Florida Prison Legal Perspectives

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WOMEN PRISONERS VICTIMS OF VIOLENT ABUSE

According to a report released by Amnesty International during March, women in U.S. prisons are being subjected to a "shocking array" of abuses that include rape, sexual harassment and trading sexual favors for privileges. Using public records and its own investigators, the Amnesty International report documents at least 96 instances since 1992 where prison guards have been criminally convicted, fired or otherwise disciplined for rape, sexually harassing or trading prison privileges for sex with female prisoners. Amnesty International claims this is the most comprehensive study on this growing area of abuse of U.S. female prisoners to date.

The report covers abuses against women prisoners from several states and a federal prison. "This is not a question of one or two states or just one part of the country having a problem," said William Schulz, director of Amnesty International USA. "This is a pervasive problem of human-rights violations from one end of the country to the other against those who are most vulnerable."

A spokesman for the American Correctional Association (ACA), Jim Turpin, responded to the report stating, "There is no epidemic. When this does occur, it is aggressively dealt with and prosecuted." The ACA is an organization that provides information to prison officials and that has been alleged to sell "certifications" that prison systems meet "standards" set by the ACA for use by the systems in defending themselves in legal challenges concerning conditions of confinement.

The Amnesty International report also addresses and calls for more attention to the health needs of women prisoners, especially the needs of those who give birth while incarcerated. It is estimated that more than 1,000 women gave birth while in prison last year.

Between 1990 and 1997, according to U.S. Justice Department statistics, the number of women incarcerated in the United States has increased dramatically. In 1990, 78,000 women were in state or federal prisons or local jails. That number had increased to 138,000 by 1997.

In a new report by the U.S. Justice Department that was released April 11th, more than a third of all women who are incarcerated in the U.S. say that they were physically or sexually abused as children. That is approximately twice the rate of child abuse reported by women overall. More than 36 percent of female state and jail prisoners surveyed in 1996-97 reported that they had been sexually or physically abused at age 17 or younger. That compares to studies of child abuse in the general population showing that 12 to 17 percent of women had been abused as children.

Commenting on the new Justice Department survey, Eleanor Smeal, president of the Feminist Majority Foundation, stated, "Childhood abuse increases the risk that anyone, female or male, could end up in prison, because the home influence is so pervasive. Women abused as children have *their* whole self-image changed. They believe they are bad. They end up in relationships with men who abuse them and in risky situations."

[Sources: *USA TODAY*, 4/12/99; Report available from: Amnesty International USA, 322 &h Ave., New York, NY. 10001.].

INCREASE IN DRUG TREATMENT PROPOSED

During March the Justice Department released its yearly Justice Statistics showing that officially there are now more than 1.8 million people in jail or prison in the United States. That figure is up 4.4 percent from last year's numbers, and is more than double the

numbers that were incarcerated just 12 years ago. The report showed that the number of prisoners in state prisons grew 4.1 percent, the number in federal prisons grew 8.3 percent and the number in local jails grew 4.5 percent.

The Justice Department's statistics also showed that 23 percent of those incarcerated are locked up for non-violent drug offenses. That is up from just 6 percent in 1980. This at a time when many prison systems have reduced spending on drug treatment programs so that more prisons could be built with the money saved.

In recognition that an estimated 80 to 90 percent of those incarcerated were using drugs or had a substance abuse problem that contributed to their incarceration, in conjunction with the Justice Department's release of the new statistics President Clinton announced that his budget for fiscal year 2000 will include $215 million to test and treat prisoners for drug abuse.

"Drug use strokes all kinds of crime," Clinton was reported as saying. "It is something to avoid releasing criminals with their dangerous drug habits intact." If Clinton's proposal is approved by Congress, the money will represent an increase of approximately $100 million over funds now available to enforce "zero tolerance" of drug use by prisoners, parolees, and probationers. Clinton's drug policy director Barry McCaffrey said that such treatment only makes sense where untreated addicts cost taxpayers about $43,000 per year each, while prison-based drug treatment for an individual costs $2,700 annually.

Clinton also announced that $120 million in already approved funds will be released for drug-free initiatives this year. Of that $63 million is slated to go to state prison systems to provide long term treatment and intensive supervision for prisoners with the most serious drug problems.

NATIVE AMERICAN CRIME RATES SOAR

According to a U.S. Justice Department report released in February, American Indians are more than twice as likely to be victims of violent crime than any other group. For the Indian population there are 124 violent crimes (murders, rapes, robberies and assaults) for every 100,000 people in the population. That is double the national violent crime rate for blacks and almost 21/2 times the overall national average of 50 per 100,000.

The report also found that reports of child abuse are increasing among Native Americans and that Indian children are more likely to be abused than any other ethnic group.

An estimated 63,000 Indians, approximately 4 percent of the adult Indian population, are in jail, prison or otherwise under the control of the criminal justice system on any given day. The compares to 2 percent of the white population and 10 percent of the black population. ■

ADDICTED TO LOVE

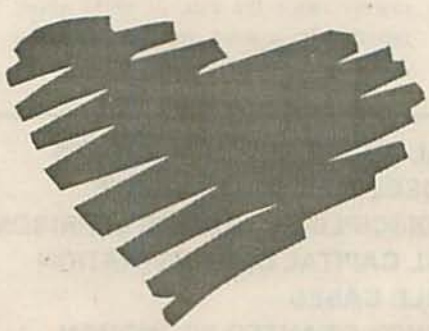
A County District Judge in Fort Madison, Iowa, had reportedly all but dismissed a lawsuit filed by an Iowa State Penitentiary prisoner against a prison nurse who he claimed addicted him to the wiggle in her buttocks, and then once he was addicted she stopped the wiggling.

Paul Blaise, 26, alleged in his lawsuit that nurse Maggie Barnett wore tight pants to work twice lifted her lab coat and wiggled her bottom during shower times in the cell unit where he was confined.

Blaise, who is serving a 10-year sentence for third-degree sexual abuse, said Barnett repeated the rear end gyrations until prisoners became addicted and then stopped.

The judge on the case issued an order during January, 1999, staying the case from further proceedings until Blaise comes up with enough money to pay for the nurse's legal costs.

[Sources: ***Southland Prison News,*** Associated Press Report] ■



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SEXUAL ABUSE AND CIVIL RIGHTS:
The Impact of the PLRA Physical Injury Requirement

by Giovanna Shay[1]

- ***Two women . prisoners are strip searched by male guards. Following the incident, one suffers stress-induced migraine headaches. The other attempts suicide and must undergo a stomach pump.***
- ***Deputies at a jail subject women prisoners to constant verbal sexual harassment and requests for sexual favors. Deputies ask women to strip and masturbate in front of them. Women who comply are granted special privileges. Women who complain become the targets of retaliation.***
- ***A women prisoner is raped by a male inmate who pays a guard to let him into her cell.***

Do these incarcerated women have viable civil rights lawsuits? regardless of the substantive law governing their claims, the Prison Litigation Reform Act of 1996 (PLRA) threatens their ability to seek relief in federal court.

In recent years, the problem of sexual abuse of incarcerated women in United States prisons and jails has gained increasing attention. Cases such as *Cason v. Seckinger,*[2] *Women Prisoners of D.C. v. District of Columbia,*[3] and *Lucas v. White*[4] have exposed rampant sexual misconduct and shocking incidents of sexual assault. The United States Department of Justice is litigating cases alleging systemic sexual abuse in both the Arizona[5] and Michigan state systems.[6] Human rights agencies[7] and the popular press[8] report grievous sexual violence against incarcerated women. In 1998, the United Nations Special Rapporteur on Violence Against Women toured the U.S. to investigate the problem of sexual exploitation of women in U.S. custody.[9]

Yet even as incarcerated women and their advocates expose sexual abuse, the PLRA threatens to close federal courts to prisoners who have been victimized. Specifically, a provision of the PLRA bars recovery in federal civil rights actions by prisoners who cannot demonstrate a physical injury. It states; "no federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury." 42 U.S.C. Section 1997e(e). Lawyers for women prisoners have reason to fear that courts will bar relief for some types of sexual harassment, abuse, and assault.[10]

A case that did not even involve a sexual assault, *Siglar v. Hightower,* foreshadowed the impact of the PLRA on the civil rights of sexually abused women prisoners. In Siglar, the Fifth Circuit dismissed a Section 1983 action brought by a prisoner alleging excessive force. The prisoner, Lee Andrew Sigler, II, alleged that, in an incident arising out of his possession of a biscuit, a prison guard had verbally abused him, twisted his arm behind his back, and twisted his ear.[12]

Although Siglar's ear was bruised and sore for three days, he neither sought nor received medical treatment, and he sustained no injury.[13] The Fifth Circuit applied Eighth Amendment standards in interpreting the PLRA physical injury requirement.[14] The court concluded that, because Siglar's injuries were de *minimis,* he had failed to articulate a claim under the Eighth Amendment and to demonstrate the physical injury required by the PLRA.[15]

Unfortunately, a U.S. Magistrate soon applied *Siglar* in a case involving a cross-gender strip search, with disastrous results for the plaintiffs. In *Moys v. City* of *Albuquerque,* a federal magistrate in the district of New Mexico dismissed a claim by two incarcerated women who had been strip search by male guards in violation of the Fourth Amendment.[16] One of the plaintiffs suffered migraine headaches due to the stress of the incident. The other attempted suicide and as subjected to a stomach pump. The court relied on Siglar to interpret the PLRA physical injury requirement. It concluded "Even if the Court were to consider any injury to Lisa Martinez as a result of her attempted suicide a a qualifying physical injury under the statute, a few hours of lassitude and nausea and the discomfort of having her stomach pumped is no more than a *de minimis* physical injury. Similarly, the mere fact that Sharon Moya now suffers headaches which she attributes to the stress of her strip search is not a serious physical injury. Following the guidance of *Siglar,* such injuries are insufficient to overcome the hurdle posed by Section 1997e (e).[17]

In *Luong v. Hatt,* a U.S. Magistrate Judge employed a similar analysis to dismiss a Texas prisoner's failure to protect claim. Although not a sexual assault case, *Luong* contained facts common to sexual assault scenarios. According to his DOC medical records, the plaintiff, who had been attacked by other inmates, suffered "cuts, scratches, abrasions, lacerations, redness, and bruises."[18] The Magistrate Judge concluded, however, that the plaintiff's medical records described only *de minimis* injuries, and that, therefore, the prisoner had failed to demonstrate the requisite physical injury under Section 1997e(e). The court reasoned that only injuries involving "lasting disability" or "severe pain" constitute physical injuries within the meaning of the PLRA.[19] It concluded that; "a physical injury is an observable or diagnosable medical condition requiring treatment by a medical care professional."[20]

Not all federal courts have demonstrated such callousness. In *Nunn v. Michigan Dept. of Corrections,* a federal district court concluded that the Section 1997e(e) physical injury requirement did not bar an Eighth Amendment claim by prisoners who had been raped and sexually assaulted by DOC employees.[21] Such attacks, the court reasoned, necessarily entail a physical injury at least sufficient to overcome a Rule 12(b) (6) motion.[22]

