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COURT RULES

SUPREME COURT OF MISSOURI

RULES OF PRACTICE AND PROCEDURE OF JUVENILE COURTS

Effective January 1, 1987

The Rules of Practice and Procedure in Juvenile Courts including the comments and Source notes were amended in 1986. These amendments, by order of the Supreme Court of Missouri, may be followed prior to January 1, 1987, and shall be followed on or after January 1, 1987. The Rules of Practice and Procedure in Juvenile Courts, as amended, are set forth below.

Rule

RULE 110. GENERAL PROVISIONS

Rule

110.01 Applicability of Rules

Rules 110 through 128 shall govern practice and procedure in the juvenile courts under Sections 211 RSMo.

Source: Compare Rule 41.01(a). See also Rules 36.01 and 37.01.

110.02 Authority for Rules

Rules 110 through 128 are promulgated pursuant to the authority granted this Court by Section 5 of Article V of the Constitution of Missouri and supersede all statutes and existing court rules inconsistent therewith. They are intended to provide for the just determination of proceedings in the juvenile courts. These Rules shall be construed to assure simplicity and uniformity in judicial procedure and fairness in the administration of justice and to conduce to the welfare of the juvenile and the best interests of the state.

Source: Rules 41.02 and 41.03; compare Rules 36.02 and 37.02. See also Section 211.011 RSMo.

Comment: The rule-making power of the Supreme Court is granted by Article V, Section 5 of the Missouri Constitution, which provides:

> The Supreme Court may establish rules of practice and procedure for all courts. The rules shall not change substantive rights, or the law relating to evidence, the oral examination of witnesses, juries, the right of trial by jury, or the right of appeal. The court shall publish the rules and fix the day on which they take effect, but no rule shall take effect before six months after its publication. Any rule may be annulled or amended by a law limited to the purpose.

These Rules are to be construed to achieve the purposes of the Juvenile Code, Chapter 211 RSMo, as set forth in Section 211.011 RSMo.

110.03 Local Rules of Court

The circuit court may adopt rules of practice and procedure governing proceedings in the juvenile court if the rules are not inconsistent with the rules of this Court, the Constitution or statutory law in force. Upon their adoption, copies of any such rules shall be filed with the office of the Clerk of the Supreme Court and of the Clerk of the Court of Appeals for the district in which the circuit court may be, said rules to become effective not sooner than 30 days after their filing. The clerk of the circuit court shall from time to time compile all of the current rules respecting proceedings in the juvenile court and shall maintain copies thereof for distribution to members of the Bar and to the general public upon request.

Source: Compare Rule 50.01; see also Rules 36.03 and 37.03.

Comment: This Rule provides for adoption of local rules by the circuit court, and not by the juvenile division of the circuit court.

110.04 Procedure When Rules Not Applicable

If no procedure is specifically provided in these Rules, the juvenile court shall be governed by the practice and procedure customary in proceedings in equity, and by Rules 41 through 101 to the extent not inconsistent therewith.

Source: Section 211.271.6 RSMo. Compare Rule 41.04; see also Rules 36.04 and 37.04.

Comment: Section 211.171.6 RSMo provides: "The practice and procedure customary in proceedings in equity shall govern all proceedings in the juvenile court."

110.05 Definitions

a. As used in Rules 110 through 128, unless the context requires a different meaning:

(1) "adult" means a person twenty-one years of age or older;

(2) "commissioner" means commissioner of the juvenile court;

(3) "court" or "juvenile court" means a juvenile division of the circuit court or a judicial officer acting therefor;

(4) "custodian" means parent, spouse of a juvenile, guardian of the person, guardian *ad litem*, or a person having legal or actual custody of a juvenile;

(5) "detention" means the taking and retention of the person of a juvenile in judicial custody in connection with proceedings under subdivision (2) or (3) of subsection 1 of section 211.031 RSMo;

(6) "detention facility" means a place of temporary care for juveniles in judicial custody in connection with proceedings under subdivision (2) or (3) of subsection 1 of section 211.031 RSMo, and includes facilities that are physically confining, but does not include a jail or other adult detention facility;

(7) "judge" means the judge of the juvenile court;

(8) "judicial custody" means the taking or retention of custody of the person of a juvenile in either protective custody or detention;

(9) "juvenile" means a person under twenty-one years of age who is subject to the jurisdiction of the juvenile court;

(10) "Juvenile Code" means Chapter 211 of the Revised Statutes of Missouri, including any amendments or revisions thereof which may hereafter be made;

(11) "juvenile officer" includes deputy juvenile officer and other court personnel the court has authorized to exercise the powers of a juvenile officer;

(12) "law enforcement officer" includes sheriff, deputy sheriff, highway patrol officer, police officer, and marshal;

(13) "legal custody" means the right to the care, custody and control of a juvenile and the duty to provide food, clothing, shelter, ordinary medical care, education, treatment and discipline to a juvenile;

(14) "municipal ordinance" means an ordinance duly adopted by any city, town, village or county of this state;

(15) "parent" means either a natural parent or a parent by adoption, whose parental rights have not been terminated;

(16) "party" means a juvenile who is the subject of a court proceeding, the custodian of the juvenile, the juvenile officer, and any other person denominated by statute as a party in the proceeding;

(17) "person" includes natural persons, corporations, and agencies of government.

(18) "placed in foster care" means placement of a juvenile in the care and custody of an agency or institution authorized by law to care for children or to place them in family homes;

(19) "protective custody" means the taking and retention of the person of a juvenile in judicial custody in connection with proceedings under section 210.125 or subdivision (1) of subsection 1 of section 211.031 RSMo; and

(20) "reasonable efforts" means those efforts that an ordinarily careful, prudent, and diligent person would make under the same or similar circumstances.

b. The singular includes the plural, the plural the singular, and the masculine the feminine, when otherwise consistent with these Rules.

Source: Section 211.021 RSMo; Standard Juvenile Court Act Section 2(k); Legislative Guide for Drafting Family and Juvenile Court Acts Section 1(s); Model Juvenile Court Rule 1. Compare Section 1.030 RSMo.

Comment: 1. The definitions set forth in this Rule differ somewhat from those employed in the Juvenile Code. These changes have been made in the interest of consistency and ease of understanding.

The definition of "adult" to include persons over twenty-one years of age differs from Section 211.021(1) RSMo, which defines an adult as a person seventeen years of age or older. However, there is no conflict between the use of adult as defined in these Rules and as used in the Juvenile Code.

"Child" is not defined in these Rules. Instead, the term "juvenile" is used. While the Juvenile Code employs the term "child" defining it in Section 211.021(2) to mean a person under seventeen years of age, the term itself is not consistently so used in the Juvenile Code; in many instances it also necessarily includes a person over the age of seventeen years. The definition of "juvenile" is used consistently in these Rules.

"Parent" differs from the Section 211.021(5) definition in that the clause "and if the child is illegitimate, 'parent' means the mother," has been deleted. The reasons for the deletion are that the rights and obligations of the father of an illegitimate child have been recognized both by statute and by court decision in Missouri. See Sections 452.150, 452.160 RSMo, and R_____ v. R_____, 431 S.W. 2d 152 (Mo., 1968).

RULE III. CUSTODY AND DETENTION

Rule

111.01 When Juvenile May Be Taken Into Judicial Custody

a. A juvenile may be taken into judicial custody

(1) pursuant to an order of the court;

(2) pursuant to the laws of arrest applicable to adults if being taken into detention; or

(3) by a law enforcement officer or a physician who has reasonable cause to believe that a child is in imminent danger of suffering serious physical harm or a threat to life as a result of abuse or neglect and such person has reasonable cause to believe the harm or threat to life may occur before a juvenile court could issue a temporary protective custody order or before a juvenile officer could take the child into protective custody;

(4) by a juvenile officer if there is reasonable cause to believe that the juvenile is without proper care, custody, or support and that immediate

protective custody is necessary to prevent personal harm to the juvenile.

b. The taking of a juvenile into judicial custody shall not by considered an arrest.

c. The jurisdiction of the court attaches from the time the juvenile is taken into judicial custody.

Source: New. Compare Sections 211.131.1, .3 RSMo. The substance of the Rule is derived from Uniform Juvenile Court Act Section 13, and Standard Juvenile Court Act Section 16.

Comment: Section 211.101.3 RSMo authorizes the court, after a petition has been filed, to order that the juvenile be taken into custody at once. Section 211.121 provides that the court may issue a **capias** if the juvenile fails to appear in response to a summons. Section 211.131.1 states that when a juvenile is taken into custody for various specified causes, the taking into custody shall not be deemed an arrest.

This Rule states the circumstances under which a juvenile may be taken into custody. Its provisions are consistent with Section 211.131.1, and are intended to clarify the present law.

111.02 Procedure Upon Taking Juvenile Into Judicial Custody

a. Any person taking a juvenile into judicial custody shall immediately make reasonable efforts to notify the juvenile's custodian.

b. When a juvenile is taken into judicial custody, he shall not remain in custody but shall be released at once to his custodian or some other suitable person, unless:

(1) the court has ordered the juvenile to be in detention; or

(2) temporary detention has been ordered pursuant to Rule 111.06; or

(3) the juvenile was taken into protective custody and the court determines the conditions requiring protective custody continue to exist.

c. The person to whom a juvenile is released may be required to sign a written promise to produce the juvenile when ordered by the court.

d. If the juvenile is released in accordance with this Rule, the person who took the juvenile into judicial custody shall promptly notify the juvenile officer in writing of the juvenile's name and address and the reason for taking the juvenile into custody.

e. If the juvenile in detention is not released, he shall immediately be taken to the juvenile officer or a person acting for the juvenile officer or to a detention facility designated by court order pursuant to Rule 111.03, and a written report shall be made to the juvenile officer stating why the juvenile was

taken into judicial custody and why he was not released.

f. If a juvenile is taken into protective custody, any party may request that the court review the facts and circumstances existing and make a determination if probable cause exists that the juvenile is without proper care, custody or support and that it is necessary for the juvenile to remain in protective custody to prevent immediate harm to the juvenile.

Source: Sections 211.061.1 and 211.141.1 RSMo. Compare Standard Juvenile Court Action Section 16: Uniform Juvenile Court Act Sections 14, 15; Model Rules 12 and 13.

Comment: Rule 111.02 follows the present statute by requiring immediate notice to a juvenile's custodian when a juvenile is taken into custody. The Rule is likewise consistent with present statutory language requiring that the juvenile be immediately taken to the juvenile officer or a person acting for him.

The Rule is in accord with the declared statutory purpose that the juvenile should be released to his custodian unless substantial reasons exist for detaining him. Section 211.141.1 RSMo. Further, the Rule adds the requirement that a report be made to the juvenile officer if the juvenile is released. The present statute has no such requirement, and the result may be that the juvenile officer and through him the court may not be apprised of a juvenile's having been taken into custody and subsequently released.

111.03 Designation of Detention Facility

a. Each juvenile court shall by order designate the detention facility or facilities to which juveniles shall be taken when within judicial custody. Copies of the order shall be made available to all law enforcement agencies within the territorial jurisdiction of the court.

b. Pending disposition of the case, the juvenile court may order in writing the detention of the juvenile in one of the following places:

(1) A juvenile detention facility provided by the county;

(2) A shelter care facility, subject to the supervision of the court;

(3) A suitable place of detention maintained by an association having for one of its objects the care and protection of children;

(4) Such other suitable custody as the court may direct.

c. A child shall not be detained in a jail or other adult detention facility.

Source: Subsection a: Compare Standard Juvenile Court Act Section 17; Uniform Juvenile Court Act Sections 15, 16. Subsection b: Section 211. 151.1 RSMo. Subsection c: New. Section 211.151.2 RSMo.

Comment: Subsection a. of this Rule authorizes the court by order to specify the detention facilities to which juveniles shall be taken and is consistent with current practice. The order should distinguish between juveniles who are taken into custody because neglected or dependent and who represent no danger to themselves or others and juveniles who require secure custody because of the existence of such danger. The purpose of the order is to provide guidance and direction to juvenile court staff and others concerning where a juvenile shall be held pending a specific detention order of the court. Subsection b. restates the content of Section 211.151.1 RSMo. A jail or other adult detention facility shall not be designated as a place of detention. Definitions for "jail or other adult detention facility" and "juvenile detention facility" are provided in Section 211.151.4 RSMo. Subsection c. restates the content of Section 211.151.2 RSMo.

111.04 Presentation of Juvenile to Juvenile Officer or Detention Facility

a. When a juvenile in detention is presented to the juvenile officer, the juvenile officer may, unless the court has ordered detention of the juvenile, release him pursuant to Rule 111.02 or may take the juvenile to a detention facility and there authorize his detention in accordance with Rule 111.06.

b. When a person other than the juvenile officer presents a juvenile in detention to a detention facility operated by the juvenile court exclusively for the detention of juveniles, the person in charge of the detention facility may release the juvenile pursuant to Rule 111.02, unless the court or the juvenile officer has ordered or shall order that juvenile be in detention.

c. When a juvenile in detention is presented to a detention facility, the person in charge of the detention facility shall promptly inform the juvenile officer that the juvenile has been received by the facility and why the juvenile was taken into judicial custody.

d. If the person in charge of the detention facility is unable to locate the juvenile officer within a reasonable time, he shall inform the judge that the juvenile has been presented to the facility and why the juvenile was taken into judicial custody.

e. Upon being informed that a juvenile is in detention, the juvenile officer or judge shall consider the circumstances and shall thereupon either direct the juvenile to be released or authorize the juvenile to be held in the detention facility or some other appropriate facility in accordance with Rules 111.06 and 111.07.

Source: New. Compare Model Rule 12; Standard Juvenile Court Act Section 17; Uniform Juvenile Court Act Section 16.

Comment: This Rule states the procedure to be followed when a juvenile

has been taken into custody and is delivered to the juvenile officer or to a detention facility. It permits the juvenile officer or detention staff to release the juvenile to his custodian, and provides for notice to the juvenile officer or judge.

Cross-Reference: Section 211.141 RSMo.

111.05 Notice Upon Admission to Detention Facility

a. When a juvenile twelve years of age or older is admitted to a detention facility, he shall immediately be informed by the juvenile officer or the person in charge of the facility of:

(1) the reason for his detention;

(2) his right to a detention hearing under Rules 111.07 and 11.08; and

(3) his rights during detention under Rule 111.10.

b. The juvenile officer or the person in charge of the detention facility shall notify the juvenile's custodian as soon as practicable that the juvenile is held in the detention facility, and inform him of the reason for the juvenile's detention and the juvenile's rights set forth in Rule 111.05a. Some communication shall be made in person, if practicable, or by telephone or otherwise.

c. A written notice substantially in the form set forth in Rule 128.06, setting forth the right to remain silent, the right to counsel, the right to a detention hearing, and the rights during detention shall be given by the juvenile officer or the person in charge of the detention facility to a juvenile twelve years of age or older in person and to his custodian in person or by mail.

Source: New. Subsection b. is derived from Section 211.141.2 RSMo. Compare Model Rule 13.

Comment: This Rule sets forth the procedure to be followed when it is determined that a juvenile should be held in a detention facility. It requires notice to the juvenile of the reason for his detention, his right to a detention hearing, his right to counsel, his right to remain silent, and the rights accorded him during detention under Rule 111.10. In addition, this notice must also be given to the juvenile's custodian. The Rule provides both oral and written notice of the right to a detention hearing and the juvenile's rights during detention.

111.06 Temporary Detention

a. A juvenile who has been taken into detention shall not be held in detention for a period of more than twenty-four hours unless the court has authorized detention pursuant to Rule 111.07. A juvenile in detention shall be released only to his custodian or other suitable person.

b. Temporary detention of a juvenile for a period not to exceed twenty-

four hours may be authorized by the juvenile officer, and, if the detention is in a facility operated by the juvenile court exclusively for the detention of juveniles, by the person in charge of the detention facility. The authorization may be in writing or given orally, and if given orally, shall be reduced to writing as soon as practicable.

c. When the juvenile officer or person in charge of a detention facility has authorized temporary detention, he shall as soon as practicable notify the judge that the juvenile is being detained.

d. Temporary detention of a juvenile for a period beyond twenty-four hours may be authorized only by order of the court pursuant to Rule 111.07 or 111.08. If no court order for detention of the juvenile has been made when the period of temporary detention expires, the juvenile shall be released.

Source: New. Compare Section 211.141 RSMo; Model Rule 12; Standard Juvenile Court Act Section 17.

Comment: This Rule permits the juvenile officer to authorize temporary detention for a period not to exceed twenty-four hours. This power to order temporary detention is also given to a person in charge of a detention facility operated by the juvenile court exclusively for the detention of juveniles.

111.07 Court Action Upon Notice That Juvenile is in Detention

a. When the court is informed that a juvenile is in detention it shall examine the reasons therefor and shall immediately:

(1) order the juvenile released pursuant to Rule 111.02; or

(2) order the juvenile continued in detention until a detention hearing is held pursuant to Rule 111.08. An order to continue the juvenile in detention shall only be entered upon the filing of a petition or motion to modify and a determination by the court that probable cause exists to believe that the juvenile has committed acts specified in the petition or motion that bring the juvenile within the jurisdiction of the court under subdivision (2) or (3) of subsection 1 of section 211.031 RSMo.

b. A juvenile shall not remain in detention for a period greater than twenty-four hours unless the court orders a detention hearing. If such hearing is not held within three days excluding Saturdays, Sundays and legal holidays, the juvenile shall be released from detention unless the court for good cause orders the hearing continued.

c. The detention hearing shall be held within the judicial circuit at a date, time and place convenient to the court.

d. Notice of the date, time and place of a detention hearing, and of the right to counsel, shall be given to the juvenile and his custodian in person, by telephone, or by such other expeditious method as is available.

Source: New. Compare Model Rule 15. Paragraph f. is derived from modern statutes and rules which require that when a juvenile is held in detention, a petition must be filed within a short period of time. See, e.g., Standard Juvenile Court Act Section 17 (24 hours, excluding Sundays and holidays); New Mexico Children's Code Section 24 (48 hours, excluding Saturdays, Sundays and legal holidays).

Comment: The Rule is not intended to affect the practice in those juvenile courts which have by local rule provided for a mandatory detention hearing in each case in which a child is detained.

111.08 Detention Hearing

a. At the detention hearing the court shall determine whether the juvenile and his custodian have been informed of the right to counsel. If not, the court shall inform the juvenile or his custodian of the right to counsel, and the court may continue the hearing to enable counsel to be obtained if the right to counsel is not waived.

b. At the detention hearing the court shall receive testimony and other evidence relevant only to the necessity for detention of the juvenile and to whether probable cause exists to believe that the juvenile committed acts that would bring the juvenile within the jurisdiction of the court under subsection (2) or (3) of subsection 1 of section 211.031 RSMo. Any written reports or social records offered to the court at the detention hearing shall be made available to all parties at or prior to the hearing. At the conclusion of the hearing the court shall:

(1) order the juvenile released pursuant to Rule 111.02; or

(2) order the juvenile continued in detention pending further proceedings. The juvenile shall not be continued in detention unless the court finds that there is probable cause to believe that the juvenile has committed acts which would bring the juvenile within the jurisdiction of the court under subsection (2) or (3) of subsection 1 of section 211.031 RSMo and that detention is required:

(a) to protect the juvenile; or

(b) to protect the person or property of others; or

(c) because the juvenile may flee or be removed from the jurisdiction of the courts; or

(d) because the juvenile has no custodian or suitable adult to provide care and supervision for the juvenile and return the juvenile to the court when required; or

(e) because the juvenile is a fugitive from another jurisdiction and an official of that jurisdiction has required the juvenile be detained pending return to that jurisdiction.

Source: New. Compare Model Rule 17; Uniform Juvenile Court Act

Section 17.

Comment: The detention hearing is to determine only whether a juvenile should be continued in detention or released to his custodian. Only if further detention is necessary should the juvenile continue to be held. In addition, the purpose of detention is only to ensure the presence of the juvenile at the hearing upon the petition or to safeguard the juvenile or other persons pending such hearing.

111.09 Release From Detention Upon Change of Circumstances

a. A juvenile held in a detention facility under order of the court may be released upon a showing that a change of circumstances makes continued detention unnecessary.

b. A written request for the release of the juvenile from detention, setting forth the changed circumstances, may be filed by the juvenile, by the juvenile's custodian, or by the juvenile officer.

c. Based upon the facts stated in the request, the court may grant or deny the request without a hearing, or may order that a hearing be held at a date, time and place as determined by the court. Notice of the hearing shall be given to the juvenile and his custodian or counsel prior to the hearing. At the hearing, upon receiving evidence, the court may grant the request and release the juvenile to his custodian or other suitable person, or may deny the request and remand the juvenile to the detention facility.

Source: New. Compare Model Rule 18.

Comment: This Rule recognizes that, following an order for detention, the circumstances which originally justified detention may change so that the juvenile can safely be released. The Rule provides a mechanism for calling to the attention of the court such change in circumstances.

111.10 Rights During Detention

a. When a juvenile is taken to a detention facility or delivered to a juvenile officer he may immediately telephone his custodian and his counsel. Thereafter he shall be allowed to telephone his custodian and his counsel at reasonable intervals. The court may establish rules regulating the time and frequency of such subsequent telephone calls.

b. When a juvenile is admitted to a detention facility, his custodian and his counsel may make an initial visit at any time. After the initial visit, the juvenile may be visited by his counsel at any reasonable time, and by his custodian during the visiting hours of the detention facility, which shall be regularly scheduled at least three days per week unless otherwise ordered by the court. The court may establish rules permitting visits by other persons.

c. If the juvenile refuses to see his custodian, no visits by the custodian shall be allowed unless authorized by the court or the juvenile officer.

d. Except for the juvenile's custodian, the juvenile's counsel, the juvenile officer, and other authorized personnel of the juvenile court, no person shall interview or interrogate a juvenile held in a detention facility unless approval therefor has first been obtained from the juvenile court or the juvenile officer.

e. When a juvenile in custody is represented by counsel no person may interview or interrogate the juvenile concerning the violation of a state law or municipal ordinance by the juvenile unless in the presence of counsel or with the consent of counsel.

Source: New. Compare Model Rule 14.

Comment: This Rule sets forth the rights of a juvenile during the time he is held in a detention facility. It recognizes that the juvenile should be allowed to telephone his custodian and his counsel, and that they should be permitted to visit him at reasonable times.

Since the purpose of holding a juvenile in detention is merely to safeguard the juvenile or others pending adjudication of the petition file in his interest, the Rule limits interviews or interrogations of the juvenile while he is in detention. The Rule is not intended, however, to permit uncontrolled interrogation of the juvenile by the juvenile officer or other court staff concerning the allegations of the petition.

Whether statements made by a juvenile are admissible against the juvenile in either juvenile court or in circuit court in an adult criminal proceeding is controlled by the general statutory and decisional law on the subject.

RULE 112. INITIATION OF PROCEEDINGS

Rule

112.01 Preliminary Inquiry

a. Information that could bring a juvenile within the jurisdiction of the juvenile court shall be referred to the juvenile officer. Such information including the name and address of the informant shall be in writing and unless impracticable shall be signed by the informant.

b. The juvenile officer shall make a preliminary inquiry and if it appears therefrom that the juvenile is within the jurisdiction of the juvenile court the juvenile officer shall either:

(1) make informal adjustment of the matter under Rule 113; or

(2) file a petition pursuant to Rule 114.01.

c. If it does not appear to the juvenile officer that the juvenile is within the jurisdiction of the juvenile court, he shall if practicable so notify the informant. Thereupon the informant or any other person may bring the matter directly to the attention of the judge of the juvenile court, by presenting to him the information in writing; and if it appears to the judge that the information could bring the juvenile within the jurisdiction of the juvenile court, the judge may order the juvenile officer to take further action, including making a further preliminary inquiry, or making informal adjustment, or filing a petition.

Source: Model Rule 1.
Cf. Section 211.081 RSMo.

Comment: Under this Rule it is not necessary that the court approve the filing of a petition. See also Rule 114.01. Under the Juvenile Code, only the juvenile officer may file a petition. *State v. Taylor*, 323 S.W.2d 534 (Spr. Mo. App. 1959). This Rule is not intended to modify the result of the Taylor decision.

Paragraph b of this Rule empowers the juvenile officer to make an informal adjustment or to file a petition. While this provision may appear to depart from a literal interpretation of Section 211.081, which states that the juvenile court may make an informal adjustment or authorize the filing of a petition, the Rule adopts what in fact has long been the practice in Missouri.

Furthermore, the statutory procedure if followed literally to mean participation by the judge in both informal adjustment and in authorizing the filing of a petition would impose a far greater burden upon the judge of the juvenile court than he presently seems to have, since it would require his active intervention in virtually every case. Also serious questions are raised as to whether the judge should be required to evaluate and prejudge the facts in order to determine whether a petition should be filed, and then subsequently sit in judgment upon those same facts at the hearing on the petition.

RULE 113. INFORMAL ADJUSTMENT

Rule

113.01 Informal Adjustment

Informal adjustment shall include the giving of counsel and advice to the juvenile and his custodian by the juvenile officer and other appropriate

persons and may include, with the consent of the juvenile if fourteen years of age or older and with the consent of his custodian, supervision by the juvenile officer and the temporary placement of the juvenile with persons other than his custodian in a manner consistent with Section 453.110.2 RSMo. Referrals may be made to public and private agencies which may provide beneficial guidance or services to the juvenile and his custodian.

Source: New. Compare Alaska Juvenile Court Rule 2 (b) (1).

Comment: Authority for informal adjustment in the juvenile court is found in Section 211.081 RSMo, which provides that upon receipt of information which appears to bring a juvenile within the jurisdiction of the court, "the court shall make or cause to be made a preliminary inquiry," and

> On the basis of this inquiry the juvenile court may make such informal adjustment as is practicable without a petition.

113.02 Notice to Parties

a. When it is determined to make an informal adjustment, the juvenile officer shall request the juvenile and his custodian, by letter, telephone or otherwise, to attend a conference at a designated date, time and place.

b. At the time the request to attend the conference is made, the juvenile and his custodian shall be informed that attendance at the conference is voluntary and that they may be represented by counsel at the conference.

Source: New. Compare Model Rule 3.

Comment: The purpose of paragraph b is to make clear to the juvenile and his custodian that the informal adjustment process does not constitute "official" action by the juvenile court which commands obedience on their part, but is merely an offer of advice and counsel to the juvenile and his custodian by the juvenile officer.

113.03 Informal Adjustment Conference

a. If the juvenile and his custodian appear at the informal adjustment conference without counsel, the juvenile officer shall inform them at the commencement of the conference of the right to counsel under Rule 116.01 and the right of the juvenile to remain silent. If either the juvenile or his custodian indicates a desire to be represented by counsel after being informed under Rule 113.03b, the juvenile officer shall adjourn the conference to afford opportunity to secure counsel.

b. The informal adjustment conference shall proceed substantially in the following manner. The juvenile officer shall inform the juvenile and his custodian:

(1) that information has been received concerning the juvenile

which appears to establish the jurisdiction of the juvenile court to act under the Juvenile Code;

(2) that he intends to discuss with them: (A) recommendations for action or conduct in the interests of the juvenile to correct the conditions of behavior or environment that may exist; (B) continuing conferences and contacts with the juvenile and his custodian by the juvenile officer or other authorized persons; and (C) the juvenile's general behavior, his home and school environment, and other facts bearing upon the proposed informal adjustment;

(3) that during the informal adjustment process no petition will be filed;

(4) that the informal adjustment process is voluntary with the juvenile and his custodian, and that they may withdraw from informal adjustment at any time;

(5) that if the juvenile or his custodian denies that the juvenile court has jurisdiction to act under the Juvenile Code, or wishes the facts to be determined by the court at a hearing, no further effort will be made to arrive at informal adjustment; and

(6) that the juvenile officer may terminate the effort at informal adjustment at any time and thereupon may dismiss the juvenile without further proceedings or may file a petition in the juvenile court.

c. The provisions of Rule 113.03b are intended to be advisory in nature and may be used as guidelines in conducting the informal adjustment interview. Modification of these procedures to meet differing circumstances is not prohibited.

d. Following the initial conference, subsequent conferences may be scheduled by the juvenile officer during the informal adjustment process.

Source: New. Compare Model Rules 3 and 4.

Comment: While Section 211.081, RSMo, provides that the circuit court, juvenile division, may "make such informal adjustment as is practicable" the Juvenile Code nowhere describes how informal adjustment is to be accomplished. This Rule recognizes that the informal adjustment process is voluntary on the part of the juvenile and his custodian, and that the court has no power to compel submission to the process or to order any particular course of conduct on the part of either the juvenile or custodian. The content of the Rule expresses currently accepted practice by juvenile court personnel within the informal adjustment process.

113.04 Termination of Informal Adjustment

a. The juvenile officer may either terminate the informal adjustment process and dismiss the juvenile without further proceedings or terminate the

informal adjustment process and file a petition in the juvenile court if at any time:

(1) it appears that the juvenile and his custodian have received the maximum benefit from the informal adjustment process;

(2) the juvenile or his custodian declines to participate further in the informal adjustment process;

(3) the juvenile or his custodian denies the jurisdiction of the court to act under the Juvenile Code;

(4) the juvenile or his custodian expresses his desire that the facts be determined by the court;

(5) the juvenile or his custodian fails without reasonable excuse to attend scheduled conferences;

(6) the juvenile or his custodian appears unable or unwilling to benefit from the informal adjustment process;

(7) the juvenile officer becomes apprised of new or additional information which makes it appear that further efforts at informal adjustment would not be in the best interests of the juvenile or of society; or

(8) other sufficient reasons exist for terminating the informal adjustment process.

b. The informal adjustment process shall not continue beyond a period of six months from its commencement unless extended by the court for an additional period not to exceed six months by an order entered prior to the expiration of the original six-month period.

c. Upon termination of the informal adjustment process and dismissal of the juvenile without further proceedings, the juvenile officer shall notify the juvenile and his custodian thereof and report such action to the court.

Source: Generally new. Section 211.081 RSMo authorizes the juvenile court to "make such informal adjustment as is practicable without a petition." Compare Model Rules 4 and 5.

Comment: Under this Rule the informal adjustment process may not in any event continue beyond a period of twelve months from its inception.

The placing of a time limit upon the informal adjustment process is both to reduce the possibility of abuse and to require any long-range program for the child to be approved by the court. That the process may be subject to abuse is recognized in the comment to Section 10 of the Uniform Juvenile Court Act: "There is, however, danger that, unless controlled, the prospect that court proceedings will be

commenced and the fear of their consequences may make the participation of the parties an involuntary one, and their agreeing to prescribed terms a product of compulsion."

The informal adjustment process does not authorize detention of the juvenile if not otherwise permitted by the Juvenile Code or by these Rules.

RULE 114. PETITION

Rule

114.01 Style and Content of Petition

a. The petition shall be entitled "In the Interest of _____, Male/Female, Age _____."

b. The petition may be filed upon information and belief, and shall set forth plainly and concisely, with reasonable particularity:

(1) the full name, birth date, and residence of the juvenile in whose interest the petition is filed.

(2) the name and residence of (A) the juvenile's parents; (B) the juvenile's legal guardian, if there be one; (C) any person or agency in whose custody the juvenile may be; (D) the juvenile's nearest relative, if no parent or guardian be known; and (E) the juvenile's spouse, if any;

(3) the facts which bring the juvenile within the jurisdiction of juvenile court, including the date, place and manner of the acts alleged and the law or standard of conduct, if any, allegedly violated by the acts; and

(4) any other pertinent data or information.

c. The petition shall be filed in the office of the clerk of the juvenile court.

Source: Section 211.091 RSMo. Compare Model Rule 6.

Comment: This Rule generally follows Section 211.091 RSMo in specifying the form and content of the petition. Several relatively minor modifications are introduced in the interest of clarity: the age and sex of the juvenile must appear in the caption, and the facts which bring the juvenile within the jurisdiction of the court are more clearly specified than in Section 211.091. In addition, the Rule provides that the petition may be filed upon the information and belief of the juvenile officer who files it, thereby obviating the requirement of Section 211.091.3.

114.02 Amendment of Petition

The petition may be amended by leave of court at any time. When the petition is amended the court shall grant the parties such additional time to prepare as may be necessary to provide a full and fair hearing.

Source: New. Compare Model Rule 8; Civil Rules 55.53, 55.54.

Comment: When the petition alleges violation by the juvenile of a state statute or municipal ordinance, care must be taken to comply with the requirements of due process of law if the petition is amended at any time after the hearing on the petition has commenced.

114.03 Responsive Pleadings and Motions

No party shall be required to file a responsive pleading. A party may file

(1) a pleading responsive to the petition at any time prior to the hearing or at the commencement thereof; and

(2) a motion at any appropriate time.

Source: New. Compare Model Rule 7.

Comment: A party filing a pleading or motion must effect service thereof upon other parties pursuant to Rule 115.04.

RULE 115. SERVICE OF PROCESS AND SUBPOENAS

Rule

115.01 Summons and Service of Petition

a. When a petition is filed and a date for hearing has been set pursuant to Rule 119.01, the clerk of the court shall issue a summons directing the juvenile to be present at the hearing and, unless the court orders otherwise, requiring the custodian of the juvenile to appear at the hearing and to bring the juvenile with him. If the juvenile is in a detention facility, the court shall direct that the juvenile be brought to the hearing.

b. Service of summons shall be made personally upon a juvenile twelve years of age or older. Service upon a juvenile less than twelve years of age shall be made pursuant to Rule 115.05.

c. Service of summons shall be made personally upon the parents of the

juvenile and upon the person having actual custody of the juvenile, provided that if personal service cannot be had upon such persons, service of summons shall be made by registered or certified mail to their last known address. Service of summons upon other parties may be made personally or by registered or certified mail to their last known address. Personal service under this paragraph shall be made in the manner provided in Rule 54.13. The inability to serve any party under this paragraph shall not deprive the court of jurisdiction to proceed.

d. Personal service shall be effected upon the juvenile and, when required, upon his custodian at least twenty-four hours before the time set for the hearing. Registered or certified mail shall be mailed at least five days before the time of the hearing.

e. Service of summons may be made by the sheriff or the juvenile officer or, if ordered by the court, any other suitable person.

Source: Sections 211.101, 211.111 RSMo. Compare Model Rule 20.

Comment: Because it is sometimes necessary to conduct a juvenile court hearing at the earliest possible time, paragraph d of this Rule retains the statutory provision of Section 211.111.2 requiring a minimum of only twenty-four hours' notice of the hearing. However, in most cases the circumstances will permit earlier notice to be given, and this should be done.

The constitutional standard of adequate notice of the charges contained in the petition is set forth in *In the Matter of Gault,* 387 U.S. 1, 33, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967):

> Notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded*** [S]uch written notice [must] be given at the earliest practicable time, and in any event sufficiently in advance of the hearing to permit preparation. ***[Due process] does not allow a hearing to be held in which a youth's freedom and his parents' right to his custody are at stake without giving them timely notice, in advance of the hearing, of the specific issues that they must meet.

115.02 Form and Content of Summons

The summons shall state the date, time and place of the hearing. It shall be substantially in the form set forth in Rule 128.11. A copy of the petition shall be served with the summons.

115.03 Summons May Order Juvenile Taken Into Judicial Custody

If the court determines probable cause to believe:

(1) that the juvenile is without proper care, custody or support and that immediate protective custody is necessary to prevent personal harm to the juvenile; or

(2) that the juvenile has committed acts that would bring the juvenile within the jurisdiction of the court under subdivisions (2) or (3) of subsection 1 of section 211.031 RSMo;

the court may order by endorsement upon the summons that the person service the summons take the juvenile into judicial custody and immediately deliver the juvenile to the juvenile officer.

Source: Compare Model Rule 21 Section 211.101.3 RSMo.

Cross-Reference: Judicial custody is defined in Rule 110.05.a(8). Rule 111.01 specified when a juvenile may be taken into judicial custody without a court order.

115.04 Service and Filing of Other Pleadings, Motions and Notices

All written pleadings subsequent to the original petition, all motions other than those which may be heard ex parte, and all notices and other papers which are required to be served upon the parties shall be served upon each of the other parties affected thereby and filed with the court, in the manner set forth in Rule 43.01.

Source: New.

Comment: Juvenile court proceedings are civil in nature. Accordingly, pleadings subsequent to the original petition, and motions and notices should be served in the same manner as in other civil proceedings.

115.05 Service Upon Juvenile Under Twelve Years of Age

a. Service of the petition, motions, notices and other papers upon a juvenile less than twelve years of age shall be effected by making such service upon his custodian.

b. If the interests of a juvenile less than twelve years of age appear to conflict with those of his custodian, the court shall appoint a guardian *ad litem* to represent the interests of the juvenile and to receive service.

Source: New. Compare Model Rule 37.

Comment: This Rule recognizes that a child below the age of twelve may not comprehend the nature of process which might be served upon him in a juvenile proceeding, and provides that service upon his custodian is adequate.

115.06 Waiver of Service by Custodian

a. A custodian may waive service of summons on himself by executing a written waiver. At the time of waiver a copy of the petition shall be given to the custodian.

b. Appearance at the hearing by a custodian shall constitute a waiver by the custodian of service of summons.

Source: Compare Rule 54.66 (e).

Comment: The custodian may waive his right to service of summons, but may not waive the right of the juvenile to such service.

115.07 Witness — Subpoena

A party is entitled to compulsory process for any necessary witness and, upon request of a party or the judge, the clerk of the court shall issue a subpoena stating the date, time and place of appearance.

Source: Compare Sections 211.101.4, 491.090 and 491.100 RSMo. See also Uniform Juvenile Court Act Section 18:

> [Subpoena] Upon application of a party the court shall issue, or the court on its own motion may issue, subpoenas requiring attendance and testimony of witnesses and production of papers at any hearing under this Act.

Comment: Rule 115.07 is broader in scope than Section 211.101.4, which states that "Subpoena may be issued requiring the appearance of any other person whose presence, in the opinion of the judge, is necessary."

This Rule gives a party a right to subpoena witnesses that he deems necessary without being first required to convince the judge of the necessity of the witness' presence at the hearing. This change is made for three reasons: First, the broadening of the statutory language is probably necessary to accord due process of law to the parties. Second, to require the judge to make a prehearing determination as to whether a particular witness may be called is inconsistent with the judge's subsequent function of hearing the evidence and determining the facts of the case. Third, to require all parties to secure judicial approval before subpoenas will be issued impinges severely, even in a routine case, upon the limited and valuable time of the judge.

Any abuse of the power to request subpoenas may be dealt with by the court in the same manner as in other civil cases, or in criminal cases.

RULE 116. REPRESENTATION BY COUNSEL

Rule

116.01 Right to Counsel

a. A party is entitled to be represented by counsel in all proceedings.

b. The court shall appoint counsel for a juvenile prior to the filing of a petition if a request is made therefor to the court and the court finds that the juvenile is the subject of a juvenile court proceeding and that the juvenile making the request is indigent.

c. When a petition has been filed, the court shall appoint counsel for the juvenile when necessary to assure a full and fair hearing.

d. When a petition has been filed and the juvenile's custodian appears before the court without counsel the court shall appoint counsel for the custodian if it finds:

(1) that the custodian is indigent; and

(2) that the custodian desires the appointment of counsel; and

(3) that a full and fair hearing requires appointment of counsel for the custodian.

e. Counsel shall be allowed a reasonable time in which to prepare to represent his client.

f. Counsel shall serve for all stages of the proceedings, including appeal, unless relieved by the court for good cause shown. If no appeal is taken, services of counsel are terminated following the entry of an order of disposition.

g. The juvenile and his custodian may be represented by the same counsel except where a conflict of interest exists. Where it appears to the court that a conflict exists, it shall order that the juvenile and his custodian be represented by separate counsel, and it shall appoint counsel if required by paragraph c or d of this Rule.

h. When a petition has been filed, a juvenile may waive his right to counsel only with the approval of the court;

i. Waiver of counsel by a juvenile may be withdrawn at any stage of the proceeding, in which event the court shall appoint counsel for the juvenile if required by paragraph c of this Rule.

j. Where the services of a public defender or legal aid society are available, the court may appoint counsel therefrom to represent any indigent juvenile or custodian. In all cases where counsel is appointed for the juvenile, the court may assess a reasonable attorney fee and any case. In the discretion of the court such costs may be adjudged against the custodian of the juvenile or

the informing witness as provided by law, or as otherwise provided by law.

Source: New. Compare Model Rule 39; Uniform Juvenile Court Act, Section 26. Section 2kk,27, RSMo, authorizes adjudging costs against the parent of the juvenile or the informing witness.

Comment: Rule 116.01 makes full provision for counsel for the juvenile and his custodian.

116.02 Appearance by Counsel

a. Counsel shall enter his appearance on behalf of a party in the proceeding by filing a written notice of appearance with the court, by filing a pleading, motion or notice signed by counsel, or by appearing in open court and advising the court that he is representing a party.

b. After counsel has entered his appearance, he shall be served with copies of all subsequent pleadings, motions, and notices required by rule or statute to be served on the party he represents.

c. Counsel may withdraw only with leave of court and in a manner consistent with Rule 4 and any applicable local court rules.

Source: New. Compare Model Rule 40.

Comment: This Rule provides the procedure whereby an attorney enters his appearance in a juvenile cause, and whereby he may withdraw from further representation.

RULE 117. PROVISIONS APPLICABLE TO ALL HEARINGS

Rule

117.01 Presence and Exclusion of Parties

a. Except as provided in this Rule, the juvenile and his custodian shall have the right to be present at all times during any hearing.

b. In any hearing where after proper service or notice has been made the juvenile or his custodian fails to appear, the court may in its discretion commence the hearing without the presence of the juvenile or his custodian, except that the hearing may not be commenced without the presence of the juvenile:

(1) in a hearing under Rule 118 to determine whether the juvenile is a proper subject to be dealt with by the juvenile court; or

(2) in a hearing under Rule 119 upon a petition alleging that the behavior of the juvenile is injurious to his welfare or to the welfare of others, or that the juvenile has violated a state law or municipal ordinance.

c. In any hearing the court may in its discretion exclude the juvenile from any part of the hearing where it appears that exclusion is in the best interest of the juvenile, except:

(1) in a hearing under Rule 118 to determine whether the juvenile is a proper subject to be dealt with by the juvenile court; or

(2) in a hearing under Rule 119 upon a petition alleging that the juvenile has violated a state law or municipal ordinance at any time prior to a finding that the facts alleged in the petition have been established.

d. In any hearing the court may in its discretion exclude the juvenile's custodian from any part of the hearing where it appears that exclusion is in the best interests of the juvenile.

e. In determining whether to proceed without the presence of the juvenile or his custodian, the court shall consider, among other things, the age and emotional maturity of the juvenile, the relationship between the juvenile and his custodian, the nature and probable value of the evidence which may be presented, and whether the juvenile or his custodian has expressly requested to be present during the hearing or during the presentation of the evidence.

f. This Rule shall not restrict the power of the court to exclude an unruly or disruptive person from the hearing where such exclusion is necessary to the orderly conduct of the court proceedings.

g. After the commencement of a hearing with the juvenile present the subsequent voluntary absence of the juvenile shall not prevent the court from conducting the hearing to a conclusion.

