

AMERICAN BAR ASSOCIATION

**ADOPTED BY THE HOUSE OF DELEGATES
August 8-9, 2005**

RECOMMENDATION

RESOLVED, That the American Bar Association encourages federal, state, territorial and local governments, consistent with sound correctional management, law enforcement and national security principles, to afford prison and jail inmates reasonable opportunity to maintain telephonic communication with the free community, and to offer telephone services in the correctional setting with an appropriate range of options at the lowest possible rates.

REPORT

Telecommunications services are integral to human interaction in today's society. Accessing these services is especially important to people who are incarcerated, separated from family, friends and legal counsel by the fact of incarceration. Telephone access is particularly important for the significant percentage of the incarcerated population with limited literacy skills.¹

Leaders in the corrections profession have long recognized the importance of extending telephone privileges to people in their custody as a means of fostering and strengthening ties with their families and their communities.² Telephone access can be a critical component of a prisoner's successful transition to a productive, law-abiding life after leaving prison.³ It can also contribute to safer prisons by reducing the number of disciplinary incidents.⁴ At the same time, we recognize that the desire to provide robust communications services to prisoners remains in tension with legitimate penological constraints of the correctional setting.⁵

Although recognizing the importance of providing expansive telephone privileges, many correctional systems engage in practices that make it difficult, if not impossible, for incarcerated people to use the telephone. First, many correctional facilities only permit prisoners to make

¹ Approximately 40% of the national prison population is functionally illiterate. The Center on Crime, Communities & Culture, *Education as Crime Prevention: Providing Education to Prisoners*, Research Brief: Occasional Paper Series 2 (Sept. 1997).

² See, e.g., the October 1996 Resolution on Excessive Phone Tariffs adopted by the American Correctional Association (ACA); ACA's Public Correctional Policy on Inmate/Juvenile Offender Access to Telephone (adopted 24 January 2001); and ACA's related standards (*Standards for Adult Correctional Institutions* (3rd ed.); *Standards for Adult Local Detention Facilities* (3rd ed.); *Standards for Adult Community Residential Facilities* (4th ed.); *Standards for Adult Correctional Boot Camp Programs* (1st ed.); *Standards for Juvenile Community Residential Facilities* (3rd ed.); *Standards for Juvenile Detention Facilities* (3rd ed.); *Standards for Juvenile Correctional Boot Camp Programs* (1st ed.); *Standards for Juvenile Training Schools* (3rd ed.); *Standards for Small Juvenile Detention Facilities* (1st ed.); and *Small Jail Facilities* (1st ed.)). See also, the National Sheriffs' Association Resolution of 14 June 1995; and USDOJ-BOP, Program Statement 5264.06, *Telephone Regulations for Inmates* (Jan. 31, 2002).

³ See, e.g., U.S. Department of Justice, Office of the Inspector General, *Criminal Calls: A Review of the Bureau of Prisons' Management of Inmate Telephone Privileges*, Ch. II, n.6 (Aug. 1999), available at <http://www.usdoj.gov/oig/special/9908/callsp2.htm> (last accessed 30 January 2005) ("telephone usage and other contacts with family contribute to inmate morale, better staff-inmate interactions, and more connection to the community, which in turn has made them less likely to return to prison...") and State of Louisiana Department of Public Safety and Corrections, *Time in Prison: The Adult Institutions*, p. 5 (2004).

⁴ Bureau of Prisons Program Statement 5264.07, "Telephone Regulations for Inmates," codified at 28 C.F.R. § 540.100 ("Telephone privileges are a supplemental means of maintaining community and family ties that will contribute to an inmate's personal development. . . . Contact with the public is a valuable tool in the overall correctional process."); State of Louisiana Department of Public Safety and Corrections, *Time in Prison: The Adult Institutions*, p. 5 (2004), available at <http://www.corrections.state.la.us/Whats%20New/PDFs/TimeInPrison.pdf>.

⁵ The "correctional setting" refers to facilities where people are detained or incarcerated, irrespective of their actual status as pretrial, civilly committed, adjudicated, or sentenced. Thus, the Recommendation encompasses jails and other detention facilities, prisons, training schools, residential facilities, and correctional facilities of all types.

collect calls. Second, charges for prisoner-initiated telephone calls are high as compared to rates offered in the residential and business markets and, in some cases, excessive.⁶ In some jurisdictions, escalating prices appear to be driven by “commissions” paid by service providers to correctional facilities for exclusive contracts, which hover in the 30% to 40% range, and can be as high as 65%, of all revenue generated. Third, many correctional systems require telephone service providers to block calls from prisoners to certain prohibited phone numbers for reasons of public safety and crime prevention. Some institutions, however, impose call-blocking requirements for inappropriate reasons, including a local carrier’s failure to enter into a billing agreement with the provider, or because the number called is a cell phone or is a remote call forwarding number. In the case of calls placed to cell phones, many telephone service subscribers are opting for cellular service instead of the more conventional land-line connection. Remote call forwarding is a technology that has been employed by some telephone service providers to compete for business by re-directing calls to customers at costs lower than would otherwise apply. In an age of increasing mobility, it will often be possible to reconcile legitimate security concerns with new technologies. Fourth, many prison systems and jails place unreasonable limits on the number of calls a prisoner is allowed to make or receive, or the aggregate amount of time a prisoner can spend on the telephone during a prescribed period.⁷ Finally, correctional institutions monitor and record inmate telephone calls routinely, but policies that permit monitoring client-attorney communications in the correctional setting or that unreasonably limit the availability of permissible unmonitored calls threaten fundamental rights regarding the effective assistance of counsel and access to the courts.⁸ Such policies are presumptively unconstitutional.⁹

⁶ “[C]orrectional agencies should discourage profiteering on tariffs placed on phone calls which are far in excess of the actual cost of the call, and which could discourage or hinder family or community contacts.” ACA’s October 1996 Resolution on Excessive Phone Tariffs.

⁷ In Texas prisons, inmate access to telephones is quite limited. “Offenders who demonstrate good behavior can earn one 5-minute collect phone call every 90 days. . . .” Texas Department of Criminal Justice, Correctional Institutions Divisions, Frequently Asked Questions (<http://www.tdcj.state.tx.us/faq/faq-cid.htm#telephone>) (last accessed 16 January 2005).

By comparison, the Federal Bureau of Prisons (BOP) policy is generous. BOP Program Statement 5264.07 entitled, “Telephone Regulations for Inmates,” which was codified at 28 C.F.R. § 540.100 *et seq.*, states that inmates are generally permitted privileges to contact up to a maximum of 30 individuals on an approved telephone list for up to 300 minutes per month. P.S. 5264.07, §§ 10.a. (30 numbers), and 10.d.(1)(300 minutes). Although advocating that then-unlimited telephone access be restricted, the Office of the Inspector General found the 300-minute limitation to be “arbitrary.” *Criminal Calls, supra n. 3*, Ch. VIII, § I. ¶ 1. (Aug. 1999), available at: <http://www.usdoj.gov/oig/special/9908/callsp7.htm#Punishments> (last accessed 30 January 2005). Indeed, for several consecutive years, the BOP has permitted inmates 400 minutes of telephone access during the months of November and December.

⁸ The U.S. Attorney General signed a directive on 31 October 2001 authorizing correctional officials to monitor inmate-client/attorney communications under certain circumstances. AG Order No. 2529-2001, 66 FR 55062. That directive was subsequently codified at 28 C.F.R. 501.3 (31 Oct. 2001).

⁹ See *infra*, n. 14.

As the billed parties for inmate collect calls, the family and friends of incarcerated people regularly shoulder the high cost of prison telephone services. A call recipient is often confronted with a choice of paying exorbitant rates for a collect call from a jail or prison, or refusing it. Many families cannot afford the inflated rates.¹⁰ One damaging result is that children are frequently unable to maintain contact with parents who are confined. Arbitrarily blocked calls only exacerbate the situation.

Individually and collectively, the foregoing practices also make it more difficult for incarcerated people to communicate with their lawyers. Telephone calls are an efficient means for attorneys to communicate with incarcerated clients, particularly when literacy or English-speaking skills are a factor. It is regularly less burdensome for an attorney to speak with a client over the telephone than to travel to the facility and conduct a meeting or personal interview. The high cost of prisoner phone calls makes it difficult or impossible for many prisoners' lawyers to accept their calls. The vast majority of incarcerated people are represented by public defenders or court-appointed attorneys who operate with extremely limited budgets.¹¹ This has serious implications given the constitutional protections surrounding a prisoner's ability to communicate with counsel.¹² When attorneys are able to accept prisoner calls, the high cost of the calls cuts into the attorneys' budgets, making it difficult for them to afford other items necessary to their clients' defense.

Correctional administrators struggle with the perennial problem of stretching limited financial resources to meet institutional needs. The lure of telecommunications contracts that promise a return of as much as 65% of all revenue can appear irresistible in the absence of alternative sources of revenue. But entering into such an arrangement creates an ethical quagmire of both real and perceived conflicts which compromise both the professional integrity of correctional officials and the public's perception. Given the penological and societal benefits that occur when incarcerated people are able to maintain contact with the outside world, the monetary advantages are not worth the human costs.¹³

¹⁰ See, e.g., *In the Matter of: Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Comments of the Ad Hoc Coalition for the Right to Communicate Regarding Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues in Pending Rulemaking, and accompanying declarations*, FCC Docket No. 96-128 (filed 10 March 2004).

