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# A Relocation of Prisoner Identity

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## A RELOCATION OF PRISONER IDENTITY

*Willa Payne & Matt Luton\**

Since its inception in 1978, Legal Services for Prisoners with Children (LSPC) has been among the leaders in the movement to challenge the prison industrial complex.<sup>1</sup> Located in San Francisco, the organization focuses on the specific legal and social policy issues that typically affect incarcerated parents and their children, as well as the family members who care for those children.<sup>2</sup> While the organization's name suggests that its primary mission is to provide legal assistance, LSPC's services are by no means limited to litigation. Rather, LSPC's mission statement<sup>3</sup> describes a holistic approach geared toward providing clients with the necessary skills to become advocates in their own right, defining their own issues and needs, and creating their own potential solutions.<sup>4</sup>

Over the summer, the Authors had the opportunity to intern at LSPC. We learned how hostility towards prisoners—not only in law, but also in the court of public opinion—has made traditional legal advocacy increasingly difficult. We discovered how LSPC challenges this hostility by presenting prisoners as human beings who are not separate from the outside world and whose health and well-being are deeply connected to the well-being of the community as a whole. For groups such as LSPC, it has become more and more obvious that unless the public recognizes that prisoners are entitled to basic human rights, their conditions of confinement will continue to deteriorate—to the detriment of all.

This Article will begin by describing the enormity of injustice

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\* Willa Payne, City University of New York School of Law, J.D. Candidate 2008; Matthew Luton, New College School of Law, J.D. Candidate 2008. They would like to thank the entire staff of Legal Services for Prisoners with Children, as well as the Public Interest Practice Section staff of the New York City Law Review for all of its hard work and energy.

<sup>1</sup> See Legal Serv. for Prisoners with Children: History, <http://www.prisonerswithchildren.org/pf/history.htm> (last visited Nov. 10, 2006) (describing the background and history of the organization) [hereinafter "LSPC: History"].

<sup>2</sup> *Id.*

<sup>3</sup> See Legal Serv. for Prisoners with Children: About Us, <http://www.prisonerswithchildren.org/aboutus.htm> (last visited Nov. 10, 2006). LSPC "advocates for the human rights and empowerment of incarcerated parents, children, family members and people at risk for incarceration [through] respond[ing] to requests for information, trainings, technical assistance, litigation, community activism and the development of more advocates." *Id.*

<sup>4</sup> See LSPC: History, *supra* note 1.

facing incarcerated individuals in the United States, particularly in California. It will outline the cultural assumptions and legal landscape which allow this injustice to continue and the limits on traditional forms of advocacy for prisoners' rights. It will then introduce participatory methodology in the prison advocacy context as a very promising means by which the public's perception of the prison population in America can be altered in order to better impact policy and affect change. Finally, using LSPC's Dignity Denied campaign as an example, it will make a case for participatory advocacy as an essential strategy for organizations that assist prisoners.

## I. BACKGROUND ON THE PRISON-INDUSTRIAL COMPLEX

### A. *National Incarceration Trends in the United States*

With more than two million prisoners, the United States holds the dubious honor of leading the world with respect to the number of persons incarcerated per capita.<sup>5</sup> Human rights advocates frequently claim that failed social policies are driving the inflated prison population. For example, with a "decent" mental health care system, 10% to 20% of the current jail and prison population could be released, and 25% could be released if illegal drugs were decriminalized.<sup>6</sup>

Over the last thirty to forty years, the use of "tough on crime" rhetoric by politicians has grown considerably.<sup>7</sup> Politicians have fed on the public's fear of drugs, murder, and mayhem, taking stances that have eventually resulted in, among other things, harsher sentencing laws and the allocation of fewer resources for protecting prisoner's rights and developing recidivism-curbing measures.<sup>8</sup>

The politicians' rhetoric is bolstered by the proliferation of sensationalized news coverage—available twenty-four hours a day

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<sup>5</sup> See U.S. Dep't of Justice: Bureau of Justice Statistics, Prison Statistics, <http://www.ojp.usdoj.gov/bjs/prisons.htm> (last visited December 14, 2006). As of June 30, 2005, there were a total of 2,186,230 people incarcerated in federal or state prisons or local jails. *Id.* In 2004, the United States imprisoned over 700 persons per 100,000, "the highest reported rate in the world;" Russia was second with 534. SENTENCING PROJECT, FACTS ABOUT PRISONS AND PRISONERS 1 (2005), available at <http://www.sentencingproject.org/pdfs/1035.pdf>.

