

Still Out of Sight, but Not Out of Mind:
A Brief History of San Francisco County Sheriff Department's
Prisoner Legal Services, 1972-Present

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A Passion Paper! I'm writing about a jail that's forty years old. I'm writing about a jail that has no dining room, where inmates are fed in their cells, looking at the toilet bowls....

...I'm writing about...a city that allows this crap to continue.

...I'm writing about...a city that thinks so little of Rehabilitation and cutting down recidivism that it doesn't have one permanent Rehabilitation officer on its payroll, a city that takes its jail and hides it out in another county, with the theory: Out of sight, out of mind.

...I'm writing about the loss of human life and dignity, with some 10,000 people per year coming through the San Francisco County Jails, like Guinea Pigs on a treadmill: Coming in, staying awhile, getting out, coming back. And one day you're dead and it's all over and you've gotten nothing out of your life. Last week I ran into someone that has spent 11½ of the last 13 years in jail—with never more than a sixty day sentence. I guess Justice really triumphed in this case. A Passion Paper? What more is there to say? Let the record speak for itself and let the city and its people stand indicted!

- Raymond Towbis
February 19, 1974

“Out of sight, out of mind.” Such is the typical treatment of prisoners in the United States. Despite its progressive reputation, San Francisco is no different, at least not historically. In 1934, San Francisco’s main jail, a six-story monolith nestled among rolling hills, was opened south of the city near San Bruno. In 1958, plans to build a new criminal courts building in what seemed to many to be the most logical place—Civic Center, where the Sheriff’s office and all other courts are located—were successfully scuttled by the Opera set, who preferred not to have that element in the area.¹ The Hall of Justice, in and near which the remainder of San Francisco’s jails are located, was instead located in an industrial area well south of Market Street. Out of sight, out of mind.

By the early 1970’s, however, what remained out of sight in San Francisco could no longer remain out of the minds of a new, progressive Sheriff, a loud-spoken community organizer, a resourceful young lawyer, and a crew of “wild-eyed radical”

¹ Jane Jacobs, *The Death and Life of Great Cities* 172 (Vintage Books 1961).

students and ex-offenders.² Together, they began meaningfully responding, for the first time, to the copious needs of the thousands of men and women who cycle through San Francisco's jails in any given year. Their efforts laid the foundation for an organization that represents the most ambitious and enduring county effort in U.S. history to provide prisoners with meaningful access to the courts. That organization is Prisoner Legal Services, and this is its story.

There's an Entirely New Kind of Sheriff in Town

In 1972, four young San Franciscans got together to film a documentary of their city's jails. The film opens with a close-up of a white man in a suit, standing in a long, stark hallway opposite a row of prison cells. His demeanor suggests he is nearing fifty, though he is actually in his mid-30s. He offers a brief monologue that begins, "I think the ideal jail is a jail that doesn't exist." His closing lines echo this sentiment: "The very existence of these jails is a symptom of a profound social problem. Simply put, the bigger the jail, the bigger the problem. That's where it's at." Between these statements are pointed observations on America's social inequities and "standardized patterns of hate." One wonders for a moment how this man got into the jail in the first place. Then the words "The Sheriff" pop onto the screen, and you realize he used his keys.³

Richard Hongisto was San Francisco's first progressive Sheriff, and he was determined to "crack open the jails."⁴ By the 1970's, County Jail #3 had begun its slide into disrepair, and was housing far more inmates than its increasingly drafty and infested cells were intended to hold. But rehabilitation efforts in the jails were virtually non-

² Interview with Michael Marcum, former Assistant Sheriff in San Francisco, Cal. (July 21, 2009).

³ *The Jail* (Delator Films 1972) (documentary).

⁴ Interview with Michael Marcum.

existent, overseen by one heart-attack prone man who regularly called in sick. Repeat offenders were, therefore, the rule.

When, after a riot in County Jail #3 in early 1973, the Rehabilitation Services Coordinator finally quit, Hongisto did not officially hire a replacement. Instead, he looked outside city and county government to begin serving prisoner needs. First, he tapped Raymond Towbis, a friend from his days as a San Francisco police officer, to take over Rehab duties. Towbis, a thirty-five-year-old community organizer, had made a name for himself locally in the late 1960's through Mission Rebels, an organization he spearheaded that worked to create opportunities for underserved inner-city youth. He had grown up in a tough Brooklyn neighborhood and, as his "Passion Paper" suggests, he was bull-headed, irreverent to a fault, and vehemently anti-establishment. He was also "a terrific salesman," and therefore exactly the right person for the job.⁵

Towbis immediately realized the Sisyphean nature of the task, with over a thousand inmates in the jails and only one of him. He set about securing funds, applying for and winning \$250,000 in VISTA funds from the federal government.⁶ The funds covered his salary, but also helped pay the salaries of twenty students working through a new program Towbis had heard about, the New College's University Year for Action (UYA).⁷ Providing civilian access to jails was unprecedented, but Towbis convinced New College to let him supervise students in the jails there. Over the course of a year, these undergraduate students, known as UYAs, would earn \$167 a month and ten

⁵ Interview with Michael Hennessey, Sheriff in San Francisco, Cal. (June 23, 2009).

⁶ Ernest Lenn, *New Lift for Jail Inmates*, SF Examiner 1 (Sept. 12, 1973). VISTA (Volunteers in Service to America) was a domestic Peace Corps Program.

⁷ New College was at the time "an upstart radical unaccredited university operating out of a former funeral home on Valencia Street," as Hennessey describes it (Towbis Papers). Till its demise in 2007, basically all that had changed was its accreditation status.

credits.⁸ In addition to working with prisoner requests in the jails, UYAs helped facilitate drug and alcohol programs, job development programs, and even coordinated outside volunteer efforts, such as clothing drives, to help incarcerated people and their families. In Towbis' words, "the volunteers are mellow dudes who are really interested in helping people."⁹ "None are radicals."¹⁰

This was salesmanship, of course. According to one of those first UYAs, Michael Marcum, who was one of two ex-offenders working in the program, "We were a bunch of wild-eyed radical hippies." In his own way, so was Towbis. Meanwhile, the Sheriff's department was "all straight, all white, all male," and most were not very excited about the changes afoot.¹¹ Supervising all of these people was Hongisto himself, who, in addition to being progressive, was also "dictatorial." Towbis' accomplishments notwithstanding, Marcum recalls that "trying to win people over"—whether deputies in the jails or county and city supervisors—"was next to impossible under Hongisto."

Still, Rehab had managed to reinvent itself. The transition was made official when, in late 1974, nearly eighteen months after starting the job, Towbis succeeded in convincing the city supervisors to name him Rehabilitation Services Coordinator for the San Francisco County Jails.

