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## The Double-Edged Sword of Prison Video Visitation: Claiming to Keep Families Together While Furthering the Aims of the Prison Industrial Complex

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# THE DOUBLE EDGED SWORD OF PRISON VIDEO VISITATION: CLAIMING TO KEEP FAMILIES TOGETHER WHILE FURTHERING THE AIMS OF THE PRISON INDUSTRIAL COMPLEX

*Patrice A. Fulcher\**

## ABSTRACT

*Each year, the United States (“U.S.”) spends billions to house the country’s massive prison population. The need to board over 2.3 million incarcerated human beings has U.S. correctional departments looking for ways to increase revenues and offset costs. According to these correctional agencies, one major expense is prison visitation. In order to reduce spending and alleviate safety concerns, U.S. federal, state, and private correctional facilities have turned to video visitation as an alternative to in-person visits.*

*The use of prison video visitation systems started in 1995. Since then, many private telecommunications companies have professed to have the solution to correctional visitation problems. These companies promote video visitation as a cheap, safe, and easy alternative to in-person visits, as well as a profitable means of generating revenues. Government and private correctional institutions, buying into these endorsements, have reduced or completely eliminated face-to-face visits and installed video visitation systems within their walls. Under this structure, inmates use video stations in their cellblock to visit family and friends at corresponding video kiosks within the institution; or inmates visit loved-ones who are at home or elsewhere outside prison walls via computer Internet video visitation.*

*In order to sell this method of visitation to the public, U.S. correctional agencies contend that video visitation helps to keep families*

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\* Associate Professor, Atlanta’s John Marshall Law School. J.D., Emory University School of Law; B.A., Howard University. This article is dedicated to the millions of prisoners and their families who have become unwitting hostages in the Prison Industrial Complex. I would like to thank Vice Chancellor John Pierre for his continued support and mentorship. Many thanks to my research assistants Campbell Williamson and Hina Asghar for their outstanding research and assistance in preparation of this Article. I would also like to thank my family, colleagues, and friends for their encouragement and support.

together by allowing inmates greater contact opportunities with loved ones. In some regards, it may be argued that video visitation does assist in the preservation of family units. Inmates are often forced to serve time in prisons miles away from their homes, so outside visits are far and few between. Yet, through the use of in-home video visitation configurations, inmates are able to connect with relatives who reside hours away.

At first glance, this visitation scheme may seem beneficial, but this Article argues that prison video visitation is a double edge sword. First, prison video visitation may help preserve family units while people are incarcerated, but the elimination of face-to-face visits robs inmates of much needed human contact with their children, spouses, and other family members. Second, almost all in-home prison video visitation systems exploit the relatives and friends of inmates because they charge excessive fees to visit. Third, the economic success of prison video visitation systems is contingent on the number of incarcerated humans. So, like other profiteering schemes of the Prison Industrial Complex ("PIC"), prison video visitation incentivizes incarceration: A decrease in the prison population has a corollary effect on million dollar revenues and corporate profits, hence compelling the need to detain more U.S. inhabitants.

Consequently, this Article argues that face-to-face visitation should be the primary means of contact for families that visit at prison facilities. In order to accomplish this goal, inmates must be assigned to correctional facilities close to their homes if space is available and there is no proven risk to security. Additionally, if prison video visitation is utilized, any fees associated with its use must be regulated to insure that the financial expense is not exorbitant.

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## I. INTRODUCTION

The desire for humans to associate with each other is great. Therefore, it is not surprising that studies have shown that social connections lead to happiness and overall well being.<sup>1</sup> The development of the U.S. Postal System, the telephone/cell phone, and the Internet<sup>2</sup> have helped people stay connected over decades.

The longing for human contact is in no way reduced when a person is incarcerated. In many regards, the need is even greater because inmates are separated from family, friends, and all loved ones. Locked in steel cages without any tangible sense of time, an inmate's survival is dependent on those he left outside the prison walls.<sup>3</sup> Inmates often feel isolated without any contact from family or friends.<sup>4</sup> That letter from home, weekly or monthly collect phone call, or even better, a face-to-face visit from a loved one, may be the only tangible interest fueling an inmate's drive for rehabilitation and release. Consequently, any form of communication with family and friends reaffirms an inmate's sense of humanity and gives him hope.<sup>5</sup> It assures an inmate that he is still loved, has not been abandoned, and that he is still connected to the free world.<sup>6</sup>

However, with over two million people incarcerated in the U.S.,<sup>7</sup> budget-stretched correctional agencies find it difficult to keep prisoners connected with the outside world through the effective regu-

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1. Ed Diener & Robert Biwas-Diener, *Happiness: Unlocking the Mysteries of Psychological Wealth*, MENTAL HEALTH AMERICA, <http://www.liveyourlifewell.org/go/live-your-life-well/connect> (last visited Sept. 20, 2013).

2. See *Facebook Reports Second Quarter 2013 Results*, PR NEWswire (July 24, 2013), <http://www.prnewswire.com/news-releases/facebook-reports-second-quarter-2013-results-216805531.html> (noting that there were 1.15 billion active Internet users on Facebook, a social networking website, as of 2013).

3. See generally Creasie Finney Hairston, *Family Ties During Imprisonment: Important To Whom And For What?*, 18 J. SOC. & SOC. WELFARE 87 (1991).

4. *Id.* See also Cheryl Whittier, *Breaking Down the Walls*, THE BODY (July 1999), <http://www.thebody.com/content/art30877.html> (discussing the specific issue of the isolation of inmates with HIV).

5. See generally ROBERT JOHNSON & HANS TOCH, *THE PAINS OF IMPRISONMENT* (Robert Johnson & Hans Toch eds., Sage Publications 1982).

6. *Id.*

7. Lauren E. Glaze & Erika Parks, *Correctional Populations in the United States, 2011*, BUREAU OF JUSTICE STATISTICS (Nov. 2012), <http://www.bjs.gov/content/pub/pdf/cpus11.pdf>.

lation of inmate visitation.<sup>8</sup> U.S. correctional institutions frequently complain that inmate visitation is expensive and a security risk to their facilities.<sup>9</sup> Consequently, with the exploding inmate population, prison and jail operators must now expend greater funds for additional guards to be present during visitation hours or pay existing guards overtime.<sup>10</sup>

In order to reduce the high cost of inmate visitation, elevate safety concerns, and generate revenues, many U.S. correctional institutions are utilizing prison video visitation technology as a feasible alternative to face-to-face visits.<sup>11</sup> Private corporations, offering varying video visitation options, have quickly emerged to tackle this specific correctional institutional crisis. These corporations proclaim they have the solution to inmate visitation woes, and at the same time, boast that their services help to strengthen inmate family units and increase correctional revenues.<sup>12</sup> Two noted companies are VuGate and Renovo Software, Inc. (“Renovo”).

Between 1994 and 1995, VuGate developed the first video visitation software<sup>13</sup> in conjunction with correctional officers; this has allowed them to “meet the unique requirements of the correctional industry.”<sup>14</sup> Since then, VuGate has installed over 4,000 correctional visitation stations and court arraignment stations across the coun-

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8. *Adams County Jail First in State to Implement Inmate Video Visitation*, ADAMS CNTY. SHERIFF'S OFFICE (Sept. 6, 2013), [http://www.adamscosheriff.org/press\\_view.php?id=373](http://www.adamscosheriff.org/press_view.php?id=373); *Travis County Jail Visitation is Now Video Visitation*, TRAVIS CNTY. SHERIFF'S OFFICE (May 1, 2013), <https://www.tcsheriff.org/about/media-relations/press-releases/280-travis-county-jail-visitation-is-now-video-visitation>; *Washington County Jail Offers Video Visitation*, SHERIFF'S OFFICE OF WASHINGTON CNTY. (May 2, 2013), [http://www.co.washington.or.us/\\_cs\\_upload/News/sonews/687999\\_1.pdf](http://www.co.washington.or.us/_cs_upload/News/sonews/687999_1.pdf).

9. SHERIFF'S OFFICE OF WASHINGTON CNTY., *supra* note 8.

10. See generally William E. Stone & Peter Scharf, *Examining the Correctional Technology Paradox: Can Correctional Technologies Save Aggregate Correctional Costs?*, 11 J. INST. JUST. INT'L. STUD. 171 (2011).

11. Adeshina Emmanuel, *In-Person Visits Fade as Jails Set Up Video Units for Inmates and Families*, N.Y. TIMES, Aug. 7, 2012, at A15; Erica Goode, *Inmate Visits Now Carry Added Cost in Arizona*, N.Y. TIMES, Sept. 5, 2011, at A10 [http://www.nytimes.com/2011/09/05/us/05prison.html?\\_r=0](http://www.nytimes.com/2011/09/05/us/05prison.html?_r=0) (noting that some prisons also charge a \$25.00, one time, “background” fee to inmate visitors in order to increase funds).

12. Luke Whyte, *Internet Based Video Visitations Could Very Well Be the Future of How Visits are Conducted in Jails and Prisons Across the Country*, CORRECTIONSONE, June 1, 2010, <http://www.correctionsone.com/products/facility-products/inmate-visitation/articles/2075432-Internet-video-visitation-Why-and-how-to-make-the-switch>.

13. *Video Visitation*, VUGATE, <http://vugate.com/videovisitation.html> (last visited Sept. 21, 2013).

14. *Id.*

try.<sup>15</sup> VuGate, as one of the largest manufacturers of video visitation systems in the world, distinguishes its corporation from companies that only install and manage video visitation systems.<sup>16</sup> As a manufacturer, VuGate provides its customers an added assurance of a consistent product supply that is amenable to growth and expansion.<sup>17</sup>

Like VuGate, Renovo, another manufacturer and distributor of video visitation software, claims to be a world leader in inmate visitation management.<sup>18</sup> Renovo entered the prison video visitation market in 2003.<sup>19</sup> Renovo has over 100 corrections facility customers in the U.S. and Canada, and manages over 5,000 visitation stations.<sup>20</sup> In addition to prison video visitation, Renovo also has applications that allow for courtroom arraignments, telemedicine, distance learning, and business videoconferencing.<sup>21</sup> In 2013, Renovo partnered with another inmate service management company, Cisco Connected Justice (“Cisco”).<sup>22</sup> According to Daniel Stewart, Cisco’s Senior Justice Advisor, this partnership will allow for the expansion and enhancement of inmate management services to the corrections industry.<sup>23</sup>

VuGate and Renovo assert their products create significant benefits to correctional institutions and families. They claim correctional facilities that adopt the video systems are safer places that efficiently manage inmate visitation while reducing costs and increasing inmate-family connections.<sup>24</sup> Moreover, VuGate and Renovo claim that inmate video visitation does more than simply reduce costs; it is also an effective means of generating revenues, and this makes video visitation an appealing offer.<sup>25</sup> However, while facially appealing, cau-

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15. *Id.*

16. *Id.*

17. *Id.*

18. *About*, RENOVO SOFTWARE, <http://www.renovosoftware.com/about/about-renovo-software/> (last visited Sept. 7, 2013).

19. *Id.*

20. *Id.*

21. *Renovo Software Extends Platform with Cisco Connected Justice*, TELEPRESENCE OPTIONS, May 2, 2013, [http://www.telepresenceoptions.com/2013/05/renovo\\_software\\_extends\\_platfo](http://www.telepresenceoptions.com/2013/05/renovo_software_extends_platfo).

