

REGULATORY CAPTURE
AND THE
SOUTH AFRICAN JUDICIAL INSPECTORATE OF PRISONS

by

STEVEN R. WOOD

A dissertation submitted to the Graduate Faculty in Criminal Justice in partial
fulfillment of the requirements for the degree of Doctor of Philosophy,
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Abstract

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Whatever the form of governance, a nation's judiciary, police, and penal system are inherently coercive. It is crucial, then, for these institutions' policies and operations to be transparent, and when their employees' behavior is inconsistent with the relevant professional codes, statutes, and departmental policies, that people are held accountable. To some extent, public access to court proceedings (e.g., arraignments, trials) act to restrain judicial abuse of power. Likewise, as a significant proportion of police activity occurs in the public domain, the risk of public outrage acts to constrain serious police misconduct. What occurs inside prisons, however, is a different matter: in many countries, prisons are closed-institutions, meaning that the odds the public will directly view staff misconduct are next to nil. To promote the principles of transparency and official accountability in prisons, then, prisons need to be monitored by independent and impartial oversight mechanisms. Prison inspectorates are one such vehicle in a handful of countries: for example, there are at least three non-governmental inspectorates operating in the United States and government-run inspectorates in the United Kingdom and South Africa. Like their counterparts elsewhere (e.g., police monitoring bodies), when carrying out their mandates prison inspectorates confront various obstacles like

inadequate funding, resistance or outright hostility from those being monitored, and co-optation or “capture” by the overseen. This study looked at the last obstacle within the South African context. Created by statute a decade ago, the South African Judicial Inspectorate of Prisons (JIOP) is intended to be independent of the Department of Correctional Services, and seeks to ensure prisoners’ right to humane imprisonment through its legislative mandates to visit and inspect prisons and report its findings to the executive branch. One issue addressed in this study was the extent to which JIOP staff had been captured by prison officials. Next, the study examined possible individual-level predictors of capture and consequences of capture. Finally, some study implications for the JIOP and regulatory oversight scholars are discussed.

Acknowledgments

Had it not been for the support from so many people and institutions, this dissertation could never have started, let alone been completed. First, to my parents who so long ago insisted—no, demanded—that I enter college upon finishing high school. Had it not been for their foresight and their endless support and encouragement, I would never have made it this far. For this, I will always be grateful.

Second, my appreciation goes to the members of my dissertation committee, Todd Clear and Warren “Ned” Benton for their invaluable insights into prisons in general and prison oversight in particular. A special thanks goes to the committee chair, Diana “Dinni” Gordon: it is my hope that I can one day be as good a mentor for other graduate students as Dinni was to me. She not only volunteered her editorial services over and over, but it was she who motivated me to study South Africa further: it was during a doctoral level course on comparative criminal justice systems that I first became interested in the South African criminal justice system, more specifically in that country’s sentencing policies. Around this time, Dinni gave me a copy of Alister Sparks’ *The Mind of South Africa*. Little did I know then that this single book would strike so much fascination and curiosity in me that I would spend the next six years of my life reading and thinking about and traveling to the country.

Dinni also knew how to prod and goad me into taking those all too crucial steps necessary to becoming a capable scholar. For instance, during the year or so when I was developing a specific dissertation topic, I vividly recall Dinni asking over and over, “What is your theory?” For months on end, not only did I struggle to either identify an already existing paradigm or to devise my own theory that would explain penal reform in

South Africa, but I constantly battled a growing frustration that arose out of my inability to answer her most elementary question. Luckily, it was while wallowing in misery over this very issue at a college library one Easter Sunday evening that I had the most significant “Ah Hah!” moment in my life: this dissertation is the direct result of this moment.

Next, this study would have been impossible without the cooperation of and logistical support from staff at the Judicial Inspectorate of Prisons (JIOP). Two people in particular deserve a heartfelt thanks: the then-Inspecting Judge Johannes Fagan, and Mr. Gideon Morris. Practically speaking, without Judge Fagan’s go-ahead, this study could have never begun. Yet on a much different level, the Judge was a most remarkable man in that even during the busiest of days, not once did he come across as being too important to greet me or to spend a few minutes chatting about whatever was on our minds. Not only that, neither before I ever met him nor since have I seen someone of his age possess the same energy and enthusiasm for life as that of a young child. It should come as no surprise, then, that both I and his staff had great admiration and respect for the man.

To Gideon Morris: before I had even homed in on the JIOP as an object of study, Gideon was an important source of information about prisons in South Africa in general, and the JIOP in particular. He was also crucial in pitching my idea to study the JIOP to Judge Fagan and his successor, Judge Nathan Erasmus, as their approval was vital. Once the study began, Gideon assisted me in my efforts to travel across the country, and to access JIOP staff and documents. Altogether, I spent about one year in South Africa and Gideon on countless occasions adopted the many hats of tour guide and taxi driver;

lecturer on issues confronting that country's prisons in general, and the JIOP in particular; as an arbitrator when this American stumbled upon, and sometimes into, the JIOP's varied political minefields and personality conflicts; and finally, as a lecturer/commentator about something he shared with many of his countrymen: a love of rugby. It is my sincere hope that Gideon will one day visit America and that I can better express my gratitude by playing host as well as he.

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(may he be in Heaven with a beer in one hand and a lady in the other). Next, I would like to say how much I miss my frequent chats over dinner at Nandos or Simply Asia with Mr. Murasiet Mentoor. If there's one thing I learned from Murasiet, it's that even in the face of adversity, one loses nothing by keeping a smile on their face, remaining optimistic, and continuing to pursue one's professional and personal objectives. Like Gideon, I hope Murasiet will one day come to America so we can resume our regular chats during meals at his favorite North American restaurant (which shall remain unnamed here).

Thanks must also go to these people who either reviewed drafts of my dissertation or provided material assistance in some other way. First, to Ms. Amanda Dissel at the Centre for the Study of Violence and Reconciliation (CSVr) for providing insight into the socio-political context in which the JIOP operates. If I have any regrets, it's that I failed to create a more durable relationship with Amanda and the CSVr. Next, thanks are due to Mr. Lukas Muntingh and Mr. Chris Giffard for agreeing to review and comment on a draft of the dissertation. Next, Dirk van Zyl Smit was most helpful in giving some of his insights into the intentions of the JIOP's creators. Finally, thanks must go to Dr. Keith Markus at John Jay College who never ignored my many statistics-related inquiries.

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CHAPTER ONE—LITERATURE REVIEW

South African Penology: An Historical and Contemporary Overview*South African Prisons and Penological Practices—An Historical Overview*

Penological practices in the pre-apartheid era. Similar to America, Europe, and elsewhere on the African continent, there were evolving notions about what morally acceptable punishment was in Southern Africa, this being dependent upon who was doing the defining and when (see Bernault, 2003a; Blomberg & Lucken, 2000). Before the 1800s, imprisonment in South Africa was rarely used to punish per se but used to detain offenders for trial or for other sanctions. Instead, punishment often took the form of ordering offenders to make restitution to the victim and their family, temporary or permanent banishment, corporal punishments such as flogging, and public execution (Bernault, 2003b). Under whose authority deviants fell was pivotal to the penal mechanism used. For example, though known to have ordered executions, traditional/tribal leaders preferred sanctions that kept the community intact while tempering conflict (e.g., restitution) (Gordon, 2006; Sparks, 1991); on the other hand, forced labor, transportation, and corporal punishments were preferred by, first the Dutch, then British colonial officials (van Zyl Smit, 1984).

Following the turn of the nineteenth century, imprisonment increasingly became *the* punishment, and within decades had become central to white control of blacks and coloureds (Bernault, 2003b; Badroodien, n.d.; Chisholm, 1986; Potts, 1984; van Zyl Smit, 1984).¹ Similar to what was occurring in other European colonies in Africa (see

¹ In South Africa, coloureds were people of mixed race ancestry (e.g., “intermixing” of early Dutch settlers with the indigenous Khoisan). This, however, is just one use of the term:

Bernault, 2003a), this control was a result of a two-fold process. First was a belief among whites that Africans needed white supervision, control, and guidance since they were seen

...as stupid and feckless, mildly dishonest but generally good-natured, a child dependent on whites for guidance and who, given it, is basically content with his lot provided he can be shielded from the influence of 'agitators' and the outside world... (Sparks, 1991, p. 215).

These white ideas about South Africa's "other" groups persisted far into the twentieth century. For example, coloureds were seen as a hazard to themselves and society since their families were "unstable" and "dangerous", they were socially and/or mentally defective, needed whites to teach them proper work ethics, and were predisposed to crime (Badroodien, n.d., pp. 7, 9). Blacks were seen in an even more negative light (Sparks, 1991).

Secondly, white control of others arose from white entrepreneurs' need for large amounts of cheap labor—provided by black, African inmates—for public works projects (roads, irrigation canals, dams, etc.) and industries like agriculture and gold and diamond mining. After slavery was banned in 1834 (Sparks, 1991, p. 77), prisoner labor became important to South Africa's economic development (Dissel & Kollapen, 2002). A

...for example in census figures or in the compilation of statistics in official publications, those groups who were not manifestly white or African were lumped with the Coloured category. Thus, groups such as the Malays, Griquas, Rehoboth Basters, Namas, and even Indians were sometimes treated as distinct groups and at other times included under the rubric of Coloured.⁴⁶ The Population Registration Act went to the ridiculous length of creating a category labeled 'Other Coloured' for those people who did not fit into any of the other six subcategories into which it divided those classified as Coloured.⁴⁷ (Adhikari, 2006, p. 14)

renowned scholar of the South African prison, Dirk van Zyl Smit, has said “...that, historically, the need for and the development of prison labour have been important forces in the evolution of the prison system” (1991, p. 548). “Pass laws” were pivotal here (Dissel & Kollapen, 2002; Human Rights Watch, 1994a).² As early as 1809 (Dissel & Kollapen, 2002), pass laws made criminals out of tens of thousands of blacks and coloureds guilty of nothing more than being in an area—for work, living, or transiting through—without written permission from a government official or employer. The “criminals” were then forced to work wherever cheap labor was required (e.g., farms, mines); this practice continued up to the late 1980s (see van Zyl Smit, 1998, p. 406).

Penological practices during the apartheid era. In 1948, the National Party became the ruling party and with it came the Afrikaner government’s dogged effort to implement and, with an iron fist, defend its policy of *apartheid* or total racial domination.³ Under apartheid, mixed race marriages were outlawed; separate (and rarely equal) education systems for coloureds, whites, and blacks were created; blacks were prohibited from owning most land, the results being that millions were forced to live in crowded, crime ridden townships beyond the cities and towns, and in small, semi-autonomous, and poverty stricken African “homelands” and “self-governing territories” (e.g., KwaNdebele, Bophuthatswana, KwaZulu, and the Transkei); and pass laws and

² Pass laws were one source; another was the Masters and Servants Act which made it a crime for a black to unilaterally terminate their contract with their employer (see Dissel & Kollapen, 2002; Sparks, 1991).

³ Historically, whites in South Africa were comprised of two primary groups: people of Dutch and British origins—the former are colloquially referred to as Afrikaners and the latter as English-speaking whites.

influx controls were enacted and strictly enforced (see Gordon, 2006; Hinds, 1986; Sparks, 1991; van Onselen, 1995).⁴

The apartheid government, like many authoritarian states, had at its disposal a large set of tools to suppress, even eliminate, its opponents. These included cease and desist, house arrest, banishment, and deportation orders; censorship of written and oral speech; civil suits (e.g., for slandering a government official) and criminal prosecution under the many security laws and emergency regulations in place (e.g., the Internal Security Act, prohibitions on the reporting of township violence during the 1980s, respectively); confiscation of books, papers, printing presses, et cetera (Merritt, 1994). And, as active resistance to the apartheid government grew, it increasingly employed more repressive control strategies. For instance, between 1984 and 1989, "...state violence ha[d] become increasingly widespread, systematic, covert and terrifying" (Cock, 1989, p. 21) with executions, assassinations, disappearances, legally sanctioned police killings of unarmed civilians, torture, bombings of opposition buildings, and detentions without trial not infrequently employed against opponents, whether real or perceived.

Finally, it is known that the government provided direct support (e.g., transportation, weapons, protection) and indirect support (e.g., conducting inadequate criminal investigations) to the Inkatha Freedom Party (IFP) during the IFP's violent confrontations with African National Congress (ANC) supporters (see e.g., Goodman, 1999; Human Rights Watch, 1993, 1995; Pauw, 1992; Sparks, 1998). Much of the political violence in Natal Province and KwaZulu was attributed to this "third force" activity (ibid.), even after the 1994 election (Human Rights Watch, 1995). Therefore,

⁴ Pass laws would be rescinded in the late 1980s.

“the very scope of South Africa’s apartheid laws sent a message that the assignments of the security police came with a license to kill. That license extended in practice if not in theory to regular police work...” (Gordon, 2006, p. 61).

Like other components of the security apparatus (e.g., intelligence services, judiciary, police, and military), prisons were “...an inherent part of the political apparatus that upheld the apartheid state...” (Dissel, 2003, p. 7) and were “...directed at maintaining white supremacy and regime stability” (Potts, 1984, p. 311). Racial segregation in South Africa and its penal system has a long history: seventeenth century Dutch officials practiced racial exclusion in the colony’s social and political life, so too the British during their reign during the eighteenth to twentieth centuries (Elphick, 1987; Welsh, 1971; as cited in Sparks, 1991, p. 32). But not until the 1880s/ 1890s did prison officials begin separating white inmates from those of other races (Bernault, 2003b; Chisholm, 1986; van Zyl Smit, 1984, 1991), although “...racial segregation was left as a matter of administrative policy in the [British controlled] Cape” (Dissel & Kollapen, 2002, Section 3). Within South Africa’s first year of sovereignty, the Prison and Reformatories Act of 1911 “...entrenched racial discrimination throughout the Union” (ibid.). Racial segregation was again statutorily reinforced nearly five decades later via the Prisons Act of 1959 (Section 23):

(1) In every prison....

(b) as far as possible, white and non-white prisoners shall be detained in separate parts thereof and in such manner as to prevent white and non-white prisoners from being within view of each other; and

(c) wherever practicable, non-white prisoners of different races shall be separated.

(2) Any prison or any portion thereof may be restricted to the detention, training or treatment therein of a specified race or class of prisoners.

Other things make the 1959 statute significant like professionalizing the then-Prisons Service and, facially at least, bringing prisons into line with international conventions on prisoners' treatment (Buntman, 2003; Dissel & Kollapen, 2002; van Zyl Smit, 1991).⁵ It was also one of many statutes enacted and used during apartheid's height to suppress opposition to Afrikaner rule (see Dissel & Kollapen, 2002; Merritt, 1994; Mihalik, 1989). Aside from imprisoning as much of the opposition as possible (Bernault, 2003b; de Vos, 2003; Dissel, 2003; Potts, 1984; United Nations, 1973; van Zyl Smit, 1984, 1991), the government strictly controlled information about prisoners and the prisons they were in (e.g., restricting drawings/photographs of prisons and prisoners, restricting prisoner-outsider communications) (Prisons Act of 1959, §§44(b) & 44(e); van Zyl Smit, 1991). For inmates that were sentenced, contact with most of the outside world was seen by prison officials as a privilege, not a right (van Zyl Smit, 1991). One condition of this privilege was "...not refer[ing] to the conditions of their imprisonment in letters to or during visits by relatives" (United Nations, 1973, pp. 119-120).

Severe sanctions awaited those writing or speaking about prison-related matters (Dissel & Kollapen, 2002; Merritt, 1994; Potts, 1984). A fine or one year's imprisonment faced anyone who

⁵ The Prisons Service became the Department of Correctional Services in 1991 (van Zyl Smit, 1998); and the 1955 United Nations Standard Minimum Rules for the Treatment of Prisoners was the framework for the Prisons Act of 1959 (Van Zyl Smit, 1992, as cited in van Zyl Smit, 1998, p. 404) .

publishes any false information concerning the behaviour or experience in prison of any prisoner or ex-prisoner or concerning the administration of any prison, knowing the same to be false, or without taking reasonable steps to verify such information (the onus of proving that reasonable steps were taken to verify such information *being upon the accused*) [italics added]... (Prisons Act of 1959, §44(f)).

Scholars writing during or about this period have commented on how this and other security-type legislation silenced many critics—especially domestic critics—of apartheid and the security apparatus in general, and prisons in particular (see Merritt, 1994; Mihalik, 1989; Potts, 1984; van Zyl Smit, 1991, 1998). Human Rights Watch, for example, suggested this by saying that one of the “most striking features of South African prisons were, until recently...the strict secrecy surrounding prison matters” and with “an attitude not unlike that of various communist governments, all matters related to prisons were deemed extremely sensitive. Prison-related matters were considered a matter of national security” (1994a, pp. 1–2).

Penal reform during the pre-apartheid and apartheid eras. There would be a gap in this discussion if penal reformers’ work before the post-apartheid era (i.e., before 1994), especially efforts occurring before the early 1990s, went unacknowledged. Van Zyl Smit (1998) writes that “the history of the South African prison system in the last 20 years is a history of both change and continuity” (p. 401). Equally accurate is that “the two century history of the South African prison system is a history of both change and continuity.”

Ironically, the colonial powers viewed their punishments as superior, as more modern and more civilized, compared to some of the punishments used by tribal authorities (see Bernault, 2003b, pp. 11–16). Starting with the British in the late eighteenth and early nineteenth centuries, Van Zyl Smit (1984) sketches some pre-apartheid attempts at reform. The British at this time wanted to make the punishment proportionate to the offending act, not to have it be “a cruel and public spectacle” (p. 148) as happened under the Dutch. Starting in the 1840s, reformers started buying into the penological philosophy of rehabilitation via imprisonment, work, education, religion, and the privilege system, among others such as demanding strict statutory controls on the use of corporal punishment (pp. 151–154). Van Zyl Smit goes on saying that

Although conditions of detention remained harsh, their purpose shifted. The state ceased to inflict pain as a direct form of social control and instead attempted to mould, through the ‘reformative’ influence of the totally controlled environment of the prison, the attitudes and moral of convicts and, through them, of society as a whole. (pp. 152–153)

There is interestingly little data available about efforts to improve prison conditions from the mid nineteenth to mid twentieth centuries. Writers instead emphasize the reasons for the increasing popularity of incarcerating non-white adults and juveniles (see e.g., Badroodien, n.d.; Chisholm, 1986; Dissel & Kollapen, 2002, Sec. 3; van Zyl Smit, 1984). It is unclear if this is a complete portrait of reality at that time—that is, reformers really had lost interest in prisoners’ plight, or as suggested by van Zyl Smit (1992, as cited in Dissel & Kollapen, 2002), they had become ineffective in the face of a

state increasingly fixated on controlling South Africa's "other" groups right before apartheid's implementation—or just one aspect of the reality.

Penal reforms during apartheid included no longer making prisoners work in diamond and gold mines (1950s) and, by the late 1980s, no longer confining prisoners at farm outstations—prisons built by farmers, yet owned and operated by the Prisons Service, with the explicit purpose of providing farmers with cheap labor (see van Zyl Smit, 1991, p. 548). As already mentioned, the Prisons Act of 1959 was meant to make prison conditions compatible with prisoner-related international conventions/instruments, though its efficacy here has been seriously challenged. A harbinger of the future was what began to occur during the 1980s: "...the official [Prisons Service] policy is not to flaunt discrimination.... Official policy could be described as 'separate but equal'" (ibid., p. 557). By the early 1990s, van Zyl Smit could describe penal policy as "cautiously reformist" in that there had been "...the repeal of some of the most anachronistic, racially discriminatory regulations, improved management structures, and a qualified commitment to open administration..." via better relations with the press and public (1991, p. 558).⁶ Prison officials also lost their legal authority to make inmates perform manual labor like crushing stones (van Zyl, 1996, as cited in van Zyl Smit, 1998) or punish inmates using reduced diets, solitary confinement, or corporal punishment (Dissel & Ellis, 2002).

Up to this point, four things can be said about South African penology: 1) within the historical context of penology, using prisons in South Africa—or anywhere for that matter—for the express purpose of punishment is a modern practice; 2) Dutch and British

⁶ For more information about relations between the press and the Prisons Service, see van Zyl Smit (1998, pp. 404–406).

colonial officials, Afrikaners, and English-speaking whites considered the country's other racial groups as inferior and ripe for exploitation, and treated them accordingly—imprisoning them, for example, then making them work for white businessmen and white owned corporations; 3) the prison was a state apparatus used to strictly enforce racial segregation and neutralize domestic opponents during apartheid; and 4) pre-apartheid and apartheid era reformers sought to improve prisoners' lives, though not always successfully.

Challenges to South Africa and Its Penal System in the Post-Apartheid Era

South Africa in the post-apartheid era. Before outlining challenges facing the Department of Correctional Services (DCS) in the post-apartheid era, one needs to grasp some challenges facing this still-developing democracy as a whole. The reason for this is that many macro- or structural-level difficulties confronting South Africa in one way or another impact DCS policies and practices today. As aptly put by Gordon (2006, p. 15), there is an "...impossibility of considering crime policy formation and implementation in isolation, divorced from a country's history and the political, social, and economic forces that are shaping the national future."

Democracies with a not too distant past of authoritarianism and large scale violent and/or non-violent resistance confront obstacles like the inability to properly identify past and current violence as political or ordinary criminality (Cohen, 1996, as cited in Simpson, 2004); weak informal social control (or informal control run amok), and high unemployment and economic disparity. Their criminal justice systems are often overwhelmed with having to adjust to a new social and political order while maintaining public order in the face of rising vigilantism, a subculture of violence, public frustration

and anger when promises made before and after the shift remain unfulfilled for too long, and law enforcement is seen as unprofessional, incompetent, or corrupt (Gordon, 2006). South Africa confronts all of these today.

The biggest challenge facing the country is arguably undoing "...the everyday systemic damage done to the social fabric..." (Simpson, 2004, p. 17) by the government during apartheid. "Far from preventing crime, as some of its leading architects had hoped, apartheid had succeeded only in creating or exacerbating the social conditions in which the roots of crime could take hold" (Dixon, 2004, p. 165). This has serious implications for the efficacy of formal and informal social control mechanisms, and partly explains the recent growth of street gangs and organized crime, high levels of gun possession, vigilantism, and peoples' sense of impunity (see Altbeker, 2004; Human Rights Watch, 1998a; Smythe & Parenzee, 2004; Standing, 2004). Complicating the healing process was the continued political and non-political violence into the mid and late 1990s (Human Rights Watch, 1998a; Simpson, 2004), especially in places like KwaZulu-Natal province (Human Rights Watch, 1995, 1998a).

One prescription for the nation was the highly publicized Truth and Reconciliation Commission (TRC). "The creation of the TRC and its limited amnesty process was a product of compromise between the ANC's call for investigation of past abuses and prosecutions where appropriate and the National Party's demand for general amnesty." (Human Rights Watch, 1998b, *Dealing with the Past*) The TRC's enabling legislation (Promotion of National Unity and Reconciliation Act, 1995, Ch. 2) gave it four objectives: 1) "establishing as complete a picture as possible of the causes, nature and extent of the gross violations of human rights which were committed..." (§3(1)(a));

2) to grant amnesty to those that committed human rights violations for political reasons and who provided full disclosure of their actions (§3(1)(b)); 3) determining what happened to victims (living and deceased), "...restoring the human and civil dignity of such victims..." and assessing appropriate reparations (§3(1)(c)); 4) and "compiling a report providing as comprehensive an account as possible of the activities and findings of the Commission...and which contains recommendations of measures to prevent the future violations of human rights" (§3(1)(d)).

Though many applauded its work of uncovering human rights abuses like death squad activities and repairing the damage done to perpetrator and victim alike, the TRC's credibility and effectiveness have been questioned. Bell's (2003) *Unfinished Business: South Africa, Apartheid and Truth*, for example, documents the TRC's employment of a senior security policeman from the apartheid era Bureau of State Security (BOSS) as a senior investigator; bickering along racial lines between TRC commissioners and investigators; and questionable investigative procedures by TRC investigators—including police seconded to the TRC (pp. 317–324). Human rights groups have also criticized "...the TRC's decision to excise findings from their draft report implicating the last president of the apartheid era, F. W. De Klerk" (Human Rights Watch, 1998b). Even the TRC itself pointed out the inadequacy of its hearings into apartheid era prisons: the Commission's focus was on sentenced political prisoners, not detainees or common criminals (Truth and Reconciliation Commission, 1998, pp. 199–221). Perhaps a harbinger of what was to come, DCS did not give testimony at the hearing, despite TRC invitations to do so (p. 204).

Distinguishing political violence from ordinary criminal violence, as the TRC was supposed to do with a focus on the former, can be difficult, if not impossible (Foster, Haupt, & de Beer, 2005; Simpson, 2004). South Africa's history with social movements suggests this with these collective activities not infrequently having political and criminal elements, depending on what point in time one is looking (Simpson, pp. 17–18). Simpson also criticizes the TRC for its emphasis on individual accountability and not “the broader historical process of truth recovery that engaged more substantially with the everyday system damage done to the social fabric of South Africa and the entrenched collective identities fostered by it” (p. 17).

Even the TRC's effectiveness at holding people accountable has been questioned. Highly critical of how the TRC executed its mandate, Bell (2003) argues that

The TRC process went some of the way towards uncovering the truth, but it balked at exposing the horrifying extent of the apartheid system and at bringing to book the most senior perpetrators of the human rights abuses it promoted: the politicians and generals. (p. 345)

Institutional transformation has been another challenge facing the new government as noted by many (Dixon, 2004; Dissel & Ellis, 2002; Dissel & Kollapen, 2002; Gordon, 2006; Human Rights Watch, 1994b; Luyt, 2001; Smythe & Parenzee, 2004; Steinberg, 2001; van Der Spuy, 2004; van Zyl Smit, 1998, 2004). The post-1994 state had to first transform the police, judiciary, prisons, military, intelligence services, et cetera in South Africa proper into institutions that protect the whole polity, not just a few. Gordon calls this security force “repoliticization” or “...the replacement of the old

politics of racial separation and repression with a new politics of inclusion and respect for human rights” (2006, p. 143).

Repoliticization confronts numerous difficulties: inadequate financial and human resources; large numbers of personnel that are illiterate, poorly trained, and demoralized; public and political panic about a real or perceived crime wave with demands that the state be “tough on crime” and restricting implementation of viable structural changes like bail reform; institutional anxiety about the future; past and (suspected by some) current ties between state officials and organized crime; and continued criminal activity among security force personnel (see Dixon, 2004; Human Rights Watch, 1998a; Schärf, Saban, & Hauck, 2001; Smythe & Parenzee, 2004; Standing, 2004; Steinberg, 2001; van Zyl Smit, 1998, 2004; van Der Spuy, 2004).

Also, what was to be done about lower, middle, and senior civil servants and members of the military from the former regime, especially those whose “...culture, their techniques, skills and methods had much in common with those of a gang of ordinary thugs” (Pauw, 1992, p. 2) and had “...believed themselves to be involved in a kind of ‘Jihad’ – a holy war against the total onslaught”?⁷ These civil servants’ retention resulted from the ANC’s, and opposition groups like it, recognition that it would be impossible to run the government without them after the transition, and that this and other “sunset clauses” would give them an upper hand in their negotiations with the National Party (Sparks, 1998, pp. 198, 257–258). It is no secret that an unknown number of policemen, intelligence agents, and soldiers involved in atrocities and death squads were neither

⁷ The apartheid government saw threats to its existence as coming from two directions: communism and the ANC; that is, it was facing a *total onslaught* (Goodman, 1999, p. 42).

fired, criminally prosecuted, nor convicted and sent to prison (Bell, 2003; Foster, Haupt, & de Beer, 2005; Human Rights Watch, 1995, 1998a; Pauw, 1992; Sparks, 1998).⁸ In the period leading up to the change in government, many worried that these same civil servants and military personnel would try to overthrow or destabilize the new government (British Broadcasting Corporation, 2006; Laufer, 2001; Sparks, 1998); a result was that four years into the transition,

...a culture of impunity continues to permeate many government structures as a result of the policies of the previous regime and the uncertainties of the transition to a new government. There are government officials at all levels from cabinet to ordinary civil servant who appear to regard themselves as above the law. (Human Rights Watch, 1998a, Facing to the Future)

Further complicating matters was that repoliticization was happening at the same time that former members of the intelligence units of the ANC and other opposition groups were being absorbed into the new intelligence services (Human Rights Watch, 1998a); parallel bodies in Transkei, Bophuthatswana, Venda, Ciskei (known as the TBVC states) and other homelands were also being incorporated into South Africa's new judiciary, police, prison system, and defense forces. Considering the corruption, brutality, and incompetence of these homeland forces, with the KwaZulu forces perhaps the worst of them, Human Rights Watch (1991a, 1991b, 1993, 1994a, 1994b, 1995) has been among the many voices expressing grave concern about the difficulties this poses for the new government.

⁸ Human rights abuses were not just committed by members of government forces in South Africa proper and the homelands: opposition groups such as the ANC, the Anzian Peoples Liberation Organization, and Inkatha Freedom Party are known to have committed similar abuses (see Human Rights Watch, 1998a).

Post-apartheid penology. Debatable is the ease in which penal reform will come to contemporary South Africa. On the one hand, “it appears that post-conflict and transitional societies may be particularly open to innovative penal thinking and permit criminologists to become actively involved in reforming the criminal justice process in ways that would not be possible elsewhere” (Stout & Wood, 2004, p. 123). Others disagree; “the task of reforming the administration of justice is not only particularly pressing; *it is also particularly difficult* [italics added]” (Gordon, 2006, p. 6). This is not surprising considering that “in short, although the system of apartheid was formally dismantled in the 1990s, many of its mechanisms of governance have persisted in the new, democratic dispensation” (Dissel & Ellis, 2002, Intro.).

Prison systems in countries undergoing massive change in their form of governance experience very real problems with rising prison populations and overcrowding, and too few human and material resources (Tapscott, 2005, p. 5). South Africa’s DCS faces each of these plus unique challenges like absorption of the former homeland prisons, officials and inmates. Although there is not a lot of information about this process of incorporation (see Dissel & Ellis, 2002; Dissel & Kollapen, 2002; Giffard, 1997; Human Rights Watch, 1994a), there are indications that in at least one province (the Eastern Cape), “notwithstanding the fact that the members now belong to the same province...they still subscribe to the old apartheid divisions and decisions are scrutinised [sic] according to whether they favour one or the other of these old geographical regions” (Commission of Inquiry into Alleged Incidents of Corruption, Maladministration, Violence or Intimidation into the Department of Correctional Services, 2006a, p. 33).

Resistance to change is another challenge, one seen in many other prison systems. Rutherford ruefully observes that when reformers take one step forward, prison systems oftentimes go two steps back (1990, pp. 2–3). For instance, it is seemingly impossible to instill a new, human rights-oriented mindset amongst prison officials; De Vos (2003) describes “...the often breathtaking absence of respect for the law and legal processes...” (p. 21), and regulations and procedures inside DCS (pp. 14–15).

In the South African context, multiple factors probably contribute to this resistance. One may be the mere fact that all but two prisons are operated by the public sector, and the public sector is more resistant to negative publicity than the private sector (Grabosky & Braithwaite, 1986, p. 144).⁹ Or, resistance may be encountered due to staff that are too few in number, poorly trained, and mismanaged by managers at the prison, area, provincial and national levels (see Tapscott, 2005). For instance, evidence exists that soon after the 1994 transition, a select group of top DCS officials—including the then-Commissioner of DCS—secretly worked to place people of its choosing into mid and top management positions (see Commission of Inquiry into Alleged Incidents of Corruption, Maladministration, Violence or Intimidation into the Department of Correctional Services, 2006a, pp. 82–92). Known as “Core”, this shadowy group is believed to still be operating.¹⁰

Or it may be residue from the penal system’s not too distant *raison d’etre*: to uphold apartheid. Van Zyl Smit (1998, p. 404) refers to the Prisons Service’s “petty

⁹ This is because unlike the public sector, negative publicity is likely to hurt the private sector’s profits.

¹⁰ Describing the terror this group invoked in DCS members, the Jali Commission said that “several people were approached for information. The majority of members spoke on condition that their identity is not revealed for fear that they might be killed” (p. 82).

apartheid”—like the larger society, the Prisons Service hierarchy was structured along racial lines with whites rarely, if ever, supervised by Africans, coloureds, or Asians; he goes on to say that a long time would go by before non-whites were occupying mid- and top-level managerial positions. But desegregation efforts created a different set of disturbing problems in post-apartheid prisons:

As a result, an impatient work force, which equated the transformation of the Department with affirmative action and ignored the other forms of transformation, embarked on a number of illegal programmes which were meant to render the Department ungovernable and also to enable them to get senior positions within the Department. (Commission of Inquiry into Alleged Incidents of Corruption, Maladministration, Violence or Intimidation into the Department of Correctional Services, 2006b, pp. 6–7; see also 2006a, pp. 51–53)

Resistance to change may be a result of the 1996 demilitarization of DCS whereby the department was no longer organized along military lines; many suspect that this has led to widespread low morale and disciplinary problems among guards (not fully complying with departmental directives, engaging in corruption, etc.) (de Vos, 2003, pp. 34–36; Dissel & Ellis, 2002; Dissel & Kollapen, 2002; Sloth-Nielsen, 2003) and prisoners. The South African experience in this regard is not surprising considering that demilitarization of corrections’ systems in the former Soviet Bloc countries of Eastern and Central Europe was “...an extremely complex and emotive topic that seems not to have been addressed successfully...” (Barclay, 2003, p. 2).

Still, the breakdown of official discipline within South African prisons is of great worry to some observers. In many management areas, for instance, “there is a general

breakdown of organisational standards and norms” and “the Department faces the prospect of anarchy in its work place” (Commission of Inquiry into Alleged Incidents of Corruption, Maladministration, Violence or Intimidation into the Department of Correctional Services, 2006a, pp. 18, 19). Some manifestations of this are members publicly making death threats against the Minister of Correctional Services, assaulting a provincial commissioner and other high officials, and taking control of entire prisons without the laying of criminal or departmental charges or termination of their employment; warders’ active or complicit involvement in gang activities; warders’ sale of prisoners for others’ sexual gratification and helping inmates escape; warders’ view of DCS policy as little more than words on paper; high staff absenteeism and truancy; lack of respect among correctional officials towards one another, their subordinates, or superiors; and officials’ failure to comply with High Court and Supreme Court of Appeals Court orders (see Chapters 1, 2, 4, 6 and 8). Lastly, “...this culture of lawlessness...has led to members of the Judiciary in some of the Divisions of the High Court declining to do prison inspections because Judges fear for their safety” (p. 21).

Equally plausible is what has been reported about U.S. correctional facilities, findings applicable beyond the United States (see Rutherford, 1990; Tapscott, 2005): “...guards are the group within the prison most directly invested in the norms underlying the status quo. Order—the absence of disruption, the smooth, predictable, controlled operation of the prison—is central to the guards’ normative agenda” (Sturm, 1990, p. 816). Reform “...disrupts the routines established by guards to maintain order. It introduces uncertainty and ambiguity to the lives of both inmates and guards—factors which guards associate with disruption and disorder” (p. 819). Reformers operating

within the system rarely have full access to information, are rarely technically savvy or powerful enough to effect change, while reformers external to the system commonly face outright hostility from prison staff (pp. 819, 827).

The Texas Department of Corrections (TDC) is an excellent case study here. In its landmark decision against the corrections' department, the U.S. District Court in *Ruiz v. Estelle* (1980) found "...it is impossible for a written opinion to convey the pernicious conditions and the pain and degradation which ordinary inmates suffer within TDC prison walls..." (p. 1391). The TDC was held to be in violation of the U.S. Constitution's Eighth and Fourteenth Amendments because of severe overcrowding, its use of prisoners to keep control (i.e., the building tender system) and frequent use of excessive force by guards, and inadequate medical and mental health care (pp. 1286–1331). Nearly 20 years later, the same judge reported that even though conditions had improved since *Ruiz v. Estelle*, prisoners' constitutional rights were still being violated (*Ruiz v. Johnson*, 1999, p. 861).^{11,12}

Not only will reform efforts in South Africa encounter resistance coming from within, then, there will be problems arising from political and public antipathy towards prisoners. The South African Supreme Court of Appeal in *Minister of Correctional Services v. Kwakwa and Another* (2002) said as much by saying that "at a time in our

¹¹ Though the prison system's medical and psychiatric care were within constitutional limits, the court said that "Texas' administrative segregation units are virtual incubators of psychoses..." (*Ruiz v. Johnson*, 1999, p. 907) and the department of corrections' "... failed to take reasonable measures to protect vulnerable inmates from other, predatory prisoners and overzealous, physically aggressive state employees" (p. 861).

¹² For a comprehensive discussion about the events preceding and proceeding *Ruiz v. Estelle* (1980), see Martin and Ekland-Olson's (1987) *Texas Prisons: The Walls Came Tumbling Down*.

history when crime is rampant and prisons overflowing, the public might feel particularly unsympathetic towards prisoners and even against those who are yet to be tried on criminal charges...” (p. 26).

Widespread prison rioting in 1994 and continuing discontent into the following year over prisoner amnesty posed another set of problems for DCS and the new government (Pete, 1998, pp. 62–66). The basic question revolved around who would get general amnesty: just political prisoners or all prisoners? The government’s first answer, political prisoners only, led to ordinary inmates revolting. This upheaval was so violent and widespread that Nelson Mandela, the first genuine, democratically elected State President, ordered a judicial inquiry into the matter so as to identify the underlying cause and derive some solutions. In the end, an assortment of politically dicey strategies was used to calm things such as deducting six months from most prison sentences, granting pardons to non-violent, elderly prisoners, et cetera.

Overcrowding and gangs are two seemingly intractable problems. Prison gangs, however, are nothing new in South Africa, going as far back as the late nineteenth century (Dissel & Ellis, 2002; Dissel & Kollapen, 2002; Human Rights Watch, 1994a; van Onselen, 1982, as cited in van Zyl Smit, 1984). Prison gangs attract a lot of attention because of their ties with gangs on the outside, and their involvement in illicit activities inside prison like sexual and physical violence, and the smuggling of contraband. A judicial inquiry into South African prisons found that

...gangs are a very powerful force in the prisons that were investigated.

Furthermore, it is apparent that corruption will never be eradicated in these institutions unless a better way is found to break the power gangs exert inside

prisons and to control them.¹ It also became clear during the hearings that these gangs are responsible for continuous instability in the prisons. Not only do they make the lives of many inmates a living hell but they also play a significant part in the corruptions of some Correctional Services officers. (Commission of Inquiry into Alleged Incidents of Corruption, Maladministration, Violence or Intimidation into the Department of Correctional Services, 2006a, p. 141)

Prison overcrowding makes gangs especially problematic (Human Rights Watch, 1994a) and overall the country's prisons are overcrowded.¹³ Within the past few years, the prison system was operating at 170% capacity (see Judicial Inspectorate of Prisons, 2003, p. 24).^{14,15} Partly via additional prison beds coming on line, a one time special remission whereby about 30,000 sentenced prisoners were released, and fewer awaiting trial detainees in prisons, DCS was operating at 137% capacity by year end 2005 (Judicial Inspectorate of Prisons, 2006, pp. 4, 17). Overcrowding is also problematic as it makes it more difficult to improve prison conditions in general. Rutherford says that

Any realistic attempt to improve prison conditions must take full account of two pivotal aspects of the prison system, namely population and capacity. Indeed, the inter-connections of this penal trinity of *population, capacity and conditions* [italics added] form the heart of the reform quagmire. (1990, p. 4)

¹³ For an in-depth discussion about South Africa's prison gangs, see Steinberg's (2004) *The Number: One man's search for identity in the Cape underworld and prison gangs*.

