Florida Prison Legal Perspectives

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FEMALE PRISON CONDITIONS - ISSUES TO BE ADDRESSED-

Tallahassee - On October 10, 1998, Florence Krell, 40, a female prisoner incarcerated at Jefferson Correctional Institution located near Monticello, Florida, was found hanging dead in her solitary confinement cell after filing complaints about brutality by prison guards. On December 3, 1998, another female prisoner, Christine Elmore, 25, was also found hanging in a Jefferson CI solitary confinement prison cell she died two days later at a hospital in Tallahassee without regaining consciousness.

Christine Elmore's death came just days after an investigation was started in late November into Krell's death by a reporter from the *Tampa Tribune*, Michelle Pellemans. Both deaths, which the Florida Department of Corrections (FDOC) has labeled suicides, sparked calls for an independent investigation by civil rights groups, the news media, and certain politicians, into not only the deaths, but also into conditions in Florida's female prisons. *FPLP* initially reported on this situation in the feature article in the last issue entitled "FEMALE PRISONERS' DEATHS QUESTIONED." Since then there have been further developments.

On January 6th, committees from both the House and Senate called prison officials before them, and concluded that the answers given were inadequate. State senator Ginny Brown-Waite, R-Spring Hill, head of the Senate Corrections Committee, said following the hearings, that the deaths could have been prevented and that she was dissatisfied with the FDOC's response to lawmakers. "They still can't answer simple questions," she said.

The FDOC admitted during those hearings that mistakes were made, but defended the department's suicide prevention procedures. This was not sufficient to Sen. Brown-Waite, who questioned whether prison officials pushed Krell to the point of suicide while ignoring her pleas for help. "Do you push that person to the brink of suicide by stripping them and leaving them naked for 24 hours at a time?," Brown-Waite asked. The senator said that she would draft a bill that would require the Florida Department of Law Enforcement (FDLE) to investigate all future prison suicides and suspicious deaths of prisoners.

On January 13, 1999, Gov. Jeb Bush dismissed as "inadequate" a 500-page report released by the FDOC in December concerning the death of Florence Krell. That report was inconsistent in accounting for the actions of prison officials in the circumstances surrounding Krell's death.

Governor Bush ordered the FDLE to conduct its own investigation into both Krell's and Elmore's deaths and the disturbing circumstances surrounding same that have come to light.

Gov. Bush has also directed the FDOC to seek "investigation assistance" from the FDLE following any future prison murders, suicides, or suspicious deaths; whenever a life-threatening injury occurs in a confrontation between prisoners and prison staff; and whenever "major" corruption or criminal activities are suspected in a prison. The U.S. Justice Department continues to look at whether a formal investigation is going to be necessary by that department.

The FDOC investigation report that was released concerning Krell's death showed that Krell had asked repeatedly to be transferred from Jefferson CI to Broward CI's crisis intervention unit before her death. Prison staff had determined that her requests were manipulative and summarily denied them. Department records show that the senior psychologist at the prison, David Schrimer, who only has mail-order cre-

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dentials, determined that Krell was not a threat to herself and chose not to report her allegations of brutality by guards to other officials.

When Krell attempted to speak to a higher ranking correctional officer while in confinement, two male and two female prison guards falsely claimed that she had been placed on a "suicide watch." They used that excuse to justify forcing their way into Krell's cell with a shield, seize her few possessions-such as a cup and toilet paper they claimed were "contraband"-and left her naked and handcuffed on the floor of the cell. Krell later unsuccessfully filed complaints that she was left in that position for days without water-after having been pepper-sprayed.

When Krell attempted to write to the judge that had sentenced her to prison and to her mother to report the abuse she was suffering and ask for help, her letter to the judge was confiscated by guards.

Despite the official profile that David Schriemer placed in Krell's files, that she was psychologically normal, the FDOC's own investigative report contained numerous interviews with other prisoners and guards showing that Krell was deeply troubled and had desperately sought help to no avail.

The report detailed how Krell had stopped grooming herself, talked to herself, refused to eat and had threatened to kill herself. In among the interview reports from other prisoners about Krell's state of mind, FDOC investigators continually repeated references to Krell having been an exotic dancer, had breast enlargement, and her sexual preferences. The FDOC report concluded that Krell was solely responsible for her own death.

The report also exhibits inconsistencies in whether prison guards had actually made rounds to check on confinement prisoners, or whether they had just falsified the logs and then skipped the required every half hour security checks. Very few prison confinement units in Florida prisons have any means for prisoners to let guards know they are having a problem or medical emergency beyond banging on the door. But that often leads to disciplinary action against prisoners, and in many cases to a beating or gassing by guards, according to numerous reports received by FPLP staff.

The FDOC's investigation into Christine Elmore's death was expected to be released by February, but was not available at this writing. Officials state that Elmore had asked to be placed in solitary confinement after being transferred to Jefferson CI from Florida CI because she feared another prisoner at Jefferson who she had once testified against. Elmore had only been at Jefferson CI for eight days at the time she was found hanging unconscious in her cell.

Following calls by *FPLP*, the Miami office of the ACLU, continued pressure primarily from reporter Michelle Pellemans of the *Tampa Tribune*, and the threat of a pending Justice Department investigation and new legislation from Senator Brown-Waite, on January 20th the FDOC's new secretary, Michael Moore was called before a House committee to answer questions. Despite the "get tough" reputation that Moore has brought with him to Florida, he informed the House committee that positive changes are going to be made in the prison system.

Even though Moore's predecessor Harry Singletary's report on Krell's death found no wrongdoing, Moore told the committee that more than 21 prison employees, including six in supervisory positions, were involved in the incidents leading to Krell's and Elmore's deaths. He told the committee that disciplinary action is pending against some or all of those employees upon the completion of an independent investigation.

Michael Moore also told the House committee that he is making changes to the department's rules to include his orders that no prison may force prisoners to go naked or take disciplinary action against them for injuring themselves.

Moore said that he has directed the re-establishment of a Standing Advisory Committee on Female Offender Issues composed of domestic violence and sexual abuse experts to address "serious female offender issues." Moore also ordered Jefferson CI guards to undergo additional training. - TERESA BURNS ■

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CORRECTIONS COMMISSION CALLS FOR FEMALE PRISON CHANGE

During late January, John D. Fuller, Executive Director of the Florida Corrections Commission, called on the new Florida Department of Corrections (FDOC) secretary, Michael Moore, to exchange North Florida female prison Jefferson CI with a male prison in South Florida. For the past two years, the Commission has recommended to the FDOC and the Florida legislature that such a change is needed, yet no action has been taken on the recommendation. The Commission has maintained that such a female to male prison conversion is necessary as the majority of female prisoners are being housed in North Florida prisons, while most of their homes and families are in South Florida. The Commission cites that this problem fails to accommodate the needs of female prisoners in maintaining relationships with children and families.

At present there is only one prison in South Florida for female offenders, Broward CI, that only has the capacity for approximately 500. That leaves the vast majority of Florida's approximate 3,500 female prisoner population being placed in institutions in the northern part of the state. An estimated 70% of those female prisoners are from South Florida.

It will be interesting to see how the FDOC's new secretary addresses this problem that the Corrections Commission has obviously made a priority on their agenda, as it should be.

[Source:*Tampa Tribune*, Rptr. Michelle Pellemans, 1/27/99] ■

PENDING ACTIONS

Censorship Challenge Filed

A-42 U.S.C. sec. 1983 action has been filed in the U.S. District Court for the Southern District of Florida challenging the FDOC's censorship of "sexually explicit" books and magazines. The action seeks declaratory and injunctive relief against the FDOC. The action requests the court to declare that the FDOC's censorship rule at 33-3.012(2), F.A.C., as has been applied to the prisoner plaintiffs, is a violation of the plaintiff's constitutional rights in that the policy is unconstitutionally vague, overbroad, and is not related to a legitimate penological interest. Injunctive relief is sought to enjoin the FDOC from further enforcing the policy. The plaintiffs in this action are the Komar Company (the parent company of PaperWings), a Maryland corporation that publishes and sells books and magazines; and Florida prisoners Richard Davidson, Jr. (Okee. CI), Thomas Chick (Okee. CI), Louis Gaskin (UCI), and Ted Herring (UCI). In addition to the secretary of the FDOC being named as a defedant, the superintendents of both Okeechobee CI and Union CI are named defendants. This action is still in the initial stages with an amended complaint having been filed in late December. The plaintiffs in this case are being represented by two attorneys from the Maryland law firm of Brown, Coldstein & Levy, LLP, and Florida attorney Lawrence G. Waters of Winter Park. FPLP will carry updates on this case as it proceeds. *Komar, Davidson, Gaskins, and Herring V. Singletary, Prevatt, and O'Neill*, Case No:98-14294-CIV-Davis.

Close Management (CM) Challenge

Attorney Peter M. Siegel, Florida Justice Institute, has agreed to represent a system-wide legal challenge to Close Management confinement conditions against the FDOC. The basis of the action is the claim that long-term Close Management confinement causes serious deterioration in the mental health of prisoners assigned to such solitary confinement in violation of the Eighth Amendment prohibition against cruel and unusual punishments. Only declaratory and injunctive relief is being sought. Only prisoners on CM will be considered plaintiffs. The action has not been certified as a class action yet, although such will be applied for if other prisoners intervene in the action as plaintiffs. For more information contact: Peter Siegel, Attorney, Florida Justice Institute, First Union Financial Ctr., Ste 2870, 200 So. Biscayne Blvd., Miami FL 33131-2310.

Early Release Credit Cases

In the latest issue of *The Informant*, Vol. 2, Iss. 1, Feb. 1999, a publication produced by the law office of attorney Bernard F. Daley, Jr., is good coverage of the Dec. '98 decisions of the Fla. S.Ct. concerning control release, emergency, administrative gain time, and provisional credits. That issue examines the *Thomas*, *Downes*, *Meola*, *Jones*, *Meadows*, *Gomez* and *Lancaster* decisions. As copies of *The Informant* were provided to all prison law libraries, and because FPLP could not add anything to Mr. Daley's analysis, for information about those cases it is suggested that *The Informant* be reviewed. ■

PRISONS FOR PROFITS

Chanting "Keep it state, keep it safe," and "Public safety not for sale," 125 corrections officers from around the country held a rally in front of the corporate offices of Wackenhut, Corp., in Palm Bch. Gardens, FL, on Feb. 5, 1999.

The public-employee prison guards vowed to fight the growing privatization of prisons nationwide, starting with the protest against Wackenhut, one of the world's largest private prison companies.

The rally was part of a three-day quarterly meeting of state and municipal correction's guards who are members of Corrections USA, a nonprofit corrections organization. The rally was designed to protest the boom in prison privatization across the country, not just in Florida, which now has five privately operated correctional facilities.

Citing that "private prison" companies do not do adequate background checks or provide enough training to their employees, the public guards claim that prison privatization is dangerous. They also claim that private prisons can conceal assaults, escape attempts, and other matters because they don't come under the same public access laws as public facilities.

At least 18 states have allowed some part of their prison system to be privatized, said Pat Cannan, a Wackenhut spokesman.

Cannan claims that Wackenhut private facilities are as safe, or safer, than public correctional facilities. "Our safety records are exemplary at all our locations," he stated. He also repeated the standard lure for privatization, that states can save money by using private companies to operate prisons, a claim that has been debunked in several studies.

[Source: *Pensacola News Jour.*,

2/6/99]

In other recent privatization news:

■ During Oct. '98, four prisoners escaped from the Correctional Corp. of America-operated (CCA) So. Central Corr. Ctr. in Wayne Co., TN. All four were later recaptured. The reason cited for the escape was inadequate staffing. During September '98 there had been an escape attempt at the same facility. A recent report by TN officials detailed that incidents including assault and drug possession at the same facility was 287~ higher than at state facilities during 1997.

■ New Mexico prisoner Joshua McCann was still listed in critical condition a week after being found beaten and unconscious in a cell at the CCA-operated Torrance Co. Detention Ctr. in New Mexico on Sept. 10 '98. It was several hours before McCann was found. CCA staff was alerted to the beating by a phonecall from outside the facility.

■ Three officers at the Wackenhut-operated Lea Co. Corr. Facility in Hobbs, NM, lost their jobs following an Aug.- 13 '98 incident that raised allegations of misuse of force against prisoner Tommy McManaway. Two Lts. resigned and the associate warden of the facility was removed, with four other officers receiving reprimands. According to an NM DOC report one Lt. kicked the prisoner in the groin as he lay on the floor in handcuffs and leg shackles. Another officer reported that he heard the associate warden tell other employees that he "wanted to hear a thump" when they took the prisoner down, and to "stick to their stories and he would back them up." The DOC report exhibited that Wackenhut had concealed information from the public concerning the incident. The state attorney declined to press charges against the officers. The Lea Co. facility has been locked down at least ten times since May '98 following incidents of violence according to its warden. Following a stabbing at the facility in Dec., Wackenhut officials were looking for ways to make it difficult for prisoners to fashion weapons out of pieces of chain-link fence. The prisoner was stabbed 93 times with a chain-link shank. That was the eighth stabbing at the facility in six months.

■ Between Oct. 5th to the 8th, 1998, 35 immigration detainees at the Wackenhut-operated INS facility in Queens, NY, went on a hunger strike to protest their lengthy confinement while awaiting hearings for political asylum.

■ In -Aug. '98, a U.S. District Court judge prevented the opening of a Wackenhut-operated juvenile facility in Jena, LA, after finding that it had an inadequate number of guards, doctors and teachers.

■ On Aug. 5 '98, a guard at CCA-operated Whiteville Corr. facility in TN was injured in an altercation with prisoners. The facility houses prisoners from Wisconsin. On Nov. 10 '98 Wisconsin DOC officials released information to the press that following the officer's assault 15-20 Wisconsin prisoners had been abused during interrogations that CCA officials had conducted. Wisconsin DOC investigators found that prisoners had been slammed into the walls by CCA guards, had been struck in the groin and shocked with stun devices, all to force the prisoners to answer questions. Despite the findings, WS DOC officials continue to send prisoners to the CCA facility.

[Sources: *Private Corrections Industry News Bulletin*, 11/98; *Prison Legal News*, 1-2/99; USA TODAY, 12/31/98] ■

WORK AND CONTROL
More on Michael Moore

In the last issue of *FPLP* it was reported that the Florida Department of Corrections (FDOC) has a new secretary in charge of the agency. Michael W. Moore, 50, replaced former FDOC secretary Harry K. Singletary. Moore has been confirmed in the chief FDOC position and took over from Singletary in January. Moore comes to Florida with a controversial history in corrections that has some in Florida concerned about the future of the FDOC.

Moore hails from Texas originally, where he spent 28 years as a prison guard, warden and regional director of the Texas DOC. Only minimally educated, Moore receive an A.A. degree from a Texas community college in 1973, and followed that up with a degree in criminology and corrections in 1976. He is married and the father of five children.

