

**BRIEFING ON SOLITARY CONFINEMENT
CONNECTICUT ADVISORY COMMITTEE TO THE U.S.
COMMISSION ON CIVIL RIGHTS**

**Old Judiciary Room, Capitol Building, Hartford, Connecticut
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Testimony of Michael B. Mushlin

Thank you for holding this important briefing and inviting me to testify. I am a Professor of Law at Elizabeth Haub School of Law at Pace University and currently Visiting Professor of Law at the Touro Law Center. I am the author of *Rights of Prisoners*,¹ a four volume treatise, and a member of the American Bar Association's Task Force on the Legal Status of Prisoners. The Task Force drafted the ABA's Standards on the Treatment of Prisoners which was adopted by the House of Delegates in 2010. *See* American Bar Association, *Standards for Criminal Justice, Treatment of Prisoners* (2010). I am also a co-chair of the American Bar Association, Subcommittee on Implementation of the ABA Resolution on Prison Oversight,² and have served as chair of the Committee on Correction of the New York City Bar Association, the Correctional Association of New York and the Osborne Association (an organization that provides training and support programs for people in jail and prison or who are being diverted from imprisonment).

Currently, I am a member of the board of the Correctional Association of New York, a 173 year old organization endowed by New York law with the authority to visit New York State Prisons with the responsibility to report on their condition to the New York state legislature. With colleagues, including Prof. Michele Deitch of the University of Texas, I participated in the organization of two national conferences on prison reform, the first *Prison Reform Revisited: The Unfinished Agenda* held at Pace Law School and the second, *Opening Up a Closed World: What Constitutes Effective Prison Oversight* held at the University of Texas. Both conferences drew together professionals from all segments of the criminal justice and corrections fields to discuss

¹ MICHAEL B. MUSHLIN, *RIGHTS OF PRISONERS* (4th ed. 2012).

² I co-chair that committee with Prof. Michele Deitch of the University of Texas.

improvement to the operation and oversight of the American prison system. For seven years, I was staff counsel and then the Project Director of the Prisoners' Rights Project of the Legal Aid Society. I also served as staff counsel with Harlem Assertion of Rights Inc., and was the Associate Director of the Children's Rights Project of the American Civil Liberties Union.

Solitary Confinement

I first confronted conditions in solitary confinement units over four decades ago when I served as trial counsel in a federal civil rights case involving Unit 14, the solitary confinement unit at Clinton prison in upstate New York close to the Canadian border. What I saw there was deeply disturbing. Inmates were locked for 23 hours each day into small windowless cages for months and years on end. No programs or activities were provided to them. Without access to any meaningful activity, they were separated from one another spending almost all of their time entirely by themselves. During that one precious hour per day when a Unit 14 inmate could leave his cell there was only one place to go: a small space directly behind his cell called a "tiger cage." The tiger cage was a small empty space with a barren floor surrounded on all sides by high concrete walls which were not covered by a roof. An inmate could walk only a few steps in one direction before turning. If he looked up he could glimpse a bit of the sky but nothing else of the outside world.³

Working on that case I witnessed firsthand the awful consequences of subjecting human beings to solitary confinement. I will never forget looking into the eyes of those inmates struggling to maintain a foothold on reality and sanity. Afterwards, when visiting other solitary confinement units, no matter where, I see that same pained, desperate stare. I have seen it so often, and in so many different places, that I have come to recognize it instantly as the gaze of a tortured person.

In the years since the Unit 14 case I have witnessed the growth and expansion of solitary confinement in prisons, in New York and nationally, through the emergence of "supermax" confinement and the expanded use of "administrative segregation units." I have watched what I saw in Unit 14 decades ago repeated throughout the nation as massive numbers of people—many of whom are mentally ill, young, and those deemed too dangerous or vulnerable to be placed in the general prison population even though they have not violated any prison rules—have been

³ See *Frazier v. Ward*, 426 F. Supp. 1354 (N.D.N.Y. 1977).

placed into solitary confinement. Even teenagers have been thrown into solitary. The best available estimate is that some 80,000 to 100,000 people are held in “restricted housing (however termed) in U.S. prisons—or about one in every six or seven prisoners.⁴ But the truth is no one really knows how many people are held in these units. I suspect that the true number of confined souls is higher than even the highest reported figures.

