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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

DAVID RUIZ, ET AL.,)	
<i>Plaintiffs,</i>)	Civ. A. No. H-78-987
UNITED STATES OF AMERICA,)	
<i>Plaintiff-Intervenors,</i>)	Amended Decree
v.)	
W.J. ESTELLE, JR., ET AL.,)	May 1, 1981
<i>Defendants.</i>)	

JUSTICE, Chief Judge.

Upon the bases set out in the court's memorandum opinion filed on December 12, 1980, and the supplemental memorandum opinion filed on April 20, 1981, it is hereby ORDERED, ADJUDGED, and DECREED, as follows:

Defendants, their successors, officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them (referred to collectively as "defendants") are hereby ENJOINED as follows:

I. Overcrowding

A. Reduction of Population

1. Defendants shall forthwith employ all measures within their power to reduce the total population of prisoners in facilities operated by TDC, as well as the prisoner population at each prison unit. At a minimum this shall include:

- a. The elimination of any practice or procedure that unreasonably inhibits or delays the award or restoration of good time to prisoners;
- b. the elimination of any practice or procedure that unreasonably inhibits or delays the granting of parole;
- c. the expansion of the work furlough program pursuant to Section 6166x-3, V.A.T.S.; and
- d. the expansion of the prisoner furlough program pursuant to Section 6184n(2), V.A.T.S.

2. Defendants shall, by November 1, 1981, review the record of every prisoner not having credit for SAT III good time (thirty days overtime for each month served) for the entire period he has served in TDC, and consider whether such prisoner should be credited with some part or all of such good time.

3. Defendants shall, by November 1, 1981, review the record of every prisoner who would be eligible for parole interview except for the absence of sufficient "PIP" incentive points, and consider whether such prisoner should be credited with sufficient points to be eligible for parole interview.

4. In expanding their work furlough program, defendants shall forthwith make maximum use of their authority under Section 6166x-3, V.A.T.S., to house prisoners outside of TDC units. Specifically: by November 1, 1981, defendants shall have at least 300 prisoners on work furlough; by May 1, 1982, defendants shall have at least 1,200 prisoners on work furlough; by November 1, 1982, and thereafter until further order of the court, defendants shall at all times have at least 2,500 prisoners on work furlough.

5. In expanding the prisoner furlough program, defendants shall make maximum use of Section 6184n(2)(a), V.A.T.S. Specifically: by November 1, 1981, defendants shall have at least 300 prisoners on furlough; by May 1, 1982, defendants shall have at least 600 prisoners on furlough; by November 1, 1982, and thereafter until further order of the court, defendants shall at all times have at least 1,000 prisoners on furlough.

6. Defendants shall expand TDC's role in community corrections and establish minimum security institutions, honor farms or units, halfway houses, urban work or educational release centers, community treatment centers, and the like. These facilities shall be located in areas near population centers of sufficient size to provide services. By November 1, 1981, defendants shall file with the court a plan for the establishment by TDC of such facilities with or without the participation of other state or local agencies.

B. Maximum Population

1. By May 1, 1981, and on the first day of every third month thereafter, defendants shall file with the Court a report stating for each unit:

a. (i) the number and size in square feet of cells housing general population prisoners; (ii) for each size category of general population cells (i.e., 45 sq. ft., 60 sq. ft.), the number of prisoners who are (A) single-celled, (B) double-celled, (C) triple-celled, (D) housed four to a cell, etc.

b. (i)(A) the number of dormitories housing general population prisoners, (B) the total floor space of each dormitory in square feet, including bathing, toilet, and activity areas, and (C) the total floor space of each dormitory in square feet, excluding bathing, toilet, and activity areas; (ii) the number of prisoners housed in each dormitory, and the number of square feet per prisoner in each dormitory, excluding bathing, toilet and activity areas.

c. (i) the number, size in square feet, type (cell or dormitory) and use (e.g., administrative, punitive segregation or medical segregation) of all other housing accommodations; (ii) for each size, type, and use category of such other housing accommodations, the number of prisoners housed therein.

