FLORIDA PRISON LEGAL

Perspectives

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FDOC Probation Officer Sex Scandal

by Teresa Burns Posey

The year was 1999 or 2000, the 29-year-old woman said she doesn't remember exactly. But she said she'll never forget the day he came to the club where she worked as a dancer. "He said, 'You look good in that dress. Want to hang out?," she reports he asked her. When reluctantly she agreed, he told her to get a bottle of champagne and come to his house when her shift ended. Once she got there he told her in no uncertain terms, "I hold your life in my hands. I could put you in prison," and then asked if she understood. Frightened, she understood all too well. He then told her, "Let's take it to the bedroom." She tearfully explained later, "I felt like I had to go along with it." Thus, she became a victim of another one of the predators within the Florida corrections system, in this case a probation officer employed by the Florida Department of Corrections (FDOC).

Chasity Owens is her name. She lives in the New Port Richey, Florida, area. At the time she was coerced into providing sexual favors to Probation Officer Frank Cochran she was on probation for a minor offense, she told police investigators earlier this year. Her story supported that of several other women who were under Cochran's supervision and who came forward once Cochran's decade of victimizing female probationers ended in May 2003 with his arrest.

Owens was obviously relieved to be able to tell her story after remaining silent about Cochran for so long. She detailed to police how Cochran essentially forced her by threats of imprisonment into complying to his wishes. In her case she said he never had intercourse with her, he just wanted to rub baby oil over her nude body, but although not going all the way, "He did sexually assault me," Owens said. When asked why she never reported his abuse when it happened, she said she did go to another probation officer for protection and tried to tell him what had happened. He didn't want to hear it, she said. "You're a dancer and it's his word against yours...if you don't change your story, I'll take you to jail myself," she said she was told. Realizing the corruption was widespread at that point she resolved to just keep quiet about it, she didn't want to go to prison on reports fabricated by Cochran or his fellow FDOC probation officers.

Cochran, 41, no doubt thought he had a good thing going on for a long time. For 16 years he had worked as a probation officer with the Department of Corrections, immersed in a culture of corruption, abuse of offenders and confident of the cloak of protective silence that FDOC employees are inculcated with. Circumventing whistle-blower laws, the FDOC has a policy that prohibits its employees from going public with wrongdoing in the

ON THE INSIDE

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department. Failure to comply results in immediate termination of their employment.

Cochran's victimization of probationers began falling apart in March 2003 when another woman on probation, Melinda Starnes, minutes after being booked into the Pasco County Jail asked for paper and pen and swore out an affidavit accusing Cochran, her probation officer, of forcing her to have an extended sexual relationship with him, among other things. Her story, detailed with names, dates and witnesses, painted a disturbing picture of the vulnerability of female offenders to the predators in the criminal justice system and exposed how that system protects its own.

Starnes, 30, told sheriff investigators how Cochran initially coerced her into having sex with him. He made it clear he could have her arrested at anytime, for anything he wished to make up, and have her probation violated and put her in jail or prison. After the first time she said she allowed it to continue because she was afraid he would violate her probation, plus, he let her drink alcohol, use drugs, ignored her house arrest, and eventually moved her into his house as his "girlfriend."

Starnes allegations forced the Sheriff's Office to investigate Cochran and, with a cover-up implausible at that point, a few days later the FDOC forced Cochran to resign. Then in May, with more women probationers coming forward to tell their stories, state prosecutors filed two felony charges against Cochran, one for using his position of authority to coerce sex from Starnes, and one for official misconduct for allegedly destroying records to protect Starnes.

So far four other women, including Chasity Owens, have broke their silence about their similar experiences with Cochran and his fellow FDOC employees. One of the women, Maricela Garcia, said Cochran told her on his first visit as her probation officer that "he could make things easy on me, or harder." She told investigators, "He told me, flat out, he could get away with anything. He was so intimidating." Once he asked her to come to his house, she said. Another time he asked her to rub suntan lotion on him. "Of course, I was disgusted. I said, 'No, of course not,'" she told the police. When asked why she hadn't reported Cochran's actions, she said she did, to the New Port Richey FDOC probation office, but, "They laughed at me," she said. Two of the other women probationers said they also had attempted to lodge complaints about Cochran with the FDOC but were met with humor and then hostility when they tried to persist. Starnes said she knew how they felt.

Although prosecutors believed Starnes enough to charge Cochran, she ran into a stonewall when she claimed that the corruption extended to the Sheriff's department.

Starnes said that in Nov. 2002, after she moved in

with Cochran, he took her to a hot tub party at a sheriff deputy's house. He introduced her to the deputy as "my case," to which the deputy relied, "That's cool with me," and then proceeded to roll a marijuana joint. "We all got high," Starnes recalled.

A spokesman for the Sheriff's department, however, Jon Powers, denied Starnes implication of the named deputy, he called that part of her story "ridiculous". When a reporter approached the deputy for a statement, he initiated an internal investigation against himself and passed a drug test, clearing himself according to the Sheriff's department. Investigators admitted Starnes did visit the deputy's house with Cochran, but aren't convinced the deputy knew Starnes was under Cochran's supervision.

The FDOC reluctantly admitted that other probation officers knew of Cochran's forbidden relationship with Starnes and had laughed at or threatened others who tried to complain about him but failed to report the "inappropriate behavior". But, the department refused to comment on what, if any, action would be taken to discipline the employees. One of them has also retired.

Although some records about Cochran's past abuses have been destroyed, according to the FDOC, enough remained to suggest that the department knew of and turned a blind eye to Cochran's depredations for years. In 1994 Cochran was cleared by an internal FDOC investigation for "inappropriately touching" a probationer. The details of that case, however, were destroyed, claims an FDOC spokesperson. In 1996 Cochran was again cleared by an internal FDOC investigation of having a personal relationship with a female probationer. In 1998 Cochran was suspended for five days for destroying incriminating evidence – he flushed marijuana down a toilet. And in 2001 he was again suspended for five days for failing to supervise a probationer who later was arrested for attempted murder and aggravated child abuse of a 15-month-old boy. Yet, these warning signs were deeply buried and ignored.

According to Cochran's routine job performance reports, prepared annually by his supervisors, he was an outstanding probation officer. No doubt, Cochran was encouraged by such glowing reports to continue his extra curriculum activities, as many FDOC employees are, according to critics of the department.

There's no telling how many more women have been victimized by FDOC parole or probation officers like Cochran, or how many would come forward if they didn't fear the very real threat of retaliation by the system. In general, the public doesn't appear to care that their dollars fund corrections' corruption as long as someone else deals with offenders. Nevermind when those guarding the criminals are criminals themselves and in an ironic twist the criminals are in turn victimized. And there's little incentive for change, no doubt, at most, Cochran may find himself on probation, supervised by friends who felt he was done wrong.

[Source: *St. Petersburg Times*. 6/16/03] ■

A System Upside Down

by Oscar Hanson

For the most part, nearly all of the prisoners within the Florida Department of corrections are imprisoned because they have violated some agreed-on norm that has been socially disapproved by society.

One of the most important constructed realities of our society is what we regard as legal or illegal behavior. Certain acts are defined as crimes because they offend the majority of people in a given society. Many of us place too much trust in our legal institutions. We expect our legislators, courts, and law enforcement to regulate social behavior in the interest of the common good. But as statistics prove, they have failed.

Our system is designed to ensure that offenders who are processed through the criminal justice systems are members of the lowest socioeconomic class. It is undisputed that poor people are more likely to get arrested, be formally charged with a crime, have their cases go to trial, get convicted, and receive harsher sentences than more affluent citizens.

In 2000, the governor of Illinois called for a moratorium on executions in his state after 13 men on death row – all of whom were poor and were represented in their trials by public defenders – were proven innocent. Another 33 who were sentenced to die had lawyers who were later disbarred or suspended for incompetence. Just prior to his departure from office, Gov. Ryan converted each death sentence to life and granted clemency to a fortunate few.

In Alabama, a public defender representing a man facing the death penalty had never tried a capital case and was given no funding to hire an investigator. The man was convicted and sentenced to death. Cases like these have intensified the national debate over the quality of legal representation provided to poor people accused of capital crimes.

In January 2003, Florida death-row prisoner Rudolph Holton was released from prison after spending 16 years on death-row for a crime he didn't commit. Holton's release was made possibly by a determined attorney who went up against all odds to prove Holton's innocence. She was ridiculed and provided no support from her colleagues at the Capital Collateral Regional Counsel (CCRC) office. In fact, she was transferred to another office in order to discourage her zealous efforts. She was not to be denied. She petitioned the judge to allow her to continue her fight for Holton's life and she'd do it out of her own pocket. She prevailed. Not long after

that Gov. Bush pitched a plan to eliminate the CCRC, an office paid by the state to defend death-sentenced prisoners in their post conviction appeals. (*FPLP*, Vol. 9, Iss. 4, "Death Row Appeals Office Receives Death Penalty.")

Such imbalances in the justice system go beyond the way poor people are treated by police, judges, attorneys, and juries. If that were the case, the situation would be relatively easy to deal with. Instead, they occur because the actions of poor individuals are more likely to be criminalized – that is, officially defined as crimes in the first place. Poor people sometimes commit acts – car theft, burglary, assault, illegal drug use, and so on – that fit commonly held definitions of what a crime is. As a result, they become "typical criminals" in the public eye.

Recently *FPLP* reported on corporate-sponsored crime laws, powerful special interest groups working to influence public policy – helping to keep more people locked up longer for corporate profit. (*FPLP*, Vol. 8, Iss 5, Sept/Oct 2002.)

The American Legislative Exchange Council (ALEC) is not well known to the general public and doesn't try to be. But the organization, founded in the 1970s, boasts of helping to pass hundreds of state laws every year. ALEC and groups like them often strive to foster a belief that society's rules are under attack by heretics and that official action against them is needed. The strategy has worked well.

In polls taken in the Untied States during the 1980s and early 1990s, an average of 83 percent of respondents felt that the justice system was not harsh enough in dealing with criminals. Governments at the state and federal level have responded to the popular sentiment by "getting tough on crime." They have cracked down on drug offenders and dealers, revived the death penalty, scaled back parole eligibility, lengthened prison sentences, and built more prisons. By 1999, 15 states had abolished parole options and early release programs, resulting in more prisoners serving 85 percent or more of their sentences. Not surprisingly, the nation's prison population has swelled.

According to the Justice Department, the number of prisoners in U.S. prisons has grown exponentially over the past several decades. In 1970 there were less than 200,000 people in state and federal prisons; by 1999 that figure had swelled to almost 1.3 million, not including over 600,000 more held in local jails. A recent Justice Department report put the 2002 state and federal jail and prison population at over 2 million people – 1 in every 143 US residents. Today the US imprisons at a far greater rate, not only than developed Western nations, but impoverished and authoritarian countries as well.

Many states, including Florida, have sharply curtailed education, job training, and other rehabilitative programs inside prison. Florida recently cut 339 positions that included educators, chaplains and wellness staff. Further cuts were made in substance abuse programs. So now, many newly released inmates – mostly poor – are significantly less likely than their counterparts of two decades ago to find meaningful employment in order to stay out of the kind of trouble that leads to further imprisonment. In addition, parole officers are quicker to revoke a newly released prisoner's parole for relatively minor technical violations. During the fiscal year 2001 – 2002, the Florida Parole Commission revoked parole for 87 parolees. Of those 87 revocations, 79 were for mere technical violations. For the fiscal year 2000 – 2001 there were 101 parole revocations, 95 of which were for technical violations. For the two fiscal year periods only 14 parolees returned to prison with *new* offenses; an astounding 174 returned with only a technical violation.

Seemingly the law is not a mechanism that merely protects good people from bad people; it is a political instrument used by specific groups to further their own political interests, often at the expense of others. As evidenced by such groups as ALEC, the law is created for economic elites who control the production and distribution of major resources in society. While the law is, of course, determined by *legislative* action, it is undisputed that legislatures are greatly influenced by these powerful segments of society via lobbying groups, political action committees, individual campaign contributions, and so on.

The acts that conflict with the economic or political interests of the groups that have the power to influence public policy are more likely to be criminalized. For example, MCI communications has twice been caught overcharging families and friends of Florida prisoners. Yet, for acts equal to predicates for racketeering, no one was prosecuted. MCI was told to repay the overcharged fees and ordered to pay a minimal fine. And now, MCI once again faces charges of fraud and racketeering but experts agree prosecution is unlikely. (Not surprisingly the FDOC continues to be a bedfellow with the communications giant despite cries of overcharging and price-gouging by families and friends of Florida prisoners.) Then there is Enron and a host of other corporate giants who face little prosecution for acts defined as crime. Two wealthy contractors pocketed $1.2 million in government contracts for work they never did. They were ordered to pay $5,000 in fines and do 200 hours of community service. But a Norfolk, Virginia, man got ten years for stealing 87 cents; a man in California received a life sentence for stealing VHS tapes; and a Florida man got caught trying to break into a house, which violated his probation for shoplifting a pair of shoes, he was sentenced to life in prison.

Through the mass media, dominant groups influence the public to look at crime in ways that are favorable to them. The selective portrayal of crime plays an important role in shaping public perceptions of the "crime problem" and therefore its "official" definition.

When bigwig politicians talk about fighting crime, or when news shows report fluctuations in crime rates, or when the Justice Department publishes its statistics on crime, they are almost always referring to street level crimes (illegal drug use, robbery, burglary, murder, assault, and so on) rather than corporate crimes, government crimes, or crimes more likely to be committed by people in influential positions.