Solitary units provide fertile soil for mistreatment and abuse of prisoners. As one observer put it, “[b]ecause of the absence of witnesses, solitary confinement increases the risk of acts of torture or other cruel, inhuman or degrading treatment or punishment.”⁵ In one of the articles I have written about abuses that occur in solitary confinement units I recount the story of Tyron Alexander and Kevin Carroll, inmates who were involved in a fight with two prison guards while being held in a jail awaiting their court appearance.⁶ Apparently no one was seriously injured, but as a result Alexander and Carroll were placed together in an isolation cell.⁷ Aptly named the “the hole,” this isolation cell, which was a “sparse” 64 square foot space meant to contain only one person, had no running water, and no toilet.⁸ At first, Alexander and Carroll were stripped fully naked though they were later given only boxer shorts but nothing else to wear. Instead of a toilet the cell had a grate-covered hole in the floor which could only be flushed by prison officials from outside the cell.

Carroll became nauseated soon after being confined in the cell and was forced to defecate into the drain, after which he was allowed only one sheet of toilet paper for cleaning purposes. Afterwards, the drain became obstructed with feces. Alexander and Carroll tried to clear the obstruction but were unsuccessful. No one helped them. When they had to urinate, urine splattered from the clogged drain onto the cell floor. The smell nauseated Carroll, who then

⁴ Yale Law School Liman Center & Association of State Correctional Administrators *Aiming to Reduce Time in Cell, Reports from Correctional Systems on the Numbers of Prisoners in Restricted Housing and on the Potential of Policy Changes to Bring About Reform*, 5 (November 2016) available at <https://www.law.yale.edu/system/files/area/center/liman/document/aimingtoeducetic.pdf>.

⁵ SPECIAL RAPPORTEUR OF THE HUMAN RIGHTS COUNCIL, INTERIM REPORT ON TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, U.N. Doc. A/66/268, 19 (Aug. 5, 2011) (by Juan E. Méndez); *See also*, Lena Kurki & Norval Morris, *The Purposes, Practices and Problems of Supermax Prisons*, 28 CRIME AND JUSTICE, A REVIEW OF RESEARCH 385, 385 (Michael Tonry ed., 2001); *See* COMM’N ON SAFETY & ABUSE IN AMERICA’S PRISONS, CONFRONTING CONFINEMENT 14 (2006) (“There is troubling evidence that the distress of living and working in this environment actually causes violence between staff and prisoner.”).

⁶ MICHAEL B. MUSHLIN, *Unlocking the Courthouse Door: Removing the Barrier of the PLRA’s Physical Injury Requirement to Permit Meaningful Judicial Oversight of Abuses in Supermax Prisons and Isolation Units*, 24 FEDERAL SENTENCING REPORTER 268 (2012).

⁷ *Id.* at 268 (citing *Alexander v. Tippah County*, Miss., 351 F.3d 626, 628 (5th Cir. 2003)).

⁸ *Alexander v. Tippah County*, 351 F.3d. at 628-629. All the facts recounted about this case are drawn from this published opinion..

vomited into the drain. When the guards finally decided to do something they were unable to flush the drain. Nevertheless, rather than release Carroll and Alexander from the contaminated cell, the guards kept them confined. The guards then instructed an inmate to spray water into the cell through an opening at the bottom of the cell door, which served only to further spread the waste across the floor. Desperate, Carroll and Alexander requested a mop to clean the mess, but it was denied. To make matters worse, Carroll and Alexander could not wash their hands because the cell had no running water and they were not allowed out. In this contaminated cell filled with urine, feces and vomit, prison officials served Carroll and Alexander lunch and dinner without utensils. The isolation cell did not have a bed—only a concrete protrusion from the wall with space for just one person. No mattress or sheets or blankets were provided even though the men were clothed only in boxer shorts that winter evening. That night in the cold Carroll and Alexander tried to sleep by sharing the small concrete slab. Incredibly, despite the enormous degrading treatment and abuses they endured, the federal court to which they turned for relief dismissed their case because the conditions did not result in “physical injury,” which is a requirement for relief under the Prison Litigation Reform Act.⁹

