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Access to Communication in United States Prisons: Reducing Recidivism Through Expanded Communication Programs with Inmates

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**Access to communication in United States Prisons: Reducing
Recidivism Through Expanded Communication Programs
with Inmates**

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Professor Bill Haltom

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Introduction

At the age of 70 in 399 BC, Socrates was found guilty of serious crimes against the state. He was sentenced to death for his crimes but had the option of agreeing to ostracism. Socrates refused to accept ostracism from society and instead drank a cup of hemlock poison.¹ To be ostracized from society is to be cut off from all ties to the community. This forbids a recognition of humanity and bars an individual from their human and citizen rights. Socrates chose death over severed ties with the community. "...this is not difficult, O Athenians, to escape death, but it is much more difficult to avoid depravity, for it runs swifter than death."² Socrates believed nothing could be worse than the deprivation of community and contact with society. Communication must be available and reasonable to promote a healthy community. Many prisons in the United States control communication between prisoners and the outside world to too great an extent. Communication between inmates and the outside decreases the percent of recidivism. It also can be a huge help in getting wrongly convicted prisoners in finding justice and being freed. The modes of communication available should be more realistic for all prisoners and in some cases expanded.

This paper aims to bring crucial shortcomings concerning communication with prisoners to light. In addition to this illumination of problems with prison communication and transparency, it will explore the importance of communication and how it can reduce the recidivism rate in the United States. First, I will address major failings of the prison system regarding access to communication with the outside world and vice versa. These

¹ Connolly, Peter, and Andrew Solway. "P. 45." *Ancient Greece*. Oxford: Oxford UP, 2001. Print.

² Bryan, William Jennings, and Francis W. Halsey. "III. On Being Condemned to Death." In *The World's Famous Orations*. Greece ed. Vol. 1. New York, New York: Funk and Wagnalls, 1906.

faults aim to highlight the excessive control the prison system has over prisoners and the wrongness of the reasons for that control. The unjust prison communication system in place will be addressed in the following sections: prison phone bidding, financial costs to families of incarcerated loved ones, mental health issues due to lack of communication, reducing the rate of recidivism by increasing communication options, the importance of allowing the media into prisons. These problems concerning communication with the incarcerated can be reformed. If our societies do so, families of incarcerated Americans will not suffer as much financially and the ability to maintain close interpersonal relationships with inmates will increase the success of prisoners after their release. This ultimately, will reduce the overall rate of recidivism among incarcerated Americans.

Over 2 million people are incarcerated and serving prison sentences in America today. Only now that people are beginning to pay attention and ask questions do issues and problems become visible. Wrongful convictions and exonerations have increased greatly over the last few years as media has increased attention to what happens before, during, and after imprisonment.³ This inclines me to presume the great power and potential of communication coming out of and going into prisons. While prisoners lose many rights while serving prison sentences, they need not lose some privileges to communicate. Many prisons employ total control over communication with prisoners. Prisoner abuses, false confessions and overall public opinion issues of prisoners are completely controlled by the state once a person is sentenced. Once someone is sentenced, his or her rights to communication are almost completely controlled by the state. Access to prisoners is extremely important in justice for all.

³ "Exoneration by Year." Exoneration by Year. December 5, 2015. Accessed December 6, 2015.

The state has the power to lock someone up and make him or her disappear and thus to reduce the humanity of that person. We do not have to forgive them, erase what they did, and we may not be able to get through to some prisoners for the better, but we can change how they are seen and accept them as humans. We cannot address all two million prisoners as one collective being just to lock up and throw away. Prisons have the power to completely restrict prisoners' ability to have their voices heard. We need to reexamine that type of manipulation and control the system has over prisoners' access to communication. The ability to communicate and maintain social connections with the outside world as well as the world inside is crucial for both mental health and reducing the percent of recidivism.

Financial Burden on Families of the Incarcerated

"It's been times when she did have to choose over paying for her medication in order to talk to me," says Ulandis Forte of his grandmother after spending 18 years in prison for assault.⁴ Prison heads putting their own greed for money over the ability of families to reach their loved ones is unjust. Families should not be forced to choose between maintaining relationships with loved ones and essential needs. At a hearing before the Federal Communications Commission (FCC) to lower prison phone rates, Bethany Fraser stated, "'My kids are among the 2.7 million children with an incarcerated parent. Losing their father to prison also meant losing over half of our family's income, and gaining a painfully large phone bill... I would do anything, and pay any amount to keep my children connected to their father. But choosing between essential needs and

