FLORIDA PRISON LEGAL

# Perspectives

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## PARENTS IN PRISON

**- PART ONE -**

by Linda Hanson

If you are a parent in prison you probably have many questions and concerns about your children and about your legal rights as a parent. Your children may be with a spouse, relative, group home or foster care. If your children are under the supervision of the Department of Children and Family Services, you may have serious concerns about your legal rights and the Juvenile Court proceedings involving your children. If your children are with a divorced spouse or if a legal guardianship has been established, you may have questions about how to reunify with your children once you are released from prison or how to protect your parental rights from being terminated by a hostile divorced spouse.

In this two-part treatise, we hope that many of the questions and concerns that incarcerated parents have about custody of their children, both during and after the time they are in prison will be addressed. The exposition that follows is not intended to replace your lawyer. If you have a lawyer, use him or her. Ask questions, give information, and tell him what you want for your family.

### I. FRACTURED FAMILY

Incarceration dramatically alters domestic relationships. To be imprisoned is to be cut off physically from one's spouse and children. For those with strong marital ties, the odds of surviving divorce are better than those with weak ties. But even for the most solid relationships, the stress and strain can wreck havoc on a marriage. It will take a couple with a lot of courage, strength and love to survive the test, but it can and has been done.

For those individuals who have a supportive and committed spouse, your fears and concerns about the family unity are not as severe as those who do not have a strong relationship. To keep your family intact, communication is a must. This can be accomplished through regular visits, phone calls, and letters. While visits and phone calls can be a burden to your spouse (since she or he may have depended on your income), greeting cards and letters provide the most economical way to communicate with your children. It will also foster the development of reading and writing skills for your children. If your child is too young to understand letters, draw pictures to send home. Make sure your spouse sends you report cards, school assignments or projects, and photos – plenty of photos. Likewise, send your children photographs of you. Again, communication is the key to maintaining family unity, and if successful, the fracture will heal

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ON THE INSIDE

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**FLORIDA PRISONERS' LEGAL AID ORG., INC**
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Fax (407) 568-0200
email: fplp@aol.com

**FPLAO DIRECTORS**
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Reduction of crime and recidivism, maintenance of family ties, civil rights, improving conditions of confinement, promoting skilled court access for prisoners, and promoting accountability of prison officials are all issues the FPLP is designed to address.

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upon your release. For those with life sentences, keep the faith alive and hope for a change in law or some executive decision that will open a door of opportunity for you. Never give up!

## II. DIVORCE

For those marriages that fail, the emotional trauma can be severe not only for the spouses, but the children, too. Once the divorce is final, usually the unincarcerated parent remarries and within time will seek to have her new husband formally adopt her children, which will terminate the incarcerated parent's parental rights. However, there are some barriers that will prevent such an adoption. Section 63.062, Florida Statutes requires biological and lawful parents to consent to an adoption before such adoption can take place. The exception to this rule is where a parent has deserted a child without affording means of identification, or who has abandoned a child or who has had their parental rights terminated by order of a court of competent jurisdiction. Prior to October 1, 1997, incarceration alone could not serve as a basis to terminate parental rights. However, after October 1, 1997, that was changed by the Florida Legislature.

During the first regular session of the Fifteenth Legislature, Florida's lawmakers passed a bill that authorized the termination of parental rights of the incarcerated parent who has been determined by the court to be a violent career criminal, a habitual violent felony offender, or a sexual predator. The bill also authorized termination of parental rights if the parent has been convicted of first or second degree murder or a sexual battery that constitutes a capital, life, or first degree felony. The most troubling portion of the bill was that termination could also be ordered when the period of time for which the parent is expected to be incarcerated will constitute a substantial portion of the period of time before the child will attain the age of 18 years. Because the termination of parental rights affects fundamental liberty interests protected by both State and Federal Constitutions, incarcerated parents who face termination of parental rights are entitled to appointment of counsel. See *O.A.H. v. R.L.A.*, 712 So.2d 4 (Fla. 2d DCA 1998).

Should adoption not become an issue with your ex-spouse, you may experience hurdles upon your release in order to be able to visit with your children. Upon your release you may need to modify any visitation schedule you may have been *given in* the original divorce decree This means you may be required to file a Petition to Modify Visitation under Family Rules of Procedure 12.905(a). You will be required to demonstrate that you can safely parent. Keep records of all your efforts to visit your child and follow and complete rehabilitation programs. Write down the time and date of everything you do for you and your child. This means keeping track of every phone call and visit with your child, your child's caregiver, a social worker or lawyer.

By keeping track of these calls and visits, you can prove that you care about what happens to your child. A judge is much more likely to believe that you called your child every Sunday if you show him your written record than if you simply tell the judge that you made the calls. Here are some steps you can follow to assure that you have documented all your efforts to stay in touch with your child.

1. Get a notebook and use it only for your child's case. Write down the date and time of:
   - Each call you make to or about your child;
   - Each visit you have with your child;
   - Each *call* you make to your child's caregiver, and what the call was about

2. Write letters to your child and save copies of those letters.
3. Attend any available programs, classes or meetings that your institution offers and record the dates and times of your attendance.
4. Keep copies of certificates showing that you attended those programs.
5. Ask program teachers and counselors of any programs you complete to write a letter about how you did.

Maintaining the parent-child relationship can be difficult while you are in prison, but it is not impossible. With a lot of work you can survive the ills associated with incarceration and upon your release, resume your active role as a caring, loving parent. It will require a lot of patience and determination but the rewards for you and your children are immeasurable.

[Note: Part Two of *Parents In Prison* will appear in the next issue of *FPLP*.]■

# Commentary: TROUBLES WITH CHARLIE

**by Lisa Stanton**

Remember the white-haired state senator a few years ago who ran on a platform of get-tough-on-crime and prisoners? It might help jog your memory to remember the guy in the T.V. political ads with the heavy steel prison cell door slamming shut behind him as he told viewers that he would "get tough on crime." Slam! Or you might remember him for his self-adopted nickname that called to mind the days of slavery for many and for a brief, but doomed, return to those days with Florida's reinstitution of prison chaingangs. Yep, that's him – "Chaingang Charlie" Crist.

Prisoners who were in the system in 1995/96 should remember Charlie. Besides being the most vocal, almost rabid, demagogue who harangued then Governor Lawton Chiles, FDOC Secretary Harry Singletary, and more sensible legislators into restarting chaingangs in Florida prisons, Charlie was the one behind changing prison lunches from hot meals to bologna and peanut butter sandwiches. He didn't stop there, though. Charlie really got on the "get tough" bandwagon of those years. He had no other meaningful issue that he could use to sell himself to voters with. The simplistic "get tough on prisoners" platform was ideal for Charlie, it didn't take much brains to stand on, it appealed to the public's mass media-instilled crime fear, and best of all, its targets were disenfranchised and couldn't vote against Charlie. Man, Charlie was tough.

During the mid-1990s Charlie raged against Florida's "country club prisons." As prisoners were being beaten senseless in prisons like Union Correctional Institution, Florida State Prison, and North Florida Reception Center by out-of-control prison guards, Charlie tried to have all of the televisions taken. Prison officials fought that, the tubes were their best babysitters and control tools. Charlie settled for a law prohibiting new TVs from being bought.

Next Charlie went after weightlifting and recreation equipment. Charlie painted a picture of prisoners doing nothing but watching TV, eating gourmet food, and becoming bulked-up Terminators just waiting to be released to wreak havoc on society. Prison officials agreed to restrictions on weightlifting access and no new recreation equipment was purchased.

**Ups and Downs**

Encouraged by Charlie's antics, many anti-prisoner good ol' boys *within* the DOC began pushing for other "get tough" changes in the system. The elimination of package permits and severe restrictions on allowable personal property followed, as did the lifting of the allowable profit caps on canteen prices, among other onerous changes.

Charlie thought he was a hit and thought he could ride his "get tough" horse up to Washington by running for a position in Congress. He lost that election, but was given a state job as a sanitation engineer, or some such title, for the next couple of years. He bided his time. When the next elections rolled around there was Charlie again running – out of all things – for Florida's top post in education. He ended up being appointed by Jeb Bush. It just went to prove P.T. Barnum's saying.

It didn't take long, however, for Charlie to be found out. Recently Gov. Jeb Bush, in an unprecedented move, had to appoint another person to be education commissioner – along with Charlie. Seems Charlie just wasn't good enough.

**Never Say Die**

Undaunted, Charlie has now set his sights on being Florida's next attorney general. To head off expected criticism about his qualifications for that post, in September Charlie revealed that he flunked the Florida Bar examination for an attorney's license twice. "Yes, I failed the bar exam twice; the third time I passed it," Charlie told reporters. "It's not something I'm particularly proud of, but I think the lesson is to never give up."

Charlie doesn't lack for money to campaign for the position; he holds a commanding lead in fundraising so far. Charlie faces Sen. Locke Burt in the Republican primary this year. Sen. Buddy Dyer of Orlando is the only Democrat in the race so far.