22. *Id.*

23. *Id.*

24. RENOVO SOFTWARE, *supra* note 18; TELEPRESENCE OPTIONS, *supra* note 21; *LA County Sheriff's Dept Increases Security, Efficiency, and Accessibility of Inmate Visitation*, RENOVO SOFTWARE, May 30, 2013, <http://www.renovosoftware.com/news/renovo-software-in-the-news/la-county-sheriffs-dept-increases-security-efficiency-and-accessibility-of-inmate-visitatio>.

25. *Id.*

tion should be exercised where cost saving measures may lead to human exploitation.

Therefore, this Article first discusses the management of inmate visitation in U.S. correctional institutions.<sup>26</sup> It next reveals the varying operations that prison video visitation corporations offer.<sup>27</sup> It then discusses whether prison video visitation keeps families together,<sup>28</sup> or is another means of economic exploitation derived from the Prison Industrial Complex (“PIC”).<sup>29</sup> Lastly, this Article argues that the human need of inmates to stay connected with their family and friends should be fulfilled by housing prisoners close to their homes.<sup>30</sup> If this goal cannot be achieved, correctional facilities have to take every measure to ensure that face-to-face visits are primary to prison video visitation.<sup>31</sup> Additionally, the cost of prison video visitation, like prison phone calls, must be regulated in order to prevent the continued economic exploitation of people ensnared in the machinery of the PIC.<sup>32</sup>

## II. U.S. PRISON AND JAIL VISITATION PROCEDURES

Typically, a person arrested and charged with a crime in the U.S. may spend time in custody prior to the resolution of his<sup>33</sup> case if he cannot afford bail or if bail is denied.<sup>34</sup> If that person is convicted,

26. See *infra* Part II.

27. See *infra* Part III.A.

28. See *infra* Part III.B.

29. See *infra* Part III.C.

30. See *infra* Part IV.

31. See *infra* Part IV.

32. See *infra* Part IV.

33. The use of the words “his” and “he” when referencing incarcerated persons in this Article is not intended to discount the more than 200,000 women incarcerated in the U.S. From 1980 to 2011, the number of imprisoned women increased by 587%, almost 1.5 times the rate of men. *Incarcerated Women*, SENTENCING PROJECT, 1-2 (Dec. 2012), [http://www.sentencingproject.org/doc/publications/cc\\_Incarcerated\\_Women\\_Factsheet\\_Dec2012final.pdf](http://www.sentencingproject.org/doc/publications/cc_Incarcerated_Women_Factsheet_Dec2012final.pdf) (“Oklahoma incarcerates more women per capita than any other state with 121 out of every 100,000 women in prison. Rhode Island has the lowest per capita rate of women in prison with 15 out of every 100,000 women in prison.”). Many of these women suffer from drug addiction, mental illness, and have been victims of physical and sexual abuse, but they rarely receive treatment while incarcerated. *Id.* at 3 SENTENCING PROJECT Dec., .; See also *Women in Prison*, ACLU, <https://www.aclu.org/prisoners-rights/women-prison> (last visited Sept. 25, 2013).

34. WAYNE R. LAFAYE ET AL., CRIMINAL PROCEDURE § 12.1(a) (3d ed. 2012) (discussing the conditions for bail and preventive detention in federal cases under The Bail Reform Act of 1984); *Id.* § 12.1(b) (discussing general state criminal procedures on granting and denying bail, suggesting that “judges are inclined to give primary consideration to” (1) the seriousness of the offense; (2) strength of the case against the defendant; and (3) the accused’s prior record, rather than usual factors such as an accused’s background, character, employment, or ties to the community). A 2006 Department of Justice, Bureau of

then he may be removed from society and forced to serve time in one or more of the 1,821 U.S. prisons,<sup>35</sup> or 3,283 jail<sup>36</sup> facilities.<sup>37</sup> Although incarceration isolates this person from his community, he (ideally) is not completely cut off from society because most correctional facilities provide visitation opportunities.<sup>38</sup> However, each facility's administration has a different attitude towards visitation: Several correctional institutions encourage inmate visitation to foster high inmate morale and family relationships, while others place extreme limitations on visits due to security concerns.<sup>39</sup> Consequently, the number of visits this

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Justice Statistics study of the 75 most heavily populated counties in a single month found that “[a]pproximately 62% of felony defendants [in the study] were released prior to the final disposition of their case” and that “[a]mong the 38% of defendants who were detained in jail until case disposition, about 5 in 6 had a bail amount set but did not post the money required to secure release.” *Id.* (citing Thomas H. Cohen & Brian A. Reaves, U.S. Dep’t of Justice, *Felony Defendants in Large Urban Counties, 2002*, BUREAU OF JUSTICE STATISTICS (Feb. 2006), [www.bjs.gov/content/pub/pdf/fdluc02.pdf](http://www.bjs.gov/content/pub/pdf/fdluc02.pdf) (concerning felony cases filed during the month of May 2002)). It also noted that the “overall median time from arrest to adjudication was 98 days.” *Id.*

35. James J. Stephan, U.S. Dep’t of Justice, *Census of State and Federal Correctional Facilities, 2005*, BUREAU OF JUSTICE STATISTICS, 1 (Oct., 2008), <http://www.bjs.gov/content/pub/pdf/csfcf05.pdf> (“Private correctional facilities (up 151) accounted for nearly all of the increase in the number of adult correctional facilities between June 30, 2000, and December 30, 2005. . . . About two-thirds of all private facilities were under contract to state authorities and a third were under contract to the Federal Bureau of Prisons.”). The South has the highest number of prisons in the U.S. with a total of 779 facilities. *Id.* at 9 tbl.1.

36. James Stephan & Georgette Walsh, U.S. Dep’t of Justice, *Census of Jail Facilities, 2006*, BUREAU OF JUSTICE STATISTICS, 3 (Dec., 2011), <http://www.bjs.gov/content/pub/pdf/cjf06.pdf> (“Jail facilities are confinement facilities, which are usually administered by a local law enforcement agency. These facilities are intended for adults, but sometimes hold juveniles before or after adjudication. Jail facilities perform numerous functions, including receiving individuals pending arraignment and holding individuals who are awaiting trial, conviction, or sentencing.”). The South has the highest number of jails in the U.S. with a total of 1,356 facilities. *Id.* at 5, tbl.2.

37. LAFAYETTE ET AL., *supra* note 34, § 26.1(c) (discussing state legislations proscribing mandatory minimum and heightened sentences, and noting that 70% of all felons in 2004 were sentenced to serve prison time, and as of 2005, “over seven million people were either incarcerated or under supervision for probation or parole in the United States”); *Id.* § 21.1(h) (discussing the sentencing table that guides the sentencing judge in identifying the appropriate sentencing range for a person convicted of a federal crime).

38. See generally Chesa Boudin, Trevor Stutz, & Aaron Littman, *Prison Visitation Policies: A Fifty State Survey*, YALE LAW SCHOOL (Nov. 5, 2012), [http://www.law.yale.edu/documents/pdf/Liman/Prison\\_Visitation\\_Policies\\_A\\_Fifty\\_State\\_Survey.pdf](http://www.law.yale.edu/documents/pdf/Liman/Prison_Visitation_Policies_A_Fifty_State_Survey.pdf); Alicia Sitren et al., *Jail Visitation: An Assessment of Organizational Policy and Information Availability*, UNIV. OF S.C. (Jan. 1, 2009), [http://scholarcommons.sc.edu/cgi/viewcontent.cgi?article=1000&context=crim\\_facpub](http://scholarcommons.sc.edu/cgi/viewcontent.cgi?article=1000&context=crim_facpub); *Visiting Hours & General Information*, FED. BUREAU OF PRISONS, [http://www.bop.gov/inmate\\_locator/visiting.jsp](http://www.bop.gov/inmate_locator/visiting.jsp) (last visited July 13, 2013); *Visitation Frequently Asked Questions*, CCA BAY CORRECTIONAL CENTER (Feb. 2013), <http://cca.com/Media/Default/documents/Facility-Info-Sheets/Bay%20Correctional%20Center%20Information%20Page.pdf>.

39. See Boudin, et al., *supra* note 38, at 17; FED. BUREAU OF PRISONS, *supra* note 39.



inmate will receive during a week, the time, duration, manner of contact, and restrictions placed on his visitors, will be determined by his assigned facility.<sup>40</sup>

The visitation policies and privileges vary greatly from one correctional institution to another. A 2009 assessment of U.S. jails found a deviation of inmate visitation guidelines based on the size of the institution.<sup>41</sup> Large jails provided more visitation hours and longer visits than small jails.<sup>42</sup> The large jails that participated in the study offered inmate visitation for 32 hours per week, with visits lasting an average of 44 minutes.<sup>43</sup> By contrast, small jails offered inmate visitation for 9 hours per week, with visits lasting an average of 33 minutes.<sup>44</sup> Furthermore, the study found that large jails supply more written information to family and friends of inmates regarding visitation policies.<sup>45</sup> This in turn helps to ensure that more visits will occur: Visitors, aware of visitation qualifications and expectations before they arrive at a jail, have a greater chance to comply with visitation policies, decreasing the likelihood that they will be denied a visit.

Likewise, the visitation procedures in U.S. prisons differ. For example, an inmate in a South Dakota prison is allowed to place family members and only two additional people on his visitation list, while an inmate in a California prison may place an unlimited number of visitors on his list.<sup>46</sup> State prisons in Mississippi, Connecticut, California, New Mexico, New York, Washington, and Colorado allow for overnight family visits,<sup>47</sup> while prisons in other states do not.<sup>48</sup>

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40. Boudin, et al., *supra* note 38.

41. See Sitren, et al., *supra* note 38, at 207, 211 (This study included information gathered from 30 jails. Jails having a capacity of 55 inmates or less were defined as small, and jails having a capacity of 800 inmates or more were defined as large.).

42. *Id.* at 215 (finding that “[t]he average number of hours of visitation among large jails was more than three times greater than the hours of visitation among small jails”).

43. *Id.* at 215, 216.

44. *Id.*

45. *Id.* at 214 (noting that large jails are also more likely to provide inmates and visitors policies such as whether visits have to be scheduled, photo identification is required, and the maximum number of adults during a visit).

46. See Boudin, et al., *supra* note 38, at 18.

47. Michael Mechanic & Laura McClure, *How to Get a Conjugal Visit*, MOTHER JONES (July/Aug., 2008), available at <http://www.motherjones.com/politics/2008/07/how-get-conjugal-visit>. The Mississippi State Penitentiary was the first state prison to allow conjugal visits in 1918 when it was formally known as Parchment Farm. Columbus B. Hopper, *The Evolution of Conjugal Visiting in Mississippi*, 69 PRISON J. 103, 103 (Apr. 1989), <https://www.ncjrs.gov/pdffiles1/Digitization/120664NCJRS.pdf>. The Mississippi Department of Corrections still affords inmates conjugal visits, but only to married, minimum custody inmates who have an acceptable behavioral rating. *Conjugal Visits*, MISS. DEP'T. OF CORR., [http://www.mdoc.state.ms.us/conjugal\\_visits.htm](http://www.mdoc.state.ms.us/conjugal_visits.htm) (last visited Sept. 26, 2013).

