

IVEY WALTON, RAMONA AUSTIN,
JOANN HARRIS, the OFFICE OF THE
APPELLATE DEFENDER, and the NEW
YORK STATE DEFENDERS
ASSOCIATION,

Petitioners-Appellants,

-against-

THE NEW YORK STATE DEPARTMENT
OF CORRECTIONAL SERVICES, and MCI
WORLDCOM COMMUNICATIONS, Inc.,
now doing business as Verizon Business
Services,

Respondents-Respondents.

ON APPEAL FROM THE APPELLATE DIVISION,
THIRD DEPARTMENT, NO. 98700

SUPREME COURT INDEX NO. 04-1048 (ALBANY COUNTY)

BRIEF OF AMICI CURIAE The Sentencing Project, NAACP Legal Defense & Educational Fund, Inc., National/New York Associations of Criminal Defense Lawyers, The Women's Prison Association, Legal Action Center, The Fortune Society, Bronx Defenders, Center For Community Alternatives, Citizens United for Rehabilitation of Errants, Justice Policy Institute, Southern Tier Advocacy & Mitigation Project, Incorporated, Parolee Human Rights Project of The New York City Aids Housing Network, Advocare, Inc., The Equal Justice Initiative of Alabama, Voice of the Ex-Offender, The Community HIV/AIDS Mobilization Project, AND The Real Cost of Prisons Project IN SUPPORT OF PETITIONERS-APPELLANTS

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PRELIMINARY STATEMENT

Amici Curiae The Sentencing Project and Seventeen Others¹ submit this brief to alert the Court of unequivocal research findings indicating the public interest in promoting telephone communications as a means of preserving closer ties between New York State inmates and the family members from whom incarceration separates them. Studies uniformly show that prisoners who preserve close ties with their families and other intimate relations are more likely to desist from crime after their release. Indeed, one study observes that there is no “other research finding in the field of corrections which can approximate this record.” By reducing recidivism, the nurture of inmates’ social ties via reasonably accessible telephone communications serves the compelling public interest of making all of the State’s residents safer and more secure.

Several issues raised by this appeal, such as application of the “continuing violation” doctrine, see Commack Self-Service Kosher Meats Inc. v. State of New York, 270 A.D.2d 687, 688-89 (3d Dept. 2000), and the meaning of “final and binding” under C.P.L.R. § 217, require the Court to construe broad procedural rules capable of more than one application. See David D. Siegel, 562 New York State Law Digest, at 3 (Oct. 2006) (“[A]s is plain in many cases that we’ve

¹ The names of each amicus joining this brief appear on the cover page hereof. A description of the interest of each organization in the subject matter of this appeal is set forth in the Affirmation

reported in the Digest over the years, including Court of Appeals cases, trying to pinpoint that moment [at which an “administrative determination becomes ‘final and binding’” under C.P.L.R. § 217] is often difficult, and often the subject of disagreement among the judges.”).

In this enterprise, the Court may, and should, take account of public policy concerns implicated by the circumstances at bar. Mundy v. Nassau County Civil Serv. Comm’n, 44 N.Y.2d 352, 358 (1978) (appealing to basic considerations of fairness in calculating limitations period). With respect to questions of timeliness, the Court has noted its readiness, “[w]hen justified by circumstances,” to “countenance[] even greater delays” than those it has excused on review of a suit instituted roughly six years after the accrual of claims subject to a six-month limitations period. City of New York v. State of New York, 40 N.Y.2d 659, 665-66, 670 (1976).

By reducing recidivism, promoting ex-offenders’ successful reentry into communities throughout the State, and ultimately serving public safety, reasonably accessible prison telephone communications further policy aims at the core of criminal justice administration in New York. In recognition of the significance of these aims, the Court should advance the State’s decisional law in a manner

of Keith M. Donoghue, Esq., in Support of Motion Pursuant to Section 500.23 of Rules of Practice for Leave to File Amici Curiae Brief With Supplementary Appendix.

permitting meaningful review of allegedly unlawful constraints upon inmates' telephone calls. Toward that end, it should hold this action to have been timely commenced.

ARGUMENT

I. THE RETURN OF PRISONERS TO COMMUNITIES THROUGHOUT THE STATE IS A RECOGNIZED PUBLIC POLICY CONCERN OF SURPASSING MAGNITUDE

In New York State, the state prisons' telephone rate structure exists within the context of a broader correctional policy that includes the rehabilitation of offenders as an aim on the same footing as the deterrent and incapacitation functions of criminal law. In June, the Legislature adopted Senate Bill 7588, amending the Penal Law to expressly recognize as one of its "general purposes" the "promotion of [offenders'] successful and productive reentry and reintegration into society." See S. 7588, 229th Leg., Reg. Sess., 2006 N.Y. Sess. Laws 404 (McKinney) (amending N.Y. Penal Law § 1.05).

The State's executive has endeavored, as an integral component of its reentry planning, to nurture inmates' family ties. In a 2003 publication, former Department of Correctional Services ("DOCS" or "Department") Commissioner Glenn Goord boasted of the Department's participation in a pilot initiative that prepared prisoners for release by providing, among other services, professional

counseling addressed to family reintegration.² Amplifying former director Goord's remarks, DOCS spokesman James Fleteau describes family contacts as a Department priority.³ Like DOCS, the State's Division of Parole has joined in efforts to leverage family ties in aid of the supervision of former prisoners struggling with challenges such as substance abuse and child custody.⁴

State lawmakers' attention to family ties as an aspect of offender rehabilitation reflects the inescapable policy significance of an issue directly affecting nearly 675,000 persons released from prisons each year.⁵ The cumulative meaning of this statistic is overwhelming: one Department of Justice study estimates that at year end 2001, 5.6 million Americans, and one in six African-American men, had been to prison.⁶

² See Glenn Goord, "Transitional Services Program – A Seamless Transition from Prison to the Community," in Reentry Best Practices: Directors' Perspectives 149, 151 (Reginald A. Wilkinson ed., 2004) (reproduced at A-1 to A-8 in supplementary appendix submitted herewith).

³ See Paul Esmond, "Families Struggle to Maintain Contact with Loved Ones in State Prisons," Legis. Gazette, June 13, 2005 (reproduced at A-9 to A-12 in supplementary appendix submitted herewith).

⁴ See Carol Shapiro & Meryl Schwartz, "Coming Home: Building on Family Connections," 5 Corrections Mgmt. Q., No. 3, at 52, 55-59 (2001) (discussing "La Bodega de la Familia" initiative on New York City's Lower East Side).

⁵ See Paige M. Harrison & Allen J. Beck, Prison and Jail Inmates at Midyear 2005 (U.S. Dep't of Justice, Bureau of Justice Statistics, May 2006) (excerpt reproduced at A-13 in supplementary appendix submitted herewith) at 6 tbl.7 (reporting 672,202 prisoners released in 2004, an increase of 11.1 percent over 2000 figure).