Advocates for incarcerated women may attempt to escape the mental or emotional injury label by emphasizing their clients' somatic reactions to sexual abuse. In the pre-PLRA case *Women Prisoners of D.C. v. District of Columbia,* plaintiffs' expert testified that systemic sexual harassment and misconduct caused plaintiffs to suffer "significant depression, nausea, frequent headaches, insomnia, fatigue, anxiety, irritability [and] nervous-ness."[23] In another pre-PLRA case, *Jordan V. Gardner,*[24] the Ninth Circuit concluded that a policy

allowing male guards to conduct random, non-emergency, suspicionless clothed body searches on women prisoners violated the plaintiff prisoners' rights under the Eighth Amendment. The court based its conclusion on the fact that such searches caused many members of the plaintiff class severe emotiona! distress and psychological suffering, largely due to the women's prior experiences of sexual abuse.[25] However, it highlighted an extreme somatic reaction: a prisoner who, after being subjected to such a search, "had to have her fingers pried loose from bars she had grabbed during the search...and vomited after returning to her cell block."[26] As *Moya* demonstrates, however, some courts may reject such physical reactions as *de minimis* injuries under Siglar. The D.C. Circuit recently concluded that certain somatic symptoms were insufficient to establish a physical injury within the meaning of Section 1997e(e). In *Davis* v. *District of Columbia,* a prisoner who had sued for to cmental and emotional distress arising from the disclosure of his HIV status sought to amend his complaint to allege physical injury.[27] He relied on an affidavit by his psychiatrist stating that he had experienced weight loss, appetite loss, and insomnia after the disclosure of his medical status."[28] The D.C. Circuit declined to allow him to amend. It concluded that the Section 1997e(e) requirement of a "prior" physical injury, as well as the legislative purpose of discouraging frivolous" lawsuits "preclude reliance on the somatic manifestations of emotional distress that Davis alleges."[29] It remains to be seen whether other courts will follow *Siglar* and *Davis* in cases involving severe and long-lived somatic reactions to sexual abuse.

Perceiving that Section 1997e(e) prohibits relief even for psychological torture, prisoners, advocates have attempted to challenge the provision on constitutional grounds. Several early opinions by magistrate judges questioned the constitutionality of the physical injury requirement.[30] However, both the Seventh and D.C. Circuits have upheld the provision against constitutional challenges. Ironically, both courts did so on the grounds that left open the possibility of injunctive relief.

In *Zehner v. Trigg,* the plaintiffs challenged Section 1997e(e) on three grounds, claiming that: (1) Congress lacks the power to strip federal courts of their power to remedy constitutional violations; (2) Section 1997e(e) violates equal protection by impinging on the plaintiff's fundamental rights to access to the courts; and (3) Section 1997e(e) violates separation of powers by impermissibly directing the outcome of constitutional cases.[31]

The Seventh Circuit rejected all three claims. The court disposed of the jurisdiction-stripping argument by stating that, the Constitution does not demand an individually effective remedy for every constitutional violation."[32] As for access to courts, the court wrote, Section 1997e(e) does not limit prisoners' access to courts, but, rather, their access to relief.[33] Finally, the court concluded that Section 1997e(e) does not prescribe a "rule of decision" any more than any other statute setting out *prima facie* elements.[34]

The D.C. Circuit upheld Section 1997e(e) on similar reasoning in *Davis.*[35] The plaintiff in *Davis* claimed that prison officials had violated his fundamental constitutional right of privacy by disclosing his HIV status. He alleged mental and emotional distress arising from the constitutional violation.[36] The district court dismissed his claim, relying on Section 1997e(e).[37] The plaintiff appealed to the D.C. Circuit, alleging, *inter alia,* that Section 1997e(e)violated his rights to equal protection and access to the courts.[38]

The D.C. Circuit rejected both claims.[39] It concluded that the physical injury requirement did not impermissibly infringe on the plaintiff's fundamental right of privacy because it "is merely a limitation on damages."[40] Reading the statute as applying only to injuries suffered" in the past, the court reasoned that it did not preclude prospective relief such as declaratory and injunctive relief.[41] It further noted that "suits for declaratory and injunctive relief against the threatened invasion of a constitutional right do not ordinarily require proof of any injury other than the threatened constitutional deprivation itself."[42] Precluding "backward-looking" relief in cases alleging only mental and emotional injury, it reasoned, did not "directly and substantially" interfere with the plaintiff's exercise of his constitutional right of privacy.[43] The court rejected the right of access claim on similar grounds.[44] In circuits following *Zehner* and *Davis,* therefore, plaintiffs may seek injunctive and declaratory relief for sexual harassment.

In an opinion by Judge Reinhardt, the Ninth Circuit offered prisoners and their advocates some hope. In *Canell v. Lightner,* the Ninth Circuit concluded that a prisoner's constitutional claim did not fall within the Section 1997e(e) prohibition on claims for "mental or emotional" injury. The court declined to apply Section 1997e(e) to bar a prisoner's claim that officials had violated his rights under the Establishment and Free Exercise Clauses of the First Amendment to the U.S. Constitution.[45] The court reasoned: "Canell is not asserting a claim for mental or emotional injury." He is asserting a claim for a violation of his First Amendment rights. The deprivation of First Amendment rights entitles a plaintiff to judicial relief wholly aside from any physical injury he can show, or any mental or emotional injury he may have incurred. Therefore, Section 1997e(e) does not apply to First Amendment Claims regardless of the form of relief sought."[46] Similarly, sexual abuse plaintiffs may argue that they claim violations of their Eighth and Fourteenth Amendment rights, not mere "mental or emotional injury.

ENDNOTES

1. This article was supported by a grant from the Open Society Institute's Center on Crime, Communities & Culture's Soros Justice Fellowship Program. I have relied heavily on both the ACLU National Prison Project's *Significant Decisions Regarding the Prison Letigation Reform Act* and John Boston's *The Prison Letigation Reform Act: The Story So Far.*

2. Consent Order filed in Civil Action No: 84-313-1-MAC (M.D. Ga. Nov.23, 1994).

3. Women Prisoners v. District of Columbia, 877 F.Supp. 634 (D.D.C. 1994), vacated in part, modified in part, 899 F.Supp. 659, remanded, 93 F.3d 910 (D.C. Cir. 1996), cert. denied, 117 S.Ct. 15452 (1997).

4. "U.S. Prisons Will Change Sexual Assault Policies," *N.Y. Times National,* March 4, 1998, atAl3.

5. Tony Ortega, "Feds Sue Arizona: State Accused of Failing to Protect Women Inmates From Sexual Misconduct' Involving Prison Guards," Phoenix *New Times* March 13, 1997.

6. Anjali J. Sekha, "In Michigan: Female Inmates Abused and Mistreated, Suit Claims, Correctional Officials Say Justice Department Lacks Evidence," *The Detroit News,* June 6, 1997, at D3.
1. 7. Human Rights Watch, "All too Familiar: Sexual Abuse of Women in U.. Prisons," (1996); Human Rights Watch, "Nowhere to Hide: Retaliation Against Women in Michigan Prisons," (1998); Women's Institute for Leadership Development for Human Rights, "Human Rights for Women in U.S. Custody," (1998).
8.Nina Siegal, "Locked Up in America: Slaves to the System," *Salon Magazine,* http://www.salonmagazine.com/mwt/feature/1998/09/cov_01feature4.htm.
9. International Human Rights Law Group Women's Rights Advocacy Program, The United Nations Special Rapporteur on Violence Against Women: Q&A Fact Sheet (May 1998).
10. The PLRA physical injury requirement does not apply to plaintiffs who are no longer incarcerated *Keer V.Pucket,* 138 F.3d 321, 323 (7th Cir. 1998); and courts have declined to apply the provision retroactively, see *Swan v. Banks,* 160 F.3d 158 (9th Cir. 1998; *Craig v. Eberly,* 1998 WL 886748 at 3 (IOth Cir. 1998).
11. *Siglar v. Hightower,* 112 F.3d 191(5th Ci. 1997).
12. *Id* at 193.
13. *Id*
14. *Id.* at 193.
15. *Id.* at 194. *But see Gomez v. Chandler,* 1999 WL 304 at 4 (5th Cir. 1999) (dlstinguishing *Siglar* and noting that "there is no categorical requirement that the physical injury be significant, serious, or more than minor.").
16. No.96-1257 DJS/RLP, Mem. Op. and Order (D.N.M. Nov.17, 1997) (unpublished).
17. Id at4.
18. Luong v. *Hat,* 979 F.Sunp. 481, 485 (N.D. Tex 1997).
19. *Id.*
20. *Id* at 486.
21. *Nunn V. Michigan Dept of Corrections,* No. 96-CV-71416, Order and Op. at 9 (E.D. Mich. Feb. 4, 1997) (unpublished).
22. *Id* at9.
23.877 F.Supp. at 665.
24.986 F.2d 1521(9th Cir. 1993).
25. *Id* at 1525~26.
26. *Id.*,1523.
27.1998 WL 743572 (D.C. Cir. 1998).
28 .Id at6.
29. *Id See also Plascencia V. State of California,,* 198 WL 804713 at 8 (C.D. Cal.1998) ("weight loss is insufficient to constitute a prior physical injury under PLRA"); Valentino v. Jacobson, 1999 WL 14685 at (S.D.N.Y. 1999) ("anxiety" and "somatic emotional difficulities" fail to state a civil rights claim under PLRA).
30. *See, e.g., Calhoun v. DeTefla,* 1997 WL 75658 (N.D. Ill. Fe. 8, 1997); Dorn v. *DeTella,* 1997 WL 85145 (N.D. Ill. Feb.24, 1997).
31.133 F.3d 459, 461~65 (7th Cir. 1997).
32. *Id,*462.
33. *Id* at 463.
34. *Id* at 404.
35. 1998 WL 74372 at 1.
36. *Id* at 1.
37. *Id*
38. *Id* at 1.
39. *Id* at7.
40. *Id* at 1.
41. *Id.* at 2.
42. *Id.*
43. *Id* at 3.
44. *Id* at 4.
45. 143 F3d 1210,1212 (9th Cir. 1998).
46. I*d.,* 1213. See *also Self-AIIah v. Ammucci,* 1998 WL 912008 at 5 (W.D.N.Y. 1998).

Giovanna Shay, J.D. Yale 1997, is on a Soros Justice Fellowship with the National Prison Project focusing on issues affecting incarcerated women. This article is reprinted here, with permission, from Vol. 12, No. 4, of The National Prison Project Journal. ■

PROPOSED MAIL RULE UPDATE

In the January/February issue of *FPLP* it was noticed that the FDOC had re-proposed amendments to the routine, legal, and privileged mail rules at 33-3.004, 33-3.005, and 33-3.0052, F.A.C.. On November 25, 1998, the department posted the first of the two required rulemaking notices before those amendments can be adopted. The Nov. 25th notice was the "rule development" notice. The second required notice has not been posted as yet and therefore those proposed amendments have not been adopted to date.

As noted in the above mentioned issue of *FPLP*, some of the new proposed mail rule amendments are good and would benefit prisoners and their correspondents in having clear rules setting out what is and is not allowed in mail. However, it was also noted that some of the proposals would seriously and negatively affect the ability of Florida prisoners to communicate with the outside and some of the proposals do not appear to comply with established federal or state laws. It was requested that *FPLP* readers be prepared to file written comments and have their families and friends do the same to certain portions of the proposed rules if and when the second stage of the rulemaking notices were posted. Since that second stage notice has not been posted yet it is suggested that everyone remain prepared.