<sup>6</sup> HUMAN RIGHTS WATCH, ILL-EQUIPPED: U.S. PRISONS AND OFFENDERS WITH MENTAL ILLNESS 16 (2003), available at <http://www.hrw.org/reports/2003/usa1003/usa1003.pdf>.

<sup>7</sup> See Marc Mauer, *Why Are Tough on Crime Policies So Popular?*, 11 STAN. L. & POL'Y REV. 9, 12 (1999).

<sup>8</sup> *Id.* at 13.

on television and on the internet—by news organizations, which have a profit-motive for stoking the public's fear of crime and insecurity.<sup>9</sup> Rather than portraying prisoners as human individuals who deserve a certain level of dignity and rights, politicians and the media paint prisoners as one-dimensional characters, identifiable primarily by their crimes. To the public, prisoners cease to exist as the grandparents, parents, siblings, and friends they were before entering the prison system; because prisoners are viewed as immoral criminals, society at large has little reason to care about the conditions under which they live.<sup>10</sup> If the voting public does not recognize that those who are incarcerated are human beings—entitled to a certain level of dignity and human rights—there is little reason for lawmakers to abandon “tough on crime” politics or for news outlets to abandon their emphasis on sensationalized crime.

Negative public opinion has also profoundly affected prisoners' ability to use federal courts to fight for their rights. Knowing that they will not be challenged by the public at election-time, federal politicians and their state counterparts have consistently made legislative decisions designed to inhibit the ability of prisoners to use the courts to protect themselves from abuses.<sup>11</sup> This trend is perhaps best illustrated by the Prison Litigation Reform Act of 1995 (PLRA), passed by Congress on April 26, 1996 under the guise of stopping an “alarming explosion” of prisoner litigation.<sup>12</sup> While true that prisoner litigation increased prior to passage of the PLRA,<sup>13</sup> the authors of the PLRA failed to thoroughly examine the underlying reasons behind the increase in litigation. A sharp rise in arrests and incarceration, under-funding for prison healthcare systems, heightened levels of overcrowding, and a consequential growth in prisoner abuse by overworked prison guards and mis-managed correctional systems are all obvious causes for the rise in prisoner lawsuits, but none of these reasons was addressed by the

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<sup>9</sup> See KATHERINE BECKETT & THEODORE SASSON, *THE POLITICS OF INJUSTICE: CRIME AND PUNISHMENT IN AMERICA*, CH. 5 (2004); see also Mauer, *supra* note 7, at 13.

<sup>10</sup> Even federal courts have recognized the public's ambivalence concerning the welfare of prisoners. See, e.g., *Shaw v. Allen*, 771 F. Supp. 760, 763 (S.D.W. Va. 1990) (“Certainly it must be said without a great deal of reservation that the expenditure of a significant portion of a limited budget so as to protect the constitutional rights of prisoners is not a paramount concern in the minds of many citizens.”).

<sup>11</sup> See Mauer, *supra* note 7, at 14–15.

<sup>12</sup> Cindy Chen, *The Prison Litigation Reform Act of 1995: Doing Away with More than Just Crunchy Peanut Butter*, 78 ST. JOHN'S L. REV. 203, 204 n.38 (2004).

<sup>13</sup> *Id.* (citing 141 Cong. Rec. S14,627 (daily ed. Sept. 29, 1995) (statement of Sen. Hatch)) (“The crushing burden of these frivolous suits makes it difficult for the courts to consider meritorious claims.”).

