those folks out; we need to find a way to punish people so that it doesn't scar them. One of my big complaints with corrections is I think prisons are probably the worst way to punish. We ought to punish people, but if you punish a person by over a long period of time depriving them of their dignity, violating their sense of self, and preventing them from developing any type of positive view of themselves, then you really do the worst damage that you can do to a person. I've long thought that the old days of the whipping post were probably more humane than the concept of long-term incarceration as punishment. Long-term incarceration scars the man's soul so that he can't recover from it. You put somebody on a whipping post and it leaves scars on his back, but it doesn't have to scar his soul. We make a real mistake when we try to protect society by taking people and putting them into prison and scaring them and destroying them and then turning them out to prey upon us. Prisons, I think, do fit into a rational concept of corrections. There is a need for long-term incarceration. We see it. There are people who are just mean; and there are people who come in at 18 or 19 years old who are mean. Some of those, it's necessary to keep them out of society until they're 25 or 30 or 35. Very few, in terms of protecting society, do you need to keep all their lives. alternative. Admittedly there are some. But, no one has asked No one has really looked at the system--at what we have there. You know, what institutions, and what capabilities do we have? What are their shortcomings? What are our needs, and how are we going to get to a system which is not in constant crisis? Without that type of in-depth study, I think that we are setting out to just make greater mistakes. You need to look at institutions for the true lifers, and those institutions should be different, the punishment institutions. I think you can run a system like that at a reasonable cost.

DEPUTY DIRECTOR JOHN GRIDER

May 30, 1985

1. What was the purpose for the creation of the Department of Corrections?
 - A. Prior to '67, we were under the State Board of Affairs, and this is a body of people who usually just take care of state property. Probably, it was created because most all states in the United States had a body of people controlling corrections. Oklahoma was one of the last states to create a Department of Corrections. Up until that time, Granite and McAlester had operated pretty well independently--separate appropriations, separate wardens, separate power structures. Up until that time, the Penitentiary controlled Oklahoma corrections. Over on the west side, you had the Oklahoma State Reformatory and the politics of the Western part of the State, with very little cooperation between the two entities--the Reformatory or the Penitentiary. Each went their own way; each had their own power; each had their own political strings to pull. So it was one side against the other, in a sense.
2. What were the primary results, if any, of the creation of the Department of Corrections?
 - A. There were so many of them--some good, some bad. I would have to say the first result was to bring some semblance of order to the correctional system. The first director started the Policy Manual for the Department of Corrections, because we had no written rules and regulations, either on the east side or on the west side--the Penitentiary or the Reformatory. Policy. Procedure. Accountability, both in fiscal affairs and in dealing with the inmate population.
3. How did the administration of Governor David Hall, a former prosecutor, affect corrections in Oklahoma?
 - A. Definitely so. We can put much of the blame for the July 1973 riot at David Hall's feet. He ran on the platform, one of the platforms, that no person convicted of a narcotics crime would ever be paroled; that no convicted felon convicted of a crime of violence would be paroled. For about three and one-half years, he strictly adhered to that policy. People would come up for parole; the Parole Board would recommend them; David Hall would reject them. This created tension within the prison system and offered no hope for many deserving inmates. They went to school, they worked, they maintained clear conduct. They were deserving of parole. The Parole Board would give them a vote of confidence; the Governor would say, "No." The Parole Board met with the Governor, and he appointed three of the members. They advised him that there were

problems brewing. Still, he maintained that degree of authority over the Parole Board and those inmates that were recommended for parole.

