

LAW ENFORCEMENT MANAGEMENT INSTITUTE

A COMPARISON OF THE METHODS USED TO CONTROL VIOLENCE IN  
THE TEXAS DEPARTMENT OF CORRECTIONS, PRIOR TO AND  
FOLLOWING IMPLEMENTATION OF THE RUIZ V ESTELLE DECISION

A LEARNING CONTRACT  
SUBMITTED IN PARTIAL FULFILLMENT  
OF THE REQUIREMENTS FOR  
MODULE I

BY

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## INTRODUCTION

The treatment and control of inmates within a prison system is not an exact science. It is an often debated subject and invokes a great amount of passion from those who feel strongly about this issue. Many believe that all convicted felons should be locked up and provided with only the necessities of life. Many feel equally strong that inmates should be provided with all the services available to the public, including medical services, job training, and educational opportunities. Even if little agreement exists regarding the ideal treatment and control of prisoners, this decision is most often directly related to the funding provided for the operation of the prison system.

When society's most violent offenders are brought together as a group within a prison setting, it is almost certain that violence will continue. The conditions that encourages violence and the methods used to control the violence is the subject of this writer's research. A comparison of Texas prison conditions and methods of control used prior to and following intervention by the Federal Court will be examined. Some of the Federal Court Orders and their impact upon the control of violence will be discussed.

## Involvevement of the Federal Court

In 1972 David Ruiz, a prisoner of the Texas Department of Corrections, filed suit against the Texas Department of Corrections and its Director, W. J. Estelle Jr., seeking relief for alleged violations of his constitutional rights. In the spring of 1974, Judge William Wayne Justice, Chief Judge of the U.S. District Court Eastern Division, consolidated the Ruiz lawsuit with those of seven other Texas Department of Corrections prisoners into a single action, Ruiz v. Estelle. Judge Justice appointed attorneys for the plaintiff as a class action lawsuit. The class was composed of past, present, and future Texas Department of Corrections prisoners. Additionally, Judge Justice approved a motion to include the United States Justice Department as a plaintiff intervener.<sup>1</sup>

During the pre-trial process the defendants were successful in having the trial moved to Houston in an attempt to prevent Judge Justice from hearing the case. Judge Justice, however, was assigned to hear the case in Houston and the trial started on October 2, 1978. The trial concluded on September 20, 1979, after 159 days of trial in

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<sup>1</sup> Overview to *Ruiz, et al, v. McCotter, et al, A Summary of Relevant Orders, Stipulations, Reports and Issues*, (TDC Management Services, October 1986), p. 3.

which 349 witnesses testified and 1,500 exhibits were presented.<sup>2</sup>

The Court issued its opinion regarding the case on December 12, 1980. It found that the practices and conditions within the Texas Department of Corrections violated the Eighth and Fourteenth Amendments to the U.S. Constitution prohibiting cruel and unusual punishment and the deprivation of due process of law. The Court ordered the parties to meet to attempt to agree on a proposed order to resolve the issues raised in the case. A Consent Decree was drafted by the parties in February 1981 and approved by the Court on April 20, 1981. The Consent Decree resolved some issues primarily related to health care and work safety.<sup>3</sup>

Those issues on which the parties were unable to agree were addressed by the Court in an order entitled Decree Granting Equitable Relief and Declaratory Judgement which was entered on April 24, 1981, and amended on May 1, 1989.

The Amended Decree covered several distinct issues, including overcrowding, the use of prisoner "building tenders," disciplinary due process procedures, use of

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<sup>2</sup>Ibid.

<sup>3</sup>David Ruiz, et al, v. W.J. Estelle, et al, Civil Action No. H-78-987, United States District Court, Southern Division of Texas, Houston Division, Consent Decree, April 20, 1981.

physical force, access to courts, and fire safety standards.<sup>4</sup>

The defendants appealed the court judgement to the U. S. Court of Appeals in 1981. The Appeals Court affirmed the major parts of Judge Justice's order.

The parties subsequently entered into a number of stipulations settling outstanding issues of concern. Additionally, the Court appointed a Special Master to assist the Court by monitoring the Texas Department of Corrections compliances with the terms of the court orders and subsequent agreements.