PLRA or its extremely scant legislative history.<sup>14</sup>

The PLRA's main purpose was to restrict and discourage litigation, particularly the prisoner-initiated class action lawsuit—a procedural mechanism described as “one of the most effective means of combating . . . illegal polices and practices of government agencies.”<sup>15</sup> In effect, the PLRA “slam[med] the courthouse door to society's most vulnerable members.”<sup>16</sup>

Collateral consequences of pervasive incarceration and “tough on crime” politics reach far beyond the prison walls, affecting whole communities. The loss of income and support which occurs when an individual is whisked off to prison is detrimental to the stability of families and communities. Prisons are located in out-of-the-way places to avoid contact with the public, making prison visits extremely expensive. In California, for example, where most women prisoners come from urban areas,<sup>17</sup> the majority of female prisons are located in rural regions of California.<sup>18</sup> As noted by a report issued by the Boalt Hall Prisoner Action Coalition in 2000:

Bus service to these [rural] locations can be limited and the trip often takes many hours. Chowchilla is home to two female correctional facilities, VSPW [Valley State Penitentiary for Women] and CCWF [Central California Women's Facility]. Together the populations of these two prisons comprise 62% of the total female prison population in the state. For a Los Angeles family to travel via bus to this location, it would take seven hours and cost \$38 per person. If departing from San Francisco, the travel time would be five hours at a cost of \$55 per person. The same family traveling by bus from LA to the California Institute for Women (CIW) in Frontera would still have to set aside five hours of travel time.<sup>19</sup>

Because a disproportionate number of inmates and their families

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<sup>14</sup> *Id.* at 209–10 (discussing the haste with which the PLRA was passed in Congress); see also Jennifer Winslow, *The Prison Litigation Reform Act's Physical Injury Requirement Bars Meritorious Lawsuits: Was It Meant To?*, 49 UCLA L. REV. 1655, 1659–60 (2002) (same).

<sup>15</sup> Nancy Cook, *Poverty, Justice, and Community Lawyering: Interdisciplinary and Clinical Perspectives, Looking for Justice on a Two-Way Street*, 20 WASH. U. J.L. & P. 169 (2006).

<sup>16</sup> ACLU, PRISONERS' RIGHTS 1, <http://www.aclu.org/FilesPDFs/prisonerrights.pdf> (2001).

<sup>17</sup> See California Dep't of Corrs. & Rehab, <http://www.cdcr.ca.gov/divisions/boards/AOAP/FactsFigures.html> (last visited Feb. 12, 2007) (thirty-three percent of offenders are from Los Angeles County alone).

<sup>18</sup> PRISONER ACTION COALITION, WOMEN IN CALIFORNIA PRISONS (2000), <http://www.boalt.org/PAC/stats/women-prison-fact-sheet.html#children-families>.

<sup>19</sup> *Id.*

are poor, it is no coincidence that visiting prisons is a great financial burden on friends and family members.

While these issues affect all with ties to the American prison system, the disproportionate impact suffered by African American and Latino communities is profound.<sup>20</sup> For example, African Americans represent only 15% of people who use drugs in the United States, yet 36.8% of those arrested for drug-related crimes are African American.<sup>21</sup> Overall, 48.2% of adults in state or federal prisons and local jails are African American, and African Americans represent 42.5% of prisoners on death row.<sup>22</sup> African-American women are three times more likely than Latinas and six times more likely than white women to face imprisonment during their lifetimes.<sup>23</sup> African-American children are nearly nine times more likely to have an incarcerated parent in prison than white children; Latino children are three times more likely than white children to have a parent in prison.<sup>24</sup>

“Tough on crime” politics, combined with the explosion of round-the-clock, fear-promoting news coverage, have thus enabled a prison culture that is patently inhumane and overtly racist to become an accepted and encouraged part of our culture. In essence, politicians are rewarded for feeding off of the public’s news-driven fear of crime: They insist harsh measures are absolutely necessary, enjoy political gains, and allow struggling minority communities to suffer the most.