When asked whether he thinks his experience with the bar exam should

*have any bearing* on his ability to handle the attorney general's job, Charlie said, "I personally don't. I did pass the Bar. If anything, the fact that I had to take it three times gives me greater compassion."

Charlie's competitors in the race said they had heard about his problem passing the Bar exam, but that they had no immediate plans to use it against him in the campaign. Both Burt and Dyer passed the Florida Bar on their first try.

Bob Poe, chairman of the Florida Democratic Party, said he didn't know about Charlie failing the Bar exams and that his party had no plans at this time to *embarrass* Charlie by using the *information*. But, Poe commented, "He obviously isn't qualified to be education commissioner; otherwise the governor wouldn't have appointed another one. And now he probably isn't qualified to be the state's attorney general. Are we going to have the governor appointing a second attorney general to work with Charlie?"

Prisoners can't vote in Florida, but they can talk to their family members and friends who do vote about Charlie. I certainly intend to. ■

# INFORMED REJECTION OF A PLEA OFFER

by Corinda Luchetta, J.D.

Before you made the decision to go to trial and make the government prove its case against you, did your attorney advise you of any and all plea offers made by the prosecution? Did your attorney explain to you what would happen, what your sentence might be if you lost the trial? Did your attorney tell you whether or not you had a chance at trial, and, finally, did your attorney tell you what he (or she) thought you should do? Did your attorney make a recommendation to you?

If your lawyer did not do all of the above, you may have received ineffective assistance of counsel. In *United States v. Purdy*, 208 F.3d 41 (2d Cir. 2000), the appellate court provides an informative and helpful discussion of the basic requirements for a criminal defense lawyer's pretrial representation of an individual who has been accused of a criminal offense. According to the court, "defense counsel must give the client the benefit of counsel's professional advice" on the crucial decision of whether or not to plead guilty. This includes communicating the terms of any plea offer, analyzing the pros and cons of the prosecution's case, and comparing the sentences to which the client might be exposed if he or she decides to either plead guilty or go to trial.

Although your attorney cannot make the ultimate decision for you, that is, he or she cannot decide whether or not to go to trial, he or she is obligated to advise you of the chances of winning or losing, and the likely sentence if the case is lost following a jury trial. If counsel fails to do so, his or her failure may be the basis of a post-conviction claim of ineffective assistance of counsel.

In *United States v. Boria*, 90 F.3d 36 (2d Cir. 1996), the defendant's attorney did not give his client any advice on the "wisdom of accepting or rejecting the state's initial plea offer." Counsel's failure was so egregious the court found the lawyer "failed to meet the minimal requirements of constitutional competency" and granted the defendant's petition for writ of habeas corpus because the deprivation of Boria's right to counsel resulted in substantial prejudice to him. Indeed, according to the court's opinion, under the original offer, Boria would have been sentenced to a prison term of between one and three years. However, following Boria' s rejection of the offer, he went to trial, was convicted and sentenced to 20 years to life.

So if you're currently serving an extensive prison sentence because your attorney didn't *tell you* about the prosecution's offer, or didn't tell you to take the offer because it was likely you would lose at trial and end up serving twice the time, you may have a post-conviction claim of ineffective assistance of counsel. Of course, the rules regarding motions for post-conviction relief on these types of claims contain strict time limits and other legal requirements which must be met in order to bring the claim, but it may be something worth looking into, or possibly consulting an attorney who specializes in the area of post-conviction relief.

*Corinda Luchetta, a former federal prosecutor, now practices in Tampa, Florida as a partner in the firm of Giordano & Luchetta.*■

# INS MUST RELEASE CRIMINAL IMMIGRANTS

Let the exodus begin. More than three weeks after the United States Supreme Count issued its landmark decision that the Immigration and Naturalization Service (INS) cannot detain convicted immigrants indefinitely (once they have completed their prison sentences), release is on the horizon, even if their native countries refuse to accept them.

On Thursday, July 19, 2001, Attorney General John Ashcroft reluctantly ordered the INS to begin releasing 3,400 foreign nationals who

have completed prison sentences in the United States but whose home counties won't take them back.

The Department of Justice and the INS are required to follow the Supreme Court's ruling and to apply the release procedure to those who are currently detained. The INS policy, prior to the court ruling, allowed detention of criminal immigrants as long as necessary to protect public safety. Their status in detention limbo is a result of reforms passed in 1996, when Congress limited the rights of noncitizens who commit crimes and made it easier to deport them.

Unhappy about the prospect of countries like Cuba, Cambodia, Vietnam, and Laos who refuse to take their nationals, Ashcroft may ask Secretary of State Colin Powell to "discontinue granting visas" to citizens of those countries who do not cooperate.

Although the release of these criminal immigrants might make some people uneasy, it is fundamentally unfair to lock people up indefinitely. Most expected to serve the amount of prison time that was imposed upon them, but these people had no idea when they getting released once INS detained them and this was a psychological nightmare for them all.

[Source: *The Washington Post*, 6/20/01] ■

# DOC OFFICIAL ARRESTED FOR MOLESTING TWO YOUNG GIRLS

Ronald L. Nichols, a correctional lieutenant for the Florida Department of Corrections was arrested October 1, 2001, accused of molesting two 8-year-old girls over a two-year period.

Nichols, who works at Hillsborough Correctional Institution was officially charged with committing a lewd and lascivious assault on the girls, each first degree felonies.

Nichols turned himself in to the Orient Road Jail shortly after 6:00 p.m. on Monday, October 1, said Hillsborough Sheriff's Lieutenant Rod Reder. The warrants were issued the last week of September, 2001. Affidavits on the warrants accuse Nichols of molesting one girl in 1999 and the other girl in 2000. Bail was set at $50,000. As of late Monday night, Nichols remained in jail.

[Source: *The Tampa Tribune*, 10/2/2001] ■

# NEW PROCEDURE DIRECTIVES ON LAW LIBRARIES

All Florida prisoners are aware that after the class action access-to-court *Hooks* case was ended in Dec. 2000 the Florida Department of Corrections almost immediately began the process to change the rules that had been approved by the court. Those amendments, codified at Chapter 33-501.301, Florida Administrative Code (F.A.C.) were formally adopted in Nov. 2001. Largely unknown to the prison population, however, is that during that same month the DOC also adopted 3 new Procedure Directives (P.D.s) concerning law libraries. Those new directives, which eliminate all local Institutional Operating Procedures on law library operations, are numbered and entitled: P.D. 501.301, Law Library Programs; P.D 501.303, Law Library Interlibrary Loan Services; and, P.D. 501.304, Acquisition and Disposal of Law Library Materials.

Notably, where the amendments to Chapter 33-501.301, F.A.C., deleted where law libraries would be located and the specific list of which books are required to be available in the law libraries, that information is now found in the new P.D.s – with some significant changes from what used to be in Chapter 33-501.301.

It is also noted that the DOC skipped releasing a P.D. number 501.302 at this time, which may indicate that a further P.D. is planned on law libraries to fill that vacancy sometime in the future.

It is suggested that all prisoners review the new law library rules and directives.

[Note: Shortly after the *Hooks* case ended the department's Law Library Services attorney, Joe Belitsky resigned from the DOC and went to work for the attorney general's office. From cases *FPLP* staff has seen recently it appears Belitsky is being assigned to represent the DOC in any cases filed by prisoners concerning the law libraries or denial of access to court. This is an advantage that should be exploited – ed] ■

# CHALLENGE TO FDOC POLICIES SURVIVES MOTION TO DISMISS

Florida prisoner Mark Osterback initiated a federal complaint seeking declaratory and injunctive relief on three independent claims related to policies and procedures of the Florida Department of Corrections. Those

claims are: (1) the FDOC's policy of placing prisoners in confinement prior to a determination of guilt, which prevents the prisoner from collecting evidence and that the availability of staff assistance is ineffective because staff will not help collect evidence for his defense; (2) the FDOC rules do not provide a period of time for non-legal mail to be held when rejected for various reasons, which vitiates any meaningful opportunity to challenge the decision to return the non-legal mail; and (3) the FDOC's policy of disposing of personal property deemed contraband without affording the prisoner an opportunity for meaningful challenge or review.

The FDOC asserted three defenses: (1) a blanket assertion that the claims are barred by the statute of limitations without identifying which claims were barred; (2) that the prisoner lacks standing to challenge disciplinary proceedings, mail review, or contraband policies of the department; and (3) non-exhaustion of administrative remedies.

Magistrate Judge William C. Sherrill, Jr., of the United States District Court for the Northern District of Florida issued a Report and Recommendation following his analysis of the case. District Judge William Safford adopted the Report which found that the statute of limitations was applicable to the claims that occurred prior to February 27, 1997. Because Osterback filed his complaint on February 27, 2001, a four year period of limitation precluded review of those claims occurring prior to February 27, 1997. However, those claims that occurred after February 27, 1997 would survive.

