


Confronting Confinement

A Report of
THE COMMISSION ON
SAFETY AND ABUSE
IN AMERICA'S PRISONS

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III. Oversight and Accountability

EVERY PUBLIC INSTITUTION—HOSPITALS, SCHOOLS, police departments, and prisons and jails—needs and benefits from strong oversight. Perhaps more than other institutions, correctional facilities require vigorous scrutiny: They are uniquely powerful institutions, depriving millions of people each year of liberty and taking responsibility for their security, yet are walled off from the public. They mainly confine the most powerless groups in America—poor people who are disproportionately African-American and Latino. And the relative safety and success of these institutions have broad implications for the health and safety of the public. Throughout the Commission’s hearings, in discussions of virtually every substantive area of concern, witnesses expressed the critical importance of oversight and accountability, both from within the profession and from without.

The majority of officers “did the work as required by rules and regulations, but often with the exception of not reporting certain incidents observed for fear of job loss or retaliation.”

Ron McAndrew, former prison warden in Florida

Margaret Winter, associate director of the National Prison Project of the American Civil Liberties Union said that what prisons and jails need is “light, light, and more light.” Rhode Island’s corrections Director A.T. Wall stressed to the Commission the importance of monitoring from within: “Recognizing that our correctional institutions—like all other institutions in which the exercise of power is a defining characteristic—have the potential for abuse, we cannot sit idly by. If we do so, we run the substantial risk that the dynamics of these environments will default to a position where misconduct can ultimately flourish.” Winter added that oversight must take multiple forms, from the “power of courageous news reporting” to action by federal judges who with lifetime tenure can “take the heat,” from social scientists doing research to good corrections directors, wardens, officers, and other staff engaged in monitoring their own systems.

Oversight and accountability encompass several distinct but related activities. Some of them, such as independent inspection, litigation and court oversight, and direct inquiry from the public and the press, rely on the work of outsiders. Other activities, such as auditing, professional accreditation, and internal investigations of alleged wrongdoing must be conducted from within the profession. The key, many people told the Commission, is never to rely on any single mechanism of oversight and accountability, but rather to take what Professor Michele Deitch calls a “layered approach.” The different activities must be mutually supportive, pointing to the same goals and being comprehensive without being redundant or overly burdensome. Together, the efforts of both insiders and outsiders can ensure that prisons and jails are open and responsive to public scrutiny and that they evolve in ways that make them safer, more effective institutions. That is the promise of oversight, but it remains far from fully realized in the United States.

Oversight of America’s prisons and jails is underdeveloped and uneven. The foundation exists, however, to improve the mechanisms that now exist and to create new ones. In this section, the Commission addresses how to strengthen and expand external monitoring of correctional systems and how to improve oversight and accountability within the corrections profession. We also recommend ways in which prisons and jails can become more transparent to and understood by the public. ■

Invest in External Oversight

JACK COWLEY, FORMER WARDEN WITH MORE THAN 20 YEARS OF experience in the Oklahoma prison system, was one of many witnesses to stress to the Commission the need for external oversight to bolster the ways corrections professionals hold themselves and their staffs accountable. “When we’re not held accountable,” Cowley said, “the culture inside the prisons becomes a place that is so foreign to the culture of the real world that we develop our own way of doing things.” Just as the public does not rely solely on self-policing of public hospitals, it should not do so with correctional agencies. Yet, some corrections administrators have been resistant to external monitoring, and by and large the public and its representatives have not insisted on it.

For there to be any sustained response to the issues of safety and abuse raised in this report, there must be strong independent oversight of prisons and jails nationwide. External oversight, particularly sustained intervention by the federal courts, provided much of the impetus for raising prison and jail conditions from their truly deplorable state three or four decades ago. The Commission urges state and federal legislators, with the collaboration of corrections leaders, to enhance and expand external oversight in four ways: develop independent government inspection and monitoring systems, create a national non-governmental organization to visit and inspect prisons and jails, expand the capacity of government investigators, and ensure access to the judicial process for prisoners who are victims of constitutional violations.

1 Demand independent oversight. Every state should create an independent agency to monitor prisons and jails.

Perhaps the least developed form of oversight at present is independent inspection and monitoring. Few states have monitoring systems that operate outside state and local departments of corrections, and the few systems that do exist are generally underresourced and lacking in real power.

Former Florida Warden Ron McAndrew told the Commission that for many years he had sought “a key that would open the door to better and safer security” and hoped for an independent “legal observer” who would monitor each prison and have unlimited access to the facility, its records, and its staff and prisoners. The federal government follows this model with

RECOMMENDATIONS

1. Demand independent oversight.
2. Build national non-governmental oversight.
3. Reinvigorate investigation and enforcement.
 - a. Increase access to the courts by reforming the PLRA.

an Inspector General's office operating outside of the Federal Bureau of Prisons. Its director, Department of Justice Inspector General Glenn Fine, urged the wider use of this model. Despite the relative rarity of independent monitoring as a central component of correctional oversight in the United States, there are examples approaching McAndrew's long-sought key.

Perhaps the most comprehensive is California's Office of the Inspector General (OIG), significantly revamped in 2004. The Inspector General is fully independent from the corrections department and even insulated from the governor (by virtue of a six-year term and protection from termination absent good cause) and to some extent the legislature (by virtue of a budget based on caseload—currently \$15.3 million annually). And it has the

authority—a “golden key” as Inspector General Matthew Cate told the Commission—to visit and inspect any facility within the state prison system at any time, without notice. It has a staff of 95 to implement that authority. The OIG has two core functions: First, it carries out top-to-bottom performance evaluations and investigates alleged wrongdoing of managers; second, it provides real-time oversight of the corrections department's internal affairs investigations of staff misconduct. The lack of transparency in California corrections led to the creation of the OIG, and transparency is now infused into the OIG's work by statute. Every facility audit and summaries of all investigations must be provided to the legislature and to the public. The OIG has no enforcement power but relies on the persuasive power of publishing its findings and the power of collaboration, both with corrections leaders and non-governmental groups of interest.

Other models exist for independent monitoring. States and localities have corrections boards or commissions which can play an inspection and monitoring role. Ohio has created a legislative body that inspects that state's prisons. The Ohio Correctional Institution Inspection Committee, composed of eight legislators, inspects every prison in the state at least every two years. Among its obligations, the Committee is required by state law to review prisoner grievance procedures in each facility and report its findings annually to the full legislature. One example of a monitoring body often cited for its role in collaboratively improving practice is the Florida Correctional Medical Authority. Created

Independent Oversight in Great Britain

Her Majesty's Inspectorate of Prisons has a mandate to examine and report on conditions in each of the 139 prisons and jails in England and Wales. This well-regarded independent monitoring system relies on the power of persuasion and collaboration. Rigorous and typically unannounced inspections are offered as a “free consultancy, trying to improve performance,” as described by Chief Inspector of Prisons Anne Owers. And although it has no authority to force change, this collaborative approach is bolstered by a policy to encourage action through publication of its reports. The enabling statute goes one step further: It requires prison managers to file a response stating whether they accept the recommendations in the report. Most often they do.

In her testimony to the Commission, Owers described the benefits of her work: “We can look at what's actually happening on the ground. . . . Even in well-run prisons I don't think I have ever been on an inspection which hasn't found something, however small, that the governor or the warden of the prison didn't know was happening and where the warden hasn't said, ‘I'm glad you told us that, I will need to take account of that,’ and that is a very important, preventive role that inspection can play. . . . I think independent inspection which is coming from outside the institution can provide a credible voice which gives some political space for reforming and changing prisons.”

