

GO25/2.2/P45/1929

63771

COLORADO STATE PUBLICATIONS LIBRARY



3 1799 00171 4641

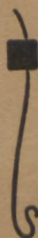
APR 18 1951

DOCUMENTS DIVISION

University of Colorado Libraries

D.C.

REPORT OF  
 The Governor's Special  
 Committee  
 To Investigate  
 The State Penitentiary



BUREAU OF BUSINESS AND GOVERNMENT RESEARCH  
 UNIVERSITY OF COLORADO  
 BOULDER, COLORADO

COMMITTEE

W. W. GRANT, Jr., Chairman

HENRY McALLISTER

B. C. HILLIARD, Sr.

*Not Printed at Public Expense*

REPORT OF  
The Governor's Special Committee  
To Investigate  
The State Penitentiary

---

Denver, Colorado, December 4, 1929.

Honorable William H. Adams,  
Governor of the State of Colorado,  
Denver, Colo.  
Sir:

By your executive order of October 12, 1929, you appointed the undersigned as members of a Special Committee:

"To investigate and inquire into the causes leading up to the uprising and rioting of inmates of the Colorado State Penitentiary at Canon City, Colorado, on October 3, 1929, and to ascertain, if possible, how and by whom firearms and ammunition were gotten into the institution—in fact to make a full and complete investigation of all phases of the uprising, the suppressing thereof and of the management and administration of said institution, and any and all matters of any nature or any kind in any way pertaining thereto, in such manner as the committee may deem best and proper; and upon completion of the investigation, report to the Governor their findings with any recommendations they may desire to make as to the future operation of the institution, or any legislative action they might deem desirable."

Your Committee has had no power to subpoena witnesses or to administer oaths but it has inspected the penitentiary, the farms and canning factory and other appurtenances of the institution, has taken the statements of the warden and deputy warden, those guards who were available to us and who were present at the time of the mutiny, many of the inmates of the penitentiary, the Adjutant General and other officers of the National Guard, who were on the scene during the evening of the rioting, others connected with that organization, members of the Board of Corrections charged with the control and man-



agement of the penitentiary, a member of the Civil Service Commission having some control over employment of the warden and his subordinates, and others who might enlighten us on the matters covered by our commission.

The following report resolves itself into four general subdivisions, viz.:

I	The Riot—including the immediate causes thereof:	
		Page
1.	Descriptions of portions of the penitentiary.....	5
2.	The practice at dinner time.....	6
3.	The beginning of the riot, and succeeding events.....	7
4.	The fire and extent of property destroyed.....	18
5.	Efforts to suppress the riot, their adequacy, and any criticism thereof .....	18
	—(a) From within the walls.....	18
	—(b) From without the walls.....	21
	—The National Guard .....	24
6.	The immediate causes of the riot.....	26
II	Underlying causes and general conditions.....	28
III	Recommendations .....	48
IV	Legislative Action .....	51

The foregoing, more particularly numbers II and III involve consideration of:

A.	Location, Grounds and Plant .....	29
	—Adequacy of Housing	
	—Segregation of Prisoners	
	—Trusties	
	—First Timers	
	—How Many to a Cell	
	—Immorality, etc.	
	—Recreation ground	
B.	Administration .....	32
	—Board of Corrections	
	—Guards—How Selected—Pay—Training and Discipline.	
	—Incentives and Encouragement of Officers	
	—Detail List for Work such as Waiting, Care of Grounds, etc.	
	—System of Bookkeeping—Audits	
	—Purchase of Supplies and Materials	
	—The Warden—Deputy Warden	

C. Methods of Discipline.....	37
—Rules and Regulations—printed	
—Ordinary problems of prison discipline—how handled	
—Punishments	
—Forefeiture of Privileges	
—Forfeiture of Good Time	
—Solitary detention—special cells—sanitation, ventilation, opportunities for exercise, reading, etc.	
—Insane in solitary confinement.	
—Flogging	
—How Many Under Discipline When Riot Broke Out	
D. Health .....	37
—Medical Director—part time	
—Alienist—care of defectives	
—Hospital facilities	
E. Industries and Facilities for Work.....	38
—How Many and What Kind—possibilities	
—Farming—Canning Factory—Road Building	
—Other Enterprises, if any	
—Use of Prison Products and Produce at Penitentiary	
—Accounting System	
F. Educational Facilities .....	43
—Opportunities for Vocational Training	
—Training in Citizenship	
—Library	
—School	
G. Religious Influences .....	43
—Services, Teachings, etc.	
H. Prison Population .....	44
Number—Repeaters—First Timers	
—Treatment—Favoritism, injustice, denial of opportunity, brutality, control through fear, repression	
—Unintelligent Mass Treatment	
—Authority of Warden	
—Working Conditions	



H. (Continued)

- Payment of Wages to Workers
- Aid to Prisoner's Families
- Trusties
  - How Selected
  - Any Report from Doctor—Chaplain—Consideration of Past Record—Outside Influence or Recommendations
  - Number—Good Time Allowances
  - Employment of Trusties
- Inequality of Sentences
- Paroles
  - Basis of System—At Stated Intervals—How Many
  - Knowledge of Individual Prisoners
  - Periodic Investigations of or Interviews with all Prisoners
  - Periodic Investigations of or Interviews with those Under Indeterminate Sentences
  - Executive Clemency—Effect of—Advisability

I. Opportunities for Smuggling .....	46
—Through Trusties	
—Through Visitors	
—Through Guards	
—Otherwise	
J. Appropriations and Finances .....	47
Report of Benjamin C. Hilliard .....	55

## I.

### THE RIOT

(Including its immediate causes)

Beginning about 12:20 P. M. on Thursday, October 3, 1929, and ending in the early morning hours of the next day, a riot occurred within the Canon City penitentiary walls resulting in the killing by the rioters of eight guards. \* (E. G. Erwin, C. N. Rinker, Ray Brown, M. H. Goodwin, J. J. Eeles, R. A. Wiggins, J. W. McClelland, C. C. Shepherd), the wounding of two other guards (D. F. Osborne and E. J. Hollister), the wounding by a guard (Goodwin) of one of the ringleaders among the convicts, and the final killing of the active convict participants by their leader who then committed suicide, and the destruction or serious damage by fire of several portions of the plant. The facts and our conclusions respecting these matters will be stated after a preliminary description of those portions of the penitentiary involved necessary to an understanding of events.

#### 1. Descriptions of Portions of the Penitentiary

The penitentiary is surrounded by a high stone wall and on this at intervals are towers on each of which is stationed a guard armed with a rifle. The main entrance is at the administration building located about the middle of the south wall. A tower is located thereon. Other towers involved are at the southwest corner of the wall (No. 1), at the "west gate" (which is the one principally used for traffic into and out of the institution, the passage of trusties, etc.) and on the north wall (No. 9). A plat of the penitentiary grounds, the wall, towers and other structures to be mentioned, accompanies this report as an aid to its understanding.

In the middle of the grounds was a large structure, the central portion of which contained the deputy warden's quarters and the main dining room for the convicts. Running to the east from this portion of the building was cell house No. 1, being connected with the dining room by a door or gate. On the west side of the dining room cell houses Nos. 2 and 3, also connected by doors with the dining room.

From the south or main entrance to this building, there was a corridor extending northerly to the south end of the dining room. On the east side of this corridor was the deputy warden's office, and behind it the interview room where prisoners met their visitors. On the west side was the telephone room and behind it the prison library and barber shop. On the second

---

\*Some of those employees killed, wounded or involved were known as "overseers" who had charge of departmental work and received slightly more compensation than guards, but as most of these were performing guard duty at the time, we have called all of them guards throughout this report.



floor of this portion of the building was located a dormitory for the clerical class of trustees, consisting of four rooms with a number of cots in each. At the northerly end of the corridor was a barred gate connecting it with the dining room. Immediately to the west or left side of this gate (facing the dining room) was an elevated steel gun-cage, called the "Crow's Nest," commanding (through bars) a view of the dining room. The floor of this cage was about level with the top of the gate. To the right of the gate, outside of the dining room, was a winding stairway leading from the corridor to the above mentioned dormitory, and being the only means of access thereto. Barred windows existed on both the main floor and the upper floor of this portion of the structure.

Above the dining room was the chapel reached by stairways running from the south end of the dining room. In the northerly end of the chapel were barred windows through which the west gate tower and No. 9 tower on the north wall could be seen.

It will be observed from the plat that the deputy warden's quarters and the dormitory above were not far from the administration building tower, also that the westerly end of cell house 3 was near the west gate, about 75 feet.

Near the southwest corner of the grounds, within the walls, was a structure the easterly end of which was cell house No. 4, housing trustees principally. The westerly end housed the curio shop on the first floor and the tailor shop above. The west end was very close to the southwest tower No. 1. The bottoms of the tailor shop windows were several feet higher than the windows in this tower, so that a gunman in the tailor shop would have the "drop" on a guard in this tower.

## 2. The Practice at Dinner Time

The trustees' dinner was served shortly after 11 A. M. About 11:45 a gong was rung which was the signal for non-trusty convicts employed within the walls to go to their cells preliminary to entering the dining room. At about 11:55 a bell again sounded as a signal for the keepers of cell houses 1, 2, and 3 adjoining the dining room, and who were guards stationed in the respective cell houses, to release the convicts and send them in lines into the dining room in a certain order. At this time it was the duty of another guard who kept the keys to the gun-cage, or crow's nest, to enter it by a ladder which he then raised, lock himself in, load the rifle which was kept in this cage and remain in it until the meal was over. The purpose of keeping this armed guard in the crow's nest was to discourage serious disturbances on the part of the large assemblage of prisoners, or to subdue them if they arose. This guard was the only armed guard within the walls during the daytime, this practice being due to the obvious and constant danger that guards might be



overcome and disarmed by prisoners. At the time this guard mounted his cage, a number of guards assembled in the dining room to see that the prisoners did not waste food and that order was preserved. Then the door leading from the dining room to the corridor in the deputy warden's section was locked and a guard with its keys remained on duty at this door outside of the dining room and immediately at the foot of the cage. During the meal the respective cell house keepers remained in the cell houses and did not enter the dining room, but it was their duty to see that all their inmates, especially those under suspicion, were in line into and out of the room. After the meal was over, about 12:20 P. M., the prisoners, on signal, would go back into their respective cell houses where they remained for about one-half hour before leaving for their several duties. When the dining room was cleared of these prisoners a signal was given and the guard in the cage would unload the rifle, put the ammunition in his pocket, leave the unloaded rifle in his cage, unlock it, lock it after him and descend by the ladder lowered for that purpose. Except at meal time the door leading from the dining room into the deputy warden's corridor remained open. The door at the other end of the corridor, being the main entrance, was always open. On the day of the riot Guard Erwin was stationed in the crow's nest, Guard Duncan had charge of cell house No. 1, Guard Peace of cell house 2, and Guard Eeles of cell house 3. Guard Ferguson was stationed outside of the dining room at the southerly door leading therefrom and at the foot of the crow's nest and the stairway leading from the dormitory. Captain Clyde Smith, who was in command or control of the guards, was inside the dining room with a number of other guards, including several of those later mentioned.

### 3. The Beginning of the Riot, and Succeeding Events

Two convicts named Albert A. Daniel, generally known as (Danny Daniels) and James (Jimmie) Pardue were dangerous and confirmed criminals. Daniels was quartered in cell house 2. Pardue occupied cell 18 in cell house 1. As shown by the diagram, these two cell houses were on opposite sides of the dining room. Pardue had been received at the penitentiary February 8, 1925, sentenced by the District Court of the City and County of Denver to a term of twenty to thirty years for robbery with a dangerous weapon. His age on admission was twenty-one. He had previously been incarcerated in the Missouri penitentiary from which he escaped. After his admission to the Colorado penitentiary, and in July, 1925, he attempted to escape by going over the wall. Daniels was received at the penitentiary November 30, 1927, from the District Court of El Paso County, on a charge of assault on murder, on a two count sentence, twelve to fourteen years on each count to run consecutively. His age when received was thirty-seven and he had served previous sentences in the State Penitentiary in Oklahoma



and was wanted by the United States Attorney at Tulsa, Oklahoma.

Both of these prisoners were recognized as thoroughly hardened criminals and they associated together to a considerable extent when out of their cells and on the grounds. At the time of the riot Daniels was employed in the laundry just inside of the north wall of the penitentiary. Pardue was employed in conveying coal from the coal pile near the northeast corner of the grounds to the boiler room near the southeast corner.

It is clear that officers in charge, especially Captain Smith, had received warning that these two men had guns within the penitentiary (whereabouts unknown) and intended to escape at some time and their cell house keepers had been instructed to watch them and to see that they were in the lines which entered the dining room at meal time or in their cells.

On this particular day, as the prisoners left their cell houses for the dining room, No. 1 cell house keeper, Duncan, missed Pardue, and No. 2 cell house keeper, Pease, missed Daniels. Durcan states that he did not notify anyone of Pardue's absence, but intended to do this after the convicts came back into his cell house some twenty minutes later. He gave as an excuse for his delay the fact that two men condemned to death, Ives and Weiss, were locked in cells, that his orders were not to move out of sight of their cells and that he could not even go to the door entering the dining room, only a few feet from his station, and call Captain Smith or any other guard there without violating his orders in the above respect. Furthermore, he thought Pardue might have been detained in the yard at his work. We regard his excuse as trivial and believe that it was possible for him to have devoted a few seconds to notifying Smith of Pardue's absence, or to have called his cell-runner for that purpose. Pease states that as soon as he missed Daniels he went to the latter's cell and not finding him there, immediately called to Captain Smith in the dining room and advised him. The latter admits that Pease notified him, but asserts that this was but about five minutes before the meal was over. We think it was earlier because of the following facts which we find to be true. After the Captain had been notified by Pease he spoke to Guard Davis who was Daniels' overseer at the laundry. Davis said that he had not specifically noticed Daniels leave the laundry for the cell house. At the captain's suggestion Davis then left the dining room, went over to the laundry and not finding Daniels there came back into the dining room, and then out of the door by the crow's nest through the corridor and into the front yard. He returned from this trip before the prisoners had left the dining room. As a number of minutes were required for this tour, the captain must have known of Daniels' absence for a considerable portion of the meal period. In any event, Smith, suspecting co-operation between Daniels and Pardue, went into



cell house 1, asked its keeper Duncan if Pardue had entered the dining room, and upon being advised that he had not been seen, went to Pardue's cell, found he was not there, and got back into the dining room after the prisoners had left and just as Guard Edwin was shot, as presently to be stated. Daniels and Pardue were in fact not at this dinner. They were otherwise engaged as next shown.

Shortly before the gong sounded about 11:55 for non-trusty prisoners to march into the dining room, Daniels and Pardue appeared in one of the dormitory rooms above the deputy warden's quarters and at the southeast corner of the structure. They had apparently entered through the door leading from the dining room, and which had not yet been locked, and gone up the stairway above mentioned. A sick trusty was in bed in this dormitory room when Daniels and Pardue entered. Each had a revolver and under his prison clothes each wore civilian clothes. They intimidated the trusty and remained in the room until the time had arrived for the prisoners to leave the dining room, about 12:20. While they were in this room, Pardue cut small holes in the screens in the windows looking to the south and east from which the towers over the administration building and to the east were plainly in view. Each removed his convict's clothes. They kept close watch of the time and on leaving forced the trusty to lie face downward on the floor and ordered him to remain in that position. At about 12:20 they left the room and it is clear that they went down the stairway to the foot of the crow's nest and reached there just as Guard Erwin descended to the floor. One of them, probably Pardue, immediately shot Erwin. One guard in the dining room claims that the latter struck at Pardue or attempted to grab his gun before the shot was fired. No others saw this and we doubt it especially as this same guard says that in the few seconds occupied he noticed the two revolvers held by the prisoners and that they were not among those afterwards recovered—a most unbelievable story, considering the excitement of the moment. Guard Ferguson was promptly subdued, and his subsequent activities consisted in caring for Erwin until the latter died, and his body was removed to the administration building. The two convicts then rushed through the corridor to the front portion of the building, and Pardue broke into the room containing the telephone apparatus and tore it out, thus cutting off that means of communication with the outside. Steward Schillo, whose place was in the dining room, but who for several days had probably spent the meal hour in the front part of the building, and who was at this moment in the deputy warden's office, was held up by Daniels' revolver and taken in charge. Pardue and Daniels then came back to the cage, and one of them obtained the key and ammunition from the mortally wounded guard's pocket, got up to the gun-cage, unlocked it and removed the unloaded rifle. The key which Guard Ferguson held for the



door leading into the dining room was taken from him and the door opened. As soon as Pardue obtained the rifle he went up into the same room in the trustees' dormitory where he had previously been located and going to the southerly window shot and killed Guard Rinker stationed in the tower over the administration building. About the same time he got into the chapel above the dining room, took several shots at the west gate tower and either than or shortly thereafter, probably from the north window of the chapel, shot and killed Guard Brown in the north tower No. 9. While the sequence of events cannot be determined with exactness, it is apparent that shortly thereafter Pardue or Daniels by intimidation required the respective cell house keepers to unlock the cells of prisoners who were "locked up" for infractions of the rules or who were condemned to death. Among those so released from cell house 1, were the two condemned men, Ives and Weiss. But it must be said to their credit that they did not participate in the subsequent proceedings and probably remained in their cells most of the time. Ives claimed at the time that Daniels offered him a gun which he refused, but arming himself with a hammer went back to his cell determined to fight them if opportunity arose. In cell house 2 were confined A. R. Davis, alias James Harris, and Leo G. McGenty, alias P. H. McGuire. Davis was also a confirmed criminal. He was received into the penitentiary on January 2, 1929, from the District Court of the City and County of Denver, charged with robbery, sentenced to twenty to thirty years, age thirty-seven. He had served previous sentences in the New Mexico penitentiary and was wanted by it for escaping. On May 2, 1929, he attempted to escape from the Colorado penitentiary by going over the wall. On August 28, 1929, he escaped but was recaptured upon the same day. McGenty was received on May 9, 1927, from the City and County of Denver, charged with aggravated robbery, sentenced to eighteen to twenty-five years, age twenty-three. On December 28, 1928, he sawed out of cell house 2 in an attempt to escape, but was caught in the yard. On July 6, 1929, he attempted to escape over the wall. At the time the riot started these men were locked in their cells because of their attempted escapes, but they had both been in the dining room and had gone back to their cells.