⁸ Paul Liberatore, *Jail Caseload Workers: Trappings Aren't Ivory Tower*, source/date unknown (copy in 'Towbis Papers' on file with the San Francisco Sheriff's Department and made available to author).

⁹ *Id.* As the article makes clear, Towbis should have been more careful with his choice of words. Nearly half of the "dudes" working as UYAs the first year were women.

¹⁰ *Id.*

¹¹ Interview with Michael Marcum.

Enter a Lawyer...

Michael Hennessey didn't know what to do with himself. It was late 1973, he had just passed the California State Bar exam after completing studies at the University of San Francisco School of Law, but he didn't have any idea what kind of law he wanted to practice. He had been intrigued by a Poverty Law class in school, had externed with the Marin County Public Defender's Office, and had also worked with a local non-profit legal services agency, but had no leads and little direction. One day, someone from the non-profit called him and asked if he had any interest in working for the Sheriff, whose Legal Counsel was taking a six-month leave of absence. Why not? He interviewed for the position, and got the job.

The job suited Hennessey fine, but he became particularly interested in the new social services work starting in the jails. Towbis and the UYAs had developed a reputation, regardless of what Towbis told the papers. "[The UYAs] were fond of creating havoc in the jails and Ray was the very willing ring leader. Anybody who messed with the UYA kids had to suffer the wrath of Ray."¹² Hennessey was intrigued, and decided to approach Towbis to see if he could become involved.

"We hate lawyers," was Towbis' curt reply.

Nevertheless, Hennessey began working with the UYAs, assisting them in putting together legal forms and information packets for the prisoners. Over the next six months, working in the jails grew on Hennessey, and his more understated and diplomatic version of passion and dedication grew on Towbis. When Hennessey's position expired in June 1974, Towbis asked him if he had any plans. Hennessey had none, so Towbis invited him to stay.

¹² Michael Hennessey, *Day Zero* (Towbis Papers).

“We hate lawyers,” he repeated, “but we kind of like you, and we could use a legal advisor. Why don’t you come work in the jails?”

Kind words were not all Hennessey was offered. The potential legal advisor of Rehab was also promised a salary, secured by VISTA funds, of \$190 per month, meager even by 1974 standards. Hennessey would also get ten credits at New College, which were, of course, basically worthless to him. Towbis advised him to take his time in deciding. After three days of “soul-searching,” during which he came to terms with the fact that he would have to receive food stamps and Medicaid, Hennessey decided to take the job. He read up on the Penal Code, consulted assorted books on representing prisoners and prisoners’ rights, and then hit the jails.

To tackle the challenges of his new position, Hennessey followed a course similar to that taken by Towbis, tapping New College’s recently established School of Law for legal interns to interview prisoners. The Assistant Dean at the school was impressed with the program and with Hennessey, and put him in contact with people she knew at the San Francisco Bar. This led to the interest of foundations. Hennessey did some persuasive writing, raised \$13,000 for his own 1975 budget and christened the new legal arm of Rehab “San Francisco County Jail Prisoner Legal Assistance” (“SFCJPLA”).

“I went out and had a stamp made,” Hennessey laughs. “And I would stamp that on top of a white piece of paper and that was my stationery.”

When he wasn’t shopping around for grants, Hennessey spent much of the first couple of years as legal advisor trying to get jail administrators to pay more respect to prisoners’ rights. His primary tack was to go to the courts, assuming that the most powerful way to force the system to change would be by court order. But judges would

routinely deny his cases, no matter how much work he put into them or how strong the case. In one instance, he had a case in which prisoners' due process rights of notice were clearly being violated, and he had case law backing his position. After being forced to wait all day, he made a strong, passionate and convincing presentation to the court. The judge asked him if he was finished. Hennessey said he was. The judge responded, "Dismissed."

He persevered until, one day, Richard Hongisto suggested a different approach. At issue was a book. Several prisoners in the women's jail were angry with deputies because they were denying their requests for copies of the recently published feminist bestseller *Our Bodies, Ourselves*.¹³ They complained to Hennessey about the situation, and Hennessey agreed that the deputies were overstepping their bounds. He thought he had a good case against the Sheriff, whom he informed, "as a courtesy," of his intent to sue. Hongisto, taken aback, asked what the rules and regulations said about deputies' duties to fulfill prisoner requests. Hennessey replied that there weren't any; deputies simply did whatever they wanted to do.

"Well don't sue me," responded Hongisto, "write new rules and regulations!"

A "big light" went on over Hennessey's head. He realized that if he could convince the administration to adopt rules and regulations that were beneficial to the prisoners, he would get much further than he had gotten in court.

"Prisoners didn't have many rights" at that time, but "we were trying to carve out rights within this particular department."

¹³ Boston Women's Health Book Collective, *Our Bodies, Ourselves: A Book by and for Women* (Simon and Schuster 1973).

Unfortunately, by the end of the 1970's it looked as if this experiment in actively and aggressively recognizing prisoners' rights might be coming to an end. Ray Towbis had left the organization in 1976 to pursue other interests, leaving Hennessey in full command of Rehab/SFCJPLA. Then, in 1978, Richard Hongisto accepted an invitation to serve as Cleveland's Chief of Police under Mayor Dennis Kucinich. His replacement did not share his progressive ideals, and pulled back on department support of the programs. Morale began to suffer. Hennessey, discouraged, decided it might be time to move on and find "a real job."

One night, he joined some friends for a drink, including his old friend Towbis, who had opened a pottery shop in North Beach. It was early 1979, and a new Sheriff would be elected later that year. Someone, possibly Towbis, and probably as a joke, suggested that Hennessey run for Sheriff. Though he had no political experience, the lawyer knew the jails inside and out, and by the end of the night the idea had started gaining traction.

"I figured I was gonna quit anyway, so I might as well go out in a blaze of glory."

In May of 1979, Hennessey declared his candidacy. Five months later, he won. No one was as surprised as he.

"Here I was put in charge of a jail system—at that time I think we had 350 or 400 deputy sheriffs and a jail system with a thousand or 1200 prisoners—and I'd never run anything larger than a ten to twelve person law student project."

Not everyone was happy. Deputies might not have had a problem with Rehab when it was just Rehab, but when Rehab was suddenly running the show (Hennessey

hired Towbis as his Chief of Staff and Michael Marcum eventually became Prisoner Services Director), well, that was an entirely different matter.

“It was pretty shocking to the deputies,” Hennessey recalls. The new Sheriff received clear if sometimes petty signals of the deputies’ anger over the new pecking order. “I used to park my car in the garage down in the Hall of Justice. The protocol was that when the lot was full, you would leave your keys in the car so that if someone needed to leave they could move your car forward or back and get out. And I’d come down and park and go up to the jails and the keys would end up locked in the car. That happened several times. The first time I assumed I did it myself. The second time I realized that, well, these things happen.”

