

11-18-2010

Opening Up a Closed World: What Constitutes Effective Prison Oversight?

Michael B. Mushlin

Pace University School of Law, mmushlin@law.pace.edu

Michele Deitch

University of Texas

Recommended Citation

Michael B. Mushlin and Michele Deitch, *Opening Up a Closed World: What Constitutes Effective Prison Oversight?*, 30 *Pace L. Rev.* 1383 (2010)

Available at: <http://digitalcommons.pace.edu/plr/vol30/iss5/1>

Opening Up a Closed World: What Constitutes Effective Prison Oversight?

Michael B. Mushlin¹ & Michele Deitch²

I. Background

In April 2006, some of the world's leading experts in corrections policy and human rights gathered in Austin, Texas for a seminal three-day conference on prison oversight. This by-invitation event, entitled *Opening Up a Closed World: What Constitutes Effective Prison Oversight?*, was sponsored by the Lyndon B. Johnson School of Public Affairs at the University of Texas, in conjunction with Pace Law School. The Texas conference was a follow-up to the 2003 conference at Pace Law School entitled *Prison Reform Revisited: The Unfinished*

1. Michael B. Mushlin is a Professor of Law at Pace University Law School. Before entering academia he was staff attorney and Project Director of the Prisoners' Rights Project of the Legal Aid Society, and Associate Director of the Children's Rights Project of the American Civil Liberties Union. He has served as Chair of the Committee on Corrections of the New York City Bar Association and as Chair and now Vice Chair of the Correctional Association of New York. He also was a member of the Task Force on the Legal Status of Prisoners of the American Bar Association, which drafted a new set of standards governing the rights of prisoners adopted by the House of Delegates of the ABA as policy on February 8, 2010. He is the author of *RIGHTS OF PRISONERS* (4th ed. 2009), a four volume text published by West Publishing Company. B.A. Vanderbilt University; J.D. Northwestern University School of Law

2. Michele Deitch is a Senior Lecturer at the University of Texas—Lyndon B. Johnson School of Public Affairs and the University of Texas School of Law. She was the Chair of the 2006 conference on prison oversight, as well as a Soros Senior Justice Fellow. She served as the original Reporter for the American Bar Association's Standards on the Treatment of Prisoners, and was a court-appointed monitor of conditions in the Texas prison system in the landmark class action lawsuit *Ruiz v. Estelle*. She has also served as a policy advisor to the Texas Legislature on corrections and sentencing issues, was appointed to the state's Blue Ribbon Task Force on the juvenile justice system, and provided lead testimony on independent prison oversight issues before the National Prison Rape Elimination Commission and the Commission on Safety and Abuse in America's Prisons. B.A., Amherst College; M.Sc., Oxford University; J.D. Harvard Law School.

Agenda, the proceedings for which were published in the PACE LAW REVIEW.³

One of the themes of the previous Pace conference was the critical need to develop methods for ensuring greater transparency of correctional institutions and accountability for the protection of prisoners. Exclusive reliance on the courts to serve this function is misplaced: judges can only remedy problems once a constitutional violation is found; they are not in a position to prevent problems in the first place. The far wiser approach is to develop preventative oversight mechanisms that reduce the necessity of court involvement in prison operations.

The Texas conference developed and explored this theme in-depth. It provided the first opportunity in the United States to examine closely a range of workable non-judicial prison oversight mechanisms—both international models and domestic—and to explore ways that prison oversight can be enhanced in this country. This issue goes not only to the heart of good governance practices, but also to the protection of human rights in a closed institutional environment. Supreme Court Justice William Brennan sagely referred to this prison environment as a “shadow world”;⁴ by shining a light on these hidden corners of our society, we can go a long way towards eliminating abuses.

The Texas conference broke new ground in the extent to which it brought together a broad range of high-level players representing key stakeholder groups concerned about prison-related issues. They came together in a spirit of cooperation and dialogue, and with a willingness to engage deeply about ways to improve prison conditions and the treatment of prisoners. Among the 115 participants were 20 percent of the nation’s corrections commissioners and directors, as well as international experts and the country’s leading prisoners’ rights advocates, scholars, practitioners, judges, journalists, and policy-makers.⁵ Many of the participants were previously

3. Symposium, *Prison Reform Revisited: The Unfinished Agenda*, 24 PACE L. REV. 395 (2004), available at <http://digitalcommons.pace.edu/plr/vol24/iss2/>.

4. O’Lone v. Estate of Shabazz, 482 U.S. 342, 354-55 (1987) (Brennan, J., dissenting).

5. A list of the distinguished conference participants and their affiliation

used to seeing each other only on the opposite sides of a courtroom. Attendees came from twenty-two states and five foreign countries to discuss methods for increasing transparency and accountability in U.S. prisons and jails. Unlike most academic conferences, this conference was a “by-invitation only” event, designed to make the conference one in which a fruitful and respectful dialogue among experts could take place.

By bringing together both domestic leaders and international experts, the conference created an opportunity for American corrections officials and prisoner rights advocates to be exposed to international practices and requirements with prisons. The concept of independent oversight is uncharted territory for most U.S. corrections practitioners. Many European countries have highly developed mechanisms for inspecting and reporting on prison conditions. Such monitoring systems are designed to prevent human rights abuses before they occur. In contrast, the United States is one of the only Western nations without a formal and comprehensive system in place providing for regular, external review of all prisons and jails.⁶ At the same time, these international experts learned a great deal both about U.S. correctional practices and the challenges faced by prison and jail officials working in the current political environment.

The conference agenda, which is attached as Appendix B to this Foreword, details the range of complex issues that were explored in depth over the course of the event.

Over the course of three days, which included two days of conference-style information-sharing and a separate day for a work session, this diverse group achieved a remarkable level of consensus about the need for increased levels of oversight of prisons and jails in the United States.⁷ The consensus did not

at the time of the conference is attached as Appendix A to this Foreword.

6. As shown by Professor Deitch’s 50-state inventory of correctional oversight mechanisms in this volume, however, there are some important examples of such routine correctional monitoring conducted at the state and local levels. Such examples include the California Inspector General, the Ohio Correctional Institution Inspection Committee, the Board of Correction in New York City, and the Texas Commission on Jail Standards. Michele Deitch, *Independent Correctional Oversight Mechanisms Across the United States: A 50-State Inventory*, 30 PACE L. REV. 1754 (2010).

7. The Texas House of Representatives passed a resolution praising the

emerge because we all share a perspective on the extent of problems in corrections today, but because we all agree that improvement is possible and that enhanced oversight can assist in the effort to improve operations. Corrections officials wisely observed many ways in which external oversight can benefit their agencies, and advocates began to perceive that routine oversight could be an effective and appropriate alternative and supplement to litigation as a reform vehicle. Moreover, all stakeholder groups that participated recognized that they shared many common goals and objectives that could be served meaningfully through expanded independent oversight—most notably, the goal of achieving safe and humane prisons.

Following the conference, numerous participants committed to taking steps both large and small towards ensuring that the momentum from this important event would continue to grow and take root. Since our gathering in 2006, we have seen a number of concrete indications that the *Opening Up a Closed World* conference has had a critical impact. In 2008, the American Bar Association passed a resolution calling for independent correctional oversight in every jurisdiction and detailing what such oversight bodies should look like,⁸ and in 2010, the American Bar Association adopted a vastly revised set of criminal justice standards on the treatment of prisoners that similarly emphasized the importance of independent oversight mechanisms.⁹ In 2007, the National Prison Rape Elimination Commission held a

stimulating dialogue and debate sparked by the Conference that promises to lead “to significant reforms within the U.S. criminal justice system.” H.R. 223, 79th Leg., (Tex. 2006).

8. ABA Resolution 104b, Approved by the House of Delegates at Annual Meeting 2008, *available at* <http://www.abanet.org/crimjust/policy/am08104b.pdf>. Co-author Michele Deitch served as an advisor to the ABA Subcommittee that drafted the resolution.

9. ABA Criminal Justice Section Standards: Treatment of Prisoners, Standard 23-11.3 (2010), *available at* <http://www.abanet.org/crimjust/standards/treatmentprisoners.html>. Co-author Michele Deitch served as Reporter to the ABA Standards Task Force that developed these standards, while co-author Michael Mushlin served as a member of that same Task Force.

hearing featuring testimony on independent prison oversight,¹⁰ and the PREA Standards, issued in 2009, emphasized the importance of oversight to ensure agency compliance with the standards.¹¹ The annual convention of the American Correctional Association in 2007 featured a major session on independent correctional oversight.¹² Several states and local jurisdiction have sought to establish or strengthen oversight bodies through either legislation or negotiation. In 2007, the Texas Legislature created the Independent Ombudsman for the Texas Youth Commission, and incorporated many of the key principles of independent oversight in the drafting of that legislation.¹³ And countless individuals, experts, and advocacy groups have sought guidance and information on this topic from the organizers as a result of the conference. Though the long-term impact of the conference has yet to be fully realized, it is fair to say that the event has generated significant interest and commitment to an issue that had previously received sparse exposure in the United States.