When Davis and McGenty were released from their cells under demand of Daniels or Pardue, they came out of the cell houses and met Daniels in the dining room where Daniels handed Davis a revolver. Probably just before this, Pardue had gone around the north side of cell house 3, between it and the bakery, shown on the diagram, for the purpose of shooting Guard Goodwin in tower No. 1 at the southwest corner, but while engaged in this attempt, Goodwin shot and seriously wounded him. \* From that time Pardue was out of the combat and a

\*By this time Captain Smith who had escaped from the dining room had reached tower 1 to assist Goodwin.



liability to Daniels, and was kept in cell house 3. It is our belief that Davis who was handed a gun at that time was not fully acquainted with the plans of Pardue and Daniels, although he may have been advised that they intended to undertake escape, but he willingly received the gun and became an active participant in the proceedings. McGenty, we believe through fear or fascination, followed Daniels around to the point between cell house 3 and the bakery, near where Pardue had been shot. Daniels then gave Davis the rifle which Pardue had been using and handed to McGenty the large old revolver which Davis had previously been carrying. The evidence is clear that McGenty was not a party to the conspiracy and that he took the gun under intimidation from Daniels. Not long after he received it, he threw it into a flour barrel in the kitchen and was seriously and constantly threatened by Daniels for so doing. If McGenty is still in the "lock-up" under suspicion of participation in the affair, in our judgment he should immediately be released. His action and statements at the time and all other facts developed, indicate that he was not a voluntary party to the transactions. The revolver which McGenty had thrown away was recovered and about this time another prisoner, Charles Davis, came upon the scene. We shall call him the younger Davis. He had been received on July 17, 1928, from the District Court of Las Animas County, charged with assault to rob and sentenced from fifteen to twenty-five years. His age when received was twenty-seven. He had previously served a term in the New Mexico penitentiary. We have interviewed this prisoner and while there are some facts militating against him, we are of the opinion that he is not a hardened criminal though easily led, and that in the subsequent proceedings he acted under the domination and intimidation of Daniels, whose complete control over more than a dozen cowed guards demonstrates the compelling character of the man. Daniels then gave him a gun, probably the one McGenty had previously possessed. At this time the conspirators were stationed in the open space between cell house 3 and the bakery. A number of guards had been assembled there and the prisoners then armed were Daniels with a revolver, the older Davis with a rifle and the younger Davis with a revolver. Under Daniels' orders and surrounded by guards as a protective screen, a party was formed which moved from cell house 3 over to the tailor shop near the southwest tower in plain view of the west gate and of the southwest tower. Daniels ordered the younger Davis to break open the door to the tailor shop, but finally took charge of this work himself. The older Davis then went upstairs into the tailor shop where he had a close and clear view of the southwest tower No. 1 at an elevation above it, and shortly came down and stated that he had killed the Guard Goodwin, the same man who had previously wounded Pardue. The party then went back under the protection of the guards. There is some evidence that on their first trip the older



Davis was left in the tailor shop and that a second and similarly conducted trip was made to it to conduct him back, but this is not recalled by all participants.

We break the narrative to follow the movement of the guards immediately after the shooting of Erwin at the foot of the gun-cage. As already stated Captain Smith and a number of the guards were in the dining room when Erwin was shot. Quite evidently from the moment that shot was fired the thought of each guard was exclusively upon his own safety. Captain Smith and guard Davis immediately ran to the door on the east side of the dining room, followed by Guards Stowe and Gentry and they all made their escape out of the penitentiary walls. Guard Davis, who kept the keys, had just unlocked this door pursuant to custom. The remaining guards apparently forgot this means of exit. About three of the guards ran into cell house 1 and with its keeper Duncan, hid in the upper tier until Daniels ordered them down as later herein related. Other guards (including the keepers of cell house 2 and 3) were rounded up by Daniels and Davis and many of them were pressed into service in the trip or trips to the tailor shop. Captain Smith and Guard Davis, after they left the dining room ran to the easterly end of the grounds and there separated. Davis called to the guard (Asher) in tower 3 to drop down a riot gun (a sawed-off shot-gun) but this was refused as against the rules. The tower guard says that he called to Captain Smith, asking whether this should be done and that Smith said no. Smith does not recall this, but admits that would have been his answer. Davis asserts that his intention was to go back to the scene with the gun and from some strategical position pick off the rioters. Captain Smith and the tower guard say that the chance of success was too small to run the risk of a riot gun falling into the hands of the mutineers; and that as the guard in tower 9 was killed about this time, in all probability Davis would have met the same fate.

Recurring now to the rioters. After the trip or trips to the tailor shop, Daniels armed with a revolver, Davis with the rifle and young Davis with the revolver received from Daniels, led the assembled guards through the dining room and into cell house 1. Daniels routed out the guards there hidden, and consolidated all of them in a row along the south wall of the cell house, requiring them to stand at the windows so as to expose themselves to any firing from the outside, as a protection to the rioters. As near as we can ascertain the guards now assembled were thirteen in number, Conway, Duncan, Karl, Eeles, Hollister, McClelland, Osborne, Pease, Roche, Schillo, Shea, Shepherd, and Wiggins. The armed men in charge of these guards were Daniels, Davis and the younger Davis, though we are convinced that the latter might readily have been disarmed. These thirteen guards were completely subdued and apparently none thought seriously of any co-operative action to overcome



their captors. While there assembled, Guard Schillo convinced Daniels that he should be released to fight the fire, presently to be mentioned, and Daniels acquiesced. The best evidence indicates that Schillo was then escorted by the older Davis to the front part of the deputy warden's section and allowed to leave the building for the above purpose. He subsequently participated in the defense against fire until called by Daniels to take a message to the warden, later to be mentioned. This left twelve guards lined up in cell house 1.

About this time, or shortly before, Daniels started two convicts to digging into the wall of cell 18 previously occupied by Pardue, and other convicts were later forced into this work which was apparently difficult and took some time. When completed Daniels went into this cell and brought out of the hole driven into the wall one or two packages. There is great conflict in the statements as to the contents of these packages which were wrapped in cloth, but it is our opinion that one of them contained another revolver and the other ammunition. They had undoubtedly been planted in this cell by Pardue some time before and Pardue had informed Daniels of their whereabouts. The means of hiding them was through an opening about four to six inches in diameter used for ventilation and which ran horizontally from the wall for a short distance and then extended down substantially vertically. Pardue had evidently seen that this cache had found firm lodgment in this opening, but out of view from the interior of the cell.

Shortly before, fire broke out in the chapel above the dining room. The evidence shows very clearly that this fire was set out by another convict named George Reiley ("Red" Reiley), alias Melvin Major, who had been received at the penitentiary December 8, 1924, from the District Court of El Paso County, charged with robbery with a dangerous weapon, sentenced to thirty years to life, age when received, thirty-five years. He had served previous sentences in San Quentin and Folsom, California. He had attempted to escape from the Colorado penitentiary on July 16, 1925, by going over the wall. While he was a dangerous man he was also unbalanced. The excitement which had been created by Daniels and Pardue convinced him that he should do as much damage as possible in his own way. He secured a can of gasoline from the kitchen, went into the chapel, broke up the furniture and poured the gasoline over it and started the fire which rapidly spread. As presently shown, Reiley was later armed and became an active participant, but we are convinced that he was not in the original conspiracy and was not in the confidence of Daniels or Pardue. The fact is that when Daniels discovered the fire he expressed great ill-feeling toward the perpetrator. This fire was not a part of Daniels' plans and probably disturbed them considerably.

After Daniels had obtained the packages from Pardue's cell,



the guards were lined up and ordered to cross through the dining room into cell house 3 in charge of Daniels and the two Davises, also in a measure of Reiley who had appeared in that cell house with a long butcher knife. The fire was well under way and it was extremely difficult for the guards to crowd through the dining room, but they, with their captors, finally reached cell house 3.

The party entered cell house 3 through its north door which remained open that afternoon and night. There Daniels lined up the twelve guards against the wall, in the northeast corner and kept them standing for at least two or three hours. They were guarded by Daniels with a revolver, the older Davis with two revolvers, and for a time by young Davis who had the rifle, but who later turned this over to Reiley on Daniels' order, dropped from the picture and spent the night in what was called "Siberia" a basement under the deputy warden's quarters, and kept away from the riot.

Meanwhile, during the afternoon, the fire had practically gutted the dining room, the deputy warden's section and the chapel and dormitory above, and had greatly damaged cell houses 1 and 2 and the auto-tag shop near the northeast corner of the dining room, as shown on the appended map. Various convicts and at least two guards had been engaged in fighting the fire. About five o'clock two of these guards, Thomas and Schillo (who had been released by Daniels in cell house 1 to fight fire, as above stated) received word through a convict that Daniels wanted them. They went into cell house 3 where the guards were still lined up along the wall guarded by the older Davis with two revolvers and Reiley with the rifle. Daniels came out of a cell where the wounded Pardue was located, ordered them into another cell and there gave them a message to take to the warden, in substance this: That three cars were to be sent in, in good condition, with plenty of gas and oil, that the west gate was to be left wide open, that all guards there should be withdrawn, that they (Daniels and associates) would take the captive guards with them as shields but that they would be turned loose at a safe distance from the penitentiary; that this should be done about as darkness came on; and to quote Thomas, Daniels said if the demand was not met "I am going to kill every God Damn one of them" (namely, the guards held as hostages). Schillo and Thomas took this message to the warden, but the demand was not favorably regarded.

Presumably about this time, Daniels ordered most of the assembled guards into cells at the northeast corner of the cell house and locked them in. Then at his suggestion, one of the guards prepared a plea to the warden to save their lives by granting the demands and Daniels sent this out by Guard Conway, on the latter's promise to return which was not kept. The warden announced that the demand could not be complied with.



No favorable word having come from the warden, between 7 and 8 o'clock, Guard Eeles was ordered out of his cell ostensibly to go out with a renewal of the demands, but was immediately shot and mortally wounded by Daniels, who (to quote his language) "Sent him out on a platter," by convicts to the west gate. In perhaps half an hour Guard Wiggins was ordered out, asked by Daniels whether he had said his prayers, replied that he had been doing that all afternoon, and thereupon Daniels said he intended to kill him. Wiggins said "God bless you Dan" and asked where he should stand. Thereupon Daniels killed him by a shot through the head. Guard Shea was ordered out of the cell and under Daniels' directions, and with assistance from prisoners, took the body out of the west gate. Shea did not return. About 9 o'clock Daniels shot at Guard Duncan in one of the cells, but did not hit him. Duncan, with much presence of mind, toppled over and from that time until the rescuers appeared in the morning, after all conspirators were killed, lay apparently lifeless in his cell. At times during the night Daniels looked in at him but finally said "he's as dead as a mackerel." Somewhat later, he sent Guard Pease out with a renewal of his demand, and on the latter's promise to return. Pease met the warden at the west gate and took word back that the answer would be given in five minutes. Upon hearing a shot at the west gate, Daniels sent Pease out for the reply, and the latter did not return. About this time a gun-fire barrage from the west gate was started as a protection to the planting of dynamite against the cell house later mentioned. This was followed by the throwing of tear gas grenades through the cell house windows shattered by the dynamite explosion. This gas began to take effect in the cell house and Daniels ordered the remaining guards out of their cells. He shot and killed Guards McClelland and Shepherd and left them in the east hallway of the cell house. Between 1 and 2 A. M. he shot at Guard Roche, missed him but Roche fell pretending to be dead, and later got into a cell where he remained until morning. He shot and wounded Guards Osborne and Hollister, who fell, but shortly afterwards escaped when no one was guarding them.

Thus all guards had either been killed, shot, shot at, or sent out as emissaries, except Earl. Both Daniels and the older Davis had given him some hope that he would not be killed, and finally Daniels came to him, told him, as Earl testified, that "we are going to bump ourselves off pretty soon," and "you stay here and I will come and tell you when we are ready to bump ourselves off, and then you can come around and look at us. I want you to examine us and see that we are deader than hell and then go out and tell them, because I don't want them to be shooting in here and trying to tear this building down over these innocent fellows" (referring to the non-participating convicts). Daniels did not speak to Earl again, but about four o'clock the latter in groping around found the dead bodies



of Daniels, the older Davis, Pardue and Reiley in one cell near the southeast corner of the cell house. Under Daniels was a revolver with all shells exploded. This was about daylight, and Earl went out to the west gate, gave the news to the assembled crowd that all were dead and that it was safe to go in and then appeared some rivalry to be the first in the cell house. The Adjutant General in recounting the activities of the National Guard stated that two or three of its members were first in the cell house after news came out that the rioters had killed themselves. The bodies found were these of the four convicts above named, the two guards, McClelland and Osborne, and one Albert Morgareidge, who was found in the north passage of the cell house. Morgareidge had been received March 26, 1929, from the City and County of Denver, convicted of grand larceny, sentenced to one and one-half to two years, age twenty-three. The circumstances of his death are not known, but he was never a party to the riot, and was probably struck by a stray bullet from either inside or outside while on one of the upper tiers, as his body fell to the floor. In our opinion his death was accidental.

Of the two guards feigning death, Roche left immediately. Duncan was released from his cell in a semi-conscious condition, suffering great physical and mental shock, but later revived.

In this narrative many minor events and details have necessarily been omitted. It may be inaccurate in some respects and the order of occurrences may not be strictly correct. We have had to collect the facts from a great mass of evidence given by men who were laboring under great excitement at the time and whose recollections radically differed. But we believe the outstanding circumstances have been outlined with sufficient accuracy.

One respect in which the testimony has been highly irreconcilable is as to the number of guns used throughout the riot by the participating convicts. For example, Guard Duncan stated positively that he saw three rifles. In this he was clearly mistaken. There was but one rifle employed and it was the one taken from the crow's nest after the killing of Erwin. There was another rifle in that cage but it was not taken and was found in its place and in a charred condition after the fire. Some witnesses said that, aside from the rifle, they saw four six-shooters or revolvers, but the far more credible and consistent testimony is that at no time in cell house 3 were there more than three revolvers. It is our conclusion that two of these were held by Daniels and Pardue in the beginning and the third was taken by Daniels from Pardue's cell as above stated. In cell house 3, Daniels had a comparatively new revolver, the older Davis had two old ones, and the younger Davis for a time held the rifle which was later turned over to Reiley. The latter had, from time to time, a long butcher or bread knife which he



had undoubtedly taken from the kitchen at an early stage. After the riot a rifle and three revolvers were found in cell house 3, and we are of opinion that these were the only guns employed throughout. However, we may be mistaken in this and the statement should not deter the penitentiary officials from continuing a rigorous search for additional weapons.

Our narrative has excluded the constant threats, by action and speech, interspersed with profanity, employed by Daniels throughout the afternoon and night and which doubtless terrorized not only the imprisoned guards but the large number of convicts who had crowded into cells throughout the building. Daniels was the ruling dominating spirit throughout—at least, after Pardue's injury. He was cool, collected and in complete command of the situation, and did all the talking for the rioters. Even when attending to duties other than standing over the guards, the recollecton that he was near them banished all thought of overcoming the others or of catching him unaware. If he could have been overcome we believe the mutiny would have collapsed. We believe that all the shooting of guards in cell house 3 was by Daniels, and that he killed all his associates. The older Davis may have fired some of the shots at one of the guards though this is doubtful. Young Davis fired no shots at any time, and this is probably true as to Reiley.

In concluding this section of our report, we express the opinion that Daniels and Pardue were the sole conspirators in the beginning and that none other knew that the riot was then to take place; that the older Davis was a willing accessory from and after receiving the revolver from Daniels but that any cooperation from a dozen guards could have overpowered and disarmed him; that Reiley took advantage of the chaotic situation by staging a fire and riot of his own and then consolidating his efforts with those of Daniels; that the younger Davis was not a willing participant but was intimidated by Daniels into taking and carrying (but not using) a gun, which is not remarkable when his subnormal intelligence is considered in connection with Daniels' complete domination of the guards; and that McGenty was clearly innocent of any desire or intent to participate. What were the original plans of Daniels and Pardue will never be known. They may have been the same as those Daniels attempted to carry out, but it seems probable that they were not, and that Pardue's injury changed the designs, but further comment on this would be mere speculation.