⁶ See Thomas P. Bonczar, Prevalence of Imprisonment in the U.S. Population, 1974-2001 (U.S. Dep't of Justice, Bureau of Justice Statistics, Aug. 2003) at 1 unnumbered tbl. (excerpt reproduced at A-15 of supplementary appendix submitted herewith).

The import of these figures owes not simply to their sheer size, but to the disproportionate role of recidivist offenders in criminal activity. A study of data collected in thirteen states found that former prisoners have arrest rates between 18 and 26 times those of the general adult population.⁷

The volume of persons passing through state custody in New York, and their disproportionate responsibility for crime across the State, is in keeping with the striking nationwide figures. DOCS anticipates releasing approximately 26,000 offenders in 2006.⁸ One study pegs the number of individuals returning from prison or jail each day to New York City alone at 350.⁹ Many of these released offenders are disproportionately concentrated in certain communities, including Harlem, the South Bronx, Central Brooklyn, and Jamaica.¹⁰ Those neighborhoods are also home to a disproportionate share of victims of the violent offenses

⁷ See Richard Rosenfeld et al., "The Contribution of Ex-Prisoners to Crime Rates," in Prisoner Reentry and Crime in America 80, 86 (Jeremy Travis & Christy Visher eds., 2005).

⁸ See New York State Criminal Justice Performance Management: 2005 Crimestat Report (Chauncey G. Parker, Director of Criminal Justice, Feb. 9, 2006) (excerpt reproduced at A-17 to A-24 in supplementary appendix submitted herewith) at 32. DOCS has released similar numbers of offenders in recent years: 26,100 offenders in 2005 and 26,311 offenders in 2003. Id.

⁹ See Marta Nelson et al., "The First Month Out: Post-Incarceration Experiences in New York City" (Vera Inst. for Justice, Sept. 1999) [hereinafter "The First Month Out"] (reproduced at A-25 to A-60 in supplementary appendix submitted herewith) at 2.

¹⁰ See Policy Matters: Coming Home... and Staying There (Policy Research Institute for the Region, Spring 2006) (reproduced at A-61 to A-66 in supplementary appendix submitted herewith).

committed by recently released New York prisoners, who together commit fully 15 percent of all violent crime perpetrated by adult New Yorkers.¹¹

II. STUDIES OF RECIDIVISM UNIFORMLY DEMONSTRATE THAT PRISONERS WHO MAINTAIN CLOSE SOCIAL TIES ARE LESS LIKELY TO ENGAGE IN CRIME FOLLOWING RELEASE FROM CUSTODY

Against the backdrop supplied by the volume of offenders returning to communities throughout the State each year and their disproportionate role in crime, the issue of recidivism has received sustained and intensive attention. Research is unanimous in finding recidivism rates to be lower when prisoners remain in closer contact with family members during their terms of confinement.

Some thirty-five years ago, a state-sponsored study concluded:

The positive relationship between strength of social ties and success on parole has held up for 45 years of releases across very diverse offender populations and in different localities. It is doubtful if there is any other research finding in the field of corrections which can approximate this record.¹²

¹¹ See Rosenfeld et al., *supra* note 7, at 90 tbl.4.3; Eric Cadora et al., "Criminal Justice and Health and Human Services: An Exploration of Overlapping Needs, Resources, and Interests in Brooklyn Neighborhoods," in Prisoners Once Removed: The Impact of Incarceration and Reentry on Children, Families, and Communities (Jeremy Travis & Michelle Waul eds., 2003) [hereinafter Prisoners Once Removed] at 285, 301-303 figs. 9.10b, 9.12 (showing violent crime to be concentrated in Brooklyn neighborhoods that are also home to disproportionately high numbers of parolees and probationers).

¹² Norman Holt & Donald Miller, Explorations in Inmate-Family Relationships (California Dep't of Corrections, Research Div. Research Report No. 46, Jan. 1972) [hereinafter "Holt and Miller"] (excerpts reproduced at A-67 to A-72 in supplementary appendix submitted herewith) at 61-62.

Authors Norman Holt and Donald Miller reproduced this finding once again by correlating the number of visits received by inmate subjects with the likelihood of their return to custody within one year.¹³ Even when controlling for factors such as immediate financial need and employment, the authors determined family ties to be of independent significance to the likelihood of a successful parole outcome.¹⁴ Indeed, “[i]n every comparison category, including those with 3 or more prior commitments, men with more family-social ties have had the fewest parole failures.”¹⁵

The robust results reported by Holt and Miller have in time made their research the most often cited evidence of the relationship between strong family ties and reduced recidivism.¹⁶ Yet, as Holt and Miller were the first to observe, an underlying research consensus can also be traced a further half century back. A study of Illinois parolees released between 1925 and 1935 found that inmates who had maintained an “active family interest” during their incarceration, as measured by the number of visits they received, were more than twice as likely to desist from

¹³ Id. at 42-43.

¹⁴ Id.

¹⁵ Id., cited in Eva Lee Homer, “Inmate-Family Ties: Desirable but Difficult,” 43 Fed. Probation 47, 48 (1979).

¹⁶ See Creasie Finney Hairston, “Family Ties During Imprisonment: Important to Whom and for What?,” J. Soc. & Soc. Welfare, Mar. 1991, at 85, 97.

crime as those who had no contact with family.¹⁷ Several decades later, the federal Bureau of Prisons commissioned an investigation which reproduced these results, finding prisoners who corresponded most frequently with family members had a 71 percent rate of success on parole, while those who did not communicate with relatives achieved only a 50 percent success rate.¹⁸

The Bureau of Prisons study also assessed the importance of strong familial relations subsequent to release, finding, for example, that recidivism was most common among releasees who lived alone,¹⁹ a circumstance closely correlated with the strength of family ties due to a pronounced likelihood that parolees who lived with others did so with close relatives and spouses.²⁰ The study also found parolees less likely to recidivate insofar as their familial relations were comparatively free from discord.²¹ Nonetheless, even parolees whose home relations were characterized by some disharmony were more likely to desist from

¹⁷ See Lloyd E. Ohlin, The Stability & Validity of Parole Experience Tables (Ph. D. diss., Univ. of Chicago, 1954) at appx. B tbl. 42, discussed in Daniel Glaser, The Effectiveness of a Prison and Parole System 366 (1964).

¹⁸ See Glaser, supra note 17, at 366.

¹⁹ Id. at 379-80.

²⁰ Id. at tbl.15.6.

²¹ Id. at 381, 384-85.

crime than those who moved away from home,²² suggesting that the preservation of at least a modicum of familial peace improved parole outcomes.