The monitoring aims to achieve four “expectations”: **safety**, even for the most vulnerable prisoners; **respect** for the human dignity of all prisoners, **purposeful activity** available to all prisoners and for their benefit; and **resettlement**, which means preparing people for release in a way that reduces the likelihood of reoffending (Her Majesty's Inspectorate of Prisons 2004).

The work of the Inspectorate is echoed by a similar function performed in 46 European countries by the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Its president, Silvia Casale, told the Commission: “In Europe, oversight mechanisms have gradually developed, at the international, the national, and the local level. Mistakes have been made along the way, but workable systems are emerging. Perhaps these developments can inform the debate in the United States on safety and abuse in custody, on the theory that one can learn from other people's errors as well as from their successes.”

as a means to replace more than 20 years of federal court intervention in Florida's prison medical care system, the CMA works in collaboration with both the corrections and health departments. Although it receives administrative support from the latter, it remains independent from both.

Reflecting on the limits of litigation and the need for a better prophylactic approach, U.S. District Judge Myron Thompson told the Commission to look to the executive and legislative branches of government: "Only they can step in beforehand and actually prevent constitutional violations." The Commission strongly urges states to create a monitoring body independent of the department of corrections which might draw on California's OIG or one of the other state or local models. It must be sufficiently empowered and funded to inspect and report on conditions and practices in every jail and prison statewide and be dedicated to timely, accurate, and complete public reporting of the problems it identifies. Crucial to its success is a staff that is knowledgeable about correctional systems and sensitive to the challenges managers and staff face. While not a tool of management, through cooperation and collaboration with corrections administrators, this external monitoring body can become essential to management. Typically, an independent monitor has no formal enforcement authority and relies instead on its credibility and powers of persuasion. Yet, the corrections department should be required to formally and publicly respond to its findings and to document compliance, or noncompliance, with its recommendations.

2 Build national non-governmental oversight. Create a national non-governmental organization capable of inspecting prisons and jails at the invitation of corrections administrators.

There are times when correctional agencies would benefit from the ability to request confidential monitoring and assistance from a neutral party, especially to investigate and resolve distinct problems. What is needed is a new, national non-governmental organization that is committed to working with corrections leaders outside of advocacy and litigation channels, bringing a fresh eye and credible voice to new and old problems. The work of such a group would not be subject to public review, would not result in externally published reports, and would not be available in litigation involving facilities that invite its assistance.

This new non-governmental organization would operate within parameters developed in consultation with the corrections administrators who seek its help. These would set forth the scope of the review, the powers granted to the reviewers, and the form of the end report. At the very least, the organization would be authorized to visit facilities, privately interview prisoners and staff, and review internal documents. Ensuring ongoing confidentiality through protection from discovery in litigation would require creating an attorney/client or similar relationship, depending in part on state law. The organization would produce a report for the internal use of corrections and other state government officials and make pragmatic

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Glenn Fine, U.S. Department of Justice
Inspector General

recommendations for addressing the problems identified. The organization would draw on a pool of investigators experienced in corrections who understand and support the organization’s mission and approach and who are trusted by corrections staff and prisoners. Development of such an organization should be undertaken in consultation with the National Institute of Corrections, and perhaps other national bodies that are knowledgeable about and sensitive to the needs of corrections managers.

The virtue of such an approach—relying on invitation, a limited and focused review, and confidentiality—is that administrators need not fear asking tough questions about the performance of their systems and can benefit from the impartial views of people who bring a national perspective to the task and are not invested in the current policies and practices. This kind of voluntary and confidential problem-solving review would also help administrators prepare for review of their systems by independent government monitors who have an obligation to report findings to the public. And they could use select findings from a confidential review to build support for their reform agenda, demonstrate a need for more resources, and document a baseline against which future achievement can be measured.

The inspiration for this form of confidential oversight is the International Committee of the Red Cross (ICRC), which carries out inspections of detention facilities in conflict zones worldwide. The ICRC is formed on the belief that “detention problems are best solved through constructive dialogue based on mutual confidence, rather than in the glare of publicity which inevitably carries the risk of politicizing the issues” (ICRC 2004). The creation of a national organization capable of serving in a similar capacity would benefit all concerned: Corrections administrators, staff, and prisoners would have the benefit of consulting with a neutral party. And managers in particular could rely on a fair and objective assessment of their work, one that recognizes their strengths and provides constructive advice for improvement grounded in the reality of their particular systems and facilities.

3 **Reinvigorate investigation and enforcement.** Expand the investigation and enforcement activities of the U.S. Department of Justice and build similar capacity in the states.

“There is tremendous pressure within an institution to keep quiet,” Glenn Fine, inspector general of the U.S. Department of Justice, told the Commission. He explained that this makes it all the more important to have strong governmental oversight of prisons and jails. At present, the only federal entity that investigates state and local correctional facilities across the country is the Department of Justice. DOJ can initiate investigations and bring criminal prosecutions and civil actions when it sees incidents or conditions that violate federal statutes or prisoners’ constitutional rights. The reach of these powers, however, has always been limited. In recent years, their use has become increasingly sparse. We must expand the capacity of DOJ in this area and build similar capacities in the states.

Criminal investigation and prosecution is an important component of correctional oversight. William Yeomans, former deputy assistant attorney general at the Civil Rights Division of the Department of Justice, told the Commission: "The violence inflicted on inmates frequently results in bodily injury and establishes a tone in an institution that force is an acceptable means of addressing problems in an institution. Prosecutions that punish the offenders in these situations emphasize that all members of the corrections community must abide by the law." Criminal enforcement at the federal level is crucial because too frequently local jurisdictions lack the political will, and sometimes the expertise, to thoroughly

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investigate and prosecute abusive corrections officers within their own communities. But even in the best of circumstances, when local prosecutors support federal investigations and prosecutions, a limited number of criminal cases can have only a limited impact. In Yeomans' words, "Broader issues regarding the safety of the prison, the training of officers, the adequacy of administrative processes and overall conditions in the prison [often] go unaddressed."

The 1980 Civil Rights of Institutionalized Persons Act (CRIPA) gives DOJ, through its Special Litigation Section, authority to initiate civil lawsuits to remedy egregious conditions in prisons and jails. These civil actions have the power to bring greater systemic change than criminal prosecutions because they can result in court-enforceable consent decrees that mandate and guide specific reforms. During the course of an investigation, Section attorneys, along with experienced corrections consultants, gain access to a correctional facility and talk to both staff and prisoners. The result, according to Yeomans, are "findings letters' that reflect the detailed findings and recommendations of experts who have toured the facility and examined its practices [and that] can serve as a blueprint for a willing institution to improve itself." Civil actions, which should begin with a collaborative problem-solving approach, can have positive effects even if they are settled before formal litigation is initiated.

In recent years, DOJ's output has been low on both the criminal and civil sides. The Criminal Section has been given broader responsibilities without the resources to fulfill them adequately and has focused on prosecuting human trafficking and involuntary servitude cases. On the civil side, the Special Litigation Section has been investigating only a very small number of correctional systems and appears less insistent that

Through litigation.