¹⁴ In early 2003, South Africa was incarcerating just over 400 of every 100,000 citizens (Judicial Inspectorate of Prisons, 2003, p. 26).

¹⁵ Around this time, ten prisons were operating at anywhere from 285% to over 385% capacity (Judicial Inspectorate of Prisons, 2004, p. 21)!

Ascertaining prison overcrowding's historical context is difficult. First, many homelands had their own security apparatus; when separate penal systems existed, their censuses were not included in those for South Africa proper (see Human Rights Watch, 1994a; van Zyl Smit, 1991). Good data is also hard to come by because of security laws in place during that time regarding the security forces and prisons. Some information is available though: in the mid 1980s, prisons overall in South Africa proper were operating at 132% capacity (Department of Justice, 1988, as cited in van Zyl Smit, 1991, p. 540) with one Cape Town area prison housing nearly twice its capacity (Hansard House of Assembly Debates, Questions and Replies, 1989, as cited in *ibid.*).

Over two or more decades, then, the prison population has exceeded capacity. Apartheid prisons held common criminals and the already mentioned violators of segregationist laws like pass laws and government critics (i.e., political prisoners). During a time of massive social upheaval and government repression in the 1980s, “the most striking aspect of the law of incarceration in South Africa [was] the broad authority conferred upon executive officials to order [the] detention of individuals for significant periods of time without judicial action...” and “hold unconvicted prisoners incommunicado” (Potts, 1984, pp. 302, 315).¹⁶ This was especially so during South Africa's many states of emergency; during one 1985 emergency, about 30,000 (est.) people were detained in prisons and police cells (South, 1989, as cited in van Zyl Smit, 1991, p. 539).

With apartheid's end, ordinary citizens, the press, business leaders, lawmakers, police, academics, et cetera began clamoring about the country's seemingly exponential

¹⁶ See Potts (1984, pp. 302–310) for these security-related statutes (e.g., Internal Security Act) and their effects on police and courts.

rise in violent and property crime. Surveys conducted in the first six years of democracy showed a very high proportion of the public fearing for their safety (Institute for Security Studies, 2001a, Figure 1); around the same time, official crime data indicated a spurt in the number of violent and property crimes (Institute for Security Studies, 2001b, Figure 1). Interestingly, when respondents in one crime victimization survey were asked to rate their likelihood of experiencing certain events in the next year, just one of every five said that it was *unlikely* that they would be sexually assaulted (Møller, 2004, Table 2). Such “confidence”, however, dropped when asked about the chance of being robbed, having their house broken into or car stolen (seven, fifteen, and eighteen percent, respectively, saying this was unlikely). Finally, although official crime data suggest that the number of serious crimes has been declining since 2002/2003, it still exceeds those recorded by police in the mid-1990s (Altbeker, 2005, Figure 1).

In the end, this fear led to growing public demand that government control crime and control it quickly. Creation of two super-max prisons was one response by the government (Dissel & Ellis, 2002); bail reform and new sentencing requirements were some others. In 1997 the parliament passed the Criminal Procedure Second Amendment Act and the Criminal Law Amendment Act. The first statute makes it harder for defendants to receive bail (Criminal Procedure Second Amendment Act, §§4(e) & 4(f)) and the latter requires judges to impose long, mandatory prison terms for many offenses (see Criminal Law Amendment Act, §51(2)) unless the court finds substantial and compelling reasons to deviate from the prescribed sentence. One year later, the Correctional Services Act, 1998, required many of those incarcerated under the Criminal Law Amendment Act, 1997, to serve a minimum of 80% of their sentence before their

parole (Correctional Services Act, 1998, §73(6b)(v)). The statutes' detrimental effect on the prison population—a growing percentage of prisoners serving minimum sentences of 5 to 25 years, more awaiting trial detainees—led Judge Johannes Fagan, until March 2006 the Inspecting Judge of Prisons, to demand publicly and repeatedly that these provisions be repealed or modified (see Fagan, 2005).

How effective Fagan's demands will be is an open question; Dissel and Ellis (2002) say that prison overcrowding

...is above all a reflection of a more stringent public demand for punishment that stands in clear contradiction to the official policy of rehabilitating offenders. It is here that the condition of South Africa's prisons most clearly demonstrates a difference between the official policy and widespread public expectations, analogous to the gulf between the provisions of one of the world's most liberal constitutions and some of the realities of South African society. (Prison conditions)

The public is not alone in this sentiment; in this writer's conversations with staff from the Judicial Inspectorate of Prisons, judges and magistrates need to share the blame for their "tough on crime" actions on the bench, failing to see or appreciate the short and long-term effects of their sentencing practices on prison overcrowding.

Why are the public, courts, and lawmakers willing to put so many people through this experience? There are multiple possibilities as to why this is, three of which are mentioned here: one is that people may be blinded by the simple rationale of "Do the crime, do the time", another is that members of the community "...may condone or even encourage aggressive police action against 'known' offenders while deploring these same

police practices against ‘innocent’ members of the community” (Bass, 2000, p. 159). Or, vice-versa, it could be that few people really know about what happens inside these facilities—an ignorance shared by ordinary citizens, prosecutors, jurists, lawmakers, et cetera. While each has its supporters, it is the third possibility that is explored in the next section.

Transparency’s Importance to a Democratic Society and Its Penal System and the Mechanisms that Enable It—An Overview

The Importance of Transparency to a Democratic Society

Observers have noted the positive association between how democratic a country is and the government’s willingness to expose its activities to the light of day—that is, make itself transparent. This relationship was acknowledged as long ago as the mid eighteenth century by James Madison (Florini, 2004). Contemporary observers continue to comment on transparency’s centrality to citizen participation in the decisions their government makes (e.g., Florini, 2004; Frost, 2003). Beyond empowering citizens in their relationship with government, transparency can increase government efficiency, and make it less abusive when exercising its power and less corrupt (Florini, 2004; Frost, 2003; Hill, 2003; Transparency International, 2001). (There are detractors though. Frost (2003) and Florini (2004) present some criticisms of transparency in government like citizen participation making government less efficient.) Transparency also increases government accountability to citizens, which in itself increases the public’s trust and perception of their government’s legitimacy (Florini, 2004; Frost, 2003; Hill, 2000; Lewis, 1991, 2000; Maguire, 1991; Transparency International, 2001). Openness in

government is generally viewed, then, as being central to a government that is well functioning and popularly supported.

Transparency-Enabling Mechanisms in Democratic Society

Table 1

Categories of Transparency-Inducing Mechanisms in Government

Category	Examples in the South African context
1. Communications technology	The World Wide Web.
2. Constitutional and statutory	The Constitution of 1996; Promotion of Access to Information Act of 2000.
3. Oversight by government	Quasi-governmental bodies; the executive, judicial, and legislative branches; “Chapter Nine” institutions.
4. Non-governmental organizations	Transparency International; human rights groups; grass-roots organizations.
5. Social institutions	Private industry, the press, religious groups, academia.

Ensuring openness in government is important because of everything that depends on it. By definition, transparency-enabling mechanisms publicly expose government policies and their implementation. With exposure, there is an increased probability that the public will demand change should its interests be jeopardized. For example, if the public knew how ineffective proactive policing was at preventing crime, as asserted by police researchers like Bayley (1994), it might demand a different policing strategy. There are at least five transparency-enabling mechanisms in countries having democratic

governance (see Table 1). To be truly effective at bringing about transparency in and accountability of government, these mechanisms work best in conjunction with one another (Dissel, 2003; Stone & Ward, 2000; Transparency International, 2001).

Communications technology and legislation. The first mechanism is advances in communications technology that allow for easier public access to government-produced information (Florini, 2004; Transparency International, 2001). Many of the South African government sources used in this dissertation, for example, were accessed via the World Wide Web. The second mechanism is statutory, as in laws that grant greater public access to many government documents. As a result of the constitutional mandate that “everyone has the right to...any information held by the state,” (Constitution of the Republic of South Africa, 1996, Ch. 2, §32(1a)) South Africa enacted the Promotion of Access to Information Act of 2000. This legislation is like the Freedom of Information Act in the United States; but unlike the U.S., where openness in government is seen as a requirement for government efficiency (Florini, 2004; Frost, 2003), the underlying rationale for South Africa’s law is for open government to “actively promote a society in which the people...have effective access to information to enable them to more fully exercise and protect all their rights” (Promotion of Access to Information Act of 2000, p. 2). Though the underlying motivations differed, both the American and South African laws were a result of the very serious abuses of power during past administrations like Watergate (Frost, 2003) and apartheid (Promotion of Access to Information Act, 2000), respectively.

Oversight by government. Oversight by government itself is a third way of promoting transparency in South Africa and democracies elsewhere. This takes place via

(a) quasi-governmental bodies; (b) the executive, legislative, and judicial branches of government (including government commissions and agencies); and peculiar to South Africa, (c) “Chapter Nine” Institutions. Chapter Nine Institutions arose from Chapter Nine of the 1996 Constitution which established six institutions that “...are independent, and subject only to the Constitution and the law...” (Constitution of the Republic of South Africa, 1996, §181(2)) and accountable to Parliament through the National Assembly (§181(5)). These are the Public Protector; the South African Human Rights Commission; the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities; the Commission for Gender Equality; the Electoral Commission; and the Auditor-General. Each has the power and constitutional responsibility to monitor actions taken by the government; some like the Public Protector have the power to take corrective action when necessary (see §§182–190).

Civilian Complaints Review Boards (CCRBs)/Complaints Review Boards are examples of quasi-governmental bodies that provide government oversight in the United States, Canada, the United Kingdom and elsewhere (Beattie & Weitzer, 2000; Brereton, 2000; Lewis, 2000; Maguire, 1991; Sammonds, 2001). Often made up of civilians or a mix of police and civilians, CCRBs supposedly ensure that police do not abuse their authority when dealing with citizens, and when police do abuse their authority, they are held accountable. Community Police Forums at the local level and Community Police Boards at the area and provincial levels are theoretically comparable examples of quasi-governmental oversight of the police in South Africa. “Their initial role was to build better relations between the police and black communities, by bringing them into a structured forum” (Mistry & Kiplin, 2004, p. 3) partly by “improving transparency in the

[South African Police] Service and accountability of the Service to the community” (South African Police Services Act of 1995, §18(1)(e)). Quite rapidly, however—within a matter of years—these bodies came to be seen as little more than intelligence gathering mechanisms for the police and devices by which the police networked with particular community niches (e.g., business groups) (see Gordon, 2006, pp. 218–226).

Government-created commissions or agencies include human rights commissions (Dissel, 2003; Jagwanth, 2004), inquiries by presidential commissions and the judiciary, truth and reconciliation commissions (Sammonds, 2001), inspectorates (Boyne, Day, & Walker, 2002; Jagwanth, 2004), ad-hoc investigatory commissions (Prenzler, 2000), inspectors general, and bodies that enable citizens to file complaints against members of government (Sammonds, 2001). South Africa already has experience with some of these such as the already mentioned Truth and Reconciliation Commission. Another is the Commission of Inquiry Regarding the Prevention of Public Violence and Intimidation (the Goldstone Commission) during the early-1990s (Goodman, 1999, p. 79). Headed by Justice Richard Goldstone, the Goldstone Commission investigated the increasingly widespread violence that took place in South Africa during the late-80s and early-90s.

An example of a government-operated complaints body in the South African context is the Independent Complaints Directorate (ICD). Though a function of government, the ICD is like the quasi-governmental CCRBs in the U.S. and elsewhere in that the ICD provides ordinary South Africans with an avenue for filing grievances against police. Created because of the troubling “...evidence of high police brutality, including unjustified killings and the use of torture” (Bruce, 2003, p. 25), the ICD was designed to provide oversight that is independent of the national police (the South

African Police Service/SAPS) (South African Police Service Act, 1995, §50(2)). One of its legislative mandates is investigating police misconduct, including ordinary criminal activity, police corruption, and excessive or deadly force (see South African Police Service Act, 1995, §53(2); Independent Complaints Directorate, 2003, p. 4).¹⁷ There is some concern though that the ICD is not as effective as many would like it to be because of too few resources and too little authority, questionable independence of the ICD from and poor coordination with the civilian leadership of the police at the provincial level (Mistry & Kiplin, 2004, pp. 5, 10–11). Finally, a South African example of a human rights commission and inspectorate is provided later in this report.

Each branch of government ideally provides a system of checks and balances meant to prevent another branch from abrogating its constitutional responsibilities. In the United States, for example, Congress and the federal courts theoretically constrain the executive branch (i.e., the President) from assuming too much power and control. This is also theoretically true of South Africa. Through the National Assembly, for example, Parliament has a constitutional mandate to oversee actions taken by the executive—the President and the Cabinet (Constitution of the Republic of South Africa, 1996, §§42(3), 92(2)).¹⁸ Likewise, in matters involving the Constitution, the Constitutional Court, the nation’s highest court, is obligated to check actions taken by the other branches of government (Constitution of the Republic of South Africa, 1996, §167(5)).

¹⁷ Between April 1997 and March 2002, the ICD investigated over 2,300 police-involved homicides (does not include deaths of people in police custody), and more than 2,200 allegations of police use of torture, simple assault, and aggravated assault (Bruce, 2003, Table 2).

¹⁸ Parliament is composed of the National Assembly and National Council of Provinces; the latter ensures that the interests of the country’s nine provinces and local communities are considered by Parliament (Parliament of South Africa, 2004a).

Conceivably, with its rigid separation of power, checks and balances in the American government is easily effectuated, with Congressional rubber-stamping of executive actions kept to minimal levels.¹⁹ In South Africa, there are conflicting opinions about this. Some have expressed concern that the parliament provides ineffective oversight and control of the executive. Some reasons for this are that the National Assembly's composition is based upon a system of proportional representation (Issacharoff, 2004), the president is elected by the National Assembly (Constitution of the Republic of South Africa, 1996, §87), and the African National Congress has won more than 62% of the vote in national elections since 1994 (Roefs, 2004). Others show little concern: while acknowledging the centrality of the separation of powers to democratic governance, the Constitutional Court said that overlap between the legislative and executive branches is not necessarily harmful. Instead, such “overlap provides a singularly important check and balance on the exercise of executive power. It makes the executive more directly answerable to the elected legislature” (*Certification of the Constitution of the Republic of South Africa, 1996*, para. 111).

NGOs and social institutions. A fourth transparency-enabling mechanism in government is oversight provided by privately run or non-governmental organizations (NGOs). A few examples are Transparency International, an international organization having as its institutional mission the reduction, if not elimination, of corruption in government (Transparency International, n.d.); human rights groups (Sammonds, 2001)

¹⁹ Congressional action, however, sometimes suggests that Congress is, if not rubber stamping actions by the executive, failing terribly to fulfill its constitutional obligation to check the executive. An example of this is what transpired between the years 2000 and 2006 whereby a Republican-controlled Congress failed to hold accountable a Republican Party president and vice-president for what many see as their gross abuses of power.

such as Amnesty International and Human Rights Watch, two internationally renowned organizations; and grass roots, community organizations (Bass, 2000). Although not a function of government, these organizations can exert tremendous sway over policy-makers and elected officials through their willingness to use press releases, media statements and the release of publicly available reports to expose official misconduct, waste, and ineptitude. The remaining transparency-inducing mechanisms are the social institutions that exist in any modern, complex society. Social institutions have great potential to influence policy-making when one considers their diffusion throughout a country's social, political, and economic fabric. Private industry, a free and independent press (Sammonds, 2001; Transparency International, 2001), religious groups (Stockard, 1999) and academia are four social institutions that watch government and call it to task for its actions.

Transparency's Importance to Prisons in a Democratic South Africa

With some exceptions, what occurs behind South Africa's prison walls has historically been well hidden from the public. (See the preceding discussion about the secrecy provisions that surrounded apartheid period prisons.) That is, these institutions are opaque to outsiders, and keep "a distance from the public eye" (Dissel, 2003, p. 7). South African prisons are not alone in this regard; British (Justice, Howard League for Penal Reform, & National Association for the Care and Resettlement of Offenders, 1975) and U.S. prisons (Blomberg & Lucken, 2000) have this reputation too. Prison officials generally prefer this: in America, for example, by removing most punishment from the public purview—through imprisonment—the state arguably minimized public passions, and made the punishment of criminals more efficient, more humane, and even more

scientific (e.g., through application of the principles of deterrence theory) (see Blomberg & Lucken, 2000).

Yet there are negative consequences associated with this institutional opaqueness or closedness such as official malfeasance and inhumane conditions of confinement. Publicly exposing what transpires behind these institutions' walls is of utmost importance considering the history of the South African prison, that South Africa today imprisons over 400 of every 100,000 people (Judicial Inspectorate of Prisons, 2003, p. 26), devotes less than 10% of its annual DCS budget to offender rehabilitation/re-entry (see Department of Correctional Services, 2002, pp. 79, 103), and sees very high recidivism rates (Ballington, n.d., as cited in Muntingh, 2001) and "churning"—offenders repeatedly departing and returning to prison.

External oversight mechanisms, then, publicly expose prison practices and policies, help in keeping corrections' officials accountable, and control the way in which they use their legitimate power (Dissel, 2003; Lewis, 1991, 2000; Maguire, 1991; Sammonds, 2001; Stigler, 1971; Stone & Ward, 2000).²⁰ Problematic for any democracy is that the punishment process is undermined when misconduct is rife among corrections' staff and investigations inadequate, if occurring at all, and at all levels of the system there is little public accountability (see Lewis, 2000; Stone & Ward, 2000). Such occurrences have led to North American and European police forces coming under external, civilian oversight, arguably increasing police accountability to the public (Bass, 2000; Lewis, 2000). The adverse effects of a penal system with little public legitimacy are especially

²⁰ Lewis (1991, 2000), Maguire (1991), Sammonds (2001), and Stone and Ward (2000) talked about these ideas in the context of police oversight; Stigler (1971), in terms of government in general; and Dissel (2003) in terms of prisons. These ideas are applied throughout to prisons.

great for countries like South Africa where gross abuses of power occurred during the decades long authoritarian rule; a likely result is that citizens will increasingly resort to extra-legal means to catch, try, then punish suspected offenders (e.g., spontaneous mob violence, creation of kangaroo courts).²¹

Transparency-Enabling Mechanisms in South Africa’s Penal System

For purposes of this discussion, the mechanisms described here are external to DCS. Intended to ensure that prison staff are complying with departmental guidelines and regulations, internal affairs units—unlike external oversight bodies—benefit from the ability to quickly react to and condemn employee misbehavior (see Ayres & Braithwaite, 1992, pp. 102–106). Some argue that “...strict internal discipline is an indispensable mechanism of accountability. Only the department itself can respond swiftly to violations. Internal investigators are often the only ones who can find the information needed to convict police who engage in misconduct” (Stone & Ward, 2000, p. 27). But these units do not necessarily increase organizational transparency nor the odds that prison officials will be held publicly accountable.

Internal affairs units can even make a mockery of transparency and public accountability. Referring to police internal affairs units, Prenzler and Ronkin (2001, p. 157) say that “there is now an extensive critique of internal affairs units that stresses the pathological inability of police to objectively investigate their peers.” Though not in such strong terms, other police scholars refer to this (Goldsmith, 1991; Lewis, 1991, 2000; Maguire, 1991; Prenzler, 2000). One can make parallel arguments about internal affairs units in corrections’ departments.

²¹ This is a real possibility with reports about incidents or fears about incidents of vigilantism in the South African media in 2006 and 2007.

Not very long ago, the Los Angeles Times published a string of articles detailing the California Department of Corrections' (CDC) failures to properly investigate or punish misconduct by prison officials (e.g., Arax & Warren, 2003; Fausset, 2004). In addition, besides accusing top corrections' officials of perjury, the court-appointed special master in *Madrid v. Woodford* scathingly concluded that an internal CDC "...investigation was riddled with failures. Indeed, the evidence demonstrates that the Post Powers Investigation Plan, submitted by the Department of Corrections to the Court through the Special Master, was a sham which high-ranking CDC officials never intended to follow" (2004, p. 102).²² In the South African context, as recently as mid-2003, just 12 staff were tasked with investigating corruption within all of DCS (Commission of Inquiry into Alleged Incidents of Corruption, Maladministration, Violence or Intimidation into the Department of Correctional Services, 2006a, p. 600). Not surprisingly, such a tiny staff complement is seen as being inadequate.

Observers in South Africa give positive—though guarded—kudos to DCS for its recent efforts to “clean house” (Sloth-Nielsen, 2003, pp. 53–55; Tapscott, 2005, p. 9). The creation by presidential proclamation of a non-DCS Special Investigations Unit to investigate misconduct in the DCS and recover economic losses incurred by the state represents one effort to restore credibility and trust in the department (Dissel, 2003, p. 61; Proclamation by the President of the Republic of South Africa, 2002; see also Special Investigating Units and Special Tribunals Act, 1996). Such efforts may be the result of the recent Jali Commission of Inquiry's (headed by Justice Thabani Jali) findings of

²² The Post Powers Investigation Plan refers to plans by the Department to investigate and punish officers that may have been involved in misconduct (see *Madrid v. Woodford*, p. 1).

rampant corruption and misadministration in DCS. A number of DCS officials were disciplined, fired, or prosecuted because of the findings of the inquiry and internal departmental investigations (Department of Correctional Services, 2003, pp. 5–6, 13). The Special Investigations Unit’s authority, unfortunately, did not allow it to investigate misconduct committed after August 2002 (Proclamation by the President of the Republic of South Africa, 2002, p. 3).

Table 2

Five Categories of Transparency-Inducing Mechanisms in Prisons

Category	Examples in the South African context
1. Communications technology	The World Wide Web.
2. Constitutional and statutory	The Constitution of 1996; Promotion of Access to Information Act of 2000.
3. Non-governmental organizations with prisoners’ rights focus	South African Prisoners Organisation for Human Rights.
4. Social institutions	The press, religious groups, academia.
5. Oversight by government	The executive, legislative, and judicial branches; “Chapter Nine” institutions.

Communications technology, legislation, NGOs, and social institutions. As with government in general, there are multiple, overlapping ways to promote openness in South Africa’s prisons (see Boyne, Day, & Walker, 2002; Dissel, 2003; Florini, 2004; Frost, 2003; Jagwanth, 2004; Transparency International, 2001). These are illustrated in Table 2. These mechanisms, again, are most efficacious when operating in conjunction

with one another (Dissel, 2003; Stone & Ward, 2000; Transparency International, 2001). One is *technological innovations* like the World Wide Web, a second is *statutory* like the Promotion of Access to Information Act of 2000, and a third *NGOs* with a prisoners' rights focus. South African groups with this focus include the South African Prisoners Organisation for Human Rights (SAPOHR), and the Centre for the Study of Violence and Reconciliation (CSVR). Likewise, Human Rights Watch is a U.S.-based NGO that occasionally issues reports on South Africa's prisons.

Social institutions like the media and academia—especially centers of higher education—act as a fourth transparency promoting mechanism. Since the end of apartheid (and, to a lesser extent during the apartheid era), South Africa has seen the media, especially the print media, as being seen as highly independent of the government and quite lively in their critique of the government in general and the security apparatus in particular.²³ The Civil Society Prison Reform Initiative, operated by the University of the Western Cape's Community Law Centre, is an example of prison oversight by academia. The CSPRI has "...the aim of improving the human rights situation in South African prisons through research-based lobbying and advocacy, and collaboration with civil society structures" (Community Law Centre, n.d.).

Oversight by government. Finally, South Africa can promote transparency in its prisons through *government* itself. This occurs via (a) Chapter Nine institutions and (b) each branch of government (including government-created commissions and agencies). Like the police, there are no quasi-governmental bodies monitoring prisons; but prisons

²³ There are recent indications, however, that efforts are being pursued by elements of the government to curtail freedom of the country's press.

are (or should be) overseen by at least three Chapter Nine institutions: the South African Human Rights Commission (SAHRC), the Public Protector, and the Commission for Gender Equality (Dissel, 2003, pp. 52–63).²⁴ Of these, Dissel rates the SAHRC as the most involved and most committed to improving prison conditions. She says, for example, that

One area in which the Commission has been very active has been in the public arena and in stimulating public debate around penal issues. The response was particularly strong from Commissioner Kollapen and former Commissioner Rhoda Kadalie, who made frequent comments in the media, wrote articles and made public presentations on the state of prisons. Through this they played an important role in strengthening the voice of other sectors of civil society, calling for improved conditions and educating the public on the importance of respecting the human dignity of prisoners. (p. 57)

This does not make the SAHRC immune to criticism. Since its creation in late 1995, the SAHRC appears to have published just one comprehensive report on prison inspections (see South African Human Rights Commission, 1998). Based upon its inspections of at least 39 prisons over about two years, the Commission found that some

²⁴ The SAHRC is constitutionally obligated to do three things: 1) “promote respect for human rights and a culture of human rights;” 2) “promote the protection, development and attainment of human rights;” 3) monitor and assess the observance of human rights in the Republic” (Constitution of the Republic of South Africa, 1996, §184(1)).

The 1996 Constitution gives the Public Protector three powers: 1) “to investigate any conduct in state affairs, or in the public administration any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice; 2) “to report on that conduct;” 3) “to take appropriate remedial action” (§182(1)).

“The Commission for Gender Equality must promote respect for gender equality and the protection, development and attainment of gender equality” (Constitution of the Republic of South Africa, 1996, §187(1)).

prisons were in such a state of serious disrepair that prisoners' health was jeopardized; overcrowded and understaffed; gang infested; provided few educational and vocational opportunities for inmates; and witnessed significant warder/correctional officer violence. Since this report, prison-related investigations by the SAHRC have been directed at specific inmate categories (e.g., those still on death row; South African Human Rights Commission, 2002). Other criticisms of the SAHRC are that it does not independently verify data provided to it by DCS, it lacks enough authority to make DCS put into effect human rights standards *system wide*, it fails to ensure that DCS follows through on recommendations made to it by the SAHRC, and fails to work with law makers to improve conditions (Dissel, 2003, pp. 57–58).

Official corruption in DCS falls within the Public Protector's mandate, and the office occasionally responds to corruption and abuse of power complaints. The Public Protector, however, fails to engage in dialogue with DCS, to conduct in-depth investigations of prisons, or address the *systemic* corruption, abuse of power, and incompetent management within DCS and its facilities (Dissel, 2003, pp. 60–61). Prison oversight by the Commission for Gender Equality, according to Dissel, is characterized by "...very little engagement with correctional services, and where it has done so, its focus has been on an issue concerning a small group of sentenced female prisoners" (p. 62).

There is great *potential* for legislative oversight of prisons in South Africa. Parliament, for instance, is constitutionally required to oversee and keep the executive accountable for its actions (Dissel, 2003, p. 15). This can happen in a couple of ways, one of which is through the National Council of Provinces' Select Committee on Security

and Constitutional Affairs (Parliament of South Africa, 2004a). There is, unfortunately, very little information on this body's performance here other than its authority to visit prisons at any time (Correctional Services Act of 1998, §99(3)(a)). Another way is through the National Assembly. In principle—if not reality—this is done via the three Chapter Nine institutions engaged in any sort of prison oversight and the National Assembly's Portfolio Committee on Correctional Services. Chapter Nine institutions, for example, provide information about prisons in their annual reports to the National Assembly (see Constitution of the Republic of South Africa, 1996, §§181(1) & 181(5)).

The Portfolio Committee on Correctional Services has the right to “visit any prison at any time,” (Correctional Services Act of 1998, §99(3)(a)) and “must maintain oversight of...any executive organ of State falling within its portfolio...” (Parliament of South Africa, 2004b, §§ 201(1)(b), (b)(ii)). Though it can be said that “of all the bodies having an oversight role over corrections, the Portfolio Committee has the most extensive,” (Dissel, 2003, p. 15) its efficacy at bringing external oversight to the country's prisons has been questioned by Dissel (2003) and Sloth-Nielsen (2003). They argue that the Committee's “powers are limited to investigation and inquiry...” (Dissel, 2003, p. 16), that it reacts to problems, rarely using its statutory authority to inspect prisons (pp. 30–31), and fails to hold DCS officials accountable “when confronted with indications of impropriety...” (Sloth-Nielsen, p. 54).

While a gap exists between the ideal and reality, like their counterparts in America, South African courts present a potent form of prison oversight. These countries' courts, for instance, can award compensation to victims of official misconduct; can order prison officials to cease questionable practices, with non-compliance leading to

sanctions; finally, with court proceedings and rulings a matter of public record, courts provide an avenue for interested parties like inmate advocate groups to expose what happens inside these facilities. However, as will become evident, even with a court breathing down their backs, DCS officials can and do effectively rebuff reform efforts (see de Vos, 2003).²⁵

DCS oversight by the judiciary occurs in a few ways: prison visits by jurists, inquests/ inquiries, and prisoner litigation. (For reasons discussed below, the Office of the Inspecting Judge/Judicial Inspectorate of Prisons, the focus of this study, possesses characteristics that make it a mix of executive *and* judicial oversight of prisons.²⁶) First, prison visits by jurists. During apartheid, magistrates were authorized to visit people detained under the “90-day detention law” (General Law Amendment Act of 1963, §17, as cited in Southern Africa Project, 1983, footnote 35). Van Zyl Smit (1991) noted that visits by jurists were “relatively infrequent^[...] and...not structured according to any system of inspection” (p. 545). Thirty-five years later, jurists were provided similar statutory authority: “A judge of the Constitutional Court. [*sic*] Supreme Court of Appeal or High Court, and a magistrate within his or her area of jurisdiction. [*sic*] may visit a prison at any time” (Correctional Services Act of 1998, §99(1)). These jurists “must be allowed access to any part of a prison and any documentary record. [*sic*] and may

²⁵ For excellent examples of this in the United States, see Dolan (2004), Martin and Ekland-Olson (1987), and *Ruiz v. Johnson* (1999).

²⁶ When the Judicial Inspectorate of Prisons’ Director was asked by me as to whether the inspectorate was a form of judicial *or* executive oversight, he responded with “it’s neither” as it contains elements of both.

interview any prisoner...” (§99(2)).²⁷ Between early 2001 and mid-year 2004, jurists conducted at least 64 prison visits and/or inspections (see Judicial Inspectorate of Prisons, 2002, 2003, 2004).

The judicial inquest/inquiry is another way jurists provide prison oversight. Their power lies in the ability to make public what parts of government—like DCS—would prefer remain secret. During apartheid, judicial inquests into security force abuse of prisoners sometimes provided ample ammunition for opponents of the regime (see Southern Africa Project, 1983, pp. 5–28). These inquiries usually led, however, to conclusions supportive of the government, even in the face of insurmountable evidence to the contrary.

A notable example of a contemporary judicial inquiry was the Jali Commission of Inquiry into Alleged Incidents of Corruption, Maladministration, Violence or Intimidation into the Department of Correctional Services (or the Jali Commission of Inquiry), headed by Justice Thabani Jali. Established by presidential proclamation in 2001 (Commission of Inquiry into Alleged Incidents of Corruption, Maladministration, Violence or Intimidation into the Department of Correctional Services, 2006b), the Commission concluded its inquiry in late 2005.²⁸ In its final report to President Thabo Mbeki and Parliament, the Commission found that “intimidation and fear is prevalent...” across the organization (2006a, p. 26), with threats of violence (including death threats)

²⁷ Inexplicably, in many places of the Correctional Services Act of 1998, periods (“.”) were used in place of commas. Such misuse of punctuation has not been seen in other statutes.

²⁸ Unfortunately, the Commission’s final report was not made publicly available until the current study was well underway.

directed at both DCS officials and commission members (pp. 25–26, 30).²⁹ It also found “...that corruption and maladministration were so rife in most of the Management Areas investigated as to warrant describing this as part of the institutional culture” (2006b, p. 4). The Commission went on to say that “this appeared to be done with impunity in that there was little evidence of disciplinary action being taken against transgressor” (p. 5). Later in this chapter, the extent to which much of this was driven by the prison officer union, as documented by the Commission, will become evident.

Litigation, a method sometimes used to great effect in the U.S., is a third way the South African judiciary provides prison oversight. Strikingly similar to pre-1960 America, South African courts until a decade ago practiced a *hands off* doctrine with prisoners seen as having few rights (de Vos, 2003; van Zyl Smit, 1991, 1998). In less polite terms,

While a cloak of legality was maintained and the courts were allowed to continue some of the judicial formalities, the arbitrary powers of the Government...and the restrictions on the power of the Courts, virtually ended the substance of legality and judicial safeguards, and thereby deprived the opponents of apartheid of any

²⁹ The Jali Commission cited the assassination of a provincial head of DCS’s Human Resources Management in KwaZulu- Natal province by two DCS members as “...the one incident which put the fear of death into a number of members in the Department...” as “...it gave the impression that sinister forces within the Department were prepared to go to any extent to achieve their objectives” (2006a, p. 26). In the same province, “from the commission’s investigations, it became apparent that the general level of intimidation and political climate made the Management Area almost ungovernable” (p. 31). Such fear is said by the Commission to have negatively impacted the information it obtained during the inquiry.

In the Free State province, the threat of violence against commission investigators was so great that a police escort was required during their visit to one prison (2006a, p. 32).

protection from intimidation and terror. (United Nations, 1973, p. 16, italics omitted)

In the early- to mid-1990s, this began to change with an important milestone the case of *Minister of Justice v. Hofmyer* (1993) (De Vos, 2003; van Zyl Smit, 1998). Here the court chastised prison officials and imposed certain limits on their powers (van Zyl Smit, 1998, p. 403). Two years later, in its landmark decision in *S v. Makwanyane and Another* (1995) declaring capital punishment unconstitutional, the Constitutional Court asserted that "...a prisoner does not lose all his or her rights on entering prison," (para. 142) and

the rights to life and dignity are the most important of all human rights, and the source of all other personal rights.... By committing ourselves to a society founded on the recognition of human rights we are required to value these two rights above all others. And this must be demonstrated by the State in everything it does, *including the way it punishes criminals* [italics added]. (para. 144)

It was about this time that inmates began pursuing litigation more often, with some successes (de Vos, 2003). Inmate litigation against DCS has, however, been mostly ineffective at changing DCS doctrine or more importantly, its culture. The Jali Commission of Inquiry (Commission of Inquiry into Alleged Incidents of Corruption, Maladministration, Violence or Intimidation into the Department of Correctional Services, 2006a, p. 505), for example, observed that

the flood of applications prisoners have made to our courts is evidence of the lack of adequate remedies or procedures in the Regulations or the [Correctional

Services] Act for prisoners to protect their rights to parole and the other rights they are entitled to.³⁰

De Vos (p. 31) says that out of eight published inmate litigation cases, only two had any impact on DCS policy itself: *August and Another v. Electoral Commission and Others* and *Minister of Correctional Services v. Kwakwa and Another*. On top of reaffirming its earlier holding in *S v. Makwanyane and Another* that prisoners retain certain rights, in *August and Another v. Electoral Commission and Others* (1999) the Constitutional Court unequivocally said “prisoners have a constitutional right to vote” (p. 29), and through its actions the government was threatening this constitutional prerogative (p. 24). To rectify this, the government was ordered to put in place mechanisms enabling prisoners to vote (pp. 33, 35–36).

In *Minister of Correctional Services v. Kwakwa and Another* (2002), the Supreme Court of Appeal ordered DCS to devise a legally acceptable privilege system for pre-trial detainees and not yet sentenced prisoners. In its ruling, the court found it unacceptable that sentenced convicts received greater privileges than unsentenced inmates (p. 24) and in a stinging rebuke, concluded that in establishing the privilege system in question, the DCS Commissioner didn’t just abuse his powers,

he disregarded the provisions of the Constitution and fashioned a privilege system inconsistent with its core values and not countenanced by the statutory regime from which he assumes his powers.... Prison authorities in exercising their

³⁰ Prisoner litigation against DCS became so common that a special motions’ court was created by the Johannesburg High Court to deal with the increased work (Commission of Inquiry into Alleged Incidents of Corruption, Maladministration, Violence or Intimidation into the Department of Correctional Services, 2006a, p. 506; see also footnote 64, p. 528).

statutory powers must take care to ensure that they act in accordance with the principle of legality. (pp. 33–34)

One explanation for prison litigation’s ineffectiveness in South Africa is the piecemeal approach to it (de Vos, 2003), in contrast to the class-action approach taken in a number of landmark American prison litigation cases (e.g., *Estelle v. Gamble*, 1976; *Ruiz v. Estelle*, 1980). (Recently, the Durban High Court, in *E.N. and Others v. the Government of the Republic of South Africa and Others* (2006), a class action lawsuit brought against the state by inmates with HIV/AIDS, ordered the government to supply anti-retroviral medications to all prisoners incarcerated at the Durban-Westville Correctional Centre whose medical condition had progressed to a particular state.)

Quite damningly, however, de Vos repeatedly provides another reason: along the lines of what the Jali Commission of Inquiry, the Supreme Court of Appeal in *Minister of Correctional Services v. Kwakwa and Another*, and the Durban High Court in *E.N. and Others v. the Government of the Republic of South Africa and Others* concluded—“it has always been, as I perceive it, that the Respondents have delayed without good cause in circumstances where life and death mattered” (*E.N. and Others*, p. 30)—de Vos suggests that today, there is something very rotten within the prison system itself. For instance,

In conversations with various prisoners’ rights litigators, it emerged that one of the most pressing problems faced by anyone trying to take on the Department of Correctional Services—in or out of court—is the often breathtaking absence of respect for the law and legal processes and, indeed, for the Rule of Law itself by especially the leadership in individual prisons. (2003, p. 21)

On the one hand, de Vos' dismay is well founded. Though American prison litigation has sometimes been successful—*Ramos v. Lamm*'s (1979) influence on Colorado's prison system, for example (Feeley & Rubin, 2000)—in other instances success has eluded reformers after years, if not decades, of litigation in Texas (Martin & Ekland-Olson, 1987; *Ruiz v. Johnson*, 1999) and California (*Madrid v. Woodford*, 2004) correctional facilities. In both countries, then, we see corrections officials effectively rebuffing the judiciary. Yet, de Vos' concern may be premature: the use of courts to effect large scale reform in South African prisons is a new and infrequently used tool. For example, just a decade has passed since the Constitutional Court held that prisoners do have certain inalienable rights (see *S v. Makwanyane and Another* above). Also implicated in the delay is "...the evident isolation of Correctional Services within government structures..." (Sloth-Nielsen, 2003, p. 11) and "...the absence of strong leadership, with a commitment to ensuring the humane treatment of prisoners in the Department of Correctional Services."