A 1968 to 1972 study examined a sample of Hawaii prisoners who, thanks to the island's small size, were almost as likely to receive visits as letters.²³ The authors likewise found the extent of prisoners' contacts with family and friends to be closely enough associated with successful parole outcomes to warrant enlargement of programming that encouraged correspondence and visitation.²⁴

The findings of these path-breaking studies have been reproduced by research employing a range of variables as proxies for the extent of prisoners' community and family contacts. A study commissioned by the Massachusetts Department of Correction documented significantly lower short- and long-term recidivism rates among men who participated in prerelease and home furlough programs that were "geared to maintain, to establish, or to reestablish general societal links such as family, economic, political, and social roles."²⁵ At least one

²² Id. at 387-88.

²³ See Don Adams and Joel Fischer, "The Effects of Prison Residents' Community Contacts on Recidivism Rates," 22 Corrective and Soc. Psychiatry and J. of Behav. Tech. Methods and Therapy, No. 4, at 21, 22 (1976).

²⁴ Id. at 26-27.

²⁵ See Daniel P. LeClair, "The Effect of Community Reintegration on Rates of Recidivism: A Statistical Overview of Data for the Years 1971 Through 1983" (Mass. Dep't of Correction, Feb.-March 1986) (excerpts reproduced at A-73 to A-92 in supplementary appendix submitted herewith) at 2-3, 18-22 & tbls.8-10, 25-28 & tbls.12-13.

additional study has also found temporary release programs to have a positive impact.²⁶ Similarly, correctional programming that brings family members closer to confined prisoners by permitting overnight visits has been found to correlate with lower rates of arrest following release.²⁷

A recent study of post-release social ties among former offenders in Ontario, Canada, documented results akin to those of the Bureau of Prisons study four decades earlier.²⁸ The authors sampled a total of 347 repeat offenders, the vast majority of whom had committed a new offense within one year of their most recent release.²⁹ Compared with the small pool of offenders who had desisted from crime over the year studied, recidivists were less likely to be living with a nuclear family; less likely to be married; spent less time engaged in family activities; and were more likely to report interpersonal conflicts, which they also characterized as more serious in nature than did non-recidivists.³⁰

²⁶ See James Howser & Donald MacDonald, "Maintaining Family Ties," Corrections Today, Aug. 1982, at 96-97, cited in Hairston, supra note 16, at 98.

²⁷ See Jules Quentin Burstein, Conjugal Visits in Prison: Psychological and Social Consequences (1977), cited in Hairston, supra note 16, at 98.

²⁸ See Edward Zamble & Vernon L. Quinsey, The Criminal Recidivism Process (1997).

²⁹ Id. at 16-20.

³⁰ Id. at 72-74 & tbl.4.2, 76 tbl.4.3.

A spectrum of additional studies published in the 1980's and 1990's has lent further support to the research consensus.³¹ In sum, these uniform findings bear out the conclusion stated by Creasie Finney Hairston, dean of the Jane Addams College of Social Work at the University of Illinois, that the "family ties-lower recidivism relationship has been consistent across study populations, different periods of time, and different methodological procedures."³² Indeed, more than one study has pronounced the uniform results of this body of research to be "remarkable."³³ Given this exceptional consistency, few measures are as promising as the nurture of inmates' social ties as a means of reducing crime and promoting the public safety enjoyed by all New Yorkers.

³¹ See Christy A Visher & Jeremy Travis, "Transitions from Prison to Community: Understanding Individual Pathways," 29 Ann. Rev. Soc. 89, 100 (2003) [hereinafter "Transitions from Prison to Community"] (citing ten studies "evidenc[ing] that inmates' family relationships and ties to those family members during prison improve postrelease outcomes").

³² Hairston, supra note 16, at 98. Professor Hairston's deanship may be confirmed at the website of the Jane Addams College of Social Work, <http://www.uic.edu/jaddams/college/dean.html> (last visited Nov. 29, 2006).

³³ Rebecca L. Naser & Christy A. Visher, "Family Members' Experiences with Incarceration and Reentry," 7 W. Criminology Rev. 20, 21 (2006); Nancy G. La Vigne et al., "Examining the Effect of Incarceration and In-Prison Family Contact on Prisoners' Family Relationships," 21 J. Contemp. Crim. Justice 314, 316 (2005).

III. CLOSER SOCIAL TIES ASSIST FORMER PRISONERS IN MANAGING A RANGE OF ISSUES WHICH MIGHT OTHERWISE PRECIPITATE A RETURN TO CRIME, WHILE ALSO MITIGATING THE EFFECTS OF INCARCERATION ON FAMILIES AND COMMUNITIES

In addition to confirming the importance of family ties by statistical means, scholars and professionals have developed a nuanced understanding of how these ties achieve their positive impact. A common thread running through the studies is the recognition of family and other intimate relations as a critical source of both tangible and intangible support in former prisoners' encounters with a range of unique challenges confronting them upon release. Phone calls emerge in the literature as an important – indeed, generally the most important – means by which prisoners preserve, through often lengthy terms of confinement, the support structure that offers the best hope of sustaining them when at last they return home.

A. Social Ties Are Often Former Prisoners' Primary or Only Means of Satisfying Basic Needs

To begin with the tangible benefits of inmates' family ties, it is necessary to look no further than housing. Finding a home is inevitably among the foremost concerns of prisoners during the period immediately following their release from confinement.³⁴ Notably, this is the same interval during which recidivism rates are

³⁴ See Jeremy Travis, But They All Come Back: Facing the Challenges of Prisoner Reentry [hereinafter But They All Come Back] 219 (2005); Glaser, supra note 17, at 371-72 tbl.15.4 (documenting increase, as release date approached, in share of prisoners who identified housing as primary type of assistance expected from close relatives).

highest.³⁵ Yet housing is a perennial difficulty for former prisoners, more than ten percent of whom have been found to experience homelessness shortly after release.³⁶ Those who do establish a stable residence overwhelmingly rely on immediate family members to take them in.³⁷

Given prisoners' difficulty in locating housing and their usual need of help from family members, it is not surprising that inmates with stronger family ties, and hence better prospects of finding a home, are more likely to make a successful

³⁵ See Patrick A. Langan & David J. Levin, Recidivism of Prisoners Released in 1994 (U.S. Dep't of Justice, Bureau of Justice Statistics, June 2002) (excerpts reproduced at A-93 to A-96 of supplementary appendix submitted herewith) at 3 & fig.1 (finding that, of all prisoners rearrested within three years of release, nearly two-thirds were arrested during first year alone); Adams and Fischer, supra note 23, at 22 (reporting that recidivism may be assessed nearly as accurately at two years after release as at ten years).

³⁶ See Stephen Metraux & Dennis P. Culhane, "Homeless Shelter Use and Reincarceration Following Prison Release," 3 Criminology & Pub. Pol'y 139, 144 (2004) (finding that 11.4 percent of cohort of 48,424 New York State prisoners released to New York City between 1995 and 1998 entered homeless shelters within two years); cf. Zamble & Quinsey, supra note 28, at 36 ("most" individuals within sample of 311 recidivists lived in "temporary accommodations" at time of survey).