Source: New. Compare Model Rule 36.

Comment: Section 211.171.2 RSMo provides that "The hearing may, in the discretion of the court, proceed in the absence of the child and may be adjourned from time to time." This section followed similar juvenile code philosophy current at the time of its adoption. See, e.g., Standard Juvenile Court Act Section 19 (6th ed. 1959): "The child may be excluded from the hearing at any time in the discretion of the judge."

Following the *Gault* decision (387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2nd 527 [1967]), however, it has been recognized that at least in those juvenile court proceedings in which the conduct of the juvenile is in question the court's power to proceed without the presence of the juvenile is restricted. The Comment to Model Rule 36 is instructive:

> Section 19 of the Standard Juvenile and Family Court Acts permits the child to be excluded from the hearing

at any time. *Standards for Juvenile and Family Courts* holds (p. 75) that the child should not be excluded during the adjudicatory hearing of a delinquency petition. This position, adopted in the rule, seems to be required by the *Gault* case, which establishes the right to confrontation in a disputed juvenile court adjudication.

> In general, children should not be excluded from any hearing and may not be excluded if the testimony concerns their own acts. However, the airing of allegations regarding a child's parents and home life may be traumatic and disruptive of the family relationship. Such material may be elicited in neglect proceedings, in which the parents' acts or omissions, hurtful to the child, are the subject of the court's inquiry. In many such cases, the child need not be present at the hearing at all or may be excused while particular testimony is being given, and his interests can be protected by counsel. If the child is not represented by counsel, it may be appropriate to appoint a guardian *ad litem* to protect him while he is excluded from the courtroom.

A similar position is taken by Section 24 of the Uniform Juvenile Court Act:

> The court may temporarily exclude the child from the hearing except while allegations of his delinquency or unruly conduct are being heard.

Section 29 of the Children's Bureau Legislative Guide is similar:

> If the court finds that it is in the best interest of the child, his presence may be temporarily, excluded from the hearings except while allegations of delinquency or need of supervision are being heard.

117.02 Admission to Hearings

The court may in its discretion, consistent with the welfare of the juvenile and the objectives of the Juvenile Code, admit to hearings persons with a direct interest in a given case or in the work of the juvenile court.

Source: This Rule is a restatement of Section 211.171.5 RSMo.

Comment: This Rule permits the juvenile court to protect the confidentiality of the proceeding by excluding the general public, but allows the admission to hearings of persons interested in a given case or interested in the work of the court.

117.03 Record of Proceedings

A complete record of all testimony shall be kept by stenographic reporting, by mechanical or electronic device, or by some combination thereof. Exhibits and other tangible evidence shall be preserved by the party offering the same unless otherwise directed by the court.

Source: New. Compare Model Rule 42.

Compare Section 211.171.4 RSMo: "Stenographic notes or an authorized recording of the hearing shall be required if the court so orders or if requested by any party interested in the proceeding."

See Uniform Juvenile Court Act Section 24(c): "If requested by a party or ordered by the court the proceedings shall be recorded by stenographic notes or by electronic, mechanical, or other appropriate means. If not so recorded full minutes of the proceedings shall be kept by the court."

See also Standard Juvenile Court Act Section 19; Children's Bureau Legislative Guide Section 29(b).

Comment: The Juvenile Court in Missouri, as a division of the Circuit Court, has available to it the services of a full-time court reporter. Consequently **there is no good reason why a complete record of all testimony cannot be secured in any hearing in the Juvenile Court.** Thereby a record is provided for purposes of appeal, and, as noted in *Gault,* the judge will be spared "the unseemly duty of testifying under cross-examination as to the events that transpired in the hearings before him." 387 U.S. 1, 58, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967).

This rule is not applicable to informal adjustment conferences under Rule 113.

117.04 Rules of Evidence

At all hearings involving adjudication of the allegations of a petition the rules of evidence applicable to proceedings in equity shall govern.

Source: Section 211.171.6 RSMo. Compare Article V, Section 5 of the Constitution of Missouri.

117.05 Standard of Proof

a. In all hearings upon a petition alleging as a basis for jurisdiction that the juvenile has committed an act or acts which would be a crime if committed by an adult, such act or acts shall be proved beyond a reasonable doubt.

b. In all other hearings the facts alleged shall be proved by clear and convincing evidence.

Source: New. Compare Section 211.171.6 RSMo; Model Rule 26.

Comment: Paragraph a of this Rule follows the holding of the Supreme Court of the United States in *In re Winship*, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970), and of the Supreme Court of Missouri in *In re Fisher*, 468 S.W.2d 198 (Mo. Div. 2, 1971).

RULE 118. DISMISSAL TO ALLOW PROSECUTION UNDER GENERAL LAW

Rule

118.01 Order for Hearing

When the petition alleges that a juvenile between the ages of fourteen and seventeen years has committed an act which would be a felony if committed by an adult, the court, at any time prior to the commencement of a hearing on the allegations of the petition, may, upon its own motion or upon motion by the juvenile officer, the juvenile or the juvenile's custodian, order that a hearing be held for the purpose of determining, in the discretion of the court, whether the juvenile is a proper subject to be dealt with under the provisions of the Juvenile Code. When the order for a hearing is made, the court shall set the date, time and place thereof.

Source: Section 211.071 RSMo.

Comment: Rule 118.01 makes clear that the juvenile or his custodian may move that a hearing be held to determine whether the juvenile is a proper subject to be dealt with by the juvenile court, but the rule leaves to the discretion of the court whether a hearing is to be held.

118.02 Notice of Hearing

a. When a hearing is ordered under Rule 118.01, written notice thereof shall be given to the juvenile and his custodian in the same manner as provided for service of summons in Rule 115.01. Notice of the hearing may be waived by the custodian in accordance with Rule 115.06.

b. Notice shall be substantially in the form set forth in Rule 128.20. It shall contain a statement that the purpose of the hearing is to determine whether the juvenile is a proper subject to be dealt with under the provisions of the Juvenile Code, and that if the court finds that the juvenile is not a proper subject, the petition will be dismissed to allow prosecution of the juvenile under the general law.

Source: New. Compare Model Rule 10.

Comment: Section 211.071 RSMo is silent as to the giving of notice concerning the hearing to be held under the section. *Kent v. United States,* 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966), and *In re Gault,* 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed. 2d 527 (1967), hold that adequate prior notice of a hearing is essential. This Rule makes provision for notice to the juvenile and his custodian. Compare Rule 44.01(d), which requires five days' notice of any hearing upon a motion.

118.03 Investigation

a. When the court orders a hearing under Rule 118.01, the juvenile officer shall make an investigation to aid the court in determining whether the juvenile is a proper subject to be dealt with under the provisions of the Juvenile Code.

b. **A written report** of the investigation, **including all social records, shall be made to the court,** and, prior to the hearing, may be made available to the parties **and shall be made available to counsel.**

c. The court may order that a supplemental investigation be made by the juvenile officer and a written report thereof filed, and may continue or adjourn the hearing to afford opportunity to complete the supplemental investigation. Prior to the hearing the report of any supplemental investigation may be made available to the parties and shall be made available to counsel.

Source: Section 211.071 RSMo.

Comment: Section 211.071 RSMo requires that an investigation be made and the report thereof be received by the court before the court may dismiss the petition.

Kent v. United States, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966), requires that counsel for the child be afforded access to social records which are to be considered by the court in deciding whether to relinquish jurisdiction over the juvenile. *Kent,* however, while apparently recognizing that the right to counsel in a hearing of this kind might be waived, does not specify whether, in the absence of counsel, the parties are to be given access to the records.

118.04 Dismissal Hearing

a. If **after a hearing has been ordered** under Rule 118.01 it shall appear to the court that the juvenile is not represented by counsel, **counsel shall be appointed for the juvenile** if required by Rule 116.01.

b. At the hearing the court shall receive evidence relating to whether the juvenile is a proper subject to be dealt with under the provisions of the Juvenile Code. The juvenile officer who prepared the report of investigation may be examined by counsel, and other witnesses may be examined and other evidence received.

c. In reaching its decision the court shall consider all evidence relevant to whether the juvenile is a proper subject to be dealt with under the provisions of the Juvenile Code, including but not limited to:

(1) whether the offense alleged involved viciousness, force or violence; and

(2) whether the offense alleged is part of a repetitive pattern of offenses which indicates that the juvenile may be beyond rehabilitation under the Juvenile Code; and

(3) the record of the juvenile; and

(4) the programs and facilities available to the juvenile courts.

d. After the conclusion of the hearing if the court finds that the juvenile is not a proper subject to be dealt with under the provisions of the Juvenile Code, it shall order the petition dismissed to permit the juvenile to be prosecuted under the general law, and shall include in its order the reasons for its decision. A copy of the petition and order of the dismissal shall be sent to the prosecuting attorney.

e. If the court does not dismiss the petition to permit the juvenile to be prosecuted under the general law, it shall set a date for the hearing upon the petition, in accordance with Rule 119.01.

Source: New. Compare Section 211.071 RSMo; Model Rule 11. Paragraph c is derived from Minnesota Juvenile Court Rule 8-7 (2).

Comment: This Rule sets forth procedures to be followed at the dismissal hearing. Paragraph c states matters which should be considered by the court in making its determination as to whether the juvenile is a proper subject to be dealt with under the provisions of the Juvenile Code. The enumeration of these specific considerations is not intended to enlarge upon or modify the basic test of Section 211.071 RSMo, which has been upheld in *State v. Williams,* 473 S.W.2d 382 (Mo. 1971). Nor is it intended that paragraph c (1) require a full hearing into the facts of the alleged offense. Paragraph d follows *Kent v. United States,* 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966), and *State ex rel. T. J. H. v. Bills,* 504 S.W.2d 76 (Mo. banc 1974), which mandate that the court state its reasons for dismissing a juvenile court petition to permit a juvenile to be prosecuted criminally.

RULE 119. HEARING ON PETITION

Rule

119.01 Scheduling the Hearing

a. As soon as practicable after the petition is filed, the date for the hearing on the petition shall be set. If the juvenile who is the subject of the petition is in detention, the hearing shall be scheduled for the earliest possible date.

b. The hearing may be held before the scheduled date if the juvenile and his custodian, or if the juvenile is less than twelve years of age the juvenile's custodian alone, consent in writing or in open court that the hearing be held at a specified earlier date.

Source: New. Compare Model Rule 19.

Comment: Delay in adjudication is inimical to the purposes of the Juvenile Code. Particularly, is this true when the juvenile is in detention awaiting a hearing upon the petition.

119.02 Order of Proceedings

a. The order of proceedings should be as follows:

(1) First, the court shall determine that the juvenile and his custodian have been informed of the substance of the petition.

(2) Second, if the juvenile has appeared without counsel the court shall explain to him the right to counsel under Rule 116.01, and shall assign counsel if required by Rule 116.01.

(3) Third, if the petition alleges that the juvenile has violated a state law or municipal ordinance and the juvenile is not represented by counsel, the court shall explain to the juvenile his right to remain silent.

(4) Fourth, the court may inquire: (A) of the juvenile as to whether he admits or denies any of the allegations in the petition that the behavior of the juvenile is injurious to his welfare or to the welfare of others or that the juvenile has violated a state law or municipal ordinance; or (B) of the juvenile and his custodian in any other case, whether they admit or deny any or all of the allegations of the petition.

(5) Fifth, if the facts admitted are sufficient to authorize the court to act under the Juvenile Code, the court may make a finding that the allegations of the petition have been established by the admissions, or may in its discretion receive evidence to corroborate the admissions.

(6) Sixth, if no allegations are admitted or those admitted are insufficient to authorize the court to act under the Juvenile Code, the court shall receive evidence upon the allegations of the petition.

(7) Seventh, when the evidence has been received upon the allegations of the petition the court shall determine whether the allegations of the petition have been established in accordance with the standard of proof set forth in Rule 117.05. (A) If the allegations of the petition have not been so established, the court shall enter a judgment dismissing the petition. (B) If the allegations have been established, the court shall make a finding upon which it exercises its jurisdiction over the juvenile.

(8) Eighth, when the court finds that the allegations of the petition have been established the court may order the submission of a social study or supplemental social study pursuant to Rule 119.05. The court may continue the hearing until a later date pending receipt of the social study, provided that when the juvenile is in detention the court may not continue the hearing for more than thirty days unless a further continuance is agreed to by counsel for the juvenile.

(9) Ninth, the court shall receive evidence and other relevant data offered concerning disposition or treatment that should be ordered for the juvenile.

(10) Tenth, the court shall enter a judgment directing the action that shall be taken regarding the juvenile.

b. The parties shall in all proceedings under this Rule be afforded the opportunity to cross-examine the witnesses, to testify, to present evidence, and to present arguments to the court concerning the weight, credibility and effect of the evidence.

Source: New. Compare Model Rule 23; Section 211.171.1 RSMo.

Comment: This Rule provides that evidence is first heard upon the allegations of the petition to determine whether the court has authority to act under the Juvenile Code, and when this finding is made evidence may then be received upon the issue of disposition or treatment. While the first, or adjudicatory, phase is to be kept separate from the second, or dispositional, phase, there is no requirement that any period of time elapse between the completion of the first phase and the initiation of the second. Thus, the dispositional phase may immediately follow the adjudicatory phase unless the court determines for cause to continue the dispositional phase until a later date, as it would do if it wished to order a new or supplemental social study.

119.03 Presentation of Evidence

In all cases under Rule 119 in which the allegations of the petition are denied, the evidence shall be elicited by counsel for the juvenile officer. If the juvenile officer has no court appointed counsel, the court shall if practicable designate counsel, who may be the prosecuting attorney or his assistant.

Source: New. Compare Section 211.411.1 RSMo.

Comment: With the increased representation of juveniles by counsel, it is evident that some provision is necessary whereby the juvenile officer may have counsel to elicit the evidence in support of the petition. Juvenile courts may retain counsel as a part of the juvenile court staff authorized under Section 211.351.1 RSMo. Compare *Mashak v. Poelker,* 367 S.W.2d 625 (Mo. En Banc 1963), which found authority in Section 211.161.3 for the appointment of an administrative assistant to the juvenile court. However, in less populous circuits where contested cases may not frequently arise, the cost of retained counsel may not be justified. Accordingly, this Rule provides for the designation of the prosecuting attorney or his assistant under the authority of Section 211.411.1 RSMo;

> It is the duty of circuit, prosecuting and city attorneys, and county counselors representing the state or a city in any court, to give the juvenile officer such aid and cooperation as may not be inconsistent with the duties of their offices.

119.04 Order Terminating Proceedings

The court may at any time terminate the proceeding and dismiss the petition if it finds such action to be conducive to the welfare of the juvenile and in the best interests of the state.

Source: New. Compare Model Rule 28.

Comment: This Rule embodies the underlying philosophy of the Juvenile Code as stated in Section 211.011 RSMo.

119.05 Social Study

a. The court may order that in any case or in any class of cases a social study be made including an investigation and evaluation of the habits, surrounds, conditions and tendencies of the juvenile. The study shall be made by the juvenile officer or other person designated by the court.

When not otherwise provided, the court may upon its own motion or upon the request of any party order that a social study be prepared. The order may specify the time within which the social study shall be completed and submitted to the court.

c. At any time the court may order a supplemental social study to be made.

d. If the allegations of the petition are denied, the social study shall not be considered by the court prior to the determination whether the allegations of the petition have been established as prescribed by Rule 119.02.a(7).

e. The social study and any supplements thereto may be made available to the parties and shall be made available to counsel.

Source: New. Compare Model Rule 29. See Sections 211.081, 211.171 RSMo.

Comment: This Rule recognizes the practice of preparation of a social study concerning the juvenile by the court staff. The present Missouri Juvenile Code makes no provision for a social study as such, but does provide in Section 211.081 RSMo for a "preliminary inquiry to determine the facts," and, in Section 211.171.1 RSMo for the court at the hearing upon the petition to "inquire into the habits, surroundings, conditions and tendencies of the child."

This Rule makes it clear that the court should use the social study only in connection with the dispositional phase of the proceeding, and should neither read nor consider the social study until a finding has been made under Rule 119.02a(7)(B) that the allegations of the petition have been established.

119.06 Judgment

a. The judgment shall include the disposition or treatment of the juvenile.

b. When a judgment is entered, the clerk shall serve a copy of the judgment entry by mail in the manner prescribed in Rule 43.01 upon every party affected thereby who was not present in court in person or by counsel at the time of the rendition of such judgment.

c. If the judgment orders the juvenile placed in foster care, such order shall include determinations that:

(1) reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from his home;

(2) reasonable efforts have been made to make it possible for the juvenile to be returned to his home; and

(3) continuation of the juvenile in his home would be contrary to the welfare of the juvenile.

d. If the judgment otherwise orders placement of the juvenile outside of his home, the court may order that the juvenile be taken into custody for the purpose of making such placement.

Source: New. Compare Model Rule 32; Rule 74.78.

Comment: This Rule recognizes that the parties may not be present at the time the court enters its judgment, and provides for giving notice thereof to the parties.

119.07 Amendment of Judgment

a. Upon motion of any party made not later than fifteen days after entry of judgment the court may amend or correct the judgment.

b. The court retains control over judgments during the thirty-day period after entry of judgment and may vacate, reopen, correct or amend its judgment for good cause within that time. After the filing of notice of appeal and before the filing of the transcript on appeal in the appellate court, the juvenile court, after the expiration of such thirty-day period, may in its discretion vacate or amend the judgment upon stipulation of the parties accompanied by the withdrawal of the appeal.

Source: Compare Rules 73.01(c); 75.01; 78.02.

Comment: The purpose of this Rule is to enable the court to amend or correct the judgment after entry, to make the judgment conform to the pleadings and evidence, and to enable the court to reopen the judgment if it feels that additional evidence is necessary, or additional considerations exist that the court did not take adequately into consideration when it originally entered the judgment. Court action under this Rule generally relates to matters existing or occurring prior to the hearing on the petition. This Rule does not apply to later modification of the judgment based upon facts occurring subsequent to the original judgment. Modification is dealt with in Rule 119.09.

119.08 Post Dispositional Review

a. When a juvenile has been placed in foster care by a court, the court shall hold a dispositional review hearing within eighteen months next following the initial foster care placement and, if the juvenile remains in foster care, the court shall hold dispositional review hearings annually thereafter.

b. After each dispositional review hearing, the court shall determine whether the juvenile should be continued in foster care or should be returned to a parent, guardian or relative or proceedings should be instituted to terminate parental rights and legally free the juvenile for adoption and shall record any actions taken. In making its determination, the court may consider:

(1) whether a case plan has been approved by the court and, if so, whether all parties to the plan are in compliance therewith;

(2) whether there is continuing necessity for the placement;

(3) whether the placement continues to be appropriate;

(4) whether any existing case plan should be modified;

(5) whether the possibility exists of establishing a date by which the juvenile may likely be returned to a parent, guardian or relative or termination of parental rights proceedings commenced to free the juvenile for adoption;

(6) such other factors as are relevant to the individual needs of the juvenile.

c. Written notice of each dispositional review hearing shall be given to the juvenile, his custodian and guardian *ad litem* at least twenty days immediately preceding the hearings. Except as provided by Rule 117, the juvenile and his custodian shall have the right to be present at the hearing and to be represented by counsel.

Source: Section 210.720 RSMo; Compare Public Law 96-272.

Comment: The dispositional review hearings required by this Rule must be completed within the specified time periods. Earlier reviews are encouraged. These reviews are in addition to the review of reports required every six months by section 210.720 RSMo.

Rule 119.09. Modification of Judgment and Termination of Jurisdiction

a. A judgment of the juvenie court under which the court retains jurisdiction over the juvenile may be modified or such jurisdiction terminated at any time on the court's own motion.

b. A judgment in which the court retains jurisdiction may be modified after a dispositional review hearing as follows:

(1) If a record of the hearing was kept as provided in Rule 117.03, based upon findings from the hearing; or

(2) If a record of the dispositional review hearing was not kept as provided in Rule 117.03, based upon findings from a subsequent hearing held to develop information obtained at the dispositional review hearing if a record of the subsequent hearing is kept as provided in Rule 117.03.

c. Any party may at any time petition the court in writing for a modification of the judgment or for termination of jurisdiction. The court may deny the petition without hearing or may, in its discretion, conduct a hearing upon the issues raised by the motion and may make any orders relative to the issues as it deems proper.

d. When any judgment is modified, notice of the modified judgment shall be given every party as prescribed by Rule 119.06b.

Source: Compare prior Rule 121.01.

Comment: This Rule is not intended to suggest that the court without a hearing may modify a judgment so as to impose additional restraints upon the juvenile or upon the custodian or to deprive the custodian of custody or to commit the juvenile to the division of youth services.

Further, under Section 211.041 RSMo, once a juvenile has

been committed to and received by the division of youth services, the court loses jurisdiction over him unless he is returned to the court pursuant to chapter 219 RSMo.

Section 211.181.2 RSMo, specifies when the court may suspend execution of its order of commitment subject to such conditions as the court deems reasonable.

RULE 120. APPEALS

Rule

120.01 Appeals

a. An appeal shall be allowed to the juvenile from any final judgment made under the Juvenile Code and may be taken on the part of the juvenile by the custodian.

b. An appeal shall be allowed to a parent from any final judgment made under the Juvenile Code which adversely affects him.

c. Notice of appeal shall be filed within thirty days after entry of final judgment.

d. Neither the filing of a notice of appeal nor the filing of any motion subsequent to the judgment shall act to stay the execution of a judgment unless the court enters an order staying execution.

Source: Section 211.261 RSMo. Compare Missouri Civil Rule 81.01: "The right of appeal shall be as provided by law."

Comment: Under Article V, Section 5 of the Constitution of Missouri, Supreme Court "rules shall not change***the right of appeal." Accordingly, this Rule merely restates the Juvenile Code provision relating to appeals. It should be noted that the Missouri Supreme Court has held that an order dismissing a petition to allow prosecution of a juvenile as an adult, under Section 211.071 RSMo. (Juvenile Rule 118) is not appealable under Section 211.261. *In the Interest of T. J. H.*, 479 S.W.2d 433 (En Banc 1972).

RULE 121. TERMINATION OF PARENTAL RIGHTS

121.01. Termination, When

If a petition is filed by the juvenile officer pursuant to Section 211.447 RSMo, and if the court finds after the hearing held pursuant to Section 211.457 RSMo, that termination is in the best interest of the juvenile and that the statutory conditions for termination exist, the court may terminate the rights of a parent to a juvenile.

Source: New.

Comment: The provisions of former Rule 121, relating to modification of judgment, are encompassed in Rule 119.09.

121.02. Style and Content of Petition

The petition for termination of parental rights shall be in the form provided by Rule 114.01.

Source: New.

RULE 122. RIGHTS OF JUVENILES

Rule

122.01 Fingerprinting and Photographing

a. When a juvenile has been taken into judicial custody no law enforcement officer or juvenile officer shall take or authorize the taking of fingerprints or photographs of the juvenile without the prior oral or written consent of the court.

b. The court may at any time order the destruction of all originals and copies of fingerprints or photographs taken of the juvenile.

Source: Section 211.151.3 RSMo. Compare Model Rule 43.

Comment: In the event that the court gives oral consent to the taking of fingerprints or photographs, the consent should be promptly reduced to writing in order to avoid future uncertainty.

No apparent reason exists why the court cannot, in granting consent to fingerprint or photograph a juvenile, impose limiting conditions upon its consent, such as that neither the originals nor copies of the fingerprints or photographs be released to other municipal, state or federal agencies without express consent of the court.

Paragraph b refers only to fingerprints and photographs taken in connection with a juvenile proceeding, by law enforcement officers or the juvenile officer.

122.02 Juvenile Court Records to be Confidential

The records of the juvenile court as well as all information obtained and social records prepared in the discharge of official duty for the court shall be kept confidential and shall be open to inspection only by order of the judge of the juvenile court or as otherwise provided by statute.

Source: Section 211.321.1 RSMo.

Comment: This Rules restates the substance of Section 211.321.1 RSMo, which represents a public policy decision by the General Assembly to limit the disclosure of juvenile court records.

122.03 Law Enforcement Records of Juvenile to be Kept Separate

All records of juveniles made and retained by law enforcement officers and agencies shall be kept separate from the records of other persons and shall not be open to inspection or their contents disclosed or distributed, except by order of the judge of the juvenile court. This Rule shall not apply to all such records of a juvenile in a case in which the court has dismissed the petition under Rule 118.04 to permit prosecution under the general law. The term "records", as used in this Rule, shall include but is not limited to fingerprints and photographs of the juvenile.

Source: Section 211.321.2 RSMo.

Comment: This Rule restates the substance of Section 211.321.2 RSMo.

122.04 Sealing of Court Files and Destruction of Records

The court may, either upon its own motion or upon application by the juvenile or his representative, or upon application by the juvenile officer, enter an order to destroy all social histories, records and information, other than the official court file, and may enter an order to seal the official court file, as well as to seal all law enforcement officers' records at any time after the juvenile has reached his seventeenth birthday, if the court finds that it is in the best interest of the juvenile that such action or any part thereof be taken, unless the jurisdiction of the court is continued beyond the juvenile's seventeenth birthday, in which event such action or any part thereof may be taken by the court at any time after the closing of the juvenile's case.

Source: Section 211.321.3 RSMo.

Comment: This Rule restates the substance of Section 211.321.3.

122.05 Notification of Rights

Prior to in custody interrogation, the juvenile shall be advised by the juvenile officer that he has the right to remain silent, that he has the right to an attorney and if he is unable to afford an attorney that one will be provided for him, that whatever he says to the juvenile officer or juvenile court personnel cannot be used in any proceedings except juvenile court, that if he does talk he has the right to stop talking at any time and that whatever he says to the police or others other than the juvenile officer or juvenile court personnel may be used against him in the event he is prosecuted as an adult.

Source: The rule is new. Compare Model Rule 38; Uniform Juvenile Court Act § 27(6). It derives in part from Section 211.271(3), RSMo, as amended.

Comment: The purpose of this rule is to provide that a juvenile in custody shall be advised of his rights and the scope of such advice. It also recognizes the limitation on the use of admissions, confessions and statements by the child to the juvenile officer or juvenile court personnel.

RULE 123. PHYSICAL AND MENTAL EXAMINATION

Rule

123.01 Physical and Mental Examination of Juvenile

a. At any time after a petition has been filed, the court may order that the juvenile be examined by a physician, psychiatrist or psychologist appointed by the court to aid the court in determining:

(1) any allegation in the petition relating to the juvenile's mental or physical condition;

(2) the juvenile's competence to participate in the proceedings;

(3) whether the juvenile is a proper subject to be dealt with by the juvenile court; or

(4) any other matter relating to the adjudication or disposition of the case, including the proper disposition or treatment of the juvenile.

b. The services of a public or private hospital, institution, or phychiatric or health clinic may be used for the purpose of examination under this Rule.

Source: Section 211.161 RSMo. Compare Civil Rule 60.01. See also Standard Juvenile Court Act Section 22; Model Rule 41; Uniform Juvenile Court Act Section 28(b).

Comment: Many cases coming before the juvenile court involve the issue of the mental or physical condition of the juvenile. This Rule empowers the court to order an examination of the juvenile at any time after a petition has been filed. Thus, a pre-adjudication examination may be made to aid in determining such issues as whether the juvenile has been subjected to neglect or abuse, or whether the juvenile is mentally responsible for his actions or is in a fit condition to proceed. Where the court has determined that the juvenile is within its jurisdiction, an examination may be of substantial aid in deciding the proper disposition of the juvenile.

Under Section 211.161 RSMo, the juvenile court may cause a juvenile to be examined "in order that the condition of the child may be given consideration in the disposition of his case." This Rule makes clear that the court may order an

examination in connection with any aspect of the proceeding, provided that a petition has first been filed. Until a petition is filed, there is no case before the court, and there is no sufficient ground for requiring the juvenile to submit to an examination.

Where the examination is made prior to the adjudicatory phase of the hearing, in a case in which the petition alleges a violation of state law or municipal ordinance, the right of the juvenile not to incriminate himself is not meant to be violated by this Rule. The juvenile should be afforded protection similar to that given adults by Section 552.020.11 RSMo.

123.02 Physical and Mental Examination of Custodian

a. Prior to adjudication and after hearing the court may order examination by a physician, surgeon, psychiatrist or psychologist of a person whose ability to care for a juvenile who is before the court is in question.

b. After adjudication the court may order examination by a physician, surgeon, psychiatrist or psychologist of a person whose ability to care for a juvenile who is before the court is in question.

Source: Standard Juvenile Court Act Section 22. Compare Rule 60.01; Minnesota Juvenile Court Rule 10-2(3).

Comment: A physical or mental examination of the juvenile's custodian may be necessary to the full and proper adjudication of the allegations of a petition charging parental neglect or that the juvenile is subject to injurious environment or associations.

Further, in the dispositional stage of any proceeding, the court may need information concerning the physical or mental condition of the custodian in determining whether to place the juvenile in the custody of his parent or guardian, or to place the juvenile elsewhere. Authority for this Rule is derived in part from the fact that the parent or guardian is a party to a juvenile court proceeding. *Cf. In re J_____ O_____*, 372 S.W.2d 512 (St.L.Mo.App. 1963).

RULE 124. SEARCH WARRANTS

Rule

124.01 Search Warrants

Application for a search warrant in connection with a juvenile court proceeding may be made to the juvenile court.

Source: New. Compare Model Rule 44.

Comment: The circuit court, of which the juvenile court is a division, has authority to issue search warrants. Rule 34.01. This Rule is permissive, in that the application may, but need not, be made to the juvenile court.

RULE 125. TRANSFER OF SUPERVISION

Rule

125.01 Transfer of Proceedings or Supervision

a. On motion of either party or on its own motion made prior to final disposition, the court in which a proceeding is commenced may transfer the proceeding to the court located in the county of the juvenile's residence for further action.

b. Upon the motion of any party or upon its own motion at any time following a judgment of disposition or treatment the court having jurisdiction of the cause may place the juvenile under the supervision of another juvenile court within or without the state with the consent of the receiving court.

Source: Section 211.031, RSMo.

Comment: This Rule provides only for transfer of supervision of the juvenile following the entry of a judgment of the juvenile court assuming jurisdiction over the juvenile. Interstate placement of juveniles for supervision is governed by Article VII of the Interstate Compact on Juveniles, Section 210.570 RSMo.

RULE 126. DISQUALIFICATION OF JUDGE

Rule

126.01 Change of Judge

A change of judge of the juvenile court shall be ordered;

1. When the judge of the juvenile court is interested, related to a party, or otherwise disqualified under Rule 51.07; or

2. Upon application of an interested party under Rule 51.05, provided, that when one application has been made by a party other than the juvenile officer, no further application shall be permitted except an application by a party whose interest conflict with the interest of the party making the prior application.

Source: Rules 51.07, 51.06 (Effective September, 1973).

Comment: This Rule follows the holding of the *R. L. W. v. Billings,* 451 S.W.2d 125 (En Banc 1970), which held juvenile court proceedings are under the Rules of Civil Procedure for the purposes of disqualification of the juvenile court judge.

126.02 Powers and Duties of Special Judge

A judge sitting in the juvenile court in place of a disqualified judge shall, throughout the proceeding and until termination of the case, possess all the powers and perform all the duties of the regular judge. If it is found that the allegations of the petition have been established, further hearings in the case may be held at such place convenient to the parties within or without the circuit as the special judge may determine.

Source: Compare Civil Rule 51.15.

Comment: This Rule sets forth the customary powers of the judge who is called in to sit in the place of a judge who has been disqualified. Under this Rule, the adjudicatory phase of the proceeding shall be conducted within the county or city where venue lies under Section 211.031, but subsequent hearings, which may be numerous if it is found that the juvenile is within the jurisdiction of the juvenile court, may be conducted at a place convenient to the special judge and the parties.

RULE 127. JUVENILE COURT COMMISSIONERS

Rule

127.01 Qualifications and Appointment of Commission

a. The commissioner shall be appointed by a majority of the circuit court judges, en banc, to serve a term of four years.

b. The commissioner shall have the same qualifications as a circuit judge and shall conduct himself at all times befitting a member of the bench, shall devote full time to his duties as commissioner, and shall not engage in the private practice of law.

c. The commissioner may be removed from office during his term by a

majority of the circuit court judges, en banc, upon proof at a hearing before said judges of crime, misconduct, habitual drunkenness, willful neglect of duty, corruption in office, incompetency, or any offense involving moral turpitude or oppression in office, or unsatisfactory performance of duties.

Source: Section 211.023 RSMo, Missouri Constitution Art. VII, Section 1.

Comment: Section 211.023 RSMo authorizes the appointment of a commissioner by a majority of the circuit court judges, en banc, in each county of the first class and in the City of St. Louis.

The language of paragraph c is derived from Article VIII, Section 1 of the Constitution of Missouri, with the addition of the final phrase, "or unsatisfactory performance of duties."

127.02 Functions and Powers of Commissioner

The functions and powers of the commissioner shall be to hear and make findings and recommendations in such proceedings within the jurisdiction of the juvenile court as may be assigned to the commissioner by general or special order of the juvenile court. The commissioner shall have no administrative functions, unless such functions are assigned to him by the judge of the juvenile court.

Source: Compare Section 211.025, RSMo.

Comment: This Rule makes clear that the commissioner has only such authority as may be delegated or assigned to him by the judge of the juvenile court.

127.03 Assignment of Cases to Commissioner

The judge of the juvenile court may direct that detention hearings, informal hearings, hearings upon a petition and other proceedings under the Juvenile Code shall be heard in the first instance by the commissioner, on a case by case basis or by a general order directing the appropriate designated employee of the juvenile court to assign matters to the commissioner for hearing in accordance with a general plan established by the judge of the juvenile court or by any other appropriate method determined by the judge that tends to facilitate the operation of the juvenile court.

Source: Compare Section 211.025 RSMo: "The judge of the juvenile court may direct that any case shall be heard in the first instance by the commissioner in the manner provided for the hearing of cases by the court."

Comment: This Rule is intended to explain and implement the statutory language of Section 211.025 RSMo, and authorizes the adoption of a general procedure whereby cases of certain types may be assigned directly to the commissioner as a

matter of course.

127.04 Notice of Findings and Recommendations

a. In each case heard by the commissioner notice of the findings and recommendations of the commissioner, together with a statement of the right of rehearing, shall be given to the juvenile, the juvenile's custodian, and to any other person that the court may direct, in an appropriate manner directed by the judge of the juvenile court. Such notice shall be given in writing unless given to the parties in person at the hearing.

b. Upon the conclusion of the hearing in each case the commissioner shall transmit to the judge all papers relating to the case, together with his findings and recommendations in writing.

Source: Section 211.027 RSMo.

Comment: It would appear advisable in every case for the juvenile and his custodian to be given in writing a statement of the right of rehearing.

127.05 Motion for Rehearing — When Filed — Commissioner's Finding Final, When

The juvenile, his parents or custodian may, within fifteen days after receiving notice of the findings of the commissioner, file a motion for rehearing by a judge of the juvenile court. The judge shall promptly sustain or deny the motion and, if sustained, set a date for rehearing. If the motion is denied, the findings and recommendations of the commissioner shall become the decree of the court upon adoption by order of the judge.

Source: Section 211.029 RSMo.

127.06 Temporary Placement Pending Receipt of Request for Rehearing; Entry of Order

Upon receipt of the commissioner's findings and recommendations the judge of the juvenile court may make a temporary order in accordance with the recommendations of the commissioner by placing the juvenile in his home or in any other facility or institution authorized by Section 211.151 RSMo, pending the expiration of the time during which a request for rehearing may be made. If a request for rehearing is made, the temporary order may remain in effect until a rehearing is held by the court.

Source: New.

Comment: Under the decision of the Court of Appeals, St. Louis District, in *In re K_____ W_____ H_____*, 477 S.W.2d 433 (1972), the findings and recommendations of the commissioner cannot be adopted and confirmed by order of the judge until the expiration of the time during which a request for rehearing may be made. This Rule authorizes the

court to make a temporary order for placement of the juvenile pending the expiration of this period.

127.07 Rejection or Modification of Findings and Recommendations

The judge of the juvenile court may reject the findings and recommendations of the commissioner, or he may amend or modify the findings and recommendations provided the amendment or modification does not substantially affect the rights of the parties. If the commissioner's findings and recommendations are rejected, the parties shall have a hearing **de novo** before the judge. If the commissioner's findings and recommendations are amended or modified, notice thereof shall be given to the parties in the same manner provided for notice of the original findings and recommendations of the commissioner. The right of the parties to a hearing on such amended or modified commissioner's recommendations shall be the same as provided for the original findings and recommendations of the commissioner, and said amended or modified findings or recommendations shall become the decree of the court if no hearing before the judge is requested within ten days after the parties have received notice of the amendment or modification.

Source: New.

Comment: This Rule permits the judge of the juvenile court to reject, amend or modify the findings and recommendations of the commissioner even when no request for hearing has been made under Rule 127.05. It recognizes the power of the judge to deal with findings and recommendations which are to their face invalid, incomplete, or inconsistent, which power is inherent in Section 211.029 RSMo. Where rejection, modification or amendment occurs, the parties have a right to rehearing.

127.08 Rehearing Before Commissioner

Upon request of any party or upon his own motion, the judge of the juvenile court may in his discretion order a rehearing before the commissioner in any case, with such directions to the commissioner as the judge may deem appropriate. The findings and recommendations of the commissioner upon such rehearing shall be subject to the provisions of Rules 127.04 and 127.05 in the same manner as original findings and recommendations of the commissioner.

Source: New.

Comment: Where the findings and recommendations of the commissioner are incomplete or otherwise invalid, optimum use of judicial resources may dictate that the matter be returned to the commissioner for rehearing. This Rule authorizes the judge of the juvenile court to direct a rehearing of any matter

before the commissioner.

127.09 Designation of Location of Hearings

The judge of the juvenile court may designate by order the location within the geographical jurisdiction of the court where the commissioner shall conduct hearings.

Source: New.

Comment: This Rule provides authority for the judge of the juvenile court to designate a location other than the courthouse for the commissioner to hold hearings.

USE OF JUVENILE PROCEDURE FORM

The forms set forth in this Rule are recommended forms for use in the juvenile court. These forms or forms substantially similar may be used in juvenile court proceedings. The use of any form set forth in this Rule shall not be mandatory.

Source: New.

RULE 128. JUVENILE PROCEDURE FORMS PROMULGATED BY THE SUPREME COURT OF MISSOURI

Form

128.01 Order to Take Juvenile into Judicial Custody

State of Missouri)
) ss.
County of _____)

In The Circuit Court, Juvenile Division, of _____

THE STATE OF MISSOURI TO ANY PEACE OFFICER OR JUVENILE OFFICER IN THE STATE OF MISSOURI:

You are hereby ordered to take into judicial custody _____ _____, a person subject to the jurisdiction of the court, who is alleged to be within the jurisdiction of this court, for the reason that: _____ _____

and to bring him forthwith before this court to be here dealt with in accordance with law, and pending his appearance in this court he shall be detained in _____ _____ _____,

and you, the officer serving this order, shall forthwith make return hereof to this court.

WITNESS THE HONORABLE _____, Judge of said court and the seal thereof, issued in the county and state aforesaid on this _____ day of _____, 19____.

_____
Judge of the Circuit Court,
Juvenile Division

RETURN

Served the within order in my County of _____ and in the State of Missouri on this _____ day of _____, 19____, by taking the within named _____ into judicial custody and producing him before said court [delivering him into detention as aforesaid] on the _____ day of _____, 19____.

128.02 Authorization for Temporary Detention

In the Circuit Court, Juvenile Division,

_____ County, Missouri

In the Interest of

_____ ,

Male/Female, Age _____

AUTHORIZATION FOR TEMPORARY DETENTION

Date: _____

Time: _____

_____ , juvenile officer of _____

County, Missouri [supervisor of _____ County detention facility]

hereby authorizes the temporary detention of _____

in the authorized detention facility of the juvenile division at _____

_____

for the reason that _____

_____

_____

_____

_____

_____

Juvenile Officer [Supervisor]

Cross-Reference: Rule 111.06.b.

128.03 Notice to Judge That Juvenile is in Detention

NOTICE THAT JUVENILE IS IN DETENTION

To The Honorable _____ , Judge of the

Circuit Court, Juvenile Division, of _____ County, Missouri:

_____, male/female, age _____,

a juvenile, was taken into custody at _____, Missouri,

at _____ o'clock ____ m. on the _____ day of _____,

19 ____, for the reason that _____

_____

_____

_____

_____

and is now being held in detention at the juvenile detention facility at _____

_____.

The juvenile's address is _____,

and the name and address of the juvenile's custodian is _____

_____.

Date: _____, 19 ____.

_____

Juvenile Office/Detention Center
Supervisor

Cross-Reference: Rule 111.06c.

128.04 Order for Detention of Juvenile

In the Circuit Court, Juvenile Division,

_____ County, Missouri

In the Interest of	)	
	)	
_____	)	No. _____
	)	
MALE/FEMALE, Age _____	)	

ORDER OF DETENTION

Now on this _____ day of _____, 19 ____, appearing to the court [based upon information furnished the court by the juvenile officer] [after hearing the evidence offered in connection therewith at a detention hearing held this day] that the detention of _____

_____ is required pending the hearing upon [a] petition [filed] [to be filed] in this cause, for the reason that _____

_____

_____

_____

and it further appearing that said juvenile should be detained under the custody of this court at _____

_____ ,

THEREFORE it is ordered that _____ be detained at _____ pending further orders of the court.

_____

Judge of the Circuit Court,
Juvenile Division

Cross-Reference: Rules 111.07a, 111.08.

Note on Use: When an order of detention is made, an entry thereof should be made in the minutes of the court.

128.05 Notice of Detention Hearing

In the Circuit Court, Juvenile Division,

of _____ County, Missouri

In the Interest of)
)
_____ ,) No. _____
)
Male/Female, Age, _____ .)

NOTICE OF DETENTION HEARING

To _____ , Juvenile

_____ , Custodian

_____

_____

Notice is hereby given that on the _____ day of _____ , 19____, at _____ o'clock ____ m., in the Courtroom of the Circuit Court, Juvenile Division, of _____ County, Missouri, located at ____

_____, a hearing will be held to determine whether _____ should be continued in detention pending a hearing by the court upon the petition filed in his/her interest.