Watch the local news and you'll be inundated with coverage of "crime in the streets," with scarcely a mention of "crime in the suites," downplaying such crimes as briberies, embezzlements, kickbacks, monopolistic restraints of trade, illegal use of public fund by private interests, occupational safety violations and other corporate or industrial corruption.

How crime is defined and reported is largely determined by the race and social class of the victim and victimizer. Affluent victims receive more press coverage than poor victims, leaving the public with the incorrect impression that most crime victims are from middle and upper-class backgrounds. Conversely, racial minority and low-income lawbreakers are more likely to be publicized as criminals than are wealthy corporate leaders, whose law-breaking activities may actually be more harmful to the common good.

Such exposure creates a way of perceiving crime that becomes social reality. Society accepts that fact that certain people or actions are a threat to their own personal interests. Consequently, many in society are willing to tolerate the violation of others' civil rights in the interests of controlling crime.

Such tolerance has given an open door to lawbreakers to further curtail and limit civil liberties. In the months following the attacks of September 11, 2001, the federal government eased restrictions on the surveillance, apprehension, interrogation, and detention of suspected terrorists. To many people, this is the price society must pay in order to control "the crime problem" or to ensure public safety.

However, much too often, such abuses are disproportionately directed toward people of color or people at the lower end of the socioeconomic spectrum. For instance, lower-class prisoners in state prisons are often subjected to treatment that wouldn't be tolerated if it were directed toward more affluent inmates in medium-security or federal prisons. For several years prisoners in Alabama state prisons were often chained to metal "hitching posts" for as long as 7 hours at a time no matter the weather. They were denied food and water and bathroom privileges and were sometimes subjected to verbal and physical abuse by prison guards.

Ultimately a federal judge ruled that the hitching post could no longer be used. He stated, "With deliberate indifference for the health, safety, and indeed the lives of inmates, prison officials have knowingly subjected them to all hazards of the hitching post, they observed as they suffered pain, humiliation, and injuries as a result."

It is axiomatic that people in the United States take for granted that street crime is the worst social problem and that corporate crime is not as dangerous or as costly. However, unsafe work conditions; dangerous chemicals in the air, water, and food; faulty products; unnecessary surgery; and shoddy emergency medical care actually put people who live in this nation into more constant and imminent physical danger than do ordinary street crimes. According to Bureau of Justice statistics, approximately 19,000 people are murdered every year in the U.S. At the same time, 56,000 Americans die each year on the job or from occupational diseases such as black lung and asbestos. Reports have indicated such hazards play a major role in birth defects when pregnant female employees ingest or inhale harmful fumes. In addition, tens of thousands more die from pollution, contaminated foods, hazardous consumer products, and hospital malpractice.

What about the economic impact of street crime as opposed to corporate crime? The numbers are not surprising. The FBI estimates that burglary and robbery cost the U.S. $3.8 billion a year. In contrast, auto repair fraud alone costs an estimated $40 billion and health care fraud an additional $100 to $400 billion a year. And while the general public usually views certain types of corporate crime as more serious than street crimes, the individuals and corporations responsible for these dangers rarely receive heavy criminal punishment. For example, in 1997 Florida's Attorney General concluded that the Prudential Insurance Company of America, the nation's largest insurer, engaged in a deliberate scheme to cheat its customers for more than a decade. Instead of criminal prosecution, the company settled with the state for a fine of $15 million – a fraction of the $2 billion earned by defrauding customers for so long.

In contrast, if we (meaning the average individual) stole millions of dollars from a bank, or was a shop owner who defrauded customers, or a small business-person who had knowingly manufactured a potentially lethal product, it's highly unlikely we would avoid prosecution and be permitted to carry on with life as usual. Yet large corporations engage in such activities every day without much public outcry, moral panic, or legislative action. Most are never prosecuted under criminal statutes. Instead, our nation directs massive law enforcement efforts at "typical" street crimes as drug use, common and petit thieves, and prostitutes.

The law, unfortunately, has always been retained on the side of power. Laws have uniformly been enacted for the protection and perpetuation of power. It is highly unlikely that we'll ever witness a shift in this maxim. ■

From the Associate Editor...

Not long ago Steve Perrault and I were talking about adult communities and I told him that I wouldn't live in one. "Too many damn rules," I said. I don't need some high and mighty association telling me I can't fly a flag or paint my house a certain color. Steve marveled and said if I was wealthy my attitude would be different, that I'd want some stuffy association imposing restrictions because it would work to keep my property values up and the riff-raff out. Really?

Our conversation ended rather abruptly for reasons I don't recall now. Nevertheless, I pondered our conversation and reached an overwhelming conclusion that we have too many laws, including the trivial community association regulations. We should have just stuck with the Ten Commandments.

Consider some of these laws that are still in effect across the nation. In Detroit it is illegal to tie your crocodile to a fire hydrant. In Chicago it is illegal to eat in a restaurant that is on fire. How about this one from Kentucky: It is illegal to shoot an unloaded gun. Oh yes! There's more. It is illegal in San Francisco to dry a car at a car wash with rags made from old underwear, and in Gurnee, Illinois, it is illegal for women weighing over 200 pounds to ride a horse wearing shorts.

Even prisons have some really ridiculous rules. For example, prisoners are prohibited from posting their names on websites in an effort to build community ties and friendships on their quest toward rehabilitation.

Some prisoners, because of their charges, are prohibited from visiting with anyone under the age of 18 (even their own children). Yet children roam freely through the institution visiting park while the prohibited inmate visits with his or her adult visitors. And how about the new crafted rule that limits the number of items that can be received through the mail. Family and friends are permitted to send as many pages of typed or written correspondence they wish, but may not include more than 5 additional items such as photographs or other printed/media objects. In other words, if your family had a reunion or wanted to send pictures of the event, they are required to send only 5 in one envelope. So to send 20 pictures they need 4 separate envelopes. All this stupidity has forced me to take a Kafkaesque view (as my friend Glenn Larsen would say) of our nation's laws and the people's responsibilities for making them. Taking a brief view of the history of laws beginning with the Ten Commandments.

Moses, the attribute author of the Old Testament book Exodus, says the laws were written by the finger of God. Since that time, hardly anyone has paid much attention to them, other than to pay them lip service. Graven images are everywhere. How many so-called believers have not taken God's name in vain? Remember the Sabbath? (I'm not talking about Black Sabbath.) Honor thy father and mother? People still kill, commit adultery, steal, bear false witness, and covet what is not theirs.

The big uproar over placing the Ten Commandments at a public building in Alabama could have been avoided if Alabama Supreme Court Justice Roy Moore had simply abided by the federal order. Rules are rules and they must be obeyed. Right? Otherwise, lawyers get into the act. They jump with glee when people don't follow the rules, just as law enforcement officers do. Lawlessness is their bread and butter.

Just think about it. Without lawbreakers, cops would be out of a job, prison guards wouldn't be in demand, and the courts wouldn't be so damn conservative. Without lawyers, our laws would be too simple. There would be no loopholes to argue about. Appellate judges would be left to sit around twiddling their thumbs. As it is now, to keep busy, judges take it upon themselves to meddle in our nation's election process. First the Presidential election, then the California governor recall. What they did was made an end run around the constitution.

And how about our Legislators? They have eroded our basic freedoms in return for sweetheart deals for special interests or simply to expand an already swollen government. The worst part of it all is bills get passed into law without many, if any, of our representatives actually reading or analyzing the damn things. Most representatives rely on summaries prepared by aides or worse – lobbyists.

Have you ever had the opportunity to actually read some of the legislative bills? Oftentimes they are the size of a New Orleans' phone book and contain language best described as legalistic goobledygook.

Wouldn't it be simpler to have bills printed on one typewritten page? Certainly God understood brevity and wrote in plain Hebrew.

Better yet, instead of making new laws, lawmakers should be rescinding a high percentage of the thousands already enacted. The current attitude of lawmakers is too few laws and too many rights, when it should be the other way around.

It has always been said that no one is above the law and no one below it. If so, how come the rich and powerful bigwigs get only slaps when they should get a knuckle sandwich?

I have a suggestion. Lawmakers need to give lawmaking a rest, slow down the busy work of regulating what we ingest; how we choose to die; our urine content; our sexual proclivities; how much we eat, smoke or drink; what we read; whether we use our seat belts; and how, where and when we play.

Here's a novel idea. How about passing a law that limits lawmaking. Then we wouldn't have special legislative sessions to appropriate emergency funding to build more prisons to house nonviolent drug offenders and

parole and conditional release violators who flunk faulty lie detector tests or other trivial technical violations

As I reflect on our lawmaking problem, I am convinced it began with Johannes Gutenberg, the inventor of movable type. Before that contraption was invented, ancient people just didn't have the time or inclination to chisel out laws in stone. Kings sorta made up the rules as they went along based on common sense, ethical and practical considerations found in religious doctrine.

Hammurabi, the king of ancient Mesopotamia, took one giant step backward when he came up with the idea of putting the laws of his country into a formal code, using clay tablets, which was easier than chiseling them in stone. Few Europeans in the Middle Ages could read, so they just took it for granted that whatever they did was probably against the law. Most of us today can read, but lawyers have made it next to impossible for anyone without some legal experience to understand.

And like the people living in the Middle Ages, we don't always know for certain if we are abiding by the "letter of the law" in everything we do – or don't do. So, for all of the free citizens of our legal nation, my advise is to do exactly what they are told to do, that they not risk the "penalty of law" by tearing off pillow and mattress tags. And to be on the safe side, they should always wear shoes and a shirt before entering a store; that is, everyone except women. They may go topless as an act of defiance against unjust restrictions. – Oscar Hanson ■

Florida Lawmakers Send Message: More Prisons – Less Rehabilitation

by Linda Hanson

Recently the Florida legislature made an emergency $66 million appropriation for prison construction, sacrificing schools, health care, and a number of other services. This action was taken to counter a surprising increase in prison admissions that allegedly caught state planners off guard. State Senator Victor Crist, a Tampa Republican, who chairs the appropriations subcommittee on criminal justice, was quoted as saying, "We weren't happy about having to do it but, unfortunately, after reviewing the facts, it became evident it was necessary."

Here are the facts: 2,823 offenders were sentenced to prison in June 2003, the highest number of monthly admissions since 1992. During the previous 11 months, 25,234 people were sentenced to Florida prisons, 4.1 percent more than state planners expected. Those increases forced state planners to boost earlier projections, which triggered the emergency plea for legislative help in paying for construction and expansion of prisons. The alternative was to free prisoners early, according to lawmakers and state prison officials.

Despite a drop in crime, the number of prison admissions continues to grow. Longer sentences and mandatory maximum sentences mean the number of prisoners per 100,000 Florida residents is also on the upswing. Currently, there are 440 prisoners for every 100,000 Florida residents.

Drug cases led all other offenses in the surge of new prison admissions. According to the DOC, there were 1,000 additional prison admissions for drug offenses in the 2002-2003 fiscal year that ended June 30. Hillsborough County judges sent 100 drug offenders to prison in June, the highest number of any county in the state. The majority of those drug crimes were for crimes that did not rise to the level of trafficking, which carries mandatory prison time.

In the same vein, prison reformers and other critics cited the statistics as evidence the state's approach to drug crimes is neither cost-effective nor rehabilitative. They say the state continues to build costly prisons to house nonviolent offenders while cutting drug rehabilitation programs that could keep those offenders out of jail.

State funding cuts mean more prisoners are going from prison to the street with no chance for a substance abuse program or job training. Agencies that offer these programs are bracing for a 23 percent cut in their budgets, reducing funding from $31 million to $24 million. In Hillsborough County, residential and outpatient programs are estimated to lose more than $500,000. Statewide, the cuts will affect 30 live-in and about 100 nonresidential programs.

On August 21, 2003, the DOC, which funnels the money to the agencies, sent an e-mail to service providers suggesting several cost-cutting measures, including a 16 percent decrease in residential substance-abuse programs. The DOC also wants agencies to stop subsidizing offenders in outpatient treatment, instead requiring them to pay for 100 percent of their services.

Mary Lynn Ulrey, chief executive officer of the Drug Abuse Comprehensive Coordinating Office in Tampa, stated that the center will lose 25 beds and 15 positions, including receptionists, technicians, counselors and a director of finance.

Tampa Crossroads will lose four beds that would serve eight women – "women, who will be left without any way to reintegrate into the community," said Sara Romero, a former state representative and the current director of finance and operations.

"We're definitely doing it wrong," said Robert Batey, a criminal law professor at Stetson University and member of the sentencing reform group, Families Against Mandatory Minimums. Batey believes that if our money was spent on drug treatment programs as diversionary efforts in trial rather than sending all our problems to prison, we would get more bang for the buck.

Batey says the Legislature's eagerness to build more prisons and pass tough sentencing laws is a consequence of intimate ties between lawmakers and the

"prison industrial complex." Prison industries use campaign contributions and promises of economic development to gain support from lawmakers. Those ties are especially strong with legislators from rural, economically depressed areas where prisons are welcome for the jobs they create. Batey claims that's one of the reasons we have more and more people going to prison despite a declining crime rate.

There can be no mistake that the question of how to deal with drug offenses is complex. Seemingly tough sentencing laws and massive prison construction during the 1990s has been credited with driving down crime rates.

At the same time, there is a growing consensus that more money needs to be allocated to drug courts, which provide treatment and supervision to nonviolent substance abusers. "There is no debate that the drug court model works," said Hillsborough Circuit Judge Kevin Carey, one of two drug court judges in the county. Thus, the issue becomes one of priorities and that question depends on what lawmakers in Tallahassee decide.

