

TESTIMONY OF
PRISONERS' LEGAL SERVICES OF NEW YORK
BEFORE THE
JOINT LEGISLATIVE HEARINGS
ON THE
NEW YORK STATE PUBLIC PROTECTION BUDGET FOR 2014
CONDUCTED BY THE
ASSEMBLY WAYS AND MEANS AND SENATE FINANCE
COMMITTEES

Legislative Office Building

Albany, NY

February 5, 2014

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I. INTRODUCTION

We would like to thank the members of this Committee for inviting Prisoners' Legal Services (PLS) to testify before you today. As you know, PLS was created by New York State in 1976 in response to the Attica prison uprising to act as a safety valve to help prevent another prison riot and in recognition that indigent individuals need competent legal representation to ensure that their civil and constitutional rights are protected. Thus, PLS' mission is to provide high quality, effective legal representation and assistance to indigent prisoners and to help them secure their civil and human rights. Since 1976, PLS has worked tirelessly to fulfill that mission and to address and remedy the civil legal issues that were found to have caused the Attica riot.

As you know, last year Governor Cuomo included PLS in his Executive Budget for \$1 million and the Legislature added an additional \$1.05 million which result in total funding for PLS of \$2.05 million for 2013-2014. We commend both Governor Cuomo and the Legislature for providing this funding for PLS, as it is a clear indication of the Governor's and the Legislature's commitment to civil and human rights and a testament to New York State's sense of justice. Without your support last year, and the support of the Governor, PLS would have been forced to lay off staff and close two of its four offices, significantly disrupting its ability to respond to more than 10,000 annual requests for assistance and effectively eliminating its statewide presence – a presence that is crucial to its ability to address and ameliorate the kinds of prison conditions that led to the 1971 Attica uprising.

This year, for the third year in a row, Governor Cuomo has once again included PLS in his Executive Budget for \$1 million. Again we commend the Governor for this inclusion. The \$1 million in funding, however, is insufficient to adequately fund PLS. As such, we are requesting a legislative add of \$1.5 million which will result in a total operating budget of \$2.5 million for 2014- 2015.

Funding of \$2.5 million will allow PLS to adequately staff our offices and, in turn, provide the critical civil legal services that NYS has tasked PLS to provide; cover increased operational expenses; and allow PLS to continue to partner with the State on crucial criminal justice issues.

II. PLS NEEDS ADEQUATELY STAFFED OFFICES TO PROVIDE CRITICAL CIVIL LEGAL SERVICES

As stated above, PLS' mission is to act as a safety valve by ensuring humane conditions in our state prisons so as to help prevent another Attica. In carrying out that mission, PLS is concerned about a number of issues, including the overuse of solitary confinement, the racial disparity of the prison population in general, and specifically with respect to solitary confinement, the lack of adequate medical and mental health treatment, and the numerous jail time and sentencing errors that adversely affect the liberty interests of our clients and the fiscal interest of New York State. As set forth below, PLS helps address all of these civil rights and public safety issues and more, by successfully advocating on behalf of thousands of prisoners every year. PLS acts as a "pressure valve" because *all* prisoners know that PLS will respond to their requests for assistance and will appropriately address meritorious complaints about conditions of confinement.

However, unlike a typical law office that can control the number of cases that come in to their offices, PLS has a State-imposed responsibility to accept cases where an individual's constitutional rights are being violated.¹ As shown below, that means limited staff must review every complaint for merit, conduct investigations as needed, determine which complaints warrant administrative or judicial advocacy and respond appropriately to all complaints. Also, as shown below, because PLS has developed expertise as well as credibility in the criminal justice community, it is able to act as a funnel system that appropriately and accurately identifies wrongs and works to correct them in a way

that saves the State resources and increases safety and security within and outside prison walls. However, at its current funding and staffing levels, PLS is stretched to capacity and its ability to respond to emergencies has become highly restricted.

Last year, State funding of \$2.05 million allowed PLS to operate four offices, but with only two staff attorneys in the Plattsburgh and Buffalo office.² A staff of two attorneys in a law office tasked with the responsibility of representing thousands of incarcerated New Yorkers is inadequate, especially in light of the fact that PLS cannot control its workload – as shown by a flood of disciplinary cases that occurred last year after a large disturbance in the Clinton Correctional facility yard. Overnight, PLS was inundated with requests for assistance. As a result of its intervention, many disciplinary dispositions were reversed, and dozens of prisoners were released from wrongfully imposed isolation. However, because we accepted those cases, we had to reject numerous other meritorious cases that came in at the same time.