In solitary confinement units across the nation, abuses, which differ only in detail from those inflicted on Carroll and Alexander, occur daily.¹⁰ Where but in a fictionalized horror story would one learn of places where “bodies are smeared with one's own excrement; arms are mutilated; suicides attempted and some completed; objects inserted in the penis; stitches repeatedly ripped from recent surgery; a shoulder partly eaten away.”¹¹

Twelve years ago, commenting on solitary confinement, I said in a *New York Times* Op-Ed that, “there is never justification for prison conditions that cause mental torture.”¹² I went on in that Op-Ed to observe that since most inmates will someday return to our communities, “it is a mistake to think that these kinds of conditions do not directly affect us.”¹³ A conversation with a

⁹ *Id.* at 631 (citing 42 U.S.C. § 1997e(e) (2006)).

¹⁰ These abuses, which include subjecting inmates to degrading, humiliating and unnecessary suffering, often do not cause physical injury. Even though constitutional rights are violated by these acts, federal courts have often failed to provide relief to victims of these abuses. The reason is that the Prison Litigation Reform Act (PLRA) deprives federal courts of the ability to provide relief from degrading and even torturous behavior if there is not physical injury.

¹¹ Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences: Hearing Before the S. Jud. Subcomm., 112th Cong. 3 (June 13, 2012) (Statement of Fred Cohen, LL.B., LL.M.).

¹² Michael B. Mushlin, *Breeding Psychotics*, N.Y. TIMES, March 27, 2005, available at <http://query.nytimes.com/gst/fullpage.html?res=9802E6DE173FF934A15750C0A9639C8B63>.

¹³ *Id.*

correction officer I had several years ago during a visit to Southport prison in upstate New York near Elmira drove this point home for me. Southport prison at the time of my visit housed hundreds of men, all in solitary confinement. The officer told me of his concern for law-abiding people whenever a Southport prisoner is released from solitary directly back on to the streets. He recalled the times he saw inmates, most of whom are from the New York City metropolitan areas and have been in solitary confinement for months or even years, released from the prison front gate with a suit of clothes, \$40 and a bus ticket to the Port Authority Bus Station in midtown Manhattan. Last year in an Op-Ed published in *The New York Times* my colleague Michele Deitch and I wrote that it is an “outrage” that in America solitary confinement continues to be inflicted on “thousands of prisoners ... in some cases for years, and often for minor rule violations at great cost their mental health and potential for rehabilitation.”¹⁴

Prisons must be safe and humane and they can be without solitary confinement. Indeed, with solitary they can be neither safe nor humane. There are alternatives to solitary confinement for everyone, not just the mentally ill, pregnant women and juveniles for whom solitary confinement is especially hazardous. Because solitary is so inhumane and so unnecessary, the American Bar Association in its standards prohibit any isolation of the mentally ill or juveniles,¹⁵ and even for those who must be isolated the standards absolutely prohibit “[c]onditions of extreme isolation . . . regardless of the reasons for a prisoner’s separation from the general population.”¹⁶ The animating idea behind these standards is the one that my colleague Fred Cohen put so well in his testimony to Congress on the issue of solitary confinement several years ago:

Inmates may need to be insulated from each other, and for a variety of valid reasons, but insulation (separation) and contemporary penal isolation are quite different concepts and operations. The process of insulation need not lead ineluctably to conditions of extreme social and sensory deprivation.¹⁷

¹⁴ Michele Deitch & Michael B. Mushlin, Michael B. Mushlin, *What’s Going on in our Prisons?*, N.Y. TIMES, January 3, 2016 available at <https://www.nytimes.com/2016/01/04/opinion/whats-going-on-in-our-prisons.html>.

¹⁵ ABA, CRIMINAL JUSTICE SECTION STANDARDS, STANDARDS ON TREATMENT OF PRISONERS (2010); ABA STANDARDS FOR CRIMINAL JUSTICE: TREATMENT OF PRISONERS at Standard 23-2.8 (3d ed. 2011).

¹⁶ *Id.* at Standard 23-3.8.