There is a feeling among many in the judicial system that building more prisons is not the answer, especially when most of the offenders who will be warehoused are nonviolent drug offenders.

John Skye, assistant public defender for Hillsborough County, blames the Legislature for creating "draconian" laws that ties the hands of judges and keeps feeding the prison treadmill. Skye is of the personal opinion that there ought to be a way to deal with these social problems rather then just the knee-jerk reaction of throwing everybody in prison, an opinion shared by many, including the entire staff at Florida Prisoners' Legal Aid Organization.

And, as ironic as his statement appears, Victor Crist stated that it may be time to take a look at how drug offenders are sentenced. Yes, Mr. Crist, merely locking up somebody because he or she is a substance abuser is not a prudent thing to do.

[Sources: *Tampa Tribune*, 9/10/03, 9/28/03; DOC Annual Report] ■

U.S. Supreme Court Upholds Prison Visitation Limitations

by Bob Posey

In Volume 9, Issue 2, of *FPLP*, the lead article, "Prison Visitation in Jeopardy," reported on a case that originated in Michigan concerning prison visitation that had made its way to the Supreme Court and that had the potential to result in new limitations on prison visitation nationwide. On June 16, 2003, the Supreme Court upheld the Michigan DOC visitation restrictions, overturned two lower federal courts' rulings against the restrictions, and opened the way for all states to implement more extensive limitations on prison visitation.

The case, *Overton v. Bazzetta*, involved a challenge filed by Michelle Bazzetta and numerous other MDOC prisoners questioning the constitutionality of restrictions implemented by the Michigan DOC in 1995 on non-contact visitation. Under the regulations, prisoners can only receive visits from persons placed on an approved visiting list and attorneys and clergy on official business. While the list can include an unlimited number of immediate family members, visits by minors are severely limited. Minors who are not prisoners' children or grandchildren may not visit.

Those children who are allowed to visit must be accompanied by an adult who is an immediate family member of the prisoner. Former prisoners who are not immediate family members are prohibited from visiting and prisoners who receive in-prison substance abuse violations may be prohibited all visits, except with attorneys or clergy, for a two year minimum, with no limit on extensions of the prohibition. After the case was filed, the MDOC changed the regulations to allow minor siblings and nieces and nephews to visit, but reduced the visiting prohibition provision to a single in-prison substance abuse violation.

The lawsuit filed by the prisoners asserted that the regulations violated their constitutional right to intimate association under the First and Fourteenth Amendments and violated the Eighth Amendment's prohibition against cruel and unusual punishment. The district court upheld the regulations as far as contact visits went but held that the regulations were unconstitutional and violated prisoners' rights as applied to non-contact visits. That decision was upheld by the 6th Circuit Court of Appeals. See: *Bazzetta v. McGinnis*, 148 F.Supp.2d 813 (2001) and *Bazzetta v. McGinnis*, 286 F.3d 311 (2002).

Subsequently, the MDOC sought review from the Supreme Court and it was granted in December 2002. The questions considered by the high court were whether prisoners have a constitutional right to non-contact visits, and whether the MDOC's visiting restrictions furthered "legitimate penological goals" (the test for determining whether prison regulations that infringe on prisoner's constitutional rights are permissible). The court also considered whether the visiting prohibition for in-prison substance abuse violations violated the guarantee against cruel and unusual punishment.

Although the Supreme Court justices were split in their reasons for upholding the restrictions, they unanimously agreed that the restrictive regulations adopted by Michigan do not violate the Constitution's guarantee of the right to association nor the prohibition against cruel and unusual punishment.

Justice Kennedy, who wrote the court's opinion, as has been done in all past prison visitation cases to come

before the Supreme Court, avoided answering the question of whether prisoners have a right to visitation (association) by simply concluding that if such a right exists, the regulations at issue did not threaten that right. Next, applying the four-prong test established in *Turner v. Safley*, 482 U.S. 78, 89-91(1987), used to determine whether prison regulations that infringe on prisoners' constitutional rights are constitutional, the Court held the regulations pass the first prong in that they bear a rational relationship to the legitimate penological interest of security and protecting minor children.

The second prong of the test is also satisfied where prisoners have alternative means of associating with persons not allowed to visit through communication by phone, mail or sending messages through allowed visitors, according to the Court.

On the third and fourth prongs the Court found that allowing unlimited visitation would jeopardize prison security, burden financial resources, endanger childrens' safety, and finally, no alternatives were suggested that would accommodate prisoners' associational interests while imposing minimal burdens on the goal of maintaining prison security. Actually, suggestions were made, but simply rejected out-of-hand by the Court saying they do not "meet *Turner*'s high standard."

The Court also rejected the Eighth Amendment, cruel and unusual punishment claim, which was directed towards the restriction on visitation for prisoners with substance abuse violations. Citing to *Sandin v. Connor*, 515 U.S. 472, 485 (1995), the Court held that such restriction "is not a dramatic departure from accepted standards for conditions of confinement," nor does the regulation create inhuman prison conditions, deprive prisoners of basic necessities, fail to protect their health or safety, involve the infliction of pain or injury, or deliberate indifference to the risk it might occur, citing *Estelle v. Gamble*, 429 U.S.97 (1976) and *Rhodes v. Chapman*, 452 U.S. 337 (1981). Therefore, the Court concluded, the restriction did not violate the prohibition against cruel and unusual punishment.

The impact of the final result of this case will depend on how prison systems in different states wish to implement it. The two most egrigious aspects appear to be giving prison officials the discretion to severely limit minor children from visiting prisoners and to increase the use of visitation prohibitions as a management/punishment tool. See: *Overton v. Bazzetta*, 123 S.Ct. 2162 (2003). ■

Death Penalty Imposed For Child Rape

by William Wiley

Yes, its true. In Louisiana, Patrick Kennedy was charged with repeatedly raping his 8 year-old stepdaughter and after being found guilty was sentenced to death. The sentence was imposed under a state law enacted in 1995, which allows the death penalty to be given in cases of rape where the victim is under the age of 12. This was not the first case in which prosecutors had sought the death penalty under the 1995 law; however, when previously given the option, juries had been unwilling to agree to the sentence.

If Kennedy's sentence is upheld, it would be the first time in almost 40 years since a person was executed for rape – the last time was in 1964, in the state of Missouri. In 1977 the U.S. Supreme Court held that the death penalty could not be imposed for the rape of an adult. Apparently, lawmakers in Louisiana determined the high court's decision did not preclude the death penalty when the victim is a child under 12, and in 1996 the Louisiana Supreme Court upheld the law. Opponents of the law attempted to have it overruled by the U.S. Supreme Court, but because no one had been sentenced to death under the law at that time, the high court denied review.

Now, it is highly likely that Kennedy's case will make its way to the U.S. Supreme Court where opponents of the law and many legal experts believe it will be found unconstitutional. The issue has long been a controversial moral question: Whether the death penalty should be applied in cases other than murder? While many may argue against the death penalty in any case, others would argue that in cases such as Kennedy's, a life sentence in prison "is in no way equivalent to the lifelong mental prison this child will have to endure," as one such victim commented recently in an editorial in the New Orleans's *Times – Picayune*.

While a few states have capital crime laws for such crimes as treason and train wreaking, most are considered outdated and are not used. The federal government also allows for punishment by death for crimes including espionage, kidnapping, and even drug trafficking, but while prosecutors have become more aggressive in pursuing the death penalty, federal juries have been reluctant to hand down such a sentence for those crimes.

Nevertheless, should the high court uphold the Louisiana law in Kennedy's case there could be broad ramifications. Many believe it would be harder to get children to come forward against their attackers, who are most often family members or friends, and it could result in more "murder-rape" cases. Additionally, prosecutors could become even more aggressive in seeking the death penalty under existing laws for non-murder crimes. Moreover, other states could begin following suit with Louisiana by enacting similar laws, and Florida would most likely be leading the pack.

[Source: *Christian Science Monitor*, 9/8/03] ■

POST CONVICTION CORNER

by Loren Rhoton, Esq.

Recently, in the case of Espindola v. State, 28 F.L.W. D2406 (Fla. 3rd DCA, 10/22/2003), the Third District Court of Appeal issued a ruling, upon a motion for rehearing, which will affect a large number of inmates. In Espindola the Third DCA ruled that the Florida Sexual Predator Act ("FSPA") as codified in Florida Statutes §775.21 violates procedural due process and, therefore, is unconstitutional. Therefore, pursuant to Espindola, any person who has been designated as a sexual predator can now have the predator designation eliminated.

The FSPA places significant restrictions and requirements on any persons designated as sexual predators by:

1. Requiring sexual predators supervised in the community to have special conditions of supervision and to be supervised by probation officers with low caseloads;

2. Requiring sexual predators to register with the Florida Department of Law Enforcement; and,

3. Requiring community and public notification of the presence of a sexual predator.

Furthermore, upon registering with the Florida Department of Law Enforcement or the local sheriff's department (as is required), a sexual predator must provide all personal information relating to name, age, sex, etc., in addition to providing a brief description of the crime and providing genetic material. The FSPA further authorizes the Florida Department of Motor Vehicles to provide a photograph of the sexual predator for purposes of public notification. All of the above personal information, along with the sexual offender's photograph will be posted on the internet for worldwide distribution. Failure to comply with the registration requirements is a third degree felony. Finally, the FSPA automatically prohibits specific offenders from working at any business, school, day care center, park, playground, or other place where children regularly congregate. Needless to say, being designated as a sexual predator is not desirable. Now said designation can be removed due to the Espindola ruling.

In Espindola, the Third DCA ruled that the FSPA is unconstitutional as it violates procedural due process. As of this date, the other district courts have not ruled on the constitutionality of the FSPA. Therefore, it would be advisable to draft a motion asking to have the sexual predator designation removed from one's name as soon as is possible. It has been my observation that whenever a ruling is issued that benefit's criminal defendants, other district courts begin chipping away at the ruling and eventually excluding some of the people who should be eligible for relief. For example, when Heggs v. State, 759 So.2d 620 (Fla. 2000) found the 1995 sentencing guidelines to be unconstitutional, the district courts began issuing rulings which limited the application of Heggs. Eventually people who would have originally been eligible for

Heggs relief were excluded from such consideration by the new district court rulings. Therefore, I recommend that any persons designated as sexual predators pursue relief pursuant to Espindola as soon as possible.

It would be advisable to file a 3.850 motion alleging that the FSPA infringes on a liberty interest in reputation. *See* Wis. V. Constantineau, 400 U.S. 433 (1971) [where a person's good name, reputation, honor or integrity is at stake because of what the government is doing to him, notice and opportunity to be heard are essential]. In your 3.850 it would be advisable to allege that you suffer from the "stigma" attached to the public notification and registry registration requirements. Furthermore, it will be necessary to allege damage to tangible interests, such as employment opportunities, in order to trigger procedural due process requirements. Essentially, the courts will be conducting a "stigma plus test" to determine if a defendant's procedural due process rights are implicated. *See* Paul v. Davis, 424 U.S. 693 (1976) ["reputation alone, apart from some more tangible interests such as employment, is [not] either 'liberty' or 'property' by itself sufficient to invoke the procedural protection of the Due Process Clause"].

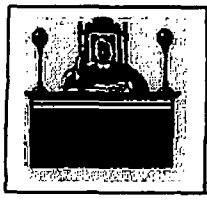
Therefore, in 3.850 motion it would be advisable to point out that Espindola held that the act of being publicly labeled a *sexual predator* clearly results in a sigma. *See also* Doe v. Williams, 167 F.Supp.2d 45 (D.C. Cir. 2001) ["it is beyond dispute that public notification pursuant to the [District of Columbia's Sexual Offender and Registration Act] results in stigma"]; Doe v. Lee, 132 F.Supp2d 57 (D. Conn. 2001); and, Doe v. Pataki, 3 F.Supp2d 456 (S.D.N.Y. 1988).

In addition to alleging the "stigma" requirement to invoke procedural Due Process protections, it will also be necessary to allege the "plus" factors. Therefore, in the 3.850 it should be alleged that the lifelong registration requirements, employment prohibitions and the inability to pursue tort remedies satisfy the "plus" requirements of the stigma-plus test. It has been held by the U.S. Supreme Court that employment does satisfy the "plus" requirement. Paul v. Davis 424 U.S. at 701; see also, Collie v. State, 710 So.2d 1000 (Fla. 2nd DCA 1998) [employment restrictions infringe on a constitutionally protected liberty interest.

In addition to alleging the *stigma plus test*, it will also be necessary to allege that you have been denied the requisite procedural safeguards of due process. A criminal defendant receives no process as the FSPA requires an automatic determination of "sexual predator" if one of the enumerated crimes has been committed. Thus, such a total failure to provide for a judicial hearing on the risk of the defendant's committing future offenses makes the FSPA violative and unconstitutional. *See* Doe v. Dep't of Pub. Safety, 271 F.3d 38 (2nd Cir. 2001), aff'g, Doe v. Lee, 132 F.Supp2d 57 (D. Conn. 2001), cert. granted, 122 S.Ct. 1959 (2002);

As always, it is advisable to be represented by experienced and competent counsel on an action such as the one suggested above. Nevertheless, if it is not possible to obtain counsel, then I would recommend a thorough reading of Espindola, and, thereafter, the filing of a 3.850 motion addressing the unconstitutionality of the Florida Sexual Predator Act.

Loren Rhoton is a member in good standing with the Florida Bar and a member of the Florida Bar Appellate Practice Section. Mr. Rhoton practices almost exclusively in the postconviction/appellate area of the law, both at the State and Federal Level. He has assisted hundreds of incarcerated persons with their cases and has numerous written appellate opinions.