As such, it is imperative that each PLS office be able to handle routine and emergency caseload matters; likewise, each office must be able to withstand staff absences or other disruptions, as in the case of the Plattsburgh office, which last year suffered the sudden and unexpected death of one of its two staff attorneys. A reasonable minimal office size for a law office that faces the demands of the entire state prison population should be no less than four staff attorneys, a figure that allows for adequate coverage in the event of planned and/or unplanned absences or crises. To bring the Plattsburgh and the Buffalo offices up to minimal staffing levels, PLS needs funds sufficient to hire two additional attorneys for each office. PLS projects that amount to be \$260,000.

¹ The State has a legal responsibility to provide meaningful access to the courts for inmates confined in state prisons. Bounds v. Smith, 430 U.S. 817 (1977).

² The PLS Buffalo office is tasked with providing representation to over 11,640 prisoners being held in 11 various prisons within a 100 mile radius. The PLS Plattsburgh office is tasked with providing representation to over 9,754 prisoners being held in 9 various prisons within a 160 mile radius.

A. PLS addresses critical civil legal needs

Prisoners write to PLS about a myriad of issues. Some complain of lack of appropriate programming and/or education which directly impacts their chances of successful reentry, other complain about harassment or brutality by correction officers, still others write about issues involving family matters such as visitation with their children or spouse. Set forth below are four categories of cases that highlight the need for PLS and why PLS' involvement in these cases is, not only essential to ensuring the protection of civil and human rights, but also in advancing prison and public safety and promoting the State's fiscal health.

1. Solitary Confinement

With respect to the issue of solitary confinement, our concerns are significant. In New York State there is no limit to the length of time a prisoner can be placed in solitary confinement. Solitary confinement, as you all may know, is confinement 23 hours a day in a cell the size of a parking space, with no commissary, no phone, no package or privileges and no visits. For most in solitary confinement there is little to no human contact, often for years at a time.

When NYS citizens are facing a loss of liberty in the criminal context, they are provided, not only significant due process rights, but legal counsel to protect those rights. However, once a person is convicted and sent to prison those protections disappear. If a prisoner is the subject of a disciplinary hearing, his due process rights are minimal and he is not entitled to counsel, even though he is facing a loss of liberty equal to, or arguably greater than, that which was so highly protected on the outside.

In 2013, PLS received 1,236 requests for assistance from prisoners sentenced to solitary confinement; hundreds of whom had been sentenced to years in isolation. PLS does not have the staff to investigate all of these requests, but, as part of our safety valve function, we do respond to

every request. For the cases we reject, we either advise prisoners that they do not have a claim or we provide counsel and advice as to how they can proceed on their own. PLS provided counsel and advice in 857 of the 1,236 requests we received and accepted 220 cases for investigation. Upon full investigation, which involves reviewing all of the documents associated with the disciplinary hearing, listening to the tape of the hearing and often interviewing the accused and his witnesses, PLS found that 111 cases warranted further administrative advocacy and of those 111 cases, PLS prevailed, either administratively, or in the courts, in 75 (68%) of them. The result was that over 89 years of solitary confinement time was expunged from prisoner's records and prisoners were, in turn, released from solitary confinement and allowed to participate in the rehabilitative and educational programs that have been proven crucial to successful reentry.

This success rate tells us not only that PLS is good at what we do, but more importantly, that there are injustices occurring daily behind New York State's prison walls, As such, it is imperative that New York State support PLS' efforts to ensure that these injustices are corrected, not only because it is the right thing to do, but because it was these types of injustices that, when left unchecked, resulted in the bloodiest prison riot in U. S. history.

2. Racial Disparity

When it comes to the issue of racial disparities, the statistics are alarming. While New York State's population is approximately 17.5% African American and 18.2% Hispanic or Latino, nearly three quarters of the people in state prison are African American (49.6%) and Hispanic (24.1%) . The statistics relating to those held in extreme isolation inside New York State's prisons are even more disturbing. While Blacks make up 49.6% of the entire prison population, they account for 59% of

those held in isolation and Latinos are held in isolation at a rate of 24.7%.³ Adding insult to injury, while in solitary confinement, prisoners typically receive no educational, vocational, rehabilitative or transitional programming.