CIVIL RIGHTS INVESTIGATIONS BY THE DEPARTMENT OF JUSTICE, SPECIAL LITIGATION SECTION, FROM 1996 TO 2004*

Investigations declined:

11 investigations in 1996
1 investigation in 2001 and in 2004

Fewer lawsuits were filed:

2 lawsuits in 1997 and in 1999
1 lawsuit in 2003

*Adult prisons and jails only

SOURCE: U.S. DEPARTMENT OF JUSTICE

LAWSUITS BY PRISONERS, BEFORE AND AFTER THE PLRA (PRISON LITIGATION REFORM ACT)

Civil rights cases declined by nearly half:

In 1995, one year before the PLRA
17 cases filed per 1,000 prisoners

Five years later, in 2000
10 cases filed per 1,000 prisoners

Plaintiffs were less successful:

In 1995, one year before the PLRA
11% successful

Six years later, in 2001
6% successful

SOURCES: ADMINISTRATIVE OFFICE OF THE U.S. COURTS, BUREAU OF JUSTICE STATISTICS

troubled systems enter into court-enforceable consent decrees. In fiscal years 2003 and 2004 combined, the Section initiated six investigations and filed only one civil court action addressing conditions in adult prisons or jails (USDOJ).

The Department of Justice has the powers it needs to effectively investigate civil rights violations in correctional facilities; it must be given the resources and the mandate to vigorously employ them. As a first step, Congress should hold hearings to examine the reasons for the small number of cases filed by the Special Litigation Section and the challenges facing DOJ in investigating and prosecuting criminal behavior within correctional facilities.

Equally important, states should become more involved in investigating and prosecuting criminal misconduct by prison and jail staff and civil rights violations caused by facility practices or conditions. After all, state prisons and local jails make up the vast majority of America's correctional facilities. As mentioned previously, this is not a job that most local prosecutors' offices are prepared to handle. Resources in these offices are stretched thin, and local prosecutors may not be in the best position to handle these types of cases. They may have little experience with the challenges of collecting evidence in a culture often ruled by a code of silence, or with the differences between prosecuting law enforcement officers rather than "common criminals," or with overcoming the higher burden of proof that juries tend to require in cases where the victim is a prisoner. For these cases, states need a capacity much like DOJ's Civil Rights Division, Criminal Section. State attorneys general or other statewide law enforcement agencies should be empowered to partner with local prosecutors to investigate civil rights violations in correctional facilities and prosecute them when warranted. They should also be granted the power to review local investigations and to prosecute cases that a local prosecutor has declined, either because of a lack of will or a lack of resources or expertise.

Both the federal government and the states must lead vigorous efforts to investigate and bring civil or criminal actions against correctional agencies and individual officers for unlawful conditions and behavior.

4 increase success of the courts by reviewing the PLRA. ...

For some time now, the federal courts have played the biggest role in watching over America's prisons and jails and shedding light on the most dangerous conditions and abuses. According to scholars Malcolm Feeley and Van Swearingen, "Litigation has probably been the single most important source of change in prisons and jails in the past forty years" (Feeley and Swearingen 2004). With their independence from political forces and their obligation to protect the rights of those whose pleas might otherwise go unheard, federal judges provide the oversight of last resort, and in some cases the only truly effective monitoring. It is a role that must be protected.

Litigation became the default form of oversight in part because corrections leaders understood it could play a constructive role. In fact, litigation is often welcomed—occasionally invited—by system administrators who themselves are desperate for help that they are not receiving from lawmakers. Criminology professor and researcher Barbara Owen told the Commission that prison administrators have said to her, “Why don’t you call up some of your friends and have them sue me?” James Gondles, executive director of the American Correctional Association, explained what a lawsuit can trigger: “State legislatures or county commissioners have responded to those suits by increasing budgets and improving programs, which has also had a rippling effect of improved programs and funding for other correctional facilities and agencies, without another lawsuit being filed.”

Nonetheless, many have pushed back against prisoners’ federal civil rights litigation. Over the last decade, this important source of oversight has declined, principally as a result of the 1996 Prison Litigation Reform Act (PLRA). The law was passed to eliminate what was described as a flood of frivolous prisoner lawsuits. Although there were a large number of lawsuits, Congress conducted no studies and held only one substantive hearing to consider potential solutions before passing the PLRA as a rider to an appropriations bill. The resulting legislation has caused so much confusion and provoked so much litigation about its own meaning that one federal Court of Appeals noted, “When Congress penned the Prison Litigation Reform Act...the watchdog must have been dead” (*McGore v. Wrigglesworth* 1997).

The Supreme Court has described the PLRA’s purposes, in part, as twofold: “to reduce the quantity and improve the quality of prisoner suits” (*Porter v. Nussle* 2002). Since its enactment, prisoner lawsuits in federal court are dramatically down, by nearly half when the increase in the prison population is taken into account. The year before the law took effect, the rate of filing was 37 civil rights actions per 1,000 prisoners; five years later it was 19 per 1,000 (Scalia 2002). While the total number of cases is down, there is no reason to believe that the PLRA actually filters out frivolous claims. If success in litigation is a measure of case quality, the PLRA has failed: The proportion of successful suits went down after its enactment (Schlanger 2003). Something else happened. Between 1995 and 2000, court monitoring of prisons diminished. The number of states with little or no court-ordered regulation of their prisons (those having no more than 10 percent of prisoners living in a facility under court supervision) more than doubled, from 12

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Malcolm Feeley and Van Swearingen

Prisoner Civil Rights Cases: Frivolous or Not?

At the time the PLRA was enacted, prisoners were annually filing almost 41,000 civil rights actions in federal court, although prisoners were no more litigious than other Americans when both state and federal filings are counted (Administrative Office of the U.S. Courts, Schlanger 2003). In fact, the debate over the PLRA conflated “frivolous” with “non-meritorious” cases. Although only 15 percent of prisoners’ civil rights suits prevailed in the early 1990s, only a very small 4.8 percent were dismissed as legally or factually frivolous (Fradella 1998). There are many reasons that prisoners’ suits have a low success rate. One is the high threshold courts have established for proving a constitutional violation. In the prison medical care context, for example, where the courts have confirmed an Eighth Amendment right to medical treatment, prisoners can prevail in court only if they can prove that the failure to provide necessary care was the result of a particular defendant’s “deliberate indifference” to their serious medical needs. This difficult standard led one federal judge to plead for change: “As the law stands today, the standards permit inhumane treatment of inmates. In this court’s opinion, inhumane treatment should be found to be unconstitutional treatment” (*Ruiz v. Johnson* 1999).

states to 28 (BJS 1998, BJS 2004). The Commission urges Congress to amend the PLRA in the following four ways.

First, eliminate the physical injury requirement. The PLRA bars a federal civil rights action by a prisoner “for mental or emotional injury suffered while in custody without a prior showing of physical injury” (42 U.S.C. §1997e(e)). In the words of Stephen Hanlon, a lawyer experienced in class-action prisoner litigation, this provision “seems to make it national policy the idea that mental torture is not actionable.” Many serious abuses leave no physical injury. For example, sexual assault in prison is likely to be

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coerced rather than forcible and thus often results in no physical injury. The courthouse door should not be barred to anyone that a corrections system fails to protect from sexual assault.