2. If, by November 1, 1981, defendants have not been able to reduce overall TDC population to a figure equal to twice the number of general population cells, plus the number of prisoners who can be housed in dormitories that afford forty square feet (excluding bathing, toilet and activity areas) per prisoner, they shall not, until further order of the Court, accept any further prisoners for confinement until the population falls below such figure. After the population falls below such figure, defendants shall not, until further order of the court, accept any prisoner whose confinement would cause the population to exceed such figure.

3. By November 1, 1982, defendants shall reduce overall TDC population to a figure equal to 1.5 times the number of general population cells, plus the number of persons who can be housed in dormitories that afford sixty square feet (excluding bathing, toilet and activity areas) per prisoner. Defendants shall not thereafter, until further order of the court, accept any prisoner whose confinement would cause the population to exceed such figure.

4. By November 1, 1983, defendants shall reduce overall TDC population to the number of general population cells, plus the number of persons who can be housed in dormitories that afford sixty square feet (excluding bathing, toilet and activity areas) per prisoner. Defendants shall not thereafter, until further order of the court, accept any prisoners whose confinement would cause the population to exceed such figure.

C. Quadruple Celling. By May 1, 1981, no prisoner shall be confined with more than two other prisoners in any cell.

D. Triple Celling. By August 1, 1981, defendants shall not confine any prisoner with more than one other prisoner in any cell. Until triple-celling has been eliminated, no prisoner may be confined in any cell with more than one other prisoner for more than ten days during any thirty-day period.

E. Double Celling. By August 1, 1982, no more than fifty percent of the TDC population housed in cells shall be assigned to cells of sixty square feet or less holding two prisoners. By August 1, 1983, no prisoner shall be assigned with another prisoner to a cell containing sixty square feet or less.

F. Dormitories. By November 1, 1981, and thereafter until further order of the court, defendants shall not confine any prisoner to a dormitory providing less than forty square feet per prisoner. By November 1, 1982, and thereafter until further order of the court, defendants shall not confine any prisoner to a dormitory providing less than sixty square feet per prisoner. Permissible square footage in dormitories excludes area used primarily for bathing, toilet or recreation ("day room") activities. . . .

IV. Discipline

A. Practices and Procedures. Defendants shall forthwith conform their disciplinary practices to the requirements of *Wolff v. McDonnell*, 418 U.S. 539 (1974), for proceedings in which prisoners might be subjected to solitary confinement, loss of good time or demotion in time-earning class. To assure that *Wolff* and due process requirements are in fact observed:

1. Defendants shall institute systematic means of informing all prisoners, including those who do not speak English, of all operative disciplinary rules, whether they are unit rules or systemwide TDC rules. All disciplinary rules for which a prisoner may be punished must be in written form and must be adequately distributed or posted.

2. At the time of service of disciplinary charges, defendants shall provide the accused prisoner with the Offense Report or with substantially the same information contained in the Offense Report filed by the charging officer. Items of information which, if disclosed to the accused prisoner, would seriously jeopardize the safety of other inmates, need not be provided to the accused prisoner.

3. Defendants may not confine prisoners to administrative segregation pending a disciplinary hearing without first ascertaining whether administrative segregation is in fact necessary to safeguard institutional security (including the protection of other inmates or staff members), detailing in writing the reasons for administrative segregation, and insuring that prisoners are provided means, through counsel substitute or otherwise, to gather evidence and prepare their defense in anticipation of the disciplinary hearing. A prisoner segregated pending a disciplinary hearing shall, whenever possible, be given the hearing within three days. If the prisoner is not given a hearing in three days, the reasons therefor shall be set forth in the record of the hearing. In any event, a prisoner segregated pending a disciplinary hearing shall be given the hearing within ten days. Credit for time served in prehearing detention shall be considered by the disciplinary committee assessing a penalty in the event the prisoner is determined guilty of the charged infraction.

4. Defendants may not subject prisoners faced with disciplinary charges to any form of coercion designed to persuade them to waive their rights to a 24-hour notice prior to the disciplinary hearing. If prisoners are offered the opportunity to waive 24-hour notice, they must be fully informed, in terms intelligible to them, of the nature of the rights at stake.

5. Records of disciplinary hearings in which the result is unfavorable to the accused must be maintained, and must set out the evidence presented and considered at the hearing. The records must explain the reasons in each individual case for the determination of guilt and the particular punishment imposed. The accused prisoners shall be given copies of the records at the time they are informed of the committee's decision, or shortly thereafter. Copies of such records must be placed in the individual inmate's file.