In spite of the tension, Hennessey did not waiver in his support for the program. On the contrary, it seems to have motivated him to make it one of his first priorities.

“After he got elected,” recalls Marcum, “he called me up and said ‘The inmates are taking over the jails! We’ve gotta do something!’”

Of course, by ‘inmates,’ he meant them. Taking over as Sheriff in early 1980—just as fellow Californian Ronald Reagan assumed the Presidency—Hennessey knew he needed to end Rehab’s dependence on federal funding. Convincing the city would be difficult, even after his election confirmed the popularity of his programs among San Francisco voters. But Hennessey had one particularly compelling tool with which to make his case....

...Add a Well-timed United States Supreme Court Decision...

Michael Hennessey's election as Sheriff was all the more remarkable when one considers the tenor of the times. Ronald Reagan's successful White House campaign was under way, liberally deploying "tough on crime" rhetoric that found receptive audiences everywhere. On both national and local levels, by the late 1970's the prison reform movement was breaking down, along with many other liberal initiatives begun in the 1960's and early 1970's. As early as 1973, New York State had enacted its harsh 'Rockefeller drug laws,' which mandated minimum sentencing at the level of second-degree murder for simple possession of narcotics or marijuana.¹⁴ In 1977, California became the second state in the nation to switch from indeterminate sentencing to determinate sentencing, removing the ability of prisons and parole boards to decide whether a prisoner was ready to return to society, and reducing incentive for prisoners to reform as it would have little to no effect on their time served. "The Legislature finds and declares that the purpose of imprisonment for crime is punishment," not rehabilitation, stated the new law.¹⁵

While San Francisco bucked this statewide and national trend in electing Hennessey, the United States Supreme Court also remained anomalous. In the late 1970's, the Court was still building on decades of jurisprudence that recognized the rights of the incarcerated. Most of the earlier cases had focused on the specific rights of indigent inmates, however, without finding any general constitutional right of prisoners. This

¹⁴ Madison Gray, *New York's Rockefeller Drug Laws*, Time Online (April 2, 2009), <http://www.time.com/time/nation/article/0,8599,1888864,00.html>.

¹⁵ Cal. Pen. Code Ann. § 1170(a)(1) (West 2004). Cited in Sean Hayes, *The End Of Determinate Sentencing: How California's Prison Problem Can Be Solved With Quick Fixes and A Long Term Commission* (Stanford University Criminal Justice Center Working Paper, Jan. 2006) (available at SSRN: <http://ssrn.com/abstract=977239>).

began to change in 1969 when the Court ruled “that inmates can aid one another in seeking access to the courts in the absence of alternative means of legal assistance.”¹⁶ Certain prisoners who were familiar with laws and the legal system, or, perhaps, were simply able to read, were frequently using their knowledge and abilities to assist other inmates with their cases or any other legal problems they might have but could not tackle on their own. These “jailhouse lawyers” tended to be unpopular with Sheriffs or deputies, who often targeted them for retaliation or harassment.¹⁷ In *Johnson v. Avery*, the Court gave jailhouse lawyers constitutional protection from state actors who would infringe on their right to assist their fellow inmates.

A more far-reaching decision came down eight years later. In 1977, North Carolina petitioned the Court to reconsider a lower court’s finding that its sole prison law library was “severely inadequate” in meeting all of the legal assistance needs of the state’s inmate population, and that it must therefore establish law libraries in each of its prisons.¹⁸ The State argued that law libraries were too expensive and that prisoners wouldn’t know what to do with them anyway. Six Justices were not convinced, and affirmed the decision. In an opinion penned by Justice Marshall, the Court announced “It is now established beyond doubt that prisoners have a constitutional right of access to the courts.”¹⁹

The opinion in *Bounds v. Smith* made very clear what “access” means:

...the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal

¹⁶ James E. Robertson, ‘*One of the Dirty Secrets of American Corrections*’: *Retaliation, Surplus Powers, and Whistleblowing Inmates*, 42 U. of Mich. J. of L. Reform 611, 622 n. 73 (2009).

¹⁷ *Id.* at 622-623.

¹⁸ *Bounds v. Smith*, 430 U.S. 817 (1977) at 818.

¹⁹ *Id.* at 821.

papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.²⁰

Given the option between libraries and legal assistance, most municipalities, particularly at the county level, have chosen the former as their means of satisfying this mandate. One county, however, already had actual jailhouse lawyers serving its incarcerated population by the time *Bounds* was decided. That county, of course, was San Francisco.

Rehab/SFCJPLA, however, was in trouble. According to Stephen Greenberg, a former UYA who took over as Director of the program after Hennessey's election, morale was still down, in large part because of the conservative swing in the political landscape. Funding was also down. By this point the program depended on monies distributed through the Comprehensive Employment Training Act ("CETA").²¹ CETA provided funds for low-income people and students working in the public interest. It was also a favorite target of disdain in Reagan's campaign. Shortly after being sworn in as President, he gutted the program.

Hennessey needed to convince the city that Rehab/SFCJPLA deserved a place in the budget. Citing *Bounds*, Hennessey argued that the city was mandated to respect prisoners' rights to access to the courts. One option was to build a couple of libraries, as most U.S. counties had done. The other option was to stick with Rehab/SFCJPLA, and this, he convinced the city supervisors, was better. First, he demonstrated that it was cheaper to hire a lawyer than to build, stock, and maintain law libraries. Second, he warned that if the city built libraries but did nothing more, all kinds of misunderstood and groundless lawsuits would be filed by prisoners, adding extra costs and delays.

²⁰ *Id.* at 828.

²¹ Interview with Stephen Greenberg, former Director of Prisoner Legal Services in San Francisco, Cal. (July 8, 2009).

“I told the city they would be a lot better off having a live body who can explain the law to people and bring legitimate complaints forward, and convince people when they have no standing under the law that they would be wasting their time and everyone’s time by filing frivolous cases.” He added for good measure that “a live body” could reduce litigation by making necessary changes through administrative, rather than legal, means. Recalling his ultimate success, Hennessey humbly recalls, “That was sort of how I convinced the city mothers and fathers to give me money for a budgeted lawyer’s position.”

That was also how Hennessey ensured that what had started as a “wild-eyed” experiment in the heady days of the early 1970’s would continue to evolve and mature well into the next century.