At and immediately after the riot there were rumors of firing from without the penitentiary walls by confederates of the rioters. We have been unable so secure any confirmation of these and believe them to be entirely unfounded. It is possible that confederates may be stationed in automobiles expecting an escape, but no proof to that effect has been discovered.

Considering the opportunities for trouble and uprising on



the part of the body of convicts, their good behavior was remarkable. Many fought long and earnestly to extinguish the fire, many denounced the riot, and the great mass sought places of safety either in or out of cell houses and maintained good order throughout. A few may have engaged in questionable or mischievous acts but without wicked purpose. A few undoubtedly assisted Daniels in uncovering the weapon and ammunition in Pardue's cell, but they were undoubtedly intimidated into this. In fact, judging by the conduct of the twelve guards lined up in this cell house, if any of them had been commanded by Daniels to do this labor, he would doubtless have responded with alacrity.

#### **4. The Fire and Extent of Property Destroyed**

The fire started in the chapel as already related, practically destroyed the dining room, the quarters of the deputy warden, the interview and telephone rooms and the barber shop in the front section of the building. The only portions remaining were the outer stone walls and there is serious question as to whether many of these were not so weakened by heat as to render them unsafe for reconstruction purposes. The auto-tag shop and its contents, including over 100,000 Colorado 1930 license plates, and equipment, were also destroyed, which will necessitate obtaining the supply for the ensuing year from other sources. Cell houses 1 and 2 were so severely damaged as to make them uninhabitable for the time being, thus forcing the inmates into army tents which were promptly provided. These cell houses have been restored and repopulated. We do not understand that our duty includes the investigation and report on the resulting monetary damage or the cost of restoration.

#### **5. Efforts to Suppress the Riot, Their Adequacy, and Any Criticism Thereof**

##### **(a) From Within the Walls**

The preceding account sufficiently indicates that there was not the slightest resistance from any of the guards within the walls, unless Erwin made a momentary effort at defense at the foot of the gun-cage. He was attacked so suddenly and at such close range that nothing he could have done would have accomplished anything. Your committee realizes that if its members had been guards they would probably have acted precisely as did those captured, or even those fortunate enough to have escaped. But we cannot but believe that this would have been largely due to our unfitness for the positions. Later in this report we shall have occasion to urge as one of the paramount necessities, the procuring of a more efficient type of guard. This result cannot possibly be accomplished under the totally inadequate pay of \$100 to \$105 per month, with no hope of increase for length of service or of pensions on a proper retiring



age. The remarkable thing is that men even of the caliber of the present guards have been obtainable. As it is, of the guards directly connected with the riot six were over 50 and under 60 years of age, six were over 60 and under 70, and two were over 70, one of them being 79 years old. But above this, candidates for guards have little or no examination respecting their qualifications for the duties of their positions. With the meager pay and no prospects of increase, the warden has been compelled to accept men who have broken down in other positions and have looked upon the work of a guard as an easy life for declining years. After appointment they receive a book of rules and very casual instruction and are assigned to various classes of work with which they have previously been utterly unfamiliar. They are given no systematic training or discipline, are not drilled or instructed as a body for co-operation in case of emergency. There is much jealousy and lack of confidence among them. There is little self-reliance and practically no reliance by one upon another. There are guards whose loyalty may be questioned. Under these circumstances it is not surprising that during the uprising each guard's mind was exclusively on himself and so far as we can ascertain it never occurred to any of them that sudden and co-operative action on their part might have subdued their captors.

We believe that if men in the prime of life and health, of the proper standard of courage and resourcefulness, each possessing confidence in the others, drilled for emergencies, ready to risk their lives as do soldiers, had been on duty upon the day of the riot it might have been soon suppressed. While it may not be profitable, and may seem presumptuous, for us to suggest the possibilities, aided (as doubtless we unconsciously are), by after acquired knowledge of facts, we venture to suggest the following:

(1) Captain Smith knew some fifteen minutes before the riot began that Daniels was missing from the dining room and not in his cell and he was notified a little later that he could not be found on the grounds. He had been warned that Daniels and Pardue had guns and intended an attempt at escape. Somewhat tardily he went to Pardue's cell and found him missing. It is true that he had no knowledge of their whereabouts, but had he ordered Erwin to stay in the gun-cage until further investigation was made, the initial plans of the conspirators would have been frustrated. If they had then entered the dining room, as was practically essential to their operations, Erwin might have been able to attack them from his position. Captain Smith himself stated that had he known Daniels and Pardue were within the walls, this probably would have occurred to him.

(2) Captain Smith is 30 years old and possesses some good qualities and military training and yet perhaps he cannot be blamed for escaping as he did under the excitement of the mo-



ment realizing that a hold-up was about to occur and that he and his men were all unarmed. However, if he be a man of initiative and courage (and we believe he possesses these qualities as fully as any man who would perform the duties for \$125 per month) his presence among the guards might have instilled them with some of the qualities for the action later suggested.

(3) Captain Smith instantly conceived the peril of himself and the guards, and considered that escape was the only course to take. Under these circumstances he should have paused long enough to direct as many guards as possible out of the one means of exit, the east door which he utilized. There was time for this as Pardue and Daniels were occupied for some moments in the front part of the building, destroying the telephone exchange, rounding up those in the deputy warden's quarters, killing the administration tower guard, and securing the rifle, before they emerged into the dining room. The same spirit which prompted Smith to save himself should have actuated him in saving his subordinates.

(4) If Guard Davis, when he asked the guard, Asher, in tower 8 for a riot gun, really intended to go back to the scene of action and attack the rioters, it is not impossible that he could have silenced them immediately. He could have found a place—for example, the door on the east side of the dining room through which he escaped—where he might have had an ambush from which to shoot Daniels, Pardue or the older Davis. If he had failed his life would have been forfeited, but one more gun in the hands of the outlaws would have been of minor consequence. If Daniels had been killed or wounded, especially after Pardue became incapacitated, the riot would have collapsed.

(5) In cell house 1, twelve guards were lined against the wall. The armed men in charge of them were Daniels, and the two Davises. A part of Daniels' attention was devoted to digging the gun and ammunition out of Pardue's cell and we know that finally he went in and extracted the supplies. One witness says that when he did this he gave his gun temporarily to the younger Davis, though this may be questioned. Our belief is that this Davis could have been overpowered and disarmed readily and that trained guards would have recognized this fact. We further know that at least on one occasion the older Davis was absent for a time while he escorted Guard Schillo to the front of the deputy warden's quarters to fight fire. More or less the same conditions later existed in cell house 3 during the period (which must have been at least two hours) when the guards were lined up in the corridor, and before they were placed in cells. During this period Daniels was parading in many places in the cell house and was giving more or less attention to the wounded Pardue. We are satisfied that in both cell houses there were times when the attention of one or more



of the armed rioters was diverted, at least momentarily, and when concerted action by trained guards would have resulted in disarming one of them and securing a gun, placing them on a greater equality with the conspirators. It is doubtless true that in such an effort one or more of the guards might have been killed or wounded, but that is one of the perils which faithful performance of duty in the penitentiary entails and for which a guard **should** be paid. Farthermore their lives were in great jeopardy, as certainly each one recognized, and disciplined men would know that the best hope for the greatest number would be to seize a fair opportunity to attack the enemy. We are convinced that if a man of Daniels' energy, reckless courage, quickness of perception and ability to measure men had been in the ranks of the captured guards there would be a different story to tell. An example supporting our views is found in the wise practice not to arm guards mingling with prisoners, because of the danger that a superior force may disarm them. Of course, such real danger exists. It should apply also to a case where one or two armed convicts are confronted by a dozen guards. And yet here, so completely were these guards cowed that no thought of attack entered their heads.

We repeat that these suggestions are offered not so much by way of *post mortem* or in criticism of the guards' action as to emphasize the extreme importance of making the emoluments of guards sufficient to attract men of the proper age and capabilities who will accept their positions as life's work and not because they have become physically or mentally incapacitated from performing their other occupations; and, after securing such men, of training them to meet, individually and collectively, sudden hazards which are bound occasionally to arise.

#### (b) From Without the Walls

At the outset we record faithful performance of his duty by Guard M. H. Goodwin in the southwest tower 1, in engaging and wounding Pardue in the early stages of the riot. This was the only effective offensive on the part of any guard throughout the day. Goodwin's devotion to his duty later resulted in his fatal wounding by Davis firing from a strategic position in the tailor shop, down upon Goodwin in a glass encased tower, practically a death trap, furnishing little or no shield to a devoted guard. We shall have occasion later to refer to the antiquated character of the towers. There is evidence, also that Guards Rinker and Brown, in their respective towers, exposed themselves without flinching to Pardue's fire though probably unable to locate his concealed position.

Passing now to other events without the walls. At the outbreak, Warden F. E. Crawford was in Colorado Springs, intending to return with an escaped convict. He was summoned by



telephone and arrived about 3:30 P. M. Deputy Warden N. G. Green was at lunch at his house adjoining the easterly wall. Probably the shooting of Rinker in the administration building tower gave the first notice of the uprising to those in that building, though Captain Smith and Guard Davis must have arrived there about this time. The deputy warden was called and immediately came to the building. He remained there or at the west gate the remainder of the day and night. A general alarm was immediately sent out and the administration building was a seething mass of excited, disorganized but armed men, officers of the law, guards and civilians, and this condition continued throughout the afternoon and evening. The warden and deputy warden were flooded with gratuitous advice from all quarters which doubtless increased their mental confusion as to appropriate action. The general feeling was that an attempt would be made by rioters to "rush" the west gate or the administration building, and large armed but thoroughly unorganized forces were stationed at those exits. In the early portion of the afternoon the chaos was doubtless largely due to ignorance, or what was worse, wild and exaggerated rumors, as to the number of armed rioters, their location and their activities. It seems to have been believed that the rioters were watching the grounds and that anyone entering the walls would be shot. Subsequent disclosures throw much doubt on this as the two or three armed convicts had their hands quite full in handling the imprisoned guards, taking care of Pardue, maintaining a semblance of order among non-participating convicts, etc., and gave little attention to what was occurring outside the cell house. The fact is that a number of persons went without molestation into the grounds from the administration building to fight fire or release convicts trapped in the burning cell houses. A deputy warden in charge of farms says he went to windows in cell house 3 and asked prisoners whether they could get out, was assured that they could because the north door was open, and finally Daniels pointed a gun at him and asked whether he desired to enter. Of course, a negative reply was given, and the deputy beat a hasty retreat. So far as shown he did not report his experiences at the time. While it will be necessary in this report to criticize the deputy warden it should be stated that he early wanted to go in but was convinced by advisers that he was a disliked and marked man and that he would surely be killed. But whatever ignorance of conditions may have existed up to about 5 o'clock, from that time the warden and deputy warden or others assisting them, had ample opportunity to learn what the situation was. About that hour Schillo and Thomas came out with the first demands. They testify that they told the warden and deputy warden that there were three to five guns. The warden and a national guard captain say that Schillo reported that there were at least eight guns and Captain Smith asserts that he said ten to twelve guns



and plenty of men to use them and under no circumstances should anyone go in for an attack. The warden labored under the belief all day and evening that there were at least eight weapons. There are many things in Schillo's conduct which are difficult to understand. He was the steward whose place was in the dining room at meals. On the day of the riot and for several days prior he was in the deputy warden's end of the building. He was permitted to leave the line of condemned convicts in cell house 1 to fight fire. He claims that he then came to the administration building to get the fire equipment and called to those in that building giving information as to the location of the guns on the inside, but the party he named or anyone else did not hear him. His statements to the warden and others were either the product of an overwrought mind or made for some ulterior purpose. He was certainly a favorite of Daniels that afternoon. Shortly after Schillo came out, Guard Conway came out with another message. He had been through all the experiences in cell house 1 and 3, but he says no one asked him about conditions inside and he volunteered nothing. Early in the evening the bodies of Eeles and Wiggins came out. This added to the hysterical condition. During the entire riot there does not appear to have been anyone in authority who endeavored to ascertain and visualize the exact conditions inside. True, all coming out were laboring under intense strain, as were those outside, but if the administration building and later the warden's house near the west gate where "conferences" (in fact mass meetings) were held, had been cleared of many volunteer and excited advisers, and one cool, collected man had made it a point to interview the guards and convicts who were sent out as emissaries or body bearers, he could have readily analyzed the statements and arrived at approximate truth. This would have half-solved the problem.

Up to about the time Eeles' body was sent out, about 7:30 P. M., the belief seems to have been quite general that Daniels would not carry out his threats. But regardless of consequences the warden took the position, which he maintained, that there could be no compromise with crime and that compliance was unthinkable. Of course, this conclusion was the only possible one though it might mean (as it did) the loss of life.

Late at night it was concluded that the westerly corner of cell house 3 should be blown out to make an opening for gun firing. After some delay in securing dynamite, Father Patrick O'Neill, an instructor in a school at Canon City volunteered to place the dynamite and accompanied for a part of the distance by some armed men and under the protection of a heavy barrage fired by them and from the west wall, the dynamite was placed. One charge failed, the other exploded but failed to break the wall. This was probably about 12:30 A. M. It did, however, shatter the windows. Then the use of tear gas was suggested and grenades were thrown through the windows by Marion



Keating of Pueblo, a volunteer. This gas soon became very effective and led to the culmination of the riot as above related. The plans for the use of dynamite and tear gas were devised at a conference between the warden and various officials and civilians who had assembled in his house. It is impossible to determine accurately who was individually responsible therefor.

Unquestionably, from the beginning the situation was an extremely difficult one. It involved not merely the overcoming of rioters. If they had been alone the problem would have been comparatively simple. But they held captive some twelve guards and there were a large number of innocent convicts in the cell houses. As early as 5:30 P. M. Daniels' threats were known and by about 7:30 it was known that he intended to execute them. There was the problem of rescuing these guards and it was properly recognized that an assault upon the cell house would precipitate the killing of all of the guards by the rioters, and might result in the killing of many innocent non-combatants.

Here, as always, hindsight is better than foresight, and it is easy for your committee to suggest what should have been done. Events proved that tear gas was the effective instrument. Shortly before the riot the warden had obtained some supply of tear bombs, and these were supplemented by others arriving from Denver in the evening. The use of this gas apparently did not occur to anyone until late in the night. We believe that if a cool, experienced and determined person had been in command of the situation throughout the day and night, he would have realized the value of gas and its possibilities, and we further believe that it could safely have been taken within the walls and thrown through the windows of cell house 3 at almost any time during the afternoon or evening with comparative safety to those handling it. After events prove this, but even during the progress of the riot it was known, or should have been known, to the warden or his subordinates that there were many persons around the inside buildings who were not being attacked.

We cannot say that the most skillful handling of the situation from the outside would have saved any lives, in view of the utter ruthlessness of Daniels and his apparent determination not to be taken alive and to show his contempt for the law by killing as many of its representatives as possible before taking his own life. But we do say that there was no one in authority at any stage of the proceedings who was capable of analyzing the problem and reaching a sound conclusion.

#### The National Guard

When the riot alarm was sent out at Canon City, the Captain (Frank E. Sanburg) of the local Howitzer Company, 157th Infantry, was requested by the prison authority to order out his troops and assist in quelling the riot. The captain issued a



call and telephoned the Adjutant General at Denver for authority and was referred by him to your Excellency as Commander-in-Chief, and you directed the Captain to mobilize his troops, to proceed to the penitentiary and assist as the penitentiary officials directed. A little later by your authority and through the Adjutant General, the Captain (Aubrey J. Kief) of Pueblo Battery C. 168th Field Artillery, was also directed to mobilize and proceed to Canon City with similar directions and, as senior Captain, to take command of all troops.

The Canon City company went on duty about 8 P. M. Captain Sanburg conferred with the Deputy Warden, and offered to take a group of his men within the walls and attempt to quell the riot, but this offer was rejected as involving great danger that the men would be disarmed and their weapons fall into the hands of the rioters. Thereafter until the arrival of Captain Kief, the company was employed in guarding the walls, including the west gate.

The Pueblo battery, under command of Captain Kief arrived about 5 P. M. Captain Sanburg reported to him and he assumed command, conferred with the warden and it was determined to utilize the assembled national guard in patrolling the walls. The two companies were employed in this work throughout the riot, the Pueblo battery remaining on duty until the evening of the following day. The Canon City company remained on guard duty until Sunday, October 6, in command of its Captain after Captain Kief's company was released. So far as we can determine this duty was efficiently performed.

During conferences with your Excellency soon after news of the riot reached Denver, the Adjutant General suggested that he should go down to Canon City, and you authorized him to do so. The Adjutant General then placed himself in uniform and after obtaining search-lights which you requested him to take and which somewhat delayed him, he departed for Canon City about 4 P. M., arriving about 7:45. There is some question as to the exact authority or directions (which were verbal) given to that officer. The latter states that the duty assigned him was merely to confer with the warden and civil authorities and "see if I could be of any help," and that on arrival he told the warden: "We (the national guard) are down here to assist you in any way we can, but you are in charge of the situation." He further states that he was not in, and did not exercise, command either of the national guard or of the suppression of the riot, command of the guard being vested in Captain Kief, and charge of suppression of the riot remaining with the warden. The Adjutant General (with numerous other persons, officers and civilians) did confer with the warden from time to time after his arrival but we are unable to report that he made any constructive suggestions. If, as he contends, his authority was merely as above stated, he certainly did not exceed his com-



mission. He states that an important object of his trip was to see that the members of the guard were fed and had a place to sleep, but so far as appears the respective Captains had and exercised these duties.