⁴ "04.24.13: Ulandis Forte on Ridiculously High Prison Phone Rates." *YouTube*. YouTube. Web. 19 Nov. 2015.

keeping kids connected to their parents is a choice no family should have to make."⁵ The traumatic effects on children with a parent incarcerated are extremely impactful and have been compared to the trauma of the death of a parent.⁶ While children can be affected greatly by the loss of a parent to prison, parents will have more success outside of prison if they are able to continue relationships with their children and other family members while incarcerated. Post-release success is much higher among inmates that have continued to strengthen relationships with their family members while incarcerated.⁷

Phone Bidding Process

State prison systems, county jails, and private prison systems require unique and costly features from phone companies that regular businesses do not. Additional costly features include physically secure phones (no easily removable parts); extensive monitoring and recording capabilities, including the ability to archive phone calls for later review by investigators; and difficult access to the prison-based equipment for servicing.⁸ While these requirements do increase costs and heighten the bidding war among private telecoms, the driving force behind the outrageously high phone rates imposed on families of prisoners is profit. Phone rates into and out of prison started to escalate in the early 1990s when telecoms bid to secure contracts with prisons and jails. Both the phone company and the facility profit from prison phone call costs.

⁵ "The Secret Weapon in the Prison Phone Rate Fight? Families." *Colorlines*. 12 Aug. 2013. Web. 22 Nov. 2015.

⁶ "Effects of Parental Incarceration on Young Children." *ASPE*. 13 June 2015. Web. 21 Oct. 2015.

⁷ Parke, Ross D., and K. Alison Clarke-Stewart. "Effects of Parental Incarceration on Young Children." *NATIONAL POLICY CONFERENCE*. U.S. Department of Health and Human Services, 30 Jan. 2002. Web. 24 Nov. 2015.

⁸ "Prison Legal News." *Nationwide PLN Survey Examines Prison Phone Contracts, Kickbacks*. Web. 5 Dec. 2015.

The bidding process begins with a request for proposal (RFP)- a form detailing the number of telephones, telephone locations, and technical performance standards required by the contracting facility. Specific figures include estimated minimum usage and servicing frequency (or “down-time”).⁹ The phone companies take the RFP given by corrections facilities and determine how much they plan to bid for the contract. The winner of the bidding process however, does not win based on the response to the RFP.

The winning phone company is most heavily determined by the kickback provisions included in the contract. These kickbacks or “commissions” are paid to the contracting agency based on a percentage of the total income based on phone calls made by prisoners. State prisons alone make more than \$143 million per year nationwide on phone call commissions.¹⁰ Because of the kickback rates promised in the phone contracts, the price of phone service per minute experiences a costly outcome. Prison phone contracts are more likely than not, contracted based on higher commissions rather than lower phone rates. Any idea of free-market competition is lacking greatly in the prison phone business and the consumers are the victims of picking up extra costs, mainly families of prisoners.¹¹

⁹ *ibid*

¹⁰ *ibid*

¹¹ Bennett, Chaz. "WORKSHOP ON FURTHER REFORM OF INMATE CALLING SERVICES." *Capital Reporting Company Workshop on Further Reform of Inmate Calling Services*. Federal Communications Commission, 9 July 2014. Web. 5 Nov. 2015, pg. 14.

Security Issues

Telephone access at an affordable rate and time can greatly reduce the risk of security issues within prisons. Many fights erupt around the telephone and the need for outside contact is so great that it has become a currency in prisons. Prisoners have shared that they will trade meals for phone call time.¹² Prisoners often steal other inmates' Personal Identification Number to charge their phone calls to someone else's billing account.¹³ The desperation for contact with the outside world pressures inmates to the extent that they commit more crimes while in prison, lengthening their sentence. In addition, the rate of smuggling cellphones into prisons grows in relation to the excessive phone rates and short allotted times for calling.¹⁴ Therefore, this lack of access to communication with the outside poses a great security threat to prisons.

Federal Communications Commission

After years of complaints filed with the Federal Communications Commission (FCC), the excessive phone rates in and out of prisons have been officially capped. The rates that family members had to pay to speak to loved ones and maintain relationships peaked to a point that federal regulators were finally forced to step in. On October 22, 2015, the Commission voted 3-2 to comprehensively reform the Inmate Calling Services

¹² HIGGINS, MARGARET, DOMINIKA MALISZ, ELYSIA NEWTON, NATALIE PETERSON, ARTIKA TYNER, and SHANNON WEST. "PHONE CALLS CREATING LIFELINES FOR PRISONERS AND THEIR FAMILIES: A RETROSPECTIVE CASE STUDY ON THE CAMPAIGN FOR PRISON PHONE JUSTICE IN MINNESOTA." *Community Justice Project*. University of St. Thomas, 2014. Web. 29 Nov. 2015.