In 1995 he left Texas and took over as the commissioner of the South Carolina Department of Corrections. Shortly after arriving in S.C., the worst prison riot in S.C. for the past 20 years was credited to Moore's "get tough on prisoners" policies. At least 32 prisoners and 6 guards were injured in the riot that occurred at the Broad River Correctional Institution. As soon as Moore arrived to take over in S.C. he began implementing severe changes to that system, which in turn created serious problems and earned him criticism from not only civil rights advocates, but also from many in state government and the news media.

In addition to requiring S.C. prisoners to wear short hair, state provided clothes instead of personal clothing, cutting out packages from families, implementing new mail and publication censorship policies, and cutting out proven recidivism-reducing college and work-release programs, Moore also stopped S.C. prisoners from receiving a paltry 18-cents an hour work payment, and instituted an 18-hour workday. Moore's policies in S.C. had prisoners starting work at 4:30 AM, and kept them busy for the next 18 hours at doing something.

Moore pays lip-service to the idea of rehabilitation-stating, however, that his idea of rehabilitation only comes from work and control of prisoners. He does not believe in calling people in prison "inmates" or "prisoners,". he likes the term "offenders." He says that no one should lose sight of the fact that "offenders" are where they are because they committed crimes.

This new FDOC "boss" says that the FDOC needs to be run more like a business. Commenting on the widespread negative impression that he created in S.C. and his business ideas, "Contrary to what a lot of the news media said in South Carolina, we did a lot of good things, both with education programs and economizing," he said. "I believe in system management, like Wal-Mart." For one example, commenting on the FDOC, "I believe

the prison system has several thousands acres that the department owns and could be in production." In S.C. he claims to have cut per prisoner meal costs by about 25-cents with increased farming practices. "That's what I mean by saying we need to run our prisons more on a business side," he said.

Florida House Corrections Committee Chairman Allen Trovillion, R-Winter Park, said that he has talked "prison philosophy" with Moore on a few occasions since he has been here in Florida and admires his approach to corrections.

"About 90. percent of the men who are there don't have a high school diploma," Trovillion says. "They need some programs not only in education but to change their way of living, thought patterns, and to learn some life-management skills. Mike Moore believes in making them learn that."

"He'll whip the Florida system into shape," claims state Senator David Thomas, R-Greenville, chairman of the S.C. Senate Corrections Committee. "I wouldn't call what he does a punishment model, but a control model, and it works," commented Thomas. But Moore also has many detractors that he left behind in South Carolina."

The emphasis in the department changed under Michael Moore, from training and getting inmates ready to go back into society, to punishment," said Gaston Fairly, a Columbia, S.C., attorney who represented prisoners in lawsuits against Moore. "It was discipline, but not good discipline. Prison itself is punishment, but [Moore wasn't] trying to make a person better while they're in there," stated Fairly.

Moore has said his goals in Florida are "instilling order and discipline," and supporting the FDOC's employees. He spent most of his first month on the job meeting legislative leaders and making some changes in the top administrative positions in the FDOC. He brought with him his top deputy from S.C., Mike Wolf, who will apparently replace Singletary's deputy secretary, Bill Thurber. And he has recruited Theresa Coker, former personnel director for the FL Department of State, to be his assistant secretary for executive services.

Moore was (allegedly) recommended to Florida's new governor Jeb Bush, by former Republican S.C. governor David Beasley. Bush said that Beasley's "tough-guy" recommendation of Moore was just what he had in mind for the FDOC position. Jeb Bush laughingly shrugged off the suggestion that his naming Moore to replace Harry Singletary was a shift from rehabilitation to punishment in Florida prisons. "You think we've been doing that? Rehabilitation?" asked Bush, incredulous. "I think the general philosophy of corrections, the first priority, needs to be to keep people who have committed serious crimes in jail," Bush said. "The way to keep them from coming back is the second priority-an important one-and it is to provide job training opportunities, education opportunities, drug rehabilitation."

During his first year, Moore says that he will travel to every FDOC institution to meet as many staff as he can.

One of the first issues that Moore will have to deal with in the 1999 legislative session, according to one state representative, will be the continued push to privatize prisons in Florida. A bill has already been filed in the House to make private prisons in Florida take the same high security-rated prisoners as the state operated prisons have. Currently there are five privately operated prisons in Florida that have only generally accepted minimum or medium security prisoners.

Moore has said that he hasn't taken a position on prison privatization, although he realizes it is one of the top concerns of state correctional officers. "I'm neither for nor against privatizing," he said. "That's a decision far above my head. But this criminal justice system is so large, everybody could take a bite of it-take 10 bites-and we'd still have plenty left."
[Sources: *Tallahassee Democrat*, Internet] ■

FEMALE PRISONER ABUSE REPORT

Recently the Human Rights Watch issued a new report detailing an investigation of reports of abuse of female prisoners in Michigan. The report cites that Michigan female prisoners are being held in inhumane conditions and that women who challenge the conditions are subject to retaliation by prison staff. The stories of five women are looked at in the report. All five are part of an ongoing lawsuit against the Michigan Department of Corrections. The lawsuit concerns claims that prison officials have not stopped guards and staff from sexually assaulting and abusing female prisoners, and that when complaints were made about the abuse that retaliation from guards was the result. The report is entitled *Nowhere to Hide: Retaliation Against Women in Michigan State Prisons*. For more information on the report contact: Human Rights Watch, 350 Fifth Ave., 34th Floor, New York, NY 10118-3299. Ph.#: 212/290-4700. Fax: 212/736-1300. Email: hrwnyc@hrw.org. Web: http://www.hrw.org/reports98/women/. [Source: *Prison Legal News* 2/99] ■

WHERE DID CHAIN GANG CHARLIE GO?

For those of you who are wondering what happened to former state senator Charlie Crist (R), who lost his bid at the U.S. Senate in the November 1998 election, he has landed another state job. Charlie, who tried to campaign on the backs of prisoners, presenting himself as the "toughest" on locking up criminals and making it tough for them in prison, had went so far as to give himself the nickname "Chain Gang Charlie" after he pushed for the reintroduction of chain gangs in Florida.

On Feb. 10, 1999, Charlie (who some prisoners call "The Tuna," because he "just isn't good enough") was appointed deputy secretary of the Florida Department of Business and Professional Regulation. It's a bet Charlie doesn't try to get tough on the business community in that position, or he may just find himself as a sanitation engineer in his next job. Sorry Charlie! ■

SEVEN ACQUITED IN BEATING AND DEATH OF FLA PRISONER

Fort Myers - After a six-day trial in the federal court located in Fort Myers, Florida, seven of the ten former Florida correctional officers originally indicted in

the beating and death of prisoner John Edwards at Charlotte Correctional Institution, were acquited by a jury on January 15, 1999. The ex-FDOC guards, had been indicted last year by a federal grand jury after being charged with violating Edward's civil rights by beating Edwards over several days and then after he cut his own wrists, allowing him to bleed to death over a 12-hour period, chained to a steel bed. Ten FDOC officers were originally charged, and all ten were fired by the FDOC when the seven-count indictments were handed down on July 10, 1998. [See: *FPLP*, Vol. 4, Iss. 5, "FDOC CORRECTIONAL OFFICERS INDICTED BY FEDS."]

Only seven of the former guards, that had held rank in the FDOC from entry level officers to Captain rank, were taken to trial. The other three officers pled guilty in exchange for their testimony against the other seven and the possibility of a lighter sentence.

Yet, in spite of that testimony, that detailed the horrendous conditions that John Edwards had been subjected to for several days before his death, after two days of deliberations the jury (eight men and four women) returned a not guilty verdict on all counts. Now, only the three ex-officers who testified against the other seven, and who pleaded guilty, will possibly go to prison for Edward's abusive treatment. They still face sentencing.

Acquitted by the jury were former FDOC guards Capt. Donald Abraham, Capt. Kevin Browning, Sgt. Michael Carter, Sgt. Gary Owen, COI Richard Wilks, Paul Peck and Joseph Delvecchio.

The prosecution's witnesses were ex-officers John D. Robbins, Robert Shepard and former Sgt. Thomas J. McErlane. Defense attorneys for the other seven acquited officers attacked the three witnesses' testimony, saying they were the ones who beat and abused Edwards and were lying on the stand hoping to get lighter sentences by involving others - particularly supervising officers. It also was presented as relevant that Edwards was in prison for killing his estranged wife and another man, and that he was a self-professed Satanist.

In testifying at the trial, John Robbins was considered a key prosecution witness. He admitted that he was perhaps the most enthusiastic of Edward's attackers.

According to Robbins testimony, Edwards arrived at Charolotte Correctional Institution (CCI) on the night of Aug. 18, 1997, escorted by Zephyrhills Correctional Institution (ZCI) guards Joseph Delvecchio and Gary Owen. Information had already been received at Char. CI that Edwards had lunged at a ZCI guard, Dominick Denicola, and bit his cheek and then taunted the officer that he had AIDS.

Robbins detailed how Edwards was beaten virtually from the moment he arrived at CCI and was beaten and abused for the next four days until Edwards cut his own wrists and was then allowed to bleed to death chained to a metal bed. When Edwards was first placed in a cell, Robbins testified that he was there along with former Sgt. Michael Carter, Robert Shepard, and Thomas McErlane. Robbins said he and Carter ran Edwards into the cell wall, threw him to the ground, where Robbins hit Edwards six to eight times forcefully in the stomach. He said that he grabbed Edwards by the hair and slammed his head into the metal bunk several times.

While Edwards was on his knees, Robbins testified that he kicked him in the genitals four to six times, and then "everybody began hitting and kicking him."

While this first beating took place, Robbins said that former Capt. Donald Abraham stood watching before telling the guards to stop. Guard Delvecchio, who Robbins also claimed was present, then looked to his Sergeant, Owen, who nodded, followed by Delvecchio punching Edwards in the face.

The whole time Robbins said that Edwards was meek and compliant, and was not resisting or trying to attack the guards.

Afterwards, according to Robbins, Abraham told the guards to falsify reports stating that Edwards attacked the guards and had to be controlled.

The next day, Edwards was so cowed that he would get on his knees and touch his forehead to the floor and place his hands behind his back on command, Robbins told the jury. "You better be right," Robbins stated he would tell Edwards, signaling Edwards to get into the position whenever an officer came into the dormitory. "It was a form of intimidation to let him know that we had complete control of him," Robbins testified.

Robbin's work partner in the confinement unit, Richard Wilks, used another form of harassment against Edwards, he would "airmail" him his food, throw the food into the cell and onto the floor, claimed Robbins. Then he [Wilks] told the inmate to clean up the mess by picking up the tray and hitting Edwards with it "once, maybe twice," stated Robbins.

Former Captain Kevin Browing, showed up later to see Edwards and slapped him twice, taunting him, according to Robbins.

On Aug. 21, other prisoners began banging on their doors to draw the guards attention to Edward's confinement cell. When Robbins and former guard, Paul Peck, arrived they saw Edwards pacing in pools of blood, pouring from slashes in his arm. "'Let me go! Let me die! Don't call medical!' he was screaming," Robbins told the jury. It was determined that Edwards had cut his arms with a sharpened identification card clip.

The guards called Browning and a nurse, but by the time they arrived Edwards was laying face down in the blood unconscious. After nurses bandaged Edward's arms, while he was still handcuffed behind his back, the guards took him to the psychiatric ward.

In the ward, Robbins said, Edwards was put face down on a metal bunk. Browning stood over him and kicked Edwards in the buttocks, telling him he better hoped he died, before Edwards was turned over and strapped to the bunk by his wrists and ankles.

That's when Browning began torturing Edwards, pulling hairs from his eyebrows and thighs with Wilks, who was

also present, delivering blows to Edward's chest as he arched his back, Robbins said.

Browning followed that with several slaps to Edward's face, then ordered another inmate-an orderly who had washed the blood off Edwards in the shower-to hit Edwards, which he did, twice. Then the inmate orderly looked at Robbins "like, 'This guy's unconscious,' shrugged his shoulders and walked out," Robbins told the jury.

The other two witnessing ex-officers described how they, and the other officers waged a campaign of abuse against Edwards. Robert Shepard described how he was told by former Capt. Abraham before Edwards arrived at CCI, that the prisoner would be beaten when he got there. Former Sgt. Thomas McErlane testified how he and several other officers continued to torment Edwards for the three days before he took his own life.

After those witnesses testified, former Capt. Donald Abraham took the stand in his own behalf. He testified that he did nothing to hurt Edwards or to cover up his attack. While Abraham admitted that force was used, he denied witnessing any officers beating Edwards as Robbins had claimed. He said that after Edwards arrived at CCI, he got a call from the officers escorting Edwards to confinement who told him that Edwards was combative and they had to use force. He said that when he talked to Edwards later he told him that nothing had happened. Another officer, Ronald Filipowicz, who wasn't charged, testified that he was there when Edwards was first brought in and he didn't see Abraham, Delvecchio or Owen.

A correctional probation officer at CCI, Danette Fasanella, testified that she saw Edwards the day before he died and she saw no injuries on him.

Jury members questioned after they had returned the not guilty verdict said that there wasn't enough evidence to convict. One juror, Dave Rice of Naples, said: "All I want to say is that we decided the verdict based on the evidence. It's the only decision we could make."

Juror Donna Huffman stated, "We felt for these men. They did their jobs under very dire circumstances." Some jurors expressed that they had "reservations" about some of the defendants, but that ultimately they did not feel the prosecution presented enough evidence to convict them.

Managing Assistant U.S. Attorney Doug Molloy, who prosecuted the case, showed no emotion when the not guilty verdict was read. When asked his feelings later, he said the trial accomplished one thing: It brought the allegations of abuse into the public eye.

"Justice is done when the truth comes out," Molloy said. "John Edwards died after three days at Charlotte Correctional Institution. These were the men who came into contact with him. He was bruised, mangled and beaten," stated Molloy.

Following the verdict, staff at CCI went on a heightened alert for trouble at the institution, apparently fearing prisoners' reaction to the not guilty verdict. No trouble resulted, however. According to the CCI superintendent, Warren Cornell, everybody was relieved that the trial was over. He indicated that some other officers and staff had been vocal about the situation, that some had thought the charged former officers should have been convicted while others had hoped they would be acquited.

John Edward's mother, Norma Edwards, commenting by phone from Patriot, Ohio, after being informed of the verdict, said, "I think what my son must have went through. That's terrible. I feel like his death was in vain if they're not going to improve the prison situation."

Prisoners at CCI have stated that conditions at the institution have actually worsened since the former officers were acquitted. "There's been a noticeable change," one prisoner wrote. "The officers act like they know they can get away with anything now."

Another prisoner wrote *FPLP*: "I was at CCI from 1988 to 1997. Anyone who has ever been there knows what goes on. Nothing will change. At least three of the [former officers] will pay something for what happened. That will only be a drop in the bucket, however, to what has been done to hundreds of prisoners over the years at CCI."