³⁷ See "The First Month Out," supra note 9, at 8 (finding that roughly eighty percent of sample of New York State prisoners returning to New York City were living with a family member two days following release); "Understanding the Challenges of Prisoner Reentry: Research Findings from the Urban Institute's Prisoner Reentry Portfolio" (Urban Institute, Justice Pol'y Ctr., Jan. 2006) (excerpt reproduced at A-97 to A-102 of supplementary appendix submitted herewith) at 8 (finding between 60 and 88 percent of prisoners returning to communities in Illinois, Maryland, Ohio, and Texas to live with or anticipate living with family members upon release).

reentry.³⁸ In light of this dynamic, one research team's characterization of familial support as of "make or break" significance to successful reentry is apt.³⁹

A second tangible respect in which inmates who preserve close family ties find themselves comparatively well situated upon release is in employment opportunities. Finding a job is critical for successful reentry not only because it provides much-needed income, but also because employment has been strongly linked to reductions in criminal behavior. Through work opportunities, offenders establish positive relationships with co-workers that can serve as "informal social controls" encouraging the development of a law-abiding identity.⁴⁰

Among a cohort of prisoners returning to New York City in 1999, fully one-third of those who had found employment within a month of release located those jobs through family or friends.⁴¹ The other two-thirds, notably, were able to call upon former employers themselves,⁴² thus evidencing the significance of an

³⁸ See "The First Month Out," supra note 9, at 9 & n.4 (observing markedly higher rate of absconding from parole supervision among releasees who lived in homeless shelter following release).

³⁹ "The First Month Out," supra note 9, at 1; see also Eric J. Wodahl, "The Challenges of Prisoner Reentry from a Rural Perspective," 7 W. Criminology Rev. 32, 35 (2006) (citing additional study characterizing housing as "the lynchpin that holds the reintegration process together").

⁴⁰ See Christopher Uggen et al., "Work and Family Perspectives on Reentry," in Prisoner Reentry and Crime in America, supra note 7, at 210-15.

⁴¹ See "The First Month Out," supra note 9, at 14.

⁴² Id.

additional set of social contacts which, to the extent prisoners are able to preserve them, improve the prospects of a successful reentry.⁴³

Less tangible dimensions of family support also play an important role in prisoners' successful reintegration. A struggle common to as many as 80 percent of former prisoners is that of recovering from a history of drug and alcohol abuse.⁴⁴ In this endeavor, family ties have been found to be associated with a greater likelihood of success.⁴⁵ The positive impact of such ties may operate by means of family members' informal monitoring,⁴⁶ as well as by giving a former substance abuser a stake in conventional social roles that lead him or her to regard the costs of a return to abuse as more significant.⁴⁷ Individual accounts of family members

⁴³ Similarly, a survey of the family members of prisoners returning to Chicago determined that one in five family members helped their recently incarcerated relative locate employment. See Naser & Visser, supra note 33, at 26; see also "Transitions from Prison to Community," supra note 31, at 97 (collecting additional studies finding returning prisoners unlikely to "find jobs on their own, but rather [to] turn to family, friends, and former employers for help").

⁴⁴ See National Governors Ass'n, "Issue Brief: Improving Prisoner Reentry Through Strategic Policy Innovations" (Sept. 2005) (reproduced at A-103 to A-118 of supplementary appendix submitted herewith) at 4; "HUB System: Profile of Inmate Population Under Custody on January 1, 2006" (New York State Department of Correctional Services, June 2006) (excerpt reproduced at A-119 to A-128 of supplementary appendix submitted herewith) at ii (finding 71.9 percent of New York State inmates in custody as of January 1, 2006, to self-report history of substance abuse).

⁴⁵ See Mike Bobbitt & Marta Nelson, "The Front Line: Building Programs that Recognize Families' Role in Reentry" (Vera Inst. of Just., Sept. 2004) (excerpt reproduced at A-129 to A-132 of supplementary appendix submitted herewith) at 2.

⁴⁶ See Shapiro & Schwartz, supra note 4, at 58.

⁴⁷ See Bobbitt & Nelson, supra note 45, at 2 (reporting survey of former prisoners whose motivation to desist from substance abuse owed to wish "to retain the good opinion of their families," which they "feared losing... if they resumed using drugs").

who accompany newly released prisoners to support groups, or simply on neighborhood outings which might otherwise occasion temptation,⁴⁸ afford a sense of the real effect of meaningful family ties in promoting desistance from crime.

Finally, successful reentry has been associated with more diffuse forms of emotional support for which prisoners commonly turn to their family and friends. One study of prisoners' emotional state upon reentry found that "postrelease depression and, conversely, emotional adjustment following release from prison depend in large measure on the availability of supportive, bridging interpersonal networks."⁴⁹ Survey evidence, perhaps somewhat surprisingly, indicates family members to be overwhelmingly ready and willing to provide this emotional care, often exceeding even the high expectations of returning prisoners.⁵⁰

The availability of emotional support takes on additional significance upon consideration of the extent of mental illness among returning prisoners, who have been estimated to suffer mental disorders at more than five times the rate in the

⁴⁸ See "The First Month Out," *supra* note 9, at 10.

⁴⁹ Sheldon Ekland-Olson et al., "Postrelease Depression and the Importance of Familial Support," 21 *Criminology* 253, 271 (1983).

⁵⁰ See Naser & Visher, *supra* note 33, at 26 (reporting survey results that showed more than eighty percent of family members to regard as "pretty or very easy" the provision of emotional support to relative returning home from prison); *cf.* Glaser, *supra* note 17, at 367 tbl.15.2, 369 (more than half of prisoners expected to rely on immediate family for support upon release).

general population.⁵¹ Between ten and 20 percent of all prisoners suffer from a mental disorder serious enough to require intensive treatment during a single year.⁵² Against the size of this population must be considered the paucity of treatment programs available to parole administrators.⁵³ While family and friends may be no substitute for professional help, the positive impact of intimates' support on prisoners' capacity to cope with depression⁵⁴ indicates that at least some ameliorative impact may be achieved by correctional policies that permit prisoners more opportunity to preserve familial and social ties during incarceration.

B. Preservation of Prisoners' Social Ties Is of Critical Importance to a Sizable Population of Children

Policies that sustain prisoners' pre-incarceration ties help not only prisoners, but the family members on whom they rely. Children of incarcerated parents have been observed to experience myriad negative effects of potentially long-lasting consequence in connection with the loss of a primary caregiver, financial support,

⁵¹ See Terry A. Kupers, Prison Madness: The Mental Health Crisis Behind Bars and What We Must Do About It 11 (1999).

