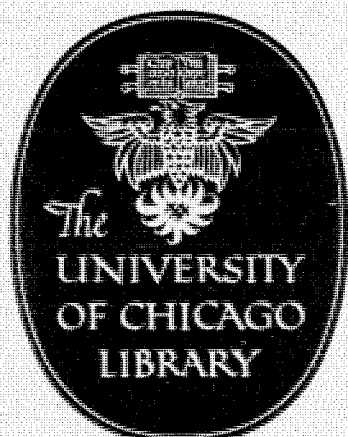


# **Exhibit 1-A**

**COMMONWEALTH OF VIRGINIA**  
**BOARD OF CORRECTIONS**

**REPORT  
OF THE  
MECKLENBURG CORRECTIONAL CENTER  
STUDY COMMITTEE**

**November 7, 1984**



Gift of  
Prof. Norval Morris

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Case 3:19-cv-00332-REP Document 1-2 Filed 05/06/19 Page 4 of 98 PageID# 104

**BOARD OF CORRECTIONS**

**MECKLENBURG CORRECTIONAL CENTER**

**STUDY COMMITTEE**

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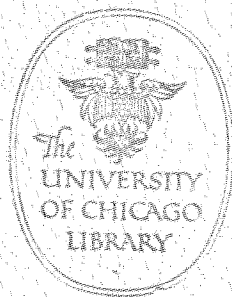
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*Gift of Morris  
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**TABLE OF CONTENTS**

|                                |            |
|--------------------------------|------------|
| <b>EXECUTIVE SUMMARY .....</b> | <b>E-1</b> |
|--------------------------------|------------|

**PART I--INTRODUCTION**

|                                                                        |           |
|------------------------------------------------------------------------|-----------|
| <b><u>Chapter 1--Purpose and Scope .....</u></b>                       | <b>1</b>  |
| A. The Mecklenburg Correctional Center Study Committee .....           | 1         |
| 1. Background .....                                                    | 1         |
| 2. Appointment of the Study Committee .....                            | 7         |
| 3. Study Committee Membership and Staff .....                          | 7         |
| B. Study Committee Charge .....                                        | 8         |
| C. Study Methodology .....                                             | 9         |
| <b><u>Chapter 2--The Mecklenburg Correctional Center (MCC) ...</u></b> | <b>15</b> |
| A. History of the Facility .....                                       | 15        |
| B. Incidents at the Facility .....                                     | 20        |
| 1. Background .....                                                    | 20        |
| 2. Chronology of Recent Events .....                                   | 20        |

**PART II--CONCEPT AND DESIGN OF THE MECKLENBURG CORRECTIONAL CENTER**

|                                                                                       |           |
|---------------------------------------------------------------------------------------|-----------|
| <b><u>Chapter 3--Programmatic Issues .....</u></b>                                    | <b>25</b> |
| A. Introduction .....                                                                 | 25        |
| B. The Commonwealth's Most Violent and Disruptive Inmates .....                       | 27        |
| 1. Background .....                                                                   | 27        |
| a. MCC--An Institution Specifically Designed for Violent and Disruptive Inmates ..... | 27        |
| b. The "Phase Program" .....                                                          | 28        |
| (1) Evolution of the Program .....                                                    | 28        |
| (2) Criteria for Assignment to MCC .....                                              | 38        |

|                                                                                                  |    |
|--------------------------------------------------------------------------------------------------|----|
| (3) Profile of "Phase Program"                                                                   |    |
| Inmates .....                                                                                    | 40 |
| 2. Findings and Recommendations .....                                                            | 41 |
| a. The Concept of Utilizing a Single Institution to Confine Violent and Disruptive Inmates ..... | 41 |
| b. The "Phase Program" .....                                                                     | 46 |
| (1) Criteria for Assignment and Available Bedspace .....                                         | 46 |
| (2) Treatment of Disruptive Inmates .....                                                        | 48 |
| (3) Phase Program Design .....                                                                   | 50 |
| C. Other Inmate Populations at MCC .....                                                         | 58 |
| 1. Background .....                                                                              | 58 |
| a. Special Purpose Assignments .....                                                             | 58 |
| (1) Administrative Transfer .....                                                                | 58 |
| (2) Investigative Hold .....                                                                     | 58 |
| (3) Death Sentence .....                                                                         | 58 |
| (4) Protective Custody .....                                                                     | 59 |
| b. Segregation .....                                                                             | 60 |
| c. Isolation .....                                                                               | 61 |
| d. Maximum Security Unit .....                                                                   | 61 |
| e. Mental Health Unit .....                                                                      | 62 |
| 2. Findings and Recommendations .....                                                            | 63 |
| a. General .....                                                                                 | 63 |
| b. Administrative Transfer, Investigative Hold, Segregation, and Isolation .....                 | 64 |
| c. Death Row .....                                                                               | 65 |
| d. Protective Custody .....                                                                      | 68 |
| e. Maximum Security Unit .....                                                                   | 70 |

|                                                                                          |           |
|------------------------------------------------------------------------------------------|-----------|
| f.    Mental Health Unit .....                                                           | 76        |
| <u>Chapter 4--Management and Operations Issues .....</u>                                 | <u>79</u> |
| A.    Introduction .....                                                                 | 79        |
| B.    Security .....                                                                     | 79        |
| 1.    Background .....                                                                   | 79        |
| 2.    Findings and Recommendations .....                                                 | 81        |
| a.    Consultant Recommendation and<br>Other Efforts to Improve<br>Security at MCC ..... | 81        |
| (1)    Consultant Recommendations<br>on Equipment and Physical<br>Security .....         | 81        |
| (2)    Consultant Recommendations<br>on Operations, Policies and<br>Procedures .....     | 85        |
| (3)    Other Efforts to Improve<br>Security at MCC .....                                 | 88        |
| b.    Basic Flaws in Design .....                                                        | 90        |
| c.    Security Procedures .....                                                          | 91        |
| C.    General Management and Supervision .....                                           | 93        |
| 1.    Background .....                                                                   | 93        |
| 2.    Findings and Recommendations .....                                                 | 94        |
| a.    Board of Corrections/DOC<br>Central Office Relationship .....                      | 94        |
| b.    DOC Central Office .....                                                           | 96        |
| c.    Regional Office .....                                                              | 98        |
| d.    Institutional Management .....                                                     | 100       |
| e.    Line Supervisors .....                                                             | 103       |
| D.    Staffing Issues .....                                                              | 109       |
| 1.    Background .....                                                                   | 109       |
| 2.    Findings and Recommendations .....                                                 | 110       |

|     |                                                                               |     |
|-----|-------------------------------------------------------------------------------|-----|
| a.  | Overall Staffing Levels .....                                                 | 110 |
| b.  | Security Staffing Levels .....                                                | 113 |
| (1) | Institution .....                                                             | 113 |
| (2) | Regional Office .....                                                         | 114 |
| (3) | Central Office/Adult Services<br>Division .....                               | 114 |
| c.  | Turnover and Recruitment of Security<br>Personnel .....                       | 122 |
| d.  | Staff Quality .....                                                           | 126 |
| e.  | Duties and Assignments for Security<br>Personnel .....                        | 127 |
| f.  | Recommendations .....                                                         | 130 |
| E.  | Staff Disciplinary and Grievance Procedures ..                                | 132 |
| 1.  | Background .....                                                              | 132 |
| 2.  | Findings and Recommendations .....                                            | 134 |
| a.  | Reversals of DOC Management<br>Decisions by Grievance Hearing<br>Panels ..... | 134 |
| b.  | Alleged Misuse of the State<br>Grievance Procedure .....                      | 141 |
| c.  | Exceptions to the State<br>Grievance Procedure .....                          | 142 |
| F.  | Staff Morale .....                                                            | 144 |
| 1.  | Background .....                                                              | 144 |
| 2.  | Findings and Recommendations .....                                            | 145 |
|     | <u>Chapter 5--Impact of Legal Proceedings</u> .....                           | 149 |
| A.  | Introduction .....                                                            | 149 |
| B.  | Recent Legal Proceedings Involving MCC .....                                  | 150 |
| 1.  | Background .....                                                              | 150 |
| a.  | April 1983 ACLU Settlement<br>Agreement Case .....                            | 150 |

|                                                       |     |
|-------------------------------------------------------|-----|
| b.    October 1984 ACLU Attorney Access<br>Case ..... | 154 |
| 2.    Findings and Recommendations .....              | 154 |
| <u>Chapter 6--Inmate-Staff Interaction</u> .....      | 163 |
| A.    Inmate-Staff Relations .....                    | 163 |
| 1.    Background .....                                | 163 |
| 2.    Findings and Recommendations.....               | 164 |
| B.    Inmate Grievance Procedures .....               | 168 |
| 1.    Background .....                                | 168 |
| 2.    Findings and Recommendations .....              | 169 |

### **PART III--COMPENSATION ISSUES**

|                                                                                    |     |
|------------------------------------------------------------------------------------|-----|
| <u>Chapter 7--Compensation for Correctional Officers<br/>and Other Staff</u> ..... | 173 |
| A.    Introduction .....                                                           | 173 |
| B.    Salary and Fringe Benefits for Correctional<br>Officers .....                | 173 |
| 1.    Background .....                                                             | 173 |
| 2.    Findings and Recommendations .....                                           | 174 |
| a.    General .....                                                                | 174 |
| b.    Correctional Officer Duties .....                                            | 175 |
| c.    Correctional Officer<br>Qualifications .....                                 | 178 |
| d.    Recruitment and Turnover .....                                               | 179 |
| e.    Salary Incentives .....                                                      | 181 |
| f.    Hazardous Duty Pay .....                                                     | 182 |
| g.    Cost and Other Implications of<br>a Salary Increase .....                    | 183 |
| h.    Summary .....                                                                | 184 |
| C.    Compensation for Other Correctional Staff ....                               | 187 |
| 1.    Background .....                                                             | 187 |

|    |                                                           |     |
|----|-----------------------------------------------------------|-----|
| 2. | Findings and Recommendation. ....                         | 187 |
| D. | Housing for the MCC Warden and Assistant<br>Wardens ..... | 188 |
| 1. | Background .....                                          | 188 |
| 2. | Findings and Recommendation .....                         | 188 |
| E. | Other Compensation .....                                  | 189 |
| 1. | Background .....                                          | 189 |
| 2. | Findings and Recommendation .....                         | 189 |

#### **PART IV--TRAINING ISSUES**

|                                                                                |                                               |     |
|--------------------------------------------------------------------------------|-----------------------------------------------|-----|
| <u>Chapter 8--Training for Correctional Officers<br/>and Other Staff .....</u> |                                               | 191 |
| A.                                                                             | Introduction .....                            | 191 |
| B.                                                                             | The Academy for Staff Development .....       | 193 |
| 1.                                                                             | Background .....                              | 193 |
| 2.                                                                             | Findings .....                                | 194 |
| a.                                                                             | Correctional Officer Training .....           | 194 |
| b.                                                                             | Supervisory Training .....                    | 198 |
| c.                                                                             | Specialized Training for<br>Supervisors ..... | 203 |
| d.                                                                             | Oversight Role of Academy .....               | 204 |
| e.                                                                             | Summary .....                                 | 205 |
| C.                                                                             | Institutional Training .....                  | 206 |
| 1.                                                                             | Background .....                              | 206 |
| 2.                                                                             | Findings .....                                | 207 |
| a.                                                                             | General .....                                 | 207 |
| b.                                                                             | Recent Progress .....                         | 209 |
| D.                                                                             | Training for Other Correctional Staff .....   | 211 |
| 1.                                                                             | Background .....                              | 211 |

|                                       |     |
|---------------------------------------|-----|
| 2. Findings .....                     | 211 |
| E. Recommendations for Training ..... | 212 |

**PART V--ISSUES INVOLVING THE SURROUNDING LOCAL COMMUNITIES**

|                                                                                                   |     |
|---------------------------------------------------------------------------------------------------|-----|
| <u>Chapter 9--The Mecklenburg Correctional Center and the Surrounding Local Communities</u> ..... | 217 |
| A. Communication .....                                                                            | 217 |
| 1. Background .....                                                                               | 217 |
| 2. Findings and Recommendations .....                                                             | 217 |
| B. Transportation of Inmates to the Local Courthouse .....                                        | 220 |
| 1. Background .....                                                                               | 220 |
| 2. Findings and Recommendation .....                                                              | 221 |

**FOOTNOTES**

**APPENDICES**

|                                                                            |     |
|----------------------------------------------------------------------------|-----|
| Appendix A -- Study Committee Charge and Work Plan ....                    | A-1 |
| Appendix B -- DOC Departmental Guideline 825 .....                         | B-1 |
| Appendix C -- Sharp Staffing Formula .....                                 | C-1 |
| Appendix D -- Example of Post Audit and Application of Sharp Formula ..... | D-1 |

**EXECUTIVE SUMMARY**

## EXECUTIVE SUMMARY

The Mecklenburg Correctional Center Study Committee was appointed by the Chairman of the Board of Corrections on August 14, 1984 to examine incidents which occurred at the Center this past spring and summer, with special attention to be given to the concept and design of this maximum security facility, and the adequacy of compensation and training of the personnel who operate the facility. The Committee's work has been conducted in approximately ten weeks and included both an announced and an unannounced visit to the facility. During the study, the Committee had the opportunity to discuss the issues with well over 100 individuals, both inside and outside the Department of Corrections.

It is the Committee's view that the historical development of managerial and operational problems over an extended period, beginning with the opening of the facility in 1977, led to the recent series of serious incidents at the Center. Although considerable progress has been made in recent months to address these problems, much work remains to be done. The Committee has concluded that no single individual was solely responsible for the problems. If, however, responsibility is to be assigned for these incidents, the Committee believes it must be shared by many individuals-- including the members of this Committee and the Board of Corrections.

The Committee believes that the Mecklenburg Correctional Center has the potential to be a model of effective and efficient

correctional practice, rivaling any correctional institution in the nation. Regrettably, this potential has not been fully realized.

The problems the Committee identified and observed developed over a long period. Thus, it is unlikely that their resolution can be accomplished in the short span of weeks or months. Perhaps the Committee's strongest advice to those responsible, and to all who may consider this report, is not to be again lulled into a sense of complacency or assume that there may be quick resolutions to the difficulties the Center has experienced. History clearly demonstrates that responding to correctional crises in the Commonwealth or elsewhere solely in terms of additional security equipment and construction features may be of little more than cosmetic value, while the underlying problems remain to resurface once more.

The Committee's observations and recommendations are intended to ensure that in the attempt to resolve the problems at Mecklenburg, there is not too much reliance on short-term solutions, specific only to Mecklenburg.

The Board has been given the responsibility to "monitor" the Department of Corrections. It is the intent of this Committee, as members of the Board, to continue to take that "monitoring" responsibility seriously in order to ensure that the systematic degeneration of the correctional operations which occurred at the Mecklenburg Correctional Center does not occur again at any institution in the Virginia Department of Corrections. The Committee acknowledges this goal as members of the Board

and commends to those who may succeed us the essential need for continuing critical scrutiny of the Virginia corrections system.

Our conclusions and recommendations are summarized below. (For the purposes of simplicity, the Board of Corrections is referred to as the "Board," the Department of Corrections as "DOC" and the Mecklenburg Correctional Center as "MCC.")

