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## YALE LAW & POLICY REVIEW

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### Why Do They Do It That Way?: A Response to *Prison Visitation Policies: A Fifty-State Survey*

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Through an unprecedented collaboration between Yale Law School's Liman Program and the Association of State Correctional Administrators (ASCA)—the membership organization encompassing the Chief Executive Officers of the fifty-state corrections departments and the Federal Bureau of Prisons—we practitioners now have available a full and fascinating set of data describing every jurisdiction's policies governing visiting.<sup>1</sup> The effect is that of a large mirror. It reflects back to us how each of our systems handles this universal feature of prison operations—one of the most significant aspects of institutional life. The results fairly cry out for us to compare and contrast. In addition to the authors' astute observations and those queries that may occur to other readers of the Feature, our members are now pondering a host of questions. Why do we do it this way? Why don't our colleagues? Why do they do it that way? Why don't we? What is the logic of particular practices? Do they make sense?

Many of these questions concern the details of visiting arrangements. Some of them are: their frequency and duration; the numbers of visitors allowed and what attire is permissible or unacceptable; search procedures; conduct in the visiting room itself; and restrictions and exclusions placed on those who wish to visit. In each of these categories, our various agencies come to different conclusions according to such variables as history, culture, location, technology, the philosophy of organizational leaders, the custody level of a given institution, architecture, staffing patterns, and the nature of security breaches attempted or completed. Interestingly, as the authors observe, one factor that almost never comes into play is judicial intervention. This domain is ours alone, largely unconstrained by court decrees. Yet while these decisions may strike the public at

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1. Chesa Boudin, Trevor Stutz & Aaron Littman, *Prison Visitation Policies: A Fifty-State Survey*, 32 YALE L. & POL'Y REV. 149 (2013).

large as so much minutiae, they matter enormously to those who live and work in prisons, and to those who visit the facilities.

The lack of uniformity across the nation reflects not only these myriad individualized considerations but also the role of corrections as a traditional domain of state and local governments. While membership in professional associations, development of professional standards, and technical assistance from the federal government have facilitated the exchange of information in recent decades, the corrections profession has traditionally been highly state- and local-centric. The rapid expansion of electronic communication and what appears to be increasing interest in our field at the national level may lead to greater similarity in a variety of correctional practices, including visiting rules and protocols.

This study, which was itself greatly facilitated by the ease of information exchange, has already begun to stimulate self-examination and alterations in our regulations. One jurisdiction, for instance, quickly discovered that it was a unique outlier in its prohibition of visits conducted in any language other than English. It rapidly revised its policy in conformity with the norm. I expect that the publication of this Feature will also generate movement toward general guiding principles. This has been the case with administrative segregation, where the Liman Program produced a similar survey using data provided by ASCA.<sup>2</sup> There will undoubtedly be some adoption of one another's practices as well. Ultimately, however, for reasons related to the particular characteristics of the different systems (and even among institutions in the same system), there will still be plenty of variation in both official policy and actual practice. For example, a jurisdiction that may have no objection to overnight family visits in principle may reject the idea based on a consideration of the advantages versus the downsides. Factors might include needed modifications to the physical plant, changes in staffing patterns, alterations in facility scheduling, and attitudes of those inmates who don't receive this privilege as opposed to the numbers who can and do participate in the program. Is the payoff worth the fuss? In another vein, liberal visitation policies that appear generous on their face can be an empty promise in practice if inmates are situated in such remote areas that their loved ones lack the money or the means to travel there.

Embodied in the ways we structure visitation is also a larger set of issues than those raised by the idiosyncrasies in our specific visiting procedures. They arise from certain tensions among some of our profession's core values and principles. There is a broad consensus among all corrections directors about our purpose. In essence, we understand our mission to include both the administration of safe, secure, orderly, and constitutional facilities *and* the provision of programs and opportunities that will promote lawful and pro-social behavior following release.

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2. Hope Metcalf et al., *Administrative Segregation, Degrees of Isolation, and Incarceration: A National Overview of State and Federal Correctional Policies* (Yale Law Sch., Public Law Working Paper No. 301 2013), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2286861](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2286861).

Visitation policies and practices stand at the intersection of these two fundamental and sometimes conflicting goals. The way in which visiting is actually experienced on the ground reflects the challenges we face in our efforts to honor each.