Executive oversight of South African prisons is provided for by ad-hoc Special Investigations Units, and the National Council on Correctional Services. As they have already been described, Special Investigations Units are not mentioned any further here. The main purpose of the National Council on Correctional Services "...is to advise, at the request of the Minister [of Correctional Services] or on its own accord, in developing policy in regard to the correctional system and the sentencing process" (Correctional Services Act of 1998, §84(1)). This body is comprised of jurists, high level police, DCS, public prosecution and social service officials, and outside penological experts (see §83(2)), and has the statutory authority to visit any prison it wants when it wants, and

inspect any part of the facility and any document (§§99(3)(a), 99(3)(b)). Thus, some assert that the Council is a “heavyweight committee” (Dissel, 2003, p. 39). Its provision of effective and independent oversight is questionable, however. For one, council members have little time or resources to fully investigate prison-related matters (pp. 49–50). Second, not only does it receive funding from the very same organization it oversees, but it serves in strictly an advisory capacity to the very same Minister who appoints council members and can fire them (see Correctional Services Act of 1998, §§83–84; Dissel, 2003).

Because of its centrality to the present research, the last form of prison oversight, the Office of the Inspecting Judge/Judicial Inspectorate of Prisons, is described in detail below.

The South African Judicial Inspectorate of Prisons

Characteristics of the Judicial Inspectorate of Prisons

Interestingly, this is not the country’s first experience with inspection as a form of prison oversight: according to the Lawyers’ Committee for Civil Rights Under Law, in the late 1970s “...two ‘Inspectors of Detainees’ were appointed as special ‘watchdogs’ over detention conditions and given unrestricted access to detention facilities with no required advance notice in order to examine conditions and question detainees about their treatment” (Southern Africa Project, 1983, p. 17). The Committee proceeded to say that this mechanism was not effective in effecting changes in the conditions of confinement for detainees.

In the first years after the 1994 transition to democracy, portions of government and civil society (e.g., academics, NGOs) saw a need for an independent prison

inspectorate (Jagwanth, 2004). This inspectorate would be “...part of an array of independent institutions set up to bolster and support democracy and human rights” (ibid., p. 4). In 1996, Lawyers for Human Rights South Africa released a report outlining what the ideal qualities of a future inspectorate would be: these include an inspecting judge appointed by the Minister of Correctional Services using a committee-like process as used in appointing Constitutional Court judges; using specialists to inspect prisons (e.g., physicians, teachers, dieticians); conducting regular prison inspections and when this is unfeasible, relying upon the assistance of organizations with penological expertise; transparency of its operations and prison inspection findings; and using lay people to monitor prisons.

Within one year of this report, Parliament created the Office of the Inspecting Judge/ Judicial Inspectorate of Prisons (JIOP) by amending the Prisons Act of 1959 (Correctional Services Amendment Act of 1997, §13). Organizationally speaking, then, this government operated prison inspectorate is a young organization with four characteristics.³¹ The JIOP is, first, an entity that is external to/separate from the prison system it oversees (Correctional Services Act of 1998, §85(1)). Though statutorily separate from DCS, there are lingering questions about whether separate means independent. Correctly answering this is crucial for the body doing the overseeing must be independent of the body it is overseeing (Dissel, 2003). In her evaluation of the JIOP, Jagwanth (2004) documented her concern, and the concern expressed by some JIOP staff

³¹ While I refrain from referring to the JIOP as a regulatory body, preferring “overseer” instead, it can be categorized as a regulator of government if using James’ (2000, p. 328) criteria: 1) it has some authority over DCS and can set standards for DCS to follow, 2) the JIOP watches what officials are/are not doing inside prisons and attempts to persuade DCS officials into behaving responsibly, and 3) the JIOP and DCS are two distinct entities.

and outside observers, that the JIOP is not as independent of DCS as some would like. For instance, JIOP employees “...are deemed for administrative purposes to be correctional officials seconded to the Judicial Inspectorate. [*sic*]...” (Correctional Services Act of 1998, §89(3)), and “the Department [of Correctional Services] is responsible for all expenses of the Judicial Inspectorate” (§91).

Jagwanth, among others, expresses great concern about this situation. In arguing for a change in the JIOP’s funding stream, she cites the Constitutional Court ruling in *The New National Party of South Africa v. The Government of the Republic of South Africa et al.* (1999, pp. 70–71): to be truly independent from those it was overseeing, the Independent Electoral Commission (IEC) must receive its funding directly from Parliament and the overseen cannot dictate to the IEC how to execute its constitutional and statutory mandates or whom to hire. According to Jagwanth, this ruling has applications to bodies such as the JIOP (2004, pp. 38–39). (The Jali Commission, however, found “there was...no evidence to suggest that the issue of financial resources had been raised with the Department and that it had refused to provide them” (Commission of Inquiry into Alleged Incidents of Corruption, Maladministration, Violence or Intimidation into the Department of Correctional Services, 2006a, p. 571)).

The second JIOP characteristic is that it is on the one hand, a form of judicial oversight, and on the other, an executive oversight mechanism. It is a form of *judicial* oversight in that

- a) its official head—the Inspecting Judge of Prisons—is a sitting or retired High Court or Supreme Court of Appeal Judge (Correctional Services Act of 1998,

§§86(1), 86(2)) who “...continues to receive the salary. [sic] allowances. [sic] benefits and privileges attached to the office of a judge,” (§86(3));³² and,

- b) the Inspecting Judge can issue rulings in some areas of DCS operations; in other words, s/he has the ultimate authority by statute to reverse certain DCS practices. (This is discussed further in the context of the inspectorate’s fourth characteristic.)

A prison inspectorate with a judge at the helm is highly unusual; installing a judge as the head of the JIOP was done because of “...the independence, stature and credibility that a judge would bring to the Office” (Jagwanth, 2004, p. 6). At the same time, the JIOP is form of *executive* oversight of prisons in that

- c) when appointing special assistants and determining their salary and “conditions of service”, and determining the inspectorate’s most suitable staff make-up, the JIOP must consult with the DCS Commissioner (Correctional Services Act of 1998, §§87(1), 87(4), 89(1));
- d) the Minister of Correctional Services has the authority to dictate the salary for part-time inspectorate staff (§93(8)); and,
- e) “the Inspecting Judge must submit a report on each [prison] inspection to the Minister” and “...an annual report to the President and the Minister” (§§90(3), 90(4)(a)).

As will become evident later, these statutory conditions have, however, arguably impacted the overall mission of the JIOP and this study’s findings.

The third JIOP characteristic is that it has the underlying goal of improving conditions of confinement for prisoners (Judicial Inspectorate of Prisons, 2000, 2002).

³² The Correctional Services Act of 1998 does not indicate what steps can/will be taken should the Inspecting Judge him/herself engage in misconduct.

This is done in a few ways such as through its statutory authority and mandate to “...facilitate the inspection of prisons in order that the Inspecting Judge may report on the treatment of prisoners in prisons and on conditions and any corrupt or dishonest practices in prisons” (Correctional Services Act of 1998, §85(2)); its system of lay prison monitors, full-time prison inspectors, and Inspecting Judge of Prisons (§§89(1), 90(1), 93(1)); and the JIOP’s willingness to sometimes publicly reveal what it knows about the nation’s prisons. Thus, “the authority of the Inspectorate lies not in wielding a stick, but in its ability to impartially and thoroughly investigate and report on complaints, and widely disseminate the results and recommendations so that remedial steps can be taken” (Jagwanth, 2004, p. 35).

The mandate to investigate and report on “any corrupt or dishonest practices” in prisons was, however, removed in the year 2001 (Correctional Services Amendment Act, 2001, §31) at the request of the JIOP (2001, 2002) itself. This is unfortunate or fortunate, depending upon whom one is talking to. According to the JIOP, this will make it easier for it to fulfill its main mandate—to work with prison officials to improve prison conditions.³³ Both Jagwanth and the Jali Commission of Inquiry challenge this.

³³ The rationale JIOP managers gave me was that investigating corruption would make it more difficult for the inspectorate to work with DCS officials in improving prison conditions. Both Jagwanth (2004) and the Jali Commission (Commission of Inquiry into Alleged Incidents of Corruption, Maladministration, Violence or Intimidation into the Department of Correctional Services, 2006a) mention this too.

Interestingly, few people besides Jagwanth, the Jali Commission of Inquiry (2006a), and one mid-level JIOP staff member mention a statutory conflict regarding the JIOP’s corruption mandate; dealing with the Inspecting Judge’s powers, duties and functions, section 90(1) of the Correctional Services Act of 1998 states: “The Inspecting Judge inspects or arranges for the inspection of prisons in order to report on the treatment of prisoners in prisons and on conditions and *any corrupt or dishonest practices* [italics added] in prisons.” The Correctional Services Amendment Act of 2001 (see §§31–32) removed the corruption mandate from section 85(2) of the 1998 Act *only*.

Jagwanth (2004, p. 41) says that “despite legislative amendments, the Inspectorate will no doubt have to continue to deal directly with this issue [of corruption in prisons] in the execution of its legislative mandate.” Less flattering, the Jali Commission concluded that “...the amendment to the Correctional Services Act to remove the investigation into corruption from the Office of the Inspecting Judge was *ill-conceived* [italics added]” (Commission of Inquiry into Alleged Incidents of Corruption, Maladministration, Violence or Intimidation into the Department of Correctional Services, 2006a, p. 587).

The fourth and final characteristic is the limited statutory authority to reverse decisions made by prison officials.³⁴ The Correctional Services Act of 1998 gives the JIOP powers such as the authority to conduct an inquiry upon notification of a prisoner’s death (§15(2)), reverse solitary confinement and/or segregation orders (§§25(1), 25(2), 30(7)), reverse orders for prisoners to be placed in mechanical restraints (§31(5)), and reverse DCS decisions regarding publication of certain types of information (§123(4)). Jagwanth (2004, p. 33) concludes that “it appears from a reading of the [JIOP’s enabling] legislation as a whole that the Inspectorate is primarily a reporting body with some decision-making powers in respect of certain issues.” This is like prison inspectorates in the U.K, Canada (p. 34), and the American states of New York (Correctional Association of New York, 1994, 2004) and Pennsylvania (Pennsylvania Prison Society, 2004).

With very limited authority to reverse prison official decisions, the JIOP—like similar inspectorates in other countries—must rely primarily upon tactics like negotiation, persuasion, lobbying efforts, and publicly releasing findings from prison

³⁴ The architects of the JIOP limited the JIOP’s powers because the JIOP was conceived as primarily a prison monitoring and reporting body (Dirk van Zyl Smit, email communication, March 2, 2008).

visits. What, if any, legal action the inspectorate can take against DCS when its directives are occasionally ignored—as found by the Jali Commission of Inquiry to be the case (Commission of Inquiry into Alleged Incidents of Corruption, Maladministration, Violence or Intimidation into the Department of Correctional Services, 2006a, p. 116)—is not known.

As an overseer of a system notoriously resistant to outside interference, the JIOP confronts various barriers to its mandates. Many of the same obstacles thought to complicate post-apartheid penal reform (see *Challenges to South African Penology in the Post-Apartheid Era*, *Post-apartheid penology* above) arguably impede the inspectorate's ability to improve prison conditions: they include overcrowded and undermanned prisons; incompetent DCS managers and under-trained and demoralized staff; institutional resistance to change (including a new mindset that prisoners *do* retain certain inalienable rights; see Commission of Inquiry into Alleged Incidents of Corruption, Maladministration, Violence or Intimidation into the Department of Correctional Services, 2006a, p. 332); endemic official corruption and line staff and managers that see themselves as above the law; under-resourced and/or dilapidated facilities; prison gangs; public demands for government to be “tough on crime” and a State all too happy to comply; and an apparently growing disdain among some ANC lawmakers to investigate, if not actually stop, waste and corruption at all levels of government.

An obstacle yet to be mentioned here are the prison officers' unions, POPCRU (Police, Prisons, and Civil Rights Union) being the largest and most powerful (Commission of Inquiry into Alleged Incidents of Corruption, Maladministration, Violence or Intimidation into the Department of Correctional Services, 2006a, p. 105).

Membership in unions is constitutionally protected, with DCS members from the most junior member to senior managers belonging to the very same unions (see pp. 107, 119 and 127). (POPCRU members are also employed with the JIOP.) Because it can make it difficult, if not impossible, for DCS managers to effect reform via the disciplining of rebellious officers, POPCRU—just like its counterparts in some U.S. states (e.g., the California Correctional Peace Officers Association or CCPOA)—poses its own set of difficulties for the JIOP. What the Jali Commission found regarding these unions is utterly breathtaking:

Unions were apparently in control of the day to day running of the Department of Correctional Services, with Popcru being the most powerful and influential. The power of the Department's management had been successfully emasculated by the union, which had succeeded in ensuring that union sympathisers were appointed to almost all strategic positions. As a result, the Department found itself in a position where it could not make and enforce decisions regarding work conditions or that might affect employees because these were likely to be frustrated by union sympathisers in the higher echelons of the Department.⁹⁴

As a result of this distribution of power, the entire management system of the Department, including the capacity to exercise discipline, was ineffective. Employees did not have to comply with the rules and regulations of the Department. Instead, their survival in the Department depended merely on currying favor with the union. (Commission of Inquiry into Alleged Incidents of Corruption, Maladministration, Violence or Intimidation into the Department of Correctional Services, 2006a, p. 98)

The consequences were endemic official corruption and consolidation of power among gangs inside prisons, placement of officials into positions for which they were clearly not qualified, and demoralized civilian staff such as social workers, psychologists, and physicians (see Commission of Inquiry into Alleged Incidents of Corruption, Maladministration, Violence or Intimidation into the Department of Correctional Services, 2006a, pp. 98–99, 114–117).

Another potential hitch is a lack of capable “guardians of the guardians” or guardians that are weak. In other words, what governmental bodies besides DCS or Parliament, professional groups and/or NGOs watch over the JIOP to ensure that its oversight of DCS is efficient, effective, and independent? Known as “tripartism”, these same guardians of the JIOP can become its allies when DCS becomes ornery (Ayres & Braithwaite, 1992; Grabosky & Braithwaite, 1986). The JIOP’s lack of statutory authority to make prison officials change their ways, thereby giving it few tools by which to gain DCS cooperation or compliance, is another serious problem (see Ayres & Braithwaite, 1992; Grabosky & Braithwaite, 1986), so too is regulatory capture, a phenomenon described in detail below.

The “Regulatory Capture Paradigm”

An Introduction to Regulatory Capture

Traditionally, capture theory “refers to regulation which may have a public-interest origin but which comes to be dominated by well-organized special interests...” (Levine & Forrence, 1990, footnote 4). These special interests aren’t restricted to just the private sector; they are just as likely to reside in the public sector. There is, however, more than one capture theory, each varying from the others (Levine & Forrence, 1990;

Prosser, 1999). There are, for example, *market-based capture* and *cartel-capture* theories (Schneiberg & Bartley, 2001, p. 104), *special interest, economic, and government services theory* (Levine & Forrence, 1990), and just plain *capture theory* (Prenzler, 2000). Because of this diversity, it might be more appropriate here to refer to a theoretical paradigm called the *capture paradigm*. For brevity's sake, then, *capture* and *regulatory capture* are used here interchangeably.

Whatever the specific propositions associated with each individual theory, two assumptions about capture arise from the paradigm and both are applicable to the private and public sectors. (In order to give the reader a broad overview of the paradigm, both assumptions are presented here. However, the current study relies upon the second assumption only.) The first assumption is that capture is present when government regulation occurs if and when it is in the self-interests of some group (in contrast to the larger good), whether that group is in private industry or the public sector; the group could even be the regulators themselves (Levine & Forrence, 1990, pp. 168–169; Stigler, 1971). Generically speaking, a regulatory agency, for instance, could gain greater investigatory and/or enforcement powers following its turf war with another oversight body, not because it was altruistically motivated (e.g., to better protect the public welfare).

A specific public sector example is the Toronto (Canada) police agreeing to external civilian oversight since it could bring benefits such as decreased public criticism of the police and greater due process rights for officers accused of misconduct (Lewis, 1991). A private sector illustration is provided by Schneiberg and Bartley (2001, p. 104):

Rejecting claims that regulation is a form of consumer protection that is forced against their will, capture theory argues that regulation is a tool with which the regulated firms limit competition, create monopolies, and benefit themselves at consumers' expense [citations omitted]. Here, market forces and intraindustry dynamics of competition drive regulation.... Regulation occurs when firms cannot control markets privately.

The American aviation industry up through the 1970s/early 1980s is an example of this. During this time, in areas like new airlines, routes, schedules and fares, commercial aviation was extensively regulated by the federal government. One outcome was diminished competition between long established carriers. In return, airlines such as Pan Am, TWA, Eastern Airlines received heavy government subsidies, enabling them to continue operating in the face of tremendous overhead and inefficiency (see Kingdon, 1995, pp. 9–11).³⁵ As deregulation gained momentum, many of these same airlines either temporarily operated under bankruptcy protection or disappeared for good.

While the first assumption dealt with why regulation is created, the second is arguably of greater value to our understanding and use of capture here since it describes what can happen once regulations and their enforcement mechanisms are in place. (Again, the current study is based upon the latter statement.) This second assumption is that capture is present when the regulator (a) becomes increasingly concerned about the interests of the regulated (Ayres & Braithwaite, 1992, p. 65), (b) fails to take action when violations have occurred (Bardach & Kagan, 1982, as cited in Ayres & Braithwaite, 1992), or (c) is manipulated by those it oversees (Schneiberg & Bartley, 2001; Prenzler,

³⁵ Though some of this understanding of aviation regulation comes from Kingdon, it also derives from my own understanding obtained over the years.

2000). For example, the former head of the Federal Railroad Administration, the regulator of U.S. railroads, was criticized by the Department of Transportation's Inspector General not long ago for having "...failed to recognize the ethical problem of vacationing on four occasions with a Union Pacific lobbyist" (Bogdanich, 2005a, p. A19). The agency was subsequently criticized for not properly investigating train-motor vehicle collisions, for "...accepting the word of railroads when they blame drivers for most collisions at grade crossings..." (Bogdanich, 2005b, p. A22) and failing to "...be more forceful in enforcing safety rules when railroads do not properly maintain crossing signals."

Of tremendous theoretical and practical significance are the factors that lead to or inhibit regulatory capture (e.g., using former DCS officials as prison inspectors). However, these are not described here; instead, they are described in the context of the study's research hypotheses (see Chapter Two).

Conceptual Problems with Regulatory Capture

As already described, according to the capture paradigm, when the regulator has been captured by the regulated, the former is at a greatly increased risk of acting in a manner that benefits the latter to the detriment of other groups and/or the general public. For researchers, however, identifying exactly when a regulatory body or its agents has been captured and the process by which this occurs, is of much greater complexity and difficulty. The high probability that capture at both the individual and organizational level is a fluid phenomenon (see Ayres & Braithwaite, 1992) only complicates scholarly efforts.

Few, if any, would disagree that capture is present when there is blatant corruption such as bribery of officials (Makkai & Braithwaite, 1992). Other than this obvious example, when else can capture be said to be present? If regulators ignore regulatory violations because it increases their own workload, is this an instance of “situational capture” as suggested by some (see Makkai & Braithwaite, 1992)? Or, how does one distinguish between regulators who behave in a particular way because they have been captured by the overseen versus actions carried out because, although contrary to what the public might want, these are believed by regulators to be in the best interests of the larger polity (i.e., “Burkean” policies) (Levine & Forrence, 1990)? Or, can a regulator be “indirectly captured” via intra-organizational dynamics or influences as Prenzler (2000, pp. 671–672) has suggested? What about the regulatory body that has “allowed” itself to be captured in order to engage in activities that are for the good of the larger public (see Levine & Forrence, 1990)?

Much more troublesome is what could be perceived as a “muddying of the waters” by some in terms of the distinction between regulatory capture—which asserts that through the regulatory process the interests of many are subverted by the interests of a few—and regulators merely “being flexible” in their dealings with those they oversee. Comments by two sets of authors illustrate this concern; first, Makkai and Braithwaite (1992, p. 72) assert that

in a sense, the best regulatory culture is one where regulators are tough and absolutely committed to maximising [*sic*] the policy objectives that lie behind the law while at the same time being flexible—open to ways of achieving those policy objectives that are less costly for business.

What is most disturbing about this statement is that, if we seriously consider this balancing act, are we failing to understand the phenomenon in question? In other words, how exactly do we distinguish between a regulator that has been captured versus their just being flexible? Perhaps there is a clue in Makkai and Braithwaite's assertion that capture occurs on a continuum, that one cannot categorize a regulator as being either "captured" or "not captured." This notion is tested directly in this study (see Chapter Two).

The next illustration contributes to the muddying of waters in a different way. Writing about the relationship between private industry, government, and regulatory capture, Prosser (1999, p. 204) observed that

...it is certainly possible to suggest that the early stages of the regulatory process were subject to governmental capture rather than capture by the firm, not in the sense that the regulators were pressurised by ministers but that major decisions...were determined directly by government to achieve the political objective of successful privatisation.

The difficulty here is distinguishing "governmental capture" (i.e., capture of regulators by elected officials) from the completely acceptable use of government to pursue legitimate political goals. In other words, is the government's pursuit of the "political objective of successful privatization" a reflection of government capture or a perfectly legitimate goal of government? Prosser fails to address either question, let alone ask them.

Regulatory Capture: Can it be a Constructive Force for Reform?

Based upon the paradigm's two assumptions and the examples provided, and assuming that regulatory capture can be accurately identified, we can then ask, is capture

necessarily a bad thing? Not surprisingly, many scholars say *yes*. James (2000), Lofthouse (1998), and Prenzler (2000) say that a regulator co-opted by the regulated is less able to bring transparency and accountability to the latter; the regulated (e.g., the police) are then able to operate with near impunity.³⁶ Prenzler's (2000) examination of external police oversight in Queensland, Australia illustrates this well. Concluding that the oversight body (the Criminal Justice Commission) exhibited signs of being captured, he found that it was not neutral in its investigation of citizen complaints of police misconduct. Instead, it was increasingly likely to give undue weight to police versions of events, at the expense of aggrieved civilians, transparency in police policies and operations, and their accountability to the public (see also Lewis, 1991, 2000; Maguire, 1991).

On a more abstract level, and one that insults a core value of democracy, is what Stigler (1971; see also Levine & Forrence, 1990, p. 178) described: instead of taking into consideration the wishes and needs of the larger public, a regulator that is highly motivated to retain his job will avoid antagonizing the rich and powerful. One way that this can be accomplished is by bowing to demands such as enacting and enforcing legislation—as in the cases of lawmakers and agents of oversight bodies, respectively—favorable to the interests of a few, thus increasing the likelihood that regulators will keep their jobs. Stigler goes on to say that this is especially true of elected officials, who

³⁶ Lofthouse's (1998) work on financial regulators in the U.K. raises an intriguing question: in what way does regulatory capture influence the operational transparency of the *regulator* itself? Or, approaching the association from a different angle, is a non-transparent regulator suggestive of it having been captured?

require significant financial and political support from the rich and powerful to enter into and stay in office.

Braithwaite and his colleagues, however, counter-argue that under certain circumstances, capture is beneficial (Ayres & Braithwaite, 1992; Grabosky & Braithwaite, 1986; Makkai & Braithwaite, 1992). Instead of being concerned about capture *per se*, the real concern should be about the *type* of capture (Ayres & Braithwaite, 1992, pp. 63–71). They distinguish between three types: *inefficient capture*, *zero-sum capture*, and *efficient capture*. The essence of their theoretical constructs inefficient capture and zero-sum capture is that a business or public sector organization (i.e., the body being regulated) benefits to the detriment of the public good (see pp. 63–71); this is consistent with the conventional understanding of capture. More specifically, in inefficient capture, the regulator, in the face of growing resistance from the regulated, fails to take appropriate action—for example, imposing sanctions; in zero-sum capture, neither the regulator nor regulated are cooperating with one another at first, but over time the regulator (but not regulated) acts as if it is getting cooperation. Though differing in how inefficient and zero-sum capture occurs, each simply put represents an oversight body that is not taking appropriate action (e.g., increased inspections, imposing civil and/or administrative penalties, criminal prosecution, etc.) in the face of resistance and/or misbehavior by the regulated.

Contrasted with capture that is inefficient or zero-sum, Ayres and Braithwaite theorize that efficient capture is actually beneficial.³⁷ Here, the regulator takes into

³⁷ This is how Ayres and Braithwaite (p. 69) distinguish between inefficient, zero-sum, and efficient capture: inefficient capture is “...where joint cooperation shifts to a firm defect : agency cooperative equilibrium,” zero-sum capture takes place “...where joint

account the concerns of both the overseen and the larger public. Traditional capture theorists argue that regulator concern about what the regulated wants and needs jeopardizes the public interest. Rebutting this argument, Ayers and Braithwaite note that in contrast to a regulator operating “by the book” and the overseen evading oversight because the regulator is “out to get them”, efficient capture leads to a situation in which both sides trust and cooperate with one another. A result of this mutual trust is that the regulator is able to save its enforcement resources for more serious problems or violations (see also Grabosky & Braithwaite, 1986). Another result is that regulators are more likely to obtain insider information.

It is these conflicting ideas about capture and how openness in prisons and prison official accountability may be affected are tested in the study. How this is done is described in the next chapter. Though not looking specifically at *prison reform*, a fundamental assumption here is that reform is derived from increased transparency and official accountability.

defection shifts to a firm defect : agency cooperative equilibrium,” and efficient capture is “...where joint defection shifts to a joint cooperative equilibrium.”

CHAPTER TWO—FORMAL STUDY HYPOTHESES

Based on Makkai and Braithwaite's (1992) work, the first two study hypotheses address capture's theoretical structure:

H₁: there would (a) be three underlying dimensions of capture and (b) that 18

Likert scale items would load heavily on one of these factors; and,

H₂: two or more of the predicted dimensions would be correlated.

As described in Chapter One, there are differences of opinion about regulatory capture's consequences; more specifically, not everyone agrees that capture has to *always be* a bad thing. In the context of transparency of prisons and prison official accountability, this dissertation sought to empirically test these opposing ideas via three hypotheses. (The research design was to allow for certain cause-effect relationships to be posited.) The third hypothesis posited that,

H₃: levels of JIOP staff capture predict (cause) how transparent prisons are (effect).

The relationship was predicted to be negative and linear, with a completely independent inspector, operating in strict oversight mode, feeling little compunction about exposing prison conditions. But as an inspector increasingly looks out for prison officials' interests, he would expose less and less for he does not want to do anything that will hurt their interests. This is consistent with the mainstream understanding of some effects of capture (see Lewis, 1991, 2000; James, 2000; Maguire, 1991; Prenzler, 2000).

More controversial, however, is capture's effect on prison official accountability:

H₄: there is an \cap -shaped relationship between levels of capture among JIOP staff (cause) and prison official accountability (effect).

That is, when levels of capture were too low or too high, JIOP staff were predicted to be ineffective at ensuring that officials are kept accountable. At some mid-point, however, capture would result in the greatest public accountability of DCS officials. Inconsistent with mainstream thinking, but consistent with that of Ayres and Braithwaite (1992) and Grabosky and Braithwaite (1986), this hypothesis was premised on the trust prison officials have of JIOP staff and the feeling that they are not “out to get” DCS. This conceivably would lead to prison officials either directing less hostility towards the JIOP’s pursuit of its legislative mandates and/or being more amenable to non-legally binding JIOP recommendations.³⁸

Next, of great interest were the extent to which capture’s effect on transparency was mediated by prison official accountability, and the extent to which capture’s effect on prison official accountability was mediated by transparency. When thinking of just the bivariate relationship between transparency and accountability, one can validly claim a positive relationship because if, for example, prison officials know *powerful* outsiders are “looking in” and willing to challenge them, officials will feel pressure to explain and/or modify their policies and practices when questioned. The problem is that conflicting rationales may drive how oversight bodies use public exposure. For example, when prison officials are responding to JIOP inquiries and requests, the inspectorate may publicly say this is occurring or say nothing (i.e., transparency versus opacity, respectively). The respective choices might be driven by the JIOP’s desire to reward cooperation or its reluctance to “rock the boat.” When prison officials are uncooperative,

³⁸ Though I derived this idea from the work of others (e.g., Maguire, 1991; Braithwaite and his colleagues), it was supported by Saras Jagwanth (oral communication, November 2004).

however, the JIOP may adopt one of two strategies to gain compliance: *threaten* to publicly expose this or *actually* do so (i.e., opacity versus transparency, respectively).

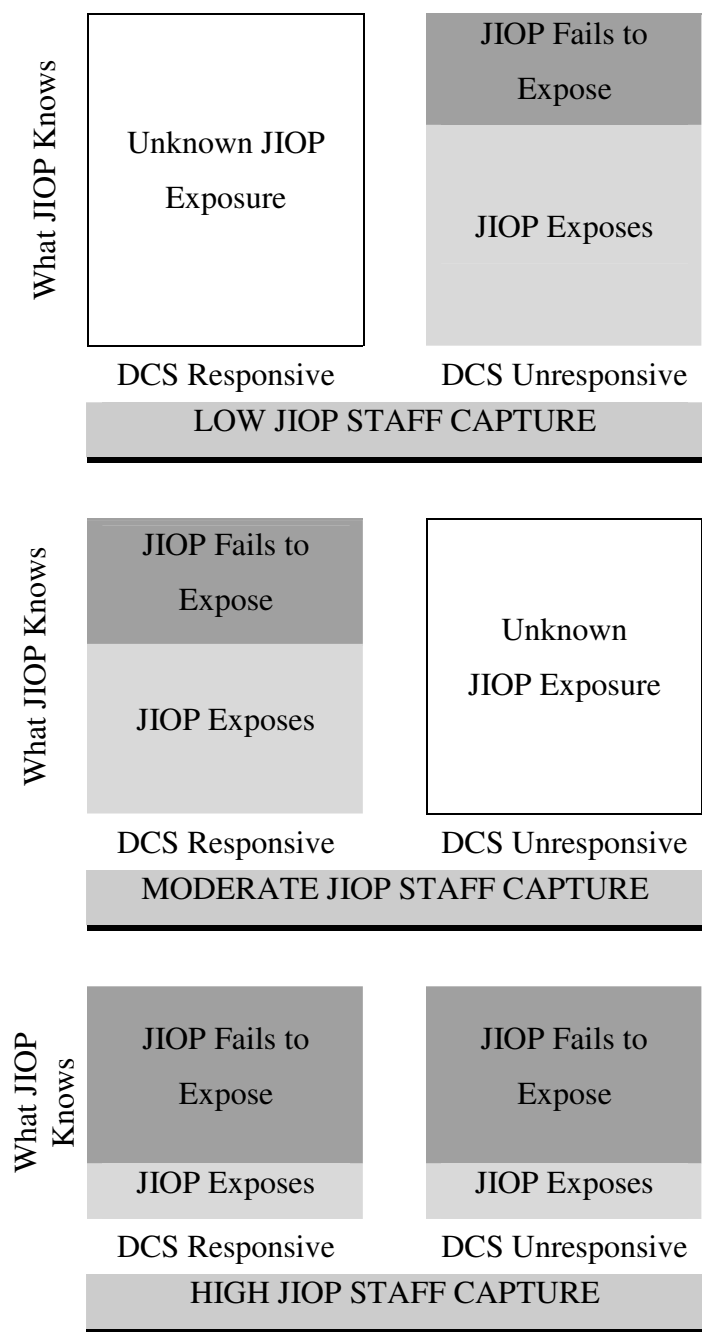


Figure 1. Hypothesized Relationships between Transparency and DCS Responsiveness, controlling for levels of JIOP Staff Capture.

These ideas mirror those expressed by Ayres and Braithwaite (1992) and Grabosky and Braithwaite (1986). What this research sought to do, however, was add capture to the equation.

For example, based upon the preceding discussion, if capture is high, JIOP staff will conceivably reveal little information about what happens within a prison. This would happen irrespective of whether prison officials are kept accountable for their (in)actions. If capture was mild and prison officials uncooperative and unresponsive to JIOP inquires/requests, inspectorate staff might expose a lot in order to get compliance and accountability. Finally, when capture was moderate and prison officials cooperative, there would be less exposure since JIOP staff do not want to upset their relationship with prison officials. The “wild cards” were when there is (a) low levels of capture and prison officials are cooperating, and (b) moderate levels of capture and very resistant prison officials. These combinations are illustrated in Figure 1 above.

These ideas were to be explored through the fifth major hypothesis (see illustration in Figure 2):

H₅: the effect of capture on transparency of prisons is partially mediated by the effect of prison official accountability.

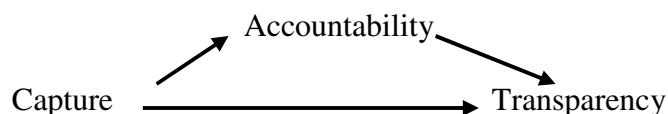


Figure 2. Capture and Accountability’s Effect on Transparency.

Unfortunately, due to restrictions placed on the study’s design, an equally interesting question could not be tested: does transparency have a mediating effect on the capture-accountability relationship?

Of practical import are processes said to inhibit or promote JIOP staff capture, as “[t]he very conditions that foster the evolution of cooperation are also the conditions that promote the evolution of capture and indeed corruption.” (Ayres & Braithwaite, 1992, p. 55) This tricky balancing act is repeatedly cited in the regulatory oversight literature. Four hypotheses are based upon this very dilemma:

H₆: levels of capture are positively associated with an employee’s age (see Hawkins, 1984, as cited in Boyne et al., 2002; Makkai & Braithwaite, 1992);

H₇: levels of capture are positively associated with time employed with the JIOP (ibid.);

H₈: JIOP employees with prior employment with a corrections’ department will have higher levels of capture than employees without this occupational background (see Lewis, 1991; Lofthouse, 1998; Maguire, 1991; Makkai & Braithwaite, 1992; Prenzler, 2000; Quirk, 1981); and,

H₉: JIOP employees agreeing with the statement “I think about one day working for the Department of Correctional Services” would have greater levels of capture than staff that disagreed (ibid.).

With IPVs dispersed across the country, the distance between them and the national and regional offices (in Cape Town and Centurion, respectively) was expected to be inversely related to their satisfaction with their office-based supervisors, and directly related to IPV autonomy. Jagwanth (2004) and Gallinetti (2004), for example, reported on the feeling of organizational disconnect among JIOP personnel in the provinces beyond the Western Cape; this disconnect has also been observed first-hand by myself during early visits to the JIOP. As a result, another three hypotheses were developed:

H₁₀: levels of capture are negatively associated with the quality of employee supervision (see James, 2000);

H₁₁: Independent Prison Visitors and office-based staff will manifest different levels of capture; and finally,

H₁₂: the frequency of contact between JIOP staff and prison officials is positively associated with capture's severity (see Lofthouse, 1998).

CHAPTER THREE—STUDY METHODOLOGY

Introductory Note

This chapter begins with a short overview of certain obstacles I encountered during the data collection process. The reason for this overview here is that, in the preceding chapters, I presented three very important research hypotheses regarding capture's effect on transparency and official accountability. None of these hypotheses, however, could be tested directly, and just one could be tested indirectly. As a result, the methodology described below sometimes ignores these hypotheses. Therefore, the major obstacles are presented first in order to prevent the reader from becoming confused over the disjuncture between what I set out to study and what I actually could study. The chapter proceeds to describe how the study was carried out (i.e., participant selection criteria, recruitment methods, and construction of the surveys and research scales).

Major Study Challenges

In places such as chapters two and four, I discuss in-depth some study hypotheses that required the collection of outcome data. These outcome data were to be derived from specific staff meetings and JIOP produced documents (via participant observation and content analyses, respectively). Since these particular research questions were central to the original study design, in this report they have received the attention due to them. However, for reasons described in the findings chapter (see Chapter Four) such as poor document quality, meetings not being held, et cetera, these outcome data were either never collected or if they were, left unanalyzed. The information presented in this chapter, then, relates only to (semi-) successful data collection efforts; in other words, this chapter does not discuss any failed data collection efforts.

Next, starting in November 2006, the JIOP underwent a major organizational restructuring. The process of implementing this restructuring was still occurring when I stopped collecting data in mid-June 2007 and returned to the United States. This drawn out process would ultimately wreak havoc on the study for two reasons: first, staff titles and job duties changed, sometimes radically. For example, prison inspectors became compliance auditors, not responsible for inspecting prisons but ensuring that employees such as IPVs were satisfactorily performing their duties. The Regional Coordinator (RC) system was done away with, with RCs becoming Visitors Committee Coordinators (VCCOs), no longer responsible for overseeing IPVs in one or two provinces, but for providing organizational support for IPVs within one or two Visitors' Committees. Finally, IPVs were no longer to be contracted to work at one or two facilities, as they were under the old system. Instead, IPVs might be reassigned to any prison falling within the VCs ambit.³⁹

In and of themselves, these changes complicated the data collection process; but, when combined with managers unable to make decisions and follow through on their execution, such changes made further data collection next to impossible. For example, more than six months after the restructuring process began, a crucial component of the new VC structure had yet to be put into place: qualified people such as jurists or

³⁹ For example, if a prison lost its IPV through resignation or they were fired, another IPV from the same VC could be temporarily assigned to the facility. Or, as explained to me by JIOP managers, problems in a prison could be so severe as to warrant the work of two IPVs until the problems were resolved.

attorneys—not IPVs or VCCOs—to chair the VC meetings. Also, as of mid-2007, written job descriptions had yet to be created for compliance auditors.⁴⁰

Second, partly due to the prolonged restructuring process, management was inconsistent in its decisions as to when VC meetings would be attended by office-based supervisory staff.⁴¹ For months at a time, office representatives did not attend most, if not all, VC meetings. This was relevant to the study because, in order to recruit IPVs and collect data, I traveled with office staff to these VC and SH meetings all over the country. Also for months, SH meetings all over South Africa were not being held.

However, since the research was initiated under the former JIOP structure and the restructuring efforts were still underway at the cessation of data collection efforts, this report uses the pre-restructuring job titles and job duties.

Study Participants and Case Selection

The population targeted for study inclusion was current JIOP employees who, as part of their regular duties, visit and/or inspect prisons; were key decision makers as to JIOP policy and operations; or were in some other way significantly involved in improving prison conditions. Though administrative and support personnel possess the statutory authority to visit prisons, they were excluded from the study as they were not substantively involved in JIOP policy making, DCS practices, or resolution of prisoners’

⁴⁰ There is also the issue surrounding the training of new staff or of old staff given new responsibilities. All I can say here is that the relevant training schedules were repeatedly cancelled or delayed for months at a time.

⁴¹ I am aware of some VCs not being attended by anyone from the office for many months at a time, and IPVs feeling confused as to how to proceed, frustrated by inattention and/or lack of information coming from the office, and in some instances, holding just one hour meetings.

complaints. About 200 people were targeted for study participation with JIOP managers assisting me in identifying the target population.

