St. John's Law Review

Volume 95
Number 4 *Volume 95, Summer 2022, Number 4*

Article 3

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YOU HAVE THE RIGHT TO REMAIN POWERLESS: DEPRIVATION OF AGENCY BY LAW ENFORCEMENT AND THE LEGAL AND CARCERAL SYSTEMS

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INTRODUCTION

The charges against Philadelphia Police Officer Phillip Nordo read like an episode of *The Shield*.[1] The grand jury presentment, should you have the stomach for it, is closer to *Law & Order: Special Victims Unit*.[2] For over twenty years, Officer Nordo groomed, sexually assaulted, and used crime reward funds to pay off vulnerable men in Philadelphia.[3] Whether in his transport van, prison visiting rooms, or police interrogation rooms, he regularly exploited his unfettered access to and absolute control over vulnerable individuals.[4] Though he was not convited until 2022, the communities he stalked and preyed upon knew exactly what Nordo was doing in the decades leading up to his arrest.[5] Living in the streets where Nordo flexed his considerable power, these Philadelphians had nowhere to run, and no one to whom to report

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[1] *See* Criminal Docket, Commonwealth v. Nordo, CP-51-CR-0001856-2019, (Pa. D & C.2d filed Mar. 15, 2019), https://ujsportal.pacourts.us/Report/CpDocketSheet?docketNumber=CP-51-CR-00018562019&dnh=1%2FhdrNrdxjlmmTVisHyuLQ%3D%3D [https://perma.cc/5LJM-VZNG]. On June 1, Phillip Nordo was convicted of rape, official oppression, stalking, and theft. His victims were men whom he met in his official capacity with the Philadelphia Police Department. *See* Samantha Melamed, *A Philly Homicide Detective was Convicted of Raping Witnesses. What Happens to Those he Locked Up*? PHILA. INQUIRER (June 1, 2022), https://www.inquirer.com/news/philadelphia-homicide-detective-phillip-nordo-cases-exonerations-20220601.html.

[2] Presentment No. VII at 4–5, In re: The Twenty-Ninth Investigating Grand Jury, Misc. No. 0006987-2016, (Pa. D. & C.2d filed Feb. 19, 2019) [hereinafter Presentment No. VII], https://philadelphia.cbslocal.com/wp-content/uploads/sites/15116066/2019/02/phil-nordo-presentment-2.19.19.pdf [https://perma.cc/5NK2-TSKL].

[3] *Id*. at 5–9.

[4] *Id*. at 4, 7.

[5] *See, e.g.*, Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2093 (2017).

the bad detective. They could not call the other officers who took turns leaving Nordo alone with suspects for long stretches of time. Nor could they rely on the Internal Affairs Division, who corroborated rape allegations against Nordo and then kept him on payroll for another decade.[6] And they certainly could not turn to Philadelphia prosecutors, who had quietly put Nordo on a "no call list."[7]

This Article is not about Phillip Nordo. This Article is about the outright excision of agency that our legal system exacts on vulnerable communities.[8] At every stage, our legal system strips already marginalized communities of power, particularly communities of color.[9] Mass incarceration, a mechanism to uphold white supremacy, has further corroded individual and collective autonomy in these communities. This Article examines the ways in which law enforcement, the legal system, and the carceral state remove agency from individuals. In the final section, this Article suggests measures to immediately empower incarcerated individuals who have been stripped of their agency by our system.

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[6] Presentment No. VII, *supra* note 2, at 12–13.

[7] *See, e.g.*, Mark Fazlollah, *Accused Philly Police Officers Get Reassigned to the 'Last Place' They Should Be, Critics Say*, PHILA. INQUIRER (Mar. 22, 2019), https://www.inquirer.com/news/philadelphia-police-department-misconduct-tainted-cops-corruption-homeland-security-center-20190322.html.

[8] Monica C. Bell describes this as "legal estrangement," the "structural[ ] ostraciz[ation] through law's ideals and priorities." Bell, *supra* note 5, at 2085–86. Bell's concept of "legal estrangement" moves past the concepts of theories of legitimacy, legal cynicism, and procedural unfairness to describe a "cultural and systemic mechanism" that is "partly representative of a state of anomie related to the law and legal authorities, and [ ] interacts with legal and other structural conditions—for example, poverty, racism, and gender hierarchy—to maintain segregation and dispossession." *Id*. Further, Bell argues that "legal estrangement is a product of three socio-legal processes: procedural injustice, vicarious marginalization, and structural exclusion." *Id.* at 2100.

[9] Aggressive policing practices target neighborhoods of color, especially those communities with dense populations of Black individuals. *See* Anthony A. Braga et al., *Race, Place, and Effective Policing*, 45 ANN. REV. SOCIO. 535, 535–37 (2019). *See also* Plaintiffs' Tenth Report to Court on Stop and Frisk Practices: Fourteenth Amendment Issues at 2–3, Bailey v. City of Philadelphia, 2:10-cv-05952, (E.D. Pa. Apr. 24, 2020), https://storage.courtlistener.com/recap/gov.uscourts.paed.394493/gov.uscourts.paed.394493.106.0.pdf [https://perma.cc/T68K-X5FL] (indicating that Black individuals are fifty percent more likely to be stopped and forty percent more likely to be frisked than white individuals; in Philadelphia seventy percent of stopped individuals were Black, though Black individuals make up only forty percent of the population).

I. THE OBLIGATION TO REMAIN SILENT: EXCISION OF AGENCY BEGINNING WITH LAW ENFORCEMENT

Picture this: you are arrested. It is 11:00 at night. You are picked up in a van. You are not given a telephone call. You are cuffed to a table in an interrogation room and left overnight. You are held for forty-eight hours. After two days and two nights of questioning with no sleep, food, or drink, you are exhausted. You are told that if you sign a confession, you can go home. You sign it, but you never go home. This may seem out of the ordinary, but it is not. Across this country, people sit in prison having been "discretionarily" stopped[10] and searched without probable cause,[11] having falsely confessed,[12] or having been convicted of a crime on the testimony of a lone police officer witness,[13] informant,[14] or an otherwise incentivized witness.[15] Indeed, these are the tactics recited in the indictment of Phillip Nordo.[16] But they are certainly not unique to him. Many shadowy police practices are standard

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[10] Further,

> [p]roactive policing practices, such as hot-spot policing, stop-and-frisk policies, and "investigatory stops," have become ubiquitous over the past four decades—expanding police discretion and increasing police contacts with the public. These types of proactive policies are scrutinized, in part, because they tend disproportionately to target Black and Latinx individuals and communities and young people.