The implementation of the court ordered procedures required drastic changes in the manner that the Texas Department of Corrections operated its prison system. The order to implement the changes affected almost every aspect of an extremely large complex institution. This ranged from the basic philosophy of managing inmates to the millions of dollars needed to be appropriated for everything from new buildings to thousands of additional employees at a time when the Texas economy was suffering from the downturn in the oil business. At the heart of this controversy was the deep seated feeling of most Texans that Texas did not need any outsiders telling them how to run their business. It

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<sup>4</sup>David Ruiz, et al, v. W.J. Estelle, et al, Civil Action No. H-78-987, United States District Court, Southern Division of Texas, Houston Division, *Decree Granting Equitable Relief and Declaratory Judgement*, April 24, 1981.

would be several years before the Texas Department of Corrections would cooperate in implementing the court orders due to the resentment of prison administrators and personnel to change what they perceived as an effective prison system. They would point out that the Texas Department of Corrections' rate of homicides, staff assaults and major riots were among the lowest of any American prison system.<sup>5</sup> They would also point out that because of the Texas Department of Corrections farming and manufacturing industries, the cost of maintaining an inmate was among the lowest in the nation. Usually accompanying the discussion would be an often repeated saying, "If it ain't broke, don't fix it."

As the Texas Department of Corrections began to implement the court ordered reforms, the management of violence became a crisis. The guards could no longer use the old methods of control with which they were familiar, and they did not have the knowledge or procedures in place, within the court guidelines, that could control the violence. As a result, employee morale dropped and inmates quickly became aware of the void of authority and reacted quickly to obtain power. Various illegal disruptive groups, Texas Syndicate, Mexican Mafia, Aryan Brotherhood (prison gangs), competed to obtain their share of the illegal drug

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<sup>5</sup>Ben Crouch and James Marquart, *Litigated Reform of Texas Prisons: An Appeal to Justice*, Austin: University of Texas Press, 1989), p. 46.

market and control over other inmates by physical violence. In 1984, 25 inmates were murdered by other inmates and 404 inmates were victims of stabbings. In 1985, the homicide rate jumped to 27 with an additional 237 inmates victims of stabbings by other inmates.<sup>6</sup>

During the implementation of the court ordered reforms, much of the prison staff attempted to use the old method to control the violence. Much of the prison staff did not fully accept or understand the new guidelines imposed by the court. The new guidelines did not appear to allow the staff to use the necessary amount of force and other methods many believed necessary to control the outbreak of violence. During this time it appeared to many that the Texas Department of Corrections no longer maintained control of its institutions.<sup>7</sup>

#### Control of Inmate Violence Prior to the Ruiz v. Estelle Decision

The cause of violence within a prison system is a complex issue and probably will never be completely eliminated. When society's most violent criminals are grouped together within a prison setting, it would seem logical to expect a certain amount of violence. Likewise, TDC's response to managing the violence prior to Ruiz v.

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<sup>6</sup>Texas Department of Corrections Public Information Office.

<sup>7</sup>Daniel Pederson, Daniel Shapiro, and Ann McDaniel, "Inside America's Prison," Newsweek, October 6, 1986, p. 56.

Estelle is a complex issue and involves a wide variety of both formal and informal controls. Some of these controls involve TDC's philosophy encompassing the work ethic, a complex system of punishments and rewards, a social system involving both TDC employees and inmates, physical punishment, and an inmate building tender system.

When Texas first established a prison system in 1848, in Huntsville, it was designed and based on the "Auburn Model" which was a walled building where inmates worked to produce goods under strict control.<sup>8</sup> The revenue from the products were to be a source of state income. Although the prison system did not achieve the goal of self supporting, the idea that inmates should be forced to work to "earn their keep" prevailed. As the system expanded TDC purchased huge amounts of farm land for agriculture operations and the inmates were forced to work long hours in the fields. The idea that the prison system should be self-supporting and that inmates should earn their keep still prevailed up until the Ruiz decision. An added benefit related to control was the belief that an inmate that works ten hours in the fields would be too tired at night to cause trouble. Although most Texas prisons have incorporated modern industrial operations, the prisons are most often still referred to as "farms."