Publication of this volume of papers is yet another step in the process of ensuring that this topic of independent prison oversight remains visible, and that essential information about correctional oversight mechanisms is readily available to all practitioners, advocates, scholars, and others who are

10. *Special Topics In Preventing and Responding to Prison Rape: Medical and Mental Health Care, Community Corrections Settings, and Oversight, Hearing before the National Prison Rape Elimination Commission* (Dec. 6, 2007), available at <http://www.cybercemetery.unt.edu/archive/nprec/20090820160849/http://nprec.us/docs3/December%206%202007-New%20Orleans.txt>. Many of those who provided testimony at this hearing, including co-author Michele Deitch, were speakers at the *Opening Up a Closed World* conference.

11. National Prison Rape Elimination Commission, Publications – Standards AU1, http://nprec.us/files/pdfs/NPREC_PrisonsJailsStandards.PDF (last visited Sept. 26, 2010) [hereinafter PREA Standards].

12. The speakers for this session included two corrections directors, Harold Clarke (the then chair-elect of the ACA and incoming director of the Massachusetts Department of Corrections) and Kathleen Dennehy (the outgoing director of the Massachusetts Department of Corrections), and co-author Michele Deitch.

13. 2007 Tex. Sess. Law Serv. Ch. 263 (West). For more information on the law, regularly referred to as SB 103, see *Bill History*, TEXAS LEGISLATURE ONLINE, <http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=80R&Bill=SB103> (last visited Sept. 27, 2010).

interested in the concept. The need for such information has become increasingly apparent to us during the time since the conference, and so we redoubled our efforts to update research and solicit articles from our conference participants. We have also updated the conference website, so that also remains an excellent resource for anyone interested in prison oversight. The website—www.utexas.edu/lbj/prisonconference—has long contained videos of all the presentations at the conferences, so anyone can be a “virtual participant” in this exciting event. Newly added to the website are the conference proceedings, which include detailed written summaries of each conference session (a godsend for anyone without time to watch the full videos) as well as copies of handouts from the conference (descriptions of the various oversight bodies discussed during the sessions).¹⁴ In time, additional resources on correctional oversight will also be added to this website.

This law review volume may be considered a sourcebook on the issue of correctional oversight, and we predict that the volume will be an invaluable resource in this growing field of law, policy, and public administration. Given the explosive growth of prisons over the last three decades and the absence, by and large, of effective prison oversight mechanisms in this country, these papers—the first in any American law review devoted to this subject—take on added importance and urgency because they provide information not previously available before to American audiences and add important perspectives from major leaders in the field.

II. Highlights of the Papers in this Volume

The papers published herein cover four general areas, and the volume is organized along these lines: (1) overview of the topic of prison oversight; (2) the international experience with prison oversight; (3) correctional oversight in the United States; and (4) resources for further research on correctional oversight.

14. Michele Deitch, ed., *Opening Up a Closed World: What Constitutes Prison Oversight?—Conference Proceedings*, LYNDON B. JOHNSON SCH. OF PUB. AFFAIRS, THE UNIV. OF TEX. AT AUSTIN, http://www.utexas.edu/lbj/prisonconference/2006_conference_proceedings (last visited Oct. 1, 2010).

A. *Overview of the Topic of Prison Oversight*

The first set of papers provides useful background and an overview of this important subject. The volume begins with a paper from Professor Michael Mushlin that traces in more detail the connection between the 2003 Pace conference on prison reform and this 2006 Texas conference on prison oversight. His essay demonstrates how the *Prison Reform Revisited* conference set the necessary foundation for this conference by bringing together for the first time people who often are at odds with one another. In his article, Mushlin writes that “[t]his was a dramatic break with precedent. In the past, prison administrators rarely, if ever, voluntarily met with advocates. By the same token, advocates, when they wished to discuss strategies for achieving change, steered clear of prison administrators. Except during periods of conflict, these individuals lived their professional lives segregated from one another.”¹⁵ The model for that successful conference made this conference, which is more focused and specific, possible.

Professor Michele Deitch’s essay, *Distinguishing the Various Functions of Effective Prison Oversight*,¹⁶ will help readers begin to understand the complex concept of oversight. This essay was also a presentation from the opening of the conference, and its importance lay in its effort to establish a shared terminology on “oversight” for conference participants. “Oversight,” Deitch notes, is not a term of art, but an umbrella concept that encompasses many distinct functions, including regulation, audit, accreditation, investigation, legal, reporting, and inspection/monitoring. Each of these functions, she argues, is an essential part of effective oversight and these functions should not compete with each other in importance. Moreover, as this essay indicates, we each have a different function in mind when we discuss oversight, which makes communication about this topic difficult at times. Deitch calls

15. Michael B. Mushlin, *From White Plains to Austin: The Road from the Prison Reform Revisited Conference to the Opening Up a Closed World Conference*, 30 PACE L. REV. 1430, 1432 (2010).

16. Michele Deitch, *Distinguishing the Various Functions of Effective Prison Oversight*, 30 PACE L. REV. 1438 (2010).

for a robust system of correctional oversight that is multi-faceted and multi-layered, serving each of these functions and involving players both inside and outside the correctional agency.

Next, the volume reprints the keynote speech delivered at the Texas conference on prison oversight by former United States Attorney General Nicholas Katzenbach.¹⁷ His powerful presentation drew on his personal experiences as a prisoner of war during World War II and his belief in the importance of oversight to ensure the humane treatment of prisoners. Katzenbach acknowledges the lack of a natural constituency in favor of prisoners' rights, and explores the possible explanations for why there is starting to be a more welcoming attitude towards the notion of oversight on the part of prison administrators. He hopes that oversight bodies can engage society in a discussion about the shortsightedness of some of our criminal justice policies and practices. He concludes with an eloquent exhortation to all of us to let politicians know that important people care about reforming prisons and reversing regressive criminal justice policies, and are willing to speak out about these matters.

Lest there be any doubt about the need for external oversight, Geri Lynn Green's article about the disarray of the California prison system should dispel the notion that all is right with the American correctional system.¹⁸ That article chronicles the crises in the nation's largest prison system, brought on by severe overcrowding with some California prison facilities crowded to 300% capacity.¹⁹ Green, a civil rights attorney, argues that these challenges have led to a situation in which California prisons operate "without necessary management structures, policy standardization, training information technology or the ability to provide essential

17. Hon. Nicholas de B. Katzenbach, *Reflections on 60 Years of Outside Scrutiny of Prisons and Prison Policy in the United States*, 30 PACE L. REV. 1446 (2010).

18. Geri Lynn Green, *The Quixotic Dilemma, California's Immutable Culture of Incarceration*, 30 PACE L. REV. 1453 (2010).

19. Though California's prison problems are enormously high-profile, by no means is this state the only one whose prison system is facing challenges. For a survey of the problems in contemporary American prisons, see generally COMM'N ON SAFETY AND ABUSE IN AMERICA'S PRISONS, CONFRONTING CONFINEMENT (2006).

health care services and rehabilitative programming.”²⁰ She concludes that without effective and appropriate external oversight of this system, there has been a “massive waste of taxpayer money.”²¹

This section concludes with an important article by Professor Stan Stojkovic. His piece, entitled *Prison Oversight and Prison Leadership*,²² makes a compelling argument for prison oversight from the perspective of correctional administrators. He ends with the premise that “[p]rison oversight . . . will be the norm for prison leadership and management in the 21st century. For correctional professionals the only question remains how they will adjust to this change.”²³

Professor Stojkovic demonstrates how this development should be embraced and welcomed since prison oversight is “in the best interests of everyone” including correctional leadership.²⁴ This is so because without public scrutiny administrators are “anonymous.” To Stojkovic, this is not as appealing a posture as it might sound. His article demonstrates the benefits that come from the transparency that results from prison oversight. These include enhanced effectiveness, greater resources, and new ideas. “Without adequate oversight, correctional problems compound. Issues like correctional health care, prison crowding, prison violence and the management of prisons become almost impossible to address.”²⁵ Even more pointedly, Stojkovic argues that oversight serves democratic values by engaging the public in the “long and difficult discussion of what we, as a society, can reasonably expect of prisons.”²⁶

20. Green, *supra* note 18, at 1459-60. Indeed, currently the entire prison system of California is under a court order to decrease its prison population by tens of thousands of inmates in order to come into compliance with basic constitutional norms. *See id.* at 1461-63.

21. *Id.*

22. Stan Stojkovic, *Prison Oversight and Prison Leadership*, 30 PACE L. REV. 1476 (2010).

23. *Id.* at 1489.

24. *Id.* at 1476.

25. *Id.* at 1483.

26. *Id.* at 1486.

B. *International experience*

The next section of this volume presents a variety of international models of prison oversight. Correctional oversight mechanisms are far better established in other developed countries than in the United States, and thus these models provide an excellent source of information for us. For example, the United Kingdom has three different oversight bodies, each fulfilling a different function: there is a Prison Inspectorate that conducts routine inspections of all places of detention;²⁷ a Prison Ombudsman who investigates prisoners' complaints; and a system of Independent Monitoring Boards made up of lay citizens who are appointed to monitor a particular facility.²⁸ Most European countries—the forty-seven states that are party to the Council of Europe—fall under the auspices of the Committee for the Prevention of Torture and the Inhuman and Degrading Treatment of Prisoners (CPT), an intergovernmental treaty body that has the power to inspect and report on conditions in any of the prisons in that vast area.²⁹ In Canada, the Office of the Correctional Investigator is charged with investigating conditions in that country's prisons and reporting its findings to the public and to political officials.³⁰

These entities are discussed in several papers, and the pieces make for fascinating reading. The authors caution that they are not attempting to sell their particular model to the American public and explicitly note that in order for oversight to be effective, a model must fit within the culture in which it operates.³¹ Nevertheless, there are common themes that

27. See Anne Owers, *Prison Inspection and the Protection of Prisoners' Rights*, 30 PACE L. REV. 1535 (2010).

28. See Vivien Stern, *The Role of Citizens and Non-Profit Organizations in Providing Oversight*, 30 PACE L. REV. 1529 (2010).