¹⁷ Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences: Hearing Before the S. Jud. Subcomm., 112th Cong. 3 (June 13, 2012) (Statement of Fred Cohen, LL.B., LL.M.) (emphasis in original).

Last September I was privileged to be among a group of invited experts at a national gathering to consider whether there is now a consensus among correctional administrators, advocates and academics about whether there are achievable ways of systematically reforming the use of solitary confinement. The colloquium, which was held at John Jay College of Criminal Justice in New York City, included 15 corrections agency heads, including Scott Semple, Commissioner of Correction from your own state of Connecticut and a like number of attorneys, academics, and experts.¹⁸ The report of those deliberations of that gathering demonstrates that there has now emerged a strong consensus among experts in the field that “the United States can do better to both limit how it employs extreme social isolation and to ameliorate many of the most damaging results from its overuse.”¹⁹ At the colloquium I spent time with Commissioner Semple in serious deliberations about how to reduce reform solitary confinement. He impressed me as a knowledgeable and thoughtful leader in the effort to fundamentally change the way in which the corrections profession sees solitary confinement.

Recommendation Regarding Solitary Confinement

For all these reasons I believe that the time has come for the prisons and jails of the United States to be free of scourge of solitary confinement. To aid in this goal I recommend that the Connecticut Advisory Commission to the United States Civil Rights Commission should call on the Governor and the Legislature of the state to pass legislation that would implement the standards of the ABA which I have discussed above banning solitary confinement in its prisons and jails. But more is required to make this fundamental reform meaningful. External independent oversight of Connecticut’s prisons and jails is essential to ensure that reform of solitary confinement actually occurs and is sustained. I now turn to that subject.

The Critical Importance of External Oversight

Prisoners are under lock and key twenty-four hours a day, seven days a week, and therefore they must depend on their keepers for all their human needs. They are held behind walls and closed doors, living “in a shadow world that only dimly enters our awareness.”²⁰

¹⁸ Martin Horn & Ann Jacobs, *Report on a Colloquium to Further a National Consensus On Ending the Over-Use of Extreme Isolation in Prisons, Solitary Confinement: Ending the Over-Use of Extreme Isolation in Prison and Jail* (2016).

¹⁹ *Id.* at 1.

²⁰ O’Lone v. Estate of Shabazz, 482 U.S. 342, 354 (1987) (Brennan, J., dissenting). The discussion in this section of my testimony is drawn from my most recent article, Michael B. Mushlin, “*I Am Opposed to This Procedure*”: How

American prisons in particular “mainly confine the most powerless groups . . . poor people who are disproportionately African-American and Latino.”²¹ Currently, most prison systems, including I am informed Connecticut, operates “without a comprehensive mechanism for the routine inspection and monitoring of all places of confinement.”²² Without comprehensive and meaningful oversight these sequestered places of confinement become even more isolated from the society they are designed to serve. Without oversight any reforms envisioned for Connecticut’s use of solitary confinement no matter how well intended are in danger of not being implemented.

Shorn of oversight, and the public support that it provides, even prison administrators with the best of intentions are not able to run decent prisons.²³ One famous example recounted by Dean Norval Morris is the story of Captain Alexander Maconochie, the British Naval Captain who, in the 1840s, unsuccessfully attempted to implement major reforms to the barbaric practices at the Australian prison colony on Norfolk Island.²⁴ Captain Maconochie abandoned his reform efforts due to a lack of outside support.²⁵ So too was the fate of Thomas Mott Osborne, who became the warden of Sing Sing Prison with a reform agenda, but whose efforts were overturned.²⁶ More recent examples include the experience of the leaders of the penal system of New York City. Despite their efforts, violence against inmates on Rikers Island, the penal island of New York City has reached epidemic proportions.²⁷

Some people think that prison officials automatically oppose vigorous oversight. However, that is not true. Many prison officials recognize the importance of public oversight. For example, Jack Cowley, a warden from Oklahoma, wrote that without accountability that comes with oversight, “the culture inside the prisons becomes a place that is . . . foreign to the

Kafka's In the Penal Colony Illuminates the Current Debate About Solitary Confinement and Oversight of American Prisons, 93 Or. L. Rev. 571 (2015). More detail can be found there.