You are requested to attend this detention hearing and to present evidence concerning the necessity for continued detention of the juvenile. You have a right to be represented by an attorney at the hearing.

_____
Judge of the Juvenile Division
Clerk of the Juvenile Division
Juvenile Officer

Cross-Reference: Rule 111.08.

Note on Use: Notice of the detention hearing should be served upon the juvenile and his custodian.

128.06 Notice Upon Admission to Detention Facility

NOTICE UPON ADMISSION TO DETENTION FACILITY

You are hereby notified that when a juvenile is admitted to a detention facility he has the following rights under the law:

1. The juvenile has the right to remain silent. This means that he does not have to answer any questions or make any statements unless he desires to do so. If he decides not to remain silent, he has the right to stop talking at any time.
2. The juvenile has the right to consult with and be represented by an attorney. An attorney may be requested at any time. If the juvenile wishes, he will be given the opportunity to telephone an attorney. If the juvenile is unable to hire an attorney, a court will appoint one to represent him without cost to the juvenile.
3. The juvenile has the right to a detention hearing before the court to determine whether detention is necessary. A detention hearing will be held within 3 days, excluding Saturdays, Sundays and legal holidays. At such hearing the juvenile may be represented by an attorney.
4. The juvenile may immediately make a telephone call to his custodian and his attorney. A juvenile may make further telephone calls to his custodian and his attorney at reasonable times.
5. The juvenile's custodian and his attorney may visit him. The first visit may be made at any time. After the first visit, his custodian may visit him during visiting hours, and his attorney may visit him at any reasonable time.
6. If the juvenile refuses to see his custodian, the custodian may visit

him only if authorized by the juvenile judge or the juvenile officer.

7. No person other than a custodian, attorney, juvenile officer or member of the juvenile division staff may interview or question a juvenile in detention unless authorized by the juvenile judge or juvenile officer.
8. If the juvenile is represented by an attorney, no person may interview or question a juvenile unless agreed to by the juvenile's attorney or unless his attorney is present.
9. If the juvenile is fourteen years of age or older and has committed an act which would be a felony if committed by an adult or which is a violation of a traffic law, the court may permit the juvenile to be prosecuted as an adult. If such a case, anything he says to the police or others other than the juvenile officer or juvenile court personnel may be used against him in a criminal proceeding.

Cross-References: Rule 111.05, 111.10, 118.01.

128.07 Notification by Law Enforcement Officer That Juvenile Was Taken Into Custody and Released

NOTIFICATION THAT JUVENILE WAS TAKEN
INTO CUSTODY AND RELEASED

_____, 19____

TO _____, juvenile officer of _____

County, Missouri:

_____, male/female, age _____,

a juvenile of _____, _____, Missouri,

was taken into custody by the undersigned at _____, Missouri,

at _____ o'clock _____ m. on the _____ day of _____,

19____, for the reason that _____

_____

_____

and was thereafter released to the juvenile's custodian, _____

_____, of _____,

_____, Missouri.

_____

Cross-Reference: Rule 111.02d.

Note on Use: Whenever a juvenile is taken into custody and released without

being turned over to the juvenile officer, juvenile detention facility, or juvenile division, notice must be given in writing to the juvenile officer, stating the name and address of the juvenile and the reason he was taken into custody.

128.08 Notice of Informal Adjustment Conference

NOTICE OF INFORMAL ADJUSTMENT CONFERENCE

Date: _____

To: _____

_____

_____

Custodian of _____ :

You and the above-named juvenile are requested to appear for an informal adjustment conference before _____, juvenile officer of _____ County at _____ on _____, 19 ____, at _____ o'clock ____ m.

The purpose of the conference is to discuss _____

_____

_____

which is alleged to bring the juvenile, _____,

within the jurisdiction of the juvenile division of the circuit court.

Attendance at this Conference is voluntary, however, your failure to attend may result in a petition being filed in the juvenile division. You and the juvenile may be represented by an attorney at the conference.

_____

Juvenile Officer

Cross-Reference: Rule 113.02.

Note on Use: Rule 113.02 does not require written notice of an informal adjustment conference, but if such notice is given this form is suggested.

In the Interest of)
)
_____) No. _____
)
Male/Female, Age _____)

PETITION

Now comes the juvenile officer of _____ County, Missouri, and states to the court:

1. This petition is filed in the interest of _____ _____, a juvenile born on _____, 19____, and who resides at _____.

2. The name of the juvenile's father is _____, who resides at _____. The name of the juvenile's mother is _____, who resides at _____. The name of the juvenile's legal guardian [or] nearest known relative or spouse is _____, who resides at _____.

3. The juvenile is in the custody of _____ whose address is _____.

4. The juvenile, _____, is within _____ County, Missouri, and is in need of care and treatment because: _____

_____

_____

5. The juvenile, _____, resides or was found to be in _____ County, Missouri, or

The violation which the juvenile committed occurred in _____ County, Missouri.

6. The juvenile is in such condition or surroundings that his welfare requires that his custody be immediately assumed by the court, for the reason

that _____

_____ .

The juvenile is (is not) now in detention.

WHEREFORE, petitioner prays that the court make and enter such judgment as the court shall find to be necessary in the interests of the juvenile.

_____

Juvenile Officer of _____ County

Cross-Reference: Rule 114.01.

Note on Use: The petition should set out in detail and with particularity the facts constituting the basis for jurisdiction under Section 211.031, RSMo. The appropriate paragraph in 5 should be completed.

128.11 Circuit Court, Juvenile Division, Summons

IN THE CIRCUIT COURT, JUVENILE DIVISION

OF _____, MISSOURI

In the Interest of)
)
_____,) No. _____
)
Male/Female, Age _____)

SUMMONS

To _____:

You are hereby notified that a petition has been filed in the Circuit Court, Juvenile Division, of _____ County, Missouri, alleging that the above-named juvenile is subject to the jurisdiction of the court for the reasons set forth in the petition, a copy of which is attached hereto.

You are ordered to appear before this court at _____ on _____, the _____ day of _____, 19 ____, at _____ o'clock ____ m., for a hearing on the petition, and to have said juvenile with you then and there.

Witness my hand and the seal of said court this _____ day of _____ _____, 19 ____ .

Clerk of the Court

ORDER TO TAKE JUVENILE INTO CUSTODY

To the Person Serving This Summons:

You are hereby directed to take into your custody immediately the above-named juvenile, _____, and to deliver said juvenile without delay to the juvenile officer of _____ County, Missouri, so that the juvenile may be placed in detention at _____ _____ pending further order of the court.

Witness my hand and the seal of this court this _____ day of _____ _____, 19 ____.

Judge of the Circuit Court,
Juvenile Division

TO THE JUVENILE OR CUSTODIAN

You are to be present with the said juvenile at all hearings in this case, as your right to the custody and control of the juvenile will then be determined.

This summons must be served upon you at least twenty-four hours before the time set for the hearing, unless your have signed a waiver of service.

The hearing may be set over to a later time at your request, if the court finds you have a good reason for the request.

If at the first hearing the allegations in the petition are denied, the court may set this case for trial at a later date.

You have the following rights:

(1) The allegations in the petition are not assumed to be true, but must be proved by competent evidence presented to the court.

(2) You have the right to have an attorney present to assist you at all juvenile court hearings, or you may waive your right to an attorney. If you do desire to be represented by an attorney, you should begin now to obtain his services. If you cannot afford to pay an attorney and you wish to have an attorney to represent you, the court has the power to appoint an attorney to

represent you, without charge. However, in the event the court does appoint a public defender or other appointed counsel for the juvenile, the court may, after notice and hearing, order the custodian to make reimbursement for all or part of the cost of representation of the juvenile. You should make known to the court your desire to have an attorney appointed for you.

(3) When a petition is filed, the court is required to give you written notice of the date of hearing by summons, unless you have signed a waiver of service, in which case you may be notified by mail of the time and place of the hearing.

(4) If a statement or testimony is given by you, it may be used against you in court. You have the right to question any witness who appears at the hearing and to bring with you any witnesses. If you request, the court shall order persons to be present as your witnesses.

(5) At the end of the hearing when the court has reached a decision, you have the right to appeal the court's decision to a Missouri appellate court.

(6) If the juvenile is fourteen years or older and the petition alleges an offense which would be a traffic offense or which would be a felony if the juvenile were an adult, the court may conduct a hearing to determine whether the juvenile should be dealt with by the juvenile division, or whether he should be proceeded against as an adult, under the general law. If the juvenile is seventeen years or older and already under the jurisdiction of the juvenile division, and the petition alleges an offense which would be a violation of any criminal law or ordinance if the juvenile were an adult, the division may conduct such a hearing.

(7) If the division finds the facts in the petition to be true, it may make orders affecting the juvenile and his custodian concerning the care, custody and control of the juvenile, and the division may commit the juvenile to an institution.

RETURN OF SERVICE

I certify that I have duly executed this summons by serving a copy of the same upon _____ at _____,

Missouri, at _____ o'clock ____ m. the _____ day of _____ 19, ____ .

[I certify further that on the _____ day of _____, 19 ____, I did take into custody the above-named juvenile, _____ _____ , and did deliver him/her to the juvenile officer _____ County, Missouri.]

Cross-Reference: Rules 115.01, 115.02, 115.03.

Note on Use: If the court orders that the juvenile be taken into custody immediately, or if the juvenile is already in detention, the last phrase of the second paragraph of the summons should be stricken.

128.12 Waiver of Service of Summons By Custodian

IN THE CIRCUIT COURT, JUVENILE DIVISION

OF _____ COUNTY, MISSOURI

In the Interest of	)	
	)	
_____,	)	No. _____
	)	
Male/Female, Age ____.	)	

WAIVER OF SERVICE OF SUMMONS BY CUSTODIAN

I, _____ , hereby waive service of summons as required by law in this cause, acknowledge receipt of a copy of the petition which has been filed in the juvenile division herein, enter my appearance as a party to this cause, and consent that a hearing be held by the division on the _____ day of _____ , 19 ____ , at _____ o'clock ____ m., or any date and time to which the hearing may be continued by the court. I further acknowledge that I have been informed of my right to be represented by an attorney in this case.

_____

Custodian

Cross-Reference: Rule 115.06.

Note on Use: Only the custodian of the juvenile may waive service of summons. The juvenile may not waive service, nor may the custodian waive service for the juvenile.

128.13 Juvenile Division Finding of Jurisdiction

IN THE CIRCUIT COURT, JUVENILE DIVISION

OF _____ COUNTY, MISSOURI

In the Interest of)
)
_____,) No. _____
)
Male/Female, Age _____.)

FINDING OF JURISDICTION

Now on this _____ day of _____, 19 ____, there being present _____, juvenile officer of _____ County, and _____, attorney for the juvenile officer, and _____, the juvenile, _____ and _____, the juvenile's custodian, and _____, attorney for the juvenile, and testimony being heard and other evidence received by the court, the court finds that the allegations of the petition have been established, in that _____

_____

_____

and that the court has jurisdiction over the juvenile pursuant to the provisions of Section 211.031 _____, (insert number of sub-paragraph) RSMo.

_____
Judge of the Circuit Court,
Juvenile Division

Cross-Reference: Rule 119.02a(5), (7).

Note on Use: Rule 119.02a requires that the court, after receiving admissions or other sufficient evidence, to make a finding upon which it exercises its jurisdiction over the juvenile, or to dismiss the petition if the allegations thereof are not established. Preferably, this finding should not simply reiterate the allegations of the petition, but should state concisely the facts as found by the court. The finding will normally appear as an entry in the judge's minute book. Only when a finding of jurisdiction is made may the court receive evidence and make its determination concerning the disposition to be made in the case.

128.14 Circuit Court, Juvenile Division, Order of Disposition

IN THE CIRCUIT COURT, JUVENILE DIVISION

OF _____ COUNTY, MISSOURI

In the Interest of)
)
_____,) No. _____
)
Male/Female, Age _____)

ORDER OF DISPOSITION

Now on this _____ day of _____, 19 ____, there being present _____, juvenile officer of _____ County and _____, attorney for the juvenile officer, and _____, the juvenile, _____ and _____, the juvenile's custodian, and _____, attorney for the juvenile, and the court after receiving evidence having found [on the _____ day of _____, 19 ____] that the allegations of the petition were established in that _____

_____

_____

and that therefore it had jurisdiction over the said juvenile, and the court having received further evidence concerning the need of said juvenile for care and treatment, and it being found that said juvenile is in need of care and treatment which can be furnished by placing him in the custody of his custodian in his own home under the supervision of the court,

IT IS ORDERED that said juvenile be placed in the custody of his custodian in his own home at _____, Missouri, under the supervision of this court until further order of the court, and that while under such supervision he shall be subject to the rules and supervision established by this court.

Judge of the Circuit Court,
Juvenile Division

Cross-Reference: Rules 119.02, 119.06.

128.15 Court Order of Disposition Committing Juvenile to Custody of Division of Youth Services

IN THE CIRCUIT COURT, JUVENILE DIVISION

OF _____ COUNTY, MISSOURI

In the Interest of)
)
_____,) No. _____
)
Male/Female, Age _____)

ORDER OF DISPOSITION COMMITTING JUVENILE TO CUSTODY OF DIVISION OF YOUTH SERVICES

Now on this _____ day of _____, 19 ____, there being present _____, juvenile officer of _____ County and _____, attorney for the juvenile officer and _____, the juvenile, _____ and _____, the juvenile's custodian, and _____, attorney for the juvenile, and the court receiving evidence having found [on the _____ day of _____, 19 ____.] that the allegations of the petition were established in that _____

_____

_____

and that therefore it had jurisdiction over the said juvenile, and the court having received further evidence concerning the need of said juvenile for care and treatment, and it being found that said juvenile is in need of care and treatment which cannot be furnished by placing the juvenile in his own home, but which requires the care, custody and discipline of a facility of the division of youth services;

IT IS ORDERED that the said juvenile be committed to the custody of the

division of youth services, there to remain until discharged by law or until reaching the age of eighteen years, to be dealt with in all respects as provided by law, and that the said juvenile forthwith be delivered to the custody of the division of youth services.

_____

Judge of the Circuit Court,
Juvenile Division

Cross-Reference: Rules 119.02, 119.06.

128.16 Commitment to Custody of Division of Youth Services

IN THE CIRCUIT COURT, JUVENILE DIVISION

OF _____ COUNTY, MISSOURI

In the Interest of	)	
	)	
_____,	)	No. _____
	)	
Male/Female, Age _____	)	

COMMITMENT TO CUSTODY OF DIVISION OF YOUTH SERVICES

The State of Missouri to _____,

juvenile officer of _____ County, Missouri:

WHEREAS, in a proceeding in the Circuit Court, Juvenile Division, of _____ County, Missouri, on the _____ day of _____, 19 ____, the court having inquired into the need for care and treatment of _____, a juvenile over whom the court had previously assumed jurisdiction, who was then and there present, and the court having found the said juvenile to be in need of training, school care, custody and discipline; and

WHEREAS, the court entered an order of disposition committing the said juvenile, _____, to the custody of the division of youth services, there to remain until discharged by law or until reaching the age of eighteen years:

THEREFORE, you are hereby commanded to take the said _____

and deliver _____ to the custody of the division of youth services, there to remain in compliance with said order of this court, and to make a return thereof to this court.

_____
Judge of the Circuit Court
Juvenile Division

Cross-Reference: Section 211.231, RSMo.

128.17 Notice of Entry of Judgment

IN THE CIRCUIT COURT, JUVENILE DIVISION
OF _____ COUNTY, MISSOURI

In the Interest of)
)
_____,) No. _____
)
Male/Female, Age _____)

NOTICE OF ENTRY OF JUDGMENT

To _____ :

You are hereby notified that on the ____ day of _____, 19____, the Circuit Court, Juvenile Division, of _____ County, Missouri, made and entered the following judgment in this case:

You are further notified that you may have a right of appeal from this judgment under Rule 120.01, which provides:

a. An appeal shall be allowed to the juvenile from any final judgment made under the Juvenile Code and may be taken on the part of the juvenile by the custodian.

b. An appeal shall be allowed to a custodian from any final judgment made under the Juvenile Code which adversely affects him.

c. Notice of appeal shall be filed within thirty days after entry of final judgment.

d. Neither the filing of a notice of appeal nor the filing of any motion subsequent to the judgment shall act to stay the execution of a judgment unless the court enters an order staying execution.

_____

Clerk of the Court

Cross-Reference: Rule 119.06b.

Note on Use: Rule 119.06b requires that the clerk of the court serve a copy of the court's judgment by mail upon every party affected thereby who was not present in court in person or by counsel at the time of the entry of the judgment.

128.18 Motion to Dismiss Petition to Allow Prosecution of Juvenile Under General Law — Traffic Violation

IN THE CIRCUIT COURT, JUVENILE DIVISION

OF _____ COUNTY, MISSOURI

In the Interest of	)	
	)	
_____,	)	No. _____
	)	
Male/Female, Age _____	)	

MOTION TO DISMISS PETITION TO ALLOW PROSECUTION OF JUVENILE UNDER GENERAL LAW — TRAFFIC VIOLATION

Now comes _____, juvenile officer of _____ County, Missouri, and moves that the court dismiss the petition heretofore filed in the case to allow the juvenile, _____, to be prosecuted under the general law for a violation of a state traffic law law [municipal traffic ordinance], and in support thereof states:

1. The petition filed in this case alleges that the said juvenile did on the _____ day of _____, 19____, at _____, Missouri, _____

_____

2. The alleged acts by the juvenile, if committed by an adult, constitute a violation of a state traffic law [municipal traffic ordinance], to-wit Section _____, RSMo.

3. The said juvenile was at the time of the alleged acts over fourteen years of age, having been born on the _____ day of _____, 19____.

4. The said juvenile is not a proper subject to be dealt with under the provisions of the Juvenile Code, for the reason that _____

_____

_____

and that therefore said juvenile is beyond the rehabilitative care, treatment and services available to this court and cannot benefit further therefrom.

WHEREFORE, petitioner prays that the court receive the report of the investigation required by Section 211.071, RSMo, hear evidence, and find that the juvenile is not a proper subject to be dealt with under the provisions of the Juvenile Code, and thereupon order that the petition be dismissed and that said juvenile may be prosecuted under the general law for the aforesaid traffic violation.

_____

Juvenile Officer of _____
County, Missouri

Cross-Reference: Rule 118.01.

Note on Use: The allegations in paragraphs 1 and 4 should be stated with definiteness and in sufficient detail to inform the juvenile and the court of the grounds for the motion.

128.19 Motion to Dismiss Petition to Allow Prosecution of Juvenile Under General Law — Felony

IN THE CIRCUIT COURT, JUVENILE DIVISION

OF _____ COUNTY, MISSOURI

In the Interest of	)	
	)	
_____,	)	No. _____
	)	
Male/Female, Age _____	)	

MOTION TO DISMISS PETITION TO ALLOW PROSECUTION OF JUVENILE UNDER GENERAL LAW — FELONY

Now comes _____, juvenile officer of _____ County, Missouri, and moves that the court dismiss the petition heretofore filed in this case to allow the juvenile, _____ _____, to be prosecuted under the general law of this State for commission of a felony, and in support thereof states:

1. The petition filed in this cause alleges that the said juvenile did on the _____ day of _____, 19____, at _____, Misouri, _____ _____ _____ _____.

2. The alleged acts by the juvenile constitute an offense which would be a felony if committed by an adult, to-wit: _____ _____, a violation of Section _____, RSMo.

3. The said juvenile was at the time of the alleged acts over fourteen years of age, having been born on the _____ day of _____, 19____.

4. The said juvenile is not a proper subject to be dealt with under the provisions of the Juvenile Code, for the reason that _____ _____ _____, and that therefore said juvenile is beyond the rehabilitative care, treatment and services available to this court, and cannot benefit further therefrom.

WHEREFORE, petitioner prays that the court receive the report of the investigation required by Section 211.071, RSMo, hear evidence, and find that the juvenile is not a proper subject to be dealt with under the provisions of the Juvenile Code, and thereupon order that the petition be dismissed and that said juvenile may be prosecuted under the general law for the aforesaid felony.

Juvenile Officer of _____
County, Missouri

Cross-Reference: Rule 118.01.

Note on Use: The allegations in paragraphs 1 and 4 should be stated with definiteness and in sufficient detail to inform the juvenile and the court of the grounds for the motion.

128.20 Notice of Hearing on Motion to Dismiss Petition to Allow Prosecution of Juvenile Under General Law

IN THE CIRCUIT COURT, JUVENILE DIVISION

OF _____ COUNTY, MISSOURI

In the Interest of)
)
_____,) No. _____
)
Male/Female, Age _____)

NOTICE OF HEARING ON MOTION TO DISMISS PETITION TO ALLOW PROSECUTION OF JUVENILE UNDER GENERAL LAW

Notice is hereby given that a motion has been filed in the Circuit Court, Juvenile Division, to dismiss the petition heretofore filed in the interest of _____, a juvenile, to allow said juvenile to be prosecuted under the general law. A copy of the motion to dismiss is attached hereto.

The court has ordered that a hearing be held on said motion to dismiss, on _____, the _____ day of _____, 19____, at _____, _____ m., at _____, Missouri.

The purpose of the hearing is to determine whether the juvenile is a proper subject to be dealt with under the provisions of the Juvenile Code, and if the Court finds that the juvenile is not a proper subject, the petition will be dismissed to allow prosecution of the juvenile under the general law.

You have the right to have an attorney present to assist you at the hearing, or you may waive your right to an attorney. If you do desire to be represented by an attorney, you should begin now to obtain his services. If you cannot afford

to pay an attorney and wish to have an attorney to represent you, the court has the power to appoint a public defender or other appointed counsel. The court may, after notice and hearing, order the custodian to make reimbursement for all or part of the cost of representation of the juvenile.

You have a right to question any witness who appears at the hearing and to bring with you any witness. If you request, the court will order persons to be present as your witnesses.

_____

Judge/Clerk of the Court

Cross-Reference: Rule 118.02.

128.21 Order Dismissing Petition to Allow Prosecution Under General Law

IN THE CIRCUIT COURT, JUVENILE DIVISION

OF _____ COUNTY, MISSOURI

In the Interest of	)	
	)	
_____,	)	No. _____
	)	
Male/Female, Age _____	)	

ORDER DISMISSING PETITION TO ALLOW PROSECUTION UNDER GENERAL LAW

Now on this _____ day of _____, 19 ____, there being present _____, juvenile officer of _____ County, Missouri and _____, attorney for the juvenile officer, and _____, the juvenile, and _____ and _____, the juvenile's custodian, and _____, the attorney for the juvenile, and the court hearing the motion of the juvenile officer to dismiss the petition heretofore filed in the interest of the juvenile, to allow the juvenile to be prosecuted under the general law, and the court receiving testimony and other evidence upon said motion, and the report of the investigation required by Section 211.071, RSMo, and being fully advised in the premises, the court finds:

1. The petition filed in this cause alleges that the juvenile has committed an offense which would be a violation of a state traffic law/municipal traffic offense/felony if committed by an adult, to-wit:

_____

_____ ,

a violation of Section _____ RSMo/Municipal Ordinance.

2. The juvenile is _____ years of age, having been born on the _____ day of _____, 19 _____, and the alleged offense was committed after the juvenile became fourteen years of age.

3. The juvenile is not a proper subject to be dealt with under the provisions of the Juvenile Code for the reasons that _____

_____

_____

_____ .

WHEREFORE, it is ordered that the petition filed in this case be and the same is hereby dismissed, and that the juvenile may be prosecuted under the general law for the offense alleged in said petition.

_____

Judge of the Circuit Court,
Juvenile Division

Cross-Reference: Rule 118.04.

Note on Use: The order dismissing the juvenile court petition must state the reasons for the decision. A copy of the order, together with the petition, must be sent to the prosecuting attorney.

128.22 Motion to Modify Previous Order of Disposition

IN THE CIRCUIT COURT, JUVENILE DIVISION

OF _____ COUNTY, MISSOURI

In the Interest of)
)
_____ ,) No. _____
)
Male/Female, Age _____)

MOTION TO MODIFY PREVIOUS ORDER OF DISPOSITION

Now comes _____, juvenile officer of _____ County, Missouri, and moves that the court modify its previous order of disposition entered in this cause, and in support thereof states to the court:

1. On the _____ day of _____, 19 ____, the juvenile, _____, was found to be within the jurisdiction of the court, and the court [on the _____ day of _____, 19 ____] entered an order of disposition that _____ _____.

2. The aforesaid order of disposition should now be modified for the reason that _____ _____ _____.

3. For the foregoing reason, this court should modify its previous dispositional order to provide that _____ _____ _____.

WHEREFORE, petitioner prays that the court order that a hearing be held upon this motion, and that the court make and enter an order modifying its previous order of disposition in such manner as it shall find to be in the welfare of the juvenile and the best interests of the state.

_____

Juvenile Officer of _____
County, Missouri

Cross-Reference: Rule 119.09.

Note on Use: A motion to modify a previous dispositional order may also be filed by the juvenile or the juvenile's custodian.

128.23 Notice of Hearing Upon Motion to Modify Previous Order of Disposition

IN THE CIRCUIT COURT, JUVENILE DIVISION

OF _____ COUNTY, MISSOURI

In the Interest of	)	
	)	
_____,	)	No. _____
	)	
Male/Female, Age _____	)	

NOTICE OF HEARING UPON MOTION TO MODIFY PREVIOUS ORDER OF DISPOSITION

To _____

_____

_____

You are hereby notified that a motion has been filed in this court by _____ _____, juvenile officer of _____ County, Missouri, praying for a modification of the order of disposition heretofore entered by the court in the interest of _____, a juvenile, on the _____ day of _____, 19____, at _____ ____ m., at _____, Missouri, to determine whether the order of disposition should be modified.

You are required to be present at the hearing and also have the juvenile present if the juvenile is in your custody.

You have a right to have an attorney present to assist you at the hearing, or you may waive your right to an attorney. If you do desire to be represented by an attorney, you should begin now to obtain his services. If you cannot afford to pay an attorney and wish to have an attorney to represent you, the court has the power to appoint an attorney to represent you, without charge. However, in the event the court does appoint a public defender or other appointed counsel, the court, may, after notice and hearing, order the custodian to make reimbursement for all or part of the cost of representation of the juvenile.

You have the right to question any witness who appears at the hearing and to bring with you any witnesses. If you request, the court will order persons to be present as your witnesses.

Judge/Clerk of the Court

Cross-Reference: Rule 119.09.

128.24 Order Modifying Previous Order of Disposition

IN THE CIRCUIT COURT, JUVENILE DIVISION

OF _____ COUNTY, MISSOURI

In the Interest of)
)
_____,) No. _____
)
Male/Female, Age _____)

ORDER MODIFYING PREVIOUS ORDER OF DISPOSITION

Now on this _____ day of _____, 19 ____, there being present _____, juvenile officer of _____ County and _____, attorney for the juvenile officer, and _____, the juvenile, _____ and _____, the juvenile's custodian, and _____ attorney for the juvenile, and the court hearing the motion of _____ to modify the previous order of disposition made and entered by the court on the _____ day of _____, 19 ____, and the court receiving testimony and other evidence upon said motion and being fully advised in the premises, the court finds said order of disposition should be modified for the reason that _____

_____.

WHEREFORE, it is ordered that the order of disposition in this cause be, and the same is modified to provide that _____

_____.

_____
Judge of the Circuit Court,
Juvenile Division

Cross-Reference: Rule 119.09.

128.25 Order Transferring Proceedings

IN THE CIRCUIT COURT, JUVENILE DIVISION

OF _____ COUNTY, MISSOURI

In the Interest of)
)
_____,) No. _____
)
Male/Female, Age _____)

ORDER TRANSFERRING PROCEEDINGS

Now on this _____ day of _____, 19 ____, the motion of _____, juvenile officer of _____ County, Missouri, for an order transferring this proceeding concerning _____, a juvenile, from this court to the Circuit Court, Juvenile Division of _____ County, Missouri, being presented to the court and evidence received thereupon and it appearing to the court that the welfare of the juvenile and the best interests of the state be served by said transfer of this proceeding;

IT IS ORDERED that the proceedings concerning _____, _____, juvenile, be transferred to and placed with the Circuit Court, Juvenile Division, of _____ County, Missouri, and that the juvenile officer and the clerk of this court shall furnish to the Circuit Court, Juvenile Division, of _____ County, Missouri, such records and other information concerning the juvenile as shall be requested by said court.

_____
Judge of the Circuit Court
Juvenile Division

Cross-Reference: Rule 125.01.1.

128.26 Order Transferring Supervision

IN THE CIRCUIT COURT, JUVENILE DIVISION

OF _____ COUNTY, MISSOURI

In the Interest of)
)
_____ ,) No. _____
)
Male/Female, Age _____)

ORDER TRANSFERRING SUPERVISION

Now on this _____ day of _____, 19 ____, the motion of _____, juvenile officer of _____ County, Missouri, for an order transferring supervision of _____, a juvenile over whom this court has jurisdiction under the Juvenile Code, Chapter 211, RSMo, from this court to the Circuit Court, Juvenile Division, of _____ County, Missouri, being presented to the court and evidence received thereupon, and it appearing to the court that the welfare of the juvenile and the best interests of the state would be served by said transfer of supervision, and that the Circuit Court, Juvenile Division, of _____ County, Missouri, has consented to assume supervision of the juvenile;

IT IS ORDERED that the supervision of _____, a juvenile, be transferred to and placed with the Circuit Court, Juvenile Division of _____ County, Missouri, and that the juvenile officer and the clerk of this court shall furnish to the Circuit Court, Juvenile Division, of _____ County, Missouri, such records and other information concerning the juvenile as shall be requested by said court.

_____
Judge of the Circuit Court,
Juvenile Division

Cross-Reference: Rule 125.01.

128.27 Order Terminating Jurisdiction

IN THE CIRCUIT COURT, JUVENILE DIVISION
OF _____ COUNTY, MISSOURI

In the Interest of)
)
_____) No. _____
)
MALE/FEMALE, Age _____)

ORDER TERMINATING JURISDICTION

Now on this _____ day of _____, 19 ____, it being found by the court that _____, a juvenile, had reached the age of _____, and is no longer in need of the care and treatment which this court may provide,

IT IS ORDERED that the jurisdiction of this court over _____ be terminated, and that _____ be discharged from further supervision by this court.

_____
Judge of the Circuit Court,
Juvenile Division

Cross-Reference: Rule 119.09.

128.28 Motion to Disqualify Judge

In the Circuit Court, Juvenile Division,
_____ County, Missouri

In the Interest of)
)
_____) No. _____
)
MALE/FEMALE, Age _____)

APPLICATION FOR CHANGE OF JUDGE

Now comes _____, and applies to the court for a change of judge in this cause pursuant to Supreme Court Rule 51.05.

Dated: _____

_____

CERTIFICATE OF SERVICE

I certify that on this _____ day of _____, 19 ____, I did

serve by regular mail upon _____, and _____, being all other parties to this cause, a copy of the foregoing application together with notice that the application would be presented to the court on the _____ day of _____, 19 ____.

_____

Cross-Reference: Rule 126.01.

Note on Use: Rule 51.05 provides that an application for change of judge need not allege or prove any cause for the change of judge. The application must be filed at least thirty days before the trial date or within five days after a trial setting has been made, whichever date is later.

128.29 Order the Destroy Records

In the Circuit Court, Juvenile Division,

_____ County, Missouri

In the Interest of)
)
_____) No. _____
)
MALE/FEMALE, Age ____)

ORDER TO DESTROY RECORDS

Now on this _____ day of _____, 19 ____, there being presented to the court the application of _____, juvenile officer of _____ County, to seal the official court file and law enforcement officers' records and to destroy all social histories, records and information relating to _____, juvenile, and it appearing to the Court that _____, juvenile, has reached his seventeenth birthday, that the jurisdiction of this court over _____ has been terminated, and that it is in the best interest of _____ that such action be taken;

IT IS ORDERED that the official court file and law enforcement officers' records of _____, juvenile, be sealed and that

all social histories, records and information in the custody or possession of the court relating to _____, juvenile, be destroyed.

_____
Judge of the Circuit Court,
Juvenile Division

Cross-Reference: Rule 122.04.

DEADLOCK AT WALLA WALLA

by

G.T. CARTIER

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DEADLOCK AT WALLA WALLA

By G. T. Cartier

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FOREWORD

Deadlock at Walla Walla is a candid look through the bars of Washington State Penitentiary, at Walla Walla, Washington. Much has already been written about prison life in America, from colonial times to the present. Why, then, was another volume justified?

Much of what has already been written has been geared towards specific components of our penal system -- areas such as violence, death row, rehabilitation, and reform. Deadlock at Walla Walla, by contrast, is a broad slice-of-life overview of one of America's most interesting maximum security prisons. This volume is descriptive, rather than prescriptive. Its purpose is to share an understanding of prison life at Walla Walla just as it occurred during the period January 1977 through the spring of 1978.

The author accumulated the massive collection of information from which this book has been constructed, while working as a librarian inside Walla Walla's walls. The facts and commentaries are presented here in a chronological, but kaleidoscopic fashion; gradually,

the reader will find that the characters and themes coalesce into a full documentary cross-section of prison life at Walla Walla.

Special credit is due the Walla Walla Union-Bulletin, from whose pages much of the information presented here has been abstracted. Its tireless staff of editors and reporters, in the best traditions of American journalism, dug deeply to uncover the facts and events and issues behind Walla Walla's stone walls.

DEADLOCK AT WALLA WALLA

By G. T. Cartier

Convicted Murderer Awaits Death Penalty Ruling

On July 22, 1977, Donald M. Snook, Jr. was convicted of killing a fellow inmate at the penitentiary. The aggravated first-degree murder conviction was handed down by a seven-woman, five-man Walla Walla County Superior Court panel. The verdict culminated the case which stemmed from the January 8 strangulation death of Gordon V. Noel, who was 23 at the time of his demise.

Noel was first thought to be a suicide victim; when discovered, his body was hanging from a noose, fashioned from a sheet, and tied to his cell bars.

Under a 1975 state law, prison slayings could command the death penalty. Snook's court-appointed attorneys asked Judge James B. Mitchell to rule on a defense motion to set aside that penalty. The

convicted prisoner was also expected to file notice of appeal of the conviction within the prescribed 30 days.

Ironically, this was not Snook's first murder conviction stemming from an in-prison death. In 1975, inmate Michael Wayne Brookshire, 18, was strangled and later died from his injuries. Snook was convicted in that case which was still under appeal at the time of the second conviction.

The second in-house murder conviction required a week-long trial, with separate balloting on each element of the charge. The prosecutor in the case told the jury that Noel was killed by Snook in his effort to cover up a homosexual rape that had occurred shortly before the murder. The accused maintained that he was watching television at the time Noel died and the defense attorneys questioned whether the death was in fact a suicide rather than a murder.

In instructing the jury, the judge said that neither punishment nor the heavy security in effect should be considered in reaching a verdict. The security measures, he said, were routine for Washington State Penitentiary cases.

Security measures included individual guards assigned to testifying inmates who, among other things, were kept in chains. The customary witness stand was

replaced by a heavy chair, securely bolted to a rugged wooden platform.

Little Common Ground

The Whitman College Interim '77 program hosted activist-priest Father Daniel Berrigan and Washington State Penitentiary Warden B. J. Rhay. Berrigan, 55, who had been incarcerated from 1970 to 1972 for conspiracy and for burning draft records, said he believed that prisons should be abolished. The surge in violent crimes, he suggested, resulted from a spiritual decay of the post-Vietnam era in the 1960's and early 1970's. Decent prisons and the Pentagon could not coexist, he said.

Rhay, 56 years old, and the senior warden in the United States, took a somewhat different approach. The rise in violent crime, he argued, emerged from the same era, but was the result of society's having toyed with alternatives to incarceration. With Walla Walla's population exploding at a near-capacity level of 1,683, the warden suggested that earlier programs including probation for two- and three-time losers were dismal failures. He applauded what he said was a sharp downswing in killings at the penitentiary.

Ray was close to eligibility for retirement, but it was speculated that governor-elect Dixy Lee Ray would ask Rhay to run the state's entire prison system. He had already turned down similar offers from other states.

Kicked around for discussion were the basic premises of incarceration. Prior to the advent of rehabilitation as an objective, prisons served three principles purposes: they insured the appearance of defendants in court, they inflicted retributive punishment, and they kept criminals out of circulation in society.

Another panelist was Lee Bowker, an associate professor of sociology at the college. He told the audience of 200 that legalization of heroin in a city like New York could reduce crime by as much as 55 or 60 percent. Even though Warden Rhay agreed that a large portion of all crimes were drug or alcohol related, he said that such legalization of the drug would "condemn to death" every heroin addict. Instead, he said that the idea of small community-based prisons should be considered as an alternative to large state penal institutions.

Death Row

Michael Green, 19, became the first death row prisoner at Walla Walla in about six years. Convicted in the knife slaying of an eight-year-old Seattle girl the previous fall, Green was transferred from Seattle to Washington State Penitentiary.

The facility was actually without a formal death row. The U.S. Supreme Court had declared the state's death penalty and procedures unconstitutional, so the death row designation was academic at best. King County Superior Court Judge Earl Horswill had scheduled the execution date for April 4, but he stayed the execution when Green's lawyer filed suit.

When asked by the press how Green would be treated, prison information officer A. J. Murphy responded, "just like any other inmate in Big Red."

Big Red was more formally the prison segregation unit. There was only one way to visit Big Red and that was with the permission of Associate Superintendent James Harvey, a man who seemed to be liked by no one except Rhay. Green would be given a single-man cell equipped only with a bed, toilet, sink, and table. He

would be allowed the customary one hour per day exercise period. The caged men would be released, about four at a time, for exercise, and then returned to their respective cells. The inmates of Big Red included escape artists, contract murderers (some of whom would purportedly kill inside the prison for as little as fifty dollars) and those who simply chose to follow no rules.

One of the prisoners kept in Big Red was known as the animal. The last time -- literally the last -- he was allowed out of his cell, he slashed another man 31 times with a sharp instrument fashioned from a typewriter carriage bar. The animal came to Walla Walla after a long career in which he cold-bloodedly killed a 70-year-old man and his polio-crippled 5-year-old for a few dollars. He then beat up and raped a waitress, after which he shot her five times in the head. Committed to prison, he continued to stab, assault, and rape -- and so he found himself in Big Red.

With the death penalty restored after a long hiatus brought on by the Supreme Court and later undone, the warden indicated that new death row cells would be constructed after final approval from state

officials in Olympia. The prison administrative committee had already approved the plan.

Diapering

While the activists, pacifists, and sociologists were busy debating the importance of prisons -- and how they ought to be constructed -- the courts were being asked to look at some common practices at Walla Walla.

Inmate Donald Snook filed a $170,000 suit in Spokane's U.S. District Court, asking damages from Warden Rhay and other prison officials. In his suit, he alleged cruel and unusual punishment. As part of what prison officials termed a mental health "relearning process," for rehabilitative purposes, prisoners were forced to wear diapers and were chained to their beds. The suit alleged that prisoners were compelled to crawl on the floor and drink from baby bottles. Snook claimed that on several occasions he was chained to prison hospital beds for as long as 24 hours and assaulted while guards watched.

James Cummins, the penitentiary's associate superintendent for treatment, said that the mental health program in place at the facility consisted of group therapy, educational programs, counseling, and psychiatric care.

"We do not have the staff to take care of many of the mentally ill people we've got at the institution," he said. "It's one of the tragedies."

Prison Blues

Walla Walla's history dated back to 1899 when the guards wore blue and white striped bib overalls and inmates lived in bucket cells. Every morning, each prisoner would pick up his bucket, take it out into the cellblock corridor, dump it in the slop trough, walk past the lime barrel and grab a handful. The limes would be thrown into the buckets and carried back to the cells.

Fighter pilot Bobby J. Rhay came home from the Italian front in 1945, a chest full of medals, and he asked for a job as a prison guard. What he found was not very dissimilar to what had existed in 1899.

Rhay's recollection of his hiring was quite vivid. He visited the prison the day he applied, sat around on benches with a bunch of guys in bib overalls, and eventually got to meet the lieutenant who put him to work at once.

"What do I do?" Rhay asked a guard coming off duty as he walked through the trap door into the tower.

"Don't let anybody go over the walls," was the terse response.

With that as his in-service training, he started his career in the penal system of Washington State. He has had many firsts since that time, including the unique distinction of having been the first American warden to have presided over five state executions at the state's toughest lockup.

A good old boy from Blue Mountain country, his roots were firmly embedded in southeastern Washington. He met Patty, a former warden's daughter, and married her early in his career at Walla Walla. And then there were Katy, Colleen, Maureen, Brigid, Megan, Trisha, and Annie - their seven daughters.

Pat was perhaps as knowledgeable about the prison blues as anyone else. When her mother died, she dropped out of the University of Washington to keep house for her widowed father, Warden Tom Smith. And a house it was. Her cooks and houseboys were murderers with life sentences. Her view, from the penitentiary campus home's kitchen window was spectacular: gun towers and the door to the execution chambers.

Rhay had become the penitentiary classification director, but was fired for purely political reasons; he was related by marriage to a Democrat. Vowing to eventually get the warden's job by competing in a merit

examination, he did just that -- attaining the high score in a field of nine.

But before he reached the top, he gained experience in a number of related areas. He went to work for author Eric Stanley Gardner, known for his Court of Last Resort. Sponsored by Argosy magazine, the Court published true stories of men who had been wrongly convicted and who were serving time in institutions including Walla Walla. Rhay went to Chicago to take a Northwestern University course on the use of the polygraph, and ultimately became one of the nation's two top experts in the field. Rhay went to New York City with his wife where he took over the Court's city office. He was responsible for screening all cases appealed to this unusual Court.

In his capacity as a Court of Last Resort official, Rhay visited all the nation's major prisons. When he returned to Walla Walla, he was appointed prison sociologist and helped to develop the new reception and guidance unit.

Aside from the polygraph course and others in related correctional disciplines, Rhay learned most of what he acquired in the course of his work. He recalled one Sunday when his inside phone rang. An officer was hysterical.

"My God, Warden, get over here..." the employee begged.

Warden Rhay rushed in, only to find two women rushing out with terror painted on their faces. The double-locked doors were closed, but the doors behind them were wide open. A security booth officer held a .38 revolver in his hands and repeatedly cocked and uncocked the weapon. Rhay found himself locked out, but the sight ahead was gruesome: an officer was lying in a pool of blood.

"Then an inmate came in and pushed a flaming fire bomb into the security booth and set it on fire," Rhay recalled.