There is no time limit that has to be observed between the time the first notice is posted and when the second notice appears, usually the FDOC does not wait this long to post the second notice however. When and if that second notice is posted, there is a time limit on when comments and objections must be filed, it is 21 days. The name and address of the person to send comments and objections to will be listed on the notice.

So, prisoners should watch the bulletin boards for that second rulemaking notice. If it appears, we all need to be immediately prepared to object to the negative portions of the proposed mail rule amendments. Last year we were successful in having the department withdraw very similar mail rule changes by working together to send hundreds of comments and objections. If the department shows that it is going to try to adopt such onerous rules again we must be prepared to challenge them again. Prisoners' ability to communication with the outside world is perhaps their most important right. Without that ability everything else will be quickly lost. Prisoners still have substantial First Amendment rights, they must be zealously protected from any invasion or attempts to apply "get tough" nonsense rules to restrict them. ■

"10-20-LIFE" CATCHY PHRASE BUT WILL IT FLY?

On March 31, 1999, Gov. Jeb Bush signed into law new legislation that all Floridians are familiar with from Bush's gubernatorial campaign, the "10-20-Life" law. The new law will take effect July 1 and will make gun-related mandatory minimum prison sentences where a gun is used in a crime go from the current 3 years to 10 years minimum. If the gun is fired, the mandatory minimum goes to 20 years, and if someone is seriously hurt or killed the mandatory minimum will be 25 years to life in prison. Jeb Bush said, "It's time that gun-toting violent criminals who prey on Florida's law abiding citizens receive absolute certainty of punishment, and 10-20-life will do just that."

In fact, according to some lawmakers, the law will not provide anymore certainty of punishment than laws that are already in effect where under the new law state prosecutors will take over the role of judges when they retain the authority to pick and chose who receives a plea bargain to lessor charges that are exempt from a 10-20-life sentence. A majority of Florida's black lawmakers opposed the new law, citing that it will have a disproportionate impact on

blacks who commit crimes.

All 11 of the Florida House of Representatives members who are black voted against the new law. The bill passed in the House 108 white state representatives against the 11 black state representatives. With more at stake as concerns there political future, none of the few black state senators voted against the senate version of the bill, and it passed in the Senate unanimously.

A provision in the law requires the state to heavily advertise the coming tougher sentences in the hope that getting the word Out on the street about the penalties now being faced if a gun is used in a crime will work to reduce gun-related crimes. The legislature approved $250,000 for the advertising. A similar tactic in Florida in the early 1980s advertising an increase in the penalty for armed robberies of up to 99 years in prison did not reduce the robbery rates.

Strangely, the 10-20-life law has another provision that makes little sense to some critics except in the overall trend of the government to exempt its own from the laws. That is the provision that police officers and military personal who commit gun-related crimes on the job or going to or from work will not be covered by the 10-20-life law because they have no choice about carrying firearms. ■

GET TOUGH ATTITUDE PROMOTES JUVENILE ABUSE

During March state prosecutors from Miami-Dade County began investigating a program for juvenile delinquents after allegations were made that a guard forced two boys to lie on a nest of red ants after they had tried to escape.

The two boys, ages 14 and 15, suffered hundreds of ant bites last summer after trying to escape from the Hurricane Conservation Corps program located in South Florida.

The boys allege that guard Andrew McCray forced them to lie on the ground, one on top of the other, on a mound of biting red ants after he caught them trying to escape. The boys also claim that once in that position McCray placed his foot on top of them and pushed them down into the ant mound.

McCray said that he considered the boys escaping felons and that he was trying to restrain them. "I got bitten too," McCray said.

The boys allegation of this get tough treatment has lead prosecutors to investigate other conditions at the state-financed, privately operated juvenile facility. The U.S. attorney's office is also investigating claims that weaker boys at the facility are targeted for group beatings and that new boys were forced to perform mock sex acts.

At the time that the ant incident occurred, the program was being operated by Gator Human Services, a private company based in Michigan. Since then the program contract has been sold to its current operator, Youth Track.

Four guards have been fired and one was suspended for three days, according to a spokesman for the state Department of Juvenile Justice. McCray said he resigned because he was told he would have to work more hours, but the juvenile justice department says he was terminated because of the investigation. ■

FDOC DISCIPLINES GUARDS IN PRISONER'S SUICIDE

In a rare instance, during March the Florida Department of Corrections (FDOC) took disciplinary action against several correctional officers which an investigation revealed had been involved in illegal and wrongful acts that may have contributed to the suicide of Florence Krell. The last two issues of *FPLP* reported extensively on this situation and the suicide death of another female Florida prisoner, Christine Elmore, only 8 weeks after Krell's death.

Three guards received official reprimands for their part in the treatment of Florence Krell, who had unsuccessfully filed complaints with the FDOC that prison guards were harassing her before she eventually took her own life in a solitary confinement cell at the prison.

Even though in February a Florida Department of Law Enforcement investigation report had cleared any guards of wrongdoing, during March, six Jefferson CI guards were hand-delivered notice of disciplinary charges by the FDOC. The charges included allegations of numerous violations of the department's rules including tampering with Krell's legal mail to her sentencing judge asking for help from him to stop guards from harassing her, stripping her naked in the cell and leaving her handcuffed for days, and failing to disclose that they had turned the water off in the cell.

Two of the guards, Lt. Anthony Palazzolo and Sgt. Yolinda Robinson, are facing termination from the department for their part in Krell's treatment. Three other guards, Sgt. Lenita Lawrence, Lt. Jean Hamburger, and COI Cassandra Thomas, received written reprimands. A sixth guard was also to be disciplined in the matter.

Palazzolo was one the several guards that Krell had tried to file complaints about, she had accused him of harassing her. She had tried to get higher officials to investigate her claims, but all her grievances had been denied with the standard boilerplate responses that are usually used to deny any complaint made by Florida prisoners.

Palazzolo has been charged with negligence, lying to investigators, and willful violation of rules and regulations. He is alleged to have approved two male and two female guards using force on Krell to remove a "cup and toilet paper" from her cell that they claimed were "contraband." The two male guards participated in stripping her naked, leaving her handcuffed on the floor for days with the water to the cell cut off. Palazzolo also is accused to have known about and allowed subordinates to confiscate legal mail that Krell had attempted to send to her sentencing judge complaining about the harassment and her treatment the day before she was found hanging from the door to her cell dead.

Timothy Jansen, an attorney from Tallahassee who is representing Palazzolo, has questioned why only prison guards have been charged with wrongdoing when higher ranking officials at Jefferson CI and at the FDOC central office knew of their actions and approved of them.

No disciplinary charges had been filed in Christine Elmore's death as of April. ■

FPAN'S ANNUAL CAPITAL DEMONSTRATION

FROM LEFT TO RIGHT: GAYLE RUSSEL OF FILS AND TERESA BURNS OF FPLP WITH VISATATION DISPLAYS

FROM LEFT TO RIGHT: NADINE ANDERSON (FLIP), REPRESENTATIVE JUANITA WILSON & ALAN TROVILLION

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OVERHEAD PICTURE IN THE CAPITAL ROTUNDA OF FPAN RALLY

FROM LEFT TO RIGHT: NADINE ANDERSON (FLIP) AND GLEN BOSHER (FILS)

NOTABLE CASES
by Sherri Johnson and Brian Morris

First DCA Expressly Rules *Sheley* Applies to DOC Challenges

Richard Doss filed a petition for writ of mandamus in the circuit court challenging an FDOC disciplinary proceeding that resulted in forfeiture of 15 days gaintime. The petition was denied by the circuit court and Doss appealed to the First District Court of Appeals (DCA).

The DCA applied the decision in *Sheley v. Fla. Parole Commission*, 720 So.216 (Fla. 1998) which held that a prisoner who receives a full review in a circuit court of a Parole Commission order is not entitled to a second full review, or plenary appeal, in the DCA.

The DCA in Doss's case also noted that *Sheley* limits review when proceeding to the DCA following a review by the circuit court to consideration of whether the circuit court (as opposed to the agency) denied the prisoner due process of law or departed from the essential requirements of law - in other words, the DCA is limited to certiorari review.

The DCA noted that although it was recognized that Doss's situation does not concern a Parole Commission order or decision, the reasoning in Sheley applies equally to decisions of the Department of Corrections. The DCA then applied certiorari review standards to Doss's appeal and found that the circuit court did not deny due process or depart from the essential requirements of law. The DCA denied Doss's "appeal" (petition for certiorari, as it was entitled by the DCA). See: *Doss v. Fla. Department of Corrections*, ___So.2d___, 24 FLW D397 (Fla. 1st DCA *2/10/99).*

Rule 33-22.008(2) Does Not Preclude Second DR Hearing

Broderick Hay was written a disciplinary report (DR) after a urinalysis tested positive for opiates. At the DR hearing Hay presented evidence that one of the drugs prescribed to him by the prison doctor, an antibiotic called "Floxin," contained opiates and therefore the urinalysis test result was a false positive. Rather than find Hay "not guilty," the DR team simply dismissed the charge.

Later the prison doctor reported that "Floxin" does not contain opiates and a second DR hearing was held where Hay was found guilty as charged. Hay exhausted his administrative appeals, unsuccessfully, and then filed what he termed an "omnibus petition for extraordinary relief" in the circuit court. Hay claimed in the petition that Rule 33 -22.008(2), F.A.C., required the DR team to have found him "not guilty" (rather than simply dismiss the charge) at the first DR hearing, and that the same rule precluded a second hearing from being held on the same charge. The circuit court denied the petition and found that the petition was "frivolous" per section 944.279(1), F.S., opening the way for Hay to receive another DR for filing frivolous judicial pleadings.

Hay filed for review by the appeal court. The DCA applied certiorari review standards pursuant to *Sheley v. Fla. Parole Comm.*, 720 So.2d 216 (Fla. 1998), and determined that the circuit court did not depart from the essential requirements of law. The DOC had interpreted the rule for the circuit court (as is an agency's right as long as the interpretation is reasonable) and found that it did not preclude a second hearing from being held and (despite the plain language of that rule) that a DR may be dismissed rather than a not guilty finding being returned even when the evidence produced indicates a not guilty verdict. The DCA deferred to the DOC's interpretation as had the circuit court.

On the circuit court's frivolous finding, however, the DCA REVERSED, after examining the definition of "frivolous" as it exists in Fla. law. The DCA found that it could not say that Hay's petition was so devoid of merit as to find it frivolous.

While the DCA was reviewing this case, Hay filed a motion for the DCA to relinquish jurisdiction back to the circuit court to allow him to file a motion alleging newly discovered evidence in the form of a letter from a pharmaceutical company (apparently disputing the prison doctor's claim that "Floxin" does not contain opiates that was used to find him guilty at the second hearing). The DCA refused to relinquish such jurisdiction, but did so without prejudice to Hay filing a new administrative appeal with the DOC on that claim (and starting the whole process over again if the administrative appeals are denied). See: *Hay v. Moore*, DOC, ___ So.2d ____ 24 FLW D621 (Fla. 1st DCA 3/5/99).