Since the beginning of the current century, the concept of effective prisoner reentry into the community post-release has emerged as a key organizing principle of our profession. Among its many strands is the belief that the maintenance of ties to family and other loved ones has a powerful role in easing the sensitive transition from an institutional setting to the far less structured environment of life in the free world. For example, ASCA's members immediately grasped the troubling implications of research done in some of our agencies that revealed the large numbers of inmates (forty percent or more in some instances) who had received no visits whatsoever in the past twelve months. As the Feature's authors note, a careful study in Minnesota has shown that prisoners who had visitors were significantly less likely to reoffend.<sup>3</sup> Research done in Ohio provides evidence of the benefits of visitation for inmate compliance with institutional rules.<sup>4</sup>

Uniformed personnel are familiar with the relationship between successful prisoner reentry and public safety. They understand that visiting is an important inducement to good behavior and that it keeps inmates connected to loved ones. But custody staff also know that the sine qua non of their job is the maintenance of security inside the prisons. Their performance is judged by their success in providing safety and maintaining order. Their failure to do so can lead to serious consequences for them, their peers, and the inmates. Visiting introduces an element of unpredictability. It can lead to disruption in the routines, difficult encounters with visitors and inmates, and security threats such as the conveyance of contraband (including drugs and weapons in particular). The introduction of these items to prison settings sets the stage for all manner of security breaches and a destabilization of the inmate climate. Correctional officers and supervisors are expected to exercise a very high level of scrutiny throughout the visiting process, checking to see if visitors are authorized to enter the facility, making sure that clothing conforms to the regulations, conducting thorough searches without being impermissibly intrusive, keeping careful watch over the interaction between inmates and visitors, assuring that children are under control, and terminating visits if the parties don't follow the rules. For the front-line guardians of institutional security, the idea that visiting can help lead to better outcomes for public safety down the road can seem highly attenuated when compared to the risks and threats it raises in the here and now.

The results can be difficult for all concerned. Staff must be hyper-vigilant throughout the visitation process, sometimes interjecting themselves into intimate encounters between people whose privacy is already severely constrained. Visitors frequently complain that they are treated like criminals, denied entrance or subjected to preemptory termination of their visits without being given satisfactory explanations. Inmates become angry if they perceive that their visitors

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3. Boudin, Stutz & Littman, *supra* note 1, at 152.

4. *Id.*

have been treated poorly or that a much-anticipated visit has been cut short. Staff for their part uncover ruses to hide the visitor's true identity and criminal history or ever-changing schemes to smuggle in forbidden and even dangerous items. These experiences reinforce their concerns about the risks associated with the visiting process in general.

There are other contingencies that exacerbate the potential for a fraught and tense visiting experience. Issues that arise in prison management—sudden lockdowns, changes in institutional schedules, disciplinary infractions, the movement of inmates to different housing units when visiting days and times are organized by housing location—occur regularly in environments as complex as these. Harried personnel may lack the time or skill to explain what is happening while they are trying to manage long lines of sometimes impatient members of the public or ordering inmates back to their cells. Differing interpretations of the rules by various staff and visitors lead to additional frustration and stress.

Given the competing considerations, what are some options that could make the experience of visiting less charged for all concerned? Recognizing the evidence that visitation fosters a positive institutional climate and better reintegration post-release, how can visitation be promoted without unduly compromising essential managerial objectives?

One way to increase visiting opportunities without the attendant security concerns lies in the use of technology to expand virtual visitation. In discussing this option, the Feature's authors set forth its potential benefits and drawbacks. In addition to these pros and cons there are also some less tangible considerations. For example, is there a qualitative but measurable difference between face-to-face contact and technologically facilitated visiting? How important is the element of touch, however constrained? In a presentation to ASCA members, one of the authors raised the troubling case of a young child whose experience of seeing his incarcerated father via video had such a powerful impact on him that when he saw his dad in person he had difficulty distinguishing which of the two persons was "real." Although public reaction to the enhanced screening technology of the federal Transportation Safety Administration may not give cause for optimism, the use of similar equipment in prison to replace the increasingly outmoded metal detectors may boost the ability of correctional officials to detect a wider array of contraband without raising the ire of visitors or inmates. In those jurisdictions where institutional managers have the flexibility to deploy staff on posts where their abilities are best suited to the tasks at hand, careful consideration could—and should—be given to assigning those with the best combination of customer service skills and watchfulness.

In view of its centrality to both the prison experience and to successful reentry, visitation in policy and in practice deserves the careful attention it receives in the Feature, *Prison Visitation Policies: A Fifty-State Survey*. In many ways, the topic encapsulates the contradictions of correctional administration as a whole. Weighing the interests of both security and rehabilitation when they come into conflict is perhaps the most profound challenge faced by our profession. The efforts we make to sort out the relationship between these two priorities in both the microcosm of visitation and institutional management as a whole is at the

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essence of the query, “why do they do it that way?” There is no simple answer to the question. The fact is that we will always be calibrating and recalibrating, trying to get the balance right.