...And the Rest, is History

Under Sheriff Hennessey, Rehab/SFCJPLA officially became Prisoner Legal Services (“PLS”), newly blessed with a place in the city budget as mandated by the Supreme Court. Of necessity, the court’s mandate of providing “meaningful access to the courts” is more circumscribed than the role Rehab had initially played in the jails, with UYAs involved in nearly every aspect of a prisoner’s life, from legal needs to drug programs, to job placement, even family issues. Certain of these issues became the focus of an increasing number of drug or anti-violence programs that have been developed over the years, and prisoners can work with other organizations like the Northern California Service League when they need assistance with their families. For just about every other service—from resolving disputes between jail administrators and prisoners, providing

information and assistance in understanding criminal charges, filing a range of legal motions, writs and claims, or even getting married or divorced—PLS is there.

Challenges Faced and Victories Won by PLS Directors

As was the case in the beginning and, barring a sudden decrease in the jail population, is likely to continue to be the case well into the future, serving the numerous needs and requests of the prisoners is a great challenge. The challenge has increased as the legal internship program shifted from a year-long program exclusively for New College law students to an intense, competitive and rewarding (though unpaid) summer program drawing students primarily from the major Bay Area law schools. These interns, most of whom have little to no experience with the criminal justice system, face a steep learning curve at the beginning of each summer, and not just because the rules, regulations, and legal codes they must master and disseminate among prisoners are numerous and complex. PLS presents a valuable and difficult lesson in navigating the muddy waters of conflicting interests. Some of these potential conflicts include working for the Sheriff’s office while representing the interests of persons under his guard; working out of the Public Defender’s building while helping prisoners understand their right to fire their Public Defenders; and relying on custody staff for access to the jails, even though custody staff might not always appreciate the concept of “access to the courts.”

It isn’t easy, as the majority of attorneys who have headed PLS under Hennessey have discovered. Michael Marcum, who, as Prisoner Services Director, oversaw the program until 2004, witnessed this difficulty on a daily basis. “The fact is that the PLS

Director is dealing with an insane contradiction: Representing prisoner clients while being paid by the Sheriff.”

Sheriff Hennessey’s current Chief of Staff Eileen Hirst, who first started working in the department in 1985 as Special Assistant to the Sheriff, has had a front row seat to the drama of the position and backs up Marcum’s claim. “The irony of the Sheriff being the one to implement PLS in the first place and continuing to fund it year after year is so off the charts that anyone wanting to be the PLS Director has to just take a deep breath, embrace the ambiguity of it all, and do the best he or she can to give clients the best service possible. If a Director is not conflicted and frustrated,” adds Hirst, “he or she probably is not doing the job correctly.”²²

By this rubric, each PLS Director has been very good at the job, as each has expressed some level of conflict and frustration with the nature of the organization. Randy Daar, another former UYA from New College, assumed the Director position in 1982, taking over from Stephen Greenberg. Under his watch, PLS breathed perhaps the last gasps of its original radical self—and almost paid a big price for its alleged impertinence.

Complaints from prisoners about ineffective assistance of counsel are common. Nonetheless, though nearly a decade had passed since counselors started helping prisoners with legal matters, the Sheriff’s Department still lacked concise information explaining the right to fire court-appointed lawyers. Daar knew that this was a potentially sticky issue: PLS was never intended to get involved in a prisoner’s underlying case, which is the domain of the defense attorney, and informing them about their right to fire their lawyers raised a risk of appearing to do just that. On the other hand, *Bounds* created

²² Interview with Eileen Hirst, Chief of Staff for Sheriff Hennessey, Cal. (June 29, 2009).

a mandate to help prisoners understand *all* their rights, and it was Daar's job to accomplish this.

Daar and his interns began handing out a packet called the *Pro-Per's Quick Reference Motions Manual*, which had been prepared by unrelated ex-offender organizations. A "pro-per" is a prisoner who is representing himself in court. The process is complex from start to finish, and the manual was intended to dispel confusion around the issue. However, it did so in an unabashedly "wild-eyed radical hippy" style. At times, the manual displays a clear distrust of the legal system and of lawyers. For example, in one of the manual's sample motions, a prisoner is dubbed "John Howard Innocent," his virtue cemented by his nature as the accused. The name of his Public Defender? "Howard Hangman."²³

Daar admits, in hindsight, that he set himself up for conflict.²⁴ Jeff Brown, the Public Defender at the time, accused Daar and PLS of interfering in the attorney-client relationship. In a lengthy analysis of the document, the Research Unit of the Defender's Office stated "such a manual should never be provided to a prisoner who HAS counsel," because "any manual, no matter how well written brings into play the adage that 'a little knowledge is a dangerous thing' and is bound to create second-guessing and dissension between attorney and client."²⁵

The issue made its way to the San Francisco Bar, and eventually Daar was summoned before a judge to determine whether he had indeed interfered in the attorney/client relationship. Hennessey, who empathized with Daar, came along for moral

²³ Sonny Hill, Inside/Out & Layman's Law Collective, *Pro-Per's Quick Reference Motions Manual*, 1979.

²⁴ Interview with Randy Daar, former Director of Prisoner Legal Services, Cal. (June 23, 2009).

²⁵ Memo. of San Francisco Office of the Public Defender Research Unit, *Analysis of Prisoner Services' In Pro Per Manual* (Feb. 1983) (copy on file with Prisoner Legal Services).

support. “We were all green,” says Hennessey. “We didn’t know what we were doing back then.”

When they got to the judge’s chamber, they found three judges instead of one. “It was incredibly intimidating,” recalls Hennessey. Daar was subjected to a long “tirade” about how PLS was toying with prisoners’ lives and reeking havoc with court calendars. When the judge had finished, he asked the court reporter to leave, and then asked Daar if he had anything to say for himself. He was trying to scare him. “Basically [the judge] was trying to get Randy to not tell prisoners that they had a right to do this—to challenge their attorney. That would screw up the system if they knew about that stuff.”

Daar held his ground. “I basically told them, ‘Hey, people have a right to make these decisions, a right to bring them to court. And they may hurt themselves, and we will certainly tell them that they may hurt themselves, but they have a right to make these choices, and you don’t have a right to silence us.’” Daar had to assure the judges that he was not encouraging people to file motions to fire their attorneys, and that a new information packet would be compiled for the prisoners. The judges ultimately shot down the Defender’s contention that PLS had no business informing prisoners of their right to fire their attorney. “It was a big moment for us,” Daar recalls.

After this win, and under the subsequent directorships of attorneys Betty Bortin (1985-1987) and Sharon Heath (1987-1995), PLS settled into a period of relative stability. Hennessey was becoming a very popular Sheriff, and this tended to work to the benefit of PLS. “By the time I got there,” says Heath, “PLS was part of the background

noise in the jails.”²⁶ The deputies had learned to trust the organization and its interns, who knew the value of treating them with respect.