The warden finally took the handgun from his stunned security officer, warning the three potential escapees that he meant business. One of them picked up the wounded guard and placed a knife under his jaw.

"Get out of my way, Warden, or I'll drive this through the top of his head," the prisoner threatened.

Rhay pulled the trigger, despite the fact that the prisoner's head was only half visible, his hostage concealing the other half. The kid dropped "like a sack of potatoes," Rhay said, but he somehow recovered.

When the second prisoner tried to run, Rhay fired off another shot and he, too, wound up in the hospital.

The surgeon showed Rhay that his patient was wearing thick pancake makeup, purportedly part of the escape plot. The warden had literally grazed the makeup with his bullet, but by some miracle, it failed to penetrate the prisoner's scull.

The warden ran a tight ship. In 1974, he personally led his tactical squad through a plate glass window to rescue five nurses who were being held hostage by some of his inmates. The nurses suffered a few slashes from a knife-wielding inmate before being knocked unconscious by his men. The outcome could have been a lot worse.

Walla Walla's head man also talked with pride about the positive things which happen within his walls. For example, in 1972, 52 inmates graduated from Walla Walla Community College by taking in-house courses. Prioritizing the functions of his prison, Ray ordered the three goals as security for society, punishment, and rehabilitation.

Rhay's learning also centered on the experiences of other institutions, including those in Europe. In 1970, he visited the Scandinavian nations and Holland. He was so impressed with what seemed like phenomenally successful systems abroad, he carried back many ideas for reform.

Among the changes which were introduced were uncensored mail, telephone privileges, freedom of dress, and the elimination of the notorious strip cells. These were cells in which the prisoner was kept stark naked as a punishment. His suggestions for even bolder reforms, however, were shelved by the powers to be. Rhay had wanted the big fortress broken down into smaller units in which real troublemakers could be segregated from others requiring only moderate security. These smaller units could be placed in cities near the prisoners' families and would strictly house prisoners who could be handled on a lower security basis. While Rhay was an advocate of prison reform, he often suggested that the changes which occurred in 1970 were too drastic, too soon. Prison guard morale had ebbed, because the staff had suddenly been burdened with major changes, but no retraining. Staff turnover had actually reached an annual level approaching 50%.

With almost half the guards mere rookies, it wasn't surprising that the staff became very nervous when tempers began to flare. Walla Walla, like most American prisons, had become a potentially explosive facility. Recruitment for guards required little expertise. Applicants had only to be 21 with a high

school diploma and willing to work in an unusual environment with interesting people. Previous experience was not necessary and the compensation for the job was $800 a month. What applicants may not have immediately realized was that the burnout was rapid. They may also have not realized that anything could be expected: a lightbulb smashed in their face, or worse. If the applicant was married, the chance for divorce rose rapidly as soon as the guard's position was assumed.

"You're supposed to feel good if you go home and there hasn't been a riot on your shift," one guard explained. And he added that a lot of ex-cons lived outside the walls of Walla Walla penitentiary in the community. You might be happy about having made a prison bust for drugs, but then you leave your job behind for another day and you lock your doors and watch carefully over your shoulder.

"I've always advocated a balance between custody and treatment," Rhay told the press. He referred, in 1970, to his institution as a "dinosaur." Asked how he ran the prison, he was frank. "You don't manage it. It somehow limps along."

Residents and Staff

They used to call them "inmates." But some of the men behind bars at Walla Walla prefer the term "residents." Take Gary Toliver, 30, a repeater who has become involved in the inmate Awareness program. It was Rhay who helped him secure a transfer to Monroe Reformatory so he could enroll there in barber school.

Like a lot of other new-breed inmates or residents, Toliver was bright, articulate, and well versed in his legal rights. Many of these new and wiser inmates were a lot more educated than their guards.

And what did men like Toliver think about their captors and the boss? Some of them hated Rhay, but many were thankful for the changes which permeated Walla Walla in recent years. Since 1971, for example, the inmates had been allowed to wear personal clothing of their choice. The old prison garb was gone. With long hair, arm bands, headbands, and even swastikas, it was a next-to-impossible task to separate the residents from the free men.

The state legislature enacted numerous other reforms including telephone privileges, uncensored mail, furloughs, and training releases. Rhay's career staff people didn't particularly approve of these changes. On the contrary, with support from their strong union, they actively sought to keep prison wardens and prison staffers "tough."

Captain Daniel Griffin, a custody officer for 16 years, reflected on the days when prisoners left their cells with their buckets to collect what was due them. He remembers the single hour of recreation these law breakers were given each day.

"The inmates knew where they stood then," Griffin said. The captain wasn't alone in his assessment of prison conditions; many of the career officers resented the addition of inmate privileges. Some of them felt that Rhay could have been stronger in resisting change.

Rhay, on the other hand, reflected on those early but not-so-great days. He remembered well his first experience in 6-Wing. Given a handful of heavy keys, he soon learned that he was the only officer among a wing of 400 inmates, many of them potentially violent. To make matters worse, it was common practice to allow certain prisoners possession of the keys as they locked

and unlocked doors throughout the unit. They were basically unpaid guards.

As warden, Rhay was known to stand by his principles and he'd come down hard when he knew he was right. On the other hand, he would go out on a limb when his intuitive senses told him it was appropriate -- signing off on numerous successful furloughs. Of course, some of them went sour, the furloughed prisoners escaping; these were more commonly talked about following press coverage. Rhay would routinely spend time with his prison population, talking and interviewing inmates.

Perhaps the most interesting stories revolved around the fishes, the term applied to rookie guards. Like new inmates, they were largely thrown into fish bowls with relatively no adjustment period. They either sank or swam, and they were at the mercy not only of their own senior bosses, but the prison population as well.

Too often, rookies found that they had to shake their own bleeding-hearts if they were to survive in this prison jungle. Realty would hit them like bricks thrown at the head.

Dave Olson, a softspoken Bellevue native, was a good example. He thought that his unique combination

of education in the social sciences and his religious orientation would provide a basis for opportunity as a prison guard. Olson recognized, after a few months of service, that the tensions were severe. He used the YMCA to work off his anxieties and he made it a point to keep his home life separate from his job.

After picking up a couple of men with multiple stab wounds, he reflected on the situation. What do you do with the perpetrators who are already serving life sentences?

"They have nothing to lose," Olson concluded.

Lifers Have Feelings, Too

The Lifers with Hope Club was unlike any other club you may have belonged to. It was restricted to Walla Walla inmates who were serving life sentences. Back in the early 1970's its primary concern was the establishment of a communications link with the state legislature and other interested parties.

Its president was Chuck Epperson, then 28, a former union pipefitter who found his way into Walla Walla following sentencing -- life plus twenty years, to be served consecutively. Typical of the "democracy" which has characterized many in-house prison functions, Epperson expressed the need for lifers to have a bigger voice in the policies written in Olympia.

"We will be here when 95 percent of the population has gone home," he predicted. Many of his complaints were stated in statistically precise terms. For example, he pointed out that of 240 men serving life terms, only 26 were on minimum security and only one in a work-training release program.

Epperson characterized Rhay's use of the word dinosaur in describing the institution as

"appropriate." Said Epperson, "The hardline philosophy towards prisons is as old and decadent as the dinosaur itself. It has been used and abused by its ignorant advocates ever since the first prison was built in this country." The results, he said, were dismal.

Danny Powers, a vice president of the Lifers organization, argued that there was virtually no standardization in sentencing or practices. In Idaho, for example, Powers said that first degree murder carried a seven and a half year sentence, while South Dakota required a minimum 20 years, and Minnesota a minimum 7.

With hope hard to come by, Lifers With Hope embarked on a letter writing campaign just to reestablish communication with the outside world. For some, the interest was simply to keep others from finding themselves behind these grim walls.

Walt Stephens, another vice president of the club, had been sentenced to a natural life sentence under the Habitual Criminal Ruling. In and out of jails for 38 years, since he was eight years old, he described himself as having "no family, no trades, and very little education." He stressed that he did not want to get out. His objective in working with Lifers was

to keep other young impressionable men on the right side of the bars.

Lifers With Hope also participated in radio interviews, via the telephone and community projects such as Toys for Tots. Sometimes, however, small infractions caused disagreements with the Walla Walla administration and several of these programs were discontinued. The group hired an attorney to investigate conditions.

"As far as rehabilitation is concerned, it is practically non-existent," the group's public relations chairman indicated.

Within the walls of Walla Walla, the Lifers Club functioned much like any other large fraternal or social organization. Its Rules, Ways and Means Committee reviewed all proposals made by the club or its sponsors. It screened potential new members to make sure they had something to offer the club. It monitored each of the other committees, as a watchdog, to make sure that they were functioning properly.

The Blind Tape and Sound Shop departments, for example, had as one of its directors Dan Frazier, a Lifers vice president. Frazier was sentenced to five life sentences to be followed by a 20 year term he owed the Feds for bank robbery. Once a licensed medical

surgery technician, he also worked at the prison's hospital for a time before taking on the current responsibilities. The Blind Tape and Sound Shop recorded books, magazines, music, and correspondence courses -- basically, anything needed in the community. It prided itself in having made tapes for hospitals, retarded children, and other handicapped -- but free -- people.

Other specialists included repairmen for radio and televisions, including those in use by both prisoners and administrators. The club had expressed an interest in repairing donated televisions, giving the working products back to the needy outside the walls of Walla Walla. The Custody administrators, however, reportedly put the kibosh on the program, perhaps for security reasons.

Another interesting member of the population was David Van Meter, a 45 year old resident who hoped one day to take his acquired skills in Braille outside the walls of Washington State Penitentiary.

"Of course," he confided, "it depends on whether the blind person is willing to work with an ex-con."

In the meantime, he was active with affiliated organizations in the outside world. The in-prison shop has its own sound room for recording and taping, and

several reel-to-reel recorders. Because he wanted to be able to communicate with deaf mutes, too, Van Meter ordered a book on the subject.

Another inmate who worked in the sound shop for several years was Chick Chandler who, at 57 years of age, was married with seven children and 24 grandchildren. Also incarcerated under the Habitual Criminal Act, for walking away from a rehabilitative program, he was appealing his sentence. Chandler's specialty was the re-recording of music -- everything from folk music, ballads, operas, and choirs. The shop was able to customize musical tapes for the blind.

Still another project under discussion by the Lifers was worm farming. With technical help having been offered by some commercial worm farmers in the community, the project would provide vocational education as well as income. In 1970, it was estimated that worm farming generated some $100 million a year; the inmates of Walla Walla would like to cash in on a very small part of that business.

With confinement for a minimum of twenty years the common bond among the Lifers members, they welcomed new opportunities for self-improvement. After all, they had a lot of time on their hands.

Play it Again, SAM

It was hard to keep your identity when you were just another number in a large population of prisoners. Fortunately, the S.A.M. program -- Social Adjustment for Minorities -- helped inmates to first learn a little more about their own ethnic cultures, and then break down prejudicial barriers.

Prisoners at Walla Walla, in the early 1970's were beginning to talk about "the new S.A.M," a second-generation program with new structures. It was hoped that eventually all minority groups would be represented. Separate instructors offered scheduled classes for Caucasians, Blacks, Native Americans, and Chicanos. Each group clearly had its own needs. The black prisoners, for example, were exposed to courses in cultural history and self-image building while Chicanos immersed themselves in the Spanish language.

Each Friday at 2:30, a S.A.M. assembly was held in which members of all the sub-groups met together to assess the week's activities. Twice a month, outside guest speakers were invited. Like most of the other prison activities administered by the inmates

themselves, tough rules had been set to keep things on target. Attendance at lectures and Friday meetings, for example, was mandatory.

The S.A.M. program appeared to be successful in meeting its stated objectives: developing and reinforcing non-criminal identities, providing prisoners with strong ethnic and cultural ties, and teaching skills for more effective and productive interaction among the members. Ultimately, it was hoped these skills would be valuable in the outside world.

Steel, Stone, and Rope

Several thousand people mulled within Walla Walla's walls -- and it was the inmates and the staff that made this place what it is. But there was also a lot of cold iron and heavy rock and sturdy rope that made this place operate the way it was supposed to.

The penitentiary sat rather alone in this prosperous town. Nobody wanted to build too close to the facility which sported gun towers; nobody wanted to be visited at night by a half-crazed escapee or two in need of a car and some hostages.

The sign, Washington State Penitentiary was painted on the rocks in five-foot high letters. Warning signs greeted the visitor: They were to bring no firearms, drugs, or liquor onto the premises. All visitors, of course, were to be searched.

Nothing looked very new here except, perhaps, the office building out front. The walls were old but solid. The catwalks were decorated with barbed wire. The guards, high in their towers were armed.

A portrait of George Washington met the visitor as he entered the lobby. Guests were assigned tour guides -- prisoners who knew their home only too well. You didn't just walk through a place like this without going through some rigid formalities. The guest signed in at the register. His hand was stamped with an invisible ink that showed up under black light. His pocket items -- like keys, wallet, and cash -- were safely stored by a guard in a small envelope for which a receipt was issued. And, yes, the visitor was frisked carefully.

Over to one side, there were stripping rooms, where inmate visitors were searched for contraband. Off to the other side were visiting rooms -- small, square, bleak cubicles with chairs.

Barred doors swung open as they guests passed through, but they slammed shut quickly behind them with a decidedly solid thump. Controlling the gates were guards in bullet-proof glass cages or control rooms.

Once safely inside the facility, inmates seemed to be everywhere. There was an incredible ethnic mix among these men, but they were noticeably young. The guest observed many special rooms for clubs and other prison functions. At last, the huge mess hall was approached.

A typical lunch, not bad for institutional cooking, might have included salad, pasta with meat sauce, bread, and a beverage. The plates were metal and spoons and forks were provided. Steak wasn't served, so there was no need for knives here.

Continuing on through the prison, the visitor found a club house in use by an in-house motorcycle gang. This bunch of guys was anything but docile; they purportedly represented the most violent offenders in the house. They were allowed to go about their business with little or no supervision. The visitor might be offered cigarettes or coffee; he hoped that a shank -- a homemade knife -- wouldn't suddenly turn up. These were muscle men, and they were not about to let prison life wreck their physiques. A set of barbells, heavy and of steel -- like just about everything else in this place -- provided the exercise.

If they were going to maintain their bikes, they needed a tool shop, and they had that, too. With welding equipment and other power tools, it seemed amazing that more weapons hadn't been fabricated here. A standing joke suggested that the only unarmed people inside the Walls of Walla Walla were the guards. In any case, most of the violence which had erupted had been directed by inmates against inmates.

Somewhat concerned with their image, members of the motorcycle club sometimes did unusual things to prove that they were not all bad. For example, they invited Rhay down to their club room where they made a presentation. More specifically, they presented him with 10 handmade shanks made from files and iron bars and finished with fine wooden handles. Their leader, Mike Abrams -- serving time for grand larceny and auto theft -- was credited with the strong, positive leadership which made this "presentation" possible.

Sexual attacks in the darkened theatre weren't uncommon. Prisoners, in the hands of their fellow inmates, frequently ended up in the prison hospital following beatings or other cruel punishments. One convict found his head reshaped in a tool room vise.

That was not to say that life for the guards was easy; it wasn't. An occasional stray razor blade found its way into a bar of soap mysteriously thrown at a guard from a higher tier. Perhaps less dangerous, but more offensive, were the piles of human feces thrown at correction officers. Catching the offender was next to impossible. Bruises, broken jaws, and verbal abuse were hallmarks of prison life.

Cell blocks housed the men by night. Each has its own character, as administrators try to classify their

men somewhat. Eight-wing, for example, housed the most notorious criminals; the guards called it the "gorilla wing." A hundred cells housed four times as many men. Some of the cells looked rather cozy -- perhaps, too cozy -- with four bunk beds, soft-core pinups on the wall, a table in the center, and a comfortable rug. Nine o'clock was lock-up time each night. With a crashing sound, a guard in a barred room with a panel of levers caused all the cell doors to slam shut.

Some of the prisoners would come out of their cells fresh as daisies in the mornings. Others would stagger. Drugs ran rampant, as they did in all American prisons. There was enough grass, hash, acid, coke, heroin, and speed to keep the place high for months. The quality was reported to be first-rate and the availability, for the right price, assured. Ironically, a large number of these men had been incarcerated for drug-related crimes. With some of the biggest drug dealers doing time at Walla Walla, business continued as usual.

Nobody knew with certainty just how the drugs got in. There were probably a number of routes. One prisoner had his granddaughter smuggle heroin, packed in condoms inserted in her vagina. She would pass the packets to her grandfather, he would swallow them

intact, and later vomit them back up in his cell. The solution was a program of skin searches for all visitors of both sexes, but the drugs continued to pour in. A number of prisoners, owing money for drugs to their fellow residents and unable to pay, ask for protective custody. Being locked away in your cell for 23 hours was preferable to being killed. It was assumed that some -- nobody knows exactly how many -- of the murders committed within Walla Walla's walls had been drug related. Between 1960 and 1970 there were only three prison murders, but in the five years that followed, there were sixteen.

There was also a strong smell in the air -- a smell of pruno. This home-brew alcoholic beverage was actually fermented within the prison walls -- illicitly, of course -- in large vats.

Special guests, like those from the press, might have even had the opportunity to visit one of the towers. A trip to a tower required a long hike down a metal catwalk, a ramp with numbers painted along the way. The numbers correspond to pre-assigned strategic riot positions. One final trap door would be passed before entrance to the tower was achieved. Once inside the tower, the visitor found a guard with a collection of guns including a .30 calibre carbine, a 12-gauge

shotgun, and a launcher for flares and tear gas. The guard sat on a stool with a fine pair of binoculars. He would explain how good a sharpshooter he really was and how he would shoot for the head in a hostage situation. If all else failed, Walla Walla was also equipped with Thompson submachine guns.

Leaving the tower behind, the worst was yet to be seen. There was the death chamber, a two-level room with a trap door on the second floor. The first floor was barren, except for a short ladder used by the doctor to check that the condemned has indeed died.

The condemned man was kept in a holding cell for twelve hours preceding the execution. He could have any reasonable last meal he chose -- steak and beer, if that was his preference. Just before midnight, he would be ushered to the scaffold, in the presence of the warden, the executioner, and a maintenance man. The prisoner, by law, was given a chance to utter his last words, but invariably he had nothing to say.

Warden Rhay pointed out that most prisoners went to their deaths "like men," but for those who resisted, the tour guide pointed out a long, narrow wooden board fitted with a variety of straps. The prisoner was secured tightly to the device and then brought to the gallows. For most condemned men, the practice was

somewhat different. The prisoner, having decided that he has nothing to say, was simply bound hand and foot by his executioner. A black hood was pulled down over his head and the noose, hung from heavy metal rings in the ceiling, was secured behind his left ear.

The hangman looked up at the warden and when the warden nodded, the maintenance man pushed a switch which, in turn, flashed a red light below the scaffold. There, four officers picked by the warden -- he asked for no volunteers -- each pushed a switch, only one of which activated the balcony's trap door. The other three were dummies. Perhaps it was easier on the conscience, never knowing for sure whether you had actually sprung the trap yourself. The rest was history.

The guide described in gory detail how an earlier warden botched up an execution. Leaving too much rope, allowing its victim to fall eight or nine feet to his death, the condemned prisoner was virtually decapitated. His head was barely attached to his body, and blood gushed all over the spectators as he twirled from the rope. The guide said that people were screaming and throwing up everywhere.

Rhay and his staff appeared to be far more professional. However, a white sheet was draped

vertically in front of the position where the hanged body came to rest -- perhaps, just in case there was another bad accident.

The visitor did not get a chance to hear the trap door slam open. It was normally boarded up, to prevent accidents. Anyone wanting to hear the real thing would have to wait to be invited to an execution. The sound resonated through Death Row, reminding the condemned prisoners of what was to come. The message eventually reached all within Walla Walla's walls.

Things You Don't Want to See

A tour of Walla Walla may have been interesting, but it wasn't necessarily pleasant. More than likely, the average visitor, perhaps from the press, would see a relatively calm prison population. Of course, inside any maximum security prison, one small incident could mushroom into a full-blown riot.

The administrators of the State Penitentiary used the same approach to this problem as the administrators of all American prisons, attempting to isolate the most hardened, violent inmates from the others. Big Red, the cell block in which inmates were kept locked up twenty-three hours a day was one way at Walla Walla. Another was found on the third floor.

Dr. William Hunter, the prison psychologist, made his home on the third floor. Hunter, now relieved of his full-time duties as program director -- but reappointed as a consulting psychologist for the prison's mental health section -- was the prison team member responsible for behavioral modification programs. More specifically, he ran the controversial treatment program in which inmates were chained to

beds and diapered. The Hunter Method evidently didn't get the approval of Harold Bradley, head of Washington Adult Corrections.

The mental ward wasn't a particularly pretty place. A visitor entered the ward through barred doors, opened and closed by physically huge attendants in white clothes. A sense of firm discipline was evident everywhere on this ward.

Prisoners in the psychiatric ward did not have any of the liberties others in the prison population had come to expect. Their hair was short. Their clothing was neat. Some of the attendants on the floor were actually prisoners who, for one reason or another, had been isolated from the main population.

During the day, rehabilitative programs included group therapy and lectures given by residents of this floor. But for many, their cells were where they existed. There were men lying about in fetal positions. Others paced back and forth like lions planning dinner. The psychotics and the schizophrenics found a home here at Walla Walla, some of them convicted murderers or rapists or the like.

It was hard to tell who was sick and who was feigning illness. A prisoner would report a flying saucer in his cell. Another will suddenly scream

violently or out of fear. In the middle of a coherent conversation, the speech would suddenly become slurred and the words would be meaningless.

Some of the cells housed men for reasons of protective custody. Perhaps they had snitched on fellow inmates, breaking an unwritten prison code which could mean death. Others had homosexually assaulted, or resisted assault by their fellow inmates and had asked to be segregated for their own protection. Their lot, on the third floor, may not have been much better than in the main prison population. Until the administrators of this mental health program felt that they were making progress, they might face unusual punishment. Some of them were locked away in solitary confinement, naked, in concrete cubicles with nothing more than a glass mesh window and a hole in the concrete floor off to one side. These men were given one hour's exercise daily in the corridors -- nothing more. The message was simple: if you didn't modify your behavior, you'd die in your cell.

Hunter commented that he got "some of the most difficult cases in the state." He added, "When custody can't do anything with them here, they are sent up to me in shackles to take care of." The men come from Shelton and Monroe and other corners of the

state. Hunter applauded the program which, he said, had not had a single returning offender in twelve years among all those he had recommended for parole.

The prison psychologist said that his program taught honesty. "Sure we have put people in diapers and we've chained them to their beds, but most of the time it is the only way to help these people." The alternatives, he suggested were strong tranquilizers which provided no long-term benefits. Hunter felt that his controversial programs taught values and skills the prisoners never acquired as children. The court put an end to chaining and diapering, for the time being, but the strong disciplinary measures on the third floor continued in force.

Several suicides had been reported among these mentally ill prisoners. The attendants had often been blamed and some inmates suggested that a number of suicides may have actually been murders.

Another class of prisoners at Walla Walla were the transvestites. Often wearing tight t-shirts, with breasts swelling beneath them, they could often provide their services to others for a price. Some of them were kept by the toughest inmates for themselves.

Too Many Is Too Much

Earn more money and that's good. Score more runs in baseball. That's good, too. But acquiring too many prisoners and that's not so good. In mid-1970's, Warden Rhay was faced with a prison population just eleven men short of Walla Walla's rated capacity. He described the climate inside his institution as "explosive."

Rhay wasn't alone in his problems. The institutions at Monroe and Shelton were equally crowded. In fact, the Monroe Reformatory boasted a population 156 men over its capacity and Shelton was quickly approaching its limit.

Walla Walla was designed to hold, at most, 1,658 men, but some thought an appropriate population was actually more like 1,000. It was already housing 1,647 convicted felons. Rhay estimated that perhaps an additional 30 prisoners could be accommodated if all the hospital beds and strip cells were filled.

Milton Burdman, a high official at the Department of Social and Health Services, said that his examination of the state's penal system revealed

"jungle" conditions. He pleaded with the state's independent Board of Prison Terms and Paroles to speed up the release of numerous inmates. He admitted that striking a balance between the community's needs for confinement and providing "civilized institutions where people aren't getting to each others' throats" wasn't easy. The Monroe reformatory, with 800 inmates -- 200 above rated capacity -- was, he said a "dungeon."

At Walla Walla, in answer to the state's request, a formal proposal was announced for the release of as many as 600 inmates. After careful screening, prisoners -- most of whom had less than six months remaining on their sentences -- would be set free. The prison administration tried to calm community members who expressed serious concerns over the proposal. Assistant Superintendent James Cummins assured the concerned community that murderers and other hardened criminals would not be among those gaining early freedom. The doors would not simply be set ajar indiscriminately.

There was also talk about refurbishing the old women's prison at Walla Walla at a cost approaching half a million dollars, but the prison superintendent said that this would, at best, be a stopgap measure. The former women's facility, built in 1931, but closed

in 1973, once held as many as 99 convicts. In any event, it would have taken six months to renovate the old facility. The truth was that our sick society was producing larger numbers of offenders than ever. With mandatory sentencing just around the corner, the prognosis was not good.

The state's alternatives were small in number. The approval of $462,000 in the 1977-78 budget for the renovation of the women's prison would certainly provide needed cell space. The figure included salaries and operating expenses for two years, including wages for 23 workers or fewer if overtime costs were incurred. On the other hand, there was considerable community opposition to what would become a minimum-security prison for an additional 75 men. The state also wanted to weigh the relative costs of renovation versus the construction of new grass-roots facilities. The idea of mini-prisons located in decentralized portions of the state still appealed to many. However, any new facilities would be far out on the horizon. The immediate question -- what to do about current convicts -- would not be addressed.

Representative Earl P. Tilly wrote Governor Ray asking that she consider the McNeil Island Federal Penitentiary as home for some of Walla Walla's most

hardened criminals. McNeil had long been rumored to be phased out of the federal corrections program. The state could pay Uncle Sam for housing these prisoners or the state could negotiate to purchase land on the Island to build its own prison. As a third alternative, Tilly suggested that the state undertake to operate the prison, the federal government reimbursing the State of Washington for the care of the federal prisoners. With federal bureaucracy what it was, McNeil Island did not seem a reality for the State of Washington. Although it was in fact scheduled to be phased out of the federal system, the date kept being pushed back. Cynics pointed out that Alcatraz had originally been scheduled for closure in 1932, but it didn't reach its death until 1963. Besides, under U.S. law, other federal agencies would get first crack at the facility and its land before state agencies could bid.

Tilly rejected the idea of mini-prisons, saying that they had failed when tested in California. He also denounced prisoner coddling, suggesting that color television sets and sophisticated recreational facilities should not be considered necessary.

Inside Walla Walla, angry prisoners were claiming that the prison administration was in fact creating

just those conditions which would cause a riot. Inmate John Bateman, in a letter to Representative Ronald Hanna said that tensions were "at an all-time high." He largely attributed this to "unusual practices" in the prison hospital which he said made a "mockery" of medicine. Indeed, Bateman alluded to the resurrection of strip cells.

In defense of the allegations, Rhay admitted that us of these dark cells had been reinstated, but he said the frequency was rare but justified. The warden instead emphasized that his prison was staffed with some of the finest medical practitioners. Rhay termed the inmate's charges "unfounded," and suggested that with little to lose, such allegations would probably continue to be made.

Heroes

On January 5, 1977, at about six o'clock in the evening, one of the most feared things happened at Walla Walla: fire broke out. With at least one cell ablaze, inmates above and below the inferno were screaming on top of their voices for help. Bright flames and choking smoke were pouring out from the flaming cell.

Reports indicated that Officer Frazier fought courageously to extinguish the fire, but heat and smoke spread rapidly to adjoining areas. Prisoners, locked in their cells, cried out for help. Frazier apparently yelled to another corrections officer to release the trapped men, but his colleague was overcome by panic and the cell doors remained locked. Frazier pleaded, but to no avail.

Danny Jones, a prisoner who was outside his cell on D-deck, realized the severity of the crisis. He returned to his cell, immersed a towel in a sink of water, and wrapped it about his face. He ran to the area where his fellow inmates were still secured.

Frazier was still pleading with his fellow worker to release the men, whose lives were now threatened. Again, nothing happened. The officer pulled the wet towel away from Jones and he ran up the stairs. But he was clearly panic-stricken. He stopped short of the next landing, the cells still locked tight.

With Jones screaming at the stunned officer that the prisoners would soon die from asphyxiation, Frazier was continuing his efforts to extinguish the blaze. Finally, Jones approached the shocked corrections officer and helped himself to his keys. Normally, this would have been a cardinal offense -- a prisoner attempting to release his colleagues from their cells. With a few swift turns, Jones managed to open the cell doors on C- and D-decks. Coughing violently, prisoners rushed out of their cubicles. Aerosol cans of deodorant and hair spray began to explode wildly throughout the compound. The floors had become so hot that the prisoners could not even lay close to the floors in an attempt to get fresher air.

Most of the men assumed they were already lost to one of a prison's most threatening occurrences -- a fire. With wet towels wrapped around their faces, some of the men bowing their heads into the commodes, their

release came only minutes or seconds before it would have all been over.

Many prisoners owed their lives to Danny Jones, a black inmate who was serving a five-year sentence at Walla Walla. The men, thankful to be alive, still wanted to know why the prison staff failed to react. They petitioned Governor Ray to consider releasing Jones for his heroic efforts.

Rhay confirmed that an investigation was to be conducted. He praised Frazier, who was overcome by smoke, for his official efforts and extended congratulations to Jones for his own heroic efforts. The officer who so badly failed in a time of terrible crisis was severed from Walla Walla's staff.

Motorcyclers Mean Business

February 2, 1977 was a very special day for the motorcycle club at Washington State Penitentiary. Joining inmates at the Bike Shop's general membership meeting were Jack Frenger and Arly Weese from Frenger's Harley-Davidson Motorcycles Sales and Service. It was always something special when the inside and outside worlds met like this. The pair, who worked for a very successful business and had themselves been riding motorcycles for three decades, shared their experiences with the prisoners.

The purpose of the visit was two-fold. First, Frenger and Weese participated in a repair seminar in which they talked about the maintenance and repair needs of bikes in general. Second, they discussed means by which the Bike Shop might obtain more external financing and support for the operation. The prison's Motorcycle Association had grown rapidly and the prisoners who worked in the Bike Shop meant business.

The prisoners had worked out an arrangement under which Frenger's would provide used motorcycle parts such as gas tanks and fenders for in-prison custom

painting. Mike Abrams, the Association's inmate president, described the arrangement as "the first free world industry in any prison setting organized, financed, and operated by the convicts." Abrams said that comprehensive cycle repair classes would soon be self-supporting, the Association able to pay customary wages to the instructors by February 1978. He hoped that other inside-outside joint ventures would emerge, providing valuable vocational training for the entire inmate population.

The Association's treasurer, Dustin Shirley, maintained the group's books. In February, the treasury showed $2,700 in cash with $1,600 of this committed. Like any large organization which meant business, the motorcycle group planned activities and drives. A number of dollar projects added to the group's funds. Some of the treasury's funding came from its own members, but the group was relying more heavily on the hope of increased funding from outside.

Abrams said that a realistic annual budget would be $30,000, with a goal of saving $5,000 a year for emergencies which members might encounter. The club was even working towards establishing a halfway house school and training release center on its own property.

This would serve as a stepping stone for prisoners facing release from Walla Walla.

A formal public relations committee continued to mail out about 200 letters a week. Some of the mail, whose stationary and postage costs had to be borne by the group, was routinely directed at Olympia officials and legislators. The hope was to gain support for rehabilitative projects such as those undertaken by the club.

Not surprisingly, those who "graduated" from the prisons to eventually find themselves outside bars, looking in, were among the most aggressive supporters of these programs. D&M Transmission, for example, a Seattle firm, had recently donated numerous parts, supplies, and tools for the prison cycle shop. Its owner was Monte Hayes, an ex-convict who found a straight path for himself once back in society.

It became apparent, however, that the concepts of rehabilitation and in-prison work were not catching on just with ex-cons. The motorcycle group was beginning to receive support and donations from numerous others, too. A Honda dealership in Moses Lake, Washington donated nearly $2,500 in parts. The owner of a cycle shop in Kent shipped two motorcycles valued at $3,500 to the inmates. Other supporters, from cycle riders to

attorneys, began to dig into their pockets to provide for the Association's needs.

Although parts, cycles, and money were important to the club, the organization also hoped that others would donate their time. With continued production changes being made in both 2-stroke and 4-stroke cycle engines, repair skills were ever changing. The Association was thus in need of certified instructors who could train and test students in their new skills. Many of the students were anxious to develop specialized skills in maintenance, general repair, painting and customizing, and electrical repair.

Clearly, the men were providing for many of their own needs. For example, the club began to reward outstanding students and workers with token prizes; it was the recognition that was most important in motivating men, many of whom rarely received praise. At the end of the long tunnel was a list of motorcycle shops -- in the outside world -- who had agreed to hire mechanics trained within Walla Walla's tall walls.

The inmates often expressed appreciation for Superintendent Rhay's philosophies and what they perceived as his commitment to a modern penal system. Things had surely changed dramatically over recent years at Walla Walla.

Take William McMaster, a native of Quincy, Massachusetts who was honored as Instructor of the Month for his work in electric wiring. With a background in electrical wiring and electronics, McMaster, age 40, taught ten students. The 12-week course met twice a week and its instructor required a great deal of patience in dealing with students, many of whom had had absolutely no experience in the disciplines. McMaster had spent 19 years in the U.S. Navy where he held the rank of Comm. Electrician 1st Class.

Then there was Gerald J. White, a younger man of only 26 and a native of Seattle. Since he became a member of the Washington State Penitentiary Motorcycle Association in June of 1976, he completed courses in 2-stroke and 4-stroke repairs, and in tools, and was named Student of the Month for Parts Identification. His goal was to become a "top mechanic" when he left Walla Walla.

Some of the inmates concurrently took classes in much more basic subjects such as English and mathematics as part of a G.E.D. program. Walt Burson, for example, was an exemplary student in his motorcycle classes; at the same time, however, he was putting together much more fundamental language and math skills

which he had never acquired. With only a sixth grade education level when he arrived at Walla Walla, the 24-year old convict was quick to realize that the G.E.D. program was of paramount importance. Knowing, too, that he would need to develop useable vocational skills if he were to survive upon release, he joined the motorcycle group in the hopes of becoming a mechanic. He admitted that he did not particularly like school, that learning wasn't always easy. But he set out on a more productive road.

Some of the members had had prior associations with motorcycle clubs, and some had not. 28-year old Sam Cook, a native of Oregon, boasts that he rode his first cycle at the age of 15. His exposure to cycle clubs was extensive, but he never joined. It was unfortunate that it took prison life to get him involved, but he worked his way up to the rank of instructor. Although his specialty was motorcycles, Cook also taught a course in geography to the G.E.D. high school equivalency group.

Many of the men had families or girlfriends anxiously waiting for their return to freedom. The key to success, particularly in the eyes of the parole board, was the ability to work productively. The Association had motivated many of these men to learn

the skills necessary to take on such work. The motorcycle club was a far cry from the motorcycle gang where many of these men might otherwise have found themselves.

An Eye for an Eye?

A trial date of February 28 was scheduled for one of two men charged in the stabbing of inmate Curtis Lee Johnson. Kenneth Agtuca's attorney said that his client would plead innocent by reason of insanity.

Hearings were scheduled on defense motions for mental examinations and a change of venue. Agtuca's attorney thought that pre-trial publicity made a fair trial in Walla Walla County impossible.

The victim of the assault managed to survive 31 stab wounds, inflicted while he was housed in the maximum security segregation unit. Johnson was himself serving time for the prison slaying of a 48-year-old fellow inmate.

Serving the Needs of Blacks

Inmates in any large correctional institution typically have more time on their hands than they can productively occupy. Any group, like the motorcycle club, which helps to unite the men into productive social orders is helpful. Besides the educational and vocational groups, the penitentiary was home for several groups based on ethnic origins. The Black Prisoners' Forum Unlimited was one of the most active.

Its president, Phyron Berkins, energetically sought more community involvement in the problems of black men behind Walla Walla's prison walls. Ultimately, he reminded the community, these men would return to the outside world to rejoin the communities from which they came. Their ability to succeed, once released, would be predicated on the programs that were available while they were incarcerated.

Among the proposals placed before the prison administration by B.P.F.U. was the initiation of a monthly family therapy session. Recognizing the importance of strong family ties during and after imprisonment, the group suggested such a program.

Prisoners would be helped to understand their responsibilities following release and spouses would likewise discuss their own roles and expectations.

Leaders of B.P.F.U. insisted that black prisoners still faced many of the same problems they did years earlier in periods of extreme prejudice. They hoped that more humane methods of treatment could be employed by the state's penal system.

Like the motorcyclists, B.P.F.U. members were actively seeking financial support. In order to foster the growth of additional technical and educational programs, they sought state and federal grants as well as those offered by private endowments. Gaining a grasp on these funds was not always easy, so several members actively pursued learning experiences in grant writing and other techniques for self-sufficiency.

The organization also worked out a program under which law students in the state could visit with them for their mutual benefit. The university scholars would, of course, gain practical experience and unusual insight behind the prison walls. At the same times, the inmates would obtain needed counseling in areas of criminal law and corporate law. Inmates were continually writing briefs, appeals, and writs and the expertise of senior law students would be invaluable.

The corporate law support related to potential tax advantages available to B.P.F.U. through incorporation.

One of the arms of the B.P.F.U. was the Black Cultural Workshop which provided courses in areas diverse as speech and expression, law, French, library science, and drama. The drama group, directed by Ronald Bland and assisted by Allen Parks, gave performances every Wednesday evening: skits, poetry recitals, song, and serious drama.

Few props, costumes, or sets were available for the plays, but the main emphasis was not constructing professional theatre. It was, rather, an opportunity to air and share personal feelings. Like all acting companies, the workshop group's men went through script readings, rehearsals, and publicity programs.

On February 10, 1977, B.P.F.U. hosted a dedication ceremony for its Awareness Movement graduates. Special thanks were expressed to Ramiro Samaneigo, an in-house instructor who was instrumental in constructing a two-room structure which would house a sewing room, a new drama room, and a barber shop. The dedication was presided over by Berkins and certificates were presented to graduates. Music, complete with guitar, bass, flute, and drums, was provided by the talented prison group.

One Visit is Worth a Thousand Words

January and February were busy months at Walla Walla, with Superintendent Rhay hosting a number of tours. The visitors included judges, parole board members, and executives from the Department of Social Health Services at the state capitol. Several of the judges were guests by Rhay's personal invitation.

"They should have the opportunity to see for themselves the environment and facilities the men will be subjected to once sentenced from their courtrooms," the penitentiary's boss said. Indeed, Walla Walla was another world for the uninitiated.

The visitors did more than merely tour the physical facilities. They sat in on grievance committee meetings, met with prisoners, and observed the workings of many prisoner organizations. Rhay, who toured the facility with his guests, poked in on an A.A. meeting first and then one being held by the Senior Citizens.

At the Black Prisoners' Forum Unlimited, Rhay observed that few members were in attendance. Its president attributed the low membership to slow

progress on a remodeling project. Phyron Berkins said that its completion would ultimately bring more members into its meetings.

Rhay offered some words of advice. He told Berkins that the group would always consist of both the doers and the talkers. Some members would aggressively participate in the activities, getting things done as fast as possible, while others would simply wait and complain.

At the United Chicano Club, Rhay praised president Manuel Parejo for his leadership. Parejo had put a lot of emphasis on retraining of older members, many of them alcoholics who spoke no English. Besides offering classes in English, vocational workshops in brick laying and self-help classes in awareness and Spanish culture had been made available. An Art Committee has assembled the works of some of its members, for display on the Washington State University campus at Pullman. A Northwest Rural Opportunities program has been targeted at the reduction in alcoholism among Mexican Americans. And there were recreation areas in which members could listen to records, play foozball or cards, or just watch television. Rhay contrasted the present condition of the Chicano Club with its earlier roots which, he said, were rather destructive.

Among other projects, the Chicano Club issued a regular newsletter, Punto De Vista or Point of View. Its Managing Editor, Joe Fernandez, was supported in his efforts by several good typists and reporters from within Walla Walla's walls. A couple of Honorary Members, with rather Anglo-sounding names -- Rick Young and Michael McKnight -- had contributed their time and effort to the organization.

"I have never appreciated anything I received that I didn't work for," the superintendent offered words of encouragement.

Rhay's tour of the Lifers with Hope Club left him with mixed emotions. The group had just had new elections, but Rhay questioned the propriety of elections at a time when the previous slate's term had not yet expired. Perhaps, all the elements of democracy were not evident here. It's new president, Tommy Thompson, only retorted that the group had elected the "people's choice" in what he described as "a surprise."

The newly-elected officers expressed a desire to maintain credibility with the superintendent.

"I cannot give you credibility," Rhay replied. "You must get that from your membership...I can only give you recognition." Rhay gave a short sermon on

democracy and stability, and reminded the group that its recent past did not give much evidence of stable structures.

The Lifers then discussed the worm farming proposal and other revenue-raising projects. Rhay turned the discussion around again, reminding the members that prison clubs existed for only one good reason: to provide social institutions to which members could "belong" and derive some comfort. He again stressed that power plays and frequent coups did not achieve that objective. While promising continued support for clubs which promote "sensible" programs, Rhay firmly assured the Lifers that he would veto unrealistic or worthless projects.

Some of the men probably heard a veiled threat in Rhay's words, especially when the superintendent reminded them that their clubhouse was once a night dormitory. "We don't have this as a dormitory unless we kick the lifers out," he said. "I would never do that unless you lost your direction and credibility." At the time of his chat, Walla Walla was already housing 1,659 inmates, one man over the designed capacity.

Rhay reaffirmed his position on life and death. "If we are going to hang people, then hang them; but if

we give them a life sentence, my position is give them a mandatory that's realistic."

The tour ended at the Coke Shack where its manager Steve Nelson met with Rhay and his guests. The business was operating at a 35% profit, its manager said, adding that his future goal was 38%.

"You can be honest," Rhay said. "Remember... everything that the inmate population receives must come from the profits of this store. When you mismanage, you hurt yourself and no one is to blame but you."

To be sure, the prison closed down shops from time to time when mismanagement became excessive. The inmate curio shop, for example, provided convict-made wallets, belts, related leather goods, candy, and cigarettes. The shop was largely patronized by outsiders -- families and friends of prisoners. The shop, which was housed in the administration building, had been the frequent target of burglars, however. The administration building had few staff people in it at night and despite screens having been placed over the store's doorway, merchandise was being stolen in off-hours. Additionally, large sums of money -- one time, purportedly about $1,200 -- disappeared from the till. This the administration blamed on lightfingered

convicts, one of whom was transferred from minimum to maximum security. When it became obvious that conditions were worsening and there wasn't enough profit from the store's operations to bring in civilian workers, the shop was closed down.

