

@CONDITIONS FOR DEATH ROW PRISONERS IN H-UNIT,
OKLAHOMA STATE PENITENTIARY

REPORT ON A VISIT ON 3-4 MARCH 1994, FOR AMNESTY INTERNATIONAL,
INTERNATIONAL SECRETARIAT

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1. Introduction

1.1 I was asked by Amnesty International to undertake a visit to H-Unit at Oklahoma State Penitentiary at McAlester and to report my findings on the conditions pertaining to the custody of death row prisoners. This request was consequent upon a series of complaints to Amnesty International by death row prisoners, by attorneys who represented them, and by others since H-Unit first opened. These complaints prompted an initial letter of inquiry from the then Secretary General of Amnesty International, Ian Martin, to the then Director of the Oklahoma Department of Corrections, Gary Maynard, dated 4 December 1991 and a reply from James Saffle, Regional Director, dated 24 December 1991 which invited Amnesty International to visit H-Unit. Four death row prisoners have since taken a class action against the Department of Corrections in respect of attorney visiting conditions and confidentiality of telephone calls to attorneys, which was heard in the United States District Court for the Western District of Oklahoma in July 1993 (Mann et al v Reynolds et al). At the present time, I understand, four other prisoners are pursuing a Federal lawsuit challenging conditions and alleging violations of rights to religious freedom, access to the courts and right to counsel.

1.2 The visit to OSP McAlester took place in the company of a member of the Americas Research Department of Amnesty International throughout two whole days on 3rd and 4th March 1994. We were welcomed to the institution by Dan Reynolds, Warden of Oklahoma State Penitentiary, who treated us with unfailing courtesy and exemplary hospitality throughout our visit. He answered all our questions, provided us with various documents which we requested, efficiently arranged for us to have unfettered access to whatever parts of the institution we asked to see and in some cases accompanied us. He gave us permission to speak to any inmate and any member of staff. I asked that we be allowed to speak to prisoners in the most open way possible, expressing my preference that this should be contact visits in their own cells. Mr Reynolds pointed out that staff were not permitted that level of contact but that we could speak to prisoners in the attorney visits facility - small rooms on either side of the staff office on H-Unit from which the visit can be observed by staff. We interviewed seven death row prisoners, three on the first morning of the visit and four on the second. We spent the first afternoon inspecting SE and SW quadrants as well as other parts of H-Unit, and making brief visits to the old death row on F Block and the administrative segregation facility in D unit. On the second afternoon we also visited the infirmary and returned to F Block where special needs prisoners are now held. We talked to seven members of staff, including medical and other professional staff as well as correctional personnel at some length at their place of work, and one or two others en passant. At the end of the second day we spent nearly two hours with Warden Reynolds when I gave a preliminary indication of these findings, to which he gave a courteous and constructive response.

1.3 I should like to record here my gratitude to Warden Reynolds and his staff both for the personal courtesies extended to us and for the professional manner in which the visit was accommodated.

2. Historical Background

2.1 What is now the Oklahoma State Penitentiary was first brought into use as a prison in 1908 on a site of more than 1,500 acres to the north-west of the city of McAlester. It originally comprised the West Cell Block, but the Rotunda and East Cell Block were added shortly afterwards. East and West Cell Blocks are no longer in use. They were closed in 1984. This followed protracted lawsuits in the US District Court in Muskogee, Oklahoma, commencing with *Battle v Anderson*, filed on April 24, 1972. These suits alleged among other matters: racial discrimination; lack of due process in disciplinary hearings; the use of dark, insanitary and unventilated cells for prolonged periods; the random use of tear gas and mace by guards; inadequate medical care; and lack of religious freedom to worship. Court orders were issued for remedial action on each of these matters, and the court checked on compliance at six monthly intervals. By 1976 the question of overcrowding was raised, and the authorities were warned that an injunction would be issued if the intolerable conditions were not addressed. An accelerated programme of prison building was introduced, but in May 1977, following an evidentiary hearing on overcrowding and conditions of confinement, the court ruled that each prisoner should have 60 square feet of cell space and that the prison population should be reduced to 800 (Sandhu 1991).

2.2 By the time that East and West Cell Blocks closed new accommodation had been provided in A, C, D and E Blocks. A and C units, originally designed to hold 112 prisoners each, now hold about twice that number of Level III and Level IV (general population) prisoners. D and E units were both designed as 40-man units: the former houses prisoners on administrative segregation (Level II), and the latter those on disciplinary segregation (Level I). F Cell Block leads off the Rotunda, effectively a third wing in a partial version of a Pennsylvania style radial prison, with outside facing cells and a central corridor or 'run' (Johnston 1973). It was added in 1937. From at least 1978 until November 1991 death row prisoners were held in F Block, on the first (ground) floor. Today the first floor of F Block houses the special care (mental health) unit. Other floors accommodate an induction or orientation unit, protective custody prisoners and prisoners on GED programmes.

2.3 McAlester has had a troubled history. In the summer of 1973 it experienced a major riot, which lasted some 19 days. During the riot much of the prison, including one cell block, was burnt down, 24 hostages were taken, three prisoners were killed and three others escaped. At the time of the riot OSP had a capacity for about 1,100 prisoners but contained 2,200. In the preceding three and a half years there had been 19 violent deaths and 40 stabbings.

Most of the conditions cited in *Battle v Anderson* were found to have obtained before the riot. Following the riot it was decided that OSP should be retained only as a maximum security institution for 400 to 500 prisoners on the basis of single celling (Sandhu 1991). In 1985 prisoners attempted to gain control of F Block, but this was foiled. However, prisoners did take hostages and gained control of A and C units. Three of the five employees taken hostage on C unit were seriously injured.

2.4 There was a decidedly different response to the two events. The 1973 riot was followed by a period of liberalisation and reform under the direct supervision of the Federal District Court.

By the end of 1983 the courts had effectively withdrawn from supervision of the establishment. The 1985 incident was followed by a policy of lock down (confinement to cells) and retrenchment which imposed very tight security measures and introduced a fourfold housing and security classification known as the 'level system', which also determines privileges.

Operations Memorandum OSP-090101-23 dated 26 March 1991 sets out the current levels and the criteria inmates have to meet to transfer from one level to another. Level I relates to disciplinary segregation which may be imposed following determination of an offence for periods of up to 30 days. Level II relates to administrative segregation. This is subject to 90 day reviews; and following 180 days of clear conduct and the accumulation of 40 good time points prisoners may be transferred to Level III. Level III is an intermediary category which nevertheless currently comprises the majority of the McAlester population. They remain on 23 hour lock down but are entitled to educational programmes and some other privileges. This Level also effectively embraces special needs and protective measures prisoners. After 120 days of clear conduct and 36 good time points they become eligible for transfer to Level IV. Level IV relates to general population prisoners who are entitled to work, contact visits, and additional yard time. After 60 days clear conduct and 36 good time points they become eligible for transfer to a lower security establishment. The main factor to account for this change in policy response to the riots seems likely to have been the serious injuries to members of staff during the 1985 riot.

2.5 The overcrowding problems in the Oklahoma Department of Corrections had not been solved, and from time to time the DoC had to invoke its 'CAP' legislation to release prisoners early as population reached 95% of capacity. The law was not popular, but nor was it easy to obtain resources for new prison building.

2.6 In April 1989 a prison officer, Mr Savage, was stabbed through the heart by a death row prisoner. The attack took place on D unit where the prisoner was held on administrative segregation, not on F Block where death row prisoners were then housed. It was effected by attaching a piece of metal to a broom handle, and thrusting the weapon through the food service hole in the cell door - known locally as the 'bean hole'. Fortunately, Mr Savage recovered.

2.7 It was against this background that funds were provided to develop the new high security unit providing 200 cells, known as H-Unit. It was apparently intended from the outset that: 'The state of the art design of this unit maximises security and control, while providing inmates and staff with a safe, modern environment in which to live and work. The current proposal is to house death row, new receptions, and high security inmates in this unit' (undated internal document). H-Unit was opened in the fall of 1991, and death row inmates were moved from F Block to the SE and SW quadrants of H-Unit in November that year. Under Oklahoma DoC policy death row prisoners are automatically assigned to restricted housing. Initially death row prisoners were housed one to a cell, but now more than a hundred of the 118 death row prisoners are double celled. Apparently this results from the tactical management of an overcrowded system, in which part of the South side of H-Unit has been brought into use as a transit unit and now accommodates some 50 lower security prisoners pending transfer to other institutions. The North side of H-Unit contains prisoners on disciplinary and administrative segregation, as well as some Level III prisoners.

2.8 McAlester was last accredited by the Commission on Accreditation for Corrections in April 1991 before H Unit opened. The capacity of the prison was then 545 with a population of

779 and so it failed Standard 2-4128, which is non-mandatory. Nevertheless, McAlester was accredited with 100% compliance with the 40 mandatory standards and 98.8% compliance with the 420 non-mandatory standards. By the time of our visit the capacity had gone up through the addition of the 200 cells in H-Unit, but the population was now close to 1400 prisoners.