29. See Silvia Casale, *The Importance of Dialogue and Co-Operation in Prison Oversight*, 30 PACE L. REV. 1490 (2010).

30. See Howard Sapers & Ivan Zinger, *The Ombudsman as a Monitor of Human Rights in Canadian Federal Corrections*, 30 PACE L. REV. 1512 (2010).

31. See e.g., Owers, *supra* note 27, at 1547 (“[I]t is important to stress that the models for protecting prisoners’ rights cannot simply be packaged up and exported wholesale to another county. Protecting prisoners’ rights requires a multi-layered approach and any mechanisms for doing so need to be effective within the political, social and legal cultures of each jurisdiction.”)

emerge from this record of extensive experience with oversight in these countries and the lessons learned are valuable to anyone interested in the prospect of establishing oversight in the United States.

Some of the examples of the benefits that have occurred from oversight mechanisms used in other countries are simple, yet powerful. In one case, Dr. Silvia Casale, the then-head of the CPT, recalls an inspection by her group to an unnamed European prison³² in which it was so freezing that “fingers grew stiff with cold.”³³ The inspection report put a spotlight on the problem, which in turn led to an increase in government funding for the fuel allowance given to the prison. The end result was that the prison was no longer as cold and forbidding a place.³⁴ In another equally powerful story, Casale tells how the Russian Federation was persuaded by the oversight body to remove shutters from the windows of all the prison cells in that country. Before that decision, the prisons were dark and dank dungeons. This shift in practice, to quote Dr. Casale, “was a dramatic move to let in the light, symbolizing vividly the effect of oversight on the closed world of prisons.”³⁵

Andrew Coyle’s article is of particular resonance because he speaks from his experience on the receiving end of oversight inspections.³⁶ In the early 1990s, Coyle was appointed the warden of Brixton Prison, which at the time was one of the largest and most notorious of all British correctional institutions. He writes about the great benefit that oversight inspections provided, as he sought to reform the operation of this prison:³⁷

These two objective and independent reports provided me with the tools that I could use to convince staff of the need for change, to demonstrate to government ministers and

32. The CPT keeps its reports anonymous. *See* Casale, *supra* note 29, at 1496, n.20.

33. *Id.* at 1495.

34. *See id.* at 1501-02.

35. *Id.* at 1502.

36. Andrew Coyle, *Professionalism in Corrections and the Need for External Scrutiny: An International Overview*, 30 PACE L. REV. 1503 (2010).

37. *Id.* at 1507.

national officials that . . . sufficient resources be provided so that we [could] deliver decent and humane care to prisoners. The reports also provided an opportunity to engage with the media and local public about what was going on in the prison, what could be expected of it and what should not be expected of it. . . . [T]he process of change and improvement which we began in Brixton in 1991 was greatly assisted by these two independent reports because they were able to draw attention to the pressure which made it difficult to manage the prison. These were pressures which everyone connected with the prison was already aware of but it took external inspections to get them on the public agenda.³⁸

Coyle points out that there exists a range of international, regional, and national standards to guide these inspections, and that these standards “are not merely theoretical, nor are they simply aspirational. They are intended to be applied in practice in the day-to-day management of prisons.”³⁹ Using these objective standards, Coyle argues, helps ensure that the inspections are not ad hoc and subjective. Coyle concludes that his experience demonstrates that oversight can materially help in addressing what he sees as common problems in prison management across cultures and national boundaries.⁴⁰

Howard Sapers and Ivan Zinger, in their article on the Canadian prison system, conclude that oversight in that country provides an “effective counter-weight to the natural tendency of large social control institutions to overreact to social and political pressures.”⁴¹ They describe the Office of the Correctional Investigator (OCI), which under Canadian Law is charged with investigating and resolving individual prisoner grievances.⁴² The office also has responsibility “to review and make recommendations” to correctional officials regarding

38. *Id.* at 1507-08.

39. *Id.* at 1511.

40. *Id.* at 1511.

41. Sapers & Zinger, *supra* note 30, at 1528.

42. *Id.* at 1518.

“policies and procedures associated with individual complaints.”⁴³ The authors observe that the OCI is “above all an Ombudsman” office.⁴⁴ However, the article explains how that description fails to recognize the true value of the OCI. Working with a staff of twenty-four, the office receives between 6000 and 8000 inquiries and complaints from inmates every year. These communications and the follow up responses give the OCI an excellent perspective on the Canadian prison system and a basis for making recommendations for systemic change. Nevertheless, the authors point out that while this model has achieved results, there are limitations to what it has been able to accomplish, particularly when it comes to addressing the widespread use of administrative segregation in the Canadian prison system. They conclude their article with recommendations as to how this external oversight mechanism can be strengthened. Recommendations include providing the OCI with power to make independent adjudication of decisions to place prisoners in administrative segregation; giving the OCI independent authority to report directly to Parliament; and creating a national review mechanism in Canada that meets the requirements of the Optional Protocol to the Convention against Torture.⁴⁵

The next article, by Baroness Vivien Stern,⁴⁶ provides some insight into the use of citizen review boards in the prison monitoring context. She draws on her experiences working with the system of Independent Monitoring Boards in England to examine the benefits and drawbacks of such an oversight model, and to assess their potential value for implementation in the United States. She writes powerfully about the importance of involving citizens in the oversight process:

[Citizens] bring with them the values of the outside world to the closed and deformed world of prisons. They keep alive in the prison a certain view of how human beings should be treated. They can be the eyes and ears from the outside . .

43. *Id.*

44. *Id.*

45. *Id.* at 1527-28.

46. Stern, *supra* note 28.

. . .⁴⁷

Anne Owers makes an important contribution with her piece on the British Prison Inspectorate, for which she serves as the Chief Inspector.⁴⁸ The Inspectorate, established by Parliament in 1985, has statutory power to inspect every adult prison and juvenile facility in England and Wales, as well as all places of immigration detention in the UK and by invitation the military's central detention facility. Each prison in the country is inspected at least twice every five years.

In her article, Owers provides useful detail about how the inspections are carried out. Of particular interest is that the Inspectorate uses four tests to determine whether a prison is functioning properly. These four tests are:

whether prisoners are held in safety, whether they are treated with respect for their human dignity, whether they are able to engage in purposeful activity, and whether they are prepared for resettlement back into the community.⁴⁹

Following each inspection, the Prison Inspectorate releases a report with recommendations for improvement. Under British law, prison officials must respond with an action plan stating whether each recommendation is accepted and if so how it will be implemented in the prison.⁵⁰ Later, the Inspectorate returns to conduct a follow up inspection to determine the agency's state of compliance with its action plan. Owers reports that "it is encouraging that, even in a pressurised system such as ours, we find that around 70% of our recommendations have been implemented, wholly or in part."⁵¹ But the benefits of this inspection process, according to Owers, are not confined just to the changes made in individual prisons. Through "thematic reviews" her office has also been able to

47. *Id.* at 1533.

48. *See generally* Owers, *supra* note 27.

49. *Id.* at 1542.

50. *Id.* (reporting that about 95% of all recommendations are accepted by the agency, with about 70% of them ultimately implemented).

51. *Id.* at 1543.

“promote and support system-wide changes.”⁵²

These articles about international models of oversight are fascinating and provoke obvious questions about whether we can adapt these models for use in the United States. Of course, as Owers point out, cultural and political differences between our country and the countries that these authors write about must be taken into account.⁵³ At the same time, though, it is hard to disagree with Andrew Coyle’s observation that the “problems that face prisons across the world are broadly similar and the situation in the United States is no different from other countries. The common problems related to under-resourcing and overcrowding; poor health (including mental health) of many prisoners; issues relating to staff such as low pay, poor training and little public respect for what they do.”⁵⁴ The articles in this section of the volume serve as a valuable resource as we learn from the experiences of our international counterparts.

C. *Correctional oversight in the United States*

While prison oversight mechanisms are not well established or in wide existence in the United States, neither are these bodies completely unknown. The conference papers published here provide rich examples of a handful of correctional oversight bodies in the United States and the benefits that such oversight provides. The oversight models profiled in this report fall into four categories: (1) non-governmental citizen-based oversight; (2) oversight by independent governmental bodies; (3) oversight by professional correctional organizations; and (4) judicial oversight.

1. The role of NGOs and civilians in the oversight process

Probably the best-known examples of oversight of the criminal justice system in the United States arise in the context of civilian oversight of law enforcement, rather than in

52. *Id.* at 1544.

53. *Id.* at 1547 (“[M]odels for protecting prisoners’ rights cannot simply be packaged up and exported wholesale to another country.”).

54. Coyle, *supra* note 36, at 1511.

the prison context. Barbara Attard, who served as the executive director of the National Association for Civilian Oversight of Law Enforcement (NACOLE), describes in her article what is needed to be an effective oversight body for the police.⁵⁵ Those elements of effectiveness include political will, authority, adequate funding, the ability to make policy recommendations, connection with the community served by the oversight body, the ability to report publicly, and the use of mediation to resolve specific complaints.⁵⁶ While Attard's article does not deal with prison oversight, it is nevertheless worthy of review by anyone interested in the effort to ensure transparency and accountability in criminal justice agencies. To be sure, there are significant differences between police oversight and prison oversight—not the least of which is that police oversight does not involve inspections of facilities—but the lessons learned through years of experiences on the police oversight front sound all too familiar to anyone who monitors correctional institutions.