¹¹ According to the U.S. Department of Justice, 82% of felony defendants in state cases in the 75 largest counties in the country in 1996, and 66% of felony defendants in federal cases in 1998 were represented by court-appointed attorneys. Department of Justice, Bureau of Justice Statistics, *Defense Counsel in Criminal Cases*, Nov. 2000. Both public defenders and other court-appointed counsel are paid by the same governments (state and federal) whose monies are used to fund the correctional systems from which inmate telephone calls originate. Given the current fiscal crisis in governments at all levels, exorbitant rates for inmate-generated telephone calls seem particularly pernicious.

¹² Compare *Alabama v. Shelton*, 535 U.S. 654 (2002) and *Gideon v. Wainwright*, 372 U.S. 335 (1963) (indigent's constitutional right to counsel in criminal cases) with *Lewis v. Casey*, 518 U.S. 343 (1996) and *Bounds v. Smith*, 430 U.S. 817 (1977) (prisoners' right of access to the courts with regard to certain civil and post-conviction matters).

¹³ The Nebraska Department of Correctional Services does not accept commissions on inmate telephone charges. Instead, rates are set by the Nebraska Public Service Commission. Nebraska Department of Correctional Services, *Frequently Asked Questions*, available at: http://www.corrections.state.ne.us/frequent_questions/telephone-index.html (last accessed 30 January 2005).

Although some courts have recognized the constitutional problems inherent in correctional policies that make it impossible for prisoners to contact lawyers and others,¹⁴ neither the courts¹⁵ nor regulatory agencies¹⁶ have yet required correctional authorities to abandon sole-source contracts and open the prison environment to competition that could result in a broader range of calling options at the lowest possible rates.

The resolution encourages federal, state, territorial and local governments to ensure that incarcerated people are afforded a reasonable opportunity to maintain telephonic communication with family and friends in the free community, consistent with the imperatives of correctional management, law enforcement and national security. While the resolution does not go further to specify particular measures correctional authorities must take to ensure the "reasonable

¹⁴ Courts have long recognized that the ability to communicate privately with an attorney by telephone is essential to the exercise of the constitutional rights to counsel and to access to the courts. *Murphy v. Waller*, 51 F.3d 714, 718 & n.7 (7th Cir. 1995)("Restrictions on a detainee's telephone privileges that prevented him from contacting his attorney violate the Sixth Amendment right to counsel. . . . In certain limited circumstances, unreasonable restrictions on a detainee's access to a telephone may also violate the Fourteenth Amendment."); *Tucker v. Randall*, 948 F.2d 388, 390-91 (7th Cir. 1991)(denying a pre-trial detainee telephone access to his lawyer for four days would implicate the Sixth Amendment); *Johnson-El v. Schoemehl*, 878 F.2d 1043, 1051 (8th Cir.1989)(holding that inmates' challenge to restrictions on the number and time of telephone calls stated a claim for violation of their rights to counsel); *Miller v. Carlson*, 401 F. Supp. 835 (M.D. Fla. 1975), *aff'd & modified on other grounds*, 563 F.2d 741 (5th Cir. 1977)(granting a permanent injunction precluding the monitoring and denial of inmates' telephone calls to their attorneys). See also Dana Beyerle, *Making Telephone Calls From Jail Can Be Costly*, Times Montgomery Bureau (Sept. 22, 2002)(Etowah, Alabama county jail under court order to provide phones to people incarcerated in the jail based in part on complaints they could not talk to lawyers). They have accordingly held that, when prisons' collect call-only policies interfere with the ability of incarcerated people to communicate with their lawyers, they may violate these rights. See, e.g., *Lynch v. Leis*, Docket No. C-1-00-274 (S.D. Ohio Feb. 19, 2002)(holding that where public defender's office and many private attorneys refused most collect calls, a prison's collect call-only policy was unconstitutional)(unpublished decision on file with the Brennan Center); *In re Ron Grimes*, 208 Cal. App. 3d 1175, 1178 (1989)(holding that switch by Humboldt County (California) Jail from coin operated to collect-only calls violated the constitutional rights of people incarcerated there because the public defender's office, other county departments, and some private attorneys did not accept collect calls).

¹⁵ See, e.g., *Arsberry v. Illinois*, 244 F.3d 558 (7th Cir. 2000). Illinois granted one phone company the exclusive right to provide telephone services to inmates in return for 50 percent of the revenues generated. Prisoners and members of their families challenged the practice as a violation of their free speech rights, as a discriminatory denial of equal protection of the laws, and as a violation of federal anti-trust laws. In the *Arsberry* case, the United States Court of Appeals for the Seventh Circuit concluded that the practice did not violate the constitution or any federal law. See, also, *Daleure v. Kentucky*, 119 F. Supp. 2d 683 (W.D. Kentucky 2000)(The court found defendants' actions did not violate the Constitution); *Miranda v. Michigan*, 141 F. Supp. 2d 747 (E.D. Mich. 2001)(Plaintiff's Federal Telecommunications Act claims fell within the primary jurisdiction of the Federal Communications Commission and were dismissed).

¹⁶ See, e.g., *In the Matter of Wright Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues in Pending Rulemaking*, CC Docket 96-128 (Federal Communications Commission)(decision pending); *In re: Petition of Outside Connection, Inc.*, DA 03-874 (Federal Communications Commission); *Voluntary Remand of Inmate Telephone Services Issues*. CC Docket No. 96-128 (Federal Communications Commission); and North Carolina Utilities Commission, Docket No. P-100, Sub 84; Docket No. P-55, Sub 1005; and Docket No. P-100, Sub 126, These cases were matters in which prisoner advocates filed briefs, appeared at oral argument, and engaged in discussions with commission personnel, all without success.

opportunity” that is urged, there are a number of basic steps that have been identified as deserving of serious consideration. First, correctional authorities should encourage service providers to offer a broad range of calling options, consistent with sound correctional practices. Toll-free calling, debit calling, and collect calling are options that offer different advantages at varying costs. To the extent that existing technology does not permit full access to toll-free numbers for security reasons, correctional authorities should work proactively with telephone service providers to develop and refine technology that extends security features to toll-free calls. Although correctional authorities must be mindful of security concerns when determining what calling options to offer, some telecommunications experts and numerous correctional systems have found that alternatives to collect call-only policies – such as the debit-calling option presently in place in a significant number of facilities – can satisfy legitimate security concerns.¹⁷

Second, telephone services in the correctional setting should be offered at the lowest possible rates. A wide range of calling options and fair competition in the marketplace will help control excessive costs. Non-exclusive contracts, contracts with multiple vendors, the provision of debit cards through multiple vendors, and unrestricted vendor access to correctional telephone networks are all measures that promote fair competition which will lead to reasonably priced telephone services for prisoners and their families. Greater oversight of the terms and conditions – particularly the site commissions – of service contracts will enable service providers to lower their cost of service and pass those savings on to consumers.

Third, telephone service contracts should expressly forbid call-blocking for any reason other than legitimate law enforcement and national security concerns, requests initiated by the customer, or failure to pay legitimately invoiced charges.

Finally, if correctional authorities conclude that limits must be placed on the number of calls a prisoner makes, or on the aggregate amount of telephone time allotted a prisoner in a given period, those limits should be as flexible and generous as possible in light of the many benefits of maintaining ties between incarcerated people, their families, and their communities.

Respectfully submitted,

Catherine Anderson
Chair, Criminal Justice Section
August 2005

¹⁷ See *In the Matter of Wright Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues in Pending Rulemaking*, FCC Docket 96-128, Affidavit of Douglas Dawson. The federal Bureau of Prisons permits prisoners to place calls using debit cards, demonstrating that collect call-only policies are not necessary to maintain prison security. See U.S. Department of Justice, Federal Bureau of Prisons, Memorandum For All Institution Controllers All Trust Fund Supervisors, from Michael A. Atwood, Chief, Trust Fund Branch, Trust Fund Message Number 18-02 (Feb. 8, 2002) at 2.

Confronting Confinement

A Report of
**THE COMMISSION ON SAFETY AND ABUSE
IN AMERICA'S PRISONS**

**John J. Gibbons
Nicholas de B. Katzenbach
COMMISSION CO-CHAIRS**

June 2006

What happens inside jails and prisons does not stay inside jails and prisons. It comes home with prisoners after they are released and with corrections officers at the end of each day's shift. We must create safe and productive conditions of confinement not only because it is the right thing to do, but because it influences the safety, health, and prosperity of us all.

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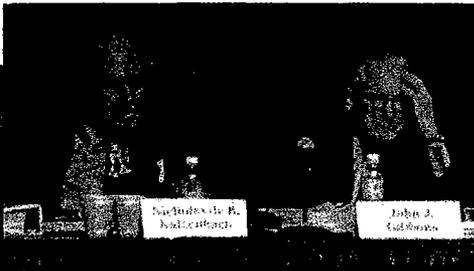
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Pat Nolan: President of Prison Fellowship's Justice Fellowship and a member of the National Prison Rape Elimination Commission, and a former Republican leader in the California State Assembly who served 25 months in a federal prison on a racketeering conviction

Timothy Ryan: Chief of Corrections for Orange County, Florida, overseeing one of the largest jail systems in the United States, and past President of the American Jail Association

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Hilary O. Shelton: Director of the National Association for the Advancement of Colored People, Washington Bureau

6 Support community and family bonds. Reexamine where prisons are located and where prisoners are assigned, encourage visitation, and implement phone call reform.