3. The Basis For My Evaluation

3.1 The 'death row phenomenon'. Central to the consideration of the conditions on H-Unit is the fact that in Oklahoma death row prisoners are automatically assigned to restricted housing as a class, without reference to their behaviour whilst in custody. Since they are technically outside the Level system it is not possible for death row prisoners to progress to more relaxed conditions on the basis of their institutional performance - although most of those now in H-Unit previously enjoyed less restricted conditions in F Cell House prior to November 1991. Moreover, a significant proportion will probably have their death sentences vacated and then qualify for progression to more open conditions in lower security establishments. There is a valuable institutional concession whereby, as I understand it, death row prisoners, although technically outside the Level system, have some of the same privileges as Level IV general population prisoners. This concession relates to personal property, telephone calls and the amount of money (if they have it) which they may spend at the prison shop, known as the canteen, but it does not extend to the opportunity to work or to have associated activities with other prisoners or to additional yard time, and other Level IV privileges are severely curtailed or differently experienced as a result of the physical plant and operational policies of H-Block. As a result of protracted appeals procedures death row prisoners may experience these conditions under the shadow of the death penalty for very long periods indeed - sometimes for as long as the average time now served by life sentence prisoners in England and Wales. This has become known as the 'death row phenomenon'. So far as I am aware, the US Supreme Court has not yet ruled on whether the death row phenomenon constitutes "cruel and unusual punishment" in violation of the Eighth Amendment, although in the case of *Soering v United Kingdom* the European Court of Human Rights held that it constituted inhuman or degrading treatment in contravention of Article 3 of the European Convention on Human Rights. However, that decision of the ECHR depended upon the particular circumstances of *Soering's* case (*Soering* was a German national arrested in the United Kingdom appealing against extradition to Virginia on charges of capital murder where he would have faced death row in Mecklenburg), rather than solely on death row conditions. In November 1993 the Judicial Committee of the Privy Council in England ruled, in the case of *Pratt and Morgan v Attorney General of Jamaica*, that prisoners who had been under sentence of death for more than five years in Jamaica should have their death sentences commuted, on the ground that the prolonged period awaiting execution constituted cruel, inhuman or degrading treatment in violation of Jamaica's constitution.

3.2 International standards. In the absence of a clear determination by the US courts I rely upon a number of agreed international standards. The primary documents are the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations in 1948, and the International Covenant on Civil and Political Rights which was ratified by the United States in 1992. Article 5 of the Universal Declaration proclaims that 'No one shall be subject to torture or cruel, inhuman or degrading treatment'. This is now commonly regarded as having passed into the body of customary international law whether or not states have become party to

any particular international instrument (Rodley 1987). There are many other sources, of which the United Nations Standard Minimum Rules for the Treatment of Prisoners approved by the UN Economic and Social Council in 1957 and 1977 is the best known. In recent years the deliberations of such bodies as the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment have been influential, and I have therefore used their findings as a comparative base. I have also had a mind, of course, to the standards promulgated by the American Correctional Association's Commission on Accreditation for Corrections, which in part reflect US Court decisions and were to some extent originally intended to safeguard correctional authorities against litigation.

3.3 International best practice. Throughout I have tried to have regard to international best practice. To this end I have drawn upon my own relevant experience. I have conducted research in British, American and Russian prisons since 1968. In 1983 and 1984 I conducted research in Federal penitentiaries at Marion (Level 6), Lewisburg and Leavenworth (Level 5) and Terre Haut (Level 4). At that time I was invited by Norman Carlson to participate in the deliberations of the Advisory Research Council of the Federal Prison System. In October 1983 two prison officers were killed in the control unit at Marion, which resulted in a complete lock down of the facility. In December 1984 the consultants (Ward and Breed 1985) who reported on the Marion lock down to the US House of Representatives Committee on the Judiciary recommended that the Federal Bureau develop a new Level 6 facility along the lines of Oak Park Heights in Minnesota, a state of the art maximum security facility which nevertheless upheld very high standards of care and constructive activity. I was able to carry out research in Oak Park Heights for several months during 1984. In 1983 Her Majesty's Prison Service in England and Wales experienced acute control problems in its prisons, and the Home Office Control Review Committee undertook a study tour of the United States in 1984 to learn from American experience. At their request I extended my researches to report on other Federal 'new generation' prisons at Butner and Otisville; from 1985 to 1987, on my return to the United Kingdom, I advised the Home Office as a member of the Advisory Group on the Long Term Prison System. I have used my knowledge of Marion and Oak Park Heights as benchmark comparators in this evaluation. I have also borne in mind the findings from Lord Justice Woolf's Inquiry into the UK Prison System - the largest, most important and authoritative Inquiry of its kind which followed major prison riots in Manchester and elsewhere in 1990. The Woolf Report (Home Office 1991) set out the most comprehensive recommendations for maintaining a balance between security and control on the one hand and justice and humane regimes on the other, pointing out that the provision of the latter was the best guarantee of the former. His findings have largely been accepted by the British Government as the foundation for prisons policy.

3.4 Other recent developments. I understand that in recent years there has been something of a proliferation of maximum security last resort institutions: the Federal Bureau of Prisons is apparently building a replacement for Marion in Florence, Colorado; California has established a Security Housing Unit at Pelican Bay; Missouri at Potosi; Florida at Starke; Indiana at Westville; and there are several others. Many of these are said to be 'state of the art' establishments, although there has been little in the scientific correctional literature that sets out very much evidence either in terms of their penological rationale or their effectiveness, and certainly nothing comparable to the documentation concerning Oak Park Heights. Several of these new or planned prisons have attracted adverse comment from a human rights perspective. It may be, therefore, that this Report will be of wider interest and application.

4. Some Background Considerations in Evaluating the Design and Use of H-Unit

4.1 Planning brief. According to the Memorandum Opinion by US District Judge Robin Cauthron, in *Mann v Reynolds*, H-Unit was apparently 'planned and designed by an informal committee of DoC personnel' on the basis that it would be a 'non-contact' facility. The 'philosophy and design' were said to be 'modelled on the Federal penitentiary at Marion, Illinois'. In fact the design of H-Unit bears little or no resemblance to the original design of Marion (see, for example, Johnston 1973), although poured concrete beds and shelves were added to Marion to replace metal and wooden fixtures after the murders of Officers Clutts and Hoffman in the control unit there (also called H-Unit). Warden Reynolds was unable to provide a planning or design brief for the facility. Nor was he able to say with certainty whether DoC officials had visited Marion or other institutions before carrying through the design brief, or whether they had sought expert advice on the relationship between design and prison regimes. Warden Reynolds did confirm that the design owed much to the input of correctional staff. It is evident that the planning process took place around the time of the stabbing of Mr Savage or shortly afterwards, because according to press reports construction began in April 1990 after 35 prison employees met with Tulsa architects. I would be amongst the first to defend the importance of some such staff input. Historically, there have been many examples of prison designs (most of those built in England and Wales, for example, during the 1960s and 1970s) which have failed to address matters of supervision and safety through failure to consult experienced correctional staff who have to do the job on the ground. It is, of course, important that staff should be consulted if they are to have confidence in their ability to run a safe, secure and constructive environment in a professional manner and with due regard to justice and humanity. Two sensible features of the McAlester H-Unit design which were contributed in this way were the siting of 'bean holes' low down to avoid a repetition of the incident in which Mr Savage was stabbed (although this has unfortunate other consequences given the use of H-Unit as noted in paragraph 6.3); and the extra wide staircases which are safer for staff and prisoners. However, in other respects the design of H-Unit demonstrates the folly of allowing correctional staff too much direct say in the design of facilities, especially in the aftermath of riots or serious incidents of assault. They are all too likely, as in this case, to overemphasise considerations of security and control - often on ill-founded premisses - at the expense of considerations of fairness, justice, humanity and reasonable opportunities for constructive contacts and activity. There was, as documented in the judgement in *Mann v Reynolds* for example, no provision made for attorney visits in the original design. Nor was there any planned provision for religious services. The absence of education or work or other day time facilities was, no doubt, intentional, but it is nevertheless the case that the largest, airiest space in the unit which could be used for such purposes is, as a matter of policy, left unused. Other features of the design (lack of windows in cells and solid walls to exercise yards) provide a degree of security and protection in excess of reasonable penological need, and still others (size of exercise yards) seem to represent a rather token acknowledgement of the minimum requirements of the ACA/CAC standards. It was originally intended that the facility be fully self-contained with its own kitchens and on site medical services. These were apparently abandoned on cost grounds, but their absence seriously undermines the viability of the Unit. The design and planning process for McAlester H-Unit contrasts markedly with that which obtained for Oak Park Heights in Minnesota where the deliberations of working parties and committees led to the published Master Plan for a High Security Facility (Minnesota DoC 1977).