### PROGRAMS

MCC was specifically designed to confine the Commonwealth's most disruptive inmates in a single maximum security setting, with an important secondary purpose of utilizing a special program--the "Phase Program"--to modify and improve behavior to a point where these inmates could be returned to the general population of other correctional facilities in the Commonwealth. During its research, the Committee found that in planning for the facility no projection was made as to the actual number of bedspaces needed to confine the most disruptive inmates, with the result that many more cells were constructed than current estimates indicate will be needed in the foreseeable future. Thus, over the past seven years differing inmate assignments and programs have proliferated at MCC in an attempt to utilize available bedspace. These numerous programs, with their different goals and requirements, have caused confusion and frustration for both correctional personnel and inmates. The specific program designed to treat the disruptive inmates has been compromised due to these and other factors. Despite these

problems, the program has met with some success in reducing violent acts by inmates. The Committee believes that the original intended purpose of MCC is fundamentally sound. That purpose, however, has not been given sufficient priority and has not been fully achieved.

**Recommendation 1:** MCC should continue to be used for the confinement of particularly disruptive inmates from other correctional facilities in the Commonwealth. At least one reason for this recommendation is the improved conditions at other correctional facilities which appear to have resulted from the transfer of particularly disruptive inmates to MCC.

**Recommendation 2:** DOC should continue to place disruptive inmates who have been transferred to MCC in a special program designed to treat these inmates to the point where they change their behavior and can safely be returned to the general inmate population of other institutions in the Commonwealth. DOC should assemble a team to reassess and redesign the MCC Phase Program consistent with appropriate clinical practice. The program team should include DOC personnel responsible for both correctional security and treatment, as well as other individuals with special expertise who are not employees of DOC. A proposed program team and work plan should be submitted to the Board of Corrections by January 1, 1985, for approval. The work of this program team should be completed and a report provided to the Board by no later than July 1, 1985.

**Recommendation 3:** In redesigning the program, particular attention should be given to:

- (a) structuring a more voluntary inmate commitment to participation in the program;
- (b) program management by on-line security and treatment personnel who will be responsible for implementing the program;
- (c) the need for immediate positive reinforcement of inmates who demonstrate appropriate, desired behavior;

(d) to the extent possible, the provision of meaningful work opportunities for inmates in the program;

(e) specific, objective criteria to guide classification decisions; and

(f) the need for a process to evaluate and reassess the program to be implemented.

**Recommendation 4:** Although there have been significant improvements in the process for assigning inmates to MCC, the Committee remains concerned that assignment criteria are not, at this time, sufficiently precise. The Committee recommends a further review of the MCC assignment criteria in conjunction with Recommendations 2 and 3 to ensure that only the truly disruptive inmate is transferred to MCC.

**Recommendation 5:** DOC should consider seeking technical assistance and funding from the National Institute of Corrections (NIC) in implementing Recommendations 2-4. NIC currently is soliciting grant proposals for the development of a national model to "guide the management and confinement of disruptive maximum security inmates."

**Recommendation 6:** The special purpose of MCC should not be jeopardized by the assignment of inmates to the facility primarily for the purpose of utilizing available bedspace.

**Recommendation 7:** The number of "assignment categories" at MCC should be reduced to ensure that the facility will be able to fulfill its original function of being a special purpose facility for the confinement of the Commonwealth's most disruptive inmates.

**Recommendation 8:** "Administrative transfer," "isolation," and "segregation" assignments should be continued at MCC. The "investigative hold" assignment should be discontinued except for the assignment of inmates already confined at MCC before an "investigative hold" assignment was appropriate. If there is to be any difference in the meaning of various assignments at the facility--for example, between "isolation" and "segregation"--then there must be perceivable differences between the assignments. No meaningful distinctions probably can or should be made on the basis of "privileges," such as television, etc. Thus, efforts should be made at least to confine inmates assigned to "isolation"

separately from other inmates, and to confine inmates assigned to "segregation" separately from those in the Phase Program. Because of their temporary nature, it does not appear that special steps are needed to confine "administrative transfers" and "investigative holds" separately from other inmates.

Recommendation 9: DOC should confine all death row inmates in one facility; that facility should be separate from the one at which inmates are executed. MCC is an appropriate such facility. In general, the Board of Corrections should support DOC's former policy of permitting death row to be operated as a general prison population area separate from the other inmate populations at MCC, rather than requiring death row inmates to remain in "lockdown" (i.e., confined to their cells except for periodic showers and individual exercise times in the pod area). However, in order better to control movement of death row inmates, assure appropriate access to attorneys, and thereby reduce risks to security, DOC and MCC staff should jointly develop special procedures for handling death row inmates. These procedures should be developed and reported to the Board by January 1, 1985.

Recommendation 10: Because it is easier to segregate protective custody inmates and provide them with the necessary protection at MCC than it is at most of the Commonwealth's other correctional facilities, and because sufficient bedspace is available at MCC, a protective custody unit should be maintained at MCC. DOC and MCC should develop special procedures for handling protective custody inmates, keeping in mind that they are in general not as disruptive as the Phase Program, segregation and isolation inmates, and should explore the potential for programs in addition to the tailor shop for protective custody inmates.

Recommendation 11. The maximum security unit should be moved from MCC unless sufficient personnel and capital outlay funds are made available to enable MCC to provide the same level of counseling services, jobs skills training, and recreation programs as are provided to maximum security inmates at other institutions in the Commonwealth. These inmates could be replaced, for example, by (1) inmates who would be appropriate for the Phase Program, (2) additional protective custody inmates currently confined in other institutions, or, possibly (3) if Recommendation 12 below is implemented, additional

mental health inmates from other institutions. The Committee believes this "exchange" can be implemented smoothly if the transfer criteria in DOC Departmental Guideline 825 are properly applied.

Recommendation 12: A small mental health unit should be retained at MCC for the temporary confinement of MCC inmates who the MCC medical and counseling staffs determine may have mental health problems. However, unless the additional psychological and psychiatric staff necessary for appropriate and adequate mental health care is made available, MCC should not be used for the long-term mental health care of inmates from MCC or other State correctional institutions. If such additional staffing can be provided, a larger mental health unit at MCC for long-term care of inmates with mental health problems might be appropriate, but such a unit should be a lower priority assignment category for use of space at MCC than the Phase Program and protective custody. Finally, MCC should not be used as a facility for the long-term care of the "criminally insane."

Recommendation 13: As long as space in the MCC mental health unit is available, it is not inappropriate for that unit to be used for the temporary confinement of inmates from Central State Hospital or other State correctional facility for the mentally ill to determine if those inmates can readjust to a prison environment before they are sent to another correctional facility.

### SECURITY

In June and July 1984 technical assistance reports examining MCC's security procedures, equipment and physical plant were prepared by consultants from the National Institute of Corrections. Over 50 specific recommendations for improvements were included in these reports. During its study the Committee reviewed these reports and noted the attention being directed to implementation of the recommendations. Breakdowns in

established security procedures were in large part the cause of the May 31 escape and August 4 hostage situation at MCC. The committee concluded that DOC is taking appropriate, prioritized steps to implement the consultant recommendations, as well as addressing additional areas intended to enhance security. Although physical security and staff adherence to security procedures have improved in recent months, consistency in adherence to established procedures remains a problem and must remain a high priority at MCC.

**Recommendation 14:** Completing the implementation of the security improvements at MCC recommended by the national consultants and DOC staff must remain a high DOC priority. The Board of Corrections should support all necessary and reasonable DOC funding requests for these improvements.

**Recommendation 15:** DOC should be required to report its progress in implementing recommended security improvements to the Board of Corrections on a monthly basis. DOC should also be required to report to the Board any decision not to implement or not to seek funding for a particular recommendation, and the reasons for that decision.

**Recommendation 16:** DOC and MCC should be directed to continue as a high priority the development and consistent implementation of, and strict staff adherence to, adequate security procedures for MCC.

**Recommendation 17:** The Correctional Officer stationed at the reception desk at the front entrance to the MCC administration building should not be armed with a firearm.

### MANAGEMENT AND SUPERVISION

The Committee recognizes that responsibility for problems at Mecklenburg must be shared by all management levels within DOC, including the Board.

The Board is a nine-member, part-time citizens board appointed to a four-year term by the Governor. Prior to 1982, the Board was solely an advisory board; the General Assembly amended the Code of Virginia, effective July 1, 1982, to provide that henceforth the Board was to be a policy-making board with the broad responsibility to oversee DOC, set program and fiscal standards for DOC, and, in general, "to monitor the activities and effectiveness" of DOC. However, the Board was not given additional resources to perform these important and demanding new functions. It still has the same staff today it did when it was merely an advisory board--one full-time secretary--even though it has indicated a need for additional staff since prior to July 1982.

The Study Committee believes this study has provided the Board with considerable insight into the correctional system in Virginia, while also highlighting the tremendous difficulties in fulfilling its responsibilities on a part-time basis without adequate staff. The Board does not have the time available to review most correctional programs in the depth MCC was reviewed by this Committee. The key to successful Board oversight in the future is access to reliable information, the availability of necessary staff, and an adequate independent budget. The Committee therefore believes strongly that the newly-created

Inspector General position for DOC should be included in the Board's budget and should report directly to the Board.

Serious security and morale problems developed at MCC over an extended period of time and at least partially contributed to the incidents at the facility this past spring and summer. Yet, information on the seriousness of morale and security problems at MCC was not presented to the Board prior to the May 31 escape from Death row. The Committee's interviews with DOC management officials indicated that they also lacked knowledge of the severity of the problems. The Board and Director of DOC did not have the management controls in place that would have provided information on the problems at MCC. It is clear that more effective management controls throughout the DOC organizational hierarchy are needed. The special attention now being directed towards MCC by DOC was warranted long before the recent incidents. Steps must now be taken to clarify responsibilities and practices of the Board and at the DOC central office, regional and institutional management levels.

One of the most critical problems at MCC is the skills and practices of institutional supervisors--those who have on-line authority for managing the institution. Visibility, communication, exercise of authority and decision-making by line supervisors at MCC were sorely lacking this past spring and summer, although the Committee noted improvements during its visits to the facility this fall. More appropriate and effective management controls throughout DOC may have prevented the recent incidents at MCC.

**Recommendation 18:** MCC should continue to be a top priority of DOC management. A Board of Corrections subcommittee and DOC management should meet with employees at MCC to discuss the findings and recommendations of this report. The Board should also request regular status reports from DOC on the implementation of the various recommendations in this report.

**Recommendation 19:** The reporting relationship of the new Inspector General to the Board of Corrections, the Director of DOC, and the Secretary of Transportation and Public Safety should be clearly defined and established by December 1, 1984. The Committee believes it is imperative that the Inspector General report directly to the Board and be included in the Board's budget. The Board is ultimately responsible for monitoring the activities of the Department and must have the information to do so. In turn, the Inspector General must have the independence and authority to: review security practices; investigate serious incidents; audit financial and management practices; and assist in developing management standards and controls. As is the practice in other State agencies and private institutions, the Committee believes direction and oversight of the audit function by an agency's Board is the most effective way to ensure this independence and authority. Hiring and evaluation of the Inspector General should be a joint responsibility of the Board and Director, while report distribution should be simultaneous to the Board, Director, and Secretary.

**Recommendation 20:** The DOC regional offices should increase their oversight of field activities. In particular, the Region II Administrator and his staff should have clearly defined responsibilities for implementing this Committee's recommendations specific to MCC. In order to ensure consistency among the regions in management oversight, the Committee also recommends that DOC report to the Board in the near future on the purposes and responsibilities of all regional offices.

**Recommendation 21:** The vacant Warden's position at MCC should be filled by an applicant experienced in both security and programs. The reestablishment of strong security measures initiated by the Acting Warden should remain the focal point of the new Warden during the next few months. Programs, however, are a necessary component of the facility and should be reviewed and refined. The Committee recommends that the new Warden take the following actions, among others, to continue improvements initiated in recent months:

- (a) establish better communication mechanisms;
- (b) develop a management reporting system (e.g. "management by objectives") to ensure that top MCC staff have clearly defined objectives and that, in turn, the Warden can monitor the progress of his staff;
- (c) make certain that the provisions of the 1983 ACLU settlement agreement continue to be incorporated into institutional operations;
- (d) revise institutional operating procedures; and
- (e) review the operation of the Phase Program.

The new Warden should be instructed to meet with the Board as soon as practicable to discuss his goals and objectives for MCC and the findings and recommendations of this report. MCC is a special institution which requires continuing Board involvement.

**Recommendation 22:** DOC should take the following actions in order to improve supervision at MCC:

- (a) Revise performance evaluation practices at MCC. Supervisors need to be retrained to use the employee performance evaluation system effectively. More emphasis should be placed on identifying tangible goals and objectives for a supervisor to meet, and identifying skill deficiencies requiring improvement. The central DOC personnel office should participate in this process.
- (b) Involve line supervisors (i.e. Captains, Lieutenants and Sergeants) in the revision of institutional operating procedures. This action would increase knowledge of procedures by these supervisors.
- (c) Increase individual supervisory training. Group training does not always account for individual weaknesses and constitutes only a short-term solution. (See Chapter 8 for more details).
- (d) Develop written definitions of job requirements specific to MCC for Corporals, Sergeants, Lieutenants and Captains. These should include descriptions of each supervisor's responsibility in specific situations as well as such general managerial duties as the performance evaluation of employees. Most importantly, a Sergeant's responsibility as a "building supervisor" should be well-defined.

- (e) Rotate MCC supervisors to other institutions to increase their knowledge of the correctional system and of more effective management practices.
- (f) Increase the number of Sergeant positions to ensure adequate supervisory coverage on evening shifts. This could be done without staff increases by reclassifying and training several Corporals or by eliminating Corporal position(s).

### STAFFING

MCC was intended and designed to have a high staff-to-inmate ratio. Authorized security staffing levels at the facility have remained relatively stable over the past four years. A high level of security staff turnover--position vacancies--has become a problem during the past year. A depleted qualified applicant pool in the local communities surrounding MCC has also developed into an increasingly serious problem. Creative solutions are needed to improve the quantity and quality of staffing at MCC.

The facility may need to increase its authorized staffing level. However, the Committee could not conclude whether this was necessary based upon its review of the process used by MCC and DOC to assess staffing needs. The Committee found inconsistencies in the MCC "post audit" process (the process by which an institution determines what posts are necessary at a facility) both (1) as conducted at MCC itself by various Wardens and their assistants over the years and (2) as compared to post audits conducted at other maximum security institutions. These inconsistencies made it impossible for the Committee to determine MCC's actual staffing needs, and may indicate a critical flaw in

the DOC resource allocation process.

**Recommendation 23:** DOC should be directed to conduct a new Post Audit of security staffing needs at MCC. It should be conducted by a team composed of DOC central office, regional and institutional personnel and at least one team member with special expertise not employed by DOC, by February 1, 1985. The current inconsistent post audit process and incorrect use of the "Sharp formula" to determine actual manpower needs at MCC are of great concern to the Committee since accurate staffing levels at this special purpose maximum security facility are of critical importance to the security of the facility.

**Recommendation 24:** The Board of Corrections should direct DOC to use the new Post Audit of MCC as an opportunity to identify possible systemwide deficiencies in the Post Audit process and in the application of the Sharp formula. This action also may help remove the apparent confusion within both other State agencies and the General Assembly as to what DOC security staffing levels are necessary and appropriate.