4. What impact has Battle v. Anderson, along with the resulting Bohanon court decisions, had on corrections since 1972?
 - A. Had it not been for one particular judge--not an inmate, not Bobby Battle, not Park Anderson--had it not been for Federal Judge Luther Bohanon, Oklahoma Corrections would still be in the Dark Ages. Prior to Battle vs. Anderson, and I've said this many, many times, we had a corrupt system, a barbaric system, an inhumane system. Since human life (and I've got to say "correctional staff") . . . since correctional officers weren't killed in the riot, the inmates were right in burning the damn place down. Now they lost lives; they killed each other. It was just an inhumane system. Definitely, some good things came out of that, too. Had it not been for the riot, had it not been for Bohanon, we'd still be in the Dark Ages.
5. Was Bobby Battle, himself, a type of "unsung convict hero" of prison reform in Oklahoma?
 - A. No. Bobby Battle is nobody. He's nobody. Bobby Battle just happened to be a person on the scene when it was really popular to sue somebody. He was educated, yet he's dumb. I say he's dumb, because he's back in the prison for his fourth or fifth term. He's educated, because he could write; he could research. But it could have been any one of two thousand inmates that could have filed the lawsuit, and it would have been accepted. Oklahoma was ripe for Federal intervention, so it wasn't Bobby Battle.
6. Why was Battle virtually ignored during the year following its filing?
 - A. It wasn't popular for any Federal Court to intervene in state policy or procedures. No Federal Court wanted to tackle state corrections.
7. If the Courts had taken a definitive stand on Battle, could the riot and fire of 1973 likely have been avoided?
 - A. No, it was inevitable. The lawsuit was filed about a year before the riot. This was a contributing factor, also, in the riot. About a year before the riot, the Justice Department and A.C.L.U. attorneys were in and out of that penitentiary on a daily basis. In fact, they were in the institution on the day of the riot. They, not intentionally, had given false hope to the inmate population by the fact that they were there daily, taking depositions, left the impression, "Overnight we're going to clean this mess up." This was going on for a year even before we went to trial. So, inmates wanted action tomorrow, not next year. So they gave false hopes to them. she saw what was happening. The penitentiary was

ripe for burning, and they burned it.

8. Conversely, if there had not been a riot and fire, how likely are the chances of Battle's having been acted upon?
 - A. We would have still lost the case.
9. What effect did the Oklahoma State Penitentiary riot and fire of 1973 have on corrections on the state?
 - A. That was the turning point, that and Federal Court intervention. The State of Oklahoma realized we had to do something to turn the system around. You can look at the system today. It's not perfect, but it's one of the better correctional systems in the United States. I'd place it in the top ten.
10. How do you visualize the system if the riot and fire had not occurred?
 - A. We'd still be in the Dark Ages.
11. Did the zeal of the David Boren administration for construction help or hinder corrections in Oklahoma?
 - A. It helped. David Boren is an astute politician. I feel that he personally would have rather spent money on highways or mental health or education than corrections. Still, he knew the power of Bohanon and the mandate of Bohanon. Boren hired Ned Benton as Director. Boren got rid of Russell Lash. He hired Ned, knowing that Ned was a builder, a dreamer. he knew that he was going to have to spend the money, so he brought in someone that could build buildings. Boren made political sacrifices to get the money for the three prisons Lexington, Joe Harp, and Conner. He would not have built those prisons had it not been for the Federal Court intervention. Benton's impact on Oklahoma corrections was phenomenal. He knew how to build. He had made a Master Plan for the State of Oklahoma, funded through the L.E.A.A., with several recommendations.
12. Did the riot and fire of 1973 force placement of a higher priority upon prison construction and reform by the Governor than would have been given without the highly publicized conflicts?
 - A. Not really. It had bearing on construction. At the time of the riot, we had 1675 inmates at McAlester as I recall. But about two months before the riot there were over 2100 there. Which means that we had hurried construction at Stringtown. Stringtown had been a minimum security vocational training center, but we were putting a double chainlink fence around it. So with the riot, almost immediately we moved people down to Stringtown. The construction was already there. We had acquired Lexington. This was the old Norman Mental Health Annex, which had been a Navy Base. This was before the riot; but with the riot, we had housing there.