Rhay felt that this was the exception rather than the rule. Summing up the tour he conducted, he said, "I always enjoy visiting the clubs and other facilities inside the institution. These people are my friends."

It Doesn't Take Much

Furloughs are relatively common at Washington State Penitentiary. The administration feels rather secure that it knows which prisoners can be trusted and which can't. Things don't always work that way, however, even if the infractions are small.

Take the case of Randy Gillespie, 22. On furlough for the day, the Walla Walla inmate was arrested by local police for allegedly shoplifting a bottle of nasal spray valued at $3.29 from a neighborhood Safeway store.

James Harvey, the prison's associate superintendent in charge of custody said that Gillespie's arrest cost him his minimum-security status. Other charges, too, were possible.

And then there was the case of Michael J. McDonald, 36. Committed to a work-release program in Seattle, McDonald did a short disappearing act, remaining absent without leave overnight. He turned himself in to authorities in the morning and would face escape charges for the one-night fling.

Some escapes took a little more effort than merely walking away from a work release program. They took planning, creativity, and occasionally the work of an outside accomplice. More often than not, the escape was either foiled before it happened or the prisoners -- and their outside accomplices -- ended up behind bars.

On October 23, for example, inmates Paul A. Thorpe, Richard Rosebeary, and Wayne William Andruss escaped from the penitentiary but were soon recaptured. Janice McCoy, 19, a local Walla Walla resident pleaded guilty to a charge of first degree complicity in escape, for which conviction carried a sentence as long as ten years and a fine as great as $10,000 or both. She told Judge James B. Mitchell that she picked the prisoners up on U.S. Highway 12 and drove them out of town.

Encore!

It seems that some members of the prison population did such a good job at their duties with the various clubs and organizations that they got a second chance. Patrick E. Thomas, for example, a 32-year-old native of Tallulah, Louisiana was chairman of the B.P.F.U. That was in 1973, prior to his parole from Walla Walla. He was credited with numerous projects including the camera concession, visits to Walla Walla by several college groups, and the beginnings of a minimum security program for qualified B.P.F.U. members.

Thomas may have thought that his contributions to the Black Forum were over. In 1975, Thomas returned to B.P.F.U., having been sent back to Walla Walla. He became involved with the group's Resident Council, and eventually became its chairman. He was reelected after he brought in pay movies for the general prison population.

The inmate said that with tensions at an all time high, he worked closely with the past president of the Motorcycle Association to prevent an all-out race riot.

He attributed a good deal of pressure to poor food which, he said, was frankly brought about my uncaring inmates -- not the administration -- in the prison's kitchen.

He also spoke of his work with the Climate Control Committee, a group which has nothing to do with heating or air conditioning. On the contrary, the C.C.C. was organized by prisoners to cool down disputes between residents and members of various prison groups. Because of a dispute with the prison administration over guidelines under which the group could operate, C.C.C. was effectively shelved.

Thomas was looking to the parole board in April. He hoped to parole to the state of Louisiana where, he felt, his family roots would take hold. Relatives who owned property in Louisiana would be supportive of Thomas in starting a new life, he indicated.

Tool Room Cages

Every business which owns tools knows how fugitive they can be. If they don't get lost or stolen, they seem to get broken. Such was the problem, too at the Motorcycle Association's tool room.

The club's directors decided that losses and breakage were getting out of hand, so they instituted new procedures to protect their limited tool assets. A physical inventory of all tools and equipment was taken. Broken tools were repaired or discarded and new replacements ordered. In all cases, tool acquisitions had to pass prison security checks for suitability.

A crew shift for the tool room -- complete with five stewards -- was implemented. With each man working three to five hours and tool room stewards maintaining the tool room, things became more orderly. The stewards became responsible for cleaning, maintaining, and repairing tools.

A new tool log was begun. Each member was required to sign for all tools checked out and each member was responsible for returning the tools in acceptably clean condition.

Shop stewards reported, in turn, to a tool room manager. The club's president also arranged for the installation of painted shelves with tool shadows so that each hand tool could be returned to a pre-assigned location.

Controlled Violence

Many of the men at Washington State Penitentiary had been incarcerated because of their violence. Untold numbers of people had been beaten silly or killed by members of the Walla Walla population, prior to their imprisonment. But it was recognized by prison officials that good, controlled violence was an outlet for pent-up aggressions.

November 24, 1976 provided such an outlet. Members of the Washington State Penitentiary inter-boxing team met competition from the Portland Boxing team. The gym was packed to capacity as Portland whipped the inmates at Walla Walla. The outcome wasn't fully unexpected, as the Portland team had significant experience in the ring.

Matches at the light middleweight and heavyweight categories brought cheers and laughter among the gathered inmates. Fighting was usually condemned by the prison administration and punishable by isolation or an extension of confinement; boxing was therefore one of the only sanctioned outlets in which prisoners could blow off steam.

There was more interest in boxing than there was time to pair up all the inmates. The November 24 meet followed an earlier qualifying round. Until the next competition was scheduled, inmates could polish up their boxing skills.

They Speak Without Reservation

Another group represented at Walla Walla was the American Indian. The Confederated Indian Tribes of Washington State Penitentiary was the formal name for the organization of native Americans. With 85 members representing tribes from the Pacific Coast, the Midwest, East, Southwest, and the North (including Canada), their goals were not very different from those of other groups.

Naturally, parole and work release programs were foremost on the minds of many of the members. Like many other groups, too, this one did not aim to isolate its members from others. On the contrary, improved interpersonal relations was a central theme of its objective statement.

Most of the group's programs were internal. These included a dancing and singing class, held nearly every night, with the more experienced members coaching the less experienced. Organized sports were also quite popular.

A formalized alcohol education program was run in conjunction with the prison's official alcohol

counselor, Jack Buchanan. Alcohol was a particularly serious problem among the native American population and their families. The group was also working to secure a legal representative who would help members in parole hearings and similar matters.

What Constitutes Free Speech?

Carl L. Harp, unhappy about his placement in the segregation unit, filed suit to have his general population placement restored. He lost. Harp, also known as the Bellevue Sniper, claimed that his rights of free speech were abridged by the institution.

The challenge came about after Harp decided to confront the prison administration. A memo, circulated by officials, indicated that prisoners would be forbidden to wear obscene T-shirts or patches; offending clothing would be confiscated.

Harp retaliated by erecting a 16-by-24 inch poster which suggested that the prison administration had no jurisdiction in such matters. The inmate was then sent to the maximum security unit.

Judge John C. Tuttle ruled that the poster was not merely an exercise of free speech. He said that it represented an attempt to erode respect for legitimate authority -- an authority necessary to maintain security. Harp's First Amendment plea was unfounded, Tuttle decided.

Stunned, But Inevitable

For ten years, the Supreme Court had effectively shelved the ability of courts to invoke capital punishment in the United States. It had been argued that the death sentence represented cruel and unusual punishment and that the individual laws governing such sentences were arbitrarily applied. The day inevitably came when the High Court cleared the way for the first execution after a long hiatus. Naturally, the impact in America's prisons -- including Washington State Penitentiary -- was intense, but predictable.

The news media carried the full gory details of Gary Mark Gilmore's execution by firing squad in Utah. It became the sole subject of discussion at Walla Walla's morning mess hall. Many of the prisoners argued that Gilmore needed treatment, not a body riddled with bullets. After all, he was as much the victim of society as the perpetrator of murder.

A number of inmates at Walla Walla predicted that Gilmore's execution would be nothing less than the beginning of a new long stream of executions. Time proved them right. For those who were heading for

Walla Walla' death row, Gilmore's execution took on a new and very personal meaning. Once the state's laws were deemed to have conformed to the Supreme Court's new standards for capital punishment, the gallows would be ready for more men.

The road to death, in Washington as elsewhere, was never swift. Gilmore had begged for the supreme sacrifice, but others unfriendly to his cause intervened and delayed his ultimate execution. The story would be repeated over and over. Appeals, some of them mandatory, would be made on behalf of condemned felons. Eleventh hour appeals to justices of the High Court became the rule, rather than the exception. An entire breed of law practice evolved -- a practice aimed, successfully, at delaying executions for months and years.

In Washington, a death penalty initiative was put to the voters in November of 1975. It was overwhelmingly approved by the electorate, 662,535 to 296,257. All the state needed to reestablish a death row was a vote of the legislators. Joseph Chester Self, executed in 1963 by the State of Washington for the murder of a taxi driver, might well lose his distinction as the last man to be hanged at Walla Walla.

The state legislature had indeed approved a bill in 1975 mandating the death sentence for specific heinous crimes, but foes of the legislation argued that it would not be upheld by the High Court. They believed the law should have included discretionary judicial power to invoke life imprisonment as well.

As a result of the expected challenges, few people at Walla Walla believed that the April 4 execution date set for Seattle child-slayer Michael Green would bring about the first execution in 14 years. Green, 19, was sentenced on September 28 -- just two days after Gary Gilmore's execution -- for the knife slaying of eight year old Kelly Anne Emminger in Seattle.

Prison information officer, A. J. Murphy, said publicly that Washington's most recent death sentence had probably been handed down in order to test the constitutionality of the state's new death sentence law. Because appeals were automatic, the state's law would ultimately be ruled upon by the U.S. Supreme Court. The penitentiary wasn't moving quickly to take the gallows out of moth balls, but it had requested about $65,000 to convert a row of six strip cells into a death row unit.

Alternatives

Nobody ever devised a surefire plan to rid the nation of crime. What's more, nobody ever developed a universally accepted solution for the confinement of convicted criminals. The debate went on. Members of local communities adamantly opposed the erection of new mini-prisons.

"Take your prisons elsewhere" was the cry of citizens from four Washington counties which were considered viable prison sites. They protested the plans of the Department of Social and Health Services to build small community facilities in Clark, King, Spokane, and Yakima Counties. The prisons in Clark and Yakima Counties would be maximum security lockups while the remaining two would be deemed medium security.

Nobody argued that existing facilities were not popping at their seams; it was just that nobody seemed to want a prison in his proverbial backyard. The objections lodged at a public hearing were not necessarily that straight forward, however. Residents of Medical Lake -- one of the proposed sites -- said that their concern was the water table. The 150-man

maximum security prison, they maintained, would consume more than 20,000 gallons of water a day, causing the town's water table to recede.

In Clark County, a spokesman for disgruntled residents pointed out that the proposed prison site was less than a mile from a grade school that had been closed for lack of funding. How, they wanted to know, were funds available for prisons but not for schools. The answer was classically simple. It was a matter of dire need. With adult prison population at 102 percent of specified capacity, there were no simple alternatives. At Walla Walla, 50 to 60 percent of the prisoners were kept idle because the facility was so overcrowded, a state spokesman testified. A DSHS representative reminded the audience that the public had begun to demand minimum sentencing in lieu of parole or probation. Such determinate sentencing naturally caused prison rolls to swell.

While representatives of DSHS were selling their side of the story to concerned and sometimes angry residents, others were looking to dismantle the Department. A House Committee endorsed legislation which would create a Department of Corrections separate from DSHS. The new agency would be responsible for the state's eight prisons, its adult parole and probation

programs. Juveniles would still be administered by DSHS. The bill was approved by the House Institutions Committee following a two-year study. Earlier bills had been considered, but they were either vetoed or otherwise scuttled.

At the same time, the panel approved legislation setting standards for the construction and operation of jails under city and county control. A price tag was estimated to be just under $50 million. The new standards were aimed at upgrading living conditions, some said to be deplorable, at municipal and county jails.

Who's Running the Show?

Rhay, commenting on the future of Washington prisons, also reflected on the past. He praised the state legislature for its decision to authorize construction of a 150 bed auxiliary facility at Walla Walla. He said that such small community facilities should be models for future construction plans.

The warden also suggested that conditions at Walla Walla were on the upswing, despite severe overcrowding. Much of this he attributed to improvement in discipline and morale. Drug traffic had been significantly alleviated. All of these positive moves stemmed, Rhay said, from his having reasserted his authority over the institution.

The earlier resident government councils had been abolished. Instead of inmates participating in the administration of the prison, they were allowed only to advise. By establishing advisory councils and personally resuming legitimate control over the prison, Rhay said things had taken a turn for the better.

"There has not been a single murder at the penitentiary in over a year," the warden said with pride.

Citing recently-compiled statistics, Rhay pointed out that Walla Walla boasted the highest employee to inmate ratio of the state's institutions: 4.1 to 1 at Walla Walla, 2.5 to 1 at Monroe, and 2.0 to 1 at Shelton. Since Walla Walla housed the most hardened offenders in the state, it was only natural that its staff to inmate ratio should be the highest.

Rhay criticized the lack of jobs at Walla Walla, some 700 inmates with no work assignments. "Idle people make trouble," he said, and suggested sarcastically that even the rock pile would be better than no work at all.

The future of Walla Walla and other prisons in the Washington State penal system was still not clear. Not everyone agreed with Rhay in his assessment that small mini-prisons would solve the state's problem of overcrowding. Walla Walla's county prosecutor, Art Eggers, for example, said that such a concept was unproven and probably very expensive. The problem, he said, wasn't the large size of prisons like the Washington State Penitentiary at Walla Walla but rather

the ill-conceived reform movement of the late 1960's and early 1970's.

"Reform," the prosecutor said, was "the most inhumane concept that has ever been devised." He cited 19 in-prison homicides as evidence of his conclusion. Speaking of a new prison addition, he said "I'd like to see them have it in Olympia, right next to Evergreen College."

Eggers argued that crime was not the psychological or psychiatric problem many people wanted to believe. On the contrary, he said crime has its origin in "economic, social, and racial" problems. For some people, he stressed, it was simply a consciously chosen way of life. No amount of reform or rehabilitation, he argued, would change someone who chose not to change. So why, he asked, should the state build the proposed mini-prisons -- four to fifteen had been suggested -- at a cost of over $60,000 per cell when proven larger facilities could do the job at far less cost? Eggers thus threw his support to the enlargement of the state penitentiary at Walla Walla.

While the future of Washington prisons was still subject to debate, there was generally complete agreement that crime was on the rise everywhere; every state would eventually face decision points surrounding

the administration of justice and more specifically, the manner in which prisoners would be incarcerated. Indeed, there were striking similarities between Washington's prison problems and those of almost any other state.

In North Carolina, for example, the state had locked up 13,369 convicted criminals in facilities considered adequate for only 10,980. Like Washington's Walla Walla, Raleigh's maximum security prison was old, having been built in the 19th century. Other convicts were housed in more rural camps, lining the highways and identified by their conspicuous barbed wire fences. Drugs and filth and fear and murder were a way of life in North Carolina's maximum security prison, as it was too in New Jersey or Illinois or Texas or Washington State. Road work crews, characterized by the clanking of leg shackles along the state's byways, were gone in North Carolina. Prison reform was a national process, but the problems of growing prison populations were ever present.

In Alabama, a federal judge ruled that prisons had become sources of cruel and unusual punishment. Prisoners were packed in large numbers in cells designed to house only one inmate apiece.

Newspaper reports were continually describing, across the nation, prison fires, rapes, murders, and escapes. Inmates were being forced to sleep on floor mattresses because of inadequate bed space. The floors were too often wet and filthy. Windows were broken. Knives were being fashioned by the inmates from pens, toothbrushes, and other seemingly innocent personal property. Corruption was running rampant, prisoners paying their colleagues, if not their keepers, for protection the law supposedly guaranteed.

It's no wonder lawsuits were being filed in record numbers by inmates. At the Washington State Penitentiary, the cost to taxpayers of such lawsuits had reached what some believed were epidemic proportions. Lawsuits generally sought certain civil rights, but in many instances, monetary damages were also demanded. Whatever the purpose, the state was obligated to defend itself against these litigants.

Assistant Attorney General Donald Law estimated the annual cost to Washington State taxpayers at $150,000. He said that he hoped the U.S. Supreme Court would continue to curtail prisoner availability of the courts for such suits. He felt that the Court was awarding more discretion to prison officials.

Civil rights groups of course took a different position. A Prison Legal Services Project lawyer pointed out that many prisoner complaints had actually been upheld by the land's highest court. Civil rights attorneys pointed out that correctional law, although a very recent addition to the general practice of law, was important. Prisoners, they argued, should not be stripped of basic constitutional rights despite their deprivation of freedom of mobility. Prior to 1970, courts rarely involved themselves with the rights of prisoners, assuming that prison conditions fell in the purview of prison administrators. It was only when overcrowding and prison conditions became intolerable that the courts agreed to hear the cases of plaintiff inmates.

The series of decisions being rendered was, of course, adding to the common law. Both sides hoped that fewer suits would be filed as a result, as state and prison officials learned to run their institutions in better compliance with the wishes of the High Court. In short, as more decisions were made, fewer issues would be left to be decided.

One lawsuit in which a Walla Walla prisoner asked for changes in the way in which prison mail was handled

was moved from Thurston County Superior Court to Walla Walla Superior Court for convenience. With Rhay named as the defendant, the suit was brought as a class action on behalf of all prisoners whose mail was involved.

Filed by inmate Stanley Rose, the suit alleged that Washington State Penitentiary officials had been returning packages mailed to inmates when the packages had not been previously authorized. Under the Washington Administrative Code, prisoners were supposed to have been informed that such packages had been returned; the suit alleged that prisoners had been systematically denied knowledge of such returns. Rose complained that a pair of eye glasses were lost in the mails because prison officials refused to accept the package and then failed to notify him of its return.

In another unrelated case, a U.S. District Court judge agreed with an inmate that he had been unconstitutionally denied his rights when requested law books had not been provided. Judge Marshall A. Neill held Rhay and Harvey in contempt of court for failing to honor inmate Edward A. Mead's requests for law books.

Mead, 34, a member of the militant George Jackson Brigade was denied access to the prison's legal library

because he was being kept in the prison's maximum security segregation unit. When asked to have certain books delivered to his cell, his requests were not honored. He claims to have either received the wrong books or no books at all.

In an earlier ruling, Judge Neill had determined that the prisoner was entitled to have 10 books a day in his cell and use of a typewriter for four hours a day. The Associate Superintendent admitted that Mead had been provided with as few as three books, but indicated that as a result of the most recent court ruling, the prisoner would get his full complement of ten. The prisoner, who had been convicted in a Seattle bank robbery, was preparing his own appeal. He had filed a $60,000 suit against the prison in connection with his incarceration, claiming that his isolation in the segregation unit was for political reasons.

Prison Psychologist William Hunter, too, came under additional legal attack. Four penitentiary inmates filed a lawsuit seeking his termination. Prisoners Ken Badten, Harold Lyda, Vance Stanmore, and Charles Kreck asked the county court to treat the suit as an action on behalf of all Walla Walla inmates.

Although Hunter had been formerly relieved of control of the mental health programs at Walla Walla,

he had been retained as a consulting psychologist. The plaintiffs contended that he had in fact retained actual control of the programs.

Citing what they termed "inhumane treatment" and corporal punishment inflicted by fellow inmates under the direction of prison staff, they described a water treatment. The treatment allegedly involved the dousing of prisoners with water of varying temperatures for prolonged periods of time.

The inmates asked that other state correctional officials named as defendants be barred from transferring additional inmates to this mental health unit.

Associate Superintendent James Harvey denied that Hunter was in control of the program and said that he was unaware of any problems involving "water treatment and baths or whatever." Hunter himself denied any connection with the alleged practices, saying that he acted only as a group therapist and inmate interviewer on the psychiatric floor.

Boom!

Everybody had been saying that tensions at Walla Walla were becoming explosive; with severely overcrowded conditions, the lid would one day pop off. The lid on the state's penitentiary did not come off, but county officials came close to disaster. Prisoners had cracked open a natural gas line in the county jail's visiting room in an apparent attempt to blow the jail to pieces. Deputies smelled the gas and shut it off before the big boom could occur. The visiting room, on the ground floor of the building, adjoined the sheriff's offices. Prisoners were themselves housed on the second floor.

This wasn't the first attempt of its kind. Just a week earlier, a bomb in the courthouse did go off, seriously injuring a penitentiary guard during the assault trial of a Walla Walla inmate. A booby-trapped cigarette lighter exploded in the hand of James L. Hartford, a 23 year old guard at the penitentiary; he lost four fingers and part of the thumb on his right hand. Hartford had just testified against two defendants when the incident occurred. Authorities

interviewed numerous people, including the 13 inmates housed at the jail at the time.

To nobody's surprise, the inmates could provide no useful information about the blast. Police detectives refused to speculate what connection, if any, the bomb had with Hartford's testimony. Although some observers believed there was a connection, others thought that Hartford may just have happened to be the first person to pick up the rigged cigarette lighter. Rhay confirmed that prisoners were routinely frisked before being allowed entry to the area. Lighters and matches would not have been allowed in the area, but it was possible that such a device could have been concealed in a body cavity.

To prevent further possibility of injury, flowers and other gifts which were received at St. Mary Community Hospital, where the officer was being treated, were carefully examined. Community members quickly established a fund for Hartford, with a Walla Walla skydiving group donating $1,000 to get things rolling. It would take some time for the officer's insurance to pay, and it was frankly doubtful that he would be able to return to duty at the penitentiary.

The bombing investigation was turned over to the sheriff's office, with the additional support of the

U.S. Treasury Department. Fragments from the blast were being examined at the Treasury's San Francisco laboratories.

The county jail was typically used to temporarily house Washington State Penitentiary inmates during trials at the county courthouse. Unfortunately, these represented some of the toughest men around and the sheriff's facilities were deemed by many to be too fragile for their custody.

The sheriff had suggested a new jail at an estimated cost of $1.5 million. Source of funding was uncertain, but a bond issue was considered. The state's proposed $40 million funding bill, if enacted, could also have been a source of money for such a new jail. In the meantime, interim measures were taken to reduce the risk of another attack. Cardboard containers, filled with tax statements and ledger cards, were ordered to be cleared from the courthouse corridors. It was feared that these boxes might be used by prisoners or others to conceal explosive devices.

The explosion which did occur sent attorneys for two defendants back into court with requests for new trials. The jury had found inmates Kenneth Agtuca and Alvin Gilcrest guilty of first degree assault in the

stabbing of fellow inmate Curtis Lee Johnson. The verdict followed the explosion by about seven hours. The attorneys claimed that the explosion, which they said caused a disruption in closing arguments and jury deliberations, prejudiced their clients. Panelists were escorted to the jury room where they were told to take cover under a table.

Judge John C. Tuttle disagreed, however, allowing the trial verdict to stand.

One of the defense attorneys argued that he couldn't see how the bomb blast could not have affected the jury. Of the bombing, he asked, "Who could have anticipated that?"

Tuttle replied, "I could guess who could have anticipated it, but I won't." Defense counsel immediately asked that the judge's remark be stricken from the record.

Defense attorneys cited a number of other allegations in seeking a new trial. An inmate defense witness had thrown a glass of water on a juror while court was in session. Additionally, the lawyers argued that several court denials of their requests had prejudiced their clients.

The judge wasn't impressed. He retorted that jurors were not aware of the specifics of the blast.

In any case, he suggested, such a blast would probably have intimidated the jurors against a guilty verdict, if anything.

Trouble on the Outside

The death of Richard Earl Johnson, a 20-year-old inmate at the penitentiary made news. Sentenced to Walla Walla on a 1973 conviction for robbery, Johnson was found hanging from a bed sheet from the top bunk of his four-man cell. While suicide was presumed, police detectives were considering the possibility of foul play. Interestingly, Johnson was scheduled to be released in just a few short months.

Johnson's death, however, did not cause the record shock waves created by another series of incidents, outside the prison walls. A local cab driver was killed and a 72-year-old Pendleton man abducted. The body of Steven F. Schmerer, the 23-year-old taxi driver, was found in his bullet-riddled cab at Juniper Canyon. Missing was Marion J. Riley. His vehicle was recovered near Ione and police linked the abandoned vehicle to the disappearance of an Ione woman.

Local residents could not recall a kidnapping in recent history. Never had they remembered such an intensive manhunt in their area, one in which 15 FBI

agents, scores of sheriff's deputies and Oregon State Police, and numerous aircraft were employed.

Following a long investigation, police named Michael Olds, a 34-year-old Walla Walla resident, as their suspect in the murder and kidnappings. He was also charged in Superior Court with second-degree theft in connection with a $356 loss at the City Zoo Pet Center, where he worked.

When interviewed by members of the press, the apartment house manager where Olds lived characterized the tenant as "an awful sweet guy." He was reportedly in the midst of a divorce.

A City Zoo official said that Olds was "dependable" and "pleasant."

"We just thought Mike would be the last one to steal from us," one of the store owners commented.

Olds was no stranger to the people at Walla Walla's penitentiary, either. He had served twelve years for first degree murder and first degree robbery convictions stemming from a Seattle grocery store holdup. Prison officials remembered that Olds was quite a young man when he arrived at the institution. Associate Superintendent for Treatment, James Cummins, reported that Olds was a rather model prisoner, having violated no rules while an inmate. Following his

release and 25 months of parole, a conditional discharge from supervision was granted. Officials deemed Olds rehabilitated and ready to to take a regular role in a world of freedom.

Naming Olds and finding him were two different matters. An eight-state manhunt was launched by the FBI for the fugitive. Because he was wanted for two murders in the west, FBI officials presumed he was heading east and thus concentrated their search in more eastern regions. The body of the missing Ione, Oregon woman was found in the desert along Highway 26 in southeastern Oregon; she had been shot to death.

Police and federal agents had received many tips and leads, each of which had to be checked. One report said that Olds had purchased a ticket to Boston. Another had Olds hanging around Walla Walla, purportedly seen in the back seat of a car with an Idaho license plate. FBI agents were actively searching for the fugitive in Utah, Idaho, Oregon, Montana, Colorado, Wyoming, Nevada, and Washington.

Olds turned up in Pennsylvania. His capture followed a tense incident in which he took a 7-year-old boy and his parents hostage, just outside of Pittsburgh. Bail, in connection with the Pennsylvania charges, was first set at $300,000, but later increased

to $1 million. That was the highest bond ever set in Alleghany County history. The suspect pleaded innocent to all charges. Officials sought additional bond in connection with the felony charges in the northwest.

Although each district attorney wanted to take a crack at a potentially important conviction, Pennsylvania authorities seemed cooperative in considering requests to send Olds back west to face the more serious charges pending there against him there. However, preliminary hearings were scheduled in Pittsburgh for Pennsylvania's lesser charges including kidnapping, aggravated assault, reckless endangerment, and three related weapons violations.

Olds was not expected to fight extradition, but if he did so choose, he could delay his return by as long as three months. Washington State charges included parole violations and theft, but officials considered these academic, at best. They would probably let Oregon put its best foot forward on the most serious charges -- murder and kidnapping. Oregon was known for its tight-ship prison system. A conference was convened at the Umatilla County Courthouse in Pendleton to make final arrangements for the sequence of prosecutions in the northwest. Decisions following the meeting of prosecutors were few, however. Oregon

wanted to file two murder charges as well as a charge of kidnapping; Washington was ready and willing to file kidnapping charges; and Pennsylvania had amassed a list of kidnapping, assault, and weapons charges.

Of particular concern was Pennsylvania's law which required that Olds be charged within 180 days of his arrest or be protected against later prosecution in that state. Pennsylvania prosecutors, who had first announced unequivocal intention to allow Oregon first option on prosecution, suddenly expressed caution that no final decision had yet been reached. If convicted on the Pennsylvania charges, Olds could be sentenced to a minimum 10 years and a maximum of 20.

"I think we're going to go ahead and let extradition take place," Alleghany County's chief trial counsel finally concluded. "Our decision is based on the fact we feel Oregon has a more important case than we have."

Not unexpectedly, federal authorities also entered the case, filing charges against Olds in connection with the two interstate kidnappings.

As emotional as the various communities had become, some groups actually came out against prosecution. KUMA, a Pendleton radio station, ran an editorial in which its spokesman suggested that Olds

should not be brought to trial in Umatilla County. The station's position was based on the economics of such a judicial proceeding. Station manager Ted Smith reasoned that Pennsylvania courts would mete out the same kind of sentence for kidnapping as the local courts. Why, he asked, was the expense then justified?

District Attorney Fred Bennett couldn't disagree more. Cost, he told the public, was not a concern -- justice was. He promised to initiate extradition proceedings following any Pennsylvania trial which might take first jurisdiction. The newspaper agreed with the D.A., adding that the costs to try paroled murdered Michael Olds, were nothing like the costs of trial for newspaper heiress Patty Hearst.

Alleghany County's Chief trial counsel Chris Copetas agreed that cost was not a valid consideration in deciding who would prosecute. "If we based our justice system on that," he said, "we'd have no justice at all."

It took some time for authorities to put all the pieces together, but the story -- once told -- was complex. The fugitive reportedly took at least five hostages after allegedly committing the two murders. At McKees Rock, Pa., a small town on the northwestern

edge of Pittsburgh, Olds was said to have attempted to take another woman hostage.

"This lady just flatly refused," a police official reported, so he just went about the acquisition of another hostage. Police were alerted and the manhunt was on.

Olds got hold of the seven-year-old and took him and his father to a men's room at the back of a nearby restaurant where he held them at gunpoint for 45 minutes. Claiming he had nothing to lose, and acknowledging that the electric chair was waiting for him, he demanded a car.

The boy's mother delivered a car to the back of the restaurant and Olds took off with his hostage family. With a gun pointed at the boy's head all the while, a wild chase ensued with police in pursuit. Olds fired several shots at the police. At last, the vehicle came up fast on a roadblock and the boy's father had to bring the station wagon to a stop. A dozen police vehicles converged on Olds, the child's mother knocked Olds' arm down, and a Pittsburgh police officer drew a gun to the fugitive's head. It was all over.

In Retrospect

"Where did we go wrong?" That's a question that parents often ask themselves when their children go astray. Prison and parole officials asked themselves that question about Michael Andrew Olds. A rather celebrated, if not notorious, name in Seattle, Olds' problems started when in March 1961 he held up a Queen Anne grocery store. The grocer opened the cash register till, and Olds panicked, believing the proprietor was reaching for a gun. Olds discharged his own handgun, but missed the grocer and instead killed a 38-year-old mother of two who happened to be shopping in the store. He netted less than $40 in the robbery.

Police said that Olds then called the store owner and made threats in an attempt to extort money. A week later, Olds held a taxi driver at gunpoint, asking him whether he had any children. When the cabbie replied in the affirmative, Olds released him. The taxi driver's report and description led to Olds' capture by Seattle patrolman Harold Countryman. The officer was ultimately awarded the distinction of Patrolman of the Year by a national law enforcement publication.

The confession which Olds made to police was withheld from the jury, because the accused murdered had not been afforded the opportunity of counsel before making the statements. A plea of mental irresponsibility was originally entered, but the trial judge threw this out when the defense failed to submit any evidence in support of this contention.

The jury also didn't see pre-trial reports that said that Olds had once attempted to strangle a 4-year-old girl because she had called him names. Also concealed from the jury was a report that Olds once plugged up exhaust pipes on cars, thinking the drivers would be overcome by fumes. The jury, too, was deprived of reports on Olds' childhood -- 17 foster homes in 18 years and a frequent runaway.

The prisoner's mother, 34 at the time of Olds' trial, testified that her son lived in a world of imagination and fantasy. She was only 15 when she gave birth to him, the product of rape. Olds had been hospitalized shortly after birth, because authorities considered him neglected and undernourished.

Olds had been sentenced on a 1961 conviction of murder. Instead of receiving the death penalty, he received two concurrent life sentences. Olds was only 18 at the time of his conviction. The prosecutor was

not a proponent of capital punishment, and besides, Olds' age and the belief he could be rehabilitated weighed heavily on many minds. In the state of Washington, a life sentence could mean, with good behavior, a jail term of 13 years and four months. Olds, however, also got credit for time he had served in King County Jail before his sentencing. Indeed, the prisoner had sued the Washington Parole and Probation Board in order to get this credit.

Additionally, the law allowed the Board to waive the mandatory prison term and offer a parole on a life sentence. In order to receive such a parole, prison officials had to provide certification of readiness. In Olds' case, Superintendent Rhay had written that the inmate's "conduct and work have been meritorious and based thereon, I hereby recommend...parole to an approved plan."

When questioned about Olds, Rhay admitted that he could not remember the specifics of the circumstances at the time. This was not surprising in view of the large number of parole certification letters which were routinely written. However, prison officials said that such letters were usually written based on information supplied by others -- counselors, guards, work supervisors, chaplains, and psychiatrists.

Despite the process, the rate of return to prison for Walla Walla's paroled inmates was high -- nearly 45 percent. Other state institutions which housed less serious or less violent offenders had return rates closer to 35 percent.

Washington State Penitentiary officials denied any indications of potential problems in releasing Olds. On the contrary, they said that his work-release program was progressing well. He was working for a landscaping company and was engaged to be married. While behind bars, Olds was described as cooperative, non-violent, quiet, and respectful. The letter of certification, dated May 9, 1974, was thus based on experiences the staff had had with this prisoner.

At the time of Olds' sentencing, Judge George H. Revelle recommended psychiatric treatment. Olds had been evaluated as a schizophrenic paranoiac. The prosecutor said, at the time of sentencing, that Olds would likely end up in the maximum security unit of Eastern State Hospital. However, records showed no evidence of any stay at Eastern, or for that matter, any mental-health counseling. With this kind of diagnosis, it was thus proper for authorities to ask about Olds' mental condition before his release, and they did.

"I see no psychiatric reason why this man is not parolable at the present time and I recommend this," Dr. Ralph Keyes, a Walla Walla prison psychiatrist wrote the Board on October 22.

And so on November 4, 1974, Olds was paroled to Walla Walla, rather than returned to his hometown. He married his fiancee that day and became one of 37 persons on active parole in Walla Walla County. Statewide, there were 2,310 parolees under active supervision.

The status required Olds to report regularly to his parole officer, and he was expected to abide by the laws and generally keep out of trouble. Travel outside the county required advanced permission. Under the conditions of parole, however, nothing could stop Olds from drinking or gambling in moderation.

Eventually, Olds and his family -- his wife had six children at the time of their marriage -- moved to Wisconsin, but Olds chose to return alone in November. His wife reported that there were family problems and a subsequent separation. Olds, who was under parole supervision in Wisconsin, through an interstate agreement, had received good reports there.

On December 21, the active parole status was reduced to conditional parole, which meant that Olds no

longer had to report to his parole officer. Instead, only an annual written report to the Parole Board was to be filed. Olds would have been restored his civil rights in 1981, had everything gone as planned.

When the Inevitable Arrives

Everyone knew it had to happen sooner or later. A pressure cooker could only take so much pressure before the relief valve gave way. Prison officials took the drastic step, on April 10, of putting its 1,372 prisoners on deadlock. They were confined to their cells for an indeterminate period of time as a result of serious disturbances at the institution. A convict mob, whose size was estimated at 300 to 500, set fire to the prison's Protestant chapel. An inmate store was also looted, with losses estimated at $6,000.

Dr. Harlan McNutt, head of Washington's Department of Social and Health Services and Harold Bradley, state corrections chief, scheduled an early meeting with inmate representatives in order to hear out grievances. Not surprisingly, prisoners complained bitterly about overcrowding and the segregation unit where problem prisoners were kept in solitary confinement.

The only beneficiaries of the deadlock conditions were several prisoners who were being kept in protective custody as protection against inmates in the general population. Because the general population was

locked up, these special inmates were allowed out to do general lawn and garden work within the prison's walls.

The problems at Walla Walla and other state institutions were finally beginning to catalyze a program by which as many as 230 inmates would be transferred out to other facilities.

Many local Walla Walla residents were beginning to lose patience with the penitentiary's problems and Olympia's answers. At one community meeting, one resident suggested that he was tired of discussions about prisoner rights. "If they're so concerned," he said, alluding to the legislature, "when some get out on work release, they should send them over as page boys."

Prisoners, in turn, decided to snub correctional officials at the penitentiary. Instead, they asked for a governor's committee to hear their complaints about the prison administration. "They're not talking to the administration at all," A. J. Murphy, prison information officer, reported. Nor were they talking to state corrections or DSHS officials. The inmates would settle for no less than a governor's panel. Murphy characterized their demands as nothing less than their desire to run their own prison.

The governor agreed to intervene, but she showed no intentions of getting personally involved, at least for openers. Instead, she appointed McNutt of DSHS to act on her behalf. It was unclear whether this would satisfy the prisoners' demands.

Corrections officers were making systematic searches within Walla Walla's walls for contraband and weapons, in light of the problems. One by one, the industrial area, then the school, then the club rooms, and finally the segregation area were checked. Sweeps of the four largest areas -- the main population dormitories -- were scheduled last. Although no firearms were turned up, Murphy said that several "barrels of contraband" were put together. Only two shanks were uncovered and this surprised prison officials. They had also expected to find significant quantities of drugs, but they found none. They guessed that the toilets were being flushed regularly to dispose of the chemicals. Metal detectors were also brought in and methodical searches of the flower beds and Lifers' parks were planned. Nothing, but a few long bolts -- but no weapons -- were uncovered, however.

"We're going to go over every square inch," James Harvey assured the press.

The prison shakedown did uncover what appeared to be a bomb and it caused several very tense moments. Prison officials, police, and the Army's Vancouver, Washington bomb squad were called in to aid in the investigation. The metal can with attached batteries found in eight-wing was just that -- a metal can with batteries. There were no explosives; the device was a fake and, according to Murphy "an obvious attempt" to stop the shakedown. Eight-wing, the largest wing and the one regarded as having the toughest residents, took the longest to search. Search of other wings was characterized by officials as "downhill."

Prison officials confiscated items which they might not have been too worried about before. A cigarette lighter was found in one cell, contrary to regulations, but its internal rattle really jarred officials. The bomb squad was called in, only to find an innocent, but illegal, cigarette lighter. After the earlier courthouse experience, nobody was taking chances.

A considerable number of furnishings were removed from the cells because it was felt they provided hiding places for weapons, drugs, and pruno. In some cases, contraband was defined by quantity: one radio in a cell was permitted, but the second was confiscated.

Initially, prison officials thought about using minimum security inmates in the search operations. However, they soon realized that these prisoners would be the target of later reprisals by the more hardened convicts. As a result, prison employees took on the huge task of searching and cleaning up.

Nobody doubted that the fire which broke out at Walla Walla on Easter Sunday was designed to attract the attention of legislators to conditions within the stone walls. To that extent, the $3,000 blaze and accompanying $6,000 store loss were successful.

Prisoners also took the opportunity to write the local newspapers in an effort to get whatever publicity they could. One inmate, an American Indian and former chairman of the in-house Indian Club, complained about Rhay's alleged apathy regarding a proposed alcohol and drug treatment program. In his letter to the editor, the prisoner said that he had personally asked Rhay about such a program, submitting particulars in detail. He complained that Rhay not only failed to acknowledge the proposal, but lost the correspondence submitted to him.

Other letters to the editor came from relatives of prisoners. One of them complained to the Union

Bulletin that her husband had been denied access to a shower for 17 days as a result of the prison deadlock. She said she called prison officials for an explanation and she was told only that her husband had a wash basin in his cell.

"Is this how they all take showers?" she asked. Indeed, it was several weeks before prison officials would allow inmates out of their cells for showers, and then only a few at a time, under strict supervision. Officials feared that contraband would simply be moved from one place to another if inmates were allowed freedom of movement during the shakedown. In the same letter, the prisoner's wife said that mail addressed to inmates was not being delivered.

Still another letter to the editor came from an angry resident who was rebutting an earlier letter demanding harsher punishment. "Justice," it said, "is not punishing a person so severely that it puts more hate into them. Justice is not getting revenge."

And finally, one letter to the newspaper blasted Rhay for apparently having said that "when you pack rats in this tight, they start biting each other." A prison inmate protested the rats philosophy by which he said he was to be manipulated by supposedly "superior minds." The prisoner squarely put the blame

for the institution's problems on Rhay and his administrators.

"We read in the paper only what the prison administration wants us to know," he wrote. He predicted that if psychological tests were conducted, the majority of the prison staff would be found to be more hostile than the average inmates.

With all the letter writing going on, it seemed that nobody -- inside or outside -- was ambivalent anymore about conditions in that austere place known as Washington State Penitentiary.

Rhay, Murphy, and others weren't so sure that what they believed to have been a "staged" disturbance would in fact result in improved legislative funding. Speaking of the riot, Bradley said he didn't think it was a "well conceived strategy." Others, in and out of the institution, had said that the disturbance resulted from a shakedown at the segregation unit, following the county courthouse cigarette lighter explosion.

Prison officials would not immediately comment on what they had found in the all-out search, nor whether any additional explosive devices had been confiscated. Unusual contraband articles were turned over to outside agencies for investigation; other more typical, but potentially dangerous items -- like television antenna

wire, extension cords, broom handles, knives, and cell curtains -- were simply taken away from the prisoners. A few pairs of nunchaucks -- oriental fighting sticks -- were uncovered and removed.

Inmates at Walla Walla continued under deadlock conditions, but officials reported this to have been one of the quietest deadlocks in memory. With kitchen areas largely unstaffed, prisoners were served TV dinners twice a day i. their cells. Cereal was being added to their breakfast meals and fruit to their dinners. Recreation was limited to television, within the same cells.

A few isolated problems emerged, but then there were always small outbreaks at the penitentiary. A correctional officer suffered minor injuries when he was attacked in the prison's treatment unit. A prisoner had jumped across a desk, grabbed the guard by the throat, and bit him. When a counselor rushed to the guard's aid, he too was attacked with a punch to the nose.

In an unrelated incident, a 34-year-old inmate who had been sent to the penitentiary on a conviction of indecent liberties was beaten about the face by an unknown assailant. He was placed in a locked prison hospital room.

There were also minor incidents involving milk being splashed on a guard and small projectiles -- like bottles -- being flung at guards from cell tiers.

Although deadlocks were somewhat common to all state penitentiaries, this deadlock at Walla Walla marked an unusually long period during which there were no negotiations between inmates and administration. There was growing disenchantment among many inmates with their council leaders who, they thought, should have been negotiating on their behalf. The council continued to hold out for the formation of a governor's select committee. Some outside observers conjectured that the prison administration was delighted with the growing rift between the general population and their leadership group. It did not appear to the administration that the Governor was going to give in to inmate demands for the creation of an independent committee.

Prisoners were beginning to air their grievances to the press, and through relatives. Besides overcrowding and policies in the segregation unit, they were accusing the administration of inadequate medical facilities. They also said that prison officials were misappropriating prison funds.

