April 10, 2008

Commissioner Theresa C. Lantz
Department of Corrections
24 Wolcott Road
Wethersfield, CT 06109

Re: Conditions on Death Row

Dear Commissioner Lantz:

We are troubled about several conditions faced by the inmates on Connecticut's Death Row. In early May 2007, our office expressed concern about death row conditions brought to our attention as a result of an inmate hunger strike. We were directed to have the death row inmates utilize the D.O.C. grievance process. In compliance with your instruction, the Death Row inmates have exhausted the grievance process regarding these issues, but to date D.O.C. officials have not taken any steps to alleviate the constitutional violations faced by these inmates. Additionally, officials have both verbally and in writing promised to secure certain privileges for the Death Row inmates in exchange for the cessation of the most recent hunger strike. A number of these promises have not been fulfilled. Our concerns are outlined below. We request a meeting to discuss the unconstitutional conditions, the reasons for them, and the possibility of neutralizing those conditions. We also request a walk through tour of the Death Row facility to view first hand the conditions therein.

First, denying Death Row inmates regular and meaningful access to religious services is a violation of their right to religious freedom under the First Amendment to the U.S. Constitution. *Williams v. Warden* established that inmates must be given a "reasonable opportunity of pursuing [their] faith," under the First Amendment to the United State Constitution. 470 F. Supp. 1123 (D.Conn. 1979)(citing *Cruz v. Beto*, 405 US 319(1972)). Additionally, the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) requires that "[n]o government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution. . . , even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person (1) is in furtherance of a compelling government interest; and (2) is the least restrictive means of furthering that compelling government interest." 42 U.S.C. § 2000cc-1. The Death Row inmates report that they are not granted regular access to Reverend Bernd. Inmates were told that they would have access to Reverend Bernd once a week, but even that is often not accomplished as some weeks Reverend Bernd does not visit. When Reverend Bernd does visit he does not meet with each and every Death Row inmate. Moreover, the religious services that are provided to the Death Row inmates are unacceptable in that they do not provide *meaningful* access to religious services. The Sixth Circuit has held that a prison must accommodate group religious services in order to provide

"meaningful religious services" as required by the First Amendment. *Whitney v. Brown*, 882 F.2d 1068 (6th Cir. 1989). The Death Row inmates are not only being denied group religious services, but they are even prevented from meeting with Reverend Bernd face to face, instead being forced to communicate with the Reverend through the steel doors of their cells. Death Row inmates are experiencing repeated and systematic denial of access to practice their faith. Finally, it cannot be asserted that safety concerns justify the denial of access because religious service is provided sporadically, and without relation to inmate behavior.

Second, the State has stripped the Death Row inmates of their liberty interest in group recreation without due process of law in violation of the Fifth and Fourteenth Amendments to the US Constitution. Section II(6)(B) of the most recent Death Row handbook provides for out of cell "passive recreation" time. The description of activities appropriate for this time includes "chess, checkers, dominoes." It is therefore clear that *group* recreation was anticipated for this time as the abovementioned activities require multiple participants. In late 1998, after more than two years of group recreation for Death Row inmates at Northern C.I., group recreation was revoked. Inmates, although no longer living in complete freedom are still guaranteed protection under the Constitution, *Wolff v. McDonnell,* 418 US 539 (1974), and "remain recipients of whatever limited liberty interests the State may choose to grant them." *Parker v. Cook*, 642 F.2d 865 (5th Cir. 1981). "Whether this substance is embodied in a constitution, statute, regulation, rule, or practice is of no significance; once a state creates a liberty interest, '(n)o State shall … deprive any person of (the liberty interest) without due process of law….'" *Id.* at 867. Liberties assured by regulation and not subject to officer discretion are constitutionally protected. *See Moody v. Daggett,* 429 US 78 (1976); *Wheway v. Warden*, 215 Conn. 418 (1990). The liberty interest in group recreation created by the regulation does not allow for officer discretion to justify total and permanent denial of such recreation. Due process rights were not provided upon the cessation of group recreation.

Third, the State has stripped the Death Row inmates of their liberty interest in eating meals out of their cell in a group without due process of law in violation of the Fifth and Fourteenth Amendments to the U.S. Constitution. As with group recreation, the State has created a liberty interest in eating meals communally in the day room for Death Row inmates. Sections I(5)(I) and II(5)(B) of the most recent Death Row inmate handbook provide that lunch and dinner will be served in the day room, and only breakfast will be served in the cell. The handbook provision mandating communal lunch and dinner in the day room has created a liberty interest and the State may not deny this interest without due process. These due process rights were not provided before the removal of the ability to eat in the day room in late 1998.