A rare but interesting model of prison oversight in the United States involves inspections conducted by private nongovernmental organizations that have authority to enter prisons. The Correctional Association of New York is one of only two private citizen-based organizations in the United States with a legislative mandate to visit prisons and report on the conditions of confinement.⁵⁷ It has had this mandate for over 165 years. The Board of Directors of this organization is comprised of private citizens including “prominent citizens, lawyers, advocates, formerly incarcerated individuals, individuals associated with community based organizations . . . and academics.”⁵⁸

55. Barbara Attard, *Oversight of Law Enforcement is Beneficial and Needed—Both Inside and Out*, 30 PACE L. REV. 1548 (2010).

56. *Id.*

57. Jack Beck, *Role of the Correctional Association of New York in a New Paradigm of Prison Monitoring*, 30 PACE L. REV. 1572, 1574 (2010).

58. *Id.* See also John Brickman, *The Role of Civilian Organizations with Prison Access and Citizen Members—The New York Experience*, 30 PACE L. REV. 1562, 1564 (2010) (listing such famous past members of the Correctional Association as Theodore Roosevelt, John D. Rockefeller, Andrew Carnegie, Cornelius Vanderbilt, John J. Astor, Jr., Samuel F. B. Morse, and Jacob H. Schiff). Co-author Michael Mushlin is a past chair of the Correctional Association and currently serves as a vice chair of the organization and a member of its Executive Committee.

Two articles—one by John Brickman, who served as Chair of the Board of the Correctional Association,⁵⁹ and the other by Jack Beck, the head of the visiting project of this organization⁶⁰—describe the work of this impressive organization in detail and discuss the benefits of this oversight model as well as its drawbacks. Brickman’s article also allows for an interesting contrast between this model and a government model of oversight, as he also for a time headed the Board of Correction, a New York City government body charged with inspection and regulation of the city’s jails.

According to Brickman, a major benefit derives from enlisting prominent citizens in the difficult effort to obtain meaningful reform of prisons.⁶¹ Once recruited, these citizens can influence legislators and budget officials to provide needed financial support and can enlist private philanthropy to support prison affairs. Moreover, their status in the community can also influence the media to report on conditions and can provide political “cover” for administrators who want to take steps that might otherwise be politically unpopular. Their very presence in the facilities keeps corrections professionals “at the top of their game” in running the prisons.⁶²

John Brickman captures all of these points when he summarizes and applies an axiom of quantum physics—Heisenberg’s “uncertainty principle”⁶³—to the field of prison oversight. This principle, according to Brickman, “teaches that the fact of observation will alter the subatomic reaction being investigated.”⁶⁴ Applying this principle in this context, he concludes that:

59. Brickman, *supra* note 58.

60. Beck, *supra* note 57.

61. An additional article discussing the benefits of citizen oversight bodies is the very useful article of Baroness Vivien Stern, *supra* note 28. That article describes the Independent Monitoring Boards comprised of ordinary citizens, which date back to the 16th century in England, and are in operation for all 135 prisons and 10 immigration removal centers in England and Wales.

62. Brickman, *supra* note 58, at 1569.

63. JAN HILGEVOORD & JOS UFFINK, THE UNCERTAINTY PRINCIPLE, IN STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta ed., 2006), available at <http://plato.stanford.edu/archives/fall2006/entries/qt-uncertainty/>.

64. Brickman, *supra* note 58, at 1571.

Watching something affects its course. In facilities that confine people, the presence of civilian overseers humanizes everyone—inmates and staff—and makes the prison a better, more effective and more enlightened institution for all.⁶⁵

The approach of the Correctional Association's Prison Visiting Project is described in greater detail in Jack Beck's article. Correctional Association staff employ numerous techniques for gathering data about conditions in the New York's prison facilities, including the use of standardized survey instruments.⁶⁶ This data, along with the results of the inspection team's observations and interviews, is used to generate reports either about single prison facilities or about issues that cut across the entire penal system. The sophistication of the monitoring process is exemplified by a review of correctional programs for treatment of drug and alcohol abuse conducted under Beck's leadership. This project involved visits to twenty-two prisons, the observation of forty different treatment programs, detailed surveys of 1,160 inmates, focus group meetings with staff, and discussions with prison administrators.⁶⁷

Both Beck and Brickman point out that the independence of the Correctional Association is both an advantage and a shortcoming. Its independence from governmental structures allows the Correctional Association to rise above political limitations. However, the Correctional Association's independence is limiting insofar as the law that grants the Association access to prisons "does not grant the CA any power to require change."⁶⁸ Its power to effect change therefore is only through the "persuasiveness" of its efforts. Beck finds a paradox here too in that the more "forcefully the CA advocates for change, the more difficult it is to have a congenial and cooperative relationship with the Department."⁶⁹

65. *Id.*

66. Beck, *supra* note 57, at 1576.

67. *Id.* at 1600.

68. *Id.* at 1580.

69. *Id.*

One fascinating new development that will impact the work of the Correctional Association involves the passage of three separate pieces of recent legislation in New York that provide for specialized government oversight of certain aspects of prison operations, including the creation of new oversight mechanisms for mental health care, substance abuse treatment, and health care.⁷⁰ The Correctional Association advocated for the development of each of these oversight mechanisms, and will be monitoring the effectiveness of each entity. In effect, the Correctional Association will be watching the watchdogs, a fascinating concept.⁷¹

Readers may wonder about the replicability of the Correctional Association model. Beck offers a number of options for modifying this model in ways that might be politically feasible today, including the establishment of an “independent review board.”⁷² These options may bear closer similarities to the independent prison monitoring boards described in the earlier piece by Vivien Stern.⁷³

2. The Role of Independent Governmental Oversight

One of the best-known examples of governmental oversight is the New York City Board of Correction, which oversees and regulates the city’s jail system. The Board is an agency of the City of New York that functions independently of the city’s Department of Correction. The members of the Board are political appointments, made by the Mayor, the City Council, and the Judges of the Appellate Division of the New York State Supreme Court; they have the legal mandate to enter jail facilities and to establish legally enforceable minimum operational standards.⁷⁴ Members of the Board serve fixed terms and are not compensated for their service, and there is

70. *Id.* at 1593-1605 (citing SHU Exclusion Law of 2008; N.Y. MENTAL HYG. LAW § 19.09 (McKinney 2010); N.Y. PUB. HEALTH LAW § 206(26) (McKinney 2010)).

71. *Id.* at 1609.

72. *Id.* at 1583.

73. Stern, *supra* note 28.

74. For a full description of the authority and composition of the Board, see Richard Wolf, *Reflections on a Government Model of Correctional Oversight*, 30 PACE L. REV. 1610 (2010).

also a full-time professional staff of inspectors. Thus, even though this is a government entity, there is an element of citizen involvement incorporated into this model.⁷⁵

This volume contains two articles that specifically discuss the Board. The articles were written by authors who have deep personal experience with it. John Brickman, whose article about the Correctional Association was discussed above, also addresses the work of the Board of Corrections in his piece and offers useful contrasts between the two models. Brickman served as the Executive Director of the New York City Board of Correction in the 1970s before leaving that office to enter private legal practice. Several decades later he became Chair of the Board of the Correctional Association discussed above.⁷⁶ In addition, Richard T. Wolf, the current Executive Director of the Board of Correction, also contributes a valuable piece on the role of the Board. Wolf details the history of the Board, its structure and authority, its field operations unit, the Board's minimum standards, and his insights and observations about the role of non-judicial oversight extrapolated from his deep experience in the field.⁷⁷

In describing the work of the Board, both Brickman and Wolf stress the importance of its independence. In Wolf's words, "[t]he fact that correctional facilities *are* 'closed worlds' is the compelling argument for outside, independent scrutiny."⁷⁸ Wolf elaborates on what "independence" means: the oversight body must "formally . . . establish and maintain an arms-length relationship" between itself and the Department of Correction.⁷⁹ Independence is so critical to the effectiveness of prison oversight—and such a complex subject—that it was the topic of a separate panel discussion at the

75. New York City Charter (2004), *available at* <http://www.nyc.gov/html/charter/downloads/pdf/citycharter2004.pdf>.

76. Brickman, *supra* note 58, at 1569-70 ("The non-governmental organization, exemplified by the Correctional Association, can maintain leadership that is less likely to change arbitrarily with shifts in the political landscape. The government agency, such as the Board of Correctional, is susceptible to budgetary variations, in lean times or because of political disagreement.").

77. Wolf, *supra* note 74.

78. *Id.* at 1611 (emphasis in original).

79. *Id.* at 1612.

Opening Up a Closed World conference.⁸⁰

Wolf and Brickman make strong arguments in these papers that a “hybrid” model that combines governmental and citizen involvement in one body could be usefully considered by governmental authorities seeking to establish oversight of prisons and jails in jurisdictions that currently have no oversight structure in place.