Second, eliminate the filing fee for indigent prisoners or make it reflective of the person’s earning power, and eliminate the restrictions on attorney fees. The PLRA discourages prisoners from filing lawsuits, and attorneys from representing them, through a range of economic burdens and disincentives. Under the PLRA even indigent prisoners must pay a filing fee of \$350, which is collected over time from their accounts, presenting an insurmountable burden for many prisoners (28 U.S.C. §§1914 and 1915(b)). Court filing fees are normally waived for indigent plaintiffs. Just as problematic, the PLRA discourages attorneys from representing prisoners with civil rights claims by capping their fees at an unrealistic level (42 U.S.C. §1997e(d)(3)). And if the prisoner prevails in court, the attorney’s fees are limited to a percentage of the damages awarded to a prisoner, which are considerably lower than in other civil lawsuits, rather than being calculated on an hourly basis as in other types of federal litigation (42 U.S.C. §1997e(d)(2)). These provisions are counter-productive because they discourage representation even in meritorious cases.

Third, lift the requirement that correctional agencies concede liability as a prerequisite to court-supervised settlement. The PLRA bars a court from approving a consent decree—a form of settlement—without determining that a constitutional violation has occurred, and the court cannot make that determination prior to trial unless the defendant concedes liability (18 U.S.C. §§3626(c)(1) and (a)(1)(A)). This is a major obstacle to settling cases because a central purpose and attraction of negotiated settlements is that the question of liability need not be resolved. Although the statute allows for private settlement agreements when there is no such concession, the implementation of the terms of these settlement agreements cannot be monitored by a federal court, undercutting the court’s critical oversight function.

Fourth, change the “exhaustion” rule. The PLRA bars the courthouse door to prisoners who have not fully “exhausted” all available grievance procedures in the facility where they are incarcerated (42 U.S.C. §1997e(a)). Prior to the PLRA, the Civil Rights of Institutionalized Persons Act (CRIPA) required that the application of an “exhaustion rule” hinged on the existence of a grievance procedure that met standards set by the Department of Justice (28 C.F.R. §§40.1-40.22). The standards are important because if the grievance procedures are meaningless or unnecessarily cumbersome or strict, an exhaustion rule simply undermines access to justice.

At the time this report went to press, the Supreme Court was set to decide a related matter: whether the PLRA’s exhaustion rule also bars judicial review when a prisoner fails to meet a filing deadline or other procedural requirement. Many states and localities require prisoners to file a grievance in as little time as within three days of an incident (*Woodford v. Ngo* brief 2006). If the Court rules there is a “procedural default” element in the PLRA exhaustion rule, a prisoner claiming that a facility failed to protect him from assault might be forever barred from a legal remedy if he were locked in a segregation unit or held in a medical unit for three days without access to the grievance process. Congress should encourage reliance on meaningful grievance procedures—and meaningful procedural justice—by returning to the CRIPA exhaustion rule, and if the Court identifies a procedural default element in the exhaustion rule, Congress should eliminate it.

These four changes to the PLRA would increase the ability of federal courts to both deliver justice to individual prisoners and to provide the authority necessary to force reform of facilities where people are in danger or subject to abuse. ■

INVEST IN EXTERNAL OVERSIGHT: RECOMMENDATIONS RECAP

- 1. Demand independent oversight.** Every state should create an independent agency to monitor prisons and jails.
- 2. Build national non-governmental oversight.** Create a national non-governmental organization capable of inspecting prisons and jails at the invitation of corrections administrators.
- 3. Reinvigorate investigation and enforcement.** Expand the investigation and enforcement activities of the U.S. Department of Justice and build similar capacity in the states.
- 4. Increase access to the courts by reforming the PLRA.** Congress should narrow the scope of the Prison Litigation Reform Act.

Strengthen Accountability Within the Profession

RECOMMENDATIONS

1. Monitor practice not just policy.
2. Strengthen professional standards.
3. Develop meaningful internal complaint systems.

THE CORRECTIONS PROFESSION IN AMERICA HAS A STRONG commitment to meeting the increasing challenges it faces, demonstrated in part by the considerable progress of corrections administrators in building systems to monitor their work and to promote accountability from within. That internal accountability takes several forms: from internal affairs bureaus and correctional inspectors general to internal auditing and performance measurements and evaluations. These efforts are all the more impressive given that they have been largely self-generated rather than imposed through political pressure. However, the Commission agrees with the many corrections leaders who told us that there is still much left to accomplish in the realm of internal accountability and oversight to transform a relatively closed and unregulated domain within state and local governments to an open one. This chapter explores two areas that invite improvement: professional accreditation and internal systems for reporting unsafe or abusive conditions.

1 Monitor practice not just policy. Ensure that American Correctional Association accreditation more accurately reflects practice as well as policy.

Since the mid-1970s, the American Correctional Association (ACA), the principal corrections professional association, has offered an accreditation program for prisons and jails. This voluntary and rigorous process involves auditing facilities for compliance with ACA's standards covering virtually every aspect of correctional operations. It is essentially a collaborative effort by individual corrections managers and the ACA to raise the level of professionalism in a particular facility or systemwide. The Commission heard repeatedly that ACA accreditation is an important indicator of safety and humane treatment in a prison or jail. Accreditation has limits, which is why it must complement rather than substitute for other, more independent forms of oversight. But there is little doubt that it is a spur to good practice.

At present, 525 of the nation's 1,208 adult prisons and a strikingly low 120 of the 3,365 jails across the country are ACA accredited. The Commission urges many more facilities to seek accreditation and, at the same time, urges the ACA to strengthen the process so that accreditation is even more meaningful. The primary concern about the accreditation process is that it

focuses too heavily on a facility's written policies and procedures without sufficient corroboration from direct observation. The result, critics contend, is a certification process that does not do justice to the ACA standards and does not sufficiently indicate to managers, legislators, and the public how well—or poorly—an institution functions from day to day.

The accreditation process is extensive, including review of a prior self-evaluation by the facility's own managers, review of documentation regarding compliance with standards, a three-day compliance audit by three corrections professionals followed by a hearing, and consultation throughout the process (ACA 2003). To be accredited by the ACA, a facility must meet or exceed all of the mandatory standards—roughly 10 percent of the standards are mandatory—and meet 90 percent of the remaining, non-mandatory standards. Accreditation extends for three years, and facilities must annually certify their continued compliance with the standards. As extensive as the audit process is, no single audit or series of audits spaced years apart can determine whether policies and practices are routinely carried out. As former Warden James Bruton put it in his Commission testimony, "I'm a big believer in it [ACA accreditation], but... the only way it has teeth is if the warden of the institution is inside every day being sure those standards are being followed."

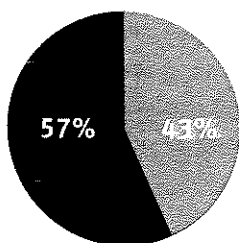
Inherent limitations aside, there are a number of ways that the ACA could improve its ability to gauge practical compliance over time. One way would be to institute one or more mid-term inspections, whereby a team of auditors would come in—perhaps unannounced—to check on compliance in a limited number of areas. Undoubtedly, a series of unannounced visits would contribute to the accreditors' ability to evaluate practical compliance and could help administrators identify trouble spots. There is no reason why unannounced visits cannot be part of a collaborative relationship between facility administrators and accreditors, and collaboration need not preclude an objective review geared to improving operations.

Another innovation would be to institute a procedure whereby staff and prisoners can report deficiencies in practice to the ACA audit committee.