As the committee was appointed by and is reporting to your excellency, it seemed inappropriate that we should call you as a witness and report back to you on your own statements. We have, however, received the statements of others, including your Secretary. The latter says that in substance your authority to the Adjutant General was this:

"When you get there you get in touch with the warden and do everything that is necessary, or do anything that is necessary under the circumstances, and keep me informed."

Without attempting to determine the exact language used and which you will doubtless recall, it does appear that there was more or less informality, that no two men would agree on the exact language employed, or its exact effect, and that the Adjutant General was not placed in command or instructed to take charge of the suppression of the riot, superseding the warden. We further believe that the retroactive written order which was prepared several days after the riot, which stated that the Adjutant General was placed in command, exceeded the tenor of the oral instructions, though he signed that order. When it was presented for his signature he should have conferred with your Excellency for the purpose of conforming the record to the facts. This he did not do. It further appears that he never made any written report to your Excellency on the riot, or on the movements and action of the national guard or of himself. He says that he conferred with you at Canon City on the day following that riot and informally reported. We cannot approve the omission of a formal report.

In our opinion a strict interpretation, by a cautious officer without aggressive initiative, of the terms of the authority conferred, sustains the Adjutant General's legal and military position. The situation, however, required assumption of authority by a self-confident and assertive officer rather than meticulous care to observe the technical niceties of official statutes.

#### 6. The Immediate Causes of the Riot

Your order requires a report on the causes of the riot. In a later section we shall have occasion to report serious defects in the operation of the penitentiary and the handling of inmates and to recommend changes which we believe would directly or indirectly prevent or discourage future outbreaks. But in this case the causes clearly appear and can be stated briefly:

(a) Two desperate, resourceful criminals possessed of reckless courage, determined to escape or to die in the attempt; not



influenced in any degree by any hardships or mistreatment, whose minds and purposes would not have been changed in the slightest by any different treatment on the part of the penitentiary officials, or by lighter sentences; and

(b) Their thorough knowledge of procedure on the walls, their confidence that guards could be killed or captured, and their belief that superior officials would succumb to their demands to save the guards' lives; and

(c) Their possession of guns.

The facts supporting the above items (a) and (b) are established by the preceding account of occurrences. As to item (c) you have requested that we "ascertain if possible how and by whom firearms and ammunition were gotten into the institution."

We have been unable to ascertain these facts, and in all probability they will never be known. Of course, someone either within or outside the penitentiary knows how this was done. We have interviewed convicts most likely to possess information but they have denied knowledge of the time and manner in which arms were brought in. They claim or admit that they knew guns were in the penitentiary. In fact one of them in whom Daniels had apparently confided, states that he had been so informed, and (doubtless to ingratiate himself with the officers) he had reported the fact to an official a short time before. This was one reason why Daniels and Pardue were under special surveillance. The statements of convicts are subject to much suspicion. One common method of approach to the officers for favors or of creating unrest in the walls, is to report or start a rumor that there are guns in the penitentiary, generally unfounded. In the present case two of the guns recovered bore evidence of having been stored for some time. Only one of them, that used by Daniels, was new. It is not improbable that whatever was obtained from Pardue's cell had been secreted there for many months.

All that we can report in this respect is to state the possibilities for smuggling in guns and we are satisfied that the weapons used in this riot (three revolvers) were introduced through one or more of the following channels:

(1) Trusties freely mingle with other convicts. Until about April, 1928, they were not searched when entering or leaving the walls. Under the most careful practice, mistakes are bound to occur in selecting trusties and without doubt there are some bad men among them who would not hesitate to conspire with other convicts;

(2) Since April 1928, trusties and trucks entering the penitentiary have been "searched." This has consisted of "frisking" or running hands over the clothing of those coming in, and looking under the seats and other places in trucks where



contraband might be hidden. We are not convinced that this searching has been thorough especially in the case of trucks. The matter becomes important because Pardue had long worked at the coal pile, supplied largely by trucks driven into the yard. He was unquestionably on terms of more or less intimacy with the drivers;

(3) Some coal is dumped into the coal pile through a barred opening perhaps two feet square in the north wall, which is locked when not in use. By a carefully preconcerted arrangement a gun or ammunition could have been passed to Pardue through this door.

(4) Until about February, 1928, visitors of convicts were allowed to meet and converse with them in a room without any obstacle between them, though a guard was supposed to be present. About that time a wire netting was run vertically through a table extending above it and also to the floor, and the prisoner has been required to be seated on one side of this network and his visitor on the other. It is easily possible that until this precaution was taken articles might be passed to the convict, especially if the guards were momentarily careless.

(5) Sightseers or tourists have been allowed to go through portions of the penitentiary. Their usual route was through the administration building, thence into the hospital section, thence through the corridor in the deputy warden's building and the library adjacent to it, whence through the corridors of cell house 1, through the tag-shop, the kitchen or bakery, and then over to the curio shop in charge of prisoners, where they were allowed to make purchases. Some of these parties were very large. One guard stated he had conducted parties from one to fifty-six in number; another that he had seventy-six in charge on one occasion. The testimony is that care was taken to keep the visitors together, and to keep them away from cells or convicts. But it is perfectly obvious that with large parties all could not be watched. We believe that opportunities were presented to secrete packages in the library and especially in the curio shop when the room was filled and it became impossible for one guard to watch the movements of every person.

## II

### UNDERLYING CAUSES

Your Committee has little question but that the situation at the penitentiary was such that an outbreak of some sort not only might happen at any time, but due to opportunities for smuggling in arms, and the spirit of unrest abroad in the institution, almost inevitably would happen in the absence of effective and unceasing vigilance. This state of affairs is not new, but the condition has been steadily growing worse due to increased numbers, rapidly changing wardens, personnel of employees, inadequate and improper housing, and idleness,



among other things. While these elements probably did not immediately induce the recent riot, yet it must be conceded, that, generally speaking, the maintenance of order and discipline in such an institution will be greatly advanced by the elimination of conditions generally recognized as evil. We discuss these matters under the heads previously specified.

It is generally considered that in some vague and mysterious manner the period which a prisoner passes in a penitentiary reforms him or penalizes him or both—either transforms his attitude towards society by some inward alchemy or represses his natural unsocial instincts by the weight of retribution. This is a point of view common to both citizens and Courts. There is no clear-cut conception of the problem which permits it to be uncompromisingly dealt with from either point of view, nor is there any intelligent comprehension, apparently, of what follows from an unintelligent mixture of the two motives. The matters we discuss in differing degrees go to make up the conditions bringing about the present situation at the prison. The case is surgical and requires a radical departure from out of date and ineffective methods of treatment.

#### A. Location, Grounds and Plant

Few of the institutions of the state have been located with reference to the purposes for which they exist. No penal institution should ever have been located in or near a town or city. Among those signally misplaced the penitentiary stands in the front rank. It was apparently located at Canon City because somebody owned lime rock quarries. It would be money in the taxpayers' pockets to erect a new institution on a large tract of land that could be used for agricultural purposes, and in such an institution place and employ all trusties and, perhaps, first timers, until their status has been fixed as to whether they should be kept permanently within the walls or are worthy of trusty privileges. Such tracts of land with water rights are, we are informed, available within ten miles of Canon City. This kind of an operation would also do away with the expense necessarily attendant on conducting five or six different farms at different places and miles apart, largely on leased land under a crop-sharing arrangement. The present plant at Canon City should be used for prisoners who are never permitted to go outside. Industries in which they could work could then be placed in a space around which walls are already in position or could be easily built.

At one time the housing facilities may have been adequate. Today 827 men taking into account the 240 double cells and the old horse barn used as a dormitory can be sheltered. If the men were properly housed, not more than 558 could be taken care of. The following table shows capacity and character of accommodations. (The term "fish" used in one heading, is prison vernacular for a newcomer.)



CELL HOUSE	Single Cells	Double Cells	Unoccupied Cells	Fish Cells	Full Capacity
Cell House No. 1.....	114	42	3	---	195
Cell House No. 2.....	1	150	---	3	293
Cell House No. 3.....	144	---	4	---	140
Cell House No. 4.....	---	48	3	---	90
Cell House No. 5.....	40	---	---	---	40
Dormitory (1909)					
Cell House No. 6.....	---	---	---	---	29
Female Department....	40	---	---	---	40

TOTAL CAPACITY .....827

The legitimate capacity is really 558, which figure is arrived at by subtracting the second occupant of each double cell and those in the old horse barn, denominated "Dormitory-Cell House No. 6." The prison population numbers about 1,081, including 25 women. The growth of population as compared to capacity is indicated by the following:

Biennial Period	Average Population	Capacity	Proper Capacity (558)
1905-1906 .....	681	757	"
1907-1908 .....	651	"	"
1909-1910 .....	638	827	"
1911-1912 .....	769	"	"
1913-1914 .....	775	"	"
1915-1916 .....	792	"	"
1917-1918 .....	635	"	"
1919-1920 .....	564	"	"
1921-1922 .....	728	"	"
1923-1924 .....	881	"	"
1925-1926 .....	974	"	"
1927-1928 .....	1,049	"	"
11 Months to Oct. 3, 1929....	1,081	"	"

The growth during the last six or eight years is partly accounted for by the presence of some 230 bootleggers.

As a matter of fact though there are about 509 trustees, many of whom are housed on the farms, between 700 and 800 prisoners are kept within the walls. All of these figures may vary a little either way.

No segregation of prisoners is attempted or is practicable with present facilities. This is exceedingly important and should be made along the following lines:

- A. Repeaters
- B. First Timers
- C. Trustees

Under the present system first-timers, who are not infrequently boys in their teens (one as young as 16), are herded in with hardened criminals. Trustees working or permitted outside the walls fraternize with dangerous convicts within. More,



under the vicious method which provides two-man cells, the first timer may be put in a cell with a practiced criminal in a space  $6\frac{1}{2} \times 4\frac{1}{2}$  feet. Conditions are such in any event that he is subject to the contagion of the habitual offender. As one witness expressed it, "I see these young fellows day after day sitting out with these hard-boiled old repeaters, pouring it into them, hour after hour." The result is inevitable.

The two-man cell adds to this the virus of frightful immorality, a number of specific cases of which came to your committee's attention. In our opinion no consideration whatever, financial or otherwise, can justify the retention of such cells. The addition of others of the same kind would be barbarous. The evil is so obvious and notorious that we are surprised that even under pressure of financial stringency, the Board of Corrections had planned a new double-cell house at the time the riot occurred. We understand those plans have now been altered. The officers do what they can to select suitable cell mates, but considering that there are 240 of these cells, their efforts cannot accomplish much. The fate of the young first offender is sealed. He is permanently lost in a few months, perhaps less. He comes out hardened, or a pervert, or both. In his last report, the present warden emphasized the need of single cells. There are ostensibly six cell houses. Nos. 1, 2, and 3 are those in which non-trusties are kept. Cell house 5 is the hospital. Cell house 6 is the old horse-barn in which trusties are housed. Cell house 4, the newest building in the institution also houses trusties.

An exception to the rest of the institution is the women's building, which is adequate, well arranged, and well administered.

The towers on the walls of the prison are entirely insufficient and out of date. The windows cover the greater part of all the six or eight sides of each particular tower, making them in each instance, a death-trap. Guard Goodwin in tower No. 1, for instance had no protection whatever from shots fired from the tailor shop. The guard in the tower on the administration building is absolutely unprotected. The other towers are similarly undefended. Bullet-proof glass should be installed in the present towers, and in any towers built or reconstructed in the future.

The only recreation ground is the space labelled "Bull Pen" on the map. It is about 70 yards long by 20 yards wide. In this space over 700 inmates—all except those who are housed outside the walls—must get their recreation. The normal conditions of any game with the possible exceptions of horse-shoe pitching and boxing are out of the question. The facilities are hopelessly inadequate. It is doubtless true that in the old days imprisonment in a state penitentiary was a grim and terrible business in which the feelings and attitude of the prisoner were



matters of complete irrelevance. The very idea of recreation was in itself immaterial. Today, however, common sense indicates a different attitude for utilitarian reasons if not for humanitarian, viz: improved morale, better discipline, and a realization of the fact that 80 per cent of the prisoners will in process of time be once again units in the social body; all of which points to the advisability of emphasis on normal activities and recreations, so far as compatible with the fact of imprisonment.

It is perhaps feasible to surround the present park, which we understand is owned by the state, across the road from the penitentiary with a wall or fence, and connect the two with a tunnel. It could then be used for segregating prisoners, for recreation, or for industries. Another possibility, which appears to us quite feasible, would be to level off the ground north of the present walls, extend the walls to include it and establish a recreation field in this space.

The disastrous effect of inadequate housing accompanied by idleness is stressed in the standard annual devoted to prisons and other places of detention, in speaking of Colorado:

"Any . . . progress, however, must be slow until the problems of increasing overcrowding and idleness are met. With the population steadily growing, almost complete curtailment of road work has taken place. The seriousness of abolishing road work cannot be over-emphasized. This was one of the few features of its prison program of which Colorado could justly be proud. It had excited attention throughout the country. The interests which have caused its curtailment should not be allowed to prevail. Such work can be profitable to the state and beneficial, both physically and morally to the prisoners."—*Handbook of American Prisons and Reformatories—1929*, p. 186.

The individuals who become inmates of prisons are entirely different from the old-time criminal. Many today are made criminals by statute. In other words, the offenses of which many have been found guilty are offenses not inherently wrong—*malum prohibitum*, but not *malum in se*. The elements constituting the prison population are different. As the world has moved, so have crime and criminals with the result that it is just as futile to use outworn methods in dealing with prisons and convicts as it would be to use the methods of fifty years ago in modern business.

#### B. Administration

The penitentiary is administered by a Board of Corrections created by the legislature of 1915, its duties and functions being at present prescribed by the law of 1921. The 1915 law provides a salary of \$1,200 per annum for each member of the Board, together with necessary traveling expenses. The warden receives \$2,500 and his subsistence—which is probably the total equivalent of about \$4,000, on which he is apparently expected to



entertain every person in the public service in the State of Colorado who happens to stop in Canon City. The law provides for monthly meetings of the Board at each of the institutions under its control, viz.: the penitentiary, the reformatory at Buena Vista and the insane asylum at Pueblo. The Board meets at Canon City with as reasonable regularity as could be expected.

While the Board is required to make a biennial report to the Governor, and vacancies in its membership are nominally filled by him, he has practically no control whatever over the institution or the Board. This is due to the fact that only unpaid boards are exempt from the Civil Service Amendment to the Constitution. In the opinion of your Committee, the salaries of the Board members should be abolished, so that the Board will be removed from the operation of the Civil Service and immediately responsible to the Governor, who must and should bear the responsibility of Chief Executive of the State.

"The prison now needs strong leadership from the Board of Corrections in a campaign to secure a return of the road work program and general expansion along employment lines. In this connection it is interesting to note that **Colorado is the only state with a part-time Board on a salary basis.** Now that obsolete disciplinary methods have been done away with, it would be tragic if an increase of unemployment were allowed to counterbalance the good effects of this change. Idleness cannot be properly charged to local officials; responsibility rests with state officials and legislators."—Handbook of American Prisons and Reformatories, 1929, p. 186.

No matter how good a board is, a continually renovated broom sweeps cleaner. A board continually in office tends to have the edge of its efficiency dulled by familiarity. A board, one member of which is appointed or reappointed every two years, one member being a resident, perhaps, of Canon City, would be in a position to exercise closer and more effective supervision. In this connection it is only fair to say that the best work in the State has been done by unpaid Boards. The Girls' Industrial School and the Home for Dependent and Neglected Children, both model institutions, among others, illustrate the point. One board for the penitentiary and reformatory, and another for the asylum, both unpaid, would be more effective. The hue and cry anent boards and commissions has overlooked the fact that when such bodies are unpaid (thereby lessening their attractiveness as political rewards) and composed of public-spirited citizens, two advantages accrue, viz.: there is a direct responsibility to the executive, and the interest of the citizen in his institution is maintained. The cry for efficiency has overlooked the further fact that effective operation of the particular institution is the objective. The number of unpaid



boards and commissions is immaterial if this objective is attained.

The Warden's salary should be increased to at least \$4,000 per annum and subsistence. He is the general manager of a business involving a plant and projects for which in private life a salary of \$25,000 per annum would not be excessive. In fact, we believe if such a salary could be paid (which we recognize is out of the question) and the Warden were given an absolutely free hand in running the institution, a type of man could be secured who would save the state several times his salary in money and efficient administration. The modest increase we propose could be taken care of without further expense to the State if the Board were unpaid, and it is required in common decency.

Commissioner Jones of the Civil Service Commission appeared before us and gave various figures. He was emphatic that all the penitentiary officials and guards are underpaid. He further stated that there are only four employees at the institution at the present time certified by the Commission. They find it difficult to get men to apply for positions above guard, and from their experience deem it useless to attempt to get guards. A free hand is given the Board of Corrections and the Warden in such matters. Guards can be suspended, and in many instances discharged without reference to the Commission, because they are mere provisional appointees, selected in the absence of an eligible list prepared by the Commission.