The Report went into a detailed analysis on whether Osterback had standing to challenge the disciplinary proceedings, mail review and contraband policies. To find Osterback had standing to seek injunctive relief the Court would need to determine that he faced similar injury in the future. The Court recognized that the complaint alleged that correctional officers were following department policies and that the prisoner could reasonably expect to be affected by these rules and policies in the future at any institution where he may be housed as the rules are apparently applied on a state-wide basis. More pointedly, the Court recognized that Osterback, who is serving a life sentence, faces a strong likelihood of being given a disciplinary report in the future because as the Court noted, an inmate does not have to break the law of the prison to come before the disciplinary hearing board; rather, a correctional officer merely has to allege that the prisoner did so. The Court also recognized that Osterback has shown that the policies regarding mail and contraband have been consistently applied to him at many different institutions during his tour thus he has sufficiently demonstrated that the application of FDOC's policies are not speculative. Therefore, the Court determined that Osterback has standing to seek injunctive relief in this case.

As to FDOC's claim of non-exhaustion, the Court correctly rejected the FDOC's claim since Osterback had filed administrative grievances that were addressed on their merits notwithstanding the FDOC's contention that he failed to demonstrate that he properly exhausted "specific" incidents as opposed to multiple incidents.

The case has been remanded for further proceedings. See *Osterback v. Moore*, 15 Fla. L. Weekly (Fed) D37 (M.D. Fla. 11/5/2001). ■

# FDOC IGNORED WARNINGS: PRISONER MURDERED AS A RESULT

Gainesville – While waiting to be sentenced for killing one woman and trying to kill another, Ricardo Gill, 32, warned the judge to either give him the death penalty or he would do something else to get it. Instead, citing to Gill's life-long history of mental illness, on July 20, 2001, Alachua County Circuit Court Judge Stan Morris sentenced Gill to life without parole. That afternoon Gill was turned over to the Florida Department of Corrections (FDOC) and four days later, despite several warnings to prison officials, Gill's cellmate was found strangled to death.

Robert Rush, Gill's attorney, commenting after Orlando Rosello was found strangled in Gill's cell at the FDOC's North Florida Reception Center (NFRC) with a torn-up bed sheet, said, "There's no reason this should have happened." He said his client should never have had a cellmate and that prison officials should have known that.

For almost his entire life Gill had problems, his lawyer said. Dysfunctional, he was kicked out of 2 kindergarten classes and 2 schools during the 1st grade. By the time he was 10-years-old, Gill was confined in a mental institution in Miami. "There was a prophetic note from the psychiatrist that says this child needs intensive rehabilitative therapy," Rush said, and quoting from the memo, "If he doesn't get it, it's going to be much more expensive in the future."

By 14 Gill was behind bars. After serving 2 years, he was out at 16 but then locked up again at 17 – and staying in prison for the next 13 years. During those years Gill's record wasn't good. While in prison Gill bit a guard,

threw feces at another, slashed his wrists with a broken light bulb and set his bed on fire.

Gill only stayed out of prison 11 months after being released. During that time he worked in Gainesville as a car salesman. But, police say, he also killed Beverly Moore, a Gainesville travel agent that he had met in a bar, and attempted to kill another woman that he had dated. Moore was stabbed to death and found in her apartment. The other woman was stabbed in the back with a butcher's knife.

Gill pleaded guilty in both cases, but claimed he didn't commit the crimes. He told the judge, however, he didn't want to stay in prison the rest of his life for something he didn't do and so asked for the death penalty.

In August 2000, while waiting to be sentenced, Gill told a Gainesville reporter, "I'm going to make the judge sentence me to death. If he doesn't do that, he's going to make me somebody I don't want to be. He's going to cause me to do something that's going to make the next judge give me the death sentence."

After being sentenced to life, Gill was taken from Alachua County jail to the North Florida Reception Center, where prisoners are processed when entering prison. Three times, said spokesman Sgt. Jim Troiano, the Alachua County Sheriff's Department warned prison officials about Gill's behavior. "Once we got there, we talked to a sergeant and a lieutenant, and apprised them of... his past suicidal tendencies, his uncontrollable disruptive behavior, how very manipulative he was, as well as letting them know that he had made a comment... that if he wasn't sentenced to death, he would do something to be sentenced to death," said Troiano. Because of his behavior, Gill had been kept in solitary confinement for 2 years at the Alachua County jail.

At NFRC prison officials placed Gill in a cello with another prisoner. Gill's first cellmate was moved when Gill threatened him with violence. But then Orlando Rosello, 49, was placed in Gill's cell. Rosello, who was serving a 20-month sentence, was at NFRC for medical treatment.

Only 2 days after arriving at NFRC, on July 22, Gill wrote to the *Gainesville Sun* stating: "I, Ricardo Gill, took the life of Orlando Rosello by strangulation." That letter was mailed the next day. On Tuesday, the 24th, at 6:45 a.m., prison guards found Rosello dead. On Wednesday, the *Sun* received Gill's letter.

FDOC Secretary Michael Moore declined to comment on the murder, saying that Rosello's death is under investigation by the Florida Department of Law Enforcement (FDLE). "I can't comment on it. I don't have all of the facts," Moore told a reporter before the DOC's lawyer interrupted him, telling him not to say anything. The FDLE, said spokesman Al Dennis, is not only looking into Rosello's murder, but is also looking into Gill's claim that prison guards beat him the night he entered NFRC in Lake Butler.

Rosello was buried in the prison cemetery at Union Correctional Institution in Raiford on July 27, his tombstone – a license plate made at that prison's tag plant. No relative had claimed his body. Gill is now at Florida State Prison near Starke – in a single-man cell. [Source: *Miami Herald*] ■

# TERRORIZING THE CONSTITUTION

The Justice Department, Attorney General John Ashcroft declared in his confirmation hearings, is "the role model for justice the world over." But under Ashcroft that role model is rapidly losing the confidence of allies abroad and at home in the campaign against Al Qaeda. Spain – a country that after decades of Basque separatist movement bombings knows about fighting terrorists – openly declaring that it will not extradite eight imprisoned Al Qaeda suspects if they could face military tribunals or the death penalty. Around the United States police chiefs – who know they need the ground-level trust of immigrant communities – are resisting Ashcroft's plan for an open-ended trawl among young men from Middle Eastern nations. Serious voices across the nation say that secret immigration trials, unreviewable military tribunals and warrantless monitoring of attorney-client conversations have little to do with real security.

While the cops speak up, most of Washington keeps its head down. Just before Thanksgiving, Senate majority leader Tom Daschle ducked questions about the military tribunals. Daschle now says he is "concerned" but adds, "until we see exactly how they will promulgate this new concept it's pretty hard for us to come to any conclusions." Translation: I'd rather not deal with this.

A few Congressional voices are at last beginning to ask bolder questions. It's mildly encouraging, for instance, that Democratic Senator Patrick Leahy succeeded in getting GOP colleague Orrin Hatch to sign a letter "inviting" Ashcroft to explain himself before the Judiciary Committee. In the House, Bob Barr and John Conyers have joined forces to breathe down the neck of their slow-moving judiciary chairman, James Sensenbrenner. What has legislators rumbling is the sudden realization that through a barrage of executive orders and legal maneuvers, Ashcroft and Bush are systematically seizing on the Congressional prerogative to make the law governing crime and punishment.

Pollsters declare that civil liberties have little resonance with the broad public now. But the public's sophistication and even outrage about legal issues sometimes runs ahead of the Beltway. What it will take to ignite that latent sensibility, though, is leadership, starting with vigorous questioning of Ashcroft when he appears before Leahy's committee.

The need for those questions grows daily. On November 27 Ashcroft announced that at least 550 people rounded up after September 11 remain in federal custody on immigration violations and another 55 on federal criminal charges. But once again he refused to provide details – claiming, absurdly, that he was protecting the privacy of the detainees. Still left unanswered are basic questions including how many have been detained on the basis of secret evidence, a discredited practice that Ashcroft is now trying to revive.

The relentless Spanish investigative magistrate Baltasar Garzon, prosecutor of Gen. Augusto Pinochet as well as those eight Al Qaeda suspects, warns against the direction Ashcroft seems to be headed in: "It is not sufficient to say: 'I have the evidence but I cannot make it public for fear of endangering my sources.' That is not a serious approach – it is simply illegal." ■

# CONTEMPLATING DNA TESTING?

The spiral make-up of DNA have moved its physical attributes into the ideological realm. As Florida's Legislators and the Florida Supreme Court tangle themselves in a web of who has the better way to deal with DNA testing for convicted prisoners, the men (and women) whose fate lies in the balance are holding their breath.

Last May Gov. Jeb Bush signed a bill giving inmates the chance to make a request for DNA testing to prove their innocence regardless of the form of the disposition of their case. However, on October 18, 2001, the Florida Supreme Court issued a decision by a 4-3 majority that modified the rule providing DNA testing to exclude cases in which a defendant plead guilty or no contest.

The Court opinion deals in part with the whole substance vs. procedure argument and the inherent separation of powers issue that reportedly came up repeatedly during oral argument. Highlights of the Court's decision are as follows.