**Recommendation 25:** The new post audit to determine MCC's current staffing needs should consider a number of issues which arise from general observations on staffing made by the Committee during its two on-site visits to the facility. These include:

- (a) whether surveillance equipment (e.g., television cameras mounted on the wall in the hallways outside the pod areas) will lead to a reduction in the need for security positions;
- (b) whether use of a tactical team is the most appropriate method to respond to special security needs, what the appropriate size of the team should be, and what the impact is on overall staffing.
- (c) whether the officer and supervisory staffing level on the 12:00 midnight to 8:00 a.m. shift is too low;
- (d) whether seven transportation officers and two mail room officers are required;
- (e) whether the number of posts to which female officers are assigned should be expanded;

- (f) how soon the use of security officers to do janitorial tasks and administrative support duties can be eliminated.

Recommendation 26: DOC should implement a rotation system in which correctional staff from other institutions are rotated periodically to MCC on a temporary basis. Similarly, MCC correctional staff should be rotated periodically to other institutions to enhance their job experiences and broaden their perspectives. A "tour of duty" at an institution other than the officer's "home" institution, and a tour of duty at MCC for every officer in the adult corrections system, should be a factor considered in career progression and promotion.

#### EMPLOYEE GRIEVANCE PROCEDURE

DOC and the Department of Mental Health and Mental Retardation usually report the highest number of employee grievances among all state agencies each year. The high numbers more accurately reflect the high numbers of employees of the Departments, rather than inherent problems in their management of the grievance system. Employee grievances filed at MCC were reviewed and found to be consistent with those filed at comparable DOC facilities.

The Committee was told, however, of widespread concern in DOC that the high percentage of management decisions which had been modified or reversed by a grievance hearing panel over the past several years (35% modified or reversed during 1983-84) was undermining the effectiveness of DOC management. The Committee was not able to determine the extent to which DOC management had in fact been affected by these decisions; but it did note with concern that in four of nine cases over the past two years which

involved employee termination and in which management was not upheld, the employee had been terminated following a criminal conviction. In addition, statistics on the number of employee grievances which reached the hearing panel stage increased in fiscal year 1983-84 over what they had been in fiscal year 1982-83. For these reasons the employee grievance system needs to be reviewed in greater depth by the Board and DOC.

**Recommendation 27:** DOC should further emphasize training on management and supervisory responsibilities under the State grievance procedure, especially at the first two "management steps" of the procedure, which involve attempts to resolve management-employee disputes at the immediate supervisor and next highest supervisory levels.

**Recommendation 28:** The Board of Corrections and DOC should explore the possibility of amending DOC Departmental Guidelines to provide that mandatory disciplinary action be taken at least against employees who are convicted by a court or jury of a criminal offense, perhaps with the particular action taken being dependent upon the seriousness of the offense.

**Recommendation 29:** The Board of Corrections and DOC should request the Office of Employee Relations Counselors to review the Commonwealth's current grievance procedure--and in particular the hearing panel step of that procedure--to determine whether, in its judgment, reversals of DOC management decisions in cases where the employee was terminated because of a criminal conviction were justified. If not, the Board and DOC should request that the grievance procedure be amended to provide for either (1) the transfer of the final grievance procedure decision-making authority in such cases from the current hearing panel to some other entity or (2) mandatory disciplinary steps against employees so convicted, as described in Recommendation 28.

**Recommendation 30:** DOC management and supervisory staff should continue to take only those disciplinary actions against an employee which are deemed appropriate in the circumstances of the particular case. In order to protect DOC management, the Board of Corrections, through the

newly-appointed Inspector General, should investigate any allegation that disciplinary action was taken against a DOC "managerial employee," warden or assistant warden for reasons other than that the employee's conduct warranted the action.

**Recommendation 31:** The State Department of Personnel and Training and the Office of Employee Relations Counselors should be asked to review the exceptions to the State grievance procedure to determine if the "agency head" and "managerial employees" exceptions should be expanded, with a view to providing that DOC Superintendents, and other correctional personnel with a rank higher than Major, would not be permitted to file a grievance under the State grievance procedure for disciplinary action taken against them, including termination.

### **MORALE**

Staff morale at MCC had become a serious problem prior to the incidents at the facility this past spring and summer, and contributed to those incidents. The former Warden had identified the problem and had initiated steps to improve the situation. The intense scrutiny of the facility by the media and other groups has compounded the problem. Staff perceptions of low pay, understaffing, inappropriate duties and "having lost to the ACLU" have undermined MCC staff cohesiveness and DOC's ability to manage the institution. Many positive steps have been taken by DOC to address this problem, but substantial improvements will likely take a significant period of time.

**Recommendation 32:** Implementation of the recommendations in this report should significantly improve staff morale at MCC. Additional actions should be taken to improve morale and ensure employees do not feel "isolated" or unsupported by the DOC administration. These actions should include:

- (a) Periodic visits to Mecklenburg by DOC officials and members of the Board of Corrections -- These visits should be both announced and unannounced and should occasionally include closed meetings with employees.
- (b) Formation of employee teams -- The establishment of a Tactical Team to respond to situations in which inmates are disruptive and to supervise outdoor recreation is the first step in fostering a teamwork approach to solving problems and operating the facility. Rotating staff assignments to the Team would be an appropriate second step.
- (c) Involve officers and other security personnel in program planning and management -- Officers have valuable insights into inmate behavior which could be helpful in program planning. Another potential area for staff involvement is in the revision of Institutional Operating Procedures (IOPs). Use of supervisors and staff in this process should result in improved quality of these procedures and greater staff knowledge of them.

#### IMPACT OF LEGAL PROCEEDINGS

Within the past 18 months there have been two legal proceedings affecting MCC which have had a major impact on the facility. The first was a settlement agreement signed by the Commonwealth in April 1983 in a suit which alleged inhumane prison conditions and guard brutality at MCC and which was filed by inmates at MCC represented by the American Civil Liberties Union (ACLU) National Prison Project. The agreement provided that DOC would make a number of changes in the conditions and programs at the facility. Two were of particular concern to DOC. The first was a change in the Phase Program under which inmates

will be transferred to another facility after two years at MCC, even if they do not complete the program. The second was a major increase in the number of required hours of outdoor recreation for inmates which DOC and MCC were concerned could not be met with current staffing levels. Otherwise, however, DOC officials indicated to the Committee that they "really hadn't lost anything" in the agreement and that, with regard to one change in the Phase Program under which inmates would begin in Phase II rather than Phase I, DOC had been considering adopting that change anyway.

The second legal proceeding affecting MCC was a court order issued in October 1984 providing for greater attorney access to inmate-clients.

Both proceedings have had an inordinate and disproportionate impact on staff morale and program operations at the facility. Most staff seem to believe the ACLU or the inmates "are running this place." The Committee believes that the problem is not one of the terms of the agreement or order but the manner in which they have been communicated to MCC management and staff-- and in particular the 1983 ACLU settlement agreement. Especially in view of the fact that DOC did not object to most of the contents of the 1983 agreement, the Committee believes that DOC and representatives from the Office of the Attorney General, which represented DOC in the suit, should have taken greater steps to ensure that more accurate and detailed information about the agreement was transmitted more promptly to MCC management and staff. Apparently most staff have not seen or read the agreement. What they know about it they learn from rumors, many of which are

incorrect. The DOC central office and the Region II office also should have monitored MCC acceptance and implementation of the decree more closely.

**Recommendation 33:** DOC personnel--from officials in the DOC central office to correctional officers in individual institutions--should receive additional and more detailed training in the developing area of "prisoner's rights" law so they are better informed as to their rights and obligations under the law as corectional personnel and can therefore better perform their responsibilities. The Office of the Attorney General should be asked by the Board of Corrections and DOC to assist in this training.

**Recommendation 34:** The Board of Corrections should direct DOC that, whenever a court order is entered against, or a settlement agreement is signed by, the Commonwealth directing that conditions or programs at a DOC institution be changed, management officials at the DOC central office, regional office, and at the affected institution, as well as all correctional staff at the affected institution, should be fully and immediately informed by DOC of the requirements of that order or decree. The Office of the Attorney General should be asked by the Board of Corrections and DOC to assist in this process.

**Recommendation 35:** Each DOC management level--from the DOC Director to the Warden of each affected institution--must make it clear to all affected DOC employees that DOC expects to comply fully with any court order entered against, or settlement agreement signed by, the Commonwealth which may affect DOC or its individual institutions.

**Recommendation 36:** DOC should be directed to review its procedures for ensuring full compliance with any court order entered against, or settlement agreement signed by, the Commonwealth affecting DOC or its individual institutions.

**Recommendation 37:** The Study Committee made no findings on DOC or MCC compliance with the August 1983 ACLU settlement agreement or the October 1984 ACLU attorney access order. DOC management should be directed to (a) make certain that DOC and MCC are in compliance with both the 1983 agreement and 1984 order, and to (b) file monthly reports with the Board on that compliance.

### INMATE/STAFF INTERACTION

Over the past five years the number of inmate assaults on correctional personnel has been higher at MCC than at any other correctional facility in the State system. In some instances, inmates resort to throwing urine or feces on officers. Verbal abuse of staff by inmates is a constant occurrence.

The Committee is confident, on the other hand, that while verbal and physical abuse of inmates by staff at MCC clearly has occurred, it is neither a frequent nor substantial problem. The Committee is concerned, however, that staff at the facility may be too disposed to use force in marginal circumstances, and that some officers may inappropriately swear at or bait otherwise excitable inmates.

The filing of inmate grievances at MCC increased dramatically during the past few months and has only recently begun to decrease. The Committee believes, in some respects, this is a good sign, since it indicates that the inmates can, and are willing to, deal with their complaints in an appropriate manner. Nonetheless, there is a high level of tension at the facility both between and among staff and inmates. Caution must be used in returning the facility to more normal operations, with due recognition of the need for security and reasonable regard for the concerns of both inmates and staff.

**Recommendation 38: DOC and MCC management and supervisory staff must continue to make it clear to MCC staff that assaults of, or otherwise**

abusive behavior directed towards, inmates by correctional staff is not condoned and will not be tolerated.

Recommendation 39: DOC and MCC management must continue to make it clear to inmates that assaults on MCC staff will not be tolerated and that inmates who assault staff will be prosecuted or otherwise disciplined to the extent permissible by law, DOC Departmental Guidelines, and MCC Institutional Operating Procedures.

Recommendation 40: DOC should be directed to review its Departmental Guidelines governing institutional disciplinary steps which may be taken against inmates who assault correctional staff, with a view towards making certain that (a) (e.g, assault with a weapon, threats to the physical safety of staff, throwing of human waste or food, and verbal abuse) is proportionate to the seriousness of the conduct and that (b) the penalty is imposed as swiftly as fairness and legal requirements will permit.

Recommendation 41: DOC and MCC management should continue to proceed cautiously in easing the current lockdown and restrictions on MCC inmates. Attention should be directed throughout this process to fundamental fairness for inmates and their need for productive programs.

Recommendation 42: DOC and MCC management should be directed to hire a full-time chaplain for MCC; and DOC should be directed to request, and the General Assembly should be asked to provide, the necessary funds for the position.

Recommendation 43: DOC and MCC management should be directed to monitor regularly Inmate Grievance Procedure as it has been implemented at MCC to make certain that it continues to be appropriately communicated to inmates, that there is free and easy access by inmates to the various aspects of the procedures, that there are no reprisals against inmates for use of the procedures, that inmates receive written responses to their grievances indicating the reasons for management decisions concerning the grievances, and that grievances are processed in an appropriate and timely manner.

Recommendation 44: DOC, Regional Office, and institutional management should be directed to analyze regularly and systematically the number, scope, and content of inmate grievances filed at

the Commonwealth's various correctional facilities, for the purpose of assuring that institutional managers at MCC and other facilities receive the necessary information and take appropriate action when such an analysis reveals the potential for serious incidents at a correctional facility.

### COMPENSATION

The job requirements for a correctional officer, possible salary inequities between officers and corporals, increasing turnover among correctional officers and possible salary disparities in public safety employment classifications combine to make a valid case for increasing the compensation of correctional officers. However, the Committee's review of the compensation issue revealed system-wide problems which a salary increase alone will not resolve. The frequently cited "low quality of security personnel" is arguably exaggerated and unfair; it is clearly more the result of deficiencies in employee selection, evaluation, promotion, and training practices than a lack of effort on the part of employees. The Committee believes that deficiencies noted in the personnel system must be addressed, and in so doing ample basis will be shown for increased appropriations. The Committee's recommendation is intended to promote long-term improvements in the quality of correctional officers.

**Recommendation 45:** The Committee recommends that the Governor and General Assembly consider granting a salary increase to correctional officers only. However, the Committee would not support a salary increase unless it is tied to a major reassessment

of DOC personnel practices for security positions. The Committee recommends that this reassessment include the following actions:

- (a) Review the job duties of security personnel and compare them to other public safety classes.
- (b) Review the qualifications of security personnel in relation to other public safety classes in Virginia and corrections personnel in other states.
- (c) Develop a performance-based system of training at the Academy for Staff Development for supervisors and officers. Training performance should become a consistent part of an employee's performance evaluation.
- (d) Develop methods to link job retention, promotions, and salaries to the completion of education and training. In particular, completion of training should be a requirement for promotion.
- (e) Develop a consistent statewide procedure for selecting corrections officers, including effective use of interview panels for officers and thorough background investigations.
- (f) Revise the exit interview process to obtain better information on the reason for voluntary terminations by correctional officers, particularly information specifically related to salary issues.

**Recommendation 46:** The Board of Corrections and DOC should request the State Department of Personnel and Training to conduct a study of compensation for non-security staff at the Commonwealth's various correctional facilities to determine if such staff is adequately compensated.

**Recommendation 47:** The Governor and General Assembly should be asked to authorize funding for housing for the Warden and Assistant Wardens at MCC. Should funds be difficult to authorize in light of other State priorities, the Committee recommends that funds be authorized only for a Warden's home.

**Recommendation 48:** DOC and MCC officials should continue to purchase reasonable amenities for staff members. A decision to build or lease a bachelor officers quarters (BOQ) should be delayed until completion of both a staffing plan for MCC and a cost analysis of alternative methods for providing such housing. These efforts should include plans

for continued use of the available bedspace in the current BOQ.

### TRAINING

The Committee found the training programs at the DOC Academy for Staff Development and at MCC to be fundamentally sound and effective. Training, however, is not effectively integrated into either the institutional management structure or the employment and promotional system. Increased training of line security supervisors is particularly necessary, as is greater emphasis on specialized training in maximum security institutions. The development of performance-based training and testing must be implemented to ensure the effectiveness and justify the expense of training of correctional personnel. DOC currently places little emphasis on critically reviewing an officer's abilities during training, or in linking successful performance in training to promotion.

**Recommendation 49.** The Board of Corrections should direct DOC to conduct an assessment of training requirements for personnel at maximum security institutions. MCC should be a pilot institution for such an assessment, which would include:

- (a) an individual "skills inventory" of all supervisors at MCC, in conjunction with a more general survey of all MCC employees;
- (b) a specific training program tailored for each supervisor; and
- (c) the Institutional Training Officer as a full participant in the assessment.