¹³ *ibid*

¹⁴ "Global Tel*Link." *ConsumerAffairs*. Web. 28 Nov. 2015.

(ICS) industry.¹⁵ Commissioner Mignon Clyburn added to the FCC's latest Order that the sacrifices families of inmates were forced to make based on excessive phone rates were "untenable, egregious, and unconscionable."¹⁶ This latest Order passed by the FCC requires a cap of all prepaid/debit calls, both local and out of state, made from federal prisons at \$0.11/minute. Jails are also required to cap phone rates based on facility size. For local and out of state calls made from jails, the cap stands at \$0.14/min for jails with more than 1,000 prisoners, \$0.16/min for 350-999 prisoners, and \$0.22/min for jails with less than 349 prisoners.¹⁷ These caps will be enforced on a gradual continuum of a two-year period until meeting these requirements. This recent Order also removes excess fees that have the potential to add an extra 40% to the cost of a phone call. The Order allows only three fees to be administered: payments by phone or online are capped at \$3.00, payments through a live agent are capped at \$5.95, and paper billing is capped at \$2.00.¹⁸ On December 2, 2015, the Order was officially published in the Federal Register and these reforms are set to begin 90 days after publication.¹⁹ Kickbacks are not banned in the FCC's recent Order, but they are strongly discouraged. While they are still allowed, this is the largest step in prison phone justice in history. To put this victory into context, a 15 minute prepaid interstate phone call from the Washington State Department of Corrections cost \$18.30 in 2010 (\$4.95 connection fee and \$0.89/min).²⁰ This same call was reduced to a flat rate of \$3.15 under the FCC's first Order concerning interstate

¹⁵ Wilkinson, Carrie. "Breaking News! FCC Votes to Further Reform Prison Phone Industry." *Prison Legal News* 26, no. 12 (2015): 40-41.

¹⁶ *ibid*

¹⁷ *ibid*

¹⁸ Trathen, Marcus. "Re: WC Docket No. 12-375, Inmate Calling Services Proceeding." *Federal Communications Commission*. FCC.Gov, 15 Oct. 2015. Web. 3 Dec. 2015.

¹⁹ *ibid*

²⁰ "Prison Phone Justice." *Breaking News! FCC Votes to Further Reform Prison Phone Industry*. Web. 29 Nov. 2015.

prison phone raged.²¹ With this latest Order published in 2015, that same call will be reduced to a maximum of \$1.65 when the Order goes into effect. The FCC banned flat rate phone calls, making this rate possible and affordable for poorer families to connect with inmates.

The Importance of Communication

Federal court rulings have established that prisoners have a constitutional right to communicate with people outside. A federal court of appeals ruling in 1982 affirmed that prisoners have a constitutional right to correspond with news reporters, another federal appellate court ruling in 1998 cleared an inmate on death row to write about his experiences for publication, and yet another federal ruling in 2007 struck down a federal ban on prisoners writing for news outlets under their own byline.²²

It is clearly forgotten by those signing prison phone contracts with commissions and excessive phone rates that prison phone services were put in place for much more than a profit. About 85% of state prisons in the US participate in phone service contracts that include kickback payments.²³ Close family relationships and strong interpersonal support systems reduce recidivism and the costs to the community associated with it.

Continued contact and communication with one's community encourages inmates to remain clean and out of trouble after they are released. As the Secretary of Corrections in the state of Pennsylvania John Wetzel says, "The rate of recidivism is 50%. We spend

²¹ *ibid*

²² "Proposed Rules for Maine Prison Inmates May Restrict outside Communication - The Portland Press Herald / Maine Sunday Telegram." *The Portland Press Herald Maine Sunday Telegram Proposed Rules for Maine Prison Inmates May Restrict outside Communication Comments*. 20 Oct. 2015. Web. 30 Nov. 2015.

²³ " Prison Legal News." *Prison Legal News*. Web. 5 Dec. 2015.