[Sources: *Charlotte Sun Herald* 1/13/99, 1/16/99; *Charlotte Herald Tribune*, 1/16/99; *News Press*, 1/9/99; Readers, Advisors] ■

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BLIND JUSTICE DEATH

by Carl Ridgeway

Denzel Washington is currently working on a project depicting the life of champion middleweight boxer Rubin "Hurricane" Carter who, as some of you know, was exonerated from a life sentence stemming from a 1967 murder conviction. After nearly two decades in prison, Hurricane, as Bob Dylan's lyrics describe him, "sitting like Buddha in a ten-foot cell, an innocent man in a living hell," was freed in 1985.

Hurricane now lives in Toronto, Canada, and runs the Association in Defense of the Wrongly Convicted. In mid-November 1998, Hurricane met with 29 other people who like himself have been falsely accused, falsely convicted, and finally exonerated against all the odds to conduct a conference on false convictions and the death penalty. Several of the 29 others came within hours of execution before the madness ended.

As highlighted at the first National Conference on Wrongful Convictions and the Death Penalty, held at Northwestern University in Chicago, since the Supreme Court reinstated capital punishment in 1977, 75 wrongfully convicted people have been exonerated and freed from death rows across the country. By early February of this year there have been 513 executions since the death penalty was reinstated. That's one exoneration for every seven executions that have occurred. With numbers like those, it should be apparent that the criminal justice system is seriously flawed.

Contrariwise, in true-to-form political double-talk, politicians like former Illinois Governor Jim Edger says data like that only proves that "the system works." How ironic it should be then for Edgar to learn that many of these exonerations had little or no help from the judicial system.

The judicial system did not free the Ford Heights Four convicted of two murders in 1978 in a Chicago suburb. These four young men were exonerated in 1996 through the efforts of Professor David Protess and his Northwestern University journalism students because they picked the Ford Heights Four case as a class

project. And on February 6, 1999, Professor Protess, a private investigator and several journalism students registered another success with the release of Anthony Porter after 16 years on the Illinois death row.

Last fall, Porter, who was convicted of murdering two people in 1976, and who only has an I.Q. of 51, came within two days of being executed and only got a stay when his lawyers raised questions about his ability to understand what was happening to him. With just a few weeks of investigation, Protess and his students discovered that the main witness against Porter claims that police pressured him to testify against Porter. Further investigation led to another suspect's wife who implicated her husband in the murder. When confronted by a college professor and his determined students, that other suspect, Alstory Simon, confessed to the killings on video tape.

If Porter's conviction is overturned as expected, he will be the 10th death-row prisoner in Illinois, and the 76th nationwide, to be exonerated since the death penalty was reinstated. Professor Protess intends to continue working on other cases and wants to establish an "innocence project" at Northwestern. "What we need is a network of innocence projects across the country," he says.

A System That Only Gets Worse

What little of the system that did work is fast being eroded through the efforts of pro-punishment politicians. Congress has defunded the nation's Death Row Resource Centers, which provided appellate lawyers for many prisoners on death rows. Then in 1993, the Supreme Court ruled that the discovery of new evidence that might prove innocence is no bar to execution.

To top it all off, President Clinton, who tried everything in his power to see that his own due process rights weren't being violated, allowed the gutting of habeas corpus by Congress, severely limiting the ability of death row prisoners' to file appeals. This occurred with the passage of the Antiterrorsim and Effective Death Penalty Act of 1996 (AEDPA) (note the combination, terrorism/death penalty, as if the two were connected).

Although statistics show that on average it takes 7 years to find the evidence to exonerate a person, the AEDPA contains a statute of limitations requiring death-sentenced prisoners to file their one appeal to the federal courts within one year, or in certain cases, in only six months. In the past, federal courts have found reversible constitutional errors in over 40 percent of the death sentences they have reviewed. This will cease under the AEDPA. Federal courts are now prohibited (by a congressional law) from overturning a state court's death sentence unless the sentence was "unreasonably" erroneous or contradicts explicit Supreme Court rulings, even if other clear constitutional violations exists.

Moratorium Needed

Few contested death sentence convictions ever receive widespread media notoriety, like Hurricane Carter or Mumia Abu-Jamal (a journalist who is sitting on death row in Pennsylvania for allegedly murdering a police officer in 1981, yet who has thousands of supporters claiming the evidence does not support the conviction).

Most of the death-sentenced get very little attention, judicial or mediawise, like Willie Enoch of Illinois, convicted of murdering a woman in 1983. Enoch has steadfastly maintained his innocence, and one day before he was scheduled to be executed he won a 90 day stay for independent DNA testing on a key piece of evidence. Independent testing because prosecutors conducted their own DNA tests and then refused to let outside investigators review their alleged positive findings.

Upon Enoch's stay in November 1998, Senator Rick Hendon made a powerful proposal: a moratorium on all executions in Illinois until all capital convictions could be tested with DNA analysis where applicable. Senator Hendon earned quick opposition to his idea and one of his detractors was Dudley Sharp from the pro-execution Texas group Justice for All. "When we use vaccines, we accept that a certain number of people are going to get sick and die from their use," retaliated Sharp.

Yet, Sharp's analogy is sophomoric at best. When an individual has need of a vaccine, usage of the vaccine is administered with prescience of the possible benefits and/or side effects. Our judicial system is manned by mortals and carries no such disclaimer as a vaccine does. It is unconscionable that innocent people could be put to death for a crime they did not commit. It should never be considered palatable to have an "acceptable level of wrongful executions" as Sharp suggests and other pro-death demagogues suggest.

All states which employ capital punishment should consider the moratorium proposal. After Anthony Porter was released in early February, both of the major newspapers in Chicago called for a ban on capital punishment in Illinois until a review of the entire system can be conducted. As Bruce Shapiro, columnist for *The Nation* points out, "Most death row inmates were convicted before the new DNA technology was available, or if there was scientific evidence at all it was cooked by uncertified, unsupervised and, sometimes, corrupt state crime labs, as investigative reports from West Virginia to Washington state have revealed."

It should be noted that, once again, due to a celebrity case (O.J. Simpson), much of this substandard and corrupt crime lab anaylsis and reports have come to media attention. Surely if one person's life is spared by such a

(Continued on page 12)

NOTABLE CASES
by Sherri Johnson and Brian Morris

Retroactive Application of Parole Regulation Extending Consideration May Violate Ex Post Facto Clause

On January 6, 1999, the federal Eleventh Circuit Court of Appeals reversed and remanded a Georgia district court's grant of summary judgment for the state parole board holding that the retroactive application of parole regulations that extended the time between parole consideration hearings was not violative of the Ex Post Facto Clause.

The Eleventh Circuit determined that the regulation at issue gives rise to a significant risk of increasing the measure of punishment attached to prisoners' crimes that cannot be said not to violate the Ex Post Facto Clause, where the regulation requires parole eligible prisoners to wait eight years between consideration hearings, is not limited to a class of prisoners for whom the likelihood of parole release is quite remote, is not carefully tailored to intend only to further a legitimate end and not to increase the quantum of punish and does not provide for procedural safeguards, as noted and approved in *California Dep't of Corrections v. Morales*, 514 U.S. 499 (1995), to require a full hearing, review of all relevant facts, and statement of particularized facts relating to prisoners' likely future parole eligibility.

GA prisoner Robert Jones was given a life sentence in 1972 for murder. In 1982 he was given another life sentence for another murder. At the time of the second offense, GA parole regulations provided for initial parole consideration after 7 years, and every three years thereafter. After Jones was sentenced, but before his first 7 year consideration, the parole board amended its rules to provide parole reconsideration only once every eight years. Jones was initially considered for parole in 1989, 7 years after the 1982 conviction, and parole was denied. The board scheduled Jone's reconsideration for eight years later. In 1991, however, the Eleventh Circuit decided *Adkins v. Snow*, 922 F.2d 1558 (11th Cir. 1991), finding that the retroactive application of the parole consideration extention of the GA regulations violated the Ex Post Facto Clause. Jones was then reconsidered for parole in 3 year intervals, twice.

In 1995 the Supreme Court decided *California Dep't of Corrections v. Morales*, and the GA parole board read *Morales* as overruling *Adkins* and rescheduled Jones for parole reconsideration in eight years, again.

Jones filed a Sec. 1983 action in the district court, which dismissed the complaint as frivolous, and which was subsequently reversed by the Eleventh Circuit on appeal. On remand from that appeal both Jones and the parole board filed for summary judgment, which the district court granted to the parole board agreeing that *Morales* overturned *Adkins*.

Jones appealed again, and the Eleventh Circuit found that the summary judgment for the parole board was error, and significantly, that *Morales* reinforced the decision in *Adkins* because the GA regulation at issue did not meet the requirements as expressly approved in *Morales* to avoid falling afoul of the Ex Post Facto Clause. See: *Jones v. Garner*, ___ F.3d ___ , 12 FLW Fed. C382 (11th Cir. *1/6/99*).

[Note: This case may have a significant impact on a significant number of Florida prisoners who are parole eligible, if challenges are raised. In 1997, following the *Morales* decision, the FL legislature amended parole statutes to provide for parole reconsideration hearings to be held every 5 years, rather than the former 2 years, for prisoners who have been convicted of murder, attempted murder, sexual battery, attempted sexual battery, or sentenced to a 25 year minimum mandatory sentence. The amendment also provided for the extension of presumptive parole release dates for 5 years in certain circumstances for the same class of prisoners. Chap. 97-289, Laws of Florida, amending sections 947.16, 947.174, 947.1745, Fla. Stat (1997). As in the GA regulation in the above noted case, the 1997 amended FL-parole statutes do not appear to: be "carefully tailored," provide for a full (initial or) reconsideration hearing, give the parole hoard the authority to tailor the frequency of subsequent reconsideration hearings of the particular circumstances of the individual (except for prisoners who are within 7 years of tentative parole release date), or only apply to a class of prisoners for whom the likelihood of release is quite remote, etc.

Interestingly, approximately two weeks before the Eleventh Circuit issued the above decision, the 1st DCA state appeal court upheld the denial of a prisoner's ex post facto challenge concerning the 1997 amendments, and the parole commission's use of statutes and rules enacted after his crime was committed to set his presumptive parole release date off after his parole was revoked. That case is attorney represented and can probably be expected to go further. See: *Brown v. Fla. Parole Commission*, ___So.2d___, 24 FLW 12/117/98).-sj]

Against Leniency for Testimony: Voices in the Wilderness

In July 1998, a three judge panel of the 10th Circuit Court of Appeals entered a stunning decision that prohibited federal prosecutors from using a witness' testimony if there was any promise of leniency in the witness' own criminal case. *United States v. Singleton*, 144 F.3d 1343 (10th Cir. 1998). In less than ten days that decision was vacated, and in January the full Tenth Circuit Court of Appeals reversed the July 1998 decision relying on the "longstanding practice of leniency for testimony." *United States v. Singleton*, No. 97-3178, 1999 WL 6469 (1/8/99).

The three judges who had written the original decision dissented from the majority opinion that now allows the federal government to offer a witness leniency in exchange for that witness' testimony. But their voices have been all but lost in the resounding rejection of their July 1998 decision. In more than 40 cases in over 20 jurisdictions that cite the original Singleton decision, thirty-eight have disagreed with it. Given the government's heavy reliance on buying testimony in order to secure convictions, this result was sadly predictable.

What is astounding is that two federal district courts have had the courage and wisdom to adopt and apply the reasoning of the original *Singleton* decision. In *United States v. Lowery*, Jr., 15 F.Supp.2d 1348 (S.D. Fla. 1998), the court granted a defendant's motion to suppress the testimony of three co-defendants who had entered into plea bargains with the government.

Applying a plain language interpretation to 18 U.S. Code Section 201(c)(2) that provides for a fine or imprisonment to "whoever" offers anything of value for testimony, the *Lowery court*, like the original *Singleton* court, decided the government fit within the definition of "whoever." What is good for the goose was

good for the gander. The court stated, "Where a witness, either for the [government] or the defense, knows that a promise of leniency or other thing of value is inextricably intertwined with his testimony, the incentive to lie and to curry favor is tremendous.... [I]ncluding the prosecution [in prohibiting payment for testimony] would not work an obvious absurdity, but would clearly preserve the integrity of the judicial process."

In *United States v. Fraguela*, No. Crim.A. 96-0339, 1998 WL 560352 (E.D. La. 8/27/98), District Judge Berrigan entered an order granting the defendant a new trial because the testimony of several pivotal witnesses violated Section 201(c)(2). Judge Berrigan rejected the government's argument that it only offered leniency for "truthful" testimony, noting "it is frankly difficult to envision a more powerful incentive to shade testimony a particular way than avoiding criminal conviction and loss of freedom."

Although these voices for integrity are virtually lost in the wilderness, Congress may have heard at least an echo of justice on October 21, 1998, when it enacted 28 U.S. Code Section 530B, the "Citizens Protection Act of 1998." Taking effect in April 1999, the new law will require federal prosecutors and all government attorneys to follow state rules regarding ethical conduct including prohibitions against communicating with persons who have an attorney. Praised by the criminal defense bar and corporate counsel and denounced by the U.S. Department of Justice, it remains to be seen whether this new law will sound even a whisper.

[Reprinted from: *Coalition for Prisoners' Right Newsletter*, 2/99]

30 Day Limit to Seek Judicial Relief Per 5. 95.11(8), F.S., Not Applicable to CM Challenge

Whenever a FL prisoner has tried to claim that sensory depriving solitary confinement in what the FDOC calls Close Management (CM) is punishment, the FDOC vehemently denies that CM is punishment or intended to be punishment. In a recent case, however, the FDOC- "conveniently" claimed that CM was punishment and that CM proceedings were "disciplinary proceedings," and got a circuit court to agree, but then realized the consequences of their duplicity and had to back pedal - fast.

Prisoner Derwin Norris filed a petition for writ of habeas corpus in the 2nd Jud. Cir. Ct. claiming a due process violation in the procedure used to assign him to CM status. The Florida Department of Corrections (FDOC) argued that Norris' claim was barred as untimely filed pursuant to section 95.11(8), F.S., which requires FL prisoners to file any judicial challenge to prison disciplinary proceedings within 30 days of final exhaustion of administrative appeals. The FDOC maintained that CM was "disciplinary confinement" for the purpose of moving for denial of Norris' petition. The circuit court agreed with the FDOC and denied Norris' petition on the statute of limitation grounds.

Norris didn't give up though, he filed for certiorari review of the denial in the 1st DCA, which no doubt surprised the FDOC when the review was granted. This surprise was evident when the FDOC immediately conceded to the DCA that the 30 day filing limitation did not apply in Norris' case, since CM was not "disciplinary confinement." The FDOC made this confession in a motion for the DCA to relinquish jurisdiction back to the circuit court for further consideration of Norris' petition. The DCA accepted that as an admission of error by the FDOC and QUASHED the lower court's denial of the habeas petition and REMANDED the case for further proceedings. See: *Norris v. FDOC*, 721 So.2d 1235, 24 FLW D84 (Fla. 1st DCA 12/21/98).