**Recommendation 50.** The Criminal Justice Services Board should conduct an in-depth review of correctional

officer and supervisor minimum training standards. This review should focus particular attention on:

- (a) increasing requirements for minimum in-service training of correctional officers and Corporals, with emphasis on use of Academy rather than institutional instructors;
- (b) determining whether Lieutenants and higher grade personnel require increased minimum training;
- (c) increasing minimum in-service training standards required for Sergeants;
- (d) making it clear to personnel that credit is given towards the in-service training requirement for completion of additional specialty courses, and making it easier for personnel to obtain certification of that training once it has been completed;
- (e) requiring specialized training for officers at maximum security prisons; and
- (f) requiring that credit for training be based upon a system for measuring the performance of correctional personnel, rather than, or in addition to, attendance at more training sessions for a prescribed number of hours.

Recommendation 51. If the previous training recommendations are adopted and minimum training standards are revised, DOC's staffing formula for correctional institutions should be amended to reflect the increased time required for training.

Recommendation 52. The Board of Corrections should direct DOC to take the following steps:

- (a) initiate a system to link performance in training to recruitment, job retention, promotion, and the performance evaluation system. The Academy should institute a performance-based system for supervisors and for correctional officers in basic training and consider adding physical agility tests to its training requirements;
- (b) require that the criteria for promotion within security personnel classifications include successful completion of mandatory training courses;
- (c) expand opportunities for correctional officers and Corporals to participate in advanced and supervisory course offerings;
- (d) evaluate the performance of institutional manage-

ment at least in part on their ability to train employees in a timely and effective manner;

- (e) assess the capabilities and training needs of Institutional Training Officers;
- (f) examine and redefine the role of Institutional Training Officers in terms specific to their institution, to the end that Institutional Training Officers become part of the managerial team at each institution;
- (g) require Institutional Training Officers to submit annual reports to their Warden and Regional Administrator and to the Academy assessing the training needs of their institutions and describing their plans for meeting those needs;
- (h) consider having Institutional Training Officers be responsible for specialty courses and assigning responsibility for general institutional orientation and training to Captains. Supervisors should be a part of the training team at each institution.

**Recommendation 53:** DOC and a subcommittee of the Board of Corrections should study all non-security positions at MCC to determine:

- (a) whether non-security staff at the institution possess the basic job qualifications and training necessary to perform their duties adequately; and
- (b) whether non-security staff at the institution need specialized training in how to deal with maximum security inmates, especially disruptive inmates.

#### **MCC AND THE SURROUNDING COMMUNITIES**

The existence and operation of MCC is of tremendous economic value to the surrounding communities. Incidents during the summer have focused unnecessary, sensationalized attention on the area. The initial fear invoked in residents by the escape seems largely to have dissipated. More important to the populace is the development of a means for more formal contact and

communication with the facility in the future. An historical problem continues to be more vexing than the incidents of this past spring and summer: steps must be taken to reduce the profane and obscene verbal abuse directed at the citizens of the area by inmates during transportation to and from MCC.

**Recommendation 54:** Officials at MCC should meet periodically with elected officials and other individuals from the surrounding local communities in an effort to improve communications and enhance an understanding by local citizens of the purpose of, and problems faced by, the facility.

**Recommendation 55:** MCC should work with elected officials in the surrounding local communities to establish a telephone network for alerting local officials of emergencies at the facility which might have an impact on those communities.

**Recommendation 56.** DOC and MCC should explore various alternatives to prevent verbal abuse of local citizens and other disruptive conduct by MCC inmates being transported to the Mecklenburg County Courthouse for the trial of criminal offenses committed at the institution. Possible alternatives include:

- (a) conduct the trials in the courtroom at MCC;
- (b) use a vehicle without windows to transport the inmates to the Mecklenburg County Courthouse;
- (c) construct, with State funds, an inmate waiting area adjacent to the Mecklenburg County Courthouse;
- (d) restrain disruptive inmates by handcuffing them to their belt after fair and appropriate warning; and
- (e) gag verbally abusive inmates after fair and appropriate warning.

### **DEATH SENTENCES**

During the course of this study, a number of questions were raised concerning the death sentence process, including the length of time inmates are spending on death row and the number of appeals and stays. The time constraints of the study did not permit the Committee to study all aspects of that process; its review, therefore, was limited to the propriety of housing death row inmates at MCC. However, the Committee recommends that the Board undertake a more detailed review of the death sentence process.

**PART I**

**INTRODUCTION**

**CHAPTER 1**  
**PURPOSE AND SCOPE**

**A. THE MECKLENBURG CORRECTIONAL CENTER STUDY COMMITTEE:**

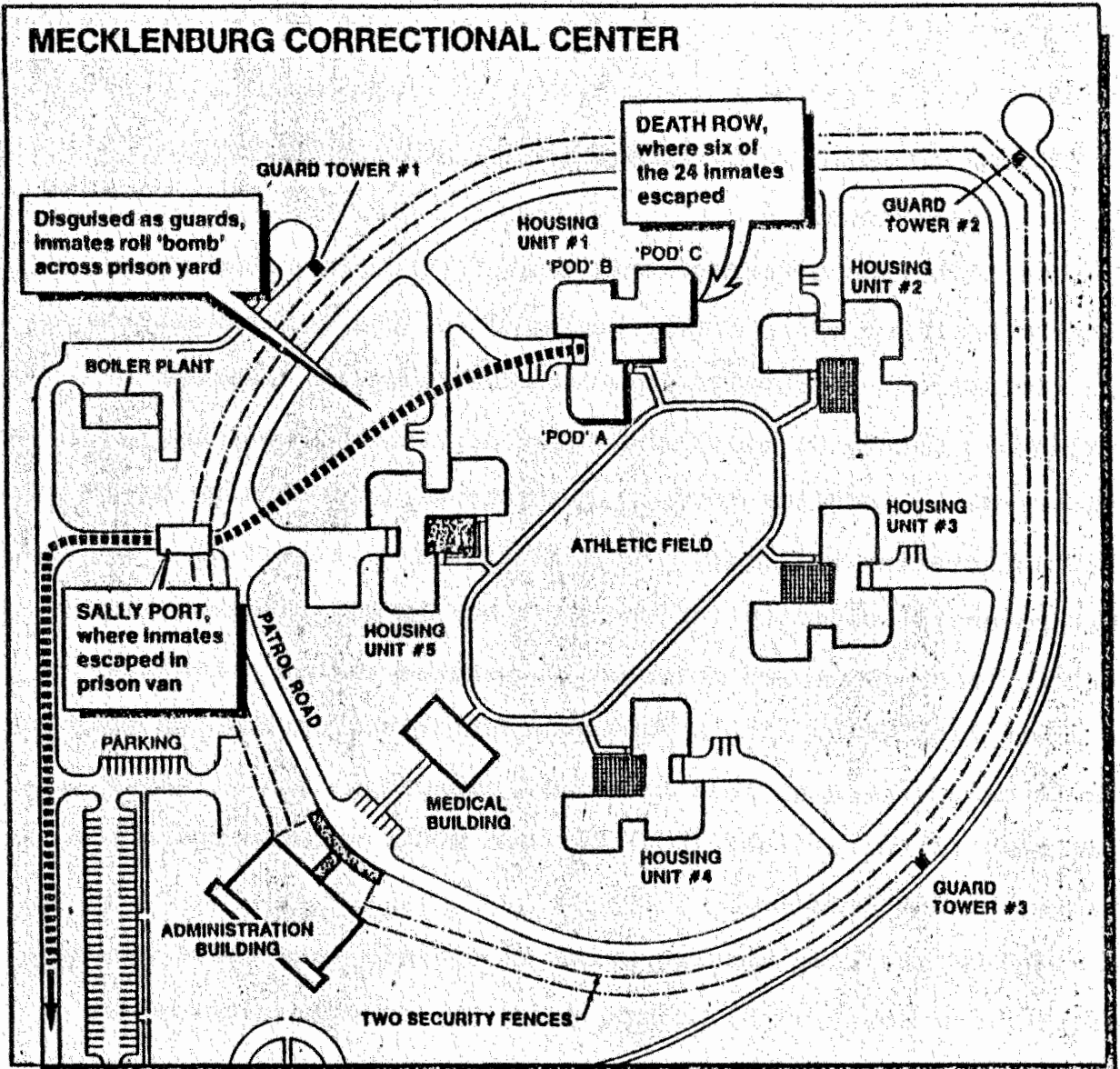
**1. Background:**

The Mecklenburg Correctional Center (MCC) is a maximum security facility specifically designed for the Commonwealth's most violent and disruptive inmates. The facility, located in Mecklenburg County 85 miles southwest of Richmond near the Virginia-North Carolina border, consists of five housing units, an administration building, and an infirmary (Figure 1). The total potential capacity for the facility is 360 inmates. However, in order to permit movement of inmates within a facility and among facilities, it is common practice nationwide for prisons to be operated at less than full capacity. The Virginia Department of Corrections (DOC) has set MCC's maximum operating capacity at 335 inmates.

Each of the five housing units is divided into three 24-cell "pods," for a total of 72 inmate beds per building (Figure 2). Some of the pods are divided by a wall into two separate 12-cell sub-units. Access to the pod "day rooms" (the open area outside the cells) and to each cell in the pod is controlled by the correctional officer assigned to the pod "control room," which can be entered only through the hallway outside the pod area. There is a staff bathroom across from each control room which is

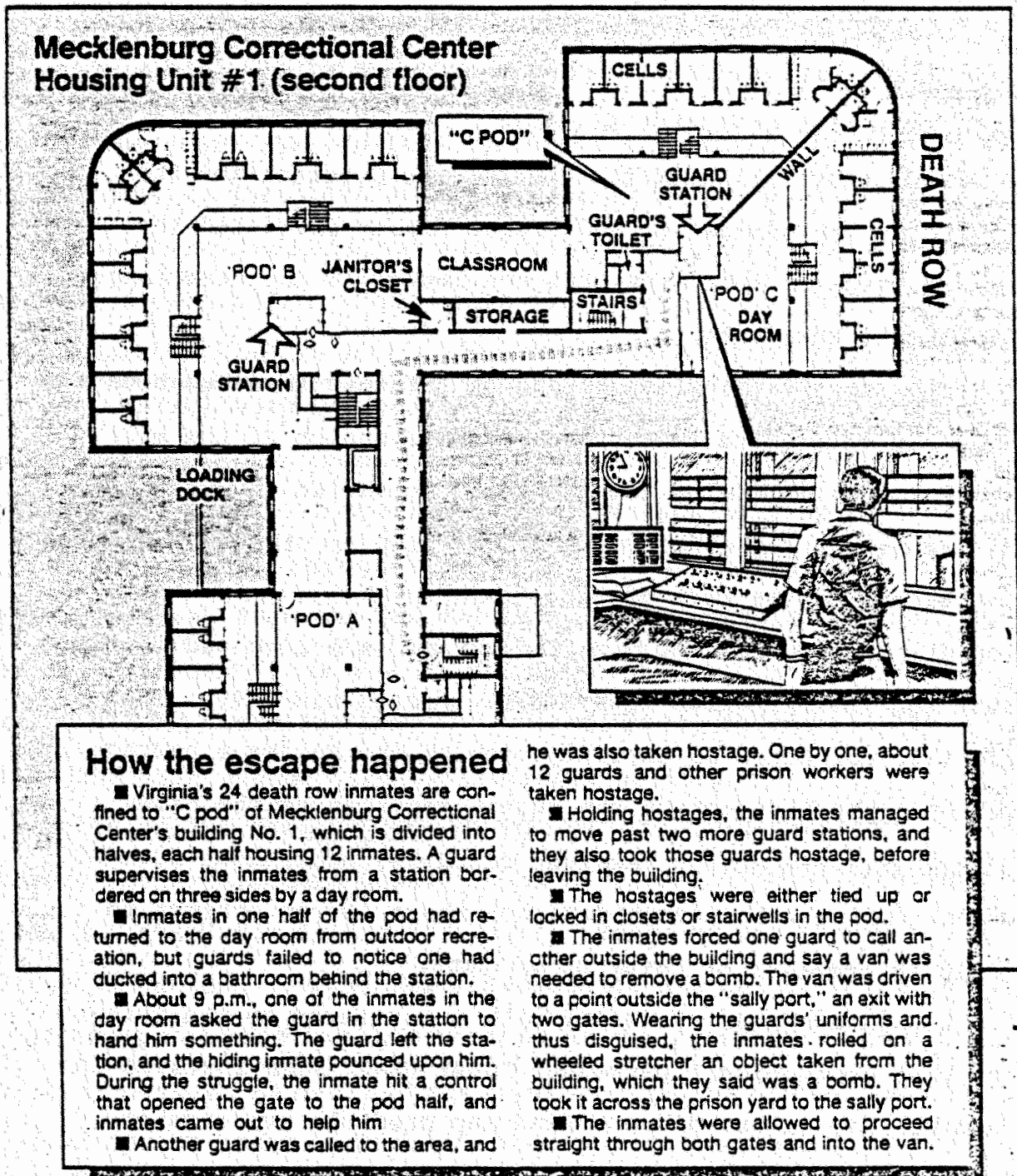
Figure 1

The Mecklenburg Correctional Center\*



\*The Richmond News Leader, June 2, 1984, p. 5, col. 4-6.

Figure 2

A "Pod" at the Mecklenburg Correctional Center\*

\*The Richmond News Leader, June 2, 1984, p.1, col. 4-6.

accessible only from the hallway.

During the spring and summer of 1984, several major incidents occurred at MCC, the two most notable of which were an escape of six inmates from death row on May 31, 1984, and a hostage situation on August 4, 1984.

Immediately following the escape, the Governor and the Secretary of Transportation and Public Safety initiated the following steps to determine both the immediate and more long-term causes of the incident:

First, the State Police Bureau of Criminal Investigation was immediately ordered to assist in the apprehension of the six escapees and to determine how the escape occurred and whether there was any evidence indicating complicity or other involvement in the escape on the part of Department of Corrections (DOC) personnel. Over 30 agents from the Bureau were involved in the manhunt and investigation from June 1 through mid-July. The Bureau also conducted an investigation of the August 4 hostage situation. The Director of the Bureau reported to the Study Committee that the Bureau received complete cooperation from DOC personnel during both investigations; there was no attempt to withhold information or cover up matters.

Although a number of individuals interviewed by the Bureau stated that correctional personnel "must have" been involved in the escape, the Bureau did not find any credible evidence of staff complicity or involvement. Instead, the Bureau concluded that the escape had occurred because of a disregard by MCC staff of a number of basic standard operating procedures. For exam-

ple, (1) the correctional officers supervising the death row pod failed to count the number of death row inmates who were returning to their cells from outside recreation (one inmate did not return to his cell but instead hid in the staff bathroom across the hallway from the pod control room); (2) correctional officers guarding the death row pod then failed to investigate the fact that the door to the staff bathroom (where, unbeknownst to the staff, the inmate was hiding) was locked for over an hour after the inmates returned to their cells from recreation; and (3) the correctional officer on duty in the death row control room failed to follow established procedures in that, at the request of an inmate in the pod day room, he left the control room--leaving it unlocked--and went to a portion of the entrance hallway to hand an item to an inmate through the bar grill separating the entrance hallway from the pod day room, at which point the correctional officer's back was to the bathroom door and the inmate who was hiding there ran into the control room, opened all the cells, and then subdued the correctional officer.