⁵² Id.; see also Zamble & Quinsey, supra note 28, at 34-35 & tbl.3.1 (finding 61.2 percent of sample of recidivists to self-report history of psychological problems and 20 percent to report prior attempt of suicide).

⁵³ See Joan Petersilia, "From Cell to Society: Who Is Returning Home?," in Prisoner Reentry and Crime in America, supra note 7, at 15, 32 (citing 1995 survey finding 75 percent of parole administrators to report lack of special programs for mentally ill clients).

⁵⁴ See Sheldon Ekland-Olson et al., supra note 49, at 271.

and critical emotional contact.⁵⁵ Correctional policies that facilitate positive interaction between the incarcerated and their family members can help mitigate this harm.⁵⁶ The significance of this beneficial effect is immediately apparent on consideration of the number of prisoners who are parents: a 1999 survey found a majority of prisoners to have at least one child under the age of 18, summing to approximately 1.5 million children with parents behind bars.⁵⁷

C. Preservation of Prisoners' Social Ties May Contain the Cumulative Impact of Incarceration on Communities That Are Home to a Disproportionate Share of Persons in State Custody

At a broader level, the reduced crime and stronger families achieved by correctional policies that preserve pre-incarceration ties promote the vital interests of neighborhoods and communities from which a disproportionate share of prisoners are drawn.

A study of Brooklyn has dramatically illustrated the concentration of incarceration's effects by plotting the location of census tracts that are home to

⁵⁵ See generally "The Effects of Parental Incarceration on Children: Perspectives, Promises, and Policies," in Prisoners Once Removed, *supra* note 11; see also But They All Come Back, *supra* note 34, at 119-20, 126-31 (describing financial stress, emotional and behavioral problems, and social stigma experienced by some children of incarcerated parents).

⁵⁶ See Prisoners Once Removed, *supra* note 11, at 20-22, 250; But They All Come Back, *supra* note 34, at 134-35 (explaining that meaningful contact between incarcerated parents and their children can be of help to both).

⁵⁷ Christopher J. Mumola, Incarcerated Parents & Their Children (U.S. Dep't of Justice, Bureau of Justice Statistics, Aug. 2000) (excerpt reproduced at A-133 of supplementary appendix submitted herewith) at 1.

higher-than-usual numbers of persons removed for and returning from confinement: a sizable majority of all such tracts cluster in the borough's east-central region.⁵⁸ These same neighborhoods were likewise characterized by high percentages of single-parent households and residents receiving public assistance, as well as elevated rates of violent crime.⁵⁹

The same pattern has been observed throughout the country. Nationwide, roughly two-thirds of all persons released from state prison in 1996 returned to the central city of a metropolitan area.⁶⁰ In Cuyahoga County, which encompasses the City of Cleveland, three percent of 1,500 block groups accounted for twenty percent of the State of Ohio's prisoners.⁶¹ In Tallahassee, more than three-quarters of neighborhoods each received no more than 30 of the prisoners released between 1994 and 2002, whereas five percent of neighborhoods received more than 150 prisoners each.⁶² Studies of prisoners returning to Chicago, Baltimore, Boston, Richmond, and Detroit have in each instance found between one-third and one-half

⁵⁸ See Eric Cadora et al., supra note 11, at 299 fig.9.9, 303 fig.9.12, 306 fig.9.14a.

⁵⁹ Id. at 294, 296-97, 301, 307, figs. 9.4, 9.6, 9.7, 9.10b, 9.14b.

⁶⁰ See James P. Lynch & William J. Sabol, "Prisoner Reentry in Perspective" (Urban Inst., 3 Crim. Policy Rep., Sept. 2001) (excerpt reproduced at A-135 to A-146 of supplementary appendix submitted herewith) at 15.

⁶¹ Id. at 16.

⁶² See Todd R. Clear et al., "Communities and Reentry: Concentrated Reentry Cycling," in Prisoner Reentry and Crime in America, supra note 7, at 179, 197.

of former prisoners to return to neighborhoods comprising no more than fifteen percent, and as little as seven percent, of the cities of which they are part.⁶³

Negative stigma associated with incarceration has been observed to lead prisoners' close relations to retreat from social networks on which they would otherwise rely.⁶⁴ Along with the disruption which incarceration directly causes by constantly removing and returning a share of residents, the cumulative effect of these retreats from neighbors can weaken social networks themselves, ultimately impairing the community's capacity to summon collective energies toward shared ends.⁶⁵ The result may be a further intensification of the social ills already associated with concentrated poverty: heightened crime rates, loss of employment, and strain upon social service providers.⁶⁶

⁶³ See "Understanding the Challenges of Prisoner Reentry," supra note 37, at 14.

⁶⁴ See Dina Rose et al., Drugs, Incarceration and Neighborhood Life: The Impact of Reintegrating Offenders into the Community (Final Grant Report to National Inst. of Justice, Doc. No. 195173, July 3, 2002) (excerpts reproduced at A-147 to A-156 of supplementary appendix submitted herewith) at 173.

⁶⁵ See Clear, et al., supra note 62, at 193-94.

⁶⁶ See Dina R. Rose & Todd R. Clear, "Incarceration, Reentry and Social Capital: Social Networks in the Balance," in Prisoners Once Removed, supra note 11, at 313, 324-26; Shelli Balter Rossman, "Building Partnerships to Strengthen Offenders, Families, and Communities" in Prisoners Once Removed, supra note 11, at 343, 345; "Transitions from Prison to Community," supra note 31, at 103 (discussing studies). A difficulty in assessing the hypothesis that removal and return of a disproportionate share of residents exacerbates social ills in certain communities is insufficient longitudinal data measuring the pertinent factors over a period of time. See id. at 104.

While overcoming this cycle will likely require fundamental shifts in social policy, simple adjustments in corrections practices are also of some value. Policies that help preserve prisoners' intimate relations within their home communities are a means of solidifying the "strong ties" that are a necessary, if not always sufficient, basis of a community's capacity for collective action.⁶⁷ Prisoners who maintain community ties with former employers succeed also in preserving the "weak ties" which sociologists have found essential to the vibrancy of social networks and efficacy of informal norms.⁶⁸ In both respects, the preservation of inmates' pre-incarceration ties figures within the sociology of mass incarceration as a simple means of fighting the exacerbation of social ills caused by the disproportionate selection of prisoners from a limited number of communities. The beneficiaries of informed corrections policy thus include not only prisoners themselves, but their neighbors and, ultimately, the public as a whole.

IV. TELEPHONE CALLS ARE ESSENTIAL TO PRISONERS' PRESERVATION OF SOCIAL TIES

While it is clear that prisoners' pre-incarceration social ties are critical to successful reentry, prisoners face a number of dilemmas in efforts to sustain these relations by means other than telephone calls.

⁶⁷ See Clear et al., supra note 62, at 188-91.