One notable positive change during this time was the installation of the county’s first prisoner law libraries at San Bruno and in one of the men’s jails in the Hall of Justice. However, despite the greater respect paid to PLS and its director and interns by the late 1980’s and early 1990’s, there were aspects of the jails that Heath wished she had more authority to change. For one, she was surprised by the attitude of medical professionals who worked in the jails. “You would think that medics would be more sympathetic to such a needy population, but they end up more on the side of deputies.” She understands that it is difficult to put up with a generally manipulative population, but thinks the larger problem is a lack of constitutional mandate. “The standard that they have to meet is very low. Basically, as long as it isn’t ‘cruel and unusual,’ it’s fine. But what is that? Is failure to treat a toothache ‘cruel and unusual’?”

Heath also was frustrated by the difficulty in dealing with deputies who abused their power with prisoners. “Many of the deputies are wonderful human beings,” she affirms. “But there are always a few bad seeds.” One sergeant in County Jail #3 particularly disturbed her. “He was big and mean, and we kept getting abuse reports about him.” The problem was that, despite complaints from prisoners, there was never any concrete evidence against him. “The week I resigned he was promoted to Captain. I called Eileen [Hirst] and told her that if I hadn’t already quit, I would have to over this.” Although he was eventually forced to leave the department, his multiple promotions over several years illustrate the difficulty of changing the status quo in the administration of the jails.

²⁶ Interview with Sharon Heath, former Director of Prisoner Legal Services, Cal. (June 22, 2009).

When Heath announced in 1995 that she would be resigning, Prisoner Services Director Michael Marcum hired an old friend, attorney and activist Nate Harrington. This was a risky move on Marcum's part. Harrington, like Marcum, was an ex-offender. In fact, they had met in state prison.

That both were inmates in the same prison at the same time did not make their friendship likely: Marcum is white; Harrington was black. As Marcum explains it, custody staff in the prisons and jails had a long history of implementing racial segregation and inciting racial tensions on the inside. "The staff would try anything to keep us at each other's throats," Marcum recalls. By the late 1960's, prisoners had begun actively organizing in resistance, and Harrington quickly found a role among the organizers. "We were constantly fighting [the false antagonization between the two groups], so people would see that it's us and the Man, and that's it."

Harrington served his time and was released, but in 1977 was re-arrested and charged in a shooting. Marcum and others worked hard to get the charges dropped, not only because they liked him, but also because the DA had no evidence that Harrington had anything to do with the crime. Two years later, Harrington decided to go to law school at New College, and in 1985 he passed the bar; at both stages, the Sheriff's department campaigned to get him on a track that is typically closed to ex-offenders. When he was hired on as director of PLS, Marcum invited Harrington into his office and closed the door. He then presented him with his badge, and, as Marcum tells it, "the two of us just sat there laughing like a couple of kids, both of us flashing our badges. It had been a long road."

Marcum felt that Harrington's status as an ex-offender made him perfect for the job, but received clear signals from the custody staff that his hiring could lead to trouble. Harrington, however, had a personality that could diffuse any situation, and whatever tensions may have existed were quickly dispelled. "He was unique," remarks Marcum. "He had survived prison with his heart and head intact. It hadn't destroyed him."

One of Harrington's student interns in 1997, Nick Gregoratos, was also an ex-offender taking the route through law school. "I was one of those bright-eyed bleeding hearts that believed that prisons did not work and no one deserved to be incarcerated," he states.²⁷ Gregoratos, who has stayed with the organization since his internship and assumed the directorship of PLS in June 2009, recalls a profound lesson Harrington imparted to him. A particularly needy inmate had been getting on Gregoratos' nerves, challenging his absolutist views of incarceration. "This guy was, to put it mildly, a real pain in the neck. He was a demanding, narcissistic repeat sex-offender. I was talking to Nate about what we as a society should do with people like this. He told me, 'I have spent many years incarcerated, and met thousands of prisoners. The majority of them do not belong in prison. However, I have also met some truly damaged people who made me grateful that we have prisons. They do not belong in society and need to be removed.'"

A few days after this discussion, Harrington came to work in a particularly good mood. His oldest son had graduated from high school the day before, and his pride was inescapable. "All he could talk about was how proud he was, not only that his son had graduated but that he wasn't in the system. He felt he had done a good job as a father."

That night, tragedy struck. Harrington and his son were at home, and a normal conversation had escalated into a heated argument. At one point, his son pushed him in

²⁷ Interview with Nick Gregoratos, Director of Prisoner Legal Services, Cal. (July 7, 2009).

anger. He had meant his father no harm, but the push caused Harrington to lose his balance near the top of a flight of stairs. He tumbled down several stairs and out a window to the sidewalk below.

The resulting coma was permanent. After several days, Harrington was removed from life support and his organs were donated. “Even in death, Nate gave back to the society that gave him a second chance,” says Gregoratos. Michael Marcum and others worked to ensure that the charges against Harrington’s grieving son were minor. “This seems to be the purpose and mission of Prisoner Legal Services: Even those of us who have violated the norms of society have the right to a second chance,” states Gregoratos. “Nate will be remembered as a shining example of this and one of the many reasons that PLS is necessary.”

Harrington was replaced by attorney Chris Hipps, who helped dedicate the Nate Harrington Memorial Law Library for women prisoners in County Jail 8 later that year. By her own admission, Hipps represented a departure from Harrington. “I’m a troublemaker,” she laughs. “Not a rule-breaker, but a troublemaker. My view is that we as a society have spent too much time criminalizing social behavior instead of socializing ‘criminal’ behavior. And forget about recognizing the huge role mental illness plays and the unmet need for medical treatment.”²⁸

Hipps came into the position at a time when prison rights activists and custody officials were adjusting to the recent passage of California’s draconian “Three Strikes” laws. In spite, or perhaps because of this, Hipps recalls that there was much more of an involved and communicative resistance to the prison industrial complex than there is

²⁸ Interview with Chris Hipps, former Director of Prisoner Legal Services, Cal. (July 1, 2009).

now. As prison and jail populations exploded, a bit of the radical tone from the 1970's was re-injecting itself into the cultural landscape.

Hipps enjoyed bringing a small measure of this resistance into the jails. One of her favorite techniques with the prisoners was what she called "Know Your Rights Time." Gathering prisoners together as best as she could, or addressing the residents of a particular cell, she would conduct lessons with them on such things as the limits of probation. "We would go through all the twenty-three things that you can't do when you're on probation, laughing the whole time at how hard they are." One of the conditions is being on time for myriad appointments and commitments. "That's when I would chime in that I would never survive probation!" Of course, Hipps would close by emphasizing the importance of maintaining good rapport with parole officers, social workers and the like, just in case a violation did occur.