Strong connections to family and community give hope to people in prison—that elusive element that a correctional facility alone cannot provide but can, if it is not vigilant, destroy. And hope, it turns out, is critical to avoiding violence. The storehouse of self-respect and pride that a person finds in family and community can ward off the shame and humiliation that lead one to violence while incarcerated (Gilligan 1996). For prisoners who are parents, incarceration means being physically removed from children; for them it is critical that we make every effort to maintain family ties. And as former prisoner A. Sage Smith explained, visits from community volunteers “inject a sense of purpose into many prisoners’ consciousness” and “bring a sense of concern and infuse a sense of hope” that can assist a prisoner’s positive transformation. These relationships with people outside the correctional facility also smooth the process of reentry and make it more likely that prisoners will succeed after release.

The Commission was told about various ways to support community and family bonds. We address three strategies here, although many others should also be considered. First, unlike local jails, prisons are filled with people who have been sent far from home, and in some cases transported to other states. The physical distance to the facility can make it nearly impossible for family to visit regularly and impractical to connect prisoners with groups based in their home communities. Recognizing the importance of family and community bonds, many state systems move prisoners to facilities closer to their home communities in the final months before release. But these bonds are important not only as part of the reentry process but as an important ingredient for a safe environment during incarceration.

Decisions about where to send prisoners, combined with the siting of many prisons far from the prisoners’ home communities, disproportionately affect African-American and Latino families and exacerbate the racial divide between prisoners and officers. According to one study, those decisions result in rural prisons, which have a greater concentration of white staff, holding higher percentages of African-American men than correctional facilities in urban areas (Farrigan and Glasmeier 2002). There is widespread agreement that for incarceration to be productive, support must be given to preserving a prisoner’s bonds with his or her family and community.

There are many reasons states build prisons in rural locations far from the urban centers from which most prisoners come: lower-cost land, a more favorable political environment, and the perception of a larger employment pool. These factors—reasonable in theory, sometimes debatable in practice—must be considered against the weakening of prisoners’ ties with family and community. While a shift in priorities would require tremendous political will, lawmakers should at least examine the impact of decisions about where to locate prisons. In the meantime, corrections administrators should look closely at their internal process for assigning

The Cost of Keeping in Touch

When people are incarcerated far from home, phone calls with partners, children, and parents are often the only practical way for these families to stay in touch. **Calling rates vary considerably from state to state.** Where collect calling is the only option and the rates are high, poor families make large sacrifices to speak with an incarcerated loved one.

Average cost of a 15-minute in-state long-distance collect call placed from a correctional facility

NEBRASKA	\$2.25
NEW MEXICO	\$4.98
VERMONT	\$4.70
NEVADA	\$5.03
FLORIDA	\$5.32
NEW JERSEY	\$9.00
WASHINGTON	\$17.77

State correctional facilities that enter into exclusive contracts with telephone companies

typically reap **30 to 40 percent** of all revenue generated—enormous sums that state legislatures have come to depend on.

Florida's Inmate Welfare Trust Fund

took in **\$15.3 million** in fiscal year 2000.

Nevada collected

\$20.5 million in 1999.

SOURCES: CALLING RATES PROVIDED BY CITIZENS UNITED FOR THE REHABILITATION OF ERRANTS (CURE); INFORMATION ABOUT COMMISSIONS PROVIDED BY THE AMERICAN BAR ASSOCIATION AND BY ALAN ELSNER IN HIS BOOK *GATES OF INJUSTICE*.

people to facilities and make decisions whenever possible that preserve family bonds. And no system should send their prisoners to other states.

Second, both prisons and jails must do a better job of welcoming visitors, providing ample space and time, and even assisting with transportation. There are costs involved to do this well, but these dollars would be well spent. And in many places the most needed investment is in a change of attitude. Visitors are often sent the erroneous and harmful message that they are not welcome in a facility and that they do not play an important role in supporting prisoners and the well-being of the facility. There are valid security concerns that require restrictions on visitation. Nonetheless, author Asha Bandele described to the Commission the humiliating and capricious treatment she received when visiting her incarcerated husband. She explained the consequences: "[Poor] treatment of family members has the potential to make the facility less secure because it can lead to severe tensions between a prisoner and a guard who humiliated or otherwise violated his wife."

Another way to encourage visitation is by allowing the greatest degree possible of closeness and privacy, given security imperatives. Because contact visits can inspire good behavior, people confined in both prisons and jails should be allowed to touch and embrace their children, partners, and other friends and family. Physical barriers and telephones should be reserved for those who have abused visitation privileges or otherwise have been determined to pose too great a risk. The Commission was told that people detained in the Washington, D.C., jails prefer to be held in the privately run facility rather than the public jail because, despite some of its disadvantages, it allows contact visits with family.

The final way correctional systems, principally prisons, might support family and community bonds is by minimizing the cost of prisoners' telephone calls. At present, most state systems allow only collect calls from prisoners (typically no direct calls out or incoming calls are allowed) and do so through contracts with providers that charge the recipient extraordinarily high rates, with the state receiving a commission. For example, in Florida, where only collect calls are allowed, a prisoner's 15-minute in-state long-distance call from prison costs \$5.32. Calling someone out of state costs \$17.30. The state earned over \$15 million in commissions on prisoners' calls in 2000 (Citizens United for the Rehabilitation of Errants, Florida Corrections Commission).

A growing group of corrections leaders recognizes the critical importance of telephone communication for prisoners and their families. The American Correctional Association has taken the position that prisoners "should have access to a range of reasonably priced telecommunications services" with rates "commensurate with those charged to the general public" (ACA 2001). But many directors of state departments of corrections have been pressured by shortsighted legislatures to use telephone contracts to seek income for state general funds or corrections budgets rather than to ensure family unification. The result is that family members

of prisoners pay many times more than anyone else for the opportunity to speak with a loved one.

There has been considerable effort to convince lawmakers that, regardless of the income from telephone charges, interference with family unification is too high a price to pay. The American Bar Association recently adopted a recommendation urging “the lowest possible rates,” among other measures to ensure ready telephone contact (ABA 2005). Some states are responding. Vermont requires phone contracts to offer prisoners the option of direct or collect calling at “the lowest reasonable cost” (Vt. Stat. Ann. tit. 28 §802a). New Mexico’s statute bars its prisons and jails from receiving commissions on the amount billed and requires “the lowest cost of service” (N.M. Stat. Ann. §33-14-1). The District of Columbia bars correctional facilities from charging higher than local Public Service Commission rates and also bars surcharges on prisoner calls (D.C. Code Ann. §24-263.01).

Meanwhile, practices in some states more drastically interfere with prisoners’ ability to maintain family and community bonds through phone contact. In Texas, for example, the very ability to make calls is severely restricted: “Offenders who demonstrate good behavior can earn one five-minute call every 90 days” (Texas Department of Criminal Justice 2006). State legislatures and correctional systems must end practices such as these that interfere with the maintenance of critically important family and community ties. ■

Strong connections to family and community give hope to people in prison. And hope, it turns out, is critical to avoiding violence.

PREVENT VIOLENCE: RECOMMENDATIONS RECAP

- 1. Reduce crowding.** States and localities must commit to eliminating the crowded conditions that exist in many of the country’s prisons and jails and work with corrections administrators to set and meet reasonable limits on the number of prisoners that facilities can safely house.
- 2. Promote productivity and rehabilitation.** Invest in programs that are proven to reduce violence and to change behavior over the long term.
- 3. Use objective classification and direct supervision.** Incorporate violence prevention in every facility’s fundamental classification and supervision procedures.
- 4. Use force, non-lethal weaponry, and restraints only as a last resort.** Dramatically reduce the use of non-lethal weapons, restraints, and physical force by using non-forceful responses whenever possible, restricting the use of weaponry to qualified staff, and eliminating the use of restraints except when necessary to prevent serious injury to self or others.
- 5. Employ surveillance technology.** Make good use of recording surveillance cameras to monitor the correctional environment.
- 6. Support community and family bonds.** Reexamine where prisons are located and where prisoners are assigned, encourage visitation, and implement phone call reform.

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HEADLINE: Bill would reduce inmates' phone fees;
Required collect calls are a burden for families

BYLINE: Richard Roesler, Staff writer

DATELINE: OLYMPIA

BODY:

For the past six years, every time Caron Berrysmith's son called her for 20 minutes, it cost nearly \$20.

Here's why: He's a state prison inmate.

Under state law, prisoners in Washington can only call collect. It's a lucrative deal for both phone companies and the state, which gets back about 40 percent of the phone charges. But at a time when it's easy for consumers to find long-distance phone service at a nickel or less per minute, prisoners' friends and families are paying up to \$5.31 for the first minute and 89 cents a minute after that.

"That's insane," said Tom Murlowski, with the Colville-based November Coalition, a prisoner-advocacy group. "Essentially, these companies are gouging prisoners and their families."

Even the state Department of Corrections, which signs the contracts, says the phone rates are too expensive.

"It's very high, compared to what you and I pay," deputy Secretary of Corrections Eldon Vail said Tuesday. "It's a lot."

Bill would reduce inmates' phone fees; Required collect calls are a burden for families Spokesman Review (Spokane, WA) January 29, 2004 Thursday Spokane Edition

Now, as a five-year contract with AT&T comes to an end, the department and state lawmakers say it's time to find a cheaper way for inmates to stay in touch with their families and friends.