²¹ GIBBONS & KATZENBACH, CONFRONTING CONFINEMENT 77 (2006).

²² AM. BAR ASS’N, STANDARDS ON TREATMENT OF PRISONERS § 23-2.7(a)(2), at 52 (3d ed. 2011).

http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/treatment_of_prisoner_s_commentary_website.authcheckdam.pdf.

²³ See Barbara Attard, *Oversight of Law Enforcement is Beneficial and Needed—Both Inside and Out*, 30 PACE L. REV. 1548 (2010); Andrew Coyle, *Professionalism in Corrections and the Need for External Scrutiny: An International Overview*, 30 PACE L. REV. 1548 (2010).

²⁴ NORVAL MORRIS, *MACONOCHE’S GENTLEMEN: THE STORY OF NORFOLK ISLAND AND THE ROOTS OF MODERN PRISON REFORM* (2002).

²⁵ *Id.*

²⁶ See *Thomas Mott Osborne*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/433764/Thomas-Mott-Osborne> (last visited Jan. 3, 2015).

²⁷ Editorial Board, Op-Ed, *A ‘Culture of Violence’ at Rikers Island*, N.Y. TIMES (Aug. 5, 2014), <http://www.nytimes.com/2014/08/06/opinion/a-culture-of-violence-at-rikers-island.html>.

culture of the real world.”²⁸ A.T. Wall, the director of corrections in Rhode Island, observed that without “light, light, and more light,” there is a real danger of prison abuse, and “we [the public] cannot sit idly by. If we do so, we run the substantial risk that the dynamics of these environments will default to a position where misconduct can ultimately flourish.”²⁹ Dean Stan Stojkovic, writing in the *Pace Law Review* said that “[w]ithout adequate oversight, correctional problems compounded. Issues like correctional health care, prison crowding, prison violence, and the management of prisons become almost impossible to address.”³⁰ No sensible prison administrator wishes this to happen.

Effective external independent oversight requires both regulatory and monitoring power. An agency with regulatory powers can impose and enforce minimum standards. An agency with monitoring powers is also important because unlike a regulatory body they are charged with as my colleague Michele Deitch notes, “routine and regular review of every institution as a preventative measure; it is oversight to help in improvement, not to point out what went wrong.” (Emphasis in original).

Both aspects of prison oversight are essential to ensure that Connecticut’s prisons run effectively, that its prisons are safe, and that they operate in a manner that ensures the safety of the prisoners and the staff.

Calls for Oversight

The calls for oversight of penal facilities have been persistent and growing. A leading example is that the American Bar Association (“ABA”) in its Standards for the Treatment of Prisoners, adopted in 2010, declared that “Governmental authorities should authorize and fund a governmental agency independent of each jurisdiction’s correctional agency to conduct regular monitoring and inspection of the correctional facilities in that jurisdiction and to issue timely public reports about conditions and practices in those facilities.”³¹

Additionally, the ABA passed a formal Resolution on Oversight which recommends an independent body to monitor prisons. To be effective the oversight body must be adequately funded and staffed; have expertise; conduct regularly scheduled and unscheduled inspections; issue reports on particular problems; have access to all relevant records and the authority to

²⁸ GIBBONS & KATZENBACH, *supra* note 21 at 16.

²⁹ *Id.* at 78 (citing testimony of Rhode Island Corrections Director A.T. Wall).

³⁰ Stojkovic, Stan Stojkovic, *Prison Oversight and Prison Leadership*, 30 PACE L. REV. 1476, 1483 (2010).