Seeing wasn't always believing. As the deadlock reached its third week, prison officials were nothing less than mystified at having found only six knives during the intensive shakedown. These shanks, as the inmates called them, were found in general areas and couldn't be linked to specific prisoners. Officials could also not imagine how the weapons -- which they were sure existed -- were disposed of.

Admitting that they did not know when the deadlock would end, officials began a second sweep of the prison grounds and inmate meeting areas. The metal detectors were back in full force, along with what seemed like a brigade of officers. In line for the second sweep were areas used by the Motorcycle Club, the Black Prisoners Forum Unlimited, the Confederated Indian Tribes, Chicanos Group, the Lifers and the rehabilitation areas used by Awareness, Alcoholics Anonymous, Social Therapy, and SAM -- in short, just about every meeting area.

Some officials were beginning to believe, at last, that knives simply didn't exist in the quantities originally imagined. They attributed the lower number to a greater feeling of inmate safety at the institution. One of the most dangerous areas at the prison, a 220-yard walkway notoriously termed Bloody

Alley had been closed to inmates. The corridor was once a site where numerous assaults had occurred. In addition, contractors had recently dismantled portions of the roof which had obscured vision of several outside walkways from the overhead gun towers.

Another week passed before prisoners and state officials finally got down to talking. Eighteen inmate representatives unloaded complaints, gripes, and grievances on Dr. George McNutt of DSHS. Other panel members included DSHS Director Milton Burdman, Harold Bradley of the Corrections Department, Samuel Kelly, special assistant to the President of the University of Washington, Jon Bowman, President of the Washington State Council on Crime and Delinquency, and Kitsap County Superior Court Judge Jay W. Hamilton.

Adding to the list of problems they had already constructed, inmates charged the institution with racial discrimination, insufficient visiting hours, and absence of jobs. McNutt made it clear that the deadlock's end would not be his doing, but rather the result of an agreement between inmates and the local institution. Prison officials naturally did not agree that any or all of the prisoners' complaints were justified. They couldn't deny, however, that the prisoners had done an exceptional job in presenting

their side. After all, it was almost four weeks in the making.

Outcome of the meeting was uncertain. With 23 days of deadlock behind them, prison officials said the lockdown condition would remain in effect indefinitely. Now, however, they had more than just prisoner demands with which to contend. Angry members of the prison employees' union were requesting a meeting with McNutt. Basically, they wanted equal time to share views from another divergent angle.

The unionized employees called for the meeting because they feared that state officials were about ready to order a "premature" return to normal operating conditions at the penitentiary. The workers said that such a move would jeopardize their safety.

Rhay continued to assure everyone that he -- and he alone -- would decide when conditions were right for a return to normal operations. He said that unless he was completely confident that there would be no inmate problems, the lockdown would continue. A small, but powerful, group of prisoners were angered by the shakedown which stripped cells and club areas; prison officials knew there was a good chance for reprisals. Major precautions would have to be taken following any

lifting of the deadlock in order to prevent a serious catastrophe.

Correctional officers were already beginning to report that guards' lives had been threatened by inmates. Although they did not come right out and say so, unionized correctional officers were beginning to intimate that a strike was possible. Leaders were asking publicly whether the governor's committee had the qualifications necessary to assess the seriousness of the situation.

"These people came over here two times to listen to a bunch of mealy-mouthed convicts and didn't come once to talk to the staff," a correctional officer complained.

The union also criticized the committee for discussing prison policy openly before a group of inmates. The labor group took the position that prisoners were not entitled to democratic participation in such matters. To emphasize the point, the labor leaders kept reminding other interested parties that the chapel fire was a premeditated act -- perhaps premeditated by the resident council itself.

Olympia officials, in the meantime, were closing in on a plan under which some 200 nonviolent prisoners would be transferred out of Walla Walla to a variety of

other state facilities, in an effort to ease overcrowding. A number of honor camps around the state, to be used for emergency forest fire fighting, would draw the largest number. Others would be dispatched to Eastern State Hospital for treatment of mental illness. McNutt's proposal was presented to Governor Ray.

At Walla Walla, screening of potential candidates for such transfers would be done by local officials. All decisions would be subject to state review by the adult corrections staff at Olympia. Admitting that many of the penitentiary's inmates had no business being housed in the "jungle-like bastilles" of Walla Walla, DSHS Deputy Director Milton Burdman said that the transfers made good sense.

On the other hand, McNutt made it clear that Washington would not return to a replay of the 1970 prison reform movement. In a surprise visit to the penitentiary, McNutt -- who was accompanied by Burdman and Bradley -- made no commitments regarding the future of Rhay or Harvey.

"Rhay is running the place," McNutt said, but couldn't comment to reporters what the future might hold. He emphasized again, however, that only Rhay

would be able to decide when the deadlock was to be broken.

Prison guards added fuel to the fire when they uncovered -- in a sewer sump pump well -- a cache of drugs. Stored carefully in balloons and plastic sandwich bags, the narcotics had evidently been flushed down the toilets somewhat earlier. The pump was located off the prisoner visiting room, and it was surmised that the drugs had been brought in by visitors. Apparently, the prisoners thought the drugs were too hot to take in-house and flushed them away instead.

Prison information officer A. J. Murphy used the opportunity to confirm the need for routine searches of visitors; he was taking this position just as prisoners were demanding relaxations in the tight security they attributed to Associate Superintendent Harvey. There were clearly two sides to the issue of security for Washington State's toughest convicts.

A chat with any correctional officer would yield a real sense of fear and the need to keep up the guard at all times. Jim Hartford, the guard whose fingers were blown apart by a booby trapped cigarette officer, was as good an example as any.

At the age of 23, he was philosophical about what happened. "If I had lit a cigarette with it," he said of the lighter, "I'd be dead. At the very least, I'd be blinded." Hartford was preparing to go back to work, minus a few fingers, once the severe pains in his hand began to subside.

Hartford pointed out that he had been hospitalized before, as a result of job-related injuries. The first time, he was struck with a glass jar filled with peanut butter and water, hurled by an inmate from the top of a three-story tier. The impact dislocated his shoulder; the injuries could have been far worse with a better aim.

On another occasion, Hartford was taken to a hospital following an altercation in which he was kicked by an inmate as he and another member of the staff tried to subdue the prisoner. The inmate had just fired two home-made shotguns, concocted from pipe. Hartford would often find himself in difficult situations. He was formally classified as a prison utility officer, one of a group of guards used as trouble-shooters. The utility officer would walk along breezeways, shaking down suspicious inmates for weapons, narcotics, or other unlawful property. Because the utility officers dealt with the worst of

the prison's nearly 1400 men, constant vigilance and good judgment could mean the difference between life and death.

The six foot one inch, 180-pound Hartford admitted that his guard was down for a few seconds when the explosion occurred. He says, however, that his immediate response was a notion that a courtroom escape attempt was in the making. Unaware at first that his fingers had been mangled, he reacted to the loud pop as if it was gunfire. Fortunately for Hartford, another guard literally wrestled him to the floor and applied pressure to his wrist, preventing him from bleeding to death.

Once he realized what had happened, Hartford began to concern himself with his life style. He wondered whether he would ever work again at the prison. Moreso, he wondered whether his hobbies -- skydiving and pistol shooting -- would be lost forever. He finally put together the conviction to continue living in the same life style, even if it meant learning to shoot with his left hand.

Hartford recalled his initiation to Walla Walla. A political science and criminology major at Washington State University, Hartford took a law enforcement education loan, agreeing to pay off the debt by working

in his chosen field. Nobody could say he didn't pay the price nor pay off his obligations.

The officer pointed to an old blood-stained jacket he had used as a prop when teaching new fellow officers shakedown procedures at the prison.

"I can retire the jacket now and show them my hand," he said.

Back Home

It may not exactly have been home for Michael Andrew Olds, but the 34-year old captured fugitive was on his way back West. Oregon law enforcement officers flew to Pittsburgh for a rendezvous with the man everyone wanted to try. Having waived extradition, his return to Oregon was speeded up by a month or two.

Two agents of the Oregon State Police and the Umatilla County sheriff's department flew East with evidence and warrants in hand. In return, they were given a much-wanted prisoner. Pennsylvania had contemplated its own charges against Olds, but agreed to defer them until Oregon got its crack at Olds. Michael Delfonso, Alleghany County's assistant district attorney, admitted that his state would probably not seek prosecution if Oregon was successful in prosecuting its own more serious charges.

Security was tight for the fugitive. Word was out in Umatilla County that someone had threatened to kill Olds on his return. When he came off a United Airlines flight at Pendleton City Airport, the handcuffed prisoner was quickly whisked away by patrol car to the

county jail, using a round-about route as a precaution. Even the flight number and time of arrival of the plane were kept under wraps until Olds was well on his way to the county jail. Officials said that he would be kept in solitary, under heavy guard. Under Oregon's laws, Olds would be safe. Bail would normally not be permitted an accused murderer.

Dennis Hachler, the attorney appointed by the court to defend Olds, promised a vigorous defense. His first two orders of business were requests for psychiatric evaluations of his client and movement towards a change in venue. The attorney said that he believed a fair trial, given all the publicity, was impossible in this county. In requesting a week's delay, Hachler said he needed more time to prepare legal arguments.

An arraignment was held quickly and $25,000 bail set for the kidnapping charge. Umatilla County Court Judge Jack Olsen deferred for several days a request to consider bail on the murder charge. The accused murdered had told Olsen that he had only five dollars and could not afford counsel. He thus found himself represented by Hachler, a public defender of considerable experience with several controversial clients during his previous six-year legal career.

Hachler, in answer to questions from the press, said there were several options open to him. Reminding reporters that "no one saw him shoot anybody," the public defender said his client could plead innocent. On the other hand, he admitted that there seemed to be a lot of supporting evidence for the prosecution. There were also possibilities of a plea of mental illness or an immediate guilty plea in exchange for a life term.

When Olds finally arrived in court, heavily manacled, the judge was expecting him to enter a plea in the murder charge. His attorney, however, said that a plea could not be entered because his client was under the influence of medication. Law officers confirmed that the prisoner had been given drugs to calm him down. He was said to have been loud, abusive, and combative to county jail employees. Hachler argued that his client, chained and accompanied by the county sheriff and four deputies, could not enter a plea since the medication's effects were not known.

The defense lawyer said that he was "seriously concerned" about Olds' competence to stand trial. Authorities agreed that the only safe place to conduct a comprehensive psychiatric examination of the defendant was the Oregon State Hospital in Salem. The

examination would help determine not only whether the prisoner was equipped to stand trial, but whether he was legally sane at the time the crimes were committed.

Hachler said he couldn't understand why Olds became upset at the jail on Sunday; he described his client as calm, cool, and considerate, during his own interviews with him on Friday and Saturday.

"I went over to see him about six-thirty Sunday and he was just wild as a lion," Olds' counsel told the judge. "So they called a doctor and pumped him full of Demeral."

Arraignment in Pendleton in connection with Umatilla County charges of Steven F. Schmerer's murder and Marion J. Riley's kidnapping went without a hitch; but Murrow County charges stemming from the kidnapping of Mary Emily Lindsay, and the unauthorized use of her car, were delayed. Prosecutors feared that moving Olds from one court to another might jeopardize his safety. Instead, they decided to wait until psychiatric examination results were in. With Morrow and Umatilla Counties falling within one judicial district, prosecutors said they might consider holding a Morrow arraignment at Pendleton.

Morrow County D.A. Dennis Doherty promised only to be a good "poker player." His decision not to publicly

announce his prosecution strategy, he said, was quite appropriate. "I'm not going to show any cards until I have to play them," he warned. The trials would have to be conducted separately, however, and the results of the first case -- whichever it was -- would not be admissible as evidence in the second. Doherty speculated that one key witness, Riley, would play a major role in both cases. Most observers were betting, however, that Umatilla County would try Olds first. That would leave Morrow County, Malheur County, Alleghany County, and the Feds on the waiting list.

Riley, who was with Olds when Mrs. Lindsay was kidnapped and later when she and Olds walked away from the car in Malheur County, said he heard a single shot just before Olds returned alone to the car.

Another Transfer in the Works

Michael Andrew Olds wasn't the only one facing a transfer. James Harvey, associate superintendent at the Washington State Penitentiary, was about to be moved, too. In a prepared statement, Dr. Harlan McNutt, head of Washington Department of Social and Health Services told the inmate resident council that Harvey was about to be transferred.

Claiming that Harvey's transfer was not directly connected with the lockdown stalemate at Walla Walla, McNutt said it resulted from a year-old request by Harvey to be transferred to Shelton. McNutt made a point of stating that Harvey had "performed satisfactorily in a position which by its very nature is not likely to generate a high level of popularity." Professor Samuel Kelly, a member of the governor's blue-ribbon panel which was studying the situation at Walla Walla had, however, recommended Harvey's removal from the penitentiary post just a week earlier. He had said that Harvey was "heavy handed" in his dealings with prisoners. Instead, he recommended more emphasis on "the treatment side" instead of the "custody side."

The announcement immediately stirred anger among unionized prison guards who had already threatened to walk off the job if either Harvey or Rhay were terminated or transferred. The union was also lobbying against any immediate end to the lockdown. McNutt again assured prisoners that the deadlock would be broken only when Rhay thought the time was right.

McNutt left the resident council with some positive words. He said that inmates "potentially in need of mental health treatment" were being evaluated for transfer to Eastern State Hospital. This was in direct answer to inmate complaints of poor health care at Walla Walla. He also said that more work-release opportunities and an increase in the minimum security population, statewide, would be implemented soon. Other improvements would include better visitation arrangements -- although searches would continue to be made in the interim -- and better sanitation inspections.

The DSHS chief denied prisoner allegations that they had been subjected to racially discriminatory practices. He said that the facts did not support those charges and that the department's "firm policy" with respect to non-discrimination would remain intact.

Prison guards immediately restated their threats to walk away from their jobs if Harvey was removed. Rhay, too, said that he would resist any attempt to remove the associate warden. Despite McNutt's explanation to the contrary, members of the Walla Walla community saw Harvey's removal as linked to recent disturbances at the prison.

Steve Chadek, president of Local 206 which represented prison staff at all levels, said the union wouldn't tolerate Harvey's ouster "on account of any influence from the inmates." Declining to call his members' actions a "strike," Chadek said it would be more a mass quit. "Our jobs just wouldn't be worth sticking around."

The union president also reaffirmed the likelihood of a mass walkoff if the lockdown was ended by Olympia without the approval of prison staff. Describing prisoners as angry following the shakedown, he said that without appropriate controls, an inmate riot was likely.

Local legislators, too, came out firmly in support of Harvey. Senator Jeanette Hayner of Walla Walla was among the lawmakers who expressed concern over the recommendation to sidetrack Harvey. She said that it

was her understanding that the impetus to move Harvey clearly came from resident inmates.

Representative Gene Struthers took a similar position. He said that prisoners had urged the governor's committee to remove both Rhay and Harvey. He pointed to Harvey as an administrator who had been instrumental in bringing about needed tightening of security at the penitentiary.

"I often think that some of these do-good people lose sight of the fact that the penitentiary at Walla Walla is the maximum security institution of the state. And it should be run in a very secure manner," he added.

On the law enforcement side, County Prosecutor Art Eggers praised Harvey for ending the strong-arm tactics of some of the prison's toughest inmates. "To say this is wrong is utterly ridiculous. A person that says that has no concept of a maximum custody prison."

Harvey, hearing about Kelly's recommendation, had a few words of his own. "I don't know whether it'll have anything to do with the rest of the committee's opinion or not. I feel that I've been doing a good job and I'll continue until I'm removed or transferred to another institution for promotional reasons. I don't have any plans right now to leave," he said.

With the deadlock in force for nearly a full month, prison administrators and correctional officers met to begin planning its end. Administrators remained cognizant of the union's threat of mass exodus and seemed intent on convincing the staff that it would participate in any undoing of the deadlock conditions. McNutt had meanwhile indicated that some unspecified changes were due at the prison.

Rhay declined to discuss any specific controls that might be implemented as things returned to normal. Chadek said, to the surprise of many, that the union might recommend normalization for all prisoners at once instead of a phased-in program that some favored. He said that inmates would then be watched carefully and any unusually threatening behavior would be dealt with quickly, confining those inciting trouble.

"It's just a small minority of the residents in there that are causing trouble," he explained.

The meeting had a secondary purpose -- to assure guards that neither Rhay nor Harvey would be run out of town by Olympia chiefs on the strength of prisoner demands.

The union took the opportunity to assure its members that insurance coverage was adequate. Following the courthouse bombing which serious injured

Officer James Hartford, the troops were becoming uneasy.

Rhay described the meetings as productive. He said there was a new strong feeling of solidarity among administrators and correctional officers. Even the guards' wives joined forces, forming a league to support their husbands. To be sure, they knew better than anyone else that a correctional officer's job in Walla Walla was no picnic. Even if the officer escaped physical harm, the mental abuse and personal sacrifices were tremendous.

The severe problems which officers faced finally got the attention of the legislature, too. Walla Walla Representatives Hayner and Struthers met with counselors, correctional officers, and officials at the institution and state levels to discuss forward programs for employees. Rhay, Bradley, and McNutt were among the executives who met with the representatives.

Hayner said she thought a proposal for increased staff insurance could be sold to the legislature. She said the body could no longer avoid the realization that jobs at the state penitentiary were inherently dangerous, given the violent nature of some of the inmates. Officers participated in a group health insurance program under Blue Cross and were, of course,

also covered by Worker's Compensation. But it was only two years earlier that insurance coverage was added to provide benefits for guards injured by violent inmates.

The Walla Walla representatives also faced off with state officials over a $6,700 request for new security and safety equipment. Although the request had originally been made years earlier, and the Department of Corrections had agreed to the need for it, nothing ever happened. Because of bureaucratic red tape or lack of communications, the officers were kept in greater jeopardy, Hayner said, than they should have been.

Struthers and Hayner came out squarely in favor of a separation of the Department of Corrections from the state's Department of Social and Health Services. They expressed disappointment that McNutt would not support this separation. Hayner reminded the state's corrections officials that the state legislature could reorganize DSHS anyway and that the governor shared the party affiliation of the legislature's majority. If all else failed, this could become a classic political issue.

For the short run, it seemed that overcrowding at Walla Walla was finally to be addressed and acted upon. McNutt promised quick action on a proliferation of

work-release programs. Perhaps as many as 200 inmates would be transferred to the program planned for Eastern State Hospital, near Spokane.

An increase in minimum-security population capacity would be effected soon, he said, probably by putting the old women's quarters on the east side of the penitentiary back into operation for inmates requiring minimum security. Rhay told the community that money had already been budgeted for the conversion which would house a maximum of 75 inmates. This would be in addition to the existing minimum security building at Walla Walla which already provided lodging for 292 prisoners. Rhay said that the increase in minimum security populations was not without its risks. He predicted probability of escape, but downplayed the danger. Inmates confined in minimum security areas were typically nonviolent people with low risk to the community.

With additional transfers to Eastern State of inmates having mental disorders, the controversial third-floor mental health wing at the penitentiary might eventually be eliminated.

Additional news came soon, confirming Harvey's transfer from Walla Walla to Shelton. Something of a compromise kept union anger in check, however. Harvey

would be retained at the penitentiary until the deadlock was lifted. Union leader Chadek said his members could live with this arrangement; prison administrators could breathe more freely.

"The way I see it," Chadek explained, "Olympia's really cooperating with Mr. Harvey, letting him wait and not demanding he go over there." Whether the short extension for Harvey was really significant, or merely face-saving, it did diffuse union animosity and cooled those who were looking towards a walkout.

Rhay admitted that he did not yet have a replacement in mind for the transferred administrator. What the next custody man would be like remained anybody's guess, but prisoners and staff had surely aired their divergent perceptions on this subject. Everyone seemed to sense an impending end to the lockdown. Just when it would happen was still unknown. Just how it would be implemented was another unknown, but union leaders were less convinced of a holocaust now.

Looks Are Deceiving

Although union officials believed that the manner in which James Harvey was being eased out satisfied all parties, many of the guards were not so sure. In fact, word was out that many of the guards feared a full-blown riot among inmates.

Even if Harvey's transfer had indeed resulted from his earlier request to leave Walla Walla, and even if it represented a promotion of sorts, there would still be a stigma attached to the move. After all, it surely appeared to the penitentiary's inmate population that they had won a major round -- they kicked out the associate superintendent because he was tough.

Prison information officer Murphy effectively rescinded everything that McNutt had said a few days earlier. Harvey, he said, might just stay on at the state penitentiary after all. The decision would be solely Harvey's -- whether he would transfer to Shelton or stay on at Walla Walla.

Observers at the prison speculated that McNutt had either flatly given in to prisoners' demands or, perhaps, he had simply been too inexperienced to handle

the matter more prudently. Whichever the case, guards feared that the earlier announcement of Harvey's transfer was ill-timed. Some described a particularly unnerving calm along the inmates, following McNutt's words; they feared that this was the calm before the storm. Other corrections officers took the giant step backwards, threatening to walk off the job after all if Harvey was pushed aside.

County prosecutor Art Eggers said he was sure "the inmates consider it a great victory. Too many victories have been written in blood," he added. The prosecutor pointed out that if it had not been for Harvey's tough disciplinary policies, homicides at the prison would have been commonplace as they had been years before.

Nobody could say with absolute certainty that a riot within Walla Walla's walls was inevitable, but dust was being stirred up -- even outside the prison. An explosion in the Rainier National Bank's Overlake Park branch, in Seattle, was linked to the prison's lockdown. The George Jackson Brigade claimed credit for the bombing; one of its members, Edward Allen Mead, was locked away behind the penitentiary's walls. In fact, he had been suing for his release from a

segregation cell where he had been kept since his incarceration at the prison.

"If the bombings on the outside are directed as sympathetic movements for the situation here," Warden Rhay said, "you would have to look at security outside and inside." He assured the community that such acts of terrorism would not influence his judgment or his administration of the penitentiary. Although he denied that the bombing would directly affect timing for the deadlock's end, others felt that the incident might well delay the stalemate.

Rhay and members of his staff began to meet intensely with prisoners, inmate council members, and club leaders in an attempt to determine the institution's "temperature." Clearly, the deadlock -- now beginning its second month -- was slated to be lifted soon. It already represented the longest lockdown in the prison's history.

The pipe bomb explosion in Seattle, which ripped apart almost a hundred safe deposit boxes, didn't stand alone either. A second bomb was found, but disarmed, at the bank's Midlakes branch in Bellevue on the same day.

Authorities had been warned about the bombs in anonymous telephone calls. A written statement left at

two Seattle radio stations said that the Brigade activities represented sympathy for penitentiary inmates. The FBI determined that the communique was "authentic." According to the document, a member of the bank's board, William J. Pennington, was also president of the Seattle Times. The paper, the Brigade charged, "led propaganda attacks...against the prisoners in Walla Walla."

As far as McNutt's proposed changes at the penitentiary were concerned, the Jackson Brigade was unimpressed. "These changes are absurd," their statement said. "They actually consist of three attacks and four empty promises."

The activist group suggested that newspapers promptly arrange to interview prisoners -- especially those kept in solitary confinement -- and print their grievances. Newspaper editorials were written with dispatch, denouncing the Brigade and defending their own publication practices.

"Acts of violence won't help the inmates," one writer said, "whether they are committed by the brigade on the outside or by inmates themselves." Continuing, the editorial's writer said, "as for the newspaper interviewing prisoners and publishing their grievances,

the penitentiary and inmate gripes have received widespread coverage around the state."

Summing up, the paper argued that "a newspaper can't become the voice of the inmates or any other special-interest group unless there is some legitimate news value associated with the story to be told."

Authorities were becoming extremely cautious with and sensitive to courtroom trials in which inmates were to testify. The combination of the courthouse explosion coupled with the lockdown at the penitentiary made many nervous. One question at the forefront of discussion concerned security at trials during this very tense period. More specifically, the question being raised was whether tight security jeopardized the right to a fair trial.

Judge John Tuttle ordered that all Washington State Penitentiary inmates would remain shackled while on trial in his courtroom, whether considered dangerous or not. Chaining was not an unusual practice in state or federal jurisdictions when transporting prisoners; however, it had been general accepted that fetters be removed from prisoners, while in the courtroom, in the presence of jurors.

Jerry Votendahl, a special prosecutor assigned to prison cases, feared that the State's Supreme Court

might ultimately overturn convictions in which defendants were shackled. As a result, Washington's Court of Appeals was asked to review the security measures for constitutionality. Tuttle had also required inmates to wear prison garb rather than street clothes. Prisoners who were defendants could not sit at the same tables with their attorneys.

Although jurors, under the directive, would be told in advance that the security measures were routine for penitentiary trials -- and would be asked to disregard the practices in rendering verdicts -- many civil rights lawyers came down hard on the order. They argued vigorously that juries would be prejudiced against prisoners brought into the courtroom in chains.

A lot of people disagreed, especially those who had come to know or live in a town whose borders contained the state's maximum security penitentiary. Civil rights took on a special flavor here. One local newspaper editorial, for example, pointed out that "it would be unfair to say that all of the inmates are dangerous and disruptive. But experience shows," it continued, "it would be equally wrong to say that none poses a threat." In concluding, the editorial writer said that "justice will be better served by a jury which can listen attentively to the evidence than one

which feels a sense of fear or views actions which disrupt an orderly judicial process." The paper recommended that the appeals court approve Tuttle's new rules.

"All inmates are potentially dangerous," Tuttle said. He pointed to prisoners' testimony that martial arts were being practiced daily to keep prisoners physically fit and to improve their skills in the use of deadly force.

In any case, the controversy surrounding the judge's order and the delay in getting an opinion from the appeals court indefinitely set back the murder trial of inmate Donald M. Snook, Jr. Prison Superintendent Rhay had been asked to put together a list of inmates testifying in Snook's defense. In a preliminary hearing, he told the court that the group consisted of some high security risk inmates. It was this testimony which convinced Tuttle to put his order into effect.

"To go ahead now under the order without knowing how the Supreme Court would rule on the thing," prosecutor Votendahl said, "could be costly."

Deadlock and Beyond

When the deadlock was 41 days old, warden Rhay hinted that it was close to an end. "I'd like to hope it'll be off within a week," he told the community. He could give no specific date for its expiration, however, saying that problems still existed within the prison's walls. A number of changes had been effected during the previous six weeks and Rhay wanted to be certain that prisoners fully understood what had transpired.

Among the biggest changes was the closing of the inmate store. Succinctly, prison officials told their population that it wasn't profitable to run a store in a high crime area. Experience showed that the prison store was plagued by inefficiencies, poor accounting, and plain theft. Three burglaries in two years proved the point. The capstone, of course, was the store's looting by several hundred prisoners which led to the deadlock in the first place.

Instead, A. J. Murphy explained, the store building would become a central services center from which mail and other packaged goods from the outside

would be distributed. It would be staffed by civilians, rather than inmates, and fortified with barred windows. Under the new scheme, prisoners could order approved personal goods from outside the institution's walls and have them delivered in about a week's time. Inmates would just have to anticipate their needs for items such as candy bars, shaving items, and combs a few days in advance.

A related benefit of the new arrangement would be the elimination of scrip by which inmates had formerly made purchases. Prisoners had never been allowed to transact business with actual money, but scrip often found its way into gambling activities. Inmates also frequently stole the substitute money from one another.

A second major change announced in anticipation of the lockdown's end involved a new gate system. Cell doors would be opened only once an hour during which prisoners could leave to go to other common areas. They could, however, return to their cells at any time. The system was designed to cut down traffic. Prison officials pointed out that under the old arrangement, guards had become virtual bellhops. On the Eight Wing, the prison's largest dormitory, correctional officers

sometimes opened the gates 3,000 times within a single eight-hour shift, officials said.

To prevent mass crowding at the cafeteria doors, inmates would be required to return to their cells at 10:45 a.m. each day and wait to be released for the lunch meal. It had been reported that in the rush to enter the dining area, guards were frequently pushed aside or nearly trampled.

Officials emphasized to the inmate council that the changes were not disciplinary or punitive. They had long been needed, he said, to conduct business in a more orderly fashion. Administrators, who were meeting regularly with inmates -- the content ones and the grumbling ones alike -- reported that the prison's temperature was gradually falling.

"The mood seems to be quiet," Murphy said.

In the meantime, there was some disagreement -- even if only academic -- regarding the lockdown's beginnings. The prison employees' union charged that the resident council had actually premeditated the disturbance which forced the lockdown conditions. One council member was cited by guards as a leader of the raid on the Coke Shack.

Rhay, on the other hand, took the position that the incident, bad as it was, was a spontaneous

disturbance. He warned, however, that he was not "negotiating with anyone." Looking in from the outside, observers were questioning the administration's dealings with resident council members. Among the members were three convicted murderers, four armed robbers, and a pair of rapists. Other council members had been put behind bars for offenses ranging from burglary to pimping, assault to perjury, and manslaughter to narcotics manufacture.

Admitting that "to anyone outside, it seems ridiculous," the superintendent put the facts on the line. "They are the ones that were elected," he said, the electors, of course, being their peers.

Most of the prisoners within Walla Walla's walls were, more than anything else, tired. They had been permitted to shower but once a week. The TV dinners served twice a day had become monotonous. But officials knew there was still a lot of resentment following the biggest shakedown since the 50's. Much of what had been confiscated had been around for years, in fact for decades. It had been passed down from prison generation to prison generation, nobody having paid much attention to the items in all those years. Hollowed-out headboards, "overstuffed chairs," and dubious tools had been removed by the barrel. The guys

were going to miss this stuff and the corrections officers who had implemented the shakedown were likely targets for retribution.

Day 44 arrived and with it came an announcement that the lockdown was about to end. Officials said they expected no acts of violence. As a routine precaution, however, extra guards were to be posted in the prison dormitories and in the gun towers. The institution's riot squad would be put on alert. Everything seemed in place, but then the prison's unionized workers struck. More than 120 employees walked off their jobs in a wildcat action. The strike began early in the morning, before the anticipated breaking of the prison's longest deadlock. Three correctional officers had been ordered to release 18 inmates who were serving as cooks. When they refused, they were suspended by the administration. Their colleagues walked off the job in protest.

Among the strikers were food preparers, nurses, prison counsellors, recreation workers, and perhaps most important, 97 guards. About half the men scheduled to report for work on the first shift failed to do so.

The Washington State Patrol sent in 30 troopers to man the prison's walls. Prison administrators, aided

by Olympia personnel, served inmates TV dinner breakfasts. Rhay, after conferring with Harold Bradley, issued a statement in which he warned absent employees that they would be "suspended with appropriate administrative action to follow." The warden refused to characterize the walkout as a strike.

The prison employees weren't dormant, however. They organized their own meeting at Pioneer Park to air their grievances. They also sought a court injunction to prevent an end to the Walla Walla lockup. Union leaders insisted that their members' lives were in jeopardy because of the proposed normalization of prison life. They accused prison administrators of having backed away from an earlier understanding that potentially threatening prisoners would be locked up. Union officials also claimed that administrators had reneged on earlier agreements to exercise more control over club areas. Prison officials retorted that they had made no such promises to their guards. According to Murphy, "the things they say we said we were going to do were only proposals under consideration. They were not promises."

Union president Chadek contended that Rhay's decision to end the deadlock resulted from Olympia

pressures and not personal judgment. Rhay denied the allegation, saying the decision was strictly his own. "Now is the psychologically perfect time to end it," the warden said of the deadlock. Given the reality of what happened, however, the deadlock remained intact. Prisoners were informed that the action of prison guards had delayed normalization.

Two days later, prison administrators tried again to end the deadlock -- this time with success. With a full complement of 62 prison guards back at work, the 46-day lockdown ended at 7:00 a.m. Superintendent Rhay, bullhorn in hand, visited his inmates, tier by tier. He explained the terms for the beginning of the end. His remarks were greeted with applause. Inmates would shower at 9:30 a.m., following one last TV dinner breakfast in their cells. At 1:00 p.m., the option of a movie or exercise in the Big Yard would be offered. After a 4:00 p.m. cell count, prisoners would be released in shifts for the evening meal. State troopers remained on site for the day, just in case violence erupted.

Union officials had struck a negotiated agreement with administrators. Except for lost pay for the time they did not work, employees would not be penalized for their walkout. The three suspended officers were

allowed to return to work, but were scheduled for disciplinary hearings. Chadek suggested that his men's return to work did not represent a change in heart; rather, it resulted from what he said was the warden's new proposal to effect a controlled unlock. He referred to the normalization as "a trial run." Chadek continued, "All we've been asking for in the first place was somebody to show us some consideration."

Two behind-the-scenes developments had also taken place. Thurston County Superior Court Judge Gerry Alexander had refused to grant the union an injunction to prevent the prison from ending the lockdown. He also had denied a request placed before him by Legal Services, on behalf of the prisoners, for an immediate release.

Although there was no immediate indication of trouble following the return to near-normal operations, a sense of uncertainty still plagued the penitentiary. Guards warned that they would walk off their jobs again if certain demands were not met. Among them, they cited the need for new riot equipment, protective cages for officers stationed in prison dormitories, and the elimination of existing "blind spots" from which tower guards could not observe ambushes on guards or other prisoners. The riot gear was estimated to cost $6,700.

Additionally, guards asked that one of their members, armed with tear-gas, be stationed on a catwalk over the prison's dining room.

Guards were also demanding greater control over inmate traffic within the dormitories, better insurance coverage for officers injured on their job, and hazardous duty pay -- up to $300 a month -- for officers. Officers insisted that their issues did not result from anger, but rather from the need to establish "professional working standards." Citing what they said were inferior guard tower carbines that jammed easily, the officers depicted themselves as victims of the civil service system.

State officials, the correctional officers seemed to suggest, were more willing to talk to inmates than to them. "The officers have been belittled up here too long," Chadek said. A clear polarization between union employees and prison administrators was becoming increasingly evident.

Despite the internal animosities which were brewing, things went well at Walla Walla following the release of prisoners from their cells. A long line of visitors waited outside the penitentiary walls to see husbands, sons, fathers, and friends for the first time

in 46 days. Washington State Patrol troopers left the facility when it appeared that all was quiet.

"Everybody seems really happy inside," A. J. Murphy said. "They're out of their cells shaking hands and renewing friendships like they hadn't seen each other in months," he said.

Visitors were granted admittance, one at a time. Each was searched. Tears and laughter filled the visiting room where as many as 90 visitors per shift were reunited with loved ones. Emotions ran high as families were reunited, if only for the two allotted hours. Communications during the lockdown had been shattered. Mail was slow in moving in or out. Telephone calls to prisoners had been suspended completely. There was as much fear outside the prison walls as inside, with news reports the primary source of information for those trying to look in.

With no outbreaks of violence and no reported threats, even Steve Chadek admitted that conditions were "comfortable." His men were put on twelve hour, instead of the routine eight hour shifts, for a few days.

Murphy commented that the facility's population relished the rib steaks, potatoes, salad, and cake dinner which served to close out a seven week period of

TV dinners. The movie, ironically titled Stay Hungry, was not well attended. Most of the men chose instead to retire to the Coke Shack or work out in the Big Yard. With three small exceptions, the prison population was calm. The three, who ended up back in isolation before the lockdown expired, seemed destined for trouble. One had thrown coffee at a guard; the other two had made verbal threats. There was talk -- but no positive evidence -- that militant inmates had put together a hit list of correctional officers following the shakedown.

Over 150 inmates were looking forward to receiving college degrees or high school equivalency certificates, despite the 46-day ordeal. Walla Walla Community College would award 55 associates degrees and nearly twice that number of GED certificates. One resident was slated for a four-year Bachelor's Degree to be conferred by Washington State University. Although class schedules had been delayed by the lockdown, many instructors were making arrangements for completion of their respective programs. Extra classes were provided by some; videotapes were brought in by others.

Educational programs would soon be back to normal: 10 full-time and 24 part-time instructors teaching 37

different community college courses and four university offerings. Over 500 Walla Walla prisoners were signed up for vocational or academic classes, an astounding increase over the previous years due largely to federal and state funding.

The return to normal operations also meant a return to many of the facility's earlier problems and scars. Hard feelings over the confiscation of property would not dissipate quickly, nor would resentment over the small percentage of staff members who were ethnic minorities. The former problem was far more pressing an issue than the latter.

Much of the old regime was gone at the penitentiary, so it was easy to cast hard feelings on those who were not longer in their posts during the lockdown. Two state representatives, Ron Hanna of Tacoma and John Fisher of Seattle questioned the seizure of personal property by guards. They said that at both Walla Walla and Shelton, there was evidence of property misappropriation. Personal articles belonging to prisoners as well as public property used in common areas had been seized and in some cases destroyed.

"In some instances," corrections chief Harold Bradley said, "people were being ripped off." The property seizures, he said, had not been sanctioned by

either the Adult Corrections Department or the local prison administration. In defense of Harvey, who was now gone, Bradley said he didn't think the former associate superintendent for custody "could have reversed" the search operations once underway. However, he said a committee would investigate to determine whether Harvey knew that inappropriate confiscations were taking place; since he was still employed by the state in a similar capacity at another penal institution, answers were needed.

Prisoners began to file claims, many in the $25 to $50 range, but some in the hundreds of dollars, in connection with the massive seizure operations. The state would process them, slowly but surely, through the attorney general's office.

Not everyone shared Bradley's sentiment that prisoners might have been "ripped off." One correctional officer wrote the paper, reminding readers that he and his colleagues had found "dope, pruno, money, knives, guns and ammunition" and other contraband in many earlier prison searches. Pointing out that contraband was usually stored in hollow legs of furniture, false walls and ceilings, and in radios, he sarcastically criticized the adult corrections chief. "I suggest," he said, "that the next time a

search is necessary, we should take taxpayer dollars and hire craftsmen to do the search. After all, we must not disturb the country-club atmosphere and make this a penitentiary." He added, "I personally would like to credit Harvey for trying to do a job that has needed doing for years."

But perhaps even more than Harvey, the most symbolic measure of the old regime and its change was the departure of B. J. Rhay. Taking over the duties of warden, or more officially, superintendent, was Douglas Vinzant.

What's in a Name?

With a change in prison administration, inmates were beginning to wonder how conditions and procedures might change at Walla Walla. Who was this Douglas Vinzant, anyway?

Vinzant, an ordained Methodist minister, had been a warden at two Massachusetts prisons -- at Walpole and Concord. At only 40 years of age, he had already established a name for himself. When he had first gone to Walpole as its warden, he inherited a prison which had been in near-chaos for several years. Plagued by 11 in-house murders in 12 months, Vinzant had a tough job cut out for him. But he met the challenge; during his last nine months at Walpole, the institution had been free of homicides.

His predecessor at Walla Walla, B. J. Rhay, now 56, had been reassigned to Olympia after 20 years at the helm of the state's penitentiary. Rhay would work with the state's adult correction's division on the long-sought development of mini-prisons. The state had finally completed a budget allowing for this new concept in correctional centers. McNutt admitted that

Rhay's change in assignment resulted from the 46-day lockdown. This had represented the first time in Rhay's career that he had been unable to muster the support of his guards.

Rhay referred to his transfer as a "lateral" move. It was likely that two of the small prisons to be built would be located in the Seattle and Spokane areas. The old woman's unit at Walla Walla was closer than ever to renovation as well. Rhay seemed genuinely excited about his new work. He had publicly indicated much earlier that he had intended to retire, but this lower-pressure job would allow him to continue in what he knew best -- penology.

In answer to concerns of the free and imprisoned populations of Walla Walla alike, Vinzant said "I think any time you have a different personality at the institution, you'll probably see different things." He was quick to point out, however, that the very nature of a maximum security penitentiary put serious constraints on potential changes.

"We won't try to run minimum-custody programs in a maximum-security operation," he said flatly. For low-security programs, prisoners would just have to be transferred out.

Vinzant had originally come to Washington in 1974 to work as a project director on the governor's corrections task force. Among his accomplishments was the preparation of the state's master plan for adult corrections. Then, in 1976, he undertook the job of director for Washington's bureau of juvenile rehabilitation.

Although Vinzant may have had some proposed changed up his sleeve, his primary job was clearly the establishment of continuity in running a very difficult operation. The lockdown's end, coupled with a change in administration, did not totally diffuse angers and animosities among staff or population.

Property confiscated during the lockdown period was still unaccounted. The attorney general's office had accumulated over a hundred tort claims. There were still hard questions to be answered: Why was all the property confiscated? Where did it go?

With the lockdown now history, the full story -- or at least different versions of the same story -- could be told. Phil Owens, inmate resident council president wrote Dr. Harlan McNutt, asking that a state investigation determine exactly who was responsible for the big cleanout. As Owens told the story, "They took everything: curtains, furniture, book shelves, stools,

fans, lamps, cigarettes, commissary items." He added, "They even took one guy's second pair of false teeth."

Owens maintained that the massive shakedown was intended to settle personal grudges and to break prisoner unity. He claimed that the confiscations were selective, the guards hardly touching Seven Wing which housed the inmate kitchen staff. The council president reported that only about one in twenty items seized by the guards had been returned.

Prison officials, on the other hand, insisted that there was nothing more to return. The booty, which had been temporarily stored in the old woman's prison had been returned, the prison's community resources coordinator said. His only other explanations were that some confiscated items were hauled to the county dump and others may have been "borrowed."

One inmate's wife said she watched correctional officers follow trucks to the dump. The implication was that guards ended up with inmates' personal property.

Steve Chadek, union president, thought the allegations were absurd. "I doubt very much that an officer would risk his job and reputation to take a five dollar fan that didn't work," he explained. Accordingly to the union boss, every confiscated item

was logged when it was taken and logged again when it was disposed of and bulldozed at the county dump. The seizures, in his eyes, were justified. "Contraband is anything that is not authorized," Chadek said, again highlighting the dangers inherent in seemingly harmless items that may have been tampered with.

Warden Vinzant promised that officials would return or replace improperly-seized items, but he warned that evidence would be required. A small staff of prison employees was assigned to investigate the complaints on a case-by-case basis.

Some people on the outside were wondering why any sane human being would want to run a prison like Walla Walla in the first place. Obviously, Vinzant must have had his reasons -- professional, personal, emotional. But a look back over recent history at Washington State Penitentiary didn't provide a pretty picture.

Between 1962 and 1970, there were only three homicides within the prison's walls, but during the four and a half years preceding Vinzant's coming aboard, there had been 16. There were also numerous recent "suicides," mostly by drug overdose.

Nearly 200 inmates had chosen to live in a protective custody unit, whose poor living conditions

they thought preferable to the general population -- a population which threatened to kill them. "Ugly" is a word which Rhay and Eggers and others had used repeatedly, in describing some of the men lodged within the prison walls. Members of the motorcycle club, according to Eggers, had taken out contracts on fellow inmates who were in arrears of $10 or $25 on drug deals. Back in the old days, inmates were even conducting drug deals on the outside, via phone contacts.

