Pace Law Review

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

Article 20

11-18-2010

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Michele Deitch, *Annotated Bibliography on Independent Prison Oversight*, 30 Pace L. Rev. 1687 (2010)
Available at: http://digitalcommons.pace.edu/plr/vol30/iss5/20

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Annotated Bibliography on Independent Prison Oversight

Michele Deitch*

The body of literature regarding correctional oversight is both limited and fragmented, posing a significant challenge to policy makers, practitioners, scholars, and advocates who seek to engage this important issue. Indeed, much of the literature surrounding this topic is to be found in the form of reports, speeches, unpublished essays, and chapters of books—none of which is easy to identify, locate, or collect. To add to the challenge, much of the existing material comes from international sources. This material has never been gathered previously in one place.

In preparation for the conference "Opening Up a Closed World: What Constitutes Effective Prison Oversight?," held at the University of Texas in 2006, graduate students in my seminar on "Prisons and Human Rights" embarked on a major group effort to compile and review the literature dealing with independent oversight of prisons and to develop an annotated bibliography of this material.

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This Annotated Bibliography was originally prepared as a research project conducted by University of Texas graduate students in my interdisciplinary seminar on Prisons and Human Rights during the spring of 2006. The research for and drafting of the original 2006 bibliography was done by: Fabiola Flores (School of Law), Crystal Jones (Lyndon B. Johnson School of Public Affairs), Bryan McCann (Department of Journalism), and David Wagner (School of Law). The original draft was presented to participants in the "Opening Up a Closed World: What Constitutes Effective Prison Oversight?" conference held at the University of Texas in April 2006, a conference that I chaired and organized. The Bibliography has since been significantly restructured and updated. I would be grateful if readers who identify other helpful resources can bring them to my attention, as I seek to maintain a current database of this material. I may be reached at: Michele.Deitch@mail.utexas.edu.

What follows is an Annotated Bibliography[1] of this literature and other resources, representing the recommendations, methods, and experiences of a diverse group of experts on the issue of independent prison oversight and closely related issues. While the students strived to include as much of the key literature as was feasible, this is by no means a comprehensive listing of everything that has ever been written on the subject. I have updated and restructured the bibliography to include a number of important publications issued since the 2006 conference and to recognize various developments in this arena.

The purpose of this bibliography is to serve as a resource for those stakeholders who wish to develop or analyze mechanisms to enhance transparency and accountability in correctional operations. Ideally, it will inspire some creative thinking about the need for external prison oversight, the various ways in which oversight mechanisms can be structured, and the tasks to be performed by monitoring entities.

I. Research Findings

Before turning to the Bibliography itself, it might be instructive to provide a brief discussion and analysis of what the literature on this topic revealed.

A. *Oversight Mechanisms*

Correctional oversight bodies tend to fall into one of four categories: trans-national quasi-governmental groups; non-governmental organizations (NGOs); government agencies; and citizen participation. Trans-national quasi-governmental groups such as Europe's Committee for the Prevention of Torture (CPT) and the International Committee of the Red Cross (ICRC) are independent bodies with formal rights of access to detention facilities across nations. The United

[1] **Editor's Note:** This Annotated Bibliography is designed to be accessible to those both inside and outside of the legal academic community. As such, sources have been cited according to the author's preference; they do not conform to *The Bluebook: A Uniform System of Citation*.

Nations also requires countries to submit individual reports documenting their compliance with the Convention Against Torture. Human rights organizations such as Amnesty International and Human Rights Watch typically do not possess the same level of access to prisons as do those trans-national entities, so these NGOs gather their information about prison conditions and the treatment of prisoners from different sources and focus their efforts on articulating human rights standards and recommending the development of official oversight mechanisms. Trans-national groups and NGOs are generally guided in their efforts by international human rights instruments.

Many governments in other countries and, to a much lesser degree, in the United States have created external oversight mechanisms for prisons and jails that involve routine monitoring. The external oversight bodies have taken different forms, from independent Prison Inspectorates to Inspectors General to Ombudsmen, and all have formal access to prison facilities. Some of these are stand-alone entities, while others are affiliated with a legislative or executive branch entity. The literature discussed in this bibliography provides a closer look at how some of these bodies are structured and what makes them effective in their work.

Oversight models in a number of countries and states often rely upon citizens to provide oversight of prisons. Trained volunteers participate on inspection teams and on civilian review boards, and in some cases civilian lawyers get involved in Internal Review units. Striking examples of civilian involvement in oversight are found in the United Kingdom, South Africa, New York, and Illinois, and advocates in Canada have long called for the involvement of citizens in reviewing agency decisions to place a prisoner in administrative segregation.

Historically in the United States, the responsibility of prison oversight has fallen to the federal courts, which in extreme cases have set up offices that conduct routine monitoring of prison facilities to ensure compliance with court-ordered improvements in conditions.[2] Judicial intervention

2. For example, in the landmark case of *Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980), *amended and vacated in part by*, 688 F.2d 266 (5th Cir. 1982). Judge William Wayne Justice set up the Office of the Special

serves a very different function than the routine monitoring conducted by the oversight bodies discussed here, since courts get involved only after a facility is determined to have unconstitutional conditions and since this type of oversight is not intended to be ongoing in nature. There is a healthy body of available literature on the subject of judicial intervention in prisons, and this Bibliography only touches on this subject briefly.[3]

B. *Major Themes in the Literature*

This literature review reveals a significant difference between the ways imprisonment is viewed in the United States and in other countries. Non-U.S. authors overwhelmingly stress the need for oversight on the basis that imprisonment and the deprivation of liberty represents the most power a government can exercise over individuals. Such a profound expression of state force, therefore, requires extensive scrutiny. This rationale is conspicuously absent in most of the literature about oversight coming from the United States, as is the related effort to ground oversight in basic human rights principles. While this reflects, in part, a cultural difference among nations, presumably it also stems from a recognition on the part of advocates in the United States that policy-makers are more likely to be moved by arguments about the cost-effectiveness of preventive oversight and the efficiencies and improvements in prison operations that can result from outside scrutiny.

A number of the annotated works emphasize that oversight models must be developed to meet the specific needs, culture, and situation of a particular jurisdiction. A "one-size-fits-all" approach to oversight is unrealistic, and even the best of models cannot be simply transferred to another jurisdiction

Master, a 10-person office responsible for monitoring conditions in all Texas prisons and reporting to the court and the parties on the prison agency's compliance with court orders. The office existed from 1981 until 1990. The author served as a full-time court-appointed monitor in this office from 1987 to 1990.

3. One of the best sources on the topic of court oversight of prisons is a previous volume of the PACE LAW REVIEW that contains the proceedings of the symposium "Prison Reform Revisited: The Unfinished Agenda," 24 PACE L. REV. (2004) (discussed *infra,* p. 1733).

without modification. That said, it is striking how many of the countries highlighted in this literature review demonstrated a familiarity with other oversight systems and sought to create oversight structures modeled on these bodies. The British Prison Inspectorate is often held up as one of the most effective oversight bodies created at a national level, and there are oversight entities around the world that have sought to emulate this structure.

Virtually every work describing an oversight model stresses the importance of "independence." Independence is a complicated concept, but at its core, it means both that an oversight entity should be independent of the body that it oversees and that it should exercise independence of judgment about how to respond to the problems it identifies. Also critical is routine monitoring—not just investigations of past wrongdoing—in order to prevent prisoner abuse and to ensure early detention of problems before misconduct occurs and lawsuits are filed. Other core features of effective prison monitoring include the need for confidentiality on the part of those who speak with the inspectors and the ability of monitors to work collaboratively with prison officials to ensure that changes get implemented.

We were also struck by the extent to which the literature on police oversight raises numerous considerations that parallel the concerns of those interested in making prisons more transparent and accountable. While the two types of oversight are not by any means identical, we believe that the literature on police oversight provides a valuable frame of reference, especially since police oversight is currently much more established in the United States than is correctional oversight. Police oversight mechanisms have some applicability to the enterprise of monitoring prisons and jails, and oversight practitioners in the law enforcement field have faced many of the same challenges and questions that daunt those who propose correctional oversight mechanisms.

Finally, we noted many instances in which the literature references oversight of a particular aspect of prison operations or conditions, or oversight of a particular segment of the prisoner population. Such "issue-specific" oversight tends to be more evident in the United States, whereas in Europe and beyond, every aspect of the prison environment is seen to

justify external scrutiny. In the United States, for example, there is some literature available about monitoring private prison operations. Oversight of private prison facilities tends to fall in most cases to the public agencies with whom the private vendors contract. Yet oversight of private prisons and jails poses unique challenges, because most monitoring is limited to ensuring compliance with contractual terms. If those underlying contracts do not contain provisions relating to the treatment of prisoners or the quality of conditions in the facility, as many contracts unfortunately fail to do, the ability to monitor these facilities effectively and hold private providers accountable for the protection of prisoners is significantly lessened. The annotated literature offers a number of suggestions for those who wish to ensure greater transparency and accountability in private prison operations.

Many of the works discussed here identify the need for external scrutiny in order to protect inmates from sexual assault, an issue that is receiving increasing levels of attention in the United States in the wake of the work of the National Prison Rape Elimination Commission and the requirements of the Prison Rape Elimination Act.[4] Similarly, many works highlight the need to address the concerns of mentally ill and physically disabled inmates. As the public becomes more aware of the special challenges faced by mentally ill inmates and the difficulties this population poses for prison officials, there is increasing interest on the part of both advocates and policy-makers in ensuring that this population receives appropriate treatment. Thus, external oversight is seen as especially necessary for this segment of the prison population.

II. Organization of the Annotated Bibliography

We begin this literature review by highlighting sources that provide a general overview of the correctional oversight issue, including writings that speak to the importance and need for independent oversight, articles that discuss the meaning of this concept, and publications that provide guidance on how to conduct monitoring activities. We then

4. Prison Rape Elimination Act of 2003, Pub. L. No. 108-79, 117 Stat. 972.

turn to a focus on international oversight models, including both trans-national oversight bodies and oversight mechanisms that exist in specific countries. Also included are sources that compare the correctional oversight mechanisms in various countries.

Next, we identify resources about correctional oversight in the United States. Again, we begin with some general sources that discuss the range of oversight models that exist domestically; then we address the role that litigation has traditionally played in protecting prisoners' rights. We go on to offer resources that provide more detail about the prison and jail oversight bodies that exist in specific states and the federal system.

Finally, we identify literature that discusses the potential for oversight of specific correctional issues, such as private prisons, sexual assault, and mental health and disability issues. We also offer a variety of sources on police oversight.

Again, this Annotated Bibliography is not comprehensive, but it provides a helpful starting place for research in any of these areas. We should also note that the Pace Law Review volume in which this article appears constitutes a virtual sourcebook of information on prison oversight and has some of the most relevant articles available on this subject. Most of the articles in this volume are not discussed separately in this Bibliography, but nevertheless deserve special attention by any reader studying the oversight field.

III. Conclusion

While the literature discussing prison oversight is not nearly as extensive as it should be, a number of valuable resources still exist. This literature review is designed to organize this body of work in a manner that will be valuable to both practitioners and scholars. Holding prisons accountable to the standards of human rights is a complicated enterprise, but also an indispensable one. Oversight is a critical issue that affects both human rights concerns and correctional management and operations. The organizations, nations, and states described in the literature annotated here offer standards, mechanisms, and insights that, we hope, will provide a meaningful perspective on how prison oversight can

be developed and practiced effectively, and how it can help lead to the more humane operation of prisons.