Anne McGlynn-Wright et al., *The Usual, Racialized, Suspects: The Consequence of Police Contacts with Black and White Youth on Adult Arrest*, SOC. PROBS. 1, 2 (2020).

[11] "Justice Department investigations across the country have illustrated how these astounding numbers of warrants can be used by police to stop people without cause." Utah v. Strieff, 136 S. Ct. 2056, 2068 (2016) (Sotomayor, J., dissenting).

[12] *See, e.g.*, Emily West & Vanessa Meterko, *Innocence Project: DNA Exonerations, 1989-2014: Review of Data and Findings from the First 25 Years*, 79 ALB. L. REV. 717, 761 (2016) ("[O]ver a quarter (27%) of the 325 DNA exoneration cases involved false confessions—either by the exoneree him or herself, or by a co-defendant.").

[13] *See, e.g.*, Michigan v. Bryant, 562 U.S. 344, 378 (2011) (permitting a police officer to testify as to a statement given to police by a wounded crime victim identifying the person who shot him).

[14] *See* West & Meterko, *supra* note 12, at 766 ("Informants contributed to wrongful conviction in 15% (48) of the 325 DNA exonerations.").

[15] *Id*. at 766, 768 (discussing incentivized informants). Additionally, non-informant witnesses (such as alleged eye-witnesses) often receive crime reward money or other benefits, which may go undisclosed at trial.

[16] Presentment No. VII, *supra* note 2, at 4–38.

operating procedures.[17] Practices such as arbitrary[18] and lengthy detention without arrest,[19] and days-long interrogations[20] during which individuals are denied sleep[21] or telephone calls,[22] disempower individuals from the moment of police contact. Post-charging practices such as holding individuals without affordable bail for long periods of time, without even a thought to the collateral consequences—loss of employment, housing, and family support—are so commonplace that we do not even question them.[23] Yet, they strip individuals of everything; individuals who are presumed innocent.

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[17] *See, e.g.*, *Strieff*, 136 S.Ct. at 2069 (Sotomayor, J., dissenting).

> The New York City Police Department long trained officers to, in the words of a District Judge, "stop and question first, develop reasonable suspicion later." The Utah Supreme Court described as " 'routine procedure' " or " 'common practice' " the decision of Salt Lake City police officers to run warrant checks on pedestrians they detained without reasonable suspicion. In the related context of traffic stops, one widely followed police manual instructs officers looking for drugs to "run at least a warrants check on all drivers you stop. Statistically, narcotics offenders are . . . more likely to fail to appear on simple citations, such as traffic or trespass violations, leading to the issuance of bench warrants. Discovery of an outstanding warrant gives you cause for an immediate custodial arrest and search of the suspect."

Id. (internal citations omitted).

[18] *See, e.g.*, Aziz Z. Huq, *The Consequences of Disparate Policing: Evaluating Stop and Frisk as a Modality of Urban Policing*, 101 MINN. L. REV. 2397, 2431, n.7 (2017) (citing "prolonged detention" as "a real concern in a jurisdiction where police have arrest quotas to fill").

[19] *See* Steven J. Mulroy, *"Hold" On: The Remarkably Resilient, Constitutionally Dubious 48-Hour Hold*, 63 CASE W. RSRV. L. REV. 815, 816 (2013).

[20] *See, e.g.*, Brandon L. Garrett, *The Substance of False Confessions*, 62 STAN. L. REV. 1051, 1095 (2010) (discussing "lengthy confessions" as a factor that courts consider in evaluating voluntariness of a confession, some occurring over the course of days, without allowing for sleep or meals).

[21] *See id*. (discussing the deprivation of food and sleep as a factor in considered by courts in evaluating voluntariness of a confession).

[22] *See, e.g.*, Complaint for Mandamus and Injunctive Relief at 11, #LetUsBreatheCollective v. City of Chicago, No. 2020CH04654, (Ill. Cir. Ct. June 23, 2020) (internal citations omitted), https://www.cookcountypublicdefender.org /sites/default/files/attorney_access_complaint_with_exhibits_file_stamped.pdf [https://perma.cc/VU54-8GMC] ("Between April 16, 2020 and June 5, 2020, the PUBLIC DEFENDER surveyed 1,468 people in bond court. Of the 1,468 surveyed, 338 (23%) stated that CPD [Chicago Police Department] never offered them access to a phone at *any* point while they were detained at the police station. . . . The average wait time for individuals who were offered a phone call was 4.2 hours.").

[23] *See* Shima Baradaran, *Restoring the Presumption of Innocence*, 72 OHIO ST. L.J. 723, 724–25, 739 (2011) (discussing the history of bail in the United States, as favored and then largely disfavored, as an abandonment of the presumption of innocence).

Of course, this underlies so many issues in our system: the presumption of guilt ascribed to entire communities. As Justice Sotomayor wrote, dissenting in a stop and frisk case:

> [I]t is no secret that people of color are disproportionate victims of this type of scrutiny. *See* M. Alexander, The New Jim Crow 95–136 (2010). For generations, [B]lack and [B]rown parents have given their children "the talk"—instructing them never to run down the street; always keep your hands where they can be seen; do not even think of talking back to a stranger—all out of fear of how an officer with a gun will react to them. *See, e.g.*, W.E.B. Du Bois, The Souls of Black Folk (1903); J. Baldwin, The Fire Next Time (1963); T. Coates, Between the World and Me (2015).[24]

II. THE ENCUMBRANCE OF COUNSEL: EXPROPRIATION OF AUTONOMY THROUGH THE LEGAL SYSTEM

For individuals targeted by shadowy police practices, particularly people of color, the dismissal of individual rights and dismantling of agency will not stop at the courthouse door. Prosecutors did not stop Philip Nordo. Instead, they put him on a "no call list," preventing defendants from questioning him about his predilections.[25] Nor would the defense bar have been equipped to uncover Nordo's crimes. In the courts, the victims of arbitrary policing will continue to receive the clear message: you have no power here.

Once individuals have lost the benefit of the doubt, the burden is on them to prove their innocence—but they do not have the necessary tools or even speak the requisite language to do so. Thus, our system purports to afford the right to counsel, an expert advocate, skilled at speaking the language of law, experienced in navigating the criminal legal system, and adept at advocating zealously for the rights of others.[26] Yet, this is another right that, in practice, is often more an encumbrance than entitlement.