NOTABLE CASES

BY OSCAR HANSON & ANTHONY STUART

The following are summaries of recent state and federal cases that may be useful to or have a significant impact on Florida prisoners. Readers should always read the full opinion as published in the Florida Law Weekly (Fla.L.Weekly); Florida Law Weekly Federal (Fla.L.Weekly Federal); Southern Reporter 2d Series (So.2d); Federal Supplement 2d Series (F.Supp.2d); Federal Reporter 3d Series (F.3d); or the Supreme Court Reporter (S.Ct.), since these summaries are for general information only.

U.S. SUPREME COURT

Yarborough v. Gentry, 16 Fla.L.Weekly Fed. S 479 (10/20/03)

Respondent Lionel Gentry was convicted in California state court of assault with a deadly weapon for stabbing his girlfriend, Tanaysha Handy. Gentry claimed he stabbed her accidentally during a dispute with a drug dealer.

After testimonies from Handy, eyewitness Albert Williams, and Gentry in his own defense and a lengthy closing by defense counsel the jury convicted after a six-hour deliberation.

Gentry appealed arguing that his trial counsel's closing argument deprived him of his right to effective assistance of counsel. The California Court of Appeal rejected that contention, and the California Supreme Court denied review. Gentry's petition for federal habeas corpus was denied by the U.S. District Court, but the U.S. Court of Appeals for the Ninth Circuit reversed. The state filed a petition for a writ of certiorari to the United States Supreme Court.

After the Court went into the analysis of the principles regarding ineffective assistance and effective assistance of counsel, it found that the Ninth Circuit had erred in its ruling.

The Ninth Circuit had found California Court of Appeal's decision "objectively unreasonable". The California court's opinion cited case law setting forth the correct federal standard for evaluating ineffective assistance claims and concluded that counsel's performance was not ineffective. That conclusion was supported by the record. The court went into a summation of what transpired on record.

The Ninth Circuit rejected the state court's conclusion in large part because counsel did not highlight various other potentially exculpatory pieces of evidence: that Handy had used drugs on the day of the stabbing and during the early morning hours of the day of her preliminary hearing; that William's inability to see the stabbing clearly was relevant to the issue of intent; that Gentry's testimony was consistent with William's in some respects; that the government did not call as a witness William's co-worker, who saw the stabbing; that stab wound was only one inch deep, suggesting it may have been accidental; that Handy testified she had been stabbed twice, but only had one wound; and that Gentry, after being confronted by Williams, did not try to retrieve his weapon but instead moved toward Handy while repeating, "she's my girlfriend."

The Supreme Court ruled that these arguments did not establish the state court's decision was unreasonable. Some of the omitted items, such as Gentry's reaction to Williams, are thoroughly ambiguous. Some of the others might well have backfired. For example, although Handy claimed at trial she had used drugs before the preliminary hearing, she testified that she was not under the influence and could remember exactly what had happened the day of the stabbing. And, although Handy's wound was only one inch deep, it still lacerated her stomach and diaphragm, spilling the stomach's contents into her chest cavity and required almost two hours of surgery. These were facts that the prosecutor could have exploited to great advantage in her rebuttal.

After further analysis of the Ninth Circuit's ruling, the high Court stated the Circuit court's conclusion of counsel's effectuation in that not only was his performance deficient, but that any disagreement with that conclusion would be objectively unreasonable – gives too little deference to the state courts that have primary responsibility for supervising defense counsel in state criminal trials. In turn, the high Court granted the state's writ and reversed the judgment of the Ninth Circuit.

U.S. DISTRICT COURT

Purvis v. City of Orlando, 16 Fla. L. Weekly Fed. D694 (M.D. Fla. 7/29/03)

Carol Purvis (Plaintiff), as personal representative of the Estate of Thomas J. Logan, Jr. brought a lawsuit, pursuant to 42 U.S.C. 1983, against law enforcement officials Kevin Beary as Sheriff of Orange County and Police Officer Wendell Reeve (Defendants), regarding the death of her ex-husband, Logan.

The Plaintiff filed a six-count complaint alleging that Officer Reeve violated Logan's civil rights by permitting him to escape and

intentionally failing to aide him from drowning. Plaintiff's argument was based on violations of Logan's Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendment rights. The Defendants filed a Motion to Dismiss and the U.S. District Court granted it.

The background of this case shows that on the night of March 7, 2001, in a prearranged operation, law enforcement officials arrested Logan at the Orlando International Airport for drug possession. Before the arrest law enforcement officials, including Officer Reeve, was briefed on Logan being a serious flight risk and was potentially suicidal. Reeve allegedly stated that any attempt by Logan to procure suicide would be accommodated by law enforcement.

Thirty minutes after Logan's arrest, D.E.A. officials placed him in a holding cell and almost 90 minutes later Officer Reeve arrived to transport Logan to central booking. Reeve did not search Logan or handcuff him, although Logan held his hands behind his back as if he was handcuffed.

Before reaching the patrol car Logan fled from Reeve, although Reeve maintained that Logan overpowered him, the Plaintiff contended that Reeve allowed Logan to flee without incident. Officer Reeve and other officers pursued Logan as he scaled fences and eventually entered a retention pond. Law enforcement officials gathered at the shore of the pond, and a helicopter was above videotaping and illuminating where Logan was. Although a boat was located nearby, Office Reeve did not follow Logan into the retention pond in order to rescue or capture him, and subsequently, Logan drowned.

In conclusion of the court's findings it ruled that the Plaintiff did not state any constitutional violation, nor cited any controlling authority in arguing that Reeve objectively violated clearly established law. In *Kelly v. Curtis*, quoting from *Post v. City of Fort Lauderdale*, 7 F.3d 1552, 1557 (11th Cir. 1993), "If case law, in factual terms, has not staked out a bright line, qualified immunity almost always protects the defendant."

The Plaintiff submitted no clearly existing case law on the issue, and failed to cite authority holding that a law enforcement officer cannot purposely allow a prisoner to escape into a dangerous situation. The Plaintiff also did not submit authority declaring that if a law enforcement officer does allow such a situation, he has an affirmative duty to rescue the escapee. Finally, Plaintiff cited no case holding that a law enforcement officer must place themselves in mortal danger in order to effecuate a rescue.

Osterback v. Crosby, Jr., 16 Fla. L. Weekly Fed. D 513 (N.D. Fla. 3/5/03)

James V. Crosby, Jr., (Defendant) filed a special report September 10, 2001 and the court construed it as a motion for summary judgment. Afterwards, Mark Osterback (Plaintiff), after being advised of his Rule 56 obligation to respond to the motion for summary judgment, filed his response and submitted evidence in support of his claims.

The challenges involved in this case are the effects of departmental practice, policy, or custom regarding prison rules and regulations within the Department of Corrections.

The Plaintiff first complained of the automatic placement of an inmate charged with a disciplinary infraction in administrative confinement. He asserted that this practice, policy, or custom prevents the collection of evidence to present in defense of the allegations charged. Staff assistance that is offered is ineffective because staff members will not collect evidence. It was noted that the denial of requests to collect evidence were based on departmental rules.

The Plaintiff's other complaint regarded the departmental rule that required the immediate return (within 24 hours) of non-legal incoming mail which is disapproved. The Plaintiff contended that if incoming mail is determined not to meet departmental rule criteria of incoming mail, the sender of the mail is sent a notice advising the mail was disapproved. Then, pursuant to departmental rule, the inmate is then given an opportunity to challenge the screening staff's disapproval through departmental grievance procedure by an uninvolved departmental employee. However, the practice, policy, or custom of all institutional mailroom employees is to return the disapproved incoming mail within 24 hours of its receipt. This denies a meaningful opportunity to challenge the disapproval because once the letter is returned to sender the letter then does not exist to permit an independent, impartial review of the contents causing the disapproval.

On March 5, 2003 Magistrate Judge William C. Sherrill docketed his report, for the second time, and recommended that the Defendant's motion for summary judgment be denied.

The case was evaluated in detail and it gave a lengthy analysis for the recommended denial. However, after reviewing the recommendation, Senior Judge William Stafford remanded the case back for further consideration. This involved both claims and the further considerations were whether the Plaintiff provided evidence that he was deprived of due process liberty interest, given that he is a parole-ineligible inmate serving a life sentence and whether the Plaintiff's evidence of harm is sufficient to support the challenge that was made to Defendant's rule concerning mail.

Clark Construction Group, Inc. v. Hellmuth, Obata, and Kassabaum, Inc., 16 Fla. L. Weekly Fed. D 689 (M.D. Fla. 10/9/03)

This case highlights jurisdictional issues involved in a civil action in a state court and the

filing from one of the parties a removal of the action, in part, to a federal court.

Here in this case the notice of removal was filed by the defendant and purported only to remove a part [the negligence claim], from the state court action where the plaintiff had filed an amended third-party complaint against the defendant asserting an assigned indemnity claim and complaint alleging direct cause of action for negligence against the defendant. However, the federal district court is without subject-matter jurisdiction to rule on merits of matter where the negligence claim and amended indemnity claim are two parts of a single civil action and the defendant had attempted to unilaterally sever the claims and remove only the negligence claim part of the state court action.

Congress has authorized a removal only of a "civil action" brought in a state court of which the district courts of the United States have original jurisdiction. 28 U.S.C. section 1441 (a).

The case then details what actually construes a "civil action" comparing both the Federal Rules of Civil Procedure and the Florida Rules of Civil Procedure with explanation made to the difference in their wordings.

Whether a federal court has jurisdiction over a removal action depends on the pleadings at the time of removal. Subsequent developments generally do not affect the court's jurisdiction.

DISTRICT COURT OF APPEAL

Johnson v. State, 28 Fla. L. Weekly D2241 (Fla.5th DCA 9/26/03)

Florida prisoner Jama Johnson was convicted of possession of a firearm by a convicted felon and sentenced to fifteen years in prison, three years of which were designated a minimum mandatory sentence. Johnson raised multiple issues on appeal and the DCA reversed on two issues; one of which I'll discuss here.

Johnson challenged the propriety of a three-year minimum mandatory sentence imposed pursuant to section 775.087(2)(a)1, Fla. State. (2002), for possession of a firearm during the commission of a felony. The DCA recognized an ambiguity, which required the application of lenity embodied in section 775.021(1), Fla.Stat.(2002).

The ambiguity created in 775.087(2)(a)1. is found in the use of the word "actually" to modify "possessed" in the first portion of the statute and by its omission in the latter part of the statue. This ambiguity leads to two potential constructions. The State argued that the legislature, by its plain use of the language, intended that the ten-year minimum be applied when the felon "actually" possessed a firearm but that the three-year minimum applied for certain offenses when possession is something other than "actual". An alternative construction is that the legislature intended that the three excepted crimes bear a three-year minimum sentence, rather than a ten-year minimum sentence, provided that "actual" possession is proven. In other words, the word "possessed" in the latter portion of the statute should be construed as "actual possession". The Second DCA has previously adopted the second construction in *Bundrage v. State*, 814 So.2d 1133 (Fla. 2d DCA 2002). The Fifth DCA above did not find either construction clearly manifested and determined the statute to be ambiguous in this regard. As a result, the DCA accepted the construction urged by Johnson and approved in *Bundrage* and held the ten-year minimum mandatory did not apply to this particular offense. Further, the three-year minimum mandatory would apply, but only if it was shown that Johnson "actually possessed" the firearm, which the DCA construed to mean carried on his person.

Ayala v. State, 28 Fla. L. Weekly D2283 (Fla. 2nd DCA 10/3/03)

Florida prisoner Elpido Ayala filed a petition pursuant to Fla.R.App.P. 9.141(c) that raised two claims of ineffective assistance of appellate counsel. The DCA granted relief on only one of Ayala's claims, which alleged that appellate counsel was ineffective in failing to argue that it was fundamental error to instruct the jury on voluntary manslaughter where the information did not allege the element of intent to cause death, which is a necessary element of voluntary manslaughter.

The DCA held it was fundamental error for the trial court to instruct the jury on voluntary manslaughter because had it been raised as an issue on appeal it would have required a reversal.

Steele v. State, 28 Fla. L. Weekly D2294 (Fla 5th DCA 10/3/03)

William Stewart Steele, a Florida prisoner, appealed an order denying his tenth challenge to his 1991 conviction. The Fifth DCA held that "enough is enough" and ruled Steele's current appeal was without merit and ordered Steele to show cause pursuant to *State v. Spencer*, 751 So2d 47 (Fla.1999), why he should not be barred from filing further pro se pleadings in his criminal case. The DCA found no merit in Steele's response and held his successive petitions to be an abuse of the judicial system.

The Court directed the Clerk of the DCA not to accept any further pro se filings or pleadings from Steele regarding Ninth Judicial Circuit Court Case No. 1990-CF-5038.

Nelson v. State, 28 Fla.L.Weekly D2276 (Fla. 4thDCA 10/1/03)

Florida prisoner Vernon Nelson had previously succeeded in having his case reversed and remanded to the trial court for a determination of whether the trial transcripts demonstrate that his criminal offenses (and the sentences

imposed) were from a single criminal episode, which would prohibit consecutive sentences.

On rehearing, the state argued that the Court need not reach the merits of Nelson's *Hale* claim because it had already determined the claim was successive. (In *Hale v. State*, 630 So.2d 521 (Fla.1993) the Supreme Court held that sentences for multiple crimes committed during a single criminal episode, which were enhanced pursuant to section 775.084 could not be further increased consecutively.)