I. General Information about Correctional Oversight

A. *Overview of Oversight Models and Issues*

American Bar Association (2008). Resolution 104B: Prison oversight and monitoring of juvenile and adult facilities. Retrieved on May 20, 2010, from http://www.abanet.org/crimjust/policy/am08104b.pdf

Official ABA policy now urges federal, state, local, and tribal governments to develop and support independent oversight mechanisms for all places of detention in that jurisdiction. This resolution and the accompanying report include detailed recommendations to ensure that such oversight bodies are effective. These documents provide an excellent starting place for any jurisdiction considering the development of a correctional oversight body.

American Bar Association (2010). Criminal Justice Standards (3rd Ed.). Treatment of Prisoners. Retrieved on April 26, 2010, from http://www.abanet.org/crimjust/policy/midyear2010/102i.pdf

The ABA's Standards on prisoners' rights, recently revised for the first time in 30 years, include important provisions relevant to correctional oversight. Part XI of the Standards (Standards 23-11.1–23-11.5), entitled "Accountability and Oversight," include provisions on the topics of internal accountability, external regulation and investigation, external monitoring and inspection, legislative oversight and accountability, and media access to correctional facilities and prisoners. While

these standards are not binding on any jurisdiction, they provide important guidance to judges, practitioners, advocates, and policy-makers, and represent the best thinking of a range of criminal justice and corrections experts and legal scholars from a wide variety of perspectives.

Deitch, M. (2006). *Opening Up a Closed World: What Constitutes Effective Prison Oversight? Conference Proceedings*. Lyndon B. Johnson School of Public Affairs, The University of Texas at Austin. Retrieved on February 12, 2010, from http://www.utexas.edu/lbj/prisonconference/.

This website contains the proceedings of the international conference on prison oversight held at the University of Texas in 2006. This was an invitation-only event that brought together 115 of the world's leading experts, including prison officials, attorneys, human rights advocates, representatives of all the major correctional oversight bodies, scholars, judges, and policy-makers. Available online are videos of all conference sessions held over two days, including both panel discussions and keynote speeches; summaries of all presentations made at the conference; a copy of the conference agenda; a list of speakers and participants; and copies of handouts describing various models of correctional oversight. This is the most comprehensive source available for anyone researching the topic of prison oversight.

Deitch, M. (2006, February 8). Effective Prison Oversight. Written Testimony Submitted to the Commission on Safety and Abuse in America's Prisons – 4th Hearing. Retrieved on May 20, 2010, from http://www.prisoncommission.org/statements/deitch_michele.pdf.

Michele Deitch provides an overview of the prison oversight issue, discussing in depth the distinctions among different types of monitoring functions with a

primary focus on the value of the inspection and monitoring function and what it provides above and beyond other types of oversight. She offers examples of the range of correctional oversight bodies that exist both internationally and in the United States, and details the essential elements of an effective prison monitoring system. She also highlights the benefits of external monitoring for corrections officials.

Deitch, M. (2010). Distinguishing the Various Functions of Effective Prison Oversight. 30 *Pace Law Review* 1438 (2010). www.law.pace.edu/plr

This short piece provides an analytic framework for thinking about prison oversight. Noting that the term "oversight" lacks a clear meaning and that the different functions of prison oversight are often confused and seen as in competition with each other, the author distinguishes several important functions provided by oversight mechanisms, including regulation, audit, accreditation, investigation, legal, reporting, and monitoring. Each of these is a distinct element of effective prison oversight, but all these functions need not be served by the same oversight body. "Oversight" is really an umbrella concept that encompasses each of these functions, and the focus of reformers should be on ensuring that each function is served effectively in every jurisdiction. The ideal is to have a layered system of correctional oversight in which there is a range of effective internal accountability measures and robust external oversight mechanisms.

Deitch, M. (2010). Special Populations and the Importance of Prison Oversight. 37 (3) American Journal of Criminal Law __ (Summer 2010).

This article discusses the critical need for the development of effective, independent oversight mechanisms to ensure that prisons and jails become more transparent in their operations and more accountable for the protection of the rights of prisoners.

The author argues that the need is especially great when it comes to the protection of vulnerable prisoners, including inmates housed in segregation, those at greatest risk for sexual assault, prisoners who are mentally ill or physically disabled, and prisoners with serious medical needs. The article highlights examples of independent oversight entities that can serve as models, and identifies the essential elements of effective prison oversight. The piece is based on the author's invited testimony to the National Prison Rape Elimination Commission.

Dickey, W. (2006, February 8). The Management of Prisons in a Democratic Society. Written Testimony Submitted to the Commission on Safety and Abuse in America's Prisons – 4th Hearing. Retrieved on May 20, 2010, from http://www.prisoncommission.org/statements/dickey_walter.pdf.

The central theme of this paper is that prisons should be run in a manner consistent with the values of a democratic society. As such, the public should have access to prison rules, the legislature should conduct oversight of prison rule-making and administration, and prisons should be as transparent and visible as possible.

B. *Monitoring Techniques*

Association of Members of Independent Monitoring Boards. (2005). *Practical guide to monitoring prisons*. (3rd ed.).

Produced for members of U.K. prison monitoring boards, this guide lists over 900 questions for monitors to use when examining prison conditions. Sections are cross-referenced and include: reception and introduction (intake), regime, food and prison environment, health, safer custody, religion, race relations, applications and complaints, special categories (juveniles, women, elderly), security, order and control, resettlement

(release), management, and independent monitoring boards. The book notes that while some questions are direct, others are more open-ended and thus allow for monitors to exercise their own judgment depending on the context of the situation.

Association for the Prevention of Torture; OSCE. Office for Democratic Institutions and Human Rights. (2007). *Monitoring Places of Detention: A Practical Guide*. Switzerland. Retrieved on February 9, 2010, from http://www.apt.ch/component/option,com_docman/task,cat_view/gid,57/Itemid,59/lang,en/.

This updated manual provides technical guidance for NGOs and other bodies entitled to conduct monitoring visits to places of detention. It defends the importance of maintaining NGO monitoring groups as an independent and more permanent complement to national and international monitoring mechanisms. The manual also includes a section on specific conditions that should be examined, and the applicable international standards.

Coyle, A. (2002). *Human Rights Approach to Prison Management: A Handbook for Prison Staff*. International Centre for Prison Studies. Retrieved on February 9, 2010, from http://www.kcl.ac.uk/depsta/law/research/icps/downloads/handbook_2nd_ed_eng_8.pdf.

This all-inclusive handbook is an important resource for prison staff who wish to implement various international human rights standards in their practical day-to-day work. Among the various topics covered, the handbook stresses the importance of inspections. Before delving into a variety of inspection procedures, author Andrew Coyle, a former prison administrator, explains the value of these processes. Inspections are divided into informal and formal mechanisms that can take the shape of something as simple as regular contact

between the prison and community agencies, to much more formalized monitoring bodies. The manual explains that administrative inspections that audit procedures, though important, are not sufficient to protect human rights. Independent inspections are the best method and the author argues that the most independent of these oversight bodies involve inspectors who are appointed by legislatures and report back to them. The section on inspections closes with a section entitled "Putting it into Practice," which helps translate these standards into practical procedures for correctional staff.

Coyle, A. (2003). *Humanity in prison*. London: International Centre for Prison Studies.

Andrew Coyle provides a draft audit instrument as a mechanism for ensuring humane treatment in prisons. It is intended for broad use either by prison administrators or by independent investigators. The audit instrument uses an exhaustive questionnaire addressing virtually all facets of prison life and administration and it relies primarily on qualitative measures.

Nowicki, M., & Fialova, Z. (2001). *Human rights monitoring*. Warszawa: Helsinki Foundation for Human Rights. Retrieved on May 20, 2010, from http://www.hfhrpol.waw.pl/pliki/Monitoring_eng.pdf

A training manual designed for NGO watchdog organizations, this handbook provides extensive, detailed guidance on developing and conducting monitoring visits, and methods for reporting results of human rights inspections. It was developed based on the experiences of Polish NGOs, state inspectors, and intergovernmental groups such as the CPT, and it incorporated feedback from trainees. The handbook provides information on the purposes of monitoring, technical assistance in developing strategies, creating a

team, conducting monitoring visits, investigating data, collecting evidence, and distributing the report.

Penal Reform International. (2001). *Making Standards Work: An International Handbook on Good Prison Practice.* 2nd Ed. London: Astron Printers. Retrieved on May 20, 2010, from http://www.penalreform.org/files/man-2001-making-standards-work-en.pdf

This publication advocates an integrated approach to prison inspection, recommending internal and external, official and unofficial, national, regional, and universal mechanisms for oversight. Throughout, the authors emphasize the need for independence. They recommend that outside entities that specialize in specific areas perform inspections consistent with their particular expertise. The volume also advocates a dynamic inspection process so as to prevent co-optation of inspectors by the prison environment. All recommendations are grounded in the United Nations' Standard Minimum Rules (SMR).

II. International Oversight Models

A. *Trans-National Models*

1. International Committee of the Red Cross

Aeschlimann, A. (2005). Protection of detainees: ICRC action behind bars. *International Review of the Red Cross, 87*, 83-122. Retrieved May 20, 2010, from http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/review-857-p83/$File/irrc_857_Aeschelimann.pdf

The International Committee of the Red Cross (ICRC) outlines its procedures for investigating the treatment of detainees. The document emphasizes the flexibility in standards and procedures that is contingent upon the

context of the investigation. For instance, the facility at Guantanamo Bay is likely to be approached differently than an aged prison in a developing country. Inspectors meet with both prisoners and staff, taking special care to educate the latter on international standards and legal matters, as well as on steps that can be taken toward improving conditions. The ICRC is also careful to use the same representatives for regular investigations of any one location to facilitate an ongoing dialogue with the institution and its detainees. The resulting dialogue from inspections remains confidential between the ICRC and administrators in the interest of building trust.

International Committee of the Red Cross. (2004, February 7). ***ICRC visits to persons deprived of their freedom: An internationally mandated task, implemented worldwide.*** **Retrieved May 20, 2010, from http://www.icrc.org/Web/Eng/siteeng0.nsf/iwpList265/4C2DE1E5ED3C7C9DC1256B660061123E**

The ICRC briefly describes its rationale and methodology for visiting detainees. The standard procedures include the registration of prisoners, an overview of all facilities, private talks with detainees, and delivery of written messages to their families. Any problems are only taken to authorities with the express permission of the detainee. Reports are given directly to detaining authorities and are not intended for publication.

2. United Nations

Centre for Human Rights, & Crime Prevention and Criminal Justice Branch. (1994). Supervision of places of detention. In ***Human rights and pre-trial detention: A handbook of international standards relating to pre-trial detention*** **(pp. 35-37). Professional training series no. 3. New York: United Nations.**

Of particular interest in this manual is the standard dealing with "Supervision of Places of Detention," which asserts that "effective supervision of places of detention by impartial authorities interested in maintaining humane treatment is vital for the protection of human rights of detainees." The manual lists relevant international standards pertaining to issues such as the ability of prisoners to make confidential complaints and the authorities' ability to investigate unnatural deaths. The manual provides an interpretation of these international standards and offers practical guidelines for administering them.