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[24] Utah v. Strieff, 136 S. Ct. 2056, 2070 (2016) (Sotomayor, J., dissenting).

[25] *See, e.g.,* Mark Fazlollah, *'Restricted Duty' Officers Work at Sensitive Locale*, PHILA. INQUIRER, Mar. 24, 2019, at A1.

[26] Gideon v. Wainwright, 372 U.S. 335, 344–45 (1963).

Once a lawyer is appointed, she becomes your agent.[27] You lose the right to speak for yourself.[28] You lose the right to direct strategic decisions.[29] You lose agency. Her mere presence gives your case the veneer of process.[30]

At the same time, indigent defense counsel—whether in a defender agency or court appointed—frequently bring to bear representation far below well-accepted standards of care. Appointed indigent counsel, especially at the state level, face unreasonable fee caps and resource limitations. Because of the flat fee structure for appointed counsel representing Philadelphians accused of homicide, one study found that counsel would effectively be paid two dollars per hour if they devoted the requisite number of hours to provide effective representation.[31] Thus, appointed counsel take more cases in order to pay the bills.[32] Public defender agencies across the country are also grossly under resourced.[33] The average public defender in this country labors under overwhelming caseloads. In 2017, the average Rhode Island public defender held a caseload of 1,700 cases per year; in 2007, Kentucky public defenders each handled over 400 felony and misdemeanor cases.[34] In Missouri, trial defenders spend an

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[27] Recently, in *Shinn v. Ramirez,* the Supreme Court of the United States repeatedly emphasized this principal, reaffirming that "[T]he attorney is the petitioner's agent when acting, or failing to act, in furtherance of the litigation, and the petitioner must bear the risk of attorney error." 142 S.Ct. 1718, 1733 (2022) (citing Coleman v. Thompson*,* 501 U.S. 722, 753 (1991)). Unless there is a "constitutional right to counsel in state postconviction proceedings, a prisoner ordinarily must 'bea[r] responsibility' for all attorney errors during those proceedings." *Id.* at 1735 (internal citations omitted). "A prisoner is 'at fault' even when state postconviction counsel is negligent." *Id.*

[28] *See* Alexandra Natapoff, *Speechless: The Silencing of Criminal Defendants*, 80 N.Y.U. L. REV. 1449, 1453, 1469–75 (2005).

[29] Strickland v. Washington, 466 U.S. 668, 691 (1984).

[30] *See* Paul D. Butler, *Poor People Lose: Gideon and the Critique of Rights*, 122 YALE L.J. 2176, 2190–98 (2013).

[31] James M. Anderson & Paul Heaton, *How Much Difference Does the Lawyer Make? The Effect of Defense Counsel on Murder Case Outcomes*, 122 YALE L.J. 154, 195 (2012).

[32] *See, e.g.,* David D. Friedman & Stephen J. Schulhofer*, Rethinking Indigent Defense: Promoting Effective Representation Through Consumer Sovereignty and Freedom of Choice for All Criminal Defendants,* 31 AM. CRIM. L. REV. 73, 96 n.75 (1993).

[33] Stephen F. Hanlon, *Case Refusal: A Duty for a Public Defender and a Remedy for All of a Public Defender's Clients*, 51 IND. L. REV. 59, 61 (2018).

[34] Lisa C. Wood et al., *Meet-and-Plead: The Inevitable Consequence of Crushing Defender Workloads*, 42 A.B.A. LITIG. 20, 22 (2016). Misdemeanor caseloads are staggeringly high: in Chicago, Miami, and Atlanta the average defender handles 2,000 misdemeanors annually, and in New Orleans that number is 19,000 cases. *Id*.

average of 84.5 hours on homicide cases.[35] The concept of "meet and plead" is a cynical but very real concept. For a defense attorney who has 200 cases, how can she do more?[36]

Unmanageable caseloads are not the only effect of underfunding. Underfunded counsel forgo investigation, forensic analysis, expert consultation, and mental health assistance.[37] They are also compensated at lower rates than prosecutors, while often carrying more cases.[38] Faced with a lack of funding, some state courts appoint unqualified and even unwilling attorneys to represent defendants in criminal proceedings.[39] These factors adversely impact the culture of agencies and appointed bars, leading to a culture of indifference and bureaucracy, wherein the hardest working attorneys are often punished, ridiculed, and quickly burn out.[40]

Post-conviction proceedings provide the first and, in some cases only, opportunity to litigate the incompetence of trial counsel. Yet, here too, the right to post-conviction counsel has become a liability. States routinely fail to adequately fund post-conviction counsel,[41] with devastating consequences for state and

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[35] RUBIN BROWN, THE MISSOURI PROJECT: A STUDY OF THE MISSOURI PUBLIC DEFENDER SYSTEM AND ATTORNEY WORKLOAD STANDARDS 24 (2014).

[36] In some cases, counsel fails to present exculpatory evidence *in counsel's possession*. *See, e.g.*, Reeves v. Fayette SCI, 897 F.3d 154, 164 (3d. Cir. 2018) (holding that where an attorney possessed but failed to "present to the fact-finder the very exculpatory evidence that demonstrates his actual innocence, such evidence constitutes new evidence for purposes of the Schlup actual innocence gateway").

[37] *See, e.g.*, Friedman & Schulhofer, *supra* note 32, at 85.

[38] For example, one Tennessee law requires local governments to apportion seventy-five cents to indigent defense for every dollar given to prosecutors. *See* Eve Brensike Primus, *Culture as a Structural Problem in Indigent Defense,* 100 MINN. L. REV. 1769, 1772–73 (2016). This is so despite the fact that the prosecutors have at their disposal separately funded law enforcement investigators as well as crime and forensic labs at the state and local level, while defender organizations do not.

[39] In 2004, after the Massachusetts legislature refused to fund compensation for appointed counsel, private counsel refused to renew contracts and filed a class action suit. Instead of allowing trial judges to dismiss charges against and release unrepresented defendants, the Massachusetts Supreme Court directed courts to appoint unqualified and even unwilling attorneys to represent them. Hanlon, *supra* note 33, at 61.

[40] *See* Primus, *supra* note 38, at 1772.