⁶⁸ See id. at 188, 193.

Perhaps the foremost challenge confronting prisoners in New York, as in most states, is the distant location of correctional facilities, which dramatically constrains visiting opportunities. While 55 percent of the State's inmates come from New York City, more than 90 percent of the State's prison beds are located north of the five boroughs.⁶⁹ Indeed, nearly three-quarters of all facilities are located beyond Westchester County.⁷⁰ One snapshot of the geographical distance which separates inmates from home appears in the confinement of more than 30 percent of all female inmates from New York City at the Albion Correctional Facility, some 375 miles away.⁷¹

Statewide, as calculated by means of driving distances published by DOCS on its website,⁷² prison facilities are, on average, approximately 217 miles from New York City. The drive time associated with paying a visit to a loved one is therefore reasonably estimated to require four hours travel in each direction – a full

⁶⁹ New York State Department of Correctional Services, Prison Safety in New York 14 (2006) (excerpt reproduced at A-157 to A-160 of supplementary appendix submitted herewith).

⁷⁰ See Paul Esmond, "Democrats' Bill Would Lower Phone Costs for Inmates," Legis. Gazette, May 16, 2005 (reproduced at A-161 to A-162 of supplementary appendix submitted herewith) (reporting 48 of 69 facilities to be sited north of Westchester).

⁷¹ See Paul Esmond, "Families Struggle to Maintain Contact with Loved Ones in Prison," Legis. Gazette, June 13, 2005; compare John C. Coughenour, "Separate and Unequal: Women in the Federal Criminal Justice System," 8 Fed. Sentencing Rep. 142 (1995) (reporting average female inmate in custody of federal prison system to be confined more than 160 miles farther from family than average male inmate, due to operation of fewer facilities for women).

⁷² See <http://www.docs.state.ny.us/DriveDirections.html> (last visited Nov. 30, 2006).

work day, separate and apart from whatever time a visitor manages to spend with an incarcerated relative upon finally arriving at the prison facility.

Not only are State correctional facilities distant from the boroughs that are home to more than half of all inmates, but DOCS policies do not favor placement of city inmates in the limited number of prisons located nearer the metropolitan area. In 2002, less than one-third of prisoners from New York City were confined in those prisons closest to home.⁷³ A Department spokesman flatly states that DOCS does not generally attempt to assign New York City inmates to the few metropolitan area facilities it operates.⁷⁴

Those family members lucky and stalwart enough to manage visits often encounter exasperating difficulties once they arrive. While the nature of these obstacles is largely anecdotal, a compelling portrait is framed by the final report of an intensive study conducted in Florida in 1998 by a state legislative committee.⁷⁵ The investigation found visiting policies and schedules commonly varied from one facility to another, resulting in upended expectations whenever a relative was

⁷³ See Philip M. Genty, "Damage to Family Relationships as a Collateral Consequence of Parental Incarceration," 30 *Fordham Urb. L. J.* 1671, 1680 n.60 (2003) (relying on 2002 DOCS publication to estimate share of prisoners from metropolitan area confined in prisons within either of two Department "hubs" nearest city).

⁷⁴ See Esmond, *supra* note 71 ("There's no attempt at keeping them close to home. Based upon good behavior and program involvement you work your way closer to home.").

⁷⁵ See Florida House of Representatives, Justice Council, Committee on Corrections, Maintaining Family Contact When a Family Member Goes to Prison (Nov. 1998) (excerpts reproduced at A-163 to A-194 of supplementary appendix submitted herewith).

transferred.⁷⁶ Arbitrary application of rules which vested correctional staff with broad discretion was also observed to interfere with visitation.⁷⁷ A common, if not predominant, complaint was of discourtesy toward visitors on the part of correctional staff.⁷⁸

The failure to provide family members with information regarding visitation policies appears to be a recurrent problem in jurisdictions throughout the United States.⁷⁹ Family members of New York prisoners make the same complaints. Staff of support groups for State residents with relatives in prison criticize DOCS for failing to provide information concerning visitation policies, which commonly differ from one facility to another.⁸⁰ Encounters with insensitive correctional staff have also been reported.⁸¹

⁷⁶ Id. at 4 (Findings 11 and 12).

⁷⁷ Id. at 4 (Finding 12); § VII.C.1, pp. 28-29.

⁷⁸ Id. at 4-5 (Findings 14 and 16); § VII.C.6, p. 51.

⁷⁹ See Creasie Finney Hairston, "Families, Prisoners, and Community Reentry: A Look at Issues and Programs," in Vivian L. Gadsden, ed., Heading Home: Offender Reintegration into the Family (American Correctional Ass'n, 2003) at 18 ("Practices regarding acceptable identification, clothing, and searches vary from one prison to another and sometimes from one visit to another, creating humiliation, confusion, and frustration for adults and children visitors alike.").

⁸⁰ See Esmond, supra note 71 (quoting on this point the founder of statewide support group, Prison Families of New York, as well as a counselor at New York City's Osborne Association).

⁸¹ Id. (quoting girlfriend of prisoner who described visits as "often humiliating," as in officers' attention to whether she wore wire-supported bra).

Not only are prisons distant and visitation frequently compromised, but written correspondence is often of little utility to prisoners who strive to keep up their pre-incarceration ties. Literacy rates among prisoners are significantly lower than among the population as a whole.⁸² Those prisoners who formally qualify as literate are in many instances incapable of fully expressing themselves in writing,⁸³ and even prisoners who have achieved a meaningful degree of literacy are no better able for that reason to communicate with minor children who are themselves unable to read and write skillfully. Finally, the review of prisoners' mail by corrections officials undoubtedly limits the candor of correspondents' self-expression.⁸⁴

In light of the remote location of many correctional facilities, restrictive and sometimes arbitrarily enforced visitation policies, and broad illiteracy among inmates, telephone communications are essential to the nurture of intimate relationships which incarceration might otherwise rend. Cf. Overton v. Bazzetta, 539 U.S. 126, 135 (2003) (recognizing availability of telephone calls as material factor in upholding challenged restrictions on prison visitation). The significance

⁸² Jeremy Travis & Michelle Waul, "Prisoners Once Removed: The Children and Families of Prisoners," in Prisoners Once Removed, *supra* note 11, at 11; National Governors Ass'n, *supra* note 44, at 5 (reporting "roughly half" of returning offenders to be functionally illiterate).

⁸³ See "HUB System: Profile of Inmate Population Under Custody on January 1, 2006," *supra* note 44, at 45 (reporting that roughly one third of New York State inmates read at below a ninth grade level, and one fifth of inmates below a sixth grade level); Hairston, *supra* note 79, at 19.

of telephone communications, as a matter of constitutional law, has been recognized by federal court decisions holding that restrictions on prisoners' telephone access must be reasonably related to legitimate penological aims. Washington v. Reno, 35 F.3d 1093, 1100 (6th Cir. 1994); Tucker v. Randall, 948 F.2d 388, 391 (7th Cir. 1991).