Committee Against Torture. (n.d.). *Monitoring the prevention of torture and other cruel, inhuman or degrading treatment or punishment*. Retrieved May 20, 2010, from http://www2.ohchr.org/english/bodies/cat/index.htm

This webpage includes a brief description and detailed links associated with the work of the U.N. Committee against Torture (CAT). The group comprises a body of independent experts that monitor the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by state parties. All countries are required to submit reports to the committee to describe how rights are being implemented. CAT also can consider individual complaints, undertake inquiries, and consider inter-country complaints.

Office of the High Commissioner for Human Rights. (2001). Visits to persons in detention. In *Training manual on human rights monitoring* (pp. 127-147). Professional training series no. 7. New York: United Nations.

While the entire manual provides useful advice on conducting monitoring, the chapter "Visits to Persons in Detention" provides detailed information on standards applicable to detention issues and special populations. It also offers guidance on conducting both global monitoring (visits to an entire detention facility) and focused monitoring (more specific inquiries related to a particular issue or person). The guidance provided is comprehensive and covers pre-visit issues (such as setting objectives and selecting sites), monitoring issues (such as interviewing detainees), and follow-up and reporting guidance. The chapter stresses the importance of coordinating with the International Committee of the Red Cross.

3. Committee for the Prevention of Torture (CPT)

Casale, S. (2006). Mechanisms for Custodial Oversight: The United States and Europe. 22 *Washington University Journal of Law and Policy* 217. Retrieved on May 20, 2010, from http://law.wustl.edu/Journal/22/p217Casale.pdf

Dr. Silvia Casale, the then-President of the European Committee for the Prevention of Torture (CPT), provides a detailed description of the structure and function of the CPT correctional oversight mechanism in place throughout Europe. Of particular importance to the CPT's work is its independence, access to all places of detention, impartiality, expertise, maintenance of confidentiality, and ability to work collaboratively with prison officials. The CPT does not have enforcement authority, so it relies on the power of persuasion. The work of the CPT is forward-looking, seeking to prevent human rights violations rather than to investigate past misconduct.

Council of Europe Committee of Ministers. (2006). *Recommendation of the Committee of Ministers to member states on the European Prison Rules*. Retrieved May 20, 2010, from https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(2006)2&Sector=secCM&Language=lanEnglish&Ver=original&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75

This document urges countries that are members of the Council of Europe to abide by the European Prison Rules, which are attached as an Appendix to the document. The European Prison Rules provide an exhaustive set of standards designed to ensure prison safety, security, and discipline while not undermining prisoners' individual dignity and rehabilitation. The standards outline basic principles of human rights and inspections, and provide detailed guidance on issues such as conditions of imprisonment, health, good order, safety, discipline, and use of force. Moreover, the European Prison Rules mandate that prisons be inspected regularly by a government body to ensure compliance with the rules, and that there be monitoring by an independent body to assess the treatment of prisoners.

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. (2004). *The CPT standards: "Substantive" sections of the CPT's general reports*. Retrieved May 20, 2010, from http://www.cpt.coe.int/en/documents/eng-standards-scr.pdf

This document briefly describes the standards that guide the CPT's periodic and ad-hoc prison inspections. These standards include provisions regarding overcrowding, recreation, disciplinary procedures, health care, the treatment of foreign nationals, women, and juveniles, and criteria for the placement of inmates in psychiatric facilities. The report is intended to provide authorities with clear guidance as to how

prisoners and other persons deprived of their liberty should be treated and to stimulate discussion about these issues.

Kellberg, L. (2001). The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. In G. Alfredsson, J. Grimheden, B. G. Ramcharan, & A. de Zayas (Eds.), *International human rights monitoring mechanisms: Essays in honour of Jakob Th. Möller* (Vol. 7, pp. 587-599). The Raoul Wallenberg Institute Human Rights Library. The Hague, The Netherlands: Kluwer Law International.

This article describes the creation, composition, powers, and duties of the CPT. The committee aims to prevent ill-treatment by initiating periodic, ad hoc, and follow-up visits to public and private places of detention in participating countries. Committee members gather information by examining the physical conditions of confinement, and speaking to staff, detainees, government authorities, and other interested parties, such as families and NGOs. The author notes the importance of the CPT's non-confrontational role, as evidenced by its promise of confidentiality and role as a provider of assistance to detention officials. Specifically, the CPT attempts to resolve concerns it identifies directly with government authorities, and reports can only be released by those authorities (the CPT encourages them to release these reports).

Morgan, R., & Evans, M. (2001). *Combating torture in Europe*. Strasbourg Cedex: Council of Europe Publishing.

In this important book, Morgan and Evans outline the history, procedures, and standards of the CPT. The CPT has unlimited access to correctional facilities located in countries belonging to the Council of Europe, and it conducts periodic and ad hoc visits to detention facilities throughout these countries. CPT inspectors

are in constant dialogue with the prison administration through every phase of the inspection. Reports of visits are released only to government authorities, and officials there decide whether to release the report publicly. Follow-up visits are expected and initial inspections are always understood to be part of a larger process. The book also outlines the CPT's standards with regard to what constitutes torture and inhumane and degrading treatment, different categories of detainees, and safety and health standards for prisoners. The book closes with an assessment of the CPT's achievements to date and what lies ahead as the Council of Europe grows in importance and membership.

Africa's Special Rapporteur on Prisons Vilijoen, F. (2005). The Special Rapporteur on Prisons and Conditions of Detention in Africa: Achievements and possibilities. 27 *Human Rights Quarterly* 125-71 (2005).

The article extensively reviews the creation, activities, strengths, and weaknesses of the Special Rapporteur on Prisons (SRP), a position established by the African Commission on Human and Peoples' Rights. The SRP examines the situation of persons deprived of their liberty within the countries that are party to the African Charter on Human and Peoples' Rights (131). The SRP's four main activities include: investigating and reporting through country visits (the SRP must be invited by the country's government); conducting urgent interventions; assisting the Commission with related communications; and promoting prisoners' rights and international standards. Vilijoen notes that, although the SRP overlaps with some international monitoring groups, the agency should be seen as complementing these groups by providing focused attention on detainee rights, and increased follow-up. The author concludes that visits and reporting have been well-conducted, but there is little guidance on handling urgent appeals. He also notes that the promotion of prisoners' issues has

increased awareness among prison officials but not in other quarters, and the African Commission has not requested SRP consultation on issues related to detention. Finally, Vilijoen makes seven recommendations, including some that address SRP's dependence on the NGO Penal Reform International, and the lack of prison monitoring in Northern Africa and more populous countries.

B. *National Models (Non-U.S.)*

1. Australia

Groves, M. (2002). Ombudsmen's Jurisdiction in Prisons. 28 *Monash University Law Review* 181-205 (2002).

This article explores the role of Australian ombudsmen in that country's administrative system, with a particular emphasis on their work within the prison context. Groves explains that ombudsmen are independent of the executive, can initiate investigations in response to complaints or of their own accord, and although lacking determinative powers (the ability to order a particular action), are still able to exert considerable influence on officials to review and reconsider decisions. Groves notes that ombudsmen have a right to visit prisoners, that they regularly go to prisons to promote awareness of their position and role, and that, other than in the state of Tasmania, prisoners have an unfettered right to communicate with ombudsmen. Groves concludes that the current structure has worked well and argues against granting determinative power to ombudsmen for the fear that such power might undermine their status as neutral, disinterested observers.

Office of the Inspector of Custodial Services of Western Australia. Annual Report 2008-09. Retrieved on February 7, 2010, from http://www.custodialinspector.wa.gov.au/

The Office of the Inspector of Custodial Services is a government office that brings independent and external oversight to prisons in Western Australia. This structure is unique in Australia, as it is the only such oversight agency that is independent and capable of direct access to parliament. The office is based on the British Prison Inspectorate model, and it is required to inspect every correctional facility at least once every three years. Most of its inspections are announced a few months in advance.

Sands, V. (2004, December). *Regulatory independence, public accountability and the Victorian prison system.* 63 (4) *Australian Journal of Public Administration* 50-59 (2004).

This article examines how the move towards privatization of public services has affected independent monitoring and review of Victoria's prisons. It begins by examining the old models of public accountability in government generally and then concludes that they are no longer workable under the new public management (NPM) principles in place today. Specifically, regulations are probed to determine if there has been any loss of independence to the oversight mechanisms that were in place under the old regulatory scheme. After detailing the changes that took place in 1992 and again in 2003 with the restructuring for a "more seamless system," the author concludes that the current correctional oversight mechanism has suffered a loss of independence.

2. Canada

Correctional Service of Canada. (1997, December). *Human rights and corrections: A strategic model*. Retrieved May 20, 2010, from http://www.csc-scc.gc.ca/text/pblct/rights/human/toce-eng.shtml

In this report, Canada's Working Group on Human Rights reviews the Correctional Service of Canada's (CSC) current systems for ensuring human rights in a corrections context, creates a model for evaluating the agency's compliance with human rights standards, and makes recommendations regarding CSC's ability to achieve compliance and communicate their results. Notably, the Working Group focuses on the human rights of prisoners, staff, and special populations (women and indigenous groups). Interestingly, the group also considers both domestic and international legal obligations, including international human rights treaties and instruments approved by the Canadian Government. Chapter three of the report compares Canada to similar countries and finds that most of these countries provide for both internal prison grievance systems and external correctional monitoring mechanisms.

Jackson, M. (2006). The litmus test of legitimacy: Independent adjudication and administrative segregation. 48 *Canadian Journal of Criminology* 157 (2006).

In this article, Professor Michael Jackson discusses the potential for the use of "independent adjudication" (the use of decision-makers external to the agency) to review the decision to place and retain a prisoner in administrative segregation in Canada. He argues that the severity and indefinite duration of administrative segregation requires additional measures to ensure that human rights standards are met. The controversy surrounding the use of independent adjudicators has been examined and debated by numerous government

working groups over the past twenty-five years and the author chronologically describes these previous groups' conclusions and their consistent recommendations for the use of independent adjudicators in this context. Jackson also describes competing arguments made by the Correctional Service of Canada (CSC) in response to these recommendations. Despite repeated efforts on the part of advocates to respond to concerns of the CSC and the development of a pilot project, the CSC has continued to resist implementation of the proposals, and Jackson concludes that CSC is reluctant to have independent adjudication of administrative segregation because it would subject decisions about prisoners' rights to outside involvement. Jackson reinforces the need for independent adjudication to ensure fair hearings, protection of prisoners, and the creation of re-integration plans. He further adds that judicial or Parliamentary intervention may be needed to counter the CSC's continued resistance to independent adjudication.

Office of the Correctional Investigator. (2002, December 20). *Mandate, roles and responsibilities*. Retrieved May 20, 2010, from http://www.oci-bec.gc.ca/man-eng.aspx

The Office of the Correctional Investigator is a legislatively-mandated ombudsman for prisoners. The Office investigates prisoner complaints, meets with inmate committees, conducts unannounced visits to penitentiaries, reviews applicable Correctional Service of Canada policies and procedures, and issues annual reports to the legislature highlighting issues of concern. The Office has significant authority to require the production of information during an investigation, but maintains integrity by imposing strict requirements to ensure requests for information are pertinent and follow privacy laws. In addition, the Office cannot be summoned in legal proceedings and its processes are independent of appeals before the courts, which ensures the Office's actions are not compromised by advocates'

efforts to use the office as a substitute for discovery mechanisms or procedural prerequisites.