### B. “An Unconscionable Degree of Suffering” in California Prisons

The California prison system is a prime example of the overall deterioration of prison systems and prisoners’ rights around the country. Whereas California’s system once emphasized rehabilitation as a key component of corrections, it has more recently be-

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<sup>20</sup> See LEGAL SERV. FOR PRISONERS WITH CHILDREN, PEOPLE OF COLOR AND THE PRISON INDUSTRIAL COMPLEX: FACTS AND FIGURES AT A GLANCE 1, <http://www.prisonerswithchildren.org/pubs/color.pdf> (last visited Feb. 12, 2007).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* (citing U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES (1999); BUREAU OF JUSTICE STATISTICS, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS (1998); DEP’T OF HEALTH & HUMAN SERVS., NATIONAL HOUSEHOLD SURVEY OF DRUG ABUSE (1998), available at <http://oas.samhsa.gov/NHSDA/98MF.pdf>; and ALLEN J. BECK, BUREAU OF JUSTICE STATISTICS, PRISONERS AND JAIL INMATES AT MIDYEAR (1999), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/pjim99.pdf>).

<sup>23</sup> *Id.* (citing ALLEN J. BECK & PAIGE M. HARRISON, BUREAU OF JUSTICE STATISTICS, Prisoners in 2000 at 1 (2001).

<sup>24</sup> CHRISTOPHER J. MUMOLA, BUREAU OF JUSTICE STATISTICS, INCARCERATED PARENTS AND THEIR CHILDREN 2 (2000).

come a symbol for inhumane prison condition.<sup>25</sup> In fact, the prison healthcare system is so disturbingly poor that a federal judge saw fit to remove it from state control.<sup>26</sup> In *Plata*, Judge Thelton Henderson stated that California's healthcare system was "broken beyond repair,"<sup>27</sup> observing that "[t]he harm already done . . . to California's prison inmate population could not be more grave, and the threat of future injury and death is virtually guaranteed in the absence of drastic action."<sup>28</sup> Finally, and responding to his own call for "drastic action," Judge Henderson determined that given "the polycentric and pervasive nature of the problems afflicting the California Department of Corrections and Rehabilitation (CDCR)," a federal receiver<sup>29</sup> would be required "to engage in wholesale systemic reform . . . from the outset."<sup>30</sup> Thus, the court "engaged in the process of appointing a full Receiver with the leadership, commitment, experience, and vision to take on the monumental and critical task of bringing the level of medical care provided to California's 165,000 inmates up to constitutional standards."<sup>31</sup>

Inhumane treatment of imprisoned populations is not, of course, confined to California. Many other prison systems throughout the United States have failed to provide inmates with the minimum level of healthcare and other necessary services required by the Constitution, much less the degree of care that many would argue should be required in a civilized nation. In fact, as Judge Henderson noted in *Plata II*, U.S. district courts have taken control of various aspects of state prison systems in numerous

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<sup>25</sup> See John Pomfret, *California's Crisis in Prison Systems a Threat to Public: Longer Sentences and Less Emphasis on Rehabilitation Create Problems*, WASH. POST, June 11, 2006, at A3 (discussing how California's prison system has deteriorated since the 1970s).

<sup>26</sup> See *Plata v. Schwarzenegger (Plata II)*, No. C01-1351 (TEH), 2005 WL 2932253 (N.D. Cal. 2005) (Finding of Fact & Conclusion of Law Regarding the Appointment of Receiver).

<sup>27</sup> *Id.* at \*1.

<sup>28</sup> *Id.*

<sup>29</sup> A receiver is "[a] disinterested person appointed by a court . . . for the protection or collection of property that is the subject of diverse claims (for example, because it belongs to a bankrupt or is otherwise being litigated)." BLACK'S LAW DICTIONARY 1275 (7th ed. 1999).