In February 2001, the Criminal Rules Committee filed an emergency petition asking the Supreme Court to adopt new rule 3.853 providing for post conviction DNA testing. During the 2001 regular session, and after the Criminal Rules Committee filed its original petition, the Legislature passed DNA legislation, which, among other things, provides for post-sentencing DNA testing. See ch. 2001-987 Laws of Florida (creating section 925.11 and 943.3241 and amending section 943.325, Florida Statutes). After considering the proposed rule, which varied from the new legislation in several aspects, the court returned the matter to the Criminal Rules Committee for expedited reconsideration in light of the new legislation. What followed was an amended petition published for comments and oral argument was set for August 28, 2001.

Proposed rule 3.853 varies from the new DNA legislation passed by the Legislature. The most significant variation is the provision that addresses who may seek post conviction DNA testing and the laboratory or agency that must conduct the testing. Chapter 2001-97, section 1, Laws of Florida, create section 925.11 (1)(a), Fla. Stat., which provides that a person, regardless of how his case was resolved, may move the court to order post-sentencing DNA testing. Like the legislation, proposed rule 3.853 (a) authorizes DNA testing for those who have been tried and convicted but excludes those who entered guilty or not guilty pleas.

The majority of those who filed comments in opposition to proposed rule 3.853 raised separation of powers concerns, taking the position that subdivisions (a) and (c)(7) deal with substantive matters that are within the sole purview of the Legislature. The proponents of the rule maintain that these provisions are either procedural in nature or within the Supreme Court's constitutional authority to issue writs of habeas corpus under Article V, Section (8) of the Florida Constitution.

After oral argument the Court adopted the proposed rule without reaching the constitutional issues raised in the proceedings. The Court modified proposed subdivision (a) of the proposed rule to explain that the new rule simply provides procedures for obtaining DNA testing under section 925.11, Fla. Stat. Subdivision (b) of rule 3.853 lists the required contents of a motion seeking DNA testing. Subdivision (b)(4) was modified to require a statement that identification of the movant is a genuinely disputed issue in the case, and why it is an issue, or an explanation of how the DNA evidence would either exonerate the defendant or mitigate the sentence that the movant received.

Subdivision (c) of the new rule provides general procedure to be followed after a motion for testing is filed. Specifically, the Court amended subdivision (c)(7) to allow the court, on showing of good cause, to order testing by a laboratory or agency, certified by the American Society of Crime Laboratory Directors or the National Forensic Science Training Center, other than the FDLE or its designee when requested by a movant who can bear the costs of such testing.

Subdivision (d) of the new e provides a two-year time iitation and subdivision (d)(2) ɔvides that a motion to vacate ed under rule 3.850 or a motion ed under 3.851, which is based lely on the results of the court-dered DNA testing obtained der this rule, shall be treated as ising a claim of newly-scovered evidence and the time riods set forth in rules 3.850 and 851 shall commence on the date at the written test results are ovided to the court, the movant, id the prosecuting authority irsuant to subsection (c)(8).

Editor's Note: FPLP provided evious coverage on this proposed NA testing rule in Vol. 7, Issues and 4.] ■

# STATE AGENCY HOME VENUE PRIVILEGE

AN OVERVIEW
by Oscar Hanson

: is well-established within the ommon law that venue in an ction against a governmental gency lies in the county where the gency maintains its principle ieadquarters. See: *Carlisle v. Game & Fresh Water Fish Comm'n*, 354 So.2d 362, 363 (Fla. 1978). This rule, often called the "home venue privilege," arises out of common law concepts of sovereign immunity, which provides a government immunity from being sued in its own courts without its consent. The home venue privilege is, however, subject to a limited exception known as the "sword-wielder" doctrine. Figuratively, this exception allows a plaintiff to bring an action against a state agency as a shield from an attack upon the plaintiff by the state's sword.

As an initial matter, the parties dispute who bears the burdens of proof and persuasion when establishing the application of the home venue privilege or the application of the sword-wielder exception to that privilege. This issue is admittedly confusing because, pursuant to established case law, the burdens shift back and forth between the parties. See: *State Dep't of Labor & Employ. Sec. v. Lindquist*, 698 So.2d 299 (Fla. 2d DCA 1997). When an agency wishes to challenge a plaintiff's venue selection, it must first raise the issue in a motion to dismiss or an answer to the complaint. The agency has the burden to prove its right to the governmental home venue rule. Cf. *Tropicana Prods., Inc. v. Shirley*, 501 So.2d 1373 (Fla. 2d DCA 1987).

Typically, the headquarters of the agency is established by law or is otherwise an admitted fact, and no additional evidence is required to prove the general application of the home venue privilege. The burden then shifts to the plaintiff to plead and prove facts establishing an exception to the general rule. *Id.* at 1375. If the plaintiff pleads these allegations and presents evidence to establish the sword-wielder exception, then the agency must respond with conflicting evidence or the plaintiff prevails on his venue selection. See: *Lindquist*, 698 So.2d 299. Finally, if the agency responds with conflicting evidence, then the burden of persuasion returns to the plaintiff, and the trial court must resolve the factual dispute. Id.

In *Lindquist*, it appears that the plaintiffs anticipated the venue issue and pleaded undisputed facts in their initial complaint sufficient to overcome the application of the home venue privilege. Once a plaintiff has pleaded such facts, Lindquist holds that the agency must respond with evidence challenging the plaintiff's allegations, and only then does the burden of persuasion return to the plaintiff to prove the basis for its venue selection. In Lindquist, the plaintiffs made sufficient allegations to support the application of the sword-wielder exception, and the agency never responded with evidence that would cause the burden to return to the plaintiff.

Under the sword-wielder doctrine, an agency can be sued in another country if the original action complained of occurred within the county or there is an imminent threat of such action. Such a suit can be filed outside the agency's home venue only if the primary purpose of the lawsuit is to obtain direct judicial protection from an alleged unlawful invasion of the constitutional rights of the plaintiff within the county where the suit is instituted. See *Dept. of Corrections v. Ross*, 680 So.2d 622 (Fla. 5th DCA 1996). Although the Supreme Court of Florida has officially recognized the sword-wielder doctrine in *Carlisle*, it has not yet applied the doctrine in any case.

Of particular interest to litigants challenging the constitutionality or validity of a statute, rule, or regulation, is the use of a declaratory judgment pursuant to Section 86.011, Florida Statutes. The circuit courts have jurisdiction to declare rights, status and other equitable or legal relations whether or not further relief is or could be claimed. When contemplating a declaratory action a prospective litigant should become familiar with the home venue privilege as well as the sword-wielder doctrine. See: *Fish and Wildlife Conv. Comm. v. Wilkinson*, 26 Fla. L. Weekly D 2026 (Fla. 2d DCA 8/17/01) ■

# POST CONVICTION CORNER

by Loren Rhoton, Es

The focus of many of my previous articles has been on a motion for post conviction relief which is filed with the trial court pursuant to Florida Rule of Criminal Procedure 3.850. As Rule 3.850 is probably the most used post conviction vehicle it makes sense for someone who is researching his or her post conviction case to dedicate a substantial amount of time to an attack pursuant to said rule. However, an often overlooked and worthwhile post conviction possibility is an attack on the appellate process via a Florida Rule of Appellate Procedure 9.141(c) Petition for Writ of Habeas Corpus alleging ineffectiveness of appellate counsel.

In the State of Florida a defendant has a right under the Florida Constitution to pursue a direct appeal from a trial court's imposition of a Judgment and Sentence. *See* Art. V., §4(B), Florida Constitution. And, where a state provides for a direct appeal as a matter of right (as Florida has done), a criminal defendant has a right to counsel to help prosecute his appeal. *Douglas v. California*, 372 U.S. 353 (1963); and, *State v. Weeks*, 166 So.2d 892 (Fla. 1966). Most importantly, the right to appellate counsel is the right to effective assistance of such counsel. *Evitts v. Lucy*, 469 U.S. 387, (1985).

Florida Rule of Appellate Procedure 9.141(c) provides the authority for a petition for writ of habeas corpus alleging ineffective assistance of appellate counsel. The 9.141(c) petition must be filed with the appellate court to which the direct appeal was or should have been taken. As with Rule 3.850, a 9.141(c) petition has a period of limitations. A petition for belated appeal alleging ineffectiveness of appellate counsel must be filed within two years of when the conviction in question becomes final. The only way around the two year period of limitations is if the petitioner alleges under oath that he or she was affirmatively misled about the results of the appeal by appellate counsel, Florida Rule of Appellate Procedure 9.141(c)(4)(B).