The President of the Board of Corrections has this to say in this connection:

"There has never been a single instance since the writer has been a member of the Colorado Board of Corrections (since 1918) that the Civil Service Commission of the State of Colorado failed to discharge employees of the state penitentiary on complaint either of the Warden of the state penitentiary or the Board of Corrections."

The guards are very much underpaid. They receive from \$100 to \$105 per month, with no increase for any length of faithful service, no subsistence and no pension. They have nothing to look forward to and no incentive to do aught but endure the daily grind in order to live. As a result, while there are doubtless good men among the guards, many of them have outlived their usefulness. Some are in their seventies, many in their fifties and sixties. In vigor and alertness and those qualities necessary to such a position they are consequently lacking. Even at that, some of the older men are among the best. There is no reason, however, why any man who can get another job should become a prison guard, and the institution's defects reflect this.

The Deputy Warden, in charge within the walls and dealing with matters of utmost importance to the lives and welfare of



over 1,000 men, receives \$1,800 per annum and partial subsistence. This is less than the dining room steward, who acts as a guard, but who receives \$162.50 per month. The Deputy Warden should receive not less than \$2,500 per annum and subsistence, and the inequalities in pay throughout the institution should be equalized. The Superintendent of the tag factory, a guard, but one versed in the technical knowledge required, receives \$200 per month, which is right and proper. The entire administration should be reorganized.

The books of the penitentiary should be audited by a private firm of auditors of the highest character. While they are at present audited by the public examiners, of the Auditor's office, the job is routine. In view of the rumors and suspicions that have been given voice from time to time, the entire situation should be ironed out, and a rigorous examination made covering the last four or five years at least.

Supplies and materials are supposed to be, and doubtless are, generally purchased on a competitive basis, and after public advertisement. A commissioner of supplies, acting perhaps under an unpaid board, for all the state institutions would save the tax-payers hundreds of thousands of dollars a year; certainly many, many times more than any number of salary increases. The present method, as compared to the one suggested, is bound to be uneconomical and at times extravagant, due to the fact, among others, that certain arbitrary occasions are fixed when certain supplies must be bought regardless of market conditions.

### The Warden

The present warden, Francis E. Crawford, is a man of excellent character and humane tendencies. It is unfortunate that he does not come in more frequent contact with the inmates. He exhibited commendable firmness in his refusal to furnish automobiles and permit Daniels and his companions to escape on the plea that the lives of guards would be saved thereby. Though absent when the riot started, he arrived about the middle of the afternoon. His position at the time was somewhat dubious. National Guards and the County Sheriff were on hand, the Adjutant General was on his way, citizens had entered the administration building and were milling around, all was confusion. There were too many people in authority. In the circumstances the warden's conduct, if it is criticized, would be on the basis that he did not do what it would have required a man of most exceptional executive and military capacity to have done. The evidence already stated is clear that he was informed and believed that there were at least eight guns in the hands of the rioters, in view of which he was reluctant to permit any force to go in and attempt to overpower them, especially in view of the imminent danger of sacrificing the lives of impressed guards and many non-participating convicts. It is doubtful if anyone else would have acted differently.



The warden's time is very largely taken up attending to the various business affairs of the institution. He manages farms and a canning factory. He deals with a thousand details apart from the prisoners. It is proper that supervision inside the walls should be entrusted largely to a deputy, as is the case.

### The Deputy Warden

This official has charge within the walls. He is in direct control of the guards and handles matters of discipline of prisoners. The present incumbent is a man of long experience as a guard. He is honest and loyal. He was in charge when the riot broke out. It may be doubted whether he is competent to direct the destinies of a thousand men. A large part of the bad feeling in the prison is apparently due to him. In the opinion of your Committee, his capacity is too limited to meet the responsibilities of the position as they should be met. He has apparently no knowledge of criminal psychology, and treats all cases more or less alike. Similar penalties seem to be meted out in most cases regardless of the offense. He does not sustain the guards. This has progressed to such an extent that many infractions are not reported to him. Discipline and morale are at a low ebb. He believes in a return to corporal punishment for certain offenses. In our opinion his usefulness in his present position is distinctly questionable.

### The Guards

There is a feeling of disaffection among these men. They are in cliques and at odds with each other. They are in many cases unfitted physically and by temperament for their positions. The institution has to take about what it can get. The low pay does not attract men of the right type, save in exceptional cases. They should be paid a minimum of \$125 per month, with provision for a pension after a specified term of service. A raise of \$5 per month every year for five years should automatically come about. A policeman in the city of Denver, after three years' service, receives \$160 per month, detectives \$15 more. The positions are somewhat similar. Nominally guards are under civil service. As a matter of fact, because of the pay, it is stated that it is practically impossible to secure applicants for the position, and it appears that at the time of the outbreak there were only four employees out of the upwards of 100 who had been certified by the Civil Service Commission. Most of the guards were residents of Canon City before their employment at the prison.

There should be periodic conferences with the guards, and training should be given by some qualified person in methods of handling prison riots, marksmanship and kindred matters. Proper esprit de corps would have made the outbreak of October 3rd improbable.



### C. Methods of Discipline

These are printed on cardboard and are placed on the walls of each cell. Ordinary problems are handled by forfeiture of privileges and of good time. For more serious offenses confinement in cells or in the "cooler" are decreed. The "cooler" is a cell with a solid metal door with small holes at the top for ventilation. There is no provision for exercise in either case. The inmate has the privilege of looking at the wall. For some offenses such penalties may be appropriate. In a prison built in the old-style manner and administered as such, it would probably be impracticable to work out other penalties for the graver offenses. Flogging and the ball and chain do not appear and never have appeared in the regulations, but have been resorted to under previous administrations. It is a matter of doubt in the committee's mind as to the propriety of corporal punishment in certain cases. That it is at times effective is beyond question. Nine wardens or deputy wardens out of ten are not qualified to discriminate for which reason the use of such penalties should be discouraged. The present warden is absolutely opposed to it and does not permit it.

When the riot broke out there were about twelve men in confinement. One of them, A. R. Davis, was a leading spirit in the riot.

### D. Health

The law provides for a part time doctor at \$100 per month. The present incumbent, Dr. Holmes, is a physician of ability and has been very successful. He is a general practitioner and does not profess to be a specialist in psychiatry. He, of course, deals only with such cases as are sufficiently pronounced to be called to his attention. Your committee agrees with him that every newcomer should be examined by an expert Psychiatrist; that all prisoners should be classified to acquaint the prison authorities with their mental characteristics; to help in the assignment of work; to see that the criminally insane are segregated and treated in a different institution and to establish routine examinations before the parole or discharge of a prisoner. It should be possible for an arrangement to be made with the medical school of the University of Colorado whereby the situation could be met in some degree. The opportunity for help to the penitentiary authorities and to the prisoners themselves through this channel is practically unlimited.

The hospital at the prison has only fair equipment and facilities. A full time dentist would find plenty of work to do.

There are a number of insane in the prison. They are confined on the lower floor of cell house 5, the upper floor of which is the hospital. They should be removed from the institution and placed where they belong—in the State Insane Asylum. No



facilities exist at the penitentiary for their proper care and treatment. The only thing that can be done is to keep them locked up.

#### E. Industries and Facilities for Work

In 1777 John Howard wrote his famous "History of English Prisons." Under the heading, "Proposed Improvements," he has this to say: "For in work they (the convicts) ought mostly, certainly to be employed. This is indispensably requisite. Not one should be idle, that is not sick. . . . The keeper should be a master of some manufacture; a man of activity, prudence and temper. And he should keep his prisoners at work ten hours a day; meal times included." This was written 150 years ago, and the principle is still the same.

There are two classes of prisoners in the institution, both of whom should be provided with work,

- (a) to maintain their health, occupy their minds and avoid the manifest evils of idleness;
- (b) to fit them for useful lives upon release; and
- (c) to reimburse the state and the taxpayers to some extent for their maintenance.

The first are the trustees who can be and are taken outside the walls and used on the farms and in the canning factory. The second are those men who must be confined within the walls at all times.

The trustees at the present time are used largely in farm work. There are never more than one hundred employed at the canning factory, even at the height of the season. The factory runs, of course, not much more than half of the time. The balance of the trustees must, under present conditions, be used in some form of agriculture. No road work has been done for years, though, in our opinion, it offers one of the most available and useful methods of employment, now so direly needed. The President and Secretary of the Colorado Federation of Labor appeared before the committee and stated—as shown more fully hereinafter—that organized labor had no objection whatever to convict labor on the roads. Under existing law the warden may upon the request of a Board of County Commissioners, approved by the Board of Corrections, detail convicts to work upon public roads, providing that the county shall pay any additional expenses of guarding the convicts and provide tools and materials for their work (C. L. 1921, Sec.767). Discontinuance of road work has been due to failure of Boards of Commissioners to request this labor.

Various causes have been assigned for this. Among others, expense of maintenance; objections of those living near convict camps, with resulting political pressure on elective officials; objections of engineers on the ground that where convict labor



is used it is unnecessary to compute yardage of dirt moved, etc., and consequently little work for engineers to do; pressure of local labor unions on County Commissioners; non-cooperation of the State Highway Department, etc., etc. If these be the real causes, it should be possible to avoid them. The tax-payers of the State are annually paying millions of dollars for the construction and maintenance of roads and hundreds of thousands of dollars for the support of the penitentiary and its inmates. There can be no question whatever that a great financial saving could be effected by utilizing labor of convicts supported by the state, to say nothing of the indirect benefit resulting from the rehabilitation of the men themselves. We believe that the right to employ such labor should be extended to state highways, and, if necessary, that the law should be amended to secure the greatest possible advantage from this potential labor of men supported by state taxes and living in idleness which is productive of present and future trouble to the state.

If nothing more is practicable, it would be feasible to leave the main highways to the contractors and use convict labor for the thousands of miles of secondary roads that are almost impassable at the present time. At present nothing much remains but farm work, and some protest may in time arise on this account. The prison consumes its own products wherever possible and also furnishes some supplies for the reformatory and the asylum.

Inside the walls labor must be utilized in some form of work that can be brought to the prison, rather than the prisoners going to the work, as in the case of the trusties. The only industry inside the walls is the auto tag factory. This is hazardous work. There have been several serious accidents. One young fellow with a wife and children, due to go out in a comparatively short time, was seen by your committee in the hospital. He had lost the fingers of his right hand. He now goes out permanently crippled from hazardous work which he had no choice but to do. The warden makes men who work in such a dangerous occupation a time allowance, which is the only way he can recompense them for the risk. The number of men used is not great. There is not a full day's work for an able-bodied man inside the walls, with the possible exception of the tag factory. The institution of any further industry would doubtless arouse the antagonism of business interests, as did the canning factory, the cement plant, by the use of the products of which it was estimated that three miles of highway could be paved for the cost of one, and the vinegar plant. The territory around Canon City produces large quantities of apples fit for vinegar. The attempt to make vinegar came in for strong opposition and resulted in the abandonment of the effort.

The warden thinks overalls and rough shirts could be made and sold to advantage. Opposition to this is sure to arise. Every



man is willing for the prisoners to compete with everybody but himself. If the wishes of all were followed, nothing would be left to the prison inhabitants but to sit with their hands folded day in and day out. The routine work necessary to the operation of the institution is entirely inadequate to furnish more than perfunctory jobs for comparatively few men. For instance, twenty-eight men are employed in the laundry, while the work, according to the supervisor, could easily be done by ten. They work about three or four hours a day. There is no work in the afternoon. The inhumanity and potential dangers of idleness seem to be given no weight outside the prison, largely, perhaps, because people have not really given the matter thought. There is plenty of advice that non-competitive industries commanding a ready market be introduced. This is a contradiction in terms. There is always competition in articles commanding even a fair market. Colorado prison products are sold outside the state. The products of other prisons are sold in the state. The thing would be ridiculous were it not fraught with such serious consequences. The gain by keeping the prison out of any industry or business is more than offset by the loss to the tax-payer both in money and in facilities such as roads. The thousand men at the penitentiary must be fed and housed in some fashion. If they are not permitted to make the institution self-supporting, then the tax-payers must support it. The model institutions of the country—Minnesota, for example—are self-supporting and operate like private enterprises. It is largely a question of how the bills are to be paid. If the citizens wish to support a criminal class in idleness, it is their privilege to do so. **In the long run the greatest good of the greatest number must prevail**, and in those states where it has been tried the self-supporting penitentiary is as much of an asset as any such institution can ever be. In four years a federal law will go into effect which will make it still more difficult to market prison products. "The administration is also faced with the prospect of closing a profitable cannery which has supplied excellent work for a number of inmates." (Handbook of American Prisons and Reformatories, 1929, p. 186.) The tax-payer can, therefore, look forward to paying still larger taxes for prison maintenance, unless the state policy in the matter changes.

The representatives of organized labor presented a statement marked Exhibit L. embodying what is known as the "State use" plan, which is appended hereto.\* This embodies the idea that any industry whatever may be instituted at the prison, and any labor indulged in, which represents a public undertaking or use. This would include all road-building, all structures, such as the Denver Court House, and the manufacture of all products of all kinds used in any state institution. None of these products, however, could be disposed of otherwise.

---

\*This is included in the transcript of testimony.



All farm and dairy products are excepted. The proposal is an interesting one, and merits study. We are informed that in some of the eastern states, including New York, the system has been most successful. No figures were presented covering the Colorado situation. It may be that some such plan would be feasible, even though the cost per article were somewhat greater than the purchase price on the open market. A balance must be struck wherein such increased cost would be balanced by the benefit which accrues to society by reason of the occupation furnished to the outlaw to society and the assistance to his family, where he has one, in the shape of some payment for his labor.

In any event, your Committee believes that the effort to make the penitentiary as nearly self-supporting as possible, by utilizing the only asset of the convict—his labor—should be made. It believes that each prisoner should be credited with a per diem for his work, part of which should go to the support of his family, if he has one, the balance to be laid up against his departure. The life termer having no family should be permitted to spend his for the purposes which make his lot bearable, viz.: tobacco, books, socks, underwear, etc.

At this point we call attention to the fact that the prisoner always has difficulty in finding a job upon his discharge. He receives \$5.00 and a railroad ticket to the place from which he was sentenced, the scene of his crime. He may not want to go there and suffer ostracism. His family or friends may be elsewhere. Every condition necessary even to an attempt at rehabilitation is wanting. Every circumstance exists to induce a return to crime. The suit of clothes with which he is furnished advertises his plight. He is without money, friends, or proper environment. The situation is stupid and senseless to a high degree. It should be and could be changed. A wage of 25 cents per day earned in some productive effort would make provision to care for these unfortunate cases.

We here set forth a table showing the distribution of prisoners with reference to work on the farms. The table is not entirely accurate, but indicates substantially the situation immediately under consideration. The activities of those in Cell houses 1, 2 and 3 is not shown. There are about 786 within the walls, trusties and non-trusties, who perform only certain routine work connected with the actual operation of the institution, which work could be easily done by one-fourth the number. As a result they are all comparatively idle. Further, every trusty that can be used or for whom any kind of a job on a farm can be made, is used for that purpose, simply to give him some occupation. A large surplus of labor exists for which there is no outlet. We are informed that in former times a ball and chain were attached to a prisoner under punishment, and he pushed the ball around in a wheelbarrow, simply to keep him busy. The



abhorrence of waste in an efficient age would suggest that some better alternative than the device mentioned could be provided.

**Location of All Prisoners of the Colorado State  
Penitentiary at 7 A. M. October 3, 1929**

Ranch No. 1.....	13
Ranch No. 2.....	18
Ranch No. 3.....	7
Ranch No. 4.....	2
Ranch No. 5.....	4
Westcliffe Ranch.....	2
Blind Count.....	2
Buena Vista Reformatory.....	8
Canning Factory.....	6
State Fair Grounds.....	2
Broadacre Farm.....	183
Dormitory.....	20
Hospital and Cell House No. 5.....	61
Administration Building (Front Gate).....	1
Warden's Residence.....	5
Garage.....	2
Hog Pen.....	1
Horse Barn.....	1
Hydro Plant.....	3
Boiler House.....	4
Store Room.....	1
Kitchen.....	2
Steward's Department.....	3
Deputy Warden's Residence.....	1
Cell House No. 1.....	171
Cell House No. 2.....	260
Cell House No. 3.....	141
Cell House No. 4.....	67
Cell House No. 6.....	68
Female Department.....	25
<b>Total.....</b>	<b>1,081</b>

At this point we call attention to the fact that it is impracticable to use state land for farming. Some years ago the penitentiary authorities secured a section of state land and turned it into a model farm, which was profitable as well as useful. Without warning, the State Land Board canceled the lease, and the property has now largely reverted to weeds. In addition, the prison took a considerable monetary loss on its improvements. This farm was known as the "Avondale" farm.