Failure to Produce Evidence at Disciplinary Hearing Invalidates Proceedings

Richard Vaughan received a DR for escape paraphernalia when he was found with a set of clothes that he had made himself. Prison officials alleged that the clothing was fashioned to resemble "street clothes," but while Vaughan admitted making the clothes he claimed they were merely pajamas and at the DR hearing requested that the clothes be produced for the disciplinary team's inspection so they could see the clothes were nothing but pajamas. The DR team denied he request to produce the clothes, gave no meaningful justification for that refusal, and based on the charging officer's description of the clothes, found Vaughan guilty as charged (and imposed disciplinary confinement and loss of gaintime it is assumed-sj)

Vaughan filed a petition for writ of mandamus in the circuit court (after unsuccessfully exhausting his administrative appeals) challenging the disciplinary team's refusal to produce the clothing (evidence) without a giving a valid reason for the refusal . The circuit court denied the petition and Vaughan filed a petition for

writ of certiorari in the First DCA (correctly using the proper procedure following *Sheley v. Fla. Parole Commission*, 720 F.2d 216 (Fla. 1998), and *Doss v. Department of Corrections*, 24 FLW D397 (Fla. 1st DCA 1999) (see that case in this issue).

The DCA held that under the facts of the case, where the "appearance of the items of clothing was a critical issue, we conclude that the circuit court failed to apply the correct law when it rejected Vaughan's claim . ..". Citing *Osterback v. Singletary*, 679 So.2d 43 (Fla. 1st DCA 1996) (failure to produce evidence without giving valid reason), the DCA QUASHED the circuit court's denial of Vaughan's petition for writ of mandamus and REMANDED with directions to grant the petition and determine the appropriate relief due to Vaughan. See: *Vaughan v. Singletary*, ____ So.2d ____, 24 FLW D508 (Fla. 1st DCA 2/15/99).

Sanctions Coming Fast and Furious

Florida DCAs are now quicker to bar individual prisoners from access to the courts by the use of sanctions in both civil and criminal actions as several "frequent filers" have recently found out. The courts are exhibiting a growing intolerance towards prisoners who proceed pro-se and who instead of following an orderly progression when each step of litigation is exhausted are re-filing in the same state courts the same issues by using a different type pleading or rewording the issues a different way or by simply filing successive pleadings. In apparent overreaction, the DCAs are in cases totally barring such prisoners from filing anything else related to the same case or from filing anything else period.

On 12/18/98 the Second DCA found that John Amin a/k/a John Bailey had abused the judicial process by filing numerous appeals in that court in addition to at least twelve petitions for extraordinary writs since 1992, none of which had been successful. The last straw came when Amin/Bailey filed a petition for writ of mandamus in the DCA claiming that the court did not have jurisdiction to determine an appeal that Amin/Bailey "had filed himself." The DCA ordered that the clerk of that court is directed "to reject for filing all petitions for extraordinary relief sent by or on behalf of Mr. Amin/Mr. Bailey unless submitted and signed by a member in good standing of The Florida Bar." The court directed that any papers filed in violation of that order will be placed in an inactive file. See: *Amin/Bailey v .State*, ____ So.2d ____, 24 FLW D382 (Fla. 2nd DCA 1998).

On 2/3/99 the Second DCA found that John Pettway had abuse the judicial process by filing seventeen appeals or petitions for extraordinary writs all related to the same criminal convictions. The court determined that Pettway's convictions and sentences had been "exhaustively reviewed" by the court and he has received all the relief due to him. The court's patience came to an end when Pettway appealed a denial of a motion to correct an illegal sentence while a petition for writ of habeas corpus directed to the same sentence was pending in the DCA alleging the same grounds as in the in the appeal of the circuit court motion denial. Again, the DCA directed the clerk of the court to reject any future extraordinary relief filings of Pettway relating to his current conviction and sentence, unless submitted and signed by an attorney in good standing with the Florida Bar. See: *Pettway v. State*, ____ So.2d ____, 24 FLW D383 (Fla. 2nd DCA 1999).

In another case the First DCA held that a prisoner may not avoid a finding that a frivolous action had been filed by filing a notice of voluntary dismissal. Robert Van Meter filed an appeal raising several issues of which the DCA only considered one: Whether the trial court had jurisdiction to make a (frivolous legal action) finding pursuant to section 944.279, F.S., that a frivolous action had been brought when the prisoner had filed a notice of voluntary dismissal before the trail court made such determination. The DCA held that the trial court retains jurisdiction to make a determination pursuant to 57.105, F.S., concerning the reasonableness of litigation even after a filing of a notice of voluntary dismissal. The DCA held that the trial court could properly enter an order authorizing sanctions pursuant to sections 944.279 and 944.28(2)(a), F.S., as the requisite jurisdiction is retained. See: Van *Meter v. State*, ____ So.2d ___ 24 FLW D502 (Fla. 1st DCA 1999).

Not to be left out, on 2/24/99 the Third DCA issued two decisions containing sanctions against prisoners. In the first case Kasim Ali was found to have abused the judicial process by filing several successive motions for post conviction relief and petitions for writs of habeas corpus in the DCA, the Florida Supreme Court and the federal courts all attempting to relitigate the same issues and all of which had been denied. The DCA's decision was to prohibit Ali from filing any further pro-se pleadings, motions, or petitions relating to his 1983 conviction. The DCA also ordered that any further pleadings related to Ali's case must be reviewed and signed by an attorney, and cautioned Ali that a prisoner who files any frivolous action or pleading is subject to gain time forfeiture pursuant to Florida statute and denied Ali's latest habeas petition. See: *Ali v. State*, ____ So.2d ____, 24 FLW D514 (Fla. 3rd DCA 1999).

In the second case out of the Third DCA, Jack Phillips was found, the best that the DCA could determine, to have filed eighteen post conviction motions, appeals, petitions for habeas corpus, motion for rehearing or clarification, in the DCA, the Florida Supreme Court or the federal courts concerning his 1973 conviction and life sentence, all of which had been denied. In this case the court's patience ran out when Phillips filed a new petition for writ of habeas corpus alleging ineffective assistance of appellate counsel concerning the same conviction. The DCA held that Phillips had abused the judicial process and ordered that he is prohibited from filing any further pro-se pleadings concerning the 1973 conviction, and that anything else that might be filed concerning that case must be reviewed and signed by an attorney. The court also cautioned Phillips about the sanctions for frivolous pleadings as a future warning, while denying the habeas petition. See: *Phillips v. Singletary*, ___ So.2d ___, 24 FLW D516 (Fla. 3rd DCA 1999).

[Note: In the past year or so we have seen an increasing number of sanctions being issued against prisoners so it is nothing new to see the above cases. What is new in the above cases is the number of instances where prisoners are being barred

from future filings in certain situations unless the pleadings are 'submitted and signed " or "reviewed and signed" by an attorney. In the case of indigent prisoners this amounts to a total bar without exception. Where the court orders that future indigent pro-se filings be placed in inactive files or rejected (unless submitted and signed by an attorney, which the indigent prisoner cannot afford), without any consideration being given to what may be new circumstances that have merit, then it would appear in my opinion that such would be an unconstitutional denial of access to the court that could not withstand even cursory scrutiny. -sj]

No Contest Plea Followed by Withhold of Adjudication is Not a Conviction

James W. Batchelor sought postconviction relief alleging ineffective assistance of counsel. Batchelor claimed that his attorney failed to object to errors in the scoring of prior record on the sentencing guidelines scoresheet even though he had told his attorney about the errors. One of Batchelor's sworn claims was that "7.2 points had been scored for a prior robbery with a firearm as to which he had pleaded no contest, adjudication had been withheld, and he had successfully completed his probation." Batchelor claimed that, but for the erroneous inclusion of these points, the maximum permitted guidelines sentence, which he did receive, would have otherwise been reduced. In summarily denying Rule 3.850 relief in this case, among other things, the trial court erroneously concluded that "the robbery with a firearm had been properly scored, notwithstanding the allegation that adjudication had been withheld, because, for guidelines purposes, Florida Rules of Criminal Procedure 3.O2(d)(2) defines 'conviction' as 'a determination of guilt resulting from a plea or trial, regardless of whether adjudication was withheld or whether imposition of sentence was suspended.'" Batchelor appealed.

On appeal, the First DCA's analysis found that, notwithstanding the definition of "conviction" implied by Rule 3.702(d)(2), "a no-contest plea followed by a withhold of adjudication is not a 'conviction.'" Significantly, the First DCA found Batchelor's allegation that "he pleaded no contest to the robbery with a firearm charge, that adjudication was withheld, and that he successfully completed his probation" set forth a sufficient claim that error had been made in the scoring of his prior record. Specifically, the DCA noted that "it seems ... [Batchelor] has established ... the robbery with a firearm should not have been scored ..., and that trial counsel was ineffective in failing to object to its being scored." Ultimately, the DCA reversed the trial court's summary denial of the scoresheet claim and remanded for further proceedings. See: *Batchelor v. State*, ___ So.2d , 24 FLW D304 (Fla. 1st DCA, 1-22-99).

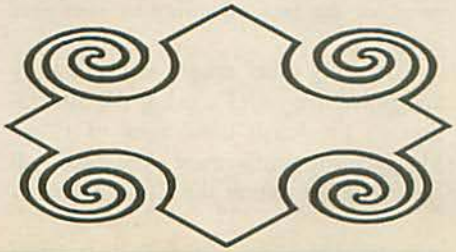
[Comment: This case just may show the much needed prime example of the simplicity of valuable issues often overlooked in ones quest for justice. The fact that a no-contest plea followed by withhold of adjudication is not a conviction is nothing new. See e.g., *U.S. v. Smith*, 856 F.Supp 665 (S.D.Fla. 1994) (in Florida, when adjudication is withheld, plea of guilty, as opposed to plea of no-contest, is necessary for "conviction" to exist.). What I find especially interesting is that, as expressed by the First DCA, the definition of "conviction" set out under Rule 3.702(d)(2), Fla.R.Crim.P., is nothing more than a simple effort to codify case law decisions recognizing that "'the term conviction means determination of guilt by verdict of the jury or by plea of guilty, and does not require adjudication by the court.'" Batchelor, at D305; quoting *State v. Gazda*, 257 So.2d 242, 243-44 (Fla.1971). Correction, what I find especially interesting is the fact that, like Rule 3.702(d)(2), both Rule 3.701(d)(2) and 3.703(d)(6), Fla.R.Crim.P., provide the same definition of the word "Conviction." I am willing to bet that Batchelor is not the only individual affected by a similarly strict, but erroneous, interpretation of the sentencing guidelines rules definition of the word "conviction." Although not emphasized enough, I believe the decision entered in Batchelor reflects the often needed reminder for criminal litigants to avoid the dreaded "tunnel vision" when searching for those issues that may warrant judicial relief. As in life, it's the simple things in law that often goes unnoticed-bm.]