Based on the Bureau's investigation, the Commonwealth's Attorney for Mecklenburg County found no reason to prosecute any of the MCC staff for either the May 31 escape or the August 4 hostage situation. Furthermore, because no one had been injured in the escape and the inmates already had been sentenced to death for other crimes, he decided not to prosecute any of the inmates involved in the escape. However, a number of inmates have been indicted and are being prosecuted for involvement in the August 4 hostage situation.

Second, the DOC Internal Investigation Unit conducted its

own in-house investigation of both incidents. Its findings paralleled those of the State Police investigation.

Third, in early June, through a request to the U.S. Department of Justice's National Institute of Corrections, the Secretary of Transportation and Public Safety, who has supervisory responsibility for DOC, obtained the services of three outside consultants to conduct an in-depth review of the events leading up to the escape, security practices at MCC, and DOC and MCC hiring and promotion practices and procedures, and training programs. Four reports<sup>1</sup> were prepared by these three consultants and were submitted to the Secretary in late June and July. The findings of all four reports were essentially the same as those of the separate State Police and DOC investigations; they also offered numerous recommendations to improve security practices and procedures at the facility and training for DOC personnel. The Study Committee had access to and reviewed in detail all four reports.

Fourth, in early June DOC initiated a study of the design and concept of MCC to review whether confining the Commonwealth's most disruptive inmates in one facility still was a valid approach, and if it was, whether changes should be made in the programs at MCC designed to deal both with the disruptive inmate population and with the other inmates confined there. As of the writing of this report, the DOC concept and design study had not yet been completed.

Fifth, in early June the State Department of Personnel and Training was asked by the Governor's Office to undertake a

comprehensive review of compensation for correctional officers. That report was released to the public on September 26, 1984, and is considered in Chapter 7 ("Compensation for Correctional Officers and Other Staff") of this report.

2. Appointment of the Study Committee:

The Board of Corrections consists of nine residents of the Commonwealth appointed by the Governor to four-year terms and subject to confirmation by the General Assembly. The Board is not part of the Department of Corrections; it oversees the Department and sets program and fiscal standards and goals for the Department. Under Section 53.1-5 of the Code of Virginia, the General Assembly has charged the Board with the duty to "monitor the activities and effectiveness" of the Department of Corrections.<sup>2</sup>

Shortly following the August 4 hostage situation, the Governor asked the Chairman of the Board of Corrections to appoint a special committee from the Board to study the incidents which had occurred at MCC over the prior several months and to recommend steps which should be taken to avoid such incidents in the future. On August 14, 1984, the Chairman announced the appointment of the Study Committee.

3. Study Committee Membership and Staff:

The five members of the Board serving on the Study Committee are:

Carroll E. Lillard (Chairman--Study Committee), Madison, Va.--retired Sheriff of Madison County.

**Harry L. Greene, Alexandria, Va.--former businessman; currently President of a national organization which provides chaplains to local correctional facilities.**

**Claudette B. McDaniel, Richmond, Va.--Vice-Mayor of Richmond.**

**Stephen D. Rosenthal, Radford, Va.--Attorney.**

**John W. Williams, Charlottesville, Va.--businessman and Chairman, Board of Corrections.**

The Committee has been assisted by a four-person staff:

**H. Lane Kneedler (Staff Director), Charlottesville, Va.--Associate Dean and Professor of Law, University of Virginia Law School.**

**James M. Mills, Richmond, Va.--Senior Management Analyst, Management Consulting Division, State Department of Information Technology.**

**James T. Roberts, Richmond, Va.--Corrections Section Supervisor, State Department of Criminal Justice Services.**

**Vivian T. Toler, Richmond, Va.--Secretary, Board of Corrections.**

**B. STUDY COMMITTEE CHARGE:**

The Study Committee was asked to identify the major problem areas at MCC, and, based upon its research, to provide policy guidance to DOC and other agencies responsible for resolving the problems identified.

In particular, the Study Committee was charged to examine three specific issues. Those three issues, as set forth in the Work Plan adopted by the Study Committee on August 28 and amended on September 13 (see Appendix A) are:

- (1) The Concept and Design of MCC--Is the concept of confining the Commonwealth's most violent and disruptive inmates in one facility valid? What are the criteria for assigning inmates to MCC, and are they being appropriately administered? Is the

treatment and population management program sound and is it being implemented appropriately and effectively? Is the facility adequately staffed?

- (2) Compensation for Correctional Personnel--How does the compensation offered to correctional personnel in Virginia compare to that offered in neighboring states and nationally, and to that offered to other law enforcement and public safety personnel in Virginia and nationally? Is there a need for a pay differential (e.g., "hazardous duty pay") for maximum security personnel at MCC? What are the cost implications of a decision to increase compensation for correctional officers?
- (3) Training for Correctional Personnel--Are the DOC and MCC training standards and curricula for correctional personnel appropriate and sound? Is the quality of training adequate? Are correctional personnel completing the training? Are correctional personnel utilizing the skills developed through training? Are training budgets adequate?

#### C. STUDY METHODOLOGY:

The Study Committee was appointed on August 14, 1984. The staff was appointed and a work plan was drafted by August 24. The Committee's first meeting was held on August 28. During the next 10 weeks, the Committee made one announced and one unannounced visit to MCC, held a public meeting for local officials in the Mecklenburg area and a closed meeting for MCC staff, visited the DOC Academy for Staff Development in Waynesboro, held a public hearing in Richmond, interviewed or spoke with over 100 individuals about MCC, and prepared and discussed a draft of this report. In addition to the five days devoted to visits to MCC and the training Academy, the Study Committee and its staff met on nine other occasions, mostly for full day sessions, to interview various individuals and discuss recommendations.

The Study Committee was concerned at the outset that sufficient time might not be available to conduct the in-depth study necessary to fulfill its charge. However, it was clear that some of the Committee's potential recommendations could have substantial budget implications and that if those recommendations were to be considered by the Governor, the Secretary of Transportation and Public Safety, and the Department of Corrections in their 1985-86 budget recommendations to the 1985 General Assembly, which convenes in January, the Study Committee's recommendations had to be available by early November. Furthermore, the Committee felt that its investigation of programs, policies and procedures at MCC should be completed as soon as possible in order to decrease the possibility that incidents similar to the May 31 escape and August 4 hostage situation might occur again. Thus, the Committee decided that it was important to conduct as thorough a study as was possible within the maximum of 10 weeks available and to have its report completed and delivered to the full Board of Corrections by early November.

During its 10-week study, the Committee:

1. Conducted two on-site visits to MCC, one 2 1/2-day announced visit (September 16-18), and one 1 1/2-day unannounced visit (October 9-10). During the first visit, the Committee held a public meeting on the evening of September 16 for local officials in the Mecklenburg County area (attended by approximately 30 individuals) and a closed meeting on the evening of September 17 for MCC staff only (attended by approximately 50 individuals). The Committee also toured the facility and interviewed the Acting Warden, two Assistant Wardens (one of whom is an Acting Assistant

Warden), correctional officers, other MCC staff, and inmates. On the second visit Committee members and staff toured and inspected the facility again and spoke with additional MCC staff and inmates.

2. Interviewed DOC personnel, including the Director, the Deputy Director of the Division of Adult Services, the Assistant Director for Capital Outlay and Maintenance, the Assistant Director and staff from the Division of Program Development and Evaluation, and the Regional Administrators for the Central Region (Region II, which includes MCC) and the Southeast Region (Region V).

3. Interviewed former MCC staff, including the first Warden of the facility, and the former Warden and Assistant Warden for Operations who were in charge of the facility at the time of the May 31 escape and who were relieved of their duties at MCC and transferred to other DOC positions in June and July 1984.

4. Interviewed the Director and Assistant Director of the State Police Bureau of Criminal Investigation, who were responsible for investigating the May 31 escape and the August 4 hostage situation.

5. Interviewed the Director of the State Department of Personnel and Training and other DPT personnel who were responsible for preparing the report entitled Review of Compensation of Corrections Officers in the Commonwealth of Virginia (August 1984), which was released to the public on September 26, 1984.

6. Interviewed DOC personnel who are preparing the DOC "concept and design" study of MCC, which has not yet been

completed.

7. Interviewed several individuals with a particular interest in prison reform in general and MCC in particular, including the Director of the American Civil Liberties Union National Prison Project, the Director of the Virginia Chapter of the ACLU, the Director of the Virginia Chapter of the Southern Coalition on Jails and Prisons, and a Charlottesville attorney who represents several inmates on death row at MCC.

8. Conducted a one-day on-site visit to the DOC Academy for Staff Development in Waynesboro, which included a tour of the facility and in-depth interviews with the Superintendent and other supervisory personnel and instructors.

9. Consulted several professionals with expertise in prison programs, including several psychologists (one of whom has had extensive experience in, and was an assistant warden at, a maximum security institution similar to MCC in another state, and one of the persons who designed the original MCC program for disruptive inmates).

10. Reviewed videotapes of incidents at MCC in which correctional officers had been accused of brutality. Apparently it is not uncommon nationwide for prison officials to videotape incidents in which correctional officers are forced to remove an inmate from his cell (e.g., because of acts of self-mutilation, because of fires set to mattresses and other materials, such as newspapers), to break up a fight between inmates, etc. The DOC began videotaping such incidents in the late 1970s. The tapes reviewed by the Study Committee were part of a series of tapes which the ACLU had intended to introduce in a suit filed in August

1981 by inmates at MCC against DOC charging inhumane prison conditions and guard brutality. The suit eventually was settled in April 1983 (see Chapter 5).

11. Reviewed the four consultant reports prepared at the request of the Governor and the Secretary of Transportation and Public Safety following the May 31 escape.<sup>3</sup>

12. Conducted a national literature search through the U.S. Department of Justice's National Criminal Justice Reference Service for materials on maximum security prisons and programs for dealing with disruptive inmates.

13. Conducted a telephone survey of 18 other states to determine how they dealt with disruptive inmates.

14. Held a public hearing on MCC on the evening of October 18, 1984, in Richmond, Virginia. The hearing was attended by approximately 30 persons, including representatives of the media, several members of the General Assembly, a representative from the ACLU, several representatives from DOC and other state agencies, and a few members of the general public.

Unfortunately, only two persons made presentations to the Committee: a correctional officer from the State Penitentiary who stated that he was proud to be working for DOC but that correctional officers were underpaid, and an electrician who had applied for a position at MCC and who did not feel he had been fairly treated in the application process.

## CHAPTER 2

### THE MECKLENBURG CORRECTIONAL CENTER

#### A. HISTORY OF THE FACILITY:

Planning for the Mecklenburg Correctional Center (MCC) began in earnest during 1972-73. The development of the facility was the result of many factors, the most important of which were overcrowding throughout the Commonwealth's prison system and the desire to replace the aging State Penitentiary in Richmond with a modern maximum security facility. MCC was modeled at least in part on the Federal Bureau of Prisons' maximum security penitentiary in Marion, Illinois. Funds appropriated by the 1974 General Assembly provided the resources needed to begin construction of the facility. Originally scheduled to open in November 1976, the facility actually began operations in March 1977, with two of the five planned 72-bed buildings completed. The delay was caused by construction problems related to water and sewage operations.

The original purpose of MCC, as described in a document written during a 1973-74 pilot program conducted at several of the Commonwealth's other facilities, was:

"1) to receive inmates who are particularly troublesome to themselves, to other inmates, and, thus to the smooth administration of correctional programs within the state system and, 2) to modify the actions of such inmates so that they may be returned to the beneficial influence of correctional programs in the general population of another institution. . . ."<sup>4</sup>

At that time DOC planned to construct a maximum security facility

where a program utilizing the principles of behavior modification could be developed to decrease the disruptive behavior of inmates transferred to the facility from throughout the corrections system. Despite the "pilot" nature of this project, the program apparently was abandoned in October 1974 due to substantial administrative changes involved in separating the newly-created Department of Corrections from the former Department of Welfare and Institutions, and other reasons which remain unclear.

As construction of the facility continued, attention again focused on planning for a special program at MCC for disruptive inmates from throughout the corrections system. An internal DOC Task Force was created in 1976. The program as originally implemented at MCC was described in a DOC document entitled Maximum Adult Security and Intensified Treatment Program (MASIT) dated November 16, 1976. Although distinct in a number of respects from the 1973-74 proposal, the overall objectives for the facility remained consistent. A DOC report completed in June 1977 reiterated that MCC was constructed "to provide maximum security segregation and treatment for the most difficult inmate."<sup>5</sup>

With certain administrative and procedural revisions, the program proposed for the facility in 1976 is substantially the same as the "Phase Program" operating today. Essentially, the Phase Program is structured through a series of levels (varying from three to five levels during the past eight years) utilized to reward inmate progress with a corresponding series of increasing "privileges." Theoretically, the increasing privileges associated with each level serve as a reward for an inmate's compliance with institutional rules. The first document to identify specific

behavioral criteria for assignment to the Phase Program at MCC was prepared in June 1979. This document also set forth once again the special purpose of the facility: "it is [the] commitment to change the behavior of the dangerous and disruptive inmate and return him to a conventional center that sets Mecklenburg apart from the other maximum security facilities."<sup>6</sup>

During the period 1977-1979, the Phase Program continued to be the major program in operation at MCC, but there were other programs there as well. Inmates were assigned to the facility in two categories: "General Population" assignments (for placement in the Phase Program) and "Special Purpose" assignments, which included "Death Row," "Protective Custody" and "Investigative Hold." By June 1980, these Special Purpose categories had expanded to include a "Special Management Unit," a restrictive form of segregation for particularly disruptive inmates.

In 1981, MCC staff and the DOC central office undertook what appears to be the first major re-examination of the facility's program for disruptive inmates. This resulted in a comprehensive proposed program intended to build upon both the original objectives of MCC and the experience of operating the facility during its first four years. The introduction to that document states that "the method of a structured physical environment has been somewhat effective in changing disruptive behavior, [however] due to past emphasis on security and control, a program of individualized treatment has not been fully utilized as a means for effective behavior change."<sup>7</sup> This 186-page report provides an extremely detailed description of the purposes and procedures for

dealing with disruptive inmates assigned to the MCC Phase Program.

Until 1981 the majority of assignments to MCC were General Population (Phase Program) inmates transferred to MCC for assignment to the Phase Program. Although some inmates refused to participate in the program and therefore were placed in segregation at MCC, most of these transferred inmates appear actually to have been placed in the Phase Program. However, in an apparent effort to respond to space pressures elsewhere in the prison system, a second category of "temporary" General Population assignments was initiated in July 1981 to utilize existing bedspace at MCC. These temporary assignments were made on the basis of initial classification at the DOC Reception Center and were for reasons not related to disruptive or assaultive behavior in other correctional facilities--e.g., simply a desire to use available bedspace at MCC. These temporary assignments were required to be of six months duration or less.

By December 1982, the categories of inmate assignment to MCC had again been expanded to include: (1) "Special Purpose" (Death Row, Protective Custody, Investigative Hold and a new "Administrative/Emergency Transfer" category); (2) "Phase Program"; and (3) a "Maximum Security" unit. A number of the Commonwealth's correctional facilities house maximum security inmates. The creation of the maximum security assignment status at MCC and the dedication of one building (72 beds) to maximum security inmates who were serving sentences of 50 or more years was a direct response by DOC to pressures from within the department itself and from the General Assembly to utilize available bedspace at MCC. Inmates assigned to the Maximum Security program were not inmates who had

demonstrated behavioral problems at other institutions but were those who were merely viewed as generally requiring the level of security existing at MCC. The practice of "temporary" initial General Population assignment to MCC apparently was terminated with the creation of the new Maximum Security unit there.