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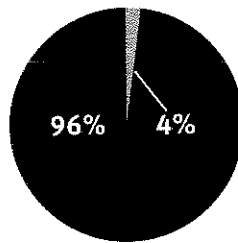
Professional Accreditation Remains Underused

PRISONS



525, or **43 percent**, of the nation's **1,208 adult prisons** are accredited by the American Correctional Association

JAILS



Only 120, or **4 percent**, of the nation's **3,365 jails** are accredited by the American Correctional Association

SOURCES: AMERICAN CORRECTIONAL ASSOCIATION, BUREAU OF JUSTICE STATISTICS

Several witnesses told the Commission that facilities were spruced up for visits and then reverted to disorder when the auditors left. Confidential questionnaires before and after an audit could be used to elicit specific information about compliance over time.

A third change would be to alter those standards that may contribute to accreditation's failure to reflect practical compliance. Some standards, including some mandatory standards necessary for "life safety," expressly require no more than a written plan (e.g., Standards 4-4224 responding to security threats, 4-4300 periodic classification review, 4-4357 HIV management). Consideration should be given to changing these and similar standards to require a greater degree of compliance in practice.

The ACA has been taking steps on its own to improve the process. Over the past five years, the ACA has begun to move towards performance-based standards and outcome measures designed to demonstrate actual compliance with the standards. This pilot effort has been focused on standards governing health care but will be expanded to other areas.

While self-monitoring aided by a professional association can never substitute for independent monitoring by government, the ACA's accreditation process is an important way to raise standards and improve practice in prisons and jails nationwide. The Commission urges the ACA to continue to make accreditation more rigorous and objective—for the good of all the correctional systems that already seek accreditation and for the many more that should.

2 Strengthen professional standards. Support and improve American Correctional Association standards.

The more than 500 American Correctional Association (ACA) standards form a comprehensive framework for guiding and assessing the operations of a prison or jail (ACA 2003). They are the only standards governing the core operations of adult correctional facilities. (Standards developed by other organizations govern particular areas of operations, most notably health care.) The standards are developed, and revised as necessary, by a 20-member committee selected by the president of the ACA and the chairman of the commission responsible for accreditation. The Standards Committee includes members from outside the corrections field, invites input from and consults with a range of interested groups, and holds meetings that are open to the public. Several witnesses told the Commission that the ACA standards are an extremely important tool to promote safe and humane conditions in prisons and jails but that they could be improved in two ways. First, they could be stronger. Second, they could benefit from even more input from individuals and organizations from outside the corrections profession.

Currently, most of the standards set a low threshold to encourage compliance. As ACA Deputy Executive Director Jeffrey Washington told the Commission, "This whole process, one forgets, is [about] minimal standards." The notion of minimal standards, however, is often criticized. Brian Dawe, executive director of Corrections USA, a national organization of

corrections labor groups, told the Commission that “in order for an accreditation process to effectively address the issues that plague corrections, it must be fearless...raising standards whenever possible.” Standards Committee member Michael Hamden agrees that although accreditation is a good process, some of the standards are not tough enough. “I agree there are standards that do not come to the level I think we could accomplish,” he said. Hamden, who as executive director of North Carolina Prisoner Legal Services was a skeptic about the standards and accreditation process when he joined the Committee, has become a strong proponent of the system.

The Commission learned of a number of important areas in which ACA standards are insufficient or should be made mandatory. We offer two examples: one broadly applicable and one quite narrow.

“In order for an accreditation process to effectively address the issues that plague corrections, it must be fearless . . . raising standards whenever possible.”

Brian Dawe, executive director of Corrections USA

The ACA standards should require that all prisons provide substance abuse treatment to those in need. The current standard (4-4377), which is not mandatory, requires that prisoners have “access to” a treatment program and requires a needs assessment, treatment plan, education, and a discharge plan. These are all the right steps, but the standard falls short of requiring that access to treatment translates into delivery of treatment. Perhaps as many as 80 percent of prisoners are in need of drug or alcohol abuse treatment, and many facilities have lengthy waiting lists for an insufficient number of long-term treatment slots (Mumola 1999). Untreated dependency can be a catalyst to violence and other behavioral problems. Moreover, the wait for treatment often outlasts a prisoner’s sentence, threatening the prisoner’s success on release and potentially the safety of the community to which he or she is released. The ACA standard on substance abuse should be mandatory and should guarantee that accredited facilities are in fact providing treatment to those in need.

The standard governing exercise time for prisoners in segregation (4-4270) requires only that they have opportunities to exercise outside of their cells one hour per day, five days per week, and only when “security and safety concerns [do not] dictate otherwise.” The standard was developed to meet constitutional norms set by the courts and to reflect limits imposed by staffing constraints. But minimal constitutional standards aside, five hours per week is insufficient given the small size of segregation cells and the other harmful strictures imposed on people in segregation.

In the process of developing stronger, more constructive standards, the ACA Standards Committee would benefit from including an even greater range of voices and interests than it presently does. According to Jeffrey Washington, the Committee has made efforts in this regard—engaging

“[There is] a recurrent pattern in American prisons of threats and retaliation against prisoners who file grievances and complaints.”

John Boston, director of the Prisoners Rights Project of the New York City Legal Aid Society

Early Warning Systems

Careful attention to complaints from prisoners and efforts to encourage staff to report misconduct—and protection for both groups—should be coupled with the development of early warning systems that identify officers prone to misconduct. Such systems pay dividends for all involved. They spur early action to protect prisoners from future abuses; they give managers the information necessary to intervene; and they even protect misbehaving staff persons by signaling when intervention is necessary, before more serious troubles arise. As Michael Gennaco, chief attorney at Los Angeles County’s Office of Independent Review, told the Commission, “One thing . . . that does exist in some of the more progressive police departments is a computer tracking system of employee behavior. . . . Unfortunately, this kind of model hasn’t moved over to the correctional setting, and there’s no reason why it can’t.”

and responding to groups that advocate for lower prisoner phone rates and tougher standards governing prisoner sexual abuse, for example—and will continue to seek and listen to advice from advocates and others.

The Commission encourages the ACA to involve the broadest range of interested parties in the process of developing ever stronger standards for correctional practice. It is particularly important to involve representatives of organized labor—a critical source of knowledge, an important constituent, and a group that feels it has not had a voice in the development of ACA standards. Seeking input from current and former prisoners is equally important. And the Commission invites the Standards Committee to use this report as a guide for strengthening those standards that have a direct influence on the safety of prisoners and staff.

3 **Develop meaningful internal complaint systems.** Corrections managers should strengthen the systems that allow them to listen to those who live and work in prisons and jails.

Corrections leaders at all levels have much to learn from those who live in prisons and jails and those who work in the tiers and pods. No director, warden, or shift commander alone can know all he or she needs to know. Strong internal oversight and accountability depend on listening to the people with day-to-day knowledge of conditions and acting on what they say. That means establishing meaningful and safe grievance procedures for prisoners to use and also encouraging staff to report unsafe conditions and abuses.

Meaningful grievance and complaint systems for prisoners serve three critical functions. First, they are an important source of knowledge about the functioning of a facility. Prisoners want their facilities to be safe and orderly and should be able to point out problems and offer potential solutions (Commonwealth of Massachusetts Governor’s Commission on Corrections Reform 2004). Second, a meaningful grievance system demonstrates commitment to procedural justice and the rule of law. There can be no accountability for safety failures and misconduct if victims are not encouraged to make their grievances known. Moreover, the right to seek a

judicial remedy depends on compliance with existing grievance procedures, so justice demands that those procedures be meaningful and freely available (see “Increase access to the courts by reforming the PLRA,” p. 84). Third, a meaningful procedure serves as an important “safety valve” for prisoners and staff, and its absence encourages prisoners to create their own systems of accountability that might involve disorder and even violence. As former prisoner A. Sage Smith told the Commission, “The guys who think somebody is listening to them don’t cause problems. When they don’t think that they’re being heard, that’s when they cause problems.”