Senate Bill 6352 would erase the requirement for collect calls. Modern phone technology can provide the same security, phone companies say, and at a much lower cost. The bill would allow prisoners to use prepaid phone cards or a debit system funded by their families or their wages doing prison work. The current security rules - all calls are recorded, can be monitored, and must carry an announcement that it's a call from a prisoner - would remain the same.

Family members of prisoners say such a change is long overdue.

"The price is really prohibitive," said Zady Evans, a Seattle minister whose 34-year-old grandson is imprisoned on drug charges at Aberdeen. The cost now, she said, ensures that prisoners' struggling families remain poor.

"They (inmates) call their families and it costs the families, but they want to talk to their children," she said.

Berrysmith knows that dilemma firsthand. Her son is serving 20 years for bank robbery, and at 63, she's living in Seattle on less than \$600 a month from Social Security. Her son's occasional calls from the state penitentiary at Walla Walla sometimes left her struggling to keep up with her bills. Her usual strategy: Pay only part of the power bill.

"Sometimes you just want to hear somebody's voice," she said. "We just try to tell each other to stay strong."

This winter, her son was transferred to Monroe, close to Seattle. It's now about \$10 per call, she said.

"It's still too much," she said, "but it's less."

In 2001, the state made nearly \$5 million from inmate phone calls. One quarter of that money goes to a fund for crime victims. The rest is spent on inmate extras like TVs, law librarians, ice machines, gym equipment, books, sewing machines, holiday treats, music and children's toys for prison visiting rooms. In years past, Vail said Tuesday, taxpayers ended up footing the bill for such things.

Bill would reduce inmates' phone fees; Required collect calls are a burden for families Spokesman Review (Spokane, WA) January 29, 2004 Thursday Spokane Edition

For the last two years, prison phone fees have dropped sharply, shrinking the state's share to \$3.3 million last year. Vail said the department isn't sure why, although it suspects that some inmate families are using phone companies that bypass the direct collect call system by forwarding the call through a local phone number near the prison.

Lobbyists for several phone companies, including AT&T, Qwest and MCI, testified in favor of the bill Tuesday. What would really reduce the cost for inmates' friends and families, one lobbyist pointed out, is if the state would reduce or eliminate its 40 percent cut of the fees. Vail said the state is willing to reduce it.

Some friends and relatives of prisoners also argue that it's smart for the state to make it easier for inmates to stay in touch. Eventually, they say, most will get out of prison, and those with strong support stand the best chance of success.

"The prison world is a different world. They live within this system for year after year, and then they're booted outside. They have to have that contact," said Evans.

This sidebar appeared with the story:

FAST FACTS

Collect calls

What a collect call from a Washington prison inmate costs:

Long-distance, out of state: \$5.31 for the first minute, and 89 cents for each minute after that.

Long-distance, in-state: From \$2 to \$5.01 for the first minute, and 10 cents to 59 cents a minute after that, depending on prison and time of day.

Local call: A flat \$2 per call.

Source: Washington Department of Corrections

Bill would reduce inmates' phone fees; Required collect calls are a burden for families Spokesman Review (Spokane, WA) January 29, 2004 Thursday Spokane Edition

NOTES:

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News > May 13, 2004

Good Call

Prison advocates fight to reduce phone fees

By CHRISTOPHER HAYES

For inmates around the country, every opportunity to call friends and family is a mixed blessing. While phone calls provide a much-needed lifeline to the outside world, the exorbitant fees charged for collect calls by phone companies place a further burden on their loved ones.

But relief may soon be coming to relatives and friends of prisoners in North Carolina.

State officials earlier this month requested proposals for a new phone contract in which vendors would provide inmates with the option of setting up debit accounts to pay for calls.

"The debit features that we have specified were based on the fact that we wanted to offer inmates and their families other options for paying for calls," says Patricia Deal, telecommunications manager for the state's Division of Prisons.

Under the current contract, inmates' friends and families can pay as much as 51 cents a minute, plus collect surcharges that can be as high as \$2.25. For poor families and public defenders, the cumulative cost of collect call surcharges can quickly become a significant obstacle to staying in touch.

"For a decade it has been just a very serious problem for the families of inmates and for inmates themselves," says Michael Hamden, executive director of North Carolina Prisoner Legal Services. "The inmates have difficulty maintaining ties because it's ruinous to call repeatedly collect at these exorbitant rates, and the families are in the position of being extorted."

Despite repeated complaints from prisoner advocacy groups nationwide, reform has been difficult. Many prisons, both private and public, negotiate exclusive contracts with phone carriers and then take a percentage of revenue as commission. This gives prison officials an incentive to squeeze as much money out of the calls as they can. Prisoner rights advocates argue that this system of financing effectively amounts to subsidizing prison costs out of the pockets of the families of the imprisoned.

For families of inmates serving in private prisons, sometimes thousands of miles from home, the costs are even more onerous, given phone calls represent the only means of routinely staying in touch. In March, a number of prisoner advocacy groups filed a petition supporting an earlier request that the FCC stop private prisons from signing exclusive contracts, require open competition among multiple carriers and allow inmates to set up debit accounts to avoid the markup for collect calls,

North Carolina's prisons are public, and the state's Department of Corrections receives a commission on all collect calls originating from prisons. This netted the DOC about \$5 million last year. Deal says reductions in phone revenue could imperil prison services such as education opportunities, indigent inmate funds, and religious and leisure activities. But she's hopeful that by giving prisoners the ability to pay through a debit account, more calls will be connected.

"It allows inmates to make calls [to people] that normally would not accept their calls because they can't afford to," she says, "so that could increase our revenue."

Christopher Hayes is the Washington Editor of the *Nation* and a former senior editor of *In These Times*. Read more of his work at www.chrishayes.org.

[More information about Christopher Hayes](#)

TAGS [civil liberties](#) [social justice](#)

Center for American Progress



Phoning Home: High Cost Calls Hinder Prisoner Rehabilitation

By **Henry Fernandez**

April 9, 2007

My wife used to be a public defender in Pennsylvania, representing prisoners in their appeals. Over the years, several prisoners came to trust her judgment and still call our house from time to time seeking advice. As I organize our bills so we can pay them each month, I have unwittingly become heavily involved in funding criminal defense work myself. This is because collect calls from prisons, often lasting only a few minutes, generate absurd costs.

Here's an example. Three calls originating from a prison in Pennsylvania totaling 25 minutes in January and February of last year cost my wife and I \$26.73, or about \$1.07 per minute. Now, we don't like paying these charges, but we can afford them and they are rather limited for us as a family. We do not have a relative in prison and the calls do not come that often or last that long.

But what about prisoners trying to stay in touch with their families as they seek to rehabilitate themselves in prison and prepare for life after prison as responsible members of society? Most prisoners are poor and their families are poor. High cost phone bills force families to make bad choices. They can either not accept calls from family members in prison or they can spend money they don't have.

What archaic phone service are prisoners using to make these outrageously overpriced collect calls? Well my phone bill lists the service provider for these calls as "Verizon Select Services." I don't use Verizon so I was shocked that they could stay in business charging so much for a call. So I checked Verizon's web site and learned that for \$39.99 a month (or about \$480 a year), a Pennsylvania resident could have unlimited calling to anywhere in the United States including Puerto Rico.

Prisoners, however, cannot receive phone calls and in many states cannot choose which phone service to use. They must make a collect call using the service contracted for by the prison. If a prisoner tries to talk to family members once a week in Pennsylvania for just 15 minutes to stay in touch with his children or so that a sick parent knows her incarcerated daughter still cares, their families will be paying over \$834 a year to stay in touch.

That's \$834 for about 12 hours of talk time a year. Why should twelve hours of conversation a year from prison cost \$350 more than unlimited calling for the rest of us?

I know of no social science of any mainstream political persuasion which would dictate that it makes sense to deny prisoners access to their families. Quite the opposite.

Having prisoners, the large majority of whom will return to society, maintain a connection with their families is in most cases the best thing for them. Even the Federal Bureau of Prisons appears to agree. In its 2004 Legal Resource Guide the agency says: "Telephone privileges are a supplemental means of maintaining community and family ties that contributes to an inmate's personal development."

Similarly, it makes no sense to drive the primarily poor families of prisoners further into poverty. The stronger these families are, the more likely they are to be a source of strength and support for prisoners during their time in prison and when they get out.

Poverty is a factor that increases the likelihood that someone will end up in prison. Increasing poverty among families already at risk is more than bad anti-crime policy—it is immoral.

Why do so many state departments of correction, county jailers, and even juvenile detention facilities so often

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charge exorbitant fees for telephone services to their captive audiences? Research done in 2004 by the Associated Press showed that California counties earned on average about half of the more than \$303 million from collect calls made by prisoners over a five-year period. So at the end of the day, prisoner's families, most of which are poor, are paying a hidden tax to maintain the prisons.

While over-charging the families of prisoners continues across America, advocates have begun to win some key victories. For example, in February 2004 the Center for Constitutional Rights sued the state of New York and MCI on behalf of the families of prisoners to stop telephone over-charging by MCI/Verizon, alleging that the phone companies and the state government were charging 630 percent more for collect calls from prison than for a regular collect call.

The lawsuit is now winding its ways through the courts. Just last month New York's highest court ruled that the case could proceed after state lawyers contested whether the suit was filed in a timely fashion.