In concluding this topic it is significant that at those penal institutions in the United States at which every inmate is occupied all the time no riots have occurred. There has never been a riot on a prison farm. The President of the Board of Correc-



tions stated to us that he, with Governor Shoup, "attended the meeting at Avondale when citizens of that district protested the presence of inmates in their community. Not one violation of law had been committed by any of these inmates, while during the time the inmates were there several of the citizens of the Avondale community had been arrested for felonies of varying descriptions."

#### F. Educational Facilities

Among a large number of men, largely only half-occupied, there should be facilities for self-improvement for those who desire it—and there are such—as well as opportunities for teaching the rudiments to a considerable number wholly uneducated—and these are numerous. There should be opportunities for vocational training to fit a number who are capable of earning a living after their departure from prison. It should be borne in mind that most of the inmates go out into the world again. There are a large number of life-termers (about 160). The other 900 will become members of the social body once more. The better their attitude and equipment, the better for the rest of us. Training in the duties and responsibilities of citizenship would be most appropriate. Much crime is due to ignorance. Books are necessary. A library is needed.

At Canon City the library was destroyed by the fire. Out of 10,000 volumes a hundred or so remain. The average daily circulation (1927-1928) was sixty-five volumes a day. The only school is that of ex-Senator Colgate, who cannot be too highly praised for the intelligent human interest he takes in the convicts, particularly the young ones. He conducts a school up to the eighth grade, at which attendance is purely voluntary. The school numbers 90. It should number several hundred. He picks out the better educated as teachers, and brings light where there is otherwise only darkness. He appears to be universally respected by the convicts themselves. Such an influence should be extended. A new library should be provided. Some plan, possibly with the co-operation of the State University, should be worked out whereby every inmate should have the opportunity to acquire such knowledge as would prevent him from being a burden on society upon his discharge, and should fit him, so far as possible, to be a social asset rather than a liability.

#### G. Religious Influences

Services are held weekly, Roman Catholic and Protestant. A full time Chaplain would be of great benefit. He could help in the school, and his influence could be almost anything he wanted to make it. Prisoners will talk to such an official when they will talk to no one else. They are human beings, and the Chaplain is often their one link with better things. At the present time a catch-as-catch-can situation exists, which is highly perfunctory. A Chaplain should be more or less a fixture for his influence to be felt. His present stipend is



\$1,000 a year. Of necessity he must be Pastor of some congregation in Canon City, with duties, interests, and emoluments apart from the penitentiary. This does not meet the need. There has for some time been no Chaplain at the penitentiary, none being available under existing conditions.

"A Chaplain is necessary here in every view. To reform prisoners, or to make them better as to their morals, should always be the leading view . . . . As rational and immortal beings we owe this to them; nor can any criminality of theirs justify our neglect in this particular."—Howard's History of English Prisons (1777) Ed. 1792 p. 40.

#### H. Prison Population

There are about 1,080 men in the penitentiary, of whom about 164 are life-termers. That there is favoritism and discrimination in the treatment accorded by the guards, with whom the prisoners come mostly in contact, is clear. That there is control through repression is in many cases inevitable. Unintelligent mass treatment in the light of limited facilities with lack of opportunity to many must follow.

Working conditions on the farms and in the canning factory are as good as such conditions anywhere. The men are fed much better than formerly, the testimony shows. The raw materials are good and the cooking depends on the cooks in the penitentiary. It appears that when an inmate tires of the cooking detail he cooks very badly, causes complaint and gets himself removed. Those on the farms are well housed and well fed. Conditions in the tag factory in part, are hazardous. The factory burned up and is at present in use as a dining room.

No wages are paid to the workers, nor do their families receive aid from this source. We have previously stated an opinion on this matter.

Trusties are selected on a basis of letters and recommendations from people outside who have known or employed the prisoner. Insofar as there is any record in the institution, it is considered. Many are made trustees so soon after their arrival that it is impossible for the officers to have any personal knowledge of them. Members of the legislature lend their offices in this behalf to certain ones. There is no report from a psychiatrist or a Chaplain, who would know more of a man's mental attitude than anyone else. There is little opportunity for a prisoner to demonstrate his worthiness to be a trusty if he has no one to speak for him.

There are upwards of 509 trustees. About 300 are employed outside of the walls. The cramped facilities compel the creation of as many as possible. Mistakes are, of course, made but probably not out of proportion.

Inequality of sentences is acknowledged to be a distinct source of bitterness and unrest. It is hardly necessary to call



attention to the fact that the power to commute exists, primarily to remedy such a situation, and it should be exercised to that end.

Doubtless, out of a number of cases of a similar nature some deserve more drastic punishment than others. By and large, however, crimes of the same character should be penalized alike. Disparity is in essence injustice. All men are supposed to be equal before the law. These inequalities are bitterly resented by the convicts.

An inspection of the prison records shows, for instance, that the penalty for robbery (with a gun) varies from 10-12 years to 25-35 years. Convicts sentenced from the same Court within 60 days show a discrepancy varying from 10-20 to 20-30; other penalties for the same offense run 18-20 years; 12-30 years; 30-40 years to life; the same crime (probably without a gun) in one instance is visited with a penalty of 3-5 years; in other cases 5-6 years and 7-10 years. Certain crimes seem to prevail. There are, for instance, 160 in for murder, of which 7 are for murder in the second degree; and 174 for robbery. There is a wide variation of penalty, particularly for robbery, taking into consideration the distinction inhering in aggravated robbery, and whether or not the convict is a repeater. A general survey of the convicts should be made with a view to equalizing sentences. Some effort should be made to ascertain whether or not the penalty is, in the case of each newcomer, in line with the average sentence imposed for crimes of that nature. This function could probably be performed by the Board alluded to hereinafter. It is trite, but perhaps appropriate to observe in this connection, that the certainty and uniformity of punishment are more important than excessive severity.

Hope springs eternal in the human breast. When it is quenched, the lack of that hope promotes a despair which is reckless of consequences, and regardless of discipline. To keep alive that hope is to promote and preserve discipline. A man with a 35 year sentence is encouraged to good conduct if the sentence is reduced to 30 years—a life time in itself. Both guards and prisoners emphasize the fact that the absence of hope is a deterrent of good behavior. As one prisoner expressed it, "What's the use of trying to make a good record? You get nothing for it." This statement is typical of the general feeling your Committee found to exist. The statement is, of course, not justified by the law, which is liberal in its provisions, as has been the practice under it.

In this connection the matter of paroles is relevant. Indeterminate sentences admit of parole by the Governor on the expiration of the minimum sentence, except in certain specific cases. Unless some good reason exists to the contrary, paroles should be granted when the prisoner has served this minimum sentence (which we understand is the present practice), but



only after investigation of his record and an adequate physical examination.

Periodic investigations or interviews with all prisoners would conduce to good discipline and healthy morale. In any event such interviews should be had with prisoners under indeterminate sentences. We again call attention to the fact that about 85% of the prison population eventually become a part of society, and the more that is known of their character and tendencies, the better for all concerned. Such interviews could be had by warden, deputy warden, Chaplain, or by all three at different times. In addition the Board to which we refer later could be of use in this connection.

There are cases, unquestionably, where pardons would be in the interest of justice. Such cases, of course, would require most thorough investigation. Such an investigation, or any investigation at all worthy of the name is practically impossible with present facilities. The Governor himself has neither time nor means. Your committee recommends that a board, somewhat in the nature of the old Board of Pardons, be created for the consideration of deserving cases, on whose advice and recommendation the Governor could act in cases of paroles, commutations and pardons, and one of whose important functions would be to consider inequalities of sentence, which, as we have elsewhere pointed out, are prolific of discontent and unrest among the inmates. This Board could be official or unofficial. In the long run the former would be desirable for the maintenance of a continuous policy. In the meantime the Governor could nominate an informal body for this purpose. Its usefulness would depend on the care taken to secure a proper personnel. There should be at least one person on it, preferably a lawyer, able to understand and interpret court records. With the advice and assistance of such a Board, composed of representative citizens, the matter of executive clemency could be handled in such a way as to be a positive influence for morale and discipline at the penitentiary.

The matter appears to have been handled sporadically and rather unsystematically under your Excellency's three predecessors, and involved some 528 cases of executive clemency, beginning with June, 1919. Governor Shoup paroled, commuted, and pardoned a total of 151; Governor Sweet 133; and Governor Morley 244.

Your Committee is fully convinced of the advisability of executive clemency when exercised systematically and with a definite policy. It undoubtedly conduces to better conduct and discipline.

#### I. Opportunities for Smuggling

These always exist. Through lack of segregation of the different elements of the prison population smuggling is always possible. Contact between trustees and other inmates pro-



vides a constant menace. It came to the attention of your Committee that drugs could be, and doubtless are smuggled in in quantities dependent only on the funds available for their purchase. The current price for marijuana is, we were given to understand, twelve dollars for a full tobacco can. There is no reason to suppose other drugs are not also available. Trusties are searched every night when they come within the wall, but this search necessarily is of a character effective only for the discovery of articles such as knives and guns. The slightest relaxation or carelessness in the search might make it possible for cunning minds to devise schemes to evade discovery of even such as these.

A second possibility is through visitors. A distinct source of penitentiary revenue is visitors at 25 cents a head, the proceeds going into the library fund. As many as 3,600 visited the prison on one Sunday during the past summer. These are escorted through by guards, generally two, often one. Groups aggregating as many as 76, 58, 37, etc., have been escorted by one guard. Opportunities are legion whereby articles could be passed to the insiders.

While we implicate no guards in this connection we are certain that a petty traffic has existed at times whereby guards have lent themselves to the smuggling in and out of various contraband articles, some of little importance. This indicates the possibility of infractions with reference to goods and articles of a more serious nature.

The number of packages received at Christmas time is so great that a rigorous and critical scrutiny, almost beyond the realms of possibility, would be necessary to make certain no contraband had entered the prison. Pies and cakes are cut up and every package is opened and inspected. The press is so great that trusties are called upon to help. What this traffic, if any, amounts to, we cannot say. This merely illustrates a possibility.

One or more of the guns used in the riot may well have come through in a truck load of coal, and have been shoveled out of the coal dump. A detailed search of each truck is impracticable, though an inspection is made.

All the foregoing avenues are open. Whether they are used or not depends on the "public opinion" and morale of the prison body. There will always be some smuggling.

If morale is high and discipline is good the danger is minimized.

#### J. Appropriations and Finances

There has been a considerable increase in the cost of the penitentiary during the past ten years. This appears to be accounted for, however, by several factors, among them, increase in living costs and increase in the number of prisoners together with the increasing cost of repairs to an old institu-



tion. The cost per day per prisoner in 1913-1914 was about 82.66 cents; in 1921-1922 it was 86 cents; in 1927, it was 87.54 cents, with 1,062 prisoners as against 778 in the first year mentioned. The actual cost to the taxpayer is a few cents less. The difference is earned by the convicts. The appropriations and expenses are continually growing, and we see no reason to suppose that they will cease to grow. The contribution of the penitentiary to its own maintenance from the convict labor fund was the sum of approximately \$116,000 in 1926-7 and \$41,000 in 1921-2 as appears from the warden's reports transmitted by the Board to the Governor for the periods in question. According to an analysis of cost appearing on page 57 of the budget transmitted by Governor Sweet for the period 1925-1926, the cost to the taxpayers increased from \$227,739 in 1913-14 to \$473,730, according to the Governor's recommendation, for 1925-6. The cost of living index had increased from 101.5 to 170. Appropriations for 1929-30 amounted to \$726,450.41, not including repairs, equipment, and improvements at \$134,833 (Cell House \$113,533), nor a \$15,000.00 operating fund for license plates and canning factory, which is returnable out of earnings. Due to change in the fiscal year the period covered by this appropriation is 30 months. The usual appropriation for the interim period of 3 months amounted to \$86,750. Excluding the cell house, the per capita cost is about 87.3 cents per day. Otherwise about 99 cents per day per capita. All of this emphasizes the need of a complete survey of the penitentiary situation, as regards its physical aspects, and the possible renovation of a considerable portion of the plant. We have no suggestions to make except those already made with reference to providing work for the inmates, involving the erection of new quarters and consequent segregation. Increasing idleness of a great number of men as opposed to their occupation in productive industries will inevitably increase the tax-payer's burden.

The Attorney General of the United States has voiced an eloquent plea for more, better, and bigger prisons. In view of the increasing number of laws creating new crimes, his suggestion is probably timely, and applicable to all localities. A system whereby those guiltless of legal infractions be permitted to remain inside of walls with outer darkness for infringers, will doubtless in time be the part of economy.

### III. RECOMMENDATIONS

We summarize our recommendations for convenience.

#### A. Location, Grounds and Plant

1. The purchase or lease of a large tract of land somewhere near Canon City, involving segregation of repeaters, first timers, and trusties.

In any event, such segregation should be effected as soon as possible.



2. The two-man cell should be abolished. One inmate in one cell is the proper method for all purposes. The cell is under the best circumstances a dismal habitation. Governor Roosevelt of New York has recently recommended that in providing new quarters for the more trustworthy prisoners a substitute should be provided. This should be done in the event any housing structure is erected on the farm or land outside the walls.

#### **B. Administration**

1. The Board of Corrections should be unpaid and not under Civil Service.

2. The salary of the Warden should be raised to not less than \$4,000 per annum, the Deputy Warden to \$2,500, with subsistence in both cases; the guards should receive not less than \$125 per month and partial subsistence. Other salaries should be adjusted accordingly.

3. A pension fund should be created to cover warden, deputy warden, and guards.

#### **C. Discipline**

Corporal punishment and ball and chain should be permanently abolished, or, rather, should not be revived.

#### **D. Health**

1. An examination of every newcomer to the prison by a Psychiatrist, as well as the general physical examination as at present. Periodic examinations by a Psychiatrist of those in any degree abnormal. Also an examination on leaving.

2. Attention of a Psychiatrist for the insane and their removal to appropriate institutions.

3. Additional equipment for hospital to make it adequate for all necessary operations.

#### **E. Industries and Facilities for Work**

1. Road Work—especially on secondary roads wherever it can be arranged with county commissioners—should be provided to the greatest possible extent.

2. Creation of a committee to make a detailed survey of industries to determine what are practicable at the penitentiary, and to investigate and report on the so-called "State use" plan, either to the Governor or to the Legislature.

3. A per diem to each convict for each day's labor, half of which should go to the assistance of his family if he has one, the balance to be laid up against his departure; probably about 25 cents per day.

4. Abolition of the present custom of giving a discharged prisoner \$5 and railroad ticket to the place from which he was



sentenced; the prisoner to receive transportation to any point in Colorado to which he wishes to go, plus at least \$10 in cash, plus a fairly well fitting suit of clothes. If a per diem has been paid as suggested in the preceding paragraph, then the prisoner to receive whatever is due him, but not less than \$10 beyond railroad transportation in any event.

#### F. Educational Facilities

The appointment of a committee to investigate in conjunction with the state institutions the question of vocational training, extension courses, citizenship classes, and various questions pertaining to education.

#### G. Religion

1. The employment of a full time Chaplain at not less than \$125 per month and full subsistence.

#### H. Prison Population

1. Segregation of prisoners along the lines of first timers, trusties, and repeaters. These groups will, of course, vary from time to time. There are first-timers who are desperate men and will have to be placed with the repeaters, etc. The third group should, perhaps, include all, who for any reason, are beyond the hope of rehabilitation.

2. Selection of trusties to take into consideration the report of Chaplain and Psychiatrist. A specified minimum of at least 30 days to elapse before any prisoner is made a trusty.

3. The creation of a Board along the lines of the old Board of Pardons to investigate all sentences with a view to recommending cases to the Governor in order to equalize sentences; the same Board to investigate deserving cases for commutations, paroles and pardons.

4. Periodic interviews with all prisoners, especially those under indeterminate sentence.

#### I. Opportunities for Smuggling

We do not recommend abolition of visitors at a per capita charge, because they purchase many of the knick-knacks made by the prisoners. The market is small in any event. The cessation of smuggling to some extent will come about through some of the other measures suggested—especially segregation of the different elements of the prison population.

#### J. Appropriations and Finances

An audit of the penitentiary books for the last six years by some private accounting concern.

In every detail of the foregoing recommendations it is assumed that the Board of Corrections will co-operate, and



action should be taken with such co-operation wherever possible.

It is obvious that our suggestions involve time, effort, and money. In our opinion all the matters mentioned have a bearing on the riot of October 3rd, and on the possibility of other such outbreaks in the future. There is not sufficient appreciation of the effect of every day prison life on the prisoner. It must be made not only bearable, but something more.

Some will doubtless claim that any intelligent handling of the problem is sentimental. A prisoner's comfort and well-being are things which directly and inevitably influence his conduct outside—and over 80% come out. Common humanity to those held for life would suggest certain decencies. Fortunately for the strength of the case the utilitarian argument coincides. Both point to up-to-date methods for up-to-date criminals, and up-to-date crimes. Otherwise the state is in the anomalous position of training criminals, which is the case at present.

#### IV. LEGISLATIVE ACTION

Your Excellency's order requires that our report include findings as to legislative action which we may believe desirable.

Many of the reforms above suggested can doubtless be accomplished under existing laws providing they are assured by adequate appropriations. But the following would require specific legislation, which we urgently recommend.

1. The amendment of the existing law respecting the State Board of Corrections by abolishing the existing annual salaries of \$1,200 each.