Eventually, however, the pressures of working with a rapidly expanding population in increasingly overcrowded jails wore on Hipps. "One of the reasons I left PLS is that I felt like I was fighting with my hands tied behind my back," she states. Gregoratos recalls her frustration. "Watching her clients languish in jail, confused and unable to do what she knew would get them out just that much sooner, was too much for her to bear." PLS, after all, does not work on a client's underlying case; that is left to his or her lawyer. Hipps moved to the San Francisco Public Defender's office upon leaving PLS, and admits it is a much better fit. "As a defender I am *expected* to fight, and am rewarded and appreciated for zealous advocacy!"

Teresa Nelson, who had a background as an attorney in the mental health field, took over the reigns in 2000. Nelson saw obvious similarities between prison and mental

health institutions – “...people are there involuntarily, and they’re locked away from the rest of the world” – but also one major difference: the professional standards among trained staff. “In the mental health system, you can appeal to standards of the health profession,” Nelson explains. “At any level of the field...you had extensive training.”²⁹

Nelson believes this level of training is lacking in the custody staff. “There’s no such thing as a ‘professional’ guard,” Nelson continues. “There are some standards, but they’re broad and they’re not ‘We’re here to help people’ standards. I’m not saying there aren’t good deputies that work well with prisoners. But as a general rule, the baseline education is not very high. And yet, they make more than school teachers. Where’s the priority there?” Ray Towbis had once suggested that reforming Rehab was having the effect of bringing deputies around to working for what is best for the prisoners.³⁰ But thirty years later, Nelson says she found a “very entrenched system” which focuses not on making progress but on maintaining the status quo.

Nelson saw as symbolic of a general disregard of the basic humanity of prisoners an instance that took place in 2004, when the Department decided to make a controversial change—of the prisoners’ underwear. “They ordered this weird underwear that was basically just two strips of synthetic cheesecloth sewn together at either end. It was ridiculous.” The Department had hoped that the underwear would help reduce costs. Nelson responded with what has come to be known as “The Underwear Memo.”³¹ She acknowledged that there was little legal ground to stand on in challenging the garments, although the underwear might violate rights around issues of privacy and sanitation.

²⁹ Interview with Teresa Nelson, former Director of Prisoner Legal Services, Cal. (June 29, 2009).

³⁰ Ray Towbis, Letter to City and County of San Francisco Requesting Promotion (Oct. 23, 1974) (Towbis Papers).

³¹ Memo. from Teresa Nelson, Director, PLS, to Jan Dempsey, Undersheriff, San Francisco Sheriff’s Department, *New Jail Underpants/ies* (April 9, 2004) (copy on file with Prisoner Legal Services).

Ultimately, it was her appeal to the Department's sense of justice that got the prisoners to remain in actual underwear: "[W]hile we have no duty to provide garments that are attractive or appealing to prisoners, the decision to provide this underwear sends a clear symbolic message that prisoners do not deserve conventional underwear and can be provided substandard necessities."

This story, though humorous, provides a very serious lesson: If San Francisco had chosen law libraries as a total substitution for providing legal assistance, prisoners in its county jails might still be wearing cheesecloth underwear, and would likely have suffered a host of other indignities and humiliations as well. Without the effective advocacy of PLS, the prisoners' only recourse would have been to go through the courts, which would have been costly and time-consuming for the city, and might not have resulted in a win for the prisoners. What's more, this would be the case in a city that, with Hennessey as Sheriff, is far better than most at respecting prisoners' rights. This suggests another reason that Hennessey fought so hard to get PLS in the city budget. Hennessey knew that, regardless of his best intentions, he could not serve as Sheriff and serve as advocate for prisoners when his department did things the prisoners felt violated their rights. A regard for prisoners' general well-being is not enough when their rights are specifically violated.

Nevertheless, like Hipps, Nelson left the position feeling frustrated. As Nick Gregoratos states, "They were trying to create substantial and lasting change within the system. The inability to do that as PLS Director was the downside of the job for both of them." Nelson's replacement, Carol Ruth Silver, encountered similar feelings, though she was not new to the department. Silver, in fact, had worked as Legal Counsel to Sheriff Hongisto in the 1970's, and it was she who first hired Hennessey to act as her temporary

replacement. In the intervening years, however, the ‘War on Drugs’ had resulted in a massive increase of people incarcerated for relatively minor possession charges. “These people deserve treatment,” Silver states, “and instead we treat them as criminals.” Silver is now active with Law Enforcement Against Prohibition (LEAP), a national organization of current and former members of law enforcement agencies working to legalize and regulate drugs.³²

In 2009, Nick Gregoratos was promoted to Director after serving in an assistant capacity since his graduation from law school in the late 1990’s. He is ably assisted in this task by Melinda Norrell, who has been with PLS since 2000. Together, they make a good team, Gregoratos’ penchant for zealous advocacy well balanced by Norrell’s innate understanding of the boundaries of the organization’s mandate. Each commands the respect of the prisoners, the custody staff, and, perhaps most importantly, their interns.

The Intern Experience at PLS

Michael Marcum, an unapologetic advocate of prison reform, nevertheless admits that he did not particularly care for the first young reformers he met in jail. “They simply had no idea what prisoners were like. They glamorized all of us, or imagined we were all some sort of proletariat hero.” He came to realize this wasn’t exactly their fault; few of them had been in jail, and none of them had had the benefit of serving as UYAs. Herein lies one of the primary strengths of Prisoner Legal Services: Its ability to expose a law student interested in the world of criminal justice to every facet of the system in one shot.

“That’s what makes the PLS internship great,” explains Melinda Norrell. “Nowhere else does an intern have the near-total access to the housing areas, records and

³² Interview with Carol Ruth Silver, former Acting Director of Prisoner Legal Services (July 8, 2009).

inhabitants of a jail. Nowhere else does an intern have such direct contact with incarcerated persons, defense attorneys and prosecutors, law enforcement officers, civilians working in jails, court personnel, and others impacted by the system.”³³

Several past PLS directors echo this sentiment. “You learn criminal law in law school,” says Stephen Greenberg, “but nobody talks about what actually happens to these people, to their lives.”

“PLS made me a hundred times better as a lawyer,” affirms Randy Daar. “You learn how to deal with people who are in a hopeless, paralyzed situation, who are emotionally trying to control you and control it. You learn how to deflect that kind of emotional stuff and impart information and get them to understand and listen to what you are trying to impart to them. That’s huge! If someone is doing criminal defense, especially, imagine walking in cold without having talked to this population before.”

Sharon Heath used to give her new interns advice based on where they saw themselves in the future. In her experience, most interns at PLS aspired to positions in either the District Attorney’s or Public Defender’s office. For those interns who saw themselves headed to the DA, Heath would tell them, “It’s good to know what you’re doing. This is where you’re sending them. It’s a pretty miserable place, and you have to be comfortable doing that.” Conversely, she would advise future defense attorneys, “You should be lied to at least once by your client before you start practicing law. And get over the ‘criminal as victim’ mentality. Maybe they are, but they are not just victims, they are also victimizers.”