Yet another type of governmental oversight arises in the context of commissions and task forces appointed by government officials. Jamie Fellner, who recently served as a Commissioner on the National Prison Rape Elimination Commission, contributed a useful piece that discusses the Commission’s deliberations about how to address the tragedy of prison rape.⁸¹ Following an exhaustive period of study and hearings, the Commission proposed standards for the elimination of prison rape, currently awaiting approval by the United States Attorney General.⁸² A central recommendation of the Commission is that it is imperative for the prevention of prison rape that every prison system be subjected to routine auditing in order to ensure compliance with the standards.⁸³

3. The Role of Professional Organizations

Two articles discuss the role of the American Correctional Association in raising the quality of prison operations, and debate the extent to which the accreditation process acts as a form of oversight. David Bogard, a former Commissioner on the American Correctional Association’s Commission on Accreditation for Corrections and a member of the ACA’s Standards Committee, in his article entitled *Effective Corrections Oversight: What Can We Learn from the ACA Standards and Accreditation?*, describes in detail the voluntary process used by the ACA to accredit correctional institutions whose administrators request accreditation.⁸⁴ Lynn Branham,

80. CONFERENCE PROCEEDINGS, *supra* note 14, at 57.

81. Jamie Fellner, *Ensuring Progress: Accountability Standards Recommended by the National Prison Rape Elimination Commission*, 30 PACE L. REV. 1625 (2010).

82. PREA Standards, *supra* note 11.

83. Fellner, *supra* note 81, at 1638-41

84. David M. Bogard, *Effective Correctional Oversight: What Can We*

a law professor and a member of Commission on Accreditation of the American Correction Association for thirteen years, in her piece entitled *Accrediting the Accreditors: A New Paradigm for Correctional Oversight*,⁸⁵ also describes the ACA accreditation process while advocating for certain reforms of that system.

The accreditation process is important because, as Branham notes, the ACA's Commission on Accreditation for Corrections "is the only entity that accredits entire correctional facilities nationwide."⁸⁶ According to the ACA's website, there are 130 accredited jails and 590 accredited prisons in the country, a significant number, though clearly a minority of all correctional institutions in the country.⁸⁷ Bogard observes that this process is "as close as we currently get to a national corrections oversight process" in the United States.⁸⁸

While Bogard considers the accreditation process valuable and believes that it has produced "many safer and more humane correctional facilities in this country,"⁸⁹ he does recognize its shortcomings. To begin with, the accreditation process is not transparent, nor does it assure accountability. He also acknowledges that the voluntary nature of the process reduces the value of accreditation as a form of oversight. Nevertheless, Bogard does not urge that the voluntary nature of the process be changed, since as a voluntary system the "impetus for accreditation . . . derives from an internal quest for enhanced professionalism"⁹⁰

Branham agrees with much of what Bogard says but takes a different view on some of these points. She agrees with him that the process has had many positive effects. She writes that as a commissioner she has:

witnessed the dramatic potential that the accreditation process has to catalyze

Learn From ACA Standards and Accreditation, 30 PACE L. REV. 1646 (2010).

85. Lynn S. Branham, *Accrediting the Accreditors: A New Paradigm for Correctional Oversight*, 30 PACE L. REV. 1656 (2010).

86. *Id.* at 1658.

87. Bogard, *supra* note 84, at 1649.

88. *Id.* at 1652.

89. *Id.* at 1655.

90. *Id.* at 1653-54.

improvement in conditions confinement, abate practice that transgress constitutional requirements or professional norms and transform the culture of a correctional institution from one marked by debasement of staff and inmates to one suffused with a commitment to professionalism.⁹¹

Branham attests further based on her extensive firsthand experience that, because of this process, “many correctional facilities in this country are far safer, more humane, and better operated than they were before undergoing what can be the rigors of accreditation.”⁹²

Branham’s perspective diverges from Bogard’s when it comes to the issue of voluntariness. She argues that the voluntary nature of the ACA accreditation process is a “systemic” problem that “detracts substantially from, and potentially could eviscerate, its efficacy as an oversight mechanism.”⁹³ Unless there is agency consent to inspection and accreditation, the process does not take place. In Branham’s view, “[t]he voluntary nature of accreditations, combined with the fact that it is fee-based, makes the accreditation process vulnerable, both financially and operationally.”⁹⁴ For one thing, prison officials or legislatures can opt out of this process of oversight entirely, which limits its effectiveness. Moreover, the fact that the ACA is dependent upon the fees from participating correctional agencies “spawns unrelenting and sometimes irresistible pressures to water down accreditation standards and make accreditation procedures more lax.”⁹⁵

To remedy this problem, Branham proposes a fundamental reform to the process. She suggests that federal law be changed so that in order to receive any federal funding for

91. Branham, *supra* note 85, at 1663-64.

92. *Id.* at 1664.

93. *Id.*

94. *Id.* 1665.

95. *Id.* Professor Branham makes clear that this watering down process is not promoted by individuals with “sinister motives.” Instead, pressure to excuse non compliance comes from prison administrators who are deeply committed to accreditation but who are unable to obtain needed funding from legislatures to achieve this result. *Id.* at 1666.

corrections purposes, a state must operate a prison system that is formally accredited. She goes on to say that:

Since correctional facilities receive federal money for an array of purposes, including to fund construction and institutional programs, making the receipt of federal funds contingent on accreditation likely would propel many more correctional institutions to become accredited than currently are.⁹⁶

Branham argues that this reform would not only make prisons subject to accreditation, it would also make the operations of prisons more open and accountable, although this would only be a “first step.”⁹⁷ Furthermore, in Prof. Branham’s opinion, making the process compulsory would “dissipate, at least somewhat, the inexorable pressures that correctional institutions often exert on an accrediting agency to dilute its accreditation requirements.”⁹⁸

4. The Role of the Courts

While the major thrust of this volume focuses on non-judicial forms of oversight, it cannot be overlooked that, in the United States to date, the most significant form of oversight has come about through civil rights litigation brought before the federal courts of the United States.⁹⁹ Elizabeth Alexander’s significant contribution to this issue entitled *Getting to Yes in a PLRA World*¹⁰⁰ deals with what is probably the most important practical aspect of utilizing that system of oversight in the current time: how to overcome the barriers to judicial review of

96. *Id.* at 1668.

97. *Id.* at 1671 (recognizing that “other correctional oversight mechanisms would need to be developed or refined . . . if the objectives of correctional oversight are to be met fully.”)

98. *Id.* at 1669.

99. The history of that involvement and an assessment of its successes and failures are discussed in the issue of the PACE LAW REVIEW devoted to publishing papers from the *Prison Reform Revisited* conference. Symposium, *supra* note 3.

100. 30 Pace L. Rev. 1672 (2010).

prison conditions that were imposed by the Prison Litigation Reform Act of 1995.¹⁰¹ That law imposes formidable obstacles to commencing and maintaining prison litigation.¹⁰² Nevertheless, Alexander (who at the time of the writing of her article was the Director of the National Prison Project of the American Civil Liberties Union), demonstrates that prison litigation is continuing and that in some notable cases plaintiffs have been successful at persuading defendants to agree to consent decrees granting relief, despite the impediments to such agreements in the Act. Alexander offers practical suggestions for litigators on how to overcome the PLRA's barriers. In the process, her article also confirms "the continued relevance of prison conditions of confinement litigation."¹⁰³

D. *Resources for correctional oversight*

The final section of this volume contains two important resources for anyone pursuing further research on the topic of independent correctional oversight or for any practitioners or advocates seeking to develop or enhance prison oversight mechanisms in their own jurisdiction. First, co-author Michele Deitch and her graduate students in law and public policy have produced an Annotated Bibliography of all significant resources on the topic of correctional oversight.¹⁰⁴ This Bibliography is of particular value because it identifies and summarizes sources that are especially difficult to locate, including reports, speeches, unpublished essays, and chapters of books. Much of the cited material comes from international sources. These materials are all brought together for the first time in this Bibliography, and are organized in a sensible, easy-to-follow manner. The Bibliography begins by highlighting sources that address the importance of oversight, discuss the meaning of the oversight concept, and provide guidance on conducting

101. Pub. L. No. 104-134 (April 26, 1996). For a full discussion of the act and the difficulties it poses for prisoners' lawyers see MICHAEL B. MUSHLIN, *RIGHTS OF PRISONERS*, Chapter 17 (4th ed 2009).

102. For a full description of the provisions of this law, see *id.*

103. Alexander, *supra* note 100, at 1686.

104. Michele Deitch, *Annotated Bibliography on Independent Prison Oversight*, 30 PACE L. REV. 1687 (2010).

monitoring activities. Next, the focus is on the wide variety of international models of correctional oversight. The following section identifies domestic resources on oversight, including information about specific oversight models in various jurisdictions in the United States. Finally, the Bibliography summarizes literature dealing with the potential for oversight of specific correctional issues, such as sexual assault, private prisons, and mental health.

The second resource, also by Michele Deitch, is a massive inventory of all correctional oversight mechanisms in the United States and is a major contribution to the field.¹⁰⁵ This groundbreaking document provides us with a baseline understanding about the extent of correctional oversight in this country. It provides a quick reference guide for anyone interested in knowing more about oversight in a particular jurisdiction. And most importantly, as Deitch points out, it shows “major gaps in the systems we have in the United States for monitoring prison and jail conditions and the treatment of prisoners.”¹⁰⁶

The scope of the effort to inventory correctional oversight mechanisms included all oversight bodies operating at a statewide level, along with some local oversight bodies that came to light during the course of research. Deitch’s graduate students contacted and collected information from every state, and developed categories for analyzing the oversight mechanisms they identified. Many of these oversight bodies do not have unique responsibilities for overseeing correctional institutions, but have that authority for government agencies generally. Many others entities have oversight authority only over specific issues, which might include some issues relevant to prisons.