Some convicts could display their bodies which had been stabbed 30 or 70 or 90 times. If it wasn't drugs, it was the home-brewed pruno that got them high. And then there was sex -- homosexual sex and homosexual rape. Talk to some of the insiders, and they will say they were victims rather than perpetrators of crime. A suit filed in Spokane Federal Court charged that just before the troubles began on Easter Sunday, 80 prisoners were forced to remain naked in their isolation cells for about 48 hours. Cold air, they said, was intentionally pumped in. On Easter Sunday, these same men, the suit alleged, received two luncheon meat sandwiches as their entire day's food allotment. The food allotment was repeated the following day, they

claimed. The court was asked to establish a "Declaration of Rights."

Before he left his post at Walla Walla, Rhay retorted. "They probably have more rights than we do." It was all a matter of perception. One of the men in isolation sent a written message, via a guard, to request a legal aid lawyer. Another guard purportedly returned the slip of paper on which someone had written, "Legal aid funding has run out. They no longer exist." At least a few of the guards seemed to enjoy giving the convicts a hard time.

Idleness was still another problem which Vinzant would have to address -- not his, but his population's. Except for the bikers who were involved with major motorcycle repairs, there was not much large-scale activity. A few hundred men worked in the license plate factory, earning 40 cents an hour; but for many, there were just no jobs. Years earlier, there was an in-house clothing and shoe manufacturing operation which provided all the state institutions with goods. But it had long since been dismembered.

Only the strong could survive comfortably at the penitentiary -- strong prisoners, strong staff.

Toying With Change

The new faces in the penitentiary's administration building were symptomatic of change at the state's penal system. But plenty of other changes were taking place, too, behind the prisons' walls -- some the result of legislative action, some the result of the judicial process.

The state had begun to experiment with a concept known as intensive parole. Inmates would be released after serving as little as 45 days behind bars. Hailed as a program which would save taxpayers tens of thousands of dollars, it was first tried at Shelton. Washington authorities made it clear that, at least for the time being, penitentiary inmates at Walla Walla would not qualify for the program.

According to Joe Lehman, the project's director, initial results were very encouraging. Of the 88 inmates released from prison after serving just a few weeks of much longer sentences, none had committed additional crimes. Four had been returned to prison for what he termed "technical parole violations." The program was only a year in the making and additional

experience was clearly needed before it became widespread.

At the penitentiary, a number of changes were imposed not to free inmates earlier, but to make life more satisfactory while incarcerated. Many of the changes stemmed from prisoner demands voiced at the time of the lockdown. Dental services were materially improved. Sanitation inspections were carried out with some frequency. Perhaps most important, inmates with serious mental disorders had been transferred to Eastern State Hospital. In previous months, many of the inmates' problems were reported to have stemmed from disturbances brought on by mentally ill convicts.

Many observers cautioned prison authorities to watch out, however, for prisoners who were feigning mental illness in order to move to a softer way of life. One newspaper editorial criticized inmate demands as often being the result of "malcontents with nothing to occupy their time." Moreover, the writer suggested that "there is ample evidence from past experience that rehabilitation doesn't work and that heavy emphasis on the so-called rights of prisoners weakens the authority and ability of the administration to maintain control."

Perhaps, because of of public sentiment, the courts were becoming no more lenient either in dealing with inmate offenders. Larry Rogers Jones, a 25-year-old Walla Walla prisoner who had been sentenced in King County on assault, rape, and weapons convictions, found out just how harsh the courts could be. He pleaded guilty to possession of drugs, while an inmate at the penitentiary. Judge Tuttle added a term, not to exceed five years, to his previous sentence. The drug was tenuate dospan, a medication prescribed for weight reduction.

Superintendent Vinzant, aware that idleness was a major contributor of problems at his institution, vowed to work towards the creation of more jobs. Through work, inmates would not only qualify for earlier parole, but they would earn a little income and help clean up what had often been termed a "filthy" prison. Not all of his staff shared the sentiment, however. Many openly argued that prisoners did not want to work.

Roger Braithwaite, inmate resident council secretary, supported Vinzant's plans. "Idleness," he wrote, "breeds lack of direction, laziness, crime, and destroys initiative." He said that bouts of violence at the prison could be specifically attributed to lack of meaningful work. State studies, he said, supported

his contention. Unquestionable, a very large percentage of both first-time and multiple offenders were unemployed at the time of their arrest.

The council secretary pointed out that the inmate population included electricians, cabinet makers, draftsmen, masons, and other contractors. Many had volunteered to teach their trades, but because of red tape the programs never got off the ground. He said that many of the trades would be worth twelve to fourteen dollars an hour on the street. Braithwaite would know. In 1970, he directed the prison's upholstery shop which trained 25 inmates and grossed $50,000. Following his parole in 1973, he served as administrative assistant to the chief of prison industries and later as a consultant to the state's adult corrections department. Three years later, he ended up back behind bars, a parole violator.

Braithwaite put his support behind the warden's proposal to pay inmates for cleaning up and maintaining the institution. He did suggest that Vinzant's idea to pay inmates $10 a month for this service was a little low; he suggested minimum pay of $40 instead as a better work incentive.

Other proposals in the council's report included the selective training of inmates as practical nurses,

medical technicians, and dental assistants in the prison hospital. The inmates also asked that the state consider revamping the prison industries program, providing greater flexibility to link up with private business. Last, but not least, Braithwaite concluded that the state prison system should provide a means by which prisoners could be "earning their way to freedom." For every day worked, a day would be removed from the original sentence. Under the laws at that time, a prisoner could reduce his sentence by a third through "good behavior." This did not necessarily mean work, but both Vinzant and the council thought that employment would be an appropriate tie-in to sentence reductions.

Union leader Chadek opposed the position. If an inmate wants to sit on his bunk all day, he took the position, that should be acceptable. Tools should be available, he suggested, for those who really wanted rehabilitation, but no prisoner should be required to work at the institution. Besides, Chadek pointed out, many of the prisoners "don't need training." They already had trades when they entered the prison population, he said.

When four members of a House subcommittee met with Vinzant at the penitentiary, it became evident that

capital project changes were on some minds. The previous legislative session had funded projects including a new kitchen and dining area at a cost of $1.9 million; conversion of the old women's prison at a $300,000 price tag; and dental office remodeling whose cost was placed at $145,000. The state representatives wanted to see what their constituents' taxes were actually buying.

The superintendent said that he was proposing a series of custody level areas, from no-wall minimum custody right up to segregated maximum custody, with several levels in between. The idea would be to place responsibility on the inmates themselves for their behavior, allowing them to progress through the levels as their own actions dictate. Giving an example of self-effected consequences, Vinzant said that a prisoner who violated the institution's trust by accepting contraband from visitors would be penalized: subsequent visits would be by telephone across a glass partition.

The current minimum-security building, in Vinzant's estimation, did not serve the needs of its population well. Ironically, he pointed out, fewer programs were available to these men than to those housed in the maximum security wings. He recommended

running the minimum security facility as a totally separate unit, with its own policies and programs.

Fundamental to any new arrangement of custody levels, the warden said, was the need for inmate work and more extensive vocational education. He asked the legislature to support him in these efforts.

The state had budgeted for three 100-person prison camps, but they had not yet been constructed. Vinzant said that a reduction in Walla Walla's population, through transfer of inmates to these camps, would alleviate serious overcrowding. Some 900 men were housed in small, four-man cells. The warden said that double-celling was adequate for "good medium custody" while "good maximum custody" still required individual celling.

While the warden was pleading for improvements in minimum-custody areas, lower-level custodial officers were busy telling legislators at a House Institutions Committee hearing that control in the segregation unit was not strict enough. Abuses by inmates, they said, were numerous. Some of these inmates had been placed in solitary confinement under an administrative rather than disciplinary order. Kept caged for 23 hours a day, with few visitors, for periods as long as

two years, some of them viewed themselves as political prisoners.

A Prison Legal Services attorney described the segregation unit as "a place to stick people and stick them as far back and as long as possible." He said that prisoners so confined received no counseling or other services likely to modify factors which led to their internment there in the first place. While admitting that some of the segregated men were very violent, he cautioned that continued isolation would only reinforce the anger. He also agreed with charges by inmates that many had been incarcerated in solitary confinement units because of "political beliefs."

Alice Iverson, a representative of the American Friends Service Committee, agreed with the attorney. She described "political prisoners" as those who attempted to exercise their rights within the penal system. She proposed that an ombudsman or independent investigator be assigned to review prisoner complaints about segregation units and related matters.

Members of the inmate resident council told legislators that long periods in segregation served no useful purpose; they asked for a process by which inmates could work their way out into less restrictive units. Correctional officers testifying at the same

hearings of course painted a different picture. Prisoners in segregation were, they charged, abusive and defiant. Being spattered with human waste was not uncommon, they testified.

"These guys are not first-time losers," one officer said. "The officer is running back and forth like he's being hit by a bat on either side," he added. The guards uniformly characterized segregated prisoners as "troublemakers."

The subject of ethnic composition in the penitentiary's workforce came up, not unexpectedly. Eight blacks and Chicanos were on the prison's staff. Administrators attributed this very small number to the composition of Walla Walla's population. They said that it was very difficult to recruit minorities from other communities, convincing them to relocate to Walla Walla. Representative George Hurley of Seattle argued that the prison needed to try harder in its minority recruitment drives, but one of the black employees at the penitentiary made an interesting observation. Black corrections officers, he said, were subjected to far more abuse by black inmates than white officers. The call of "Uncle Tom" or "White Nigger" was not at all unusual, he said.

Then there were changes brought about by the courts, or at least the state's interpretation of recent court rulings. For example, the Department of Social and Health Services adopted new regulations increasing punishment for prisoners in violation of prison codes. In effect, due process requirements were being streamlined, to the complete satisfaction of prison administrators.

The new rules gave the three-member prison hearing boards the authority to limit prisoners' rights to call witnesses and cross-examine them. They also allowed the warden five days to act on appeals, instead of the one-day requirement prior to the change. The regulations were drawn up after the state's assistant attorney general read and interpreted several U.S. Supreme Court rulings. These rulings had held that the state did not have to go quite as far as it had in the past in protecting the rights of inmates involved in disciplinary hearings. Over the years, many prisoners had challenged, on technicalities, the validity of disciplinary hearings and their resulting punishments -- often winning and thus embarrassing the prison administrators. Penitentiary employees complained that as non-lawyers, their hands were often tied in effecting necessary discipline.

Besides setting new guidelines for the hearings themselves, the new rules set stiffer penalties for infractions. Earlier penalties of 3-day privilege suspensions were increased to up to 10 days for a first offense, 20 days for a second infraction, and 30 days for third violations. Regulations on misconduct covered everything from smoking in non-smoking areas to rioting and escape.

The social scientists were busy, too, effecting change in the prison world. Results of a seven-year federally-funded study in a mental hospital depicted rehabilitation as a very viable hope for prisoners. All you had to do was change the way they thought. The Social Adjustment for Minorities program at Walla Walla claimed to have verified this discovery in 1973. SAM called the process the humanization of man.

Whether SAM's process was in fact as successful as it said was academic. SAM had been disbanded because many believed that society had come to accept as axiomatic the belief that many offenders were simply incorrigible. The process could have been called humanization or behavioral modification or, to those who opposed it, brainwashing. But SAM statistics seemed to show that over eighty-nine percent of its participants, when paroled to society, stayed

clean. Of others returned to society, no more than forty percent could be expected to stay out of trouble and remain free.

Washington's corrections officials were looking to other jurisdictions, too, to find other programs which would justify change. There were 285,000 inmates in America's prisons and jails, an increase of 20 percent in a one-year period. The sudden surge resulted from high unemployment, better police training, plea bargaining, and a tougher stand by courts. The average American had lashed out against rehabilitation and was more content to just throw the convicted felon behind bars.

Unfortunately, concrete and steel was little more than an interim solution. In California, fourteen convicts were killed behind bars in a single year. Many of these murders were said to have been racially motivated. Prison reform advocates were looking again to new changes, among them trained ombudsmen, workers especially skilled in handling inter-racial disturbances, and alternatives to prison for the less hardened criminals.

The American Corrections Association, which represented 12,000 corrections and probation officers, was among the interested parties in finding new

solutions to very old penal problems. Many of the solutions, however, were not easily implemented -- like the recruitment of more minority officers for major penitentiaries.

That's not to say that these solutions were totally unworkable. Arizona, for example, managed to staff its maximum security prison in Florence with officers, 35 percent of whom were Mexican-American. This was in line with a 26 percent Mexican-American inmate population. California had increased its minority prison staff from just six percent a decade earlier to more than 26 percent.

Many believed that such a balance was important in relieving internal prison tensions. After all, the prisoners themselves had actually formed in-house ethnic gangs in some states: the Mexican Mafia, the Aryan Brotherhood, and the Black Guerrilla Family, to name a few.

Prisons run by the federal government were moving rapidly toward smaller units. Many of the 30,000 inmates were being reshuffled into groups of 50 to 100 with special teaching staffs. The groups were all racially integrated, but each represented some special need: alcoholism, drug addiction, job training, education.

Father Richard Houlahan, chief chaplain for the U.S. federal prison system, emphasized the need for religious programs which addressed self-image and dignity concepts. "When people start to appreciate other people," he said, "then racial tension is mitigated."

Officials were looking hard at a new pilot program in Minnesota, formally known as the communities corrections act. Counties received state subsidies for assuming responsibility for offenders. The funds could be used for county projects ranging from halfway houses to crisis intervention teams. The state still retained control of the most serious and violent offenders, but the counties were charged with lesser offenders. If any county found it necessary to send one of these lesser offenders to the state prison system, it was required to reimburse the state for this care.

More Trials and Tribulations

Washington's Court of Appeals affirmed the first-degree murder conviction of inmate Donald Snook. By a two-to-one vote, the court upheld the Walla Walla County Superior Court conviction which stemmed from the murder of fellow inmate Michael Brookshire. Only a month earlier, Snook had been sentenced to die for the aggravated first-degree murder of yet another inmate, Gorden Noel.

Snook had asked that the Brookshire murder verdict be overturned on several accounts. Among them, the defendant cited Judge Tuttle's failure to charge the jury in a matter satisfactory to Snook. The convicted killer also believed that his confession had been improperly admitted into evidence. He had also charged that Dr. Hunter's testimony had been improperly excluded. Lastly, Snook's request for a change of venue, because of pretrial publicity, had been denied.

Of the challenges, the judges writing the majority opinion said that Snook's proposal for a charge to the jury was not consistent with the law or the definition of the charges. Snook's confession, they wrote, had

been substantially corroborated in several other respects to support the verdict of murder in the first degree. Hunter's testimony, they said, was appropriately excluded because "he had no knowledge of" the murder incident itself. As for a denial of change in venue, the judges said that their review of newspaper articles showed that reports were factual and included little evidential matter that could have prejudiced the jury.

Following the appeal verdict, prison officials were preparing to move Snook from his one-man cell in the isolation unit to the isolation of death row, but not until the appeal process was completed. For the time being, Snook was to be kept under close tabs, allowed out of his cell for only an hour a day to exercise. He would have no contact with other prisoners.

Snook's original conviction in Walla Walla and the subsequent sentence to be hanged stemmed from the 1975 Washington State law which provided for the death penalty in prison slayings. Attorney General Slade Gorton, however, had gone on record as saying the law was "constitutionally unenforceable." Snook's sentence contained a provision that if the death penalty were to be commuted by the governor, or the

penalty determined to be unconstitutional, a life term would automatically be imposed. The life term -- 20 years, in fact -- was further defined to prevent parole, release, furlough, or work release.

Judge James Mitchell, in handing down the sentence, had agreed with many other legal experts. "I am satisfied," he said, "that the Supreme Court will probably find that the death penalty is unconstitutional." The prison's death row section had housed only one prisoner at the time -- inmate Michael Green, also convicted of aggravated first-degree murder. Presumably, Snook would soon join Green in death row.

Green's execution date was set by a Seattle judge, but penitentiary officials doubted that the prison gallows would be put into service after 14 years of collecting dust. Gorton, in this case, like Snook's felt that the 1975 law would be knocked down by a higher court as unconstitutional. He believed that the law's inflexibility in mandating death, with no room for discretion, would ultimately doom the law.

Mark Alan Larue, 22, another Walla Walla inmate was also making waves, but making little progress, in his own judicial skirmishes. Convicted of second-degree assault in a prison stabbing, Larue had

asked for -- but was denied -- a new trial. He cited alleged irregularities in the court proceedings, misconduct, and lack of evidence to justify the verdict. Judge James Mitchell was not impressed with the arguments. Larue, who was already serving time for a parole violation in a Clark County burglary conviction, would be sentenced after Judge Mitchell had a chance to review Larue's parole records.

Escape Artists

It didn't always have the glamour portrayed in major motion pictures filmed at Alcatraz and elsewhere, but escape from the state's maximum security penitentiary was a regular thing -- at least the attempts were. Escape plots were varied over the years. Most failed and some men died.

The successful escapes were usually the most simple. Men, particularly those housed in the minimum-security area of the maximum-security prison simply walked away from their home away from home. However, occasional escapes from the heavily guarded maximum security areas took place as well.

After five years of maintaining good security, inmate Harry Kubacki managed to elude guards at Walla Walla. Kubacki had persuaded fellow inmates to sew him into a sofa -- in the prison's upholstery shop. When the area was cleared, he popped out of the furniture, fleeing over a barbed wire fence into the night. His escape, however, was short-lived, Colorado authorities picking him up just three weeks later.

It wasn't the first time an inmate had concealed himself in some unusual fashion. In 1958, two prisoners had themselves packed into fish and lard containers. After being hauled from the prison by truck, they burst out of their barrels, climbed into the vehicle's cab, and forced the driver at gunpoint to drive them into town.

Still a year earlier, convicted murderer Irvin Squires disappeared in a three foot square bundle of socks which was bound for other state institutions. Armed with a pair of shears, he broke out of the bale and forced another inmate, from a minimum security area, to drive him away. Guards gave chase, forcing the fleeing truck off the road. Squires jumped free and ran out across a field of snow. Hours later, the half-frozen Squires gave himself up in a tavern.

Some escapes, particularly in earlier years, ended with bloodshed. Prisoners had rammed vehicles through prison gates and had been met accordingly with gunfire from automatic weapons. Such daring escapades were not all buried in the historic archives of the state's penitentiary, however. Two minimum security inmates had just commandeered an official pickup truck and crashed it through a prison farm gate in an attempt to get out. Thomas G. Lewis and Gary Noble were found

hiding in a soybean field after abandoning the truck some 30 miles northwest of Walla Walla. Dozens of law enforcement officials from state, county, and municipal police organizations joined forces in searching for and apprehending the escapees. There was no struggle. Prison officials said that ironically both men were scheduled for an impending release before their early unofficial departure. They would now face charges of escape and potentially receive additional time.

The old tightrope act had its debut in 1963. After hand manufacturing a rope of twine and tape, and attaching hooks, two inmates made their way to the third floor roof of the prison. Fortunately for them, the hooks gave way and one of the prisoners fell to the ground, unconscious; a tower guard had already trained his weapon on the inmate and was about to pull the trigger. At least this potential escapee remained alive -- unconscious for a while, but alive.

Then there were escapes involving women -- or women impersonators. In 1961, when the women's prison was still located at the penitentiary, one if its inmates escaped by dieting her way to 85 pounds. She was then able to contort her body through the 5" x 11" space between the bars on her window. An extension cord proved satisfactory, at her weight, for lowering

herself to the ground. Vines provided all the leverage she needed to scale an outer wall.

More recently, one of Walla Walla's male residents borrowed a dress from a transvestite in the population and disguised himself as a female visitor. The dress, with all the jewelry trimmings, didn't prove convincing enough. Prison guards told him he was going to be strip searched by a prison matron; he asked for trousers.

In years gone by, tunnelling was the most often used method of moving out illegally. But it depended on having a place to conceal all the dirt dug up in the process. The coal cinder buckets once used before natural gas was brought to the penitentiary was exactly what the escape artists needed. Now that the buckets were gone, tunnelling became little more than a legend.

Some escapees seemed to have good intentions when they made and implemented their plans; that's not to say all was legal. Inmate Paul Bromley, for example, decided to make his own arrangements for medical treatment. Calling the Veterans Administration Hospital, he identified himself as an escaped convict from the Washington State Penitentiary. He said he would soon show up by taxi. Prison officials confirmed that they had been trying to arrange a medical furlough

for Bromley who had suffered a broken jaw. But when bureaucratic red tape seemed to be hampering the inmate in his efforts to get his jaw fixed, he simply walked away from the minimum security hog farm at the penitentiary.

Walking away was literally just that. Inmates Silas Cox and Victor Ketzenberg, convicted of grand larceny and attempted robbery respectively, escaped from the minimum security unit at Walla Walla, only to be apprehended in the city a short time later. They described their departure from prison in easy-to-understand terms: they walked out the front door. Prison officials did not even know yet that the men were gone, and there was no evidence the front door had been tampered with.

Thomas Welsh, a 32-year-old serving time for grand larceny literally used the fog surrounding the prison as a cover for escape. Gone for only six hours, he was apprehended by Walla Walla city police while driving a stolen car. Welsh got a change in prison cells -- moving, at least temporarily, to the city jail.

"We had quite a fog around the institution, and he just walked away in the fog," Murphy said of the incident. "That's why we call it parole dust."

The stories were being played and replayed at Walla Walla and elsewhere throughout the state. Joseph Buster Calfrobe, a 31-year-old convict serving time for assault and parole violations, signed out to go to the penitentiary's dairy, but disappeared. Larry Glenn, 24, serving time for a robbery conviction, dropped out of sight from the minimum security unit, authorities unable to say how he left. Four convicts, all in their thirties, each convicted of burglary or larceny, were reported missing from the state's local work-release facility half an hour after being restricted to their quarters. The restriction followed a discovery by authorities that they were outside at 1:40 a.m. At 2:10 a.m., following the disciplinary measure, they were gone completely.

Not every prisoner's needs were the same, either. Warren S. Halverson, another minimum security inmate, frankly decided that prison wasn't the place for him, and so he left. Halverson, who had been convicted of robberies and murder and sentenced to life in prison in June 1968, had escaped before. For the second time around, officials had put him into a minimum security setting and for the second time he vanished. Described as a good worker, quiet, and trustworthy, it seemed

right at the time for Halverson to be housed in a minimum security unit.

Following the second escape which, like the first, was short-lived, many people in the community began to criticize the way in which prisoners were classified. Should a convicted murdered and previous escapee have been reclassified after only three years as suitable for minimum custody? Questions like this were not as easily answered as they were asked.

The statistics, however, were not encouraging. Although the number of escapes from the penitentiary had declined since the early 1970's, the institution was still experiencing about 60 escapes a year, many of them walk-aways. In 1972, there were 98; in 1971, a near-record 94 escapes were reported. In 1970, there were only 45. Officials could not explain the large fluctuations, insisting that criteria for the assignment of prisoners to minimum-security programs had not changed over the years. A.J. Murphy conjectured that in-house discipline was the primary variable affecting escape attempts -- successful and otherwise.

A Day in Court

The trial of Michael Olds -- the first trial -- for the shooting death of Walla Walla taxi driver Steven Schmerer was at last underway. Site of the trial was the Union County Circuit Court in LaGrande, Oregon. The charges were actually brought in Umatilla County, but a change of venue had been granted because of the unusual levels of publicity the case had received. It was a much awaited day, with several jurisdictions having fought for the opportunity to try Olds first.

Olds' court-appointed lawyer, Dennis Hachler wasn't about to disclose whether his client would take the stand in his own defense until the trial was finally in progress. The defense would be built on a depiction of Olds' background as the rejected child of a rape victim, a boy who had lived in 17 different foster home settings. The formal plea entered was innocent by reason of mental disease or defect.

Hachler told the press that Olds was a product of the society in which he lived. "They created him and what are they going to so with him?" he asked.

The trial meant a 104-mile daily round trip for Olds, who was transported from the Pendleton jail to Union County. The jail in Union County was not considered adequate for Olds.

Umatilla County District Attorney Fred Bennett noted that some of his witnesses had already moved to other locations, but he expressed confidence in his ability to win a conviction. He expected to take up most of the court's time with the prosecution's case, and that he did.

The trial lasted for four days. The jury deliberated three and a half hours. When all was said and done, it had rejected Olds' plea of innocence by reason of mental disease or defect. Olds was sentenced to a mandatory natural life term, making him eligible for parole in 30 years. In actual fact, the term was subject to review and possible revision in 20 years if the authorities deemed Olds rehabilitated. Oregon's parole board chairman, Ira Blalock, commented following the trial that the seriousness of the offense could well mean more than 30 years imprisonment for the convict.

When he sentenced Olds, Judge Jack Olsen advised the convict that he had the right to appeal the verdict within 30 days through an attorney appointed by the

State of Oregon. The judge asked Olds whether he had anything to say, before sentencing him.

"What is there to say?" the convicted murdered replied, the judge imposing a natural life sentence.

Olds' problems were far from resolved. He still faced additional murder, kidnapping, and assault charges in Oregon, Idaho, and Pennsylvania. Priorities and dates had not yet been set on the remaining charges, but many interested parties were encouraged by the first verdict. Edwin F. Schmerer, the murdered taxi driver's father, had attended the trial each day with other members of the family.

"I wish to extend my sincere gratitude to the prosecuting attorney," he said, "for his excellent work as this country needs more men like him."

It seemed likely that Olds would be sent to the Oregon State Penitentiary at Salem first and then to Malheur County for further judicial proceedings. Morrow County's district attorney said he might drop the Lindsay kidnapping charges, following the outcome in Malheur County.

It took a month for Malheur County officials to get the wheels rolling in their case, but when they started them turning, it seemed like an instant replay was about to occur. Olds' new attorneys, Doughlas

Combs and William Tharp told Judge Frank Yraguen that their client was pleading innocent by reason of mental disease or defect -- a plea that had been unsuccessful in the previous trial. A new wrinkle, however, was added. The attorneys filed motions for dismissal of the charge, claiming that their client had already been convicted of murder, and that an additional trial would put him in double jeopardy. They also asked for details of the earlier psychiatric examination and for movement of the trial from Malheur County. The judge promised an early ruling.

Clearing the Air

The penitentiary had been plagued with problems of discipline, overcrowding, and lawsuits. But now it had another to resolve -- smoke. The prison had been accused of being a polluter of the air, the source of the smoke being its heating plant.

The institution was given an eight-month extension to reduce its pollution to acceptable levels. The Walla Walla County's Air Pollution Control Authority agreed to the additional time on the condition that only natural gas be used to run the three boilers in the interim. The boilers were equipped to run on either gas or coal. If the institution did not clean up its act by the end of the eight months, the Authority would seek fines of up to $250 a day.

The heating plant was used not only for heating the institution, but for the operation of the prison's laundry facilities. At a cost approaching $200,000, the penitentiary was about to install high-temperature filters to clean the air from two of its three stacks. The third stack would not be modified, but would only be used during periods of peak demand.

While officials were resolving problems up at the stacks, they were also faced with problems down below. Six inmates who were confined to the intensive supervision unit -- also called the hole -- filed a class action lawsuit against prison and state corrections officials. Represented by Institutional Legal Services of Monroe, Washington, the prisoners asked for a preliminary injunction which would allow them daily outdoor exercise and sick call for the security unit. According to the suit, a number of inmates had been confined to the unit for as long as two and a half years.

Most of the inmates sent to the intensive supervision unit had been charged with infractions diverse as escape, riot, threatening remarks to female employees, and an alleged bombing incident. The suit alleged that there were no specific criteria used in the administrative segregations; rather, it suggested, the segregation was arbitrary and in violation of constitutional rights. The plaintiffs asked for release into the general population or the adoption of specific standards for administrative segregation.

On the state level, more problems were developing. The Governor had vetoed a bill providing for mini-prison funding. State legislative leaders and

corrections officials -- including B. J. Rhay -- were about to return the volley.

Representative Ron Hanna of Gig Harbor, chairman of the House Institutions Committee, sent Governor Ray an open letter saying he was frustrated and embarrassed by his experience with the new prison proposals. He reminded the governor that the legislature had approved the controversial program after being convinced by the executive branch that there was a need for new maximum security facilities. He said the committee would not again tackle the problem until she, Ray, came up with a new comprehensive plan for prison change.

Harlan McNutt said that the $1.4 million veto for planning and design would not kill, but merely set back, the project. The governor insisted that the project had originated during the previous governor's administration and held that it was far too costly to implement. She was more inclined, she indicated, to use existing facilities before new grass roots cells were constructed. Rhay, who had become a major planner for the program, said he agreed with that approach, although he was disappointed in the delay.

The need for new prisons was reaching urgent proportions. Extrapolating prison populations, given the rate at which judges were incarcerating convicted

felons, an extra 1000 beds would be needed within three years.

Rhay referred to the "stiffening of public attitude regarding criminals." This, of course, was putting pressure on judges to sentence convicted criminals to longer terms. Liberal judges who had been using alternatives to imprisonment had long since fallen into disfavor with John Q. Citizen.

On the other hand, a study conducted by the Committee to Reinvolve Ex-Offenders and released to the public stated flatly that state prisons did not rehabilitate, did not provide adequate medical care, and didn't provide much vocational or educational training. The report also said the custodial care cost more than it had to. The study was based on a six-month investigation of conditions at Walla Walla and Monroe and was sponsored by the Association of Scientologists for Reform. Its foreword was written by Representative Ron Hanna.

A strong relationship between the lack of educational and vocational opportunities and return to crime was cited. Two out of every three criminals returned to crime, the 44-page report said. Of those who had received significant educational or vocational services, fewer that 15 percent became repeat

offenders. The group's survey suggested that nine out of ten inmates interviewed felt that rehabilitation was either very poor or non-existent. The penitentiary, the document claimed, provided jobs for only 600 of the 1,700 inmates. At the Monroe reformatory, the ratio was even worse: 300 jobs for 900 men.

The University of Washington had developed a pilot Resident Release Project. Only ten percent of the inmates paroled to the project returned to prison, compared to the much higher rates of traditional releases. The project's daily cost per inmate was only $11.33 compared with $15.97 at the penitentiary and $21.85 at the reformatory.

The report also took jabs at the prison's mental health programs, calling them costly, unsuccessful, and dehumanizing. It mentioned involuntary electric shock treatments, the overuse of tranquilizers, and chaining practices. The recidivism rates among the prison system's mental health patients, the study concluded, was very poor. The mental health unit, it said, had spent over a million dollars in the first two and a half years of operation. Only seven patients were released, of whom four returned to prison within a year.

Another major problem in need of resolution was a reduction in staff turnover at the penitentiary. In 1976, it was estimated that no fewer than one in three employees would be gone within the year. Among the custodial officers, the rate was two out of three. Subcommittee hearings were scheduled to determine the cause of this high level of terminations. The answers which the committee members received were numerous.

Some complained of lack of direction. Others referenced fear of personal safety. Still others cited continued confrontations with prisoners. There were also mentions of inadequate training and lack of control over inmates. They all pointed, however, to a low level of morale.

Wayne Helgeson, a training officer at the prison told the subcommittee members that age seemed to be a major factor, too. The twenty-one year old prisoner, he pointed out had probably come through the ranks of the juvenile system and was somewhat knowledgeable about institutions in general. The prison guard of the same age was "still ten minutes away from mother and the Christmas tree," he said.

Corrections officers required no more than a high school diploma or its equivalent to work at the penitentiary. The minimum age was just 21. Following

two weeks of training, they were considered fully equipped to deal with prison populations inside the maximum security institution. Helgeson admitted that he was able to deliver about ten percent of the knowledge a new officer needed to survive well. "He gets another 40 percent on the job," the training officer reported.

A DSHS personnel specialist refuted a contention that low salaries were at the heart of poor morale and high turnover. He described compensation as "quite competitive" and said there were enough walk-ins applying for prison jobs to keep the institution staffed without advertising. He blamed the officers' inability to discipline offenders as the prime cause of problems. "You have to have an act of Congress to get recalcitrants out of the population," he complained.

Representative Hanna probed the issue further, wondering out loud why this testimony failed to mesh with inmate complaints that they were being hauled away to solitary confinement without cause. Hanna pointed out that although the prison administration had denied these allegations, a state investigative committee had indeed discovered abuses in the administration of discipline.

The correctional officers' union was represented, too, at the hearings. Its officers charged prison management with failure to keep employees informed of policy changes. An officer, acting in good faith on what he believed was policy, would be put on the carpet for acting contrary to a newly-changed but unannounced policy. Employees were described as having "input" but no "impact" in shaping prison policy. Promises of improved equipment and working conditions, they also alleged, were never fulfilled.

Union president Chadek pleaded for more training, regardless of the administration's attitudes -- liberal or conservative -- toward prisoners. "Let management sit me down in a chair for 20 minutes and let them tell me what to do. But give us the money and give us the time and the bodies to do it," he argued.

Testifying on behalf of the administration, warden Vinzant agreed wholeheartedly that training was an area of prime concern. "One of my highest priorities," he said, "is to get beyond this very superficial 80 hours training and thinking we've got a trained officer." He suggested that perhaps a better approach would be to let the prospective officer spend some time inside the prison's walls first so that he could decide whether life as a correctional officer was right in the first

place. Training would then follow if the job seemed right.

"We can build training into the every-day operation of this institution," the superintendent said. "That's the kind of training that means something."

Subcommittee members finished the first day of hearings with a three-hour tour of the penitentiary. They interviewed prisoners and observed the activities of several inmate organizations. Although a lot of questions were asked and a lot of answers provided during the week of hearings, the air wasn't necessarily any cleaner as a result.

The First Thirty Days

Prison wardens and prison administrations are always under the constant scrutiny of their populations, their staffs, and the public. With thirty days already history, people were beginning to look at Vinzant and his staff in assessing the immediate successes and failures.

Inmates and their advocates were cautiously optimistic about conditions at the institution under the new leadership. There was a lot of talk -- at least publicly -- about new programs and reforms.

Guards and correctional officers were expressing some concerns, however, about the direction Vinzant and his administrators were taking. The forum for all this discussion was a continuation of state hearings in Olympia. On the one hand, legislators were being asked for a proliferation in the number of programs available for inmates; on the other, they were being asked for more control.

James Hartford, whose hand had been mangled in the courthouse, gestured forcefully with what was left of his hand. "These people up here aren't kindergarten

kids," he told the lawmakers as he displayed a collection of handmade weapons taken from prisoners in recent months.

The injured officer explained how violence or threats of violence extended beyond the prison walls themselves. He explained that he had found notes, presumably written by inmates with less than honorable intentions, listing the addresses and automobile descriptions of Hartford, his parents, and his friends. Hartford said that the high turnover rate at Walla Walla clearly stemmed from the unusually high personal risks and dangers which faced the staff every day.

Hartford criticized the condition of equipment on which guards had to rely. He said that officers should have been allowed to carry small arms. He agreed with others in portraying morale as poor. Vacation scheduling, he pointed out, was inflexible; training was nearly non-existent; and there was frankly a social stigma in telling friends or acquaintances that your place of employment was the state penitentiary.

Turning to the administration, the officer charged that the management intentionally broke up "cliques" of officers whom they perceived as working well in teams. He said that they resented officers who were "doing

their job too well," because it irritated the convicted felons.

"Every time a group of officers forms...they call it a 'clique' and tear it down," he said. "You need the cliques to get the job done," he added, recognizing that the inmates themselves had set up rather strong and sometimes formalized social organizations.

Other guards testified that they had been removed from assignments solely on the basis of inmate demands. Some inmates were allowed to violate rules with impunity because of protests from other inmates. The officers were portraying an environment in which it wasn't clear exactly who was in control at times.

"These guys," one worker said, "are not first-time losers. What they are doing now is their life. They'll never be any different." The sentiment was really no different from what was being expressed by the public outside Walla Walla's walls. Guards were beginning to attack rehabilitation as something that wouldn't work for a large number of the prison's population. Instead, they recommended stricter controls and -- to the absolute dismay of inmate council leaders -- more use of the solitary confinement or segregation unit.

Officer Terry Walter put it on the line. Alluding to problems with a troublesome prisoner, he said, "If I had him in isolation where he never saw no one but us, you wouldn't have a problem."

Phil Owens, council president, testified on behalf of the inmates. He pleaded for more self-help programs, vocational training, in-house employment opportunities, and a reduction in boredom. Prison clubs, he said, provided the only rehabilitation vehicles within the institution's walls.

"I don't see them causing wars or other things," he said of the clubs. "I see them as stoppers of wars." Owens defended the exclusive use of a number of small prison buildings by the clubs. Some of the organizations, particularly those based on cultural or ethnic heritage, had grown markedly. These club areas, he said, were places prisoners "can feel a part of." Owens elaborated. "A club is not just a thing to do sometimes. It's something you do all the time."

Owens and another council member, Antonio Wheat, asked that more vocational training be made available. They stressed the need to provide inmates with employable skills so they would have something to rely on after release. Wheat called for "more community involvement with staff and inmates." He described the

cultural isolation as a deteriorating process which made eventual release very difficult.

"I know I've been here 12 years and if you released me today, I'd be scared to death," he admitted. "If I don't know how society is operating -- what I can do and can't do -- how can I go out and survive?"

Inmate requests for training programs encountered a sympathetic understanding from Adult Corrections Director Hal Bradley. In addressing the committee, however, he laid some realities down. The penitentiary had a very large population on a mere 17.3 acres, he said. Thus, there were physical limitations which prevented the extensive introduction of jobs and vocational training.

Indeed, according to figures which had just been released, Washington's prison population had soared 12.3 percent in one year. There were 321 more inmates in custody than considered safe by official standards. The total of 3,788 inmates did not include those on work release programs or persons on parole.

Some observers looked as the hearing as an instrument by which the state and its people could evaluate the effectiveness of the new prison administration. This would have been a political

evaluation, at best. No administration could really have been expected to materially alter the conditions or problems of a penal institution as old as the penitentiary at Walla Walla. Vinzant had inherited all the problems of his predecessors and perhaps some new ones. At best, the hearings might have served to give some clues as to the new administration's sense of direction for the future.

It was said by some that a little of the substance and a lot of the style of Douglas Vinzant was beginning to appear at the penitentiary. There was a general notion, it seemed, that more structure was needed for inmates and staff alike.

For example, in directing his attention to lack of structure in inmate programs and activities scheduling, Vinzant struck a chord. "Not having a particular place for a prisoner to be any particular time creates a situation where we don't know where half the people are half the time," the superintendent admitted. He was quick to point out that he had no intention of cutting off the little freedom of mobility his prisoners had.

"If it's not destructive or illegal and I know where it is, when it is, and who's involved, then I might consider that activity constructive," he said.

Philosophizing, the institution's boss pointed out that even "the worst person" who had been sent to his institution might have been committing crimes only ten percent of the time. Turning this statistic around, Vinzant said he had an offender on his hands who "ninety percent of the time would be operating within society's rules."

Vinzant said that he favored the state's good time law which allowed earlier releases based on good behavior. As for the time prior to release, the new superintendent said he would fight boredom with whatever programs he could.

"If you want to stop people from doing one thing, you've got to give them the opportunity to do something else," he said. Perhaps because of his newness to the institution, Vinzant was not able to elaborate much on what that something else might be.

An observer could have commended -- or criticized -- Vinzant for taking a middle road position. On the one hand, he said "The day when the warden was two slots below God are gone. The situation has changed from ten, fifteen years before when he had absolute authority." The warden said the inmates would have "a lot of input and that's how it should be." He also recognized the need, as a good manager of people, to

delegate authority and responsibility for decisions to his staff.

"There are other people working here drawing big salaries besides me," he said. "People don't accept responsibility and make decisions if they feel they will be reviewed at a higher level and reversed." Adding to this belief, the warden said, "I don't want people who can memorize what we tell them to memorize, but people who can apply."

On the other hand, Vinzant sent a clear message to his inmate population. He said he would not be "put in a situation where inmates dictate what is going to happen."

Vinzant summed up the uncertainty at Walla Walla. "I think everyone is wondering where I'm coming from. The number one thing is to let them get some feel for my priorities and way of operating." Among the priorities discussed at the hearing, and those for which Vinzant had already gone on record, was the relocation of the intensive security unit from its position in the center of the inmate area.

"If people had tried to plan something disastrous, they couldn't have done a better job," Vinzant said, pointing up that much of what he faced had been inherited. "The segregation unit is at best a white

elephant." Its physical location provided a "contagion factor," he said, allowing troublemakers who had been isolated the opportunity to stir up other inmates in the general population.

Looking to the visiting area, Vinzant also shed light on his forward plans. Describing the area as "the worst of any prison that I have ever been in," he reminded the legislators that he had been in "most of those in this country." His primary complaint was that there was no differentiation between classes of prisoners -- from minimum security to segregation -- in the institution. Contact visits, he said, should not be permitted when prisoners or their visitors have had histories of passing contraband.

Just as Vinzant was addressing the legislative committee, a case of contraband was being decided by the local district court. Julia Ann Emick of Seattle was fined $100 and given six months probation for possession of a small quantity of marijuana. Because the quantity was under 40 grams, the charge was a misdemeanor.

What made the charge more interesting was that Emick had stuffed the weed into her bra in an alleged attempt to smuggle it into the visitor's area of the

penitentiary. Prison personnel, who routinely searched visitors, had uncovered the cache.

A Composition by Billy R. Blankenship, 253427

Some of the most poignant insights into prison life come from inmates who have themselves told or written their stories. Inmate Blankenship wrote this one on July 31, 1977.

> Some months ago there was a man sent to prison for committing a crime. A crime that he claims was done in the name of God. This man had three other people also in prison, one being his wife. His trial was on national T.V. His name: Edward Lion Cunningham. Mr. Cunningham's crime was so dirty and evil that the prison's leaders felt it dangerous to let this man live in the prison's main population. He would not have lived two days there. So he was housed in a cell all by himself and even while in there, other prisoners looked upon him as some kind of a freak that should be killed. Finally he was transferred to the

hospital's (3rd) floor. This is where I became acquainted with Mr. Cunningham. I am on the hospital third floor because my behavior has made me a threat to the main body of prisoners in in prison.

I am an attendant resident and I was on duty that day Mr. Cunningham was brought up on the floor. He was placed in s/l status which in normal terms is a single lock and most of us liked him.

At least he was cooperative as far as his manners, cleanliness, and general appearance. Not one man could find a single thing wrong with Mr. Cunningham. This is what made me watch him so closely. I have always been leary of those who come on so perfectly to others. If I have not learned anything else in my life, I have learned to understand people. I had to. I had to know people from the age of six. I raised myself on the streets of Baltimore, Maryland. I had to beg food and shelter until I was big enough to steal or take it from someone. Begging taught me a lot about people. It wasn't long till I knew

at a first glance if I would get kicked across the street pr pitied enough to be given a dime or two, I became a salesman of the streets. A tramp.

