Pace Law Review

Volume 30
Issue 5 *Fall 2010*
Opening Up a Closed World: A Sourcebook on Prison Oversight

Article 10

September 2010

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

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Recommended Citation
Vivien Stern, *The Role of Citizens and Non-Profit Advocacy Organizations in Providing Oversight*, 30 Pace L. Rev. 1529 (2010)
Available at: http://digitalcommons.pace.edu/plr/vol30/iss5/10

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Revised and Updated Speech by Baroness Vivien Stern to the Conference on Prison Oversight, Austin, Texas, April 25, 2006: *The Role of Citizens and Non-Profit Advocacy Organizations in Providing Oversight*

Baroness Vivien Stern*

Every prison in England and Wales (and every Immigration Removal Centre) is required by statute to have an Independent Monitoring Board. These Boards go back, in some form, to the 16th century, when "magistrates of the County Quarter Sessions had a hand in the administration and regulation of . . . prisons."[1]

Thus, in most countries with a British past (ex-colonial

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Her publications include *Bricks of Shame: Britain's Prisons*; *A Sin Against the Future: Imprisonment in the World*; *Alternatives to Prison in Developing Countries*; and *Developing Alternatives to Prison in East and Central Europe and Central Asia*. Her latest book, *Creating Criminals: People and Prisons in a Market Society*, was published by Zed Books in May 2006.

1. Indep. Monitoring Bds., Background Information—Independent Monitoring Boards in Prisons, Immigration Removal Centres and Short-Term Holding Centres, http://www.imb.gov.uk/docs/Speakers_IMB_Background_Inf1.pdf (last visited Mar. 5, 2010).

countries), there will be a system of local oversight of prisons by a group of lay citizens, usually called a Visiting Committee. I was in a prison in February 2006, in a small African country, formerly a British colony, called Malawi. I checked the visitors' book and sure enough, there was an entry. Someone from the Visiting Committee had been there the month before and she had recorded, in the book, her impressions and her suggestions for improvements.

In England and Wales, the word "visiting" was dropped in 2003 and replaced by a more official-sounding name, "Independent Monitoring Board." Every one of the 135 prisons and 10 Immigration Removal Centres in England and Wales has such a board, made up of between 12 and 20 members. Altogether there are over 1,850 members in total. Vacancies are advertised locally and anyone can apply. Each member is appointed to a specific prison or Immigration Removal Centre. Members are lay people from the local community (i.e., not prison professionals) and they receive no payment (but may be reimbursed for basic expenses). They are expected to serve two days per month. The members may enter the prison at any time and go anywhere in the prison (subject to security considerations and personal safety). They can enquire into anything (except confidential medical files).

Independent Monitoring Board members' statutory duties are set out in the 1952 Prison Act.[2] Additionally, an updated prison rule that was proposed by the National Council was recently accepted by the Minister, which among other things, requires the Board to "satisfy itself as to the humane and just treatment of those held in custody within its prison and the range and adequacy of the programmes preparing them for release."[3] The Board must also inform the responsible government department when it has a serious concern about any matter and it must produce an annual report for the government on how well the prison has met the standards and requirements.[4] Boards are encouraged to publish their annual reports. These are publicly available on the Boards' websites

2. Prison Act, 1952, 15 & 16 Geo. 6 & 1 Eliz. 2, ch. 52, § 6 (Eng.).

3. *See* Letter from Norman McLean, Head of Independent Monitoring Boards' Secretariat, to prison administrators (June 30, 2004), at Annex A, *available at* http://www.imb.gov.uk/docs/DC_15_04.pdf.

4. *Id.*

and they are issued to the press and are often reported.[5]

What do the Board members actually do? They monitor the day-to-day life of their prison. They visit it regularly, usually unannounced. They listen to the concerns of prisoners and report them if necessary. The Board must inspect the prison at least once per month, but in practice most Boards inspect once per week. As part of the inspection the Board member must visit the kitchen, healthcare unit and segregation unit. The members also regularly listen to requests and complaints by individual prisoners. The Board must meet once a month (with the director of the prison in attendance) to discuss the results of its inspections and any concerns raised by prisoners.