³¹ ABA STANDARDS § 23-11.3(a).

conduct confidential interviews; make investigation reports public; have the authority to require prison administrators to respond publicly to monitoring reports; and develop plans to rectify problems identified.³² Specifically, the ABA Resolution states “The monitoring entity is independent of the agency operating or utilizing the correctional or detention facility...[and]...The monitoring entity is authorized to inspect or examine all aspects of a facility’s operations and conditions including, but not limited to: staff recruitment, training, supervision, and discipline; inmate deaths; medical and mental-health care; use of force; inmate violence; conditions of confinement; inmate disciplinary processes; inmate grievance processes; substance-abuse treatment; educational, vocational, and other programming; and reentry planning.”³³

The Commission on Safety and Abuse in America’s Prisons, which surveyed the state of the American prison system almost a decade ago also called for a comprehensive system of oversight.³⁴ It based this recommendation on the reality that “[m]ost correctional facilities are surrounded by more than physical walls; they are walled off from external monitoring and public scrutiny to a degree inconsistent with the responsibility of public institutions.”³⁵ To rectify this imbalance, the Commission called on every state to create an independent agency to monitor prisons and jails and on the federal government to create a national nongovernmental agency to inspect penal facilities at the request of prison administrators.³⁶

Joining the movement for greater oversight, the Attorney General of the United States, utilizing the power granted under the Prison Rape Elimination Act (PREA), promulgated standards that call for oversight of virtually all penal institutions in the United States.³⁷ The standards of PREA aim to ensure that the prisons and jails receiving federal funding take steps to respond to instances of sexual abuse of prisoners and take preventative measures against such abuse.³⁸ Following the recommendation of the National Prison Rape Elimination Commission

³² See generally ABA Resolution on Oversight.

http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_policy_am08_104b.authcheckdam.pdf.

³³ ABA Resolution on Oversight § 1, 6.

³⁴ GIBBONS & KATZENBACH, *supra* note 21.

³⁵ *Id.* at 15.

³⁶ *Id.* at 16, 79.

³⁷ Prison Rape Elimination Act of 2003, 42 U.S.C. §§ 15601–09 (2012).

³⁸ *Id.* §§ 15601–02. The Prison Rape Elimination Act was enacted by Congress in 2003 to address the problem of sexual abuse of persons in custody of U.S. correctional agencies, including private and public institutions housing both adult and juvenile offenders, as well as community-based agencies. The Act addresses both inmate-on-inmate sexual abuse and staff sexual misconduct. The major provisions of PREA include a zero tolerance standard for

(NPREC)³⁹ in 2009, the Attorney General decided that beginning in August 2013, compliance with PREA standards required audits of all confinement facilities covered under the PREA at least every three years. These audits are necessary for the facilities to be considered compliant with PREA standards, with one-third of the facilities operated by an agency—or private organization on behalf of an agency—audited each year.⁴⁰ These include adult prisons and jails, juvenile facilities, lockups (housing detainees overnight), and community confinement facilities, whether operated by the Department of Justice or a unit of a state, local, corporate, or nonprofit authority.⁴¹ This oversight, when implemented, will be a significant change, but it is very limited in its scope by focusing on only one problem.

The ABA also recognizes the importance of opening prisons to public view through unofficial, nongovernmental means such as occurs through the work of the Correctional Association of New York. Because “[t]he heightened public awareness resulting from prison and jail visits will result in improvements in conditions and operations,”⁴² the ABA standards call on government to “encourage and accommodate” visits to prison facilities by “judges and lawmakers and by members of faith-based groups, the business community, institutions of higher learning, and other groups interested in correctional issues.”⁴³ The Commission on Safety and Abuse in America’s Prisons takes a similar position. Recognizing that oversight also includes the involvement of an engaged citizenry, the Commission urged that prisons should be open to

inmate sexual assault and rape; the development of standards for detection, prevention, reduction, and punishment for prison rape; the collection and dissemination of information of incidents of prison rape; and the award of grants to help state and local governments implement the Act.

Under PREA, the Bureau of Justice Statistics (BJS) is required to carry out a comprehensive statistical review and analysis of incidents and effects of prison rape for each calendar year. The review and analysis must be based on a random sample of no less than ten percent of all federal, state, and county prisons; a representative sample of municipal prisons; and include at least one prison from each state. The BJS must utilize surveys and other statistical studies of current or former inmates and ensure the confidentiality of each survey participant. To comply with these requirements, the BJS developed the National Prison Rape Statistics Program (NPRSP), which is comprised of four separate data collection efforts designed to collect multiple measures on the incidence and prevalence of sexual assault, including the Survey of Sexual Violence, the National Inmate Survey, the National Survey of Youth in Custody, and the National Former Prison Survey. Each survey operates as an independent effort which together allow for a deeper understanding of sexual victimization in correctional facilities. *Id.* §§ 15601–09; *see also Prison Rape Elimination Act (Sexual Violence in Correctional Facilities)*, BUREAU OF JUSTICE STATISTICS, <http://www.bjs.gov/index.cfm?ty=tp&tid=20> (last visited Jan. 26, 2015).