6. TDC officials shall inform accused prisoners of their general right to present documentary evidence and call witnesses, at the time they are served with notice of the charges. Prisoners must be allowed, either personally or through counsel substitute, to communicate with a reasonable number of potential witnesses in advance of the disciplinary hearing. Witnesses requested by the prisoner must be permitted to testify, unless legitimate institutional needs dictate otherwise. Such needs shall be fully documented in the record.

7. Before proceeding with a disciplinary hearing, the committee must make a reasoned determination whether accused prisoners are in need of a counsel substitute. Any prisoner (a) whose literacy, mental abilities or misunderstanding of English is questionable; (b) who, because of the complexity of the issue, will be unlikely to be able to collect and present the evidence necessary for an adequate comprehension of the case; or (c) who is confined to any form of segregation pending the hearing, must be provided with counsel substitute. Defendants shall maintain a panel of TDC staff members, on a rotating basis, from which prisoners may choose counsel substitute. However, at the discretion of the disciplinary committee, the accused may be allowed to choose counsel substitute from among his fellow inmates, if he so desires. Counsel substitute must be given time and the means to confer with the accused prisoner and with potential witnesses, and to obtain documentary evidence, in order to provide adequate representation at the hearing.

8. No disciplinary committee may include an officer who has filed the charges, ordered the filing of the charges, or participated in any incident that led to the charges in question.

9. Prisoners charged with rule violations shall be present at disciplinary hearings unless their behavior during the hearing justifies their exclusion. If a prisoner refuses, or is unable, to appear at the hearing, the hearing may be conducted in the prisoner's absence. Prisoners may hear all evidence presented at the hearing, unless hearing the evidence will jeopardize the life or safety of the persons or the security and order of the institution. The record must establish and provide justification for the accused prisoner's absence during any portion of the hearing.

10. At a disciplinary hearing an accused prisoner may make statements, call witnesses (unless the testimony of such witness is likely to jeopardize the life or safety of persons or the security and order of the institution), and present documentary evidence. The prisoner, or his counsel substitute, may question all witnesses. If security considerations require that the accused prisoner be removed from the hearing for the presentation of any evidence or questioning of any witness, the prisoner's counsel substitute shall be permitted to remain and to act in the prisoner's behalf, unless the counsel substitute is an inmate whose hearing of the evidence will jeopardize the life or safety of persons or the security and order of the institution. The record must establish and provide justification for the exclusion of the prisoner

counsel substitute, and such record shall be made available to the Special Master.

11. Defendants shall follow their own rules and regulations governing disciplinary procedures.

B. Recording of Disciplinary Hearings. All disciplinary hearings, until further order of the court, must be recorded by tape recorder or other means of preserving a verbatim record of the proceedings. The tape recording or other record of the hearing shall be preserved for at least one year after the hearing. A prisoner, or his counsel substitute, may have access to the tape recording or other record in connection with any litigation in which the disciplinary proceeding may be relevant, or for other purposes for which the prisoner can show a reasonable need. Only that portion of the tape recording or other record for which the prisoner was excluded from the hearing for security reasons may be excepted from the prisoner's review. Such tape recordings or other records shall be available for review upon request of the Special Master and/or counsel. At the request of a prisoner, the tape will be made available to the reviewing authority, in the event of any appeal for a disciplinary proceeding or in instances where a grievance is filed as a result of such proceeding.

C. Administrative Segregation

1. Defendants shall not confine any prisoner to administrative segregation without opportunity for regular outdoor exercise, if the prisoner is confined for longer than three days. Segregated prisoners must be allowed to leave their cells at least once a day for physical recreation of at least an hour's duration, unless, in an individual case, fulfillment of the requirement would create an immediate and serious threat to prison security. By November 1, 1981, defendants shall file with the court a plan providing for increased and regular out-of-cell recreation opportunities for prisoners segregated on Death Row. . . .