A rule 9.141 petition must provide the following:

- The date and nature of the lower court's order to be reviewed
- The name of the lower court rendering the order
- The nature, disposition, and dates of all previous proceedings in the lower tribunal and, if any, several fronts. Firstly, if the issue to be raised goes to the heart of the case the appellate court needs to be made appellate courts
- If a previous petition for a belated appeal was filed, the reason the claim in the present petition was not raised previously
- The nature of the relief sought, and
- The specific acts sworn to by the petitioner that constitute the alleged ineffective assistance of counsel

Typically the relief that will be requested is a belated appeal whereby the petitioner can raise an appellate issue that could have, and should have been raised in the original direct appeal. Therefore, the issue to be raised in a petition for writ of habeas corpus alleging ineffectiveness of appellate counsel is that counsel was ineffective for failing to raise a meritorious issue. *Groover v. Singletary*, 656 So.2d 424 (Fla. 1995). The actual legal issue that was not raised on appeal is only relevant to determine whether the petitioner should be afforded the opportunity to present that issue in a belated appeal. *Rogers v. State*, 698 So. 2d 1178 (Fla. 1996).

As with ineffectiveness of trial counsel claims, the test for ineffectiveness of appellate counsel is a two pronged test where both ineffectiveness and prejudice to the petitioner must be established. Thus, to determine whether appellate counsel was ineffective, the appellate court's evaluation is limited to: "first, whether the alleged omissions are of such magnitude as to constitute a serious error or substantial deficiency falling measurably outside the range of professionally acceptable performance and, second, whether the deficiency in performance compromised the appellate process to such a degree as to undermine confidence in the correctness of the result." *Groover v. Singletary*, 656 So.2d 424, 425 (Fla. 1995).

Once a petition alleging ineffectiveness of appellate counsel is filed, the appellate court will often issue an Order to Show Cause to the State directing the State to reply to the Petition. Often the State will reply, without any supporting evidence, that appellate counsel should not be deemed ineffective for choosing to pursue other stronger appellate arguments in lieu of the one that counsel is alleged to have been ineffective for omitting. *See Julius v. Johnson*, 840 F.2d 1533 (11th Cir. 1988). This is a veiled strategy argument that can be rebutted on aware of the importance of the issue. An issue that is crucial to the validity of the conviction and goes to the

heart of the case "...cannot be excused as mere strategy or allocation of appellate resources." *Wilson v. Wainwright*, 474 So.2d 1162 (Fla. 1985). Additionally, it is important to point out to the court that a court's finding that some action or inaction by counsel was tactical is generally inappropriate without an evidentiary hearing. *See, Thomas v. State*, 634 So.2d 1157 (Fla. 1st. DCA 1994).

If the appellate court determines that the petitioner has demonstrated both ineffectiveness of appellate counsel and resulting prejudice, then a belated appeal will likely be granted. At that point the petitioner will then be able to pursue the issue that was previously omitted from his or her original direct appeal and the rules of appellate procedure will all apply to any further proceedings. Hopefully this article has added another angle of attack for some people who were previously unaware of Rule 9.141(c). Rule 9.141(c) may or may not be something that is helpful, depending on the case, but it is always something worth looking into when one is researching post conviction options.

*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 post conviction/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.*

## In memory of those who have passed on...

### October

Carlyle Collins - Everglades
Jimmy Coleman - NFRC
Gary W. Sayers - NFRC
Bruce D. Simmons - Moore Haven
Greg Williams - Everglades
Frederick R. Thomas - NFRC
Jimmy Wilson - NFRC
Charles E. Stone - Union
Harvey J. Smith - NFRC
Carlos Roman - NFRC
Mary L. Bayer - Gadsden
James Fussell - NFRC
Segundo Forteza - NFRC
Thomas E. McKeithen - NFRC
Willie Mitchell - Okeechobee
Timothy L. Velie - NFRC
Otis L. Hardrick - Taylor

### November

Windford Mines - NFRC
Billy R. Whetstone - NFRC
Christopher E. Taylor - FSP
Kevin L. Smith - Everglades
Raymond Bennett - CFRCS
Herman Watson - NFRC

### Nov. continued

John C. Briley - NFRC
William E. Jamison - NFRC
Jay J. Hale - Tomoka

### December

Paul Lemire - Marion
James M. Kennedy - Union
Leroy Anderson - Jackson
Burt James - SFRC
Charles A. Williams - CFRCS
Juan Garcia - Everglades
Vanessa R. Miller - Lowell W
Maurice Lamorris - NFRC
Edward L. Rodriguez - NFRC
John R. Wilson - CFRC
Burie Davis - NFRC
Perry L. Sellers - NFRC
Dan Williams - NFRC
Daniel K. McGowin - New River W
Jimmie L. Maxie - NFRC
Dwayne Dorsey - Everglades
James A. Jones - NFRC
James C. Johnson - Glades
Lawrence Singleton - NFRC
Roger Dolan - NFRC

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# NOTABLE CASES

by Brian Morris & Oscar Hanson

**The following are summaries of recent state and federal cases that may be useful to or have a significant impact on Florida prisoners. Prisoners interested in these cases should always read the full case as published in the Florida Law Weekly (Fla. L. Weekly); Florida Law Weekly Federal (Fla. L. Weekly Fed.); Southern Reporter 2nd Series (So.2d); Federal Supplement 2nd Series (F.Supp.2d); Federal Reporter 3rd Series (F.3d); or Supreme Court Reporter (S.Ct.).**

## FEDERAL

### U.S. Supreme Court

*Becker v. Montgomery*, 121 S.Ct. 1801 (2001)

Failure to sign timely notice of appeal did not require the Court of Appeals to dismiss appeal. Imperfections in noticing an appeal should not be fatal where no genuine doubt exists about who is appealing, from what judgment, to which appellate court.

*Booth v. Churner*, 121 S.Ct. 1819 (2001)

Prison Litigation Reform Act (PLRA) requires administrative exhaustion prior to inmate's filing of civil rights lawsuit even where grievance process does not permit award of money damages and inmate seeks only money damages, as long as grievance tribunal has authority to take some action in response to inmate's complaint.

*Alabama v. Bozeman*, 121 S.Ct. 2079 (2001)

Interstate Agreement on Detainers (IAD) basically (1) gives a prisoner the right to demand a trial within 180 days, and (2) gives a state the right to obtain a prisoner for purposes of trial, in which case the state (a) must try the prisoner within 120 days of his arrival, and (b) must not return the prisoner to his original place of imprisonment prior to that trial. However, the IAD does not bar a receiving state from returning a prisoner before his trial is complete when it would be mutually advantageous, and the prisoner accordingly waives his rights under IAD to be tried prior to his return to sending state. Absent a knowing and voluntary waiver, the literal language of Article IV (e) bars any further criminal proceedings when a defendant is returned to the original place of imprisonment (i.e., the sending state) before his trial.

*Duncan v. Walker*, 121 S.Ct. 2120 (2001

Application for federal habeas corpus review is not "application of State post conviction or other collateral review," within meaning of tolling provision of the Antiterrorism and Effective Death Penalty Act (AEDPA); thus, time for filing federal habeas petition was not tolled during pendency of a petitioner's first federal habeas petition.

### Federal Circuit Court

*Harrell v. Butterworth*, 251 F.3d 926 (11th Cir 2001)

The Florida Supreme Court's decision in *Harrell v. State*, 709 So.2d 1364 (Fla. 1998), that witnesses' testimony via two-way, closed-circuit satellite transmission did not violate constitutional rights and was neither contrary to, nor an unreasonable application of, Federal law set forth by Supreme Court cases.

*Hall v. Moore*, 253 F.3d 624 (11th Cir 2001)

A defendant who wishes to waive his Sixth Amendment right to the assistance of counsel at a critical stage and proceed pro se must clearly and unequivocally assert his right to self-representation, and the court must conduct a hearing to ensure that the defendant is fully aware of the dangers and disadvantages of proceeding without counsel.

*Hubbard v. Haley*, 262 F.3d 1194 (11th Cir 2001)

Prison Litigation Reform Act (PLRA) did not permit group of prisoners bringing in forma pauperis section 1983 civil rights actions against corrections officials to join claims and thereby divide single mandatory filing fee among them, regardless of prisoners' contentions that federal joinder rule governed and that their claims arose out of same transaction or occurrence and involved common question of law. PLRA required separate action and payment of full filing fee by each prisoner.

*Skirtich v. Thornton*, 267 F.3d 1251 (11th Cir 2001)

Florida prisoner David Skirtich brought a section 1983 civil rights action against Florida prison guards, alleging that he was subjected to excessive and unjustified use of force while

incarcerated in violation of his Eighth and Fourteenth Amendment rights. Asserting qualified immunity, the prison guards filed motions for summary judgment or to dismiss. The United States District Court for the Middle District of Florida denied the motions, and the prison guards appealed. The Eleventh Circuit Court of Appeals held that: (1) prison guards' alleged beating of prisoner during a cell extraction, after he had been incapacitated by a shock from an electronic shield, violated the prisoner's Eighth Amendment rights; (2) prison guards' alleged beating of prisoner violated clearly established constitutional law and, thus, their actions, if proven, would not be protected by qualified immunity; (3) prisoner's injuries did not result from a de minimis use of force; and (4) defendant's third motion to dismiss filed by two of the prison guards was improper and should have been dismissed. [Note: Some of the prison guards being sued in the above case are also awaiting trial for the second-degree murder of prisoner Frank Valdes at Florida State Prison in July 1999.]