[41] For example, attorneys who litigate on behalf of incarcerated people under Pennsylvania's Post-Conviction Relief Act ("PCRA") are subject to draconian funding caps by the state, which have not seen raises in decades. Currently, the state of Pennsylvania provides PCRA attorneys a *maximum* of $6,000 for homicide cases, and $2,400 for non-homicide felonies. 47 Pa. B. 3806 (Jul. 15, 2017). For context, American Bar Association Guidelines for capital post-conviction cases anticipate thousands of hours to adequately marshal records, thoroughly review and digest documents, develop additional facts, and research and draft pleadings. The American Bar

federal appeals.[42] In Pennsylvania,[43] these practices have resulted in the all-too-common occurrence of lawyers filing "no merit" letters in post-conviction cases, a practice endorsed by Pennsylvania's courts in *Commonwealth v. Finley*.[44] Under *Finley*, a post-conviction attorney may withdraw from a case after submitting a "no-merit letter," verifying that they have reviewed their client's case and concluded that all claims are without merit.[45] The United States Supreme Court's affirmance[46] that the Constitution is not offended by a post-conviction attorney filing such a letter, with no notice to his client, was premised on the notion that there exists no constitutional right to state post-conviction process or counsel,[47] and no right to equal protection in post-conviction representation.[48]

Association, *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*, 31 HOFSTRA L. REV. 913, 967–68 (2003) [hereinafter *ABA Guidelines*].

[42] Incompetent representation in the post-conviction context has far reaching consequences for petitioners largely due to the hyper-technical limitations imposed on the federal habeas process by the Anti-Terrorism and Effective Death Penalty Act ("AEDPA"). *See generally* Stephen R. Reinhardt, *The Demise of Habeas Corpus and the Rise of Qualified Immunity: The Court's Ever-Increasing Limitations on the Development and Enforcement of Constitutional Rights and Some Particularly Unfortunate Consequences*, 113 MICH L. REV. 1219 (2015).

[43] Pennsylvania, used as an example here, leads the country in life without parole sentences. Philadelphia alone sentences more people to LWOP than any other county and 45 states. Over 2,700 Philadelphians have been sentenced to death by incarceration. Eighty-four percent are Black. QUINN COZZENS & BRET GROTE, A WAY OUT: ABOLISHING DEATH BY INCARCERATION IN PENNSYLVANIA, A REPORT ON LIFE-WITHOUT-PAROLE SENTENCES, ABOLITIONIST L. CTR. 33 (2018), https://abolitionistlawcenter.org/wpcontent/uploads/2018/09/ALC_AWayOut_27August_Full1.pdf [https://perma.cc/678E-JF5Y].

[44] Commonwealth v. Finley, 550 A.2d 213, 215 (Pa. Super. Ct. 1988); *see also* Commonwealth v. Turner, 544 A.2d 927 (1988).

[45] *Finley*, 550 A.2d at 215.

[46] Pennsylvania v. Finley, 481 U.S. 551, 558 (1987) (declining to apply the four-step rule for withdrawing from direct appellate representation outlined in Anders v. California, 386 U.S. 738 (1967)). For comparison, under *Anders*, counsel is only allowed to withdraw as appellate counsel if the appeal is determined to be "wholly frivolous." Martha C. Warner, Anders *in the Fifty States: Some Appellants' Equal Protection is More Equal Than Others*, 23 FLA. ST. U. L. REV. 625, 631–32 (1996). Under *Finley*, however, an attorney may withdraw if the client's case merely "lacks merit." *Finley*, 481 U.S. at 553, 559.

[47] *Id*. at 556–57. Petitioners in a post-conviction posture are not, as a matter of federal or state constitutional law, entitled to such process, or to counsel. *Id*. In Pennsylvania, the appointment of counsel in collateral proceedings is a rule-based right, born out of the PCHA. *Id*. at 553–54.

[48] *Id*. at 556 ("[T]he equal protection guarantee of the Fourteenth Amendment does not require the appointment of an attorney for an indigent appellant just because an affluent defendant may retain one.").

Dissenting, Justice Brennan observed that the court had essentially turned the "right to effective counsel into a right to a meaningless ritual."[49] In reality, however, the practice is worse than meaningless, causing actual harm to the petitioner, including revealing privileged and confidential communications with the client and witnesses.[50] As the dissent noted, it is not just that appointed counsel goes through the motions of representing his client, he actually "argue[s] *against his or her client's claims* without providing notice or an opportunity for that client either to proceed *pro se* or to seek the advice of another attorney."[51]

III. THROWING AWAY THE KEY: THE SUPPRESSION OF SELF BY THE CARCERAL STATE

Notably, self-representation is a staggeringly infeasible option for most who are incarcerated. In the name of "security" and cost savings, prisons have enacted rigid restrictions around access to legal resources and advocacy, and the courts have acquiesced. In *Lewis v. Casey*, the Supreme Court held that there is no right to prison law libraries, unless an incarcerated person sustained "actual injury" and could

> show, for example, that a complaint he prepared was dismissed for failure to satisfy some technical requirement . . . . Or that he had suffered arguably actionable harm that he wished to bring before the courts, but was so stymied by inadequacies of the law library that he was unable even to file a complaint. [52]

This heightened standard puts incarcerated petitioners in a virtually-insurmountable predicament: rely on inadequate resources to show that you have a viable legal claim that is significantly stymied by those very inadequate resources.[53] In

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[49] *Id*. at 569 (Brennan, J., dissenting).

[50] *Id*. at 568–69. To withdraw under *Finley*, defense counsel informs the court of the issues the client has requested counsel review and why those claims fail, including with regard to witnesses the client has requested the attorney contact. *Id*. In addition to the clear ethical implications, it largely limits the post-conviction review undertaken by the court and counsel to the record, which is antithetical to post-conviction review. *Id*.

[51] *Id*. at 568 (emphasis added).

[52] Lewis v. Casey, 518 U.S. 343, 351 (1996). In *Lewis*, a group of incarcerated individuals sued the Arizona Department of Corrections ("ADOC") for failing to provide adequate law library facilities and legal resources, thus significantly impeding their ability to effectively develop and raise claims. *See* Joseph L. Gerken, *Does* Lewis v. Casey *Spell the End to Court-Ordered Improvement of Prison Law Libraries?*, 95 LAW LIBR. J. 491, 496–97 (2003).

[53] Gerken, *supra* note 52, at 499.