A recent Washington State study found that people who were released *directly* from segregation had a much higher rate of recidivism than individuals who spent some time in the normal prison setting before returning to the community: 64 percent compared with 41 percent.⁴ When over 2000 New York prisoners, the majority of whom are Black or African American, are released directly into our communities from solitary confinement annually,⁵ the projected 23% increase in recidivism for this population raises significant civil rights and public safety issues.

3. Adequate Medical and Mental Health Care

Adequate medical and mental health care for prisoners is not only constitutionally required, but critically important to public health and safety. PLS investigates hundreds of allegations of inadequate medical and mental health care annually. We successfully advocate in many of those cases. As a result of our work, many prisoners receive the medical and mental health attention that they need which translates into a reduction in tension within the prison population. Additionally, because they are treated for their medical and mental health issues, upon release they are better able to reintegrate into society and reunite with their family and loved ones, which often lessens the likelihood that they will re-offend and return to prison.

³ New York Civil Liberties Union, “*Boxed In – The True Cost of Extreme Isolation in New York’s Prisons*” p. 8. (Oct. 3, 2012) available at: <http://www.nyclu.org/publications/report-boxed-true-cost-of-extreme-isolation-new-yorks-prisons-2012>

⁴ David Lovell & Clark Johnson, *Felony and Violent Recidivism Among Supermax Prison Inmates in Washington State: A Pilot Study*, available at: <http://www.son.washington.edu/faculty/fac-page-files/Lovell-SupermaxRecidivism-4-19-04.pdf>

⁵ New York Civil Liberties Union, “*Boxed In – The True Cost of Extreme Isolation in New York’s Prisons*” p. 8. (Oct. 3, 2012) available at: <http://www.nyclu.org/publications/report-boxed-true-cost-of-extreme-isolation-new-yorks-prisons-2012>

Although PLS' advocacy in the area of mental and medical health has resulted in improvements in care, there remains a significant unmet need. In 2012, PLS received 755 complaints concerning inadequate medical and mental health care (up from the 649 cases PLS received in 2012) but, due to limited staff and resources, we were only able to accept approximately 20% of those cases. Such statistics demonstrate the critical need for the type of civil legal services that PLS provides.

4. Jail and Sentencing Time

Our Constitution ensures the right of liberty for all citizens, but often prisoners are held beyond their court ordered release date. Whether the error is due to a jail time or sentencing computation mistake, or loss of good time as a result of a due process violation at a disciplinary hearing, denying an individual's right to freedom flies in the face of one of the most fundamental constitutional rights that exists in America.

In 2013 PLS received 1,293 requests from prisoners to investigate parole, jail time, sentencing and good time issues. Once again, due to our limited resources, we were only able to accept a fraction of those cases for review but, even with the limited number of cases we were able to accept, PLS' advocacy resulted in over 64 years of jail time, sentencing time and good time being restored to prisoners across New York State. Although the clients whose freedom we were able to protect are very appreciative, there are literally thousands of others for whom our services were unavailable due to our lack of adequate resources.

III. PLS NEEDS ADDITIONAL FUNDING FOR RISING OPERATIONAL COSTS

Accounting for inflation, to restore PLS to its 1994 funding level would require total funding of \$5.3 million. Restoration to the 1998 funding level would require \$4.3 million, and restoration to even the 2001 funding level would require total funding of \$3 million. However, we are cognizant of the economic realities of the day and are asking only for an increase sufficient to cover critical expenses. The expenses, beyond those supported by last year's total funding and, in addition to the above stated personnel expenses, are broken out below.

A. Investigatory, Pre-Litigation and Litigation Expenses

As stated, one of the primary reasons PLS has been so successful in keeping the peace and in improving conditions in our state prisons, is that it acts as a funnel by screening possible cases for merit and not advocating or litigating unless there is a high likelihood of success. To do this, staff must engage in in-depth investigations, research and analysis, and often must seek out expert opinions. For instance, PLS is currently working on the case of a prisoner who was sentenced to four years in solitary confinement as a juvenile. To adequately present his case, PLS will have to employ the services of, at the very least, a psychiatrist and an expert in the effects of long term isolation on juveniles, expenses that will amount to thousands of dollars. PLS may be able to resolve this issue before engaging in extensive litigation, thus saving DOCCS and the AG's office, along with the Judiciary, thousands of dollars, but this will only be possible because PLS will spend the funds up front to come up with a workable solution. With over 10,000 requests for assistance annually, PLS needs an increase in funding to cover the necessary expenses associated with investigating these types of cases and preparing them for administrative advocacy and/or litigation. PLS projects that amount to be \$65,000.