<sup>30</sup> *Plata II*, 2005 WL 2932253, at \*34.

<sup>31</sup> *Id.* While the court appointed a full receiver, it made clear that the appointment was "intended as a temporary, not permanent, measure." *Id.* at \*33. Moreover, the appointment of a full receiver was designed to "extend no further than necessary to correct a current and ongoing violation of a federal right . . . [and] impose no unnecessary burden on defendants . . . [or adversely] impact on either the safety of the public or the operation of the criminal justice system." *Id.*

other states.<sup>32</sup>

One aspect of the human rights crisis inside California's prisons is the dramatic growth of the population of aging prisoners. Estimates show that by the year 2022, the percentage of prisoners over the age of fifty-five will swell to 16% of the entire California prison population, amounting to more than 30,200 prisoners.<sup>33</sup> Because of their special needs and medical requirements, the costs to care for elderly prisoners are generally far higher than the costs for younger prisoners, and when the health concerns of elderly prisoners are not addressed, their needs become magnified based on a diminished ability to cope with illnesses and other medical problems. As the average age of the California prison population continues to rise without being acknowledged by courts or politicians, it is clear that another crisis is pending in the California prison system.

## II. ADVOCACY IN PARTNERSHIP WITH PRISONERS

Participatory advocacy opens up enormous potential for marginalized, underrepresented, and stigmatized populations and their allies. This section will define and describe the methodology and its application to advocacy with prisoners. It will further offer LSPC's Dignity Denied campaign as an illustration of participatory methods' potential for success.

### A. Participatory Legal Advocacy

Traditional theories of lawyering typically suggest that the legal advocate has the knowledge and the client has the situation for which the lawyer's knowledge is necessary.<sup>34</sup> All too frequently,

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<sup>32</sup> *Id.* at \*23 (citing *inter alia* Newman v. Alabama, 466 F. Supp. 628, 635–36 (M.D. Ala. 1979) (appointing receiver for Alabama State Prisons); Shaw v. Allen, 771 F. Supp. 760, 762 (S.D. W. Va. 1990) (noting that in the absence of traditional remedies, courts may be justified “in implementing less common remedies, such as a receivership, so as to achieve compliance with a constitutional mandate.”)).

<sup>33</sup> See HEIDI STRUPP & DONNA WILLMOTT, DIGNITY DENIED: THE PRICE OF IMPRISONING OLDER WOMEN IN CALIFORNIA 6 (2005), available at <http://www.prisonerswithchildren.org/pubs/dignity.pdf>.

<sup>34</sup> See generally, GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE (1992). While both client and lawyer possess practical knowledge, the lawyer often sees him or herself as the sole problem-solver in the lawyer-client relationship, and generally does not take full advantage of the client's knowledge. Instead, clients are expected to provide facts relevant to the lawyer's own legal problem solving. *Id.* at 47-48. The client, in accepting the problem as “strictly ‘legal’” then assumes that he or she is not able to play a role in problem-solving and views his or her own knowledge as irrelevant or obvious. *Id.* at 48; see also William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Or-*

however, legal advocates fail to take real-world problems into account and do not accurately assess the specific needs and concerns of the client.<sup>35</sup> In many cases, a legal advocate's primary goals may not adequately reflect the needs of the client because of poor communication between them and the advocate's failure to appreciate the client's input. In the absence of commonality and collaboration, the client may wind up in a situation that brings consequences he or she did not expect or wish to suffer; the client will ultimately feel misrepresented and will not be improved at the end of the representation.<sup>36</sup>

Participatory legal advocacy upends this hierarchy in favor of shared power and expertise. The goal of this methodology is to bridge the gap between the professional and layperson. Since individuals are experts regarding their own lives, increased collaboration between advocate and client opens the door for advocates to bring forth client stories in a way that the public can appreciate. It creates a paradigm in which the advocate works in solidarity with the client and does not merely present a cause of action in the name of the client. Thus, participatory advocacy establishes a working collaboration between client and advocate, from which the end result is a better public understanding of the client's suffering, an increase of sympathy and support for the client's cause, and affirmative change more in tune with the client's needs and desires.