Although inmate visitation policies and procedures may differ, most U.S. correctional institutions make it clear that inmate visitation is not a guaranteed right, but a regulated privilege that may be suspended at anytime.<sup>49</sup> For instance, the Federal Bureau of Prison's visitation regulations clearly state that "[t]he Warden has the authority to restrict or suspend regular visiting privileges temporarily when there is reasonable suspicion that the inmate has acted in a way that would indicate a threat to the good order or security of the institution";<sup>50</sup> the Georgia Department of Corrections recognizes the importance of inmates staying connected with their families, but also says that visitation is a privilege;<sup>51</sup> and the Leavenworth Kansas Detention Center, a private prison run by the Corrections Corporation of America ("CCA"), provides notice that "[v]isits may be terminated by a shift supervisor or above if it is believed a visitor's behavior is detrimental to the safety and security of the facility."<sup>52</sup>

Over the years, the U.S. Supreme Court has helped to insure that correctional overseers have extreme latitude in implementing visitation privileges.<sup>53</sup> In *Overton v. Bazzetta*, the U.S. Supreme Court found that Michigan's Department of Corrections ("MDOC") 1995 policy of excluding prison visitation privileges, in order to "limit the number of visitors a prisoner is eligible to receive" and "decrease the total number of visitors," were not unconstitutional.<sup>54</sup> Specifically, the Court ruled that while MDOC inmate visitation regulations (1) exclude minor nieces and nephews, and children as to whom parental rights

48. See Boudin, et al., *supra* note 38, at 19. The Federal Bureau of Prisons does not allow conjugal visits for inmates in federal prisons. *Conjugal Visits: General Information*, FED. BUREAU OF PRISONS, [http://www.bop.gov/inmate\\_locator/conjugal.jsp](http://www.bop.gov/inmate_locator/conjugal.jsp) (last visited Sept. 26, 2013); *Program Statement: Visiting Regulations*, FED. BUREAU OF PRISONS (May 11, 2006), [http://www.bop.gov/policy/progstat/5267\\_008.pdf](http://www.bop.gov/policy/progstat/5267_008.pdf).

49. See, e.g., *Program Statement*, *supra* note 48, FED. BUREAU OF PRISONS; (last visited July. 13, 2013) *Guidelines for Visitors*, LA. DEP'T. OF PUB. SAFETY AND CORR., <http://www.doc.la.gov/quicklinks/offender-info/visitation/> (last visited July. 13, 2013).

50. *Program Statement: Visiting Regulations*, *supra* note 49, at 1; FED. BUREAU OF PRISONS (May 11, 2006), [http://www.bop.gov/policy/progstat/5267\\_008.pdf](http://www.bop.gov/policy/progstat/5267_008.pdf).

51. *Frequently Asked Questions: Visitation*, G.A.A. DEP'T OF CORR., 1 (Sept. 17, 2008), [http://www.dcor.state.ga.us/pdf/Visitation\\_FAQs.pdf](http://www.dcor.state.ga.us/pdf/Visitation_FAQs.pdf) ("Is visitation a right? No. While it is important for every offender to maintain connections with and the support of family and friends during incarceration, the safety and security of staff, offenders and visitors are critical. Therefore, visitation is a privilege afforded to offenders and should not be considered as a right.")

52. *Leavenworth Detention Center Information Page*, CCA, at 2 (Feb. 2013), <http://cca.com/Media/Default/documents/Facility-Info-Sheets/Leavenworth%20Detention%20Center%20Information%20Page.pdf>.

53. See, e.g., *Overton v. Bazzetta*, 539 U.S. 126 (2003).

54. *Id.* at 129.

had been terminated from visits; (2) prevent minor children of inmates from visiting unless accompanied by an immediate family member of the child or inmate, or the legal guardian of the child; and (3) prohibit inmates with two substance-abuse violations from visitation privileges for at least two years did not violate inmates' due process rights under the Fourteenth Amendment, were not cruel and unusual punishment under the Eighth Amendment, and were not a restraint on the freedom of association as guaranteed by the First Amendment.<sup>55</sup>

### III. U.S. PRISON AND JAIL VIDEO VISITATION

#### A. *The Operations*

Prison video visitation is the use of videoconferencing software and equipment to allow inmates to visit family and friends via the Internet as opposed to face-to-face.<sup>56</sup> Instead of being transported to visitation areas by security guards, inmates use video stations in their cellblock to talk with visitors sitting at corresponding video kiosks within the institution, at kiosks outside the facility, or at home using a webcam on their computer.<sup>57</sup>

Prison video visitation is a relatively new industry to the Prison Industrial Complex. The video systems surfaced in the mid-1990s when VuGate was one of the first private companies to develop the software.<sup>58</sup> Since then, numerous private companies have begun to offer a variety of visitation management services that fall primarily within two larger categories: (1) onsite video visitation via individual kiosks; or (2) online video visitation outside of the correctional facility. Both categories include online or kiosk visitation scheduling and a level of supervision over the video equipment.<sup>59</sup> Companies like Vu-

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55. *Id.* at 132-137. In deciding whether MDOC's regulations were rationally related to legitimate penological objectives, the Court applied the four factor test it had previously adopted in *Turner v. Safley*: (1) "whether the regulation has a 'valid, rational connection' to a legitimate governmental interest"; (2) "whether alternative means are open to inmates to exercise the asserted right"; (3) "what impact an accommodation of the right would have on guards and inmates and prison resources"; and (4) "whether there are 'ready alternatives' to the regulation." *Id.* at 132 (citing *Turner v. Safley*, 482 U.S. 78, 89-91 (1987)).

56. *Video Visitation*, RENOVO SOFTWARE INC., <http://www.renovosoftware.com/corrections-solutions/inmate-video-visitation/> (last visited Sept. 29, 2013).

57. *Id.*

58. See VUGate, *supra* note 14.

59. See, e.g., RENOVO SOFTWARE, *supra* note 19; *Video Visitation*, JPAY, <http://jpay.com/PVideoVisit.aspx> (last visited Sept. 29, 2013) (offering face-to-face visits in real time); *Video Visitation*, VISILINC, <http://www.visilinc.com/visitation.html> (last visited Sept. 29, 2013) (noting that it provides the software to Renovo that connects the video systems

Gate and Renovo also manufacture and install the video system hardware that is placed in the facilities, whereas other companies that manage visits have the equipment installed by another vender.<sup>60</sup> Global Tel\*Link is also becoming a major player in the video visitation market. Global Tel\*Link has made a majority of its profits as a telephone service provider to correctional facilities, but the company also offers video visitation management services utilizing Renovo equipment.<sup>61</sup>

The data on the number of operating systems is not centralized but various sources suggest that there are “hundreds of jails in at least 20 states” utilizing prison video visitation or developing plans to employ this machinery.<sup>62</sup>

### 1. Onsite Video Visitation

Facilities that use onsite video visitation normally do not charge a fee to visitors. In order to visit inmates at these correctional institutions, visitors are required to make appointments beforehand and arrive with the appropriate identification. Two examples of correctional facilities that use onsite video visitation are the District of

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between the inmate housing and visitor areas and that its; oOther services include consultation, installation, maintenance contracts, and the replacement of parts); iWEBVISITS, <http://www.iwebvisit.com> (last visited Sept. 29, 2013) (offering remote video visitation); *Video Visitation*, TELMATE, <http://www.telmate.com/products/video-visitacion> (last visited Sept. 29, 2013) (offering onsite and Internet video visits and claiming to have “more remote and local video visitation installs than any other competitor”); *VideoViso*, STRIKE INDUSTRIES INC., <http://www.strikeind.com/Corrections%20and%20Judicial.htm> (last visited Sept. 29, 2013) (providing inmate video visitation systems for jails of all sizes); *Video Visitation*, SECURUS TECHNOLOGIES, <https://securustech.net/web/securus/118> (last visited Sept. 29, 2013) (providing the ability “to schedule and participate in visitations with your loved one from the safety and comfort of your home); *Video Visitation Solutions*, BLACK CREEK, <http://www.blackcreekisc.com/visitation> (last visited Sept. 29, 2013) (offering on-premise and off-premise visiting and claiming to be the most “sophisticated” video visitation company in the industry because its IP Visitor© Software includes “electronic fingerprint capture and photo ID registration of all public visitors”). This list is in no way of exhaustive of the video visitation companies in operation in the U.S. It is provided to show how widespread the business and practice of prison video visitation has become. It continues to expand.

60. See *supra* notes 13-18.

61. *GTL's Inmate Telephone System*, GLOBAL TEL\*LINK, [http://www.gtl.net/products/GTL\\_inmate\\_telephone\\_system.shtml](http://www.gtl.net/products/GTL_inmate_telephone_system.shtml) (last visited Sept. 29, 2013); *Video Visitation Fact Sheet*, GLOBAL TEL\*LINK (Mar. 13, 2013), <http://www.gtl.net/documents/7000321-%20GTL%20Video%20Visitation%20Fact%20Sheet-%20Web.pdf> (claiming to integrate the services of the “leader in inmate telephone and offender management systems with the leader in video visitation solutions”).

62. Emmanuel, *supra* note 12 (stating that the data on prison video visitation systems was collected from “interviews with system vendors, criminal justice officials and legal experts, as well as news reports”).

Columbia Department of Corrections in Washington, D.C. and Clark County Detention Center in Las Vegas, Nevada.

In 2012, the District of Columbia Department of Corrections (“DCDC”) completely did away with face-to-face visits for all inmates housed at its Central Detention Facility/District of Columbia Jail (“DCJ”)<sup>63</sup> in order to “significantly streamline visitor check-in, improve the management of inmate visitation and improve safety and accessibility for family members and friends.”<sup>64</sup> DCDC installed 54 video stations in jail housing units and 54 video kiosks in the DCDC Video Visitation Center (“Visitation Center”) located in the D.C. General Hospital Complex across the street from the DCJ.<sup>65</sup> Inmates are allowed only two 45-minute social visits per week.<sup>66</sup> Visitors of inmates residing at the DCJ now make appointments online or over the phone prior to each visit at the Visitation Center.<sup>67</sup> Once visitors arrive at the Visitation Center, they present their I.D. and visitation confirmation number to the guard.<sup>68</sup> The guard confirms the documents and then escorts the visitors to the 54 side-by-side, black, steel, video screen kiosks with attached phone receivers and seats.<sup>69</sup>

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63. *Online Scheduling for Video Visitation*, D.C. DEP’T OF CORR., 4, <http://doc.dc.gov/service/online-scheduling-video-visitation> (last visited Sept. 29, 2013). Notably, attorneys and their agents are still allowed face-to-face visits with the inmate they are representing at the DCDC. *Attorney or Legal Visitor*, D.C. DEP’T OF CORR., <http://doc.dc.gov/page/attorney-or-legal-visitor> (last visited Sept. 28, 2013) (stating that attorneys and their agents are allowed access to their clients “24 hours per day, seven days a week”). On average, the DCJ houses 1,736 men and the D.C. Correctional Treatment Facility houses an average of 501 women inmates. *Demographics and Statistics, Average Daily Population for October 2008 Through June 2013*, D.C. DEP’T OF CORR. (Aug. 4, 2013), <http://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/Demographics%20and%20Statistics%20July%202013.pdf>. The majority of the men housed at the DCJ are awaiting adjudication of their cases, or sentenced for misdemeanor offenses so they spend less than a year at this facility. It also holds men convicted or charged with felonies are held at DCJ until convicted and then they are transferred to the FBOP Federal Bureau of Prisons. *Central Detention Facility*, D.C. DEP’T OF CORR., <http://doc.dc.gov/page/correctional-facilities> (last visited Sept. 28, 2013) (“As a result of the National Capital Revitalization and Self-Government Improvement Act of 1997, sentenced felons [in D.C.] are transferred to the Federal Bureau of Prisons.”).