4.2 Physical security and non-contact philosophies of control. When McAlester staff speak of Marion as the main inspiration for the development of H-Unit the presumption has to be that they have attempted to carry through the logic of the Marion lock down and close confinement into a philosophy of non-contact. Marion itself was neither designed nor used, at least at the time I worked there at the end of 1983 and in 1984, as a non-contact facility except in the sense that most inmates were permanently locked down. The problem with lock-down situations, which give staff a temporary feeling of security, is that sooner or later they have to be opened up, and any easing of the situation may be resisted by staff who then feel vulnerable. Nevertheless, on B Unit in Marion prisoners were being eased out of lock down status, and there was open dining and some minimal programmes. In the remaining units prisoners were cuffed and shackled and escorted by three officers whenever they were out of their cells - for showers, exercise and visits. In any case, Marion might not be thought to have been an auspicious example to follow. The 'box car cells' and various aspects of their operation in the Marion control unit were declared to be in breach of the Eighth Amendment's prohibition against cruel and unusual punishment and ordered to be closed in 1978 (Bronstein 1981). The control unit philosophy at Marion did not prevent major violence, and its operation has often been a major source of embarrassment to the Federal authorities. The attempt to design non-contact facilities based upon physical and electronic barriers to separate staff from prisoners, and prisoners from each other, is essentially an attempt to provide staff with a permanent sense of security by creating a lock-down situation which need not be lifted. There are several reasons for thinking that non-contact facilities provide much greater security than is necessary for the public, without giving staff the protection they think they need. It is notoriously difficult to diagnose which prisoners require the most secure conditions. Often prisoners who constitute the most risk to the public outside are not problem prisoners in custody; and prisoners who are control problems in custody are not necessarily a risk to the outside community. In recent evaluations in England and Wales as to which prisoners needed control or special unit facilities, prison governors (wardens) were unable to agree on candidates, except in regard to those who had already killed in custody. As a result prisoners are often placed in units of much greater security than they need. This is especially relevant in the case of death row prisoners in McAlester who are assigned to special category housing without regard to institutional behaviour. Moreover, there can be serious problems for staff who may be lulled into a false sense of security and be caught off guard. Thus in practice it is virtually impossible to design a complete non-contact facility that would meet reasonable standards of humanity. In *Mann v Reynolds* seven situations were cited in H-Unit when inmates came into contact with other inmates, seven in which inmates came into contact with staff, and six in which inmates came into contact with the public or outside specialists. The more restrictive an environment and the more distant are the staff, the more likely is it that frustrated and angry prisoners will contrive to use such brief and occasional opportunities for contact as they get to express their frustration and anger. The circumstances of the staff killings in the Marion Control Unit, and the attack on Mr Savage, perhaps exemplify that position. Ironically, non-contact facilities often prove more expensive in terms of staffing because of the need to have several staff present when cuffing and shackling prisoners and escorting them. As a result staff often have nothing to do in the intervals between these activities, and so non-contact facilities do not provide satisfying or rewarding jobs for correctional officers. Nor, of course, do they provide prisoners with appropriately humane and constructive facilities. There are better alternatives. It is important to remember that the consultants appointed by the US House of Representatives Committee on the Judiciary - David Ward and Allen Breed - to report on the events in Marion concluded that the design of Marion was inappropriate for its purpose and recommended as a long term solution the construction of a 'new generation' level 6 prison along the lines of the Minnesota Correctional Facility at Oak Park Heights (Ward and Breed 1985 p 19).

4.3 Dynamic security and contact theories of control. The Oak Park Heights design for a maximum security last resort prison placed eight discrete groups of 50 prisoners in self contained units or complexes where they were unlocked for up to 15 hours a day and were expected to participate in work, education or treatment programmes for up to 7 hours a day (apart from prisoners in administrative segregation or disciplinary punishment). In fact Oak Park Heights has very elaborate physical and electronic separation of staff and prisoners for various purposes. The design allows separate and rapid access by staff to any part of the facility in emergencies via a racetrack corridor. Prisoners may proceed unescorted from one unit to another using separate corridors with controlled electronic access under visual or televisual surveillance. All parts of each living and working unit can be seen by a member of staff in a security bubble or control room attached to each complex. But in spite of, or perhaps because of these background security and control devices, the philosophy of Oak Park Heights was based on the security that comes from direct contact with prisoners - a variant of 'direct podular supervision' in corrections jargon. Each group of 50 prisoners was supervised by three members of staff - one in the security bubble and two on the floor space which was shared as a matter of design and operational policy with prisoners. The provision of full programmes for prisoners and the development of direct contact with staff encourage what is often referred to as 'dynamic security' - a vigilant staff, who are not lulled into a false sense of security by physical barriers and who are aware that their behaviour and demeanour is their best protection. Lord Justice Woolf's prestigious report after the riots at Manchester and other prisons in 1990, which ran to nearly 600 pages, endorsed these views. Woolf stressed that the question of maintaining good order within prisons depended fundamentally upon getting the right balance between security, control and justice. He argued that 'the best way to reduce the risk of disturbance is to improve the regime within a prison and to improve the way prisoners are handled within the prison system' (Home Office 1991 para 12.231). His recommendations have since become part of Government policy. Warden Frank Wood, at Oak Park Heights, used to insist that his small, but well educated and well trained staff, 'should treat inmates as we would want our sons, brothers or fathers treated'. Subsequent to the Marion lock down the Federal Bureau boarded some 25-30 Marion inmates at OPH and a number of States did likewise with prisoners whom they could not control. In the first seven years of its operation (my last contact with OPH was in 1990) there had been no serious incidents of violence and no escapes (King 1991).

5. H-Unit: Physical Plant

5.1 Facility. H-Unit is an artificially earth-sheltered facility, which is to say that it was built as a free-standing unit on level ground and then all external walls were insulated and sheltered with imported earth sloping up from ground level to the top of the walls at an angle (judged by eye) of approximately 35 degrees. The Unit comprises four self-contained quads, NE, NW, SE, and SW, which are approached and accessed via a central corridor. The corridor has the appearance of a tunnel, leading off from the double gates, electronically controlled by a single officer in the gate lodge at the entrance. Above the entrance is a security tower manned by an armed guard who has visual oversight of all approaches to the unit.

5.2 Quads. We visited only the death row quads. Each quad has some 50 cells which are arranged on two floors around three sides of a square. In the centre of the square is a raised

control room occupied (at the time of our visits) by a single officer. Through the glass walls of the control room it is possible to see every cell in the quad, and from here are operated both the intercom with the cells and the electronic locks to the cells and the unit. Access to the quad is along a short corridor and through an electronically controlled gate into a small, sterile sallyport area in the centre of the fourth side of the square. In fact the whole quad is subdivided into two halves by the metal grillwork walls of the sallyport on the nearside of the control room and by a single concrete wall on the far side of the control room. Access to each half of the quad is through electronically controlled gates on either side of the sallyport. The fourth wall of the quad, on each side of the central corridor, is largely glassed and provides visual oversight of the two small exercise yards which are enclosed on the remaining three sides by an 18 feet high concrete wall, roofed with girders and stout wire mesh. Inside the perimeter of each quad, on both floors, is a corridor or 'run' about four feet wide, on to which each of the cells opens, but which is separated from the central area by a wall of metal bars. Between this interior wall of bars and the control room is a substantial and airy central space, open from ground level to the roof. The roof of this central area is raised above the roof line of the cells around the perimeter by about two or three feet, and the upper part of this elevation is windowed to provide the main natural light source for the quad. The only other natural light enters via the roof of the exercise yards on one wall of each quad. There is a shower stall, designed to accommodate two prisoners at a time, at the end of each run on each side of the quad. Finally, each half of the quad has a 'high max' cell to accommodate refractory prisoners.

