TESTIMONY OF ERNEST D. PREATE, JR. ESQUIRE
BEFORE THE SUBCOMMITTEE ON CRIME,
TERRORISM, AND HOMELAND SECURITY

April 22, 2008

Good Afternoon. My name is Ernie Preate, Jr.. I'm an attorney licensed to practice law in the Commonwealth of Pennsylvania and the federal District Courts in Pennsylvania and the Third Circuit Court of Appeals.

I would like to thank Chairman Scott, Ranking Member Gohmert, and the rest of the Committee for inviting me to speak to you today about the "Prison Abuse Remedies Act of 2007." I rise in support of HR 4109.

I'd like to give you a brief background of my life experiences that brings me before you today. I am a former District Attorney in Scranton, Pennsylvania, and a former Attorney General of Pennsylvania. I'm also an attorney in private practice who defends accused criminals in state and federal courts; I also litigate Civil Rights claims on behalf of inmates and former inmates. But perhaps my most important experience for purposes of this testimony is that I was once a prisoner. I pled guilty to Mail Fraud in 1995 in connection with improperly gathering less than $20,000 in campaign contributions nearly 20 years ago. It was a violation of our state election law to take cash contributions in excess of $100. At some of my fundraisers, some people paid in cash, most paid by check. It was wrong for me to accept the cash contributions, and I am deeply sorry to the people of Pennsylvania for my actions. As punishment, I spent nearly twelve months in federal prison.

which, along with the Anti-Terrorism Effective Death Penalty Law (ATEDP), effectively obliterates the great Writ of Habeas Corpus. They talk to me about whether ill and aged lifers have any chance of pardon or parole, and, whether those who are truly innocent can ever be freed.

I am in a unique position to understand the real life consequences of legislation that is passed, by you and my Commonwealth. I know that most individuals, including those who crafted the PLRA, have a limited knowledge about realities of prison life, and, therefore, could not have predicted the stifling consequences of this law. It was only when I was a prisoner that I understood the critical importance of the federal courts' oversight of prisons. Based upon ALL my experiences, I can say with confidence that the PLRA is deeply flawed and its unintended consequences have done serious harm to the principle that a justice system must, after all, be fundamentally just.

A serious problem with the PLRA as currently written is that it requires a prisoner to exhaust administrative remedies in order to file a lawsuit in federal court. This means that he or she must file internal grievances through possibly 3 or 4 levels before the claim can be brought in federal court. This restriction applies in both county and state prisons.

I can tell you from my own experiences, both as an inmate and as a civil rights attorney that

one guard’s inmate beating. The stomping boot print was clearly visible on his back. The next day, the prisoner verbally complained to the day shift officer. So did his father, a well-known

Moreover, in the vast amount of cases, the guard will deny having done anything wrong, and the

are for filing the initial grievance and for appealing the decision of the grievance officer to the Superintendent and the Superintendent's decision to review in Harrisburg. However, when the Superintendent is given the inmate's Appeal, at least in one of the state prisons where I have a client, it stated right on the form used for recommended action to the Superintendent: "your answer is due by (specific) date." Clearly the staff are notified of the time dates, but not inmates. This should change.

It is helpful to compare the prison grievance processes required by the PLRA to that of other legislation. In virtually every phase of administrative review, both state and federal, when decisions are made, such as Social Security denials, Workers' Compensation denials, Unemployment Compensation denials, Equal Employment Opportunity findings, it clearly states on the official finding or denial that there is a right to an appeal and the timeline for appeal of that decision. However, from what I have observed, nowhere on correctional complaint forms does it inform the inmate of his or her right to file a complaint or appeal, to whom the appeal should be directed, and, the timeline for submission of the appeal.

It is important to remember here that the education level for most inmates in Pennsylvania prisons is less than an eighth grade education. These timelines, and other grievance process information, are contained in an 18 page "policy statement" ADM-804 that is given to inmates along with 26 other official policies that the inmate must be aware of. Though it is carefully crafted by lawyers, even inmates who can barely read are expected to understand their rights and responsibilities. Again, even if an inmate has a legitimate and meritorious complaint, if it is one day late, it is never going to be redressed

I would also note that Pennsylvania has no comparab

defendant. That provision represents the key mechan

These ADR programs, used in other federal cases, provide an impartial and accessible forum for just, timely and economical resolution of federal legal proceedings. Our own federal courts have recognized that the ADR processes are effective and economical use of the court's resources. In particular I believe ENE would be valuable in prisoner litigation as the neutral attorney could provide a neutral look the inmate claims to see whether the claim can be best resolved without litigation.

Lastly, as a solo practitioner, I must add my voice in support have to support the other testimony regarding the unfair provisions of the PLRA limiting attorneys fees. As a solo practitioner I have learned of many meritorious cases involving First Amendment rights, and in particular retaliation against prisoners for exercising their rights. Since these cases involve only nominal damages and not physical injury, the 150% requirement makes it impossible for someone such as me to represent an inmate in a meritorious case. The inmates seldom have access to funds to pay an attorney up front, and if my recovery is limited to 150% of a nominal damage award, there is no way that I would be able to devote my time to such a case. I willingly do *pro bono* work for Pennsylvania inmates and am a registered lobbyist in Pennsylvania for criminal justice reform minded individuals and groups. But, as a solo practitioner I cannot litigate without adequate recompense for my time.

In fact, it is, in my opinion as a former Attorney General, that the 150% requirement is the single greatest contributing factor to the unwillingness of the states to settle cases, since they know they will not be required to pay the attorney's fee if only a nominal amount of a buck or two is awarded. They can afford to pay $1.50 in attorney's fees, but not the actual fee earned by the