*Caniff v. Moore*, 269 F.3d 1245 (11th Cir. 2001)

Under Florida law, an Interstate Agreement on Detainers (IAD) claim is cognizable on direct appeal, but not on a post conviction motion. See *Vining v. State*, 637 So.2d 921 (Fla.), cert. denied, 513 U.S. 1022 (1994); *Remeta v. Dugger*, 622 So.2d (Fla. 1993).

Because Caniff brought his IAD claim on direct appeal but subsequently voluntarily dismissed it, he defaulted on his IAD claim under Florida law, and thus was barred from raising the claim on federal habeas corpus review.

**Federal District Court**

*Wilson v. Silcox*, 151 F. Supp. 2d 1345 (N.D. Fla. 2001)

Florida prisoner brought pro se action against prison guard, alleging that the guard violated his First Amendment rights by threatening him with violence after he had filed a section 1983 civil rights action against the prison guard's brother. Upon prison guard's motion for summary judgment, the United States District Court held that genuine issue of material fact existed as to whether prison guard made statements threatening prisoner for having sued prison guard's brother in an earlier case, precluding summary judgment.

*Randles v. Hester*, 14 Fla. L. Weekly D475 (M.D. Fla. 8/9/01).

Allegations in complaint by Florida prisoner filed pursuant to section 1983 state a sufficient claim under the Eighth Amendment where plaintiff alleged that defendant ordered him to clean up blood spills from other prisoners, that defendant knew of substantial risk posed by exposure to blood, that defendant was himself concerned about location of cleaning supplies prisoner used to clean other prisoners' blood, and that defendant refused to provide prisoner with protective clothing . which was maintained by DOC in form of blood spill kit. No qualified immunity available under facts of the complaint.

## STATE

**Ex Parte Probable Cause Determination Under Ryce Act Must Be Supported By Sworn Affidavit Or By A Verified Petition**

Thirteen detainees under the Jimmy Ryce Act (q.v. section 394.910 et. seq., Fla. Stat.) petitioned that their detentions were illegal because the ex parte probable cause order on which the detentions were based were not supported by sworn evidence. The Second District Court of Appeal noted that the Act does not state whether a petition initiating a commitment proceeding must be sworn, nor does it identify the basis on which the court is to make its initial probable cause determination. The statute simply directs that upon filing of the petition the court is to determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator.

The District Court held that the determination must be found on sworn proof. First, the Court reasoned that determining whether there is probable cause to believe something requires a consideration of factual circumstances and the making of mixed conclusions of law and fact. Absent the parties' stipulations, courts may only find facts based on sworn evidence; mere unsworn allegations are insufficient to prove any fact. Second, the Court determined that the legislature prescribed the early ex parte judicial probable cause determination in order to furnish the alleged predator due process before depriving him of his liberty pending trial on the merits of the commitment petition.

The Court did deliver a stark warning. A person's complaint that he has been detained without due process becomes mooted by a subsequent proceeding in which he is detained after being afforded due process. See *Melvin v. State*, 26 Fla. L. Weekly D 2733 (Fla. 2d DCA 11/16/01).

**The Continuing Saga Of The Jimmy Ryce Act**

In yet another Jimmy Ryce Appeal, the Fifth District Court of Appeal was confronted with the decisive issue of whether the extensive hearsay evidence which was permitted to go to the jury deprived Florida prison Damon Jenkins

of a fair trial guaranteed by the state and federal constitutions.

The hearsay evidence in question consisted of police reports containing unsworn allegations of serious sexual misconduct introduced to the jury without providing Jenkins any opportunity to confront the witnesses. The Court recognized that the Due Process Clause applies equally in criminal and civil actions that implicate fundamental rights of life, liberty, or property notwithstanding the legislature's intent to allow hearsay evidence to be introduced at trial. While the evidence may be introduced, it may not serve as the sole basis for commitment. See: Section 394.9155 (5), Fla. Stat.

The Fifth DCA correctly construed the Ryce statute in light of the Fourteenth Amendment right of confrontation. The Court stated that the Florida Legislature cannot rescind the due process protections of the United States Constitution.

In this case, the Court addressed two problems. One is the nature of the hearsay which the trial court permitted to go to the jury. Police officers were permitted to testify from police reports as to what out-of-court witnesses had told police that others had told them. This broad band of out-of-court statements, which compose the hearsay spectrum, goes from reliable hearsay to rumor to gossip.

The second problem was that Jenkins was committed almost solely on hearsay evidence. Experts presented evidence in the form of "opinions" based on the police reports which contained not only hearsay but also double hearsay, and perhaps even triple hearsay. The Court decided that this type of unreliable hearsay that factored into the expert's opinion was no more than garbage in and garbage out.

The Court reversed the commitment but suggested that if the State is truly concerned that Jenkins remains a danger to others then they may consider the Baker Act. The Court stated that a commitment under the Baker Act would be far more humane, and perhaps even prove genuinely helpful, than confinement under the Ryce Act. See: *Jenkins v. State*, 26 Fla. L. Weekly D 2862 (Fla. 5th DCA 11/30/01)

[Comment: The constitutionality of the Jimmy Ryce Act has again been challenged. The United States Supreme Court reversed the Kansas Supreme Court and held the Kansas civil commitment statute (a statute very similar to our Jimmy Ryce Act) constitutional under the federal constitution. See: *Kansas v. Hendricks*, 521 U.S. 346 (1997). The Kansas Supreme Court has again, for a reason not considered by the United States Supreme Court's earlier decision, invalidated their statute. In its *Hendricks* opinion, the United States Supreme Court operated from what appears to have been a defense stipulation that Hendricks was indeed a danger to society and would likely commit additional violent sexual offenses if not kept confined. In re *Crane*, 7 P. 3d 285 (Kan. 2000), the Kansas Supreme Court again held its statute unconstitutional because there is no requirement in its act that there be proof that a respondent is incapable of controlling his behavior. This matter is once again before the United States Supreme Court. In the concurring opinion in *State v. Brewer*, 767 So.2d 1249 (Fla. 5th DCA 2000) (Harris, J. concurring), the problem relating to conviction by profile was discussed. Further, in *Westerheide v. State*, 767 So.2d 637 (Fla. 5th DCA 2000), the Fifth DCA held the Jimmy Ryce Act to be constitutional under the Florida Constitution. This matter is presently pending before the Florida Supreme Court for consideration – oh]

### Prisoner Civil Action Under 57.085 Fla. Stat.

Florida prisoner Lester Johnson filed a civil action in the circuit court, which was ultimately dismissed for failure to comply with the requirements of section 57.085, Florida Statutes (1999). Johnson failed to pay the statutory filing fee and did not provide a list of each suit, action, claim, proceeding, or appeal filed in any court or other adjudicatory forum in the preceding five years, as required by section 57.087 (7).

On appeal, the Fourth District Court of Appeal affirmed the dismissal because Johnson had failed to comply with the prior litigation listing requirement of section 57.085 (7). (The Supreme Court declared the "copy" requirement in section 57.085 (7) to be unconstitutional but left intact the litigation listing requirement.)

Noteworthy was the district court's discussion of Johnson's indigence. The Court's recognized that an indigent prisoner is one who does not have sufficient funds to pay in full for a lawsuit upon filing. See: *Geffken v. Strickler*, 778 So.2d 975, 976 (Fla. 2001). Johnson's account information indicated that at the time he filed his civil action he had a balance of $89.16, less than the required $95 filing fee, rendering him indigent. See: *Johnson v. Burns*, 26 Fla. L. Weekly D 1822 (Fla. 4th DCA 7/25/01).

### Habeas Corpus Challenging Close Management

In order to obtain habeas relief from close management status, the writ must allege harassment, lack of due process, failure of the DOC to comply with its own rules regarding close management, or other grounds which provide a basis to grant a release from CM. Cf. *Taylor v. Perrin*, 654 So.2d 1019 (Fla. 1st DCA 1995); *Granger v. FSP*, 424 So.2d 937 (Fla. 1st DCA 1983). See: *Holland v. State*, 26 Fla.

L. Weekly D 2076 (Fla. 5th DCA 8/24/01).

**Department's Arbitrary Abandonment Of Procedure Encroached Prisoner's Due Process Rights And Warrants Relief**

Prison guards at Polk Correctional Institution received information that prisoner Nickolas White was involved in the use of LSD. Based on this information a "for cause" drug test was administered on White. Because the DOC's drug testing facilities were not suited for testing for LSD, White's urine sample was sent to an outside commercial laboratory for testing. The unquantified test results showed a positive result for the presence of LSD in White's sample.

In the ensuing disciplinary proceeding, White was found guilty of unauthorized use of drugs and was sentenced to 60 days in disciplinary confinement and a loss of 180 days gain time. After exhausting available administrative remedies, White sought relief in the courts.

White's argument was that DOC's rule (FAC 33-602.2045) for drug testing mandates a retest of any sample that gives a positive result and that no retest was performed in his case. The DOC argued that the testing procedures used by the commercial lab were in compliance with the lab's protocol, as well as state and federal law.