But the state's new governor, Eliot Spitzer, decided that there was no reason for New York to wait any longer to bring some measure of justice to these families. Spitzer acted to end this egregious practice—only days after he became Governor. As of April 1, New York no longer requires MCI/Verizon to pay 57.5 per cent of its profits to the state.

The Center for Constitutional Rights estimates that this should result in an immediate cost savings to families of at least 50 per cent. But across America there is still a long way to go.

States ought to stop the pathetic practice of gouging poor families who just want to keep in touch with loved ones in prison. It's mean-spirited and bad policy. It should end.

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BODY:

Studies of prison inmates clearly show that keeping them in contact with friends and family is vital to giving them a chance to create an honest life after jail instead of committing new crimes that land them right back behind bars. Yet the simple act of picking up the phone to call home can be bankrupting for inmates and their families.

The cruel and counterproductive system now in place around the country charges them as much as six times the going rate for collect calls placed from inside state prisons. The collect-call service providers keep a stranglehold on the business by paying the state prisons a legalized kick-back called a "commission."

These costs are borne by spouses, parents and other collect-call recipients who typically come from the country's poorest families. Worse still, these families can be barred from receiving a prisoner's collect call at all until they open costly accounts with the same companies that provide the prison phone service.

With bills that sometimes reach into the hundreds of dollars a month, families must often choose between talking to a jailed loved one and paying the rent. The lost contact is especially crushing for imprisoned parents, who make up more than half the national prison population and are often held in prisons hundreds of miles away from their children.

A bill that went nowhere in Congress this year would have mandated fair rates for interstate calls made from prison. The bill, introduced by Representative Bobby Rush, Democrat of Illinois, would also have required prisons to use both the collect-calling system and the less expensive debit-calling system. Used in federal prisons, debit calling lets inmates use computer-controlled accounts to pay for easily monitored calls to specified phone numbers.

The collect-call-only system is being challenged in court in a number of states, including New York, where a closely watched case is scheduled to be argued before the state's highest court in early January. The suit rightly argues that the telephone markup is a hidden levy on families who already support the prison system through their taxes.

The Bankrupt-Your-Family Calling Plan The New York Times December 22, 2006 Friday

State prison officials say the money is used to pay for programs that benefit inmates. But it also gouges the poorest citizens -- driving them deeper into poverty -- to pay for prison services that the state is obligated to provide. It might be legal, but it is also counterproductive and morally indefensible.

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PRISON PROFITEERS

EDITED BY TARA J. HERIVEL AND PAUL WRIGHT

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“...an easy and accessible read—and a necessary one.” —San Diego Union-Tribune

PRISON PROFITEERS brings together a formidable array of lawyers, prisoners, journalists and advocates to provide a unique look at who, exactly, is benefiting from mass imprisonment. **PRISON PROFITEERS** takes readers on an investigative journey behind the bars of our nation's prisons to the front lines of its mass incarceration crisis and into the realm of its financially motivated private investors.

The United States, with just five percent of the world's population, is responsible for incarcerating an astounding twenty five percent of the world's inmates. Thanks to thirty years of mass incarceration, the number of people in state and federal penitentiaries has dramatically increased from an estimated 300,000 to 2.3 million. The numbers are shocking, yet while much research has focused on the social issues that surround incarceration in the U.S., until now, little attention has been given to the individuals and commercial enterprises that profit from prisons and their related services. **PRISON PROFITEERS** approaches the subject from a unique angle—not who is being harmed by current policies of mass imprisonment but rather who benefits from such policies. From investment banks that issue bonds for prison construction, to the companies that staff and manage prisons, and the organizations that provide medical care, we learn how they benefit and how much they profit.

The contributors to **PRISON PROFITEERS** take an investigative look at the fiscal consequences of mass incarceration, tracing more than \$186 billion annual U.S. tax dollars intended for the public good to the various private prison companies, churches, investment banks, guard unions and medical corporations that benefit from the one out of every one hundred thirty-seven Americans who are imprisoned today. **PRISON PROFITEERS** documents one of the biggest transfers of wealth in American history and how it operates in conjunction with mass imprisonment—the biggest and most thoroughly implemented social experiment in American history.

(over)

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Mapping the Prison Telephone Industry

Steven J. Jackson

March 2007

Elaine is one of millions of people in the United States with family members in the criminal justice system.¹ Since the late 1990s her son has been serving time in Oklahoma, with no likelihood of parole before 2008. In recent months, Elaine has contracted what appears likely to be a terminal illness, leaving her unable to work and, no less important, unable to leave her home in Texas to visit her son (who, like a sizeable portion of the incarcerated population of the United States, is functionally illiterate). Under these circumstances, Elaine faces some hard choices. She can foot the cost of long-distance phone calls billed at 89 cents per minute plus a hefty connection fee—no small sum on her current disability allowance of \$573 per month. Or she can do what most other people in her situation have in fact done: severely restrict and/or give up contact altogether with family members—parents, spouses, children, siblings, and other relatives—in prison. Elaine and her son have worked out what they believe to be the best possible compromise under the circumstances: once a month, she will receive a collect call from the Oklahoma prison where her son is housed, and they will talk for no more than 15 minutes—a call that will show up on her next phone bill at \$20 or more. If he calls again in the month, she will have to refuse the charges.

As this brief vignette will suggest, pricing and other abuses in the prison telephone system further exacerbate the deep and deepening divide between the insides and outsides of American penology. By further restricting an already limited range

of options for connecting prisoners to family members and communities on the outside, exploitative phone rates contribute directly to patterns of isolation and lost or severely limited contact with direct and destructive consequences for prisoners, family members, and their broader communities. This chapter surveys the dynamics driving the escalation of prison phone rates through the 1990s and early 2000s, exploring in particular how prison collect calling, through the vagaries of restructuring in the telecommunication industry along with the national correctional explosion of the 1980s and 1990s, has become a significant and controversial revenue generator within the wider prison industrial complex. At the heart of these developments lies a series of questionable contracts entered into by local, state, federal, and private prison operators with telephone service providers that have in many instances driven the costs of prison calling significantly *up*—over precisely the same period that the costs of intra- and interstate long-distance calling have plummeted within the domestic telecommunications market at large. The net result of this activity is a long-term trend toward excommunication—a move with deeply disturbing implications along penal policy, social, and ethical lines.

Background and Origins

The roots of the current prison telephone industry can be traced to the early 1970s, when prison calling was first introduced as a now-routine feature of correctional life. Departing from the highly limited phone policies widespread before this time, in 1973 the federal Bureau of Prisons introduced an expanded telephone access program that would “permit constructive, wholesome community contact” while addressing security concerns through rudimentary call monitoring capabilities. Citing contemporary recidivism studies showing a strong correlation between weakened family and community

bonds and the likelihood of reoffense, federal prison officials argued that a more liberal regime of telephone access could help to maintain prisoner-community connections valuable to the rehabilitation process. State correctional departments throughout the country (and later, private facilities) generally followed suit over the course of the 1970s. By the early 1980s, inmate calling via widespread (though by no means universal) commercial pay phone service had become a common practice within the American correctional landscape.

Throughout this period, like most other segments of the American telecommunications industry, the fledgling prisoner telephone market remained under the purview of AT&T. Within the relatively staid and stable world of the regulated AT&T monopoly, rates for operator-assisted collect calling from prisons (the only form of service available to prisoners) largely tracked price trends in the outside world. Under such circumstances, apart from the distinctive security requirements operative in the correctional setting, there was little to distinguish the basic dynamics of the prison telephone market from the broader dynamics governing the provision and pricing of telephone service in the American telecommunications market at large. Prison collect calling was relatively expensive, but then so was the consumer long-distance market in general (at least by the standards of 2006). Beyond absorbing the costs of the required security systems, there were no additional incentives to “game” the system, in the form of windfall profits to be produced and distributed in the interests of securing ongoing service contracts.

This structural dynamic changed in 1984, when AT&T entered into a consent decree with the Department of Justice under which the telecommunications giant agreed to divest itself into a long-distance company retaining the AT&T name and a series of seven separate Regional Bell Operating Companies (or “Baby Bells”) that took over the local service functions of

the former AT&T. This move, and the subsequent Telecommunications Act of 1996, reflected a regulatory sea change by which competition and market innovation became enshrined as the guiding principles of American information policy. The move to a pro-competitive framework introduced far-reaching changes into almost every corner of the American telecommunications world, throwing long-standing practices and arrangements up for grabs, and substantially rewriting the rules of the telecommunications game.

The prison telephone market was no exception to this rule. Market restructurings and interim steps away from the AT&T monopoly were enacted throughout the middle and latter part of the 1980s, and by the end of the decade AT&T and the Baby Bells were facing their first real competition for prison telephone contracts, in the form of dedicated and aggressive correctional service divisions at rivals MCI, Sprint, and GTE. These established players were soon joined by other niche firms catering exclusively to the correctional market.² As these markets grew and competitors flooded in, however, the unique competitive dynamics pertaining in the prison telephone industry quickly became apparent. Simply put, in stark contrast to most other major sectors of the post-monopoly telecommunications world, far from causing end-user rates to fall (a common experience across most of the American telecommunications landscape through this period) competition in the prison telephone industry has *driven prices up*. Armed with a uniquely effective monopoly sourcing power, county, state, federal, and private prison officials have entered into what amount to profit-sharing agreements with telephone service providers, awarding exclusive service rights in exchange for cash or percentage payments, back into correctional authority and/or state general funds.³ Under such conditions, the incentives of price competition—instrumental in driving down long-distance rates by more than 80 percent in the residential

consumer market between 1984 and 2005—have proven fundamentally perverse, as companies compete to secure contracts by effectively offering the *highest* prices and passing along a portion of the windfall revenues in the form of “commissions” paid to the contracting agencies (i.e., public or private correctional facilities). The net result of post-divestiture “competition” across vast stretches of the prison phone industry, then, has been a significant *rise* in prices—even as consumer rates available elsewhere in the American telecommunications landscape have plummeted.