Timeliness of Unauthorized Consecutive Habitual Offender Sentencing Claims

Florida Rule of Criminal Procedure 3.850 authorizes criminal defendants to raise claims of entitlement to relief based on belated changes in the law which invalidates the constitutionality of their original conviction or sentence. Indeed, the main purpose of Rule 3.850, coming as it did in response to the United States Supreme Court's landmark decision entered in *Gideon v. Wainwright*, 372 U.S. 335 (1963), was to allow prisoners the opportunity and a forum to challenge convictions affected by the change of law announced in Gideon. In Florida, such claims must be raised within two years of the date that a change of law is held to apply retroactively by either the Florida Supreme Court or the United States Supreme Court.

On October 14, 1993, the Florida Supreme Court held that the imposition of consecutive sentences for offenses committed during a single criminal episode are not authorized under section 775.084, Florida Statutes (the habitual offender statute). See *Hale v. State*, 630 So.2d 521 (Fla.1993). Approximately twenty-one months later, on July 20, 1995, the Florida Supreme Court announced that its decision in Hale applies retroactively. See *State v. Callaway*, 658 So.2d 983 (Fla.1995). Problems arose, however, when the *Callaway* Court expressly held that "a two-year window following [the] decision in *Hale* shall be provided for criminal defendants to challenge the imposition of consecutive habitual offender sentences for multiple offenses arising from the same criminal episode." Id., at 987. The *Callaway* Court's decision in effect - and actually - deprived criminal defendants of their right to a full two-years to file claims for relief from the time that the decision in *Hale* was announced to apply retroactively.

Gregory Dixon's case illustrates just how difficult a task it can sometimes be for a pro se criminal defendant to obtain warranted relief. In the alternative, Dixon's case could be an indication that some judges, under certain circumstances, are just not too serious about the oath they took to protect an individuals rights. Dixon was sentenced on April 23, 1991, to two 30 year prison terms, enhanced pursuant to the habitual offender statute. The trial court further enhanced Dixon's sentences by ordering them to run consecutively. The overall 60 year prison sentence stemmed from offenses that arose during a single criminal episode and were prosecuted in a single case.

After the decision in *Hale* was entered, on August 12, 1994, Dixon filed a pro se Rule 3.850 motion seeking relief from his consecutive H.O. sentences. The trial court summarily denied Dixon's motion and the Third DCA affirmed, per curiam ("PCA"), without a written opinion. Later, the Third DCA, attempting to justify its PCA decision, claimed that it assumed "*Hale* would not be retroactive." *Dixon v. State*, 697 So.2d 966, at 967 (Fla. 3d DCA 1997). After the decision in *Callaway* was entered Dixon filed a second Rule 3.850 motion seeking *Hale* relief. The trial court again denied relief and the Third DCA affirmed based on its finding that Dixon was "in the position of having raised the Hale issue both too early and too late." Id. Fortunately for Dixon, the Third DCA did certify the following question as a matter of great public importance:

WHETHER APPELLANT'S RULE 3.850 MOTION SEEKING RETROACTIVE BENEFIT OF HALE V. STATE, 630 So.2d 521 (Fla.1993), SHOULD BE DEEMED TIMELY FILED WHERE (1) APPELLANT SOUGHT HALE RELIEF PRIOR TO THE ANNOUNCEMENT OF CALLAWAY, AND RELIEF WAS DENIED; AND (2) APPEL-

LANT FILED ANOTHER MOTION FOR POSTCONVICTION RELIEF, BASED ON HALE, WITHIN TWO YEARS AFTER CALLAWAY WAS ANNOUNCED.

The Florida Supreme Court granted review, rephrased the certified question, and receded from its holding in *Callaway* "to the limited extent that it utilized the *Hale* decision as the basis for calculating the two-year window in which an eligible defendant could seek *Hale* relief." Although it certainly didn't come easy, Dixon did finally obtain the relief he was entitled. In the process, the Florida Supreme Court held that "defendants whose Hale claims were summarily rejected prior to *Callaway* would have had two years after [the] mandate in *Callaway* to refile their claims." See *Dixon v. State*, ___ So.2d ___, 24 FLW 567i (Fla. February 4, 1999).

[While finding this particular case interesting, I couldn't help but wonder about the individuals who were in similar situations as *Dixon*; but, because the *Callaway* Court expressly held that "a two year window following [the] decision in *Hale* shall be provided . .," failed to timely file their claims for *Hale* relief. Because it's only reasonable to believe that the *Callaway* Court meant just what it said, that defendants had two years to file their claim from the decision in *Hale*, I firmly believe the *Dixon* Court erred by holding that defendants can only benefit from the *Hale* decision if they filed their claim "within two years of the date [the] mandate in *Callaway* issued on August 16, 1995," *Dixon*, at S69 n~7. Although an illegal sentence may be challenged at any time, two other exceptions to the Rule 3.850 two year limitation period are 1) newly discovered facts that could not have been discovered through the exercise of due diligence; and, 2) a change in the law that has been held to apply retroactive. Although the decision in *Hale* was not held to apply retroactively until the decision in *Callaway* was rendered, it seems only reasonable to conclude that the decision in *Callaway*, holding that the two years to bring *Hale* claims began when the *Hale* decision became final, frustrated the right to bring the claim within two years from the date the change of law was held to apply retroactive in *Callaway*. Because the two year period was certainly frustrated by the express holding set out in *Callaway*, it seems to me that the only reasonable solution is to provide eligible defendants a full two years to bring *Hale* claims.-bm]

Slamming The Door on Prisoners' Access to Court in Criminal and Collateral Criminal Proceedings

FPLP's Notable Cases recently noted an opinion rendered by the First DCA pertaining to the forfeiture of prisoners gain-time for filing frivolous pleadings. The article, entitled "Frivolous Pleading Tunnel Vision," *FPLP* Vol. 4 Iss. 6, indirectly praised the First DCA for doing the right thing and denying the State's request to have Joseph Saucer's gain-time declared forfeited. Saucer had petitioned the First DCA for a writ of habeas corpus seeking a belated appeal on the basis that he had, to no avail, requested his attorney to take an appeal. The First. DCA relinquished jurisdiction and appointed a special master to conduct a hearing. "The special master[ ] ... found that, while client and counsel discussed an appeal after a suppression hearing was denied, later Saucer entered a plea with the understanding that there would be no appellate review." *Saucer V. State*, 23 FLW D1972 (Fla. 1st DCA, 8-17-98). Based on the special master's findings, Saucer's petition for belated appeal was denied without a written opinion. Assuming the position that Saucer had "knowingly or with reckless disregard for the truth brought false information or evidence before the court, the State moved for an order forfeiting Saucer's gain-time pursuant to section 944.28(2)(a), F.S. The State's request was initially denied when the First DCA reluctantly determined that "it is the role of the [FDOC], not the court, to order the forfeiture of gain-time." *Id.*

The First DCA recently withdrew its initial order denying the State's request to forfeit Saucer's gain-time and substituted it with an order granting the forfeiture. For what it's worth, the Saucer Court did certify to the Florida Supreme Court, as a matter of great public importance, the question of whether section 944.28(2) (a) actually applies in criminal and collateral criminal proceedings. But see, *Rivera V. State*, 24 FLW 559c (Fla., 12-10-98) (noting that further filings of issues that should have been or actually were raised "on appeal or in prior postconviction proceedings .... could result in ... sanctions under either section 944.279 or section 944.28(2)(a), [F.S.] (1997)."). See *also, Adkins v. State*, 24 FLW D47 (Fla. 5th. DCA, 12-23-98) (warning Adkins that if he persists in filing new collateral challenges to his conviction ..., he may lose gain time and risk imposition of other sanctions.").

In his dissent, Judge Webster found that sections 944.279 and 944.28(2) (a), F.S., which the majority relied upon to justify its gain-time forfeiture in a criminal proceeding, was "enacted as parts of chapter 96-106, Laws of Florida [and] establishes with relative clarity that its intent was to address only frivolous or malicious civil litigation by inmates." The majority, however, found no reason why the gain-time forfeiture cannot apply to criminal proceedings." See *Saucer v. State*, 24 FLW D37b (Fla. 1st DCA, 12-17-98).

[In my opinion, any forfeiture of Saucer's gain-time that stems from his decision to invoke his constitutional right to access the court, see Art. I, § 21, Fla. Const., is patently unconstitutional. In my opinion, the Florida Supreme Court would violate Rivera's constitutional right against ex post facto laws if it applied the 1997 laws to sanction Rivera for challenging the constitutionality of his 1990 criminal conviction. Cf. *Britt v. Chiles*, 704 So.2d 1046 (Fla.1997) (new statute that disadvantages offender by allowing DOC to lengthen sentence violated Ex Post Facto Clause.). In my opinion, the law was once clear that any judicially imposed penalty that discourages assertion of a constitutional right is in and of itself unconstitutional. See *Weatherington v. State*, 262 So.2d 725 (Fla. 3d DCA 1972). Finally, it is my opinion that the State's cowardly move to deprive Saucer of his liberty under section 944.28(2) (a) rather than seeking a perjury conviction pursuant to section 837.02, F.S., was probably due to a fear that Saucer might actually have a fighting chance if allowed a trial by jury. Unfortunately, my opinion doesn't carry the force of law.-bm] ■

SUBMISSION OF MATERIAL TO *FPLP*

Because of the large volume of mail being received by *FPLP*, financial considerations, and the inability to provide individual legal assistance, readers should not send copies of legal documents of pending or potential cases to *FPLP* without first having contacted the staff and receiving directions to send same. Neither *FPLP*, or its staff, are responsible for any unsolicited material sent.

Readers are requested to continue to send news information including newspaper clippings (please include name of paper and date), memorandums, photocopies of final decisions in unpublished cases, and potential articles for publication. Please send only copies of such material that do not have to be returned. *FPLP* depends on YOU, its readers and supporters to keep informed, so that everyone can be informed. Thank you for your cooperation and participation in helping to get the news out. Your efforts are greatly appreciated.

(Continued from page 8)
moratorium, it would be worth the extra effort.

Florida Leads Nation in Wrongful Convictions

As revealed in a recent edition of *USA TODAY*, Florida has had almost twice the number of any other state in wrongful death convictions since 1976. Statistics from the Death Penalty Information Center based in Washington, DC, shows that there have been at least 19 proven wrongful death penalty convictions in Florida since executions were started back. The next state in proven wrongful convictions is Illinois, which has had 9 exonerations.

Many in Florida would say that 19 exonerations proves that the system works, while many in political office feel that maybe it works a little too good. Florida, like all death penalty states, is feeling the economic pinch of the appellate costs associated with death row prisoners. To their credit, lawyers from the Capital Collateral Representatives, a state-funded pool of lawyers who represent indigent death row prisoners in Florida, have continually aired their concerns about being underfunded and understaffed for the tasks they must try to perform. Now steps have been taken by the FL legislature to make CCR even less effective.

Money, or lack of same, however, is but one reason for false convictions. The one-to-seven rate of death row exonerations to executions proves that other areas of the system are also at fault. Those who have been fortunate enough to be exonerated are the lucky ones, it makes you wonder just how many of the 513 who were executed were innocent also.

How long will we as a people continue to accept that it's okay to murder a few innocent people as long as we kill the guilty ones too? How long will we continue to teach our children that killing is okay, as long as you justify it as "legally" carried out and that the end justifies the means? ■

CAPITAL PUNISHMENT
Capital Representation in Florida Further Dispersed

Last year there was a big to-do when the director of the Florida organization that was set up to provide legal representation to death-sentenced prisoners resigned amid claims that the legislature was not providing adequate funding for the number of such prisoners needing representation. That organization is known as Capital Collateral Representatives (CCR).

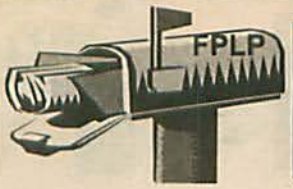
During the midst of the turmoil that was sparked by that resignation, a court case was decided that also held that since Florida was not providing adequate representation of death-sentenced prisoners, that Florida was not entitled to "fast-track" capital cases under new expedition provisions of the Antiterrorism and Effective Death Penalty Act of 1996 (AEPDA). The AEDPA provides that when states meet certain requirements in providing adequate representation to death-sentenced prisoners then a expedited appellate review of the case may be required. In *Hill v. Butterworth*, 133 F.3d 783 (11th Cir. 1997), however, the federal appeal court for Florida found that Florida's capital representation did not meet the requirements necessary to receive expedited review of capital cases. The court issued an injunction preventing Florida from fast-tracking capital cases.

That resulted in several changes to the Capital Collateral Representatives program. Where before, the program had only had one office located in Tallahassee, by early 1998 it was spilt into three regional offices, with one in South Florida, one in the middle of Florida, and one remaining in Tallahassee. The legislature voted to fund these offices, and new directors were found for each regional office.

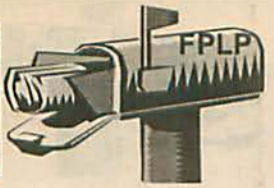
On July 30, 1998, however, another monkey wrench was thrown into the entire situation. Relying on a May 26, 1998, U.S. Supreme Court decision, that death-sentenced prisoners may not have a court issue a declaratory judgment that a state does not meet the expedited review procedures of the AEDPA, the 11th Circuit REVERSED and REMANDED its prior decision in *Hill v. Butterworth*, and directed that the lower district court dissolve the injunction against Florida that had prevented them from using the expedited appellate procedures. *Hill v. Butterworth*, 11 FLW Fed. C1646 (11th Cir. 1998).

Now Florida is moving again to greatly speed up capital case appeals. On September 16, 1998, it was announced that a new program will be implemented to provide legal representation to death-sentenced prisoners for their appeals. Citing the CCR money problems, the new program is allegedly designed to clear up a backlog of cases that CCR had been unable to handle. Sixty private attorneys from around the state were selected to represent the appeals of prisoners now on death row in Florida.

These attorneys, reportedly, will be paid a flat rate maximum fee of $64,000 for each death penalty case that they handle. The attorneys will also be allowed a maximum of $15,000 to conduct necessary investigations to represent the prisoners on the appeals. Few details were released to the public about this new program before its implementation. Few, if any, details were released to the public about how the sixty private attorneys were selected; nor what qualifications they were required to meet before being allowed to represent one of these prisoners whose very lives hang in the balance. Some death penalty opponents in Florida have claimed that the state is now loading the dice in its own favor with this private attorney program in order to show the public that executions will be sped up. Unless the private attorneys have reasonable experience in handling capital cases they will find themselves in a whole new realm of criminal defense and likely be unable to provide effective or adequate representation. Attorneys who simply wish to receive the $79,000 fee, and who may actually be pro-death penalty, will likely have been selected for this program. While some of these attorneys may actually give up the rest of their private practice to devote the amount of time that is usually required to appeal capital cases, many will not be able, or willing, to do that. And if the appeal process, which can be very expensive in



FPLP SOUND OFF



Dear FPLP: I subscribe to FPLP, and I can't thank you enough for the great work you are doing in so many areas. One year ago, I transferred from the Florida DOC to the Arizona DOC, and FPLP has been my lifeline for keeping current with the changes in Florida. The FDOC still controls my fate and my ultimate release date.