80 billion dollars a year on the prison system and fail half the time.”²⁴ Maintaining contact with family members is crucial to reducing this rate of recidivism. Most families of incarcerated persons are low-income. The outrageous phone rates make it very difficult to keep up close relationships that are therapeutic and rehabilitative with loved ones while imprisoned. There are other forms of communication for families that cannot afford the hundreds of dollars a month; however, many prisoners are functionally illiterate and cannot rely on written letters. Many members of the prison community interviewed for a report published by University of St. Thomas expressed concern for the younger prisoners in particular. There is a generational dependence on technology as means of communication and letter writing is not apart of that.²⁵ Many prisoners rely on phone calls as their only means of family connection while incarcerated. The deterioration of families with an incarcerated loved one has a great impact on both the prisoner’s and the family’s stability and wellbeing.²⁶

A spokesperson for the Oregon Department of Corrections (DOC) says, “Ongoing contact with supportive family and friends is an important part of inmates’ success in prison and upon release.”²⁷ Not only does continued communication benefit prisoners on the outside, it benefits them on the inside as well. A study published by University of St. Tomas reported one of many instances where communication could have been beneficial inside and eventually led to the mad returning to prison. The man was incarcerated at age

²⁴ *Fixing the System*. Directed by Shane Smith. Performed by President Barack Obama. United States: Vice on HBO, 2015. Film.

²⁵ "PHONE CALLS CREATING LIFELINES FOR PRISONERS AND THEIR FAMILIES: A RETROSPECTIVE CASE STUDY ON THE CAMPAIGN FOR PRISON PHONE JUSTICE IN MINNESOTA" pg. 10

²⁶ Holt, Norman, and Donald Miller. *Explorations in Inmate-family Relationships*. 1st ed. Vol. 46. Sacramento: California Dept. of Corrections, 1972.p.37. Print.

²⁷ " Prison Legal News ." *Nationwide PLN Survey Examines Prison Phone Contracts, Kickbacks*. Web. 5 Dec. 2015.

nineteen and had received little family contact during that time. He explained how he had become “animalistic” while imprisoned. His lack of contact with the outside impacted him so much that when he was released from prison, he felt he could no longer connect with the outside world. He proceeded to commit another offense after his release to go back to the environment he had grown accustomed to.²⁸ Recidivism for prisoners is at an extremely high rate. Financial burdens and inaccessibility to communication with the outside is a major part of this and we cannot continue to contribute to that. Maintaining relationships through regular contact with the outside is critical to the success of prisoners upon release.²⁹ It is in our best interest, as a community, to make transitioning back into society as smooth as it can be. It is in our best interest to make sure prisoners have close ties with reliable loved ones when they are released. It is in our best interest to encourage healthy relationships between prisons and the rest of society.

The Power of Media

“Transparency is a prerequisite for reform.”
 -Maine Commissioner of Corrections, Joseph Ponte³⁰

It is crucial that prisoners be seen and heard. Prison reform cannot be addressed seriously if the prisons are blocked to media and families of inmates. We cannot fix something we cannot see. Jennifer Gonnerman, a writer for the New Yorker, wrote, “The walls and razor wire surrounding prisons at times seem to serve dual purposes: to keep the inmates inside, and everyone else out. Wardens rarely permit journalists into their

²⁸ The Price of Prisons, *supra* note 6; Hairston, Family Ties During Imprisonment, *supra* note 6., pg. 9

²⁹ Finney Hairston, Creasie. "Family Ties During Imprisonment: Do They Influence Future Criminal Activity?" National Criminal Justice Reference Center.

³⁰ Vice documentary with Obama

facilities, and some states refuse to allow any inmate interviews.”³¹ Many prisons plead “security” or “privacy” when asked to release public-record.³²

Exonerations have the potential to increase for innocent prisoners due to media coverage and the ability to communicate stories from prison to the outside. While the gates are built around the prison to keep the inmates in, it also has the unfortunate power of keeping the press out. A prisoner at Pennsylvania DOC warns, “We hate the way the media portrays us. The truth that it hides is also something we hate. We don’t have a choice because we are not allowed to speak up for ourselves.”³³

The evening of September 15, 2015 at six o’clock, almost exactly one day before the scheduled execution of Richard Glossip, a news segment aired an update on the execution of Mr. Glossip and his case.³⁴ Joseph Tapley, an ex-convict himself, recognized Glossip’s name and story as the segment played out. More than simply recognizing the story, Tapley’s former cellmate, Justin Sneed, had flaunted how he tricked the system and got Glossip sentenced to death for a murder Sneed actually committed himself.³⁵ Sneed escaped the death penalty after implicating Glossip for a murder he had committed of his former boss. Sneed claimed in court that Glossip had paid him to commit the murder in exchange for money. This narrative ultimately got Sneed out of the death penalty while Glossip was sentenced to death in Oklahoma.

