

THE ASSOCIATION OF THE BAR  
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COMMITTEE ON CORRECTIONS

March 19, 2004

Hon. Glen S. Goord  
Commissioner  
New York State  
Department of Correctional Services  
State Office Campus – Building No. 2  
1220 Washington Avenue  
Albany, NY 12226

Dear Commissioner Goord:

During the past few years the New York State Department of Correctional Services (DOCS) has displayed a troubling closed-door policy with respect to requests by The Association of the Bar of the City of New York (ABCNY) for access to DOCS' facilities.

In the years 2000 and 2001, the Committee on Corrections in conjunction with the Committee on Capital Punishment undertook a study of the conditions of confinement on New York State's "death row" (officially named the Unit for Condemned Persons [UCP]). In order to accurately describe the conditions of confinement, the then President of the ABCNY, Michael A. Cooper, wrote you in March 2000 asking your permission for members of the Committees to visit the UCP. That request was denied because of undefined security concerns. ABCNY's inability to visit the UCP seriously undermined the factual record that the committees sought to compile. Nevertheless, the two committees completed their project and published their report, "Dying Twice: Conditions on New York's Death Row."<sup>1</sup>

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<sup>1</sup> Vol.56, No.3 The Record (2001)

In 2002, the Committee on Corrections decided to study a seemingly uncontroversial aspect of the New York State penal system – the condition of prison law libraries. The importance of this study is readily apparent to all who examine the criminal process. The Sixth Amendment, as interpreted by the United States Supreme Court, grants inmates the right to be provided with a sound prison law library. This interpretation reflects our belief that the both the accused and the convicted should be able to learn about their rights under the law.

An effective prison law library empowers inmates to fulfill their rights to aid in their own defense. The Committee’s modest goal was to learn what was necessary to assist institutions statewide in providing high-quality law libraries. We requested that DOCS provide us with access to three prisons, at which we could examine the legal materials and training inmates were receiving. We also asked that, following these three visits, we be permitted to send a short, follow-up survey to the inmate law librarians. The request gave DOCS the option to choose the time and place of the visits and suggested that one of the visits be conducted at the Sullivan Correctional Facility, an institution reputed to have a well-managed law library with ample resources. Once again DOCS rejected the proposition, citing unidentified security concerns, and asserting that any such visit would for some reason create a dangerous precedent. As a consequence, the Committee has been unable to continue a project designed to assist the DOCS provide better law library services to its charges.

It seems fairly clear that DOCS will no longer authorize this Committee to visit any state prison in the pursuit of any project, regardless of how important, or seemingly uncontroversial, the topic may be. To this new and unjustified policy, we strongly object.

#### The Committee on Corrections

The Committee on Corrections of the ABCNY is comprised of judges, academics, prosecutors, defense attorneys and other interested professionals. While the Committee involves itself in a variety of correctional issues, our chief focus has been on the operation of the prison system in New York City and State. Our interest in these correctional issues grows out of the spirit of analysis and advocacy that the Honorable Warren E. Burger, then Chief Justice of the United States Supreme Court lauded in a speech<sup>2</sup> that he delivered to the ABCNY in February 1970. In that speech, which focused on the state of prisons in the United States, Chief Justice Berger stated that Few things characterize our attitude toward prisons and prisoners more than indifference, on the one hand, and impenitence with the failure of the

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<sup>2</sup> Vol. 25, No.3, The Record (Supp) 14 (1970)

prisoner to return to society corrected and reasonably ready to earn his own way in life.<sup>3</sup>

The Chief Judge suggested that, “If we want prisons to change, public attitudes toward prisoners and ex-prisoners must change.”<sup>4</sup>

One catalyst for change that the Chief Justice identified was the involvement of the legal profession in monitoring correctional issues. Chief Justice Burger gave specific advice about how lawyers should become involved in this important aspect of the criminal justice system. They should begin by “getting all the facts, visiting the scene if necessary, and then organizing the evidence.” And while “most of the facts are available from prison authorities,” the Chief Justice noted that, “A visit to most prisons will make you a zealot for prison reform.”<sup>5</sup>

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<sup>3</sup> *ibid*, p. 18

<sup>4</sup> *ibid*, p. 20

<sup>5</sup> *ibid*, p. 21

The Chief Justice's speech reflects the attitude that the courts and the public have held for years in America. In three landmark Supreme Court cases<sup>6</sup> decided in the 1970's the court held upheld restrictions on media access to prisons and found that such restrictions do not violate First Amendment rights. In the *dicta* of the cases the Court recognized the importance of public scrutiny of prisons. For example, in Houchins, the Court wrote:

A number of alternatives are available to prevent problems from escaping public attention. The early penal reform movements in this country and England gained impetus as a result of reports from citizens and visiting committees who volunteered to visit penal institutions and make reports. ... Citizen task forces and prison visitation committees continue to play an important role in keeping the public informed on deficiencies of prison systems and need for reforms.<sup>7</sup>

As a result of DOC's denial of visits by ABCNY's Committees to prisons, New York State prisons appear closed to the independent scrutiny of voluntary, citizen groups that Chief Justice Burger and other members of the Supreme Court thought were hallmarks of the prison reform movement in the United States.

Public access to correctional institutions is not just an American tradition. Andrew Coyle of the International Centre for Prison Studies, King's College, London, wrote in his handbook for good prison management<sup>8</sup> that

All prisons are places where men and women are detained against their will. The potential for abuse is always present. Therefore they must be institutions which are managed in a way which is fair and just. All institutions which are managed by or on behalf of the state should be subject to public scrutiny.<sup>9</sup>

All public institutions, including correctional institutions, should be subject to public scrutiny. The involvement of voluntary, citizen groups has been an long standing tradition both in America and abroad. In order to bring the appropriate transparency to the most closed of our public environments – our correctional facilities - the New York State DOCS should welcome the involvement of groups such as the ABCNY rather than close the door in their faces.

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<sup>6</sup> Pell v. Procnier, 417 U.S. 817 (1974); Saxbe v. Washington Post Company, 417 U.S. 843 (1974); and Houchins v. KQED, Inc., 438 U.S. 1 (1977).

<sup>7</sup> Houchins v. KQED, Inc., 438 U.S. 1, 12-13 (1977)

<sup>8</sup> Coyle, Andrew. A Human Rights Approach to Prison Management.

<sup>9</sup> *ibid*, p.111.

Therefore, we request that you reconsider your opposition to our request to visit prison law libraries and work with the Committee and ABCNY in improving correctional services to inmates. A more flexible, open door policy is in the public interest.

Very truly yours,

David S. Hammer  
Chair, Committee on Corrections

cc: Hon. Richard M. Platkin