Ms. Burns, thanks for publishing the names and mailing address for the members of the Florida Corrections Commission. This week I wrote letters to each of the eight commissioners asking them to please consider the "middle ground" on the corrections issues that confront them. I asked them to maintain a moderate viewpoint on matters affecting me and my fellow prisoners, explaining that many men and women feel genuine remorse for their past crimes. We are working toward a better future through our good behavior in prison, and our participation in the available programs.

Ms. Burns, it occurs to me that some of your subscribers would write similar letters if you stressed their importance and published a sample letter for use as a model. I know many articulate inmates who would assist your efforts if you told them exactly who to write and what to say, regarding a particular issue that you are lobbying. Toward that end, are there any letters that I could write to assist your efforts? As articulate inmates, we need your guidance in finding a focus for our concerns.

Last week, on the BET cable channel, I watched a live interview with Professor Angela Davis of the University of California at Santa Cruz. You may recall that, in 1969, Prof. Davis was on the FBI's "Ten Most Wanted List." She spent sixteen months in jail before being acquitted of all charges. She has continued to work for prison reform since that time.

I was impressed by Prof. Davis's calm and rational approach to the inequities of the criminal justice system. This past weekend she launched a national campaign for prison reform, commencing with a conference/workshop at UC - Berkeley. The conference was subtitled "Beyond The Prison-Industrial Complex." Prof. Davis has declared that April 11, 1999 will be a national day to "Visit The Prisons." I intend to write to her for more information and I suggest that you contact her as well. Ms. Burns, can you help me by obtaining a more complete mailing address for her? Thanks!

Also, Ms. Burns, I'd like to tell you a bit about myself. I have been in custody since 1991. I am a former police officer (Orlando) who earned a degree in Criminal Justice from Michigan State University. I have experienced the criminal justice system on both sides of the law.

Arizona's prisons are very different from Florida's, in some ways harsher, in other ways more benign. Their incarceration rate is even higher than Florida's, however the prevailing philosophy is more rehabilitative and less punitive than in Florida. But, like Florida, conditions are getting worse here. If you're interested, I'll keep you informed of the significant changes here, and what efforts are being made to improve things. Somehow, we prisoners must shake off the lethargy of inaction and find appropriate forums for the expression of our legitimate needs. Thank you, Ms. Burns, for helping us in so many ways. Sincerely, PL Arizona

FPLP: I'm writing this as a cry out of only one man speaking for many, that are suffering and enduring these hardships and these punishments that Florida State Prison are inflicting on humans. I do challenge you to print this letter In your publication. Since you strive to print real news and truths. this is as real as it gets and scary. I've condensed this as briefly as possible because of space. But the readers will get the point. Florida State Prison practices stocking/warehousing of inmates. First thing they do to insure this is to devise rules that will make the mass' impossible to obey. So comes the majority of inmates receiving disciplinary reports to be placed in inhumane conditions of confinement. You do all the D.C. time and they take away gain time, because of petty D.R.'s and so the inmate stays longer in prison. The treatment of inmates at F.S.P. is the equivalent of the inhumane ways prisoners in Germany were treated during the Nazi Regime at the concentration camps. Just to name a few installment plans they have here is as reads: (1) Non-education- for all educational programs have been deleted from F.S.P. so they promote illiteracy.

(2) Poor Medical practices- their written policies are not practiced at all. The over-the-counter drugs (such as Tylenol, cough medicine, etc.,) are in the control of security staff, the same ones who apply these inhumane conditions. So we may rarely get medicine when requested. (3) Non-rehabilitation- again their policies are not practiced. There are NQ programs or advancement group sessions, (ZILCH) to prepare inmates a pathway back into society. Because prisons and institutions brings the biggest profits to Florida and the legislature. And because a lot of votes come from the politicians crime-fighting agenda's, it stands to reason why these white-colors have created a revolving door to these same prisons. Their motto is: "To keep them dumb, uninformed, and lull of animosity against ruling authority". To insure they will most definitely keep well-stocked warehouses. (4) Non-communication- Here is where a thin line divides security and cruel and unusual punishment. They (D.O.C.) do not adhere to Fla. Statutes due to a separation of two words; Rights and Privileges. Visitation is a privilege. So they place inmates in waist chains and handcuffs and put you behind a partition separating you and your loved ones from contact. They promote ~ If you try to communicate with your fellow inmates, you are written "trumped-up" D.R.'s for fabricated infractions.

Mail privileges are almost obsolete. To get any information out that goes against the D.O.C. it has to be disguised. But the little privileges left in mail procedures are slowly deteriorating. (5) Authority MonQers- The authority is so intense at F.S.P. that at times, there are two Sergeants working on one wing. They write D.R.'s just so they can brag about it later to their buddies. If an inmate files a grievance on an officer, that officer usually retaliates and writes that inmate so many D.R.'s he's buried in D.C. confinement. This is all I'll expose at this time...

Please print this letter and wake up society as to what is happening right under their noses. After all, by a famous prediction long ago, "By the year 2000 every family in the U.S.A. will feel the effects of prisons. Anonymous

Hey Guys,

Glad to learn you are now Non-Profit donations are tax deductible. Hope to make one this year to help the cause(s). About the I/M deaths, I was at Charlotte CI from "89-97" and know from personal experience how it goes! We need to take advantage of the 10 CO.'s indicted and go on the offensive by creating a clearing house / out reach where these incidents (gratuitous beatings) can be properly documented and get more exposure. One of the reasons that they have gotten way out of hand (epidemic) is that 1.) DOC is " expert " at cover up 2) Most "victims" (I/Ms) lack the ware-with-all to obtain redress. Like Ms. Krell many are "taught a lesson" for standing up for what is right in a system largely run amok. Please help us all by forming a column devoted to 8th Amendment (cruel and unusual punishment) issue so we can unify to fight this ***most*** serious of all issues. Just try to imagine if it was You or you loved one! AA

To Whom It May Concern,

I have grown very interested in your magazines. You get great praises here from all of the ladies at BCI. CM

I would like to thank you for FPLP it has been very helpful to me. I try to pass it on to other inmates as well. I think every one of us in prison should subscribe to

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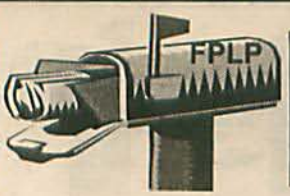

FPLP SOUND OFF

the FPLP you all do a very good job at keeping us up dated on every thing that is happening. Thank you very much. MW HCI

Dear FPLP,

There are no words to express our appreciation of your efforts to support and inform the prisoners and family. God Bless! Hazel Roughton

Dear FPLP,

I have been subscribing to FPLP for three years and basically I've been satisfied with the information I've been reading. However there are issues I have been dissatisfied with FPLP coverage on and that is close management and how is applied in the State of Florida as well as the issue of Police brutality and official misconduct as it is happening and practiced at FSP; In addition to FPLP lack of advocacy for a new disciplinary proceeding to be instituted in the state of Florida that has more meaningful due process. FPLP should be sending investigative reporters to FSP to investigate the many severe police assaults that are carried out against inmates here at FSP. I myself have been a victim of these many assaults and there are numerous of other cases I know of. In the last week three inmates had to be life flighted from FSP to the outside hospital with one inmate dying as a result of being assaulted. You know, as procedure the average inmate in FSP has to be handcuffed before leaving his cell and in all cases the assaults take place while the inmate is handcuffed. There's no way in my wildest imagination that the death of a inmate is a justifiable use of force while he is handcuffed??? How long must the carnage go on? I guess as long as good people or conscious people refuse to act in the interest of Justice, Truth, and Equality... We both know that prison agencies do a very poor job of policing themselves, the result is almost always there's no evidence to support the inmates allegations thus the officials involved go unpunished which only encourages the behavior directly or indirectly. Don't ge wrong. In-spite of you short comings you and your organization are doing far more in the interest of prisoners and their families than any other prisoners advocacy group I know of in Florida but------ you can do more! You have the potential, the means, and the conscious.... The prison system in Florida is very unique in that the officers have absolute authority. There are no checks and balances in place to counter that absolute authority. Prisoners in Florida in 1999 have no liaison committee unbelievable, incredible... Prisoners in Florida's system have no force or voice in matters that effect their daily lives in the prison system--Lifers and long timers particularly...With long prison sentences being handed out like water what is the future for Florida prisons in such hostile atmosphere? MC FSP

Dear FPLP,

I'm concerned about the tax money that is being mishandled by (Department of Corrections) DOC. The bids that are put in for the new construction are bid on by contractors who bid millions for the labor to build these prisons, and by contractors who are experienced at the trades needed. Well I see the tax payers are again getting the shaft from another state agency here in Florida DOC. I'm a prisoner here at Taylor CI I have been building prisons for 7 ½ years. The people that are hired to build the new buildings are not contractors as the bid requires, and all the "millions" for labor is really a joke. Because inmates are being forced to work at trades we are not experienced at, which is dangerous. The inmates do all the work "skilled trades" , so where are all the tax dollars, millions, going? Our family's pay for these things and I'm tired of seeing the needed money go to the hands of greed. TH TCI

Dear FPLP,

I have enjoyed FPLP this past year and wish to renew my subscription. I have to admit your newsletter covers a wide selection of topics for any one looking for brief information. Whether it be legislative laws being passed, or up to date court rulings State and Federal. FT ECI.

Dear FPLP,

Thank you for your extensive efforts in fighting for the rights of Florida Prisoners. I am impressed with the quality of your newsletter. Each issue gets better and better. Please inform all Florida prisoners of a new manual on sale for $25.00 that has been written to assist prisoners in filing inmate grievances and writ of mandamus petitions in the Florida courts. I have personally purchased a copy and its an excellent manual, for any Florida inmate who has no legal education or institution law clerks to assist in the filing of complaint's under F.A.C. 33-29/ The manual is called "Prisoners' Guide to the Inmate Grievance Procedure" it can be purchased from the Publisher at the following address: Sam Reed, P.O. Box 51, Mercedes, Tx. 78570. I recommend all prisoners obtain a copy immediately. AS CCI

To Whom It May Concern;

Enclosed with this letter is a check for $5.00 for a year subscription of your FPLP news periodical. Which helps me and other brothers keep up with what's going on with the brothers and sisters who are incarcerated through out the US. I pray to God y'all keep up the good work , because not only do y'all keep us informed , but y'all let "those" people know that they are being watched. Remember: " The watcher that watches is being watched". DJ

Dear Sir or Ma'am,

I am writing because I want to start receiving a subscription to FPLP. Do you know how hard it is just to borrow somebody else's just to read it? Near impossible! Everyone keeps them and files them away for future reference. If I had known about FPLP sooner, I would certainly be filing mine away as we speak. I will recommend this magazine to any of the guys just entering the system and to any old timers who do not already know about FPLP. Your magazine gives us a chance to keep up with what is happening throughout DOC. Even letters from fellow inmates about how they are being treated at that particular institution. Again, I wish to thank you for giving me the opportunity to receive FPLP MD PCI

Dear FPLP

I don't believe in Angels and Devils. But if there were, you'd be the Angels and the Devils would use the media to dope the masses with massive unrelenting injections of feel good, tasty scandals, anti-crime editorials and a general " spiritual" atmosphere of ignorance and easeful, opium like primrose DENIAL. Our education industry never reveals to us that we each inhabit our own private ghetto and life's prime purpose is to rise up and out of it. Gary Fortz

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capital cases, requires more than the alloted amount the representation may very well suffer. The state will not have a similar restriction on the amount of basically unlimited taxpayer monies that it can expend to fight the appeals. Under this poorly thought out program, justice will be further regulated to those who can afford it. ■

MORATORIUM 2000

In anticipation of the new millennium, Sister Helen Prejean and other notable U.S. abolitionists have formed an organization called Moratorium 2000 and issued a worldwide call to suspend use of the death penalty next year.

In a letter to anti-death penalty activists and organizations, Sister Helen said the group's mission is to reach out, "to friend and foe alike to convince them to join us in our efforts to obtain and ensure the full protection of human rights for all as guaranteed by the Universal Declaration of Rights."

In the fall of 1999, Moratorium 2000 plans to rally at the United Nations in New York City and present the world body with a truckload of national and international petitions and letters supporting an international moratorium on executions. According to Sister Helen, the organization hopes to use the event to obtain passage of a U.N. resolution calling for a worldwide moratorium.

Sister Helen, who wrote the anti-death penalty book *Dead Man Walking*, is Moratorium 2000's honorary chair. Its chair is Michael Radelet, a professor at the University of Florida and co-author of *In Spite of Innocence*, a case study of hundreds of cases of innocent men and women convicted of capital crimes in the U.S. The vice-chair is Richard Dieter, executive director of the Washington, D.C.-based Death Penalty Information Center, which studies and reports on capital punishment in the U.S.

Magdaleno Rose-Avila, a longtime activist for economic, social, and criminal justice who once headed up Amnesty International's U.S. efforts to abolish the death penalty, serves as Moratorium 2000's executive director.

Sister Helen points out that the U.S. remains one of the foremost practitioners of state-sanctioned murder. "Currently, the United States stands isolated with a few countries such as Iran, Iraq, Nigeria, and China that refuse to respect human rights and continue to execute their citizens," she said. She noted the the American Bar Association recently took the step of calling for a moratorium on all executions in the U.S.

Moratorium 2000 is a non-partisan, non-denominational effort to ensure the protection of human rights for all.

The organization's mailing address is: 8306 Mills Drive, Miami FL 33183. The email address is: mavila@gte.net, and the phone number is: 305/596-7293. Those persons wanting to participate in the petition campaign should contact Moratorium 2000.

[The above notice was reprinted from the January 1999 issue of the *Coalition for Prisoners' Rights Newsletter*, a publication of the Prison Project of Santa Fe, Inc., P.O. Box 1911, Santa Fe, NM 87504-1911. Subscriptions to that newsletter are free to prisoners, their families, and ex-prisoners subscribing for themselves. Subs are $12/yr to other individuals, and $25/yr for government agencies and for-profit institutions. FPLP staff hopes readers will join in the Moratorium 2000 effort. -ed] ■

AMNESTY INTERNATIONAL SEEKS INFORMATION

Amnesty International (A.I.) is seeking information for a new report on human right abuses in the United States. This report will cover prisons, jails and immigration facilities and is intended to document systemic violations of human rights. The report will be issued by the end of 1999 and will include policy recommendations for governmental agencies.