Nearly every prison and most jails have a procedure for receiving prisoners' grievances. However, the Commission heard that many are ineffective. The Massachusetts Governor's Commission found that "grievances are frequently denied on procedural issues rather than substance, even when they involve allegations of abuse by staff" (Commonwealth of Massachusetts Governor's Commission 2004). Leslie Walker, executive director of Massachusetts Correctional Legal Services, described other ways that grievance systems can be meaningless or even obstructive: "It begins with the withholding of pens and paper in segregation. It begins with not making copies of prisoners' grievances so that they have no record that they have made it and then throwing them away... The whole system lacks confidentiality... The assaulted prisoner who was brave enough to report it needs to know that report is going to be held in confidentiality, which is not currently happening."

Some corrections administrators understand the critical importance of confidentiality and other protections from reprisal. Rhode Island corrections Director A.T. Wall described "multiple channels to communicate problems," including providing "deposit boxes [for grievances] that can only be opened by special staff." Federal Bureau of Prisons Director Harley Lappin told the Commission about extensive protocols, including referring all allegations of staff misconduct to the Department of Justice's Inspector General to ensure some external accountability for the safety and soundness of the grievance process. Many grievance systems lack such protection, however, and even good practices like these may not be enough to assure prisoners that they will be protected from retaliation for filing a complaint alleging staff misconduct. In describing a dozen jury verdicts and judicial findings, John Boston, director of the Prisoners Rights Project of the New York City Legal Aid Society, pointed to "a recurrent pattern in American prisons of threats and retaliation against prisoners who file grievances and complaints" (Boston 2006).

Encouraging corrections staff to report misconduct and protecting staff from reprisals is also critical for operating prisons and jails that are safe and demonstrate respect for the rule of law. Many corrections officers and managers told the Commission that most staff would be eager to report unsafe and abusive conditions—even when those conditions involve misconduct by their peers—if they felt safe doing so. But, all too often, they neither feel safe, nor do they report.

Corrections officers feel particularly vulnerable to retaliation from other officers. As Michael Gennaco, chief attorney at Los Angeles

Missing Data

- The number of grievances and complaints filed by prisoners
- The types of problems prisoners are describing
- What actions are taken as a result of prisoners' grievances and complaints

Fearing Retaliation

Preliminary findings from a survey of prisoners by the Correctional Association of New York suggest that more than half of prisoners who file grievances report experiencing retaliation for making a complaint against staff. According to prisoner rights attorney Leslie Walker, "Retaliation can take many forms, including the likelihood of remaining in segregation for longer periods of time, poor classification decisions that keep that prisoner in a higher security environment where they cannot get any program or are not near their families, the very real fear of physical retribution wherever they go in the system, and should the grievance be denied, at least in Massachusetts, the fear of discipline for filing a false grievance."

Corrections officers also fear retaliation by fellow officers if they report wrongdoing. Former warden Ron McAndrew explained: "That's very intimidating to walk out to your car in a large parking lot where there are three or 400 cars, and there are 10 or 12 goons sort of surrounding your car. They don't say a word to you, they just look at you real hard like, 'You better be getting the message, bubba.'" Recently, the California legislature found that general whistleblower laws were "insufficient to protect" corrections staff who "choose to expose the wrongdoing of coworkers or their superiors" and that "additional protections" were necessary; it instructed the corrections department to develop those protections, along with a clear code of conduct that set forth the "duty to report wrongdoing" (Senate Bill 1431 §1 2004).

County's Office of Independent Review, told the Commission, "There's a significant pressure placed on a deputy or any other correctional officer not to report in order to remain within the group of colleagues that are there backing them up every day with regard to a very dangerous occupation." In his Commission testimony, former Florida prison Warden Ron McAndrew explained that the majority of officers "did the work as required by rules and regulations, but often with the exception of not reporting certain incidents observed . . . for fear of job loss or retaliation." Those fears are based on such incidents as "serious telephone threats," or rogue officers' "meeting

"There's a significant pressure placed on a deputy or any other correctional officer not to report [misconduct] in order to remain within the group of colleagues that are there backing them up every day with regard to a very dangerous occupation."

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Office of Independent Review

a staff member suspected of 'informing' at his personal vehicle at quitting time," he explained. It is not only custody staff who fail to report misconduct. According to Dr. Robert Cohen, who was medical director of New York City's jails, doctors and nurses frequently fail to report signs of violence that they observe. Such failures to report should result in sanctions.

Everyone who works in a prison or jail must be required to report misconduct by other staff or by managers. Administrative and, in egregious instances, criminal sanctions must be used to ensure reporting. But this requirement must be backed up with an unrelenting commitment to protect people from retaliation. A.T. Wall told the Commission about some of the strategies he uses, from a credible investigation to serious consequences for retaliation, adding, "That's when people know you mean it." The Commission urges corrections departments to develop these protections and others. Meaningful and safe grievance and complaint procedures for prisoners and reporting requirements and protections for staff are a critical part of professional accountability and require much greater attention. ■

STRENGTHEN ACCOUNTABILITY WITHIN THE PROFESSION: RECOMMENDATIONS RECAP

- 1. Monitor practice not just policy.** Ensure that American Correctional Association accreditation more accurately reflects practice as well as policy.
- 2. Strengthen professional standards.** Support and improve American Correctional Association standards.
- 3. Develop meaningful internal complaint systems.** Corrections managers should strengthen the systems that allow them to listen to those who live and work in prisons and jails.

Educate and Involve the Public

“FOR TOO LONG ONLY WE IN CORRECTIONS TALKED TO EACH OTHER about our policies and approaches,” Richard Seiter, former director of corrections in Ohio and professor of criminal justice, testified. “It is critically important in my mind that those outside of corrections and outside government in the corporate, religious, not-for-profit, academic, and media world come together to discuss our nation’s correctional policies.” Mr. Seiter was part of a chorus of witnesses—from corrections administrators and union officials to advocates and former prisoners—to emphasize that it takes an educated public to demand reform of America’s prisons and jails. There are two avenues by which interested individuals as well as organized citizens’ groups might better understand what is happening behind the walls of prisons and jails: direct access to facilities and greater access to information about facilities through a free and informed press.

THE INFORMATION
1. Educate the public.
2. Access to information.

1 Encourage visits to facilities. Create opportunities for individuals to visit and see what is going on behind the walls and windows of facilities.

“The public I think understands to some degree what our work is about, but you know, they don’t have an opportunity to really see it up close and personal. So they only know the horror stories sometimes that occur,” said Theodis Beck, secretary of the North Carolina Department of Correction. Providing opportunities for the public to visit facilities serves this educational purpose. Visitors can witness and even sense the strictures of prison life for the incarcerated as well as the pressures on staff; they can begin to understand both officers and prisoners as individuals, perhaps breaking down stereotypes; they can learn about problems as well as good practices and, if they return to the facility, they can see how things do or do not change over time.