Construing Prisoner Releasee Reoffender Act Most Favorably to the Accused

In an interesting case involving the Prisoner Releasee Reoffender Act of 1997, the Defendant, Frank Wise, appeared before the trial court for sentencing with a letter from the victim that indicated the victim desired the trial court not to impose the mandatory releasee reoffender sentence. The victim subsequently appeared in court to confirm the authenticity of the letter. Thereafter, the trial court, heeding the victim's request, elected to sentence Wise pursuant to the sentencing guidelines and the state appealed.

On appeal, the state argued that the trial court had no discretion when it comes to sentencing under the Prison Releasee Reoffender Act, that such sentencing is mandatory unless the state chooses otherwise, and that the trial courts failure to impose the mandatory sentence pursuant to the act resulted in an illegal sentence. Seriously, the state actually argued that any discretion whether to sentence under the act rest solely with the state, not the courts. Fortunately, the Fourth DCA disagreed.

Although, upon conviction, the state may indeed seek what it believes to be an appropriate penalty or sentence, the DCA held that "[i]t is the function of the trial court to determine the penalty or sentence to be imposed. [Cite omitted]. The DCA found that, in this instance, the trial court did not abuse its discretion by accepting the victim's written request that the mandatory sentence not be imposed. Significantly, the DCA also noted that section 775.082(8), Florida Statutes (1997), "is not a model of clarity and may be susceptible to differing constructions requiring it to be construed most favorably to the accused. See: *State v. Wise*, ___ So.2d ___, 24 FLW D657 (Fla. 4th DCA, March 10, 1999).



HOOKS CASE UPDATE

FYI: As of April there has been no further action in the *Hooks v. Singletary* "access to court" class action case since the magistrate judge issued his report and recommendation back in September of 1998.

Following that report and recommendation (that was reported on in Vol.4, Iss.6, *FPLP),* both counsel for Florida prisoners and for the FDOC filed a response to the report, with counsel for the plaintiff prisoners objecting to much of the report. The district judge still has the case under consideration with no indication of when a final ruling may be issued.

This is the case that has been going on for over 27 years and that is directly responsible for Florida prisoners having access to law libraries and legal assistance through law clerks. Following the U.S. Supreme Court case of *Lewis v. Casey,* the DOC is now trying to have the Hooks case dismissed. An unfavorable ruling in *Hooks* for Florida prisoners may seriously affect future access to the courts. ■

CM CHALLENGE

An action challenging the conditions of Close Management confinement has been filed in the U.S. District Court, Southern District of Florida, that is being represented by Mr. Peter Siegel, Esq., of the Florida Justice Institute.

The primary basis of the case is the claim that long term close management confinement (in the manner imposed by the Florida Department of Corrections) causes a serious deterioration in the mental, and perhaps physical, health of those prisoners subjected to same.

The case will only deal with Close Management **conditions.** It will not deal, in any way, with those who should be placed on Close Management, who should be released from Close Management, or the lack of ability to earn gain time.

The only relief sought is declaratory and injunctive relief seeking the alleviation of the harsh conditions of Close Management confinement. The case will seek relief to reform the Close Management system so that prisoners in that status will have an opportunity to interact with others, have an opportunity to listen to the radio and watch television, have an opportunity for more out-of-cell exercise, and otherwise have an opportunity to live a more normal life despite the need for increased security.

All prisoners on Close Management status are potential plaintiffs in this case, especially if they have suffered negative mental or physical effects from the confinement that have been or can be documented. All prisoners on Close Management status who wish to participate in this case as a plaintiff should contact Mr. Siegel for more information. If enough prisoners join in this action class certification will be sought. Law clerks and those prisoners on Close Management who read this are requested to spread notice of this pending action and how to receive more information to other prisoners on Close Management. To join the action or obtain more information, contact:

Mr. Peter M. Siegel, Attorney
Florida Justice Institute
First Union Financial Center, Ste. 2870
200 South Biscayne Boulevard
Miami, FL 33131-2310

[Note: Mark Osterback is one of the original plaintiffs in this case that was filed while he was on CM at Everglades CI. Mark is thanked for bringing this case to the attention of *FPLP* staff in enough time that everyone could be noticed about it and provided an opportunity to decide whether to join in this very important action -ed]

CLEMENCY GRANTED SIX WOMEN

Since 1992 twenty-three battered women have been granted clemency under a program, the Battered Women's Clemency Project, that had been started by the Florida Bar Foundation. During December, 1998, six women were granted clemency by interim governor Buddy MacKay just before Jeb Bush was sworn in as Florida's new governor. That was the largest number of women who were in prison that had been granted clemency at one time. All of the women had maintained that that they had only killed after prolonged abuse by men.

The release of the six, Deborah Hart, 44, Theresa Fields, 34, Tammy Ann Duque, Kathleen Weiand, 31, Michelle Lewis, 27, and Cheri McKee, 37, were the last women to be granted clemency under the Battered Women's Clemency Project before it ran out of funding and closed its doors on December 31, 1998.

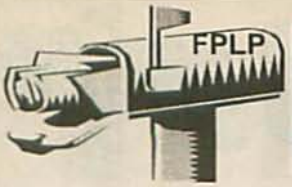
All of the six women that were granted clemency during December will have to go through residential treatment centers before they are completely released. There they will be monitored and counseled for up to 12 months before they return completely to the community.

Two other cases concerning battered female prisoners, Linda Michael, 43, and Sandra Patria, 42, were still pending clemency consideration that will depend on the Bush administration. ■

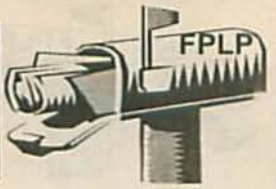
FUELING THE PRISON INDUSTRIAL COMPLEX WITH THE ELDERLY

A recent report released by the Federal Bureau of Prisons (BOP) shows that 97 percent of prisoners over the age of 55 in 1997 were in prison for non-violent crimes. Today, more than 35,000 senior citizens are behind bars nationwide. According to the BOP report, in the past decade the number of elderly men and women being sent to prison increased almost 400 percent. Additionally, while 45 percent of prisoners 18 to 29 years old return to prison within one year of release, only 3.2 percent of prisoners over the age 55 return to prison again, making the lowest risk group for release consideration.

In Florida, incarcerating elderly prisoners costs taxpayers twice and even three times what it costs to incarcerate younger, usually more violent-prone prisoners. Elderly prisoners have significantly more medical problems and special needs than younger prisoners. Florida has twice the amount of prisoners over the age of 50 of any other southern state, in fact, Florida has more prisoners over the age of 50 than Texas, Georgia and Kentucky combined. Yet, Texas alone has more than twice the overall prison population of Florida. [For further information on this topic see *FPLP,* Vol.4, Iss.6, "Taxpayers' Burden Increased by Older



FPLP SOUND OFF



Dear FPLP,

This brief notation is for sound off. I hope you can list this in your upcoming issue. I thank FPLP for reaching out to the incarcerated and our families and public awareness of prisoners. I'm currently on CM status, I was housed at Hardee CI CM unit then moved to Washington CI CM unit then onto South Bay at present. Washington CI CM unit is as bad as it gets. Inmates as they call us are treated subhuman, since being moved to South Bay its like day and night. It's going to stake sometime to get use to Sou- Bay they treat us as humans this is a self betterment facility so many programs and trades and they don't call us inmates here they treat us with respect . All I see here is helpful people even the food is 100% better, the cells have A/C and 3 times bigger. We use phones on CM and we are out of our cells 10-12 hours per day, even a disciplinary problem such as myself is all for chilling out. I say thumbs up to Wackenhut. JRW SB CI

Dear FPLP,

I am writing you this letter to thank all of you for your hard work and persistence in your care for those who are incarcerated and also for their families. Your work is very important in seeing that justice is equally given. I receive your issue here at South Bay CI in Fl. I thank God for you guys. He has placed you in the position that you are for a reason. I would like to know if you have been "pushing" DOC and the Private Institutions, in making sure that their computers are y2k compatible, so as not to cause any delays in releases or lost dates. TS SBCI

Dear FPLP, could you help us, the rare minority of pre 1983 lifers in the system who will one day be eligible for parole, get the word out that we need someone to take up the fight where P.E.N. left off. We either need the P.E.N. program re-activated and/or a new program to take up where P.E.N. left off. P.E.N. was gaining ground when it folded and with a new Governor in Tallahassee, we need to see if there is a chance that we could get rid of the Parole System, who by the way don't want to release any of us because we are their job security. All the pre 1983 guys know the story- date suspended without reason. Please help us get the word out. We need a public support group to give us back our voice in Tallahassee. Thank you for your time and keep up the great informative job you are doing. BN BCI

To Whom it May Concern,

I am a reader of your very informative newsletter. However this system we're under (FDOC) is doing its best to stop the flow of "Florida Prison Legal Perspectives" coming into those of us incarcerated.

The reasons I'm writing is to pledge my moral and prayer support of your efforts to continue to be a voice to those of us. I wish I could do more.

I am presently in the middle of litigation with FDOC, concerning issues of forfeiting Control Release Credits, out time among other issues. Right now my case is pending in the Middle District U.S. District Court. Cooper v. Singletary, case # 98-35- CIV-T 25A. The law clerks here are not experienced in Federal law and I am seeking counsel, assistance or referrals that will help in my case.

Also is there any updated information on Gomez v. Singletary? Inclosing we here in blue thank you for your concern and fight for justice. And thanks for showing we are not alone! Yes together we will be heard! DC

Dear FPLP,

I truly enjoy your articles and have tried to keep them going now for about three years. They get better every year. I will be joining the ranks as soon as I am free.

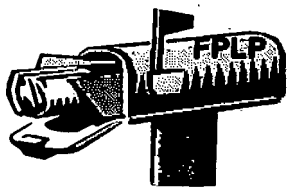
I look forward to my new issues and wish you all a wonderful year ahead in helping us fight the wrong doings of DOC and the law.

I'm one to admit if I'm wrong today, and some of are having groups now with our younger generation in prison to help them not come back.. BL JCI

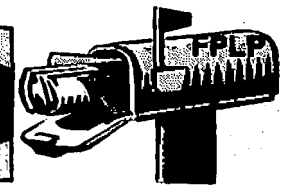
Dear FPLP,

The DOC does not police itself, it is up to prisoners and advocates to make it tow the line. A good example of an out-of-control abuse is DOC's manipulation of our canteen, visiting park vending machines, and access catalogue prices being sky-high and prisoners having no control of the Inmate Welfare Trust Fund. We all can do something if the law is enforced. First,

[All letters received cannot be printed because of space restrictions. Unsigned letters will not be printed or letters that obviously are not intended for publication. Please indicate in your letters if you do not want it printed, otherwise FPLP reserves the right to print all letters received and to edit letters for length.]



FPLP SOUND OFF



you have upon request access to the annual budget reports (past and present) for expenditures at your institution from the Inmate Welfare Trust Fund and minutes from the designated IWTF committee. Ch. 33-3.0035(8). This committee determines canteen prices (Ch. 33-3.0035(8)) which must be priced comparatively with like items for retil sale at fair market price. See F.S. *945.215(l)(e),(1998).*

At E.C.I. this was violated by boxes of Little Debbie snack cakes with a suggested retail price listed on the box being marked up for resale at 30 cents or more. When good faith attempts to resolve this violation fail, a complaint accompanied with supporting documentation should be made with the Department of Business and Professional Regulation. A uniform complaint form DBPR/REG 00l(Rev,07/93) should be acquired (on file at your law library) by writing BPR Consumer Complaints, Northwood Center, 1940 N. Monroe St. Tall. Fl. 32399-0782. This statute could arguably apply to visiting park vending machine and access catalog sky-high prices.