Sloan, T. (2004, June). *Shifting the orbit: Human rights, independent review and accountability in the Canadian corrections system*. Office of the Correctional Investigator. Retrieved February 8, 2010, from http://www.oci-bec.gc.ca/rpt/pdf/disc/disc20040629-eng.pdf

This discussion paper forcefully argues for independent adjudication of certain decisions made by the Correctional Service of Canada (CSC). The author highlights various developments that have had an impact on the debate regarding the need for external, independent adjudication for CSC. The paper asserts that CSC has allowed citizen involvement in prison oversight, but has rejected the notion of independent review of grievances or decisions to place an inmate in administrative segregation. The paper discusses issues pertaining to the rights of aboriginal offenders and makes recommendations regarding independent adjudication.

Also, the author summarizes several perspectives regarding independent oversight, such as political and managerial accountability, sufficiency of current oversight, balancing of interests, importance of safety and security, and correctional expertise. Perhaps most interesting for researchers canvassing the debate on independent adjudication is the last section of the paper—"Issues and Options"—which considers such issues as how to weigh offender rights against safety and security, and whether allowing CSC to pass difficult decisions to outside adjudicators will impact the agency's accountability and control over prisoners.

Trevethan, S., Rastin, C. J., Bell, A., & Gillis, C. (2004, June). *Citizens' Advisory Committees in Canada: A research report* (R. No. 147). Correctional Service of Canada, Research Branch. Retrieved May 20, 2010, from http://www.csc-scc.gc.ca/text/rsrch/reports/r147/r147-eng.shtml

This report describes the mission of Citizens' Advisory Committees (CAC) in Canada and evaluates differences in CACs, activities, member concerns, and effectiveness. The authors also interviewed CAC members to establish a profile of those who serve on the committees. CAC's were established in the 1960s, and consist of community volunteers from an area where a penitentiary or Community Correctional Centre is located. Members are appointed by prison wardens or parole office directors, and the CACs participate in a number of activities. The author notes that CAC members fulfill three main roles: liaison, observer, and advisor. Finally, the authors note that while most members feel satisfied with their work, concerns remain about a lack of information regarding correctional staff, victims, and crisis policies. Other concerns about the CACs include communication, recruitment of members, community involvement, and funding.

Zinger, I. (2006). Human Rights Compliance and the Role of External Prison Oversight. 48 *Canadian Journal of Criminology and Criminal Justice* 127 (April 2006). See also the rest of this special volume.

This paper is an introduction to a special volume of the Canadian Journal of Criminology and Criminal Justice devoted to issues related to prison oversight in Canada. The author notes the ongoing challenges, even in advanced democracies, of ensuring legal standards of humane detention, and observes that adherence to human rights standards is actually the most effective correctional management tool that exists. The author reflects on the value of external prison oversight in

fostering compliance with these human rights requirements. He argues the need for both effective internal accountability measures and external scrutiny, and discusses the challenges in striking the correct balance between these two important types of oversight. Praising the various oversight bodies that exist in Canada, the author posits that Canada can play an international leadership role when it comes to the humane treatment of prisoners.

3. Denmark

Eklundh, C. (2002). The Independence of the Ombudsman. In *The work and practice of Ombudsman and national human rights institutions* (pp. 13-16). Danish Ministry of Foreign Affairs.

Eklundh reviews the importance of maintaining the integrity and independence of the ombudsman position. The author stresses that the ombudsman must be independent of the executive and judiciary. While this tends to mean the ombudsman is accountable to the legislature, the author further notes the importance of maintaining a balance between the two parties. Methods of accomplishing this include: protecting the ombudsman's tenure and budget and insulating the direction of his work from legislative interference.

4. Ireland

Rogan, M. (2009). Visiting Committees and Accountability in the Irish Prison System: Some Proposals for Reform. 31 *Dublin University Law Journal* 208 (2009).

This article discusses Ireland's use of "Visiting Committees" to monitor conditions in each prison facility. These committees, comprised by appointed citizens, conduct regular inspections and receive complaints from prisoners. The Visiting Committee of

each facility publishes an annual report that is presented to the Minister of Justice. The author identifies shortcomings in the work of the Visiting Committees and notes that its independence from the prison authorities is subject to debate. She criticizes Ireland's lack of an Ombudsman to serve as an independent complaints mechanism for prisoners similar to what Great Britain has, as well as the absence of a statutory body to investigate deaths while in custody. She further notes that while Ireland has an Office of the Inspector of Prisons, that office is charged only with handling systemic investigations rather than addressing individual concerns. She offers a variety of proposals for enhancing accountability in the Irish prison system.

5. Latin America

Ungar, M. (2003). Prisons and politics in contemporary Latin America. 25 *Human Rights Quarterly* 909-34 (2003).

Ungar reviews the current state of Latin American prisons, including human rights abuses, attempts at reform, and political and administrative obstacles in the way of such reform efforts. He maintains that overcrowding, lack of funding, delayed detainee processing, and political manipulation of crime issues contribute to a systematic failure in protecting prisoners' human rights. In addressing reform measures, he mentions reducing overcrowding through conditional release and alternative sentencing, strengthening legal defense agencies, privatization, and altering penal process codes. Of particular interest is the author's description of the Defensoría del Pueblo, an independent national ombudsman's office that has been created in eleven different Latin America states. Ungar explains that the Defensorías investigate human rights abuses, take citizen complaints, initiate legal action, and formulate policy. He notes that while they have no specific power in the penal process, they have been

successful in exposing inadequate prison conditions in certain states.

6. New Zealand

Belgrave, J. "The Ombudsmen in the Prisons—The New Zealand Experience." Address to the 2nd Australasian Conference for Correctional Inspectors, 2006. Retrieved May 20, 2010, from http://www.custodialinspector.wa.gov.au/go/publications-and-resources/conference-papers

This PowerPoint presentation at a conference of prison monitors in Australia and New Zealand provides an overview of the work of the New Zealand Ombudsman. While the Ombudsman's office has responsibility for complaints from all government agencies, the office contains four specialist investigators who work on prison-related issues and visit each prison facility about nine times per year. The office handles minor complaints, and also monitors the prison agency's investigations of serious incidents and deaths in custody. Importantly, the Ombudsman also has the power to investigate systemic issues and the paper describes various examples of the kinds of major issues that have been investigated. The Ombudsman reports directly to Parliament.

7. Poland

Walmsley, R. (1996). "Inspection" and "Relations with non-governmental organizations". In *Prison Systems in Central and Eastern Europe: Progress, problems, and the international standards* (pp. 318-319). Publication series no. 29. Helsinki, Finland: European Institute for Crime Prevention and Control, affiliated with the United Nations.

These sections of the larger publication describe the work of the Polish prison service and, in particular, the inspection department charged with visiting regional

prisons, and emphasizes the importance of interviewing inmates to determine the atmosphere of the prison. To accommodate the difficulty in changing prison environments, the inspection department gives governors time limits for the implementation of each recommendation, and sends follow-up teams to ensure changes are implemented. In "Relations with non-governmental organizations," the author notes that the inspection department uses strong relationships with the Helsinki Committee, the Ombudsman's Office, and NGOs responsible for ex-offender reentry to identify issues of concern.

8. Sweden

Swedish Parliamentary Ombudsman, http://www.jo.se/Page.aspx?Language=en (*also see* Nordenfelt, C. (2006). "The Swedish Parliamentary Ombudsman." Handout from the conference "Opening Up a Closed World: What Constitutes Effective Prison Oversight?").

This website describes the operations of the Parliamentary Ombudsman, an office with a Chief and three Deputy Ombudsmen, including one dedicated to prison-related matters. The Ombudsmen are elected by the Swedish Parliament to ensure that public authorities and their staff comply with the laws and human rights standards. The Ombudsmen have significant powers to address deficiencies, including the ability to act as a special prosecutor in extreme cases.

9. South Africa

Civil Society Prison Reform Initiative (2009). *Roundtable discussion on oversight over the prison system*. Retrieved May 20, 2010, from http://www.communitylawcentre.org.za/clc-projects/civil-society-prison-reform-initiative/publications-1/cspri-publications/Oversight%20over %20prison%20system.pdf/

This report of a roundtable discussion about prison oversight in South Africa outlines the responsibilities of various oversight bodies, including a Parliamentary committee on correctional services, the Judicial Inspectorate for Prisons, the South African Human Rights Commission, NGOs, and the media. Discussion focused on the priorities and challenges faced by of each entity and the interaction among the oversight bodies. The outcome of the meeting was an identification of key correctional issues in need of reform and a commitment to working more collaboratively to ensuring more accountability in the performance of the prison agency.

Dissel, A. (2003, November). *A review of civilian oversight over correctional services in the last decade*. South Africa: Civil Society Prison Reform Initiative. Retrieved May 20, 2010, from http://www.communitylawcentre.org.za/clc-projects/civil-society-prison-reform-initiative/publications-1/cspri-publications/ Oversight_corrections_No_4.pdf/

Ten years after South Africa's governmental transition, which included the creation of civilian oversight mechanisms to enhance accountability and transparency of public institutions, this review set out to evaluate how well the correctional oversight mechanisms were functioning. The paper outlines several of the oversight mechanisms with responsibility for prisons, and makes recommendations for strengthening their impact.

Gallinetti, J. (2004, May). *Report on the Evaluation of the Independent Prison Visitors System (IPV).* South Africa: Civil Society Prison Reform Initiative. Retrieved May 20, 2010, from http://www.communitylawcentre.org.za/clc-projects/civil-society-prison-reform-initiative/publications-1/cspri-submissions-and-presentations/040811ipvreport%20csc%20jacque%20may%202004.pdf/?searchterm=Gallinetti

This report is part of an overall review of civilian correctional oversight mechanisms in South Africa with a focus on the Independent Prison Visitors System (IPV). Independent Prison Visitors are appointed by the Inspecting Judge to deal with prisoner complaints and provide a mechanism that allows for community involvement in the prison system. The report evaluates almost every aspect of the IPV, including its functions, duties, and powers. Additionally, the report assesses the IPV's relationship with the Judicial Inspectorate of Prisons in South Africa, another oversight body, and with correctional department staff. The research was not intended to evaluate individual IPVs but rather to evaluate the system more generally. The report describes the IPV system as an "overwhelming success," though it offers several recommendations for enhancing its effectiveness.

Jagwanth, S. (2004, May). *A Review of the Judicial Inspectorate of Prisons of South Africa.* South Africa: Civil Society Prison Reform Initiative. Retrieved May 20, 2010, from http://www.communitylawcentre.org.za/clc-projects/civil-society-prison-reform-initiative/publications-1/cspri-publications/Judicial_Inspectorate_Report_No_7.pdf/

As part of a large comprehensive review of the correctional oversight mechanisms in place in South African, academics from the CSPRI developed this

report with a focus on the Judicial Inspectorate of Prisons, one of the key oversight structures in place to address concerns about the human rights of prisoners. While the oversight mechanism is seen as important and as having contributed to correctional reforms, the report also details some concerns about the effectiveness of the oversight structure. The author provides information about oversight structures in other countries and the report ends with a series of recommendations.