The last major changes in the program configuration at MCC occurred as a result of the settlement agreement reached in April 1983 in Brown v. Procunier,<sup>8</sup> which had been filed against DOC and MCC in August 1981 by six named inmates on their own behalf and on the behalf of the other inmates at MCC to rectify what they viewed as inhumane prison conditions and guard brutality at the facility. The inmates were represented by the ACLU National Prison Project in Washington, D.C., which had been in contact with DOC and MCC officials for over three years about allegedly poor conditions at MCC, and by two Virginia attorneys; the DOC and MCC were represented by two successive Attorneys General and their staffs. This settlement agreement dealt with a wide variety of conditions at the facility and required a number of changes, including: the abolition of the Special Management Unit (a special segregation unit for particularly disruptive inmates); the establishment of a regular General Population Maximum Security Program in one building (previously maximum security inmates were treated very differently at MCC than they would have been at any other DOC maximum security institution; the main difference was the availability of many fewer "privileges" at MCC); a variety of procedural and administrative changes affecting the operation of the Phase Program (e.g., increased recreation time); and a number of

other matters related to general living conditions and inmate privileges. The requirements of the settlement agreement, and the adjustments made at the institution as a result of the agreement, remain in force today.

When MCC Institutional Operating Procedures were revised in May 1983 to accommodate the provisions of the settlement agreement, a new Special Purpose inmate assignment category unrelated to the requirements of the settlement agreement--the "Mental Health Unit"--was created.

**B. INCIDENTS AT THE FACILITY:**

**1. Background:**

This Study Committee was appointed to examine various issues related to a series of incidents at MCC during the summer of 1984. As is discussed in detail in succeeding chapters, it is clear that the causes underlying this past summer's incidents did not arise overnight. They can be traced to various policies and practices which evolved at the facility over the past 11 years, beginning with the planning for the facility in 1973.

**2. Chronology of Recent Events:**

The incidents which occurred at MCC during the summer of 1984 attracted intense and continuing media attention and public scrutiny, and are summarized in the text which follows. Among the most serious of these events was the escape of six death row inmates on May 31, a riot and hostage situation on August 4, as well as a number of significant personnel changes at the facility resulting from injury, resignation, dismissal and disciplinary actions.

**May 31, 1984** - Six inmates with capital convictions escaped from MCC utilizing hostages and a series of complicated deceptions. The escapees all had been confined in a single living unit at the facility--Building 1, C Pod--prior to this escape. Thirteen staff of the facility were taken hostage during the escape. This was the first successful escape from MCC in the more than seven years since it began operations.

**June 1, 1984** - Two of the six escapees were recaptured 20 miles south of MCC in North Carolina.

**June 4, 1984** - Sixteen MCC employees involved in the May 31 escape were placed on administrative leave pending investigation of the incident.

**June 8, 1984** - Two of the four remaining escapees were recaptured in Vermont.

**June 9, 1984** - A cache of homemade weapons was found in the Death Row pod.

**June 19, 1984** - The remaining two escapees were captured in Philadelphia, Pennsylvania.

**June 22, 1984** - The MCC Warden, Assistant Warden for Operations and Chief of Security were relieved of their duties at the facility. Personnel assigned to act in their capacities were dispatched to MCC from other DOC institutions.

**July 5, 1984** - Three of four reports, prepared at the request of the Secretary of Transportation and Public Safety, with resources provided by the U.S. Department of Justice's National Institute of Corrections, were completed. The reports assess a variety of operational, managerial, and training issues, identify certain deficiencies, and offer numerous recommendations for the

improvement of physical and procedural security at MCC. On the same date five Mecklenburg employees involved in the incidents leading up to the escape were dismissed, and two prison administrators relieved earlier were placed on temporary disciplinary suspension.

**July 12, 1984** - Significant disturbances erupted at MCC in separate recreation yards containing inmates confined in two of the facility's five buildings. Security staff in riot gear were required to quiet the disturbance. Two of the staff received minor injuries.

**July 13, 1984** - A series of "shakedowns" (in-depth searches) in Building 3 at MCC resulted in the seizure of a variety of "contraband," including pipe, rope, and metal fashioned into weapons. Subsequent shakedowns over the next week uncovered additional contraband--including marijuana and weapons--and detected attempts to saw through certain supporting structures in security windows in some inmate cells.

**July 17, 1984** - The fourth consultant report was received by the Secretary of Transportation and Public Safety.

**July 26, 1984** - A major institution-wide shakedown was conducted at MCC utilizing approximately 50 correctional staff from other institutions. Additional contraband was discovered.

**July 27, 1984** - An internal DOC investigation was initiated as a result of numerous complaints by MCC inmates alleging physical abuse by DOC personnel during the preceding day's shakedown.

**August 4, 1984** - Inmates in Building 5 at MCC seized nine hostages and issued a list of demands ranging from improved education and

medical care to replacement of the Acting Warden. Thirty-two inmates were involved in the 19-hour siege which ended early on the morning of August 5. At least three correctional personnel were seriously injured during the episode. Fifteen inmates have subsequently been indicted for offenses stemming from the incident.

**August 10, 1984** - Two of the correctional personnel from other institutions who were involved in the July 26 shakedown at MCC were dismissed, and a third received temporary disciplinary suspension.

**PART II**

**CONCEPT AND DESIGN OF THE  
MECKLENBURG CORRECTIONAL CENTER**

CHAPTER 3PROGRAMMATIC ISSUESA. INTRODUCTION:

MCC originally was designed to house only the Commonwealth's most disruptive inmates. However, almost from the time the facility first opened in 1977, inmates other than the most disruptive also have been confined there--at least in part because of crowded conditions at other state prisons and the availability of bedspace at MCC.

According to DOC Departmental Guideline 825, which was last revised in December 1982, there are three "categories of assignment" at Mecklenburg: "phase program" assignments for particularly disruptive inmates from other State prisons, "special purpose" assignments (administrative transfer, investigative hold, inmates sentenced to death, and protective custody), and "maximum security unit" assignments.<sup>9</sup> Currently, there are three additional assignment categories at MCC: "segregation," "isolation," and "mental health." During the Committee's second on-site visit to MCC on October 9, approximately the following number of inmates were confined at the facility:

50--Administrative Transfer, Investigative Hold,  
 Segregation, and Isolation  
 22--Death Row  
 65--Protective Custody  
 70--Phase Program  
 65--Maximum Security  
 8--Mental Health  
 280

The capacity of MCC is 360 inmates; thus there were approximately

80 vacant cells on the day of the Committee's October 9 visit. These numbers--both the total number of inmates and the mix--are somewhat misleading, of course, since a large number of inmates were transferred to other institutions from MCC immediately following the August 4 hostage situation.

Three general points should be made at the outset. First, despite the original purpose of MCC, less than 50% of the inmates at the facility are disruptive inmates transferred from other institutions. Second, MCC (or, indeed any prison) should be operated below full capacity to allow for flexibility and transfers both within the institution and between institutions. This is particularly true in an institution such as MCC in which a number of very different prison populations are confined. Third, as will be explained in greater detail below, considerably different methods are required to deal with some of the inmate populations at MCC, and these methods produce quite different demands on the allocation of the institution's resources. It is no exaggeration to say that at least five different prisons are being operated in one facility at MCC, thereby exacerbating some of the staffing, management and supervision problems described in Chapter 4.

The remainder of this chapter discusses the various "assignments," or programs, at MCC. Since the facility was originally designed for disruptive inmates from other institutions, the program for dealing with those inmates--the "Phase Program"--will be described first.

B. THE COMMONWEALTH'S MOST VIOLENT AND DISRUPTIVE INMATES

1. Background:

a. MCC--An Institution Specifically Designed for Violent and Disruptive Inmates:

Although the historical purpose of MCC has been to provide separate confinement for the most disruptive inmates in the Virginia correctional system, the meaning of the term "disruptive" has in fact evolved over time. Various reports during the past decade describe these individuals as "particularly troublesome," the "most difficult" and "problem" inmates. From the opening of the facility in 1977 until 1979 there appear to have been no clear criteria for describing "disruptive" inmates other than the general terms referenced above. In July 1979, the first concise description to guide placement decisions was promulgated by DOC in the form of Departmental Guideline 825 (DGL 825). This guideline specified that inmates could be considered for assignment to the "General Population" of MCC if they had been found guilty by a court or institutional disciplinary committee (Adjustment Committee) of a serious institutional infraction at any of the correctional centers in the Commonwealth. These infractions included: assault with a weapon; sexual or attempted sexual assault through force; rioting; seizing of hostages; escape through use of force; arson; or extortion.<sup>10</sup> Clearly these particular infractions involve violent or disruptive behavior in an institutional setting. However, DGL 825 also permitted assignment to the facility based on infractions of a comparatively less serious nature.

Based upon the present criteria for assignment, DOC

officials recently indicated that the number of disruptive "Mecklenburg-type" inmates within the Virginia correctional system today is approximately 190, or less than two percent of the total combined inmate population. According to DOC, based upon projected growth in the prison population, the number of beds needed for inmates categorized as the disruptive "Mecklenburg-type" will equal approximately 240 by the end of the decade (1990). A total of 360 beds are available in the five MCC housing units.

The use of special housing arrangements for particularly violent and disruptive inmate populations within the Virginia corrections system is not a unique or recent practice. The Committee noted that Virginia has utilized such special housing arrangements both prior and subsequent to the opening of MCC. "C" Building at the Virginia State Penitentiary and "M" Building at the Powhatan Correctional Center are examples of such facilities. They continue in operation today. The essential differences between MCC, C Building and M Building lie not in the type of inmate confined there, but in the programming available to an inmate in the three different settings. This latter point is the subject of more detailed discussion later in Section C-2-e of this Chapter.

b. The "Phase Program":

(1) Evolution of the Program:

In addition to operating a maximum security facility for the confinement of disruptive inmates, the secondary purpose of MCC historically has been to "treat" these inmates in a manner that would assist in returning them to more routine general inmate

population assignments at other correctional institutions in the Commonwealth. The approaches for achieving this goal, however, have varied considerably over the past decade.

The earliest recorded planning for the special program at MCC appears in a 1973 document describing a project entitled the "Contingency Management Program" (CMP).<sup>11</sup> This was a 1973-1974 pilot program funded by federal grants to the Commonwealth from the former Law Enforcement Assistance Administration. Simply stated, this project proposed a program structure utilizing the principles of "behavior modification." In designing this program, it was anticipated that inmates assigned to CMP would be those who demonstrated one of three distinct types of behavior. The first group would be those inmates who required administrative segregation as a result of the disruptive influence they exerted in a group living situation at another institution. For example, these individuals might consistently operate, or be indebted to, a gambling operation within an institution, thus creating a disruptive influence in the day-to-day operations of the facility. The second group, more easily identified, would be those individuals who were seriously or repetitively involved in aggressive, assaultive behavior within other institutions or those inmates who had proven themselves to be serious escape threats. The third group would be inmates involved in certain homosexual behaviors leading to aggression or seriously disruptive relationships within other institutions.

CMP was, by design, a program limited in scope. Its purpose was to change habitual "unmanageable" inmate behavior. To this

end, the program was structured in a series of four stages. Since construction had not yet begun on the MCC facility itself, the CMP pilot project was operated in C Building at the State Penitentiary, M Building at the State Farm (now Powhatan Correctional Center), and B and C Buildings at St. Brides Correctional Center. Each facility corresponded to a different stage of the program. In this pilot planning for MCC, it apparently was thought that the various buildings at MCC eventually could be used for these different stages, or, alternatively, that MCC could be used in a networking fashion for at least the first several stages of the program.

A 1977 article written by the four individuals who designed the CMP program, two of whom are psychologists at Virginia Polytechnic Institute and State University, provides an account of both the components of and the controversy which surrounded the CMP pilot project in 1973-74.<sup>12</sup> Before examining further the development of the MCC program, it is important to consider the essential features of the original CMP approach, each of which is described in greater depth in the referenced article:

- (1) Cooperative involvement of both security and treatment personnel in CMP decisions.
- (2) Emphasis on positive reinforcement to increase constructive behavior. (Inmates would earn privileges by exhibiting appropriate behaviors, rather than merely avoiding loss of privileges by omitting unacceptable behaviors).
- (3) Systematic observation of behavior for the purpose of providing objective evidence of consistent behavior change.
- (4) Specialized training for security and treatment personnel in CMP procedures and communication methods. (The authors felt

that only minimal training in the specifics of this program would be necessary, and that the program could be effectively managed by correctional officers with only a high school education.)

- (5) Consistent levels of attention directed to each inmate, through the cooperative involvement of security and treatment personnel.
- (6) Emphasis on normalized interaction between staff and inmates.
- (7) Provision of a structure in which the inmate has a real opportunity to improve his situation.

The CMP pilot project ultimately was abandoned in the fall of 1974 for reasons that are only partially clear; among them were the reorganization of the former Department of Welfare and Institutions and the creation of a new "Department of Corrections," pressure from and continuing critical examination of the program by such organizations as the ACLU National Prison Project, and poor management of the program itself.

Planning for the MCC program was renewed in 1976 through the creation of an internal DOC Task Force. The program proposed as a result of that effort is contained in a November 1976 paper entitled Mecklenburg Correctional Center Program Statement--Maximum Adult Security and Intensified Treatment (MASIT). This is substantially the program which was implemented at the facility beginning in 1977. The proposed criteria for assignment to the MASIT program specified that the inmate must meet one or more of the following conditions:

- "A. Demonstrates an inability to function without serious acts of violence in institutions of lower security.
- "B. Shows an aggressive, violent or assaultive

behavior pattern while in prison.

- "C. Is an escape risk with violent behavior involved or has a history of persistent escape attempts while in the Department's more secure institutions.
- "D. The inmate is serving time for his third felony conviction of violent crimes or his fourth felony conviction of non-violent crimes."<sup>13</sup>

The MASIT program (which later became known as the "Phase Program") was a four-step, or level, program in which increasing privileges would be afforded the inmate in each progressive step based upon the inmate "not violating conditions of Division Guidelines, any laws, or unit rules and regulations," as well as demonstrating "a willingness . . . to work toward resolution of his problems."<sup>14</sup> Though no fixed time periods were specified for completion of each step, it was anticipated that successful completion of the MASIT program would require approximately eighteen months.

Despite provisions for increasing inmate privileges at each step, the MASIT program outline in fact provided for considerable restriction of the inmate throughout his tenure at the facility. Level 1, for example, required almost around-the-clock "lockdown" of the inmate--i.e., confinement to his cell except for a shower once each week, medical necessities, "recreation" (exercise time) one hour per day, and a maximum of two "non-contact" visits (i.e., visits in which the inmate and visitor sit on opposite sides of a partition and therefore have no direct contact) per month. Counseling, meals, reading and educational activities all were to occur in the inmate's cell while he was assigned to Level 1. The succeeding levels each provided for greater periods of

time out of the cell, additional contact with other inmates, as well as more active involvement in constructive activities such as education and counseling programs. Although structured to provide a very restrictive environment at the lower levels, the MASIT program also was intended to have a high degree of individual treatment for the inmate. It was anticipated that inmates would be seen by treatment staff virtually on a daily basis in either individual or group counseling sessions. Many of the components of the MASIT program were similar to those of the earlier CMP pilot program. These included: the voluntary nature of the inmate's participation in the program; the need for continuous specialized training in program operations for the staff; and the participation of both security and treatment staff in the management of the program to provide a balanced perspective.