D. Vague Rules—Declaratory Judgment. The following TDC rules are declared to be unconstitutionally vague: Rule 3.11-F to the extent that it prohibits "general agitation"; Rule 3.11-G to the extent that it prohibits "agitating"; Rule 3.11-H to the extent that it prohibits "laziness"; Rule 3.11-O to the extent that it prohibits "engaging in unauthorized activities"; and Rule 3.11-P to the extent that it prohibits "disrespectful attitude or actions"

VII. New Facilities

A. Defendants shall not make final selection of a site for, nor undertake the construction of any new units for housing prisoners unless they have filed a report with the court demonstrating that the following conditions are met:

1. The population of the unit will not exceed 500 prisoners, or the unit will be so structured that the population of each organizational sub-unit within the unit will not exceed 500 prisoners, in accordance with Section VIII of this order. . . .

2. The unit will not be located more than fifty miles from a Standard Metropolitan Statistical Area (SMSA), as defined by the United States Bureau of the Census, with a population exceeding 200,000, unless defen-

dants' report shows that defendants are able to recruit and maintain adequate numbers of qualified professionals, paraprofessionals, and others in all disciplines necessary to the effective functioning of the unit in a constitutional manner.

3. All prisoners classified as maximum security prisoners in accordance with the classification plan to be submitted pursuant to Section II-E of this order will be confined to single cells of at least sixty square feet.

4. All prisoners classified as minimum security prisoners in accordance with the classification plan to be submitted pursuant to Section II-E of this order will be confined to single cells of at least sixty square feet or in dormitories providing at least sixty square feet per prisoner, excluding bathing, toilet, and recreation ("dayroom") areas.

5. The facility will comply with the fire safety standards of the current edition of the Life Safety Code of the National Fire Protection Association.

B. By August 1, 1981, defendants shall file a report with the court providing the information required above for the Beto Unit (now under construction) and the proposed Grimes County unit.

C. Defendants shall not undertake the construction of any new facilities or cellblocks for housing prisoners on existing units, unless they have filed a report with the court demonstrating that the following conditions are met:

1. All prisoners classified as maximum security prisoners in accordance with the classification plan to be submitted pursuant to Section II-E of this order will be confined to single cells of at least sixty square feet.

2. All prisoners classified as minimum security prisoners in accordance with the classification plan to be submitted pursuant to Section II-E of this order will be confined to single cells of at least sixty square feet or in dormitories providing at least sixty square feet per prisoner, excluding bathing, toilet, and recreation ("dayroom") areas.

3. Defendants are able to recruit and maintain adequate numbers of qualified professionals, paraprofessionals, and others in all disciplines necessary to the effective functioning of the entire unit in a constitutional manner.

4. The facility or cellblock will comply with the fire safety standards of the current edition of the Life Safety Code of the National Fire Protection Association.

5. The addition of the facility or cellblock will not impede the defendants' compliance with Section VIII of this order relating to reorganization of existing TDC units.

VIII. Managerial Reorganization of TDC Correctional Facilities

Defendants shall submit a plan to the court providing for the reorganization and decentralization of the management of each TDC unit housing more than 500 prisoners. The plan shall assure that the units are subdivided into units of no more than 500, that the warden of any unit is responsible for no more than 500 prisoners, that each organizational component of the unit is administratively and programmatically decentralized with its own manageable supervisory structure, and that the architectural modifications and retrofitting

necessary to create the sub-units and their reorganization will be completed before November 1, 1982. This plan shall be submitted by November 1, 1981.

IX. Reporting

A. All of the reports and plans required by this decree and the consent decree agreed to by the parties shall be filed with the Clerk of the court and served on opposing parties and the Special Master by the dates indicated. If opposing parties have any objection to the adequacy or contents of any report or plan, they may file such objections with the court within thirty days after receiving such report or plan. The court may determine to hold a hearing or to direct the Special Master to hold a hearing, on any such objections.

B. Until the further order of the court, defendants shall promptly provide the Special Master with copies of the disciplinary records required pursuant to Section IV-A-5 above, together with any appeals taken by prisoners from disciplinary decisions and, upon the Special Master's request, tapes or other verbatim records of the disciplinary hearings.