Lewis, the complainants were illiterate.[54] Thus, the Court reasoned that even if it found actual injury, the individuals identified as being harmed could not avail themselves of an adequate law library anyway, as they could not read.[55] The *Lewis* decision significantly curtailed the ability of courts to compel prisons to provide adequate legal resources.[56]

The paltry legal resources provided in prison—on-site legal assistants, limited computer access, law books—reflect the lack of court supervision over prisons as well as the prioritization of punishment and security over the empowerment and self-sufficiency of incarcerated people.[57] By way of example, at SCI Phoenix in Pennsylvania, there is one computer for every 200 individuals.[58] Individuals are required to sign up for limited blocks of time,[59] which provides their sole opportunity to conduct intensive research of the case law and make copies when necessary. Limited capacity of the law libraries and the lack of control prisoners have with regard to scheduling further decreases access.[60] Individuals are charged for copies, which can be quite expensive, since the material required for preparing a post-conviction petition, including case law, supporting documentation, and the appellate record amount to hundreds or thousands of pages.[61] The cost to acquire these documents is often prohibitive for a population of individuals who lack the opportunity to generate income.[62] Finally, incarcerated people simply lack the

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[54] *See id.*

[55] Jonathan Abel, *Ineffective Assistance of Library: The Failings and the Future of Prison Law Libraries*, 101 GEO. L.J. 1171, 1200 (2013).

[56] *Casey*, 518 U.S. at 357 (In the rare case where a court finds actual injury, the scope of the injunction or other remedy must "be limited to the inadequacy that produced the injury in fact that the plaintiff has established.").

[57] Ira P. Robbins, *Ghostwriting: Filling in the Gaps of Pro Se Prisoner's Access to the Courts*, 23 GEO. J. LEGAL ETHICS 271, 278–79 (2010).

[58] This number varies by institution.

[59] COMMONWEALTH OF PA., DEP'T OF CORR., POLICY STATEMENT: ACCESS TO PROVIDED LEGAL SERVICES, DC-ADM 007, at 1–2 (2015). *See also* Robbins, *supra* note 57, at 279.

[60] Samantha Melamed, *After Pa. Book Ban, Prisoners Must Rely on Ebooks*, PHILA. INQUIRER (Nov. 2, 2018), https://www.inquirer.com/philly/news/pennsylvania-book-ban-doc-books-through-bars-wetzel-20181102.html.

[61] *See, e.g.*, *ABA Guidelines*, *supra* note 41, at 933 (anticipating the entire record for a capital post-conviction case to comprise "thousands of pages").

[62] *See, e.g.*, Wendy Sawyer, *How Much Do Incarcerated People Earn in Each State?*, PRISON POL'Y INTIATIVE (Apr. 10, 2017), https://www.prisonpolicy.org/blog/2017/04/10/wages/ [https://perma.cc/79N5-KUQW] (reporting that on average people incarcerated in state and federal prison earn between fourteen and sixty-three cents for "regular," non-industry jobs, and between

storage space available in even the most modest law office; most are limited to the equivalent of four bankers boxes or fewer.[63]

Often, prison research mechanisms are so restrictive that they are actually prohibitive. One individual incarcerated in Florida described the state's restrictive legal research protocol:

> Some prisons in Florida have replaced their hardbound volumes of federal case reporters with a CD-ROM collection of these reporters. In theory, this should benefit the pro se prisoner. In reality, it does not . . . . Prisoners in Florida are not allowed to use the computers in the law libraries for research purposes. A pro se prisoner needs to know the name and citation of the case he wants to read. He must then give the case citation to a law clerk. The law clerk, when he gets around to it, will then pull up the case on the computer, and the pro se prisoner may then read the case off the computer screen and take notes. At no time during this process is the pro se prisoner allowed to touch the keyboard; the pro se prisoner must have a law clerk available to scroll the text up or down. The law library may have three or four computers in it, but only one is designated for use by the prisoners who do not work in the law library.[64]

This model, which is not isolated to Florida, not only prevents any confidential legal case development, but requires a baseline expertise in order to conduct any research whatsoever.

Prisons also limit the ability to conduct case-related investigation by heavily regulating communication with the outside world. Visitation is a "privilege" that can be adjusted based on arbitrary factors. Some prisons determine the number and duration of visits based on one's behavioral record, the assessment of an individual's "need" for visits, or nature of the incarcerated person's conviction.[65] Some prisons prohibit visitors who did not know the incarcerated individuals prior to

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thirty-three cents and $1.41 for state-owned, correctional industry jobs); *State and Federal Prison Wage Policies and Sourcing Information*, PRISON POL'Y INITIATIVE (Apr. 10, 2017), https://www.prisonpolicy.org/reports/wage_policies.html [https://perma.cc/4XMR-8LXT] (explaining that in Pennsylvania the vast majority of incarcerated people who are able to have jobs, earn between nineteen cents and forty-two cents per hour).

[63] COMMONWEALTH OF PA., DEP'T OF CORR., POLICY STATEMENT: PERSONAL PROPERTY, STATE ISSUED ITEMS, AND COMMISSIONARY/OUTSIDE PURCHASES, DC-ADM 815, at 3–2 (2016) [hereinafter PA., DEP'T OF CORR.].

[64] Robbins, *supra* note 57, at 279 (quoting Thomas C. O'Bryant, *The Great Unobtainable Writ: Indigent Pro Se Litigation after the Antiterrorism and Effective Death Penalty Act of 1996,* 41 HARV. C.R.-C.L. L. REV. 299, 325–26 (2006)).

[65] *See* Chesa Boudin et al., *Prison Visitation Policies: A Fifty-State Survey*, 32 YALE L. & POL'Y REV. 149, 162 (2013).

incarceration, which can eliminate the ability of an incarcerated individual to meet with an investigator or other non-attorney advocate.[66] That is, if an incarcerated person could afford to hire an investigator.[67]

Prisons also heavily regulate mail and correspondence. Only attorney correspondence is confidential. New policies across the country—purportedly for security—prohibit incarcerated individuals from receiving original mail, requiring that all mail be reviewed and copied, a task often outsourced to privately-owned companies.[68] This convoluted process causes significant delays in mail and dramatically reduces the quality of the mail's content.[69] Many incarcerated people have complained of blurry, unrecognizable mail and photographs.[70]

Cost considerations also severely restrict contact with the outside world, limiting the ability of incarcerated people to advocate their own cases. The cost of postage, pens, and stationery all come out of an incarcerated person's facility account.[71] Incarcerated individuals must also pay for their own telephone calls.[72] In Pennsylvania, the telephone system is managed by Securus Technologies, one of the highly exploitative private prison contractors that hold monopolies over basic human necessities for incarcerated people.[73] A 2019 report found that in Pennsylvania, a fifteen-minute call through Securus costs an incarcerated person

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[66] *See, e.g.*, 28 C.F.R. § 540.44 (2021).