Fourth, denying Death Row inmates access to gym equipment serves no penological purpose. Although deference is given to administration in the determination of prison policy, policies should be "reasonably related to a penological interest." *Turner v. Safley*, 482 US 78, 89 (1987). Death Row inmates ended their most recent hunger strike because the administration at Northern C.I. promised that gym equipment would be provided during outside recreation, however the only equipment presented has been resistance cables. Even this limited equipment has only been made available sporadically. Currently, Deputy Warden Light has denied the Death Row inmates access to an "ab wheel," stating safety concerns as the rationale. However, some inmates in administrative segregation currently have access to such equipment. Additionally, Deputy Warden Light has refused to allow Death Row inmates access to a stationary bike or "chin-ups/dips bench," to which general population has access. The denial of

this equipment and recreation outside of individual cages denies Death Row inmates the ability for meaningful recreation and the ability to elevate their heart rates. The administration at Northern C.I. should stand by the promise made to convince Death Row inmates to end their hunger strike and provide regular access to gym equipment.

Fifth, refusing to allow Death Row inmates to participate in the picture program serves no penological purpose. Death Row inmates had previously been allowed to participate in the picture program whereby photographs were taken of the inmates in plain clothes and inmates were able to send these pictures to those who were unable to visit. Inmates paid for the service. The program has since been denied to Death Row inmates without a rational explanation. Privacy or safety concerns cannot rationally justify the denial of access to the picture program because pictures of Death Row inmates are periodically released to the general public via mass media. No penological purpose is reasonably served by denying Death Row inmates access to this program.

Sixth, refusing to allow Death Row inmates to have contact visits with screened and approved family members serves no penological purpose. The safety of visitors cannot justify the deprivation of contact visits because attorneys are permitted to have contact visits with Death Row inmates.

The Death Row inmates seek the opportunity to earn the privileges that were available at Osborn C.I. and which were initially provided at Northern C.I. Exemplary disciplinary records earn all other inmates these privileges. Accordingly, similar exemplary records of Death Row inmates should be afforded equal effect.

For the State to argue that the Death Row inmates are a security risk, and deserving of level 5 status, solely based on their death sentence is unreasonable. In fact, security precautions that apply to other level 5 inmates are regularly waived for the Death Row inmates, including walking to and from the shower unescorted and without handcuffs or shackles, unsupervised work on the tier, etc. Inmates who have earned their level 5 status as a result of frequent disciplinary action and or violence, are handcuffed and shackled when being escorted to and from the shower. If the Death Row inmates were true level 5 security risks, they would not be unsupervised and unrestrained while out of their cells.

Finally, it is unreasonable for the State to argue that Michael Ross' suicide attempt in 1998 and/or Inmate Daniel Webb's escape letter to his lawyer justify the removal of privileges. Ross' attempted overdose was from medication taken only by Ross and did not occur during a communal time. None of the other Death Row inmates were involved in Ross' attempted suicide. Additionally, no other Death Row inmates were involved in Webb's attempts to devise a plan to breakout of prison. Additionally, the Ninth Circuit and the District of South Carolina have insinuated that mass punishment for other's bad acts may be a violation of the Eighth Amendment. *See Pepperling v. Crist*, 678 F.2d 787, 789 (9th Cir. 1982)(institutional lockdown may constitute a due process violation, as well as a violation of the Eighth Amendment, if [it] persist[s] too long.); *Fleming v. Reynolds*, 2007 U.S. Dist. LEXIS 60033 (D.S.C. July 2, 2007)(dismissing plaintiff inmate's claim for unconstitutional application of mass punishment *without* prejudice, allowing for relitigation after exhaustion). Punishment of all Death Row inmates by denying opportunities for contact between inmates not only unfairly punishes inmates for others' bad acts, but is wholly unhelpful at preventing a similar situation in the future.

Death Row inmates Reynolds, Courschene, Santiago, Webb, and Rizzo have exhausted their administrative remedies on all seven issues discussed above as required by the 1996 Prison Litigation Reform Act by filing level 1 and level 2 grievances. Level 2 grievances were denied for all Death Row inmates on all issues. Permission to appeal to level 3 was also denied to all death row inmates for all issues. As inmates have met their exhaustion requirement, all seven claims are ripe for litigation.

We respectfully request a meeting to discuss the general conditions, and not those of any particular inmate. Additionally, we request a walk through tour of the Death Row facility. We hope that a line of communication can be opened between the Department of Correction and this office regarding these important constitutional issues concerning conditions of confinement for inmates on Death Row in Connecticut.

Sincerely,

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Staff Attorney

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