Information is presented in various ways, including two multi-page tables displaying the nationwide results of the research. The first of these tables (“Models of Formal, External Prison Oversight”) presents the types of independent prison oversight that exist in each state, and categorizes them according to various criteria.¹⁰⁷ The second table serves the

105. Deitch, *supra* note 6.

106. *Id.* at 1755.

107. *Id.* at 1766.

same function for statewide oversight of jails (“Models of Formal, External Jail Oversight”).¹⁰⁸ The report then provides state-by-state write-ups. For each state, there is a chart depicting oversight entities in that state along with their functions and powers. There is also a brief descriptive overview of the extent of correctional oversight in that state, along with contact information and detailed descriptions for each of the organizations in the charts.

As Deitch reminds us in this report, the inclusion of an entity in the inventory is not meant to reflect any judgment upon the quality of that organization’s work in this correctional oversight arena. The research was not evaluative in any way, and the research team aimed to be comprehensive in its approach to identifying oversight bodies. She emphasizes that “[t]his inventory is meant to be a starting point for discussion rather than an endorsement of any particular approach to correctional oversight.”¹⁰⁹ It is also meant to inspire creative thinking about ways that oversight bodies can be structured and empowered.

But what are we to make of the fact that the report identifies so many oversight entities in this country? Is the United States perhaps not as far behind the rest of the world in this regard as has been suggested? Deitch is careful to make sure readers do not misunderstand the implications of this research:

Although this report is thick with examples of entities that perform (or have the authority to perform) some kind of oversight function, it should be clear upon closer examination that formal and comprehensive external oversight—in the form of inspections and routine monitoring of conditions that affect the rights of prisoners—is truly rare in this country. Even more elusive are forms of oversight that seek to promote both public transparency of correctional institutions and accountability for the protection of human

108. *Id.* at 1773.

109. *Id.* at 1755.

rights.¹¹⁰

The goal of the work was to spark discussion and debate regarding the extent of prison and jail oversight in this country and the sufficiency of current efforts to provide such oversight. With Deitch's baseline study, there can be no doubt that we must redouble our efforts to educate policy-makers, advocates, and practitioners about the need for effective correctional oversight and about the lack of such oversight today.

Conclusion

Shedding for a moment any pretense to modesty, we believe that this Sourcebook on correctional oversight should be on the desk of every corrections practitioner and advocate, and that the papers in this volume deserve careful attention. They show that external oversight of American prisons is needed, that it is practical, and that it is essential to good correctional practice. Once effective oversight structures are established on a comprehensive basis, such oversight will yield tangible benefits to prisoners, corrections staff, and the public. This is an idea whose time has come, and we are proud to have been associated with the debate and discussion of this issue during this formative time.

110. *Id.* at 1762.

APPENDIX A

Opening Up a Closed World: What Constitutes Effective Prison Oversight?

University of Texas at Austin, April 23-26, 2006

Conference Participants*

Elizabeth Alexander, Director, ACLU National Prison Project, Washington, DC

Barbara Attard, President, National Association for Civilian Oversight of Law Enforcement, San Jose, CA

Assemblyman Jeffrion Aubry, Chair, NY Assembly Committee on Corrections, and Co-Chair, Council of State Governments Task Force on Public Safety and Justice, Queens, NY**

Major David Balagia, Jail Administrator, Travis County Sheriff's Office

Jeffrey A. Beard, Secretary, Pennsylvania Department of Corrections, Camp Hill, PA

Dennis Beaty, Assistant Chief Counsel, California Department of Corrections and Rehabilitation, Sacramento, CA

Jack Beck, Director, Prison Visiting Project, The Correctional Association of New York, New York, NY

Kate Black, Program Officer, Open Society Institute, New York, NY

Merrick Bobb, President, Police Assessment Resource Center, and Monitor, LA County Jail, Los Angeles, CA

David Bogard, Commissioner, ACA Commission on Accreditation for Corrections, and Principal, Pulitzer/Bogard & Associates, Lido Beach, NY

Lynn Branham, Associate Dean, Thomas M. Cooley Law School, Grand Rapids, MI

John Brickman, Chair, The Correctional Association of New York, New York, NY

Alvin J. Bronstein, Board President, Penal Reform International-The Americas, and Director Emeritus, ACLU National Prison Project, Washington, DC

Donna Brorby, Special Master of California juvenile system, San Francisco, CA

Joan Burnham, Executive Director, Texas Inmate Families Association, Austin, TX

Alex Busansky, Executive Director, Commission on Safety & Abuse in America's Prisons, New York, NY

Silvia Casale, President, Council of Europe's Committee for the Prevention of Torture (CPT), London, England

Michael Cassidy, Managing Attorney, Prisoner Legal Services of NY, Ithaca, NY

Matthew Cate, Inspector General, Office of the Inspector General for the State of California, Sacramento, CA

Fred Cohen, Professor Emeritus, SUNY Albany, and Special Master for Ohio Department of Corrections and Rehabilitation, Tucson, AZ

Larance Coleman, Policy Director, Texas Senate Criminal Justice Committee, Austin, TX

Terry Collins, Assistant Director, Ohio Department of Rehabilitation and Corrections, Columbus, OH

William C. Collins, Co-Editor, Correctional Law Reporter, and author/consultant, Olympia, WA

Andrew Coyle, Founding Director and Professor, International Centre for Prison Studies, Kings College, London, England

Theodorus De Roos, Professor of Law, Univ. of Tilburg, Tilburg, the Netherlands

Gina DeBottis, Chief Prosecutor, Special Prosecution Unit, Huntsville, TX

Michele Deitch, Soros Senior Justice Fellow; Adjunct Professor, UT-LBJ School; and Reporter, ABA Prison Legal Standards Project, Austin, TX

Kathleen Dennehy, Commissioner, Massachusetts Department of Corrections, Milford, MA

Helga Dill, Chair, Texas CURE, Garland, TX

William M. DiMascio, Executive Director, The Pennsylvania Prison Society, Philadelphia, PA

Paul Downing, retired Chief Jail Inspector, Indiana

Department of Corrections, Plainfield, IN

Doug Dretke, Director, Texas Department of Criminal Justice-Correctional Institutions Division, Huntsville, TX

Sheldon Ekland-Olson, Provost, University of Texas at Austin, and criminal justice scholar, Austin, TX**

Steve Fama, Staff Attorney, Prison Law Office, San Quentin, CA

David Fathi, Staff Attorney, ACLU National Prison Project, Washington, DC

Malcolm Feeley, Professor, Boalt Hall School of Law, University of California-Berkeley, Berkeley, CA

Jamie Fellner, Director of U.S. Programs, Human Rights Watch, New York, NY

Matthew Frank, Secretary, Wisconsin Department of Corrections, Madison, WI

Alex Friedmann, Associate Editor, Prison Legal News, Antioch, TN

Jenni Gainsborough, Director, Penal Reform International—Washington, DC Office, Washington, DC

Robert Gangi, Executive Director, The Correctional Association of New York, New York, NY

Ted Gest, President, Criminal Justice Journalists, Washington, DC

Hon. John Gibbons, Co-Chair, Commission on Safety and Abuse in America's Prisons; retired Judge, U.S. Ct. of Appeals, 3rd Cir., Newark, NJ **

Elizabeth Gondles, President, Institute for Criminal Justice Health Care, Arlington, VA**

James Gondles, Executive Director, American Correctional Association, Lanham, MD**

Geri Green, Attorney, Legal Services for Prisoners with Children, San Francisco, CA

Robert Green, Warden, Montgomery County Correctional Facility, Boyds, MD**

Gene Guerrero, Senior Policy Analyst, Open Society Institute Policy Center, Washington, DC

Michael Hamden, Executive Director, North Carolina Prisoner Legal Services; and Co-Chair, ABA Corrections and Sentencing Committee, Raleigh, NC

Dwight Harris, Executive Director, Texas Youth

Commission, Austin, TX

Kay Harris, Professor, Department of Criminal Justice, Temple University, Philadelphia, PA

Roderick Q. Hickman, former Secretary, California Department of Corrections and Rehabilitation, Sacramento, CA

Richard Hoffman, Executive Director, National Prison Rape Elimination Commission, Washington, DC

Martin Horn, Commissioner, New York City Department of Corrections and Probation, New York, NY

Michael Jackson, Professor of Law, University of British Columbia, Vancouver, Canada

Michael Jacobson, Director, Vera Institute of Justice, New York, NY

Gary Johnson, retired Executive Director, Texas Department of Criminal Justice, Austin, TX

Susan Johnson, Executive Director, Prisoners Legal Services, Ithaca, NY

Terry Julian, Executive Director, Texas Commission on Jail Standards, Austin, TX**

Hon. William Wayne Justice, Judge, United States District Court for the Western District, Austin, TX

Hon. Nicholas DeB. Katzenbach, Co-Chair, Commission on Safety and Abuse in America's Prisons, and former U.S. Attorney General, Princeton, NJ

George Keiser, Chief, Prisons Division, National Institute of Corrections, Washington, DC