Study participants came from one of two groups: the first was made up of Independent Prison Visitors (IPVs), prison inspectors, case officers and case managers. This group is especially pertinent as it is usually these people that are documenting and resolving problems in a prison. Full-time employees, case officers and case managers record new prisoner complaints, and track and resolve prisoner complaints that cannot be resolved in the field; prison inspectors conceivably perform in-depth prison inspections. These people do not necessarily have frequent and ongoing contact with officials at a particular prison. The inspectorate's 200 or so IPVs, however, do have such contact as they are contracted to visit specific prisons each week. As part-time, contractual employees, IPVs are responsible for taking prisoner complaints and if possible, bringing remedy by alerting, consulting with and/or negotiating with prison officials.⁴²

The other group was quite small: it was comprised of (a) key decision makers as to JIOP policy and procedures, and had regular contact with outside players like police officials, public prosecutors, jurists, the media, and/or universities; and (b) staff that were not key policy makers but were still influential in the resolution of complaints involving prisoners. Included here were the JIOP's official head, the Inspecting Judge of Prisons, the Director (second in charge), certain department heads and their deputies, and IPVs' direct supervisor, Regional Coordinators.

⁴² Every prison with 100 or more prisoners is supposed to have an IPV assigned to it; not infrequently, however, facilities lack IPVs because the IPV resigned, was fired, or their three year contract expired and a replacement had yet to be assigned to the facility. In these instances, months usually went by before a replacement had assumed responsibility; more troubling, some prisons went without an IPV for a year or more.

Finally, it was very important for staff to have been employed with the inspectorate for at least six months at the time they were recruited for the study. This pre-survey employment window was deemed necessary because of the concern that the quality of one's work (e.g., "overlooking" problems in a facility, posing the "wrong" questions to prison officials) might not be indicative of capture but due to mere occupational inexperience. Top JIOP managers, for example, estimated that it can take up to six months for a new IPV or prison inspector to become fully competent.

Study Participant Recruitment

Before staff were asked to participate in the study, I acquired four pieces of information: their name; job title, and if an IPV, what prison(s) they were assigned to; and whether six or more months had passed since becoming employed with the JIOP. Potential participants were then assigned a unique, sealed packet of study materials. Although generic in the sense that each contained the same cover letter explaining who I was and the purpose of the study, two copies of the informed consent form, a copy of the survey, and a self-addressed, postage paid envelope, each packet was unique in that it contained a survey with a randomly generated, four digit ID number. Known only to me and the participant, this number was created in order to protect peoples' identity should the completed survey end up in the wrong hands. Printed on the outside of the IPV packets were the person's name and the facility or facilities they were assigned to; this was especially important for the IPV's assigned to two prisons, in which case they received unique packets for each facility. People were then instructed to place the completed survey into the self-addressed envelope and post it to my personal address.

Similar methods were used to recruit IPVs and non-IPVs. With one exception, IPVs were recruited during Visitors' Committee (VC) meetings which occur monthly and are made up of the region's RC and two to eight IPVs.⁴³ Recruitment generally proceeded as follows: I distributed the packets to the IPVs in attendance, followed by an instruction to open the packet; I then gave a brief introduction as to the purpose of my visit and an oral description of each packet item. Finally, in accordance with requirements of the John Jay College Institutional Review Board, the informed consent process took place with potential participants completing the consent form.

For non-IPV staff, recruitment efforts followed those taken with the IPVs with some modifications. A variant was to approach staff that I already had a rapport with such as the Inspecting Judge of Prisons, a Director, heads of department or deputy heads, prison inspectors, and Regional Coordinators. This was very straightforward as the number of people involved was small. If rapport was lacking (or simply for efficiency's sake), a meeting between myself and a group of staff was arranged for recruitment purposes.

There were certain pros and cons associated with traveling across the country to recruit IPVs. The greatest disadvantage was that it was the rare VC meeting where every IPV was present; nearly all of the meetings I attended lacked one or more IPVs, with some meetings missing one-half of their IPV complement. It was rare that these absentee IPVs would be pursued by me later on. Or, since recruitment efforts took place towards the end of these meetings, IPVs were not always very receptive after a four hour meeting.

⁴³ This lone IPV was approached individually during a visit to his home by myself and the R.C.

This was especially so when these same IPVs faced a long return commute to their hometowns.

Yet the advantages clearly outnumbered any negatives. In terms of time and money, efficiency was the greatest advantage—simply put, multiple people could be recruited at one time and in one place. Doing this also promoted the reality that the study was being conducted independently of the JIOP and ensured the integrity of the measures being taken to protect peoples’ privacy. Notably, of the 140 to 150 people asked to participate in the study, there were outright refusals by only five IPVs.⁴⁴

Finally, two unanticipated benefits arose from these travels: first, traveling for days at a time with individual RCs, I was able to gather invaluable information about the workings of the IPV and RC systems, about some of the systemic challenges confronting JIOP staff in the prisons, about staff attitudes regarding the organization’s strategic focus, et cetera. Second, RCs and IPVs would often conduct brief prison inspections with me accompanying them as an observer. Lasting anywhere from one to three hours, these “ride along” inspections provided important insights into the state of many South African prisons, and the ways in which field staff conducted inspections and communicated their findings to prison officials.⁴⁵

⁴⁴ One Western Cape IPV refused outright, and four did this during a particularly contentious VC meeting in Mpumalanga Province. As they refused to sign consent forms, these people were not included in the total number of IPVs asked to participate in the study.

⁴⁵ For the most part, my accompanying inspectorate staff into the prisons posed little, if any, anxiety among Heads’ of Prison (HOPs). There were, however, occasions whereby an HOP was clearly suspicious of my presence and purpose. In these instances, both I and the RC explicitly stated to the HOP that my purpose was not to study their facility or DCS, but to observe the manner in which the RC and IPV went about their duties; in no instance was I refused entry into a prison. Out of deference to DCS and the prison

Capture Operationally Defined

When a JIOP employee was not acting strictly in the prisoners' interests, s/he was seen as "captured" (operational definition of capture). In other words, if captured the person was looking out for the interests of both prisoners *and* prison officials, or exclusively protecting the interests of the latter (e.g., Ayres & Braithwaite, 1992, pp. 63–71; Levine & Forrence, 1990; Prenzler, 2000; Quirk, 1981; Stigler, 1971).

Capture could manifest itself attitudinally and/or behaviorally. As originally thought, attitudinal manifestations would include an employee (a) having sympathy or empathy towards prison officials' perspectives and problems and/or (b) identifying with prison officials, seeing himself or herself as part of DCS. These dimensions were consistent with those derived by Makkai and Braithwaite (1992). A behavioral manifestation of capture was when a JIOP employee failed to adopt an adversarial stance with prison officials, taking instead a conciliatory position (Ayres & Braithwaite, 1992; Grabosky & Braithwaite, 1986; Makkai & Braithwaite, 1992).

This last dimension was very similar to that derived by Makkai and Braithwaite (i.e., what they referred to as their "toughness" dimension) with one major difference: while their three dimensions were attitudinal, in the present study this dimension was transformed into a behavioral one. Official misconduct, as when a JIOP employee ignores a problem in return for favors or money from DCS officials (e.g., Ayres & Braithwaite, 1992; Gallinetti, 2004; Grabosky & Braithwaite, 1986; Makkai & Braithwaite, 1992), is an egregious behavioral example of capture. Such behaviors,

officials that permitted and tolerated my presence in their prison, only cursory notes were recorded afterwards.

however, were intentionally omitted in this study due to concerns about legal and occupational risks to research participants.

Survey Data

IPVs and non-IPVs completed a 54 and 55 item survey, respectively; both versions of the survey can be found in Appendix A. Unless specified otherwise, the discussion here is based upon the survey administered to IPVs: both the IPV and non-IPV surveys were nearly identical, the latter being a modification of the former. Comprised of 38 Likert scale, eight dichotomous (e.g., yes or no, male or female), six closed-ended, and two open-ended items, the survey's purpose was four-fold: to measure capture, identify some predictors of capture, identify some of capture's consequences, and to collect basic demographic data.⁴⁶ When constructing the survey, I relied upon materials on survey methodology (DeVellis, 1991; Goddard & Villanova, 1996; Maxfield & Babbie, 1998; Vaux, 1996; Weisberg, Krosnick, & Bowen, 1989) and consulted with people knowledgeable in survey techniques.

Every Likert scale item had the following answer choices and number sequence:

Strongly Disagree						Strongly Agree
0	1	2	3	4	5	

For data coding purposes, items were scored in a direction indicative of capture (Makkai & Braithwaite, 1992). In other words, while strongly agreeing with most statements was predicted to be indicative of capture (hence, being given a score of "5"), in some cases, it was indicated by strongly disagreeing with a statement (thus warranting a "5"). The

⁴⁶ The non-IPV survey contained 40 Likert scale items, eight dichotomous (yes or no, male or female), one open-ended, and six closed-ended items; capture was measured by identical items in both surveys.

latter items were recoded prior to data analysis. Although forcing respondents to state an opinion had its risks (e.g., falsely giving an opinion when no opinion exists) (DeVellis, 1991), the advantage was that it diminishes scoring problems arising from conceptually meaningless and analytically tricky “no opinion” responses. For instance, Makkai and Braithwaite’s (1992) study used Likert scale items with five answer choices, with “no opinion” given a 3. It is possible that their inclusion of a no opinion choice and their more restricted answer choice contributed to many of their statistically insignificant results. The present survey was designed to counter this. Therefore, to minimize the risk that people would skip a question to which they had only a weak opinion, six answer choices were provided (and thus, more mid-range options); six choices would also permit for the variation necessary for certain data analysis procedures (Keith Markus, oral communication, November 2005).

Capture indicators: Thirteen Likert items were modifications of those used by Makkai and Braithwaite (1992, Table 1) in their quantitative research on capture of nursing home regulators. To be applicable to the JIOP, each statement required rewording. As explained before, some statements were transformed from ones measuring *attitudes* (as in the original study) to *behavioral* indicators. Six of Makkai and Braithwaite’s original items were eliminated due to their redundancy, irrelevance, or wordiness.⁴⁷ While reducing redundancy increased the risk of the instrument becoming

⁴⁷ These items are: 1) “A large number of enforcement actions is a sign that a regulatory agency is doing its job.” 2) “It is better to be a tough enforcer of standards, even at the risk of being considered punitive.” 3) “If you want to be judged a success in this job, you are best to err on the side of demanding that the nursing home do more than is really required to meet the standards.” 4) “A good Standards Monitor takes account of the difficulties nursing homes must overcome to meet the standards.” 5) “The relationship of my Team to nursing homes is based on negotiation, mutual accommodation, and

psychometrically unstable (e.g., low inter-item correlations) (DeVellis, 1991), the advantage was that the people completing the survey would be less likely to become annoyed with an excessively long and repetitive survey. The remaining 41 items in the current survey were based upon the work of these and other researchers (e.g., Ayres & Braithwaite, 1992; de Vos, 2003; Gallinetti, 2004; Grabosky & Braithwaite, 1986; Levine & Forrence, 1990) and my first visit to the JIOP in January 2005.

Eighteen Likert scale items were *predicted* a priori to load on one of three predicted dimensions or factors of capture. (To test this prediction, a factor analysis was to be performed; for the reasons soon to be described, this analysis did not occur. One outcome of this is that the predicted and eventual scale compositions were not the same.) The predicted factors and their anticipated item loadings are presented here, with item numbers corresponding with their number in the IPV survey (see Appendix A). Items in **bold text** were reverse coded—e.g., “Strongly Disagree” thought to be indicative of capture.

An attitudinal factor, *Inspector Sympathy/Empathy Towards Prison Officials’ Viewpoints /Problems* was expected to have these five items:

- Item 1: “As a general rule, I give prison officials the benefit of the doubt” (see Makkai & Braithwaite, 1992, Table 1).
- Item 2: “Part of my effectiveness depends upon being able to understand the problems prison officials face every day” (ibid.).
- Item 5: “I never want to do something that will hurt the reputation of the Department of Correctional Services” (ibid.).

compromise.” 6) “Standards Monitoring Teams are more interested in catching nursing homes for doing the wrong thing than in helping them.”

- Item 6: “I will forgive prison officials if they have made an honest effort to fix a problem” (see Ayres & Braithwaite, 1992, p. 33).
- Item 10: “My prison visits only add to what prison officials have to worry about.”⁴⁸

A second attitudinal factor of capture, *Inspector Identification with Prison*

Officials, was also expected to have five items:

- Item 3: “I see my work as one way of improving the reputation of the Department of Correctional Services in the community” (see Makkai & Braithwaite, 1992, Table 1).
- Item 4: “I feel that I am an important part of the Department of Correctional Services” (ibid.).
- Item 7: “I have great respect for the prison officials I deal with” (ibid.).
- Item 8: “I admire the way prison officials perform their jobs” (ibid.).
- **Item 9: “To be effective in this job, it is important to maintain an ‘Us versus Them’ attitude with prison officials”** (see Gallinetti, 2004).⁴⁹

Eight items were expected to load on the behavioral factor of capture, *Staff*

Failure to Take Adversarial Position with Prison Officials:

- **Item 11: “My interactions with prison officials are strictly about business”** (see Gallinetti, 2004).

⁴⁸ While the factor is similar to that derived by Makkai and Braithwaite, they would probably only label items #1 and #2 this way; facially, item #5 is not indicative of staff identification with the regulated (as in the original study) but inspector sympathy. It was expected to be indicative of inspector sympathy/empathy towards prison officials, then.

⁴⁹ Items based upon Gallinetti reflect problems identified in her qualitative examination of the IPV system, not her identification of them as indicators of capture per se.

- Item 12: “I try to get an agreement with prison officials as to the best solution to a problem” (see Makkai & Braithwaite, 1992, Table 1).
- Item 13: “When possible, I help prison officials come up with better ways of ensuring that prisoners are humanely treated” (ibid.).
- **Item 14: “My relationship with prison officials may best be described as adversarial/confrontational”** (ibid.).
- **Item 15: “No matter what the consequences are, my job is to make sure prisoners are humanely treated”** (ibid.).
- Item 16: “If fixing a problem in a prison creates extra work for me, I will ignore it” (see Makkai & Braithwaite, 1992).
- Item 17: “If trying to fix a problem creates tension between me and prison officials, I will ignore the problem” (see Lewis, 1991).
- Item 19: “Prison officials can be trusted to properly treat prisoners” (see Boyne, Day, & Walker, 2002).

Besides these 18 items, six more Likert scale items were to be examined post-hoc for their relevance, if any, to capture. These items were:

- Item 21: “Prison officials respect the work I do” (see Gallinetti, 2004, pp. 36–37).
- Item 23: “I give prison officials the impression that we have legal power that we may not really have” (see Ayres & Braithwaite, 1992, p. 32).
- Item 25: “To be effective in this job, I am dependent upon the goodwill of prison officials” (see Gallinetti, 2004, p. 20).
- **Item 26: “When necessary, I remind/explain to prison officials what my official duties are”** (see Gallinetti, 2004, p. 21).

- Item 27: “I cannot do much if prison officials decide to ignore me” (see Makkai & Braithwaite, 1992, Table 1).
- Item 28: “To be most effective, I need to have the legal authority to force prison officials to comply with my requests.”⁵⁰

Predictors of capture: Some possible predictors of capture were assessed using seven Likert scale items, one dichotomous and one closed-ended question. The Likert items were

- Item 20: “I think about one day working for the Department of Correctional Services” (e.g., Makkai & Braithwaite, 1992).
- Item 22: “The job training I received when I began this job was satisfactory” (see Gallinetti, 2004).
- Item 24: “It is best that the public know about everything we find and do during our prison visits” (see Levine & Forrence, 1990).
- Item 29: “My direct supervisor is always available to assist me in my job duties” (see Gallinetti, 2004, p. 22).
- Item 30: “The staff at the national office (in Cape Town) are always available to assist me in my job duties” (ibid.).
- Item 31: “The monthly Visitors’ Committee meetings help me to better perform my job duties.”
- Item 32: “For the work I do, I receive an adequate salary.”

The dichotomous item asked, “Have you ever worked for the South African Department of Correctional Services or any other prison system” (item 45) (e.g., Lewis,

⁵⁰ Item 28 reflects the fact that the JIOP currently possesses little statutory authority to force prison officials to take a particular action.

1991, 2000; Makkai & Braithwaite, 1992; Maguire, 1991; Prenzler, 2000)? If respondents answered yes, they were asked to indicate what prison system they have worked for, what their last position was and for how long, and how long ago they left that job (see item 46) (e.g., Makkai & Braithwaite, 1992).

Consequences of capture: As described by Ayres and Braithwaite (1992, p. 33), a consequence of capture (or lack thereof) is the source of one's information about prison conditions (e.g., varying amounts of information coming from warders). This itself has implications for transparency and prison official accountability. Two Likert items were designed to examine this:

- Item 34: “A lot of what I know about the prison(s) I visit is information obtained from *prisoners*.”
- Item 35: “A lot of what I know about the prison(s) I visit is information obtained from *prison officials*.”⁵¹

Likewise, the extent to which someone has been captured can also affect their professional relationship with prison officials (Ayres & Braithwaite, 1992; Grabosky & Braithwaite, 1986; see also Gallinetti, 2004). In her examination of the IPV system, Gallinetti (2004) reported instances of prison official hostility towards IPV's; these were confirmed in conversations between JIOP staff and this author during a January 2005 site visit. Three Likert scale items were used to assess the presence of this:

- Item 36: “Prison officials show hostility towards me when I am performing my official duties.”

⁵¹ The non-IPV survey had an additional Likert item (Item 35) addressing this question: A lot of what I know about a prison is information obtained from *Independent Prison Visitors*.

- Item 37: “Prison officials provide enough security for me to safely perform my official duties.”
- Item 38: “Prison officials allow me to access all documents required for me to perform my official duties.”

Miscellaneous items: Finally, an additional eight Likert scale, dichotomous, open- and closed-ended items were used to measure miscellaneous things (e.g., demographics):

- Item 18 (Likert scale): “Educating prison officials as to how they can humanely confine prisoners is an important part of this job” (Ayres & Braithwaite, 1992; Quirk, 1981; see also Gallinetti, 2004, Section 5.2).
- Item 33 (Likert scale): “If given the opportunity, I would renew my contract as a prison visitor.”
- Items 39–44 (dichotomous, yes or no): These items ask people if they have ever been offered money, gifts, or special favors by prison officials in return for ignoring problems in a prison, and whether they know of colleagues this has happened to.
- Item 47 (open-ended): “Other than your work as a prison visitor, briefly describe your primary occupation.”
- Item 48 (closed-ended): “For the prison you are assigned to, how often do you visit all sections and cell accommodations where prisoners are incarcerated? _____ times per month.”

- Items 49–54 (closed-ended): Items ask people when they first began working with the JIOP, their gender, age, highest level of education, and racial/ethnic group.

As soon as possible, survey data were then entered into the database. As discussed next, not everyone answered every item on the survey.

Missing Data Substitution

As described below in the section detailing how the capture and non-capture scales were eventually constructed, each of the four reverse-scored items were excluded from the analysis; only 14 Likert scale items, then, were used to measure capture. Eight IPV's skipped one or more of these items (range = 1–4 items missing; 1% of these data missing); no office staff skipped these items.⁵² Most item “skippers” omitted just one item but one person skipped four items. While bivariate analyses indicated that whether or not someone skipped a capture-related item was not associated with gender (chi-square < 1.00, df = 1) or age ($t_{93} < 1.00$), analyses indicated that education level may have been slightly influential ($t_{90} = 1.74$, $p < .09$).

Having said this, considering the small number of skippers relative to non-skippers (n 's of 8 and 87 IPV's, respectively), the missing data analyses' trustworthiness is questionable. While convenience dictates dropping cases with any missing values, this was undesirable due to the already restrictive sample size and because these people did provide meaningful information elsewhere. We should not be too concerned, considering again that the overall percent of missing data is less than one percent of the whole

⁵² For IPV data only, substituted data make up less than one percent of the data in question: 14 capture items x 95 IPV completed surveys = 1330 potential data points; 13 missing data points ÷ 1330 data points = 1.0%. If office-based staff data were added here, the overall percentage of missing data would be even smaller.

dataset, and for those variables with missing data, the percent of missing data on each variable is under five percent (see Cohen, Cohen, West, & Aiken, 2003; Tabachnick & Fidell, 2001b, as cited in Meyers, Gamst, & Guarino, 2006, p. 59). Still, all capture-relevant analyses used both the pre-missing data substitution (i.e., using listwise or pairwise deletion) and post-missing data substitution datasets, with both sets of results presented simultaneously in the Findings section.

To provide substitutes for the missing data points, one of two methods was used: first, using a number of other survey items expected to be related to the item for which a prediction is being made, including all capture-relevant items and a small number of non-capture-relevant items like demographics and an IPV's direct supervisor, stepwise Ordinary Least Squares (OLS) regressions were run on cases (IPVs only) with complete data (see Cohen et al., 2003, pp. 445–447).⁵³ Using input variables that were statistically significant ($\alpha = .05$), substitute values were computed using the resulting model, rounded upwards or downwards to provide whole numbers, then entered into the dataset (see Appendix B for a list of input variables and resultant prediction equations).

Unfortunately, a number of cases for which missing data was being substituted were also missing at least one predictor; also, for one survey item, none of the input variables were statistically significant predictors. In these cases, simple means-substitution was utilized, again rounding values upwards or downwards to provide whole numbers. While other, more sophisticated methods to “guess” missing values exist (e.g.,

⁵³ As this process occurred around the same time as the initial data exploration process, items originally predicted to be relevant to capture, but eventually excluded from the data analysis process due to problems with reliability, were utilized here.

multiple imputation), simple means-substitution is suitable when other useful information to make an estimate is lacking (see Cohen et al., 2003, p. 450).

Capture and Non-Capture Scale Construction

Original scale construction: The prediction that capture is comprised of three underlying dimensions and that 18 Likert scale items would load heavily on one of these factors could not be tested with factor analysis. Another six Likert scale items were to be examined post-hoc for their relevance, if any, to capture. This is important because besides testing this prediction, construction of the overall capture scale and subscales (e.g., sympathy/empathy for DCS) was to be driven by the respective factor loadings.

Two conditions made a factor analysis ill advised as either would have led to highly questionable output (see Cohen et al., 2003; Rummel, 1970): one was the small sample size ($n = 107$) relative to the number of items to be included in the model ($n = 18-24$), the other being that of the 18 survey items explicitly designed to measure capture, all but two were heavily skewed, possessed a J- or reverse J-shape, or approached bimodality (see Appendix C). In some instances, over three-quarters of respondents strongly agreed or strongly disagreed with a particular statement. While distributional transformations might have brought normality to negatively or positively skewed distributions, this process could have gone on to produce new outliers and data interpretation complications. In addition, for some distributions such as those that are J-shaped, transformation rarely results in a normal distribution (Cohen et al., 2003; Rummel, 1970). All of these issues, then, made a factor analysis ill advised (Rummel, 1970).

Since they were thought to be central to capture's conceptualization, the 18 capture-relevant items were retained and, consistent with the original predictions, a scale measuring capture as a whole (range = 0–90) and three capture subscales—a staff sympathy/empathy for DCS subscale (range = 0–25), a staff identification with DCS subscale (range = 0–25), and a staff failure to adopt an adversarial position with DCS subscale (range = 0–40)—were constructed. (All of the subscale items were also used in constructing the overall capture scale.) The scale and subscales were constructed in a way that low scores would be indicative of little of the respective processes and high scores indicative of more. Scale construction assumed that a respondent had answered all of the relevant items; when not true, missing values were predicted using the already described procedures.

Again, besides the 18 survey items specifically designed to measure capture, another six were to be examined post-hoc for their relevance to capture. With the decision not to conduct a factor analysis and, upon further consideration, these six items and four more were used to construct three new scales. Each scale was assumed to represent processes separate from capture and constructed in a way that higher scores indicated greater levels of the respective processes. The *Sense of Powerlessness with DCS scale* (range = 0–15) had these three items:

- Item 25: “To be effective in this job, I am dependent upon the goodwill of prison officials.”
- Item 27: “I cannot do much if prison officials decide to ignore me.”
- Item 28: “To be most effective, I need to have the legal authority to force prison officials to comply with my requests.”

The *DCS Hostility scale* (range = 0–24) had these four items (items in **bold** were reverse scored):

- **Item 21: “Prison officials respect the work I do.”**
- Item 36: “Prison officials show hostility towards me when I am performing my official duties.”
- **Item 37: “Prison officials provide enough security for me to safely perform my official duties.”**
- **Item 38: “Prison officials allow me to access all documents required for me to perform my official duties.”**

Finally, the *Satisfaction with Support from the JIOP scale* (range = 0–15) had these three items:

- Item 22: “The job training I received when I began this job was satisfactory.”
- Item 29: “My direct supervisor is always available to assist me in my job duties.”
- Item 30: “The staff at the national office (in Cape Town) are always available to assist me in my job duties.”

Revised scale construction: Internal reliability analyses performed on each of the above scales indicated severe shortcomings with their internal consistency. Looking just at the pre-missing data substitution dataset, the capture scales’ Cronbach alphas (unstandardized/ standardized) were anywhere from an unacceptably low .23/.31 to a modest—but still poor—.59/.62. As indicated in Table 3, the alphas for the post-missing data substitution dataset were identical or virtually identical to the pre-missing data substitution dataset; alphas for the three non-capture scales too were far from desirable—from a low of .44/.44 to .58/.58.

Table 3

Cronbach Alphas for the Original Capture and Non-Capture Scales

Scale	Pre-Missing Data	Post-Missing Data
	Substitution	Substitution
Sympathy/Empathy for DCS		
Alpha / Standardized alpha	.44 / .44	.44 / .45
Identification with DCS		
Alpha / Standardized alpha	.47 / .53	.46 / .52
Failure to take adversarial action with DCS		
Alpha / Standardized alpha	.23 / .31	.22 / .30
Overall Capture		
Alpha / Standardized alpha	.59 / .62	.59 / .62
Sense of Powerlessness with DCS		
Alpha / Standardized alpha	.44 / .44	---
Hostility from DCS		
Alpha / Standardized alpha	.50 / .50	---
Satisfaction with JIOP Support		
Alpha / Standardized alpha	.58 / .58	---

Upon further examination, this became dramatically clear about the capture scales: their alphas were being reduced by the four reverse coded items (i.e., items 9, 11, 14 & 15). With these items scored in their original direction, the alphas' magnitudes went up about .15 for the overall capture scale and identification subscale; the increased magnitude for the failure to take adversarial action subscale was under .05. (Recall that

there were no reverse scored items in the Sympathy/Empathy for DCS subscale.) But in terms of capture, not having these four items reverse coded makes no conceptual sense. These items were then excluded from subsequent scale construction, resulting in 14 items being retained to measure capture in general.

Table 4

Cronbach Alphas for the Reconstructed Capture and Non-Capture Scales

Scale	Pre-Missing Data	Post-Missing Data
	Substitution	Substitution
Identification with DCS		
Alpha / Standardized alpha	.68 / .70	.68 / .70
Minimum – Maximum Scores		0–20
Failure to take adversarial action with DCS		
Alpha / Standardized alpha	.59 / .60	.59 / .60
Minimum – Maximum Scores		0–50
Overall Capture		
Alpha / Standardized alpha	.73 / .74	.73 / .74
Minimum – Maximum Scores		0–70
Sense of Powerlessness with DCS		
Alpha / Standardized alpha	.61 / .61	---
Minimum – Maximum Scores		0–10
Hostility from DCS		
Alpha / Standardized alpha	.61 / .61	---
Minimum – Maximum Scores		0–15

Table 4

Cronbach Alphas for the Reconstructed Capture and Non-Capture Scales (continued)

Scale	Pre-Missing Data	Post-Missing Data
	Substitution	Substitution
Satisfaction with JIOP Support		
Alpha / Standardized alpha	.60 / .60	---
Minimum – Maximum Scores		0–10

Note. Minimum-Maximum Scores refer to possible low and high scores on respective scales.

Next, upon further examination of the five items used to create the original sympathy/ empathy subscale and the five remaining items (i.e., not reverse coded) used to construct the failure to take adversarial action subscale, it was decided that all ten items would be used to reconstruct the latter scale; the sympathy/empathy subscale would be omitted.⁵⁴ As originally intended, the failure to take adversarial action items were measuring actual behavior, while attitudes were being measured by the sympathy/ empathy and identification with DCS items. Thus, the behavioral and attitudinal items were originally expected to load on different dimensions of capture. But on their face, the sympathy/empathy items could be seen as indicative of one's taking or not taking adversarial action with DCS. This modification to the scale resulted in an alpha of nearly .60, a more respectable though less than ideal figure (see DeVellis, 1991, p. 85). The

⁵⁴ The revised identification with DCS subscale retained items 3, 4, 7 and 8; the revised failure to take adversarial action with DCS subscale retained items 1, 2, 5, 6, 10, 12, 13, 16, 17 and 19 (see Appendix A).

new alphas and their possible minimum – maximum scores are displayed in Table 4 above.

What is worthy of attention in Table 4 is that the internal consistencies of both capture subscales are lower than that of the overall capture scale. One possibility is that there is at least one more underlying factor here; another possibility is that items in one subscale are more suited in the other. Both are possible, considering that the overall capture scale uses all of the subscale items. Without a factor analysis to guide us, though, which possibility is true cannot be assessed at this time.

Like the capture scales, efforts were taken to increase the non-capture scales' internal consistency. Ultimately, each non-capture scale lost an item in order to boost the scales' internal reliability, although the eventual alpha levels are under the desired .70 or greater (see Table 4). The revised scale compositions were items 25 and 27 in the sense of powerlessness with DCS scale; items 21, 37 and 38 (all reverse scored) in the DCS hostility scale; and items 29 and 30 in the satisfaction with support from the JIOP scale.

CHAPTER FOUR—STUDY FINDINGS

Introduction

This chapter's main purpose is to present the study's findings—that is, few explanations for these results or their implications for policy and future research are provided here. Instead, such explanations and their implications will be found in the next chapter. The present chapter begins with rates of JIOP staff participation in the study and basic sample descriptive, then proceeds to present the findings from the formal hypothesis testing process, and closes with findings from a few miscellaneous, post-hoc data analyses.

Response rates

Of the 135 JIOP staff asked to participate in the study, 102 responded in the affirmative by completing the survey—a respectable response rate of 76.1%. The small number of IPV's assigned to two prisons were asked to complete surveys for each prison, resulting in the distribution of 140 surveys; 107 of these were filled out and returned to me (76.4% response rate).⁵⁵ On average, participants completed the survey within two weeks of receiving it (mean = 12.47 days, sd = 21.81 days). Of the 114 IPV's asked to participate in the study, 90 agreed and completed one or both surveys—a response rate of 78.9%; just 12 of the 20 office-based staff who were asked to complete the survey did so (response rate = 60.0%). These response rate differences approached statistical significance (chi-square = 3.36, df = 1, p < .07).

Descriptives

⁵⁵ Of the six IPV's assigned to two prisons asked to complete the surveys, five did so by returning both surveys. The other person did not participate in the study.

Table 5

Sample Demographics

Demographic	IPVs	Non-IPVs	Overall
Gender			
Male	54 (60.0%)	9 (25.0%)	63 (61.8%)
Female	36 (40.0%)	3 (25.0%)	39 (38.2%)
Age (years)			
20 – 29	21 (23.3%)	1 (08.3%)	22 (21.6%)
30 – 39	44 (48.9%)	4 (33.3%)	48 (47.1%)
40 – 49	32 (35.6%)	5 (41.7%)	37 (36.3%)
50 – 59	7 (07.8%)	1 (08.3%)	8 (07.8%)
60 and over	4 (04.4%)	1 (08.3%)	5 (04.9%)
Race (%)			
African	69 (76.7%)	5 (41.7%)	74 (72.5%)
Non-African	21 (23.3%)	7 (58.3%)	28 (27.5%)
Education (%)			
Some High School – High School Grad.	19 (21.8%)	4 (33.3%)	23 (23.2%)
Some College, Univ., or Technikon – College, Univ., Technikon Grad.	62 (71.3%)	4 (33.3%)	66 (66.7%)
Advanced education	6 (06.9%)	4 (33.3%)	10 (10.1%)

Note. Percentages may not add to 100% due to rounding.

Demographics: As indicated in Table 5, respondents were mostly male, African, in their twenties or thirties, and lacked a college degree or its equivalent. Although IPV and office-based staff tended to be relatively young (i.e., under 40), the latter were more likely to be non-African and to have pursued an advanced education. While the dataset contains more refined categories (e.g., race was broken down into African, Coloured, Indian, Asian, and White; ages in 5 year increments), to minimize the risk that study participants can be identified here (especially office-based staff), ages are in ten year increments with people over 60 placed into one category, non-Africans put into a “non-African” category, and those having pursued any advanced education have been put into an “advanced education” category. Unless stated otherwise, however, all data analyses used the more refined categories.

Employment data: All but one non-IPV came from the Cape Town office (91.7%); among IPVs, nearly two-thirds came from the three provinces of the Western and Eastern Capes, and KwaZulu-Natal (see Table 6). The low number of IPV in the other provinces is mostly due to the small numbers approached in the first place. For instance, except for the at or just above 60% response rates in Mpumalanga and Limpopo provinces, response rates in the Northern Cape, Northwest Province, and Free State were a respectable 78% or more. Staff in Gauteng province, unfortunately, could not be recruited because certain JIOP managers denied me permission to approach these staff.

Respondents had been working for the JIOP as little as six months and as long as eight and one-half years. As contractual employees who may not have had their contracts extended after three years, it is not surprising that IPV on average had about three years

JIOP experience while non-IPVs averaged more than five and one-half years. These group differences were highly significant statistically ($t_{99} = 7.35$, $p < .001$; two-tailed t-test).⁵⁶

Table 6

Job-Related Data

Job-Related Variables	IPVs	Non-IPVs	Overall
Office Assigned To (n = 12 surveys)			
Cape Town	N/A	11 (91.7%)	N/A
Centurion	N/A	1 (08.3%)	N/A
Province Assigned To (n = 95 surveys)			
Western Cape	19 (20.0%)	N/A	N/A
Northern Cape	8 (08.4%)	N/A	N/A
Northwest Province	4 (04.2%)	N/A	N/A
Free State	7 (07.4%)	N/A	N/A
KwaZulu-Natal	21 (22.1%)	N/A	N/A
Mpumalanga	6 (06.3%)	N/A	N/A
Limpopo	7 (07.4%)	N/A	N/A
Eastern Cape	23 (24.2%)	N/A	N/A

⁵⁶ IRB restrictions required that hire dates not be included on the survey (due to privacy concerns); as a result, people were asked to indicate which three month period they were hired (e.g., January, February, March) and year. It was then possible to calculate the number of quarters that had passed since hire and the survey's completion (dates of survey completion were allowed).

Table 6

Job-Related Data (continued)

Job-Related Variables	IPVs	Non-IPVs	Overall
No. of Prisons Assigned To (n = 89 IPVs)			
One	84 (94.4%)	N/A	N/A
Two	5 (05.6%)	N/A	N/A
Time Employed with JIOP (# of Quarters)			
Mean (sd)	8.93 (5.46)	22.50 (9.26)	10.54 (7.43)
N (surveys)	89	12	101

Capture scales and non-capture scales: Table 7 below presents descriptives for the three capture scales and three non-capture scales. Presented here are the capture scale descriptives for both the pre- and post-missing data estimation datasets, but because missing data substitution did not occur with the non-capture relevant items, the table presents only the respective scale descriptives using the pre-missing data substitution dataset. As will soon become clear, there were numerous issues surrounding non-normally distributed data. When this was the case, I highlight these issues in the main text and/or footnotes.

With the three capture-relevant measures, the sample as a whole manifested what can be considered to be moderate levels of capture overall, and moderate levels on the identification with DCS and failure to take adversarial action subscales. As to the three miscellaneous scales, participants expressed moderate levels of powerlessness in their

dealings with DCS, low levels of hostility from DCS, and high levels of satisfaction with the support received from the JIOP.

Table 7

Overall Descriptives for Capture and Miscellaneous Scales

Scale	Pre-Missing Data Substitution	Post-Missing Data Substitution
Identification with DCS		
Mean (sd)	13.62 (4.53)	13.64 (4.51)
Min – Max	1–20	1–20
n	106	107
Failure to take adversarial action		
Mean (sd)	26.78 (6.85)	27.13 (6.81)
Min – Max	6–45	6–45
n	99	107
Total Capture		
Mean (sd)	40.21 (10.05)	40.78 (9.98)
Min – Max	11–65	11–65
n	99	107
Sense of Powerlessness		
Mean (sd)	4.59 (3.27)	---
Min – Max	0–10	
n	101	

Table 7

Overall Descriptives for Capture and Miscellaneous Scales (continued)

Scale	Pre-Missing Data	Post-Missing Data
	Substitution	Substitution
DCS Hostility		
Mean (sd)	4.31 (3.33)	---
Min – Max	0–15	
n	106	
Satisfaction with JIOP Support		
Mean (sd)	7.32 (2.43)	---
Min – Max	0–10	
n	106	

Finally, a cursory examination of the scale scores for the five IPVs that completed two surveys revealed that for the most part, survey A scores differed from survey B scores. The concern, then, that these people provided identical answers for each item was unfounded. On the other hand, it is reasonable for the surveys' scale scores to be similar as was the case.

Main Study Hypothesis Testing

For reasons already described, formal testing of the first hypothesis could not be conducted (H₁: there would (a) be three underlying dimensions of capture and (b) that 18 Likert scale items would load heavily on one of these factors.) Likewise, only two capture subscales were ultimately constructed. The second hypothesis (H₂), then, needed

to be slightly modified to *the two dimensions of capture will be correlated* ($H_0: r = 0$; $H_1: r \neq 0$). To test this hypothesis, a Pearson correlation was used. As shown in Table 8, this hypothesis was supported with the two subscales moderately correlated ($r = .53$).^{57,58} It is also clear that the pre-missing data and post-missing data substitution correlations were identical.

It is unfortunate that what was considered to have been the study's centerpiece could not be formally tested: how capture of JIOP staff affected their ability to bring transparency to prisons and accountability to prison officials. These effects of capture were formally stated in hypotheses H_3 to H_5 .⁵⁹ (As described below, it was possible to indirectly test H_3 .) A few things led to formal hypothesis testing not being carried out here. First, sometime around April/May 2007, certain JIOP managers refused my request to recruit IPV's in Gauteng province; this refusal was then extended to my requests to collect outcome data by re-attending Visitors' Committee (VC) and Stakeholder (SH) Meetings in Mpumalanga and Limpopo provinces. Second, a problem plaguing the research throughout the data collection process surrounded my attendance at Stakeholder Meetings. Either these meetings were not held on a quarterly basis (in some cases, not once occurring in a 12 month period), or were held but I was unable to attend because of

⁵⁷ As the overall capture scale is a sum of each subscale—all subscale items make up the capture scale—high correlations between the two subscales and the overall capture scale were expected.

⁵⁸ Analysis of the predicted versus observed residuals indicated that no abnormally high or low cases present.

⁵⁹ The respective hypotheses were: H_3 : levels of JIOP staff capture predict how transparent prisons are; H_4 : there is an \cap -shaped relationship between levels of capture among JIOP staff and prison official accountability; H_5 : the effect of capture on transparency of prisons is partially mediated by the effect of prison official accountability.

travel difficulties (e.g., being in the U.S. at the time, being in-country but not properly informed about meeting dates or places). Ultimately, it was possible to attend just six SH meetings for the express purpose of collecting outcome data.