10. United Kingdom

HM Inspectorate of Prisons (2009). *Expectations: Criteria for assessing the conditions in prison and the treatment of prisoners* (3rd ed.). Retrieved on May 20, 2010, from http://www.justice.gov.uk/inspectorates/hmi-prisons/docs/expectations_2009.pdf

This document sets forth the criteria used by the British Inspector of Prisons to evaluate prison conditions during inspections. The criteria draw on international human rights standards and they adopt a holistic approach to assessing prison conditions and determining whether a prison is "healthy." The Inspectorate uses four tests to assess the health of a custodial environment: (1) that prisoners are held in safety; (2) that they are treated with respect as humans; (3) that prisoners engage in purposeful activity; and (4) that they are prepared for a return to the community. These criteria provide the basis for robust, independent, and evidence-based assessment of prison conditions and the treatment of prisoners.

Independent Monitoring Boards. Retrieved on May 20, 2010, from http://www.imb.gov.uk/

Independent Monitoring Boards ("IMBs," formerly known as Boards of Visitors) are one of the three forms of external review of prison conditions in England and

Wales. IMBs consist of lay citizens who volunteer on an unpaid basis to monitor local prisons on a day-to-day basis and members of the IMB are appointed by the British Home Secretary. Each prison has its own IMB. After receiving training, these citizen volunteers have unfettered access to the prison, make routine inspections, interview prisoners to ensure that prison conditions are being maintained at an adequate level, and handle prisoner complaints. The position is open to any citizen who chooses to apply and is approved after an interview, and the IMBs are intended to be representative of the community. Each IMB issues an annual report about the prison it monitors.

Mordaunt, E. (2000). "The Emergence of Multi-Inspectorate Inspections: 'Going it Alone is not an Option." 78 *Public Administration* 751-69 (2000).

Based on a comparative study of four British inspectorates, Mordaunt develops a typology for prison inspections (single institutional inspections, multi-service inspections, thematic inspections, survey inspections, monitoring reviews). He then focuses specifically on the multi-inspectorate approach, describing it as a current development that is likely to have a significant impact on oversight practices. Mordaunt describes two specific multi-inspectorate models. The first include Joint Reviews that explore quality, effectiveness, and financial efficiency. The second example is the joint inspection between the HM Inspectorate of Prisons and the HM Inspectorate of Parole. The article closes with a number of issues that Mordaunt argues must be taken into consideration before such approaches can be effective.

Owers, A. (Feb. 9th, 2006). "Submission to Vera Commission." 22 *Washington University Journal of Law & Policy* 231 (2006). Retrieved on May 20, 2010 from: http://law.wustl.edu/Journal/22/p231Owers.pdf

This article provides the most useful and readily available description of the structure of the British Prison Inspectorate. As Her Majesty's Chief Inspector of Prisons for England and Wales, Anne Owers discusses the role of the inspectorate and the agency's methodology, as well as the importance of independent scrutiny in ensuring humane conditions and treatment of prisoners. She views the Inspectorate's oversight role as preventative in nature. Owers describes the schedule and format of inspections and the reports the Inspectorate issues, and assesses the influence the Inspectorate has had. She stresses that different contexts require different systems and notes that this particular model of oversight may not necessarily be ideal for other countries, though the methods, tests, and criteria the Inspectorate uses can surely be adapted by others seeking to take on monitoring responsibilities.

Owers, A. (2004, December 9). *Rights behind bars: The conditions and treatment of those in prison*. Speech presented at The International Human Rights Day Lecture, The Centre for the Study Human Rights. Retrieved May 20, 2010, from http://www.lse.ac.uk/collections/humanRights/articlesAndTranscripts/Rights_behind_bars.pdf

Anne Owers, HM Chief Inspector of Prisons for England and Wales, delivers a speech that focuses on three main themes: human rights in a prison context, the importance of independent prison inspections as a human rights mechanism, and reactions to proposed restructured forms of public service inspectors. Owers uses examples from her inspections to reveal how prison environments are inherently dangerous to the fostering of human rights. She then explains how independent

inspectors impact human rights conditions in prisons and places of detention and how their inspections differ from internal reviews of efficiency or adherence to standards. The speech outlines four principles for inspections: (1) focusing their scale and scope on places of detention, (2) empowering the Chief Inspector so that he or she has the flexibility and resources to inspect any prison at any time, (3) reporting directly to the Minister and public, and (4) maintaining a distinction between inspecting prison environments and the monitoring of prison services. Owers then offers her perspective on recent attempts to consolidate prison inspection mechanisms with probation inspectorates and criminal justice system inspectorates.

Owers, A. (2003, October 22). *Prisons Inspection and the Protection of Human Rights.* Speech presented at The British Institute of Human Rights Lunchtime Lecture. Retrieved May 20, 2010, from http://www.bihr.org.uk/documents/lunchtime-lectures/prisons-inspection-and-the-protection-of-human-rights

HM Chief Inspector of Prisons for England and Wales, Anne Owers, explains how prison inspections can help monitor, prevent, and disclose human rights concerns. She argues that the first two tests of the Prisons Inspectorate 'Healthy Prisons' concept—safety and respect—constitute the bottom line of any custodial environment. She differentiates between the types of oversight provided by the citizen volunteers of the Independent Monitoring Boards who visit prison facilities on a daily basis and the detailed scrutiny provided by specialists from the Inspectorate working on-site for an entire week. Fearing changes to the inspectorate system, the Chief Inspector concludes with four elements that she believes are essential to an effective inspectorate, including the use of independent monitoring criteria; frequent inspections on a set

schedule; the ability to conduct unannounced inspections; and meaningful independence.

Prisons and Probation Ombudsman for England and Wales. Website: http://www.ppo.gov.uk/about-us.html

This website describes the work of the Ombudsman's office, which handles individual complaints from prisoners, probationers, and immigrant detainees, and also investigates deaths in custody. The Ombudsman is one of the key oversight bodies in the UK, along with the Prisons Inspectorate and the Independent Monitoring Boards. The website contains Annual Reports and other official documents, as well as an interesting protocol detailing the working arrangements between the Ombudsman and the Inspectorate. The latter (available at: http://www.ppo.gov.uk/docs/protocol_working_arrrangements_between_hmcip_ppo.pdf) could be helpful for oversight bodies in other jurisdictions seeking to coordinate their oversight responsibilities with another entity.

Ramsbotham, D. (2005). *Prisongate: The Shocking State of Britain's Prisons and the Need for Visionary Change*, London: Free Press – Simon and Schuster.

This book is an account of David Ramsbotham's tenure as Chief Inspector of Prisons in the United Kingdom. As he writes about his experiences in this office, he introduces the reader to some of the difficulties confronted, including bad prison conditions, a lack of funding, and poor management. He also discusses his perspective on his office's role, as well as the role of prison oversight in general, noting that quality assurance is one of the critical values that independent inspection contributes to the conduct of imprisonment. He laments the fact that prisons are not working as well as they should, something he finds regrettable since

most prisoners will be released from prison. He ends with his recommendations on how to improve the British penal system.

C. *Country Comparisons*

Casale, S., Chunn, G. C., & Dickey, W. (Feb. 8th, 2006). Transparency in American Corrections Panel. Transcript of Proceedings from Commssion on Safety and Abuse in America's Prisons – 4th Hearing. Retrieved February 8, 2010, from http://www.prisoncommission.org/public_hearing_4.asp

The panel discussed transparency in American prisons, especially as compared to certain European countries operating within the jurisdiction of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Panelists discussed whether an approach similar to the CPT would be effective or viable in the United States. They also addressed how oversight is best initiated through forming a partnership with penal institutions, as well as emphasizing that successful oversight not only involves criticism of bad practices, but also praise for positive practices.

Deitch, M. (2005). Why You Should Love Watchdogs: The Case for Effective Prison Oversight and the British Experience. XVII (3) *Correctional Law Reporter,* Oct./Nov., 40-42, 46-47.

Deitch begins with a discussion of the meaning of prison oversight, emphasizing three key factors: (1) the oversight body is external to the agency being reviewed; (2) the focus of the oversight body is not on compliance with rules and standards but rather on the treatment of prisoners; and (3) the oversight is routine and designed to prevent problems, rather than designed to investigate problems after they have occurred. Although she notes that such types of oversight are generally lacking in the

current American system, Britain already has such a correctional oversight system in place and Deitch describes the British oversight structure. She also highlights the benefits that such oversight provides for corrections officials.

Hood, C., James, O., Peters, B.G., & Scott, C. (Eds.) (2004). *Controlling Modern Government: Variety, Commonality and Change.* Cheltenham, UK: Edward Elgar.

A significant portion of this book is devoted to examining the prison systems in eight different countries: Australia, France, Germany, Japan, Netherlands, Norway, England and Wales, and the United States. The authors note that there has been little growth in prison oversight in these nations since the mid-1970s, despite the fact that the prison population has exploded during this time. The book provides a detailed analysis of the oversight mechanisms present in each of these eight countries. The section on the U.S. focuses primarily on the Federal Bureau of Prisons rather than on state prison systems.

Maguire, M., Vagg, J., & Morgan, R. (Eds.). (1985). *Accountability and prisons: Opening up a closed world.* London: Tavistock Publications.

Although somewhat dated, this book provides an impressive collection of essays exploring various mechanisms for instituting prison oversight, including the creation of standards, independent inspections, ombudsmen, grievance procedures, and internal management techniques. The last section compares three countries' oversight mechanisms: the Netherlands' grievance procedures, Canada's disciplinary review mechanisms, and the United States' judicial intervention to address poor prison conditions.

Mariner, J. (2002). Behind Bars in America. 29 (2) *Human Rights* 9-10 (Spring 2002).

Mariner focuses on the lack of prison and jail oversight in the United States in terms of its impact upon the human rights of prisoners. In particular, she comments on the disparity between the effective monitoring that takes place overseas, as compared to the lack of it within the United States.

Stern, V. (1998). Keeping the rules: The supervisors and the inspectors. In *A sin against the future: Imprisonment in the World* (pp. 225-247). Boston: Northeastern University Press.

Stern reviews a variety of prison oversight mechanisms including boards of visitors (U.K.), judges (France and Europe), public prosecutors (East and Central Europe, China), courts (U.S.), and ombudsmen (U.K.), and discusses the relative strengths and weaknesses of each approach. She also describes international mechanisms, such as the European Commission and the Court for Human Rights, and the U.N. Human Rights Committee and the Commission on Human Rights. Finally, she discusses the role of national inspectors, such as the Prisons Inspectorate of England and Wales, and international inspectors such as CPT and NGOs.

Walmsley, R. (1996). Inspection and the protection of the rights of prisoners (EPR rules 4 and 5). In *Prison systems in Central and Eastern Europe: Progress, problems and the international standards* (pp. 48-53). Publication series no. 29. Helsinki, Finland: European Institute for Crime Prevention and Control, affiliated with the United Nations.

Walmsley describes the European Prison Rules (EPR) relevant to inspections (rules 4 and 5) and evaluates individual countries' methods of complying with them. He creates a table that indicates for each country whether each of the following bodies conducts prison inspections: the prison administration, the responsible ministry (e.g., Ministry of Justice or Internal Affairs), or an independent official body (e.g., prosecutor or parliamentary body). He notes that while all the countries offer some form of inspection to comply with the EPR, differences remain among the types of bodies employed by each nation and the level of development of such roles. In addition, most countries have an independent inspector, which is usually the prosecutor's office. Certain complications arise, however, regarding the possible conflict in simultaneously prosecuting the accused and examining conditions of detention. Finally, the author describes legislative and non-governmental oversight.