Nelson first filed his Hale claim in 1995. It was timely. In its response to the 1995 motion, the state argued that the *Hale* claim could be raised only in a Rule 3.850 motion. The trial court denied the claim based on the state's response. Thus the merits of Nelson's claim was not addressed – only the form of the motion.

Nelson renewed his *Hale* claim in 1997 under Rule 3.850. The state responded that it was a successive motion and should be denied for that reason. The trial court denied the claim for the reasons given in the State's response. Again the motion was not decided on the merits but solely on the basis of the rule used as his vehicle.

Essentially the state argued that the first motion was improper because Nelson cited the wrong rule, and the second motion filed under the other rule was improper because it was successive. The DCA recognized that this tactic was unfair. The Court reasoned it was hardly proper for the law to deny relief because the form of the request is improper and then when the form is corrected to say that the motion is successive, or repetitive. This, the Court stated, was a little more than the "gotcha" school of litigation, roundly condemned in the courts.

The DCA rejected the State's position and held that Nelson's claims were never addressed on the merits so his Rule 3.850 motion could not be deemed successive. Reversed and remanded.

Coblentz v. State, 28 Fla. L. Weekly D2282 (Fla.2nd DCA 10/1/03)

In July 1999, Leander Coblentz was sentenced to prison followed by community control and probation for several criminal offenses. He was declared to be a sexual predator pursuant to section 775.21(4)(c), Fla.Stat. (1997).

Coblentz filed a motion to correct illegal sentence seeking to challenge the sexual predator designation. The trial court denied relief and on appeal the district court affirmed the trial court's ruling, but encouraged Coblentz to file a "civil proceeding in hopes both the merits of his case can be tested and the trial court can be given an opportunity to devise a workable mechanism to resolve such claims."

Coblentz followed the DCA's advice and filed a motion for relief from judgment pursuant to rule 1.540 (b). The trial court denied the motion without any discussion on the merits. On appeal the DCA reversed the trial court's decision and remanded for the trial court to attach documentation which demonstrates that Coblentz qualifies for treatment as a sexual predator or to conduct a hearing to determine if he qualifies for such treatment.

Barrett v. State, 28 Fla. L. Weekly D2237 (Fla. 2d DCA 9/26/03)

Florida prisoner Peter Barrett appealed his conviction for first degree murder and claimed the trial court erred in holding that section 775.051, Fla.Stat: (2002). was constitutional. Section 775.051 became effective October 1, 1999, and eliminated voluntary intoxication as a defense to criminal charges. Barrett alleged it was unconstitutional because it violated his right to procedural due process under the Florida Constitution. Barrett argued that the statute improperly excludes a class of relevant evidence and lessens the State's burden to prove his guilt beyond a reasonable doubt.

The Second DCA rejected Barrett's arguments and found the statute does not violate due process rights. The DCA found the statute effects a substantive change in the definition of *mens rea*, and was not simply an evidentiary rule. And finally, the DCA did not find that the Florida Constitution provided greater protections to defendants than the U.S. Constitution.

Concepcion v. State, 28 Fla. L. Weekly D2292 (Fla.5th DCA 10/3/03)

In this consolidated appeal, Defendants Danny Cobb, Ariel Concepcion, and Guillermo Fonseca appealed their judgments and sentences that were entered by the trial court after a jury found the three guilty of trafficking in cocaine in an amount of 400 grams or more, and conspiracy to traffic in cocaine.

The DCA reversed the judgments based on a fundamental error committed by the trail court while issuing its *instructions* to the jury. The Court held that the submission of an improper written instruction to the jury on the charge of trafficking, which erroneously used conjunction "or" in place of "and" before fourth element of the offense, constituted fundamental error. Further, the error was deemed to have impacted the conspiracy convictions as well since the jury was required to consider the trafficking instruction in determining the issue of guilt on the conspiracy charge.

Collier v. State, 28 Fla. L. Weekly D2375 (Fla.4th DCA 10/15/03)

Marion Collier was committed to the Department of Children and Family Services under the Jimmy Ryce Act. Collier appealed his commitment trial and raised four issues, and the DCA reversed on one of Collier's claims. As part of his civil trial, Collier requested, and was granted, a *Frye*

hearing to address the admissibility of the SVR-20 (Sexual Violence Risk-20) assessment tool employed by testifying expert witnesses to evaluate his mental state. Dr. Peter Bursten, a psychologist, testified at the hearing that he used SVR-20 when evaluating Collier but could have evaluated him without using the tool. He additionally admitted that SVR-20 is considered an experimental method of recidivism assessment to a degree, and that some in the psychological science field question its use. As a result, Bursten could not state that SVR-20 had gained general acceptance in the relevant scientific community.

The DCA held that based partly on the state's use of SVR-20, the State failed to meet the burden of demonstrating the general scientific acceptability of SVR-20. As a result, Collier's classification and commitment as a "sexually violent predator" under the Jimmy Ryce Act was invalid.

Thornton v. State, 28 Fla. L. Weekly D1939 (Fla. 3rd DCA 8/20/03)

The Third District Court of Appeal reversed Henery Thornton's conviction for first degree murder due to prosecutorial misconduct.

In relevant part the case referred to a prior case the court reversed for prosecutorial misconduct, *Jackson v. State*, 421 S.2d 15, 16 (Fla.3d DCA 1982). Here the court reviewed the issue in a broader context and "the serious problem it exemplifies". The case revealed that the Third District alone "has been faced with a veritable torrent of cases which have similary involved significant prosecutorial improprieties committed by assistant state attorneys". Numerous cases were listed, dating as far back as 1979. The *Jackson* case stated that the "volume of these cases – including multiple acts of misconduct by particular prosecutors – is so great that we can no longer believe that they represent merely isolated examples of understandable, if inexcusable, overzealousness in the heat of trial. Instead, we must suspect, however reluctantly, that the improprieties may be deliberately calculated to accomplish just what representatives of the state cannot be permitted – inducing a jury to convict by unfairly prejudicing it against the defendant. It is obvious that this pattern of conduct cannot be tolerated".

[Note: Although he court is loath even to consider the possibility, some prosecutors believe that keeping a convicted defendant in prison during the often lengthy appellate process is enough to chalk up a "win" for them even if the conviction is later reversed.-as] ■

LEGISLATIVE WATCH

By John Hudson

The information contained in this section is compiled from published Session Laws and may be useful to or impact Florida prisoners. This section is an information source designed to provide accurate information concerning the latest in Florida law. Occasionally, Legislative Watch will publish other items of interest related to Florida's legislature such as upcoming bills, legislative history and bios on current legislators. New law and pending bills will be clearly identified to avoid confusion as to what is law and what is not.

NEW LAWS, 2003 LEGISLATIVE SESSION

CRIMES AND OFFENSES

Sentencing – S.B. 2046 introduced by Senator Smith and others passed. The bill amends section 921.16(3), Florida Statutes, and overrides the effects of Moore v. Pearson, 789 So.2d 316 (Fla. 2001), which the Florida Supreme Court concluded the Department of Corrections must recognize and apply coterminous sentencing provisions as modifications of sentence, even if such provisions cause a stated sentence to expire prior to the 85 percent service requirement found in section 944.275 (4) (b) 3, F.S.. This new law states a county court or circuit court of this state may not direct that the sentence imposed be served coterminously with a sentence imposed in this state or of another state. The effective date of this Act is October 1, 2003.
Chapter 2003-128, Laws of Florida.

[Note: Senator Rod Smith is a Democrat from Gainesville. He represents the 14th District consisting of Alachua, Bradford, Gilchrist, Union, and parts of Columbia, Levy, Marion, and Putnam Counties.]

Blood Collecting – S.B. 1648 passed. The Act amends F.S. 943.325 and 948.03 clarifying that the local sheriff or designee is responsible for collecting DNA specimens from those offenders who are required to provide a sample and who are not sentenced to incarceration by the court. It also allows for the collection of approved biological specimens other than blood for qualifying sex offenders. The Act took effect July 1, 2003.

Community Control – S.B. 428 "The Howard E. Futch Community Safety Act" took effect July 1, 2003. The Act amends F.S. 948.10 and was introduced by Senator Smith and others. The new law required D.O.C. to review and verify whether an ineligible offender was placed on community control by a judge and within 30 days after receipt of the order, notify the sentencing judge, the state attorney, and the attorney general that the offender was ineligible for placement on community control. The department must also provide quarterly reports to the Chief Judge and the state attorney of each circuit citing the number of ineligible offenders placed on community control within that circuit. D.O.C. provides an annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court on the placement of ineligible offenders on community control.

Also, the department shall develop and maintain a weighted statewide caseload equalization strategy designed to ensure that high-risk offenders receive the highest level of supervision and develop and implement a supervision risk assessment instrument for the community control population which is similar to the probation risk assessment instrument established by the National Institute of Justice.

In the annual report to the Governor, President of the Senate, and Speaker of the House of Representatives, the department shall include a detailed analysis of the community control program and the department's specific efforts to protect the public from offenders placed on community control. The report will include the department's ability to meet minimum officer-to-offender contact standards, number of crimes committed by offenders on community control, and the level of community supervision provided.

Lastly, the department will study the use of electronic monitoring and its effectiveness on the community control population. For purposes of this study, and notwithstanding section 948.10 (2), the department may adjust the maximum community control caseloads when electronic monitoring is used. When completed, the department will report its findings of the electronic monitoring study to the Governor, President of the Senate, and the Speaker of the House of Representatives by February 1, 2004.

Law Enforcement/Correctional Officer – S.B. 1856 provides for the right of an officer to file suit against a person who files a false complaint against the officer. However, this does not create a separate cause of action against an officer's employing agency for the investigations and processing of a complaint filed. It

requires the investigating agency to give the officer a copy of the complete investigative report and supporting documents, upon request, and provide the officer an opportunity to address the findings of the report before the imposition of a disciplinary action consisting of a suspension with loss of pay, demotion, or dismissal. The contents of the complaint and investigations are to remain confidential until the employing agency makes a final determination to issue a notice of disciplinary action. It extends the right to review complaints and statements made by the complainant and witnesses against a law enforcement or correctional officer to his or her legal counsel or designated representative immediately prior to the beginning of an investigative interview when the interview relates to the officers continued fitness for law enforcement or correctional service. Amends 112.532,.533. The effective date of this act is July 1, 2003.

Victims Freedom Act – H.B. 561 passed and amends section 784.046, Fla. Statute. Effective July 1, 2003, when a petition for injunction is filed and if the respondent is in the custody of the D.O.C., the clerk of court shall furnish a copy of the petition, notice of hearing, and temporary injunction, if any, to D.O.C. and copies shall be served upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night. If the respondent in custody is not served before his or her release, a copy of the petition, notice of hearing, and temporary injunction, if any, shall be forwarded to the sheriff of the county specified in the respondent's release plan for service.

PRISONS

Correctional Institutions – As reported in our last issue of *FPLP*, (Volume 9, Issue 5), the Legislature, in Special Session "D", approved the appropriation of almost $66 million to the DOC to increase the number of prison beds sufficient to meet demand. This act of Legislation took effect upon becoming law when approved by the Governor on August 14, 2003. The new law amended Section 216.292 Fla. Stat., permitting the Governor to initiate prison construction under certain circumstances. The following is a portion of Section 216.292 as amended showing how the money is to be spent.

Section 3. (1) The following moneys and full time equivalent (FTE) positions are appropriated to the DOC for fiscal year 2003-2004:

(a) The sum of $17,519,607 from the General Revenue Fund and 512 FTEs for salaries and benefits.
(b) The sum of $5,341,956 from the General Revenue Fund for expenses.
(c) The sum of $423,117 from the General Revenue Fund for operating capital outlay.
(d) The sum of $1,774,790 from the General Revenue Fund for food products.
(e) The sum of $48,871 from the General Revenue Fund for food service and production.
(f) The sum of $445,842 from the General Revenue Fund for salary incentive payments.
(g) The sum of $4,696,278 from the General Revenue Fund for inmate health services.
(h) The sum of $1,269,720 from the General Revenue Fund for fixed capital outlay for the reopening of the Hendry Correctional Institution.
(i) The sums of $10,000,000 from the General Revenue Fund and $17,545,694 from the Grants and Donations Trust Fund for fixed capital outlay for a new 1,380-bed annex at the Santa Rosa Correctional Institution.
(j) The sum of $4,811,856 from the General Revenue Fund for fixed capital outlay for 14 new 131-bed, open-bay dormitories.
(k) The sum of $2,000,000 from the General Revenue Fund for fixed capital outlay for planning and permitting for a new 1,380-bed annex at the Washington Correctional Institution.

(2) Operating appropriations provided in subsection (1) are for the following purposes:

(a) Increasing staff and other resources necessary to provide supervision and classification to a total of 82,281 inmates.

(b) Increasing resources for food services, health services, utilities, and other variable expenses for average daily population of 79,521 inmates.

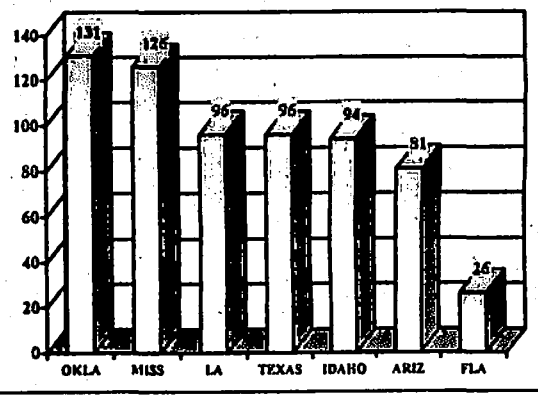
(c) Providing for operational support staff and other resources to reopen the Hendry Correctional Institution and the South Florida Reception Center.