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<sup>8</sup>Ben Crouch and James Marquart, *Litigated Reform of Texas Prisons: An Appeal to Justice*, (Austin: University of Texas Press, 1989), p. 13.



Upon arrival at TDC, an inmate would be assigned a unit and provided with a copy of the agency's rules and regulations. Most often, a new inmate would be assigned to field work. He would quickly learn that everything in TDC had to be earned. The requirement for earning was to work hard, and not violate the rules, or cause trouble. By competing to be the ideal inmate a prisoner could earn a better job, assignment to a better housing area, good time, transfers, assignment to school, furloughs, and craft shop privileges. A violation of any of the rules would result in a loss of privileges. Upon being charged with a violation of a rule by an officer, the case would be heard or tried by a disciplinary panel composed of a major or captain, a lieutenant, and a representative from treatment. It would be a rare occasion that the inmate would be found not guilty. The panel would assess the penalty which would range from being locked-up (solitary confinement) to loss of previously-earned privileges and good time, depending on the severity of the charge. An inmate could earn time off their sentence by the award of "good time" in addition to the time actually served. A disciplinary charge could not alter the time actually served by an inmate; however, the disciplinary panel could take away the good time which had already been awarded to the inmate for good behavior. Inmates were well aware that the disciplinary panel could greatly affect the actual time spent in TDC by control of their good time. A

major disciplinary case could cost an inmate status which took years of good behavior to acquire.

By the late 1960's, Texas prisons had developed a national and even international reputation for order, efficiency, and prisoner safety. Assaults on officers were extremely rare, and inmate homicide rates were low compared to those of other large state prisons. For example, in 1973, the homicide rate in Texas prisons were 0.75 per 10,000 inmates and staff, while the national average was 7.44. The highest homicide rate, in Hawaii, was 49.90. Escapes and riot in TDC were also rare. Visitors to Texas prisons, as well as new officers and inmates, were always struck by the dominance of the guards, and the submissiveness of the inmates. There was seldom any doubt about who was in charge.<sup>9</sup>

This stability and order was the result of an elaborate and largely informal control structure. This control structure encompassed the formal punishment and rewards system, but also included the building tender system, physical force by the guards, and an extensive social structure within the guard ranks.

TDC administration strongly supported and encouraged a decentralized management philosophy. The warden on each unit ran his own unit with little interference from higher authority. The warden held and used his power to make life

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<sup>9</sup>Ibid., p. 46.

or death decisions. He unquestionably ran his own prison and this was well understood by both inmates and the guard force. He made all decisions about which guards were to be promoted and which were to be fired or given the less desirable jobs. He decided which of his staff supported his ideas and beliefs and he, in turn, gave preference to these employees, which led to clique or elite status. Most wardens believed strongly in requiring work from inmates and worked hard themselves. They demanded and received loyalty from both guards and inmates. Most farms or prisons were located in somewhat isolated areas and the guards and their families most often lived on the prison property, which meant most of a guards' social contacts off duty were with the same group with whom he worked. The result was that strong esprit de corps existed among the guard ranks and they would go to great lengths to support each other. Inmates were viewed and treated in a very paternalistic manner. Officers considered most prisoners to be lazy, immature, and certainly inferior. This was understood by the inmates who, in turn, would address officers as "Boss," indicating the authority the officers held over the inmates. Officers would seldom address an inmate by his true name, but would be addressed as "nigger," "Mexican," or a nickname given to them by the officers. When talking about inmates, officers would refer to them as "them thieves" or to individual prisoners as "ole thang."

Officers took great pride in establishing a reputation of being tough and having "convict sense." Convict sense indicated that the officer understood the inmates and that he had great insight and manipulative skill while dealing with inmates. Being tough meant that the officer was not a push-over and that he was not to be crossed or he would quickly resort to physical means to solve a problem.