Heath saw upsides and downsides to having law students working in the jails. “On the one hand you have a lot of fresh eyes looking at the situation. You have... people

³³ Interview with Melinda Norrell, Prisoner Legal Services (July 6, 2009).

who aren't jaded, who see something and say 'That's wrong.' On the other hand, wrong and unconstitutional aren't always the same thing. Is it a wrong that we can do anything about?" Heath states that learning that there is not always a remedy for every problem, and gaining the maturity to candidly pass this information on to the person experiencing this problem, is among the most valuable lessons imparted by PLS. "Welcome to life," she adds as postscript.

Both Hips and Nelson emphasize the role interns can play in helping prisoners navigate difficult situations. "Most of them don't have any idea what's going on," Hips states. They don't even know what their next court date is." Keeping them informed goes a long way, she thinks, toward decreasing tension between prisoners and their attorneys, or prisoners and the custody staff. Nelson, on the other hand, thinks one of the key functions performed by PLS interns is modeling positive problem solving and communication skills for both prisoners and deputies. "Much of this is non-verbal," she states. "Just the way you hold yourself, the way you dress. You also show deference to custody staff. And force prisoners to address you appropriately, to go one at a time, and be patient."

The skills mastered by PLS interns are useful to law students regardless of whether they go on to practice criminal law or not, and Norrell states that all interns leave their assignment absolutely certain of whether or not they want to practice criminal law. There is, she adds, one last benefit: "Our interns always have the best stories."

The Uncertain Future of Prisoners' Rights

Prisoner Legal Services is in an enviable position among public interest law groups. Its funding is protected by Constitutional mandate, and it is popular with the Sheriff, for obvious reasons. It will also likely be popular with future Sheriffs, as Hennessey has been an exceedingly popular Sheriff. Still, it is not impossible to imagine something like, say, an eventual lack of funding leading some to wonder what access to the court *really* means. Isn't the fact, some might ask, that all prisoners in San Francisco have the right to a court appointed attorney enough to ensure meaningful access to the courts?

The Second Circuit has said that it is. In 2004, it held that a Sheriff in upstate New York had met the *Bounds* standard of court access when he denied a prisoner's request for legal materials on the grounds that his court-appointed attorney could get the materials for him. It was of no consequence to the court that the prisoner found his counsel to be ineffective; nor did it matter that the prisoner was requesting information on moving to represent himself; nor did it matter that this motion was immediately denied because, lacking information, he had filed too late. The court instead concluded that "the appointment of counsel is one means by which a state can fulfill its obligation to give prisoners access to the courts," adding for good measure that Sixth Amendment guarantees of effectiveness of counsel did not enter the rubric in determining the adequacy of this access.³⁴ This particular Sheriff's refusal to perform the relatively simple task of providing legal materials resulted in years of legal wrangling, with all its attendant expenses and difficulties, and the only discernable benefit to society is that Sheriffs and their staffs in the counties of the Second Circuit have a little less to do for

³⁴ Bourdon v. Loughren, 386 F.3d 88 (2d Cir. 2004) at 99.

their prisoners. Will the language of the court's decision be interpreted to mean that the existence of a county Public Defender's Office represents adequate access to the courts, rendering obsolete the law libraries most counties incorporate to meet the *Bounds* mandate?

Perhaps more importantly, will this line of reasoning find a receptive audience in courtrooms outside the Second Circuit? That court's decision did not, after all, materialize from thin air. The Supreme Court, enjoying a more conservative composition, had backed off from *Bounds*' solidly pro-prisoner holding eight years earlier in *Lewis v. Casey*.³⁵ Justice Scalia authored the narrow majority opinion in *Lewis*, holding that prisoners, in supporting a claim that their rights under *Bounds* had been violated, must show both that they suffered an actual injury *and* that the injury was the result of a systemic condition rather than an isolated act. Despite Justice Marshall's clear language in *Bounds*, which had plainly mandated a law library or legal assistance as opposed to leaving it to counties and states to come up with their own means of observing prisoners' rights, Scalia argued that "*Bounds* did not create an abstract, freestanding right to a law library or legal assistance." Therefore, "an inmate cannot establish relevant actual injury simply by establishing that his [or her] prison's law library or legal assistance program is subpar in some theoretical sense,"³⁶ which, significantly, is all that the plaintiffs in *Bounds* had claimed. The *Bounds* mandate, therefore, is already not what it used to be. What the future holds is anyone's guess.

What we do know, here in San Francisco, is how things have changed since Ray Towbis wrote his Passion Paper. In 1974, Towbis thought that roughly 10,000 people

³⁵ *Lewis v. Casey*, 518 U.S. 343 (1996).

³⁶ *Id.* at 351.

cycling through the city's jails each year was an abomination. At that time, this number represented about 1.4% of the city's population. Towbis passed away in 1991, several years before the passage of the "Three Strikes" laws and their subsequent impact on jail populations. What would he make of the fact that the number of persons booked in San Francisco each year spiked at 50,000 in the late 1990's, and has hovered at around 40,000 since then?³⁷ With only modest growth in the general population over the same time period, this means that a number representing roughly 5% of the city's population now sees the inside of its jails in the course of a year, a nearly four-fold increase.³⁸ Do "the city and its people stand indicted," as Towbis demanded? Or did we throw up our hands long ago, resigned to the notion that there is nothing we can do?

Then there are the demographics of those incarcerated in San Francisco. In 1973, Towbis reported that "75% of the inmates are black, brown, or poor whites."³⁹ As of August 17, 2009, there were 2,273 persons residing in the jails (easily double the amount in the early 1970's). Of these, 36% were white, 10% were "Other," and 54% were black.⁴⁰ Any casual visitor to San Francisco could tell you that these numbers do not reflect the general population, in a city whose current racial composition is 46% white, 47% "Other," and less than 7% black.⁴¹ Put another way, on any given day this year in San Francisco, one in every fifty-five black residents is incarcerated, compared with one

³⁷ Interview with Susan Fahey, Public Information Officer of the Sheriff's Department in San Francisco, Cal. (Aug. 18, 2009).

³⁸ <http://www.census.gov/population/www/documentation/twps0027/tab20.txt>. Because so many prisoners are repeat offenders or, increasingly, non-citizens, it would be incorrect to say that either figure (1.4% or 5%) was the actual percentage of San Franciscans incarcerated in the space of a year. Rather, these percentages represent the average number of persons incarcerated relative to the city's overall population. The actual percentage of San Franciscans who are incarcerated at least once in any given year would be far more difficult to discern, if the data is even available.