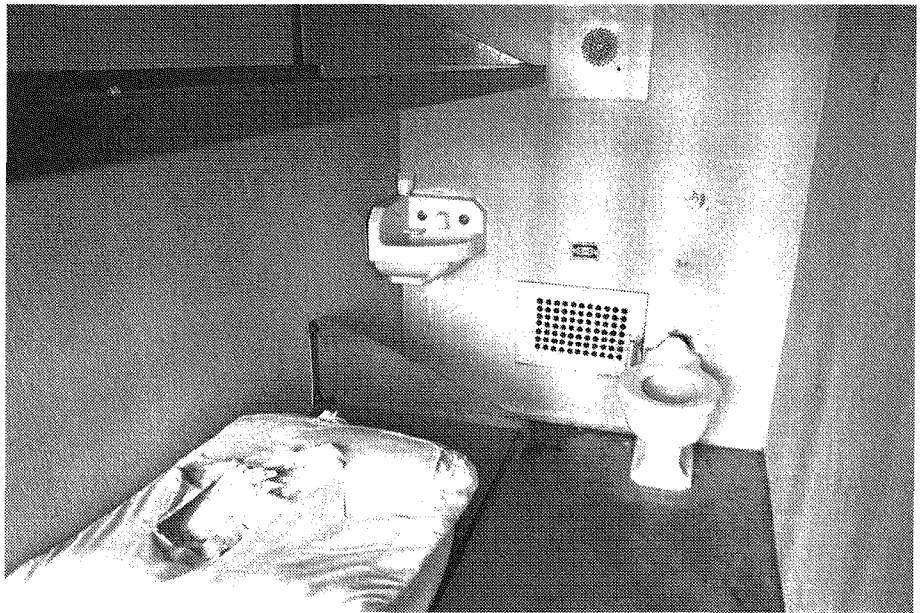
C. Until the further order of the court, defendants shall promptly provide the Special Master with reports of physical examinations of prisoners entering solitary confinement and reports of their physical and mental health while so confined, showing compliance with TDC Rules 4.3.4.2.4 and 4.3.4.2.7.

D. Until the further order of the court, defendants shall promptly provide the Special Master with copies of the reports on uses of force and chemical agents required pursuant to the consent decree and Section II-C-2, above.

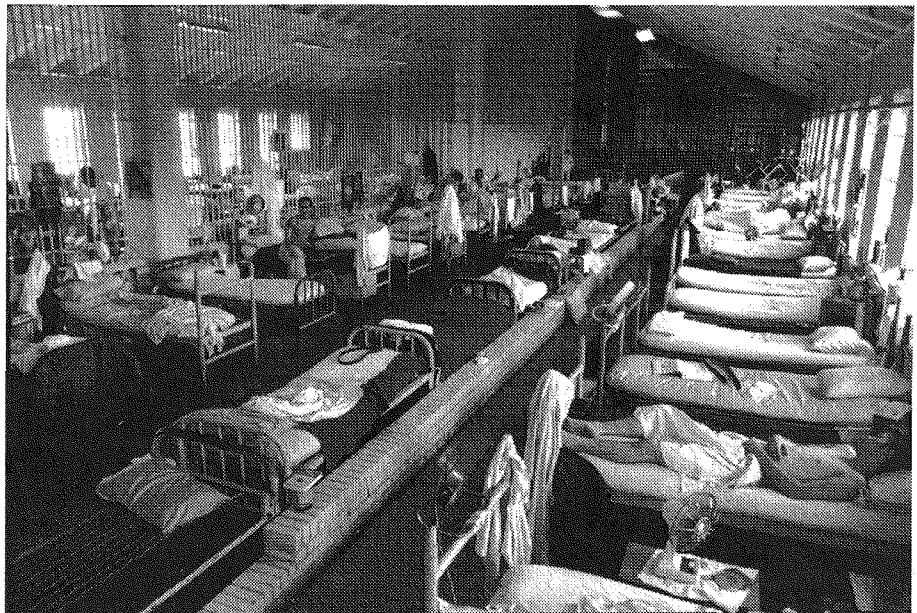
X. Counsel Fees and Costs

The class plaintiffs are entitled to recover from defendants their counsel's reasonable fees and costs, pursuant to 42 U.S.C. § 1988. Plaintiffs' counsel and defendants' counsel are directed to endeavor to agree on the amount thereof. If they are unable to agree, plaintiffs may submit an appropriate motion to the court, and the court will fix the amount of fees and costs. Plaintiffs may file later applications for services rendered by their counsel in implementing the relief specified in this decree and the consent decree agreed to by the parties, and for further services in this action.