[67] *See* Sawyer, *supra* note 62; PA., DEP'T OF CORR., *supra* note 63.

[68] Pennsylvania Department of Corrections lists the following location St. Petersburg as one of its mailing addresses for all of its facilities: PO Box 33028 St Petersburg, FL 33733. *See*, *e.g.*, *SCI Phoenix*, PA. DEP'T OF CORR. https://www.cor.pa.gov/Facilities/StatePrisons/Pages/Phoenix.aspx [https://perma.cc/Q62A-57Z7] (last visited June 22, 2022). *See, e.g.*, Mia Armstrong, *Is This What Prison Mail Looks Like Now?*, SLATE (Dec. 5, 2018), https://slate.com/technology/2018/12/pennsylvania-prison-scanned-mail-smart-communications.html [https://perma.cc/W6BF-PDPK].

[69] Armstrong, *supra* note 68. Though prisons are required to except attorney mail from these rules, they do not always do so. *See, e.g.*, Verified Complaint at 2, Hayes v. Wetzel, No. 1:18-cv-2099 (M.D. Pa. Oct. 22, 2018). Nor do these exceptions apply to incarcerated individuals without counsel.

[70] Armstrong, *supra* note 68.

[71] COMMONWEALTH OF PA., DEP'T OF CORR., POLICY STATEMENT: INMATE MAIL AND INCOMING PUBLICATIONS, DC-ADM 803 (2020).

[72] COMMONWEALTH OF PA., DEP'T OF CORR., POLICY STATEMENT: AUTOMATED INMATE TELEPHONE SYSTEM, DC-ADM 818 (2012).

[73] *Securus: Call Rates and Kickbacks*, PRISON PHONE JUST. https://www.prisonphonejustice.org/provider/t-netix/ [https://perma.cc/9A76-A6U6] (last visited Nov. 9, 2021).

approximately eighty-eight cents, while that year, the company generated $3,470,853 in kickback revenue.[74]

Security has always been the predominant purported objective in the prison system, and it has been constantly used to justify a denial of legal access. Overcrowding, deplorable living conditions, low-level education, unqualified staff, and noise pollution all contribute to violence, hopelessness, belligerence, institutionalization, and animosity toward authority.[75] Prison administrators seek to address the effects of these conditions through harsh rules and regulations that produce more isolation and confrontation than rehabilitation.[76] Institutional infractions are punishable by stripping basic autonomy and can result in lengthy stays in isolation.[77] Even minor infractions such as wearing pant hems above the ankles incur a loss of phone or visiting privileges, an incarcerated person's lifeline to the outside world.[78] When measured by recidivism rates, it is clear that these punitive measures have been counterproductive.[79] The documented level of unsuccessful reentry into the community is partially caused by prison measures that isolate individuals and further strip them of autonomy.

Funding allocated to prisons is designated primarily for security needs at the expense of rehabilitation. In many institutions, rehabilitative measures and educational programs have either been denied outright or terminated due to security concerns.[80] Providing incarcerated people access to education and rehabilitative resources is still largely considered unconventional. Given that over ninety percent of those incarcerated reenter society, everyone suffers because of this penological approach to prison operation.[81]

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[74] *Id.*

[75] *See* Lorna Collier, *Incarceration Nation*, 45 MONITOR PSYCH. 56 (2014).

[76] *See id.*

[77] Tiana Herring, *The Research is Clear: Solitary Confinement Causes Long-Lasting Harm*, PRISON POL'Y INITIATIVE (Dec. 8, 2020), https://www.prisonpolicy.org/blog/2020/12/08/solitary_symposium/ [https://perma.cc/TJ2M-U6NR].

[78] *See Prisoner's Rights: Discipline and Punishment*, JRANK L. (2021), https://law.jrank.org/pages/9402/Prisoners-Rights-Discipline-Punishment.html [https://perma.cc/KBK3-ENYL].

[79] *See* RYAN KING & BRYAN ELDERBROOM, IMPROVING RECIDIVISM AS A PERFORMANCE MEASURE 2–3 (2014), https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/UI-ImprovingRecidivism.pdf [https://perma.cc/3MZJ-PMK9].

[80] This issue has existed for decades. *See* J. Lillis, *Prison Education Programs Reduced*, 19 CORR. COMPENDIUM 1, 1–11 (1994).

[81] Timothy Hughes & Doris James Wilson, *Reentry Trends in the United States: Inmates Returning to the Community After Serving Time in Prison*, BUREAU JUST.

IV. RESTORATION OF AGENCY: A CASE STUDY

There is important scholarship about the abolition of police and the carceral state that endeavors to advance the promise of a better future. But for those locked up today, restoration of autonomy is a critical and urgent need. Policies must immediately be enacted to restore agency to those who have been robbed of it by our criminal punishment systems. As one who directly experienced and survived the systems discussed above, the author offers the following case study as a means to facilitate the restoration of agency for incarcerated persons.[82]

Graterford Prison was constructed in 1929, with a thirty-foot wall surrounding two thousand cells spanning five city blocks.[83] Its closing in 2018 marked the end of an era.[84] While in operation, access to college courses,[85] outside volunteers,[86] and community workshops allowed incarcerated individuals to tap into their agency, talents, and leadership skills.[87] Graterford was unique in

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STAT., https://bjs.ojp.gov/content/pub/pdf/reentry.pdf [https://perma.cc/Y3XK-QGYH] (last updated Aug. 20, 2003) .

[82] Marco Maldonado was sentenced to life without parole and served 28 years in prison for a crime that he did not commit, before earning two degrees, learning the law, and successfully litigating his own release.

[83] *State Prisons*, PA. DEP'T OF CORR., https://www.cor.pa.gov/Facilities/StatePrisons/Pages/default.aspx [https://perma.cc/E5GV-5BJT] (last visited June 22, 2022).

[84] *See* Samantha Melamed & Joseph N. DiStefano, *What Happened in the Rush to Open Pennsylvania's Biggest, Most Expensive Prison?* PHILA. INQUIRER (Jan. 22 2019), https://www.inquirer.com/news/sci-phoenix-graterford-pennsylvania-prison-incarceration-wetzel-wolf-20190122.html.