³⁹ Lenn, *New Lift*, SF Examiner 1.

⁴⁰ Roster of Inmates, San Francisco Sheriff's Department (Aug. 17, 2009)

⁴¹ U.S. Census Bureau, San Francisco County Quick Facts, <http://quickfacts.census.gov/qfd/states/06/06075.html>.

in every 449 white residents. Based on these numbers, a black San Franciscan is roughly *eight times* as likely as a white San Franciscan to spend time in the county jail. It may come as a surprise to progressive San Franciscans that this is actually *worse* than the national average.⁴²

To put it simply, things have gotten a little rougher for people on the outside who, for reasons too often beyond their control, are more likely to find themselves in prison. Sheriff Hennessey has tried to engage San Franciscans on these issues. When local media coverage was robust, Hennessey frequently sent out press releases about the race disparities in prison. In the last decade, however, the outlets interested in this kind of news piece have mostly disappeared. The Department also expended great effort to convince San Franciscans to fund a new jail to replace the decrepit San Bruno facility, first in 1991, and again in 1994. Both efforts failed. Despite the Sheriff's Department's best efforts, California and the nation have gotten 'tougher on crime' and continue to wage war on drugs, with a vastly disproportionate impact on the poor and communities of color.

However, under Sheriff Hennessey, life on the *inside* has improved dramatically. Through aggressive recruitment efforts, the department has gone from being composed almost entirely of straight, white males to being the most diverse of any large county in the nation, no matter how diversity is measured. Thanks to a court order ruling the old jail

⁴² U.S. Department of Justice, Bureau of Justice Statistics, *Prison Inmates at Midyear 2007*, <http://www.drugwarfacts.org/cms/node/64> (June 6, 2008): "Changes in the incarceration rates for men and women by race were associated with changes to the overall composition of the custody population at midyear 2007. Black men had an incarceration rate of 4,618 per 100,000 U.S. residents at midyear 2007, down from 4,777 at midyear 2000. For white men, the midyear 2007 incarceration rate was 773 per 100,000 U.S. residents, up from 683 at midyear 2000. The ratio of the incarceration rates of black men to white men declined from 7 to 6 during this period."

unconstitutional, a new and far more humane jail finally replaced the decrepit original San Bruno jail in August, 2006 (though still on the same grounds), and a new jail, which now houses women inmates, was also opened in the 1990's (though still near the Hall of Justice).⁴³ Perhaps most importantly, there are now about twenty fulltime staff members devoted to rehabilitation in the jails, who oversee numerous pre-release drug abuse and non-violence programs that have garnered national attention and helped countless prisoners confront their pasts and forge new futures. And, of course, Prisoner Legal Services is a well-established component of the system.

Nick Gregoratos believes that the profound impact Prisoner Legal Services has on the lives of San Francisco prisoners cannot be overstated. "Sure, there are times when it feels like I'm just kicking down doors of bureaucracy," he admits, "but it's also gotten to the point where most of the time I can just make a call and get things taken care of with little to no resistance. And remember, I represent the prisoners. These people have no power. None. So, that's pretty incredible."

Gregoratos says that there will likely always be deputies who fear PLS is out to get them. But learning about PLS and other programs is now a major component of San Francisco deputies' core training in the department, so directors of these programs have a chance to work with them before other deputies do. Indeed, most custody staff appreciate the benefits of having PLS around. "It's not uncommon for Captains [in the jails] to call

⁴³ It should be mentioned that San Franciscans twice voted down measures to fund a new jail in San Bruno during the 1990's. It took a court order declaring the old jail unconstitutional to get the new jail built. See, e.g., Brent Begin, *Jail Design May Begin This Year*, SF Examiner Online (June 19, 2010). Available at <http://www.sfexaminer.com/local/Jail-design-may-begin-this-year-82024502.html>. The article discusses the possibility of a new jail and Hall of Justice being constructed on a site next to the current Hall of Justice, at Bryant and Sixth. Construction of a new Hall of Justice would require voter approval of funding; the \$435 million needed to cover construction of new jails would come instead from certificates of participation. Eileen Hirst expressed her relief that the voters will not have to approve the funds: "You have this problem with, 'Why are we building a nice jail for prisoners when my child's grammar school looks so horrible?'"

us when they have a problem with a prisoner. The prisoner might need legal help. Or they might just need a little attention – we serve a jail management function as well.”

Over the years, PLS has also earned the respect of the courts. The directors are no longer forced to wait all day for a hearing just to be told their case is dismissed. “Most of the time,” says Gregoratos, “if I have a case where, say, someone’s release date is messed up, they’ll get me on the calendar right there and just deal with it. They’ll even invite me into their chambers to take care of things without putting it on the actual court calendar.” It bears repeating that Gregoratos represents prisoners who, thirty years earlier, were virtually guaranteed to have their interests vigorously ignored by courts.

PLS has also been highly instrumental in helping prisoners get out and stay out. PLS helps prisoners clear stale warrants in other counties, which also saves these counties time and money in transport and processing costs. This and other measures taken by PLS help prisoners to become eligible for a host of programs offered in the jail, programs that have seen impressive results in reducing recidivism. More subtly, PLS can be very effective in helping prisoners understand the reality of their situation and proposing ways that they can work with the system, rather than against it. Prisoners still do not have many rights; showing them a little respect can go a long way.

Conclusion

Out of sight, but no longer out of mind, at least not completely. Such is the current treatment of prisoners in San Francisco. While it may not sound like much, it is a far superior policy than can be found in nearly every other major American city, where the prevailing “theory” remains, simply, out of sight, out of mind. Prisoner Legal

Services has been providing a voice for one of the city's most powerless populations for almost forty years. No other city has followed suit. Not one.

This meaningful and lasting shift in the way the city deals with its prisoners is attributable to the efforts of San Francisco's first progressive Sheriff, a loud-spoken community organizer, a resourceful young lawyer who went on to become Sheriff, countless student interns ("wild-eyed radical" and otherwise), and a succession of committed Directors and staff (ex-offender and otherwise). Largely missing from the picture, however, are the people of San Francisco themselves. There will be a new Sheriff in town soon, and it will be up to San Franciscans not only to decide who he or she will be, but to let him or her know that they value the positive changes that have been made, and that they want to continue with this exceptional experiment started nearly four decades ago. Showing prisoners a modicum of respect and compassion—or, as the Court would put it, providing them with "access to the courts"—is what we are constitutionally mandated to do. Thanks to PLS, San Francisco has established an affordable and effective means toward this end. Let the city and its people take pride in this, and continue to take action toward further improvement. It's the least we can do, not just for the prisoners, but for the city as a whole.