“If [the Commission] wants to know what is really happening in our prisons and jails, I ask that you take the time to visit,” said Jeffrey Beard, secretary of the Pennsylvania Department of Corrections. This invitation was one of several that the Commission received over the course of our year-long inquiry. We accepted Secretary Beard’s invitation and visited the impressive, program-intensive maximum security prison in Graterford. An important part of this visit was a lengthy and frank private discussion with

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a group of long-term prisoners. At Graterford and elsewhere, Commission members were impressed with the openness, sincerity, and constructiveness of established prisoners’ groups. The opportunity to talk privately with such groups should be part of any prison visiting program, as should talks with staff, individually and in small groups.

Visits by the public to correctional facilities can also serve as an informal monitoring mechanism. They provide an opportunity for corrections staff and prisoners to discuss their concerns, and they bring an independent eye into closed institutions. Sheriff Michael Ashe of Hampden County, Massachusetts, testified that his county’s jail system has over 500 volunteers coming into the facilities. He stressed that “such openness to the community is a de-facto monitoring agent...adding 500 sets of eyes that those who would perpetrate violence and abuse must avoid—in a sense, 500 surveillance cameras from the larger community.” Federal District Judge Myron Thompson urged visitation by a specific group of outsiders—state judges responsible for sentencing: “If state judges were required to visit state prisons on a fairly regular basis...I think it would make them more transparent, and I think it would make the judges more aware of what’s going on,” and perhaps inspire some shared accountability for the conditions to which they sentence people.

Corrections administrators, who are responsible for maintaining the security of their facilities, are sometimes apprehensive about opening their doors to the general public, and all are attuned to the related security concerns. They may be skeptical about the motives of visitors, thinking that they harbor biases, or as corrections directors A.T. Wall and Harley Lappin pointed out, that “naïveté” on the part of an individual will make the person susceptible to being deceived or manipulated by prisoners.

These concerns are not insurmountable. Citizens’ visiting groups developed in England along with the first prisons, and the institutions traveled together to this country. These groups have taken many forms, from informal opportunities for observation to formal boards or commissions of citizen leaders. The latter approach was described by University of Texas at Dallas professor James Marquart who reminded the Commission that at one time, the Texas prison system was known as the “black hole of Calcutta,” a “violent, dangerous world” from which the public was excluded. “But that changed, and it changed as a result of leadership within the wider community. Prominent bankers, politicians, school teachers, university types came in and shone light on what was going on within that environment.... Today it’s the same issue. We have 160,000 people that are locked up. We’ve bottomed out, you know. We can’t build our way out of this. We need people, prominent people, who are going to come out and say enough is enough.”

The Correctional Association of New York, the Pennsylvania Prison Society, and the John Howard Association of Illinois have long brought citizens to visit and monitor facilities in their respective states, without compromising safety or security. Indeed the visits may help to promote

safety. Jack Beck, of the Correctional Association, has observed how visits can defuse prevailing tensions: "Communication with inmates is very affirming to them.... At least [there is] someone to hear their grievance rather than just be frustrated." These three organizations thoroughly prepare people for their visits and encourage ongoing, rather than one-shot, participation. Other programs include the Corrections Citizens' Academy of the Orange County (Florida) Corrections Department, which of-

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fers the public a 13-week program focused on the department's functions and staff, and special orientation programs in Iowa and New Jersey for the family members of corrections officers.

James Marquart, professor,
University of Texas, Dallas

Citizen visits to correctional facilities have at least one other important benefit. The presence of individuals from the surrounding community helps to normalize the prison environment. As former prison chaplain Jacqueline Means told the Commission, it gives people in prison a sense of the broader world and hope for their future in that world. For all of these reasons, correctional agencies should strongly encourage members of the public to visit prisons and jails.

2 Strive for transparency. Estimate needs to set a baseline of insights on operational data

Much of what the public knows about prisons and jails comes through the press. When journalists have the time and space to explore issues in depth, they can engage and educate the public. In 2005, the *New York Times* published a series of articles by reporter Paul von Zielbauer on the serious failings of the private company that provides health care in New York's correctional facilities. Accounts of individual suffering and death combined with detailed information about the operations of one of the biggest private correctional health-care companies brought this issue to the attention of ordinary people around the country. But the ability of the press to provide the public with the depth of information necessary to reach intelligent and informed opinions has been impeded by barriers that prevent members of the media from visiting facilities, talking to staff and prisoners, and reviewing official records.

Press access cannot be unlimited, but the many valid security and privacy concerns that exist must not be used to shield institutions from public scrutiny. While correctional systems differ in the degree to which they grant media access, journalists have cited the following problems: denial of face-to-face interviews with specific prisoners, even with the prisoner's consent; a near total lack of access to supermax prisons and segregation units; restrictions on their ability to freely visit facilities; the lack of confidentiality for interviews with prisoners and staff; the failure to protect prisoners from retaliation for speaking with the press; barriers to using cameras and audio

Alan Elsner, Reuters journalist and author of *Gates of Injustice*, compared “covering the U.S. prison system” to “what it used to be like trying to cover the former East Bloc, where one’s access was limited and movements were strictly monitored.”

recorders, and in some cases paper and pens; and a sense that responses to their requests are arbitrary rather than reflecting a thoughtful, consistently-applied policy (Gest 2001).

Alan Elsner, Reuters journalist and author of *Gates of Injustice*, testified that such limits on his access to facilities and prisoners brought him to the point where he “made a deliberate decision to stop making these visits because I came to the conclusion that their journalistic usefulness for me was very difficult, had run out, was about a zero.” He compared “covering the U.S. prison system” to “what it used to be like trying to cover the former East Bloc, where one’s access was limited and movements were strictly monitored.” As a journalist, Elsner felt that it was better to forego the story than to base it solely on what the facility wanted him to know: “They basically took you to where they wanted to take you and showed you what they wanted you to see and had you speak to who they wanted you to speak to.”

An informed public and, indeed, representative government depend on the watchdog role offered by an independent and objective press. The ability of the press to fulfill this role depends in turn on the broadest possible access to correctional facilities, consistent with valid concerns about security. Policies governing media access must be objective, streamlined, and consistently applied rather than being dependent on friendly relations between journalist and warden. A speedy appeals process should be developed so that the media may have recourse when their requests for access are denied, and correctional systems should maintain records of applications and denials to monitor practices. According to Ted Gest, president of Criminal Justice Journalists, the Society of Professional Journalists has identified North Carolina and Oregon as having what it considers reasonable media access policies in their state systems.

Direct access to facilities is not the only important form of media access. Prisoners should be able to contact journalists directly, by phone and through confidential written correspondence, just as they can with their lawyers. As Margaret Winter of the National Prison Project told the Commission, "That would be a very, very significant thing if prisoners had direct access to the press—not simply through letters, but by telephone, in person so that their voices could actually be heard."

Freedom of information laws are also important tools in opening government to scrutiny by the press and thus by the public. Perhaps even more than other government bodies, correctional agencies resist freedom of information requests. Michael Gennaco, chief attorney at Los Angeles County's Office of Independent Review, testified that "corrections managers...read the interpretation of the statutes very narrowly." Freedom of information laws should be read broadly, to fulfill their purpose—providing public access to information about how government is functioning. Exceptions, such as for ongoing investigations and to preserve confidentiality, should be made only when necessary. And the laws should apply equally to private companies that operate prisons or jails under government contract, as specified in pending legislation that would make private companies contracting with the Federal Bureau of Prisons subject to the Freedom of Information Act (FOIA) (The Private Prison Information Act of 2005, HR 1806). Free and unfettered access to records should be made a part of a renewed commitment to transparency, one grounded in broad media access. ■

EDUCATE AND INVOLVE THE PUBLIC: RECOMMENDATIONS RECAP

1. **Encourage visits to facilities.** Create opportunities for individual citizens and organized groups, including judges and lawmakers, to visit facilities.
2. **Strive for transparency.** Ensure media access to facilities, to prisoners, and to correctional data.