III. Models of Oversight in the United States

A. *Independent Oversight Generally*

Beck, J., Hall-Martinez, K., Smith, A. S., & Walker, L. (2006, February 9). Beyond Government Oversight Panel. Transcript of Proceedings from Commission on Safety and Abuse in America's Prisons – 4th Hearing. Retrieved on May 20, 2010, from http://www.prisoncommission.org/public_hearing_4.asp

The primary topic of the panel involved the role of non-governmental actors and organizations in prison oversight. Speakers from various organizations, such as Stop Prisoner Rape, the Correctional Association of New York's Prison Visiting Project, and the Massachusetts Correctional Legal Services' Rapid Response to Brutality Project expressed their perspectives on the role of NGOs in correctional oversight. Both transparency and accountability of prisons for the

protection of prisoners' rights was a central concern of the speakers.

Cate, M., Deitch, M., & Yeomans, W. (2006, February 8). Government Oversight of Prisons and Jails Panel. Transcript of Proceedings from Commission on Safety and Abuse in America's Prisons – 4th Hearing. Retrieved on May 20, 2010, from http://www.prisoncommission.org/public_hearing_4.asp

Panelists covered different aspects of prison and jail oversight. Topics ranged from discussing the key elements of effective oversight to particular examples of federal and state oversight. Particular emphasis was placed on the need for oversight findings to be made public, thereby increasing public involvement in the process.

Chunn, G. (Feb. 8th, 2006). Testimony for the Hearing of the Commission on Safety and Abuse in America's Prisons. Written Testimony Submitted to the Commission on Safety and Abuse in America's Prisons – 4th Hearing. Retrieved on May 20, 2010, from http://www.prisoncommission.org/statements/chunn_gwendolyn_c.pdf

Chunn provides a general history and overview of the American Correctional Association (ACA). Also discussed within the statement are the certification and training opportunities available to prison staff and officials who are members of the ACA.

Commission on Safety and Abuse in America's Prisons (2006). Confronting Confinement. Vera Institute of Justice. Retrieved May 20, 2010, from http://www.prisoncommission.org/pdfs/Confronting_Confinement.pdf

One section of this comprehensive report on conditions in America's prisons deals with oversight and

accountability issues. The report recommends the development of independent government correctional oversight mechanisms, as well as the creation of a national non-governmental body with the expertise to inspect facilities at the invitation of correctional administrators. The report further recommends strengthening accountability within the correctional profession, educating and involving the public with regard to prison conditions, and reinvigorating investigation and enforcement mechanisms for abuses of prisoners. The findings and recommendations of this commission grew out of four hearings held around the country at which a wide variety of domestic and international experts addressed the commission members.

Deitch, M. (2010). Independent Correctional Oversight Mechanisms Across the United States: A 50-State Inventory. 30 *Pace Law Review* 1754 (2010). www.law.pace.edu/plr

This massive report seeks to identify every independent correctional oversight body in the United States, and provides contact information and a short description of each of these entities. It is the most comprehensive such listing available and also provides charts that visually depict the types of oversight that exist in each state. The report provides a baseline against which each jurisdiction can assess the extent of correctional oversight in that jurisdiction. It also provides a quick reference guide for those stakeholders interested in a variety of models of prison and jail oversight, and shows major gaps in the systems in the United States for monitoring prison and jail conditions and the treatment of prisoners. Although the report is thick with examples of entities that perform (or have the authority to perform) some kind of oversight function, a close examination of these descriptions reveals 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 the United

States. Even more elusive are forms of oversight that seek to promote both public transparency of correctional institutions and accountability for the protection of human rights. The work is intended to spark discussion and debate regarding the extent of prison oversight in the United States and to stimulate creative thinking about the ways that oversight bodies can be structured.

B. *The Use of Litigation*

Bronstein, A., Hanlon, S., & Thompson, M. (2006, February 9). Litigation as Oversight Panel. Transcript of Proceedings from Commission on Safety and Abuse in America's Prisons – 4th Hearing. Retrieved on May 20, 2010, from http://www.prisoncommission.org/public_hearing_4.asp

This panel discussion addressed the ways that litigation and court intervention can protect prisoners' rights. Panelists included Alvin Bronstein, Director Emeritus of the National Prison Project, who spoke about how court-ordered monitoring has historically been the principal form of correctional oversight in the U.S.; Stephen Hanlon, a lawyer in numerous prison class action lawsuits, who focused on the negative impacts of the Prison Litigation Reform Act (PLRA) on the ability of courts to protect prisoners; and Federal District Judge Myron Thompson, who discussed the role that judges, through the sentencing mechanism, can play in prison oversight. Panelists generally agreed that litigation had provided for successful oversight in many instances, but all agreed that the PLRA had hampered more recent attempts to achieve oversight through litigation.

Bronstein, A.J. (2006, February 9). The Role of Litigation in Correctional Oversight. Written Testimony Submitted to the Commission on Safety and Abuse in America's Prisons – 4th Hearing. Retrieved on May 20, 2010, from http://www.prisoncommission.org/statements/bronstein_alvin_j.pdf

Alvin Bronstein traces the rise and fall of litigation as a means of correctional oversight in the United States, from the hands-off approach of the courts in the 19th century, to the active involvement of the courts in the late 20th century, until the passage of the Prison Litigation Reform Act in 1996, which decreased the frequency and efficacy of litigation as a means to address human rights violations in prisons. Bronstein concludes by advocating for a human rights approach to the problems of crime and imprisonment.

Hanlon, S.F. (2006, February 9). Written Remarks. Written Testimony Submitted to the Commission on Safety and Abuse in America's Prisons – 4th Hearing. Retrieved on May 20, 2010, from http://www.prisoncommission.org/statements/hanlon_stephen_f.pdf

Stephen Hanlon's remarks trace recent Supreme Court case law in prison litigation, as well as explain the impact of the Prison Litigation Reform Act (PLRA). He comments that these legal developments have made it increasingly difficult for prisoners to litigate issues, partly because case law has imposed significant burdens of proof upon plaintiffs, and in part because the PLRA can often make it difficult for plaintiff attorneys to recover legal fees in prison litigation.

Symposium. Prison Reform Revisited: The Unfinished Agenda [Special issue]. 24 (2) *Pace Law Review* (2004). Individual papers from this volume are available online. Retrieved on May 20, 2010, from http://digitalcommons.pace.edu/ lawrev/index.2.html

This important volume contains numerous papers presented at a conference on prison reform litigation. The invitation-only conference included participants from all stakeholder groups, including prison officials, attorneys, advocates, judges, lawmakers, and scholars. The papers address topics such as the accomplishments and failures of litigation, the modern American penal system, the anatomy of a prisoner's rights lawsuit, the international context of U.S. prison reform, and the future of reform efforts. This conference, held at Pace Law School in 2004, was the precursor to the Texas conference on prison oversight in 2006.

Thompson, M.H. (2006, February 9). Written Statement. Written Testimony Submitted to the Commission on Safety and Abuse in America's Prisons – 4th Hearing. Retrieved on May 20, 2010, from http://www.prisoncommission.org/statements/thompson_myron_h.pdf

Judge Myron Thompson begins by observing that it is a state's responsibility to ensure that prison conditions meet constitutional standards—not the responsibility of the federal government, and not the responsibility of federal judges. Thus courts should only intervene when states fail to fulfill the obligation to fix constitutional violations. Consequently, judicial oversight of prisons is limited in that it is purely reactionary in nature, and not preventative. Moreover, judicial oversight can only look to the floor of what is required by the constitution. Thus, it is a mistake to look to court oversight as a means of significant prison reform.

Yeomans, W. (2006, February 9). Statement. Written Testimony Submitted to the Commission on Safety and Abuse in America's Prisons – 4th Hearing. Retrieved on May 20, 2010, from http://www.prisoncommission.org/statements/yeomans_william.pdf

William Yeomans discusses the role of the Civil Rights Division of the U.S. Department of Justice in investigating prison abuses, misconduct, and unconstitutional conditions, and in enforcing constitutional requirements with regard to correctional facilities. Among the tools available to the Justice Department are criminal and civil proceedings and the option to negotiate settlement agreements with correctional administrators that can be monitored by Justice Department officials. He also calls for Congressional review of the Civil Rights Division, in order to ensure that it continues to strongly enforce federal law and constitutional norms.

C. ***Federal System***

Fine, G. (2005, April 19). Statement. Written Testimony Submitted to the Commission on Safety and Abuse in America's Prisons – 1st Hearing. Retrieved on February 8, 2010, from http://www.prisoncommission.org/statements/fine_glenn.pdf

As Inspector General for the U.S. Department of Justice (which includes the Federal Bureau of Prisons), Fine explains that a portion of his office's responsibilities includes investigating, auditing, and inspecting prisons, especially in response to allegations of misconduct by prison officials. Fine's testimony provides background about the structure and authority of the OIG, as well as statistics about prison abuse investigations and descriptions of some systemic reviews conducted by the office on issues relevant to prisoner abuse. The Inspector General, who is selected by the President and

confirmed by the Senate, reports to Congress and the U.S. Attorney General, and is granted subpoena power and access to government files. Fine believes that a system similar to his office, one that is well-funded and fully independent, is critical to deter prison abuse from occurring.

D. *Specific States' Models*

1. California

Bobb, M. (2006, February 9). Statement. Written Testimony Submitted to the Commission on Safety and Abuse in America's Prisons – 4th Hearing. Retrieved on May 20, 2010, from http://www.prisoncommission.org/statements/bobb_merrick.pdf

In his role as Special Counsel to the Los Angeles County Board of Supervisors, Bobb monitors the Los Angeles County jails. He discusses different jurisdictions' efforts to incorporate civilian oversight of misconduct in these jails, for example, through Seattle's use of a civilian lawyer to head the Internal Affairs unit, to the Office of Independent Review in Los Angeles, and finally, San Francisco's utilization of a citizen's review board. He ends by advocating for an oversight system similar to Seattle's and the Office of Independent Review, specifically one that promotes internal accountability while still ensuring a failsafe against biased and incompetent investigations through the use of civilian oversight groups.

Cate, M. (Feb. 8th, 2006). Letter to Prison Commission. Written Testimony Submitted to the Commission on Safety and Abuse in America's Prisons – 4th Hearing. Retrieved on May 20, 2010, from http://www.prisoncommission.org/statements/cate_matthew.pdf

Then-California Inspector General Matthew Cate describes California's model for providing prison oversight. The California OIG is an independent agency with the mandate to inspect prison facilities for adults and juveniles and to investigate incidents of abuse. Since 2005, the OIG has had the ability to release its findings publicly, and Cate believes that this model has helped achieve positive results within the California prisons and enhance public confidence.

Gennaco, M. (2005). Toward Increased Transparency in the Jails and Prisons: Some Optimistic Signs. Written Testimony Submitted to the Commission on Safety and Abuse in America's Prisons – 1st Hearing. Retrieved on May 20, 2010, from http://www.prisoncommission.org/statements/gennaco_mike.pdf

Michael Gennaco heads the Office of Independent Review, the civilian oversight agency that monitors the Los Angeles County Sheriff's Department to ensure that allegations of officer misconduct are investigated fairly and adequately. His testimony describes the involvement of the OIR in certain investigations and he notes that the agency can investigate and report on critical incidents in the jail allegations against the department at the same time that internal investigations are proceeding. The OIR is free to reach its own conclusions, as well as to challenge the Sheriff's Department on certain practices or incidents. Gennaco observes that internal tracking mechanisms regarding patterns of misconduct on the part of jail staff lag far behind similar tracking systems for police departments. He also stresses the importance of correctional facilities' allowing public access and routine monitoring visits by advocacy groups.