When MCC opened in March 1977, two of the five planned buildings were completed, providing a total of 144 inmate beds. The first inmates assigned to MCC, however, were not assigned on the basis of their disruptive behavior in other correctional facilities in the Commonwealth. Instead, the first 23 inmates assigned to the facility were placed in MCC directly from local jails after classification by DOC. The main purpose of these assignments apparently was to have a less dangerous group confined in the facility initially as the MCC staff established and tested new Institutional Operating Procedures.

By October 1977, MCC had adopted its own series of Institutional Operating Procedures (IOPs), and the classification

and assignment of inmates to MCC was being based on their "disruptive" behavior in other correctional institutions. IOP 892 provided that inmates were assigned to the facility for two purposes: "to provide a higher degree of security than that found at other institutions; and, to develop and provide program services on an individual basis."<sup>15</sup> IOP 892 also specified a series of basic rights and privileges which were to be afforded all inmates at the facility. These rights and privileges were based on minimum requirements of state and federal law and covered such areas as personal hygiene, personal mail, visitation, clothing, food, etc.

The program was officially identified as the "Phase Program" in October 1977. IOP 831 (October, 1977) specified the privileges associated with each of the four levels of the program. Except for "Orientation," no time periods were specified for completion of each "Phase." Progress to each successive level was to be based on compliance with rules and regulations, and progress in the individual treatment agreement.<sup>16</sup>

The "Program Outline" specified "privileges" for each level. Given the importance of these "privileges" to an assessment of the program, they are set forth here in Table 1 rather than included as an appendix.

In July 1978, the IOP for the Phase Program was substantially revised. IOP 12 superseded the earlier referenced editions. However, guidelines still provided no clear criteria for assignment to MCC. In addition, the administrative reorganization accomplished through IOP 12 also affected the Phase Program. Phase IV of the program was abolished. Although

Table 1  
"Privileges" Associated with the Phase Program (1977)\*

| Privileges                    | Orientation                                                         | Phase I                                                                    | Phase II                                                                                                              | Phase III                                                                                                       | Phase IV                                                                                                                      |
|-------------------------------|---------------------------------------------------------------------|----------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|
| Showers                       | 3 Per Week                                                          | 3 Per Week                                                                 | 3 Per Week                                                                                                            | 4 Per Week                                                                                                      | Daily                                                                                                                         |
| Commissary                    | 1 Per Week<br>\$20 Limit Per Month                                  | 1 Per Week<br>\$20 Limit Per Month                                         | 2 Per Week<br>\$40 Limit Per Month                                                                                    | 3 Per Week<br>\$40 Limit Per Month                                                                              | 4 Per Week<br>\$60 Limit Per Month                                                                                            |
| Meals                         | In Cells                                                            | In Cells                                                                   | In Cells                                                                                                              | Out of Cells<br>With Groups<br>of 12                                                                            | Out of Cells<br>Groups of 12 to 24                                                                                            |
| Educational Activities        | Limited in Cell<br>Voluntary                                        | In Cell<br>Self-Study                                                      | In Cell<br>Self-Study                                                                                                 | In Cell or In<br>Group Participa-<br>tion of No More<br>Than 6                                                  | In Cell or In<br>Group Participation<br>of No More<br>Than 6                                                                  |
| Coordinators/<br>Case Workers | As Appropriate<br>and Necessary                                     | As Appropriate<br>and Necessary                                            | As Appropriate<br>and Necessary                                                                                       | As Appropriate<br>and Necessary                                                                                 | As Appropriate and<br>Necessary - Can Be<br>in Groups of Up to<br>6 Individuals                                               |
| Visitation                    | 2 Non-contact<br>After 7 Days<br>Family (Fiance)<br>Only-60 minutes | 2 Non-contact<br>Per Month -<br>Immediate<br>Family (Fiance)<br>60 minutes | 3 Non-contact<br>Per Month -<br>Immediate<br>Family (Fiance)<br>60 minutes                                            | 3 Contact Per<br>Month -<br>Immediate<br>Family (Fiance)<br>60 minutes                                          | 4 Contact Visits<br>Per Month - Up to<br>90 Minutes in Duration                                                               |
| Out of Cell<br>Activities     | None                                                                | None                                                                       | Groups of 6-2<br>Hours Once Each<br>Week - No Per-<br>sonal Items<br>Except Smoking<br>Materials and<br>Playing Cards | Groups of 6 on<br>Alternate Nights<br>7-10 p.m. - T.V.<br>Viewing May Bring<br>Some Personal<br>Items From Cell | Groups of 12 Each Night<br>6 to 11 p.m. T.V. View-<br>ing - 11:30 For Special<br>Programs - Personal<br>Items As in Phase III |
| Work<br>Opportunities         | None                                                                | None                                                                       | Available At The<br>Discretion of<br>the Ass't<br>Superintendent<br>Statute Pay Rate                                  | Individual/Small<br>Group At Discre-<br>tion of Ass't<br>Superintendent<br>Statute Pay Rate                     | Mandatory Individual/<br>Small Group Discretion<br>of Ass't Superintendent<br>Statute Pay Rate                                |
| Miscellaneous                 | Personal Lockers<br>Not Permitted                                   | _____                                                                      | _____                                                                                                                 | 3 Complete<br>Changes of Cloth-<br>ing Per Week                                                                 | 3 Complete Changes<br>of Clothing Per Week                                                                                    |

\*Mecklenburg Correctional Center Institutional Operating Procedure 831 (Oct. 1977).

each of the remaining levels continued to have substantially the same privileges as before, the "behavioral criteria" for advancement to each level were substantially revised. The new guideline for advancement provided that: "The [sole] criterion for phase promotion shall be nothing more than a demonstrable willingness by an inmate to abide by prescribed rules and regulations. . . ." IOP 12 further provided that an inmate's involvement in counseling and the establishment of a treatment plan or agreement was a discretionary activity on the part of staff. Finally, IOP 12 reduced the period of Orientation to a maximum of 10 days.<sup>17</sup>

IOP 12 was rewritten in June 1980. The Phase Program continued to have Orientation through Phase III. For the first time, however, specific time periods of continuous infraction-free behavior were established for each level. Orientation was again increased to a 30-day period, and Phases I, II, and III required 60, 120, and 90 consecutive days, respectively, of infraction-free behavior. Thus the minimum time for an inmate's completion of the Phase Program after arrival at Mecklenburg became 10 months. These time periods for each step of the Phase Program remain in force today.

In revising IOP 12, the institution again emphasized the treatment aspects of participation in the Phase Program. The new policy emphasized the inmate's involvement with a new program team, led by a counselor assigned to each building. The behavioral criteria for promotion of an inmate to the next level were also made contingent on "satisfactory progress in programs

assigned and interpersonal relations with staff and the program team."<sup>18</sup> A progressive housing arrangement--transfer to a different building for each successive Phase--was also established as part of the 1980 policy revision.

IOP 12 was subsequently revised again in November 1980, June 1981, May 1983 and April 1984. In the 1980 and 1981 revisions, the structure of the Phase Program remained substantially the same, with privileges and criteria for advancement similar to that described above. However, the May 1983 revision, which was adopted in response to the requirements of the settlement agreement signed by the Commonwealth in Brown v. Procunier (see Chapter 5 for a discussion of the decree), changed the program somewhat--some DOC officials felt substantially.

The most notable of the changes provided that following Orientation, Phase I was no longer the initial assignment to the program. Orientation continued to be the initial 30 days of assignment to the institution, but the new policy provided that an inmate "will normally be assigned to Phase II upon satisfactory adjustment to Orientation."<sup>19</sup> It is important to note that DOC officials at the central office indicated to the Study Committee on numerous occasions that they had been considering a similar change in the Phase Program anyway, and that they "therefore didn't really accept anything in the settlement agreement by agreeing to this change." As will be discussed further in Chapter 5, however, the staff at MCC--especially the correctional officers--believed then, and still believe, that this change was "bad" and a "real mistake," that it was "forced upon them" by the ACLU, and that DOC and the Office of the Attorney General "sold us

out" by not litigating the case.

The "privilege" structure for each Phase remained the same, with two exceptions. These were an increase in recreation for all inmates from three hours per week to a minimum of five or six hours per week depending on the season, and the establishment of a new General Reading Library which inmates in Phases II and III were to be permitted to visit. Staff at MCC have been quite concerned about these two changes as well, especially the increased recreation.

The final major requirement of the consent decree which affected the Phase Program was the establishment of a new two-year time limit for successful completion of the program. Even though the inmate does not complete the program in this period, he must nevertheless be reassigned to another correctional institution in the Commonwealth.

**(2) Criteria for Assignment to MCC:**

In June 1979, the first document to propose clear criteria for assignment to the facility, The Mecklenburg Correctional Center Assignment Criteria and Program Overview, was prepared. The criteria proposed were included in Departmental Guideline 825 (DGL 825) in July 1979. DGL 825 specified that inmates could be considered for assignment to the MCC "General Population" if they had been found guilty by a court or disciplinary committee of a serious institutional infraction at any of the correctional centers in the Commonwealth. Certain specific infractions were listed: assault with a weapon; sexual or attempted sexual assault through force; rioting; seizing of

hostages; escape through use of force; arson; or extortion.<sup>20</sup> However, DGL 825 also provided additional flexibility by allowing "special consideration on a case-by-case basis" when an inmate was found guilty of a variety of lesser infractions or habitually disruptive major or minor rule violations at other correctional facilities.<sup>21</sup> The criteria for assignment to MCC which were adopted in 1979 in DGL 825 are substantially the same criteria which govern assignment to the Phase Program today.

The procedures for assigning disruptive inmates to MCC are fairly elaborate. In the case of an inmate at any "correctional center" in the Commonwealth (i.e., a major institution or field unit) who is alleged to have committed a serious rule infraction, the inmate may be subject to pre-hearing detention. Normally this involves segregation/isolation of the inmate at the institution where the infraction occurred for a period of ten days or less, pending the initiation of a hearing. The hearing is conducted by the Institutional Classification Committee (ICC) at the facility where the inmate is confined. The ICC at each facility is composed of the Warden/Superintendent and two additional staff members. Depending on the nature of the infraction, the ICC may take a variety of corrective actions. If the committee concludes that the current infraction is one of a particularly serious and/or repetitive nature, a recommendation may be made by the committee to transfer the inmate to the "General Population" at MCC. That recommendation must be based on the criteria set forth in DGL 825. If such a recommendation is made, that recommendation is forwarded to the DOC Central Classification Board (CCB) in Richmond. The CCB is responsible

for initial and subsequent custody level assignment, institutional placement of all newly received inmates in the State system, subsequent transfers of inmates between institutions, and furlough and work release decisions. In the case of transfers to MCC, the ICC's recommendation is reviewed by the CCB. The CCB is composed of three staff members who are assigned to the DOC Classification Unit in Richmond. If the CCB concurs with the ICC recommendation, the inmate is then ordered transferred to Mecklenburg. Data collected in June 1984 indicates that once the CCB order to transfer is issued it takes slightly more than three weeks for the inmate actually to be transported to MCC. Upon arrival, the inmate is initially assigned to the Orientation Phase for a 30-day period. During this initial placement, the ICC at MCC may recommend reassignment of the inmate to another facility if the committee concludes that the inmate is inappropriately assigned; in practice, however, such a recommendation is unlikely, at least initially. After Orientation, most "General Population" inmates are assigned to the Phase Program. If the inmate does not wish to participate in the Phase Program, he is placed in "Segregation," which is, as explained in Section C of this Chapter, essentially the same as Phase I. Upon successful completion of the Phase Program, or the expiration of the two-year time limit, this process is reversed with the ICC at MCC recommending transfer of the inmate to another institution.

### (3) Profile of "Phase Program" Inmates:

According to DOC data collected in 1983, the typical inmate

assigned to MCC for the Phase Program is in his mid-20's, serving a sentence in excess of 20 years for an aggressive offense. The inmate has a ninth grade educational level and has no significant history of in-patient mental health treatment. On the average, this inmate has a record of convictions for four or more felonies prior to the offense for which he is now serving a sentence. Prior to assignment to MCC, the inmate had a record averaging 13 convictions for major rule violations in the correctional institutions to which he was previously assigned. The 1983 data also indicated that the majority of these inmates had been at that facility for slightly more than one year. During his placement at MCC, the typical Phase Program inmate had averaged over seven convictions for institutional rule violations.<sup>22</sup>

2. Findings and Recommendations:

a. The Concept of Utilizing a Single Institution to Confine Violent and Disruptive Inmates:

According to DOC documents, from the initial planning stages for the facility until today, the "purpose" of MCC has been to provide separate confinement for the Commonwealth's most disruptive inmates. However, the number of inmates who are classified as such does not now equal, nor is it anticipated in the near future to equal, the total bedspace available at the facility. During its research the Committee noted with curiosity that no specific projection of bedspace need for the "disruptive-type" inmate apparently was included in the planning for the total number of cells to be constructed at the facility.

During October 1984, the Committee conducted a telephone survey of 18 other states to determine if the special purpose

concept of MCC was atypical of the manner in which other states dealt with particularly disruptive inmates. All 18 states reported the existence of a dangerous and disruptive segment of inmates who require specialized maximum security housing similar to that available at MCC. However, these 18 states utilize a wide variety of settings to house this inmate population. Approximately half the states sampled confine all maximum security inmates in a single facility. Their reasons for doing so varied greatly. For example, the Missouri system has only one maximum security institution statewide (whereas Virginia confines maximum security inmates in as many as seven institutions). Other states seemed to feel that centralizing disruptive inmates gave prison officials the potential for more effective control of their behavior. The remaining states in the survey disperse the subject population among two or more institutions in their systems. Among this latter group are our neighboring states of Maryland, North Carolina and Tennessee. Thus, the Committee's survey indicated no significant trend towards or away from a Mecklenburg-type facility for confining seriously disruptive inmates. It is worth noting, however, that one state in our sample, Arkansas, recently completed construction of a single, special-purpose facility for its most disruptive inmate population.