By the mid-1990s, this perverse competitive dynamic had driven prison phone commissions to unprecedented heights. According to an American Corrections Association survey published in 1995, nearly 90 percent of correctional systems nationwide received a percentage of the profits derived from inmate-placed collect calls, ranging from 10 to 55 percent of gross revenues.⁴ For states struggling to keep up with the costs of the unprecedented national explosion in incarceration of the past twenty years, phone revenues represented a welcome and multimillion-dollar source of income; under such circumstances, expected commission revenue became a principal determinant in the awarding of prison phone contracts in the 1990s.⁵ According to the results of the 1995 ACA survey, based on state self-reporting, Ohio was making \$21 million annually in prison phone commissions, while New York brought in \$15 million, California \$9 million, Florida \$8.2 million, and Michigan \$7.5 million. Nationwide, the thirty-two state departments of correction and twenty-four city and county jails surveyed—a far from complete count of the national total—reported phone commission revenues in 1994 exceeding \$100 million. By 2000, commissions on prisoner calling had reached new levels, with California at 44 percent, Georgia 46 percent, South Carolina 48 percent, Illinois, Ohio, and Pennsylvania 50 percent, Indiana 53 percent, Florida 57 per-

cent, and New York a national high of 60 percent. At least ten states were taking in \$10 million or more from prisoner calling, with California, New York, and the Federal Bureau of Prisons leading the pack with more than \$20 million in prison phone revenues each. Such patterns were broadly if unevenly replicated at the local level, with city and county jails—home to more than 700,000 prisoners, or about 35 percent of individuals incarcerated nationwide—entering into similar commission-based phone contracts.⁶

Such windfall profits for the states (along with the undisclosed profits of the telephone companies themselves) have been accompanied and enabled by a significant rise in the price of prison collect calling—an increase made all the more dramatic when set against the momentous rate drops experienced across the general long-distance market over precisely the same period. As of 1994, respondents to the ACA survey reported initial connection fees running between \$1 and \$3, followed by per-minute charges ranging as high as 90 cents for local calls and \$2.25 for long distance. Fifteen-minute phone calls billed at \$20 or more were routine, while monthly phone bills for family members receiving prisoner collect calls climbed into the several-hundred-dollar range (and sometimes higher). Some twelve years later, such extortionate rates remain largely in place.⁷ Recent data show charges for fifteen-minute out-of-state calls ranging from \$3.75 in Nebraska (one of the few states to charge no commission) to \$17.77 in Washington, with a significant percentage of states falling in the \$13–17 range.⁸ The cost of in-state long-distance calling has been similarly steep, ranging from \$2.25 (Nebraska) to \$11.57 (Kansas) for a fifteen-minute call.⁹

As the work of a growing chorus of prison advocates and family members reveals, the social costs of this pricing regime have been enormous. By 2000, low-income families with monthly phone bills running to several hundred dollars, and in

some cases thousands, faced a series of hard financial decisions. Family members contacted in the course of this research have reported forgoing medical operations or prescription drugs in order to meet payments on their MCI, AT&T, or other phone bills. For some, telephone service surpassed rent as the largest household monthly bill. Many more had had their numbers blocked, suspended, or permanently disconnected over unpaid prison bills, thus losing telephone service altogether. Some had seen their credit ratings permanently ruined.¹⁰

More disturbingly still, in the face of the financial pressures noted above, several had been forced to severely restrict, and in some cases cut off, contact with incarcerated relatives—an outcome with deep personal, and ultimately social, costs. As these accounts suggest, the ultimate effect of profit-sharing and what amount to price-gouging arrangements in the prison phone sector has been a long-term trend toward excommunication, making contact between prisoners and family members on the outside more costly and therefore more difficult to maintain. But this goes directly against the findings of several decades of recidivism and community impact studies, some of which were used to justify the introduction of prison calling in the first place. Such studies have found that a powerful predictor for reoffense is the failure to maintain family and community contact while under incarceration. As this work suggests, a reliable way of increasing the likelihood that prisoners *will* reoffend is to break all ties with the outside world and then place them back on the street years later, with little reentry support, in a community to which they have become a stranger. This is compounded by a pronounced geographic shift in American penal policy that has seen the vast bulk of recent prisons built in remote rural areas, far from the urban areas from which most prisoners originate. Under such circumstances, telephones are frequently the only viable means of sustained family contact. Beyond such individual-level outcomes, numerous scholars have pointed to

the wider social costs associated with the disruption of family and community contact, in the form of weakened parent-child relations and more general damage to community social networks and authority structures.¹¹ For families with one or both parents in prison, telephone calls represent an important and sometimes the sole means of maintaining parental contact with children, particularly where constraints of distance, financial constraint, and/or illiteracy rule out the possibility of visitation or written correspondence. These costs are borne immediately and disproportionately by low-income communities and those of color—but in the long run by society as a whole, through downstream costs in policing, educational decline, and future costs passed through the juvenile and adult correctional systems. To support a policy and pricing regime that encourages precisely this outcome amounts to a staggeringly shortsighted piece of public policy.

Protest, Alternatives, and the Limits of Regulatory Action

Since the late 1990s, pricing and other abuses in the prison telephone sector have attracted a growing chorus of critics and opponents. Sporadic actions against rate hikes (usually following new contracts) occurred in relative isolation throughout the 1990s, in the form of locally organized telephone boycotts of varying scales and duration. In January 2000, Citizens United for the Rehabilitation of Errants (CURE) launched its national Campaign to Promote Equitable Telephone Charges, with the goal of eliminating excessive rates and improving access by calling the issue to legislative, administrative, and public attention. Promoting alternatives such as debit calling and advocating legislative reform along with the reduction or outright elimination of state and county commissions, the CURE campaign has targeted lawmakers, correctional authorities, and

media outlets in states where correctional phone contracts are up for renewal. Community groups such as Brooklyn's Fifth Avenue Project and the Los Angeles Metropolitan Churches have pursued prison telephone reform efforts at the local and state levels. In 2005, the New York-based Center for Constitutional Rights (a key litigator of several of the prison telephone suits described below) along with advocates from the Fifth Avenue Project and Prison Families of New York launched the New York Campaign for Telephone Justice, which seeks to "end the kickback contract between Verizon/MCI and the New York State Department of Correctional Services, reform the exorbitant rates, and deliver choice, affordability and equitable service to the families and friends of those incarcerated in New York State."¹²

Despite these efforts—and the real and destructive consequences of prison phone price gouging—opponents of the practice have met with general indifference in the regulatory and legal arenas to date. As early as 1996, the Federal Communication Commission, in a series of rule makings sorting out the terms of pay phone service provision in the wake of the 1996 TCA, acknowledged the potential for "locational rents" to produce exorbitant rates in situations where no effective calling alternatives existed. Under such circumstances,

The location provider can contract exclusively with one PSP [pay phone service provider] to establish that PSP as the monopoly provider of payphone service. Absent any regulation, this could allow the PSP to charge supra-competitive prices. The location provider would share in the resulting "locational rents" through commissions paid by the PSPs. To the extent that market forces cannot ensure competitive prices at such locations, continued regulation may be necessary.¹³

A related concern was voiced in FCC rule makings around the contentious issue of "billed party preference," or the question of whether recipients of collect calls from pay phones should be able to select from a competitive range of service providers, or whether that right could be effectively contracted (or "sold") by location owners to a single monopoly provider. Under such circumstances, noted the FCC, the much-celebrated price benefits of competition once again cut the other way. In a statement attached to the ruling (which found *against* billed party preference, on the grounds that the "buyer beware" remedy of prior rate disclosure sufficiently served the public interest by allowing customers to seek out alternative locations from which to place the call) Commissioner Gloria Tristani acknowledged:

Unfortunately, operator services from payphones are a rare example of competition leading to higher prices for consumers. When more OSPs [Operator Service Providers] compete for the right to serve a particular location, they must pay higher commissions to the location's owner. OSPs often recover those higher commissions from consumers in the form of higher calling charges.¹⁴

In these and subsequent proceedings, the FCC has consistently recognized and criticized the basic economic principles driving the prison phone escalation, while refusing to grant effective regulatory relief. In charting this course (and in contrast to its vaunted pro-competitive position on most other issues before it) the FCC has bent to the predictable but ultimately disingenuous arguments advanced by MCI, AT&T, Sprint, and a variety of other industry players: namely, that expense, security, and penological concerns unique to the correctional setting overbalance the potential benefits to be derived from either real competition in the sector or an effective cap on rates or commissions.¹⁵

The record of action at the state level has been only marginally better. Here the principal regulatory actors have been the state-level public utility or interstate commerce commissions, who retain nominal (but weak) oversight of consumer telecommunication tariffs. In theory, this oversight is achieved through the system of filed rates, under which telecommunication carriers agree not to exceed a set of maximum rates posted and nominally reviewed by state utility regulators. In some instances, this has served as a partial if still weak check on the prison price escalation. Carriers in some states (e.g., Louisiana, Florida) have been forced to cap rates and/or issue refunds following regulatory proceedings in which prison phone providers were found to be charging rates in excess of posted tariffs and therefore in violation of state law. In other cases (e.g., Colorado, South Carolina) regulatory actions at the commission level have been effectively overturned by state legislatures, which have passed measures exempting inmate calling from the traditional mechanisms of regulatory review. Even where enforced, however, the filed rate doctrine serves as only a nominal check on pricing abuses, primarily because filed rates track only the most expensive (and in the outside world, rarely used) calling options, and therefore fail entirely to reflect the real options and prices available to consumers twenty-plus years into the competitive telecommunications landscape.