Physical force as punishment and deterrence was an important element in overall control strategy prior to the Ruiz decision. Although the use of physical force was not sanctioned within any official guidelines, the prevailing attitude was that some inmates only understood physical force. Specifically, Texas officers relied on three increasingly harsh types of physical coercion. Inmates who openly challenged an officer's authority by cursing him or being belligerent or insubordinate would be taken to the major's office and given a "tune-up." This sanction involved verbal humiliation, shoves, kicks, and head slaps to scare the inmate into compliance.<sup>10</sup>

The second type of physical coercion, commonly called an "ass whipping," usually involved a weapon such as a blackjack, baton, or flashlight. These usually occurred

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<sup>10</sup>Ibid., p. 78.

during a "tune-up" when an inmate would attempt to fight back.<sup>11</sup>

The third type of force used in TDC was the severe beating. These occurred infrequently and were reserved for inmates who violated serious rules such as attacking a staff member. These "beatings" differed from "ass whipping" only in degree. They were intended to inflict serious injury on the inmate.<sup>12</sup> Force was considered by officers to be a legitimate response to blatant inmate transgressions and it was legitimated by tradition. Prison is a violent world and physical coercion had always been employed to control inmates in Texas.

Perhaps the strongest form of inmate control prior to the Ruiz decision was the use of the "building tender." The building tenders were inmates who were assigned the duty of inmate guards. They were used to control the inmates and provide information. They carried knives or clubs and forced compliance by physical force.

Using elite prisoners in this manner was generally effective in terms of cost and control of inmates. When the number of inmates were small and stable the prison employees could oversee the actions of the building tenders. However, as the population of the prison system began to expand rapidly and the guard force remained approximately the same,

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<sup>11</sup>Ibid., p. 79.

<sup>12</sup>Ibid., p. 80.

the system was forced to rely more heavily on the inmate guards. The building tenders were given wide latitude to control violence and were heavily depended upon to provide information to the officers regarding weapons, escape plans, homosexual acts, and drugs. The building tenders often became so close and trusted by the ranking officers that they would be used to spy or snitch on other officers. Most building tenders were selected because of their reputation as being able to handle other inmates. Most were hard-core, white, older inmates with a history of violence. With the power they possessed, they controlled most of the ways to make money in an institution. They sold protection and ran commissary out of their cell, selling the commissary for two or three times what they paid for it. They controlled prostitution and forced the weaker inmates into a homosexual role. They would physically assault or kill an inmate whom they believed posed a threat to them, their business, or an officer.

The results of the building tender system were low rates of violence, few suicides, few homicides, minor group disturbances, no gang violence, and protection for the officers, as demonstrated by fewer officer assaults.

Following the Implementation  
of the Ruiz v. Estelle Decision

The Amended Decree required that the use of building tenders be discontinued and that standards for the use of

force be developed by TDC. The parties subsequently negotiated additional elements of those standards and agreed upon a final version of the Standards for the Use of Force on October 10, 1982. In the use of force agreement, TDC agreed to investigate all allegations of illegal use of force. They also agreed that the results of polygraph exams would be admissible into evidence concerning investigations of all excessive or unnecessary use of force, harassment and retaliation.<sup>13</sup>

The use of building tenders, which TDC previously denied existence, was discontinued. TDC attempted to fill the manpower void by a massive hiring campaign. The new employees were different from the old guards. They did not share the same work ethic, they were younger, better educated and, in most cases, they did not have the same understanding or "convict sense" that the older guards had. They did not accept, or have the great desire to be a part of, the old guards' social structure. They did not share the strong belief in the correctness of the way the prisons were run prior to Ruiz and they began to form labor unions.

The removal of the building tenders also broke down the system of gathering information. Previously, the system depended heavily on the information gathered by the building tenders to take action designed to defuse violence.

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<sup>13</sup>Ruiz v. Estelle, TDC Case Briefing and Status as of January 15, 1985, p. 7.

Additionally, the new guidelines removed the discretion that officers had to reward inmates for information. The growth of gangs also hampered intelligence-gathering information because of the fear of being known as a snitch by the gangs which would most often result in injury or death.<sup>14</sup>

The Office of Internal Affairs was established to investigate and monitor all allegations of excessive or unnecessary use of force and harassment or retaliation.

The inmate disciplinary process was changed so that an inmate would receive a due process hearing to determine guilt. A set of guidelines was developed to ensure that the penalty imposed on the inmate for violation of the Department rules were fair and consistent. Additionally, each inmate would be provided with the assistance of a substitute counsel person to assist them in preparing a defense to be presented at a hearing, prior to any determination of guilt by the disciplinary committee.