Following the denial of his mandamus in the circuit court, White sought certiorari review in the district court. The district court analyzed the procedural rule and DOC's interpretation and determined that the DOC's refusal to apply the established procedure in this case was nothing but arbitrary and reversed the circuit court's order with directions to grant mandamus relief.

See: *White v. Moore*, 26 Fla. L. Weekly D 1583 (Fla. 1st DCA, 6/21/01).

**Florida's 85 Percent Statute Survives Constitutional Challenge**

The Stop Turning Out Prisoners Act, which among other things requires Florida prisoners to serve a minimum of 85 percent of their sentences prior to release, has survived a constitutional challenge.

Florida prisoner John West argued that the title to chapter 95-294 was constitutionally insufficient. Under The Florida Constitution, the subject of a law "shall be briefly expressed in the title." Art 3, Section 6, Fla. Const. (1968). West contended that the title was insufficient because it did not include a specific reference to the 85 percent rule.

The Third District Court rejected this argument and held that the title gave fair notice that it modified the law relating to the release of prisoners. Thus, the title was adequate and does not violate the constitutional provision discussed above.

See: *West v. State*, 26 Fla. L. Weekly D 1598 (Fla. 3rd DCA 6/27/01).

**DCA Allows Extended Time For State To Amend Petition To Conform To Melvin Requirements**

In yet another civil commitment case, three Florida prisoners petitioned for a writ of habeas corpus to obtain their immediate release from detention under the Jimmy Ryce Act. See sections 394.910-931, Fla. Stat. (2001). The trial court vacated the initial, ex parte probable cause determinations in each case based on *Melvin v. State*, 26 Fla. L. Weekly D 2733 (Fla. 2d DCA Nov. 16, 2001), (concluding that the Jimmy Ryce Act's ex parte probable cause determination must be supported by sworn proof in the form of a verified petition or affidavit). However, the Court permitted the State to amend the petition within nine days to conform with Melvin's requirements. The Petitioner's argued that since there was no valid probable cause determination now existing, they were entitled to immediate release.

The Fourth District Court of Appeal disagreed on the authority of *Johnson v. Department of Children and Family Services*, 747 So. 2d 402, 403 (Fla. 4th DCA 1999), in which the appellate court allowed the state seventy-two hours to file a sufficient multidisciplinary team report when the ex parte probable cause determination had been on an insufficient report. See: *Hawker v. Greer*, 26 Fla. L. Weekly D 2895 (Fla. 4th DCA 11/29/01).

**Rule 9.141 (c) Petition And Rule 3.850 Motion May Be Filed Simultaneously**

Florida prisoner William Gawronski appealed the summary dismissal of his motion for post conviction relief filed pursuant to Rule 3.850. The trial court had based the dismissal on its claim that it lacked jurisdiction because Gawronski had pending a Rule 9.141 (c) petition that alleged ineffective assistance of appellate counsel.

On appeal, the Second District Court of Appeal reversed the trial court's order of dismissal on the authority of *Francois v. Klein*, 431 So. 2d 165 (Fla. 1983) (holding that because a claim of ineffective assistance of trial counsel is necessarily separate and distinct from a claim of ineffective assistance of appellate counsel, the two claims may proceed simultaneously without danger of conflicting and confusing rulings by different courts). See: *Gawronski v. State*, 26 Fla. L. Weekly D 2858 (12/5/01) ■

**The staff and volunteer's of FPLP would like to extend our deepest sympathy to the friends and family of Timothy Lewis Velie.**

**Tim's wife Twyla Velie has long been a crusader for prison reform. She took the reins of the Pen project a few years back, and we thank her for her tireless efforts in the cause.**

**Timothy Lewis Velie was born Nov. 10. 1949 and died Oct. 10, 2001, he was 51 yrs old. He is survived by his wife, four children, six grandchildren and his parents Sarah and Arthur Powell all from Vero Beach Florida. Tim spent 23 yrs. in FDOC prison system with 18 of those at Avon Park where he was head of hobby craft, along with working for Pride for 5 yrs.. He was a finish carpenter and also in the Lifers Program, and was a believer in Jesus Christ.**

**He will be greatly missed.**

**Anyone who knows of or would be interested in a bereavement group for widows or widowers of inmates please contact Mrs. Velie at 321-254-2045**

# NEWS BRIEFS

**CA** – Gov. Gray Davis vetoed $9.8 million out of the state's budget that was intended to cover testing for thousands of drug offenders who are receiving treatment instead of prison under the state's new drug policy. All testing will not be stopped, there is still almost $8 million available for drug testing in federal funds.

**CA** – During Oct. 2001, Ronnie Hawkins, 51, who is serving a 25 years to life sentence in CA for stealing $250 worth of painkillers, agreed to settle his lawsuit against a judge for $275,000. In 1998 while Hawkins was acting as his own attorney at a sentencing hearing in Los Angeles he interrupted the judge. She order him shocked with the 50,000 volt stun belt that Hawkins had on. Hawkins sued the county alleging he was denied a fair trial by the judge ordering him to be stunned. [Source: *Sacramento Bee*, 10/8/01]

**CA** – In May 2001 the CA Public Utilities Commission ordered MCI Telecommunications Corp. to offset $522,458 in overcharges it made between June 14, 1996 and July 12, 1999, on CA prisoner collect calls. The complaint was filed against MCI by a San Diego consumer advocacy group, Utility Consumer Action Network. The actual details of the settlement were kept secret. Similar to Florida, the CA DOC is allowed to give contracts to phone companies that guarantee the biggest kickback in commissions to the DOC, in CA that amounts to 40-44 percent of gross telephone revenues. [Source: *Prison Legal News*, 11/01]

**CO** – The CO legislature is considering a new law designed to help reduce the state's budget crisis by following California and Arizona in sending minor drug offenders to treatment programs rather than prison.

**FL** – On July 10, 2001, Fla. Dept. of Corrections Secretary Michael Moore replaced Michael Wolff with Richard Dugger as Deputy Secretary of the department. Wolff, who came to Fla. with Moore when he took over running the Fla. DOC in Dec. 1998 had been a controversial figure since the beginning, often described by veteran DOC employees as Moore's "hatchet man." Moore, who has faced growing criticism amid numerous scandals occurring under his administration of the prison system and opposition by political forces who still view Moore as an outsider, apparently selected Dugger for the deputy secretary position in an attempt to prevent his own ouster. Dugger is a 35-year veteran with the FDOC and was the former FDOC secretary from 1987 to 1991 before being replaced with Harry Singletary.

**FL** – It was announced in Dec. 2001 that a new $3.7 million prison located near St. Augustine to house female juvenile offenders will remain closed due to the state's current financial problems. The prison would be the only one for high-risk juvenile prisoners in northeast Florida. State lawmakers say the state doesn't have the needed $2.3 million to pay a private contactor to operate the facility for a year.

**FL** – David F. Patterson, 62, who served as chief judge of the Fla. 2nd District Court of Appeal retired from that position in July 2001. Shortly after his retirement, in Aug., Patterson spent 10 days in a psychiatric ward after being accused by his wife of domestic violence and being suicidal while drinking heavily during the past two years. A week after being released Patterson was arrested for drunken driving after a test showed his blood-alcohol content to be three times the legal limit of 0.08. [Source: *The News Journal*, 8/28/01]

**FL** – The May/June 2001 issue of *FPLP* reported on allegations of retaliation and racial discrimination against black prison guards in Florida. [See: *FPLP*, Vol. 7, Iss. 3, "Black Prison Guards Allege Retaliation, Discrimination"] Fla. DOC Secretary Michael Moore and then Director of Institutions Richard Dugger promised a full investigation of the black guards' allegations of rampant racism in the Fla. DOC. On Aug. 28, 2001, Moore announced that the investigation was complete and that it found no evidence of racism or racial discrimination within the department. State Sen. Kendrick Meek (D-Miami) commented that, "It's amazing how they can take corrective action but find no wrongdoing," in response to Moore stating that even though no discrimination exists that the DOC would improve posting of job opportunities to respond to black guards' complaints that they are often passed over for promotions. The FDOC claims it will continue to monitor four prisons: Tomoka CI, Lake CI, Marion CI, and North Fla. Reception Center where many of the black guards' complaints stemmed from. Several employment discrimination lawsuits filed against the DOC by black employees are still pending in court. [Source: *St. Petersburg Times*]

**FL** – Broward County circuit court judge Joyce Julian, 44, was arrested and charged with disorderly intoxication Dec. 1, 2001, after being found half naked at a hotel hosting a conference for judges on Amelia Island. Security at the hotel told authorities they found Julian lying on the third floor of the hotel wearing only a shirt. When confronted security claims she refused to identify herself and ran. Deputies

arrested Julian after she became belligerent, swore tat them and continued to act disorderly. Julian's attorney said his client had no recollection of what happened, but believes someone may have slipped a drug into her drink to incapacitate and assault her. Julian was one of approximately 450 circuit court judges attending the conference.
[Source: *St. Petersburg Times*, 12/6/01]

**FL** – On Dec. 18, 2001, prisoners at Sumter Correctional Institution were provided some pre-Christmas entertainment when prisoner Jose Montenez borrowed a guard's golf cart and took it for a spin. Hundreds of prisoners going to the noon meal were treated to the sight of Montenez jumping into a prison captain's parked golf cart and taking off around the compound to blow the horn and yell "Yee Haw" as prison guards chased behind him. Montenez used the golf cart, which are used at many Fla. prisons to save guards from having to walk, to spin donuts and pop wheelies. When finally surrounded, Montenez jumped off the cart and climbed to the roof of a complex of dormitories to continue leading guards on a merry chase, according to eyewitnesses. Capering across the roof tops like one of Santa's elves, Montenez waited until all the guards got on the roof before jumping down and running to another complex to climb on its roofs and repeat his performance as almost the entire prison's population, including stunned and exhausted guards, looked on. Montenez was finally captured peacefully and escorted to confinement still calling out "Yee Haw."