Lisa Kung, Executive Director, Southern Center for Human Rights, Atlanta, GA**

Debbie Liles, Director of Administrative Review and Risk Management, Texas Department of Criminal Justice, Huntsville, TX**

Rep. Jerry Madden, Chair, House Corrections Committee, Texas House of Representatives, Plano, TX

Joseph Mancini, Assistant Attorney General, Ohio, Columbus, OH

Daniel Manville, Clinical Staff Attorney, Wayne State Univ. Law School, Ferndale, MI

Steve J. Martin, Attorney and Corrections Consultant, Austin, TX**

Shereen Miller, Director General of Rights, Redress, and

Resolution, Correctional Services of Canada, Ottawa, Canada

Beth Mitchell, Senior Attorney, Advocacy, Inc., Austin, TX

John Moriarty, Inspector General, Texas Department of Criminal Justice, Austin, TX

Donald Murray, Senior Legislative Director, National Association of Counties, Arlington, VA

Karen Murtagh-Monks, Director of Litigation, Prisoners Legal Services, Ithaca, NY

Michael B. Mushlin, Professor, Pace Law School, White Plains, NY

Charlene Navarro, Director of Ombudsman's Bureau for the State of Indiana, Indianapolis, IN

Neil Nichols, General Counsel, Texas Youth Commission, Austin, TX

Pat Nolan, President, Justice Fellowship, Leesburg, VA

Cecilia Nordenfelt, Swedish Parliamentary Ombudsman for Penal Affairs, Stockholm, Sweden

Anne Owers, Chief Inspector of Prisons for England and Wales, London, England

Major Robert Patterson, President, American Jail Association, and Jail Director, Bell County Sheriff's Office, Belton, TX **

James Pigeon, Litigation Director, Massachusetts Correctional Legal Services, Boston, MA

Shirley Pope, Executive Director, Ohio Correctional Institutions Inspection Committee, Columbus, OH

Nicole Porter, Director, Prison and Jail Accountability Project, ACLU of Texas, Austin, TX

Carl Reynolds, Administrative Director, Office of Court Administration, Austin, TX

William Rich, Associate Dean and Professor, Washburn University School of Law, Topeka, KS

Gail Saliterman, Prisoners' Rights Attorney, San Francisco, CA

Howard Sapers, Correctional Investigator, Office of the Correctional Investigator, Ottawa, Canada

Brigitte Sarabi, Executive Director, Western Prison Project, Portland, OR

Marc Schindler, General Counsel, DC Dept of Youth

Rehabilitation Services, Washington, DC

Margo Schlanger, Professor, Washington University School of Law, St. Louis, MO

Zoe Schonfeld, Staff Attorney, Prison Law Office, San Quentin, CA

Dora Schriro, Director, Arizona Department of Corrections, Phoenix, AZ

Frank Smith, Field Organizer, Private Corrections Institute, Bluff City, KS

Rep. Vernon Smith, Indiana House of Representatives, Gary, IN

Don Specter, Director, Prison Law Office, San Quentin, CA

Betsy Sterling, Director of Special Litigation and Projects, Prisoners' Legal Services of New York, Ithaca, NY**

Baroness Vivien Stern, Senior Research Fellow, International Center for Prison Studies, Kings College; and Member of the House of Lords, London, England

Stan Stojkovic, Dean, Helen Bader School of Social Welfare, University of Wisconsin-Milwaukee, Milwaukee, WI

Morris Thigpen, Director, National Institute of Corrections, Washington, DC

Greg Trout, Chief Counsel, Ohio Department of Rehabilitation and Correction, Columbus, OH

Nick Turner, Chief Program Officer and Vice President, Vera Institute of Justice, New York, NY

Paul von Zielbauer, Reporter, The New York Times, New York, NY

Peter Wagner, Executive Director, Prison Policy Initiative, Northampton, MA

Leslie Walker, Executive Director, Massachusetts Correctional Legal Services, Boston, MA

Ashbel T. (A.T.) Wall, Director, Rhode Island Department of Corrections, Cranston, RI

Arthur Wallenstein, Director, Montgomery County Department of Corrections and Rehabilitation, Rockville, MD**

Joe Walraven, Review Director, Texas Sunset Advisory Commission, Austin, TX

Hon. Reggie Walton, Chair, National Prison Rape Elimination Commission, and Judge, U.S. Dist. Ct. for the

District of Columbia, Washington, DC

Mike Ward, Reporter, Austin-American Statesman,
Austin, TX

Sen. John Whitmire, Chair, Senate Criminal Justice
Committee, Texas Senate, Houston, TX**

Reginald Wilkinson, Director, Ohio Department of
Rehabilitation and Correction, Columbus, OH

Max Williams, Director, Oregon Department of
Corrections, Salem, OR

Richard T. Wolf, Executive Director, New York City
Board of Correction, New York, NY

Paul Wright, Editor, Prison Legal News, Brattleboro, VT

Malcolm Young, Executive Director, John Howard
Association of Illinois, Chicago, IL

**All affiliations are accurate as of April 2006.*

***Confirmed participant, but unable to attend due to late-
arising circumstances.*

APPENDIX B

The University of Texas
Presents

**Opening Up a Closed World: What
Constitutes
Effective Prison Oversight?**

Sunday, April 23 - Wednesday, April 26, 2006

Sponsoring Partners:

**Lyndon B. Johnson School of Public Affairs (UT)
Pace Law School (New York)**

Co-Sponsors: UT Law School, the William Wayne Justice Center for Public Interest Law (UT), the Institute for Domestic Violence and Sexual Assault (UT School of Social Work), the Swedish Studies Endowment Fund (UT), and Penal Reform International—The Americas

Supporters: Audre and Bernard Rapoport, Harold Simmons Foundation, Sandy and Paul Rogge, Fred Cohen

Agenda

All events will be held in the Thompson Conference Center on the University of Texas campus unless otherwise noted.

Sunday, April 23

5:30 – 7:30 p.m.

Opening Reception

Texas Capitol—Lieutenant Governor's Reception Room

Hosted by Texas Senator John Whitmire

Welcoming Comments:

Senator John Whitmire, Chair, Texas Senate Criminal Justice Committee

Representative Jerry Madden, Chair, House Corrections Committee

Day One: Monday, April 24

8:30 a.m. *Welcome and Conference Overview*

Michele Deitch, Conference Chair, Adjunct Professor, LBJ School of Public Affairs

PART 1: What is Oversight? Why is it Necessary?

8:45 - 9:30 a.m.

Session I. Introduction and Exploration of the Various Functions of Prison Oversight

Presentations:

“Introduction: U.S. Prisons in the 21st Century and Renewed Calls for Oversight”

Michael Mushlin, Professor, Pace Law School

“Independent Inspections as an Alternative to Court-Based Oversight”

Alvin Bronstein, Director Emeritus, ACLU National Prison Project, and Board President, Penal Reform International—The Americas

“Distinguishing the Various Functions of Prison Oversight”

Michele Deitch, Adjunct Professor, LBJ School of Public Affairs, and Soros Senior Justice Fellow

9:30 - 11:00 a.m.

Session II. “Professionalism in Corrections and the Need for External Scrutiny”

Roundtable discussion:

Does professionalism in corrections demand an openness to outside scrutiny? Why should corrections professionals welcome the concept of external oversight and how can such

oversight benefit administrators? Does increased transparency and accountability lead to increased liability or can it reduce the risk of lawsuits?

Moderator:

A.T. Wall, Director, Rhode Island Department of Corrections

Discussants:

Martin Horn, Commissioner, New York City Department of Corrections

Kathleen Dennehy, Commissioner, Massachusetts Department of Corrections

Andrew Coyle, Founding Director, International Centre for Prison Studies, Kings College, London, and former executive-level prison administrator, British Prison Service

Bill Collins, former Assistant Attorney General, Washington State, and author of "Jail and Prison Legal Issues: An Administrator's Guide"

Moderated Audience Discussion

11:00 – 11:15 a.m. *Break*

11:15 a.m. – 12:00 p.m.

Session III. What Might External Oversight Look Like? Brief Overviews of a Sampling of Inspection Models

Moderator:

Michael Mushlin, Professor, Pace Law School

Presentations:

Anne Owers, Chief Inspector, British Prison Inspectorate

Cecilia Nordenfelt, Swedish Parliamentary Ombudsman for penal matters

Matthew Cate, California Inspector General

Richard Wolf, Executive Director, New York City Board of Correction

12:15 – 1:30 **Lunch**, 10th Floor Atrium, LBJ Presidential Library and Museum

Official UT Welcome, Comments, and Introduction of Luncheon Speaker

UT Provost Sheldon Ekland-Olson

Luncheon Address:

“The Importance of Dialogue and Collaboration in the Oversight Process”

Silvia Casale, President, Council of Europe’s Committee for the Prevention of Torture and Inhuman and Degrading Treatment of Prisoners (CPT)

PART 2: The Essential Elements of External Oversight: A Closer Look

1:45 – 3:15 p.m.

Session IV. “Independence: What does it mean and why is it critical?”

What does it mean for an oversight entity to be “independent”? Of what must the entity be independent? Does an oversight entity need to be outside of government entirely in order to be free of constraint or bias? Are there downside risks to being “too” independent? Who should fund an independent oversight mechanism? Is independence based on structural factors or is it a state of mind?