Chapter 2003-417, Laws of Florida. ■

Prison Perspectives...

Women in Prison

The nation had an average of 60 women in state or federal prisons per 100,000 female residents in 2002. The chart below shows states with the highest rates of women in prison (per 100,000 female residents). Florida is not among the highest and is shown only as a point of reference.



Constitutional Amendment Effort Launched to Bar Florida's Prison Privitization

by David Reutter

The Florida Police Benevolent Association (PBA) has launched a petition drive to enact an amendment to Florida's Constitution that would ban privatization of prisons, jails, and offender supervision. The PBA represents over 30,000 law enforcement, corrections, and probation officers.

The PBA started the drive following Governor Jeb Bush's recent proposal for state legislators to provide an emergency $66 million to build new prison beds in Florida. That proposal included a provision to set aside $75,000 to allow the Correctional Privatization Commission, Florida's private prison oversight group, to take bids to build an 1,800 bed prison in Northwest Florida.

"The PBA went ballistic" when it learned of the provision, said Sen. Victor Crist, R-Temple Terrace, one of the bill's co-sponsors. While campaigning in July 2002, Bush pledged to the PBA that he would not seek more private prisons. That pledge may have been victim to political realities. In 2002, private prison companies Wackenhut, Correctional Corporation of America, and Cornell Companies, Inc., donated $274,000 to Florida candidates and political parties.

Prison privitization has its critics in the Florida Legislature. "The control of individuals who have had their rights removed by the state is a public function, not a private one," said State Rep. Mitch Needleman, a Melbourne Republican and former law enforcement officer. The PBA is also trying to enlist the clergy's help to get the constitutional amendment proposal on the ballot next year, contending that the rehabilitation of prisoners is a public function. "We're abdicating that responsibility by giving it to a for-profit corporation that profits off the mistakes of human beings," said PBA lobbyist Ken Kopczynski.

Wackenhut says the PBA opposes private prisons because their employees are not unionized. "It's purely self-interest on their part," said Wackenhut lobbyist Damon Smith. Wackenhut, which operates two private prisons in Florida, has its own self-interest in maintaining or increasing revenues in its private prison division; 14 percent of that division's revenues came from Florida in 2002, responds the PBA.

Fourty-eight hours after the PBA got wind of Bush's privitization proposal, the idea was dead. "At the last minute, the governor wanted it out [of the bill]," Crist said. The PBA apparently wants to make sure it doesn't get reintroduced again.

The PBA's constitutional amendment proposal would prohibit a public body from entering "into a contract, agreement, or other agreement, with any person, other than a public body, to provide for the care, custody, or control of individuals detained and awaiting trial, incarcerated for a crime, or under supervision as a result of criminal activity." Existing contacts shall not be renewed. The allowable exceptions, according to the proposal, would provide for a one-year contract where a public body can prove it could not timely hire additional employees or was required "to address an unanticipated increase in the number of individuals required to be in the care, custody, or control of the public body."

The petition drive is being spearheaded by the *Public Safety and Security Initiative PAC, 300 East Brevard St., Tallahassee, FL 32301.*

Court Orders Hepatitis C Re-treatment

by David Reutter

A South Florida federal district court has entered a permanent injunction requiring the Florida Department of Corrections (FDOC) and Wexford Health Sources, Inc., to administer re-treatment of Hepatitis C and cirrhosis to prisoner Allen Brash. Brash had been previously treated with Interferon for his condition. His viral loads dropped significantly after his initial treatment, but he still had the virus and required re-treatment. Before he could commence re-treatment, he was assaulted by three prison guards and transferred to Okeechobee Correctional Institution.

Brash was then denied re-treatment by Wexford after he was labeled a treatment failure. Wexford is a private corporation based in Pittsburgh, PA, and it is devoted solely to servicing prisons and jails to generate its profits. Currently, Wexford holds the medical contract for the South Florida FDOC region. After exhausting administrative remedies, Brash filed suit seeking treatment with Pegylated Interferon and Ribavirin for his condition. Magistrate Judge Lynch recommended a preliminary injunction be denied.

District Judge Paine disagreed and entered a preliminary injunction requiring Brash to be taken to a gastroenterologist and be provided with whatever medication the doctor recommended. The doctor recommended re-treatment with "one of the new Interferons."

On July 24, 2003, the Court entered a permanent injunction requiring that Brash be provided "one full course of re-treatment with Pegylated Interferon and Ribavirin." To its credit, Wexford agreed to the permanent injunction's entry. The FDOC, however, asserted its usual resistance and objected to the order. The court retained jurisdiction to assure the order was carried out and to determine attorney fees award. Brash was represented by Randall Berg of the Florida Justice Institute. See: *Brash v. Wexford Health Sources, Inc.*, U.S. District Court, So. Dist. of Florida, Case No.: 02-14331-Civ-Paine. ■

Florida Prisoner's Death In Vermont Sparks Legislative Investigation

During November 2003, Vermont lawmakers said they intend to investigate allegations against Department of Corrections officials who allegedly retaliate against prisoners and staff who file complaints and who fail to follow proper policies, which may have contributed to several suicides by prisoners this year.

Prisoner advocates, who have been calling for such an investigation, became very vocal about the problems following the Oct. 7, 2003, apparent hanging suicide of James Quigley, a prisoner at the Northwest State Correctional Facility in St. Albans. He was the fifth prisoner to commit suicide in Vermont this year.

Advocates' allegations of widespread problems in the state's prison system were repeated in a letter from Sen. Vincent Illuzzi to VT Corrections Commissioner Stephen Gold dated Oct. 30. The charges were discussed at a meeting in Oct. Between a state legislative committee and prisoner advocates.

Some of the allegations were scheduled to be discussed further at a meeting of the Legislature's Joint Corrections Oversight Committee in November.

Gold said he had read Illuzzi's letter. " I find it deeply troubling," he said. " I welcome and plan to fully cooperate with any investigation of the department." The letter outlined four main areas of concern:

- ▶ Prisoner advocates have received a large number of complaints regarding programming issues, coercion and inadequate medical and mental health issues;
- ▶ The failure of Matrix Health Systems to provide timely and needed mental health services to prisoners suffering from mental illness;
- ▶ Failure of officials to properly apply DOC policy and law to resolve prisoner grievances;
- ▶ Failure to promptly and impartially investigate complaints against staff, thereby allowing the conduct in question to continue with the added possibility of retaliation.

The allegations "appear to be fact-specific cases that all point to the same breakdown in either policy or contract implementation," Illuzzi. His letter to Gold also said that advocates felt the Quigley case best illustrated the problem.

James J. Quigley, 52, was serving a life sentence for a Florida murder conviction. He had been transferred to Vermont from Florida almost three years ago as part of a lawsuit settlement deal with Florida prison officials. That suit involved claims of widespread retaliation against Florida prisoner law clerks who are assigned to help other prisoners file grievances and legal challenges to their sentences and convictions.

Reportedly, after being sent to VT on an interstate compact, Quigley got into an ongoing disagreement with Northern State Correctional Facility Superintendent Kathy Lanman about how to spend the money from surcharges on prisoner telephone calls. His complaints resulted in his security level being raised from medium to high, causing him to be placed in solitary confinement, Illuzzi's letter said.

A hearing officer subsequently found that a charge against Quigley of wrongdoing was unsubstantiated, but Lanman overrode that decision. Lanman then claimed he was an escape risk because his parole date had been moved back and because searching prison guards allegedly found a map of Vermont in Quigley's cell that had been torn out of a newspaper.

Barry Kade, an attorney and member of the Alliance for Prison Justice, had visited Quigley just two weeks before his death and said, " He wasn't a suicidal person." Dade, complaining about Quigley's treatment in recent months, said, "They were making his life as miserable as possible. If it was suicide, they drove him to it."

Kade describer Quigley as a jail-house lawyer who helped other prisoners with their cases. Often, Kade noted, Quigley's work placed him at odds with prison staff. "He was a pain in their butts."

Quigley's mother, Claire Quigley, said, "There's no indication that [his] presumed 'suicide' was voluntary. Over 118 days in the hole of inhumanity, a dark and cold cell without adequate clothing, fresh air or exercise. His abductors tormented him with intense hostility... until he was no longer responsible for his safety." She says she is filing a wrongful death lawsuit against those she holds responsible for his death.

Ironically, shortly after Quigley was transferred to Vermont in Feb. 2001, after striking a deal with Florida prison officials to drop a lawsuit against that state's prison system, he wrote back to a friend in prison in Florida that even though the Vermont system has its own set of problems he was glad to get transferred there when he did before prison officials in Florida had him murdered.

[Sources: *The St. Albans (Vt.) Messenger*, 10/9/03, 11/4/03; Correspondence]

IN MEMORIAM

James J. Quigley

Nov. 9, 1950 – Oct. 7, 2003

James was known to so many in the Florida system, he will be sorely missed. We here at *FPLP* will miss his valuable advice and participation in the struggle we all are engaged in; he was our friend. Our sympathy is extended to his family.

IN THE NEWS

AL – On Sept. 8, 2003, it was reported that Alabama Gov. Bob Riley said that if voters rejected his $1.2 billion tax plan the state government will become "dysfunctional" and as an added threat, rejecting the plan would force the release of 5,000 state prisoners. On Sept. 10. National Public Radio reported that going to the polls voters had rejected Riley's tax plan and further noted that Alabama's prison system was already overcrowded and the state has been housing the overflow in privately owned prisons in Mississippi and Louisiana.

AL – During October 2003, the Alabama state Personnel Board voted to overturn the firing of a guard accused of sexual misconduct at Alabama's juvenile lockup for girls. Johnny Donald, 49, was reinstated by the board. The Department of Youth Services, which runs the facility and which had fired Donald, said it would appeal the board's ruling. Donald's attorney said the girls who accused Donald lacked credibility.

AR – During November 2003, prison officials in Arizona claimed they are short 4,000 prison beds and need an additional 16,000 beds to handle expected new admissions. Private prison companies immediately jumped on the announcement and have stepped up lobbying legislators, saying they have beds available to solve the problem. The Legislature is expected to address the issue in a special session.

CA – A prison riot during October 2003, at California's Pleasant Valley State Prison, left one prisoner shot to death by a prison guard. According to prison officials, the riot started in a prison yard and quickly escalated to involve 300 prisoners. Officials were investigating what caused the riot.

FL – Two female prison guards filed a lawsuit in Sept. 2003, against the Florida Department of Corrections (FDOC) claiming they were pressured to perform sex acts in exchange for favorable work shifts. Lt. Felicia R. Suelter of Lawtey and C.O. Karen A. Jones of Starke filed the suit in the Fourth Judicial Circuit Court in Duval County. The suit, seeking actual and compensatory damages, alleges that Suelter and Jones were "subjected to a work environment where terms and conditions of employment, such as favorable work shifts, were awarded for sexual favors performed by female employees on male supervisors". Jones claims when she refused to perform oral sex on a Major to get a shift change, he allegedly told her, "I don't get what I want, so you don't get what you want".

[Source: *Tampa Tribune*, 9/27/03]

FL – A $1,000 honorary award was presented to Abe Brown Ministries, a Tampa-based prison ministry, during Sept., 2003, by the University of South Florida for sponsoring The Reading Family Ties: Face-to-Face program. The program allows some state prisoner mothers to spend time reading to their children using Internet video-conference equipment. The mothers must also attend parenting classes to participate in the program. The USF Award for Nonprofit Innovation is awarded to nonprofit organizations that despite limited financial resources are able to expand and improve their services through innovation.

[Source: *Tampa Tribune*, 9/11/03]

FL – During Sept. 2003, FDOC Capt. Jonathan Dawson, a prison guard at Liberty Corr. Institution located in Bristol, 35 miles west of Tallahassee, was arrested and charged with growing 82 marijuana plants valued at more than $80,000. Dawson was arrested after a three-month joint investigation by the Florida Fish and Wildlife Conservation Commission and the Florida Department of Law Enforcement. Dawson was released on a $500 bond after his arrest and was place on administrative leave by the FDOC.

FL – FDOC Lt. Daniel Cosson was charged with perjury for lying about attacking a prisoner. Cosson, who worked at Wakulla Corr. Institution, a state prison, allegedly made three attempts to arrange attacks on a prisoner at the FDOC facility. A junior officer told officials that Cosson talked to him about making up excuses to spray the prisoner with pepper spray and beat him.

[Source: AP, 9/19/03]

FL – Larry Curry, a former prison guard at the Florida Institute for Girls, pled guilty to having sex with two teenaged girls at the facility. He faced 60 years in prison but negotiated a plea deal for only 5 years probation. The deal also includes a provision that Curry can continue to work in similar positions. His sex crimes were committed against a 14-year-old and an 18-year-old.

[Source: *Tampa Tribune*, 10/9/03]

FL – Juvenile deaths in detention centers are escalating and the State's Department of Juvenile Justice isn't contacting families when the deaths

occur. According to Terri Mestre, she was not told of her son's, Shawn Smith's, death when he committed suicide at the Volusia Co. Juvenile Detention Center on May 31, 2003. Mestre told officials at the department, "You are severely broken. Fix yourself now before any more children die, anymore children suffer." Danny Matthews, 16, died after a fight with another teen at the Pinellas Co. Detention Center. His mother, Diana Matthews, complained to state lawmakers that no one from the department ever contacted her to let her know her son was dead. In fact, after she learned of his death several days later she was warned by department personnel that if she didn't pick up his body in a timely manner they were going to have him cremated and dispose of the remains. State Rep. Gus Barreiro said the department appears to suffer from lack of communication and accountability. The Select Committee on Juvenile Detention Centers began an investigation after a series of deaths at the state's 25 juvenile lockups. Barreiro said the committee will make recommendations to the Legislature on how some problems can be fixed.