5.3 Cells. Each cell in H-Unit has unpainted concrete walls, ceilings and floors. The overall dimensions of each cell are 7' 7" wide by 15' 5" long by 8' 4" high. This provides a gross floor area of 116.9 square feet in single occupancy, and 58.45 square feet in double occupancy. There are no windows to the outside world. The cell door is solid metal, but the upper part has a Plexiglas window on one side and metal bars on the other. On the very sunny Oklahoman spring day of our visit natural light filtered from the central quad skylights through the wall of bars, and finally through the bars and Plexiglas window of the closed cell door to illuminate a few square feet of floor space at one end of the cell. At the bottom of the door is the flap or 'bean hole' through which food is served. Apart from the 'high max cells' which are designed with a single poured concrete bed space, each cell in H-Unit has been designed to accommodate two prisoners with two poured concrete beds, thus providing a capacity of 400 places. In fact all the cell 'furnishings' are in poured concrete, with a 'bed' measuring 80" x 27.5" along each long wall, contoured to provide perhaps 5 square feet of open storage space beneath. The beds are situated 24 inches from the far wall and 81 inches from the entrance wall. The space between the beds is just three feet. Between the end of each bed and the far wall is a poured concrete 'table' some 26 inches wide and 16 inches deep, for the use of which the occupant has to sit using the end of the concrete bed as a 'chair' albeit without any back support. Above each table, somewhat above head height, is a similarly sized poured concrete 'shelf' which provides rather less than 3 square feet of storage space. Between the two tables on the far wall is a stainless steel combination sink and water closet, and above this is a small unbreakable mirror. Above each table is a light fitting which has a socket for electrical appliances. Each light fitting has a bare bulb. The lights are independently switched and can be operated from inside the cells. Below the mirror is a small metal terminal for attaching a television aerial. There are no other furnishings to the cells. There is no facility for suspending clothes. There is no pin board or place to display photographs, other than the table, which would mean moving them whenever it is in use, or the shelf, which is too high for display purposes. There is no bell for attracting the attention of officers in an emergency, although there is a voice activated intercom system. There is no natural fresh air ventilation to the cell. Ventilation is through a piped system with an inlet and return vent on the far wall of

each cell. There would seem to be three possible measures of net, or unencumbered, space: i) including the space between the head of the beds and the tables, as well as the central area between the two beds, and between the foot of the beds and the entrance wall; ii) including just the central area between the two beds and the area at the foot of the beds; and iii) counting just the area at the foot of the beds. On the first definition there is 78.08 square feet of unencumbered space in single occupancy or 39.04 square feet each in double occupancy; using the second definition the figures are 71.18 square feet single occupancy or 35.59 square feet double occupancy; and using the third definition, 51.18 square feet single or 25.59 square feet double occupancy.

5.4 High max cells. The high max cells have just a single poured concrete bed, with built in fixing points for placing prisoners in four point restraint, and a combination sink and commode which is situated in the corner rather than the centre of the far wall. The high max cells have a double door entry system with a small shower stall fitted between the inner and outer doors. It is possible for a prisoner to be observed through the windows of the double doors, but there is no mechanism other than the intercom through which the inmate can make his needs known.

5.5 Exercise yard. The exercise yards are 23 feet long by 22.75 feet wide, which gives an area of 523.25 square feet. The yards have solid concrete walls which are 18 feet high so that their appearance is essentially that of a cube. Were it not for the fact that the roof is constructed of girders surmounted by square wire mesh giving access to the open air, the exercise yard would give the effect of being another room. Because the walls are solid there is no view of the outside world, except for a square of sky, and no through draught. The only facilities for recreation or physical education provided in the yard are a ball, for playing hand ball, and a permanently fixed bench and weight bar with one set of weights permanently welded to the bar, situated in one corner of the yard. The weight bar cannot be removed from its vertical runners. There is no drinking fountain on the yards.

5.6 Family visits facility. The facility for prisoners to receive visits from their families, or other persons on their visiting list, is situated on the second floor of each quad. On each quad there are four small cubicles. Prisoners access these cubicles from inside their quad, and the door is locked behind them. The cubicle contains a fixed stool and a telephone. The prisoner is separated from his visitor by a Plexiglas screen, and no physical contact is possible. We did not examine the visitors' access, but this is presumably from a staircase off the central corridor to the unit. On the visitors' side the cubicles are not fully enclosed but have partitions to provide some privacy from their neighbours on either side. There are no facilities to enable visitors to buy food or drink for themselves or their children.

5.7 Attorney visits facility. No special plans were made in the original design of H-Unit for attorney visits, and various makeshift arrangements have been made since which were the subject of the class action suit referred to above as *Mann v Reynolds*. The present arrangement has fully implemented the recommendation of US District Court Judge Robin Cauthron in that case. The attorney visits facility is situated in a small, subdivided room, between the living accommodation and a medical examination room adjacent to the staff office from which the visit can be observed, but not heard (although some prisoners and some attorneys are not entirely reassured that their conversations are not overheard through electronic means). The access is awkward. Prisoners are brought through a door at the end of the cell run into the visitor's side of the visiting room, and then pass through a further door in the partition wall which divides the room into two. They are then locked into their half of the room.

Once the prisoner is secured the attorney is brought through the medical examination room from the central corridor and locked into the visitor's half. The upper part of the dividing wall is of diamond shaped mesh, which permits the free flow of sound without the need for telephones. A large central part of this dividing mesh has, in accordance with the instructions of the court, been cut out and replaced with Plexiglas to give unimpeded visual contact without the drawbacks which applied when making eye contact through diagonal mesh. At about waist height, just above a narrow counter, a rectangular hole, about 16 inches wide and some 4 inches high, makes it possible to shake hands and to pass documents.

5.8 Recreational library. Outside the quads, in a small room off the central corridor, is situated a small recreational library facility. I judge it to contain several thousand well-thumbed paperback volumes double stacked on shelves and grouped according to broad categories. It is hard to evaluate the library on the basis of a cursory look. There appeared to be no instructional books and the fiction seemed to lack variety. There appeared to be no reliable way of ensuring that prisoners knew what was available. Prisoners did not themselves visit the library, nor was there any apparent catalogue. A selection of books was apparently taken to each quad and distributed there by the 'run men' - death row prisoners who were trusted to spend more time out of cells for a variety of errands, such as delivering milk and coffee, picking up food trays from bean holes and so on.

5.9 Law library. In another, larger, room off the central corridor is situated the law library for H-Unit. For the purpose of this visit, not being a lawyer myself, I asked local attorneys to provide me with a list of the reference books they would expect a minimally equipped prison law library to have if prisoners were to be able to make reasonable use of it. All of these series were present and, as far as I could judge, they seemed up to date although I am aware that others more expert in this area than I am have been critical. The law library is staffed by a civilian librarian and two death row inmates who act as legal assistants. We were assured that the library assistants had received a five day training programme at the end of which they had taken a proficiency test, but I was not able to form an opinion as to how adequate this was for the purpose. Books which are not available in H-Unit law library may be obtained from the main prison law library, and to this end a daily list is submitted by one of the legal assistants. In addition I saw order forms which apparently could be used to obtain additional materials which were not available in the prison law library. Up to four prisoners at a time may use the library, although whilst there they are locked into the four barred cages which are situated along one wall. At least one of the cages was equipped with an electric typewriter. There was also a photocopying machine to which, we were told, prisoners had 'reasonable' and free access.

6. H-Unit: Operational Policy and Practice.

6.1 Operational policy. All death row inmates are routinely assigned to H-Unit by virtue of their death sentence and without regard to institutional behaviour. Although technically outside the Level system, death row prisoners are regarded as equivalent to Level IV - the most favoured level - in respect to some privileges, most notably in regard to personal property, use of the telephone, and the amount of money they may spend (if they have it) at the canteen. (Level IV inmates in A and C units may be allowed to work from 7.30am until 3.30pm and they are permitted contact visits and get more yard time.) Inmates assigned to H-Unit normally spend 23 hours a day locked in cells during weekdays and 24 hours a day locked in cells at

weekends. Although originally single celled, most death row prisoners are now double celled.

H-Unit Rules and Regulations specify that prisoners are subject to 15 counts, including one stand up count, each day. One hour a day on weekdays may normally be spent in the exercise yard, weather, security and safety conditions permitting. Up to five inmates are allowed on the yard at a time, and none may return until the exercise period is completed.

Prisoners are permitted to shower three times a week, and they normally shower two at a time. A maximum of a quarter of an hour is permitted for the shower. Death row inmates are allowed up to eight visits a month with any of the ten individuals on their visiting lists. Visits may last for up to two hours and the prisoner wears leg irons, though not handcuffs throughout the visit.

High max prisoners can have four visits a month and wear handcuffs as well as leg irons.

Food is prepared in a central kitchen some hundreds of yards away from the unit and is supposedly transferred in heated containers. Breakfast is at 6.30am, lunch is at 11.30am, and dinner is served at 4.30pm. All meals are passed through the bean hole and eaten in cells.

Prisoners may order foods, toiletries, hobby and other items including television and radio sets from the canteen every two weeks using requisition slips. These are paid for out of personal monies, because prisoners receive no wages or other payments. Prisoners who have no financial resources at their disposal may receive 'indigent sacks' containing minimal toiletries. Chaplains and visiting ministers have access to the run weekly to provide individual ministry, and a religious service is held once a week in the sallyport area of the second floor for up to ten inmates at a time. During the service the prisoners are handcuffed and the chaplain remains outside the bars. The law library is available on weekdays. Death row prisoners are allowed to use the law library for up to two hours at a time between 8am and 12 noon, other prisoners on H-Unit having access for the shorter afternoon period from 12.30pm until 3.30pm in two 90 minute sessions. Priority is given to prisoners under court ordered deadlines, including a thirty day execution notification. Prisoners use the law library in locked cages where they sit in leg irons facing the wall. Prisoners are permitted one fifteen minute telephone call per week from a telephone cart which is brought to the cells. Calls are made collect, the number is dialled by the officer and the hand set passed through the bean hole. A fifteen feet long lead, supplied in response to US District Court Judge Robin Cauthron's instruction in *Mann v Reynolds*, is intended to allow the caller to be as far away from his cell mate as possible to improve privacy for attorney calls. Medical and dental appointments are scheduled by the Health care Administrator after prisoners make a sick request. These are collected by a nurse who visits each quad daily to distribute medicines. Medical appointments will often take place in the medical examination room attached to each quad (see paragraph 5.7 above) but may require an escorted visit off the unit to the infirmary and perhaps to an outside hospital. Dental appointments take place in the infirmary.