64. *Ribbon-Cutting Ceremony for Department’s New Video Visitation Center*, D.C. DEP’T OF CORR. (July 19, 2012), <http://doc.dc.gov/release/ribbon-cutting-ceremony-department%E2%80%99s-new-video-visitation-center>.

65. See Video Visitation, *supra* note 64.

66. See *id.*

67. See *id.*

68. D.C. Dep’t of Corr., *Educational Visitation Video: Video Visitation at the DC Jail*, YOUTUBE (Sept. 4, 2012), <http://www.youtube.com/watch?v=q9JoT7tJWpI&feature=youtu.be> (explaining, in an eleven-minute, twelve-second informational video, the video visitation process while depicting an enactment of the entire procedure and the video kiosks at the DCJ and Visitation Center).

69. *Id.*

Global Tel\*Link (“GTL”) installed the video visitation technology at the DCDC at no apparent economic cost to the DCDC, the inmates, or visitors.<sup>70</sup> However, this generous bequest from GTL may actually come with a price. GTL is already making money from the high population of inmates at the DCDC:<sup>71</sup> It has an exclusive contract with the DCDC for all of their inmate telephone calls.<sup>72</sup> The DCDC’s prison visitation video, linked to their website, makes note that visitors may place money on inmates’ telephone accounts using the Offender Connect Kiosk in the waiting area or at anytime the Visitation Center is open, adding “[d]eposits may be made using cash (\$5 bills or larger) Master Card and Visa credit/debit cards.”<sup>73</sup> Consequently, it is difficult to view a scenario in which the DCDC will accept a bid from another telephone provider (even at a lower cost to inmates and their families/friends) if GTL is providing them with free video visitation services.<sup>74</sup>

In 2009, the Clark County Detention Center in Las Vegas, Nevada (“CCDC”)<sup>75</sup> awarded a contract to Renovo to install 272 IP video visitation systems, making this installation one of the largest in the U.S.<sup>76</sup> The system launched in 2010 and, since then, the CCDC has

70. *GTL’s News & Events, Mayor Vincent C. Gray Announces Implementation of Video Visitation for D.C. Jail Inmates New Video Visitation Center Housed within the D.C. General Hospital Complex*, GLOBAL TEL\*LINK, [http://www.gtl.net/about/GTL\\_DOC\\_Video\\_Visitation\\_Conferencing\\_Center\\_Release.shtml](http://www.gtl.net/about/GTL_DOC_Video_Visitation_Conferencing_Center_Release.shtml) (last visited Dec. 21, 2013); Sadhbh Walshe, *Prison Video Visits Threaten to put Profit Before Public Safety*, THE GUARDIAN, (Oct. 25, 2012), <http://www.theguardian.com/commentisfree/2012/oct/25/prison-video-visits-profit-public-safety> (noting that “Global Tel Link [is] a private corporation that is in the business of making money”).

71. *Id.*

72. *Id.* See also, D.C. DEP’T OF CORR., *supra* note 65.

73. See D.C. Dep’t of Corr., *supra* note 69.

74. If DCDC accepts a bid for lower telephone rates in the future, they may run the risk of being sued by GTL. In 2009, GTL sued the New York Department of Corrections for terminating their prison telephone contract and granting it to Unisys Corporation (“Unisys”), a rival phone provider. *Global Tel\*Link v. N.Y. Dep’t of Corr. Serv.*, 894 N.Y.S.2d 580, 581 (App. Div. 2010). Unisys claimed that they would reduce phone charges to inmate families by \$600,000.00, but GTL argued that the decision to switch was arbitrary and without a rational basis in the record. *Id.* The Court affirmed the lower court’s decision finding that there was a rational basis for the award of the telephone contract to Unisys. *Id.*

75. The CCDC is a jail that houses an average of 3,000 inmates: 2,000 of the inmates are persons arrested for misdemeanor crimes and felonies in the County awaiting case dispositions, trial, or transfer to another jurisdiction; one thousand of the inmates are sentenced to serve time at the detention center for less than a year. See Clark Cnty. Det. Ctr., Nev., *NVClark County Detention Center Population Grows*, YOUTUBE (Sept. 27, 2013), <http://youtu.be/CmjBz2llyTo> (Las Vegas Metropolitan Police Department Deputy Chief Todd Fasulo discusses the spike in incarceration in the Clark County Detention Center generated from increased felony arrests and more people awaiting sentencing and competency exams; this has caused the inmate population to fluctuate up to 4,000 inmates).

76. *Clark County Detention Center Revamps Video Visitation Environment*, RENOVO SOFTWARE, (Sept. 2, 20909), <http://www.renovosoftware.com/news/press-releases/clark->

completely done away with face-to-face visits for inmates.<sup>77</sup> The onsite prison video visitation center operations at the CCDC are similar to those at the DCDC, but some procedures vary: Visitors to the CCDC have to pre-register online prior to their visits, while visitors at DCDC must register in person before registering online.<sup>78</sup> Additionally, Renovo was paid for the installation of the video systems at CCDC, while the visitation system provided to DCDC by GTL was technically “free.”<sup>79</sup>

## 2. Online Video Visitation

The software used to manage video visitation is quite intricate, but the basic operations of online video visitation are not that complicated. Once the video equipment is installed in a correctional facility, visitation management companies commonly host a server to maintain and monitor inmate visits.<sup>80</sup> These companies offer to regulate the scheduling of online visits via a secured website, install software within the facility so the staff can regulate online visits, install registration kiosks within the institution for visitors without access to a computer, and manage billing accounts.<sup>81</sup>

Online video visitation programs normally charge inmates, or their visitors, money in order to utilize the service. Since these fees are not regulated, the cost of online video visitation varies depending on the facility. For example, The Pennsylvania Department of Corrections (“PDOC”), which utilizes one of the oldest videoconferencing visitation programs in the U.S., charges families \$20.00 for a 55-minute visit.<sup>82</sup> The PDOC provides “virtual visitation” locations at three

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county-detention-center-revamps-video-visitation-environment (noting that Clark County also allows sixty licenses for Public Defenders to meet with clients remotely).

77. *Id.*

78. *Scheduling a Visit Over the Web*, CCDC (June 24, 2013), [http://www.clarkcountynv.gov/Depts/ccdc/Documents/Scheduling%20a%20Visit%20over%20the%20Web%20\\_2\\_%20\\_2\\_.pdf](http://www.clarkcountynv.gov/Depts/ccdc/Documents/Scheduling%20a%20Visit%20over%20the%20Web%20_2_%20_2_.pdf) (showing step-by-step procedures for scheduling a visit online after a visitor has first registered in person and noting that visitors of inmates at the CCDC may also register for inmate visits via designated kiosks).

79. *See Clark County*, *supra* note 77.

80. *Visitation Management Features*, RENOVO SOFTWARE, <http://www.renovosoftware.com/corrections-solutions/visitation-management-features/http://www.renovosoftware.com/corrections-solutions/visitation-management-features> (last visited Oct. 3, 2013); *Products*, VUGATE <http://vugate.com/products.html> (last visited Oct. 3, 2013).

81. *See Video Visitation*, *supra* note 60 (noting that staff can direct walk-in visitors to a kiosk to register or schedule a visit in order to free up their time with visitors checking in).

82. *See Boudin, et al.*, *supra* note 39, at 26, 27 (noting that in 2001 the PDOC partnered with the Pennsylvania Prison Society and received a federal grant to provide inmates with the opportunity to visit with families in Philadelphia via videoconferencing).

correctional facilities in Philadelphia, Pittsburgh, and Erie, Pennsylvania.<sup>83</sup> Visitors may go to one of these facilities and pay \$20.00 to visit inmates housed in one of the following eight facilities in the state: Albion, Dallas, Muncy, Cambridge Springs, Greene, Pine Grove, Coal Township, or Mahanoy.<sup>84</sup> The Virginia Department of Corrections (“VDOC”) also offers online video visitation services, for \$15.00 for a 30-minute visit and \$30.00 for a 60-minute visit.<sup>85</sup> The VDOC maintains that the “minimal” visitation fees are used to cover costs for non-profit agencies and are not deposited in the state’s budget.<sup>86</sup> Likewise, the Desoto County Jail (“DCJ”) in Hernando, Mississippi charges visitors for video visits, but the cost is \$20.00 for a 20-minute phone call.<sup>87</sup> The money collected from video visits at DCJ is divided between Securus, the visitation management company, and Desoto County.<sup>88</sup> According to Chad Wicker, the county’s Director of Detention Services, Desoto receives “something like” 55 percent of the money collected and Securus gets the rest.<sup>89</sup> Securus is also DCJ’s telephone service provider, so as GTL did for DCDC,<sup>90</sup> Securus installed DCJ’s video visitation system at no cost.<sup>91</sup> Moreover, Securus signed a 5-year contract with Desoto County and gave DCJ a \$100,000.00 signing bonus for the installation of the video visitation system.<sup>92</sup> Within the first two

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The Buncombe County Detention Facility in Asheville, North Carolina also offers online video visitation through Renovo for \$6.50 for a 10-minute visit and \$16.25 for a 25-minute visit. Buncombe provides on-site video visits at the facility only once a week, but visitors have the option to purchase additional on-site visits for \$9.75. *At-Home Internet Video Visitation at Buncombe County Detention Facility*, RENOVO SOFTWARE (Sept. 19, 2013), <http://www.renovosoftware.com/news/press-releases/at-home-internet-video-visitation-at-buncombe-county-detention-facility>.

83. *Virtual Visitation Program*, PA. DEP’T OF CORR., [http://www.portal.state.pa.us/portal/server.pt/community/inmate\\_information/7278/virtual\\_visitation/1107340](http://www.portal.state.pa.us/portal/server.pt/community/inmate_information/7278/virtual_visitation/1107340) (last visited Sept. 29, 2013).

84. *Id.*

85. *Video Visitation Program*, VA. DEP’T OF CORR., <http://vadoc.virginia.gov/offenders/prison-life/videoVisitation.shtm> (last visited Sept. 29, 2013). The VDOC has offered video visitation since 2010.

86. *Id.*

87. Yolanda Jones, *County Jail First in State to Debut Video Visitation*, THE COMMERCIAL APPEAL (Nov. 26, 2012), <http://www.commercialappeal.com/news/2012/nov/26/desoto-county-jail-first-in-state-to-debut-video/?print=1> (noting that “20 minutes is the maximum time inmates are allowed to visit with their families and friends”).

88. *Id.*

89. *Id.*

90. *See supra* Part III.A.1.

91. *DeSoto County Jail Will Soon Only Allow Video Visitation*, WMC-TV (June 20, 2012, 6:53AM) <http://www.wmctv.com/story/18840159/desoto-county-jail-will-soon-only-allow-video-visitation?clienttype=printable#>.