The IWTF benefits prisoners with growing limitations every year. Ch. 33-3.0035(3)(b)& F.S. *945.215(l)(b)* list the exclusive purposes the IWTF benefits prisoners, See also Ch. 33-3.0035(9). Prisons are notorious for skimming IWTF funds by listing free-world maintenance personnel as vocational instructors even though they do not meet the Department of Education standards required by Ch. 33-3.0035 *(3)(b)(5&6)* or taking structures and materials purchased with IWTF.

At E.C.I. the Asst. Superintendent and his supporting staff maintain offices in the Library/Education building while a lieutenant and caustic distribution center and storage occupy one of the prisoner barbershops in the Canteen/barbershop building all purchased and constructed with IWTF monies. See Ch. 33-3.0035(9)(a,c&d). "Monies from the Inmate Welfare Trust Fund will not be disbursed to employee clubs or for employee benefits", Ch. 33-3.0035(4), the funds must be discoursed exclusively to benefit prisoners, Ch.33-3.0035(l)(b); F.S. 945.215(l)(b), and it is each of our responsibility to maintain a harmonious balance in upholding in DOC the same standards which are imposed on ourselves. The rules and laws govern all of our conduct especially where the IWTF is concerned. WSS
ECI

Ma'am / Sir,

Greetings and may your walk through life meet many pleasantries. After I had the fortune to come across your momentous publication, I am moved to offer you some expressions.

First I would like to thank you and your organization for all that it has done, will do, and does in the important work toward prison reform and public awareness. Unfortunately, I have not yet been able to muster the subscription price but I will!

I had the opportunity to read the article you published in regards to the unfortunate human being pushed past her tolerance for indignation at Jefferson CI. The insight as to the human suffering of that lady was exceedingly lucid. Being inside the walls, I know how she felt exactly, if not more so, as the author described. The public had to moved by such a portrayal.

I am actively pondering prison reform. One area from the myriad in need of improvement within the penal context is that staff persons need discipline in their performance of official duties. Many staff persons cone to this forum and live out their racist fantasies, primal instincts to cause human suffering, and to manifest their lack of understanding of true self respect.

Subsequently, I've endeavored to attain the knowledge to present the factual allegations to the judiciary, to compel the dispensing of appropriate disciplinary actions to staff that posture beyond and irrespective of the Administrative Law. Predictably, I am enemy # 1. Wherefore, I am and have been the subject of the frame up. Presently at this camp (Century CI) "Based on officers statement is the normal, modus orerandi." One particularly malfeasant Capt. Avows, "I need my a.. whipped by some officers."

However, suffering comes with any struggle. Anyway I have been contacting different church's, being that this is a direct access to many poor people, and seeking to have them understand your purpose and goals. Hopefully this will produce some donations and additional forces.

Is it an accident that people misapprehend an aspect of the convicts mind? The social maladjustment of the criminal evinced by his inability to function productivity in as such. The true way to punish is to reform the values within the person. Once you improve this area of the person being then that individual can "feel" shame, remorse, sorrow. Otherwise a person that doesn't value what he does, does not value what is done to him. Corrections should be for the psychological approach rather than the physical. But that would be toward actually reducing recidivism but recidivism is the DOC's best customer.

Anyhow, keep up the comprehensive work. I am you partner for change. I strive to walk in the spirit of truth and I encourage any I contact. LH

[All letters received cannot be printed because of space restrictions. Unsigned letters will not be printed or letters that obviously are not intended for publication. Please indicate in your letters if you do not want it printed, otherwise FPLP reserves the right to print all letters received and to edit letters for length.]

SUBSTANCE ABUSE TREATMENT AVAILABLE TO FLORIDA PRISONERS

Substance abuse programs are available to Florida prisoners at 40 major institutions and 27 community correctional centers. The programs' objectives are to identify substance abusers, determine the severity of their drug problem and readiness for treatment, and place them in the most appropriate program. Those objectives are accomplished through testing and interviewing at reception centers. Prisoners determined to be in need of treatment are then either sent to an institution where a treatment program is available or placed on a waiting list. Tier I is a 40-hour psychological-educational program specifically designed to address the needs of prisoners who have never received drug treatment. Tier II is a 6-month intensive outpatient therapeutic program based upon a group treatment system. Tier III is a 9-month residential intensive group therapeutic program. Tier IV is a 12-month full-service residential group therapeutic program and is the most restrictive and controlled of all the Tier programs. Both Tier II and IV have alternative Tier programs set up at four institutions designed for prisoners who object to substance abuse programs containing a religious component as the regular Tier programs do. Tier V. is a four-month counseling program for prisoners at major institutions and community correctional centers. Dual Diagnosis is a long-term treatment program for prisoners who have both substance abuse and mental disorder problems.

SUBSTANCE ABUSE PROGRAMS: OPENINGS AVAILABLE BY FACILITY

	TREATMENT PROGRAMS						
LOCATIONS	#of Slots In Facility	Tier I	Tier II*	Tier III	Tier IV*	Tier V	Dual Diagnosis
40 Institutions	3,247	540	720	615	1,052	180	140
27 Community Correctional Centers	811					811	
1 Forestry Camp	20		20				*
Grand Totals	4,078	540	740	615	1,052	991	140
INSTITUTIONS		Tier I	Tier II	Tier III	Tier IV	Tier V	Dual Diagnosis
APALACHEE EAST	40		40				
APALACHEE WEST	40		40				
AVON PARK CI	72				72		
BAKER CI	45	45					
BREVARD CI	192	45			147		
BROWARD CI	40		40				
CALHOUN CI	45	45					
CENTURY CI	68				68		
COLUMBIA CI	40		40				
CROSS CITY CI	60				60		
DADE CI	135	90			45		
FLORIDA CI	85	45	40				
FSP/O UNIT	20		20				
GAINESVILLE CI*	330			300		30	
GAINESVILLE WORK CAMP	60					60	
GULF CI	40		40				
HARDEE CI	40		40				
HENDRY CI	60				60		
HERNANDO CI*	270			210		60	
HILLSBOROUGH CI	32				32		
HOLMES CI	40		40				
INDIAN RIVER CI	45	45					
JACKSON CI	40		40				
JEFFERSON CI	195				105	30	60
LAKE CI	120	45			75		
LANCASTER CI	81	45			36		
LANCASTER WORK CAMP	20		20				
LAWTEY CI	40		40				
LIBERTY CI	40		40				
MARION CI	190				190		
MARTIN CI*	105			105			
MAYO CI	40		40				
NEW RIVER EAST	20		20				
NEW RIVER WEST	20		20				
OKALOOSA CI	45	45					
POLK CI	40		40				
PUTNAM CI	20		20				
QUINCY CI	20		20				
RIVER JUNCTION CI	45	45					
SUMTER CI	90				90		
TOMOKA CI	72				72		
UNION CI	20		20				
WALTON CI	40		40				
WALTON WORK CAMP	20		20				
ZEPHYRHILLS CI	125	45					80
Totals	3,247	540	740	615	1052	991	140

** These facilities are devoted entirely to substance abuse treatment.*

VOCATIONAL PROGRAMS AVAILABLE TO FLORIDA PRISONERS

The Florida Department of Corrections has over 160 vocational programs that are available to prisoners and that are spread throughout the prison system. While some of these programs are not operated very efficiently, others are well put together and provide valuable job skills that can greatly assist prisoners being released to make a successful reentry back into society, if the programs are taken advantage of. One of the notable problems with the FDOC's vocational program is the sparcity of programs available to female prisoners. Out of a total of 163 vocational programs, only 12 are located at female institutions and providing only approximately 180 training position openings at one time from the female prison population of 3,500. On a more positive note, during the 1997-98 fiscal year the department added 13 new vocational programs and provided over 7,200 prisoners with an opportunity to obtain such training. During that same period 2,551 vocational certificates of completion were issued by the department to prisoners.

Vocational Education Programs by Institution on June 30,1998

Facility/ # Programs	Vocational Programs
Apalachee CI (6)	Cabinet Making, Auto Collision Repair, Construction Trades Helper, Diesel Engine Mechanics, Turf Equipment Management, Welding Technology
Avon Park CI (7)	Auto Technology, Business Administration Operations, Cabinet Making, Electronic Technology, Gas Engine Service Technology, Printing, Welding Technology
Baker CI (5)	Cabinet Making, Architectural Drafting, Electricity, Masonry, Pipe Trade SystemsTechnology
Brevard CI (7)	Auto Technology, Carpentry, Electronic Technology, DCT, Masonry, Welding Technology, Commercial Foods and Culinary Arts
Broward CI* (3)	Fashion Design, Business Administration Operations, Commercial Art
Calhoun CI (4)	Cabinet Making, Heating, AC and Refrigeration, Pipe Trade Systems Technology, Printing
Century CI (3)	Building Maintenance Technology, Architectural Drafting, Masonry
Charlotte CI (2)	Environmental Services Technology, Nursery Operations
Columbia CI (2)	Business Software Applications, Masonry
Cross City CI (6)	Cabinet Making, Auto Collision Repair, Electronic Technology, Electricity, Pipe Trade Systems Technology, Business Software Applications
Dade CI (4)	Auto Technology, Commercial Foods and Culinary Arts, Electronic Technology, Upholstery/Furniture Refinishing
DeSoto CI (5)	Auto Technology, Gas Engine Service Technology, Masonry, Welding, Carpentry
Florida CI* (5)	Fashion Design and Production, Business Administration Operations, Cosmetology (2), Architectural Drafting
Glades CI (2)	Consumer Electronic Repair, Masonry
Gulf C.I. (2)	Electronic Technology, Environmental Services
Hamilton CI (4)	Business Software Applications, Cabinet Making, Computer Programming, Masonry
Hardee CI (5)	Carpentry, Architectural Drafting, Electricity, Heating, AC and Refrigeration, Pipe Systems Trade Technology
Hendry CI (4)	Business Software Applications, Cabinet Making, Data Entry, Masonry
Hillsborough CI (3)	Building Maintenance Technology, Commercial Foods and Culinary Arts, DCT
Holmes CI (3)	Business Administration Operations, Auto Collision Repair, Welding Technology
Indian River CI (5)	Building Maintenance Technology, DCT, Environmental Services, Masonry, Business Software Applications
Jackson CI (4)	Business Software Applications, Mechanical Drafting, Environmental Services, Heating, AC and Refrigeration
Jefferson CI* (5)	Business Administration Operations, DCT, Desktop Publishing, Wastewater/Water Plant Operations
Lake CI (4)	Cabinet Making, Gas Engine Service Technology, Wastewater/Water Plant Operators
Lancaster CI (7)	Auto Technology, Carpentry, Commercial Food and Culinary Arts, DCT, Environmental Services, Gas Engine Service Technology, Printing
Lawtey CI (1)	Electricity
Liberty CI (4)	Business Software Applications, Electricity, Consumer Electronic Repair, Pipe Trade Systems Technology
Madison CI (3)	Carpentry, Shoe Repair, Tile Setting
Marion CI (8)	Building Maintenance Technology, Cabinet Making, Mechanical Drafting, Gas Engine Service Technology, Wastewater/Water Plant Operations, Business Software Applications, Electricity
Martin CI (1)	Masonry
Mayo CI (1)	Masonry
New River CI - East (5)	Business Admin. Operations, Commercial Vehicle Driving, Electronic Technology, Printing, Upholstery Furniture Refinishing
New River CI - West (4)	Gas Engine Service Technology, Masonry, Pipe Trade Systems Technology, Welding Technology
Okeechobee CI (2)	Environmental Services, Business Software Applications
Polk CI (6)	Auto Technology, Consumer Electronic Repair, Pipe Trade Systems Technology, Sheet Metal, Upholstery Furniture Refinishing, Computer Electronic Technology
Pompano CCC (1)	Auto Technology
Quincy CI (2)	Commercial Foods and Culinary Arts (2)
River Junction CI (1)	Auto Technology
Sumter CI (5)	Auto Technology, Cabinet Making, Electronic Desktop Publishing, Architectural Drafting, Masonry
Taylor (2)	Business Software Applications, Electronic Technology
Tomoka CI (1)	Masonry
Walton CI (4)	Business Software Applications, Cabinet Making, Electronic Technology, Building Maintenance Technology
Washington CI (2)	Business Software Applications, Building Maintenance Technology
Zephyrhills CI (3)	Heating, AC and Refrigeration, Nursery Operations, Printing