Surveys conducted in numerous jurisdictions have consistently found that prisoners rely on telephone calls far more commonly than visits as a means of preserving contacts with their family members and intimate partners. In Florida, 68 percent of family members received calls from a confined relative at least once a week, while fewer than 42 percent visited with equivalent frequency.⁸⁵ In the Chicago area, a survey found an even more dramatic disparity: while a majority of family members communicated with their incarcerated relatives by telephone and mail, more than two-thirds were unable to make a single visit.⁸⁶ Even in as

⁸⁴ Glaser, supra note 17, at 363.

⁸⁵ Maintaining Family Contact When a Family Member Goes to Prison, supra note 75, at § V, p. 20; appx.1 (Q4 and Q8). The 42-percent figure stated in the text in all likelihood substantially overstates the percentage of family members who visited Florida inmates at least once a month, as it includes the 15 percent of family members who reported visiting with a frequency "other" than weekly, twice-monthly, monthly, or semi-annually. Id. at appx.1 (Q4). Given that 86 percent of family members expressed a wish to be able to visit their incarcerated relatives more frequently, id. (Q5), and that respondents as a whole lived, on average, 158 miles from the facility where their loved one was confined, id. (Q11), it is reasonable to presume that most of this 15 percent in fact visited less than semi-annually. Thus, the Florida survey results can be read to indicate that only 27 percent of family members visited an incarcerated relative on a weekly basis, as compared with the 68 percent who communicated by telephone with that often.

⁸⁶ Naser and Visher, supra note 33, at 24-25.

relatively small a state as New Jersey, 41 percent of inmates did not receive a single visit over the course of a year.⁸⁷ Nationwide, a Department of Justice survey found that 42 percent of incarcerated fathers and 53 percent of mothers spoke by telephone at least once each month with a child,⁸⁸ surpassing the frequency of visits by a factor of two to one.⁸⁹

Within New York State, phone calls likewise form a lifeline of communication between inmates and their family and friends.⁹⁰ The very sum collected by DOCS as a commission on inmate calls – \$21 million in 1999 alone⁹¹ – is testament to the extent of prisoners’ reliance on the telephone as a means of staying in touch. So too is DOCS’ report of a monthly average of one-half million completed calls, totaling 9.5 million minutes of phone time.⁹²

⁸⁷ Gresham M. Sykes, The Society of Captives 65 (1958), quoted in Glaser, supra note 17, at 363.

⁸⁸ Mumola, supra note 57, at 1.

⁸⁹ Id.

⁹⁰ See John Sullivan, “New York State Earns Top Dollar From Collect Calls by Its Inmates,” N.Y. Times, Nov. 30, 1999, at A1 (reproduced at A-195 to A-196 of supplementary appendix submitted herewith) (reporting on prisoner whose only means of contact with dying relative was telephone call, and quoting family members who estimated cost of telephone communications with incarcerated relatives at hundreds of dollars each month); Paul Esmond, “Families Struggle to Maintain Contact with Loved Ones in Prison,” Legis. Gazette, June 13, 2005.

⁹¹ See Sullivan, supra note 90, at A1.

⁹² See Catriona Stuart, “Wives See Wrong Numbers on Phone Bills for Inmates,” N.Y. Sun, Jan. 21, 2005 (reproduced at A-197 to A-200 of supplementary appendix submitted herewith).

The high price of telephone calls under the present rate structure means that prisoners and their family members must not only endure financial sacrifice, but may also be required to make trade-offs between communicating with a loved one and a lawyer. Simply receiving status reports as to direct appeals and/or post-conviction proceedings may impose substantial costs. And though the right to counsel under the Fifth and Sixth Amendments hangs in the balance, it can prove impossible for attorneys to communicate satisfactorily with clients on matters integral to representation, such as the potentially adverse consequences of pursuing a particular argument on appeal, or the client's knowledge of newly discovered facts material to an application under Article 440 of the Criminal Procedure Law. Moreover, to the extent costs of telephone communications are shouldered by the institutional defenders or pro bono counsel who frequently represent prisoners,⁹³ the present rate structure draws upon the already strained resources allocated to indigent defense in New York State⁹⁴ to subsidize a corrections budget that enjoys the steady support of annual legislative appropriations.

⁹³ Cf. American Bar Ass'n, Criminal Justice Section, Report (Aug. 2005) (reproduced at A-203 to A-206 of supplementary appendix submitted herewith) at 4 (noting that "[w]hen attorneys are able to accept prisoner calls, the high cost... cuts into the attorneys' budgets, making it difficult for them to afford other items necessary to their clients' defense").

⁹⁴ See Commission on the Future of Indigent Defense Services, Final Report to the Chief Judge of the State of New York, June 18, 2006, at 17 (reporting determination that "New York's indigent defense system... suffers from an acute and chronic lack of funding," causing "a deleterious impact on all aspects of indigent defense representation").

Families' subjective accounts of their experience speak to the dilemmas posed by inflated telephone charges. More than half of Chicago-area relatives of state prisoners in Illinois identified the cost of telephone calls as an obstacle to the preservation of close ties with their loved ones.⁹⁵ In Florida, five of the twelve suggestions most commonly articulated by family members invited to submit comments on correctional policies were addressed to telephone calls, with cost most commonly cited as in need of reform.⁹⁶ And in New York, the plain spoken pleas of residents give meaning to statistics documenting the extent of prisoners' reliance on telephone calls. "I have to give up a lot to pay the phone bill," the wife of a Buffalo prisoner told The New York Times. "But I think it is important that the children have contact with their father."⁹⁷ The wife of another prisoner told The New York Sun of \$150 monthly phone bills, but explained that "without the phone calls, the distance between us seemed to grow."⁹⁸

⁹⁵ Naser & Visher, supra note 33, at 25.

⁹⁶ Maintaining Family Contact When a Family Member Goes to Prison, supra note 75, at appx.1 (Q24).

⁹⁷ Sullivan, supra note 90, at A1.

⁹⁸ Stuart, supra note 92.

In sum, the quantitative and qualitative evidence of the significance of telephone communications amply support Dean Hairston in her opinion that for prisoners, telephone calls are, simply, “vital to maintaining family bonds.”⁹⁹

V. THE IMPORTANCE OF PRISON TELEPHONE COMMUNICATIONS HAS OCCASIONED CALLS FOR REFORM

The unanimous conclusions of recidivism research, along with the manifest significance of telephone communications to prisoners, have prompted corrections professionals and lawmakers to join in seeking reform.