2. Illinois

Young, M. (2006). The Promise and Challenge of Citizen Oversight and Visits to Prison. Written statement to the Commission on Safety and Abuse in America's Prisons—4th Hearing. Retrieved on May 20, 2010, from http://www.prisoncommission.org/statements/young_malcom.pdf

Malcolm Young, the Executive Director of the John Howard Association, a citizen oversight group that has monitored conditions in Illinois prisons since 1901, provides an overview of citizen oversight of corrections. He provides an historical overview of the work of the John Howard Association and notes that the organization's prison visiting program currently brings over a thousand citizen volunteers a year into the state's prisons, jails, and juvenile detention facilities. Access is at the discretion of the prison agency. Observing that funding issues are directly related to the independence of the oversight mechanism, Young addresses the important issue of how such citizen oversight should be financially supported and discusses the pros and cons of oversight bodies receiving grant funding, consulting fees, and government support.

3. Massachusetts

Department of Correction Advisory Council. (2005, October 25). *The Commonwealth of Massachusetts Department of Correction Advisory Council Final Report.* Retrieved on May 20, 2010, from http://www.mass.gov/Eeops/docs/doc/doc_final_report.pdf

The Department of Correction Advisory Council (DCAC) of Massachusetts was formed in 2004 to establish a plan for reducing the rate of re-offense among inmates. Toward this end, the DCAC performed a thorough audit of the Massachusetts prison system, and issued this

report that makes a number of recommendations aimed at improving accountability, ensuring fairness, and fostering fiscal accountability. The report also draws heavily on the earlier findings of the Governor's Commission on Corrections Reform. Among its recommendations is the appointment of an Independent Inspector General who would be fully independent of the state prison system. The DCAC report argues that an Inspector General would be uniquely equipped to discern legitimate grievances from mere rhetoric, reinforcing the state where it is right and holding it accountable where it is wrong. The document also addresses concerns associated with any infringement that an Inspector General may have on prison security.

Harshbarger, S. (2006, February 9). Implementing Corrections Reform: A Major Public Safety Challenge and Opportunity. Written Testimony Submitted to the Commission on Safety and Abuse in America's Prisons – 4th Hearing. Retrieved on May 20, 2010, from http://www.prisoncommission.org/statements/harshbarger_scott.pdf

In his role as Chair of the Governor's Commission for Corrections Reform in Massachusetts, Scott Harshbarger discusses the Commission's role in monitoring the state's Department of Corrections. Although acknowledging that independent oversight is a critical component of a properly run prison system, he also emphasizes that in order to function properly, the system needs effective leadership and administration, as well as support from the executive and legislative branches. He identifies the role that such an independent oversight body should play within a state system, especially in terms of its interaction with other state bodies, and notes that the Commission called for the appointment of an inspector general and enhanced external oversight of corrections in Massachusetts.

4. New York

Beck, J. (2006, February 9). Testimony. Written Testimony Submitted to the Commission on Safety and Abuse in America's Prisons – 4th Hearing. Retrieved on May 20, 2010, from http://www.prisoncommission.org/statements/beck_jack.pdf

The Correctional Association of New York is one of only two non-governmental organizations in the United States that enjoy legislative authority to access prisons and to issue public reports on their findings. Jack Beck, the director of the Prison Visiting Project of the Correctional Association of New York, details the structure of the organization and gives examples of its oversight work. He also identifies a number of factors that are crucial to any outside organization that monitors and inspects prisons, including independence, access to information, and the ability to make reports available to the public.

Beck, J. (2007, December 6). Testimony before the National Prison Rape Elimination Commission. Retrieved on May 20, 2010, from http://www.cybercemetery.unt.edu/archive/nprec/20090820160927/http://nprec.us/docs3/Beck%20Testimony.pdf

Beck's testimony before the National Prison Rape Elimination Commission details the unique opportunity that the Correctional Association of New York has in monitoring New York's prisons. He discusses the challenges faced by outside agencies that monitor issues of sexual misconduct and identifies the key factors that make an oversight body effective.

Correctional Association of New York. (2005). *State of the prisons 2002-2003: Conditions of confinement in 14 New York state correctional facilities.* New York: Correctional Association of New York. Retrieved on May 20, 2010, from http://www.correctionalassociation.org/publications/download/pvp/State_of_prisons_02-03.pdf

The Correction Association describes its typical prison visit. Typically, five to eight inspection team members visit facilities' cellblocks and dormitories, yard, medical clinic, classrooms, and activity areas. Two staff members are also allowed to interview inmates in solitary Special Housing Units. They also meet with an Inmate Liaison Committee, as well as with corrections administrators and staff. The report also describes the types of questionnaires that the researchers use.

5. Ohio

Pope, S. (2006). The Work of the Ohio Correctional Institution Inspection Committee: Reflections and Analysis. Retrieved on May 20, 2010, from http://www.ciic.state.oh.us/reports/randa3-16-06.pdf

This detailed description and analysis of the operations of Ohio's Correctional Institution Inspection Committee (CIIC) was presented at the Texas conference entitled "Opening Up a Closed World: What Constitutes Effective Prison Oversight?" The CIIC is unique as an oversight body in that it is structured as a legislative committee yet it conducts routine inspections of prison facilities and issues reports on its findings. The committee is comprised of state legislators and a full-time staff of professional correctional inspectors.

6. Pennsylvania

The Pennsylvania Prison Society website. Retrieved on May 20, 2010, from http://www.prisonsociety.org/adv/ov.shtml

This 200-year old organization advocates for prisoners in a variety of ways. In terms of oversight, it has an Officials Visitors program that makes thousands of visits to prisoners each year in order to monitor prison conditions and assist with individual or systemic prison problems. These visitors are all volunteers and state law provides them with authority to carry out these visits.

7. Texas

Johnson, G.L. (2006, February 8). Remarks. Written Testimony Submitted to the Commission on Safety and Abuse in America's Prisons – 4th Hearing. Retrieved on May 20, 2010, from http://www.prisoncommission.org/statements/johnson_gary.pdf

Gary Johnson, the former director of the Texas prison system, comments upon the benefits of oversight, specifically, how it prevents complacency on the part of prison officials, as well as how it helps maintain rules and standards within an institution. Having lived through judicial oversight of Texas prisons during the *Ruiz* case, he discusses the difficult transition period during which prison officials gradually became accustomed to oversight. He also addresses the tension between the benefits of external oversight and the dangers and limitations that such oversight may also entail. Since the termination of court oversight, Texas prisons have moved towards developing relationships with external accrediting bodies such as the American Correctional Association. Johnson also discusses the risks of having oversight responsibilities conducted by non-professional entities with advocacy agendas.

Reynolds, C. (2004, Spring). Effective self-monitoring of correctional conditions. 24 *Pace Law Review* 769-792 (2004). Retrieved on May 20, 2010, from http://digitalcommons.pace.edu/lawrev/18/

Carl Reynolds, then-General Counsel for the Texas Department of Criminal Justice (TDCJ), examines how TDCJ developed internal review mechanisms to increase the agency's accountability and transparency following the termination of court oversight in the *Ruiz* case. The article describes various TDCJ internal review methods, including: emergency action center daily reports and monthly statistics that list serious and unusual events; serious incident, grievance, and use of force reviews; operational review and risk management; medical monitoring; investigations by an inspector general; internal audits; and policy reviews. Reynolds also notes that the agency sought technical assistance from the National Institute of Corrections on projects regarding administrative segregation and mentally ill offenders, as well as on use of force reviews.

IV. Oversight of Specific Prison Issues

A. *Private Prisons*

Aman, A.C. (2005). Privatization, Prisons, Democracy, and Human Rights: The Need to Extend the Province of Administrative Law. *Indiana Journal of Global Legal Studies* 511-50 (Summer 2002).

Professor Aman focuses upon problems with prison privatization, one of which is the failure of most states to include human rights provisions in statutes authorizing contracts with private prisons. To remedy this ill, Aman recommends the creation of a Model Privatization Code that incorporates provisions protecting prisoner's human rights, as well as fostering public participation on this issue. In order for the

government to retain accountability for private prisons, Aman also asserts that: (1) the government must have the ability to "step-in" and reclaim any portion of a privately run prison; and (2) any privatization contract must be limited in its duration. The latter provision allows more public input into the privatization process, as do a number of other approaches set forth in the article. He also advocates for the creation of inspection mechanisms modeled on the British Prison Inspectorate and for the application of the Administrative Procedures Act to private operators so that private providers will be more publicly accountable for ensuring the human rights of prisoners.

Bachman, D.D. (1997). *Monitoring and Accountability*. Paper presented at the National Workshop on Private Prisons, Oklahoma City, November 2-4, 1997. Retrieved on May 20, 2010, from http://www.doc.state.ok.us/field/private_prisons/monitoring_and_accountability.pdf

This paper, available on the website of Oklahoma's Department of Corrections, discusses the importance of an effective monitoring process to ensure accountability in the operation of private prisons. Bachman describes how standards must be constructed collaboratively between the state and the prison contractor. The author also discusses the strengths and limitations of two models of monitor selection: a full-time on-site monitor versus an outside agent. He also notes that a combination of the two is used by several agencies. The essay closes with a description of monitoring methods, including the scheduling of visits, provisions for written reports, corrective plans of action, a mechanism for making decisions and resolving disputes, and sanctions for non-compliance.

Camp, S.D., Gaes, G.G., Klein-Saffran, J., Daggett, D.M., & Saylor, W.G. (2002). "Using inmate survey data in assessing prison performance: A case study comparing private and public prisons." 27 (1) *Criminal Justice Review* 26-51 (2002).

The authors demonstrate how surveys of inmates can be used to compare the performance of private and public prisons with regard to gang management, safety and security, sanitation, and food service delivery. They argue that surveys should not replace operational reviews and audits but should be used in concert with such traditional mechanisms. Such surveys are inexpensive to distribute and findings were generally similar to the views expressed by guards, if not more reliable, indicating that prison staff and administration should be receptive to such methodologies for gathering information.

Collins, W. (2000). *Contracting for correctional services provided by private firms*. Washington, D.C.: U.S. Department of Justice, 36-42. Retrieved on May 20, 2010, from http://www.asca.net/documents/contract.pdf

In his discussion of monitoring private prison facilities, Collins stresses the need to balance a focus on compliance with specific rules with a broader understanding of the "climate" of the prison. He also distinguishes between "quality control," which is a form of self-monitoring on the part of private prison administrators and "quality assurance," which is executed by the government. The text also outlines several enforcement mechanisms, including corrective action plans, liquidated damages, incentive awards, dispute resolution, and, if all else fails, actual termination of the contract.

Harding, R.W. (1997). *Private Prisons and Public Accountability*. New Brunswick, NJ: Transaction Publishers.

Harding outlines a standard for contract monitoring for private prisons. An important step in his model is allowing both public and private operators to bid on contracts. This would encourage a cross-fertilized system and one in which both public and private institutions necessarily functioned under the same standards. This, argues Harding, avoids significant disparities in conditions. Harding acknowledges that his model does not necessarily solve issues of favoritism and may, in fact, make government operators more vulnerable to it.