* Denotes female facility

- There are a total of 163 vocational programs at 44 facilities: 41 male and 3 female.
- All are located in major institutions (prisons) except for Pompano Community Correctional Center.

Prisoners."-ed] ■

GOMEZ

For everyone who has been writing or calling wanting information on the Gomez case, here is a bit of information we received recently from Florida Institutional Legal Services. They have promised to keep us informed on this case and we promise to pass along any information we receive concerning it.

The decision in Gomez et al. is not final yet. Both sides have moved for rehearing. Under the appellate court rules, the motions for rehearing prevent the decision from becoming final until the motions are resolved. Because the decisions are not final, there has been no relief granted under the December 24 opinion. It is impossible to predict how long the court will take on the motions for rehearing or what the final outcome in the Florida Supreme Court will be. In addition, the DOC has asked the court for a stay pending their petition for a writ of certiorari in the U.S. Supreme Court, assuming they want to file one after the final decision by the Florida court. For these reasons, it is too early to tell what the recise impact of the final decision will be on any person or category of people. ■

OUTSIDE THE WALLS

by Teresa Burns, Publisher, *FPLP*

Your subscriptions have allowed us to offer column space to the *Florida Prison Activist Network (FPAN)*, to keep readers informed about family, prison, and criminal justice issues in Florida, other states, and other countries. *FPAN* is a coalition of groups active in prison issues in Florida, and *FPLP* is a founding member and cornerstone of the *FPAN* movement. Activist organizations and events will be spotlighted from time to time, so that our readers will be aware of important issues being addressed by other groups that should be supported in their efforts on behalf of prisoners and their families. The *FPAN* column "Outside the Walls" will be written by *FPAN*'s state coordinator, Gayle Russell, who provided *FPLP* with some of the research and information used in this article. She will begin her column in the next issue of *FPLP*.

FPAN's 2nd ANNUAL CAPITOL DEMONSTRATION PROJECT on March 11th at the Capitol Rotunda in Tallahassee showed us all that our efforts to educate and inform legislators regarding prison and family issues were successful. Special acknowledgment and thanks go to Mrs. Nadine Anderson, Executive Director and founder of *Families with Loved Ones in Prison (FLIP)*, who spent countless hours and drove hundreds of miles speaking for prisoners and their families. Mrs. Anderson and other *FPAN/FLIP* members never wavered in their commitment to prisoner and family issues, spending their own time-often losing a day's salary-- and their own money to appear in Tallahassee and other places in support of our positive family/prison agenda. In recognition of their legislative efforts on behalf of prisoners/families, *FPAN/FLIP* held a brief awards ceremony for Representatives Allen Trovillion, James Bush (his wife accepted for him because he was in a legislative hearing), and Juanita Wilson. Representatives Trovillion and Bush share the chair and co-chair of the House Corrections Committee which commissioned the study on family visitation policies and procedures, and introduced legislation regarding improved visitation facilities and procedures. Representative Wilson introduced legislation regarding female prisoners being housed in a location closer to their families and children. Other bills introduced this year include: "Protection Against Sexual Violence in Florida Jails and Prisons Act," due to the extraordinary efforts of Cassandra Collins, Founder of FAIR/SIRA, and part of the *FPAN* coalition; and Voting Rights for Ex-Felons.

Clearly, a focused and organized group of voters CAN successfully work for positive changes to the prison system. We remain disappointed by the lack of participation and support from family members and friends. Think about it: The Florida Department of Corrections has over 67,000 prisoners in the system. If each prisoner's family member or friend wrote letters and voted accordingly, we could do so much more. If each of those persons donated just $1.00 to the coalition, there would be enough money available to hire buses to transport families from all over the state to Tallahassee each year and to support the projects and pay some of the expenses of the organization's activist speakers and project leaders. It is a crushing burden on them to have to visit their own loved ones, work to support their families, and fund their activism-ON EVERYONE'S BEHALF-- out of their own pockets-pockets which are already being emptied by taking unpaid time off from their jobs. FPLP and FLIP both operate at a loss-these are not money-making organizations. Subscriptions and dues *barely* cover the cost of production and mailing FPLP, while FLIP dues do not even cover the cost of the producing and mailing the FLIP newsletter. Rest assured that both publications are labors of love and commitment that are distributed to folks for the express purpose of educating us all.

Because of computer problems on the legislature's web site, FPLP is unable to update you on the status of proposed bills. We are able to provide some information on some changes to laws regarding capital sentences. This summary was downloaded from the internet, and its accuracy should not be relied upon-instead, check with the Florida 1999 Session Laws, and, later, the Florida Statutes.

SB 0898 -- POSTCONVICTION/CAPITAL CASES

Repeals Rule 3.852 of the Florida Rules of Criminal Procedure, thereby abolishing the public records discovery rules relating to postconviction proceedings established by the Florida Supreme Court in October 1996. The effective date of this bill is October 1, 1998.

CS/SB 1328 -- CAPITAL COLLATERAL PROCEEDINGS

-Provides for the representation of certain death-sentenced defendants by attorneys in private practice instead of state-employed attorneys with the Capital Collateral Regional Counsel (CCRC).

-Would permit the CCRC to continue to represent current clients; however, attorneys in private practice would be appointed to represent death-sentenced defendants who were previously represented by private counsel and who are not represented at the time this bill becomes law.

-Requires the Justice Administration

Commission (JAC) to maintain a registry of attorneys who are statutorily qualified to represent defendants in postconviction capital collateral proceedings.

-Provides that the Attorney General would notify the JAC when ninety-one (91) days have elapsed since the Florida Supreme Court issued a mandate on a direct appeal, or when the U.S. Supreme Court has denied a petition for certiorari, or when a person under a death sentence who was previously represented by private counsel is currently unrepresented in a postconviction capital collateral proceeding. Upon notification by the Attorney General, the JAC would immediately notify the trial court that imposed the death sentence and the judge would then appoint private counsel from the registry.

-Provides a schedule of fees for the payment of private counsel and investigators. The effective date of this bill is July 1, 1998.

Cayenne Bird of the California U.N.I.O.N. project--which is similar to our Florida coalition in its mission and policies-has kindly agreed to share with us a transcript of her recent interview with a legislator in Sacramento, California, regarding their prison activism. Because we couldn't say it any better, we are publishing it here, unedited. While reading it, take it to heart because so much of what was said applies to the coalition in Florida.

MISSION STATEMENT OF THE U.N.I.O.N.

We are a statewide communication network dedicated to reforming the criminal justice system in California. We believe that the prison industry is absorbing tax dollars which would be better spent on education, health care, job and other social programs. We are opposed to the incarceration of addicts and the incarceration for life of nonviolent offenders as required by the Three Strikes and Mandatory Minimum laws.

We abhor the brutality practiced in California prisons.

We prefer to attack crime through economy for everyone, prevention through education, free after school activities, adult supervision of youth, support of teen-age mothers. rehabilitation of incarcerated criminals, medical care for the mentally ill, restorative justice and other programs clearly proven to be more of a solution to crime than prisons. We believe this can be done through the political processes established in our democracy: by the power of the vote, by letter-writing and by demonstrating.

EXCERPTS OF A CONSULTATION THAT A LEADING [California] SENATOR AND HIS CHIEF OF STAFF had with B. Cayenne Bird, Director of the UNION, well known author and highly awarded public relations consultant. It reflects her infinite wisdom and their lack of understanding about where the prison reform movement has gone wrong and why we keep losing issues. They thanked her profusely and said that now they understand whereas in the past, they never could figure it out. She explained that the UNION has tried to focus on solutions, whereas most people just want to sit around and harp on the problems which are apparent to most everyone.

Legislator: Cayenne, why are there so many little groups concerning police and prisoner issues and not one of them can organize a decent-sized demonstration?

Bird: If you examine these tiny organizations you will find that most of them are run by people who do not have a family member or loved one who has the problem of the stated purpose of the group. There are hidden agendas and about five different political parties running these groups.

Legislators: Out of all the prisoner/police/death penalty groups in California, how many are Democrats?

Bird: Only three that I can identify. The rest are Communist, Socialist, Green, Libertarian and others. The reason they always fail at reform is their inability to get everyone into a voting lobby COMPATIBLE with the voters. They miss the point that when people say "we need to unite" that means UNITE WITH THEIR VOTES AND THE 14 MILLION VOTERS IN CHARGE. Most of the prison reformers do not vote at all, which is one of the reasons why they come up on the short end.

Legislators: Why is the UNION supporting the Democrats when very few of the other prison reformers do?

Bird: Because all the legislators are either Democrat or Republican except for one, Ms. Bock of the Green Party. The laws are made in Sacramento. Reform can only come from getting the laws changed. No other party has anyone in Sacramento who has the power to do this....we're stuck with the Democrats because the Republicans are worse. Also because 97% of the voters are either Democrat or Republican. You can't easily sell people on third parties when you're out registering voters, which is an important function of the UNION. We trust and often agree with only three Democratic senators: Hayden, Vasconcellos and Polanco. We agree with none of them fully.

Legislators: Would the UNION ever change its Democratic leanings?

Bird: Absolutely. Anytime a group of voters who wanted to reform the criminal justice system numbering 3 million surfaces, we'll be examining our loyalties. No one in the UNION supported a Republican or Democrat for major office before June 6. Seeing the third party voting blocks were too small to compete, we put 300 families in Gray Davis offices. In our hearts, we hoped a third party would be well enough organized to end the repression caused in our lives by Democrats and Republicans who are *not like* Hayden, Vasconcellos and Polanco.

Legislators: Were you the only prisoner's rights group to actually work in the Davis campaign?