The track record among formal legal challenges to the prison calling system has been similarly discouraging to date. In a series of class action suits, the Center for Constitutional Rights has attacked such arrangements on constitutional grounds, arguing that the present system constitutes a case of unlawful taxation, and moreover that the high prices resulting from monopoly service provision in state, county, and private prison facilities violates First and Fourteenth Amendment rights to free speech, association, and equal protection of both inmates and family members.¹⁶ Other suits have sought to restrict com-

missions on competition grounds, arguing that the contractual monopolies between corrections authorities and phone service providers violate the provisions of American antitrust law. Still other suits have challenged prison phone commissions under a variety of state law claims. These challenges have so far met with limited success. Courts at the district and circuit level have remanded some cases to relevant state regulators and the Federal Communication Commission under the filed-rate and primary-jurisdiction doctrines, declining to rule on constitutional issues until the rate questions have undergone appropriate administrative review. Other cases have been dismissed on grounds long familiar to plaintiffs of prison-related suits: the requirement for prior exhaustion of lengthy, obscure, and frequently futile internal appeal procedures under the Prison Litigation Reform Act of 1995; the court's traditional deference to the discretion of prison administrators, and the concomitant low levels of judicial scrutiny applied to security-inspired abrogations of the constitutional rights of prisoners; and the perennial imbalance in resources available to legal aid and public interest lawyers versus those of corporate and government legal departments.¹⁷

Arguably the most successful advocacy efforts to date have come in the associated spheres of public opinion and legislative pressure. CURE campaign organizers point to more than 150 articles and a dozen sympathetic editorials in the mainstream press, and report overwhelmingly favorable responses to targeted and more general public lobbying campaigns. In some cases, this has been translated into significant, if still partial, victories. In April 2001, legislation was passed in Vermont that would see all prison phone commissions phased out by the end of 2006. In 2002, California once again entered into exclusive no-bid contracts with MCI and Verizon, but agreed to a reduction in state commissions that would reduce the cost of inmate calling by as much as 25 percent.¹⁸ During summer 2003, in

apparent response to pressures emanating from the legislature and state Public Utility Commission, MCI and the New York Department of Corrections announced that state correctional facilities would move to a flat-rate pricing system, with all in-state calls, local or long distance, priced at 16 cents a minute with a \$3 connection fee—an increase over local fees under the previous system, but delivering substantial long-distance savings. In June 2005, the New York State Assembly passed its Family Connections Bill, which would emphasize fair-market pricing and make it illegal for the state to profit from prison telephone contracts.¹⁹ Under the terms of HB 1765, effective as of July 1, 2006, Virginia prisons saw debit calling options added, with commissions capped at 10 percent. Legislatures in Missouri, Kentucky, and several other states have instructed state purchasing and correctional officials to prioritize price over commission revenue in the awarding of new correctional phone contracts (though the track record in following these guidelines, as evidenced in subsequent contracts, would appear to be mixed). Additional resolutions that would cap rates and commissions and mandate debit calling have been introduced in several more states, only to die on the floor after encountering stiff opposition from correctional authorities and/or telephone providers.²⁰ At the federal level, in December 2005 Illinois congressman Bobby Rush introduced House Resolution 4466, the Family Telephone Connection Protection Act of 2005. The proposed act would have instructed the Federal Communications Commission to establish and enforce maximum per-minute rates and connection fees, mandate debit calling options, require competition, and prohibit commission payments on all prisoner-originated calls.²¹ The proposed legislation went no further, however, and was not ultimately enacted. In an early and significant development frequently cited by price reform advocates, the Federal Bureau of Prisons (BOP) in 1995 began adding debit calling options to its

previous collect-only phone system. The BOP's debit calling system remains subject to monopoly provision and all the usual security features, but appears in most cases to have resulted in substantial savings over previous collect rates.

Conclusion

At the time of writing, in mid-2006, the political and economic future of the prison telephone industry remains fundamentally up for grabs. The efforts of a growing movement of family members and advocates to raise the issue to legal, legislative, and public attention have created new political pressures and occasional openings to curb the worst abuses of the commissioned monopoly system. In some cases, such efforts have produced breakthroughs and concessions that have led to partial rollbacks of the rising prices and commissions experienced in the 1990s. This has occurred in tandem with what seems to be a renewed interest in questions of reentry and recidivism, if the recent statements of prison officials are to be taken at face value. But despite these developments, both real and professed, prison telephone monopolies remain firmly in place and ineffectively regulated throughout large parts of the country. Many of the principal legal challenges to pricing abuses in the prison phone industry have foundered on the rocks of the filed-rate doctrine and primary jurisdiction and/or continue to languish before state and federal courts and regulatory agencies. In light of the manifest reluctance of legal and regulatory authorities to act on this matter, the best long-term hope for reform may lie in efforts to build public support and pressure against current practices, which may then be translated into legislative action. But that strategy will rest in turn on public perceptions around the unprecedented social experiment in incarceration that has dominated American criminal and corrections policy over the past twenty-five-plus years. Like many of the other prison in-

dustries reviewed in this book, justice and sound policy in the prison telephone sector remain at heart questions of deep public ethics—and will be fought for, achieved, or denied at that level.

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Clayton Mosher joined the faculty in the Department of Sociology at Washington State University in 1995, having previ-

- probation. See the *New York Times*, "National News Briefs; Guilty Plea in Bribe Case For Houston Ex-Mayor." November 23, 2000.
8. Jane Austen, Ph.D, and Gary Coventry, Ph.D., U.S. Department of Justice, "Emerging Issues on Privatized Prisons," NCJ 181249, 2001.
 9. Peter Ash, M.D., "Adolescents in Adult Court: Does the Punishment Fit the Criminal?" *Journal of American Academy of Psychiatry and the Law* 34:2:145-149 (2006) (quoting Howard N. Snyder, "Juvenile Arrest Rates 2002," Office of Juvenile Justice and Delinquency Prevention, NCJ 204608, 2004).
 10. Howard N. Snyder and Melissa Sickmund, "Juvenile Offenders and Victims: 2006 Report," Washington, D.C., U.S. Office of Justice, Office of Juvenile Justice Programs, 2006.
 11. While there are more juvenile facilities that are privately owned than the 40 percent that are publicly owned, the privately owned facilities tend to be smaller, and therefore account for less of the overall population. See the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, "Juvenile Residential Facility Census, 2002" (2006).
 12. National Mental Health Association, "Privatization and Managed Care in the Juvenile Justice System," 6 (citing Building Blocks for Youth 2002).
 13. First Analysis Securities Corporation, "Offender Management: 2000 Outlook" (2000), 11.
 14. *Ibid.*, 4 (citing American Correctional Association 1999).
 15. Carol Marbin Miller, "Florida Continues to Abuse Children," *Miami Herald* (2004).
 16. Dan Fesperman, "Hickey Turns a Violent Page," *Baltimore Sun*, March 30, 2004.
 17. See Paul von Zielbauer, "A Spotty Record of Health Care at Juvenile Sites in New York," *New York Times*, March 1, 2005.
 18. Erin Sullivan, "Jail Sell," *AlterNet*, May 15, 2000.
 19. First Analysis Securities Corporation, "Offender Management: 2000 Outlook" (2000), 4.
 20. "Juvenile Residential Facility Census, 2002: Selected Findings," Juvenile Offenders and Victims, U.S. Department of Justice, National Report Bulletin, 2006, 3.
 21. *Ibid.*
 22. Justice and Delinquency Prevention Act of 2002, as amended, Pub. L. No. 93-415 (1974).
 23. Aside from any federal standards, the privately run American Cor-

rections Association has also promulgated a series of standards for juvenile settings, but these "standards" are not mandatory and they are primarily concerned with lessening potential liability for corrections staff.

"Mapping the Prison Telephone Industry" by Steven J. Jackson

1. Names have been changed to protect identity.
2. A more detailed description of these firms and contracting patterns through this period can be found in Steven J. Jackson, "Ex-Communication: Competition and Collusion in the U.S. Prison Telephone Industry," *Critical Studies in Media Communication* 22, 4 (2005): 263-80.
3. In some states (e.g., New York, Florida, Michigan) inmate phone revenues are paid into the Department of Corrections, sometimes into inmate benefit or welfare funds. In others (e.g., California, Connecticut, Massachusetts) prison phone revenues go straight into general state funds and have no material connection to correctional activities. It should be noted that even where paid directly back into the prison system, phone revenues often go to offset the cost of services (e.g., AIDS medication) that the state is obligated to provide in any case.
4. Amanda Wunder, "Inmate Phone Use: Calling Collect from America's Prisons and Jails." *Corrections Compendium*, May 1995.
5. Instructive here is the Request for Proposals for Inmate Telephone Systems and Related Services issued by the Florida Department of Corrections in 2000. The document's evaluative criteria assigned three hundred points (out of one thousand total) on the basis of "commission rate"—a significantly higher weighting than either "corporate qualifications" or "project staff." Florida Corrections Commission, *2000 Annual Report* (accessed June 12, 2006 at <http://www.fcc.state.fl.us/fcc/reports/final00/9concerns.htm>).
6. Data from Florida House of Representatives, Justice Council Committee on Corrections (n.d.), "Maintaining Family Contact When a Family Member Goes to Prison: An Examination of State Policies on Mail, Visiting, and Telephone Access," retrieved March 24, 2005, from <http://www.fcc.state.fl.us/fcc/reports/family/famv/html>; and from the CURE Campaign Against Excessive Telephone Charges, retrieved March 24, 2005, from <http://www.curenational.org/~etc/>.