Almost immediately we just took some of the people down to Lexington. We were dealing at the time of the riot with around 3500 inmates; but because of the riot, there were commutations; there were more people placed out on parole. The inmate population dropped down to around 2800. It was around 2800 when Boren took office; so there was no need for construction. We had a bed for everyone. We didn't lose any beds at the Penitentiary other than the East Cell House. We opened up the West, the East, and the "F". We took down the new cell block. There was just no way that we could use it. So as its replacement, we had Lexington and Stringtown. New construction started because of Bohanon, the A.C.L.U., and the Justice Department. We were using the old barracks which were fire traps, down at Lexington. They had to be replaced. Then, inmate population started going up. Instead of double cells, the fourman cells had four people in them, sometimes five. At the Reformatory, an institution designed for about 450 or 460 inmates, we reached around 700. Inmates were living in corridors both at the Penitentiary and the Reformatory. We were forced into construction by Bohanon, not the riot.

13. How has the George Nigh administration implemented compliance with federal court orders?
 - A. Boren got the most money. Boren, along with Judge Bohanon milked the legislature. Almost all construction had been completed before George Nigh took over. The money was committed by Boren's administration. Governor Nigh came into office as being the first governor that legally could be reelected. There's no doubt in my mind that when he came in on May 1, he wanted to serve eight full years. Nigh is sincere in wanting to do what is best for the State of Oklahoma, which includes the correctional system. Nigh fought for this Department's fair share; yet openly he had to not defy or go against Bohanon by saying, "Let us run our prison system. Look at the vast improvements. Look at the millions of dollars that we have invested." Nigh testified, "We've done all that we can do; we've improved; we're constitutional. We want out from under you, Your Honor." Bohanon listened. I think this influenced him more or less to give up the case. Nigh did not spend the money for buildings. Nigh advocated, fought for, and got the Department of Corrections funds for expanding the prison system. Instead of a brand new prison, let's build a cell block here and a cell block there. He fought for construction funds, better sewage disposal plants, correct fire deficiencies. I don't think he'll go down in history books as a big spender for the Department of Corrections.
14. What long-term impact, if any, will the Conner Correctional Center riot and fire of August 1983 have on the future of corrections in Oklahoma?
 - A. The Conner riot will not be compared with the riot of '73. The riot at Conner was not justified; the inmates had no reason to riot. It was spontaneous; it was hot. It was a brand new institution. They had no reason to riot; therefore, it's almost for-

gotten. You hear people refer to the McAlester riot, but very few people remember the Conner riot. The McAlester riot replacement cost was \$30 million; at Conner it was \$2 1/2 million. It shouldn't have happened. We caused it; the Department of Corrections caused it. We were growing too fast; we couldn't keep up with the needs of the inmates. When I said the "needs of the inmates"--food shortages, clothing shortages, staff shortages.

15. What future projections may be made for corrections in Oklahoma, based on recent legislation and court litigation?
 - A. I predict lean years for the Department of Correction, that our budget will level off, our population will level off. There will always be innovative programs, such as House Arrest, to keep the State of Oklahoma from having to construct another prison. I think that we have achieved a good correctional system; we're fully accredited through the American Correctional Association Commission on Accreditation. I think that we will continue to see change under Larry Meachum; we'll continue to get better. We are a model state; other states come to us to study our methods. I think they are impressed. But I don't visualize us growing any more. I do not foresee triple celling in the future. I do not visualize any Federal Court in the United States that will allow triple celling.

LARRY MEACHUM, DIRECTOR OF CORRECTIONS

July 22, 1985

1. What was the purpose for the creation of the Department of Corrections?
 - A. It's my understanding that they did that to try to bring some reform. In years gone by, the Department of Corrections was the penitentiary. There was Granite out there on the western part of the state; but the eastern part of the state was McAlester. The warden at McAlester controlled Stringtown, controlled Quachita, and of course the trustee units outside the penitentiary. The warden at the penitentiary was sort of the focal point of power for the eastern part of the state. I've heard tremendous war stories in years gone by about how politicians down there that would control the penitentiary would not only control the penitentiary area for jobs and patronage, but they would control all of eastern Oklahoma.
2. What were the primary results, if any, of the creation of the Department of Corrections?
 - A. In regard to the primary results of creating the Department, I think that it started the Department on the course of developing structure and developing systems and developing system policy and developing an appearance of an identity. I think it did take about three or four directors, though, before that promise became a reality. I don't think that the first ones impacted public decision making a great deal, much less front line administrative decision making.
3. How did the administration of Governor David Hall, a former prosecutor, affect corrections in Oklahoma?
 - A. I have no knowledge of what David Hall with regards to corrections.
4. What impact has Battle v. Anderson, along with the resulting Bohanon court decisions, had on corrections since 1972?
 - A. It's amazing to me that I have not talked to a single politician or corrections administrator who was here and knowledgeable about the corrections system in 1972-73-74, who did not say two things: One is that the riot was inevitable; the other is that the Federal Court intervention was not inevitable. Privately, I have not had anyone who would fail to tell me that it was not two of the best things that ever happened to this corrections system. Now, the same people have made tremendously inflammatory statements about Federal Court intervention in state's rights or state's business, and would even say publicly how bad that was for the Federal Court to be involved in the state prison. I have not found a corrections administrator in this state who did not think that both the riot