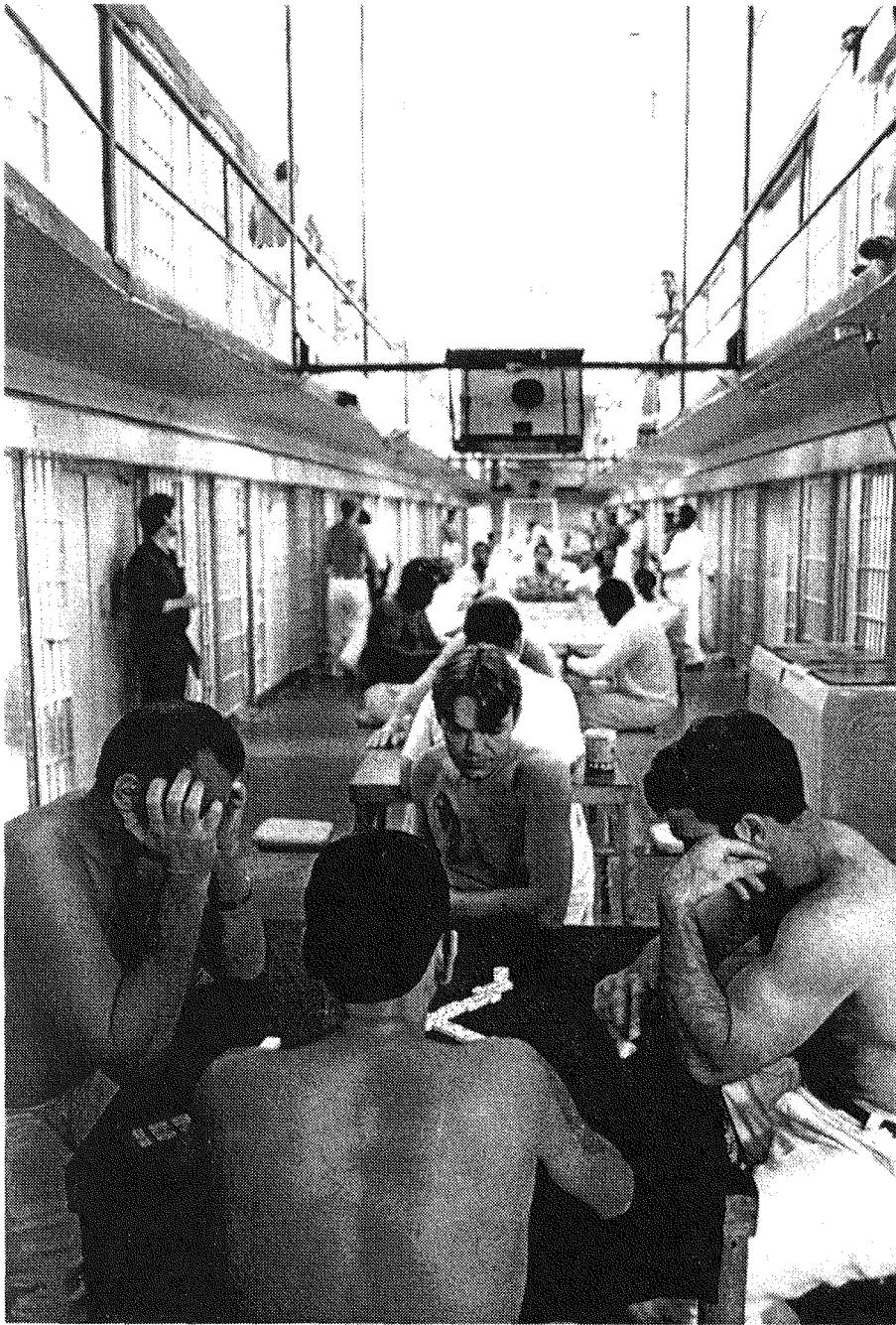
s/_____
Signed and Entered this 1st day of
May, 1981.



A solitary cell in a Texas prison in 1984. The number of inmates assigned to cells became a prominent issue in the *Ruiz* case. Photo by Alan Pogue.



An example of dormitory-style housing in the Texas prison system in 1984. Photo by Alan Pogue.



Inmates play dominos at a Texas state prison in 1984. Photo by Alan Pogue.