92. *Id.*



weeks of operations, visitation at the DCJ was up 65%; however, some complain that video visitation is impersonal and want face-to-face visits reinstated.<sup>93</sup>

While U.S. correctional institutions may offer online video visitation to reduce threats to security<sup>94</sup> and increase the number of family visits,<sup>95</sup> it is easy to ascertain how the above-mentioned fees allow institutions to reduce visitation costs and increase revenues.<sup>96</sup> Therefore, the “Increased Revenue” sales pitch made by visitation management companies undisputedly draws correctional departments to implement this technology. Million dollar companies, such as Renovo,<sup>97</sup> practically guarantee increased revenues for correctional institutions who use their technology.<sup>98</sup> Renovo maintains that their VisPay system is an “effective system to generate revenue from inmate visitation” because an institution can charge for “at-home internet visitation, additional on-site visits, specific days, times of day, or even specific vis-

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93. Jones, *supra* note 88 (“I hate it . . . It complicates everything and is so impersonal.”) (quoting Jordan Mansfield of Hernando County).

94. See Emmanuel, *supra* notes 12; Video Visitation, *supra* note 14.

95. See Video Visitation, *supra* note 13; see also, discussion *infra* Part III.B.

96. See Emmanuel, *supra* note 12.

97. Renovo Software, MANTA, <http://www.manta.com/c/mmlppdf/renovo-software> (last updated June 3, 2013) (reporting the estimated yearly income for Renovo between 5 to 10 million dollars); See also VuGate, Inc., MANTA, <http://www.manta.com/c/mm30tpp/vugate-inc> (last updated June 3, 2013) (reporting an estimated 5 to 10 million dollar annual revenue for VuGate, and other basic business information).

98. See Revenue Generation, RENOVO SOFTWARE, <http://www.renovosoftware.com/corrections-solutions/revenue-generation> (last visited Sept. 30, 2013). When the Westchester County Department of Corrections in New York contracted with Primonics, Inc. to install an online video visitation system, Primonics maintained it would save Westchester County \$300,000 by reducing the need for physical visits to jail facilities. Primonics Inc., *Westchester County Department of Corrections Selects Primonics' Televisit Corrections Solution*, CORRECTSOURCE, Mar. 6, 2009, [http://www.corrections.com/vendor/show\\_press/15701](http://www.corrections.com/vendor/show_press/15701) (Discussing video conferencing between inmates and county representatives, Commissioner Joseph Spano said, “[c]ounty representatives, such as bail expeditors and probation officers, are now conducting business from their main offices and no longer have to physically visit the jail. Consequently, they benefit by reducing their transportation cost and engineering productivity gains.”). Fox23 News [http://www.fox23news.com/news/local/story/Albany-County-Jail-to-launch-new-Video-Visitation/FTHgGxdoeUmhop\\_0jriMqA.aspx](http://www.fox23news.com/news/local/story/Albany-County-Jail-to-launch-new-Video-Visitation/FTHgGxdoeUmhop_0jriMqA.aspx) Also in New York, Assistant Jail Superintendent Clark of the Albany County Jail (“ACJ”) had this to say about ACJ’s installation of a video visitation system: “There are options where we can have the equipment put in for free, and then through time, start reaping some of the benefits from the cash brought in through the video visits. It’s all about revenue. It’s all about making money for the taxpayers of Albany County.” Julie Tremmel, *Albany County Jail to Launch new ‘Video Visitation’ Program*, Fox23 NEWS, July 24, 2012, [http://www.fox23news.com/news/local/story/Albany-County-Jail-to-launch-new-Video-Visitation/FTHgGxdoeUmhop\\_0jriMqA.aspx](http://www.fox23news.com/news/local/story/Albany-County-Jail-to-launch-new-Video-Visitation/FTHgGxdoeUmhop_0jriMqA.aspx) (noting also that visitors pay \$15.00 for a 20-minute visit).

itation locations.”<sup>99</sup> Black Creek, another private company offering video visitation, boasts that their “IP WebVisitor© provides the highest rate of revenue return in the industry.”<sup>100</sup> Utilizing the “Video Visitation Revenue Calculator” provided on Black Creek’s website, a correctional institution has the potential of generating \$183,456.00 in revenues a year if it contracts with Black Creek to manage its inmate visitation.<sup>101</sup> Moreover, correctional facilities can surprisingly make additional money by selling space on the video visitation monitors to advertisers.<sup>102</sup> For instance, in 2009, the Charlotte County (Florida) Sheriff’s office started selling still frame ad space on their prison video monitors to vendors.<sup>103</sup> The ads cost 60 cents per showing and air for two-minute intervals; the frame repeats 24 hours per day.<sup>104</sup>

Prison and jail video visitation operations may differ based on institutional needs; yet, its utilization is motivated by realizing the same advantageous outcomes: the preservation of family units, reducing security risks, cutting costs, and generating revenues. If these benefits are achieved, then why the fuss? Well, before jumping on the proverbial prison video visitation bandwagon, the following must be discussed: (1) whether these societal outcomes are actually fulfilled; (2) whether the economic gains from prison video visitation further the exploitation of disenfranchised people; and if so, (3) whether there are circumstances under which prison video visitation systems can still operate without causing harm to society.

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99. Renovo, *supra* note 99 (“Whether you offer on-site video visitation, internet video visitation, face-to-face, or a mix, Renovo’s flexible revenue generation module allows you to generate revenue each step of the way.”).

100. *Black Creek’s Video Visitation Solutions: IP Web Visitor©*, BLACK CREEK, <http://blackcreekisc.com/visitation.html> (last visited Oct. 8, 2013).

101. *Video Visitation Revenue Calculator*, BLACK CREEK, <http://www.blackcreekisc.com/calculator/calculator.html> (last visited Sept. 30, 2013) (The yearly revenue was generated by typing in responses to the categories prompted and suggestions of the company: (1) “Enter the number of inmate stations” “Typically two stations per housing unit”; (2) “Enter the number of visits per inmate section per day” “Example: Stations will be available 12 hours per day for visitation. Visits will be 12 minutes in length. = 36 possible visits per day, per station at %100 utilization. E.G. %50 utilization = 18 visits per station per day” 36; (3) “Enter the charge per visit” “A good rule of thumb is about \$10.00 per 20-30 minute visit.” \$10; (4) “Enter the number of days per week visitation is allowed” “Typically 7 days per week.” 7; (4) “Go” clicked on go; (5) “Revenue IP Web Visitor© could be generating/year for your agency” \$183,456.00).

102. *Charlotte Sheriff Selling Advertising*, HERALD TRIBUNE, Oct. 7, 2009, <http://www.heraldtribune.com/article/20091007/ARTICLE/910079991/-1/NEWSITEMAP>.

103. *Id.*

104. *Id.* (explaining that “[t]he cost for one looped ad for a year is \$1,533”).

## B. Keeping Families Together?

### 1. Inmates Serve Time Miles From Home: Video Visitation Keeps Families Connected

It is often challenging for inmates to keep in contact with their families due to institutional and geographic barriers. Many correctional institutions do not have sufficient bed space or ample facilities, so they send inmates to other jails or prisons to serve sentences.<sup>105</sup> These transfer correctional institutions are often located in rural areas; so, convicted inmates are frequently housed miles away from their communities.<sup>106</sup> Hence, it is almost impossible for family and friends to visit incarcerated loved ones due to high travel costs, time limitations, or lack of public transportation to these facilities.<sup>107</sup> For instance, sixty-two percent of parents in state correctional institutions were serving time 100 miles or more away from their homes at arrest in 2004; over fifty-eight-percent of these state inmates had never received a visit.<sup>108</sup> The number of inmate parents away from their families in federal correctional institutions in 2004 was even higher: Eighty-four percent of parents in federal correctional institutions were housed more than 100 miles from their homes and over forty-four percent of these parents had never received a visit.<sup>109</sup>

Without the ability to consistently visit incarcerated parents, family units— especially children—greatly suffer. There are approximately 2.6 million children in the U.S. with a parent in jail or prison on any given day.<sup>110</sup> The hardships these children experience are copi-

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105. Boudin, et al., *supra* note 39, at 25.

106. Anjannette Monroe, *Effects of Prisoner Location on Visitation Patterns*, 8 McNAIR SCHOLARS RES. J., 41, 42 (2012), available at [http://scholarworks.boisestate.edu/cgi/viewcontent.cgi?article=1109&context=mcnair\\_journal](http://scholarworks.boisestate.edu/cgi/viewcontent.cgi?article=1109&context=mcnair_journal).

107. *Id.*

108. Sarah Schirmer, et. al., *Incarcerated Parents and their Children: Trends, 1991-2007*, THE SENTENCING PROJECT, 8 (2009), [http://www.sentencingproject.org/doc/publications/publications/inc\\_incarceratedparents.pdf](http://www.sentencingproject.org/doc/publications/publications/inc_incarceratedparents.pdf) (finding “only 15% of parents in a state facility and about 5% of parents in a federal facility were housed fewer than 50 miles from their place of residence at arrest”).

109. *Id.* at 7, 8.

110. Susan D. Phillips, *Video Visit For Children Whose Parents Are Incarcerated: In Whose Best Interest?*, THE SENTENCING PROJECT, 1 (Oct. 2012), [http://sentencingproject.org/doc/publications/cc\\_Video\\_Visitation\\_White\\_Paper.pdf](http://sentencingproject.org/doc/publications/cc_Video_Visitation_White_Paper.pdf). The exact figures of children of incarcerated parents are illusory because “it is nobody’s job to find out.” Megan McMillen, *I Need to Feel Your Touch: Allowing Newborns and Infants Contact Visitation with Jailed Parents*, 2012 U. ILL. L. REV. 1811, 1820 (2012) (“Although the number of children affected by parental incarceration can be estimated, the true scope of the problem is uncertain because few reliable statistics exist. For the most part, law enforcement does not gather

ous.<sup>111</sup> Children of incarcerated parents can become socially isolated from peers, have disruptive behaviors, and reduced school performance.<sup>112</sup> Also, with a parent removed from the home and placed in confinement, children experience deeper poverty and are often placed in unstable family environments.<sup>113</sup>

In order to reduce these ills, there has been a growing trend to support and sustain children whose parents are imprisoned.<sup>114</sup> In accordance with this movement, efforts have been made to create greater opportunities for children to visit imprisoned parents at jails and prisons.<sup>115</sup> Increased contact with incarcerated parents can improve a child's welfare by relaxing their fears associated with their parent's detention while fostering their relationship with that parent.<sup>116</sup> In turn, visits with family members also help inmates. Incarcerated parents, as well as all inmates, behave better in prison, have a lower rate of recidivism upon leaving prison, and are generally more successful when they re-enter society if they stay connected to their families while incarcerated.<sup>117</sup>

Arguably, one way to raise the number of contacts between children and their incarcerated parents to preserve family units is through

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information about the children of arrested adults and correctional institutions do not ask prisoners for specific information about their children. Because there is no specific agency or system charged with collecting data about this population, it is unclear how many children are affected, who they are, or where they live.”)

111. See generally *id.*

112. See generally R.M. Cho, *The Impact of Maternal Imprisonment on Children's Education Achievement: Results From Children in Chicago Public Schools*, 44 J. HUM. RESOURCES 772 (2009); Susan D. Phillips, et al., *Disentangling The Risks: Parent Criminal Justice Involvement And Children's Exposure To Family Risks*, 5 CRIMINOLOGY & PUB. POLY 677 (2006); Dina R. Rose & Todd R. Clear, *Incarceration, Social Capital, and Crime: Implications For Social Disorganization Theory*, 36 CRIMINOLOGY 441 (1998).