[85] *The Villanova Program at SCI Phoenix*, VILL. UNIV., https://www1.villanova.edu/university/liberal-arts-sciences/about/phoenix.html [https://perma.cc/Q5FG-CRHB] (last visited June 22, 2022). Villanova University has a long history at Graterford Prison dating back to the 1970s. *Id.*

[86] *See* Julie Miller, *Let's Circle Up: An Introductory Restorative Justice Workshop*, HAVERFORD COLL. (Jan. 30, 2020), https://www.haverford.edu/peace-and-global-citizenship/news/lets-circle-introductory-restorative-justice-workshop-0 [https://perma.cc/L6M7-ZX8Y]. Inside-Out is another organization that worked with many incarcerated men at Graterford Prison. *About Us: The Story of Inside-Out*, INSIDE-OUT PRISON EXCH. PROGRAM, https://www.insideoutcenter.org/about-inside-out.html#story [https://perma.cc/C3LM-MB6R] (last visited June 22, 2022).

[87] Organizations created and led by incarcerated individuals at Graterford Prison were transformational both inside and outside of the prison. *See, e.g.*, *Parole Eligibility Education Initiative*, LIFERS INC., https://www.lifersincpa.org [https://perma.cc/8NK3-S2XA] (last visited June 22, 2022); *Graterford State Correctional Institution*, PRISONPRO, https://www.prisonpro.com/content/graterford-state-correctional-institution [https://perma.cc/46AE-7GRY] (last visited June 22, 2022). Other organizations such as a branch of the NAACP and The Latin American Cultural Exchange Organization ("LACEO") operated with success within the prison.

that it incorporated,[88] to a limited degree, the principles posited by social scientist Timothy Flanagan for a meaningful incarceration experience: (1) "[m]aximizing opportunities for [the incarcerated to exercise] choice [in living circumstances]"; (2) "[c]reating opportunities for the prisoner to pursue a meaningful life in prison"; and (3) "enhancing the permeability of the institution so that the offender does not lose all contact with the outside world."[89]

Graterford was viewed by social scientists as a needed response to the demands created by the overpopulated Eastern State Penitentiary. Initially, the purpose of Graterford Prison was to warehouse incarcerated men by having them work on the prison farm.[90] Attendance in rehabilitative programs such as schooling was often the second choice to prison employment due to the economic strain suffered by most of the incarcerated.

Ultimately, Graterford Prison became a unique institution in the state of Pennsylvania during the 1970s. At the time, a traditional punitive approach to punishment was the prevalent penological model in the nation.[91] As the role and efficacy of incarceration was called into question by social scientists,[92] Graterford, albeit significantly constrained, saw the dawn of a new model. Rehabilitative approaches ranged from interaction with outside volunteers to educational programs designed to empower individuals.[93] Access to college courses and community workshops designed to explore issues about criminal justice illustrate a few examples of Flanagan's theory in practice within the prison.[94] Even the choice to live in a single or double cell was given to many of those incarcerated behind Graterford's walls. The goal was to

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[88] *SCI Phoenix*, PA. DEP'T OF CORR., https://www.cor.pa.gov/Facilities/StatePrisons/Pages/Phoenix.aspx [https://perma.cc/XTN9-7NEN] (last visited June 22, 2022).

[89] Timothy J. Flanagan, *Long-Term Prisoners: Their Adaptation and Adjustment*, 2 FED. PRISONS J. 45, 50 (1991).

[90] COMMONWEALTH OF PA., REPORT OF THE GOVERNOR'S PANEL TO INVESTIGATE THE RECENT HOSTAGE INCIDENT AT GRATERFORD STATE CORRECTIONAL INSTITUTION 27 (1982), https://www.ojp.gov/pdffiles1/Digitization/88092NCJRS.pdf [https://perma.cc/8LPR-Y3BX].

[91] *See* Jeremy Travis & Bruce Western, *The Era of Punitive Excess: The Criminal Justice System Is Marred by an Overreliance on Excessive Punishment*, BRENNAN CTR. JUST. (Apr. 13, 2021), https://www.brennancenter.org/our-work/analysis-opinion/era-punitive-excess [https://perma.cc/EV48-679T].

[92] PAUL GENDREAU, CLAIRE GOGGIN & FRANCIS T. CULLEN, THE EFFECTS OF PRISON SENTENCES ON RECIDIVISM (1999), https://www.prisonpolicy.org/scans/e199912.htm [https://perma.cc/RZ3S-4PK2].

[93] *See, e.g.*, *The Villanova Program at SCI Phoenix*, *supra* note 85.

[94] *Id.*

allow individuals to access their personal agency through autonomy. As a result, the prison became a marketplace for the creation, design, and operation of organizational groups led by remarkable incarcerated people.[95]

Graterford Prison was by no means a paragon of rehabilitative or progressive penology. Significant violence and deprivation of resources existed within the prison.[96] Prison administrators and staff focused on security at the expense of rehabilitation.[97] It was not until the 1970s that prison administrators realized that an institutional ethos of agency could exist without compromise to security.[98] With limited administrative interference, incarcerated people developed, organized, and operated social organizations and programmatic groups. The Para-Professional Law clinic,[99] NAACP,[100] LIFERS,[101] and other organizations applied and were granted 501(c)(3) statuses. A minimal level of administrative oversight existed, but organizational leaders and members experienced a significant level of personal and communal agency within the prison context.[102] Events, meetings, and fundraisers were led by the incarcerated.[103] Perhaps the most significant element contributing to participation was the voluntary nature of organizational and group activity.

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[95] *Parole Eligibility Education Initiative*, LIFERS INC., https://www.lifersincpa.org/wp-content/uploads/2021/05/LINC-EligibilityIniative.pdf [https://perma.cc/A6CW-VSST] (last visited June 22, 2022); *The Villanova Program at SCI Phoenix*, *supra* note 85; *see* LACEO ART & OUTREACH (Nov. 24, 2008), laceoart.blogspot.com [https://perma.cc/HEJ2-DMRJ].

[96] For a description of life at Graterford, including daily violence, see JOSHUA DUBLER, DOWN IN THE CHAPEL: RELIGIOUS LIFE IN AN AMERICAN PRISON (2013). *See also* Samantha Melamed, *KFC, Dinosaur Prints, Rock'n'roll: The Stranger-Than-Fiction Forgotten History of Graterford Prison,* PHILA. INQUIRER (May 30, 2018), https://www.inquirer.com/philly/news/pennsylvania/sci-graterford-phoenix-history-mass-incarceration-pennsylvania-montgomery-county-philly-state-prison-eastern-state-penitentiary-20180530.html.