While our investigation has not covered the State Insane Asylum, we believe that conditions pertaining to it are so distinct from those of penal institutions, that the jurisdiction of the Board of Corrections might well be limited by amendment to existing law to the penitentiary and reformatory and another board, to serve without pay, created for the asylum.

2. The amendment of the present law fixing the warden's salary at \$2,500 per year and subsistence, by increasing the same to not less than \$4,000 per year, and subsistence; also providing for the employment of a Chaplain on full time whose compensation shall be not less than \$125 per month and subsistence. The salary provided for him under existing law is \$1,000 per year. (Other salaries referred to herein are not regulated by statute and may be established by the penitentiary authorities subject only to sufficiency of appropriations which should be adequate to provide for them.)

3. A law prescribing a system of pensions for employees from the warden down, to be effective at a certain age, not exceeding seventy years, and after a comparatively long period of employment, say twenty years.



4. A law creating a Commissioner of Supplies, or a similar officer, with authority and control over the purchase of all supplies and materials required by all the state institutions, especially the penitentiary, the reformatory, the insane asylum and all other penal or eleemosynary institutions conducted by the state; with provision for preference of convict grown or manufactured supplies wherever practicable.

5. A law which will authorize the employment of convict labor to the greatest possible extent upon the public roads of the state and its political subdivisions, by the state and counties. (The present law provides that convicts may be used on county roads only upon request of the respective boards of county commissioners, and for some reason this has become a dead letter.)

6. A law providing that convicts shall be entitled to a credit of a certain per diem (say 25 cents) for all labor performed by them, payable to their respective dependents during their confinement or to themselves upon release; or in the case of life-termers to be employed in furnishing them with such articles of comfort or pleasure as may safely be placed in their hands.

7. The establishment of a board similar to the late Board of Pardons, whose members shall serve without compensation, and to be appointed by the Governor for fixed periods, the terms to be so arranged that but one appointment will be made every two years. This board to have authority to investigate, and report to the Governor upon the merits of all applications for executive clemency, with its recommendations. This board should be authorized, as part of its duties, to consider and give weight to any inequalities of sentences imposed for similar offenses, due regard being given to the previous record of the prisoner.

8. It will be noted that the foregoing specific suggestions are silent regarding the all-important features of a farm, individual treatment of convicts, labor for all either within or without the prison walls and other economic and humanitarian questions considered in this report. We believe that relief respecting all of these matters can be provided, under existing law, by the board of corrections and the warden providing the legislature will make adequate appropriations for them. On this subject we cannot too strongly urge that every session of the general assembly should give earnest consideration to the recommendations of the board and the warden, and should aid their efforts to accomplish necessary reforms in the penitentiary. As one witness before us has stated, the "alumni" of that institution cannot exercise the influence and prestige of those from our educational institutions. The convicts are involuntary wards of the state, and it is to the interest of society and every citizen, that everything within reason be done to treat them humanely but firmly, to give them opportunities for work which will redound to their rehabilita-



tion and at the same time will relieve taxpayers of the sole burden of their support.

9. The statutes of Colorado relating to the penitentiary, and as found in the compiled laws of 1921 are in an unsatisfactory condition. Chapter XVI contains provisions respecting the "State Board of Charities and Corrections," now abolished except as to a secretary whose duties appear to be nebulous if not superfluous, and also the laws respecting the existing "Board of Corrections." Chapter XXIII covers the organization and management of the penitentiary and incorporates provisions enacted at various times, some of which are treated as obsolete, though they may not have been specifically repealed. Chapter XXV, entitled "Convict Labor and Goods" contains the act of 1907 creating the "State Commission on Prison Labor." By a decision of our Supreme Court, at least one section thereof was held repealed by later law by an opinion which left uncertain the status of other rather important provisions of that act (*Hessick v. Moynihan*, 83 Colo. 43). We believe that the laws controlling the penitentiary and its management should be generally revised by a new act which could embody the subjects covered by our recommendations.

The establishment of some of your Committee's recommendations will cost money, but we believe that the expenditure will be amply compensated by beneficial results, directly and indirectly affecting the taxpayer. We have no doubt whatever that they will relieve the tension and unrest which now exists and which may at any time manifest themselves by another uprising. From a sociological standpoint they are required. From an economic point of view we believe that they will go far toward making the penitentiary self-supporting and relieve the taxpayer of large burdens now resting upon him. The penitentiary presents a state-wide problem. Every citizen is directly interested. The welfare of the people is the supreme law, and no selfish interest should be permitted to stand in the way of a broad, humane and business-like administration of the institution.

Your Committee has received and appreciated the co-operation of the penitentiary administration, the state police, and many whom we have had to inconvenience in the course of this investigation. We have a large amount of material we should be glad to turn over to any Committee or body whose duties would make it appropriate. We herewith transmit a transcript of the testimony we have taken, which does not include, however, certain statements especially by prisoners, which were received in a confidence which the public interest requires should be observed.

Respectfully submitted,

(Signed) W. W. GRANT, JR., Chairman,

(Signed) HENRY McALLISTER,

Committee.



Mr. Hilliard has declined to sign the report. He will, I understand, submit a minority report. What his reasons are, he can best state for himself. The only dissent he has expressed either to Mr. McAllister or myself has been limited to objections to recommendations for increase of pay for warden, deputy-warden, and guards, and to the recommendation for the creation of a board, something in the nature of the old Board of Pardons to serve a number of purposes which we consider necessary.

W. W. GRANT, JR.,  
Chairman.



REPORT OF  
BENJAMIN C. HILLIARD  
To The Governor  
Concerning the Riot at the State Penitentiary  
October 3, 1929

---

Denver, December 14, 1929.

Sir:

Pursuant to executive order it has been my honor to serve on the special committee selected by your excellency to investigate the mutiny and riot which occurred at the state penitentiary on October 3, 1929. The other two members of the committee have filed a report, with much of which I am in accord, but as to some points, I regret to advise, we were unable to compose our views. Hence this report.

I attended all the hearings of the committee, and in addition to visiting all the places that the other members visited, I spent a day at the "Broad Acre" farm, where about two hundred inmates are employed and where farming and stock raising are conducted on a large scale. I did not attend the meeting held by the other two members of the committee when they had a private conference with Charles J. Moynihan, the president of the board of corrections. I knew when the conference was to be held, and, of course, was not excluded, but my conception of duty was that Mr. Moynihan, himself a public officer, if he cared to come before the committee at all, should have been willing to give his statement at a public hearing, with opportunity to representatives of the press to be present and to submit himself to interrogation, as had others who came before the committee. In the matter of prisoners examined, the committee was careful to observe their constitutional rights and whenever a prisoner expressed a desire to speak in confidence to the committee or wished to withhold his statement altogether, his wishes were respected, but as to persons other than inmates only Mr. Moynihan asked and was accorded the right of a private conference with the committee. In this connection it is proper to say that of the board of corrections only Mrs. Grenfell came and spoke freely and as freely submitted to examination in the presence of the representatives of the Denver newspapers and press associations. And it is further worthy of comment that at the time of the riot at Canon City, and during all the hours that it raged, Mrs. Grenfell was the only member of the board of corrections present.



With the narrative of the physical facts connected with the penitentiary and growing out of the mutiny, to the development of all of which I modestly contributed my time and talents, I have no quarrel whatever. If in any quarter it shall be thought that the narration is lacking in literary merit, which is hardly conceivable, the other committee members will generously state that they had both pride and monopoly of authorship.

The reports upon the investigation which your excellency initiated, if of any importance at all, are valuable only to the people of Colorado, who at great material sacrifice maintain and care for a thousand men and women that the courts of the state, after fair trial, have found to be unsocial and willful transgressors of the law. And only then if the patent evils are reached at the root.

Relative to the suggestion of the other members of the committee that a law be passed recreating the old board of pardons or a board of similar powers, study will be aided by reference to certain existing statutory provisions and the operation thereof on inmates in the penitentiary. The law which I shall presently quote, and the cited instances coming within its purview, must convince all fair minded and law abiding citizens that those of our number who so disregard their relation to society and the rights of others as to feel the weight of the criminal statutes, have but to behave themselves while undergoing imprisonment to receive and enjoy most generous reductions of their sentences. Sections 756, 757 and 758, Compiled Laws of Colorado, 1921, read as follows:

756. That every convict who is now, or may hereafter be, imprisoned in the penitentiary, and who shall have performed faithfully, and all who shall hereafter perform faithfully, the duties assigned to him during his imprisonment therein, shall be entitled to a deduction from the time of his sentence for the respective years thereof, and proportionately for any part of a year, when there shall be a fractional part of a year, in the sentence, to-wit: For the first year, one month; for the second year, two months; for the third year, three months; for the fourth year, four months, for the fifth year, five months; for the sixth and succeeding years, six months.

757. Hereafter convicts of the state penitentiary undergoing sentence in accordance with law who shall or may have engaged in work with said penitentiary outside the wall of said institution, and known as "trusty prisoners" and who shall be employed on the ranches or gardens, lime kilns or quarries, stone yards or quarries, or upon public roads and highways in this state in accordance with law, or at any other class of work without the walls, of said prison, and who shall conduct them-



selves in accordance with the rules of the prison and perform their work in a creditable manner, may, upon approval of the warden, be granted such good time in addition to that allowed by law as the board of corrections may order, not to exceed ten (10) days in any one calendar month. This granting of additional good time is not to be construed as affecting any so-called "trusty prisoner" who shall at any time be engaged in the regular prison duties while confined within the walls of the penitentiary.

758. The board of corrections is hereby empowered to adopt a special rule applicable solely to convicts employed as herein authorized and contemplated, whereby convicts so employed shall be granted additional good time allowance, conditioned upon their good behavior and cheerful compliance with all rules that may be made by said board for the management and convicts so employed.

Naturally these statutes have no application to inmates who have been sentenced for the term of their natural lives—there is no minimum in their cases. But in these cases we must reflect that the crimes for which they are sentenced are so abhorrent that every state in the union considers life terms proper punishment. Many of these life termers have gladly welcomed such sentences in lieu of what a casual observer or a profound thinker might think preferable—death. Much of what my colleagues have said is based upon the theory that since most of the convicts eventually return to society it is essential to endeavor to make them as good men as can be. But in the case of the life termer they have arrived at a logical extremity that has hopelessly confused them. The object of a life sentence is obviously punishment or retirement from society, and is not and can not be intended to reform. But, say my brethren, such prisoners are discontented and hopeless and, therefore, we must undertake to override the legislature and the courts by turning them out—so that while they are in they will comport themselves well. Thus the murderer may comfort himself when he hears a jury give him the merciful verdict of a life term, for he knows that his sentence will not only be no greater eventually than that of a robber, but he can assure himself that because he comes under no automatic parole law his peculiar status will excite the pity and attention of persons who forget his crime in anguish at his plight. I conclude that no governor, in the absence of evidence which the courts are powerless to hear, should consider for a moment the release of a prisoner when the law, a district attorney, 12 jurors and a judge have said must be confined during the period of his life. If my colleagues believe otherwise, I respectfully suggest to them that they should have recommended the passage of a law reducing the penalty for the



foul crime for which life is given as a sentence, and not the uncertain, sentimental and perhaps dishonest operation of executive clemency which, pardon board or none, results at last only in more shocking inequality than that which now exists with respect to the sentences for other crimes—and of which they complain.

To return to the analysis of the statutes above quoted, and their bearing on inmates sentenced for terms of years. By Section 756 for the first year of incarceration the inmate is credited with one month for good behavior, the second year with two months, the third year with three months, the fourth year with four months, the fifth year with five months, and for the sixth and succeeding years six months. The Supreme Court of Colorado In Re Blocker, 69 Colo. 259, has given the foregoing section a liberal interpretation, holding that the inmate is entitled to the credit each year, that is to say, if his sentence is for one year he is entitled to his discharge at the end of eleven months, and for the added credits for the succeeding years. In other words, not only has the legislature been kindly in the matter of reducing the time of service of violators of the law, but our Supreme Court, considerate and humane, has given an interpretation to the statutes which is most favorable to the inmates of the penitentiary.

By Section 757, which makes provision for additional credit to "trusty prisoners" employed on ranches, quarries, public roads, or other work without the prison walls, they, upon approval of the warden are granted such good time as the board of corrections may determine, not to exceed ten days in any one calendar month. In actual practice the full ten days is allowed. In other words, a prisoner who has been confined for six years and still has some time to serve is credited, first, with six months per year, in any event, and, if a trusty, he gets ten days additional for each month.

Section 758 authorizes the board of corrections to adopt a special rule, applicable to those employed as contemplated in the preceding section, under which inmates shall be granted additional good time allowance conditioned upon their good behavior and cheerful compliance with the rules. Otherwise expressed it would be difficult to conceive more liberal parole or good time laws, and an outstanding virtue of such laws is that they operate automatically, upon the friendless and powerful alike, the sole requirement being that during the confinement fixed by law and decreed by a court of constitutional jurisdiction, after fair trial, the inmate shall be of good report. Yet, because, forsooth, the governor of the state, sworn to observe and obey the laws and constitution of the commonwealth, not finding that justice has miscarried in any case so far coming to his attention, has not abused his power by arbitrary reduction of sentences, and has felt that in the courts and not in him is vested the determination



of what shall be done to criminals, Messrs. Grant and McAllister would subject him and his successors to the entreaties, and the taxpayer to the burden, of a pardon board—a board without definite responsibility or constitutional dignity, and which experience has shown would be, if not dishonest, often weak and vacillating. The rich and the powerful and the influential would be heard by that board, and the poor and the friendless would seek its intercession in vain. I submit that it is far better that law, created by the legislative department, and operating uniformly and as equitably as law ever can, fix the status of all prisoners, no matter what their resources may be, than to trust so important a matter to the whims and vagaries of another board. The precedent of the present administration I commend to the study of all, and especially to my colleagues. It was not responsible in any sense for the riot, and the majority have so found, for they say that the outbreak would have occurred if every single reform which they advocate had been in effect.

In elucidation of the operation of the parole and good time statutes, I set forth below some examples of automatic paroles signed by the present executive during the year 1927. I have the names of the recipients of these statutory favors, but in fairness to men who have legally expiated their offenses I do not reveal their identity. That there may be opportunity for verification, however, I do supply their prison numbers.

Number	Length of Sentence	Clemency Received Under Parole Law
12931	Minimum, 15 Years Maximum, 20 Years	4 Years, 4 Months, 23 Days 9 Years, 4 Months, 23 Days
12228	Minimum, 6 Years Maximum, 10 Years	2 Years, 9 Months, 17 Days 6 Years, 9 Months, 17 Days
12475	Minimum, 5 Years Maximum, 6 Years	2 Years, 1 Month, 26 Days 3 Years, 1 Month, 26 Days
4170	Minimum, 35 Years Maximum, Life	22 Years, 1 Month, 26 Days
12990	Minimum, 3 Years Maximum, 5 Years	1 Year, 3 Months, 9 Days 3 Years, 3 Months, 9 Days
12250	Minimum, 7 Years Maximum, 10 Years	3 Years, 7 Months, 12 Days 6 Years, 7 Months, 12 Days
12253	Minimum, 7 Years Maximum, 10 Years	3 Years, 7 Months, 12 Days 6 Years, 7 Months, 12 Days
11911	Minimum, 10 Years Maximum, 11 Years	5 Years, 8 Months, 19 Days 6 Years, 8 Months, 19 Days
13121	Minimum, 2½ Years Maximum, 7 Years	1 Year, 27 Days 5 Years, 6 Months, 27 Days



Number	Length of Sentence	Clemency Received Under Parole Law
11758	Minimum, 9 Years Maximum, 13 Years	4 Years, 3 Months, 6 Days 8 Years, 3 Months, 6 Days
12122	Minimum, 7 Years Maximum, 10 Years	3 Years, 2 Months, 16 Days 6 Years, 2 Months, 16 Days
11131	Minimum, 10 Years Maximum, 10½ Years	3 Years, 2 Months, 22 Days 4 Years, 2 Months, 22 Days
12770	Minimum, 4 Years Maximum, 6 Years	1 Year, 9 Months, 22 Days 3 Years, 9 Months, 22 Days
11876	Minimum, 10 Years Maximum, 25 Years	5 Years, 6 Months, 19 Days 20 Years, 6 Months, 19 Days
12353	Minimum, 7 Years Maximum, 10 Years	3 Years, 9 months, 3 Days 6 Years, 9 Months, 3 Days
13023	Minimum, 3 Years Maximum, 5 Years	1 Year, 2 Months, 15 Days 3 Years, 2 Months, 16 Days
12248	Minimum, 7 Years Maximum, 10 Years	3 Years, 5 Months, 15 Days 6 Years, 5 Months, 15 Days
12330	Minimum, 7 Years Maximum, 10 Years	3 Years, 8 Months, 2 Days 6 Years, 8 Months, 2 Days
12254	Minimum, 7 Years Maximum, 10 Years	3 Years, 5 Months, 15 Days 6 Years, 5 Months, 15 Days
13046	Minimum, 3 Years Maximum, 5 Years	1 Year, 2 Months, 22 Days 3 Years, 2 Months, 22 Days
11806	Minimum, 10 Years Maximum, 14 Years	5 Years, 2 Months, 11 Days 9 Years, 2 Months, 11 Days
13048	Minimum, 3 Years Maximum, 5 Years	1 Year, 2 Months, 21 Days 3 Years, 2 Months, 21 Days
11745	Minimum, 10 Years Maximum, 12 Years	5 Years, 10 Days 7 Years, 10 Days
13067	Minimum, 3 Years Maximum, 5 Years	1 Year, 3 Months, 9 Days 3 Years, 3 Months, 9 Days
11206	Minimum, 12 Years Maximum, 14 Years	5 Years, 7 Months, 19 Days 7 Years, 7 Months, 19 Days
13068	Minimum, 3 Years Maximum, 5 Years	1 Year, 2 Months, 27 Days 3 Years, 2 Months, 27 Days
12564	Minimum, 5 Years Maximum, 10 Years	2 Years, 22 Days 7 Years, 22 Days