As the guard force began to use the new guidelines they began to understand that necessary force was allowed as long as the proper procedure was followed. They began to use the inmate disciplinary procedures instead of the "tune-up." They found that they still had considerable control over the inmates by fully utilizing the inmate rules and regulations which included loss of privileges and good time upon

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<sup>14</sup>Major Paul Brown, TDC Gang Intelligence Officer, interview by author, 23 February, 1990, Huntsville.



conviction. In late 1985 the Director of TDC, Lane McCotter, ordered that members of disruptive groups (gang members) were to be kept locked in administrative segregation and that other inmates classified as staff assaultive also be locked down. The results were obvious as inmate assaults, which were 25 homicides and 404 non-fatal stabbings in 1984, and 27 homicides and 237 non-fatal stabbings in 1985, dropped to 3 homicides and 96 non-fatal stabbings in 1986.<sup>15</sup> This trend has continued to the present time. The enlarged guard force has become more confident and experienced and many have obtained positions of management.

The state has additionally committed itself to a massive building program. TDC has limited admissions to a level, as directed by the court, to maintain the inmate population to a level for which the prison has adequate facilities.

TDC has committed itself to accept responsibility for the administration of its own prison system and encompass the guidelines set down by the Federal Court. It has made great strides which have been recognized by the court and the plaintiff in the Ruiz v. Estelle decision.

The warden no longer operates each prison as a separate institution. The department has developed standardized

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<sup>15</sup>Texas Department of Corrections Public Information Office.

rules and regulations that apply uniformly to all units of the system. With the creation of Internal Affairs, inmates and employees can be assured of fair impartial investigations.

The Compliance division was established to ensure that all units comply with the provisions set forth in the Ruiz decision.

As of this date, the court-appointed monitors have been eliminated. Internal Affairs continues to investigate all allegations of excessive or unnecessary use of force. Internal Affairs investigations seldom receive allegations of physical abuse that was common during the period which TDC began to implement the Court Ordered Reforms.

The change of procedure brought about by the Ruiz decision is broad and far-reaching, particularly relating to control of inmates. The system which had depended on physical force, fear, intimidation, use of inmate guards, and manipulation of the rules and regulations is no longer in existence. Guards are prohibited from using any excessive or unnecessary force and new employee disciplinary rules mandate punishment within a narrow range for violations, which does not include corporal punishment. Employee rules and policies prohibit any retaliation or harassment of an inmate for use of the grievance system. Inmates are allowed to pursue redress through the legal system without interference by the correctional staff.

Inmate guards have been eliminated and replaced by correctional personnel. Inmates are prohibited from any form of control or supervision of other inmates. The Internal Affairs staff investigate allegations of Ruiz related violations and TDC Compliance division ensures that the Ruiz related issues are being carefully followed. The grievance procedure allows inmates to appeal disciplinary cases against them and to seek review of other complaints.

The disciplinary procedures which were easily manipulated prior to the Ruiz decision now have been amended to ensure that all inmates are treated fairly. The procedures are now formal procedures in which the inmate is charged with a rule violation and the charged inmate is afforded trained personnel to assist in presenting their case in the best possible light. With proper documentation and use of the disciplinary procedures, violent and unruly inmates may be placed in administrative segregation. This isolates them from the general population and greatly restricts their opportunity to assault other inmates and staff. Correctional staff now utilize video cameras to document incidents in which force was used.

It is likely that the debate will continue regarding the Federal Courts intervention in the TDC's affairs. It is very difficult to defend the change if you consider the numerous loss of lives and millions of dollars spent in the change process. However, it is obvious that TDC has moved

to a position of envy of many prison systems. It has in place operational procedures that allows the correctional staff to maintain control while safeguarding the constitutional rights of inmates and staff. TDC is in the process of the largest building program in the history of the state. It has developed a professional staff and a safe, secure environment for its inmates. With TDC's large farming, ranching, and industrial operation, it still is able to keep the cost per inmate at one of the lowest rates in the nation.

With the current self-monitoring and administrative commitment to provide a professional institution, it does not seem likely that TDC could return to a condition resembling that of the TDC prior to Ruiz. It also seems likely that, should TDC began to return, the plaintiff and numerous inmates would quickly petition the Federal Court to again become involved.

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