Table 8

Pearson Correlations Between Capture Scales

Scale	Identification with DCS	Failure to take adversarial action	Total Capture
Identification with DCS	---	.53	.82
Failure to take adversarial action	.53	---	.92
Total Capture	.82	.92	---

Note. Values in the upper or right half represent those after missing data replaced with estimates (n = 107); values in the lower or left half represent those prior to replacement of missing data (n = 99). All correlations statistically significant at $p < .001$.

Finally, regarding data that was to be collected from JIOP created documents, there were serious quality control issues here. For instance, it became increasingly evident that little, if any, useful data could be gleaned from prisoner complaint forms: an unknown proportion of forms were never submitted by IPVs to the national or regional offices for storage; of those forms on file in Cape Town, many were woefully short on detail. I then decided to use as the sole source of IPV documentary data monthly narratives about the prison. Even then, only a modest number of narratives could be obtained for analysis (N = 74). Having been provided in electronic format, it is probable that an unknown number were never created or electronically recorded. The entries also

not infrequently contained comments like “nothing to report” or “none”, or multiple prisons were linked with the narrative but there was no indication as to what prison was being described.

Table 9

Capture Scales x Agreement/Disagreement with statement “It is best that the public know about everything we find and do during our prison visits.”

Scale	Pre-Missing Data Substitution		Post-Missing Data Substitution	
	Agree	Disagree	Agree	Disagree
Identification with				
DCS				
Mean (sd)	13.41 (4.58)	14.93 (4.06)	13.43 (4.57)	14.93 (4.06)
n	91	15	92	15
	t(104) = 1.21, p < .12		t(105) = 1.20, p < .12	
Failure to take				
adversarial action				
Mean (sd)	26.38 (6.57)	29.00 (8.13)	26.83 (6.58)	29.00 (8.13)
n	84	15	92	15
	t(97) = 1.37, p < .09		t(105) = 1.15, p < .13	
Total Capture				
Mean (sd)	39.55 (9.77)	43.93 (11.13)	40.26 (9.74)	43.93 (11.13)
n	84	15	92	15
	t(97) = 1.57, p < .06		t(105) = 1.33, p < .10	

My planned analysis of paper and electronic documents created by case officers and prison inspectors also became highly problematic, though for different reasons. The plan to examine case officer files was abandoned in early 2007 for strategic reasons: due to growing hostility towards the research expressed by some JIOP managers, there was a concern that my access to staff and documents was becoming increasingly tenuous. For example, I was eventually denied initial or follow-up access to IPVs in three provinces. Asking for access to sensitive case files, it was feared, could have led to even greater suspicions of the study and ultimately complete denial of access to all staff and documents. For prison inspection reports, the main problem was the substantive “contamination” of final reports through managerial edits and in some cases, in-house pressure to minimize overly negative findings. Therefore, the handful of inspection reports in my possession were left unanalyzed.

Though not ideal, the hypothesis that capture and transparency are negatively related was tested indirectly using a proxy for transparency—the level of agreement/disagreement with the statement that “It is best that the public know about everything we find and do during our prison visits.” (As respondents answered this item and the capture items simultaneously, a cause and effect relationship cannot be implied.) Because of the item’s distribution—a heavy negative skew—it was decided to test the hypothesis via a one-tailed t-test (and not a Pearson correlation) of these group differences: those in agreement with the statement would have lower levels of capture than those disagreeing ($H_0: \mu_{\text{agree}} = \mu_{\text{disagree}}$; $H_1: \mu_{\text{agree}} < \mu_{\text{disagree}}$). Though the mean scale scores were in the right direction, the group differences failed to reach statistical significance; but group differences on the overall capture scale did approach statistical significance; for the pre-

missing data substitution dataset only, group differences on the failure to take adversarial action subscale too approached statistical significance (see Table 9).

Each of the three measures had distributional problems. Meyers, Gamst, and Guarino (2006, p. 86) suggest that we should be concerned when a distribution's skewness and/or kurtosis is greater than +1.00 or smaller than -1.00 as values outside this range indicate a non-normal distribution, this potentially having negative implications for how accurate our inferential statistics are. When there are distribution problems, one remedy is data transformation. As an underlying assumption of many inferential statistical techniques (e.g., t-tests, regression analyses) is that the data are normally distributed, a goal of data transformation is to effect a normal distribution. However, transforming one's data brings certain challenges such as how to interpret one's data and the possibility that new outliers will crop up (Cohen et al., 2003; Meyers, Gamst, & Guarino, 2006; Rummel, 1970). Ideally, when normalcy issues arose, transformation of the data would have been attempted.⁶⁰ Such efforts will need to occur at another time, the result being that little else can be done except note their presence in either the main text or a footnote.

On the identification scale, there was a heavy negative skew (skewness = -1.78) and high kurtosis (4.97) for those that disagreed with the statement that "It is best that the

⁶⁰ For the *pre-missing substitution dataset*, there were outliers in the following distributions (the number of outliers are in parentheses): disagree x identification subscale (one); agree x identification subscale (two); disagree x failure to take adversarial action subscale (two); agree x failure to take adversarial action subscale (three); disagree x overall capture scale (two); and agree x overall capture scale (three). For the *post-missing substitution dataset*, there were outliers in these distributions: disagree x identification subscale (one); agree x identification subscale (two); disagree x failure to talk adversarial action subscale (two); agree x failure to take adversarial action subscale (three); disagree x overall capture scale (two); and, agree x overall capture scale (three).

public know about everything we find and do during our prison visits”. (The skewness and kurtosis indicators were identical for the pre- and post-missing substitution datasets.) For the pre-missing substitution dataset, on the failure to take adversarial action subscale, the amount of kurtosis among those that disagreed and those that agreed were beyond the acceptable range of ± 1.00 (1.66 and 1.21, respectively); the respective kurtosis indicators on the post-missing substitution dataset were 1.66 and 1.24. Finally, for the overall capture scale, there was a pronounced negative skew (-1.22) and high kurtosis (4.33) among those disagreeing with the statement. These indicators were identical for both datasets.

Table 10

Capture Scales x Age and Length of JIOP Employment

		Identification	Failure to take	Total Capture
Scale		with DCS	adversarial action ^a	
Pre-Missing Data Substitution	Age			
	Pearson r	-.13	.02	-.05
	p (one-tail)	p = .10	p < .45	p < .31
	n	106	99	99
	Quarters with JIOP			
	Pearson r	-.12	-.06	-.06
	p (one-tail)	p < .12	p < .28	p < .28
	n	105	96	98

Table 10

Capture Scales x Age and Length of JIOP Employment (continued)

	Scale	Identification with DCS	Failure to take adversarial action	Total Capture
Post-Missing Data Substitution	Age ^b			
	Pearson r	-.11	.00	-.05
	p (one-tail)	p < .13	---	p < .32
	n	107	107	107
	Quarters with JIOP			
	Pearson r	-.11	-.06	-.06
	p (one-tail)	p < .13	p < .28	p < .28
	n	106	104	106

Note. ^a Analysis of predicted versus observed residuals for the quarters x failure to take adversarial action subscale indicated the presence of two extreme scores with the pre- and post-missing substitution datasets. For the *pre-missing dataset*, inclusion of these items led to $r = .00$, p not reported, $n = 98$; for the *post-missing dataset*, inclusion of these scores led to $r = -.01$, p not reported, $n = 106$. ^b While casewise diagnostic analyses of the predicted versus the observed residuals indicated an extreme score on the age x failure to take adversarial action subscale and age x overall capture scale correlation matrices for both pre- and post-missing substitution datasets, the revised value for r and p are not reported here for their magnitudes changed little. (Since the original correlations were so similar for the two datasets, new correlations were run only for the post-missing substitution dataset.)

There was no empirical support for the hypothesis that capture would be positively associated with JIOP staff age (H_6) ($H_0: r = 0$; $H_1: r > 0$) nor the hypothesis that levels of capture would be positively associated with time employed with the JIOP (H_7) ($H_0: r = 0$; $H_1: r > 0$); no correlation even approached statistical significance (i.e., $p < .10$) (see Table 10).

As to the prediction that JIOP employees with prior employment with a corrections' department would have higher levels of capture than employees without this background (H_8), formal hypothesis testing could not occur since the number of participants with prior corrections' work was too small ($n = 5$). Thus, an equally interesting hypothesis was tested: *JIOP employees agreeing with the statement "I think about one day working for the Department of Correctional Services" would have greater levels of capture than staff that disagreed* (H_9) ($H_0: \mu_{\text{agree}} = \mu_{\text{disagree}}$; $H_1: \mu_{\text{agree}} > \mu_{\text{disagree}}$). Originally a Likert scale item, it was collapsed into two groups: those that agreed and those that disagreed. As indicated in Table 11, there was strong support for this hypothesis: one-tailed t-tests indicated that compared with those that disagreed, staff that agreed identified more with DCS, were less likely to take adversarial action with DCS, and had higher levels of capture overall.

Among those in agreement with the statement, there were some distributional issues: on the identification with DCS subscale, the distribution had enough negative skew and kurtosis to be of concern (pre-missing substitution: skewness = -1.15, kurtosis = 1.39; post-missing substitution: skewness = -1.17, kurtosis = 1.46); for the failure to take adversarial action subscale, there was significant kurtosis (pre-missing substitution: kurtosis = 1.83; post-missing substitution: kurtosis = 1.83), so too for the overall capture

scale (pre-missing substitution: kurtosis = 2.64; post-missing substitution: kurtosis = 2.82).⁶¹

Table 11

Capture Scales x Agreement/Disagreement with the statement that "I think about one day working for the Department of Correctional Services."

Scale	Pre-Missing Data		Post-Missing Data	
	Substitution		Substitution	
	Agree	Disagree	Agree	Disagree
Identification with DCS				
Mean (sd)	14.82 (4.02)	11.27 (4.48)	14.84 (4.00)	11.27 (4.48)
n	72	33	73	33
	t(103) = 4.05, p < .001		t(104) = 4.09, p < .001	
Failure to take adversarial action				
Mean (sd)	27.86 (6.52)	25.00 (6.98)	28.26 (6.43)	25.00 (6.98)
n	65	33	73	33
	t(96) = 2.01, p < .03		t(104) = 2.35, p = .01	

⁶¹ Outliers for the *pre-missing dataset* among those in agreement: three outliers on the identification subscale, three outliers on the failure to take adversarial action subscale, and two outliers for the overall capture scale. For those in disagreement, there was one outlier on the failure to take adversarial action subscale. For the *post-missing dataset*, among those in agreement, there were three outliers each on the identification subscale, the failure to take adversarial action subscale, and the overall capture scale. There was one outlier on the failure to take adversarial action subscale among those that disagreed with the statement.

Table 11

Capture Scales x Agreement/Disagreement with the statement that “I think about one day working for the Department of Correctional Services.” (continued)

Scale	Pre-Missing Data		Post-Missing Data	
	Substitution		Substitution	
	Agree	Disagree	Agree	Disagree
Total Capture				
Mean (sd)	42.52 (9.13)	36.27 (10.16)	43.10 (8.94)	36.27 (10.16)
n	65	33	73	33
	t(96) = 3.08, p < .01		t(104) = 3.49, p < .001	

According to the tenth hypothesis (H_{10}), *levels of capture would be negatively associated with the quality of an employee’s supervision*. Though a proxy for supervision quality, people were asked to indicate the extent to which they agreed or disagreed with this survey item: “My direct supervisor is always available to assist me in my job duties.” This Likert scale item was collapsed into those that agreed and those that disagreed. Those that disagreed were expected to manifest higher levels of capture than those that agreed ($H_0: \mu_{\text{agree}} = \mu_{\text{disagree}}$; $H_1: \mu_{\text{agree}} < \mu_{\text{disagree}}$). This hypothesis had no support; in fact, the opposite occurred: staff agreeing with the statement had slightly higher scores on the capture indicators (see Table 12). With group differences not in the predicted direction, one-tailed t-tests were not computed. Even when post-hoc, two-tailed t-tests were computed, group differences did not reach or approach statistical significance.

Table 12

Capture Scales x Agreement/Disagreement with the statement that “My direct supervisor is always available to assist me in my job duties.”

Scale	Pre-Missing Data		Post-Missing Data	
	Substitution		Substitution	
	Agree	Disagree	Agree	Disagree
Identification with DCS				
Mean (sd)	13.71 (4.43)	13.48 (4.99)	13.74 (4.41)	13.48 (4.99)
n	84	21	85	21
Failure to take adversarial action				
Mean (sd)	27.27 (6.42)	24.90 (8.37)	27.62 (6.41)	25.19 (8.27)
n	78	20	85	21
Total Capture				
Mean (sd)	40.78 (9.53)	38.25 (12.12)	41.36 (9.47)	38.67 (11.96)
n	78	20	85	21

The hypothesis that IPV's and office-based staff would manifest different levels of capture (H_{11}) ($H_0: \mu_{IPVs} = \mu_{office\ staff}$; $H_1: \mu_{IPVs} \neq \mu_{office\ staff}$) had some empirical support: two-tailed t-tests indicated that IPV's were more likely to identify with DCS than office-based staff. Group differences on the other subscale or overall capture scale were not statistically significant nor did they approach significance (see Table 13).

Table 13

Capture Scales x JIOP Job Position

Scale	Pre-Missing Data		Post-Missing Data	
	Substitution		Substitution	
	IPVs	Non-IPVs	IPVs	Non-IPVs
Identification with				
DCS				
Mean (sd)	13.94 (4.49)	11.17 (4.17)	13.96 (4.47)	11.17 (4.17)
n	94	12	95	12
	t(104) = 2.03, p < .05		t(105) = 2.05, p < .05	
Failure to take				
adversarial action				
Mean (sd)	26.78 (7.01)	26.75 (5.72)	27.18 (6.97)	26.75 (5.72)
n	87	12	95	12
	t(97) < 1.00		t(105) < 1.00	
Total Capture				
Mean (sd)	40.53 (10.16)	37.92 (9.36)	41.14 (10.04)	37.92 (9.36)
n	87	12	95	12
	t(97) < 1.00		t(105) = 1.05, p < .30	

It is possible, however, that had it not been for the numerous outliers present among the IPV group, the statistical differences on the identification subscale would have been even greater. The skewness indicators for both the pre- and post-missing substitution datasets were just beyond the acceptable ranges (skewness = -1.04 and -1.06,

respectively), the suggestion here being that but for the numerous outliers (4 and 7 for the respective datasets), the IPV group mean may have been even higher than what was observed here. There were further problems with the IPV distributions: for the failure to take adversarial action subscale, there was a significant amount of kurtosis (pre-missing: kurtosis = 1.22; post-missing: kurtosis = 1.26); the same was so for the total capture scale (pre-missing: kurtosis = 1.21; post-missing: kurtosis = 1.36).⁶² For the remaining distributions, the skewness and kurtosis indicators were within acceptable bounds.

An interesting question had been, to what extent does frequency of contact between JIOP staff and prison officials have on capture's severity. This relationship was formally presented in the twelfth hypothesis (H₁₂): *the frequency of contact between JIOP staff and prison officials is positively associated with capture's severity*. Among IPV's, the frequency of this contact was to be measured using either the number of full site visits reported to the JIOP (for purposes of monthly payment) or their answer to the survey question, "For the prison you are assigned to, how often do you visit all sections and cell accommodations where prisoners are incarcerated? _____ times per month."

While not completely identical indices, IPV responses should have been about the same. However, an informal comparison of survey responses versus data IPV's provided to the national office revealed that the former were oftentimes inflated, sometimes grossly inflated. Non-IPV's were also asked in the survey how often they inspect prisons each month but the number of people providing useful data was too small to conduct any

⁶² For the *pre-missing substitution dataset*, there were five outliers on the failure to take adversarial action subscale and four outliers on the total capture scale; for the *post-missing substitution dataset*, there were five outliers on the failure to take adversarial action subscale and six outliers on the total capture scale.

meaningful analyses (n = 9).⁶³ The end results were that the hypothesis could not be tested.

Miscellaneous Findings

During data analysis, numerous post-hoc analyses were conducted. For instance, in what ways were the capture and non-capture scales related? Or, in what ways did gender or education affect scores on the capture and non-capture scales?

Table 14

Capture Scales x Miscellaneous Scales Correlations

Scale		Powerlessness with DCS	DCS Hostility	Satisfaction with JIOP Support ^a
Pre-Missing Substitution	Identification with DCS			
	Pearson r	.19	-.31	.29
	p (two-tail)	p < .06	p = .001	p < .01
	n	100	105	102
	Failure to take adversarial action			
	Pearson r	.51	-.24	.26
	p (two-tail)	p < .001	p < .02	p < .02
	n	97	98	94

⁶³ The non-IPV survey item asked, “On average, how many times per month do you visit a prison for the purpose of conducting an inspection and/or checking upon the conditions in which prisoners are confined? _____ times per month.”

Table 14

Capture Scales x Miscellaneous Scales Correlations (continued)

Scale		Powerlessness with DCS	DCS Hostility	Satisfaction with JIOP Support
Pre-Miss. Substit.	Total Capture			
	Pearson r	.44	-.29	.32
	p (two-tail)	p < .001	p < .01	p < .001
	n	97	98	95
Post-Missing Substitution	Identification with DCS			
	Pearson r	.19	-.31	.30
	p (two-tail)	p < .07	p = .001	p < .01
	n	101	106	103
	Failure to take adversarial action			
	Pearson r	.51	-.28	.28
	p (two-tail)	p < .001	p < .01	p < .01
	n	101	106	102
	Total Capture			
Pearson r	.43	-.33	.35	
p (two-tail)	p < .001	p < .001	p < .001	
n	101	106	103	

Table 14

Capture Scales x Miscellaneous Scales Correlations (continued)

Note. ^a Casewise diagnostic analyses of the predicted versus observed residuals indicated outliers between the JIOP support scale and capture scales. Retaining the problem scores, the respective correlations between the support scale and capture scales were, Identification subscale (3 outliers): pre-missing substitution $r = .25$ ($p < .02$, $n = 105$); post-missing substitution $r = .25$ ($p = .01$, $n = 106$); Failure to take adversarial action subscale (4 outliers): pre-missing substitution dataset $r = .14$ ($p < .18$, $n = 98$); post-missing substitution dataset $r = .17$ ($p < .09$, $n = 106$); Total capture scale (3 outliers): pre-missing substitution dataset $r = .20$ ($p < .06$, $n = 98$); post-missing substitution dataset $r = .23$ ($p < .02$, $n = 106$). Identical analyses conducted for the powerless and hostility scales indicated the lack of outliers.

First, the associations between the capture and non-capture scales were looked at using Pearson correlations. As seen in Table 14, there were a number of statistically significant correlations. Looking only at the post-missing data substitution results, for instance, scores on the sense of powerlessness scale were positively correlated with the failure to take adversarial action subscale and overall capture scale; the powerlessness scale and identification subscale's correlation approached statistical significance. As one's scores on the identification and failure to take adversarial action subscales and overall capture scale decreased, their reports of hostility from prison officials predictably increased. Unexpectedly, however, as people expressed increased satisfaction with the support they received from the JIOP, the more likely they were to identify with prison

officials and to be captured in general; increased satisfaction also increased the likelihood that someone would not take adversarial action with prison officials.

Table 15

Capture Scales x Gender

Scale	Pre-Missing Data Substitution		Post-Missing Data Substitution	
	Males	Females	Males	Females
Identification with				
DCS				
Mean (sd)	13.49 (4.45)	13.87 (4.70)	13.49 (4.45)	13.92 (4.65)
n	68	38	68	39
	t(104) < 1.00		t(105) < 1.00	
Failure to take				
adversarial action				
Mean (sd)	26.73 (7.07)	26.86 (6.53)	26.94 (6.99)	27.46 (6.58)
n	64	35	68	39
	t(97) < 1.00		t(105) < 1.00	
Total Capture				
Mean (sd)	39.97 (10.13)	40.66 (10.04)	40.43 (10.09)	41.38 (9.87)
n	64	35	68	39
	t(97) < 1.00		t(105) < 1.00	

Next, as indicated in Table 15, males and females did not differ in how much they identified with DCS, how likely they were to adopt an adversarial position with DCS, or the overall extent to which they had been captured (using two-tailed t-tests). Though not

indicated here, differences on the non-capture scales failed to reach or approach statistical significance.

Table 16

Capture Scales x Level of Education Correlations

Scale		Identification with DCS	Failure to take adversarial action	Total Capture
Pre-Missing Data		Education		
	Pearson r	-.18	-.02	-.08
	p (two-tail)	p < .07	---	p < .41
	n	103	96	96
Post-Missing Data		Education		
	Pearson r	-.18	-.14	-.15
	p (two-tail)	p < .07	p < .15	p < .13
	n	104	102	103

Note. ^a Casewise diagnostic analyses of the predicted versus observed residuals indicated outliers between level of education and failure to take adversarial action subscale and total capture scale. With the problem scores retained, the respective correlations were $r = -.08$ ($p < .42$, $n = 104$, 2 outliers) with the failure to take adversarial action subscale and $r = -.14$ ($p < .17$, $n = 104$, 1 outlier) with the overall capture scale.

Next, using Pearson correlations to examine the relationship between a person's level of education and their scores on the capture scales (two-tailed t-tests), no

statistically significant relationships were present (see Table 16). However, the education x identification with DCS subscale correlation approached statistical significance. As shown in Table 17, as one's level of education increased, their satisfaction with the support they received from the JIOP decreased, so too their reports of hostility from DCS; the correlations, however, only approached statistical significance.

Table 17

Non-Capture Scales x Level of Education

	Powerlessness with DCS	DCS Hostility	Satisfaction with JIOP Support
Education			
Pearson r	-.05	-.17	-.19
p (two-tail)	p < .64	p < .10	p < .07
n	98	103	99

Note. As missing data were not estimated for the non-capture scales, these correlations are based on pre-missing data substitution analyses.

^a Casewise diagnostic analyses of the predicted versus observed residuals indicated outliers between level of education and the hostility scale (1 outlier) but neither the correlation nor p. value changed with the outlier's removal; and level of education and the JIOP Support scale with the four outliers included in the analysis resulting in $r = -.20$ ($p < .05$, $n = 103$).

It is not clear to what extent scale distribution issues affected our hypothesis testing efforts here. Some kurtosis values indicated significant clustering of scores in the

distribution's middle among males on the failure to take adversarial action subscale (pre-missing substitution: kurtosis = 1.51; post-missing substitution: kurtosis = 1.57) and overall capture scale (pre-missing substitution: kurtosis = 1.43; post-missing substitution: kurtosis = 1.51). Next, with the exception of females on the pre-missing substitution identification subscale, each distribution possessed one to five outliers. The skewness indicators, however, indicated that we should not be overly concerned as they were within the acceptable range of ± 1.00 .⁶⁴

Finally, a number of exploratory multiple regression analyses were conducted. For the sake of convenience, these analyses were carried out on the pre-missing substitution dataset only. The main motivation here was to begin assessing how multiple predictor variables work together to predict scores on the overall capture scale and its two subscales. While it is safe to assume that some predictor variables are just that, predictors of capture (e.g., whether one is an IPV or non-IPV, their level of education), it is quite conceivable that others—like scores on the hostility and sense of powerlessness scales—are the *results* of capture. With this important caveat in mind, these four basic models were used to predict scores on the overall capture scale and the two subscales (for a total of 12 regression analyses):

- Model A: Demographics only (i.e., age, gender, and level of education);
- Model B: Job-related characteristics only (i.e., IPV versus office-based, length of employment with JIOP);

⁶⁴ Among females, kurtosis was -1.44 on the powerlessness scale, indicating that the distribution was relatively flat (see Meyers, Gamst & Guarino, 2006, p. 68). Although there were 5 outliers across the six distributions, the kurtosis and skewness indicators on the remaining non-capture scale distributions did not exceed the recommended ranges.

- Model C: Non-capture scales (i.e., sense of powerlessness with DCS scale, DCS hostility scale, and JIOP support satisfaction scale) and level of agreement with the statement “I think about one day working for the Department of Correctional Services”;
- Model D: Model A + Model B + Model C.⁶⁵

Table 18

OLS Regressions (Stepwise) Predicting Identification with DCS Scale (Models A–D)

Model A (n = 103)			
<i>Independent Variables</i>	B (SE)	p. value	β
Constant	---	---	---
Age	---	---	---
Gender (0 = Male, 1 = Female)	---	---	---
Level of Education	---	---	---
R ² / Adj. R ²	---		
Model B (n = 105)			
Constant	13.94 (.47)	p < .001	---
IPV vs. non-IPV (0 = IPV, 1 = non-IPV)	-2.77 (1.38)	p < .05	2.20
Length of JIOP Employment	---	---	---
R ² / Adj. R ²	.04 / .03		

⁶⁵ For the level of agreement with the statement “I think about one day working for the Department of Correctional Services”, both Models C and D used the original Likert scale. Analyses indicated that keeping the item in its original format—in contrast to just two categories of agree and disagree—usually resulted in a small to modest improvement in R².

Table 18

*OLS Regressions (Stepwise) Predicting Identification with DCS Scale (Models A–D)**(continued)*

Model C (n = 97)			
<i>Independent Variables</i>	B (SE)	p. value	β
Constant	10.13 (.78)	p < .001	---
I think about work with DCS	1.13 (.78)	p < .001	.48
Powerlessness Scale	---	---	---
Hostility Scale	---	---	---
JIOP Support Satisfaction Scale	---	---	---
R ² / Adj. R ²	.23 / .22		
Model D (n = 93)			
Constant	10.13 (.79)	p < .001	---
Age	---	---	---
Gender (0 = Male, 1 = Female)	---	---	---
Level of Education	---	---	---
IPV vs. non-IPV (0 = IPV, 1 = non-IPV)	---	---	---
Length of JIOP Employment	---	---	---
I think about work with DCS	1.11 (.22)	p < .001	.47
Powerlessness Scale	---	---	---
Hostility Scale	---	---	---
JIOP Support Satisfaction Scale	---	---	---

Table 18

OLS Regressions (Stepwise) Predicting Identification with DCS Scale (Models A–D)
(continued)

R^2 / Adj. R^2	.22 / .21
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Each model used a stepwise regression with predictor variables entered into the model if their probability of $F \leq .05$ and removed if F 's probability $\geq .10$. (These are the SPSS defaults.) Though others have presented serious criticisms of procedures like stepwise regression (see Meyers, Gamst & Guarino, 2006, pp. 176–177), use of this procedure here is justified by the fact that these are early, exploratory analyses and the paucity of past research and/or theory to guide us in our endeavors is severe.

For the identification with DCS subscale, participant demographics had no predictive power (see Table 18, Models A & D). With Model B, the only significant predictor was whether or not someone was an IPV. Considering that this variable accounted for a tiny percentage of the dependent variable's variance (<5%) and that it was no longer significant when combined with all of the other independent variables (see Model D), in this context this variable can be considered a weak predictor of how much someone identifies with prison officials. As indicated in Models C and D, a single variable accounted for over one-fifth of the variance in the dependent variable: the extent to which someone expressed a desire to work for or not work for DCS.

In Table 19, we see again that the demographic variables could not predict someone's score on the other capture subscale—failure to take adversarial action with DCS (see Models A & D). Similarly, neither the length of one's employment with the

Jiop nor their being an IPV/ non-IPV had predictive power (see Models B & D). The extent to which someone expressed a desire or lack of desire to work for DCS again was a significant predictor, though not as powerful a predictor as one's score on the powerlessness scale (based on Beta) (see Models C & D). These two variables alone accounted for at least one-quarter of the variance on this particular capture subscale. With fewer predictors—that is, greater parsimony or greater simplicity—and a slight improvement in the adjusted R^2 , Model C is clearly preferred over Model D.

Table 19

OLS Regressions (Stepwise) Predicting Failure to Take Adversarial Action with DCS Scale (Models A–D)

Model A (n = 96)			
<i>Independent Variables</i>	B (SE)	p. value	β
Constant	---	---	---
Age	---	---	---
Gender (0 = Male, 1 = Female)	---	---	---
Level of Education	---	---	---
R^2 / Adj. R^2	---		
Model B (n = 98)			
Constant	---	---	---
IPV vs. non-IPV (0 = IPV, 1 = non-IPV)	---	---	---
Length of Jiop Employment	---	---	---

Table 19

OLS Regressions (Stepwise) Predicting Failure to Take Adversarial Action with DCS Scale (Models A–D) (continued)

R^2 / Adj. R^2	---		
Model C (n = 94)			
<i>Independent Variables</i>	B (SE)	p. value	β
Constant	20.84 (1.32)	p < .001	---
I think about work with DCS	.63 (.31)	p < .05	.18
Powerlessness Scale	.93 (.18)	p < .001	.46
Hostility Scale	---	---	---
JIOP Support Satisfaction Scale	---	---	---
R^2 / Adj. R^2	.27 / .26		
Model D (n = 90)			
Constant	20.81 (1.35)	p < .001	---
Age	---	---	---
Gender (0 = Male, 1 = Female)	---	---	---
Level of Education	---	---	---
IPV vs. non-IPV (0 = IPV, 1 = non-IPV)	---	---	---
Length of JIOP Employment	---	---	---
I think about work with DCS	.71 (.32)	p = .03	.21
Powerlessness Scale	.91 (.20)	p < .001	.44

Table 19

OLS Regressions (Stepwise) Predicting Failure to Take Adversarial Action with DCS Scale (Models A–D) (continued)

Hostility Scale	---	---	---
JIOP Support Satisfaction Scale	---	---	---
R^2 / Adj. R^2	.27 / .25		

Finally, as seen in Table 20, just two variables were sufficient predictors of peoples scores on the overall capture scale: the extent to which a person expressed a desire or lack thereof to work for DCS and one's score on the powerlessness scale. These variables alone accounted for over one-quarter of the variance on the overall capture scale (see Models A–D). Again, because of its parsimony and slight R^2 improvement, Model C is preferred over Model D.

Table 20

OLS Regressions (Stepwise) Predicting Total Capture Scale (Models A–D)

Model A (n = 96)			
<i>Independent Variables</i>	B (SE)	p. value	β
Constant	---	---	---
Age	---	---	---
Gender (0 = Male, 1 = Female)	---	---	---
Level of Education	---	---	---
R^2 / Adj. R^2	---		

Table 20

OLS Regressions (Stepwise) Predicting Total Capture Scale (Models A–D) (continued)

Model B (n = 98)			
<i>Independent Variables</i>	B (SE)	p. value	β
Constant	---	---	---
IPV vs. non-IPV (0 = IPV, 1 = non-IPV)	---	---	---
Length of JIOP Employment	---	---	---
R ² / Adj. R ²	---		
Model C (n = 94)			
Constant	30.41 (1.91)	p < .001	---
I think about work with DCS	1.72 (.45)	p < .001	.34
Powerlessness Scale	1.06 (.27)	p < .001	.36
Hostility Scale	---	---	---
JIOP Support Satisfaction Scale	---	---	---
R ² / Adj. R ²	.29 / .27		
Model D (n = 90)			
Constant	30.52 (1.96)	p < .001	---
Age	---	---	---
Gender (0 = Male, 1 = Female)	---	---	---

Table 20

OLS Regressions (Stepwise) Predicting Total Capture Scale (Models A–D) (continued)

Level of Education	---	---	---
IPV vs. non-IPV (0 = IPV, 1 = non-IPV)	---	---	---
Length of JIOP Employment	---	---	---
I think about work with DCS	1.79 (.47)	p < .001	.36
Powerlessness Scale	1.01 (.28)	p = .001	.33
Hostility Scale	---	---	---
JIOP Support Satisfaction Scale	---	---	---
R ² / Adj. R ²	.28 / .26		

CHAPTER FIVE—STUDY CONCLUSIONS

An Introduction

This chapter opens by discussing the findings that arose out of the formal hypothesis testing process and miscellaneous analyses. When appropriate, the discussion includes potential implications for JIOP leaders, leaders of other oversight bodies, and other scholars that study regulatory oversight bodies. For example, the very structure of the IPV system may have inadvertently placed IPV's at increased risk of capture (e.g., the policy of automatically terminating contracts after three years service). Next, I argue that at least two things account for many of the obstacles and challenges confronted during the data collection process: lack of leadership in the organization, and the JIOP's status as a semi-independent extension of DCS. In the sixth and final chapter, I make a number of recommendations for the JIOP and other regulatory oversight scholars.

It must be reiterated that the conclusions arising out of the formal hypothesis testing process be viewed with caution considering that the sample was not selected using probability sampling methods (i.e., the sample may not be representative of the larger population of JIOP staff); the concerns expressed in Chapter Four about many of the data distributions; the less than ideal internal consistencies of the failure to take adversarial action subscale and the three non-capture scales (i.e., Cronbach alphas < .70); and last, construction of the capture scales not being guided by factor analytic procedures.⁶⁶

⁶⁶ Even though the specific combination of items in the current study's capture subscales differed from those Makkai and Braithwaite (1992, Table 1) used in constructing their three capture scales (i.e., sympathy, identification, and toughness), the alphas were very similar. In the Makkai and Braithwaite study, the alpha for their identification scale was .69 and for their toughness scale, alpha was .55. (Note: the authors did not report whether their coefficients were standardized or unstandardized.) In the present study, the alphas were .68 (standardized alpha = .70) for the identification subscale and .59 (standardized alpha = .60) for the failure to take adversarial action subscale.

While it was reassuring to see that the two capture subscales' correlation was significant, but not so big as to cause concern that the indices were measuring the same dimension of capture, with both capture subscales' alpha lower than that of the overall capture scale, there is the chance that one or both subscales were also measuring a third or fourth dimension of capture. While collecting data from a more representative sample is not feasible, future research efforts could resolve some of the other problems identified here. It may be possible to remedy some, if not all, of the distributional issues using advanced transformation techniques, for example. If these led to properly distributed data, it may be possible to then use factor analytic procedures to confirm that the scales' current composition is correct or if not, to provide a blueprint for their reconstruction.

Findings from the Hypothesis Testing and Miscellaneous Analyses

With this sample, none of the three demographic variables analyzed were robust predictors of capture; in other words, there were no statistically significant associations. The only demographic to even approach statistical significance with capture was a person's level of education, with increased education providing some protection against overly identifying with prison officials. Neither a person's age nor gender promoted or inhibited capture in general or its two manifestations. Unexpectedly, how long someone was employed with the JIOP was unrelated to how captured they were (see Chapter Four, Table 10). While Makkai and Braithwaite (1992) also reported no association between how long someone worked as a regulator and how much they identified with those they were regulating, they found that the longer one worked as a regulator, the less likely that they would be tough with those they oversaw.

It is possible that among the larger population of JIOP staff, there actually is not a relationship between capture and these demographic and job-related variables (i.e., a Type II error was not committed.⁶⁷) Equally compelling is the possibility that these relationships do in fact exist in the real world of prison inspectors but could not be detected here for various reasons. Maybe the sample size relative to effect sizes was too small to detect these differences, or there were validity issues with the capture scales. Under certain conditions—conditions that were not present here—a power analysis would have provided guidance as to how large the sample needed to be in order to detect any differences in the population. To conduct a power analysis, however, it is necessary to know how large one's effect sizes are, these being unknown at this time. Or, with IPVs making up most of the sample, and the average IPV having been employed with the JIOP for just over two years, maybe the range of values for the employment variable or its unit of analysis—number of quarters—were too restricted, the effect being that the measures of association used here (t-tests and Pearson correlations) could not detect any bivariate relationships. Or, two years' employment might not be enough time for capture to set in. The policy implications of this latter possibility are discussed in Chapter Six.

A Makkai and Braithwaite (1992, Table 3) finding was that how often regulators visited nursing homes was not predictive of how captured regulators would become. But a finding of ours disputes this: not being an IPV was the one job-related variable that served to protect against identifying too much with prison officials. Recall that the very

⁶⁷ Recall that in statistics, a Type II error is when we fail to reject a false null hypothesis—that is, the two populations are actually different but we conclude they are not; a Type I error has occurred when the two populations are not different—i.e., the null hypothesis is true—but we conclude that they are and mistakenly reject the null hypothesis.

purpose of IPV is to spend most working hours inside prison, interacting with both inmates and prison officials in order to identify and resolve problems, while office staff spend most of their working hours outside of prisons. Considering the inherent difficulties anyone working with prisoners confront—people with powerful incentives to lie to and manipulate others—and the reality that the safety of non-custodial workers inside the facility (e.g., medical personnel, IPV) is ensured by warders, it is reasonable that these workers would adopt a mindset similar to that of the custodial staff.

To explore what might be happening, the relationship between each measure of capture and a prison's approved population size was examined. Use of the approved population size is appropriate here as this number is a significant determinant of how many contractual hours an IPV must spend in a prison each month. While the study database contained inmate population data for just 61 facilities, there were enough data points to conduct some exploratory analyses.⁶⁸ Based on the Pearson correlations, the initial analyses were like those of Makkai and Braithwaite: there were no relationships between how much time a person spent in prison (or, were contracted to spend in prison) and how captured they were.

As illustrated in Figures 3A to 3C, however, these scatterplots portrayed a different picture: the size of a prison's approved population—thus, how many hours an IPV was supposed to spend in a prison—was *non-linearly* associated with how much IPV identified with DCS, the extent to which they took or failed to take an adversarial stance with DCS, and how captured they were in general. Each plot indicates that the

⁶⁸ These analyses used the pre-missing data substitution dataset only; the number of prisons with population data is the same in both the pre- and post-missing data substitution datasets. Any differences in group sizes across the datasets would be a result of additional cases with valid capture scale scores in the post-missing dataset.

best fitting line is a cubic one.⁶⁹ (When the intercepts were included in the scatterplots, what is seen here in Figures 3B and 3C is what was displayed in the alternate plots; the line of best fit in Figure 3A, however, took on a U-shape when the intercept was included, indicating that a quadratic equation provided the best fit. In the figures shown here, when the person assigned to the prison with over 1,000 inmates was excluded, the three lines' retained the shapes seen here.)

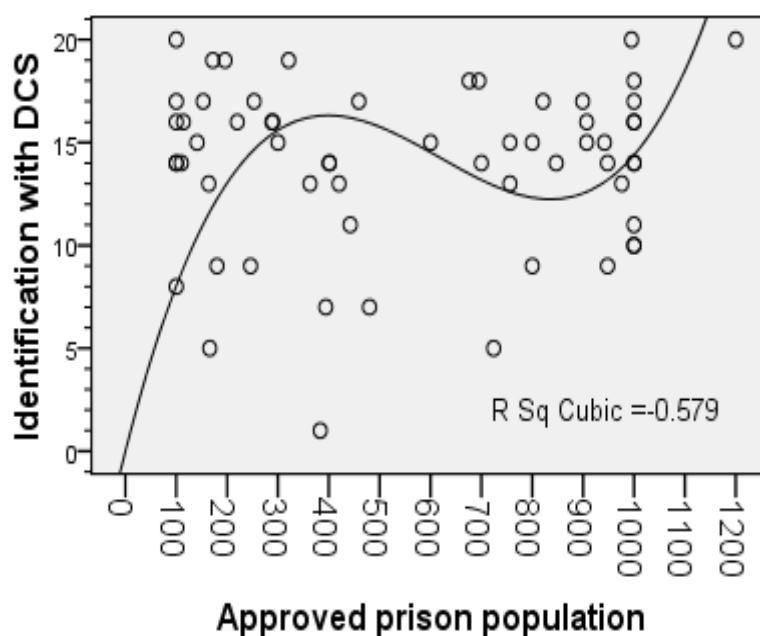


Figure 3A. Identification with DCS Scale x Prison's Approved Inmate Population.