A.I. is seeking documentation of human rights violations and court cases that relate to such violations (especially unpublished decisions). A.I. cannot provide litigation research or individual representation. This information is requested only for the report. Do not send A.I. original copies of documents or other materials which cannot be replaced.

Information to be covered in the part of the report related to prisons, jails, and immigration facilities includes: verbal/physical abuse or sexual assaults (by staff or other prisoners); use of restraints, electro-shock equipment and gas/chemical sprays; overcrowding; sexual orientation/race/ nationality or language discrimination; treatment of families/children (including location of facility limiting contact with family); confinement of juveniles in adult facilities; adequacy of health care. Suggestions for other areas are welcome.

The address to send such documentation to is:

Amnesty International
Attn: AIUSA C. Doyle
322 8th Ave.
New York NY 10001 ■

NEW AI REPORT
Juvenile Abuse Increasing

On November 17, Amnesty International (AI) USA released a new report concerning the growing numbers of juveniles who are being subjected to physical abuse, excessive incarceration and detainment in adult facilities in the United States. Findings of this new report include:

■ Thirty-eight states now house juveniles in adult prisons with no special programs or educational services for the youthful offenders;

■ Juveniles in adult facilities are five times more likely to be sexually assaulted and twice as likely to be beaten or abused by staff than those in juvenile facilities; and

■ From 1986 to 1995, the number of juveniles confined in adult facilities before their cases were heard or following conviction grew by more than 30%.

According to William Schulz, executive director of AI USA, the report should serve as a warning. "These kids will be back on the street one day," Schulz said. "Nothing is guaranteed to turn a confused,

angry teenager into a bitter adult than abusing them when they are in prison, ignoring their mental health concerns and housing them with adults." Schulz also commented that contrary to popular beliefs, the average juvenile is not brought into the justice system for a violent offense. Statistics show that only 22% of those held are accused or have been convicted of a violent crime. "The image that we have now of huge numbers of murderous juveniles who need to be taught a harsh lesson is a myth," says Schulz.

The AI report offers recommendations that include juveniles only being locked up as a last resort, periodic inspections conducted by independent oversight bodies, separate housing from adult offenders and a moratorium on executions of people who commit crimes under 18 years old. ■

DID YOU KNOW?

The U.S. population is only 13 percent Black, yet, 49 percent of the prisoners in state and federal prisons last year were African-Americans, mostly males. In 1995, one third of all African-American men between the ages of 20 and 29 were under some type criminal justice supervision. In 1991, the year that apartheid ended in South Africa, the U.S. imprisoned four and a half times more Black males per capita than South Africa.

CORRECTION

On the front page, last paragraph, of Volume 4, Issue 6, of FPLP, in the article entitled "TAXPAYERS BURDEN INCREASED BY OLDER PRISONERS," it was incorrectly stated that the "85% law" went into effect on October 1, 1996. In fact, that law went into effect on October 1, 1995. Thank you - to those who brought this error to our attention.-ed

SUBSCRIPTION INCREASE

As noted in the last issue, on May 31, 1999, there will be a slight increase in the subscription rates for *FPLP*. After that date, one year subscriptions or renewals will be $6/yr for prisoners, $12/yr for free citizens, and $30/yr for institutions and businesses. Low income family members or friends of prisoners may receive a subscription for whatever they can afford to donate.

Up until that date, current subscribers who still have some issues remaining on their current subscriptions, may renew and extend those subscriptions for another year longer at the "old" rates of $5, $10 and $25, respectively. Or, new subscribers can still receive a year subscription at the "old" rates - up until May 31st.

Any subscriptions or renewals received after May 31st must contain payment at the new rates. If a subscription or renewal is received after May 31st that accompanies payment at the "old" rate, the subscription will be pro-rated, with the subscriber receiving five (5) issues for a year's subscription instead of the normal six (6) bi-monthly issues.

New subscription forms reflecting the new rates will accompany the May-June issue of *FPLP*. New, unused U.S. postage stamps will still be accepted for subscriptions after May 31st - in an amount equal to the new rates.

The *FPLP* staff has worked hard to keep this rate increase as low as possible so that everyone can have access to this valuable resource. This increase, modest as it is, will allow more information to be distributed and allow the growth of the network to continue, which is very important.

Also, as noted in the last issue, *FPLP* has obtained federal non-profit 501(c)(3) status as a charitable organization and donations are tax deductible. Please consider an additional donation when subscribing to or renewing a subscription to *FPLP*, every little bit helps. *FPLP*'s readers and supporters are the lifeblood of this unique and effective resource. It cannot be done without YOUR support. Thank you. ■

ESSENTIAL READING

Several magazines have featured articles recently covering the growing concern over the burgeoning imprisonment binge in the United States and problems and abuses associated with same.

The December '98 issue of the *Atlantic Monthly* features an article by Eric Schiosser examining "The Prison Industrial Complex" in America. Schiosser explores the booming prison business in the U.S., exposing how groups of bureaucratic, political, and economic special interests have encouraged increased spending on imprisonment, regardless of an actual need. "The lure of big money is corrupting the nation's criminal justice system," Schlosser reports. The article is available on the *Atlantic Monthly* Website at: **www.theatlantic.com.** or: 77 N. Washington St., Boston MA 02114.

The September '98 issue of *Ms.* magazine carried a special report on the crisis and increasing incarceration of women in the United States. The report was prepared by Nina Siegal and is entitled "Bad Girls or Bad Laws: Why are So Many Woman in Prison?" This report explores the little known fact that while there are many more men in prison than women, the female prisoner population is growing at a faster rate than men, and in large part for non-violent, first offense crimes. An interesting and informative expose.

The December 27, '98, issue of *IN THESE TIMES* magazine carried two very good, fact filled, and informative articles on the injustice of the death penalty and sexual abuse of female prisoners in U.S. prisons. The first article, by Craig Aaron is a well written piece entitled "Innocence on Death Row" covering the first National Conference on Wrongful Convictions and the Death Penalty that was held at Northeastern University during November '98. The conference was held to bring attention to the large number of people who have been sentenced to death in America and who were later proven to be innocent. Florida has the highest number of death sentences that have later been found to be wrong. The *USA TODAY* newspaper carried a full page article on this conference on Nov. 13th. This *IN THESE TIMES* article covers the people who attended the conference and many of their stories.

The second *IN THESE TIMES* article in the Dec. 27th issue is entitled "RAPE CAMP USA," by Christopher Cook and Christian Parenti. This article explores the increasing rapes and sexual abuses being perpetuated against female prisoners in prisons and jails. The article cites

numerous factual instances of sex crimes against female prisoners, usually by their keepers. This article is shocking and shines a light on secrets that prisoncrats would rather the public never learn. Back issues of *IN THESE TIMES* are available for $3. Address: 2040 N. Milwaukee Ave., Chicago IL 06047; email: itt@inthesetimes.com; Website: www.inthesetimes.com. ■

FDOC INMATE WELFARE TRUST FUND 1997-98

Merchandise Sales	$33,441,616
Gross Profits/Sales	12,363,373
FDOC Telephone Commissions	13,840,084
June 30, '98, Retained in IWTF	22,709,065

[Source: *FDOC Annual Rpt.* 1997-98]

MONUMENTS TO FEAR, GREED AND POLITICAL COWARDICE
The Prison Industrial Complex

California has the Western industrialized world's biggest prison system 40% bigger than the Federal Bureau of Prisons and holds more prisoners than do France, Great Britain, Germany, the Netherlands, Singapore, and Japan combined.

The U.S. has approximately 1.8 million people behind bars; about 100,000 in federal custody, 1.1 million in state custody and 600,000 in local jails. We imprison more people than any other country in the world - perhaps half a million more than Communist China. America's prison population has grown so large it is difficult to comprehend - the equivalent of the combined populations of Atlanta, St. Louis, Pittsburgh, Des Moines and Miami. "We have embarked on a great social experiment," says Marc Mauer, author of the upcoming book, *Race to Incarcerate.* "No other society in human history has ever imprisoned as many of its own citizens for the purpose of crime control."

The nation's prisons hold 150,000 armed robbers, 125,000 murderers, and 100,000 sex offenders - enough violent criminals to populate a medium-sized city such as Cincinnati. Few would dispute the need to remove these people from society. The level of violent crime in the U.S., despite recent declines, still dwarfs that in Western Europe. But the proportion of offenders sent to prison each year for violent crimes actually fell during the prison boom. In 1980 about half those entering state prison were violent offenders; in 1995 less than a third were violent offenders. The enormous increase in America's prisoner population can be explained mostly by the sentences given people who committed non-violent offenses. Crimes that in other countries usually lead to community service, fines, or drug treatment - nor are they not considered a crime at all in the U.S. leads to a prison term, by far the most expensive form of punishment. "No matter what the question has been in American criminal justice over the last generation," says Franklin E. Zimring, Earl Warren Legal Institute director, "prison has been the answer."

In 1961, President Dwight D. Eisenhower used his farewell address to issue a warning as the U.S. continued its cold war with the Soviet Union. "In the councils of government," he said, "we must guard against the acquisition of unwarranted influence whether sought or unsought, by the military-industrial complex." Eisenhower had grown concerned about this new threat to democracy during the 1960 campaign, when fears of a "missle gap" with the Soviet Union were whipped up by politicians, the press and defense contractors hoping for increased military spending. Eisenhower knew no missle gap existed, and that fear of one might lead to a costly, unnecessary response. The potential for the disastrous rise of misplaced power exists and will persist," he warned.

Three decades after the war on crime began, the U.S. developed a prison-industrial complex: a set of bureaucratic, political and economic interests that encourage increased spending on imprisonment - regardless of the actual need. This complex is not a conspiracy, guiding the nation's criminal-justice policy behind closed doors. It is a confluence of special interests that has given U.S. prison construction a seemingly unstoppable momentum. It's composed of politicians, both liberal and conservative, who use the fear of crime to gain votes; of improverished rural areas where prisons became a cornerstone of economic development; of private companies that regard the roughly $35 billion spent each year on corrections not as a burden on American taxpayers but as a lucrative market; and of government officials whose fifedoms expanded along with the prisoner population. Since 1991, the rate of violent crime in the U.S. fell by about 20%, while the number of people in prison and jail rose

by 50%. The prison boom has its own inexorable logic. Steven R. Donaiger, a young attorney who headed the National Criminal Justice Commission in 1996, explains the thinking: "If crime is going up, then we need to build more prisons; and if crime is going down, it's because we built more prisons - and building even more prisons will therefore drive crime down even lower."

The prison-industrial complex's raw material is its prisoners: the poor, homeless, mentally ill, drug dealers, drug addicts, alcoholics, and wide assortment of violent sociopaths. About 70% of U.S. prisoners are illiterate. perhaps 200,000 prisoners suffer from a serious mental illness. A generation ago, such people were handled primarily by the mental-health, not the criminal justice system. And, white 60% to 80% of the U.S. prisoner population has a history of substance abuse, drug treatment slots in American prisons declined by more than half since 1993 - available to just one in ten who need them. Among those arrested for violent crimes, the proportion who are black men has tripled. Although the prevalence of illegal drug use among while men is approximately the same as among black men, black men are five times as likely to be arrested for a drug offense. As a result, about half the U.S. prisoners are black. One out of every 14 black men is now in prison or jail; one out of every four black men is likely to be imprisoned at some period during his lifetime. The number of women sentenced to a year or more of prison has grown twelve-fold since 1970. Of the 80,000 women now imprisoned, about 70% are non-violent offenders, and about 75% have children.

The prison-industrial complex is not only a set of interest groups and institutions. It also is a state of mind. The lure of big money is corrupting the nation's criminal justice system, replacing notions of public service with a drive for higher profits. Elected officials' eagerness to pass "tough-on-crime" legislation, combined with their unwillingness to disclose the true costs of these laws, encourage all sorts of financial improprieties.

In the realm of psychology a complex is an over-reaction to some perceived threat. Eisenhower no doubt had that meaning in mind when he urged the nation to resist "a recurring temptation to feel that some spectacular and costly action could become the miraculous solution to all difficulties."

"The era of government is over," said President Bill Clinton in 1996 - an assertion proved false in at least one respect. A recent issue of "Construction Report," a monthly newsletter by *Correctional Building News*, provides details of the nation's latest public work: a 3,100-bed jail in Harris Co., TX; a 500-bed medium-security prison in Redgranite, WS; a 130-bed minimum-security facility in Oakland Co., MI; two 200-bed housing pods at the Fort Dodge Correctional Facility in IA; a 350-bed juvenile correctional facility in Pendleton, IN, and dozens more. The newsletter includes phone numbers of project managers, so prison-supply companies can call and make bids. All across the country new cellblocks rise. And every one of them, every brand new prison, becomes a lasting monument, concrete and ringed with deadly razor wire, to the fear and greed and political cowardice that now pervade American society.

[Excerpted from "The Prison Industrial Complex" by Eric Schlosser in the Dec. 1998 *The Atlantic Monthly*.]

[Note: Although the FDOC currently has approximately 6,000 empty prison beds, in 1998 the legislature appropriated $48,080,959 for additions to two youthful offender institutions; adding secure housing units to five existing institutions; and providing site work for three new prisons. These projects will add more than 800 new prison beds in Florida. The FDOC budget for 1997-98 was $1,736,244,716. The overall cost per prisoner per day during 1997-98 was $50.51. Out of a total of 22,654 prisoners admitted to the FL system in 1997-98, 60.7% were incarcerated for non-violent crimes (24.4% of that for drugs). Over one third of new female prisoner incarcerations in 1997-98 was for drugs.-ed] ■

D.O.C.: PUBLIC RECORDS AND POTATO PEELERS

"Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or person acting on their behalf, except with respect to records exempt pursuant to this section or specifically made confidential by this Constitution."[1] The purpose of this article is to provide you with some of the basics when trying to get public records from the Department of Corrections (DOC).