COMMISSION RECOMMENDATIONS: FULL TEXT

1. CONDITIONS OF CONFINEMENT

Prevent Violence

- 1. Reduce crowding.** States and localities must commit to eliminating the crowded conditions that exist in many of the country's prisons and jails and work with corrections administrators to set and meet reasonable limits on the number of prisoners that facilities can safely house.
- 2. Promote productivity and rehabilitation.** Invest in programs that are proven to reduce violence and to change behavior over the long term.
- 3. Use objective classification and direct supervision.** Incorporate violence prevention in every facility's fundamental classification and supervision procedures.
- 4. Use force and non-lethal weaponry only as a last resort.** Dramatically reduce the use of non-lethal weapons, restraints, and physical force by using non-forceful responses whenever possible, restricting the use of weaponry to qualified staff, and eliminating the use of restraints except when necessary to prevent serious injury to self or others.
- 5. Employ surveillance technology.** Make good use of recording surveillance cameras to monitor the correctional environment.
- 6. Support community and family bonds.** Reexamine where prisons are located and where prisoners are assigned, encourage visitation, and implement phone call reform.

Provide Health Care that Protects Everyone

- 1. Partner with health providers from the community.** Departments of corrections and health providers from the community should join together in the common project of delivering high-quality health care that protects prisoners and the public.
- 2. Build real partnerships within facilities.** Corrections administrators and officers must develop collaborative working relationships with those who provide health care to prisoners.

- 3. Commit to caring for persons with mental illness.** Legislators and executive branch officials, including corrections administrators, need to commit adequate resources to identify and treat mentally ill prisoners and, simultaneously, to reduce the number of people with mental illness in prisons and jails.
- 4. Screen, test, and treat for infectious disease.** Every U.S. prison and jail should screen, test, and treat for infectious diseases under the oversight of public health authorities and in compliance with national guidelines and ensure continuity of care upon release.
- 5. End co-payments for medical care.** State legislatures should revoke existing laws that authorize prisoner co-payments for medical care.
- 6. Extend Medicaid and Medicare to eligible prisoners.** Congress should change the Medicaid and Medicare rules so that correctional facilities can receive federal funds to help cover the costs of providing health care to eligible prisoners. Until Congress acts, states should ensure that benefits are available to people immediately upon release.

Limit Segregation

- 1. Make segregation a last resort and a more productive form of confinement, and stop releasing people directly from segregation to the streets.** Tighten admissions criteria and safely transition people out of segregation as soon as possible. And go further: To the extent that safety allows, give prisoners in segregation opportunities to fully engage in treatment, work, study, and other productive activities, and to feel part of a community.
- 2. End conditions of isolation.** Ensure that segregated prisoners have regular and meaningful human contact and are free from extreme physical conditions that cause lasting harm.
- 3. Protect mentally ill prisoners.** Prisoners with a mental illness that would make them particularly vulnerable to conditions in segregation must be housed in secure therapeutic units. Facilities need rigorous screening and assessment tools to ensure the proper treatment of prisoners who are both mentally ill and difficult to control.

II. LABOR AND LEADERSHIP

Change the Culture and Enhance the Profession

1. **Promote a culture of mutual respect.** Create a positive culture in jails and prisons grounded in an ethic of respectful behavior and interpersonal communication that benefits prisoners and staff.
2. **Recruit and retain a qualified corps of officers.** Enact changes at the state and local levels to advance the recruitment and retention of a high quality, diverse workforce and otherwise further the professionalism of the workforce.
3. **Support today's leaders and cultivate the next generation.** Governors and local executives must hire the most qualified leaders and support them politically and professionally, and corrections administrators must, in turn, use their positions to promote healthy and safe prisons and jails. Equally important, we must develop the skills and capacities of middle-level managers, who play a large role in running safe facilities and are poised to become the next generation of senior leaders.

III. OVERSIGHT AND ACCOUNTABILITY

Invest in External Oversight

1. **Demand independent oversight.** Every state should create an independent agency to monitor prisons and jails.
2. **Build national non-governmental oversight.** Create a national non-governmental organization capable of inspecting prisons and jails at the invitation of corrections administrators.
3. **Reinvigorate investigation and enforcement.** Expand the investigation and enforcement activities of the U.S. Department of Justice and build similar capacity in the states.
4. **Increase access to the courts by reforming the PLRA.** Congress should narrow the scope of the Prison Litigation Reform Act.

Continued above right

III. Oversight and Accountability, continued

Strengthen Accountability Within the Profession

1. **Monitor practice not just policy.** Ensure that American Correctional Association accreditation more accurately reflects practice as well as policy.
2. **Strengthen professional standards.** Improve and support American Correctional Association standards.
3. **Develop meaningful internal complaint systems.** Corrections managers should strengthen the systems that allow them to listen to those who live and work in prisons and jails.

Educate and Involve the Public

1. **Encourage visits to facilities.** Create opportunities for individual citizens and organized groups, including judges and lawmakers, to visit facilities.
2. **Strive for transparency.** Ensure media access to facilities, to prisoners, and to correctional data.

IV. KNOWLEDGE AND DATA

Measure Safety and Effectiveness

1. **Develop nationwide reporting.** Federal legislation should support meaningful data collection, and states and localities should fully commit to this project.
2. **Fund a national effort to learn how prisons and jails can make a larger contribution to public safety.** The federal government and states should invest in developing knowledge about the link between safe, well-run correctional facilities and public safety.
3. **Require correctional impact statements.** The federal government and states should mandate that an impact statement accompany all proposed legislation that would change the size, demographics, or other pertinent characteristics of prison and jail populations.

COMMISSION ON SAFETY AND ABUSE IN AMERICA'S PRISONS

www.prisoncommission.org

Summary of Recommendations

CONDITIONS OF CONFINEMENT

Prevent Violence

1. Reduce crowding.
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4. Use force and non-lethal weaponry only as a last resort.
5. Employ surveillance technology.
6. Support community and family bonds.

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2. Recruit and retain a qualified corps of officers.
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OVERSIGHT AND ACCOUNTABILITY

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2. Build national non-governmental oversight.
3. Reinvigorate investigation and enforcement

3. Commit to caring for persons with mental illness.
4. Screen, test, and treat for infectious disease.
5. End co-payments for medical care.
6. Extend Medicaid and Medicare to eligible prisoners.

Limit Segregation

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2. End conditions of isolation.
3. Protect mentally ill prisoners.

THE COMMISSION ON SAFETY AND ABUSE IN AMERICA'S PRISONS was established in March, 2005, to explore the most serious problems in jails and prisons nationwide and the impact on prisoners, staff, and society at large. Fifteen months later, in June, 2006, the Commission released its findings and recommendations. To read that report, visit www.prisoncommission.org.

- enforcement.
4. Increase access to the courts by reforming the PLRA.

Strengthen Accountability Within the Profession

1. Monitor practice not just policy.
2. Strengthen professional standards.
3. Develop meaningful internal complaint systems.

Educate and Involve the Public

1. Encourage visits to facilities.
2. Strive for transparency.

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www.prisoncommission.org