113. See generally *id.*

114. Phillips, *supra* note 111, at 2.

115. *Id.* (listing other efforts to help children of incarcerated parents such as increasing opportunities for physical contact with parents and with instituting programs that allow children to engage in normal parent-child activities during visits).

116. Jason LaMarca, *Virtually Possible-Using the Internet to Facilitate Custody and Parenting Beyond Relocation*, 38 RUTGERS COMPUTER & TECH. L.J. 146, 165 (2012) (focusing on video visitation in the context of parental custody and visitation rights).

117. See Monroe, *supra* note 107, *passim*; Jessica Gresko, *Families Visit Prison From Comfort of Their Homes*, CORRECTIONSONE, July 2, 2009, [http://www.correctionsone.com/pc\\_print.asp?vid=1852337](http://www.correctionsone.com/pc_print.asp?vid=1852337); Jeffrey M. Leving, *Illinois Virtual Visitation for Incarcerated Fathers*, LEVING'S DIVORCE MAGAZINE (Mar. 31, 2009, 3:49PM), <http://divorcemagazine.wordpress.com/2009/03/31/illinois-virtual-visitation-for-incarcerated-fathers> (noting the existence of an internet video program in Florida, called Reading and Family Ties, that allows incarcerated mothers to read stories to their children). Jeffrey Leving is the chairman of the Illinois Council on Responsible Fatherhood and has pushed for the creation of a virtual visitation program for incarcerated fathers in Illinois. *Id.*

the use of video visitation.<sup>118</sup> Children are able to visit their incarcerated parents via video visitation kiosks at correctional institutions, online with computers,<sup>119</sup> or through the assistance of community organizations.<sup>120</sup> Some jurisdictions arrange with non-profit organizations and churches to host video visitation computer stations for families without internet access,<sup>121</sup> while organizations like Assisting Families of Inmates, Inc. (“AFOI”) help transport families to correctional institutions in Virginia.<sup>122</sup>

One proponent of video visitation, Jeffery Leving, argues that it helps to reduce the detrimental effects on children who grow up without their father’s presence.<sup>123</sup> Leving further maintains that children should visit their incarcerated fathers using videoconferences in child friendly settings instead of unfavorable prisons environments that can be traumatic.<sup>124</sup> Candace McCann, an inmate at the Rockville Correctional Facility in Rockville, Indiana, meets with her seven year old daughter almost every Saturday morning using a scheduled videoconference.<sup>125</sup> Candace proclaims that video visitation makes her feel like she is “at home, kind of” as she watches her daughter draw pictures, model clothes, and show off her lost teeth.<sup>126</sup> Likewise, Deborah Reagin, imprisoned for a methamphetamine charge, says video visits “give her a chance to feel like she’s still nearby.”<sup>127</sup> Deborah’s daughters have taken her on video tours of their new homes and she has enjoyed

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118. Solangel Maldonado, *Recidivism and Paternal Engagement*, 40 FAM. L.Q. 191 (2006) (examining the effects of incarceration on fathers and their children, and suggesting that virtual visitation is a viable option to increase the contact between prisoners and their children).

119. See discussion *supra* Section III.A.

120. See Phillips, *supra* note 111, at 4.

121. *Id.* (noting that the Sheriff’s Office in Pinellas County, Florida outfitted a bus with video visitation equipment that travels to four cities).

122. *Transportation Program*, AFOI, <http://www.afoi.org/services/transportation.html> (last visited Oct. 2, 2013) (“The cost is \$10 for each adult rider & \$1 for each child. Adults with 2 or more children pay a maximum of \$12.”).

123. Leving, *supra* note 118 (arguing that “children whose fathers are involved in their lives perform better in school, complete more years of schooling, have fewer behavioral problems, have better cognitive and psychological development, experience less poverty, are less likely to drink and use drugs, and have better self-control”).

124. *Id.*

125. Gresko, *supra* note 118 (noting that Candace’s daughter lives three hours away from the Rockville Correctional Facility with Candace’s aunt).

126. *Id.*

127. *Id.*

watching her 3-year-old grandson dance to the song "I Like to Move It" from the movie "Madagascar."<sup>128</sup>

The benefits that prison video visitation provide to families, children, and inmates are unquestionable. The opportunity to stay connected with family members is critical to families and children, as well to an inmate's overall morale while incarcerated and upon his re-entry into society.<sup>129</sup> However, the likelihood that the benefits of prison visitation also produce significant societal and economic costs cannot be ignored.

## 2. Face-to-Face Visits Eliminated: Video Visitation Hurts Families

The research regarding the effects of reduced or eradicated face-to-face visits on inmates and their families is limited. However, there seems to be a consensus among prisoner rights groups and other prison advocacy organizations that video visitation should supplement, not eliminate, face-to-face visits.<sup>130</sup> According to The Corinne Wolfe Children's Law Center ("CWCLC"), parent-child visitation is one of the most important elements to ensure the overall well being of children of incarcerated parents as well as inmates; and the most effective form of parent-child visitation is through contact visitation.<sup>131</sup> During contact visits, children have the ability to touch his or her parent, which (1) is "necessary for children to successfully bond with a parent"; (2) "helps normalize the situation and the interaction between parent and child";

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128. *Id.* Deborah, also incarcerated at Rockville Correctional Facility in Rockville, Indiana, states that "[i]t makes my day a whole lot better to be able to see my family, to talk to them" and also to be able to see her rat terrier, Peaches; something that would never happen in a regular prison visit. *Id.*

129. See La Marca *supra* notes 116; Monroe, *supra* note 117; Maldonado, *supra* note 118.

130. Phillips, *supra* note 111, at 3, 14 ("Children may benefit from video visitation if it increases opportunities for them to communicate with their parents. But video visitation is not a substitute for in-person contact visits, particularly for infants and young children."); Anthony Gierzynski, et al., Vermont Legislative Research Service, *Prison Video Conferencing*, UNIV. OF VT., (May 15, 2011), <http://www.uvm.edu/~vlrs/CriminalJusticeandCorrections/prison%20video%20conferencing.pdf>; Corinne Wolfe Children's Law Center, *Connecting Children with Incarcerated Parents*, UNIV. OF N.M., 2 (June 4, 2011), [http://childlaw.unm.edu/docs/BEST-PRACTICES/Connecting%20Children%20with%20Incarcerated%20Parents%20\(2011\).pdf](http://childlaw.unm.edu/docs/BEST-PRACTICES/Connecting%20Children%20with%20Incarcerated%20Parents%20(2011).pdf) [hereinafter CWCLC] ("Contact visitation is recommended in most cases unless contact with parents is not determined to be in the child's best interest by the court."). See also *Institute of Public Law*, UNIV. OF N.M., <http://lawschool.unm.edu/ipf/index.php> (last visited Oct 8, 2013) (noting that the Corinne Wolfe Children's Law Center is located in the University of New Mexico's Institute of Public Law).

131. CWCLC, *supra* note 131, at 2, 3 (discussing the correlation between parent-child contact and reduced recidivism).

and (3) “benefits children emotionally and behaviorally.”<sup>132</sup> So arguably, correctional visitation policies that do not allow face-to-face or contact visits are failing to provide inmates and their children with the best opportunity to maintain their family units.

Communities have begun to voice their disdain for the elimination of face-to-face and contact visits for prison video visitation. In Washington, D.C., there has been public uproar against the total elimination of face-to-face visits in the D.C. Central Detention Facility/District of Columbia Jail.<sup>133</sup> “Being in the same room is something you can’t replace,” said Denise, a parent of an 18 year old in custody at the D.C. Jail.<sup>134</sup> Denise appeared on WRC-TV news, and described how video visitation created distance between inmates and family members after D.C. eliminated face-to-face visits.<sup>135</sup> Additionally, other D.C. families, the District of Columbia Bar Association, the Washington Post editorial board, and members of the D.C. Council are pushing for the restoration of in-person visits: These groups argue that videoconferencing is impersonal and undermines inmate rehabilitation.<sup>136</sup> On February 5, 2013, D.C. Councilman Muriel Bowser introduced Bill 20-122, the Video Visitation Modification Act of 2013, in order to overturn D.C.’s policy that eliminated in-person jail visits.<sup>137</sup> Councilman Bow-

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132. *Id.* at 2 (commenting that contact visitation between children and incarcerated parents is recommended in most cases unless the court determines that it is not in the child’s best interest or, if contact visitation is not feasible due to distance, then visitation by telephone or videoconferencing should be encouraged).

133. John Kruzel, *Visitation Slight: How Two Policies Stack the Deck Against D.C. Inmates*, WASHINGTON CITY PAPER (May 22, 2013, 6:03PM), <http://www.washingtoncitypaper.com/blogs/citydesk/2013/05/22/visitation-slight-how-two-policies-stack-the-deck-against-d-c-inmates>.

134. *Id.*

135. Tom Sherwood, *Push for In-Person Visits at D.C. Jail* (WRC-TV news broadcast Feb. 6, 2013), available at <http://www.nbcwashington.com/blogs/first-read-dmv/189949461.html>.

136. See, e.g., *Public Statement Regarding the Video Visitation Policy of the D.C. Department of Corrections*, D.C. BAR, [http://www.dcbbar.org/for\\_lawyers/sections/litigation/video.cfm](http://www.dcbbar.org/for_lawyers/sections/litigation/video.cfm) (last visited Oct. 4, 2013) (arguing that videoconferencing “should not, and simply cannot, replace all in-person visits” which are invaluable for detainees, family and friends who support them); Washington Lawyers’ Committee For Civil Rights and Urban Affairs, *Council Members Move to Reinstate In-Person Jail Visits* (Feb. 5, 2013), <http://www.washlaw.org/news-a-media/298-news-jail-visitsn> (applauding the legislation stating, “[s]eeing one’s parents, children, spouses, or other loved ones on a computer monitor is not the same as seeing them face-to-face”).

137. Press Release, Councilmember Muriel Bowser, Bowser Introduces Bill Re-instating In-person Detainee Visitation Policy, (Feb. 5, 2013), <http://dcclims1.dccouncil.us/bowser/downloads/pr/2.5.13.Bowser.Introduces.Visitation.Bill.pdf>; *Video Visitation Modification Act of 2013*, D.C. COUNCIL, <http://dcclims1.dccouncil.us/lims/legislation.aspx?LegNo=B20-0122>.

ser has clearly expressed her disapproval with D.C.'s switch to video visitation:

If we're going to stop the revolving the door of returning citizens, it's important that we create the best possible situation for our men and women in the prison system to re-enter society as productive citizens. That's why we need to change current measures that are detrimental to rehabilitation, which include preventing in-person visits. We can't physically separate our citizens who are returning to society with the personal bonds that connect them to it.<sup>138</sup>

In support of Bill 20-122, the Director of Governmental Affairs of the Office of the American Bar Association ("ABA") wrote a letter to the Chairperson of the Committee discussing the bill, outlining the ABA standards that support reinstating face-to-face visits.<sup>139</sup>

Moreover, years of psychological research fortify the need for face-to-face and contact visits. Since the nineteenth century, psychologists have recognized that humans have a biological need to be touched.<sup>140</sup> This need has been described as an "actual hunger for touch that can be met only through contact with another human being."<sup>141</sup> Recent studies have shown that the touch can reduce stress levels, create a level of trust between people, and lead to heightened levels of performance.<sup>142</sup> For instance, the need for physical attachment can easily be seen in newborns and infants when a parent is sent to jail:<sup>143</sup> Infants as well as small children who are not held by parents during prison visitations develop an increase in anxiety, mental health

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138. Press Release, *supra* note 138, at 1; *see also* WCR-TV Sherwood, *supra* note 136 (stating that prison visits through a TV screen are not actually visits).