7. Though note also occasional instances of relief, as cited in the "Protests and Alternatives" section below.
8. In general, pricing across states follows a roughly bimodal distribution, with a large cluster of states (twenty-six) charging between \$13 and \$17 for a fifteen-minute interstate call and a somewhat smaller grouping (twelve) falling in the \$3-7 range. In between lies a still smaller (seven) cohort filling out the midrange of \$8-13. Current high-charging states (as measured by interstate long-distance charges) include Alaska, Alabama, Arkansas, Arizona, Colorado, Connecticut, Florida, Georgia, Illinois, Massachusetts, Maine, Michigan, Minnesota, Missouri, Mississippi, North Carolina, New Jersey, Nevada, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Washington, and Wyoming. Lower-charging states (though still well above standard consumer rates) include District of Columbia, Iowa, Indiana, Kentucky, Louisiana, Maryland, North Dakota, Nebraska, New Hampshire, West Virginia, Wisconsin, and, measured by interstate calling alone, New York (as noted in later sections, New York has moved to a flat-rate pricing scheme, which has reduced long-distance and especially interstate rates while inflating the cost of local calling). Falling in the mid-range are Idaho, Missouri, New Mexico, South Carolina, South Dakota, Utah, and Vermont. Current rate data for California, Delaware, Hawaii, and Virginia are unavailable. Texas does not allow routine prisoner calling (collect or otherwise) and therefore falls outside the scope of this study. All data based on the CURE Campaign to Promote Equitable Telephone Charges, http://www.etccampaign.com/etc/current_status.php, accessed July 31, 2006.
9. The figure \$11.57 references the debit intrastate long-distance rate in Kansas; regular collect calling runs even higher at \$13.61.
10. Beyond issues of price, family members and prison advocates have expressed additional concerns around issues such as excessive "branding" (the message informing recipients that the call is originating from an inmate at a correctional facility), which cuts into the usable portion of already expensive and time-limited calls; poor service quality, including frequent disconnections, leading call recipients to incur multiple connection charges; billing irregularities (including assigning peak rates to off-peak hours); inappropriate disciplinary actions taken against inmate families who attempt to control costs through contracting with cheaper remote call forwarding services; and administrative actions against and the frequent and inappropriate placing of blocks on the lines of call recipients, particularly those

- who have chosen not to retain the prison phone contractor as their general service provider. Moreover, even simple questions of access have in some cases not yet been resolved (e.g., in Texas, where prisoners continue to be limited to one fifteen-minute call every ninety days, and then as a condition of good behavior). This additional list of concerns is not exhaustively addressed here; interested readers are referred to advocacy sites such as the CURE Excessive Telephone Charges campaign, at <http://www.curenational.org/~etc>, and the New York Campaign for Telephone Justice, at <http://www.telephonejustice.org>, for details.
11. See, for example, J. Petersilia, *When Prisoners Come Home: Parole and Prisoner Reentry* (New York: Oxford University Press, 2003); J. Travis and M. Waul, eds., *Prisoners Once Removed: The Impact of Incarceration and Reentry on Children, Families, and Communities* (Washington: Urban Institute Press, 2003).
 12. See <http://www.telephonejustice.org/>, accessed June 15, 2006.
 13. Federal Communications Commission, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order of September 20, 1996*, FCC Docket No. 96-128, para. 16.
 14. Federal Communications Commission, *Second Report and Order on Reconsideration in the Matter of Billed Party Preference for Inter-LATA 0+ calls*, FCC Docket No. 92-77, adopted January 29, 1998, addendum.
 15. To anticipate one common objection, it should be noted that security issues around prison calling are real and to be taken seriously. Interested readers are referred to the Department of Justice, Office of the Inspector General, *Criminal Calls: A Review of the Bureau of Prisons' Management of Inmate Telephone Privileges*, available at <http://www.usdoj.gov/oig/special/9908>. But these concerns have been exploited strategically and often disingenuously with regard to the more specific question of price, where a growing body of evidence suggests that lower-cost alternatives (e.g., the debit calling systems adopted by the Federal Bureau of Justice and several state-level correctional authorities) can be fully compatible with legitimate penal concerns around security. Most pointedly, under the terms of the prison phone contracts the commission portion of prison phone rates makes no material contribution to security (short of the highly improbable proposition that the high cost of calling itself is likely to dissuade inmates from placing, and outside conspirators from receiving, "criminal" calls).

16. See *Arsberry v. Illinois*, 244 F.3d 558 (7th Cir. App., 2001); *Bullard v. New York*, 307 A.D.2d 676 (New York SC, App. Div., 3rd Dep., 2003); *Wright v. Corrections Corporation of America*, C.A. No. 00-293 (GK) (D.D.C. Aug. 22, 2001).
17. A useful review and analysis of legal challenges to the prison phone industry can be found in Madeleine Severin, "Is There a Winning Argument Against Excessive Rates for Collect Calls from Prisoners?" *Cardozo Law Review* 25:1469 (2004).
18. Despite the commission reductions, the 2002 contracts remained controversial. The decision to award the contracts to MCI and Verizon on a noncompetitive (no-bid) process followed significant contributions by both companies to the election campaign of successful gubernatorial candidate Gray Davis.
19. At the time of writing, one year later, the bill awaits action in the New York Senate.
20. A very useful summary of recent state legislative action around the prison telephone issue may be found at <http://www.curenational.org/~etc>, retrieved July 31, 2006.
21. H.R. 4466 has been referred to the committee on Energy and Commerce, where it awaits action.

"For-Profit Transportation Companies" by Alex Friedmann

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1. *Prison and Jail Inmates at Midyear 2005*, U.S. Dept. of Justice, Bureau of Justice Statistics, published May 2006 (<http://www.ojp.usdoj.gov/bjs/prisons.htm>).
2. "Detainers" are requests filed by law enforcement or corrections agencies to have prisoners returned to their jurisdiction to face charges or complete jail or prison sentences; interstate compact transfers are used to move prisoners from one state to another.
3. U.S. Marshals Service Web site, <http://www.usmarshals.gov/jpats/index.html>.
4. Hence TransCor's corporate slogan, "Because your officers have better things to do."
5. U.S. Constitution, Art. IV, Sec. 2, Clause 2.
6. 18 U.S.C. § 3182, 3194.
7. "Just Hop on the Van, Man," *Westword*, December 18, 1997.

8. TransCor's Web site (<http://www.transcor.com>); TransCor's responses to written questions dated May 31 and June 12, 2006.
9. CCA's Form 10-K (2005 Annual Report) filed with the SEC on March 7, 2006 (<http://www.shareholder.com/cxw/EdgarDetail.cfm?CompanyID=cxw&CIK=1070985&FID=950144-06-1892&SID=06-00>). Yet the company has been losing money for years; for example, TransCor's 2005 expenses were \$21 million, for a net loss of \$6.5 million. See CCA's First Quarter 2006 Supplemental Disclosure Information, Consolidated Statements of Operations (http://www.shareholder.com/cxw/downloads/Q12006_Supplemental.pdf).
10. "Interstate Inmates," *Mother Jones*, May/June 2000.
11. See <http://www.prisonertransport.net>.
12. Phone conversation with Con-Link owner Randy Cagle, June 2006.
13. See www.usextraditions.com.
14. See www.securitytransportservices.com.
15. See www.courtservices.org.
16. Based on phone conversations with Con-Link, Wackenhut, and U.S. Extraditions, and 2005 contracts between the state of Nevada, PTS, and TransCor (RFP/Contract #1383).
17. *Ibid.*; *Traveler* (TransCor internal newsletter), January/February 2006.
18. *Billings Gazette* (Montana), November 19, 2003.
19. *Orlando Sentinel*, December 7, 2005.
20. 2005 contracts between the state of Nevada, PTS, and TransCor (RFP/Contract #1383).
21. "Correctional Populations, 1980-2004," U.S. Dept. of Justice, Bureau of Justice Statistics (<http://www.ojp.usdoj.gov/bjs/glance/tables/corr2tab.htm>).
22. *Nashville Business Journal*, July 29, 1996 (quoting former TransCor CEO John Zierdt Jr.).
23. "Just Hop on the Van, Man"; "Interstate Inmates."
24. U.S. Rep. Bill McCollum, remarks on Jeanna's Law, December 7, 2000 (<http://thomas.loc.gov/cgi-bin/query/R?r106:FLD001:H62033>).
25. North Dakota legislative Criminal Justice Committee report, November 2000.
26. *Bismarck Tribune* (North Dakota), November 5, 1999.
27. "Road Hazard," *Westword*, February 14, 2002; ACLU press release, March 1, 1999.