[Source: *Tampa Tribune*, 10/9/03]

FL – Inadvertently, convicted child molester Kevin Kinder, back from a post conviction relief hearing from prison, was placed in the same cell at the Orient Road jail with one of his victims, Jason E. Flores, from eleven years ago. Flores, now 22, recognized Kinder and attacked him, beating Kinder unconscious. Flores' mother, Judy Coronett, said it was a fluke that they ended up in the same place at the same time. "But think about how [my son] feels. He was finally able to confront Kinder and fight back after 11 years. I think it's damn therapeutic."

[Source: *Tampa Tribune*, 10/10/03]

FL – A dozen or more correctional officers at the Orange Co. Jail may face charges of drug dealing, credit card fraud and identity theft following a year-long investigation into corruption at the jail by the FBI and federal attorney general's office. Some officers at the jail claim other guards were providing drugs to prisoners for sale to other prisoners for fees up to $500. Jailhouse snitch Marcus Evans, who provided officials details about the credit card fraud and identity theft, was moved to the Seminole Co. Jail for his protection as investigations continue.

[Source: *Orlando Sentinel*, 10/03]

FL – Eleven Miami police officers went on trial for four shootings. Four of them were convicted, three were acquitted, and four face retrials. Federal prosecutors want 11-year sentences for the four who were convicted but U.S. District Court Judge Alan Gold rejected that recommendation as too harsh. Gold ruled the officers should be sentenced to 3 years or less in federal prison for planting guns on defendants or covering up evidence after police shootings.

[Source: *Orlando Sentinel*, 10/03]

FL – Ronald Lawson was sentenced to a plea deal of five years in prison for his part in the beating and stomping death of 18-year-old prisoner Chad Littles. Others involved in the killing, Carlos King, Nicholas Hulsey, Malachi Najair, Larry K. Burks, and Jeremiah Hinsey were also charged in the murder of Littles at the Bay Co. Jail.

[Source: *Florida Star*, 10/19 – 25/03]

GA – On Nov. 3, 2003, Georgia prison officials announced they are closing some of the state's boot camps as other sentencing measures, such as probation detention centers, become more popular. The GA DOC said it needs to save $2.1 million next year to comply with state budget cuts.

HI – During Sept. 2003, a guard, Lia Olione, at the Hawaii Youth Correctional Facility was indicted on a charge of raping a teenage girl at the facility. A month later, during October 2003, another guard at the same facility, Myles Manlinguis, was indicted on a charge of intimidating a prisoner witness to influence his testimony.

IA – On Sept. 9, 2003, the *Des Moines Register* reported that Iowa is granting early releases to lower-risk prisoners to ease the state's prison overcrowding. Paroles were granted to 3,782 prisoners in the last fiscal year, up 4.4 percent from the previous year.

KS – On Sept. 11, 2003, a jury awarded $1.4 million to the 8-year-old son of Donald Grishman, a prisoner killed by another prisoner in 2000. An attorney for the son cited the poor supervision by John Pfannenstiel, a former Basehor mayor and former prison guard who was sentenced in 2001 to a year of probation for having sex with three prisoners, as contributing to the murder.

LA – Prison officials in Louisiana report that the number of elderly prisoners is rapidly increasing, as is the cost of their care. Medical problems common the middle-aged and elderly can cost up to $70,000 a year for each prisoner. The state expects the number of older prisoners to grow by 15 percent by 2012.

[Source: AP, 8/26/03]

LA – A $6 million renovation of the state's death row and execution facilities will add 59 more cells and expand the witness area which

currently only allows 10 witnesses to executions.

[Source: *USA TODAY*, 9/2/03]

MA – According to a recently released study by the Massachusetts Public Health Association, MA prisoners have one of the highest rates of infectious disease in the U.S. State prisoners have high rates of Hepatitis C and the seventh-highest rate of HIV infections in the nation. Disease specialist say the high rate of intravenous drug use in the Northeast could be part of the cause.

MD – During October 2003, the Maryland DOC said Baltimore's supermax prison no longer fits in with the department's plans and should be torn down, this even though the facility is only 14-years-old. Officials said the facility, which houses death-row prisoners and other "hard-core" criminals, has no space for counseling, drug treatment or education services. The prison's current 290 prisoners may be transferred to a new prison being built in Allegany County.

MI – During October 2003, a 78-year-old woman was robbed and fatally shot in her home. Arrest warrants were issued for her grandson, John Robertson, 31, and Robert Eckstein, 23, both ex-prisoners. Lillian Mae Ross was shot in the neck late on 10/19/03 or early on 10/20/03. Both Robertson and Eckstein are from Flint and both were released from prison in the past year.

MT – A report released by the American Bar Association in October 2003, says that Montana's system for dealing with juvenile defendants assumes they are guilty. The report noted that indigent juveniles accused of a crime often meet with court-appointed lawyers for the first time only minutes before going before a judge. State officials claim the report contains inaccurate information but say a study of the system, by the state, might be a good idea.

MT – Montana citizens began flooding a media-funded Freedom of Information hotline in October 2003, after the media published a statewide survey of citizen access to public records. Attorney John Shonte said people didn't know about the law giving them access to state government records until the survey was done. The survey found that some officials, especially county sheriffs, illegally withhold public records on a regular basis.

National – Many prison wardens across the U.S. are admitting that nationwide prison budget cuts are making prisons more dangerous than they should be, reported Daniel Meginn in an article in a recent *News Week* entitled "Preying on the Predator." As prison staffing levels have dropped due to budget cuts, prisoner violence has increased. In 2000-2001 there were 42,000 reported prisoner-on-prisoner assaults, up 4 percent from the previous year.

[Source: *News Week*, 9/8/03]

NC – During Sept. 2003, the Cumberland County sheriff suspended his chief jailer, Dan Ford, for a week without pay. Sheriff Earl Butler said poor supervision is the cause of recent problems at the jail. Since the jail opened in February, two prisoners have committed suicide, two jailers have been accused of having sex with prisoners, and another jailer mistakenly released two prisoners, one of whom was a convicted felon.

NC – In October 2003, local prosecutors asked the state to handle the appeal of James Parker who was convicted 12 years ago in one of the state's biggest child sex abuse cases. Parker was convicted in 1991 of sexually assaulting four boys, primarily on the testimony of children. Now the *Charlotte Observer* has reported that 15 reported victims or witnesses have come forward to say that the crimes never happened or were not committed by Parker.

NM – A former female prisoner of the Grant County Detention Center filed a lawsuit in October 2003, claiming she was sexually assaulted when newly promoted Lt. Danny Udero removed her from her cell and forced her to have sex with him. The complaint alleges a jail official was notified of the rape but took no action.

NM – In October 2003, NM DOC prison officials said they will start treating prisoners for Hepatitis C, which infects approximately one-third of that state's prison population. Treatment can range from $15,000 to $30,000 per patient, but the DOC says that's better than having to pay $500,000 for each liver transplant.

OH – A man freed after being wrongfully convicted agreed to a $750,000 settlement with the state. Jimmy "Spunk" Williams, who spent 10 years in prison, said he would use the money, the largest such award paid by the state, to take a vacation. Williams' conviction was thrown out when his alleged victim recanted her testimony identifying him as the man who raped her when she was 12-years-old.

SC – In Sept. 2003, the SC DOC announced it will ask lawmakers for $50 million more next year to handle an expected increase in the number of state prisoners. The department's budget was cut $51 million in the past three years, and it ran a $28 million deficit last fiscal year and is projected to have nearly a $12 million deficit this year.

SC – On October 27, 2003, State Trooper Tony Caldwell, 37, and his father, Eugene Caldwell, 56, of

Spartanburg, were arrested and charged with selling crack cocaine.

TX – A former guard at a county boot camp, Manuel Vera, was found guilty of misdemeanor official oppression for manhandling a camp inmate and plunging his head in a toilet. The judge sentenced Vera to two years probation and ten weekends scrubbing toilets at the boot camp. Hup, Two, Three, Four.

TX – In Sept. 2003, Larry Allen Hayes became the first white prisoner to be executed for killing a black person since Texas resumed executions 21 years ago. Hayes was executed for killing his wife, Mary, who was white, and a convenience store clerk, Rosalyn Robinson, 18, who was black. Hayes was the 310th prisoner executed in Texas since 1982.

VA – According to a lawsuit filed by three Virginia commody venders against the VA DOC in Sept. 2003, the Department of Corrections is violating the law by allowing a private company to use prisoners to operate prison commissaries. The private St. Louis – based company was awarded a contract to manage the state's prison canteens. Traditionally, the DOC has managed the commissaries and chose venders to simply purchase items through competitive bidding.

WA – In October 2003, citing the growing number of sex offenders being imprisoned on McNeil Island, the state bought a bigger ferry. The ferry, purchase for $875,000, will carry guards and other traffic between Tacoma and the island.

WI – Thirteen jail guards at the Rock County Sheriff's Department accused of using department computers to view pornography on the Internet are suing to block a newspaper's access to records concerning the incidents. It's the first such lawsuit since Wisconsin's public records law was revised in 2002. ■

PLN Rejections Overturned

Earlier this year the Florida Department of Corrections began censoring *Prison Legal News* because that magazine carries advertisements for companies offering to help prisoners' families and friends reduce collect-call phone rates for accepting their incarcerated loved ones' phone calls. (Reported on in *FPLP* Vol. 9, Iss. 3.) In late Oct. '03, as soon as *PLN*'s attorneys filed suit against the censorship, the DOC abruptly reversed course and overturned all of the rejection decisions of *PLN*. It is not clear as of this writing how the DOC intends to deliver the withheld issues of *PLN* to prisoner subscribers since DOC rules provide censored publications must be sent home by prisoners or the publications will be disposed of by the institution 30 days after any administrative appeals become final.

The DOC has also notified *FPLP* staff that the Department intends to re-review the rejection of *FPLP*, Vol. 9, Iss. 3, that had reported on the *PLN* rejections and informed prisoners' families and friends how they could set up an alternative calling system to avoid the high rates of prison collect phone calls. No word yet from the DOC on the outcome of that re-review. We'll keep readers informed on these matters as they proceed.

Attention
Parole-Eligible Prisoners

On May 1, 2003, *FPLAO* launched the Parole Project to expose the corruption within the Florida Parole Commission and to work towards increasing the number of parole releases and to reduce the number of technical violations. Since the Project started, former Chairman Jimmy Henry has been forced to resign and he has been charged with numerous criminal offenses. In addition, four other top officials in the FPC have been forced to resign and corruption has been exposed throughout the system. As the Parole Project continues there is much more that is going to come to light about the FPC, *if* the Project receives the support it needs from parole-eligible prisoners and their families and friends. So far, several hundred parole-eligible prisoners have joined the Project and sent in the minimal financial support requested. Those prisoners' outside supporters have been contacted and many have joined the Project and made donations. However, many letters to outside supporters have gone unanswered and those people need to be reminded how important this project is and how their support is needed - right now.

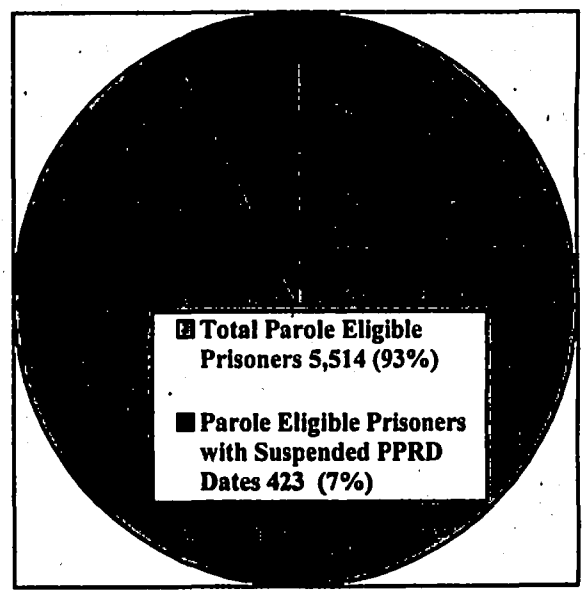
There are also a few thousand parole-eligible prisoners remaining who have not joined or sent support to the Project. Those are the ones who have given up, or think they will miraculously receive parole if they continue to act like a mouse in their holes, or those who are so negative they don't believe in anything anymore, or who are so institutionalized they are afraid to even support something that will benefit them. Before the Parole Project started, few, if any, parole-eligible prisoners would have believed the corruption within the FPC could ever be exposed, much less that the very chairman would be charged with criminal offenses. And there is much more to come, changes will be made, but it cannot be done without the participation and support of all parole-eligible prisoners and their families and friends.

Now is the time. All we need is YOUR minimal support. You can either be part of the solution or part of the problem. There is a lot remaining to be done; you are invited to be a part of it. To join the Parole Project, contact:

FPLAO, Inc.
Parole Project
Post Office Box 660-387
Chuluota, FL 32766

Parole-eligible Prisoners with Suspended PPRD Dates

As of June 30, 2002, out of Florida's 5,514 parole-eligible prisoner population 423 prisoners had their Presumptive Parole Release Dates (PPRD) suspended indefinitely by the Parole Commission pursuant to the "Extraordinary Review" provisions of Rule 23-21.155, Florida Administrative Code.