Perhaps the longest standing recognition of the role of telephone communications in prisoners’ lives is a formally promulgated rule of the federal Bureau of Prisons, which oversees federal correctional facilities throughout the country. Effective since 1994, the agency regulation provides that “[t]elephone privileges are a supplemental means of maintaining community and family ties that will contribute to an inmate’s personal development.” 28 C.F.R. § 540.100; 59 Fed. Reg. 15812, 15824 (Apr. 4, 1994).

The federal bureau’s attention to telephone communications has of late met with wide-ranging agreement in the corrections field. On February 1, 2006, the American Correctional Association (“ACA”) amended a formal policy statement

⁹⁹ Decl. of Dr. Creasie Finney Hairston (March 8, 2004), submitted in Matter of Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, F.C.C. Doc. No. 96-128 at ¶ 25 (reproduced at A-209 to A-218 in supplementary appendix submitted herewith).

recognizing that “offenders should have access to a range of reasonably priced telecommunications services.”¹⁰⁰ As a component of the broad access contemplated by the standard, the ACA directs that rates should be “commensurate with those charged to the general public for like services”; that “[a]ny deviation from ordinary consumer rates should reflect actual costs associated with the provision of services in a correctional setting”; and that contracts should “provide the broadest range of calling options determined to be consistent with the requirements of sound correctional management.”¹⁰¹

A national commission charged with investigating prison violence also recently urged that the cost of telephone calls be minimized.¹⁰² The commission, co-chaired by former U.S. Circuit Judge John J. Gibbons and former Attorney General Nicholas de B. Katzenbach, concerned itself with telephone communications after concluding that prison violence was often a function of social dislocation experienced as a result of the remote location of prisons, a failure to locate prisoners as close to home as possible, and visitation policies subjecting

¹⁰⁰ See American Correctional Ass’n, Policy Statement: Public Correctional Policy on Adult/Juvenile Offender Access to Telephones (reproduced at A-219 of supplementary appendix submitted herewith).

¹⁰¹ Id.

¹⁰² See Commission on Safety and Abuse in America’s Prisons, Report: Confronting Confinement (Vera Institute of Justice, June 2006) (excerpt reproduced at A-221 to A-238 of supplementary appendix submitted herewith) at 37.

prisoners' contacts to inconvenience and indignity.¹⁰³ Observing that many state prisons charge inflated telephone connection rates, the commission specifically recommended that such policies be discarded due to their "interfere[nce] with the maintenance of critically important family and community ties."¹⁰⁴

As officers of the courts which superintend state and federal prison systems, attorneys have likewise recognized the importance of affordable prison telephone communications. In 2005, the American Bar Association adopted a recommendation encouraging corrections administrators "to offer telephone services in the correctional setting with an appropriate range of options at the lowest possible rates."¹⁰⁵ An accompanying report prepared by the association's Criminal Justice Section observes that "[t]elephone access can be a critical component of a prisoner's successful transition to a productive, law-abiding life after leaving prison."¹⁰⁶ The ABA also criticized the toll which an inflated rate structure imposes upon the attorney-client relationship, criticizing "policies that... unreasonably limit the availability of permissible unmonitored calls" and thereby

¹⁰³ Id.

¹⁰⁴ Id.

¹⁰⁵ American Bar Ass'n, House of Delegates, Recommendation (Aug. 8-9, 2005) (reproduced at A-201 to A-202, A-207 to A-208 of supplementary appendix submitted herewith).

¹⁰⁶ American Bar Ass'n, Criminal Justice Section, Report (Aug. 2005) (reproduced at A-203 to A-206 of supplementary appendix submitted herewith) at 2.

“threaten fundamental rights regarding the effective assistance of counsel and access to the courts.”¹⁰⁷

The consensus among scholars and corrections professionals is now meeting with attention from lawmakers. In 2005, members of the State’s Senate and Assembly introduced legislation which, if enacted, will require that contracts for prison telephone services be awarded by a competitive bidding process seeking the best value to inmate users. See A. 07231 §§ 1-3, 2005 Leg., Reg. Sess. (2005). Inmates are to have the opportunity to pay for telephone calls from funds deposited in their own accounts, and collect calls are to be provided at the lowest available market price. Id. In a memorandum accompanying the bill’s introduction, the legislation’s sponsors frames the measure as a matter of basic equity for prisoners and their families:

[M]any correction facilities are in remote locations and phone calls are often the only way that inmates can directly contact family members and loved ones. The family and loved ones of inmates should not be made to suffer such expensive charges just to communicate with one another.

Memo in Support of A. 07231, available at <http://assembly.state.ny.us/leg/?bn=A07231> (last visited Nov. 30, 1996). In June of this year, the Assembly adopted the legislation, with more than two-thirds of members approving enactment. Id.¹⁰⁸

¹⁰⁷ Id. at 3.

¹⁰⁸ The Senate has not voted on the measure.

New York lawmakers are not alone. Congress has considered legislation which would require that prisons promote telephone communications between inmates and their families. See Family Telephone Connection Protection Act of 2005, H.R. 4466, 109th Cong. § 3(b) (2005). A second piece of pending federal legislation would appropriate new funds for research and pilot projects designed to evaluate the factors most important in reintegrating former prisoners, including, specifically, “family connection.” See Second Chance Act of 2005, S. 1934, 109th Cong. § 5(a)(3) (2005). Federal executive departments have already directed substantial sums to reentry projects in connection with a \$300 million initiative proposed by the President in his 2004 State of the Union Address.¹⁰⁹

The State of New York’s early attention to the prisoner reentry issues also being taken up by corrections professionals and Congress reflects State legislators’ grasp of the compelling significance of policies which promote public safety by confronting the reintegration of an ever-expanding population of former prisoners. As this Court weighs the questions of timeliness raised by this appeal, it should recall its readiness to excuse even prolonged delays when “justified by circumstances,” City of New York, 40 N.Y.2d at 670, and join the efforts of its

¹⁰⁹ See Address Before a Joint Session of Congress on the State of the Union, 40 Weekly Comp. Pres. Doc. 94, 101 (Jan. 20, 2004); U.S. Dep’t of Justice, Bureau of Justice Assistance, FY 2006 Prisoner Reentry Initiative Grant Awards (reproduced at A-229 to A-242 of supplementary appendix submitted herewith) (enumerating awards to state correctional agencies totaling more than \$13.3 million).

coordinate branches by ensuring plaintiffs the opportunity to avail themselves of the State's courts.

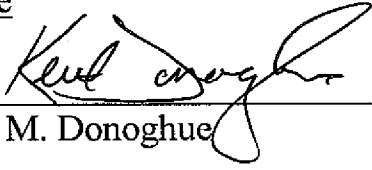
CONCLUSION

For the reasons stated in the foregoing, Amici The Sentencing Project and Seventeen Others respectfully submit that the decision of the Appellate Division should be reversed and the matter remanded for further proceedings on plaintiffs' claims.

Dated: New York, New York
November 30, 2006

Respectfully submitted,

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