⁶⁹ The lines of best fit intercepts were excluded from these plots.

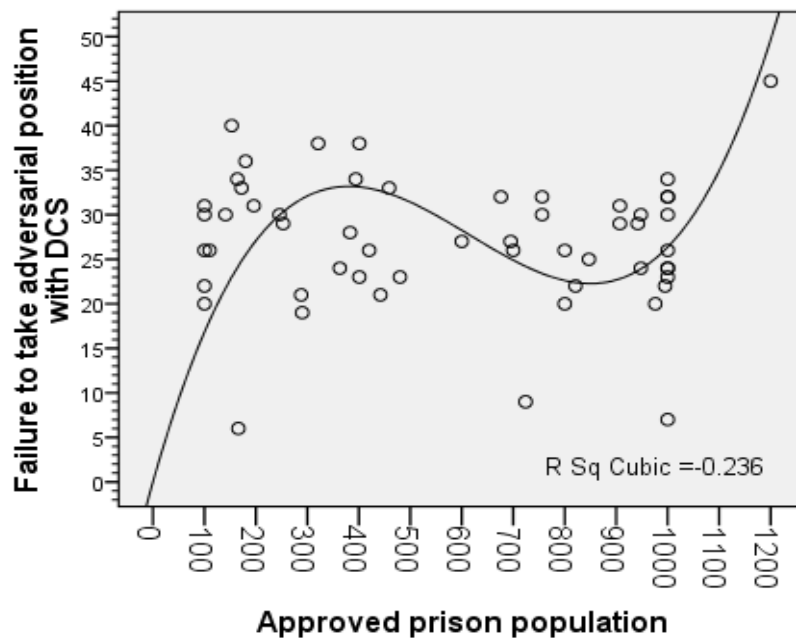


Figure 3B. Failure to Take Adversarial Action with DCS Scale x Prison's Approved Inmate Population.

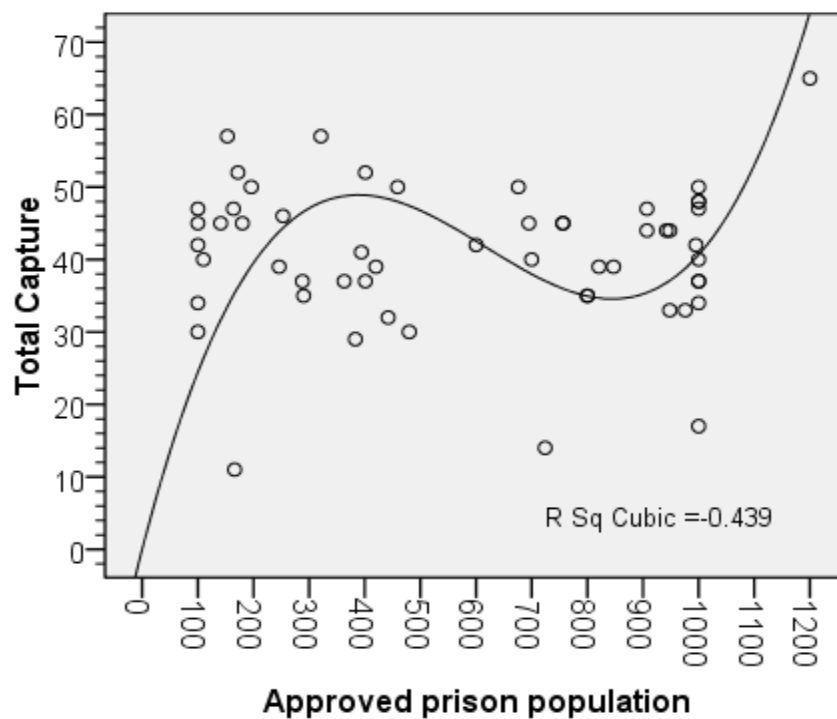


Figure 3C. Total Capture Scale x Prison's Approved Inmate Population.

These graphs, then, help explain why the current study and Makkai and Braithwaite's study failed to find a linear relationship between capture and the amount of contact between the overseer and the overseen. What is not straightforward, however, is why the relationship is not linear. For instance, why is it that IPVs in prisons designed to house small inmate numbers manifest levels of capture seen among IPVs in the larger facilities? Quite possibly, operating in the background is another variable that is interacting with time spent in prison—this other variable being whether a prison is located in an urban or a rural area. Smaller facilities tend to be located in less populated areas and larger prisons are usually located in urban areas. Before data collection began, it was recognized that IPVs working in rural prisons could be at increased risk of capture since many became IPVs because other, more suitable work could not be obtained. Also, in the towns that many of these small prisons are found, the uniformed and civilian workers are more likely than their urban counterparts to know one another outside their professional relationship.⁷⁰ In the larger prisons, however, the levels of capture among IPVs may very well be a result of spending more time there. Again, making sense of what is really happening here requires further exploration.

It is not known how many JIOP staff once worked for the Department of Correctional Services or the former Prisons Service, but I do know of staff with this experience that did not complete the survey. Again, it is unfortunate that the sample did not contain more ex-DCS officials. While Makkai and Braithwaite (1992) found limited evidence that regulators were at increased risk of being captured if they had once worked

⁷⁰ It was not unheard of for JIOP staff to have relatives who were uniformed DCS officials; it was also not unheard of for these relatives to work in prisons that fell within an RC's jurisdiction.

for the very group they were overseeing, many regulatory oversight researchers believe the risk to be very real, so too the benefits (better understanding of the overseen, etc.) (see e.g., Boyne, Day, & Walker, 2002; Grabosky & Braithwaite, 1986; Prenzler, 2000; Quirk, 1981).

Yet we could examine the extent to which capture's severity was affected by whether or not JIOP staff expressed a desire to one day work for DCS. This led to one of the study's most striking findings: in contrast with staff not expressing such a desire, those that did were much more likely to identify with prison officials and to not take adversarial action with DCS, and thus score higher on the overall capture scale. The large influence of this predictor on the capture measures was indicated in the multiple regression analyses: this variable alone accounted for over one-fifth of the variance on the identification with DCS subscale, and was one of just two predictors on the other two capture measures. This is similar to what Makkai and Braithwaite (1992, Table 3) found in their study of nursing home regulator, and the ideas expressed in the works of scholars such as Grabosky and Braithwaite (1986) and Quirk (1981).

This finding is equally noteworthy since, of the 73 surveys where staff said yes, they would one day like to work for DCS, all but one were from IPVs (98.6%); in contrast, of the 12 surveys completed by office-based staff, only one endorsed the statement.⁷¹ Not only are IPVs at greater risk of capture in general, but IPVs put themselves at even greater risk of capture by being more likely to want to work for DCS. What, then, might make IPVs disproportionately more likely to want to work for DCS? A likely explanation is again the very nature of the IPV system and the methods by which

⁷¹ Recall that a small number of IPVs completed two surveys; both surveys are included in the analyses here.

the JIOP recruits and retains its IPVs: first, many people became IPVs because other, more suitable work in their community was not available. These people may already harbor a desire to work for DCS and thinking that it will help them get their foot in the door at the local prison, seek employment as an IPV.

Just as likely, after becoming IPVs, people may come to see DCS employment as a more stable and better paying proposition. For example, IPV contracts expire after three years and are often not renewed: this is a formal JIOP policy—ironically, to prevent the “institutionalization” of IPVs—and is specified up front when IPVs are hired and reiterated by supervisors during their stint as an IPV. Left seeking alternative post-IPV work, many may see future employment with DCS as a viable source of income.⁷² Finally, there was the already discussed finding that IPVs were more likely to identify with DCS than their office-based brethren, this increased identification maybe making it easier for a person to minimize whatever resistance they once felt about working for DCS. The practical and policy implications of these are discussed the next chapter.

Next were the many positive correlations between the capture measures and the three non-capture scales. In figures 4A to 4C, scores on the sense of powerlessness scale are plotted against each capture measure: as seen here, the bivariate relationship between the powerlessness scale and the identification with DCS subscale was not as pronounced as that seen between the failure to take adversarial action subscale and capture in general. How might we account for the (nearly significant) relationship between powerlessness and identification with DCS? A simple explanation is this: if JIOP staff identify with

⁷² During the course of data collection, I became aware of at least one IPV who later became a DCS member and at least one IPV who went on to work for a parole board.

prison officials and the former think of prison officials as being powerless in the larger scheme of a prison's operations, then JIOP staff will think of themselves as being powerless in carrying out their official duties.⁷³

The large positive correlation between how powerless JIOP staff felt in dealing with DCS and their failure to take adversarial action with DCS makes equally intuitive sense: if staff believe they possess little power over what prison officials ultimately do, why bother making a fuss, especially when one's safety is highly dependent upon the very same prison officials? This is illustrated in a field note entry (10/31/06) after a conversation with a JIOP staff person who was once an IPV: "...IPVs [are] oftentimes very reliant upon DCS for their security and IPVs that made too many waves did so at their own risk." Whatever is going on here, we should be concerned because JIOP staff was less likely to adopt an adversarial position with DCS when they felt powerless with DCS and they overly identify with the very officials being monitored. And, as was very clear in the multiple regression analyses, the extent to which JIOP staff did or did not take an adversarial position with DCS was driven by how powerless they felt in their dealings with DCS and whether or not they wanted to one day work for DCS.

⁷³ These plots are based on the pre-missing data substitution dataset. In many instances, cases with the same values on both the x- and y-axis are superimposed. When true, their circles' borders are darker. For example, in Figure 4A, there are at least two cases with values of zero on the x-axis (powerlessness) and five on the y-axis (identification).

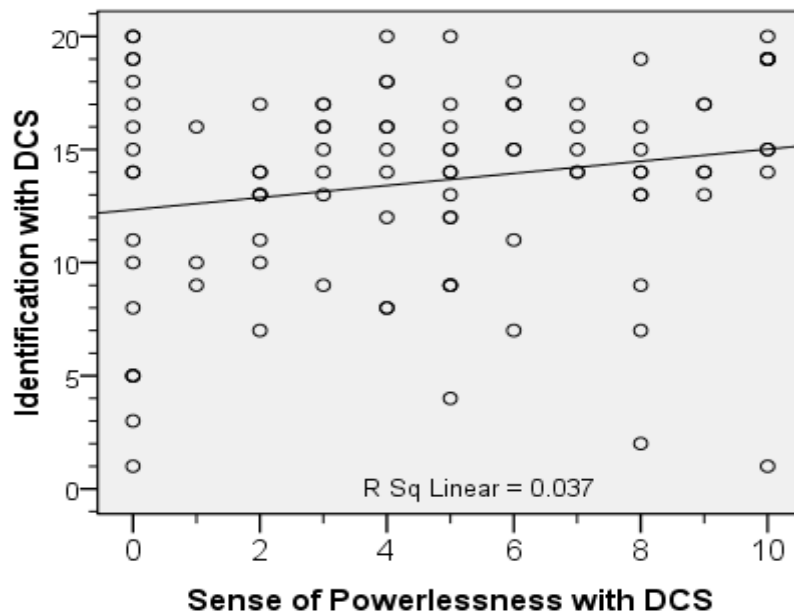


Figure 4A. Sense of Powerlessness with DCS Scale x Identification with DCS Scale.

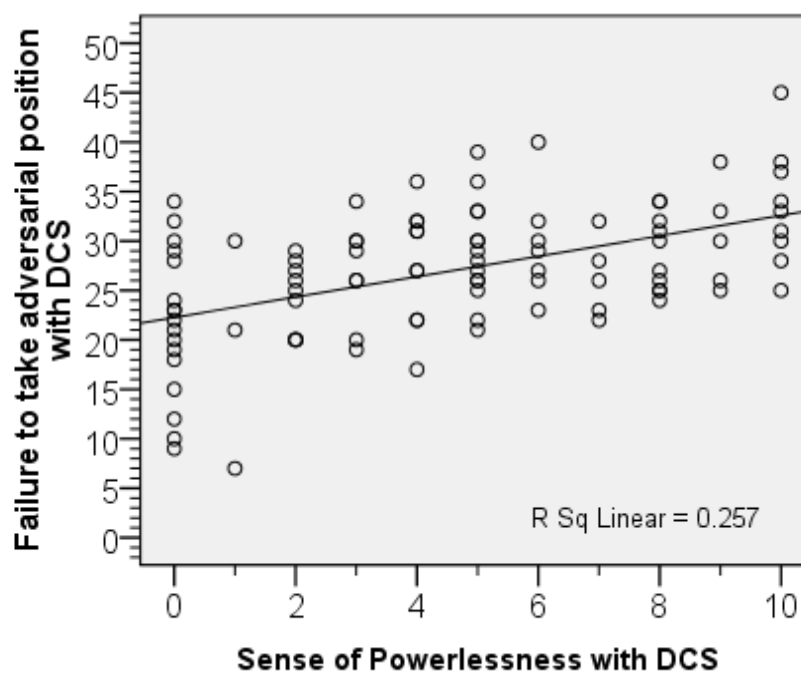


Figure 4B. Sense of Powerlessness with DCS Scale x Failure to Take Adversarial Action with DCS Scale.

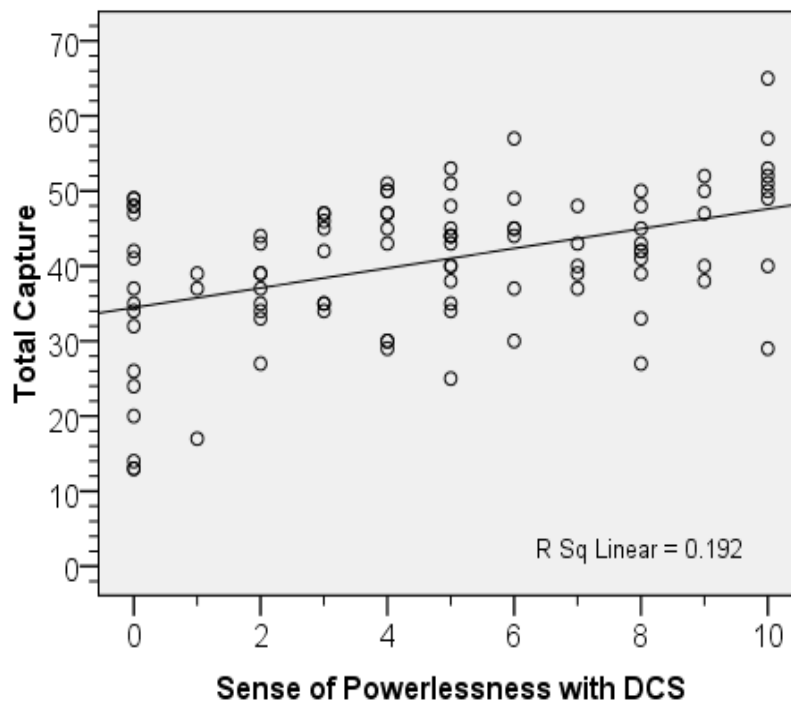


Figure 4C. Sense of Powerlessness with DCS x Total Capture Scale.

While their magnitudes were not as great as those between the powerlessness scale and capture scales, the associations between the capture scales and the DCS hostility scale were also significant. These associations are illustrated in Figures 5A to 5C. In Figures 5B and 5C, the reader will note that there are two lines of best fit: the straight line is based on a linear fit while the curved line uses a fit that is cubic. Adding a non-linear fit line to Figure 5A would not have added anything different than what is seen here. These non-linear lines were included in order to show that the bivariate relationships are not straightforward.⁷⁴

⁷⁴ It does need mentioning that in Figures 5B and 5C, the lone score in the lower right quadrants has a significant effect on the curved fit lines.

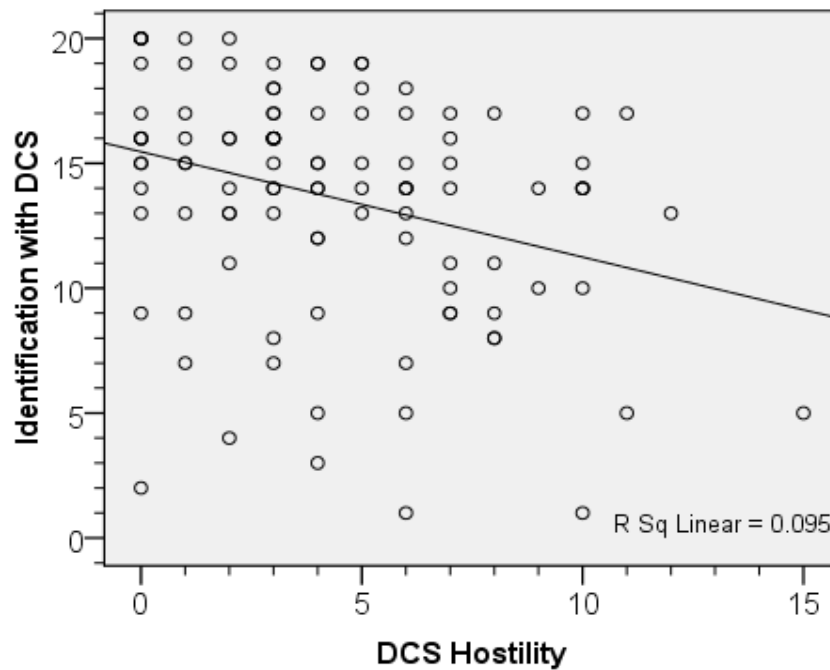


Figure 5A. DCS Hostility Scale x Identification with DCS Scale.

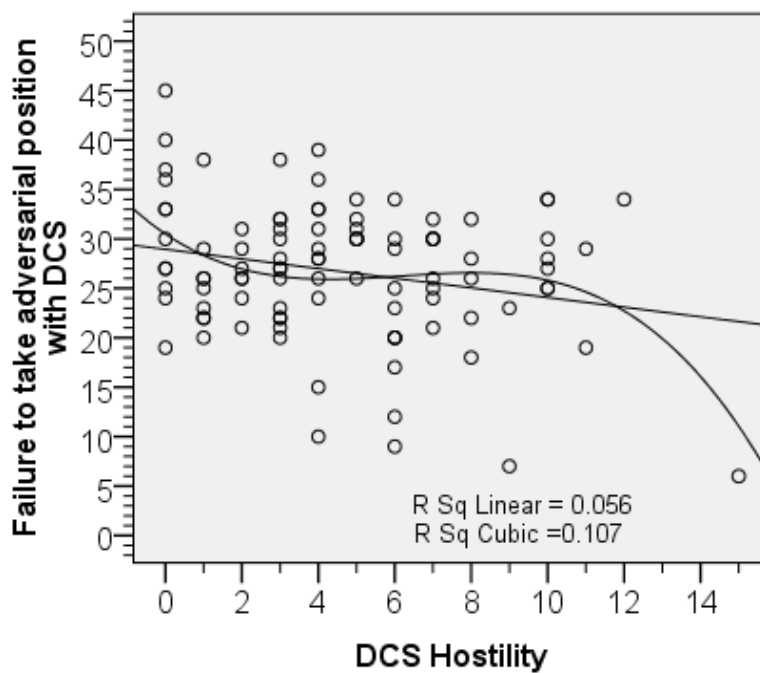


Figure 5B. DCS Hostility Scale x Failure to Take Adversarial Action with DCS Scale.

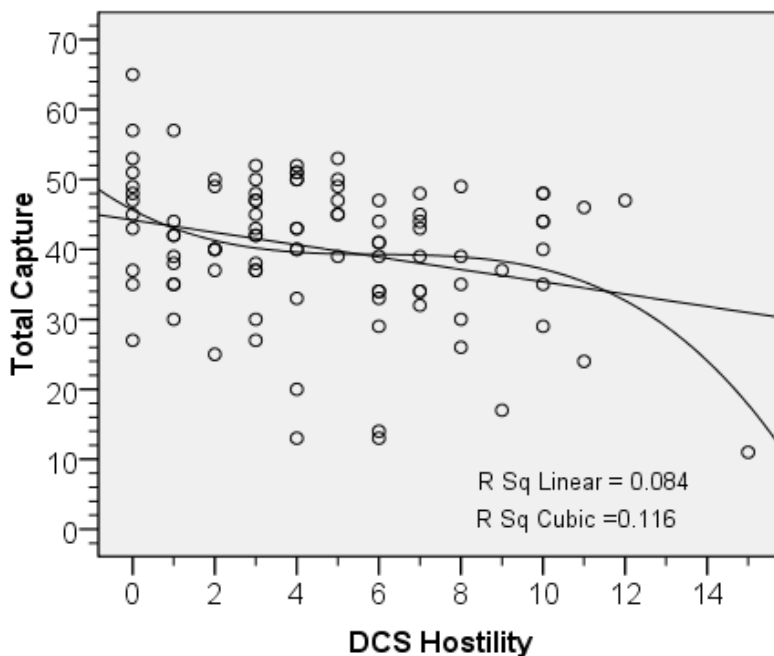


Figure 5C. DCS Hostility Scale x Total Capture Scale.

As scores on the three capture measures increased, JIOP staff reports of hostility from prison officials went down. In fact, the person that took the most adversarial position with DCS had the greatest score on the DCS hostility scale; the same thing is true for overall capture and hostility from DCS. Knowing what we do about overseers being co-opted or captured by those they are overseeing, these findings are entirely consistent with what we would expect to be an adverse effect of capture. Lewis (1991), for example, in her study of a police monitoring body in Canada, said that when there is little or no tension between police and their overseers, it is probable that there is some level of collusion taking place.

At first glance, why inspectorate staff (office-based and IPVs) satisfaction with the organizational support they received was positively correlated with the three capture measures is a mystery. Adding to the mystery is that a subsequent analysis indicated a

highly negative correlation between the staff support satisfaction and DCS hostility scales.⁷⁵ In terms of the capture scales, one would expect dissatisfied staff to be more likely to identify with the “other side” (i.e., prison officials) and not adopt a confrontational stance with DCS, but the initial bivariate analyses indicated this was not so.

There are a few possibilities for this: first, assume that a staff person (e.g., an IPV) has a professional disagreement with DCS. The IPV may turn to his or her direct supervisor and/or staff based at the regional or national office. Acting as a mediator, the supervisor may attempt to get the IPV and prison officials to understand one another’s point of view. Should the supervisor successfully accomplish this, by providing effective support to the IPV, the supervisor will have ironically increased the odds that the staff person identifies with DCS and does not take an adversarial position with prison officials. Related to this is the possibility that the JIOP as an organization is not fully independent of DCS. If the JIOP is a semi-independent extension of DCS, it makes sense that JIOP staff would receive the support they need as long as they don’t “make a stink” of things inside a prison.

Third, it is equally likely that the correlations between the support satisfaction scale and capture measures are little more than statistical artifacts. The respective scatterplots, for instance, indicated that on the support satisfaction scale, only seven people had scores ranging from 0–3; the other 90 or so people scored somewhere from 4–10. Why does this matter? Again, measures of association such as Pearson correlations can become distorted when one or both scale’s variability is low.

⁷⁵ Using the pre-missing substitution dataset, $r = -.45$ ($p < .001$, $n = 105$).

Recall that the relationship between capture and transparency of prisons was tested indirectly using a proxy for transparency: whether JIOP staff agreed or disagreed with the statement that “It is best that the public know about everything we find and do during our prison visits.” As reported in Chapter Four (see Table 9), the variable’s relationship with the capture measures only approached significance with the overall capture scale.⁷⁶ Here, in contrast to staff that were in agreement, those not in agreement had slightly higher scores on the overall capture measure. While inconclusive, the finding suggests that there is some support for the prediction that the transparency of prisons is adversely affected as JIOP staff becomes increasingly captured. It must also be pointed out that of the 15 staff that disagreed, 14 were IPVs.⁷⁷

In the next chapter, I will return to the broader practical and theoretical implications of these findings. Most importantly, I will argue that the method by which the JIOP has used to minimize the risk of IPVs becoming “institutionalized”—the near automatic non-renewal of IPV contracts—actually increases this risk, and that there are better, perhaps less costly alternatives available to it. But because the major study challenges also have implications for how we go about studying regulatory capture, these challenges are discussed next.

Study Challenges as Indicators of Ineffective JIOP Leadership and Quasi-Independence from DCS

⁷⁶ While there was a nearly significant association with the failure to take adversarial action subscale, this was only true for the pre-missing data substitution dataset.

⁷⁷ Group differences (i.e., agree or disagree with statement) no longer approached significance when non-IPVs were removed from the analysis. This suggests that there are some inherent differences between IPVs and non-IPVs on the capture measures.

It is my hope that in this section, the reader will come away with a better sense of the *institutional context* in which this study was conducted. It is true that events like the JIOP's restructuring efforts led to the irretrievable loss of data, but there is also the possibility that some of the challenges I confronted during the data collection process are evidence of the JIOP's capture by DCS and/or poor leadership within the organization. For example, were many of the prisoner complaint forms that were lacking adequate detail a result of poor IPV training and supervision, a result of managerial efforts to conceal what is happening inside prisons, or something else? Distinguishing between poor leadership and capture cannot be done here, this fact serving as the basis for one of my recommendations for other regulatory oversight scholars.

What I also cannot do here is draw a bright line between poor leadership resulting from inadequate managerial capacity (e.g., poor managerial skills), clever efforts to singularly pursue one's self interests (e.g., continued civil service employment, promotions), and/or equally shrewd efforts to ensure the organization's very survival at the expense of its larger mandate to provide independent oversight of prisons.⁷⁸ I am also unable to address here the enormous challenges facing the JIOP because of the legacy of apartheid such as hiring, training, and retaining highly qualified staff and leaders. In his comprehensive analysis of institutional reform in the post-apartheid South Africa, Picard (2005) describes the lingering systemic outcomes arising from the country's civil service during the colonial and apartheid eras. Poor quality education was and continues to be a reality for many South Africans, so too the automatic—yet unsupported—assumption by

⁷⁸ The last possibility—management's focus on ensuring the organization's survival—is worthy of a stand-alone chapter: over the last few years, governmental and non-governmental oversight mechanisms in South Africa appear to many observers to be under concerted attack.

the new government that racial equality in the civil service would lead to better service delivery, the large scale emigration of well educated and/or highly trained citizens, and the simple fact that large bureaucracies such as DCS are inherently difficult to reform.⁷⁹ Certainly, each of these are likely to have affected the JIOP and are worthy of future study.

What I do instead is argue that the challenges I confronted during the data collection process suggest an organization that was poorly led, had in effect very weak quality control mechanisms, and was driven mostly by the desire to uphold its positive public image and not upset its comfortable co-existence with DCS. During my multiple visits to the JIOP, at least three senior JIOP managers stated that the inspectorate is not really independent of DCS. Even the Jali Commission concluded that “the Office of the Inspecting Judge has been rendered ineffective by the removal of its independence and making it appear as though it is an extension of the Department [of Correctional Services]” (Commission of Inquiry into Alleged Incidents of Corruption, Maladministration, Violence or Intimidation into the Department of Correctional Services, 2006a, p. 589). The Commission concluded this because the JIOP receives its funding directly from DCS; it must consult with the DCS Commissioner when appointing staff and in certain cases determining their salary, and, JIOP staff (excluding IPVs) are considered DCS employees and subject to the same internal evaluation procedures as ordinary DCS members (see Correctional Services Act, 1998, §§85–91; Commission of Inquiry into Alleged Incidents of Corruption, Maladministration, Violence or

⁷⁹ Referring to civil service reform efforts after 1994 and patronage among civil servants, Picard (2005, p. 274) observed that “these incidents demonstrated, not for the first time, that the new government placed more importance on loyalty and obedience than on competence, even in the face of corruption.”

Intimidation into the Department of Correctional Services, 2006a, pp. 564–593; Judicial Inspectorate of Prisons, 2002, Section 6.1.2).

In the context of this study, the last point is worrisome as a handful of staff came from DCS and the Commission found that some staff were wary of bringing bad publicity to DCS for they might not be promoted in the future (Commission of Inquiry into Alleged Incidents of Corruption, Maladministration, Violence or Intimidation into the Department of Correctional Services, 2006a, p. 582). Any public exposure as to what actually happened inside prisons and any accountability the JIOP brought to DCS was, in my view, a secondary goal or a “fringe benefit”.

To support this contention, I relied upon three things: documents produced by IPVs and prison inspectors; Stakeholder and Visitors Committee meetings; and a major organizational restructuring effort initiated in November 2006 and still ongoing at the time of my June 2007 departure from South Africa. In my view, the restructuring was a poorly executed, drawn out affair that did little more than result in organizational confusion and a weakening of the JIOP’s efficacy in executing its monitoring and reporting function.

Prisoner complaint forms and monthly prison reports: A crucial source of outcome data was to be documents completed by IPVs (i.e., prisoner complaint forms and monthly narratives) and prison inspectors (i.e., prison inspection reports or prison “profiles”). Many of the inmate complaint forms, however, were very short on detail.⁸⁰

⁸⁰ As I was unable to have non-English documents translated, this observation is based on documents written in English. In my field notes (October 31, 2006), I wrote, ...the information in the section on the nature of the complaint is barely little more than the HOP [Head of Prison] steps taken to resolve the problem—in a number of instances, there’s just one line in the nature of the complaint and the

But what was most problematic was the haphazard manner in which these documents were stored at the national office, and that nobody at the JIOP could tell me what proportion of these forms were never submitted to the regional or national offices for review and storage.

Over six months, I sifted through over 20 boxes of files and was troubled by what I found. First, there appeared to be no system in terms of which box contained what form: not infrequently, in the same box were prisoner complaint forms; inmate death notices and inmate death investigation reports completed by DCS; minutes from Visitors' Committee meetings; and, job candidate materials such as CVs, academic transcripts, and completed job applications. Second, complaint forms completed by the same IPV or for the same facility might be located in one box or found randomly scattered in two or more boxes. Similarly, files were not always sorted chronologically.⁸¹

Next, nearly all of files were from the years 2000 to 2001 (Field Notes, 03/07/07). This is ironic for at the same time that JIOP managers were complaining about too little storage space, precious space was taken up by documents created six to seven years before. According to JIOP policy, documents were to be discarded after five years

steps taken, with the HOP writing "spoke with inmate, problem resolved" or something similar! There's no indication as to whether this was satisfactory or what steps were actually taken, what the HOP and inmate discussed. This is important because, in order for a complaint to be "resolved", it must have a reply—*any* response, apparently—from the HOP or his/her delegate.

⁸¹ In a field note entry (February 14, 2007), I wrote:

Was speaking with [staff person] today about my going through archives and how helter-skelter archives are. [This person] mentioned that some time ago, Public Service Commission went through archives and recommended a more robust filing system be adopted—nothing came of it. [This staff person] talked about how [they had] tried to find things in archives to no avail when trying to work on a case.

(*ibid.*). Because of a shortage of storage space, starting around August 2005, IPVs were instructed to no longer submit all of their inmate complaint forms to the regional or national offices (Field Notes, 03/13/07). Instead, only forms requiring higher level intervention (e.g., intervention by a case officer, the Inspecting Judge) were submitted to the JIOP for review and storage.⁸²

This policy, in my opinion, was ill-advised as it now prevents office staff in Cape Town from monitoring the quality of IPVs work product. It also means that, had they been doing this before or wished to do so at a later time, JIOP managers no longer had an opportunity to derive their own conclusions about trends in a prison independent of what IPVs were reporting in their monthly narratives. But then, there are indications that no one at the JIOP was much paying attention to these and other forms. For example, at least one JIOP manager described an instance in which one or more IPVs at a prison were providing written reports to the JIOP of serious prison official misconduct, but the supervisor receiving these reports was only paying attention to whether or not the IPVs were meeting their monthly quotas. A number of prison officials in the prison were later charged with murdering three inmates.

Finally, during my cursory examination of these files, something very peculiar was observed: there were a number of instances in which IPVs completed multiple prisoner complaint forms for the same problem on the same day. For example, in one facility, there was a communal cell lacking hot water. Instead of completing one complaint form representative of all inmates in the cell and alerting DCS to the problem, the IPV filled out more than 20 complaint forms from inmates in the cell, all on the same

⁸² When I made inquiries about accessing these records in Cape Town, nobody could direct me to where the recently completed documents were stored.

day (Field Notes, 10/31/06). When I mentioned this to JIOP managers, their explanation was that IPVs sometimes did this in order to meet their monthly quotas of inmate consultations and interviews (*ibid.*).⁸³

This is very important because IPVs that failed to meet these and other quotas (e.g., minimum hours spent at VC meetings) could be and were financially penalized—that is, had a loss of income. But, IPVs did not benefit financially for going above and beyond their minimum requirements. As more than one JIOP line manager suspected, once they met their minimum requirements, less honest IPVs would stop taking inmate complaints until the next month. Along these lines, JIOP managers expressed their concern that in terms of meeting their monthly quotas, the motivated, hard working IPVs were at a disadvantage since they were trying to remedy the underlying problems by actively working with the inmate, DCS, and other interested parties (e.g., Legal Aid Board, the police). Interestingly, an explanation not provided by managers was that some IPVs were not receiving many complaints because the prisoners had so little faith in the IPV's ability to do anything (see e.g., Brereton, 2000). Whatever the reasons, as a result, they risked missing their minimum standards as they were spending a lot of time actually resolving complaints, or they had fewer consultations and interviews on paper that month or in subsequent months as inmates were lodging fewer complaints.⁸⁴

⁸³ Another way IPVs might try reaching their monthly quotas was trying to resolve inmate complaints that were outside the JIOP's mandate (e.g., recording a inmate's allegation of police misconduct). However, I had witnessed some RCs instruct IPVs to resolve any complaint they received, while other RCs instructed IPVs to stay within the JIOP's mandate (e.g., Field Notes, 02/08/06).

⁸⁴ Of course, it was suspected that less hard working IPVs were reporting that inmates were not complaining because conditions in the prison were fine. In one instance, however, after hearing an IPV assigned to a 1000-plus inmate facility report few inmate

A couple of things support these managerial claims. First, by accessing certain work records of many IPV study participants, I frequently saw how the number of inmate consultations and interviews reported by the IPV as having taken place were (nearly) equal to the numbers required in their contract. For a number of IPVs, this was seen over a period of many months. Next, during a number of the VC meetings I attended, IPVs working in facilities with hundreds, if not over a thousand, inmates reported no pending or unresolved complaints from prisoners.⁸⁵ At one VC meeting, for example, three IPVs—between them, responsible for over 3,500 inmates—reported no pending and no unresolved complaints (Field Notes, 11/22/06). Besides my own observations at this and other VC meetings, the fact that JIOP managers were expressing their growing concern about this to me indicated that such reports were neither isolated nor something new.

Another potentially potent source of information about prison conditions coming from IPVs was monthly narratives. In his effort to get a better overview of prisons directly from IPVs, in his last years as Inspecting Judge, Judge Johannes Fagan instructed IPVs to send 200 word narratives about their prison(s) to the national office each month. IPVs did this for over a year.⁸⁶ I had the opportunity to examine over a year's worth of narratives, and concluded that while the quality of some was exceptional, many were

complaints, the RC and I visited the facility. The IPV's reports appeared to us as having some foundation as this facility appeared to me as one of the best run, best kept prisons I'd been to.

⁸⁵ A complaint that is pending means that the IPV is still working to resolve the problem (e.g., needs to discuss the matter with the prison's head of security, awaiting documentation), while an unresolved complaint means the IPV cannot solve the problem on his/her own or the inmate is not satisfied with the outcome.

⁸⁶ At year's end 2007, these narratives were still being submitted to the JIOP (Gideon Morris, email communication, February 13, 2008).

mediocre sources of information at best. The better quality narratives went beyond just reporting the number of inmates and/or categories of inmates (e.g., the number of sentenced and unsentenced inmates) that month, but indicated what the IPV found during his or her full site visits. For example, some narratives indicated the level of cleanliness of different sections of the prison, the (un)availability of medical and dental care facilities, the level of cooperation the IPV was receiving from DCS, et cetera. The reader of these narratives came away with a general sense of what was occurring in the prison. At the other end of the spectrum, there were narratives that only cited the size of the inmate population and one line comments like “nothing to report” or “everything is fine”. This field note entry (04/18/07) illustrates this:

I'm going through monthly narratives for 2006, four months worth, and I can't tell many times what prison an IPV is reporting for! A majority or near majority of narratives for IPVs assigned to more than one prison don't specify which prison they are writing about. What is the point of these narratives if the readers don't know which prison is being described?!?

Evidence that no one was paying much attention to these narratives is illustrated in this field note entry made two month earlier after a conversation with an IPV (02/07/07):

[The IPV] went onto say how she and VC were told that [the Visitors' Committee Coordinator (VCCO)] hadn't read their monthly reports with 200 word narrative, and that no one was reading the narratives. This [IPV] said that after having faxed her monthly report to office, with 200 word narrative, when she saw her report/narrative on electronic system, *only* one line had been recorded! She said

why bother to write out a long description when no one looks at them! She went onto say that an IPV at the VC meeting said he'd just copy and paste same narrative into subsequent reports!

During my examination of the 75 or so narratives in my possession, a number of IPVs appeared to be doing just that: copying and pasting text into later narratives with minimal modifications. In the end, because of the poor quality of many narratives, these sources of information were not used in the formal hypothesis testing process.⁸⁷

Prison inspection reports: Prison inspection reports completed by prison inspectors were, on the one hand, unusable for this study's purposes due to my concerns of substantive "contamination" by superiors. Though the extent to which this occurred is unknown, JIOP managers are known to have edited these reports and at least two inspectors told me that managers had instructed the inspectors not to be too critical of DCS. These reports, then, were not used to conduct hypothesis testing.

On the other hand, they provided a glimpse of a prison inspectorate half-heartedly going about exposing what happens inside prisons. Having examined about 20 inspection reports/ prison "profiles" sent to the Correctional Services Minister, most possessed little substance. For example, too much precious space in these seven to fifteen page reports was wasted through spacing issues (e.g., 1.5 line spacing, four lines at 1.5 line spacing blank between paragraphs), to tables and graphs of the prison's inmate population (e.g., inmate ages, sentence lengths, security classifications), and paragraph long interpretations of these easily interpretable tables and figures. What was the source

⁸⁷ In all fairness to the JIOP, someone at the JIOP sent me monthly narratives submitted by the IPVs at the tail end of 2007. Based on a cursory examination, the caliber of most narratives had improved, sometimes dramatically.

of inspectors' inmate population data? The Department of Correctional Services' electronic information system.

More telling, however, was that rarely were answers given to one or more of these questions: Was the inspection (un)announced and what was the reasoning behind this? Why was the prison inspected when it was (e.g., the office was increasingly concerned about reports coming from the IPV, too much time had passed since the last inspection, a management decision to inspect all prisons in the province or country)? How many inspectors conducted the inspection? What guidelines did the inspector(s) use to conduct their inspection and what was the basis for these guidelines (e.g., DCS regulations, internationally accepted conventions, high court and appellate court decisions)? What was the inspector looking for when the prison was inspected (e.g., communal cells at 200-plus percent capacity, inmates sleeping on floors, visible vermin infestations in the food preparation, dining, and living areas)? In what areas were prison officials in or out of compliance with the relevant statutes and regulations? Most inspection reports, for example, indicated whether or not officials were complying with a section of the Correctional Services Act of 1998 that dictates that a minimum number of hours pass between each of the three daily meals, but it was the rare profile that cited other sections of the Act and if officials were in compliance with these.