Bird: There were three groups who worked in his campaign, none of them put in the kind of effort we *did*, unless there are a couple I don't know about. We saw a choice between bad and worse and went for bad (Davis.) It put us in grief to watch his television commercials but we still feel it would be worse had we stood by and allowed Lungren to get elected. I think Davis doesn't realize that the people who elected him want him to be very, very opposite of the Wilson/Lungren regime on justice issues. At this time, a large portion of the UNION membership wants to recall Davis due to his recent decisions and appointments. At this time, we are not funded or staffed to undertake such a campaign but it is always a possibility. The 300 families who put him in can take him out, but we realize the UNION must be much larger first. And, the basic million dollars a campaign of this magnitude re-

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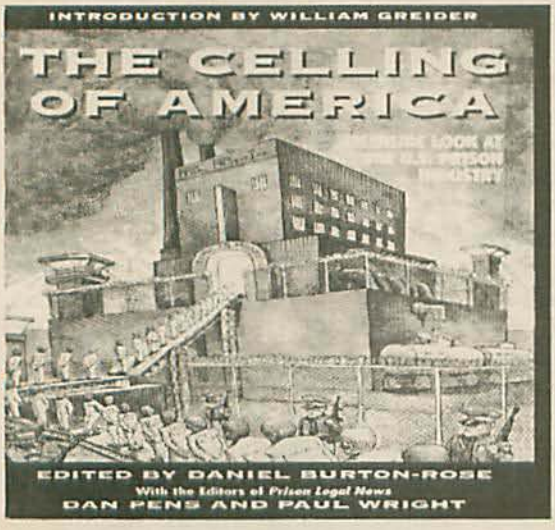
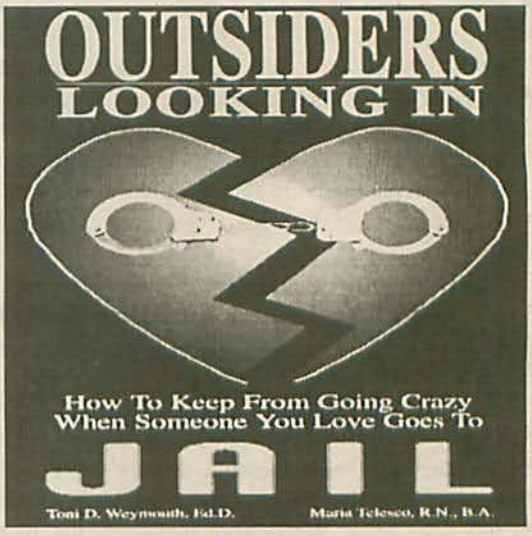


The Celling of America: An Inside Look at the U.S. Prison Industry by Daniel Burton Rose, Dan Pens and Paul Wright. Common Courage Press, 1998. Paper Back, 264 Pages. $19.95

The Celling of America is the critically acclaimed *Prison Legal News* anthology that is already in its second printing. In eight chapters this book presents an inside look at the workings of the American criminal justice system today. The book examines the death penalty, control units, the politics of prisoner-bashing, the role of the media in the current anti-prisoner climate, prisoner struggles, prison slave labor, racism, brutality, and corruption among prison employees, the role of the gun lobby and the guards unions in formulating criminal justice policy, the downward spiral of prison conditions, private prisons and much, much more. The perfect introduction into the reality and politics of modern American justice, at all levels.

OUTSIDERS LOOKING IN: How to Keep from Going Crazy When Someone You Love Goes to Jail. by Toni Weymouth, Ed.D., and Maria Telesco, R.N., B.A.. OLINC Publishing, 1998. Paperback, 351 Pages. $19.95

When someone is accused or convicted of a crime, the invisible and forgotten victims are his or her family, friends, and loved ones. While the family members of the accused have committed no crime themselves, they are often shunned by relatives, ostracized by neighbors, fired from their jobs, even "disfellowshipped" from their churches. Many have no where to turn. A few have become suicidal. *Outsiders Looking In* is an aid to those who love someone in jail or prison, and a caution to those who thought it could never happen to them. It's everything you never wanted to know about the Big House, but didn't now who or what to ask: arrest, lawyers, court, sentencing, prison rules and regulations, pitfalls and how to avoid them, death row, stress and stress reduction techniques, support groups and organizations. An invaluable resource.



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quires would need to come from somewhere. We would never take Republican money, that's for certain!

Legislators: Have their been efforts to unite the prison reformers?

Bird: Yes, when we started out this was very important to the UNION to pull together existing groups. Then we saw that less than 5% were even willing to talk about voting Democrat (or voting at all) and it seemed fruitless to pursue that course further. Also, I was constantly attacked for trying to explain to people that the general public will not accept third parties and their viewpoints so easily. We saw what happened with the Ho Chi Minh poster in Orange County, it's worse than that if you are out gathering signatures and mention certain political parties or individuals construed to be too radical. We want the laws to be changed and would like to skip the politics, but realize it's a political problem. There is zero chance of uniting the people who have been in this reform movement for 20 years into a Democratic voting lobby. They do not have a loved one affected in most cases and use these issues to build their third party interests. I can understand the intense anger at the Duopoly. However,I also see that just refusing to participate isn't a solution either.

Legislator: Does the UNION really have a chance to put the prisoner issues and reform of the criminal justice system into a serious movement?

Bird: I am reserving judgement at this time. There are major obstacles that I am uncertain we can overcome. Ignorance of how the system works is the number one obstacle. Number two is a "victim mentality" of the people affected with the problem. They do not understand that until at least 1500 people are demonstrating in front of the Capitol and on standby alert that there will be no changes in the law. They do not understand the power of numbers and what happens when legislators see thousands of VOTERS united on an issue. So far, no group can muster a decent demonstration of the very people hurt. Many people do not have cars, they are financially devastated, emotionally devastated. They pass the buck and do not understand that they have the power to end 70% of the prison industry as well organized voting block. They whip themselves by withholding participation, financial support, and most importantly by missing demonstrations. They don't get it. A famous person once said "Cowards earn their chains" I have met many cowards who slow the movement down by not doing their share. No one who has ever tried to help the prisoner families with anything has ever been able to mount an effective campaign because of their lack of participation. We ask everyone for one letter per week, one demonstration per month and to recruit ten people. This requires about ten hours a month. They keep thinking someone is going to rescue them, an attorney, an appeal, a champion legislator. Most don't understand that the only rescue which can happen is when they assume the personal responsibility for recruiting, voting, writing, demonstrating in mass numbers together with the voters. I don't know if we can overcome the ignorance or the apathy, or the victim mentality. I am just a volunteer with my own career, legal case for my son and responsibilities to worry about. My feeling is that I gave them the solution, set up a perfectly workable system in which they can fight back and the execution is up to them, they can participate and win or not participate and lose. There isn't anyone doing their work for them, so if they don't care enough about their inmate to do the basics, then they can just spend their lives going to visiting and be victims. We are all worth one vote. Nothing matters except how people vote.

Legislators: Don't they realize that lawmakers are not going to go out on a limb for them without the back up of letters to the media and other legislators and BIG, BIG, BIG demonstrations?

Bird: No, they do not understand that people are not going to help them if they won't do their part. You should see what I must go through just to get $30 for necessary stamps. The opposition gladly pays their dues, hires activists, rents offices, buys advertising and printing. The prisoner families think that everyone owes them a rescue. Of course, that is never going to happen. I regret that others have not supported you with what you have tried to do for the prison issues. I certainly beat everyone in the UNION over the head to understand they have a very important role in all of this. I get very frustrated with the laziness too. My health is bad, my son's legal problem pressing, I am a writer who donates too much time and money is always a problem. I've carried the movement way past the time I intended hoping that education would cause people to understand they will get no reform until the demonstrations are huge and they pay for the lobbying efforts. We are accepting no new projects until the team leaders get better organized and the UNION expands. They seem to be getting this done. The UNION is not the kind of

effort where it works if only a few hundred do all the work. We have a long way to go to outnumber the CCPOA [editor's note: Correctional Officers Union].

Legislators: How is your legislative rep working out who handles the UNION members' complaints about prison conditions?

Bird: Our rep is a very nice woman, however she seems to be powerless against the CCPOA. The Inspectors have shown us nothing to believe they are anything but a public relations extension of the California Department of Corrections. Death is a daily occurrence. I am constantly in grief for the retribution, torture and killings, lack of medical treatment which exists at most prisons statewide.

Legislators: Which prisons are the worst for serious complaints.

Bird: High Desert, Pelican Bay, Corcoran, Folsom, Calipatria, Vacaville, Soledad, are all horrific. We get terrible complaints from almost all of them, especially on the lack of medical treatment even in an emergency. I don't see anything changing as far as these awful conditions and cases.

Legislators: What do you think would fix the California Department of Corrections?

Bird: Fire everybody. The CDC is way too corrupt for "fixing." The people and the media must disenfranchise that CCPOA, fire Wilson's cronies and the good ole' boys running things in Sacramento, shake it up and move it out. The UNION will be able to do much of this necessary "exposure" even though the journalists are banned from the prisons, we are getting the news out through our families who report to me, and I release it to the media.

Legislators: Are you afraid of retribution, has the CCPOA bothered you?

Bird: I am a journalist and fear is not allowed when fighting for one's freedom. Yes, there has been all kinds of retribution, my son is in prison because of my work fighting for people's rights for 30 years. He has been beaten at Tracy, raped at Folsom, and almost killed at Calipatria. At Mule Creek they took him from being a computer teacher to sweeping floors and took away half his visitations because of my testimony at the Gang De-briefing Policy hearing. My son and I have agreed it is better to die on our feet than live on our knees. Prison is worse than death and I cannot live with the injustice. I will continue to fight back. They took everything but my breath to protect the political careers of a handful of men who have all the power. As long as I have the breath to speak and the ability to write, I will fight to bust up that power hold, motivated by money. I do not operate from a position of fear because the voters have all the power when properly organized. I can do it if they will listen, cooperate and participate. If not, they can continue to be a victim and their inmates will remain in the steel jaws of prison.

Legislators: Do you consider the UNION to be an adversary of the Crime Victims which has such a grasp on Governor Davis with money they've donated and time they invest in him?

Bird: We believe that a lot of tax dollars are being wasted on non-solutions to crime. The money would be better spent in preventative and rehabilitative directions. The Crime Victims, if they could get past their anger, might really be in agreement with what we have to say about ways to reduce crime which have proven themselves out. I don't think anyone in Sacramento is really interested in reducing crime. They are more interested in making money off the freedom of our young people, financing bureaucratic careers and building an inhumane and ineffective prison industry even higher. We advocate restorative justice and umpteen alternative crime solutions than retribution.

FPLP welcomes the upcoming FPAN column. Look for it in our next issue. -tb

TRACY ROSE AND TERESA BURNS (FPLP) IN FRONT OF CLOSE MANAGEMENT DISPLAY

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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).

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(Info Director, Kerry Flack)
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Interstate Compacts.....487-0558
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Stan Czerniak.....488-8181
Inmate Classification.....488-9859
Sentence Structure.....413-9337
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Population Mgt.....488-9166
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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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Florida Resource Organizations

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Families with Loved
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710 Flanders Ave.
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