Number	Length of Sentence	Clemency Received Under Parole Law
10150	Minimum, 20 Years Maximum, 25 Years	9 Years, 8 Months, 4 Days 14 Years, 8 Months, 4 Days
12973	Minimum, 3 Years Maximum, 7 Years	1 Year 5 Years
12247	Minimum, 7 Years Maximum, 10 Years	3 Years, 4 Months, 3 Days 6 Years, 4 Months, 3 Days
11381	Minimum, 9 Years Maximum, 10 Years	3 Years, 2 Months, 23 Days 4 Years, 2 Months, 23 Days
11676	Minimum, 10 Years Maximum, 14 Years	4 Years, 9 Months, 20 Days 8 Years, 9 Months, 20 Days
12263	Minimum, 7 Years Maximum, 10 Years	3 Years, 3 Months, 25 Days 6 Years, 3 Months, 25 Days

When we reflect that among the forty-eight states, Colorado is outstanding in the matter of definite and automatically acting statutes for the encouragement of good behavior on the part of inmates in its penal institutions and their early restoration to their families and society, it is nothing short of remarkable that Mr. Grant and Mr. McAllister should have solemnly recorded on page 78 of their report that "a man with a 35-year sentence is encouraged to good conduct if the sentence is reduced to 30 years," the implication being that in such a case, the executive failing to see the justice of such reduction, a pardon board should induce such action. But since the advocates of the creation of a pardon board have used the 35-year sentence as an example let us examine an instance where the sentence was 35 years minimum with maximum of life. No. 4170 is such a case. Off his 35 year minimum he enjoyed clemency to the extent of 22 years, 1 month and 26 days. Otherwise stated of a 35-year sentence (with maximum of life) the prisoner served only 11 years, 10 months and 4 days. Men are not sent to the penitentiary for a period of from 35 years to life for trifling offenses. Whatever his offense, and I am not advised, this man appreciated the generous provisions of the automatic parole law and that was encouragement enough for him to be on his good behavior. In whose mouth does it lie to say that some pardon board should have an expense account against the state treasury to work for a still further reduction of time in like cases? And on the same page of the report these brethren of mine quote with approval from an irresponsible inmate the following language: "What's the use of trying to make a good record? You get nothing for it." If the law were made more liberal, I rhetorically suggest, it would simply be a race between the sheriff and the convict which should get home first! The people should see to it that a legislature is elected



that will devote itself to the plight and needs of the law abiding portion of the community, with thumbs down on the recommendation for the creation of a pardon board. If there is anything that the state of Colorado does not need it is another board.

I earnestly sought to eliminate from the report the reference to what my learned brethren have denominated offenses "malum prohibitum". I had a feeling, and I communicated this thought to the other members of the committee, that those interested in the report would interpret such reference as contemplating the crime of those members of society who, rather than engage in some useful occupation, manufacture and dispense intoxicating liquors in violation of the constitutional and statutory enactments of both the state and the nation; but the other members of the committee would not consent to such elimination. Such view was quite in keeping with Mr. Grant's oft declared opposition to the prohibition laws. I was not at the time, however, nor have I yet been able to understand why Mr. McAllister, who is not classed with Mr. Grant in this regard, should not at least have agreed with me that it had no part in the report. In any event I could not bring myself to consent to subscribe to a statement which seemed to glorify bootleggers. I recall that even in the period to which some people refer as the "good old days of liberty", the bootlegger held the lowest position in society. In these latter days he is not only a criminal as he always was, but he so dispenses the product of his illicit still that he is potentially the cause of many of the other crimes for which men are being imprisoned in the Colorado state penitentiary. I can well understand how men may differ on the wisdom of the prohibition laws of the country, but I defy any man to justify bootlegging.

What connection there exists between the riot and the prevention of another with regard to offenses "malum prohibitum," my colleagues did not point out, nor do they make any recommendation that appears to be based upon their discussion of such crimes. They do not recommend to your excellency that the prohibition laws should be repealed or modified, they do not recommend that prohibition offenders be put in a separate institution where their presumably law-abiding traits would have full sway and where their manifest social graces might be displayed, nor do they recommend anything else in this behalf that I can discover. I take it that if the penitentiary is crowded with those who have committed felonies "not inherently wrong" that my fellows would make better use of their time in haranguing the people who have repeatedly voted for laws creating such felonies than in troubling your excellency, who is without power in the premises, with their views—interesting though they may be.

Indeed, if these new style offenders are the charming fellows my brethren believe them to be, and are harmless and



guileless men, their presence in the penitentiary should be commended. With such a population the moral tone of the institution may be said to be improved, and the consequent good influence of these man-made criminals upon the desperate "malum in se" inmates should be a welcome factor.

The trouble at Canon City and its causes will not be fully understood unless we keep in mind the elements of control. To begin with there is the board of corrections. The personnel of this board has not undergone a change in a dozen years or more, and is protected in office by the civil service amendment. The governor, although he is the constitutional spokesman of the people, has not the slightest control over the actions of this board, and the people themselves, so long as the civil service constitutional provision continues unrepealed, are powerless to change the membership of the board or to elect any official of whatever power and dignity who could make any change in it.

The governor can not appoint the warden. That is done by the civil service commission. As a consequence the governor can not, nor may the people through the governor or otherwise exercise any control over the warden or the administration of the penitentiary. That in itself is had enough, but it is not all. The warden is without power to name his deputy, neither may he appoint the guards. The sum of the situation is that on October 3, 1929, there was no one in authority at the penitentiary who was responsible to the people or to any official elected by the people. In the fact that there was only semblance of exercised control and only pretended observance of loyalty to those in higher position in the institution, will be found the reason for the chaotic conditions that obtained before and during the continuance of the mutiny, and the underlying reason for the outbreak in the beginning. It is not surprising that the time came when all administration failed. Mr. Grant and Mr. McAllister unite in the finding, and with this I am in agreement, that only Daniels and Pardue, so far as the evidence discloses, had to do with the outbreak against authority. The warden stated that he knew these two were dangerous gun men. The deputy warden testified of his knowledge of their desperate character. Every guard that we questioned echoed the same thing, and the prisoners who came before us knew that Daniels and Pardue were cold blooded killers and not to be trusted. The penitentiary is provided with cells (I do not mean the "cooler") where these men could have been confined. Since the riot prisoners who are not held to be as dangerous as Daniels and Pardue, have been put in the cells that Daniels and Pardue should have enlivened by their presence on and long before October 3. The riot could then have had no inception. The buildings would not have been fired and destroyed, the several guards that were slain would not have been ruthlessly shot down, and the citizenry generally would have been spared the



ignominy that this riot has entailed. In addition to the knowledge that all in authority at the penitentiary had of the desperate character of the two men who led the revolt, every official and guard there had been warned that Daniels and Pardue had guns cached within the walls. I can find no justification, the circumstances considered, for the privileges accorded to Daniels and Pardue; they belonged in cells and the failure to have kept them there will not be excused in the contemplation of the people by preferring charges against and dismissing from the service one or more of the ordinary guards.

I not only find that consideration of the salary of the warden was wholly without the scope of the purpose of the inquiry, and ought not to have been mentioned, but I was pained to note that the other members of the committee, in their zeal to argue for an increase thereof, on page 57 of their report, indulged a half truth to show how, because the warden entertains many people, his stipend from the state should be augmented. In the first place the warden and his family may have as limited or as extended a guest list as suits their fancy. The intimation from the majority report is that such entertainment makes an inroad on the salary of the warden. In such connection it will be enlightening to recount that in addition to his salary of \$2,500 a year the warden is furnished with a dwelling and spacious grounds that compare favorably with the mansions and premises of the ultra wealthy. The state furnishes and equips it in a manner that is nothing short of luxuriant. It is lighted and heated at the expense of the taxpayers. From the state's farms and dairies and its rich stores, in the purchase and use of which there is no limit, the warden not only supplies himself and family, however numerous, with all that the richest men are able to give their families, but from the same source of supply he may and does entertain an unlimited guest list of the great and near great, in that particular indulging his tastes only as a millionaire could. He has all the servants and service that he requires, and without cost. He has at his disposal a fleet of high priced automobiles, headed at this time with a late eight cylinder Packard, recently purchased through a Montrose agency. The cars are driven by trusty convicts. They are oiled and supplied with gas paid for by the state, and every repair is at the state's expense. The warden is not restricted in any manner in his movements. He goes when and where he will. In other words, the position so transforms a man of ordinary means, or of no means whatever, as the case may be, that the incumbent of the wardenship and his family may live and entertain on an equality with the most favored of wealthy men. I would not be misunderstood. The present warden enjoys no privileges that were not the enjoyment of his predecessors, and which likely will be the portion of his successors. I simply say that the increased salary would not add to the efficiency of the warden and would be an undeserved drain on the taxpayers. The civil service



commission has an eligible list of good men who want to be warden of the penitentiary at his present salary, and it is well known that if it were announced that the commission would hold an examination for the position men of prime qualifications would compete for what such men consider the most desirable preferment the state has to offer. Considering that the civil service commission has complete and unrestricted control over the employees of the penitentiary, from the warden down, and that in recent times it set aside the governor's choice of warden and installed its own selection, it is a significant commentary that when calamity came its only suggestion was, "Pay our men more money." I regret that the majority should have been deceived by such hollow mockery and pretense.

My colleagues have suggested that the warden would be happier if he were paid say \$5,000 a year and were required to defray his own expenses, but I venture that that reflects their own notions of what they would prefer if they were to be put in the warden's place. Other men may differ from them—and reasonably so. Salaries of public officials and of state employes should be governed by the same principle that controls employment in private life. If the state can obtain a competent warden at \$2,500 a year—and the majority are of opinion that the present warden is a capable and efficient man—the finding that greater pay should be allowed seems unwarranted.

The riot was a manifestation of the breaking down of the experiment of conducting the government of the state through the instrumentality of interdependent boards. Their objective is, "Get people on the pay roll", and their slogan is "Keep them there." The civil service commission, not in its personnel, but in its power of burdening the people, is the chief offender. The people of the state, in sheer defense of their reserved rights and inherent dignity, as well as in the interest of economy and other reforms, should be encouraged to undertake the elimination of the power that operates to rob them of the services of their chief executive and other elected officers, as well as their own participation in the governmental affairs of the state.

The other members of the committee indulged in some sarcasm when addressing themselves to the adjutant general and his activities during the riot. But in that, as in their suggestions about other individuals and conditions, they deplored the symptoms and ignored the disease. The adjutant general failed of performance in the emergency for the same reason that the prison administration failed at the critical moment—no contact with or responsibility to the people. Contrary to the prevailing rule in every other state whose laws I have examined, the adjutant general of Colorado is not appointed by the governor, nor is his position terminative this side of military retirement age, 64 years, and like the swarm of job holders protected by



the civil service, he is not spurred to excellency of accomplishment. All he has "to do is sign the pay roll" and the less he undertakes the less likely is he to do what might make his removal possible.

I join Messrs. Grant and McAllister in commending the attitude of organized labor in the matter of the employment of inmates of the penitentiary in public work. The representatives of labor presented a constructive program that, if it be put into operation, will not only give employment to those unfortunately confined in the penitentiary, but a vast saving will be worked to the state.

I trust the legislature will rise to the performance of a plain duty, and regardless of the short-sighted policy of those who benefit from state contracts, see to it that laws are enacted which will make the plan presented by organized labor effective to its fullest possibilities. The plan makes possible the greatest good for the greatest number, and selfish interests must be crushed if they intrude.

I must profess that it appears significant that in presenting the thought of operating farms by convict labor, the majority found that it would be impracticable to do so on state owned lands. They feared the state land board would repeat the action it once took of cancelling a lease upon state land so used, thus confessing a fear of a board and intimating a belief that a board cannot be controlled or leases so drawn that cancellation would be impossible under any reasonable or decent circumstances. Yet they found it easy to learn that a desirable plot of ground can be bought near Canon City for farm purposes. Always, as becomes more and more apparent, every agency of the state, whether clothed with any power in the premises or not, inclines its ear to the appeal of somebody with something to sell. With the thousands of acres of land owned by the state it would not be difficult to select some of it and inaugurate farming along the lines of advanced thought, both on the subject of tilling the soil and the employment of the inmates of the penitentiary. Simply as an instance of what the state owns and which could be used in the contemplated enterprise, if an eye single to the interest of the state were the only consideration, I make record that a section of as good land as perhaps the whole state affords, the title to which is in the state, lies within one mile of Ft. Morgan. This land is in the very heart of what is some of the best beet producing soil in the whole West. There is no reason why such a site should not have consideration in any scheme that looks toward the employment of the convicts in the industry of farming. The impracticability of such a plan can only be found, I venture to believe, in the minds of my colleagues of the committee and men who have land to sell.



Unless I have written to no purpose, what I believe the situation demands appears from the foregoing, but for emphasis I summarize as follows:

1. That under no circumstances shall the pardon board be re-established. The present chief executive, although his humanitarian promptings are universally recognized, has kept an even keel and set a precedent which should not be disturbed or overturned.

2. That unless and until a complete and disinterested survey, such as this committee could not make, shall establish the utter impracticability of the state making use of its own property, no steps be taken for the purchase of land for use of the penitentiary. If the state land board is beyond control as the law now is, suitable amendments may and should be enacted.

3. That in order that the people, through officials subject to their franchise, may regain control of their government, I recommend:

(a) Abolishment of the civil service commission and repeal of the amendment and laws under which it operates. Beautiful though it is in theory, civil service in Colorado has demonstrated that political employes appointed by elected officials may be trusted to discharge their duties with greater efficiency and willingness of spirit than political employes selected by a political civil service commission responsible to no one.

(b) The members of the board of corrections should resign. They have served too long and are too smug and complacent in their positions. The statute (Sec. 583, C. L. 1921) expressly requires that they meet monthly at the penitentiary, and oftener when necessary. They meet there only intermittently. They receive their traveling and other expenses when attending meetings, two of their number constitute a quorum, and many of their meetings are held in Denver, where Mrs. Grenfell resides, although the institutions they control are in each instance more than 100 miles from Denver.

It is fair to say that on two occasions and to different governors, Mrs. Grenfell has tendered her resignation. Messrs. Moynihan and Hoag should join her in doing what amounts at least to a patriotic contribution to the solution of the problem.

(c) That the warden and the deputy warden should resign.

(d) That as rapidly as conditions permit the guards be replaced by men of honesty and firmness of character (some of that kind are now there) and that the newly constituted board of corrections see to it that the salaries of the guards are sufficient to attract and keep men of the calibre required. I believe a new board would find opportunities for savings that would leave adequate funds in their hands for such salaries.



(e) That the real cause of the trouble, which naturally manifested itself in the desire of imprisoned men to obtain freedom, be treated by a thorough renovation of the state government. The boards and bureaus that are answerable neither to the people nor to the peoples' elected officers must be eliminated in large part, and their duties, if found to be necessary at all, be transferred to the supervision of elected officers.

(f) That if it be true, as my colleagues believe, the governor has not time to explore into the multitudinous reasons which they believe warrant jail deliveries, that the statutes governing automatic paroles be made so certain of operation that the governor may be relieved of any consideration of such matters, except in those rare cases—which, I believe, are the only ones the governor should consider—when by reason of the technicality of the law the courts are powerless to relieve.

(g) That in the meantime the civil service commission keep its messy hands off, unless it is prepared to demonstrate that the mighty as well as the miserable will suffer dismissal through its acts. The boast of the commission, commended by my colleagues, that it has never failed to dismiss a guard when tried, serves only to bear out the majority's opinion that the guards should receive larger pay. For then the guards could indulge in certiorari, quo warranto and mandamus as do those who are over them.

(h) The adoption of the plan of organized labor for utilizing the services of the inmates, and the enactment of such laws as will result in the full use of the plan.

(i) The use of state land for farming purposes with convict labor.

(j) I join in the recommendations of my colleagues contained in their numbered paragraphs 2, 5, 6 and 9, but to the extent only that a chaplain be employed, that convicts be employed upon all public roads, the state to pay for their subsistence, and that a portion of the convict's earnings be credited to him for such use as he desires to make of it.

(k) I also join in recommending that a complete, thorough and disinterested audit be made of the books, accounts and affairs of the board of corrections.

Respectfully,

BENJAMIN C. HILLIARD.

Honorable William H. Adams,  
Governor of Colorado,  
The State House,  
Denver.



**RECEIVED**

**MAY 17 2016**

**STATE PUBLICATIONS  
Colorado State Library**