The crucial part of prison life of course, if there is a concern about possible ill-treatment and abuse of prisoners, is when order is under threat and coercive measures have to be used. This occurs when prisoners need to be segregated from others, when mechanical restraints are used, and when there are incidents and disturbances. Therefore, Boards have special responsibilities in this regard. If a serious incident happens at any time, day or night, a Board member must be called to the prison to monitor the situation and observe how it is dealt with. A serious incident could include, for example, concerted indiscipline, escapes, hostage taking, deaths, roof climbing, barricades, fires, food refusal or deliberate self-harm. In these cases Board members, according to an official document, "have a duty to monitor, observe and record serious incidents. Board members have a duty to visit the incident area and remain as observers until a resolution is reached."[6] Board members must also monitor any use of restraint on prisoners and monitor the treatment of prisoners placed in segregation cells separated from other prisoners.

Board members are given advice on how to carry out their role. They should make sure they do not behave as if they are part of the management of the prison. They should make sure they do give prisoners an opportunity to talk to them about their concerns, away from staff if necessary. The leaflet

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5. *Id.*

6. Independent Monitoring Board Secretariat, Reference Book for IMBs in Prisons (2008), *available at* http://www.imb.gov.uk/docs/IMBref_v4_A4_0609.pdf (Section 35).

explaining what the Boards do says members should be: "'Open minded,"[7] "[c]aring,"[8] "[c]ommitted to diversity, equality and human rights,"[9] and "good listener[s]."[10] 'They should also have the "'[a]bility to challenge."'[11]

However, Board members' powers are limited. The Board is not an executive body. It cannot demand action. It can raise its concerns with the director of the prison, and if it is not satisfied with the response, it can raise the concerns with the various levels of the hierarchy up to the top political level. Most recently, in 2009, the matters raised by the Boards with the top political level include: the high number of mentally ill people in prison who should not be in prison but in an outside hospital, the effects of the financial stringency on prisoners' programmes and activities, overcrowded accommodation, and prisons holding an inappropriate number of elderly people with dementia.

This description of the role suggests that Independent Monitoring Boards are strong watchdogs with access to all parts of the prison, a right to talk to prisoners in private and a line of communication with the part of government responsible for the system. How far does this system of oversight by citizens actually produce a better system with a higher level of protection of the rights of prisoners?

I would argue that the existence and presence of Independent Monitoring Boards in prisons does improve the treatment of prisoners and raises the level of their protection from abuse and ill-treatment. It does this through the actual presence—in the prison, in the cells, on the landings and in the exercise yards—of people from the outside world, who have a commitment to ethical treatment of other human beings.

It also improves the prison system because of the contribution it makes to the penal culture. A distinction is often made between countries that aim to treat their prisoners as citizens and those countries that make it clear that prisoners are despised enemies of the state. It is usually quite

7. Independent Monitoring Board, What's in it for Me?, http://www.imb.gov.uk/docs/IMB_DL_Leaflet.pdf (last visited Mar. 5, 2010).

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

easy when visiting a prison system in a particular country to see which is the predominant philosophy. Are prisoners treated as one would wish a family member to be treated? Do they keep many of the rights of citizenship such as, for example, the right to vote? Or are they treated as though they are from another species, with all the insignia of the stigmatised person, with what have become the instantly recognisable regalia—orange jumpsuits, shackles?

It is worth asking, how are these different cultures—*prisoners as citizens* and *prisoners as enemies*—determined and how are they preserved? It is interesting that the U.S. State Department, in its annual human rights reports on the countries of the world, notes as a positive factor that the government in question allows visits to its places of detention by NGOs and outside monitoring bodies. Here, I come back to the importance of the Independent Monitoring Boards and of all the groups that go into prisons to monitor or to help. The group of worthy, public-spirited, concerned human beings that makes up Independent Monitoring Boards brings more than a formal presence. These people bring with them the values of the outside world to the closed and deformed world of the 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 that ask why is something being done, or why can the prisoner not have certain things that make life easier.

It is normal that in all residential institutions, not just the ones where those who are deemed to have offended against society are held, as their distance from the outside world increases, so their standards can slip. The mind-set easily becomes: no one will notice if the showers do not work. These are, after all, only prisoners. No one will dare to complain if the prisoners' mail doesn't reach them for a couple more days because there is no time to deal with it. These people are not in any hurry. No one will know if nothing is done about a bad beating that happened in the segregation block yesterday. These people are prisoners and they are used to violence.

When there is a Board member in the prison every day, and an inspection of some parts of the prison every month, and an opportunity for prisoners to bring their complaints to an independent person, out of the hearing of prison staff, then it is

probably not worth it to leave the showers unrepaired, the mail unsorted and the violence unreported because it will all be discussed at the Board's monthly meeting and prison management will be under constant pressure to fix the problems.