[97] *See* Melamed, *supra* note 96.

[98] Marco Maldonado, A History of the Organizations at Graterford Prison (Spring 2018) (M.A. thesis, California State University Dominguez Hills) (Scholarworks).

[99] The Para Professional Law Clinic was founded in 1971 and incorporated as a non-profit corporation in 1976. The clinic represented incarcerated men both in legal courts and administrative hearings within the prison. Para-Prof. L. Clinic SCI-Graterford v. Beard, 334 F.3d 301, 303 (3d Cir. 2003).

[100] The Graterford branch NAACP was established in 1994. It is one of 28 active prison branches. *See* Maldonado, *supra* note 98, at 35–37.

[101] LIFERS became an incorporated entity in 1981 whose mission was securing legislation authorizing parole for people sentenced to life in Pennsylvania. *See* Maldonado, *supra* note 98, at 29–32.

[102] *See, e.g.*, Melamed & DiStefano, *supra* note 84.

[103] *Id.*

The fact that organizations and groups were led by incarcerated people attracted membership and participation not only from within the prison population, but also the greater community. Villanova University became a presence within the prison.[104] The University provided college courses that afforded the opportunity to earn a bachelor's degree.[105] Volunteers from the community participated in various group functions within the prison.[106] Community workshops facilitated by incarcerated people included participants from the Philadelphia and Montgomery County District Attorney Offices, professors and students from surrounding universities and colleges, and members of the community at large.[107] Events and fundraisers were coordinated and sponsored by the aforementioned prison organizations that ranged from book drives to cake sales.[108] Some proceeds were funneled back into the prison by providing prizes for poetry contests and bingo nights.[109] More importantly, money raised funded scholarships and school supplies for students from impoverished neighborhoods.[110] Additionally, religious groups were allowed to have outside faith members participate in services inside of the institution.[111] Each of these efforts fostered a sense of community connection with the outside world, and offered the opportunity for those incarcerated to make the world a better place.[112]

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[104] *The Villanova Program at SCI Phoenix*, *supra* note 85.

[105] *Id.*

[106] *See* Melamed, *supra* note 96. *See* COMMONWEALTH OF PA., DEP'T OF CORR., POLICY STATEMENT: VOLUNTEERS AND INTERNS IN THE DEPARTMENT OF CORRECTIONS, 1.1.6, at 2-1 (2013) [hereinafter PA. DEP'T OF CORR VOLUNTEER POLICY] ("The facility should utilize volunteers, public visitors and interns in as many diverse program areas as possible."); *see also supra* notes 84, 85, 95.

[107] *See, e.g.*, Maldonado, *supra* note 98. *See also* Samantha Melamed, *Can Radical Listening Transform Prison Culture? One Pennsylvania Institution is Finding Out*., PHILA. INQUIRER (Nov. 9, 2019), https://www.inquirer.com/news/just-listening-sharon-browning-philadelphia-kensington-sci-phoenix-pennsylvania-20191110.html.

[108] *See, e.g.*, Maldonado, *supra* note 98.

[109] *Id.*

[110] *Id.* n.12 (citing Dan Geringer, *Parole Models: Lifelong Friends Work with City to Help Former Inmates*, PHILA. INQUIRER (Nov. 18, 2013), https://www.inquirer.com/philly/blogs/clout/Parole-models-Lifelong-friends-work-with-city-to-help-former-inmates.html); *Graterford Inmates Give Paychecks To Scholarships*, PHILA. PUB. REC. (Aug. 3, 2012), http://www.phillyrecord.com/2012/08/graterford-inmates-give-paychecks-to-scholarships/.

[111] *See* PA. DEP'T OF CORR VOLUNTEER POLICY, *supra* note 106.

[112] *Id*. at 1–1 ("It is the policy of the Department to permit volunteers and public visitors to provide a number of direct services to inmates, as well as serving as a link between the Department and the community.").

Despite the buzz, conducting any organizational activity in prison was laden with obstacles that could never be fully explained. Scheduling was always an issue. Administrative hurdles constantly arose; gate clearances were always "lost," which led to the cancellation of activities and functions. Prison lockdowns were unpredictable. The lack of resources such as computers and updated research materials, coupled with the overall prison environment, constantly worked against the incarcerated and those invested from the community. Still, there were many who continued to participate and commit themselves to educational and organizational work inside of the prison.

Graterford Prison's model of rehabilitation has not been scientifically researched. This could be attributable to the exorbitant number of people serving death by incarceration sentences in Pennsylvania.[113] It may be that the scientific community has simply overlooked the prison population. However, there are other examples demonstrating how peer-led group activity operates within prison and its effects for those reentering society.[114] Research has demonstrated that access to quality education in prison lowers the possibility of recidivation for returning citizens.[115] According to a 2014 Rand report, correctional education for incarcerated adults reduces recidivism by thirteen percent while being cost effective.[116] Incorporating findings of recent research can effectively change policy that will help create a more meaningful and connected incarceration experience, as posited by Flanagan. Consequently, the reentry process will be ameliorated by employment opportunities that otherwise would have been unavailable. More importantly, generational and inter-community incarceration can be permanently interrupted.

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[113] *See* COZZENS & GROTE, *supra* note 43.

[114] *See* BAZ DREISINGER, INCARCERATION NATIONS: A JOURNEY TO JUSTICE IN PRISONS AROUND THE WORLD 16–18 (2016); LARRY J. SIEGEL, INTRODUCTION TO CRIMINAL JUSTICE 622, 625 (2009).

[115] LOIS M. DAVIS ET AL., RAND CORP., HOW EFFECTIVE IS CORRECTIONAL EDUCATION, AND WHERE DO WE GO FROM HERE? THE RESULTS OF A COMPREHENSIVE EVALUATION (2014), https://www.rand.org/content/dam/rand/pubs/research_reports/RR500/RR564/RAND_RR564.pdf [https://perma.cc/L7XQ-MFQZ].

[116] *Id.*

CONCLUSION

The criminal judicial and carceral systems were designed to silence individuals and remove their agency. Removal of agency is effectuated through law enforcement tactics, a decimated right to counsel, and deeply repressive systemic prison conditions. The courts have only compounded this problem by closing their doors to incarcerated people and providing additional mechanisms to ensure their silence. Working in lockstep, these systems have stripped individuals and their communities of agency. This oppressive scheme must be dismantled. And for those locked away at this moment, policies must be enacted immediately to restore their autonomy.