Keating, J.M., Jr. (1990). "Public Over Private: Monitoring the Performance of Privately Operated Prisons and Jails." In McDonald, D.C. [Ed.], *Private Prisons and the Public Interest* (pp. 130-54). New Brunswick, NJ: Rutgers University Press.

Keating describes a variety of accountability measures for privately-run prisons, noting the importance of oversight due to the frequent tension between the profit motive and the protection of human rights. In the chapter, Keating outlines several monitoring mechanisms, including contract monitoring, document review, observation, financial audit, accreditation, administrative mechanisms—including the appointment of an ombudsman and grievance commission—and public scrutiny.

McAfee, W.M. (1987). Tennessee's Private Prison Act of 1986: An Historical Perspective with Special Attention to California's Experience. 40 *Vanderbilt Law Review* 851-65 (May 1987).

The author points out that the expense of state monitoring is one of the hidden costs of the private prison system. He relates the experiences of a number of states that established external monitoring systems to conduct oversight of these private prisons.

B. *Sexual Assault in Prison*

Hall-Martinez, K. (2006, February 9). Stop Prisoner Rape: Monitoring and Collaborating with Government to End Prison Rape. Written Testimony Submitted to the Commission on Safety and Abuse in America's Prisons – 4th Hearing. Retrieved on May 20, 2010, from http://www.prisoncommission.org/statements/hall-martinez_katherine.pdf

As co-executive director of Stop Prisoner Rape (now "Just Detention International"), a non-governmental organization, Hall-Martinez describes the role that her organization plays in prison oversight by increasing awareness and transparency of prison conditions and sexual assault in prison. The group also plans to educate and train prison officials on human rights in the hopes of bringing about policy change.

Mariner, J. (2001). *No escape: Male rape in U.S. prisons.* New York: Human Rights Watch. Retrieved on May 20, 2010, from http://www.hrw.org/reports/2001/prison/report.html

In addition to describing the frequency of prison rape, its horrific impact on prisoners, and the legal protections that exist, this important report describes how the lack of an independent oversight mechanism has contributed to the problem of sexual assault in prison. The author notes that few correctional facilities participate in ACA's accreditation process, and that the effectiveness of judicial oversight has declined in recent years.

Rothstein, M. and Stannow, L. (2009, July). Improving Prison Oversight to Address Sexual Violence in Detention. Brief of the American Constitution Society for Law and Policy. Retrieved May 20, 2010, from http://www.justdetention.org/pdf/ACSBrief.pdf

This brief provides an overview of the problem of sexual abuse in American prisons and jails, and discusses the standards developed by the National Prison Rape Elimination Commission (PREA standards). The authors note that the PREA standards require incident reviews, data collection, and independent audits of correctional facilities as a means of ensuring accountability in compliance with the standards. The brief advocates for increased monitoring of prison conditions that give rise to sexual abuse, as well as effective monitoring of compliance with PREA standards.

Thomas, D., et al. (1996). *All Too Familiar: Sexual Abuse of Women in U.S. State Prisons.* New York: Human Rights Watch. Retrieved on May 20, 2010, from http://www.aclu.org/hrc/PrisonsStates.pdf

An exhaustive report that describes applicable laws regarding sexual assault in prison and compares the situations of California, the District of Columbia, Georgia, Illinois, Michigan, and New York, with a focus on the occurrence of sexual abuse, the system's response, and recommendations. The report finds that nearly every state reviewed lacked accountability to external monitors, and the authors highlight the need for independent oversight.

C. *Mental Health/Disability*

The Correctional Association of New York. (2004). *Mental health in the house of corrections: A study of mental health care in New York state prisons*. New York: The Correctional Association of New York. Retrieved on May 20, 2010, from http://www.correctionalassociation.org/publications/download/pvp/issue_reports/Mental-Health.pdf

The Correctional Association of New York has statutory authority to monitor conditions in New York's prison facilities, and this report describes the methodology the organization used to investigate issues related to correctional mental health care. The investigators conducted site visits between November 2001 and January 2003. The staff took notes, reviewed inmate records, observed facility operations, inspected mental health units, and conducted surveys with inmates and staff. The study used both quantitative and qualitative measures and the analysis was guided by secondary data and policy analysis.

Human Rights Watch. (2003). *Ill Equipped: U.S. Prisons and Offenders with Mental Illness*. New York: Human Rights Watch. Retrieved on May 20, 2010, from http://www.hrw.org/en/reports/2003/10/21/ill-equipped

This important report by the international advocacy group Human Rights Watch (HRW) finds that America's prisons house three times more mentally ill individuals than the country's mental health facilities, and that prisons are often ill-equipped to treat such offenders. The report advocates several critical oversight measures, and argues that independent mental health experts should be given full access to prison medical records, staff, and prisoners. These experts should monitor the diagnosis and treatment of prisoners, the availability of qualified staff and adequate facilities, types of therapeutic interventions, as well as policies

concerning disciplinary measures such as administrative segregation.

U.S. National Council on Disability, American University, School of International Service, & Mental Disability Rights International. (2005, October 24). Monitoring Symposium: A Contribution to the Formulation of Proposals for Monitoring a United Nations Convention on the Rights of People with Disabilities Report. Retrieved on May 20, 2010, from U.S. National Council on Disability Web site: http://www.ncd.gov/newsroom/publications/2005/pdf/symposium.pdf

While not directly related to prison issues, this report offers an interesting perspective on the creation of monitoring mechanisms to enforce a United Nations convention on the rights of persons with disabilities. The report compares currently established monitoring mechanisms, such as the OECD peer review system and the CPT torture inspections. Symposium participants indicated that the development of a monitoring mechanism should address the following issues: adherence to human rights, transparency, capacity building and technical assistance, coordinating stakeholders, neutrality and expertise, adversarial versus cooperative processes, and lessons learned.

D. *Police Oversight*

Bobb, M. (2003). *Civilian Oversight of the Police in the United States.* 22 *St. Louis University Public Law Review* 151 (2003). Retrieved on May 20, 2010, from http://www.parc.info/client_files/Articles/1%20-%20Civilian%20Oversight%20of%20the%20Police%20%28Bobb%202003%29.pdf

Merrick Bobb, the longtime police monitor for Los Angeles and head of a resource center focusing on best practices in police oversight, discusses the limitations of

internal police investigations and describes various options for placing police agencies under heightened civilian oversight and control. Those options include the use of independent monitors (such as his role in Los Angeles), independent investigators (for example, the Office of Independent Review in Los Angeles and the Office of Professional Accountability in Seattle), and the more commonly seen civilian review boards. In extreme cases, the federal government can also intervene and subject the police agency to settlement agreements and ongoing monitoring.

Chech, M. (2005*). Legislative Oversight of Police: Lessons Learned from the Police Handling of Demonstrations in Washington D.C.* 32 *Notre Dame Journal of Legislation* (2005). Retrieved on May 20, 2010, from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=852765

This article argues that local legislative oversight and legislative investigations of police policies and practices are the most effective mechanism to ensure law enforcement compliance with human rights standards. The benefits of legislative oversight include an ability to address policies on a broader systemic level, greater police cooperation, and an ability to move forward at a relatively faster speed than litigation, when compared to more traditional police oversight mechanisms. The article outlines the keys to successful legislative investigation, identifies the shortcomings of this oversight model, and cautions that no one model of oversight is enough when it comes to police misconduct.

Gordon-Reed, A. (1995). Watching the Protectors: Independent Oversight of Municipal Law Enforcement Agencies. *New York Law School Law Review* 87-111 (1995).

Recognizing that police and corrections officers hold a great deal of power over people in their custody, Gordon-Reed argues that outside scrutiny and oversight is especially appropriate in this arena. Using the New York City Board of Corrections as a model, she traces the mid-1990's debate between the mayor and the city council of New York over the creation of a new, independent oversight committee for the City's police department. She presents her perspective on the role that oversight serves, the problems oversight can create, and how such an oversight agency should be structured in order to accomplish its mission.

Lemgruber, J. (2002, September). *Civilian Oversight of the Police in Brazil: The case of the ombudsman's offices.* Center for Studies on Public Security and Citizenship (Centro de Estudos de Segurança e Cidadania / CESeC) at the University Candido Mendes. Retrieved on May 20, 2010, from Centro de Estudios de Justicia de las America's Website: http://www.cejamericas.org/doc/documentos/cescec-civilian-oversight.pdf

CESeC evaluated police ombudsman's offices in five Brazilian states in order to describe and evaluate routines, to determine the satisfaction by both citizens who had lodged complaints and by police officers who were the targets of complaints, to compare the ombudsman approach with other models of civilian oversight, and to propose a new model that contributes to democratic policies. The author, Julita Lemgruber, was herself an Ombudsman before becoming the director of the CESeC. The external control comes from the Public Prosecutor's Office which is midway between the executive and the judiciary branches, giving it a margin of independence the author argues is equivalent to or greater than many of the civilian oversight mechanisms around the world. The report contains numerous suggestions for the improvement of this oversight mechanism and ends with some basic parameters for evaluation of impact.

National Association of Civilian Oversight of Law Enforcement (2010). www.nacole.org

NACOLE is a national association of organizations that provide oversight of police and other law enforcement agencies. The association's website contains a wealth of resources about the police oversight bodies that exist in the United States and internationally, and provides links to numerous articles about this topic. NACOLE also holds an annual conference, offers professional standards for oversight entities, and sponsors a listserv with frequent articles about oversight-related topics.

Quinn, S. (2009, October). ***Models of Civilian Oversight in the United States: Similarities, Differences, Expectations and Resources.*** **Retrieved on May 20, 2010, from http://www.keywestcity.com/egov/docs/257291257885436.pdf**

This relatively short paper is packed with information about the different police oversight models used around the United States. It has helpful comparisons of the different models in use by examining the strengths and weaknesses of each model. It also describes the appropriate use of public documents and offers readers tips on how to start the process of creating an oversight body.

Stone, C. (2005, October). Police Accountability and the Quality of Oversight. Summary of Conference on Police Accountability and the Quality of Oversight: Global Trends in National Context. Retrieved on May 20, 2010, from http://www.altus.org/pdf/cs_spac_oct2005_en.pdf

This excellent paper summarizes the discussions from a major international conference on police accountability and identifies six major questions that emerged from plenary sessions. Those six overarching questions frame the paper, and include topics such as: to whose standards the police should be held accountable; the definition of success in police oversight; the division of labor between external and internal oversight mechanisms; the role the media has to play in police oversight; the potential oversight contributions of non-governmental organizations; and the role of research.

Walker, S. (2005). *The New World of Police Accountability*. Thousand Oaks: Sage Publications.

The book begins by examining traditional methods of police accountability, such as oversight through the courts and the legislature, and identifies the accomplishments and limitations of these oversight methods. It also explores internal oversight mechanisms such as use of force reporting and administrative strategies such as internal affairs investigations. Author Samuel Walker argues, however, that the there are new monitoring tools that provide more effective oversight of the police. One of these new mechanisms is the auditor model of police oversight, which he favors over civilian review boards because the auditor model focuses on organizational change. The book ends with an evaluation of the continued success of this new oversight mechanism and highlights the potential it has for controlling day-to-day police work, enhancing frontline supervision, and for preventing misconduct in the first place.