6.2 Practice.

i. Contact with other prisoners. In spite of the expressed 'ideal' of creating a 'non-contact' facility it is quite clear that some prisoner contacts with one another are built in to the operational policy. Prisoners are now double-celled, and although originally they were single celled, the prospect of double celling was evidently there from the outset in a design that called for two poured concrete bunks and other 'furnishings'. Prisoners are required to shower two at a time and to use the yard five at a time. Indeed prisoners spoke movingly about all these aspects of the regime in H-Unit. Most prisoners preferred to be single celled, on grounds of space, privacy, and the sheer difficulty of co-existing with another person of different tastes and temperament for 23 or more hours a day in circumstances of close confinement, but also on grounds of the need to maintain their own safety and physical and mental health. Although

some prisoners had managed to obtain a reasonably satisfactory cell partner, and at least one had sustained a caring relationship with a disabled cell mate, others had felt this to be forced upon them and still others had experienced difficulty in obtaining a change of location in spite of repeated requests and recourse to the grievance procedure. [On the second day of our visit a member of staff reported that a prisoner remained on the run and refused to be double celled with another prisoner. This produced the response from the Unit Manager: 'Well just cuff 'im and stuff 'i m'.] Moreover, these enforced contacts were needlessly carried over into other areas.

Thus prisoners who celled together also showered and exercised together - so that the only two regular occasions in which they were relieved from the confinement of their cells provided no relief from the company of their cell mate. This led some prisoners voluntarily to forgo their exercise, preferring an hour of their own company locked up to a further hour with their partner on the yard. Some cell partners organised their exercise on alternate days to maximise their separation from one another and to equalise their access to the yard. In spite of these enforced contacts prisoners were routinely denied the possibility of other more social contacts with prisoners of their choice. Loitering on the way to the yard results in forfeiture of the yard period for the day and may attract a misconduct charge. At shower times the Rules specify that there will be 'no stopping on the run, visiting from cell to cell, nor passing any notes, coffee, etc'. If there is, it will 'be determined as refusing to shower and result in a misconduct charge'.

Prisoners used the bean hole, which for periods during the day was left open, as a means of shouting messages to one another. Following the stabbing of Mr Savage staff had advised that the bean hole be situated low down so that in the event of a similar assault only their legs were vulnerable. The siting of the bean hole meant that prisoners had to get down on their knees to make use of this as a means of communication. The 'run man' - the trusted prisoner who may distribute coffee and milk, newspapers and library books, collect dirty food trays and so on - can provide a conduit for information and the passing of messages, but in the nature of prison life is likely to be regarded with some suspicion as a surrogate member of staff. Fundamental to the complaints of death row prisoners in this regard is that they are assigned to non-contact conditions without regard to their institutional behaviour, and that they had previously enjoyed better contact with other prisoners on F Cell Block before being transferred to H-Unit.

ii. Contact with correctional staff. Correctional staff do not routinely patrol the run and there are few situations when inmates and staff have direct face to face contact with one another.

Correctional officers pass meals through the bean hole three times a day and, presumably, it is they (or perhaps the run man) who collect Request to Staff Member forms, Offender Grievance Report forms and Sick Call Requests which are then placed in pocket folders taped to the wall at the entrance to the quad. When death row prisoners are let out to go to the shower or to the yard or to family visits their cells are opened electronically and they are supervised by staff from the other side of the bars. When prisoners are escorted to attorney visits, to the law library, or to the medical facility - all of which involve movement away from the immediate environment of the interior of the quad - they are placed in leg irons and handcuffs and escorted by officers. When staff need to communicate with prisoners they use the intercom - so that prisoners receive instructions as a disembodied voice. In theory prisoners may also use the intercom to make contact with staff, and of course they do. But this is viewed with widespread scepticism. It was put to us that sometimes the intercom is switched off and so prisoners could not be confident that they would get a response; that sometimes their requests are simply ignored (as can happen with any means of communication, of course); that the intercom is used to eavesdrop on prisoner conversations; and even that correctional officers have used the intercom to create 'imaginary voices' that feed the hallucinations of disturbed prisoners. There is no bell in the cells by means of which prisoners may attract the attention of staff. In such a

restricted environment prisoners feel isolated from staff - indeed the non-contact philosophy can hardly give out any other message than that staff-prisoner contact is undesirable. It is not unusual, therefore, that prisoners resort to banging on their cell doors to try to attract the attention of the staff and to relieve their frustration. But in a non-contact climate such a call for assistance may only result in a misconduct report for damage to prison property. Once again death row prisoners contrast this with the situation which they previously experienced in F Cell Block where correctional officers routinely passed up and down the run outside their open-fronted cells and where some measure of direct contact with members of staff was always available. Just as contact with correctional officers is restricted so is it with case managers and senior staff. Some prisoners believed that initial Requests to Staff Members were sometimes binned and that they had to make grievance reports to get any attention to their requests, but since these only went to line managers there was no independent investigation of grievances. Several examples were cited where letters had to be addressed to the State Governor's office before a response was received to long standing requests. Case managers apparently do not spend much time in contact with prisoners. We were told, for example, that case managers routinely completed 120 Day Adjustment Reports - which for other prisoners might lead to the accumulation of credits leading to a change of status or location - without any direct contact with death row inmates except when they asked them to sign the already completed form. In the only such form which we were shown the case manager had assigned the prisoner to Level I. Whether this was an error of understanding or recording is not clear, but in the circumstances it is hardly surprising that some death row inmates were unaware of their Level IV equivalence for some privileges. With nothing hinging upon the outcome of a 120 Day Adjustment Report there is little incentive for case managers to give it more than token attention. I was intrigued to find that it took many more correctional officers to run the death row quadrants of H-Unit - 33 officers working in three shifts - than it took to run the old death row in F Cell Block where there were three officers on two runs.

iii. Contact with professional staff Prisoners felt that their requests to see medical, dental or psychiatric staff were either ignored or delayed and that they had to wait unduly for treatment. There were some allegations that prisoners were denied appropriate or effective treatment on grounds that as death row inmates they were 'already dead men'. When I put these allegations to the medical administrator and the dentist they were strenuously denied. It was pointed out that prisoners might not be in a position to evaluate the appropriateness of their treatment, and that often their requests would fall in the category of elective medicine in the free world. It was acknowledged, however, that a judgement had to be made, apparently on the basis of the written request and any additional enquiries made of correctional staff, as well as previous experience of the prisoner concerned, as to whether it was a legitimate medical request or not. There was a view expressed to us in the infirmary that sometimes prisoners did not need treatment but merely tried to use it as an excuse to get off the quad, and that this was disruptive in terms of the escorts and security precautions that were then needed. Given the circumstances of confinement it is not surprising that prisoners should seek to find ways of getting off the unit, though this should in no way prejudice their access to appropriate treatment.

We were assured that a qualified nurse attended each quad on a daily basis to distribute medicines and to collect sick call requests. The senior physician felt that there were sufficient staff and other resources, and that the infirmary was appropriately equipped for the needs of the institution, but thought that it would have been preferable to have a self-contained medical facility on H-Unit as originally envisaged. Several of the prisoners to whom we spoke were concerned either about their own mental health or that of prisoners on H-Unit. Death row prisoners not unnaturally have difficulty in coming to terms with their sentence. The conditions of close confinement do nothing helpful from a psychiatric point of view. The psychiatrist drew

our attention to the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association which lists captivity as a hostage or as a concentration camp inmate as "catastrophic" - the most severe stressor on their scale of adult psychosocial stressors. Incarceration on death row must rival those experiences (see Johnson 1981). Coming to terms with one's own sentence and conditions was not made easier for some prisoners by the evident symptoms of mental disorders exhibited by other prisoners on the quad. We were told of prisoners who cried or moaned incessantly, or who heard voices or saw ghosts and who threatened injury to themselves or others. Prisoners claimed that it was extremely difficult to get mental health treatment or access to the psychiatrist. The psychiatrist indicated that it was not possible to exercise proper psychiatric oversight and monitoring of patients in H-Unit, and that three prisoners who had been transferred to F Cell Block Special Needs Unit, had stayed for only 30 days before being transferred back to H-Unit as a managerial rather than a medical decision.

iv. Contact with the public, including families and attorneys. Contact with families was one of the few matters that had changed little as a result of the move from the old death row to H-Unit. In both cases the visit was non-contact. However, there were some lesser, but nevertheless important, matters which caused additional concern to prisoners in H-Unit. The cubicle in which prisoners are required to sit was reported by everyone as being so airless and stuffy especially on hot days, that visits took place in considerable discomfort. Moreover, prisoners complained that whereas on the old death row (and perhaps initially in H-Unit) it had been possible for visitors to buy drinks and snacks during the visit, this facility had been removed. One prisoner told us that his parents could not bear to visit him in these conditions and would visit again only when he got a 30 day notification of execution or was moved from H-Unit.