Equally troubling is how these inspection reports dismissed inmate complaints to IPVs about highly sensitive issues like inhumane treatment, official corruption, and assaults. Profiles often contained a table or figure listing the types of complaints reported to IPVs, and not infrequently there was at least one inmate that filed one of these

sensitive complaints with an IPV.⁸⁸ The inspection reports' text, however, usually just highlighted what is obvious to the reader: the most common complaints, for example, were about family communications, food, and transfers. What got cursory mention, if any mention at all, were the numerically inferior but equally serious or more serious prisoner complaints about assaults, inhumane treatment, corruption, et cetera, and what action the inspector took (e.g., conducted a more thorough investigation, referred the matter to the JIOP's Legal Services Unit and/or the Inspecting Judge, notified the South African Police Service). If reasons for not going further with the matter existed, such as a matter fell outside the inspector's statutory authority, these should have been spelled out in the report.

Finally, it is interesting how inspectors dealt with prisoner complaints categorized as "other" by IPV's. In many of the inspection reports I examined, this category was the most common "complaint" but the inspector failed to either provide examples of complaints categorized as such (e.g., inmate requesting pencil and writing paper, inmate requests appointment with social worker) or the inspector brushed aside the category with the explanation that some complaints cannot be properly categorized by the IPV.

Visitors Committee and Stakeholders' Meetings: In terms of data collection, the greatest problem was with the Stakeholder meetings; for the most part, the VC meetings were useful in that it was here that I recruited most study participants. Beyond the convenience of recruiting people en mass, of the 30-plus VC meetings I attended, I

⁸⁸ Even these seemingly straightforward categories of inmate complaints must be viewed with suspicion: in one instance, an IPV classified an inmate request to be escorted to the prison's records office as "conditions" (Field Notes, 03/05/07), and another IPV categorized as "other" a complaint that clearly dealt with family communications (Field Notes, 01/30/07). Such things call into question the accuracy of prisoner complaint data reported in the JIOP's annual reports and the prison profiles.

concluded that VC meetings are generally little more than forums to resolve administrative matters. These monthly meetings were opportunities for RCs to issue directives from the national office and give guidance to IPVs; to update meeting attendees about office efforts to recruit new IPVs in the region or in other provinces; for IPVs to report the number of complaints they took that month, and how many were (un)resolved or pending; and, for IPVs to request supplies such as complaints' registries. This conclusion does not mean that *all* VCs were dominated by administrative matters, for I did observe a large handful of meetings where *some* meeting participants were actively engaged in resolving inmate complaints.⁸⁹ Representatives from DCS, Legal Aid, even Home Affairs, sometimes attended VC meetings.

My impressions of the higher quality meetings were that they were driven by a very articulate chairperson (an IPV), a few vocal IPVs, the RC, and if present, representatives from other organizations (e.g., Legal Aid).⁹⁰ Some of the more sensitive topics discussed included DCS officials not granting IPVs or attorneys permission to enter a facility, SAPS and/or DCS dragging their feet in conducting inmate allegations of assaults in prison, et cetera. Generally, though, administrative matters dominated these meetings.

Unlike VC meetings, my attending Stakeholder meetings proved to be much more problematic. For instance, an unknown number of Stakeholder meetings were held while

⁸⁹ Every meeting I attended had at least one IPV that made no contribution to the discussions.

⁹⁰ It needs to be acknowledged that the presence of an English speaking visitor from the U.S.—that is, me—may have contributed to IPVs saying little: these IPVs may have felt intimidated, and reluctant to speak in English, a non-native tongue. At a few meetings, after starting in Afrikaans, Xhosa, et cetera, IPVs had to be reminded to speak in English for my sake.

I was in the U.S. and future meetings could not be scheduled before IPV contracts expired; or, meetings were not being conducted every quarter; or, I was in-country but was not properly informed about meeting dates and places; or, especially true after November 2006 (when the JIOP began its restructuring process), most Visitors Committees were subjected to a provincial or nationwide moratorium on Stakeholder meetings.⁹¹ (This process of restructuring the JIOP is described in the following section.) All told, I managed to attend 10–15 of these meetings, just six of which were attended for the express purpose of gathering follow-up data.

Like VC meetings, the quality of Stakeholder meetings ranged from poor to excellent. While certainly subjective, this was the prototypically poor quality Stakeholder meeting: one staff person from the JIOP (usually the RC) dominated the discussion and referred to problems in prison at a national level (e.g., overcrowded prisons); attendance by stakeholders was poor; and not only were IPV's contributing little to the discussion, they came across as detached and bored. When an IPV did speak, it was to read from the meeting agenda or to respond to my questions—for example, at some meetings, I asked each IPV to describe what s/he was finding in the prison. Upon witnessing this, my reaction was one of understanding why so few non-JIOP people were present.⁹²

⁹¹ While attending one VC meeting, I wrote “This VC and a [Western Cape] VC did not have a single Stakeholders’ meeting in all 2005!” (Field Notes, 02/13/06) Early into the research process (i.e., early 2005 to early 2006), senior JIOP managers indicated that Stakeholder meetings were supposed to occur on a quarterly basis, but late into the data collection process, some RCs indicated that these meetings were only held whenever systemic problems arose in their prisons.

⁹² There was one RC in particular whose Stakeholder meetings fit this profile, although one of the meetings I attended was well attended and had a representative from

At the opposite end were the meetings of high quality, the prototypical one looking like this: there were representatives from DCS, SAPS, Legal Aid, the Public Prosecutor and sometimes, a representative from another government department such as social services; there was active discussion about problems in local prisons among JIOP staff (including IPVs), and the other attendees. During one impressive meeting, the extent to which JIOP staff was exposing conditions in one management area and making DCS managers uncomfortable is illustrated in this field note entry:

[DCS] Area commissioner asking that JIOP raise concerns with DCS in private, not in these public forums. RC says Area Commissioner should send representative to monthly VC meetings so this can be done, but HOPs haven't been attending these meetings. DCS doesn't like how these problems are being aired—getting a bit defensive, wants HOP and IPV to have good relationship so problems can be resolved [but doesn't] address lack of cooperation from HOPs...⁹³

At these meetings, JIOP staff were not only presenting a portrait of problems in the prisons, but actively seeking doable short and long-term solutions.

JIOP restructuring: Without a doubt, the JIOP's restructuring process wreaked havoc on two things: the research design and the inspectorate's functioning. Although

departments besides DCS and the JIOP (e.g., Public Prosecutor's office, a magistrate) and community members. To this RC's credit, however, his meetings were the only ones where attendees were taken on a tour of the prison and allowed to interact with prisoners. During one such meeting, held in South Africa's interior during winter, an attendee pointed out how she had seen inmates being given cold beverages with their meal, something not commented on by anyone from the JIOP.

⁹³ To ensure the privacy of everyone involved, I have intentionally omitted the province and date this occurred.

officially starting in November 2006, this restructuring process was in the works months before and for all intents and purposes, was ongoing upon my departure from South Africa in June 2007. This caused irreparable harm to the study, one reason being that critical meetings—that is, VC and Stakeholder meetings—were not attended by office staff (whom I traveled with) or were cancelled due to a months' long moratorium, leading to fewer staff being recruited for the study and the massive loss of outcome data.

Another reason was that with a change in job titles came a significant shift in official job duties. For example, former prison inspectors were no longer officially responsible for performing prison inspections, and most former Regional Coordinators became VCCOs and were now officially responsible for providing support to a smaller number of IPVs. Finally, from a research point of view, maybe the most destructive aspect of the restructuring was that the only certainty was that nothing was certain. Towards the end of my stay in South Africa, I wrote this in my field notes (05/08/07): “I was reviewing my field notes last night and was struck by how little has changed in terms of organizational restructuring since January 2007. The greatest constant is confusion and uncertainty.”

But the way in which JIOP managers went about implementing the change did not just hurt the study: it also had a negative effect on the office's functioning. Over the next seven months, staff at all levels of the organization below the Inspecting Judge, repeatedly expressed great frustration with how the restructuring was (not) proceeding. One source of aggravation surrounded the constant policy shifts by the Judge and his subordinates. A few managers described how policy decisions were agreed upon during managerial meetings, but seemingly within 24 hours, unilateral decisions were made to

change the policies.⁹⁴ Even in the most stable of organizations, let alone one undergoing as massive a change as the JIOP was, this can result in confusion, frustration, and alienation among staff, especially those whose opinions were solicited, then ignored. Over the ensuing months, there were many times that JIOP managers said to me that the first group of VCCOs were to be formally trained in the near future, but from out of nowhere, senior managers would postpone the training indefinitely. When I left South Africa in mid-June 2007, not one VCCO had gone through the JIOP's formal training program. (The JIOP, in fact, was still creating its formal VCCO training program when I left South Africa.) With much managerial talk about VCCOs playing a major role in training new IPVs and helping old IPVs adapt to the new system, VCCOs themselves not undergoing formal training for so long was in and of itself highly problematic and a waste of human and financial resources.

Related to this was an apparent breakdown in communications across all levels of the JIOP.⁹⁵ While I had glimpsed this during Judge Fagan's reign, it became especially pronounced under Judge Fagan's successor, then-Inspecting Judge, Nathan Erasmus. During Judge Fagan's rule, communication-type complaints made to me usually involved Cape Town staff saying that they knew little of what the Centurion based staff was doing. And while the latter had the same complaints about their counterparts in Cape Town, it

⁹⁴ These sudden changes were, however, not unique to the Judge Erasmus era: in my field notes, there are multiple entries that record the frustrations staff—especially IPVs and RCs—felt about sudden changes in VC meeting dates and venues in order to accommodate senior JIOP managers' whims. To me, what was unique during the Judge Erasmus reign was how rampant these frustrations became across the organization, with staff at multiple levels of the organization expressing their discontent to me.

⁹⁵ Granted, after November 2006, I had next to no contact with JIOP staff located in the Centurion office.

was clear that the Cape Town staff had a distinct advantage over their counterparts: they were located in the same physical location as the Inspecting Judge and other senior managers. However, as explained to me, as they were located in another part of the country, staff in Centurion received a lot of their information through the office manager and not directly from the Judge or his senior managers.

Under Judge Erasmus, especially during the restructuring process, poor inter-office communication appeared to have become much more serious. This is illustrated in several ways: first, IPVs complained about too little information coming from the office about the progress of the restructuring efforts; office staff in Cape Town complained about too little information coming from managers in terms of their job duties; and, managers complained of too little information coming from their peers. For example, of the handful of VC meetings I attended in the post- November 2006 period, IPVs complained about how, without a representative from the office (e.g., an RC), they were repeatedly left in the dark about the new structure, were not clear on what the JIOP's strategic focus was (e.g., to reduce prison overcrowding, corruption, and/or sexual assaults), and could not receive guidance when it came to resolving problematic inmate complaints. Another example was the compliance inspectors that did not have their formal job descriptions seven months into the restructuring process.⁹⁶ At one point, I asked a compliance inspector what their job duties were, and the response was "I don't know what my duties are, as far as I know I am to sit in my office and answer the phone" (Field Notes, 05/09/07).

⁹⁶ Under the new system, the basic role of compliance inspectors is to make sure IPVs and VCCOs are performing their job duties.

More sinister were the references to certain staff as “the Gestapo” and the “growing McCarthyism” in the office, sentiments clearly indicative of the reluctance among staff to openly communicate with one another. I myself picked up on this, as illustrated in this field note entry near the end of my visit (Field Notes, 05/14/07):

A thought just came to mind: before this Judge, office was providing me lots of access to people and documents and meetings, even though office was not publicly exposing much about prisons. Now, not only is office saying little about what happens inside prisons, but my access to people, documents and meetings has now been slowly closed off.

I just realized that in terms of JIOP practices, it’s like a police state with its own employees but when it comes to DCS, it’s quite lax. Very interesting contrast.

Not only did I recognize the potentially destructive effects on the organization, but a number of the staff I spoke with did too. Some staff even expressed their concern that the Judge’s management style was going to do very serious and long lasting harm to the organization. Illustrative of these sentiments is this field note entry (05/21/07) following a conversation with someone at the JIOP:

[Person] said if had a say, ...would recommend the office be shut down as it was doing little more than wasting tax payers money. When I asked if the concept of an independent inspectorate was correct, a good one, [the person] said yes. The problem was with the people executing the plan. In office, morale is very low with many people coming to office only to be seen by management, not to get

anything done. People, when they start job, are very motivated but over time, become completely disillusioned. Said leadership doing very poor job in leading people, ensuring that each person contributes to overall healthy functioning of office, ensuring that restructuring is properly carried out.

It remains to be seen what, if any, long term harm the restructuring process has brought to the organization. For instance, what long term impact was there for the organization's legitimacy in the eyes of inmates, DCS, and stakeholders such as Legal Aid, prosecutors and magistrates, the police, NGOs and other community groups, not to mention prison reformers in other nations that are considering adopting a similar model? What impact was there of some RCs and IPVs publicly expressing their desire during Stakeholders' meetings to build and maintain productive, working relationships with DCS and other participants, only to have these very forums cancelled indefinitely not long after?

For example, during one Stakeholders' meeting, the RC—someone that impressed me so much that I advised a senior JIOP manager to further develop this person's managerial skills as I saw him as a very valuable asset to the organization—distributed a written outline of what goals he'd like the VC and relevant stakeholders to accomplish within the next year. But knowing that major staff changes were on the horizon, I wrote “See Stakeholder meeting operational plan passed out today. [Shame RC will not be here in a few months.] [brackets original]” (Field Notes, 11/22/06) Over the ensuing months, one can only imagine the negative reactions of everyone present when they discovered that the RC would no longer be attending these meetings.

Or, what long term impacts were there of repeated office decisions to postpone IPV audits for months at a time? (These decisions were made before the restructuring process began and continued months into the process.) To be conducted by RCs every three months, IPV audits were meant to ensure that IPVs were meeting their monthly standards and were used also as a training tool by RCs (especially with new IPVs).⁹⁷ In some provinces, however, IPVs received their very first audit six to seven months into the job (Field Notes, 11/27/06). A number of junior managers questioned the thinking behind this, suspecting that had they not already submitted fraudulent claims for payment, more not so scrupulous IPVs would begin doing so and get away with it (e.g., reporting that they had spent x number of hours in prison, when in fact they had not). Even when they were being audited quarterly, it was not unheard of for IPVs to engage in fraud. Even top managers knew of at least one IPV who went unaudited for nine months and was doing who knows what at the prison (Field Notes, 09/15/06), and yet, the decision was subsequently made to postpone IPV audits for months at a time. For management to follow through with this decision, knowing what had happened in the past and could just as well occur in the future is, in my view, managerial short-sightedness at best.

Finally, there was an especially disturbing aspect to the restructuring plan, one which in my view further jeopardizes the ability of JIOP field staff to remain independent of DCS: for DCS to provide VCCOs with their own offices or, if this is not possible, at

⁹⁷ The effectiveness of using audits to train IPVs is questionable: during one IPV audit, it became clear that officials at the prison had not submitted an inmate death notice to the JIOP as required by law. When the RC told the IPV that she herself should inform the national office of this death via the DCS intranet, the IPV responded that she did not know how to do this. I then watched as the RC was unable to show the IPV how to do this as he himself was unable to navigate the electronic information system!

least their own workspace (i.e., desk); with equipment such as telephones, computers, supplies, and transport. As described to me, VCCOs would ideally be located in the same office building as area commissioners and other DCS managers. When I suggested to some managers that, in order to ensure their independence, VCCOs might best be located in non-DCS offices (e.g., with the local Legal Aid Board), they too indicated this might be best; and yet, these managers said to me that senior management had dismissed this very idea.

It is no secret that DCS is responsible for the JIOP's expenses, including the provision of supplies such as paper; again, this is stated clearly in the JIOP's enabling legislation (Correctional Services Act, 1998, §91). The JIOP's cars, office furniture, computers and landline telephones, and its office supplies come from DCS. Under the old system, however, only a handful of support staff at the JIOP dealt directly with DCS to obtain these items and field staff requiring these often obtained them through JIOP support staff. It can be argued that this arrangement, though not perfect, acted as a buffer for JIOP field staff from undue influence by DCS. But with more field staff (IPVs and VCCOs) working in close proximity with DCS and directly dependent upon DCS's cooperation for support, it is reasonable to expect the risk of DCS co-opting JIOP staff to be rise dramatically.⁹⁸

⁹⁸ Of course, this assumes that DCS has these resources available to give to the JIOP, and there are some indications it does not or is not willing to share them with the JIOP. Late into the restructuring process, a JIOP staff person showed me a memorandum from a provincial DCS commissioner that DCS did not have enough computers, phones, office space, or desks to dedicate to VCCOs. A number of VCCOs, then, would have to share office space and resources with DCS for an indefinite period of time (Field Notes, 05/09/07). According to this and another staff person, this problem was not restricted to just one province.

In the end, the study's findings and my conclusions mean little if recommendations are not made for the JIOP specifically, and prison inspectorates elsewhere in the world, for other government oversight bodies, and other scholars conducting this line of work. These recommendations are laid out in the last chapter.

CHAPTER SIX—STUDY RECOMMENDATIONS FOR THE JIOP, OTHER PRISON
INSPECTORATES, AND OTHER REGULATORY OVERSIGHT SCHOLARS

Study Implications for Regulatory Bodies and Regulatory Capture Scholars

The findings from this study have numerous applications for the JIOP and for scholars examining oversight bodies in general and more specifically, regulatory capture. In this final chapter, I make five specific recommendations for the JIOP. This list should be considered incomplete, however, as many other suggestions can be derived from my critique of the JIOP in the preceding chapter. Some of the suggestions here borrow from practices of other prison inspectorates, but each recommendation assumes that JIOP managers actually want an effective and independent prison inspectorate. I say this because a handful of JIOP staff expressed the fear that certain managers did not want an truly independent inspectorate or one that directly challenges DCS.⁹⁹ There is finally the hope that those in a position to effect change within the organization will not automatically reject these suggestions as unrealistic, as unworkable, as undoable. The chapter closes with a short list of four recommendations for other regulatory oversight scholars such as better defining capture.

Recommendations for the JIOP: My first recommendation is that *the JIOP seriously revisit its across the board policy of terminating IPV contracts after three years of service*. This is based on a few things, one being the study finding that length of JIOP employment and capture were unrelated to one another. Another is that, as I argued in the prior chapter, with the current policy in place the inspectorate might not just be increasing the very risk it says it is so concerned about, its IPVs becoming captured or

⁹⁹ I too shared this impression.

institutionalized. For example, people may become IPVs since they cannot find suitable work elsewhere, or they see employment with the JIOP as a way to gain an advantage (receiving positive endorsements/ recommendations from the Head of Prison or area commissioner, etc.) when DCS is hiring. Conceivably, either of these situations increases the risk of capture among IPVs. This policy also runs a very real risk of a repeated, wholesale discarding of its motivated, public-spirited, and capable talent. In its annual reports, the JIOP claims that the Inspecting Judge's "eyes and ears" are the IPVs, but it then turns around and makes itself blind and deaf by jettisoning these very staff after some arbitrary date. It is bad enough that a handful of prisons go months or even a year without an IPV because the IPV resigned or was fired and a replacement has yet to be appointed. The situation worsens dramatically when this occurs all at once in multiple provinces.¹⁰⁰

There is nothing unusual about the JIOP not renewing or terminating early the contracts of underperforming IPVs or those found to have engaged in serious misconduct. But to continue with its current policy has, in my view, seriously undermined the JIOP's efficacy at bringing transparency, accountability, and reform to South African prisons, and will continue being true as long as it retains this practice. It can also be concluded that as long as this policy stands, the JIOP will continue squandering precious financial and human resources as it must continuously recruit and train suitable IPV candidates. Unknown wastage is incurred when JIOP office staff—including senior managers—

¹⁰⁰ Until recently at least, contracts would expire simultaneously in three provinces, with the contract expirations being staggered over time. It is not known if the JIOP is still doing this.

repeatedly crisscross the country as part of the recruitment process.¹⁰¹ This is ironic considering that in my many conversations with a senior JIOP manager, more than once this person expressed their concern that the JIOP, in relation to its annual expenses, might not be bringing enough value to civil society.

Without a full cost-benefit analysis, it is not known how much money could be saved should the JIOP adopt this recommendation. Assuming that modest to substantial savings were a result, the savings could be used for things such as pay increases for IPVs; to cover transport costs to and from VC and Stakeholder meetings incurred by IPVs; for VCCO offices in non-DCS buildings; or, for a stand-alone electronic communications network that is separate from DCS's. Each plausibly increases the odds that staff and the organization as a whole become increasingly independent of DCS. Another use of these savings would be for the JIOP to retain as consultants or special assistants to the Inspecting Judge experts in areas such as medicine, psychiatry, dentistry, social work, juvenile justice, education, nutritionists/dieticians, et cetera (see Correctional Services Act, 1998, §87 regarding special assistants to the Inspecting Judge). These experts could then be used to help guide JIOP policy (e.g., how often a prison should be inspected) and to train field staff in topics like what staff should be on the lookout for when inspecting a prison. These experts could also be used to provide guidance to managers and staff at the

¹⁰¹ During my study, I was struck by management decisions to allow senior managers to use their personal (but state subsidized) automobiles to travel all over the country to conduct activities that were better suited for field staff like prison inspectors and RCs (e.g., prison inspections, attend VC meetings). According to some staff, staff with subsidized vehicles needed to register a minimum number of kilometers each month for work related travel. These managers, of course, would then be reimbursed for food and lodging expenses on top of reimbursements for fuel.

national and regional levels, all the way down to the VC level when staff suspects systemic problems in prisons.¹⁰²

If the JIOP adopted the first recommendation, my second suggestion would be *that whenever possible, after a period of time has passed—for example, three years—transfer IPVs to other prisons or other sections within a large prison.*¹⁰³ An advantage of this is that the JIOP retains its capable IPVs and by placing them into a new environment, reduces their risk of becoming institutionalized or captured. It also allows experienced and capable IPVs to apply whatever lessons learned in their first prison to their new prison. This, of course, should be relatively easy to do when there are multiple prisons located in complexes such as the Pollsmoor and Durban-Westville complexes, or the prisons are very large with over 1,000 inmates. But this may become an issue when IPVs work in small, rural prisons and cheap, reliable transportation is not available. When this is so, the JIOP may have little option but keep its IPVs in their respective prisons for extended periods, assuming that the IPVs are highly capable and honest. When this is so, it will be critical that the JIOP have the proper supervisory and support mechanisms in place to ensure that IPVs do not increasingly adopt a DCS mindset about inmates. (This, of course, assumes that the supervisory and support personnel such as VCCOs, have themselves not become institutionalized, a very real concern considering the JIOP's plans to have VCCOs become even more dependent upon DCS for support.)

¹⁰² With at least two JIOP managers, I had suggested that the JIOP retain the services of such experts as consultants; both dismissed this idea outright as unworkable.

¹⁰³ At one or more VC meetings, IPVs said that they themselves had made this very suggestion to their RC and higher up the chain of command, to no effect.

The third recommendation is for the JIOP *to develop an alternative to its current requirement that IPVs conduct a minimum number of inmate interviews and consultations each month.* Based upon my own observations and my conversations with staff at the JIOP, I have a strong impression that because they risk being financially penalized, this practice has done little more than discourage all but the most dedicated, the most public-spirited IPVs while the not so motivated IPVs—that is, those that are IPVs only because it is a source of reliable income—are, for reasons already described, able to meet their minimum requirements and receive full pay.¹⁰⁴ This use of a quota system also does little to motivate IPVs to identify, then target and resolve chronic problems in a prison; it also does little to encourage the local VC to identify and resolve systemic problems in the prisons within its purview. This becomes especially apt considering Grabosky and Braithwaite's (1986) observation that structural change to the regulated rarely, if ever, comes when regulators are focused solely on individual complaints. As an alternative, the JIOP could adopt the ongoing strategy of having its field staff held responsible for identifying such problems in a prison or prisons within a region, then develop short- and long-term strategies to resolve them and prevent their reoccurrence.

How might this look in practice? Looking first at individual prisons, the IPV becomes aware of a persistent problem in his/her facility such as a lack of hot water

¹⁰⁴ Recall that each month, IPVs must meet certain minimum monthly requirements as required by their contracts. These include a minimum number of inmate consultations and interviews, community service such as prison awareness meetings in the community, and full prison site visits. IPVs who do not meet these minimums can suffer a reduction in pay (see Chapter Five, Study Challenges as Indicators of Ineffective JIOP Leadership and Quasi-Independence from DCS, Prisoner complaint forms and monthly prison reports).

during winter, a bedding shortage, et cetera. (While prisons usually experience multiple problems simultaneously, I refer to a single problem for simplicity's sake.) The problem may be observed directly by the IPV during their bi-weekly or monthly, full site visit, or the IPV may find out about them from inmates, prison officials, the VCCO, or office-based staff such as compliance auditors. Once identified, with assistance from the VCCO, office staff, or outside experts such as attorneys or dieticians, the IPV will be tasked with developing and putting into action immediate and long-term remedies (e.g., consulting with the HOP as soon as possible, and setting up an ongoing meeting schedule with the local prosecutor and magistrate, respectively). The IPV will also continuously monitor the situation to prevent the problem's reoccurrence.

This can easily be applied at the VC level: when multiple prisons within the VC are experiencing the same problems (e.g., large numbers of awaiting trialists incarcerated for over one year), the VC as a collective—and when appropriate, with assistance from office staff and outside experts—can develop, then execute its short- and long-term strategies to remedy the situation. The latter example is not entirely unheard of: at some of the VC meetings I attended, IPV's requested the assistance of Legal Aid Board attorneys to address the various legal concerns of inmates like appeals and bail.

An advantage of this is that when the problem is too great for a single IPV to resolve, IPV's from the VC can be temporarily tasked to the prison to assist the IPV (i.e., to “swarm” the facility with IPV's). Towards the end of the data collection process, at least one JIOP staff person indicated that the JIOP was considering this very strategy. Beyond beginning to address chronic problems in prison, by empowering staff, this approach may solve some of the staff morale and retention problems I observed. While

nothing in the relevant statutes appear to explicitly prohibit such a thing (see Correctional Services Amendment Act, 1997; Correctional Services Act, 1998; Correctional Services Amendment Act, 2001), it was my impression that Heads' of Prison did not view favorably IPVs from other prisons coming into their facility for anything other than VC and Stakeholder meetings, especially outside IPVs engaged in anything resembling a site visit. To get around this, IPVs tasked with “swarming” the facility could be issued special authorization letters from the Inspecting Judge temporarily granting IPVs access to the prison for official JIOP duties—for up to six months and renewable when necessary, for example.

This alternative also does not preclude IPVs from addressing individual inmate complaints over issues such as transfers, assaults, et cetera. In fact, IPVs will be required to take these complaints because they are statutorily obligated to do so (Correctional Services Act, 1998, §93) and these may indicate a much larger problem. It also does not mean that IPVs and VCCOs cannot be held accountable for their inactions: there is nothing keeping office staff and managers from having copies of IPVs and VCCOs action plans and status reports, then monitoring their progress. One way this can be accomplished is through occasional, unannounced visits to prisons by office staff (including the Inspecting Judge) to monitor prison conditions and supervisory staff arriving unannounced at VC meetings. (Key to this is the liberal use of unannounced visits.) When discrepancies are detected, these monitors could respond in different ways such as offering guidance to IPVs and VCCOs, intervening with prison officials and stakeholders (e.g., SAPS, public prosecutors and magistrates, Home Affairs officials), recommending refresher training for field staff, or when appropriate, initiating

termination proceedings for consistently underperforming staff or those caught engaging in misconduct. Ultimately, it is crucial that prison officials not only see JIOP staff as highly competent, but possessing impeccably high standards and character.

Should the JIOP adopt this suggestion, it will need to guard against taking on DCS's responsibility for managing prisons. Based on my conversations with managers at the JIOP and from what I observed at VC and Stakeholder meetings, the risk of this is very real. Not infrequently, I heard some JIOP managers tell IPVs to "go the extra mile", do whatever it took to resolve inmate complaints, while other managers warned IPVs not to assume prison officials' job. After all these years of studying the JIOP, including my many conversations with its managers and staff and an analysis of the relevant statutes, it still is not clear to me whether the JIOP is strictly a reporting body, or a reporting body with limited statutory powers and a legal *duty* to force prison officials to take certain actions. Some South African prison experts assert that the JIOP is strictly a prison monitoring and reporting body (Lukas Muntingh, email communication, March 2, 2008; Dirk van Zyl Smit, email communication, March 2, 2008). Lukas Muntingh (email communication, March 2, 2008) said that

The JIOP has a very particular mandate that is not there to hold DCS accountable in the conventional sense of the word. It is there to inspect and report.... The intention was therefore clear that the JIOP will not be the structure that wields the big stick but rather that there is a process of constructive dialogue. Whether this was right or wrong is debatable, but it needs to be clear that this was the intention. At some point, senior JIOP managers—especially the Inspecting Judge himself—will need to, first, bring clarity to whether the JIOP is strictly a reporting body as originally

intended or has taken on the added role of being an agent of change in prisons, then forcibly communicate this stance to the employees and others such as Parliament.

My fourth recommendation is that, *as much as possible, the JIOP should adopt the practice of field and office staff being paired whenever they conduct a site visit at a prison.* This would even apply to IPVs, and becomes even more relevant when the JIOP is aware of or suspects serious problems in a facility. As was explained to me, pairing staff with one another was an early JIOP practice but was discontinued due to cost concerns. While there may be some truth to this, to adopt the blanket policy that staff inspecting prisons or conducting investigations do so alone has, in my view, undermined the very effectiveness of the inspectorate. The suggestion's rationales are three-fold: 1) two pairs of eyes and ears are better than one at detecting problems; 2) a pair of staff are less likely than the individual to be misled or intimidated by prison officials; and, 3) the more experienced, more capable person can help train the one that is less experienced.

The last rationale is based on my knowledge of a manager with extensive investigative experience being tasked with conducting a critical JIOP investigation at a prison where prison officials were believed to have murdered three inmates. What I found troubling about this was that other, less experienced JIOP staff that might have to conduct similar investigations in the future were not ordered to accompany the manager for some very real world training. This missed opportunity was not an isolated event: I was also aware of certain office staff who had become VCCOs under the new system were not required to attend one or more VC meetings with an experienced RC (or, RC turned VCCO) for real world training, too. With some of these former IPVs, quite a long time had passed since they were an IPV. My overall view, then, was that the JIOP failed

to take better advantage of countless opportunities to provide crucial field training to its staff during the restructuring process.

My fifth and final recommendation for the JIOP is that, in order to be more effective in its role as an overseer of prisons, *it devote greater attention to building durable strategic alliances with other governmental and non-governmental bodies interested in prison matters.* Grabosky and Braithwaite (1986) referred to this as tripartism. By doing this, the JIOP and its strategic partners would be able to bring greater pressure on prison officials to improve conditions, and when the JIOP is lacking particular expertise, it can turn to its partners for technical advice and assistance (and vice-versa). This would occur at all operational levels of the JIOP—that is, at the VC, regional, and national levels—and assumes that the assorted horizontal and vertical communications are good both within the JIOP and between organizations.

Nowhere in this report has the basis for this been provided. Simply put, the reason is that it fell outside the study's modest scope. This is unfortunate as it was my impression that, again, the JIOP had seriously undermined its own efficacy by either not building a number of such alliances or was allowing these alliances to stagnate. At a handful of VC meetings, I did witness such efforts at a localized level, but how effective these efforts were over the long run are unknown. I was also aware of efforts by then-Inspecting Judge Fagan to develop a partnership with the Legal Aid Board, but following Judge Fagan's departure from the JIOP, these efforts appeared to have become seriously neglected by JIOP managers. I do not know why these alliances were allowed to deteriorate. One possibility is that JIOP managers feared that with these alliances, should the JIOP not be adequately performing its statutory prison monitoring duties, its partners

would cry foul. Grabosky and Braithwaite indicate how, though unpleasant for the overseer, such possible outcomes are important in keeping the regulators themselves in line—that is, not to be too lenient or too tough on those they are monitoring. In other words, tripartism would act to deter capture or overzealous behavior on the part of the JIOP.

Recommendations for future research: My first recommendation is that *in order to better understand the mechanisms by which capture develops, future research use a longitudinal study design.* Included in this approach would be exploring 1) whether or not those seeking employment as overseers of the private and public sectors come into their jobs already captured (e.g., already identify with those they are hired to oversee); if not, 2) by what process or processes does capture develop and affect its severity; 3) capture’s fluidity or stability among individual regulators; and 4) what differences are there in the development and progression of capture between professional and lay overseers such full time, office-based inspectors and part-time IPVs, respectively.¹⁰⁵

While it was not pursued further with follow-up questions, one of the most intriguing findings in the current study was that JIOP staff who said that they would like to work for DCS in the future had higher levels of capture than staff not saying this. Recall also that all but one person wanting to work for DCS were IPVs and as I argued in the preceding chapter, the very structure of the IPV system probably accounts for this. Having argued this, the reality remains that this study and the work of other scholars have not explored capture’s development and progression over time. Scholars, for instance,

¹⁰⁵ This dual form of prison oversight—that is, by both full time professionals and lay people—is not unique to the JIOP. There is a similar system overseeing prisons in the United Kingdom with prisons monitored by lay persons (Independent Monitoring Boards, n.d.) and by full time professionals (HM Inspectorate of Prisons, n.d.).

have posited that the revolving door phenomenon puts regulators at risk of being capture, so too increased contact between regulators and regulated. But these scholars' writings are usually a presentation of capture's theoretical framework, or their research used cross-sectional or historical/retrospective study designs. The current study had the same limitation.

The second recommendation is that *there be greater utilization of quantitative methods to assess capture, the predictors of capture, and its consequences*. This would be especially useful when looking at capture across individuals (in contrast to most scholars looking at capture of an entire organization). Again, as discussed in an earlier chapter, I know of only one other research team that has done this (i.e., Makkai & Braithwaite, 1992). While qualitative analyses of capture of organizations as a whole are useful, especially in devising theory, I believe it is high time for regulatory oversight scholars to move beyond speculation and theory building and proceed to the next stage: the actual collection of empirical data. An important aspect of this would be use of factor analytic-type techniques to better understand the underlying behavioral and/or attitudinal composition of capture. Only then can we begin to determine which theories are superior in explaining capture and its positive and/or negative consequences, and which theories require modification.

The next recommendation is *for scholars to better distinguish regulatory capture from separate but related processes* (see Chapter One, Conceptual Problems with Regulatory Capture). For example, how do we distinguish between capture and what Levine and Forrence (1990) referred to as “Burkean” policies—that is, actions taken by regulators because, although contrary to what the public might want, these are believed

by regulators to be in the best interests of the public? What happens if these Burkean policies also end up favoring the very organizations being monitored? Is the regulator still captured?

Or, can we really deem a regulator or regulatory body to be captured if it has “allowed” itself to be captured in order to engage in activities that are for the good of the larger public (see Levine & Forrence, 1990)? Put another way, should our definition of capture take into account regulators’ conscious awareness of being co-opted and/or their motivations for allowing this to happen, or should capture be seen along the lines of strict liability: only the act of being co-opted is relevant, with regulator mens rea irrelevant? What, if any, differences are there between “governmental capture”—the capture of regulators by elected officials—from the completely acceptable practice of democratically elected governments pursuing their legitimate political goals (see Prosser, 1999)? From my review of the literature, few regulatory oversight scholars have adequately addressed such concerns.

Another question that arose during the data collection process was, how do we distinguish regulatory capture from regulatory incompetence? This, unfortunately, is a question I have no good answer for. Equally interesting is the question, to what extent does regulatory (in)competence affect the risk of regulatory capture? While I believe that capture and incompetence are distinct processes, distinguishing between the two is crucial if we wish to better understand regulatory behavior.

Finally, my last recommendation brings us back full circle to what this study originally set out to do: to explore capture’s impact on transparency of prisons and whether JIOP staff were holding prison officials accountable for their behavior. Thus, *it*

is recommended that future empirical research address these three questions: first, to what extent does capture affect public access to information in regards to the overseen? Second, to what extent does capture affect public access to information in regards to the overseers themselves? Third, to what extent does capture affect an overseers' ability to hold the overseen accountable for their behavior?

APPENDIX A—IPV AND NON-IPV SURVEYS

_____ Participant ID Number

INDEPENDENT PRISON VISITOR SURVEY—FINAL VERSION
STEVE WOOD
JOHN JAY COLLEGE OF CRIMINAL JUSTICE/GRADUATE CENTER
(CITY UNIVERSITY OF NEW YORK)

PLEASE ENTER THE DATE YOU COMPLETED THE SURVEY

_____ / _____ / _____

Day Month Year

**IPV: IN ORDER TO PROTECT YOUR CONFIDENTIALITY, DO NOT ENTER
YOUR NAME, DATE OF BIRTH, THE PRISON(S) YOU ARE ASSIGNED TO,
OR ANY OTHER PERSONAL IDENTIFIER ANYWHERE ON THIS
DOCUMENT.**

Introduction: Below are 54 questions that should take no more than an hour to complete. These questions are based upon the opinions, expectations, and/or experiences you may have when performing your official duties. While a small number of questions ask you to write out your answer, most ask that you only circle a number. Please answer each question to the best of your ability.

Directions: For items 1 – 38, please select the response that best reflects YOUR level of agreement with each statement. (Select one choice only.) For example, if you completely disagree with the statement “I am afraid to go out after dark”, you would mark your answer by

Strongly Disagree (SD)						Strongly Agree (SA)
<u>0</u>	1	2	3	4	5	

(Note: Items below are lightly shaded ONLY to help you distinguish each question.)

While some people would completely agree or disagree with this statement, many people are somewhere in the middle. In other words, people *slightly disagreeing* with this statement would circle a “2” while those *slightly agreeing* would circle a “3”. Finally, people would choose “1” if they *moderately disagree* or a “4” if they *moderately agree*. Please indicate your level of agreement with the statements below:

1) As a general rule, I give prison officials the benefit of the doubt.

Strongly Disagree						Strongly Agree
0	1	2	3	4	5	

2) Part of my effectiveness depends upon being able to understand the problems prison officials face every day.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

3) I see my work as one way of improving the reputation of the Department of Correctional Services in the community.

<u>Strongly</u> <u>Disagree</u>						<u>Strongly</u> <u>Agree</u>
0	1	2	3	4	5	

4) I feel that I am an important part of the Department of Correctional Services.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

5) I never want to do something that will hurt the reputation of the Department of Correctional Services.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

6) I will forgive prison officials if they have made an honest effort to fix a problem.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

7) I have great respect for the prison officials I deal with.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

8) I admire the way prison officials perform their jobs.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

9) To be effective in this job, it is important to maintain an "Us versus Them" attitude with prison officials.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

10) My prison visits only add to what prison officials have to worry about.

