# (9)

# Managing the Reform of Prisons and Youth Detention Schools

When I included in my death penalty argument before the Supreme Court of the United States a reminder to the justices they were not a "super-legislature," I was referring to more than just Texas' death penalty laws, and I was referring to more than just the Supreme Court. I was also expressing my frustration and concern over federal judges' newfound eagerness to expand the U.S. Constitution to justify substituting their personal vision in place of our legislature's judgment on how a government agency should operate.

The source of that frustration was federal court litigation attacking our state's four largest programs involving institutional care: the prison system, young offender facilities, mental hospitals, and facilities for the mentally disabled. Any one of these cases would have been a massive litigation load—the prison case by itself became the most comprehensive civil action suit in correctional law history.[1] To have four of them hit my office at the same time was an unprecedented call on the resources of the attorney general's office.

The goal of these cases was to establish a new constitutional right. The people who were the intended beneficiaries of this legal right were criminals sentenced to prison time or committed to mental hospitals, juveniles committed to state facilities by a juvenile court judge, and persons suffering from mental illness or congenital mental disability who were committed by civil courts to state facilities. The new right being sought was a right to treatment, a right that would impose on institutions housing these people a level of care to be established by judicial decree.

Determining what level of treatment to provide inmates historically was the province of our legislature. An institution created by the legislature would have its mission defined by law, its operation reviewed each