A principle tenet of participatory advocacy is client-empowerment. In many situations, however, a client is disempowered following the bang of a gavel and the announcement of a verdict. Participatory advocates are thus called upon to fashion a holistic approach to reach outside of the courtroom and empower the client in the real world. True victory for many clients involves systemic change, requiring success in the courtroom, in the legislative arena, and on the grassroots level. Such successes require collabo-

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*ganizations*, 21 OHIO N.U. L. Rev. 455, 458 (1995) ("The lawyers want to advocate for others and do not understand the goal of giving a people a sense of their own power. Traditional lawyer advocacy creates dependency and not interdependency.").

<sup>35</sup> SOPHIE BRYAN, COMMENT, *Personally Professional: A Law Student in Search of an Advocacy Model*, 35 HARV. C.R.-C.L. L. Rev. 277, 289 (2000).

<sup>36</sup> See *id.* at 283-85 (discussing "[t]he disjunction between ends and means that characterizes the Plaintiff-as-Proxy approach" in impact litigation). But see Peter M. Cicchino, *To Be a Political Lawyer*, 31 HARV. C.R.-C.L. L. Rev. 311, 311-312 (1996) ("Only someone completely ignorant of Marx and Freud would assume that the poor, impoverished, and often physically brutalized people whom lawyers like us represent have the keenest insight into their own legal problems and understand the best ways of dealing with them. . . . [M]ost people do not understand their oppression.").

ration, input, and support from others, including legal professionals, community organizers, clients' families, social workers, students, and even celebrities.<sup>37</sup> But determining which individuals or groups are the most appropriate for collaboration requires close communication with the client. Thus, participatory advocacy is at its best when communication and input are received from the client and assistance is gathered from outsiders ready to support the client's cause.

Participatory advocacy is not a particularly new method for fighting oppression.<sup>38</sup> Its use in the prison context shows potential for creating meaningful change.<sup>39</sup> By drawing from the experience and expertise of prisoners, effective strategies and ideas for creating change can be uncovered.

Prisoners have a unique set of concerns and needs that must be taken into account by advocates, not the least of which is retaliation by prison guards and the lack of an effective system for addressing grievances. That said, the greatest obstacle to effective prisoner advocacy is arguably the public's general ambivalence toward the treatment of prisoners; this affects prisoners on both the micro and macro level, failing to deter guard misconduct and negative treatment policies. Using participatory advocacy methods, ad-

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<sup>37</sup> See, e.g., Juan Gonzalez, *Hip Hop's Elite Join Pols' Drug Law Rally*, N.Y. DAILY NEWS, June 3, 2003, at 19 (discussing rally organized in support of prisoners sentenced under Rockefeller Drug Laws; attendees included rap stars Sean (Puffy) Combs, Jay-Z, Fat Joe, Rev. Run of Run-DMC, the Beastie Boys, and Russell Simmons, as well as half of the New York City Counsel, New York State Comptroller Alan Hevesi, and influential democrat Andrew Cuomo). The impact movement against the Rockefeller Drug Laws, while not primarily litigation-based, demonstrates the potential advocacy benefits of reaching to outside groups and individuals for input and assistance. While this outsider participation was crucial to fighting the Rockefeller Drug Laws in New York, input from the actual victims—the clients in this context—was just as much, if not more, important to developing strategies and altering the public's perceptions about those imprisoned under the Rockefeller Drug Laws. See generally, JENNIFER GONNERMAN, *LIFE ON THE OUTSIDE: THE PRISON ODYSSEY OF ELAINE BARTLETT* (2004) (telling the story of Elaine Bartlett, a mother of four who was given a twenty-to-life sentence based on a first-offense drug sale involving approximately four ounces of cocaine; she had served only as a courier). Armed with a better understanding of prisoners' plight as a means to develop a strategy involving powerful outsiders, advocates successfully pressed the New York State legislature to substantially soften the Rockefeller Drug Laws in a series of actions starting in late 2004. See Michael Cooper, *New York State Votes to Reduce Drug Sentences*, N.Y. TIMES, December 4, 2004, at A1.