and the Federal Court order were a godsend to this Department, and that out of chaos, comes something good, and out of the ashes comes the phoenix, or whatever you want to call it. But this state has benefitted tremendously in terms of its corrections system and the quality of its corrections system from the Master Plan, from the riot, and from the Federal Court intervention; and I don't think anyone would dispute that.

5. Was Bobby Battle, himself, a type of "unsung convict hero" of prison reform in Oklahoma?
 - A. I think most opinions that I've ever heard have never viewed Bobby Battle as one way or the other. They view the court order itself as a major issue; but like so many other things, the name on it becomes of less importance than the substance of the case or the order. So I don't think most people focus on Battle as an individual; they think of the inmates' plight being enhanced by this Federal Court order--reduction of arbitrary and capricious behavior, reduction of violence, reduction of inhumane conditions, and improvements in all of those areas.
6. Why was Battle virtually ignored during the year following its filing?
 - A. I don't know that Battle was totally ignored during that time. I wasn't here, first of all. Secondly, it generally takes some time for a case to be entered and the facts to be considered; and I don't really know or have the information to know what happened in 1972 and '73, from the time the case was filed until the riot.
7. If the Courts had taken a definitive stand on Battle, could the riot and fire of 1973 likely have been avoided?
 - A. Nobody knows. It's like saying, "Are we going to have a riot?" The media asks me that kind of stuff all the time, you know, like "What about the long, hot summer this summer?" and the last thing you want to do is to start predicting violence or that you're not going to have violence. If you say you're not, then the inmates can show you that you can; and sometimes it only takes a spark. That does not indicate that things are really malignant, because in a good environment you can have a riot. Canada is supposed to be the system in the world. It has more resources and better conditions of confinement and they have addressed all of the alleged problems of the prison environment that are supposed to ensure that you don't have riots when they were at their peak. People say, "But if you do all these things, you're not supposed to have riots. Why is Canada having them? And nobody can guarantee that you won't have a riot, so it's an impossibility to answer that question.
8. Conversely, if there had not been a riot and fire, how likely are the chances of Battle's having been acted upon?

- A. I have no way of knowing that.
9. What effect did the Oklahoma State Penitentiary riot and fire of 1973 have on corrections in the state?
- A. It was the focal point of turning things around for us to go from a system of shame to one that was the first system in the entire United States to be fully accredited. There is not a piece of this department that the riot and the Battle case did not touch--quality of life, sensory stimulation versus sensory deprivation, food, clothing, crowding, lighting, toilets, showers, laundry, work programs, educational programs, due process in hearings, programs in education, training--literally every piece of this department was touched by those issues. It took us from a system to be embarrassed about to a system we can be very proud of.
10. How do you visualize the system if the riot and fire had not occurred?
- A. Eventually the Court would have had to rule in this state. If it had not been the riot at McAlester, it would eventually have been something, I am sure. The Court would have had to act on the issues that were addressed in the Battle case; they were bad enough so that they demanded attention. If not that, then it would have been something else; so eventually something would have happened. It would have just taken longer.
11. Did the zeal of the David Boren administration for construction help or hinder corrections in Oklahoma?
- A. It gives me one of the most modern physical plants of any system in the country. I don't have a single institution that does not have some modern physical plant, except Jess Dunn. That's a fairly decent facility anyway, including security. It does not have modern, new buildings, but programatically it is very attractive and very open and cordial. It proves that a lot of the traditionally perceived problems in corrections just don't have to exist. The construction program of the Boren days gave me a lot of facilities that are very attractive and very functional. They'd be much better if they were not overcrowded, but they're nice. The three new ones were built so similarly, and they all had some common faults; and we're still suffering from that.
- It is not country club; and if people knew how violent you had to be to live in that environment with violent people, they would understand that it is not a country club.
12. Did the riot and fire of 1973 force placement of a higher priority upon prison construction and reform by the Governor than would have been given without the highly publicized conflicts?
- A. Absolutely. I don't think there's any question about that.