³¹ "Prisoners' Lives Matter - The New Yorker." *The New Yorker*. The New Yorker Magazine, 10 Sept. 2015. Web. 9 Nov. 2015.

³² *ibid*

³³ VICE interview with Obama

³⁴ "The Case Against Richard Glossip Is Crumbling, But He Is Still Scheduled to Die in a Week." *The Intercept*.

³⁵ *ibid*

Tapley remembered hearing Sneed brag about his crime he committed and how he successfully blamed someone else for it in prison. This is not the first time this happened.

In August of 2015, Dr. Phil aired a show exploring Richard Glossip's case and his scheduled execution only a month later. A man named Michael Scott also came forward explaining how Sneed had bragged about his crime in prison with him as well.³⁶ Scott spent time in prison with Sneed, like Tapley, and witnessed Sneed speaking openly about his crime, "Among all the inmates, it was common knowledge that Justin Sneed lied and sold Richard Glossip up the river," Scott said. While the D.A. of Oklahoma claims this use of media as means of calling new evidence and reliable witnesses is insufficient, Glossip has had many different stays on his execution.³⁷ For each stay of execution, more press and more widespread media have brought helpful evidence forward. After a stay on Glossip's execution had been granted due to additional evidence Tapley brought to Glossip's lawyer, Tapley says, "If Mr. Glossip had been killed and I had not done anything, I would have felt terrible for the rest of my life."³⁸ In this case, the use of media and the allowance of public viewing and reporting of Glossip's situation have proven extremely useful and may actually save an innocent man's life.

A Constitutional Conclusion

I am not arguing for country club prisons. I am also not arguing for prisoners' rights to be as expansive as the rest of society. It is in our best interest as a nation to encourage family outreach and connection between prisoners and those on the outside.

³⁶ Segura, Liliana, and Jordan Smith. "With Questions Over His Guilt, Court Gives Richard Glossip Two More Weeks To Live." *The Intercept*.

³⁷ "GLOSSIP ET AL. v. GROSS ET AL. CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT." *SUPREME COURT OF THE UNITED STATES*. Supreme Court of the United States, 1 Oct. 2014. Web. 23 Nov. 2015.

³⁸ "The Case Against Richard Glossip Is Crumbling, But He Is Still Scheduled to Die in a Week." *The Intercept*.

The further we push them away and restrict their rights to communication practices and healthy relationships on the outside, the further away we push them from maintaining the appropriate social behaviors necessary post release. Nine out of ten inmates released into society directly after spending time in solitary confinement return to prison.³⁹ The social anxiety induced from a withholding of social interaction is something we cannot afford to ignore.

Courts in different circuits continue to disagree on the extent of communication prisoners should be granted. The Sixth and Ninth Circuits have concluded that prisoners have a First Amendment Right to communicate with others outside of prison and this includes the use of telephones.⁴⁰ The Seventh Circuit Court has maintained that the First Amendment and its influence on prisoners' rights to telephone access is not strong enough. The Seventh court has officially ruled that prisoners do not have a constitutional right to communicate outside the prison.⁴¹ The Supreme Court must hold that prisoners have a constitutional right to communicate with those on the outside based on the first amendment.

Some courts have recognized that the first amendment rights of the outside correspondence and communication as well as those of the inmate are infringed upon

³⁹ . Naday, A., J. D. Freilich, and J. Mellow. "The Elusive Data On Supermax Confinement." *The Prison Journal* (2008): 69-93. Print.

⁴⁰ "CALLING THE SUPREME COURT: PRISONERS' CONSTITUTIONAL RIGHT TO TELEPHONE USE." *Boston University Law Review* 92.369 (2012): 380-402. Print.

⁴¹ *Ibid.*

when censored or outright denied.⁴² The right to receive visits and phone calls is not only important on a legal standpoint but also a rehabilitative one. The ability to continue relationships with those on the outside is healthy for inmates and promotes success on the outside post release. Inmate tensions are reduced greatly with the granting of visits and other communication methods, and the chances for successful inmate reintegration after release are enhanced as well.⁴³ This constitutional right will in turn reduce the recidivism rate by ensuring prisoners continue to have relationships that will help them on the other side. We need to shift our focus of prison as punishment to prison as a place for reformed behavior. Now is the time to encourage a change in national mindset and reformed prison policy for the well-being of our prisoners as many will be rejoining society.

⁴² Fox, Barry M. "The First Amendment Rights of Prisoners." *The Journal of Criminal Law, Criminology, and Police Science* 63.2: 162-84. Northwestern Law. Web.

⁴³ Ibid.

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