<sup>38</sup> See, e.g., Bunyan Bryant, *Pollution Prevention and Participatory Research as a Methodology for Environmental Justice*, 14 VA. ENVTL. L.J. 589 (1994-95) (using participatory research for environmental justice causes); Prabha Kotiswaran, *Preparing for Civil Disobedience: Indian Sex Slave Workers and the Law*, 21 B.C. THIRD WORLD L.J. 161, 226 (2001) (acknowledging the many gaps in understanding prostitution in India and the challenges of interpreting prostitute women's experiences to effect law reform).

<sup>39</sup> See Cooper, *supra* note 37.

vocates can push the everyday stories of the injustices faced by their clients into the public arena and effectively illustrate that the client does not fit the faceless criminal profile sensationalized by news organizations and “tough on crime” pundits. Additionally, by gathering input from community organizations and family members, advocates educate the public of the suffering that occurs as a collateral consequence of the client’s incarceration. Through such education, participatory advocates can gather public support for their clients’ causes and push politicians to make many much-needed prison reforms. The extent of these reforms, however, can only be as successful as the extent of the public’s understanding that prisoners are human beings who deserve basic dignities in their lives, such as space to live, nutritious food, and adequate healthcare. Moreover, affirming the individual humanity of prisoner-clients is essential to their ability to protect themselves from the abuses that have become accepted over the years.

*B. Methodology in Action: The Dignity Denied Report*

LSPC recently undertook the Older Prisoner Campaign to present the prison crisis to the public through the eyes of older prisoners. As part of the campaign, LSPC produced a report, entitled *Dignity Denied: The Price of Imprisoning Older Women in California*, which explored the unique challenges and abuses faced by women as they age behind bars.<sup>40</sup> The report also argued that the continued mass incarceration of frail elders represented bad public policy. Older prisoners have the lowest recidivism rate of any segment of the population—typically less than 4% compared to the general recidivism rate in California, which exceeds 65%.<sup>41</sup> In spite of these numbers, the state continues to pay the approximately \$70,000 per year—nearly double the amount necessary for younger prisoners—it costs to incarcerate older prisoners.<sup>42</sup>

The report’s research was based on the results of a survey of women prisoners over the age of fifty-five. LSPC worked in collaboration with women prisoners to design and distribute a fifty-question survey about health status and living conditions. LSPC received 120 completed surveys, which represented approximately 30% of CDCR’s over-fifty-five women prisoner population. Additionally, LSPC conducted eighteen semi-structured interviews with

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<sup>40</sup> STRUPP & WILLMOTT, *supra* note 33.

<sup>41</sup> *See id.* at 7.

<sup>42</sup> *Id.*

older women prisoners and six interviews with family members.<sup>43</sup> *Dignity Denied* concluded that CDCR fails to adequately address the unique needs of its aging population. The report called for the release of many, if not most, elderly prisoners due to their low recidivism rate and the high costs associated with their continued incarceration.<sup>44</sup>

The prisoners' responses to the survey revealed the many ways in which California prisons fail to meet the basic needs of older prisoners. The issues emphasized might, in a vacuum, seem trivial, but through the personalized lens of the prisoners discussed in *Dignity Denied*, the absurdity of continued incarceration of older, non-violent prisoners is clear. For example, one story involved two elderly women prisoners who suffered injuries after falling from their top bunks, demonstrating problems with which outside readers can associate.<sup>45</sup> Other prisoners' stories spoke of how correctional officers' frequent failure to help elderly prisoners contributes to a dangerous environment for seniors. Many survey respondents complained about delays in access to medical attention and renewals of medications as well as their constant fear of abuse from both prison guards and younger prisoners.<sup>46</sup> By sharing the personal perspective of elderly inmates, organizations such as LSPC illustrate both the humanity of prisoners and the extremely basic and foundational levels on which prison systems fail. Projecting these realities to the outside world paints a stark contrast from the sentiments of criminals given on the television news and shatters public presumptions of what prison-life is really like.