Getting What You Want

Figure out what you want. Do you want a specific record, an item within a record, or a group of records? DOC " ..... has the responsibility for the supervisory and protective care, custody and control of inmates, buildings, property, and all other matters pertaining to . . ."[2] adult offenders. Because of this DOC generates many records, including but not limited to records concerning prison inspections,[3] inmate property,[4] incident reports,[5] grievances regarding lost property,[6] incoming legal mail,[7] sanitation,[8] in-prison disciplinary reports,[9] special facilities for the physically disabled-compliance with standards,[10] visitation records,[11] visitation denials,[12] inmates in special status,[13] etcetera.[14]

Knowing what you want is important because you will be paying for records, if you request copies.[15] The Fifth District Court of Appeals has held that indigent prisoners ". . . are not entitled to free records disclosure under Chapter 119, Florida Statutes, [and] are not thereby denied any constitutional rights [when charged for public records]."[16] Furthermore, DOC may charge you for searching for the records, if "such ... require [s] extensive use of technology resources or clerical or supervisory assistance."[17] This rule was upheld by the First District Court of Appeals when the Court interpreted § 1 19.07(l)(b), Fla. Stat., which provides for additional charges when "the nature or volume of public records requested to be inspected, examined, or copied . . . is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved . ."[18]

Ask for what you want. Requests for public records may be made to the main

office in Tallahassee or to any office of DOC where such records are kept.[19] However, to be safe you may want to make your request to the Secretary of the Department of Corrections to protect yourself because that person is "charged with the [overall] responsibility of maintaining the office having public records."[20] Although not required by the Public Records Act, put your request in writing and maintain a copy of it for future reference.[21] DOC may insist that requests for some records be put in writing.[22]

Fla. Admin. Code R. 33-6.006(4) sets out the process to be used by inmates desiring "information."[23] First, a written request is made to the inmate's classification specialist (CS) or officer-in-charge (OIC). Second, "[I]f the request meets the requirements specified in §945.10(3), the request *shall* be approved without further review."[24] If the request includes exceptional circumstances, the CSs or OIC ". . *shall* make a recommendation to the classification supervisor or superintendent of community facilities who shall be the final authority for approval or disapproval of requests from inmates..."[25]

To gain access to your health records requires a written request to the health information specialist/supervisor.[26] The process follows along the same lines set out in Fla. Admin. Code R. 33-6.006(4). If the request includes exceptional circumstances, then the health information specialist/supervisor shall review the request and make a recommendation to the chief health officer, who will make a final decision.[27] Information regarding inmate participation in drug abuse prevention or treatment functions shall be confidential, however, with inmate permission and by following the requirements in Fla. Admin. Code R. 33-6.006(11), an outside party may gain access to the material.[28]

In your request include the following: "Please state the basis of any and all exemption[s] which you contend is [/are] applicable to the record[s] requested, including the statutory citation to an exemption created or afforded by statute, and state in writing and with particularity the reasons for the conclusion that the record[s] is exempt.[29] This puts the burden of claiming and proving up any exemptions on DOC. Further, you should include: "Please do not alter, destroy, conceal, or transfer possession of the records requested." This puts DOC on notice that the material should be safeguarded. By sending a copy of the above to DOC attorneys you may trigger the Rules of Professional Conduct that prohibit a lawyer from obstructing another party's access to evidence.[30]

Potential Roadblocks

After you make your request several things may happen. First, you may get the records you requested. Second, DOC may not respond to your request. This may be due to the fact that the agency did not receive your request. If you can verify that the request was received, you may attempt legal proceedings, see below.

Third, DOC may refuse to turn over any records. However, there is ". . . no rational basis for totally denying inmates access to information in the files of. . . [DOC] . . . While there are legitimate security concerns as to some information found in Departmental files, such as maintaining security and protecting the identity of prison informants, such concerns can be met without a blanket denial of access. "[31] Here a mandamus action may be appropriate, see below.

Fourth, DOC may claim that the records requested are exempt. In the event an exemption is claimed, review the claimed exemption to check out whether it may have been validly claimed. All public records may be inspected unless there is a specific statutory exemption.[32] These exemptions must be narrowly applied and limited to their stated purpose.[33] DOC will bear the burden of proving that the records should not be released.[34] Ultimately a judge may have to do an inspection privately in chambers. This is known as an in *camera* inspection. If there is any doubt as to whether an exemption was properly claimed, release or disclosure is the proper result.[35] If DOC holds information regarding the case that resulted in your incarceration and it would benefit you, then you have a right to that information. The Florida Supreme Court held that public records shall be disclosed if they contain material that is exculpatory.[36] "[T]he State must still disclose any exculpatory document within its possession or to which it has access, even if such document is not subject to the public records law.[37]

I have been informed that DOC frequently claims exemptions, when inmates make records requests, under §§ 945.10 and 945.25, Fla. Stat. and Fla. Admin. Code R. 33-6.006.[38]

§ 945.25 relates to those records generated and maintained "on every person who may become subject to parole. "[39] Based upon the discretion of DOC, these records may include information relating to the crime charged, psychiatric history, attorney names, etc.[40] The records *shall* include . . a copy of the seriousness-of-offense . . . favorable-parole-outcome scores [and] a listing of the specific factors and information used in establishing a presumptive parole release date for the inmate. "[41] The Third District Court of Appeal held that these records are for the confidential use and consideration by the court and [are] not a public document. "[42] The Office of the Attorney General has opined that the Florida Parole and Probation Commission has the right to promulgate rules to exempt information from being disclosed under the Public Records Act.[43]

§ 945.10 is an attempt to create a public records exemption tidal wave. Information and records relating to the following areas are listed as exempt: mental health, medical, substance abuse, presentence investigations, federal witness protection program, Parole Commission records, information which released would jeopardize a person's safety, information concerning a victim's statement, the identity of an executioner, or records that are otherwise confidential or exempt.[44] The statute then lists a variety of methods to gain access to these records.[45] However, most of these methods are restricted to law enforcement or prison agencies. A public defender representing a defendant may gain access to "[p]replea, pretrial intervention, presentence or postsentence investigative records."[46] If this is the information, that you desire, you might consider contacting your trial attorney to gain a copy of these materials. The Florida Rules of Criminal Procedure require a judge to disclose all factual material to the

parties.[47] "A person conducting legitimate research" may also request this information, but the material released remains confidential and exempt from public records disclosure when held by the receiving person or entity. "[48]

The hammer of 945.10, with regard to an inmate or offender making a records request, falls under subsection 3, which states in pertinent part:

Due to substantial concerns regarding institutional security and unreasonable and excessive demands on personnel and resources if an inmate or offender has unlimited or routine access to records of the Department of Corrections, an inmate or an offender who is under the jurisdiction of the department may not have unrestricted access to the department's records or to information contained in the department's records. However, except as to another inmate's or offender's records, the department may permit limited access to its records if an inmate or an offender makes a written request for information contained in the department's records and the information is otherwise unavailable.[49] Confusing? Yes. The crux of the first sentence conveys the message that inmates have too much free time to make too many records requests on an overburdened, understaffed, under budgeted DOC. The second sentence grants DOC the discretion to make limited exceptions for an inmate's records request upon a showing of exceptional circumstances.[50]

"Exceptional circumstances include, but are not limited to. . . "[51] requests for material relating to: conflicts between commitment papers and court documents,[52] work performance records for prospective employment after release,[53] victim restitution that has been paid,[54] Internal Revenue Service claims,[55] Social Security applications,[56] claims with the Department of Labor and Employment Security,[57] applications or claims with other state or federal agencies,[58] the current address of a relative whose address is in DOC records,[59] or ". . . other similar circumstances that do not present a threat to the security order or rehabilitative objectives of the correctional system or to any person's safety."[60]

Note that the two sections underlined, in the paragraph above, are complementary. The first section is the broader construct with which to build your argument to gain access to the material that you requested and should always be included in the event your request does not fall within one of the specific exceptional circumstances. That the exceptional circumstances upon which records may be released is not limited to those areas in the statute is good. You are only limited by your imagination and good arguments as to what would conform to this standard. However, the second underlined section, in the paragraph above, goes to core mission of DOC and is therefore important. You should make sure that your arguments do not conflict with the factors in the second section underlined above as no court would likely issue a ruling that could be construed as presenting a threat to the security, order or rehabilitative objectives of the system or any person's safety. Notwithstanding, ". . [security] concerns can be met without a blanket denial of access. "[61]

Section 945.10 previously included total prohibitions on inmate access to DOC records and information.[62] But sections of the statute were declared unconstitutional in *Diaz v. Florida Dept. of Corrections.*[63] The statute has been rewritten so as to allow inmate access to records as noted above. The *Diaz* case still has good language that should be included in your arguments. The Court reasoned that there was". . no rational basis for totally denying inmates access to information in the files of the Department of Corrections. . . "[64] Further, when challenging a records request denial review whether the denial is based solely upon your status as an inmate. The Court in *Diaz* held that "[t]here is no logical basis for [a] classification [of levels of denial] where the information in the hands of the press and the public is deemed harmless to legitimate concerns of the Department [of Corrections] but the same information in the hands of inmates is presumed harmful. "[65]

Fla. Admin. Code R. 33-6.006 is the DOC rule regarding confidential records and inmate access to records. The rule begins by pointing back to § 945.10, which is discussed above. The following records or information are confidential or will be released only as the rule permits: medical records, mental health records, etceteras and then the rule begins to parrot § 945.10, Fla. Stat. If the use of this rule is more restrictive than the enabling statute, here § 945.10, Fla. Stat., then the rule is an invalid exercise of delegated legislative authority.[66] However, merely repeating the language of the enabling law, is not an invalid exercise of delegated legislative authority [67]

Navigating Roadblocks

If you made your request and did not receive a satisfactory response, what options remain? You have several options including: further letters, administrative review, mediation, mandamus, or a lawsuit. If you received no response or a confused response, you may send another letter with a copy of your original request. You may indicate, in a letter, to the person responding to your request that he or she misapplied the law with regard to exemptions. You may use an administrative appeal through DOC. You may enter into the Attorney General's public records mediation program.[68]

You may also pursue litigation in the courts by filing a complaint (a lawsuit) or by filing a petition for a writ of mandamus. Regardless of whether you take the mandamus or complaint route you must take care to follow the Florida Rules of Civil Procedure. Several preliminary steps are necessary. First, the service of process (delivery of the action) is handled by the local sheriff or a designated process server.[69] The summons is an "[i]nstrument used to commence a civil action . . ..and is a means of acquiring jurisdiction over a party . . "it directs the sheriff or other proper officer to notify the person named that an action has been commenced against him/her in the court from where the process issues.[70] The summons form is located in the forms for use with the Florida Rules of Civil Procedure.[71] Second, a cover sheet is used and it indicates the parties, the attorneys, the action's classification, and other matters is also needed. The form to be used is located in the forms for use with the Florida Rules of Civil Procedure.[72] Third, the actual complaint or petition is needed. Finally, when the case is finished a final disposition form must be filed out.[73]

A writ of mandamus is an order from a court that commands the performance of some ministerial act by a public official.[74] A petition for a writ of mandamus is an approved method of seeking disclosure of public records in the State of Florida.[75] The essence of a mandamus action is that you are trying to get a court to order some government official to do that which he or she is supposed to do automatically. Writs of mandamus are covered by the Florida Rules of Civil Procedure.[76] Make sure to follow all of the rules. In your petition you must include the facts upon which you are seeking relief (a public records request was made to DOC and no response was received), a request for the relief sought (you want the public records requested), and any legal argument with citations of authority.[77] If you present a prima facie case, the court may order DOC to show cause why the order should not be granted.[78] If the response is not sufficient, the court may order DOC to turn over the records.

Alternatively, you may file a complaint (lawsuit) regarding the response and production of records relating to your request. Make sure to follow all of the dictates in the Florida Rules of Civil Procedure including process service,[79] claims for relief,[80] and the forms for use with the rules of civil procedure.[81] A complaint must contain the following:

1.) the claim for relief must include ". . . a short and plain statement of the grounds upon which the court's jurisdictions depends...."[82]

2.) ". . . a short and plain statement of the ultimate facts showing that the pleader is entitled to relief."[83]

3.) ". . . a demand for judgment for the relief to which the pleader (or plaintiff (you)) deems himself or herself entitled. "[84]

By filing a lawsuit you gain the ability to use the tools of discovery.[85] These tools include depositions,[86] interrogatories or written questions,[87] and requests for the production of documents and things.[88] By pursuing a lawsuit you open yourself up to the use of these tools on you too.[89] Because the headquarters of DOC are located in Tallahassee, they typically succeed in demanding that these lawsuits be filed in Leon County.

Conclusion

A book has been written that more thoroughly discusses aspects of public record laws in Florida. The *Government-in-the-Sunshine-Manual* is prepared by the Office of the Attorney General and published by the First Amendment Foundation.[90] The book is updated each year and is promoted as "A reference for compliance with Florida's public records and open meetings laws."[91]

This article provides the basics of how to get public records from DOC. Getting what you want may be difficult, but with determination, thought, and the right research you should be able to get the records you want. DOC is a large bureaucracy and maintains probably what amounts to millions of pages of records. Some of the record keeping is shoddy at best. I reviewed some records that were kept in tunnels under the Florida State Prison in Starke. Because I wanted to ensure that I did not miss anything I went through each page in each file in a box that I was searching. I was reviewing one file regarding the purchase of an automatic potato peeler, and I ran across documents relating to one of my death row clients. . . in a file about a potato peeler.

Biography of Peter N. Mills

I am an Assistant Public Defender with the Office of the Public Defender for the 10th Judicial Circuit. I am currently assigned to the felony trial unit. Prior to my work in Bartow I was an Assistant CCR with the Office of the Capital Collateral Representative. CCR is a state agency that handles most of the postconviction cases of the men and women on Florida's death row. A great deal of the work at CCR involved litigation over public records.