³⁹ NATIONAL PRISON RAPE ELIMINATION COMMISSION REPORT (2009) (recommending “detailed” and “robust” oversight in order to “open up” prisons to review of their efforts to fight sexual abuse), *available at* <https://www.ncjrs.gov/pdffiles1/226680.pdf>; *see also* Dara Lind, *After 11 Years, States are Finally Committing to Fight Prison Rape*, VOX, <http://www.vox.com/2014/5/20/5731152/states-prison-rape-PREA-certification-standards-11-years> (last updated May 20, 2014, 10:20 AM).

⁴⁰ NATIONAL PRISON RAPE ELIMINATION COMMISSION REPORT, *supra* note 279, at 87–88.

⁴¹ *Id.* at 3.

⁴² ABA STANDARDS, *supra* § 23-11.2, at 351.

⁴³ *Id.* § 23-11.2(e), at 348.

visits by citizens and organized groups, and that the media should be given broad access to what happens inside prisons, including having access to facilities, prisoners, and correctional data.⁴⁴

When external prison oversight is enforced and prison leaders open their doors to regular independent oversight, significant positive changes in the treatment of prisoners and the operation of its prisons will result.

The Media and the Public's Right to Know

Another important requirement of effective prison oversight is for legislation to protect the right of access to the media and to make sure this access is enforced. As the ABA said in its commentary on its standards providing for opening up prisons to the media on a responsible basis:

Affording members of the media access to correctional facilities is a means of bringing transparency and accountability into the operations of those facilities. Through media reports, the public can be informed about problems that plague a correctional facility, conditions within it, the effectiveness of correctional programs in the facility, and the extent to which incarceration is facilitating or impeding prisoners' adherence to a crime-free lifestyle upon their release from the facility. Additionally, these media reports can highlight the need for operational changes or the allocation of more resources to make the correctional facility safer, more human and in conformance with what are considered "best practices" in the field of corrections.⁴⁵

More is required however than access to the media. Prisons should be open to responsible requests by members of the public. Both the ABA and the Commission on Safety and Abuse in America's Prisons recognize the importance of opening prisons to public view through unofficial, nongovernmental means. Because "[t]he heightened public awareness resulting from prison and jail visits will result in improvements in conditions and operations,"⁴⁶ the ABA standards call on government to "encourage and accommodate" visits to prison facilities by "judges and lawmakers and by members of faith-based groups, the business community, institutions of higher learning, and other groups interested in correctional issues."⁴⁷

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⁴⁴ GIBBONS & KATZENBACH, *supra* note 21.

⁴⁵ ABA STANDARDS, *supra* § 23-11.5 (commentary).

⁴⁶ ABA STANDARDS, *supra* note 220, § 23-11.2, at 351.

⁴⁷ *Id.* § 23-11.2(e), at 348.

Commission urged that prisons should be open to visits by citizens and organized groups, and that the media should be given broad access to what happens inside prisons, including having access to facilities, prisoners, and correctional data.⁴⁸

Legislation should also provide an adequate opportunity for information derived from prison oversight investigations to be available to the public. It is important for regulatory and monitoring oversight information to be made public so they can know what happens in the prisons. Effective oversight will become even more powerful, beneficial, and productive measure once the information obtained by the oversight agency is provided to the public.

Conclusion

Solitary confinement as we know it must end. To make that happen legislation should be enacted ensuring that no prisoner is subjected to isolation in ways that are not in accord with the Standards of the American Bar Association for the Treatment of Prisoners. In tandem legislation should also be enacted that establishes an independent external system of oversight of Connecticut's penal institutions.

Thank you for inviting me to this briefing. I am grateful for this opportunity to testify before you and look forward to your questions.

⁴⁸ GIBBONS & KATZENBACH, *supra* note 20.