Given a more sympathetic public, groups such as LSPC are in a much better position to demand better treatment for their clients and legislative reform, among other things. Therefore, following

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<sup>43</sup> Brie A. Williams, et al., *Being Old and Doing Time: Functional Impairment and Adverse Experiences of Geriatric Female Prisoners*, 54 J. AM. GERIATR. SOC. 702, 702-07 (2006).

<sup>44</sup> See STRUPP & WILLMOTT, *supra* note 33, at 11. According to the report, medical and other particular needs of elderly prisoners in the California penal system will continue to grow along with the incarcerated elderly population and, heretofore, have not been adequately addressed. Even those who represent the smallest threat to the public safety and have the lowest recidivism rates of the prison population are forced to endure inhumane and unconstitutional conditions in the California penal system. The report illuminated the broader issues that affect all of LSPC's incarcerated clients via interviews with family members, focusing on a population group with whom members of the public can easily sympathize. See generally STRUPP & WILLMOTT, *supra* note 33.

<sup>45</sup> STRUPP & WILLMOTT, *supra* note 33, at 16.

<sup>46</sup> *Id.* at 38 (asserting that one out of three respondents report personally experiencing physical abuse by another prisoner, while 83% believe that prison staff does not help to ensure their protection).

the publication of *Dignity Denied*, LSPC embarked on a public education campaign, distributing the report to legislators, prison administrators, the heads of the public health department, elder rights advocacy organizations, and legal aid organizations working on elder issues.<sup>47</sup> LSPC, together with former prisoners, family members and community partners also engaged in a media campaign to further publicize the challenges of the aging in prisons.<sup>48</sup> Furthermore, in 2005 and 2006, LSPC presented inmates' stories and the *Dignity Denied* conclusions at conferences, met with policy-makers and prison officials, and participated in radio shows.<sup>49</sup> The campaign has enjoyed some success, and LSPC was quickly able to expand partnerships with medical and public health professionals such as the California Nurses Association and geriatric health experts.<sup>50</sup>

Beyond changing public perceptions, however, *Dignity Denied* was intended to empower prisoners to help themselves by placing them in a much better position to make requests—or even demands—concerning their needs and rights. Following the release of *Dignity Denied*, California prison administrators have allowed the formation of committees comprised of older women at each of the women's prisons to advocate for needed policy changes.<sup>51</sup>

### CONCLUSION

The prison industrial complex is a terrifying system of control that particularly impacts poor communities and communities of color. While litigation has achieved a limited amount of success, the punitive culture in which we live has made an alternative advocacy methodology necessary to achieve real success for prisoner-clients. As a result, participatory advocacy has emerged as a strategy that is both effective and revolutionary in restoring prisoners' dignity and changing the public's perception of them.

Prisoners suffer denigration and disrespect in their daily lives. Because of the isolation in which prisoners live, advocates are often the only link prisoners have to the outside world. Advocates therefore have the duty to tell prisoners' stories accurately and responsibly and must be able to clearly articulate their needs and goals

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<sup>47</sup> Interview with Heidi Strupp & Cassie M. Pierson, staff members of LSPC, in S.F., Cal. (July 6, 2006) (on file with authors).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

while incorporating their own knowledge. At LSPC, prisoners, ex-prisoners, and their families are involved at every level of the agency's projects. By working with clients to develop self-advocacy skills, this participatory model ensures that clients become leaders in their own movement. In this way, advocates uproot the inaccurate and biased assumptions behind public ambivalence to prison abuse and pressure politicians to make long-overdue prison reform.