When I joined the army at the age of 18, I knew that I could not pass the I.Q. test of 71. But neither did I try. I knew I could pass another test and that was a personality thing. I talked the recruiting sergeant into helping me get a passing grade. That kind of an education does not come easy. I am now 42 years old, and I have conned my way through many things. I am writing a book about my life and I'm sure it will be very interesting. However, I am taking time out from my book to write this composition about Edward L. Cunningham. Believe me, the world should know about this man and his evil ways and beliefs. Ed is not smart in a lot of ways but he knows that, and that gives him an edge. He is witty in all ways. A master of hiding his shortcomings.

According to his trial that was televised across the nation, he beat his

daughter's little four year old child to death and locked it in a room to rot. He stated that the little child was possessed by the devil. How barbaric can one be? I have learned the true story of Ed Cunningham and his daughter and I think the world should know the truth about this man. The man who has committed a great sin and then committed a bigger one to cover it up, all the while using our holy bible to justify his crime. I have reason to think that Edward Lion Cunningham is the real father of his own daughter's dead baby. And I have good reason to believe that this is the real sin he is trying so hard to cover up.

It is no wonder that he has sleepless nights and that he can't eat or talk about himself. It is no wonder. This man is heard (and seen) crying in the night. I want to mention a few things about Ed's hidden character. When he was brought up here on the 3rd floor and placed in a cell, the very first thing he was told was: There is to be no smoking whatsoever in the

cells. He even conned me into breaking that rule. In three days, he had me ready to fight one of the most likeable men I have ever known, simply because this man said something to hurt Ed's feelings. He had used that old familiar weapon, money. It made no difference to him that people were breaking floor rules. He cared not for rules. He justified himself by saying "If I give everyone on the floor a cigarette, and the right people a pack of cigarettes, someone is going to throw the rules out the window." And that's what we did. I was no exception. I have seen Edward Cunningham preach his doctrine to a young man and literally ruin a good hard studying person. Building him up on dreams and promises that he could not either keep or prove a fact. I can feel his fear that somehow someone may guess the truth of his sin.

As facts started coming to me, I became angry. Not only with him, but myself as well. I had realized I had met a con man that would be hard to uncover. Simply

because he uses the bible as his crutch and weapon. I no longer hate Mr. Cunningham because of his crime. I feel sorry for him. I feel sorry because he knows that his secret can no longer be shielded. And he is going to have to live with the truth for the rest of his life. I believe that in time his daughter will get out of prison, find someone who will overlook her sins and sooner or later she will confess what her father, Mr. Edward L. Cunningham, did to her. I don't think the sin will stay on her head. I pray to whatever gods may be that she does not feel his sin and what he has done, weighs upon her head.

I am going to turn this composition over to the proper authorities and with the information herein do what justice you can. I base all this information on facts and so swear that this composition is true and to the best of my ability.

Billy Blankenship 253427

Getting Down to Business

The new administration, having declared its intentions and policies, was moving forward towards resolution of some of the internal problems at the penitentiary. Unfortunately, a lot of animosity generated during the earlier administration was not easily quelled.

One local resident who contributed a letter to the editor of the local newspaper came down hard on state officials. "I find these blanket accusations of guards stealing or ripping off inmate property...both insulting and repugnant, to not only the officers, but to their families as well." The writer was the wife of a Walla Walla correctional officer.

"I would like to make it known to you, Mr. Hanna, Mr. Bradley, Mr. Vinzant," she wrote, "and to you, the public. My husband is an honest man, not a thief nor a liar. He is a correctional officer trying to do his job, in spite of the pressures from within the institution as well as contending with the name calling and the labels from outside the prison walls."

While agreeing that she could not vouch for every member of the corrections staff, the writer assured the paper's readers that no "borrowed" inmate property had shown up at her home -- or ever would. She alluded to what she called "the old stereotype" of the prison guard as a sadistic, greedy, bully who enjoyed tormenting other helpless human beings.

While this kind of letter assuredly helped officers and their families to cope with a stigma which often seemed unshakable, it continued to perpetuate the feeling that things still weren't right at the institution.

Changes, however, were becoming evident -- even if small, deliberate, and cautious in kind. Prison officials announced that a limited number of visiting relatives would be allowed to spend time with their incarcerated loved ones in the prison's Big Yard. It was to mark the first time the large exercise area would be used for such visits. The yard had served before as a facility for the once-a-year banquets hosted by prison clubs. Inmates had been promoting the idea of using the yard on a more regular weekend basis, and to their delight, the administration had agreed.

Vinzant described the trial as a positive alternative to the small visiting room which was often

congested and less than conducive to good family visits. He was quick to point out, however, that its new use -- on Friday and Saturday evenings -- would be strictly limited, and by reservation. No more than 20 inmates would be allowed to extend invitations to family members for the Big Yard visits; family groups would be limited to about four visitors. Because the area was already under tight supervision, the warden indicated that no increase in staff complement would be required. Hopefully, the weekend trial would become a permanent feature at the penitentiary.

Del Wilson, one of the inmates who had been largely responsible for selling the new program to the prison's management, said that it grew out of a "family awareness program." The program, in which about 20 inmates had been meeting regularly with their families, allowed inmates and spouses the opportunity to discuss personal and marital problems. On other occasions, "kids' nights" were scheduled to provide greater interaction between inmates and their children.

Under the new program, inmates would meet with their children on Friday nights and then again on Saturday with their wives. Administrators and prisoners agreed that following the 47-day lockdown at

Walla Walla, the resurrection of family-related programs was essential.

Warden Vinzant continued to press for an inmate job program and community leaders, including newspaper editors, praised his efforts. He "seems to be headed in the right direction," one editorial stated. Vinzant's plan would be to have at last one period a day when inmates would work. Ultimately, a more comprehensive vocational work program would be implemented. It would be tied into the program by which inmates would earn reductions in their sentences based on good work records.

The major problem which Vinzant needed to overcome was lack of meaningful work. State officials had already stated, pessimistically, that the physical size and other restrictions placed on the penitentiary would limit full-blown industries from being developed.

"We commend Vinzant for his jobs plan," the Walla Walla paper said, "and wish him success." If his job turned out to be as tough as most wardens in maximum security institutions had found during the preceding decades, he'd need all the luck he could get.

The superintendent had settled into his new home next to the walls of the Washington State Penitentiary. He was also quoted as saying he had settled into "a

hundred years of history that says we're doing something wrong" at the prison.

Lack of work and overcrowding were two major factors over which the new warden had little control, although he was attempting to put a dent in the first. Overcrowding would only be alleviated when judges stopped sending men to his institution -- and that wasn't likely, given public sentiment -- or when the three proposed 100-bed prison camps became a reality.

There were always the alternatives of work programs and furloughs, but the risks had to be weighed carefully. There were a few reported cases of convicts out on the streets in these programs, committing further crime. But the number was limited. Some experts had estimated the offense rate of those on work release programs at about one percent. This contrasted with rates, often in excess of 25 percent, among parolees.

For those who could be safely certified for such alternatives, Vinzant asked "Why house an inmate for $14,000 to $15,000 a year inside the walls when he could be in minimum custody for half the price at no increase in risk?"

Besides risk, Vinzant admitted that public needs had to be fulfilled -- specifically the need to believe

that convicts were not going to avoid paying for their crimes. A murderer deserved to be punished, the theory went. He called for new sentencing structures which would allow parole boards and prisoners to set up firmer programs during the period of confinement.

As for work within the walls, public money would be a key factor. So would the participation of private sector industries. Vinzant said he would encourage Walla Walla Community College's administration to offer a greater number of courses at the prison.

The "throw the key away" approach, Vinzant said, just didn't work. He said there was an important distinction between "the soft approach" and flexibility. His remarks were in response to continued complaints by prison guards that the institution's management was soft on prisoners and too easily swayed by their demands.

"If there's one thing that all inmates want," the former Mississippi minister said, "they want out." He urged state leaders to move towards programs which would encourage prisoners do behave in a fashion whose consequences would be an earlier release.

The day for a day approach had already been in use in the isolation unit. For each day a prisoner spent on a useful in-house project -- cleanup or

repair, for example -- the inmate would move a day closer to release from this restrictive confinement. The process, the warden suggested, could be applied to the general prison population.

His days as a pastor perhaps gave him more compassion for his fellow man than many others in his shoes could match, but Vinzant was still no newcomer to penal administration. Before he came to Washington in 1974 to write the master plan for the state's adult corrections needs -- the mini-prison plan -- he had had diverse experience in related areas. Vinzant had run the Delinquency Control Institute at the University of Southern California and was a consultant to the National Institute on Law Enforcement and Criminal Justice. His experience as warden at Walpole had put the icing on the cake.

At the time of the historic deadlock at Walla Walla, there were 92 inmates confined to the segregation unit. Just a few short months later, the number was reduced to 29. Some of the men back in the general population had spent years in isolation. One of their first orders of business was the construction of a Resident Justice Committee whose aim it would be to get more men out of Big Red. The organization was being assisted by the American Friends Service

Committee, a Quaker group. An AFSC staff member described her group's role as consultative, helping those affected by problems to develop solutions.

Ed Mead, who was acting secretary for the new inmate organization, said the committee would encourage inmates to gain "more control" over their own problems. Mead had won a lawsuit against the administration, requiring them to return him to the general population. His segregation had resulted from his membership in the revolutionary George Jackson Brigade, a group which had claimed credit for several Seattle area bombings. Following his successful lawsuit, the prison's administrators responded by forbidding him to hold any elective office.

Mead reiterated his belief in "the need for a radical transformation of existing class relations," but said that he was no "mad dog revolutionary." He urged members of the new group to use the powers of persuasion, family, and legislative lobbying to correct what he said were continued abuses. Mead cited sexual harassment within the prison's walls. "This is a sexist swamp in here," he said, noting that derogatory terms were often used when referring to women.

"The law puts a man in prison for rape, but the prison environment reinforces the things that

contribute to rape," he charged. He characterized many of the inmates as weak, disabled, and elderly, and said that the prison's society should be more empathetic and responsive to their needs.

A number of guard union officials had gone on record suggesting that inmates did not want to work -- this in response to Vinzant's theme of more work to create less idle time. "Work" was a relative word, as exemplified by Edwynn Jordan, acting chairman of the Resident Justice Committee.

Addressing his group, Jordan said he favored the creation of significant prison jobs. And what was significant?

"I didn't come here to sweep no breezeways or work in no laundry," he said with authority. "Until they bring something better than that, I ain't going to be out there," he promised.

Jordan described himself as a guy who was just minding his own business and going to school when the officials decided to segregate him. "I wasn't an activist until I went to segregation," he said. "Because of the oppression and the unjust treatment I had to reach out."

The inmate described segregation as a period in which he was harassed by guards, denied mail

privileges, deprived of medical and dental facilities, and continually subjected to the "humiliation of skin shakes." Of course, the prison's official perception of isolation would be something quite different.

The speedy reduction in population within the segregation unit wasn't the end of the road either. Officials said they were exploring ways to reduce the number further. As a start, the warden interviewed a dozen inmates who had been held in Big Red for periods ranging from one to three years. Although it seemed to many that the concept of segregation cells would always be required for at least a few inmates, changes in how they were to be run were up for discussion.

"We're talking about how we could set up a segregation unit," Vinzant said, "that could be provided with outside exercise, vocational and educational training, strictly on an individual basis." This would certainly have been a major departure from the 23-hour a day six-by-nine cell which characterized the existing unit.

One plan was to consider using a part of the third floor which had housed the prison hospital. This plan was contingent on the prison's being able to move the mentally ill to other facilities within the state.

Also on Vinzant's mind was some sort of a reception or indoctrination center for new prisoners.

"People ought to be kept for a time before they're dumped into the general population," he said. The warden also pointed out, following his interviews with some of the toughest inmates being held in segregation, that "some of them should be held there longer."

Especially irritating to some segregated inmates was word that Vinzant had chosen to ignore the recommendations of the Administrative Segregation Hearing Committee -- recommendations that some of these long-termers be released to the general population. Vinzant disagreed with their recommendations, not to mention the concurrent recommendations of the United Families and Friends of Prisoners group. UFFP, a community-based prisoner-support group, had argued that the prison administration had failed to demonstrate that many of these men were a threat. They believed, therefore, that they best be returned to less restrictive custody.

Vinzant replied. "The administration doesn't have to demonstrate whether someone is a threat or not." Instead, it may merely earmark certain prisoners as better served in segregation. Some of them, he said, were "escape risks" while others were "assaultive" to

staff and inmates. For the time being, they would be kept in solitary confinement.

Overall, it had become business as usual once more at the Washington State Penitentiary -- or at least in a relative manner of speaking. It could have been San Quentin, for example, which had just undergone its own month-long deadlock following three in-house killings. The racially-troubled California prison, just nine days after coming off deadlock, had another death on its hands already. A guard shot and killed an inmate after he was spotted holding a homemade knife to another inmate.

Revolving Doors

Everyone was talking about revolving door justice -- criminals convicted of serious crimes, sent up to prison, and released just in time to commit crime again. But there were more things revolving that just prisoners.

The mini-prison system, for example, seemed like a reality, and then a fiction, and then a reality again. The state was having a hard time keeping its proposed programs on track. It was having just as difficult a time keeping track of its top prison and social service personnel.

McNutt had asked corrections chief Harold Bradley to submit his resignation. He also dismissed Milton Burdman as the department's deputy director. McNutt quickly filled Burdman's former position with the appointment of Gerald Thomas, formerly acting head of DSHS's Community Services Division. A replacement for Bradley wouldn't be easy to find, and it was speculated that Douglas Vinzant might be asked to fill his shoes.

B. J. Rhay was apparently out of the running. At least McNutt had announced that the new corrections chief "would not be anyone in Olympia."

Vinzant, who had served as state penitentiary superintendent for a mere three months, said that if asked to move up to Olympia, he would consider the post. The superintendent could not comment on what the dismissals meant for the mini-prison plans he had written for the Evans administration two years earlier.

Official explanations for the firings had not been made -- at least publicly. Several sources, however, attributed them to intensive lobbying by the chief and his deputy for small community prisons. It was understood that Governor Dixy Lee Ray ordered the firings because she believed that Bradley and Burdman were pushing for legislation behind her back.

Superintendent Vinzant was beginning to sound very flexible in his comments. If the current administration believed that "a different direction" in prisons was desirable, he said, "that's entirely appropriate." The mini-prison plan, he explained, "isn't the only way you can run a prison system," he said. Vinzant pointed to other states, some of which ran centralized systems, decentralized systems, or combinations of the two.

At Walla Walla, a new associate superintendent of custody was also named. The controversial post was filled by Nicholas Genakos, 53, a former employee of Vinzant's when both worked at Walpole, Massachusetts. Just prior to his appointment at Walla Walla, Genakos had served as warden in a men's maximum security prison at Concord. He would fill the shoes of James Harvey who had been moved to Shelton. Hopefully the new associate superintendent, a 27-year veteran in the corrections business, would have a less rocky ride than Harvey at Walla Walla.

Genakos praised Vinzant as "an implementer, not just a theorist," and said that the community could expect to see them working as a team. "If you're in this business, you've got to feel for people, you've got to believe in helping people," he added.

Backing up the recent changes in Olympia and Walla Walla was a report released by the Governor's Select Panel on the Washington Department of Social and Health Services. It called for an abandonment of the mini-prisons concept, but recommended that the Division of Corrections remain intact within DSHS. The small community prison concept, the report said, would impose costs as high as $70,000 per bed. The public had been

"terrorized and alienated," it said, by the state's public relations job in selling the concept.

The document also criticized what its authors saw as a long period of confusion: punishment had been wrongfully linked with rehabilitation. The report's authors insisted that "punishment should flow from the nature of the crime committed and the criminal history of the offender." The convict's "needs," the report stressed, should play no part in the punishment component of incarceration. The maintenance of a healthy prisoner in secure custody, the citizens panel argued, always needed to be a higher priority than rehabilitation. The authors admitted that this wasn't an easy task, given severe overcrowding, drugs, violence, and poor staff morale.

The panel, while rejecting the small mini-prisons, made several forward recommendations. A secure separate facility for mentally ill offenders was needed. Segregation, for combative or sexually aggressive inmates, should be continued. New or revamped facilities should be earmarked for medium and minimum security convicts to relieve overcrowding in the maximum security units. Pre-release probation should be expanded. Lastly, the report recommended that independent "job developers" be hired to put

together employment opportunities for probationers and parolees.

Other recommended changes included better in-service training for staff, the elimination of double shifts, and the hiring of more minority workers. The report writers also took aim at what they termed "lack of adequate mental health, medical, and dental care" in the state's prisons.

The panel commented briefly on the possible expansion of prison industries. It criticized what had been an obsessive goal for these industries: the generation of profit. The primary goal, the report said, was to provide inmates with "purposeful activity" to develop positive work habits and a sense of responsibility. Profit, the writers argued, should only be secondary.

Changing half a century of revolving doors -- or as one editorialist put it "the effort goes up and down like a yo-yo" -- would be no easy task. Penal system reform was nothing new to the State of Washington. Governors Hart and Harley and Martin and Langlie and Wailgren had each registered complaints, if not sheer disgust, over the prison's prison system. Then there was Governor Albert Rosellini who did manage to dig some appropriations out of the state legislature,

moving forward in areas of custody and mental health. And lastly, Evans and Ray followed into the governor's mansion. What had long been regarded as patchwork remedies for an ailing penal system gave way to the promise of totally new blueprints.

The blueprint was finally in place, but the public wouldn't buy it. Construction meant taxes and taxes meant lack of public support. Minimum security prisons were seen by many citizens as luxury hotels used to coddle society's enemies. The truth was that the state was actually housing some low-risk prisoners in hotels and other rented buildings to alleviate overcrowding in traditional prisons.

Without public support, Governor Ray did what perhaps any governor would have done under the same circumstances. She vetoed legislation which would have transformed the blueprint into reality; she allowed, if not directed, the firings of those who were pushing so hard to get things moving.

Commenting on the status of penal reform, local editors said, "Back to mark zero for another start." That was little consolation for prisoners or for staff at the state's troubled institutions.

Fired from his $57,600 a year job, Milton Burdman chose to strike back, commenting on the governor's

thinking. He said that her rejection of new facilities would in the long run cost the state a bundle. Noting that over $30 million had been spent to improve the penitentiary, Burdman said it was still a "dungeon" that he characterized as being in a worse condition than when it was built.

Burdman's comments were probably equally applicable to other state penal unit. The Monroe reformatory, through double-bunking, was already housing 200 more inmates than its designers had ever envisioned. It was wall-to-wall men. At a population exceeding 900, it had been through several enlargements during its 69-year history.

About a third of the men confined to the reformatory had no jobs. Understaffing continued to plague the institution. Two shifts were required for meals because there was not enough space, let alone food preparation equipment or utensils. The solution was to simply hang more and more bunks from the cell walls.

"The space is so cramped, sometimes the person in the lower bunk can't sit up," one observer reported. The cells measured nine by six and a half feet. And it was back to mark zero.

To some, only a miracle could save Washington's prison system from utter disaster. Something or someone refreshing was needed -- maybe like Dadit-ji Surit Kumar, spiritual leader of a yoga discipline Ananda Marga, translated to Path of Bliss. Traveling the west coast, Dadit-ji made weekly stops at the penitentiary. Prisoners would spend a few hours with the yogi, talking, chanting, or contorting their bodies and legs into traditional yoga postures.

The leader explained that yoga was particularly attractive to inmates who had been turned off my establishment faiths, including Christianity. The goals of yoga, which its teacher brought behind the high walls, included the ability to harmonize with nature, mental expansion, and establishing important objectives for life. The ultimate goal, he said, was to know God by knowing yourself.

The regular Tuesday visits included all that was yoga -- the two-syllable mantra, quiet meditation, and a quest for the universal vibration. The prisoners sat crosslegged in a large circle in the prison yard.

Baba nam kevalam, Baba nam kevalam, the chant could be heard -- "God's name alone" or "All is One," the translation. Inmates, some of whom had lived a

long life of crime, claimed to have seen the light at last. Only time would tell.

Unconventional wisdom didn't stand alone in Walla Walla, however. Pat Robertson, the "born again" Christian evangelist and miracle worker also visited with prisoners. That is to say, his syndicated television show, 700 Club found its way into the penitentiary by way of videotape. Some $6,000 worth of video tape equipment had been placed in the service of Walla Walla residents and entrusted to chaplain Gerald Jacobsen. Inmates would be able to enjoy what Robertson had already been bringing to his following through 50 television stations and 3,000 cable systems around the world.

Jerry Spicer, a 700 official, told a Walla Walla audience that prison rehabilitation just didn't work. Instead, he suggested "regeneration," asking inmates to turn to Christ for the answer.

And there were unusual experiences for state employees, too, at Walla Walla. There was Dr. H. Harlow Skinner, Jr., for example. After 23 years as a successful surgeon, Skinner had decided to pursue a career in administrative medicine. He blamed his change of heart primarily on the rapidly rising costs

of malpractice insurance. He joined the penitentiary, instead, as a staff physician.

Skinner described his new clientele as not very different from others in the outside world. He said they were "crying to be treated as individuals, not just numbers." Admitting that there was always the potential for violence, he hadn't had any major problems in his new job. Inmates were forever pressing him for prescriptions -- drugs, that is. "Everything has to be handled within the framework of a custody setup," Skinner said.

He also said there were numerous problems related to homosexuality, stress, and nervous disorders among the prisoners. The biggest problem facing Skinner was his need to second-guess just about anything he was told. Just about any illness could be feigned. And those illnesses or injuries which were real could never be traced to what had actually happened. Broken jaws were routinely treated. The inmates would claim to have fallen out of their bunks when they had, in fact, been beaten up.

Fortunately for Skinner, he had a variety of life activities to keep him on his toes. An associate editor of the American Journal of Proctology, he was also a U.S. Army Reserve colonel responsible for a

1,000 bed reserve hospital in Seattle. Although he never said it, one would imagine that work inside Walla Walla's walls could drive even the best of physicians up one of its walls.

Mixed Messages

Every story, especially at the Washington State Penitentiary, had two sides to it. Officials at the maximum security institution, for example, had claimed full responsibility for the 46-day lockdown, saying that a riot atmosphere had necessitated the move. Inmates still contended that the lockdown was of their own doing -- a voluntary strike, they said, to draw attention of legislators and the public to their plight.

When custody chief Harvey was moved to another prison in the state, Harvey and the state insisted it was a voluntary change in duties. Inmates said otherwise. They believed they had themselves put enough pressure on the state to cause Harvey's transfer.

Following the lockdown and change of prison administration, the five-member ad-hoc prison inspection committee -- which had been appointed by the governor -- made another visit to Walla Walla. After touring the penitentiary and talking to inmates and staff, they concluded that things were a lot better at

the institution. Of course, this differed somewhat from what Bradley, and moreover Burdman, had stated.

Even the committee members, in all fairness, tempered their remarks with caution. Professor Kelly said, "My vibes are quite good, but they've still got a hell of a way to go." He seemed to be placing a lot of blame for the prison problem's on its former warden. "In terms of basic philosophy of the warden," he said, "there's been a great improvement." With respect to Vinzant, Kelly said, "I like his straight-forward, no-nonsense approach, his sense of fair play and justice."

Inmates, by contrast, weren't so sure of the changes. Although many had been released from segregation over the three-month period between May and August, the isolation unit was still their major gripe. Complaints ranged from poor food and lack of visiting rights to allegations that inmates were badly beaten while in segregation. Prisoners argued that most of those still in segregation had demonstrated no threats and were being confined in isolation at the whim of the administrators.

And then there was protective custody, the Five Wing Unit in which inmates were segregated from the

general population by their choice. Who were these men? There were over a hundred in all.

"If a man says his life is in danger," Jim Cummins explained, "we have no choice but to give the man protection." The most often cited reason for danger was the assumption of large debts, often resulting from drug deals. The prisoners couldn't pay off. Then there were prisoners whose weak nature allowed tough guys to prey on them. Those who had snitched on others or, worse, had testified against colleagues, had something real to fear. Lastly, prisoners who had committed crimes that caused revulsion even among their peers -- child molesters, for example -- were not warmly welcomed.

Bobby Matson was a felon locked away at Walla Walla until the year 2004. He probably thought he was doing a public service when he got caught in "a bad situation," as he describes it. It appeared he had participated in the preparation of a report which played havoc with the bikers. Bike president Mike Abrams saw it differently. According to the motorcycle club chief, Matson "got paranoid," ratting on other convicts, checking himself into protective custody.

Protective custody was no picnic my any means. An inmate in this unit had perhaps snitched on someone

else -- or maybe just got that bum rap hung on him. It didn't matter. Until Vinzant took over, conditions in protective custody were very restrictive -- confinement for 23 hours a day, no education, no outdoor exercise. The new warden changed all that, providing a small exercise yard and freedom for these men to move about during the day.

While administrators were explaining that medical and dental programs had been significantly improved, Kitsap County Superior Court Judge Jay, one of the committee's outspoken members, was making observations of his own. After looking over the prison's third floor hospital unit, he commented that "the hospital still isn't the type of place you'd go to if you were a civilian and had the choice."

Notwithstanding the new, but limited, Big Yard visiting program, inmate council president Owens expressed dissatisfaction with the prison's visiting policies. He referred to the "humiliating" skin searches routinely conducted for guests, including women. Of course, reports of continued attempts to smuggle marijuana and other contraband were cited by the administration in support of these searches.

Vinzant and his people would insist that the penitentiary was an equal opportunity prison -- for

inmates, that is. But Owens and his constituents often voiced the belief that blacks and Chicanos were specifically singled out as drug traffickers. Minority inmates, they further complained, were infrequently chosen for work release and training programs. Inmates pointed out, too, that minority staff members were just that -- in the smallest minority. The administration explained this away in terms of its inability to recruit minority members in a city that was largely white and Protestant. Vinzant had promised to vigorously step up his campaign to bring more minority workers aboard.

Perhaps more than anything else -- because it directly affected what they valued the most, their freedom -- prisoners disagreed with state officials on the manner in which the parole board worked. Prison administrators described the role of counselors who were supposed to work with inmates in pre-release preparation. Inmates, in turn, described their meetings with counselors as few and far between. More important, the ultimate parole board reviews were, they said, conducted on paper rather than in person.

Parole board members vowed to dispense with paper reviews and said they would meet with every inmate at least once a year. This sounded encouraging to inmates

-- at least on paper -- but Owens cynically observed that the practical effects were a different matter.

"The parole board will tell a guy to participate in a drug treatment program, but if there isn't one, what can the guy do?"

Then there were mixed messages about funding programs. Two separate reports submitted to the state had criticized the allocation of funds. In the first, it was alleged that $100,000 earmarked for treatment programs had been siphoned off to pay guard salaries. In the second, it was alleged that money earned by inmates in their programs had gone for equipment and supplies the state was supposed to have furnished.

Jim Cummins, Associate Superintendent of Treatment, agreed that monies had been transferred between accounts, but he denied any improprieties. The need to "balance the bottom line" was given as his explanation. He also said that the resident council had agreed to spend the money as it was spent.

Bad enough there were conflicting reports on the way in which $100,000 had been spent at Walla Walla, but state officials and ex-officials couldn't agree on amounts that were orders larger in magnitude. Milton Burdman, following his firing, had said that the

penitentiary was no better for the $30 million spent by Olympia in recent years.

A DSHS finance official refuted the dollar figure as being way out of proportion. With no new construction or remodeling having taken place in many years, $30 million was simply the wrong number, he stated. He declined to give the right number, saying it would take a lot of time to dig through all those old budgets.

There seemed to be as many explanations for problems at Walla Walla as there were participants and observers.

Just Steps Away From Dying

On October 11, 1977, Donald M. Snook Jr. wrote a short composition while, as he points out, "in a double gate isolation cell." This is how he saw his life develop in his early formative years.

> My name is Donald M. Snook Jr. I am now 24 years old and am residing on death row at the Washington State Penitentiary. The story that follows is my life and how I feel it led me where I am now, on death row, with another life sentence as well, and being a two time convicted murdered.
>
> I was born in Riverside, California on February 20, 1953. I was the first born. I have one brother and two sisters. My parents are still together and my brother and sisters are all married now. I lived in California from when I was born until I was about 8 years old when we moved to Washington. My troubles actually

started at the age of 5 when I started kindergarten in California. The school was my first touch with a life that led to my many problems.

When in kindergarten about half way through the year I was taken to get a vaccination. While standing in line a bigger kid asked me my name. I hit him in this nose for this. The school officials were very disturbed about this, as I'd also been somewhat of a problem in the classroom. The school asked my parents for a conference and at this meeting I was cut down to a half a day of school and was further sent to a psychiatrist. This was the first of many psychiatrists I have been made to see in the years to come.

But this just one, I saw, was to me a very exciting experience. I can recall he talked to my parents most of the time while he had me hitting a bozo balloon. My problems were not solved, whatever they were, but the bozo clown was fun.

After turning eight, we moved to Washington state where I was put behind a

grade, because the school official said California's schools were so slow. So, I was a year older than most kids in my class. Again I had to visit child guidance and see a psychologist all through the school year. As I grew up I had to see these people. Never was my problem taken care of. I had a lot of fights in school -- no serious trouble -- but each year till the eighth grade I would be expelled from school on the average of 3 - 5 times.

In 1965 the first trouble with the law came, but before this trouble, in 1965, I was hit by a car. I was in the hospital for many months with a fractured skull and possible brain damage. A few months after this accident the law stepped in. I had been out of school this day and had made several false fire alarms. I'd send the trucks, police cars and ambulance to the house across the street. Well, that night a policeman came to my house and I was arrested and put in juvenile hall. This was a very difficult thing on my family as my father had just joined the police force.

To me, at this age, the police were okay. I spent one week in juvenile hall and was released. The problems seemed to be over though troubles at school were still taking place. It wasn't until 1968 that serious trouble again arose.

Before the trouble of 1968, I was very interested in football and wrestling, and was on the varsity team of both. I'd decided to take flying lessons. I was a very good swimmer and overall athlete. I enjoyed sports.

I had been employed as a lawn boy by several people, and I'd sold some spices etc. for a company. I was a good student in school except for my fights.

Then in 1968, while in a chemistry class I stole some hydrochloric acid. This was diluted but still powerful. While On the bus home that night, I gave some to a neighbor kid. Luckily he wasn't seriously injured. My parents and the school were notified and I was kicked off this school district. This meant I had to be driven 20 miles round trip to another school

district. However, it only lasted for 4 months before the law again took over.

In May 1968 while at school I phoned in a bomb scare to the school. Another student overheard and reported this. The police were notified and my father and another deputy sheriff were dispatched to the school. I was arrested and taken to juvenile hall. I had raised hell for about a week in juvenile hall and my father constantly being notified. Finally about the middle of May 1968, myself, my parents, and juvenile officer went before a judge. The counselor of my school was there too. I was declared incorrigible by the judge and was made a ward of the state till I was 21 years old. I still remember this all took place so fast, my mother started crying and my father was in uniform and was one of my escorts. I remember he kept calling me a dirty son of a bitch. I was again locked in a juvenile hall cell.

About 3 days later I was cuffed and taken to the juvenile diagnostic center. The normal stay here is 6 weeks. Then

you're either paroled or sent on to another juvenile institution. While at this center I started raising hell. I attempted escape several times. I continually fought with the staff. Finally I was put in "deep six." This is a basement isolation cell. I remained in this cell for three months before I was put out with others again. I returned to another cottage and then was given a board hearing. I was recommended for a forestry camp and I left that day.

This forestry camp is about 500 miles from home and about 125 miles from the nearest real city. It was winter and extremely cold. We had about 3 - 4 feet of snow and the temperature dropped to below zero. One day, I wasn't allowed on the forest crew. I was restricted to school only cause they thought I'd get in trouble with an axe or something. After about three months at this camp, I set a fire and stole a truck. I was put in a county jail as the isolation cells were frozen over at this camp. Then, about one week later, I was told I was being transferred. I knew

now I'd see the most feared by all juvenile kids -- the notorious Cedar lockup at Green Hill School for boys. This is known as the end of the line for juveniles. Sure enough, one month later I was there.

On February 10, 1969 I was in Cedar lockup at Green Hill school for boys. I remember so well how ugly these cells were. The front was heavy cyclone fence wire, surrounded by 3 walls. You had a metal bunk and no toilet or sink in your cell. You could only have seven smokes a day. And now I knew I was the end of the line -- that night, my first night there, we had a riot in Cedar lockup. It started when a little guy was taken to isolation. We started banging our doors first, then fires started and it got out of hand. Several county police departments were called in, we were hosed down with fire hoses, maced and beat. Five guys were sent to the county jail and later were remanded as adults and sent to the adult corrections. Now I knew for sure all was over. I was

only fifteen and would be 16 in ten days. Seeing all this, I was scared.

I spent a total of eleven months in Green Hill. Nine of these months were spent in lockup.

In the last 30 days at Green Hill I was placed in what is called Cak Isolation. I was put in this cell and handcuffed to the bed in this cell. I remained there for 30 days. On the 28th day my parents and the administration and myself had a meeting. On the 30th day the security staff came down, put me in cuffs and I was released to my parents on extended leave. I had various jobs when I got out of Green Hill. The last was as a dishwasher at Woolworths. In February of 1970 I was put on parole from Green Hill. Then in March I joined the Marine Corps and was on my way to boot camp in San Diego.

In boot camp I never really liked the way the Sergeants talked so I was always in some type of trouble. I was always going to sick bay and on several occasions I was intoxicated while in the barracks. The

last of these times I was taken to the Naval Hospital by ambulance. At this time it was decided I'd be discharged from the Marine Corps. I was put on Casual Company restriction to await the aptitude board. Even in Casual Company I didn't like the gungho P.F.C.'s telling me what to do so I faked several psychopathic symptoms and before long I was taken to the brig. The M.P.'s in charge of the brig opened my cell and I attacked them and attempted to escape. At this time I was taken before a psychiatrist who wrote the following:

"This 17 year old U.S. Marine Corps Private was brought into the Neuropsychiatric Unit on 9 April 1970 from the Brig because of bizarre, violent behavior. The private was observed to be sitting by himself reacting in a markedly frightened fashion to a relatively innocuous environment. He was unable to state in any coherent fashion what it was that was disturbing him at the time. When he appeared at N.P. Unit he

seemed markedly agitated, out of contact with reality, and responding to imaginary threats in the environment by cowering in a corner or attempting to escape which, when obstructed, would then lead to violence and screaming. This private had been seen earlier by Dr. D'Agostino and had been sent to the evaluation unit's Aptitude Board earlier in the day and had been given a recommendation for discharge. Past history shows this Marine to have been in and out of sick call on innumerable occasions for violent, trance-like behavior. He is suspected to have taken overdoses of various medications and had been sent to the U.S. Naval Hospital, San Diego for psychiatric and medical attention. In each instance he was returned after a brief period of observation and returned to duty. Past family history discloses many years of poor understanding with the private apparently being scapegoated by the parents whom he feels were always telling him he was wrong no matter what he did and that he had failed to provide any means by which

they could appreciate him. It is stated in his past records that he has the impression that his parents persistenly favored other siblings and viewed him as not being able to do anything correct. He has a poor record at school showing serious maladjustment behavior and has had several difficulties with police authorities. Mental Status reveals a markedly tense, apparently hallucinating young white male who was unable to respond to reality and is currently terrified to the point where he is both self-destructive and dangerous to others. There is no evidence that he was able to obtain drugs recently, but it cannot be ruled out that his current behavior represents a withdrawal reaction to excessive intake of drugs. Recommendation: It is recommended that this private be sent by ambulance to the U.S. Naval Hospital for hospitalization and further evaluation of his current psychotic posture. Diagnosis: Schizophrenic Compensation."

So with this report I was sent to the nut house at the Naval hospital. I arrived at ward 36-3 and was met by several corpsmen and hospital staff who escorted me to an interview room to admit me.

This was to be the first of several nut houses I'd be in. I was flown to the Veterans Hospital in Tacoma shortly thereafter, where I was committed as being incompetent. My doctor was a Dr. Bricka who was a very wicked doctor. I was on the maximum security Ward 4. After I'd been there about a year, Dr. Bricka started giving me electro-shock therapy and anectine therapy. I remember these things so very well because the anectine made me feel as though I'd stopped breathing.

Then the nurses would attach the electrodes to my head and I'd know that in just seconds several volts would travel through my head. I was so scared of these shock treatments and anectine therapy. I remember on several occasions Dr. Bricka would have to shock me more than once in

one session to produce the right seizure. I had to suffer through 70 of these shock treatments and anectine therapy sessions. It was a very grave effect on my life. Many times I'd never even remember getting dressed and even now I still have dreams that seem so real I can even feel the shock. I spent three years and eight months in this V.A. hospital before I finally won a battle to get out. Since then, shock treatments have been banned from the V.A. hospitals due to their effect on the brain.

After I got out I went home, where the next day I stole my aunt's car. This was the first time I'd ever driven so I didn't know what I was doing. The state police started chasing me and 28 miles later at speeds of 115 mph I was boxed in by 5 police cars. I was chained and taken to jail. I was then sent to a state hospital for evaluation. They started sleep therapy on me, but I gained my release back to jail after just a few days. The jail police then chained my hands above my head for 72 hours and just 5 minutes

before my trial took me out of chains. I went before the judge who gave me 10 years. I was taken directly in a police van to the Shelton Correctional Center. I only spent three weeks there before a large goon squad came to my cell and told me to pack up. I asked where I was going and the squad jumped me, chained me, and told me I was going to Walla Walla.

I'm here still. It seems like an eternity, but 3 years and 5 months ago I had just a 5 year minimum sentence. I was put on the notorious 3rd floor mental health unit. On my second day here I met Dr. Hunter who told me he'd broken horses all his life and if he can break a horse he can break any man. Dr. Hunter had me in baby diapers for two weeks and drinking all liquids from a bottle. He had me chained to a bed, legs and hands, 5 occasions for a total of almost a hundred days. He gave me massive amounts of thorazine and prolyxin. He gave me cold and hot water treatments. I went to sleep while locked in a cell. Dr. Hunter almost destroyed me totally. He

made me hateful and vengeful. I lost my control because of him. In July 1975 I got off the third floor for a short period of time.

In August another prisoner who had helped Hunter abuse me was on exercise period with me in the segregation unit. When yard time was over, the other prisoner was found unconscious. He died 13 days later and I was charged with first degree murder. I was again taken to the 3rd floor from where I went to trial.

I was convicted and sentenced to life imprisonment because of something I had no control over. I got off the 3rd floor again in July 1976. I was taken to segregation and locked away. In January 1977 I was in the yard and another prisoner was found hanging in his cell later that night who'd been on yard with me. A few prisoners said I killed him. I was charged with aggravated first degree murder. On July 1977 I was tried and convicted; on July 28, 2977 in the Walla Walla courthouse I was sentenced to death. My execution

date was set for October 26 at one minute past midnight. A full moon is out this night.

A month before my execution I was given a stay of execution until my appeals are over. If I win, I win my life. If I lose, I must die. In October 1977 another prisoner was stabbed. I was accused but nothing was proven. Two days later I'd had all I could take. I made a bomb and I was going to blow it. A squad came in and evacuated the tier. Then later another squad came in and defused the bomb. The state made me, the service trained me to be a killer, the state with its shock treatments and Dr. Hunter made me lose all the controls I ever had on myself.

Dr. Hunter totally destroyed me when he said he'd broken horses all his life and can break any human. I didn't believe him. He didn't break me the way he's broken many others. But because of this he destroyed my mind. The State of Washington is going to murder me:

"Donald M. Snook being found guilty of the crime of aggravated murder in the first degree I hereby sentence you to death. Such execution shall take place at the Washington State Penitentiary under the direction of the Superintendent thereof. Said execution shall taken place on the 26th day of October 1977. You will hang by the neck until dead, dead, dead. May God have mercy on your soul."

From Another Vantage Point

Donald Snook was quite a dangerous character, from the vantage point of prison officials. The potential bombing incident brought on by the convicted murder raised tension levels quickly. Associate Superintendent Genakos said that Snook's threat to explode a bomb was in protest for the way he, Snook, thought he was being treated.

Following the removal of six other inmates on the segregation tier, Snook and the bomb were, according to prison officials, isolated in his cell. With nobody immediately available to handle the explosive device, the prison looked to outside help to come in and dismantle the contraption.

After "washing down" the purported bomb, it was cut open by Spokane bomb experts. Genakos reported that "it turned out to be nothing but a few match heads." The complaints which Snook had lodged about his treatment included deprivation of personal property, television privileges, and medical attention. Just two weeks prior to the bomb threat, the inmate's

request to be transferred to death row had been turned down.

As for the stabbing incident, prison authorities again had a slightly different story to tell. Snook and 33-year-old fellow inmate, Kenneth Fraser, were accused of having stabbed inmate Richard Rankin, 23, after persuading him to come to their cell doors in the segregation unit. Rankin was said to have been stabbed 13 times in the back, arm, and ear, but a number of the wounds were described as superficial. Medical personnel said the punctures appeared to have been inflicted by a pen-like instrument, but no weapon was found in either Snook's or Fraser's cell. Prison officials said the two suspects were trying to persuade eight other inmates on the tier to join them in a hunger strike.

Snook had formally asked Walla Walla County Superior Court Judge James Mitchell to place him on death row. The apparent motive was extra privileges which he believed death row's one occupant, Michael Green, was enjoying. Superintendent Vinzant said that for all intents and purposes, the two inmates were already receiving the same privileges. The placement of Snook in the death row section, because of logistics

problems, would have required five additional officers to man the area, the warden added.

Judge Mitchell seemed surprised. "I feel it's rather strange that Mr. Snook is appealing a conviction and sentence," he said, at the same time he was asking to be put in the death row section. In any event, the state contested the request, maintaining that the local court had no jurisdiction because of the appeals process already in the works.

The judge agreed. The court's denial of Snook's request may have also provided relief to prison staff. It had been rumored, but not confirmed by officials, that Snook had threatened Green's life. This was rather ironic, because it had also been rumored that Green was to testify on Snook's behalf in his request to move to death row.

"Mr. Snook is responsible for two deaths in the institution," Vinzant reminded others. "Anybody that has that kind of record in the institution has to be termed a high security risk."

Green's sentence was also under appeal to the State Supreme Court. Always maintaining his innocence, Green swore he would never be executed, but admitted that the threat of hanging was enough to chill the soul. The death penalty, he said, was "wrong" and