Source: Florida Parole Commission Statistics
Chart by FPLAO Parole Project

The very purpose of the First Amendment is to foreclose public authority from assuming a guardianship of the public mind through regulation the press, speech, and religion. In this field every person must be his own watchman for truth, because the forefathers did not trust any government to separate the true from the false for us....Nor would I.

Robert H. Jackson 1945

Corrections & Clarifications

FPLP is committed to accurate reporting. Contact our staff to report perceived errors.

In the last issue of *FPLP*, Vol.9, Iss. 5 in the front-page article "Lockup Hotel: Florida's Growing Prison Complex," Second paragraph, the FDOC annual budget was incorrectly stated to be 1.7 million dollars. The FDOC's annual budget is actually over $1.7 *billion*. We apologize for the typo.

Flashback: DOC Yesteryear

by Oscar Hanson

In part one of this study on the Department's history our readers were given the intriguing details of how the Department evolved into one of the largest prison complexes in the nation. Our study picks up where we left off.

Like today, in the early thirties Florida prisons held high-profile inmates, one of them was Giuseppe Zangara, who attempted to assassinate President-elect Franklin D. Roosevelt in Miami in February 1933. He shot at Roosevelt and missed, instead mortally wounding Chicago Mayor Anton Cermak, who was traveling with Roosevelt. Zangara was executed in the electric chair approximately a month after his trial (unlike today when appeals can take years to end before an individual may be executed).

Interestingly, in 1935 prisoners began producing cigarettes at a factory in Raiford. From that time until 1972 the tobacco was distributed in pouches along with rolling papers. The brand was called "Dee Cee Smoking Tobacco." After 1972 the state switched to rolled cigarettes until the practice ended in 1978, due to increasing knowledge about health risks. (It is interesting to note that there is little concern about health now because cigarettes are readily sold in the inmate canteens.)

By the end of the 1930s, lawmakers ordered prisons to discontinue dressing inmates in horizontally striped prison uniforms. Glades C.I. was established in 1932 as Florida Prison Farm #2. Inmates were sent from Florida Prison Farm #1 in Raiford to grow fresh vegetables for state institutions. In 1951 it was renamed Glades State Prison Farm. In 1961 it became Glades C.I. housing adult males.

The 1940's brought continued change within the prison system. In 1941 the Parole Commission was established and in 1943, in an effort to support the war effort, inmates addressed and mailed ration books to Florida citizens. They donated $12,000 toward the purchase of war bonds.

In 1945 the Department eliminated the use of leg irons. By the end of the decade, an increasing awareness of specialized populations led to a new facility for youthful offenders, Apalachee CI in Sneads. Seven years later, in 1956, the first adult female facility, Florida CI, opened in Lowell. Before Lowell, women were housed at Raiford.

Big Pine Key, Copeland and Loxahatchee Road Prisons and the Gainesville Work Camp were among the other institutions established at that time. Until 1957, responsibility for corrections in Florida had been divided among three state agencies: Agriculture, State Institutions and the State Road Department. The laws related to administrating the penal system had last been codified in 1899, and over half the original sections remained unchanged. Therefore, lawmakers adopted a new Correctional Code, which provided for the Division of Corrections, under the control of state institutions. Avon Park C. I. opened and C.O. Culver was appointed the first director of the Division of Corrections.

During this time, lawmakers believed that prisons could provide useful opportunities for preparing people to return to society as law-abiding citizens. The system emphasized rehabilitation and self-improvement (my how we have gotten off course from that ideology). Inmates were expected to make good use of their time, accept responsibility for mistakes they made in their lives, and take academic and vocational courses to raise their earnings potential after their release.

In the late fifties, the use of sweatboxes ended and Florida State Prison Work Camp was established. The state also saw the addition of a male unit at Florida CI, Apalachee CI West Unit, Marion CI and Caryville Work Camp. What is known now as Florida State Prison was constructed with a new execution chamber in 1961. It was designed as a maximum-security prison to house adult male inmates at all custody levels and remains the same today. This facility became known as Florida State Prison and "The Rock" was named Union Correctional Institution.

Marion C.I. was established in 1959 and was designated as Florida C.I. Men's Unit designed as a support unit for Florida C.I. Main Unit, a female facility. In 1976 it became a separate facility. Over time it changed names from Marion C.I. to Lowell C.I. but remains Marion C.I. today.

Prison administrators determined that extra money in prisoners' pockets created extra problems within the system, so in the early 1960s Florida established prison canteens. The canteens helped to use up extra money in the prisoners' possession and also provided visitors with refreshments. By the 1970s canteen sales reached more than $1 million per year.

In 1963, a landmark U.S. Supreme Court decision put Florida's prison system on the map. Fifty-one-year-old Clarence Gideon was arrested, charged, and convicted of breaking and entering a pool hall. Gideon, without the assistance of benefit of counsel, was then sentenced to prison. He appealed to the U.S. Supreme Court, and in a far-reaching decision the court guaranteed those charged with a felony the right to an attorney, whether they could afford one or not. As a result of that ruling, Florida established a statewide public defender system.

Gideon again appeared before a judge, this time with a court-appointed lawyer, and found himself acquitted. *Gideon's Triumph*, a book published in 1964 by Anthony Lewis, chronicled the decision, and Henry Fonda starred in the television version. *Time* magazine listed Gideon vs. Wainwright as one of the ten most important legal events of the sixties.

Florida continued to make strides in the correctional business by becoming the first state to file for accreditation with the American Correctional Council in 1968. That year the first state inmate began work release and Desoto Correctional Institution opened its doors.

In 1972 the United States Supreme Court decided the case of Furman v. Georgia, which held that capital punishment was unconstitutional and struck down state death penalty laws nationwide. As a result, the death sentences of 95 men and one woman on Florida's Death Row were commuted to life in prison. However, after the Furman decision, the Legislature revised the death penalty statutes in case the court reinstated capital punishment. In 1976 the Supreme Court overturned its ruling in Furman and upheld the constitutionality of the death penalty in the case of Gregg vs. Georgia. Executions resumed in Florida in 1979 when John Spenkelink became the first Death Row inmate to be executed under the new statutes.

Among the many correctional institutions that sprung up during that decade were Cross City, Lake, Broward, Lawtey, Zephyrhills, Polk, Baker and River Junction. Other facilities were opened such as Quincy Vocational Center. During this period there was serious overcrowding problems that forced DOC officials to house inmates in temporary tents at North Florida Reception Center located in Lake Butler, Florida.

Sumter Correctional Institution was established in 1965 to house minimum and medium custody male youthful offenders. Currently it houses adult male inmates. In the early days, Sumter was known as a "gladiator" camp for the young thugs entering the prison system.

In 1972 the Legislature provided funds to convert an abandoned Air Force Base into a correctional facility. Cross City C.I. was established as an educational facility, housing minimum and medium custody inmates. Later it became a mainstream prison housing adult male inmates.

Lake C.I. was originally established as a migrant labor camp, but more recently housed a bait farm and a beverage distribution warehouse. In 1973 it was converted to house adult mal e inmates.

In an effort to address the problem with inmate idleness and to capitalize on inmate labor, the Legislature established the Interagency Community Service Program to provide free inmate labor to counties, cities and municipalities.

In 1975, the Division of Corrections merged with the field staff of the Parole and Probation Commission to form the Department of Offender Rehabilitation. The 1970s continued to see an increase in the prison population and tents were put up to house the inmates. The Courts once again became involved, stating that prisons could not keep inmates in such inhumane living conditions. The prison population increased to 11,236. As a consequence, inmate Michael V. Costello filed the Costello vs. Wainwright lawsuit, focusing his grievances on the issues of overcrowding, poor food, sanitation and inadequate health care. The lawsuit was settled in 1993 based on the Department's apparent compliance with the settlement decree.

In 1978, the Department of Offender Rehabilitation became the Florida Department of Corrections.

In 1981, the Legislature established Prison Rehabilitative Industries and Diversified Enterprises (PRIDE), a non-profit corporation that put inmates to work and gave them marketable job skills, helping them find jobs upon release.

In 1983, Okalossa Correctional Institution opened and The Legislature passed the first sentencing guidelines and eliminated parole for offenders sentenced after October 1, 1983, with some exceptions. The prison population in June 1980 was 19,722.

New River-West C.I. was established in 1987 from the merger of two former satellites of the Reception and Medical Center. Butler Transient Unit is now the West Unit and houses adult male inmates.

In the 1980s the drug war was taking hold of the United States and corrections across the nation began a rapid growth. As the prison population skyrocketed, more tents were erected and a special session of the Legislature appropriated funds for additional prison beds. Administrative Gain time was implemented to relieve overcrowding. However, by the following year, Provisional Release Credits replaced Administrative Gain Time, which had tighter restrictions for eligibility. By 1989 the inmate population expanded to more than 38,000.

Three years later the number of prisoners mushroomed to 47,000. The Gainesville and Brooksville Drug Treatment Centers opened in 1992, since many offenders being admitted into the system had drug offenses. Later, state lawmakers authorized funding for more than 27,000 new prison beds and revised the sentencing guidelines for the first time since 1983.

In 1995 the Legislature implemented the Stop Turning Out Prisoners legislation requiring offenders to serve a minimum of 85 percent of their sentences. Prisoners who entered the system with life sentences had no possibility for parole. That same year six inmates escaped from Glades Correctional, prompting a statewide overhaul and implementation of physical security, including metal detectors, razor wire and radios. During this period the inmate population was near 62,000.

As a new century approached, an important part of Florida's prison past disappeared. "The Rock" at Raiford, which shut down its doors in 1985, was demolished in 1999. That same year the Legislature convened a special session and added the choice of lethal injection for prisoners on death row.

In recent history, the Department has made some major changes in the administration of its giant prison complex, most notably the creation of close management units designed to house inmates in 8x10 cells for up to 23 hours a day. This new type of incarceration was quickly labeled "warehousing," and prison advocates have questioned the healthiness of this type of treatment citing both physical and psychological problems.

In 1999, the Legislature implemented the Three Strikes for Violent Felony convictions, which provides that upon an offender's third violent conviction he shall receive a minimum mandatory sentence of life in prison. Also, passed was the Governor's anti-crime legislation 10-20-Life, which creates minimum mandatory sentences for possession, discharge, or injury when a firearm is used during the commission of a felony. As a result of these tough sentencing laws the inmate population climbed to over 71,000 in the year 2000.

In more recent history, the Department of Corrections has continued to grow into one of the largest prison complexes in the nation, second only to California and Texas. This year the Legislature sacrificed education, health care and other social services for Florida citizens in order to approve a $69 million dollar budget for the construction of more prison beds, including 14 new dormitories at various prisons across the state and construction of new facilities in Washington and Franklin counties. Also included in the allocation was funding to complete a 1,200-bed close management unit adjacent to Columbia C.I., a 1,400-bed annex at Santa Rosa C.I., and renovation funding to reopen Hendry C.I. By the summer of 2004, the Department expects to have over 83,000 prisoners in custody.

[Source: 1999-2000 DOC Archival Study; Florida Session Laws, 2003]

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Florida Prisoners' Legal Aid Organization Inc.

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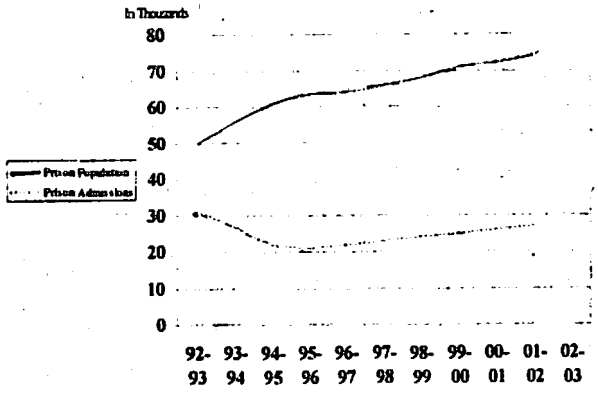
Prison Perspectives...

Prisoner Numbers: Despite a drop in crime, the number of prison admissions continues to grow. Longer sentences and mandatory minimum sentences mean the number of prisoners per 100,000 Florida residents is also on the upswing.



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Because of the large volume of mail being received, financial considerations, and the inability to provide individual legal assistance, members should not send copies of legal documents of pending or potential cases to *FPLP* without having first contacted the staff and receiving directions to send same. Neither *FPLP*, nor its staff, are responsible for any unsolicited material sent.

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

PRISON LEGAL NEWS

Prison Legal News is a 36 page monthly magazine which has been published since 1990. It is edited by Washington state prisoner Paul Wright. Each issue is packed with summaries and analysis of recent court decisions from around the country dealing with prisoner rights and written from a prisoner perspective. The magazine often carries articles from attorneys giving how-to litigation advise. Also included in each issue are news articles dealing with prison-related struggle and activism from the U.S. and around the world.

Annual subscription rates are $18 for prisoners. If you can't afford to send $18 at once, send at least $9 and *PLN* will prorate the issues at $1.50 each for a six month subscription. New and unused postage stamps or embossed envelopes may be used as payment.

For non-incarcerated individuals, the yearly subscription rate is $25. Institutional or professional (attorneys, libraries, government agencies, organizations) subscription rates are $60 a year. A sample copy of *PLN* is available for $1. To subscribe to PLN, contact:

Prison Legal News
2400 NW 80th Street
PMB 148
Seattle, WA 98117

See *PLN*'s Website at:
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