Moderator:

Michele Deitch, Adjunct Professor, LBJ School and Soros Senior Justice Fellow

Presentation:

Anne Owers, Chief Inspector, British Prison Inspectorate

Discussants:

Matthew Cate, California Inspector General

Cecilia Nordenfelt, Swedish Parliamentary Ombudsman
for penal matters

Bob Gangi, Executive Director, Correctional Association of
New York

Moderated Audience Discussion

3:15 – 3:30 p.m. *Break*

3:30 – 5:00 p.m.

Session V. Politics and Oversight**A. Case Study of Independence, Politics, and Oversight: Ohio's Correctional Institutions Inspection Committee***Roundtable Discussion:*

Ohio's legislatively-based prison oversight entity has a staff and a mandate to inspect and report on prison conditions. Does the placement of this mechanism within the legislature create any special political challenges? How independent can it be, given this structural arrangement? How effective has it been in improving prison conditions and how has its work been perceived by the correctional agency it monitors?

Moderator:

Fred Cohen, Court Monitor for Ohio's correctional medical services

Discussants

Shirley Pope, Executive Director, Correctional Institutions Inspection Committee

Terry Collins, Acting Director, Ohio Dept. of Rehabilitation and Corrections

B. Reflections on Politics and Oversight

What is or should be the role of legislators in providing oversight of prisons? Is all oversight necessarily politicized, and how can such dynamics be avoided or minimized? Do policymakers have obligations to ensure that prisons are respecting the human rights of prisoners, even if the general public remains unconcerned? To what degree do special interest group politics affect the success of external oversight and how can that challenge be addressed?

Discussants:

Max Williams, Director, Oregon Department of Corrections, and former Oregon state legislator

Roderick Hickman, former Secretary, California Dept. of Corrections

Moderated Audience Discussion

5:00 p.m.—**End of Day Reactions**

5:15 – 6:30 p.m.

Reception—Jamail Pavilion, UT Law School

Hosted by UT Law School and the William Wayne Justice Center for Public Interest Law

Welcome—**Interim UT Law School Dean Steve Goode**

Day Two: Tuesday, April 25

7:30 – 8:30 a.m. *Continental Breakfast*

8:30 a.m. **Overview of Day's Activities**

Michele Deitch, Conference Chair

PART 2: The Essential Elements of External Oversight: A Closer Look (cont'd)

8:35 – 10:00 a.m.

Session VI. Standards

What standards, if any, should apply during an inspection by a monitoring body? Are standards necessary if the body is inspecting for human rights violations rather than for compliance with rules and regulations? If standards are necessary, who would set and enforce those standards, and should they be identical to established standards in the corrections profession? Should standards be national or local in application? Should they be mandatory or voluntary? Should standards be drafted so that they establish minimum rules, or should they be aspirational and provide guidance to the agency? Is there a need for uniformity among all the standards with which an agency must comply, even if they are promulgated by different entities?

Moderator:

Silvia Casale, President, Council of Europe's CPT

Presentation:

Andrew Coyle, Founding Director, International Centre for Prison Studies, Kings College, London, and author of "A Human Rights Approach to Prison Management—Handbook for Prison Staff"

Discussants:

Alvin Bronstein, Chair, American Bar Association's Task Force on prison legal standards

David Bogard, Commissioner, ACA Commission on Accreditation

Anne Owers, British Prison Inspector and author of "Expectations"

Jeff Beard, Secretary, Pennsylvania Department of Corrections

Moderated Audience Discussion

PART 3: The Role of Civil Society

10:15-11:45 a.m.

Session VII. The Role of Citizens and Non-Profit Advocacy Organizations in Providing Oversight

Should oversight necessarily be the responsibility of government agencies or can NGOs and citizen groups also provide meaningful and effective oversight of correctional institutions? What difference does the right of access to prisons make in the quality of an NGO's reports about prison conditions? What role should we expect lay citizens to play and how can they be appropriately trained for this responsibility? Are citizen groups too easily subject to "capture" by the agency they are monitoring? Is there a role for formerly incarcerated persons to play in the oversight process? Is there a legitimate fear on the part of corrections officials that non-governmental monitoring groups are agenda-driven, and if so, how can distrust on the part of corrections officials be addressed? What lessons can we learn from civilian police oversight boards and review panels?

Moderator:

Michael Mushlin, Professor, Pace Law School

Presentation:

Vivien Stern, Senior Research Fellow, International Centre for Prison Studies; and Member, British House of Lords, *Independent Monitoring Boards and the role of lay citizens within a governmental structure*

Panelists:

John Brickman, Chair, Correctional Association of New York, *The role of an NGO with prison access rights and the role of citizen members*

Jamie Fellner, Director of US Programs, Human Rights Watch, *The role of an NGO without formal prison access rights*

Merrick Bobb, Monitor, Los Angeles County Sheriff's Office, and President, Police Assessment Resource Center, *Learning from civilian oversight of the police*

Kathleen Dennehy, Commissioner, Massachusetts Dept. of Corrections, *Can corrections agencies work effectively with NGOs and citizen boards with oversight responsibilities?*

Moderated Audience Discussion

12:00 – 1:00 p.m. **Lunch**, 10th Floor Atrium, LBJ Presidential Library and Museum

Welcome and Introduction

LBJ School Dean James Steinberg

Luncheon Address:

“Reflections on 40 years of outside scrutiny of prisons and prison policy in the U.S.”

Hon. Nicholas de B. Katzenbach, Co-Chair, Commission on Safety and Abuse in America's Prisons; Chair, 1967 Commission on Crime in the United States; and former U.S. Attorney General

1:15 – 2:15 p.m.

Session VIII. The Role of the Media in Opening Up a Closed World

Roundtable Discussion:

What role does the media play in helping to keep prisons and jails transparent and accountable? How much access should the media have to correctional institutions and to prisoners? What restrictions on that access are appropriate? Should some facilities and some information about prisons remain unavailable to the media? What should count as “media” and should there be differences between local media and national media? What constitutes responsible reporting

about prison conditions? What does/should the public have the right to know about prison conditions and operations?

Moderator:

Ted Gest, President, Criminal Justice Journalists, and Senior Fellow, Program on Crime and the News Media, Jerry Lee Center for Criminology, University of Pennsylvania

Discussants:

Paul von Zielbauer, Investigative Reporter, The New York Times

Mike Ward, Investigative Reporter, Austin American-Statesman

Dora Schriro, Director, Arizona Department of Corrections

Bill DiMascio, Executive Director, Pennsylvania Prison Society

PART 4: The Future of External Scrutiny of Prisons and Jails

2:15 - 3:30 p.m.

Session IX. Oversight of Jails and Private Prisons

What are the unique challenges present by oversight of county jails in the United States? Should jails be monitored and inspected by state-level or local-level entities? Should such oversight be funded by the state or by localities? Should the form that the oversight entity takes vary according to the size of the facility and whether it is urban or rural? What entity should provide oversight of the jails when state prisoners are housed at numerous county jails throughout the state as an overflow measure? What should oversight of private facilities look like? To what degree can contract monitoring be effective at preventing poor conditions and human rights abuses in private prison facilities? Is there a need to include human rights provisions in privatization contracts? Is contract monitoring also feasible when it comes

to private jails and to private facilities holding out-of-state or federal prisoners?

Moderator:

Bill Collins, Co-Editor, Correctional Law Reporter, and author of “Jail and Prison Legal Issues: An Administrator’s Guide”

Presentations:

Merrick Bobb, Monitor, Los Angeles County Jail, *Independent inspection of jails*

Doug Dretke, Director, Texas Department of Criminal Justice—Correctional Institutions Division, *Contract monitoring of private prisons*

Paul Downing, retired Chief Jail Inspector, Indiana Department of Corrections, *State-level government oversight of county jails*

Moderated Audience Discussion

3:45 – 5:00 p.m.

Session X. Thinking about the Future of Non-Judicial Oversight of Prisons and Jails in the U.S.

Audience discussion facilitated by Prof. Michele Deitch and Prof. Michael Mushlin

Topics to be covered:

(1) Targeted Oversight

Is it feasible or appropriate to design oversight mechanisms that target selected issues such as prison rape, health care, supermax placement decisions, and care of mentally ill prisoners?

Preliminary comments from selected audience members:

Hon. Reggie Walton, Chair, National Prison Rape Elimination Commission, and Judge, U.S. Court of Appeals for D.C. Cir., *Prison rape*

Fred Cohen, Author, “The Mentally Disordered Offender and the Law,” *Correctional health care*

Prof. Michael Jackson, University of British Columbia School of Law, *Placement in supermax*

Beth Mitchell, Senior Attorney, Advocacy, Inc., *Mentally ill prisoners*

(2) **Structural Considerations**

Are oversight mechanisms best conceived as national, state, or local in scope and what are the advantages and disadvantages of each approach? If oversight bodies should exist at the state or local level, should federal legislation be sought to require or provide incentives for the development of such state-level bodies? Would it be preferable to have oversight bodies that are governmental or non-governmental in nature?

(3) **Overcoming the Obstacles to Effective External Oversight**

What are the most challenging obstacles to implementing effective external prison oversight measures? Are the obstacles primarily matters of attitude and perception (and if so, on whose part?), or are there concrete changes that need to take place? How can these obstacles best be addressed?

5:00 p.m.

Final Remarks and adjourn formal conference

Day Three: Wednesday, April 26

9:00 a.m. – 3:00 p.m.

Work Session, 10th Floor Atrium, LBJ Presidential Library and Museum