Contact with attorneys has significantly changed, and this has been fully aired in the recent case of *Mann v Reynolds*. In F Cell Block full contact attorney visits were permitted in the Captain's office, although it has to be said that prisoners were fully restrained with leg shackles, handcuffs and a belly chain whilst in the room with the attorney. The attorney was searched before, and the prisoner both before and after, the visit. As noted in paragraph 5.7 above the current non-contact visits facility for attorneys has fully incorporated the court recommendation for a Plexiglas screen to replace the diamond mesh. Once inside the prisoner's section of the visits room the prisoner is restrained with leg shackles but not hand cuffs. The second recommendation of the court in *Mann v Reynolds* was that telephones should be fitted with longer (15 feet) leads to provide greater privacy. Prisoners complain that although this has been done it has not ensured privacy, and could not reasonably have been expected to do so. Although there are periodic public tours of H-Unit, opportunities for contact with other members of the public, with the possible exception of the two law clerks, are virtually non-existent.

v. Exercise. We were told that exercise was sometimes cancelled on grounds that it was too hot, cold, wet or snowy and sometimes because there were insufficient staff to supervise it. We were told that on such occasions yard time should be made up at weekends, though that rarely happened (I could find no reference to this either in the Unit Rules or in the Inmate Handbook). It is not possible for me to state how often this happens because prisoners gave different accounts (perhaps because their experiences were genuinely different), but it would seem that this perhaps happened once every three weeks. It is also the case that prisoners sometimes voluntarily refrained from going to exercise to get relief from their cell partners. Some prisoners had difficulty in using the exercise yard because of their physical condition. We were told of one case where the unit manager took a sympathetic view and allowed a disabled prisoner to exercise as best he could on the run. Prisoners complained about many

matters in relation to the yards, contrasting the facilities on H-Unit unfavourably with what they had experienced on F Cell Block and what was available in other parts of the prison. One complaint concerned the small size of the yard, especially in regard to the fact that if some prisoners wished to play handball there was no space for anyone else to take exercise and keep out of their way. Prisoners were extremely critical of the fixed weights bench (which staff justified because weights and weight bar had been used as weapons in an incident on another unit) both on grounds that it was virtually impossible actually to use it, and that even if it were possible it was of no use as a workout facility since it allowed only one form of bench press. There were no other facilities provided, whereas prisoners on other units in McAlester could play basket ball and had space to run. Crucially important to prisoners was the fact that the solid walls of the yard, combined with the fact their cells had no windows, meant that they never saw a blade of grass, a tree or a flower and were now virtually confined to a concrete world. All the other exercise yards which we saw were surrounded by wire fences, giving a sense of spaciousness and a view of the world beyond. One prisoner spoke movingly of his hope that a bird might fly over the yard whilst he was on exercise. Prisoners also complained that whilst on the yard they could not get a drink of water, no matter how hot it was or how hard they exercised. Nor could they leave to go to the toilet.

vi. Food service. We did not hear a single good word for the food service, which was roundly condemned on three grounds: the portions were small, and certainly smaller than had previously been the case on F Cell Block; the food was undercooked so that prisoners were fearful of eating the meat; the food was never hot. We were told that the food was not hot because of the distance it had to travel and because the heated trolleys were inefficient - in one case the heating element had apparently been missing for months. In 1991 the ACA accreditation auditors had been told by all the prisoners they spoke to that the food was cold in the main prison (apparently the only complaint they received) but that they believed the institution was working to improve that situation. When we put these complaints to Warden Reynolds he confirmed that portions were now controlled in the kitchen where the food was placed into trays, whereas previously when meals were served in front of the prisoners they were able to ask for and get larger portions of vegetables. A reduction in the amount of money for food per prisoner had meant that there had to be stricter portion control, although he hoped to be able to increase the rations at least of vegetables in the future. He also confirmed that the trolley had no heating element and promised that this would be put right.

vii. Canteen. As a result of their difficulties with prison food many prisoners who could afford to do so bought additional supplies from the canteen. Several relied on powdered soups and similar items which they mixed with water heated with stingers (electrical heating elements) in their cells. There were nevertheless many complaints about both the selection of goods available from the canteen and the prices which were charged for them. Often they were placed in a catch 22 situation: for example they were not allowed to buy television sets except through the canteen which charged considerably more than the prices which prisoners could see advertised in newspapers by outside suppliers. One of the few ACA standards which the institution failed to meet in 1991 concerned the canteen because in Oklahoma canteen profits are divided for the benefit of staff as well as inmates.

viii. Religious services. No provision was made in the design of the facility for religious services. The present makeshift arrangements, described in paragraph 6.1 above, involve prisoners worshipping in the sallyport area on the first and second floors with the chaplain outside the bars. The chaplain provides a taped musical accompaniment for the hymns and this can be heard all over the unit, in effect imposing religious services on those who have no wish

to participate, and perhaps have a constitutional right not to do so. Other prisoners turn up radios and televisions in cells to drown out the noise so that the result becomes a competition in the interests of no one. We were told that there had been some difficulty in prisoners gaining access to ministers of their chosen religion or denomination.

7. Conclusions

7.1 H-Unit and the mission statement. In the absence of published accounts I find it hard to avoid the conclusion that the Oklahoma Department of Corrections was too easily led to the view that a 'non-contact' facility offered the best means of 'protecting the public, the employees and the inmates' - a shorthand formula to which its mission statement is usually reduced. Although the full version of its mission statement provides some important indications of the way in which those aims should be pursued, the design of H-Unit has in my view failed to provide a proper and reasonable balance between the needs of security and safety on the one hand and considerations of constructive activity, humanity and justice on the other.

7.2 Design of Cells : i) total space. As I understand it H-Unit cells were designed for two persons which provides a gross floor area of 58.45 square feet per person in double occupancy. Most H-Unit prisoners are confined to cells for virtually 23 hours a day during the week and 24 hours at weekends. This is clearly in breach of ACA/CAC Standard 3-4128 which specifies 'at least 80 square feet of total floor space per occupant' in circumstances when confinement exceeds 10 hours per day. This standard relates to general inmate housing. A great deal may depend upon whether death row prisoners should be regarded as general population, as I believe in some respects they should, or special management prisoners as they are considered in Oklahoma, although in this instance it makes no difference. Standard 3-4136 also specifies a minimum of 80 square feet for segregated prisoners with the Comment that additional space should be provided for in-cell activity because of the extended period segregated prisoners may be confined to their cells.

ii) unencumbered space. Standards 3.4128 and 3.4136 both require an unencumbered area amounting to 35 square feet per prisoner. It can be seen from paragraph 5.3 above that on the most generous (39.08 Qs ft) and intermediate (35.59 Qs ft) interpretations of this definition the cells meet this standard, even in double occupancy, but on the third definition (25.59 Qs ft) they do not.

iii) furnishings . To the extent that the cells do meet the unencumbered space standard it is arguable that they do so only because of the sparseness of the cell furnishings. There is thus no place to suspend clothes, as required by Standard 3-4129; no locker, as required by Standard 3-4129 (storage of personal items being in a hollow under the concrete bed); and the 'proximate place to sit' next to the writing surface referred to in Standard 3-4129 seems to be the bed itself which offers no back support. The concrete table or writing surface offers little space to display personal items, and any display items would have to be moved whenever it was used for writing. The shelf above is too high for display and provides only limited storage space. In my view storage space and display space are grossly inadequate for cells in double occupancy, though sufficient for cells in single occupancy.

iv) siting of toilet. ACA/CAC Standards seem to say nothing about the siting of toilets and basins in cells. The siting of the combined sink and commode between the two bed heads offers no privacy when the cell is in double occupancy, and since this area is also the only one to provide a surface for eating meals, all of which have to be taken in cells it arguably constitutes a health hazard. The sink/ commode could have been sited to one side of the cell door secluded by a half wall which would have provided both privacy and a healthier environment.