139. Letter from Thomas Susman, ABA, to Tommy Wells, Chairperson, Comm. on the Judiciary & Pub. Safety, D.C. Council (June 19, 2013), [http://www.americanbar.org/content/dam/aba/uncategorized/GAO/2013june19\\_dcvisitation\\_l.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/uncategorized/GAO/2013june19_dcvisitation_l.authcheckdam.pdf) ("[T]he ABA supports developing alternative visitation methods such as video visitation in some cases, but only to the extent that video visitation does not replace critical in-person contact visits. Contact visits are crucial to a well-functioning correctional program and should be available especially for people whose confinement extends beyond 30 days.") (citing ABA, TREATMENT OF PRISONERS STANDARDS: VISITATION STANDARD 23-8.5(e) (3d ed. 2011)).

140. Robert W. Hatfield, Ph.D., *Touch and Human Sexuality*, Vern L. Bullough & Bonnie Bullough, *Human Sexuality: An Encyclopedia* (1994) available at <http://faculty.plts.edu/gpence/PS2010/html/Touch%20and%20Human%20Sexuality.htm>; *Need for Touch*, THE WELLSRING, <http://www.thewellspring.com/wellspring/sensing/1927/need-for-touch.cfm> (last visited Oct. 4, 2013) (discussing a study in which children who were abandoned and sent to founding homes died by the thousands because they were not held, but were fed, clean and protected).

141. *Id.*

142. Carey Benedict, *Evidence That Little Touches Do Mean So Much*, N.Y. TIMES, Feb. 23, 2010, at D5.

143. *See* McMillen, *supra* note 111, at 1824 (looking at how the lack of contact during jail visits effects infants and newborns).



problems, and antisocial behaviors.<sup>144</sup> Therefore, correctional policies that allow contact visits would likely reduce these effects on children as well as the adults.<sup>145</sup>

In-person and contact visits also greatly strengthen family ties at a time where communal bonds are severely threatened.<sup>146</sup> These visitation practices help to fulfill the primary stated goals of correctional institutions: preserving family units and the successful re-entry of inmates into society.<sup>147</sup> Yet, why would jail and prison administrators adopt prison video visitation to the exclusion of these types of visits? The answer appears to lie in money, an instance where “[g]reed is the inventor of injustice as well as the current enforcer.”<sup>148</sup>

### C. *Another Inhumane and Profiteering Scheme of the Prison Industrial Complex*

The Prison Industrial Complex (“PIC”) is a multimillion-dollar profiteering industry that is driven by the greed of private corporations, the federal government, federal, state, and private correctional institutions, and politicians.<sup>149</sup> The PIC is one of the fastest-growing industries in the U.S.<sup>150</sup> It “has its own trade exhibitions, conventions, websites, and mail-order/Internet catalogs. It also has direct advertising campaigns, architecture companies, construction companies, investment houses on Wall Street, plumbing supply companies, food supply companies, armed security, and padded cells in a large variety of colors.”<sup>151</sup> This system generates revenues from the economic ex-

144. *Id.*

145. *Id.* (explaining that “good-quality contact” with incarcerated parents will help counteract threats to attachment) (citing Joseph Murray et al., *Effects of Parental Imprisonment on Child Anti-Social Behavior and Mental Health: A Systematic Review*, CAMPBELL SYSTEMATIC REV., Sept. 23, 2009, at 12, 35); David Fathi, *The Common Law of Supermax Litigation*, 24 PACE L. REV. 675, 686 (2004) (focusing on the inmates in supermax prisons and how contact visits leads to better prison behavior and more successful reintegration upon release).

146. Editorial Board, *The Post’s Views: Virtual Visits for Inmates?* WASH. POST, July 26, 2012, [http://www.washingtonpost.com/opinions/virtual-visits-for-inmates/2012/07/26/gJQAultJCX\\_story.html](http://www.washingtonpost.com/opinions/virtual-visits-for-inmates/2012/07/26/gJQAultJCX_story.html).

147. See Monroe, *supra* note 118 and accompanying text.

148. *Julian Casablancas Quote*, IZ QUOTES, <http://izquotes.com/quote/33183> (last visited Oct. 4, 2013).

149. Patrice Fulcher, *Hustle and Flow: Prison Privatization Fueling the Prison Industrial Complex*, 51 WASHBURN L.J. 589, 593 (2012).

150. Vicky Pelaez, *The Prison Industry In The United States: Big Business Or A New Form Of Slavery?*, GLOBAL RESEARCH (Jan. 31, 2013), <http://www.globalresearch.ca/the-prison-industry-in-the-united-states-big-business-or-a-new-form-of-slavery/8289>.

151. *Id.*

ploitation and dehumanization of the high numbers of human beings in U.S. jails and prisons.<sup>152</sup> Private prison companies, for example, donate money to political campaigns under the belief that politicians will pass tough crime laws.<sup>153</sup> Once implemented, these laws help to maintain, if not increase the correctional population:<sup>154</sup> As the population increases, public prisons implode, so federal and state correctional institutions contract with private prisons to house their inmates.<sup>155</sup> Then, private prison companies use their inmates' labor in order to make additional profits for their shareholders.<sup>156</sup> Accordingly, inmates housed in public federal and state departments of corrections are also economically oppressed and degraded through the workings of the PIC because they are forced to work for little to no wages.<sup>157</sup> These inmates make products for governmental agencies and private companies, and work inside and outside jails and prisons for the benefit of governmental agencies.<sup>158</sup> Equally troubling, the exclusive use of prison video visitation may be another profiteering scheme of the PIC.

The growth of jail and prison populations has become more concentrated in disadvantaged and primarily minority communities in the U.S.<sup>159</sup> Once a person is arrested, his family may become economically depressed, or further depressed, with the loss of income.<sup>160</sup> Initially, the family may expend funds for bail and attorney fees. Then, the family may struggle to pay for costs—like visitation—associated with

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152. Fulcher, *supra* note 150, at 599 (discussing how the PIC generates high revenues from the utilization of private prisons).

153. *Id.* at 607 (“Between 2003 and 2012, CCA, GEO, and Cornell Companies (prior to its merger with GEO) contributed a total of \$4,839,548 to state Democratic and Republican candidates and committees.”).

154. *Id.* at 607, 608.

155. *Id.* at 597, 598.

156. Pelaez, *supra* note 151.

157. Noah Zatz, *Working at the Boundaries of Markets: Prison Labor and the Economic Dimension of Employment Relationships*, 61 *VAN. L. REV.* 857, 857-958 (2008). The Federal Prison Industry (“FPI”) was created in 1934 and is a wholly owned U.S. for-profit corporation. *Factory with Fences: The History of Federal Prison Industries*, NCJRS, 10 (1996), [http://www.unicor.gov/information/publications/pdfs/corporate/CATMC1101\\_C.pdf](http://www.unicor.gov/information/publications/pdfs/corporate/CATMC1101_C.pdf).

158. Zatz, *supra* note 158; David Leonhardt, *As Prison Labor Grows, So Does the Debate*, *N.Y. TIMES*, Mar. 19, 2000, <http://www.nytimes.com/2000/03/19/business/as-prison-labor-grows-so-does-the-debate.html?pagewanted=print&src=pm>; Pelaez, *supra* note 150.

159. See generally TODD R. CLEAR, *IMPRISONING COMMUNITIES: HOW MASS INCARCERATION MAKES DISADVANTAGED NEIGHBORHOODS WORSE (STUDIES IN CRIME AND PUBLIC POLICY)* (Michael Tonry & Norval Morris eds., Oxford Univ. Press, USA 2007).

160. Jeremy Travis, et al., Urban Inst. Justice Pol’y Ctr., *Families Left Behind: The Hidden Costs of Incarceration and Reentry* 5 (2005), available at [http://www.urban.org/UploadedPDF/310882\\_families\\_left\\_behind.pdf](http://www.urban.org/UploadedPDF/310882_families_left_behind.pdf) (“Most parents (71%) in state prison were employed either full- or part-time in the month preceding their arrest.”).

incarceration if that person is convicted.<sup>161</sup> Consequently, the money depleted from families of incarcerated inmates is excessive from the onset, and may increase exponentially every day their loved one is in custody.

The current implementation of video visitation within facilities in most cases is not an additional expense to families, but the fees for online video visitation run the risk of becoming exploitative. As explored above in Part III.A.2, correctional institutions have complete discretion in implementing rates and fees for online visits.<sup>162</sup> As a result, charges for inmate online video visitation fees are completely unregulated just like inmate telephone calls were for the past twenty years. However, in August of 2013, the Federal Communications Commission (“FCC”) stepped in and voted to regulate inmate calls.<sup>163</sup> The FCC, finding that inmate telephone fees were “exorbitant,” voted to cap telephone rates at twenty cents a minute for debit calls, and twenty five cents a minute for collect calls.<sup>164</sup> Prior to the FCC’s regulation, inmates were paying over \$17.00 for a 15-minute phone call.<sup>165</sup> Not surprisingly, the inmate telephone service providers Securus and GTL,

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161. *Id.* at 5, 6. In Arizona, state legislation allows the Arizona Department of Corrections (“ADC”) to charge adult visitor a \$25.00 one-time fee to pay for a “background check,” but the money admittedly goes towards prison maintenance and repairs. Goode, *supra* note 11. Correctional institutions charge inmate families for background checks as a condition of visitation. *Id.* The ADC also charges 1 percent for deposits made to an inmate’s spending account. *Id.*

162. *See supra* notes 85, 86, 88 and accompanying text.

163. Aaron Smith, *FCC Votes to Reduce Rates for Prison Phone Calls*, CNNMONEY, Aug. 9, 2013, <http://money.cnn.com/2013/08/09/technology/prison-phone-calls/index.html> (noting that this FCC decision comes more than a decade after the U.S. District Court denied Martha Wright’s petition for relief from exorbitant inmate telephone fees to her grandson at \$1,000.00 per year). Notably, the FCC made the decision, in part, to break up a monopoly of prison phone service companies charging exorbitant rates. *Id.* However, the top providers—GTL, Securus, Pay-Tel, Telmate, and CenturyLink—will still be allowed to make a profit. *Id.* *See also* Matt Sledge, *Prison Phone Call Industry Will Fight New FCC Rules Lowering Rates For Inmates*, HUFFINGTON POST, Sept. 9, 2013, [http://www.huffingtonpost.com/2013/09/09/prison-phone-call-fcc\\_n\\_3894556.html?view=print&comm\\_ref=false](http://www.huffingtonpost.com/2013/09/09/prison-phone-call-fcc_n_3894556.html?view=print&comm_ref=false); Press Release, Mark Wigfield, Federal Communications Commission, FCC Bars High Rates for Long Distance Phone Calls in Jails and Prisons Nationwide (Aug. 9, 2013) (copy on file at <http://www.fcc.gov>). *But see* Doug Lung, *Government Shutdown Curtails Some FCC Operations*, TVTECHNOLOGY (Oct. 7, 2013, 11:31AM), <http://www.tvtechnology.com/article/government-shutdown-curtails-some-fcc-operations-/221739> (“[D]uring the Federal Government-wide shutdown, the FCC is limited to performing duties that are immediately necessary for the safety of life or the protection of property. FCC online systems will not be available until further notice.”).