13. How has the George Nigh administration implemented compliance with federal court orders?
 - A. George Nigh has taken a strong position before the Court--he even testified before the Court that he will comply with the Federal Court order. George Nigh got on board at the time that it was okay to stop trying to fight the change and to implement the change; so he has given a great deal of support to the department in meeting the Federal Court orders. He's given more than just lip service; he's given support. He's given direction, and he's insisted that what he says is what the system delivers. So he stopped fighting and decided to get the job done. He has had a significant commitment. I have found that to pay off for the system, but also to pay off to me personally, because of my relationship with him during this conflict.
14. What long-term impact, if any, will the Conner Correctional Center riot and fire of August 1983 have on the future of corrections in Oklahoma?
 - A. It certainly did not have the impact of the McAlester riot. The thing about the Conner riot is that it came in a social climate of intolerance for that kind of thing. So if the Conner riot had an impact, it fed into the conservative mentality, not the liberal mentality. If the inmates thought they were going to get any sympathy from the public, if they thought they were going to get any sympathy from the Legislature with that kind of behavior, . . . Control wise or administratively, they helped me control them; because they created more public support and sentiment for harsh corrections than they did for loosening up. So it backfired, if anything. When people looked at that brand new facility and what the state had put into that facility and that they were supposed to have what the public perceived as these nice buildings which had in their minds as being country club (You know, and I know it's not country club), but it literally infuriated legislators and much of the public that inmates would have something that nice and then burn it up or tear it down. So if they created more problems for me, it's that there was more judgment of them than there was, and certainly it elicited no compassion at all.
15. What future projections may be made for corrections in Oklahoma, based on recent legislation and court litigation?
 - A. Court litigation is backing off, I think; and I think we'll see less and less involvement from the Federal Courts, to the point that they will allow some things to redevelop that are probably not going to be healthy and will eventually cause another cycle of problems. [Having the Court as a watchdog] was extremely helpful; but now that they back off, I don't want it, but I understand. A corrections administrator can never be in a position of wanting Federal Court intervention in state business. That's not a popular position for a state administrator. Legislators and politicians and even media people say privately that they know what benefit

came to Oklahoma out of that. But you're not allowed to say that publicly. And because you're not allowed to say that publicly, we will not learn from history.

GOVERNOR GEORGE NIGH

July 25, 1985

1. What was the purpose for the creation of the Department of Corrections?
 - A. I presume that the Department was created because the prison system had grown far beyond just a few isolated prisons, so we actually created a Department of Corrections. There were various types of programs dealing with corrections, and it probably was developed to give recognition to the fact that it was such a large part of state government. It's certainly a different thrust than what it used to be when we just had a prison at McAlester and that was it.
2. What were the primary results, if any, of the creation of the Department of Corrections?
 - A. The primary result was just mainly to emphasize what a large area of government that Corrections was.
3. How did the administration of Governor David Hall, a former prosecutor, affect corrections in Oklahoma?
 - A. I really don't remember; I was Lieutenant Governor at the time. I remember that he particularly wanted to point out that Oklahoma would not be soft on drug violations. It was kind of a sign of the times that he wanted to reach out and say that drug offenders would not be paroled. What effect he had as a former prosecutor, I don't know.
4. What impact has Battle v. Anderson, along with the resulting Bohanon court decisions, had on corrections since 1972?
 - A. The Bohanon court decision had a dramatic effect upon this state, because it put us under a court order. When I became Governor, we were under a court order; and one of my goals was to get us out from under that court order. One of the accomplishments of the administration, in my opinion, was to work with the Court and work with the Legislature, in trying to bring about programs and construction and increased manpower and appropriate manpower to bring us into compliance. The impact of the Bohanon court decision was dramatic because it made us realize that we had to do something. I've seen a dramatic change; but obviously without the court case, and the court mandated action, we would not have made so many changes.
5. Was Bobby Battle, himself, a type of "unsung convict hero" of prison reform in Oklahoma?