The Committee also examined several state and national reports which discussed the appropriateness of confining disruptive inmates in a single institution. Prominent among them was an August 1978 DOC report, The Mecklenburg Evaluation IV, which examined the impact of the opening of Mecklenburg on the

Virginia correctional system as a whole. That report, written after MCC had been in operation for slightly more than one year, strongly suggested that the existence of the facility had favorably affected other correctional institutions in Virginia. Generally, inmates and staff at the State Penitentiary and the Powhatan and Bland Correctional Centers (primary feeder institutions to MCC) believed there was stricter inmate adherence to institutional rules and a somewhat safer environment in their institutions as a result of the opening of MCC.<sup>23</sup> The Committee found no similar accounts in the national literature which would strongly support or contradict the concept of confining all seriously disruptive inmates in one facility. However, the Committee did note a well-known federal precedent in Alcatraz, which "[i]n addition to [housing] the notorious offenders who gave Alcatraz its reputation, . . . also received inmates whose conduct in other prisons constituted the most serious management problems."<sup>24</sup>

The Committee's review of the literature in Virginia and nationally did confirm, however, that the centralization of large numbers of disruptive inmates in one facility should be expected to be a source of major problems. One article, describing recent attempts in Minnesota to address this issue, indicated that such units should be considered "[a]t best, . . . place[s] of hostile attitudes, tension, and obscenities . . . [and] at worst, . . . place[s] of assault and suicide."<sup>25</sup> Minnesota's experience is illuminating. Despite an initial intent to move away from the centralization of disruptive inmates, Minnesota ultimately decided that

it was necessary to operate a separate unit for such individuals:

"We concluded that it was an error to separate inmates with special behavior problems through extensive physical barriers between them and the staff. Instead of making for a safer, more controlled area, such isolation produces tension and unrest. Yet there are inmates who have the capacity to do dangerous things. It is necessary to have an area in which these people can be safely and securely placed. Such inmates now leave their rooms only on a controlled basis and under the supervision of staff trained to manage difficult inmates."<sup>26</sup> (Emphasis added)

Indeed, data reviewed by the Committee indicated that MCC should be considered among the most dangerous of correctional institutions in Virginia for both staff and inmates. A review of Serious Incident Reports (SIRs) for the most recent five-year period (1979-1984) revealed that assaults, both with and without weapons, by inmates on staff members were significantly higher at MCC than at any other major institution in the Commonwealth. Such assaults occurred approximately once per week during 1979-1984 except for fiscal year 1980-1981, when the rate was somewhat lower. The number of inmate-on-inmate assaults and instances of institutional property damage at MCC provide further evidence of the dangerous character of the facility. During the past five years, inmate-on-inmate assaults at MCC have been significantly higher than in every other institution except the State Penitentiary. Instances of both major and minor property damage at MCC exceeded all other major institutions in the Commonwealth during the same period. Thus, it is clear that disruptive behavior by inmates at MCC is not a new phenomenon. It has occurred at the facility ever since its opening and culminated in the very serious escape and hostage incidents this past summer.

The overwhelming majority of DOC and MCC staff interviewed by the Committee favored the concept of confining the Commonwealth's most disruptive inmates in one facility, although both advantages and disadvantages were noted. In addition to the advantage of reducing disruption at other State institutions, some staff felt that assignment to MCC gave inmates "time out" from their behavior at other institutions. The theory was that some inmates develop a "tough" or "macho" image in order to "cope" at an institution; sometimes, to protect that image, they "act out" in a disruptive manner. An assignment to MCC gives them time out from the necessity to protect their image. Other staff felt that confining the "worst" prisoners in one facility merely caused inmates "to feed upon one another to protect the macho image they developed" at the institution from which they were transferred.

Based on the available research and other information, the Committee could not conclude that the confinement of particularly disruptive inmates in one facility is an inappropriate or unreasonable correctional practice. However, the practice should be expected to be a continuing source of potential problems. In the Committee's view, the key to controlling such an environment is a thoroughly considered plan and program for dealing with the inmates, utilizing personnel specifically trained and prepared for this purpose. The Committee therefore recommends:

**Recommendation 1:** MCC should continue to be used for the confinement of particularly disruptive inmates from other correctional facilities in the Commonwealth. At least one reason for this recommendation is the improved conditions at other correctional facilities which appear to have resulted from the transfer of particularly disruptive inmates to MCC.

The Committee realizes, however, that MCC cannot be used solely for disruptive inmates since the number of such inmates in the Virginia correctional system does not now equal, and according to DOC projections is not in the foreseeable future likely to equal, the number of bedspaces available at MCC. The Committee also recognizes that, in light of space needs elsewhere in Virginia's corrections system, this additional bedspace at MCC cannot remain completely unused. The issue of what to do with this additional bedspace is addressed in later portions of this chapter.

b. The "Phase Program":

(1) **Criteria for Assignment and Available Bedspace:**

MCC was intended to be a special purpose maximum security facility for the Commonwealth's most disruptive inmates. The Phase Program was designed to treat and resocialize these individuals so they could be returned to the general prison population of other institutions in the Commonwealth. The Committee could find no documentation to indicate that, in planning for the total bedspace to be constructed at Mecklenburg, any projection was made as to what bedspace was in fact needed to accommodate the disruptive inmate population systemwide. A total of 360 beds are available at the facility. A total of 216 (60%) of the facility's beds are dedicated to the Phase Program. The number of inmates assigned to the facility on the basis of classification as disruptive "Mecklenburg-type" inmates has never equaled more than approximately one-half the beds available.

Since no plan or guidelines had been developed prior to 1977 to identify appropriate inmate transfers to MCC, the facility operated for the first two years without established criteria to guide inmate assignments. Criteria developed in 1979 provided both objective guidelines for MCC "General Population" (Phase Program) transfers, as well as discretionary criteria for assignment to that setting. DGL 825 specified that: "In addition to the infractions noted, a transfer of an inmate may warrant special consideration on a case-by-case basis whenever an inmate has been found guilty . . . of one or more of the representative offenses listed below, for which assignment to Mecklenburg would be considered appropriate and beneficial by the Central Classification Board. . . ."27

Personnel interviewed by the Study Committee indicated that inmates assigned to the Phase Program have been transferred to the facility for a variety of reasons. Examples given indicated that repetitively aggressive inmates were in fact being referred to the facility, but so were inmates who were convicted of such lesser infractions as failing on several consecutive occasions to respond to an officer's instruction to "stand for count" (the process by which inmates in a pod are counted). Although the Committee could not clearly document how much inconsistency there is in inmate assignments to MCC, the absence of guidelines for referral in the initial years of operation of the facility as well as the discretionary aspects of the existing guidelines suggest that considerable inconsistency may exist. The Committee also received reports that on a routine basis in past years,

undocumented telephone calls often were made to different Regions and institutions throughout the Commonwealth requesting inmate referrals to MCC. If true, these efforts to fill bedspace at the facility are further evidence of inconsistent placement practices.

## (2) Treatment of Disruptive Inmates:

In October 1984, the Study Committee conducted its own limited telephone survey of 18 other states to determine to what degree they were providing special programming for disruptive inmates. The survey indicated that two-thirds of the states handle these inmates by procedures which are functionally the equivalent of total segregation or lockdown with little programming available and few, if any, privileges. The remaining third of the states surveyed are attempting specialized programming targeted at the subject population. Of those states attempting to "treat" the disruptive inmate, most programs are new or relatively new. The thinking generally expressed was that something had to be done to address the extremely high fiscal and human costs of simply containing and continually recycling this inmate population. Those states which are currently utilizing specialized programming for the highly disruptive inmate are generally applying systems of graduated privileges, or levels, directly associated with positive behavior and successful adjustment. Of the states surveyed, such programming for the dangerous, disruptive population is taking place in Florida, Massachusetts, Missouri, North Carolina, West Virginia, and Wisconsin. South Carolina has developed, but not yet implemented, such a program.

The survey conducted by the Study Committee suggests that a number of states have concluded that an attempt to "treat" the disruptive inmate is an appropriate correctional practice, although not yet a practice which has been adopted by a majority of states. Virginia's attempt to provide treatment programming for the purpose of readjusting inmate behavior to levels acceptable in other correctional facilities appears to be one of a growing national trend.

Interviews with personnel at MCC did not suggest strong support for the Phase Program. Many staff at the Center reported that the program was "not working" and was "ineffective." There appeared to be a variety of reasons for this conclusion. Among them were: repetitive instances of disruptive and assaultive behavior by inmates in the program; the perceptions that the staff was no longer adequately in control of the program as a result of the 1983 ACLU settlement agreement; and a general fear of inmate movement and interaction. Despite the current concerns of personnel at the facility, no staff appeared to question the fundamental goal of "treating" the disruptive inmate. In fact, employees interviewed expressed general support for returning to the original mission of the facility.

Finally, the Committee also reviewed several published and unpublished DOC reports evaluating the behavior of inmates subsequent to their participation in the Phase Program. Although certain methodological limitations arguably exist in the data contained in these reports, the evaluations did indicate a reduction in institutional criminal and disciplinary infractions

by inmates subsequent to their transfer from the MCC Phase Program to another institution when compared to the period immediately preceeding their placement at MCC. The Committee found no comparable research in the national literature.

### (3) Phase Program Design:

The Phase Program at MCC is intended to change the behavior of inmates participating in the program. Much confusion exists surrounding the term "behavior modification." A 1977 article, written by the four individuals who designed the original "Contingency Management Program" for MCC in 1973-74, describes the issue this way:

"For some behavioral scientists all intervention techniques which are derived from experimental psychology belong under the rubric of behavior modification (e.g., Kanfer & Phillips, 1970; Krasner, 1971; Ullman, 1969). Other professionals label only those therapies which are based on a learning model (i.e., respondent or operant conditioning paradigms) as behavior modification (e.g., Bandura, 1969; Milan & McKee, 1974) . . . . In our opinion, therapists should not refer to their specific techniques as behavior modification, except to indicate the goal of altering a client's behavior."<sup>28</sup>

The 1976 DOC MASIT Program Design described the proposal as a self-learning approach.<sup>29</sup> The expressed goal of the Phase Program is to modify inmate behavior to levels acceptable in other institutions.

The fundamental premises of any behavior modification program are: (1) determine what behavior needs to be changed; (2) determine what reinforcers (contingencies) support the behavior; and (3) change the reinforcers to promote desired behavior. In the case of the Phase Program, disruptive/aggressive inmate behavior is clearly the behavior for which change is

desired. The factors which promote the disruptive behavior of these inmates in other institutions are both complex and individualized in nature. Individualized counseling and establishment of a "treatment agreement" with the inmate are means by which these factors may be examined and addressed ("reinforcers determined").

The MCC Phase Program does much in the area of changing or providing different reinforcers, especially when compared to the institutions from which the inmates were transferred. The differences in the physical plant, the amount of contact with other inmates, and the restriction of certain privileges are examples of changed reinforcers.

There are, however, two principal reinforcers which are the essential features of the Phase Program and are designed to direct an inmate's progress through the program. For the program to be effective, these two reinforcers must be viewed as desirable goals which inmates will attempt, through their behavior, to achieve. The first reinforcer is the transfer of the inmate from MCC to another institution upon successful completion of the Phase Program. As currently structured, this goal may be reached in no less than eight months and will, regardless of the inmate's actual progress, be reached at the end of two years. The second reinforcer is the receipt of additional privileges in each successive Phase at the end of specified periods of infraction-free behavior (i.e., the inmate may advance from Phase II to Phase III at the completion of 120 consecutive days of infraction-free behavior).

During its research, the Study Committee had the opportunity

to discuss the Phase Program with psychologists familiar with correctional programming. One of these individuals had in recent years toured MCC and observed the Phase Program in operation. Each of these individuals, in separate interviews, was critical of the behavior modification program as it is being implemented at MCC. They consistently questioned the utility of the two principal reinforcers inherent in the Phase Program design.

In the first instance, they questioned whether the inmate's long-term goal (eight months to two years) of movement to a different correctional facility was sufficient to motivate the inmate to behave appropriately on a day-to-day basis while at the facility. It was suggested that some of the shorter-term, more immediate reinforcers, such as individualized cells or the increased level of staff attention for negative behavior may be of more meaning to some inmates than eventual return to another facility.

The second major element of the Phase Program, compliance with strict institutional rules for periods of 60-90-120 days before increased privileges are granted, was also seriously questioned. The Phase Program was characterized by these individuals as one with an almost entirely negative orientation, rewarding inmates for long-term avoidance of negative, disruptive behaviors--and punishing them severely if they engaged in such behaviors by almost always forcing them to start over at the beginning of the Phase--rather than supporting the development of desirable, adaptive behaviors.

These negative aspects of the Phase Program were described

as inconsistent with the fundamental principles of behavior modification programming. One of the psychologists summarized his conclusions by stating: "One wonders whether it is better not to attempt the [Phase] program at all, than to do it wrong."

Behavior modification programs, particularly in prisons, have been the subject of much controversy for more than a decade, resulting in numerous legal challenges in state and federal courts. The litigation most often has been directed at specific practices of such programs. The START Program at the Federal Bureau of Prisons' Penitentiary in Springfield, Missouri, for example, was the subject of such litigation in 1974. The program was terminated as a result of the court's judgment in the case. Among the major criticisms directed at the START Program were: (1) placement of the inmate in a very restrictive setting, deprived of many privileges, without the individual's voluntary consent; (2) a program emphasis on the absence or suppression of inappropriate behaviors rather than on the promotion of constructive behaviors; and (3) the use of harsh punishment procedures.<sup>30</sup>

These same criticisms have been directed at the Phase Program in litigation involving MCC. The case law, however, is not clear. Indeed, in a 1981 article the Executive Director of the ACLU National Prison Project summarizes the case law this way:

"The courts have been fairly specific on physical conditions, space requirements, and public-health issues. For example, they have ordered specific square-foot requirements for cell sizes, minimum lighting requirements, and so on. However, the court orders regarding programming have usually been vague. They usually indicate that every prisoner shall have the opportunity to participate in educational, prevocational,

vocational programs, and so on without specifying in it particulars, what these programs must be like."<sup>31</sup>

This conclusion is echoed in one of the earliest federal court rulings directed at the Virginia prison system. In Landman v. Royster, 333 F. Supp. 621, 657 (E.D. Va. 1971), the court wrote:

"[T]he time may come in the future when substantial reasons for depriving men of various liberties, to the end that their behavior may be amended, may be presented. 'Prison authorities have a legitimate interest in the rehabilitation of prisoners, and may legitimately restrict freedoms in order to further this interest, where a coherent, consistently-applied program of rehabilitation exists.' Brown v. Peyton, . . . 437 F.2d 1231."

In its telephone survey of other states, the Committee found that a majority of the sample had some experience in implementing behavior modification programs, although most tended to shy away from use of "behavior modification" due to the negative connotations which often are associated with the term. The survey indicated that behavior modification programs currently are being operated in state prison systems in Florida, Massachusetts, Mississippi, North Carolina, Missouri and Wisconsin. The Federal Bureau of Prisons also operates such a program at its penitentiary in Butner, North Carolina. Few of the states surveyed, however, have applied a behavior modification program to their most disruptive inmates. For these reasons the program implemented at MCC may be considered unique, although not inconsistent with practices in other states.

The Committee believes that the goal of treating particularly disruptive inmates for the purpose of returning these inmates to the general prison population of other institutions is a

fundamentally sound policy objective. The Committee also believes, however, that DOC has not fully and effectively implemented a program at MCC which will achieve that purpose.

Numerous factors have compromised the potential for success of the Phase Program. Among them are: the absence of strict inmate referral criteria; clinical design flaws in the program; inadequate numbers of treatment personnel; program limitations implemented as a result of the Brown v. Procunier settlement agreement; and deficiencies in communication among personnel responsible for the program. In addition, previous policy decisions to utilize available bedspace at the facility have resulted in the addition of new and competing programs (e.g., protective custody and the maximum security unit), as well as inappropriate inmate placements in the Phase Program itself (i.e., for reasons other than that the inmate had been "disruptive"). The original intended purpose of MCC has not been given sufficient priority.

DOC must make a fundamental policy decision as to whether disruptive inmates in the Virginia correctional system are to be (1) placed in a special program which seeks to treat these inmates to the point where their behavior changes and they can safely be returned to mainstream correctional facilities, or (2) merely controlled and contained through traditional forms of maximum security segregation. The Study Committee strongly recommends the former, provided that, henceforth, this purpose can be accomplished in an effective manner even in the face of expected and realistic fiscal and technological constraints. The Committee believes that the purposes for which the MCC Phase