v) lighting and ventilation. Article 11 of the United Nations Standard Minimum Rules for the Treatment of Prisoners states in part: In all places where prisoners are required to live and work, a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation. There is no doubt that H-Unit is seriously in breach of Article 11. ACA/CAC Standards are much more ambiguous. Standard 3-4140 merely requires access to natural light, although Standard 3-4141 requires inmates in general population who are confined for more than 10 hours a day to cells to have access to an opening window of at least 3 square feet with a view to the outside world. This is qualified in the Comment which appears to allow a natural light source within 20 feet of the room or cell to substitute for the window actually in the cell. It is not surprising, given the prior existence of so many Auburn style prisons in the United States with their ranges of interior cells with open fronts receiving their light from windows on the outside walls a short distance across the range, that the ACA/CAC should permit this alternative. However, it would seem extraordinary if that were regarded as acceptable for new building. The Oak Park Heights design, for example, creates a completely secure and extremely safe environment which nevertheless gives every prisoner a single cell with a window to the open air facing out over the fenced playing field which forms the interior of the prison. ACA/CAC Standards 3-4144 and 3-4145 on ventilation explicitly allow for recirculated air as well as fresh air (although 3-4141 allows for opening cell windows). I have no way of knowing whether the ventilation system in H-Unit meets the relevant technical standard but there were so many complaints about dust and air quality that both the volume and quality of air should be regularly checked. In my view the decision to earth-shelter the facility in such a way as to deny the possibility of cell windows with a view to the outside world represents an unreasonable and unnecessary pursuit of security goals at the expense of humane conditions. Lighting the facility from central skylights seems, at best, to represent a token acknowledgement of the letter of the ACA/CAC Standards. It was a bright sunny day on the occasion that I visited the cells. With the lights off, and my back to the cell door with the light coming over my shoulder it would not have been possible to read without strain: no appreciable illumination reached the back of the cell, which offered the only place to sit and work. In such gloom it clearly would not have been possible to read and work there at all. It is important to note that death row prisoners had previously enjoyed opening cell windows with a view to the outside world when they were housed in F Cell Block.

vi) cell decoration. Neither the UN Rules nor the ACA/CAC Standards have much to say on cell decoration. I merely note here that H-Unit cells are left unpainted. When I asked why I was told that this was because paint constituted a fire risk. There are, however, non-flammable water based paints. Painting the walls would not only help to humanise the appearance of what amounts to a concrete tomb, it might stabilise the surface and reduce the dust which appears then to be constantly recirculated through the ventilation system.

vii) cell bells. The absence of cell bells means that prisoners are dependent upon the intercom, which is sometimes switched off, or kicking cell doors which incurs the displeasure of staff to attract staff attention. This is unsatisfactory.

7.3 Exercise yards. i) space.. ACA/CAC Standard 3-4147 specifies that outdoor and covered/enclosed exercise areas must be provided for general population inmates and that outdoor areas are preferred, but that covered areas must be available for inclement weather in addition to dayrooms. Outdoor exercise areas have to provide 15 square feet each for the maximum number of inmates expected to use the area at one time, but not less than 1,500 square feet of unencumbered space. Covered exercise areas in institutions for more than 100 inmates have to provide 15 square feet per inmate, be at least 18 feet high, and have a minimum of 1,000 square feet of unencumbered floor space. Standard 3-4149 specifies that for segregation units there must be 15 square feet per inmate, ceilings at least 18 feet high, and a minimum of 500 square feet. There are a number of difficulties in interpreting these standards in relation to H-Unit. Firstly, as discussed in paragraph 5.5, it is not clear whether the exercise yard should be regarded as an outdoor or indoor facility. In spite of the open mesh roof the fact that it has been built to a specification which is 18 feet high suggests that the designers had an eye to the indoor standard. Secondly, although there are good reasons for considering death row prisoners as general population, requiring 1,000 square feet, there are also prisoners in administrative segregation in H-Unit for whom a lower standard of 500 square feet is specified. Thirdly, there are eight exercise yards in H-Unit, two for each quad. I take the view that although the total area is thereby increased, that it is the size of each individual yard that is important. On this basis the unencumbered space of the yard, which is about 500 square feet (after allowance for the fixed weights bench) meets the standard for segregation units, but not for general population prisoners. Whether or not the facility meets the precise ACA/CAC standards on space I would have to comment that these standards themselves leave a great deal to be desired. An allocation of 15 square feet per prisoner is, to my mind, preposterously low. The minimum standard for unencumbered space (for segregated prisoners and for institutions with fewer than 100 prisoners) of 500 square feet is unduly low. Theoretically that would allow some 33 prisoners to use the yard at one time and still meet the standard. In my view the space available for exercise is unduly restricted, particularly in that prisoners who do not wish to play handball have no room to move around and keep out of the way.

ii) Access Standard 3-4147 requires access for one hour a day for general population inmates. H-Unit Rules specify one hour of exercise per day for five days a week for a maximum of five inmates at a time. If this order is adhered to it then it would take about 20 scheduled hours of exercise (10 hours for each yard) each weekday to ensure all inmates were exercised. In fact some prisoners voluntarily forgo exercise in order to get some separation from their cell mates.

iii) Quality The lack of facilities in the yards, and the high concrete walls which effectively negate many of the benefits of this being outdoor exercise, seem to me to be unduly restrictive.

7.4 Programmes. Prisoners on death row are not permitted to participate in programmes other than GED. Although there is a large day room type space, the lightest and airiest part of the unit, this is not used for any purpose.

7.5 General conclusion Bearing in mind that death row inmates are assigned to H-Unit as a class and without regard to their institutional behaviour; that they may spend many years on H-Unit; that although they are subject to 120 day adjustment reviews there is nothing that they are presently able to do to in terms of institutional behaviour to get off the unit; that they spend 23 or 24 hours a day in cells which offer no direct recourse to natural light; the poverty of the exercise environment; the relative lack of contact with staff; the non-contact visits; and the lack of programmes available to them; I take the view that these conditions amount to inhuman and degrading treatment. I use this term as that has been understood by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) established under the European Convention for the Prevention of Torture. The CPT is the first body developed from within the corpus of international human rights law-making that specifically addresses the conditions of detention. In its deliberations it has clearly taken a cumulative approach, not dissimilar to the 'totality of conditions' approach adopted in US courts, whereby although single conditions might not be inhuman or degrading in themselves, they might become so in combination with others. Thus in 1991, conditions in Brixton, Wandsworth and Leeds prisons in the United Kingdom were deemed by the CPT (Council of Europe 1991) to amount to inhuman and degrading treatment: this was on grounds of overcrowding, lack of integral sanitation and privacy, and lack of out of cell activities (prisoners spent 22.5 hours a day in cells). Similar reasoning and conclusions were reached in 1993 in relation to Marseille-Baumettes and Nice prisons in France (Council of Europe 1993). Cell space is better in H-Unit than in these European examples, and there is also integral sanitation: but the length of time locked up in cells, the lack of a window to the outside world, the restricted space and facilities in the walled exercise yard, the lack of contact with staff, the non contact visits and the almost complete lack of educational, vocational and work programmes amount, in my view, to inhuman and degrading treatment. I reach this conclusion specifically in regard to the use of the accommodation for death row prisoners, many of whom have already spent 2 years and 4 months in H-Unit, and who presently stand to spend many more years there, even though many had previously experienced the conditions in F Cell Block and some can expect to have their death sentences vacated and eventually return to low security and perhaps even to the community. I am mindful of the fact that the European judgements were made in relation to conditions experienced by prisoners who could expect to spend relatively short periods (often weeks or months although in some cases up to about two years) so confined and who might well then be transferred to other conditions. However, I would also have considerable reservations about the use of H-Unit for disciplinary or administrative segregation or other purposes, and I return to those reservations below.

8. Further Observations

8.1 The use of H-Unit by other categories of offenders. When I presented the above findings in outline form to Warden Reynolds he indicated that active consideration was currently being given to the implications of moving death row prisoners to general population. This, he said, might allow the greater use of H-Unit for administrative segregation and disciplinary segregation prisoners. I welcome those deliberations but not without some reservations. Firstly, whilst I do not think that death row prisoners should automatically be assigned to special housing especially if that involves, as it typically does, more restrictive

conditions, I can sympathise with a view that sees death row prisoners as being in a different category from general population. My view would be this. That for death row prisoners who could cope with being in general population there should be no restriction on this providing that their institutional behaviour gave no grounds for considering an alternative disposition. But that for those death row prisoners who had difficulty in coping with other, more transient, prisoners who were being released to less secure conditions or to the free world, there should be the option of a more sheltered environment in the company of other death row prisoners, but without the restrictions implied by administrative or disciplinary segregation. Secondly, I would have reservations about the use of H-Unit for other, non-death row, prisoners if this meant a blanket extension of the use of administrative segregation. Thirdly, whatever use is made of H-Unit I believe there should be clear limits set as to the time that prisoners could be kept there. As a rule of thumb I suggest that an upper limit of twice the length of detention that would normally qualify a prisoner with clear conduct for transfer to Level III. Here I pay particular attention to the observations of Warden Frank Wood that even in Oak Park Heights prolonged detention in the administrative segregation unit of that facility would be detrimental to a prisoners mental health. Fourthly, there should be a number of changes to operating policies of the unit (I return to these matters under miscellaneous recommendations below).

8.2 Food service It is hard to over-estimate the importance of food in prison. The days have fortunately gone in many societies when it was permissible to punish prisoners through their diet. There is now a considerable body of research which demonstrates the high salience of food in the minds of prisoners. I was extremely concerned that no prisoners spoke well of the food.