B. Infrastructure

Because PLS has been fighting to keep its head above water for the past 13 years, it has not had the financial ability to address infrastructure issues within the organization. Any funding that has been provided has gone into hiring staff to respond to the thousands of complaints received every year. As a result, PLS' phone system is over 20 years old and our case management system is outdated and on the verge of collapse. PLS also needs to replace a number of outdated computers and printers. PLS projects that amount to be \$97,000.

C. Increased Expenses & COLA

As you know, every year operating costs go up. Whether it is medical coverage, workers compensation, Westlaw and library expenses, rent, travel or postage, expenses typically rise. Worse yet has been the unanticipated repercussions of the budget cuts that PLS suffered in 2011 and 2012. The budget cuts forced extensive layoffs and, due to unemployment claims filed by those PLS employees who were laid off, there was a 300% increase in unemployment insurance expenses from \$10,000 to over \$30,000. In addition, as with many organizations, COLA increases for PLS staff have been extremely rare – only one in the past 10 years. PLS needs funds to cover regular increasing expenses and to provide a long over-due COLA for employees. PLS projects that amount to be \$78,000.

IV. ADEQUATE FUNDING FOR PLS WILL PROMOTE PLS' CONTINUED AND BENEFICIAL PARTNERSHIP WITH THE STATE

The fact that PLS has earned the trust and respect of the more than 54,000 incarcerated New Yorkers is quite well known, but what is not as well known is the role PLS plays in partnering with the Department of Corrections and Community Supervision (DOCCS), the Attorney General's office, the Judiciary and the Executive to help assess, improve and implement New York State's

criminal justice policy initiatives.

For example, over the past several years, PLS has worked closely with DOCCS in the area of re-entry, most recently partnering with DOCCS on a re-entry video for all prisoners preparing for release. PLS, DOCCS, the Attorney General's office and others also recently worked together to present a continuing legal education course on prisoners' rights to the Appellate Division, Third Department (including judges and staff). In addition, PLS was recently asked by Second Circuit Chief Judge Robert Katzman and Immigration Judges Robert Weisel and Roger Sagerman to provide representation to prisoners facing immigration hearings held within DOCCS. Finally, due to PLS' trust relationship with incarcerated New Yorkers, the Executive recently requested PLS' assistance in educating prisoners about the opportunity to apply for Medicaid while in prison. As a result, and in collaboration with DOCCS, PLS has begun a concerted effort to educate prisoners and encourage them to apply for Medicaid, the result of which will be to save the State millions of dollars annually.

PLS also accepts numerous referrals annually from the Executive, Judiciary and Legislative, including members of the Assembly and the Senate, where prisoners have written to them complaining about their conditions of confinement. PLS investigates and, in most instances, resolves their complaints, thus saving all three branches of NYS' government significant resources. Moreover, PLS, by answering over 10,000 prisoner complaints annually, has discouraged, and often prevented, the filing of many lawsuits that would have otherwise been a costly burden to DOCCS, OMH, the Judiciary and the Attorney General's Office. In addition, when PLS accepts a case, the courts benefit from having experienced legal counsel steering the litigation.

In sum, PLS' partnership role with the Executive, the Judiciary and Legislature has become an invaluable one and with adequate funding PLS will be able to continue that role.

CONCLUSION

For 37 years, PLS has helped keep the peace in our State prisons and has increased the likelihood that prisoners will be able to successfully reintegrate into society when they are released. Through our work, incarcerated New Yorker's learn that society will not tolerate unjust treatment of its people. Our work instills in prisoners the sense that the criminal justice system is fair and just. Thus, when they are released from prison, our clients are much more likely to successfully adjust to life outside the prison walls and become law-abiding productive members of society. PLS is a critical and necessary component of New York State's civil legal services infrastructure. PLS is also an important, necessary and sound investment, not only from an economic, but also from a moral, ethical and human rights vantage point. Adding \$1.5 million to PLS current funding of \$1 million will allow PLS to continue this critically important work.

Dated: February 5, 2014

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