<u>Strongly</u> <u>Disagree</u>						<u>Strongly</u> <u>Agree</u>
0	1	2	3	4	5	

11) My interactions with prison officials are strictly about business.

<u>SD</u>					<u>SA</u>
0	1	2	3	4	5

12) I try to get an agreement with prison officials as to the best solution to a problem.

<u>SD</u>					<u>SA</u>
0	1	2	3	4	5

13) When possible, I help prison officials come up with better ways of ensuring that prisoners are humanely treated.

<u>SD</u>					<u>SA</u>
0	1	2	3	4	5

14) My relationship with prison officials may best be described as adversarial /confrontational.

<u>SD</u>					<u>SA</u>
0	1	2	3	4	5

15) No matter what the consequences are, my job is to make sure prisoners are humanely treated.

<u>SD</u>					<u>SA</u>
0	1	2	3	4	5

16) If fixing a problem in a prison creates extra work for me, I will ignore it.

<u>SD</u>					<u>SA</u>
0	1	2	3	4	5

17) If trying to fix a problem creates tension between me and prison officials, I will ignore the problem.

<u>Strongly</u> <u>Disagree</u>						<u>Strongly</u> <u>Agree</u>
0	1	2	3	4	5	

18) Educating prison officials as to how they can humanely confine prisoners is an important part of this job.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

19) Prison officials can be trusted to properly treat prisoners.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

20) I think about one day working for the Department of Correctional Services.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

21) Prison officials respect the work I do.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

22) The job training I received when I began this job was satisfactory.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

23) I give prison officials the impression that we have legal power that we may not really have.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

24) It is best that the public know about everything we find and do during our prison visits.

<u>Strongly Disagree</u>			<u>Strongly Agree</u>		
0	1	2	3	4	5

25) To be effective in this job, I am dependent upon the goodwill of prison officials.

<u>SD</u>			<u>SA</u>		
0	1	2	3	4	5

26) When necessary, I remind/explain to prison officials what my *official* duties are.

<u>SD</u>			<u>SA</u>		
0	1	2	3	4	5

27) I cannot do much if prison officials decide to ignore me.

<u>SD</u>			<u>SA</u>		
0	1	2	3	4	5

28) To be most effective, I need to have the legal authority to force prison officials to comply with my requests.

<u>SD</u>			<u>SA</u>		
0	1	2	3	4	5

29) My direct supervisor is always available to assist me in my job duties.

<u>SD</u>			<u>SA</u>		
0	1	2	3	4	5

30) The staff at the national office (in Cape Town) are always available to assist me in my job duties.

<u>SD</u>			<u>SA</u>		
0	1	2	3	4	5

31) The monthly Visitors' Committee meetings help me to better perform my job duties.

<u>Strongly</u> <u>Disagree</u>						<u>Strongly</u> <u>Agree</u>
0	1	2	3	4	5	

32) For the work I do, I receive an adequate salary.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

33) If given the opportunity, I would renew my contract as a prison visitor.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

34) A lot of what I know about the prison(s) I visit is information obtained from *prisoners*.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

35) A lot of what I know about the prison(s) I visit is information obtained from *prison officials*.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

36) Prison officials show hostility towards me when I am performing my official duties.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

37) Prison officials provide enough security for me to safely perform my official duties.

<u>Strongly</u> <u>Disagree</u>						<u>Strongly</u> <u>Agree</u>
0	1	2	3	4	5	

38) Prison officials allow me to access all documents required for me to perform my official duties.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

Directions: For Questions 39 – 45, please indicate your answer by circling a 0 or 1.

39) During the course of your official duties, have you ever been offered *money* by a prison official in return for ignoring problems in a prison?

<u>No</u>	<u>Yes</u>
0	1

40) Do you know any colleagues that have been offered money by a prison official in return for ignoring problems in a prison?

<u>No</u>	<u>Yes</u>
0	1

41) During the course of your official duties, have you ever been offered *gifts* by a prison official in return for ignoring problems in a prison?

<u>No</u>	<u>Yes</u>
0	1

42) Do you know any colleagues that have been offered gifts by a prison official in return for ignoring problems in a prison?

<u>No</u>	<u>Yes</u>
0	1

43) During the course of your official duties, have you ever been offered *special favors* by a prison official in return for ignoring problems in a prison?

<u>No</u>	<u>Yes</u>
0	1

44) Do you know any colleagues that have been offered special favors by a prison official in return for ignoring problems in a prison?

<u>No</u>	<u>Yes</u>
0	1

45) Have you ever worked for the South African Department of Correctional Services or any other prison system?

<u>No</u>	<u>Yes</u>
0	1

(If yes, please go directly to Question 46)

(If no, please go directly to Question 47)

***Directions:* For questions 46 – 48, please write in your answer.**

46) (a) What prison system(s) have you worked for? _____

(b) What was your *last* position/title? _____

(c) For about how long did you work in this capacity? ____ years

(d) How long ago did you leave this job? ____ years **(Note: if you are**

presently seconded from the DCS, please enter a “0” here.)

47) Other than your work as a prison visitor, briefly describe your primary occupation?

48) For the prison you are assigned to, how often do you visit all sections and cell accommodations where prisoners are incarcerated? _____ times per month.

Directions: For Questions 49–54, please indicate your answer by circling the appropriate number.

49) Think back to your first day of work with the JIOP: What year did that occur?

<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
1	2 3	4	5	6	7	8	9	

50) In what month was your first day of work with the JIOP?

<u>Jan, Feb, March</u>	<u>April, May, June</u>	<u>July, August, Sept</u>	<u>Oct, Nov, Dec</u>
1	2	3	4

51) What sex are you?

<u>Male</u>	<u>Female</u>
1	2

52) How old are you?

<u>20–24</u>	<u>30–34</u>	<u>40–44</u>	<u>50–54</u>	<u>60–64</u>	<u>70–74</u>						
<u>25–29</u>	<u>35–39</u>	<u>45–49</u>	<u>55–59</u>	<u>65–69</u>	<u>75–79</u>						
1	2	3	4	5	6	7	8	9	10	11	12

53) What is the highest level of schooling you have completed?

- 1 Some Primary Schooling
- 2 Completed Primary Schooling
- 3 Some High School
- 4 Completed High School
- 5 Some College, University, or Technikon
- 6 Completed College, University, or Technikon
- 7 Some Graduate or Other Advanced Education (Masters Degree, Doctorate, Law Degree)
- 8 Obtained Masters Degree, Doctorate, M.D., Law Degree or Other Advanced Degree

54) What racial/ethnic group do you belong to?

<u>African</u>	<u>Coloured</u>	<u>Indian</u>	<u>Asian (non-Indian)</u>	<u>White</u>
1	2	3	4	5

Conclusion: This completes this portion of the research. Thank you for your time and again, your responses are known only to the researcher.

_____ Participant ID Number

JUDICIAL INSPECTORATE OF PRISONS STAFF SURVEY—FINAL VERSION
STEVE WOOD
JOHN JAY COLLEGE OF CRIMINAL JUSTICE/GRADUATE CENTER
(CITY UNIVERSITY OF NEW YORK)

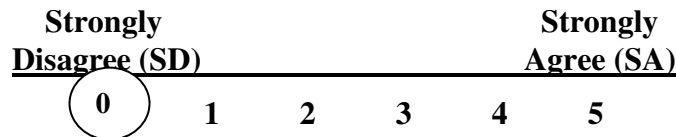
PLEASE ENTER THE DATE YOU COMPLETED THE SURVEY

_____/_____/_____
Day Month Year

**IN ORDER TO PROTECT YOUR CONFIDENTIALITY, DO NOT ENTER
YOUR NAME, DATE OF BIRTH, YOUR POSITION IN THE ORGANIZATION,
OR ANY OTHER PERSONAL IDENTIFIER ANYWHERE ON THIS
DOCUMENT.**

Introduction: Below are 55 questions that should take no more than an hour to complete. These questions are based upon the opinions, expectations, and/or experiences you may have when performing your official duties. While a small number of questions ask you to write out your answer, most ask that you only circle a number. Please answer each question to the best of your ability.

Directions: For items 1 – 40, please select the response that best reflects YOUR level of agreement with each statement. (Select one choice only.) For example, if you completely disagree with the statement “I am afraid to go out after dark”, you would mark your answer by



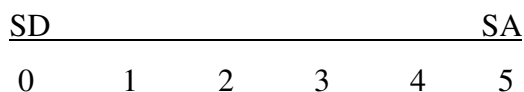
(Note: Items below are lightly shaded ONLY to help you distinguish each question.)

While some people would completely agree or disagree with this statement, many people are somewhere in the middle. In other words, people *slightly disagreeing* with this statement would circle a “2” while those *slightly agreeing* would circle a “3”. Finally, people would choose “1” if they *moderately disagree* or a “4” if they *moderately agree*. Please indicate your level of agreement with the statements below:

1) As a general rule, I give prison officials the benefit of the doubt.

Strongly Disagree						Strongly Agree
0	1	2	3	4	5	

2) Part of my effectiveness depends upon being able to understand the problems prison officials face every day.



3) I see my work as one way of improving the reputation of the Department of Correctional Services in the community.

Strongly Disagree						Strongly Agree
0	1	2	3	4	5	

4) I feel that I am an important part of the Department of Correctional Services.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

5) I never want to do something that will hurt the reputation of the Department of Correctional Services.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

6) I will forgive prison officials if they have made an honest effort to fix a problem.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

7) I have great respect for the prison officials I deal with.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

8) I admire the way prison officials perform their jobs.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

9) To be effective in this job, it is important to maintain an "Us versus Them" attitude with prison officials.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

10) My prison visits only add to what prison officials have to worry about.

<u>Strongly</u> <u>Disagree</u>						<u>Strongly</u> <u>Agree</u>
0	1	2	3	4	5	

11) My interactions with prison officials are strictly about business.

<u>SD</u>					<u>SA</u>
0	1	2	3	4	5

12) I try to get an agreement with prison officials as to the best solution to a problem.

<u>SD</u>					<u>SA</u>
0	1	2	3	4	5

13) When possible, I help prison officials come up with better ways of ensuring that prisoners are humanely treated.

<u>SD</u>					<u>SA</u>
0	1	2	3	4	5

14) My relationship with prison officials may best be described as adversarial/
confrontational.

<u>SD</u>					<u>SA</u>
0	1	2	3	4	5

15) No matter what the consequences are, my job is to make sure prisoners are humanely treated.

<u>SD</u>					<u>SA</u>
0	1	2	3	4	5

16) If fixing a problem in a prison creates extra work for me, I will ignore it.

<u>SD</u>					<u>SA</u>
0	1	2	3	4	5

17) If trying to fix a problem creates tension between me and prison officials, I will ignore the problem.

Strongly <u>Disagree</u>						Strongly <u>Agree</u>
0	1	2	3	4	5	

18) Educating prison officials as to how they can humanely confine prisoners is an important part of this job.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

19) Prison officials can be trusted to properly treat prisoners.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

20) I think about one day working for the Department of Correctional Services.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

21) Prison officials respect the work I do.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

22) The job training I received when I began this job was satisfactory.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

23) I give prison officials the impression that we have legal power that we may not really have.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

24) It is best that the public know about everything we find and do during our prison visits.

Strongly Disagree _____ Strongly Agree
0 1 2 3 4 5

25) My work only adds to what prison officials have to worry about.

SD _____ SA
0 1 2 3 4 5

26) To be effective in this job, I am dependent upon the goodwill of prison officials.

SD _____ SA
0 1 2 3 4 5

27) When necessary, I remind/explain to prison officials what my *official* duties are.

SD _____ SA
0 1 2 3 4 5

28) I cannot do much if prison officials decide to ignore me.

SD _____ SA
0 1 2 3 4 5

29) To be most effective, I need to have the legal authority to force prison officials to comply with my requests.

SD _____ SA
0 1 2 3 4 5

30) It is best that the public know about everything we find and do during our work.

SD _____ SA
0 1 2 3 4 5

31) My direct supervisor is always available to assist me in my job duties.

<u>Strongly</u> <u>Disagree</u>						<u>Strongly</u> <u>Agree</u>
0	1	2	3	4	5	

32) The staff at the national office (in Cape Town) are always available to assist me in my job duties.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

33) The monthly Visitors' Committee meetings help me to better perform my job duties.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

34) For the work I do, I receive an adequate salary.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

35) A lot of what I know about a prison is information obtained from *Independent Prison Visitors*.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

36) A lot of what I know about a prison is information obtained from *prisoners*.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

37) A lot of what I know about a prison is information obtained from *prison officials*.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

38) Prison officials show hostility towards me when I am performing my official duties.

Strongly <u>Disagree</u>						Strongly <u>Agree</u>
0	1	2	3	4	5	

39) Prison officials provide enough security for me to safely perform my official duties.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

40) Prison officials allow me to access all documents required for me to perform my official duties.

<u>SD</u>						<u>SA</u>
0	1	2	3	4	5	

Directions: For Questions 41 – 47, please indicate your answer by circling a 0 or 1.

41) During the course of your official duties, have you ever been offered *money* by a prison official in return for ignoring problems in a prison?

<u>No</u>	<u>Yes</u>
0	1

42) Do you know any colleagues that have been offered money by a prison official in return for ignoring problems in a prison?

<u>No</u>	<u>Yes</u>
0	1

43) During the course of your official duties, have you ever been offered *gifts* by a prison official in return for ignoring problems in a prison?

<u>No</u>	<u>Yes</u>
0	1

44) Do you know any colleagues that have been offered gifts by a prison official in return for ignoring problems in a prison?

<u>No</u>	<u>Yes</u>
0	1

45) During the course of your official duties, have you ever been offered *special favors* by a prison official in return for ignoring problems in a prison?

<u>No</u>	<u>Yes</u>
0	1

46) Do you know any colleagues that have been offered special favors by a prison official in return for ignoring problems in a prison?

<u>No</u>	<u>Yes</u>
0	1

47) Have you ever worked for the South African Department of Correctional Services or any other prison system?

<u>No</u>	<u>Yes</u>
0	1

(If yes, please go directly to Question 48)

(If no, please go directly to Question 49)

***Directions:* For questions 48 – 49, please write in your answer.**

- 48) (a) What prison system(s) have you worked for? _____
- (b) What was your *last* position/title? _____
- (c) For about how long did you work in this capacity? ____ years
- (d) How long ago did you leave this job? ____ years **(Note: if you are presently seconded from the DCS, please enter a “0” here.)**

49) On average, how many times per month do you visit a prison for the purpose of conducting an inspection and/or checking upon the conditions in which prisoners are confined? _____ times per month. (Note: if your answer is less than one time per month, please tell me how many times per year here: _____ times per year.)

Directions: For Questions 50–55, please indicate your answer by circling the appropriate number.

50) Think back to your first day of work with the JIOP: What year did that occur?

<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
1	2	3	4	5	6	7	8	9

51) In what month was your first day of work with the JIOP?

<u>Jan, Feb, March</u>	<u>April, May, June</u>	<u>July, August, Sept</u>	<u>Oct, Nov, Dec</u>
1	2	3	4

52) What sex are you?

<u>Male</u>	<u>Female</u>
1	2

53) How old are you?

<u>20–24</u>	<u>30–34</u>	<u>40–44</u>	<u>50–54</u>	<u>60–64</u>	<u>70–74</u>						
<u>25–29</u>	<u>35–39</u>	<u>45–49</u>	<u>55–59</u>	<u>65–69</u>	<u>75–79</u>						
1	2	3	4	5	6	7	8	9	10	11	12

54) What is the highest level of schooling you have completed?

- 1 Some Primary Schooling
- 2 Completed Primary Schooling
- 3 Some High School
- 4 Completed High School
- 5 Some College, University, or Technikon
- 6 Completed College, University, or Technikon
- 7 Some Graduate or Other Advanced Education (Masters Degree, Doctorate, Law Degree)
- 8 Obtained Masters Degree, Doctorate, M.D., Law Degree or Other Advanced Degree

55) What racial/ethnic group do you belong to?

<u>African</u>	<u>Coloured</u>	<u>Indian</u>	<u>Asian (non-Indian)</u>	<u>White</u>
1	2	3	4	5

Conclusion: This completes this portion of the research. Thank you for your time and again, your responses are known only to the researcher.

APPENDIX B: MISSING DATA SUBSTITUTION EQUATIONS

Using OLS regression, these equations were used to calculate missing data on the respective survey items, the results rounded upwards or downwards to create whole numbers:

$$\text{Item 1} = 1.823 + \text{Item 27} (.253);$$

$$\text{Item 2} = 1.387 + \text{Item 25} (.321) + \text{RC Supervisor} (.262) + \text{Item 14} (.213);$$

$$\text{Item 4} = .166 + \text{Item 8} (.379) + \text{Item 6} (.309) + \text{Item 3} (.263);$$

$$\text{Item 5} = .090 + \text{Item 8} (.331) + \text{Item 11} (.272) + \text{Item 4} (.268);$$

$$\text{Item 6} = .500 + \text{Item 12} (.501) + \text{Item 4} (.221) + \text{Item 51} (0 = \text{Male}; 1 = \text{Female}) \\ (.624) + \text{Item 27} (.140);$$

$$\text{Item 10} = .635 + \text{Item 27} (.275) + \text{Item 12} (.346);$$

$$\text{Item 12} = -1.576 + \text{Item 13} (.641) + \text{Item 6} (.259) + \text{Item 19} (.191) + \text{Item 10} \\ (.121) + \text{Level of education} (.259) + \text{Item 9} (-.104).$$

Again, these predictions assume that there were valid data points for each predictor.

APPENDIX C: *PREDICTED* CAPTURE & NON-CAPTURE ITEM DESCRIPTIVES¹⁰⁶

<u><i>Sympathy or Empathy for DCS Scale</i></u>	<u>IPVs</u>	<u>Non-IPVs</u>	<u>Overall</u>
As a general rule, I give prison officials the benefit of the doubt.	(n = 94)	(n = 12)	(n=106)
Strongly Disagree (0)	17 (18.1%)	0 (00.0%)	17 (16.0%)
Moderately Disagree (1)	10 (10.6%)	0 (00.0%)	10 (09.4%)
Slightly Disagree (2)	13 (13.8%)	3 (25.0%)	16 (15.1%)
Slightly Agree (3)	31 (33.0%)	5 (41.7%)	36 (34.0%)
Moderately Agree (4)	11 (11.7%)	4 (33.3%)	15 (14.2%)
Strongly Agree (5)	12 (12.8%)	0 (00.0%)	12 (11.2%)
<i>Mean, Std Dev.</i>	<i>2.48 (1.61)</i>	<i>3.08 (.79)</i>	<i>2.55 (1.54)</i>
Part of my effectiveness depends upon being able to understand the problems prison officials face every day.	(n = 92)	(n = 12)	(n = 104)
Strongly Disagree (0)	9 (09.8%)	1 (08.3%)	10 (09.6%)
Moderately Disagree (1)	5 (05.4%)	2 (16.7%)	7 (06.7%)
Slightly Disagree (2)	10 (10.9%)	0 (00.0%)	10 (09.6%)
Slightly Agree (3)	16 (17.4%)	2 (04.7%)	18 (17.3%)
Moderately Agree (4)	22 (23.9%)	4 (33.3%)	26 (25.0%)
Strongly Agree (5)	30 (32.6%)	3 (25.0%)	33 (31.7%)
<i>Mean, Std Dev.</i>	<i>3.38 (1.62)</i>	<i>3.25 (1.71)</i>	<i>3.37 (1.63)</i>

¹⁰⁶ An (R) indicates that the item is reverse scored.

<u>Sympathy or Empathy for DCS Scale</u>	<u>IPVs</u>	<u>Non-IPVs</u>	<u>Overall</u>
I never want to do something that will hurt the reputation of the Department of Correctional Services	(n = 94)	(n = 12)	(n = 106)
Strongly Disagree (0)	21 (22.3%)	4 (33.3%)	25 (23.6%)
Moderately Disagree (1)	8 (8.5%)	0 (00.0%)	8 (7.5%)
Slightly Disagree (2)	8 (8.5%)	2 (16.7%)	10 (9.4%)
Slightly Agree (3)	13 (13.8%)	2 (16.7%)	15 (14.2%)
Moderately Agree (4)	10 (10.6%)	3 (25.0%)	13 (12.3%)
Strongly Agree (5)	34 (36.2%)	1 (8.3%)	35 (33.0%)
<i>Mean, Std Dev.</i>	<i>2.90 (2.01)</i>	<i>2.25 (1.87)</i>	<i>2.83 (1.99)</i>
I will forgive prison officials if they have made an honest effort to fix a problem.	(n = 91)	(n = 12)	(n = 103)
Strongly Disagree (0)	6 (6.6%)	0 (00.0%)	6 (5.8%)
Moderately Disagree (1)	3 (3.3%)	1 (8.3%)	4 (3.9%)
Slightly Disagree (2)	6 (6.6%)	0 (00.0%)	7 (6.8%)
Slightly Agree (3)	7 (7.7%)	1 (8.3%)	8 (7.8%)
Moderately Agree (4)	20 (22.0%)	5 (41.7%)	25 (24.3%)
Strongly Agree (5)	49 (53.8%)	4 (33.3%)	53 (51.5%)
<i>Mean, Std Dev.</i>	<i>3.97 (1.50)</i>	<i>3.83 (1.27)</i>	<i>3.95 (1.47)</i>

<u>Sympathy or Empathy for DCS Scale</u>	<u>IPVs</u>	<u>Non-IPVs</u>	<u>Overall</u>
My prison visits only add to what prison officials have to worry about.	(n = 93)	(n = 12)	(n = 105)
Strongly Disagree (0)	22 (23.7%)	4 (33.3%)	26 (24.8%)
Moderately Disagree (1)	11 (11.8%)	2 (16.7%)	13 (12.4%)
Slightly Disagree (2)	10 (10.8%)	1 (8.3%)	11 (10.5%)
Slightly Agree (3)	14 (15.1%)	2 (16.7%)	16 (15.2%)
Moderately Agree (4)	16 (17.2%)	2 (16.7%)	18 (17.1%)
Strongly Agree (5)	20 (21.5%)	1 (8.3%)	21 (20.0%)
<i>Mean, Std Dev.</i>	<i>2.55 (1.89)</i>	<i>1.92 (1.83)</i>	<i>2.48 (1.89)</i>

<u>Identification with DCS Scale</u>	<u>IPVs</u>	<u>Non-IPVs</u>	<u>Overall</u>
I see my work as one way of improving the reputation of the Department of Correctional Services in the community.	(n = 95)	(n = 12)	(n = 107)
Strongly Disagree (0)	10 (10.5%)	3 (25.0%)	13 (12.1%)
Moderately Disagree (1)	3 (3.2%)	0 (00.0%)	3 (2.8%)
Slightly Disagree (2)	2 (2.1%)	0 (00.0%)	2 (1.9%)
Slightly Agree (3)	12 (12.6%)	4 (33.3%)	16 (15.0%)
Moderately Agree (4)	27 (28.4%)	1 (8.3%)	28 (26.2%)
Strongly Agree (5)	41 (43.2%)	4 (33.3%)	45 (42.1%)

<u>Identification with DCS Scale</u>	<u>IPVs</u>	<u>Non-IPVs</u>	<u>Overall</u>
<i>Mean, Std Dev.</i>	3.75 (1.60)	3.00 (2.00)	3.66 (1.66)
S4CB: I feel that I am an important part of the Department of Correctional Services.	(n = 94)	(n = 12)	(n = 106)
Strongly Disagree (0)	17 (18.1%)	3 (25.0%)	20 (18.9%)
Moderately Disagree (1)	4 (04.3%)	1 (08.3%)	5 (04.7%)
Slightly Disagree (2)	4 (04.3%)	1 (08.3%)	5 (04.7%)
Slightly Agree (3)	8 (08.5%)	3 (25.0%)	11 (10.4%)
Moderately Agree (4)	21 (22.3%)	1 (08.3%)	22 (20.8%)
Strongly Agree (5)	40 (42.6%)	3 (25.0%)	43 (40.6%)
<i>Mean, Std Dev.</i>	3.40 (1.91)	2.58 (1.98)	3.31 (1.92)
I have great respect for the prison officials I deal with.	(n = 92)	(n = 12)	(n = 107)
Strongly Disagree (0)	1 (01.1%)	0 (00.0%)	1 (00.9%)
Moderately Disagree (1)	2 (02.1%)	0 (00.0%)	2 (01.9%)
Slightly Disagree (2)	5 (05.3%)	3 (25.0%)	8 (07.5%)
Slightly Agree (3)	13 (13.7%)	3 (25.0%)	16 (15.0%)
Moderately Agree (4)	22 (23.2%)	6 (50.0%)	28 (26.2%)
Strongly Agree (5)	52 (54.7%)	0 (00.0%)	52 (48.6%)
<i>Mean, Std Dev.</i>	4.20 (1.11)	3.25 (.87)	4.09 (1.12)

<u>Identification with DCS Scale</u>	<u>IPVs</u>	<u>Non-IPVs</u>	<u>Overall</u>
I admire the way prison officials perform their jobs.	(n = 95)	(n = 12)	(n = 107)
Strongly Disagree (0)	14 (14.7%)	1 (08.3%)	15 (14.0%)
Moderately Disagree (1)	9 (09.5%)	1 (08.3%)	10 (09.3%)
Slightly Disagree (2)	15 (15.8%)	5 (41.7%)	20 (18.7%)
Slightly Agree (3)	32 (33.7%)	4 (33.3%)	36 (33.6%)
Moderately Agree (4)	13 (13.7%)	0 (00.0%)	13 (12.1%)
Strongly Agree (5)	12 (12.6%)	1 (08.3%)	13 (12.1%)
<i>Mean, Std Dev.</i>	<i>2.60 (1.54)</i>	<i>2.33 (1.23)</i>	<i>2.57 (1.51)</i>
To be effective in this job, it is important to maintain an “Us versus Them” attitude with prison officials (R).	(n = 90)	(n = 12)	(n = 102)
Strongly Disagree (5)	24 (26.7%)	3 (25.0%)	27 (26.5%)
Moderately Disagree (4)	8 (08.9%)	0 (00.0%)	8 (07.8%)
Slightly Disagree (3)	12 (13.3%)	4 (33.3%)	16 (15.7%)
Slightly Agree (2)	12 (13.3%)	5 (41.7%)	17 (16.7%)
Moderately Agree (1)	8 (08.9%)	0 (00.0%)	8 (07.8%)
Strongly Agree (0)	26 (28.9%)	0 (00.0%)	26 (25.5%)
<i>Mean, Std Dev.</i>	<i>2.44 (2.00)</i>	<i>3.08 (1.24)</i>	<i>2.52 (1.93)</i>

<i>Failure to take Adversarial Position with DCS Scale</i>	<u>IPVs</u>	<u>Non-IPVs</u>	<u>Overall</u>
My interactions with prison officials are strictly about business (R).	(n = 95)	(n = 12)	(n = 107)
Strongly Disagree (5)	16 (16.8%)	1 (08.3%)	17 (15.9%)
Moderately Disagree (4)	6 (06.3%)	0 (00.0%)	6 (05.6%)
Slightly Disagree (3)	2 (02.1%)	0 (00.0%)	2 (01.9%)
Slightly Agree (2)	5 (05.3%)	3 (25.0%)	8 (07.5%)
Moderately Agree (1)	13 (13.7%)	4 (33.3%)	17 (15.9%)
Strongly Agree (0)	53 (53.8%)	4 (33.3%)	57 (53.3%)
<i>Mean, Std Dev.</i>	<i>1.40 (1.96)</i>	<i>1.25 (1.42)</i>	<i>1.38 (1.90)</i>
I try to get an agreement with prison officials as to the best solution to a problem.	(n= 94)	(n = 12)	(n = 106)
Strongly Disagree (0)	2 (02.1%)	1 (08.3%)	3 (02.8%)
Moderately Disagree (1)	5 (05.3%)	0 (00.0%)	5 (04.7%)
Slightly Disagree (2)	4 (04.3%)	0 (00.0%)	4 (03.8%)
Slightly Agree (3)	8 (08.5%)	0 (00.0%)	8 (07.5%)
Moderately Agree (4)	21 (22.3%)	6 (50.0%)	27 (25.5%)
Strongly Agree (5)	54 (57.4%)	5 (41.7%)	59 (55.7%)
<i>Mean, Std Dev.</i>	<i>4.16 (1.28)</i>	<i>4.08 (1.38)</i>	<i>4.15 (1.29)</i>

<i>Failure to take Adversarial Position with DCS Scale</i>	<u>IPVs</u>	<u>Non-IPVs</u>	<u>Overall</u>
When possible, I help prison officials come up with better ways of ensuring that prisoners are humanely treated.	(n = 95)	(n = 12)	(n = 107)
Strongly Disagree (0)	1 (01.1%)	0 (00.0%)	1 (00.9%)
Moderately Disagree (1)	0 (00.0%)	0 (00.0%)	0 (00.0%)
Slightly Disagree (2)	0 (00.0%)	0 (00.0%)	0 (00.0%)
Slightly Agree (3)	3 (03.2%)	0 (00.0%)	3 (02.8%)
Moderately Agree (4)	18 (18.9%)	3 (25.0%)	21 (19.6%)
Strongly Agree (5)	73 (76.8%)	9 (75.0%)	82 (76.6%)
<i>Mean, Std Dev.</i>	<i>4.69 (.70)</i>	<i>4.75 (.45)</i>	<i>4.70 (.68)</i>
My relationship with prison officials may best be described as adversarial or confrontational (R).	(n = 91)	(n = 12)	(n = 103)
Strongly Disagree (5)	25 (27.5%)	4 (33.3%)	29 (28.2%)
Moderately Disagree (4)	6 (06.6%)	0 (00.0%)	6 (05.8%)
Slightly Disagree (3)	9 (09.9%)	2 (16.7%)	11 (10.7%)
Slightly Agree (2)	18 (19.8%)	4 (33.3%)	22 (21.4%)
Moderately Agree (1)	19 (20.9%)	0 (00.0%)	19 (18.4%)
Strongly Agree (0)	14 (15.4%)	2 (16.7%)	16 (15.5%)
<i>Mean, Std Dev.</i>	<i>2.54 (1.85)</i>	<i>2.83 (1.85)</i>	<i>2.57 (1.84)</i>

<i>Failure to take Adversarial Position with DCS Scale</i>	<u>IPVs</u>	<u>Non-IPVs</u>	<u>Overall</u>
No matter what the consequences are, my job is to make sure prisoners are humanely treated (R).	(n = 95)	(n = 12)	(n = 107)
Strongly Disagree (5)	1 (01.1%)	0 (00.0%)	1 (00.9%)
Moderately Disagree (4)	1 (01.1%)	0 (00.0%)	1 (00.9%)
Slightly Disagree (3)	0 (00.0%)	0 (00.0%)	0 (00.0%)
Slightly Agree (2)	0 (00.0%)	1 (08.3%)	1 (00.9%)
Moderately Agree (1)	6 (06.3%)	3 (25.0%)	9 (08.4%)
Strongly Agree (0)	87 (91.6%)	8 (66.7%)	95 (88.8%)
<i>Mean, Std Dev.</i>	<i>.16 (.69)</i>	<i>.42 (.67)</i>	<i>.19 (.69)</i>
If fixing a problem in a prison creates extra work for me, I will ignore it.	(n = 95)	(n = 12)	(n = 107)
Strongly Disagree (0)	77 (81.1%)	7 (58.3%)	84 (78.5%)
Moderately Disagree (1)	7 (07.4%)	2 (16.7%)	9 (08.4%)
Slightly Disagree (2)	4 (04.2%)	1 (08.3%)	5 (04.7%)
Slightly Agree (3)	0 (00.0%)	1 (08.3%)	1 (00.9%)
Moderately Agree (4)	0 (00.0%)	1 (08.3%)	1 (00.9%)
Strongly Agree (5)	7 (07.4%)	0 (00.0%)	7 (06.5%)
<i>Mean, Std Dev.</i>	<i>.53 (1.35)</i>	<i>.92 (1.38)</i>	<i>.57 (1.35)</i>

<i>Failure to take Adversarial Position with DCS Scale</i>	<u>IPVs</u>	<u>Non-IPVs</u>	<u>Overall</u>
If trying to fix a problem creates tension between me and prison officials, I will ignore the problem.	(n = 95)	(n = 12)	(n = 107)
Strongly Disagree (0)	80 (84.2%)	7 (58.3%)	87 (81.3%)
Moderately Disagree (1)	5 (05.3%)	2 (16.7%)	7 (06.5%)
Slightly Disagree (2)	3 (03.2%)	2 (16.7%)	5 (04.7%)
Slightly Agree (3)	1 (01.1%)	0 (00.0%)	1 (00.9%)
Moderately Agree (4)	3 (03.2%)	1 (08.3%)	4 (03.7%)
Strongly Agree (5)	3 (03.2%)	0 (00.0%)	3 (02.8%)
<i>Mean, Std Dev.</i>	<i>.43 (1.18)</i>	<i>.83 (1.27)</i>	<i>.48 (1.19)</i>
Prison officials can be trusted to properly treat prisoners.	(n = 95)	(n = 12)	(n = 107)
Strongly Disagree (0)	17 (17.9%)	1 (08.3%)	18 (16.8%)
Moderately Disagree (1)	18 (18.9%)	3 (25.0%)	21 (19.6%)
Slightly Disagree (2)	21 (22.1%)	5 (41.7%)	26 (24.3%)
Slightly Agree (3)	23 (24.2%)	3 (25.0%)	26 (24.3%)
Moderately Agree (4)	11 (11.6%)	0 (00.0%)	11 (10.3%)
Strongly Agree (5)	5 (05.3%)	0 (00.0%)	5 (04.7%)
<i>Mean, Std Dev.</i>	<i>2.08 (1.45)</i>	<i>1.83 (.94)</i>	<i>2.06 (1.40)</i>

<u>Items for Post-hoc Analyses</u>	<u>IPVs</u>	<u>Non-IPVs</u>	<u>Overall</u>
Prison officials respect the work I do (R).	(n = 95)	(n = 12)	(n = 107)
Strongly Disagree (5)	9 (09.5%)	0 (00.0%)	9 (08.4%)
Moderately Disagree (4)	2 (02.1%)	1 (08.3%)	3 (02.8%)
Slightly Disagree (3)	13 (13.7%)	3 (25.0%)	16 (15.0%)
Slightly Agree (2)	22 (23.2%)	1 (08.3%)	23 (21.5%)
Moderately Agree (1)	22 (23.2%)	4 (33.3%)	26 (24.3%)
Strongly Agree (0)	27 (28.4%)	3 (25.0%)	30 (28.0%)
<i>Mean, Std Dev.</i>	<i>1.66 (1.53)</i>	<i>1.58 (1.38)</i>	<i>1.65 (1.51)</i>
I give prison officials the impression that we have legal power that we may not really have.	(n = 91)	(n = 12)	(n = 103)
Strongly Disagree (0)	35 (38.5%)	3 (25.0%)	38 (36.9%)
Moderately Disagree (1)	8 (08.8%)	3 (25.0%)	11 (10.7%)
Slightly Disagree (2)	12 (13.2%)	2 (16.7%)	14 (13.6%)
Slightly Agree (3)	9 (09.9%)	3 (25.0%)	12 (11.7%)
Moderately Agree (4)	10 (11.0%)	1 (08.3%)	11 (10.7%)
Strongly Agree (5)	17 (18.7%)	0 (00.0%)	17 (16.5%)
<i>Mean, Std Dev.</i>	<i>2.02 (1.97)</i>	<i>1.67 (1.37)</i>	<i>1.98 (1.91)</i>

<u>Items for Post-hoc Analyses</u>	<u>IPVs</u>	<u>Non-IPVs</u>	<u>Overall</u>
To be effective in this job, I am dependent upon the goodwill of prison officials.	(n = 92)	(n = 12)	(n = 104)
Strongly Disagree (0)	26 (28.3%)	2 (16.7%)	28 (26.9%)
Moderately Disagree (1)	10 (10.9%)	1 (8.3%)	11 (10.6%)
Slightly Disagree (2)	10 (10.9%)	3 (25.0%)	13 (12.5%)
Slightly Agree (3)	14 (15.2%)	6 (50.0%)	20 (19.2%)
Moderately Agree (4)	15 (16.3%)	0 (00.0%)	15 (14.4%)
Strongly Agree (5)	17 (18.5%)	0 (00.0%)	17 (16.3%)
<i>Mean, Std Dev.</i>	<i>2.36 (1.90)</i>	<i>2.08 (1.17)</i>	<i>2.33 (1.83)</i>
When necessary, I remind or explain to prison officials what my official duties are.	(n = 95)	(n = 12)	(n = 107)
Strongly Disagree (0)	34 (35.8%)	6 (50.0%)	40 (37.4%)
Moderately Disagree (1)	19 (20.0%)	0 (00.0%)	19 (17.8%)
Slightly Disagree (2)	9 (9.5%)	2 (16.7%)	11 (10.3%)
Slightly Agree (3)	14 (14.7%)	2 (16.7%)	16 (15.0%)
Moderately Agree (4)	12 (12.6%)	1 (8.3%)	13 (12.1%)
Strongly Agree (5)	7 (7.4%)	1 (8.3%)	8 (7.5%)
<i>Mean, Std Dev.</i>	<i>1.71 (1.70)</i>	<i>1.58 (1.83)</i>	<i>1.69 (1.71)</i>

<u>Items for Post-hoc Analyses</u>	<u>IPVs</u>	<u>Non-IPVs</u>	<u>Overall</u>
I cannot do much if prison officials decide to ignore me.	(n = 92)	(n = 12)	(n = 104)
Strongly Disagree (0)	32 (34.8%)	4 (33.3%)	36 (34.6%)
Moderately Disagree (1)	10 (10.9%)	1 (8.3%)	11 (10.6%)
Slightly Disagree (2)	4 (4.3%)	3 (25.0%)	7 (6.7%)
Slightly Agree (3)	11 (12.0%)	1 (8.3%)	12 (11.5%)
Moderately Agree (4)	13 (14.1%)	2 (16.7%)	15 (14.4%)
Strongly Agree (5)	22 (23.9%)	1 (8.3%)	23 (22.1%)
<i>Mean, Std Dev.</i>	<i>2.32 (2.07)</i>	<i>1.92 (1.78)</i>	<i>2.27 (2.04)</i>
To be most effective, I need to have the legal authority to force prison officials to comply with my requests.	(n = 94)	(n = 12)	(n = 106)
Strongly Disagree (0)	10 (10.6)	2 (16.7%)	12 (11.3%)
Moderately Disagree (1)	8 (8.5)	2 (16.7%)	10 (9.4%)
Slightly Disagree (2)	11 (11.7)	1 (8.3%)	12 (11.3%)
Slightly Agree (3)	8 (8.5)	2 (16.7%)	10 (9.4%)
Moderately Agree (4)	16 (17.0)	0 (00.0%)	16 (15.1%)
Strongly Agree (5)	41 (43.6)	5 (41.7%)	46 (43.4%)
<i>Mean, Std Dev.</i>	<i>3.44 (1.78)</i>	<i>2.92 (2.07)</i>	<i>3.38 (1.81)</i>

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