There can be no excuse in the richest and most technologically advanced society in history for not providing prisoners with nutritionally adequate food, properly cooked, and served hot - unless there is a deliberate policy to punish prisoners through this means.

Warden Reynolds assured me that he was aware of the problems with regard to the temperature of the food and that he would ensure that this was resolved. He was also aware of complaints about portion control and expressed his intention, in spite of budgetary cuts, to try to increase the portions of vegetables. He did not know of the problem with regard to undercooking, although this was expressed by several prisoners who preferred to throw meat away rather than eat it for fear of the consequences. I recommend that a thorough review of the kitchen and food service be carried out with a view to ensuring that all prisoners get adequate, properly cooked and hot food. I note that this was the only complaint raised with the accreditation team in 1991. This is now a matter that should be urgently and effectively addressed.

8.3 Medical service I do not have the appropriate professional qualifications to evaluate the quality of the medical services. I note that they were described as excellent by the accreditation team. However, we received many complaints: first about access to medical, dental and psychiatric services and secondly about the quality of treatment received. As with food, medical matters are of high salience to prisoners. Being locked up for 23 hours a day, in the shadow of the death penalty, carries with it its own implications for health. Moreover the circumstances of confinement are such that prisoners more than others may need proper reassurance as to their condition. Considerations of security and control should not take precedence over considerations of physical and mental health. Nor should presumptions about the motivations of prisoners allow risks to be taken. I do not wish to convey a suggestion that these things do happen, but rather that it is in everyone's best interests to be assured that they do not. Without seeking in any way to prejudice the outcome I therefore recommend that a thorough audit be carried out of medical, dental and psychiatric services by competent and independent authorities with a view to ensuring that prisoners on H-Unit : i) can be assured of

prompt access to medical, dental and psychiatric services; ii) that appropriate treatment and medication is provided; and iii) that in the case of mental health there should be proper psychiatric oversight with an assurance that administrative considerations should not be allowed to overrule or substitute for properly reached psychiatric dispositions. (I note that in Oak Park Heights prisoners are routinely transferred from administrative segregation to the institutional mental health facility for a review. If nothing else it provides a change of scene.) I raised this concern with Warden Reynolds when it was graciously acknowledged.

9. My Findings in Context and Some Recommendations

9.1 H-Unit in the Context of McAlester. It seems to me important to make some further contextual comments and to make some additional recommendations. Although I find that in important respects the conditions in H-Unit amount to inhuman and degrading treatment it is worth noting that we did not during our visit receive direct complaints of gross personal abuse, nor of malicious ill-treatment by particular members of staff, nor of systematic victimisation of individual prisoners. We did, however, hear allegations that prisoners engaged in court actions got less favourable treatment, and there were numerous examples given to us which demonstrated a lack of proper care and concern for prisoners' physical and mental health as well as their everyday needs. My observations of the rest of McAlester were obviously superficial but in other respects McAlester appears to be a clean, well managed facility playing an important but difficult role within the correctional system of Oklahoma. It appears to me that problems with H-Unit derive from its design, and policy and procedures developed in an excess of zeal following a serious assault on a prison officer. I raised this general point with Warden Reynolds who acknowledged that it was always difficult in lock down situations to begin a return to normality. There is no doubt that there will be a problem in carrying staff forward to a position whereby they feel confident in more open situations. Nevertheless, it is necessary to balance staff anxieties against the need to uphold international standards. Staff will require full support, and perhaps further training, to open up the lock down in other parts of McAlester as well as H-Unit whilst proper regard will have to be paid to their understandable anxieties about safety. As I have tried to indicate there are better ways in which staff can be protected.

9.2 ACA/CAC Standards. It is hard for me to conclude this report without some comment in relation to the role of the American Correctional Association Commission on Accreditation for Corrections. At various points in this report I have called into question some of the specific standards promulgated by the Commission. It is important to acknowledge the role which the Commission has played in the professionalisation of corrections in the United States, putting an end to what had sometimes been little more than prison management by personal fiat. However, the accreditation process has been criticised for having become increasingly routinised, confining itself to a largely documentary audit without being genuinely independent of the correctional system so that fundamental deficiencies can sometimes be waived (Allinson 1979, Gettinger 1982, Bazelon 1982). Certainly the fact that Oak Park Heights and McAlester are both accredited with only a 1.2% difference on non-mandatory standards suggests to me that accreditation pays too little regard to qualitative matters of process. I thus find it extraordinary that the accreditation team who spent only twice as many person days dealing with the whole of McAlester as we did dealing with just H-Unit, could nevertheless lay claim to have interviewed more than four times as many prisoners as we did and more than three times as many staff and still have had time to audit 100 mandatory standards and 420 non-mandatory standards. Without

prejudice to my comments in paragraph 9.1 above I doubt that the accreditation team could now visit McAlester, after the introduction of H-Unit, and still conclude as they did in 1991 that " It is evident that the OSP continues to confine prisoners securely, to provide as safe and humane living and working environment with opportunities for personal growth and development". Or that the only complaint they would receive from prisoners would be in relation to food. Or that the only suggestion that they, as professionals in the field of corrections, could make to improve the quality of life at OSP would be to reduce the number of inmates confined to the institution. I also note that the ACA has not itself addressed specifically the question of the conditions of confinement for death row prisoners. I hope very much that ACA/CAP will address itself urgently to these matters.

9.3 Miscellaneous recommendations There are a number of ways in which the conditions in H-Unit could be improved by changes in operational policies:

- i. Exercise Consideration should be given as to whether it is possible to increase the size of the existing exercise yards; to provide better weight lifting and other facilities such as a basket ball net as well as a drinking fountain; and to restructure their use so that prisoners do not have to share exercise with cell partners.
- ii. Programmes Consideration should be given to the introduction of more programmed activity (and throughout McAlester). Education is the most obvious programme to develop. To this end it would be important to extend the facilities in the recreational library to include educational and instructional books.
- iii. Religious services Alternative arrangements should be made which allow for the pursuit of religious services with greater privacy so that other prisoners are not disturbed, and allowing chaplains into contact situations.
- iv. Associated activities I can see no reason why the large open space between the runs and the control rooms - the largest and airiest space in the units - should not be brought into use for associated activities. It could be used for partial open dining and for recreational activities that would get prisoners out of their cells but still under complete supervision. A cubicle for individual weight training might also be provided. The space could be used as an exercise area. At present this is a wasted resource and there seem to me to be sufficient staff available to supervise these activities.
- v. Bells in cells This is one of many matters, already referred to in my report, but which is sufficiently important to be worth repeating here. A reliable method of attracting staff attention would improve safety and remove the aggravation presently associated with kicking cell doors.
- vi. Staff rotation It is important to rotate staff who manage and work in special housing units on a regular rolling basis. I understand that this has not always happened, but was assured by Warden Reynolds that a rotation is already planned and should be implemented shortly.

Roy D King
March, 1994

References

- Allinson, R., (1979) The politics of prison standards, *Corrections Magazine*, March, 54-62.
- Bazelon, D. L., (1982) The accreditation process, *Corrections Magazine*, December, 20-26.
- Bronstein, A. J., (1981) Legal and constitutional issues related to last resort prisons, in D. A. Ward and K. F. Schoen, (eds) *Confinement in Maximum Custody*, Lexington Massachusetts: Lexington Books.
- Council of Europe, (1991) Report to the United Kingdom Government on the Visit to the United Kingdom from 29 July 1990 to 10 August 1990 (CPT/Inf (91) 5), Strasbourg: Council of Europe.
- Council of Europe, (1993) Rapport au Gouvernement de la République Française relatif à la visite effectuée par le CPT en France du 27 octobre au 8 novembre 1991 (CPT/Inf (93) 2), Strasbourg: Council of Europe.
- Gettinger, S., (1982) Accreditation on trial, *Corrections Magazine*, February, 7-19.
- Home Office (1991) Prison Disturbances April 1990, Report of an Inquiry by The Rt Hon Lord Justice Woolf (Parts I and II) and His Honour Judge Stephen Tumim (Part II), Cm 1456, February 1991, London: HMSO.
- King, Roy D., (1991) Maximum security custody in Britain and the USA: a study of Gartree and Oak Park Heights, *British Journal of Criminology*, 31, 2, 126-52.
- Johnson, R., (1981) *Condemned to Die: Life Under Sentence of Death*, New York: Elsevier.
- Johnston, N., (1973) *The Human Cage: A Brief History of Prison Architecture*, New York: Walker.
- Minnesota DoC (1977) Master Plan for a High Security Facility, Report to the Legislature, Minnesota Department of Corrections.
- Rodley, N., (1987) *The Treatment of Prisoners Under International Law*, Oxford: Clarendon Press.
- Sandhu, H.S., (1991) History of Corrections in Oklahoma (1908-1988), Stillwater: Oklahoma State University.
- Ward, D. and Breed, A., (1985) *The United States Penitentiary, Marion, Illinois: Consultants' Report*, 98th Congress, 2d Session, Washington: US Government Printing Office.