Notes

1. Art. I, § 24(a), Fla. Const.
2. § 945.025(1), Fla. Stat.
3. § 944.32, Fla. Stat.
4. Fla. Admin. Code R. 33-3.0025 and § 944.516, Fla. Stat.
5. Fla. Admin. Code R. 33-3.0066 (Use of Force).
6. Fla. Admin. Code R. 33-29.010.
7. Fla. Admin. Code R. 33-3.005(15)(a).
8. Fla. Admin. Code R. 33-8.012.
9. Fla. Admin. Code R. 33-22.011(2)(c).
10. Fla. Admin. Code R. 33-18.017.
11. Fla. Admin. Code R. 33-5.003.
12. Fla. Admin. Code R. 33-5.007.
13. Fla. Admin. Code R. 33-5.004
14. The DOC produces numerous forms for use in documenting its dealings with offenders and the public and which have been codified under rules. E.g., 33-3.00275 (Property forms); 33-3.0065(4) (Urinalysis Testing Chain of Evidence forms); 33-3.0065(5)(g) (Urinalysis Testing records); 33-3.0066(5) (Use of Force form); 33-3.0066(15) (Medical forms following Use of Force); 33-3.0081(1O)(d) (Administrative Confinement forms); 33-3.0082(11) (Protective Management forms); 33-3.0085(4)(a) (Special Management Meal form); 33-3.018(3) (Special Withdrawal form); 33-22.0117 (Disciplinary Action forms); 33-29.018 (Grievance forms); and 33-38.012 (Close Management records and forms). Other forms and records are found throughout Chapter 33, Fla. Admin Code.
15. *Roesch v. State*, 633 So. 2d 1 (Fla. 1993).
16. *Elam v. State*, 689 So. 2d 1232 (Fla. 5th DCA 1997).
17. § 119.07(1)(b), Fla. Stat.
18. *Fla. Inst. Legal Ser., Inc. v. FDOC*, 579 So. 2d 267 (Fla. 1st DCA 1991).
19. § 119.07(1)(a), Fla. Stat. (1995).
20. § 119.021, Fla. Stat. (1995).
21. Nothing in Chapter 119 of the Florida Statutes requires that a request be made in writing and a person making a request cannot be required to provide Written documentation of a request. *Sullivan V. City of New Port Richey*, No.86-i 129CA (Fla. 6th Cir. Ct. May 22,1987), *affirmed*, 529 So. 2d 1124 (Fla. 2d DCA 1988). However, as noted herein Fla. Admin. Code R. 33-6.006 requires inmates to make records requests in writing.
22. *See §* 945.10(1), Fla. Stat. *et seq* and Fla. Admin. Code R. 33-6.006.
23. *See* Fla. Admin. Code R. 33-6.006(4) generally for request procedures.
24. Fla. Admin. Code R. 33-6.006(4)(emphasis added).
25. Fla. Admin. Code R. 33-6.006(4)(emphasis added).
26. *See* Fla. Admin. Code R. 33-6.006(6)(a) generally for information regarding access to medical records. The rule requires a special DOC release for an outside party to gain access. However, the use of the release (form DC4-71 lB) may be defeated by the rules of discovery in a civil or criminal case. The form is available from the Office of Health Services, 2601 Blair Stone Road, Tallahassee, FL 32399-2500.
27. Fla. Admin. Code R. 33-6.006(6)(a).
28. Form DC4-71 lB must again be utilized.
29. *See* § 119.07(2)(a), Fla. Stat. (1995).
30. *See* R. Regulating Fla. Bar 4-3.4 which states in pertinent part "A lawyer shall not:

    (a) unlawfully obstruct another party's access to evidence or otherwise unlawfully alter, destroy, or conceal a document or other material that the lawyer knows or reasonably should know is relevant to a pending or a reasonably foreseeable proceeding; nor counsel or assist another person to do any such act."
31. *Diaz v. Florida Dep't. of Corrections*, 519 So. 2d 41 (fla. 1st DCA 1988), *relying upon Turner*

v. Safley, 107 S.Ct. 2254 (1987), *and citing Florida Institutional Legal Services, Inc. v. Florida Dep't. of Corrections, 50* Fla. Supp. 97 (Fla. 2d Cir. Ct. 1980).

32. *Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).

33. *Id.*

34 *Florida Freedom Newspapers, Inc. v. Dempsey*, 478 So. 2d 1128 (Fla. 1st DCA 1985).

35. *Tribune Company v. Cannella*, 438 So. 2d 516 (Fla. 2d DCA 1983), *quashed on other grounds*, 458 So. 2d 1075 (Fla. 1984), *appeal dismissed sub nom., Deperte v. Tribune Company*, 105 S.Ct. 2315 (1985).

36. *Muehleman v. Dugger*, 623 So. 2d 480 (Fla. 1993); *Walton v. Dugger*, 621 So. 2d 1357 (Fla. 1993); *Mendyk v. State*, 592 So. 2d 1076 (1992); *Engle v. Dugger, 576* So. 2d 696 (Fla. 1991).

37. *Walton*, 621 So. 2d at 1360 (citing *Brady v. Maryland*, 373 U.S. 83 (1963)).

38. Correspondence from Mr. Bobby Posey, Editor, *Florida Prison Legal Perspectives*, received November 30,1998.

39. § 945.25(1), Fla. Stat.

40. § 945.25(1)(a), Fla. Stat., *et seq.*

41. § 945.25(4), Fla. Stat.

42. *Blackburn V. State*, 261 So. 2d 861 (Fla. 3d DCA 1972).

43. Op. Atty. Gen., 074-247, Aug. 9,1974.

44. § 945.10(1), Fla. Stat.

45. § 945.10(2), Fla. Stat.

46. §§ 945.10(2)(d) and *945.10(1)(b)*, Fla. Stat.

47. Fla. R. Crim. P.3.713. However, this rule applies to the trial court and not DOC. *See Singletary v. Smith*, 707 So. 2d 340 (Fla. 2d DCA 1997). Additional issues about the release of PSI materials exist regarding confidential information. *See Gardner v. Florida*, 97 S.Ct. 1197, 430 U.S. 349 (1977); *Fungone v. State*, 391 So. 2d 336 (Fla. 4th DCA 1980); *Cunningham v. State*, 349 So. 2d 702 (Fla. 4th DCA 1977), *cert. denied* 362 So. 2d 1052; *Levin v. Smith*, 348 So. 2d 1189 (Fla. 4th DCA 1977); *Bronson v. State*, 345 So. 2d 872 (Fla. 2d DCA 1977).

48. § 945.10(2)(f), Fla. Stat.

49. § 945.10(3), Fla. Stat.

50. This does not include fulfilling a request for another inmate's records. That is to say, one inmate's records request regarding another inmate may not be fulfilled. A case might be made to defeat this when considering the handling of disciplinary reports (DR). One inmate's DR with the same or similar circumstances to another inmate with a DR may have been handled differently. You would have an interest in proportionality, if another inmate received more favorable treatment in such a situation.

51. § 945.10(3), Fla. Stat. (emphasis added).

52. § 945.10(3)(a), Fla. Stat.

53. *§ 945.10(3)(b)*, Fla. Stat.

54. § 945.10(3)(c), Fla. Stat.

55. *§* 945. 10(3)(d), Fla. Stat.

56. *Id.*

57. *Id.*

58. *Id.*

59. This sub part specifically states that the address is in DOC's records and ". . . the relative has not indicated a desire not to be contacted by the inmate or offender." §945. 10(3)(e), Fla. Stat. (emphasis added). This does not mean that the relative is required to indicate a desire to be contacted. The sub part's exemption is triggered when the relative indicates a desire not to be contacted.

60. § 945.10(3)(f), Fla. Stat. (emphasis added).

61. *Diaz v. Florida Dept. of Corrections*, 519 So. 2d 41, 42 (Fla. 1st DCA 1988).

62. § 945.10, Fla. Stat. (1985).

63. *Diaz v. Florida Dept. of Corrections*, 519 So. 2d 41 (Fla. 1st DCA 1988).

64. *Diaz*, 519 So. 2d at 42.

65. *Diaz*, 519 So. 2d at 43.

66. *See Diaz v. Dept. of Corrections*, (DOAH 86-4912R), 10 FALR 5241(1988).

67. *See generally Diaz v. Department of Corrections*

68. You can receive more information about the mediation program by contacting the Office of the Attorney General at PLO 1, The Capitol, Tallahassee, Florida, 32399-1050.

69. Fla. R. Civ. P.1.070.

70. Black's Law Dictionary, Sixth Edition (1991), *citing In re Dell, 56* Misc.2d 1017, 290 N.Y.S.2d 287, 289; Fed R. Civil P.4(a).

71. Fla. R. Civ. P. Form 1.902. Summons

72. Fla. R. Civ. P. Form 1.997. Civil Cover Sheet

73. Fla. R. Civ. P. Form 1.998. Final Disposition Form.

74. Black's Law Dictionary, Sixth Edition (1991).

75. *Staton v. McMillan*, 597 So. 2d 940 (Fla. 1st DCA), *rev. denied*, 605 So. 2d 1266 (Fla. 1992); *Mills v. Doyle* 407 So. 2d 348 (Fla. 4th DCA 1981).

76. Fla. R. Civ. P.1.630.

77. Fla. R. Civ. P. 1.630(b).

78. Fla. R. Civ. P. 1.630(d).

79. Fla. R. Civ. P. 1.070.

80. Fla. R. Civ. P. 1.110(b).

81. Fla. R. Civ. P. Forms 1.901, et seq.

82. Fla. R. Civ. P.

83. Fla. R. Civ. P. 1.1 10(b)(2).

84. Fla. R. Civ. P. 1.110(b)(3).

85. See generally Fla. R. Civ. P.1.280, et seq.

86. Fla. R. Civ. P.1.310 and 1.320.

87. Fla. R. Civ. P.1.340.

88. Fla. R. Civ. P.1.350 and 1.351.

89. Fla. R. Civ. P.1.280.

90. The First Amendment Foundation is located at 336 E. College Ave., Suite 300, Tallahassee, FL 32301.

91. The Government-in-the-Sunshine-Manual, Volume 20, (1998 Edition). [2]

DEATH ROW CLASS ACTION YARD CASE SABOTAGED

By William Van Poyck

After 18 years of litigation in federal court the class action death row "yard" case, ***Dougan v. Singletary,*** # 81-11-civ-J-10, met an undeserved ignominious end when U.S. District Judge William Terrell Hodges abruptly dismissed the entire case on January 21, 1999. ***Dougan*** began in 1981 when a handful of death row inmates filed a **pro se** civil suit in Jacksonville seeking their constitutional right to one (1) hour per day of outdoor exercise. Soon thereafter the court "invited" attorney William Sheppard to represent the prisoners, and the case was certified as a class action. In 1983 Sheppard abruptly "settled" the case by signing a consent decree which gave the prisoners only four (4) hours of yard per week, despite the overwhelming body of case law holding that confinement inmates have a constitutional right to a minimum of one hour per day. The four page consent decree was so poorly drafted that it permitted the State to blatantly disregard the consent decree for the next eight years, which they did. The proceedings in an attempt to enforce the terms of the consent decree, although he steadfastly refused to move to amend the consent decree to give his clients their constitutional minimum of one hour per day.

In 1996 the Prison Litigation Reform Act [P.L.R.A.] became law; the act permits any consent decree to be dissolved after 2 years upon motion by any party. The State immediately moved to dissolve the ***Dougan*** consent decree, a move applauded by class members who wanted to **go to trial** and receive their constitutionally mandated minimum of one hour per day. After an appeal to the 11th circuit, the District Court held a "status conference" on January 21,1999. Immediately following the conference (at which no prisoners were present) the court not only dissolved the consent decree, but, without any legal basis and without making any findings of fact or conclusions of law, the court, in a 3-sentence order dismissed the entire case. Sheppard, who has been totally antagonistic towards his " clients" (the prisoners) throughout this protracted litigation has collected over half a million dollars in attorney fees and costs over the years. Sheppard has written to class members informing them that he has no intention of appealing the order of dismissal and advised one prisoner class member that they were now " on their own" and should " start all over again." Class members are now seeking a real attorney to represent them in a new suit. After 18 years and $5,000,000 in collected fees Sheppard has bailed out, guaranteeing that Florida remains the only state in the nation where death row inmates receive less than one hour per day of outdoor exercise.

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ANNOUNCEMENT

Thomas E. Smolka is proud to announce the establishment of his law practice in Richmond. His practice areas include: Criminal Defense Law, Appellate Criminal Law, Post-Conviction Relief, Major Civil Litigation, Inmate Administrative Law and Proceedings involving the Department of Corrections, Probation and Parole, Executive Clemency, Interstate Compact and Institutional Transfers, Immigration Law and Detainer Actions.

Additionally, *Thomas E. Smolka and Associates located at 909 East Park Avenue, Tallahassee, Florida 32301-2646, Telephone (850) 222-6400, Telefax (850) 222-6484, will continue to provide a full range of Consulting Services to Inmates on Administrative, Executive Clemency and Parole Related Matters*.

Subsequent to his 1975 graduation from America's oldest law school at the College of William & Mary, **Thomas E. Smolka** was admitted to the Virginia State Bar and became a member of the National Association of Criminal Defense Lawyers. Tom's legal experience includes service as an Assistant City Attorney of Norfolk, Virginia followed by many years in private law practice. Most importantly, **Tom Smolka's** direct understanding of the American judiciary came when he confronted the criminal justice system, won his direct appeal and was exonerated. *See Smolka v. State,* 662 So.2d 1255 (Fla. 5th DCA 1995), *rev. denied, State v. Smolka*, 668 So.2d 603 (Fla. 1996).

Florida Department of Corrections
2601 Blair Stone Rd.
Tallahassee FL 32399-2500
(850) 488-5021
Web Site: www.dc.state.fl.us

Michael Moore, Secretary	488-7480
Information	488-0420
(Info Director, Kerry Flack)	
Correspondence Control	488-7052
Inspector General, Fred Schuknecht	488-9265
Interstate Compacts	487-0558
Health Services	922-6645
(Charles Matthews, MD, Asst. Sec.)	
Assistant Secretary for Security/Inst. Management	
Stan Czerniak	488-8181
Inmate Classification	488-9859
Sentence Structure	413-9337
Victim Assistance	488-9166
Population Mgt.	488-9166
Regional Offices	
Region I	(850)482-9533
Region II	(352)955-2035
Region III	(407)245-0840
Region IV	(954)202-3800
Region V	(813)744-8555

Florida Corrections Commission
2601 Blair Stone Rd.
Tallahassee FL 32399-2500
(850)413-9330
Fax (850)413-9141
EMail: fcorcom@mail.dc.state.fl.us
Web Site: www.dos.state.fl.us/fgils/agencies/fcc

The Florida Corrections Commission is composed of eight citizens appointed by the governor to oversee the Florida Department of Corrections, advise the governor and legislature on correctional issues, and promote public education about the correctional system in Florida. The Commission holds regular meetings around the state which the public may attend to provide input on issues and problems affecting the correctional system in Florida. Prisoners families and friends are encouraged to contact the Commission to advise them of problem areas. The Commission is independent of the FDOC and is interested in public participation and comments concerning the oversight of the FDOC.

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Katie C. Nichols-Vice Chair
Hon. William Evers-Mayor of Bradenton
David F. Harvey, Sheriff, Wakulla County
Alma B. Littles, MD
Guy Revell, Jr.-Former Parole Commissioner
Ray Sansom, Okaloosa County Commissioner
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Office of the Governor
PL 05 The Capitol
Tallahassee FL 32399-0001
(850) 488-2272

Chief Inspector General	922-4637
Citizen's Assistance Admin	488-7146
Commission/Government Accountability to the People	922-6907

Office of Executive Clemency
2601 Blair Stone Rd.
Bldg. C, Room 229
Tallahassee FL 32399-2450
(850)488-2952
Coordinator: Janet Keels

Florida Parole/Probation Commission
2601 Blair Stone Rd., Bldg C
Tallahassee FL 32399-2450
(850) 488-1655

Department of Law Enforcement
P.O. Box 1489
Tallahassee FL 32302
(850)488-7880
Web Site: www.fdle.state.fl.us

Florida Resource Organizations

Florida Institutional Legal Services
(Florida Prison Action Network)
1110-C NW 8th Ave.
Gainesville FL 32601
(352)955-2260
Fax: (352)955-2189
EMail: fils@afn.org
Web Site: www.afn.org/fils/

Families with Loved
ones In Prison
710 Flanders Ave.
Daytona Bch FL 32114
(904)254-8453
EMail: flip@afn.org
Web Site: www.afn.org/ flip

Restorative Justice Ministry Network
P.O. Box 819
Ocala. FL 34478
(352) 369-5055
Web: www.rjmn.net
Email: Bernie@rjmn.net

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