- A. Bobby Battle, I know who he is; I hardly know anything about him. I really don't have any comment on him.
6. Why was Battle virtually ignored during the year following its filing?
 - A. Whether or not it was ignored, I have no idea.
7. If the Courts had taken a definitive stand on Battle, could the riot and fire of 1973 likely have been avoided?
 - A. I don't have the slightest idea. I don't know that you could ever say that any riot or any fire would have been avoided if you'd done anything. We'll never know. You couldn't prove it one way or the other.
8. Conversely, if there had not been a riot and fire, how likely are the chances of Battle's having been acted upon?
 - A. No answer
9. What effect did the Oklahoma State Penitentiary riot and fire of 1973 have on corrections on the state?
 - A. I think mainly it just highlighted the problems that we had in Corrections. We reacted to it. It was dramatic. Whether or not it was all the riot and fire that brought about the changes in Corrections, I wouldn't know. I would think not.
10. How do you visualize the system if the riot and fire had not occurred?
 - A. I think you would have seen changes anyway. I think that the court's orders would have come. I think that the changes would have come. I think the times changed.
11. Did the zeal of the David Boren administration for construction help or hinder corrections in Oklahoma?
 - A. The effort in the Boren administration--the construction--I think we really began in the Boren administration; but there wasn't the impetus on construction and the change in Corrections until I became Governor. And there again, it was probably because we could afford it, as well as a commitment from this office that we were going to address the problem.
12. Did the riot and fire of 1973 force placement of a higher priority upon prison construction and reform by the Governor than would have been given without the highly publicized conflicts?
 - A. No answer

13. How has the George Nigh administration implemented compliance with federal court orders?
 - A. I respect and honor the court system, and as Governor when you put your hand on the Bible and you swear to uphold the laws of the state and laws of the country, that includes court orders. I think the Governor should be an example of trying to uphold the law. There are other Governors who would like to stand in the court house square or to prevent the federal court orders with troops and all that sort of stuff. I think that's grandstanding. I've had more pride to work with the courts in implementing the orders, and in removing things that we felt were out of line. We demonstrated good faith; and that's just a common sense approach. I think the Court was surprised that common sense could be used in Corrections.
14. What long-term impact, if any, will the Conner Correctional Center riot and fire of August 1983 have on the future of corrections in Oklahoma?
 - A. I think Conner was a major disappointment for this administration. I was disappointed in it because we had built the obvious, ultimate in the Corrections system. The inmates, in my opinion, did a great deal of damage. In some cases you can say, "Well, something else that was done by the inmates brought about a change for the better." I think the actual action here by the inmates deterred our efforts in Corrections. If the inmates felt they were helping their overall condition, they were in error; because it caused a great backlash among those people in Oklahoma who were supportive of a good, adequate correctional program, to say "Hey, we've done our best; and they're not only criminals, but they're ingrates." I think that slowed us down, and I regret very much the fire for several reasons. Among them is that I have a personal regret that the inmates harmed the progress that we'd made and hampered our ability to make progress in the future. It turned a lot of public opinion against them among people that had previously been supportive of them.
15. What future projections may be made for corrections in Oklahoma, based on recent legislation and court litigation?
 - A. There's been a dramatic change in the past few years. Like right now, Director Meachum is riding on support in the Legislature, and two years ago he was having problems. I think that the future projection of corrections should be shifted from the emphasis that we place . . . like Larry Meachum's name is almost a household word; and we look at brick and mortar. I would hope that the shift of corrections will continue to be what we've tried to put into place--that's in programs.

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