164. *Id.* *See also* Gary Harki, *Portsmouth’s Video Visitation is Convenient, at a cost*, PILOTONLINE.COM, Aug. 15, 2013, <http://hamptonroads.com/print/686582> (companies who wish to charge higher rates have to apply for a waiver).

165. Sledge, *supra* note 164.

who control 80% of the prison phone call market, are appealing the FCC's decision.<sup>166</sup> In the past, these companies have made a fortune on inmate telephone calls in this \$1.2 billion a year industry.<sup>167</sup> Currently, Securus and GTL are both providing video visitation services to U.S. jails and prisons.<sup>168</sup> As a result, these companies have the opportunity to recoup any losses from the FCC's regulation of inmate telephone rates from video visitation service fees.

Accordingly, the exploitation of prisoners and their families through video visitation methods will lead to increased profits for prison video visitation service providers. Securus and GTL are not the only ones who will continue to make millions from unregulated inmate video visitation systems. In 2008 alone, Renovo earned \$5 million, which was up from \$2 million in 2007.<sup>169</sup> The Renovo partners borrowed \$110,000 from a relative of Eickhoff's (a founder of the company) relatives to start the business. They easily repaid the loan within six months from the profits generated from the company.<sup>170</sup>

Correctional institutions are also generating funds from the use of online video visitation by family and friends of inmates. In Ada County, Idaho, the sheriff claimed that virtual visits would generate

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166. *Id.* In response to the FCC decision, Richard Smith, CEO of Securus, lashed out: "What we've built for the corrections industry is very secure and it helps solve tens of thousands of crimes a year, and it helps save thousands of lives a year (pointing to the technology his company uses to catch prisoners ordering hits on people). . . . All the good work gets undone when you paint us as bad guys who are making lots and lots of money, and we're just raping the friends and families of inmates." *Id.* Further, Smith maintained that families should be able to pay the monthly rates—which, in his calculations, come out to \$34.00 a month—apparently because he saw people visiting inmates with one or two cell phones and driving nice cars. *See id.*

167. Todd Shields, *Crime Pays—for Phone Companies*, BLOOMBERG BUSINESSWEEK, Oct. 25, 2012, <http://www.businessweek.com/printer/articles/77924-crime-pays-for-phone-companies>. In exchange for exclusive state contracts to provide inmates phone services, these phone companies turned over a portion of the excessive fees to the state. *Id.* According to the FCC, "[f]orty-two states collected \$152 million in commissions in 2008, with the average being 42 percent of the calling charges . . ." *Id.* Notably, the inmate telephone rates were lower for the eight states that did not take a cut of the phone contracts. *Id.*

168. *See Renovo, supra* notes 60; *GTL, supra* note 62.

169. Dick Youngblood, *Edina Firm's Software Has Corrections Connections*, STAR TRIBUNE, Mar. 25, 2009, <http://www.startribune.com/business/41867307.html?elr=KArksUUUU>.

170. *Id.* (noting that Renovo sells its systems with an annual support and upgrade fee of \$150 per video station); *see also Datapoint Receives \$800,000 Order to Expand World's Largest Video Visitation System at Pinellas County Jail in Florida*, THE BUSINESS WIRE, Jan. 15, 1999, [http://www.thefreelibrary.com/\\_/print/PrintArticle.aspx?id=53585303](http://www.thefreelibrary.com/_/print/PrintArticle.aspx?id=53585303) (noting that in 1999, Datapoint, another provider of video visitation services, received \$800,000 to install videoconferencing systems at the Pinellas County Jail in Clearwater, Florida).

more than \$2,000,000 over two years.<sup>171</sup> In Portsmouth, Virginia, the city contracted with a video visitation company called HomeWave;<sup>172</sup> HomeWave grosses about \$1,400 a month from inmate calls and the Portsmouth Sheriff's Department receives about \$1,000 a month.<sup>173</sup>

Consequently, prison video visitation companies, through contracts with U.S. correctional departments, will continue to collect fees in complete disregard for the humanity of the people involved. The exclusive use of unregulated inmate video visitation technology will generate more difficult socioeconomic choices. For example, Ms. Martha Wright, was forced to choose paying high telephone rates to talk with her grandson on Sundays over paying for her prescribed medicine.<sup>174</sup> Moreover, this profit driven desire for revenues from video visitation fees creates the demand for mass incarceration: The less people in prison, the lower the number of inmate family members available to pay for video visitation, thereby lowering corporate gains. When profits are at stake, these companies may follow the lead of private prison companies and start lining the pockets of politicians for tougher criminal laws in order to keep people locked up and dependent on their services.<sup>175</sup> Finally, it is also worth noting that all inmate video visitation sessions are monitored and recorded, just like telephone phone calls.<sup>176</sup> Accordingly, since these recordings may be used as evidence in the prosecution of inmates awaiting disposition or appealing sentences, this also potentially increases the number of people convicted and sent to prison.<sup>177</sup>

#### IV. CONCLUSION: KEEP FAMILIES TOGETHER WITHOUT ECONOMIC EXPLOITATION

No man is an island,  
Entire of itself,  
Every man is a piece of the continent,  
A part of the main.  
If a clod be washed away by the sea,

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171. Sadhbh Walshe, *Prison Video Visits Threaten To Put Profit Before Public Safety*, THE GUARDIAN, Oct. 25, 2012, <http://www.theguardian.com/commentisfree/2012/oct/25/prison-video-visits-profit-public-safety>.

172. See Harki, *supra* note 165.

173. *Id.*

174. David Ganim, *After Ten Years, FCC Votes for Prison Phone Reforms!* PRISON LEGAL NEWS, [https://www.prisonlegalnews.org/%28S%284c0nsij5d44q5z553nmmh4bl%29%29/25544\\_displayArticle.aspx](https://www.prisonlegalnews.org/%28S%284c0nsij5d44q5z553nmmh4bl%29%29/25544_displayArticle.aspx) (last visited Oct. 5, 2013); Sledge, *supra* note 164.

175. See *supra* note 153.

176. See Sledge, *supra* note 164.

177. I will specifically address this issue in a future Article.

Europe is the less.  
 As well as if a promontory were.  
 As well as if a manor of thy friend's  
 Or of thine own were:  
 Any man's death diminishes me,  
 Because I am involved in mankind,  
 And therefore never send to know for whom the bell tolls;  
 It tolls for thee.<sup>178</sup>

Those who have a voice and a means to make a difference should not overlook the plight of inmates and their families. Human beings have a natural drive to stay connected, especially when a member of their community is confined to jail or prison, so families of inmates will continue to be economically subjugated by those who pursue profits over human needs. People will continue to suffer under the pains of economic disenfranchisement if in-person and contact visits of inmates are completely replaced by video visitation screens.

The benefits of supporting a family's commitment to stay connected with incarcerated loved ones are endless. Mark Schand of Hartford, Connecticut, was recently granted a new trial after twenty-seven years in custody. Schand was arrested and convicted for a murder when he was twenty-five, but maintained his innocence all along. Schand's motion for new trial was granted based on newly discovered evidence: eyewitnesses at trial recanted their testimony that Schand was not even on the scene. The prosecutor for the State did not object to the motion for new trial, nor did he object to Schand being released on his own recognizance. Schand's motion for new trial was the result of the efforts of his attorneys, Centurion Ministries Inc., an innocence project, and—more importantly—the fortitude of his wife and family members to fight for his innocence and keep him connected to his children. During the twenty-seven years Schand was imprisoned, his wife Mia visited him every week. Mia was pregnant when Schand was arrested. After Mia gave birth to their son, she took him along with Schand's two other sons to see him every week. "My family stuck by me," Schand said. "The day I got cuffed up, I had a woman by my side. Twenty-eight years later, she's right here. I don't know if that's normal. I still can't fathom that." Schand's son Mark said it was difficult knowing his dad was in prison for something he didn't do, but that his dad was cheerful every time he visited him. "It's basically like he raised us from inside prison."<sup>179</sup>

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178. John Donne, *No Man is an Island* (1624), POEMHUNTER.COM, <http://www.poemhunter.com/poem/no-man-is-an-island>.

179. Buffy Spencer, *The Republican*, *Judge Orders Mark Schand To Be Granted A New Trial In Fatal 1986 Shooting Of Victoria Seymour*, MASS LIVE (Oct. 4, 2013), <http://>

In order to preserve family units and make inmate re-entry more likely to be permanent and successful, more thought and consideration must be given about inmate placement and visitation procedures in the U.S. correctional institutions. The first goal should be to house sentenced inmates as close to their communities as possible. In so doing, the likelihood that families will be able to visit incarcerated loved ones will increase. If inmates cannot be housed close to their communities, correctional institutions must make provision to provide transportation to rural facilities at no cost, or at least on a need basis, to inmate families. While budget constraints always appear to be at issue, a duty ought to be placed on correctional institutions to raise funds; for instance, by teaming with non-profits, churches, or other community organizations to meet this goal.

Second, correctional visitation policies must be revamped and geared towards strengthening families and successful re-entry, not pecuniary gain. Administrators of U.S. jails and prisons should be prohibited from making arbitrary and capricious guidelines that, by their nature, prevent family and friends from visiting. For instance, adults in Arizona should not have to pay for background checks before they can visit someone in jail.<sup>180</sup> These types of policies and programs serve to punish not just the offender, but also their families and the communities where they lived before their incarceration.

Prison video visitation, if regulated and used in conjunction with face-to-face and contact visits can further the altruistic goals outlined above as well as the institutional goals of safety and efficiency. The use of inmate video visitation services must not be oppressive, so fees must be affordable and transparent so that there are no hidden costs. The superior option is that inmate video visitation should be provided for free; yet, I am opposed to any "person" working and not getting compensated, inmates and corporations alike. Ultimately, prison video visitation is a double-edged sword as currently implemented, yet it does not have to be.

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[blog.masslive.com/breakingnews/print.html?entry=/2013/10/judge\\_orders\\_mark\\_schand\\_be\\_gr.html](http://blog.masslive.com/breakingnews/print.html?entry=/2013/10/judge_orders_mark_schand_be_gr.html) (Centurion Ministries located and interviewed numerous witnesses. They found five key witnesses whom the prosecution or the defense had interviewed during the investigation of Schand's trial in 1987. Schand's attorneys argued for over twenty years that prosecutorial misconduct on the part of the then Assistant District Attorney Francis Bloom resulted in a false conviction. Cooke, one of the eye witnesses at Schand's trial, testified at Schand's motion to dismiss hearing that "Bloom met with him and he came out of that meeting believing if he identified Schand as the shooter at the 1987 [trial] he would get help on his own breaking and entering case. Cooke was released on own his recognizance the day he met with Bloom. After Schand was convicted, Cooke was given probation.).

180. See Goode, *supra* note 162.