**FL** – FDOC Secretary Michael Moore alienated many FDOC employees in July 2001 when he announced that he had received special permission from Gov. Jeb Bush to apply for the position of Executive Director of the Texas Dept. of Criminal Justice (TDCJ). Moore, a native of Texas, applied for the position vacated by Wayne Scott who retired on July 31, 2001. Moore contended with four others for the $150,000-per-year job: Dora Schirro, former head of the Missouri prison system; Terry Steward, head of the Arizona DOC; Victor Rodriguez, head of the TDCJ's parole department; and, Gary Johnson, Director of the TDCJ's Institutional Division. Moore was passed over and Johnson chosen for the job.
[Source: *Southland Prison News*, 11/01]

**GA** – On Oct. 5, 2001, the GA Supreme Court struck down use of the state's electric chair saying the ghastly injuries inflicted and the risk of excruciating pain violate the state constitution's ban on cruel and unusual punishment. The 4-3 ruling by GA's high court leaves Alabama and Nebraska as the only states with the electric chair as the sole means of execution. With the ruling, GA automatically switched to lethal injection for the 128 men and 1 woman on GA's death row, as well as those sentenced to death in the future.
[Source: *New York Times*, 10/6/01]

**GA** – Three tactical squads had to be dispatched to Autry State Prison to control a two-hour disturbance during mid-December, 2001. Reports state the incident may have been sparked by a prisoner was angry that his chicken wasn't thoroughly cooked. During the disturbance, prisoners damaged lights, broke sprinkler heads off, broke windows, and set mattresses on fire, prison official claimed.
[Source: *USA Today*, 12/18/01]

**HI** – During Dec. 2001 one of four defendants in a cellblock food scandal at the Honolulu Police Dept. pleaded guilty to theft and agreed to testify against two high-ranking officers. Former food service worker Ernest Villanueva, 47, admitted that he had ordered rack of lamb and prime rib at the request of supervisors to feed police officers out of the budget for prisoners' meals.

**IL** – A Chicago judge freed three men sentenced in the 1986 rape and murder of a medical student after a prosecutor admitted there was no evidence to support their convictions. Released were Calvin Ollins, 29; his cousin, Larry Ollins, 31; and Omar Saunders, 32, after 14 years in prison. Charges were also erased against another man, Marcellius Bradford, who had served 6 ½ years after testifying against the other three. Bradford claimed he testified against the others under police coercion and to avoid a life sentence. DNA tests showed that hair and semen on the victim didn't come from any of the four men.

**IL** – In Oct. 2001 a Chicago federal court jury awarded $15 million to James Newsome, 46, who was imprisoned for 15 years for a murder for which he was later pardoned. The award represented $1 million for each year that Newsome was in prison for the 1979 murder of a grocery store owner during a robbery. The jury found that Newsome had been framed by two Chicago homicide detectives who coached eyewitnesses. Newsome's conviction had been expunged in 1994 after another man's fingerprints were found at the crime scene.
[Source: AP, 10/29/01]

**MO** – Prisoner David Perkins, 45, was sentenced to life during Dec.

2001 after being convicted of kidnapping a female medical records employee at the Jefferson City Correctional Center and holding her hostage during an eight-hour standoff.
[Source: *USA Today*, 12/18/01]

**MO** – On Aug. 1, 2001, Greene Co. jail guards Justin Hastings, 21, and Curtis Myers, 26, were charged with four misdemeanor counts of third-degree assault for urinating on four prisoners playing basketball in the jail's recreation area. The prisoners said the guards urinated on them from a metal grated roof overlooking the rec. area. Both guards resigned. While a number of states make it a felony for prisoners to throw bodily waste on prison employees, none apparently make it a felony for prison or jail employees to throw bodily wastes on prisoners.
[Source: *Prison Legal News*, 11/01]

**OK** – OK Attorney General Drew Edmonson predicted that executions in that state are expected to decline in 2002 from the number executed in 2001 when OK killed more people than any other state. Eighteen people, including three women, were executed by lethal injection during 2001, only 10 at most are expected to be put to death in 2002.

**TX** – In April 2001 a new law went into effect allowing prisoners to have DNA tests conducted to prove their claims of innocence. Within a few months Texas judges and prosecutors were swamped with requests for post conviction DNA analysis tests. Some judges and prosecutors are saying the legislature made a bad mistake because the new law allows anyone – even if charged with a misdemeanor – to ask for the test. The new law directs prosecutors to preserve biological evidence and allows prisoners to obtain state-paid post conviction DNA testing by showing that it could prove the defendant's innocence. The law also allows for retesting of material previously tested using new techniques that have been developed and that are more accurate. Prisoners must also show that the material to be tested played a key role in their conviction.

**VT** – During Nov. 2001 prison officials in Vermont began opening legal mail between prisoners and their attorneys allegedly to protect against anthrax and other biological threats. The mail opening was stopped approximately two weeks later when protested by the state defender general's office and the American Civil Liberties Union citing that the policy could interfere with attorney/client privilege.

**WA** – In May 2001 the Kirkland Police Dept. filed suit to shut down a website posted by former prisoner William Sheehan. The site, www.justicefiles.org, lists the names, home addresses and other personal information on employees of various Washington police agencies, and the WA Department of Corrections. Seattle judge Robert Alsdorf refused to order the site shutdown, finding that the site is constitutionally protected free speech. Sheehan claims he has been a victim of police harassment and believes police should be held accountable.
[Source: *Prison Legal News*, 12/01]

## FIRST TRIAL STARTS IN VALDES' *MURDER*

It took over 2 ½ years to begin, and almost three months to select a jury, but on Jan. 16, 2002, the trial of four *Florida* prison guards accused of beating death-row prisoner Frank Valdes to death on July 17, 1999, finally started. The four guards, Capt. Timothy Thornton, 36; Sgt. Charles Brown, 28; Sgt. Jason Griffis, 28; and Sgt. Andrew Lewis, 31, are charged with second degree murder and aggravated battery. Four other former FDOC guards charged in the incident will go on trial later this year. The outcome of these trials are seen by prisoner advocates as having a large influence over whether rampant abuse of prisoners in Florida continues and the verdict will be provided in the next issue of FPLP.

## LEGISLATIVE UPDATE

During Oct.-Dec. 2001, the Florida Legislature met in a special session to address what some politicians claimed was a budget crisis brought on by lower than expected tax revenues. Relevant to the Florida prison system, a revised budget for the current fiscal year was passed cutting the DOC's current budget $30 million. That reduction comes out of the $1,711 million that was approved for the 2001-02 fiscal year during the 2001 legislative session. Most of the $30 million cut will be in beneficial programs for prisoners. In Jan., 2002, the FDOC decided $13 million could be saved by almost completely eliminating substance abuse programs for prisoners. Other cuts wee made in education and vocational programs. In Jan., Gov. Jeb Bush released his proposed budget for the 2002-03 fiscal year that would restore the $30 million to the DOC and add $30 million more for the upcoming fiscal year. If agreed to by the legislature in the advanced regular 2002 session, that started in Jan., the FDOC will receive $1,741 million next fiscal year.

Despite widespread rumors in the prison system that the legislature is going to act to reduce by releasing the prison population, no such legislation has been introduced for this years session. Gov. Bush stated in Jan. that 85 percent sentencing will remain intact and no legislation has been introduced to benefit parole-eligible prisoners.

Complete coverage of this years' legislation will be provided in a future FPLP.

DEPARTMENT OF CORRECTIONS
DEPARTMENT SUMMARY
INMATE WELFARE TRUST FUND
REVENUES AND EXPENDITURES BY TYPE
FOR THE FISCAL YEAR ENDED JUNE 30, 2001

DATE RUN 08/31/01

| | | |
|---|---|---|
| REVENUES | | |
| MERCHANDISE SALES | | 35,975,348.87 |
| VENDING MACHINE COMMISSIONS | | 360,924.13 |
| TELEPHONE COMMISSIONS | | 15,286,142.86 |
| PRIVATIZED CANTEEN COMMISSIONS | | .00 |
| INTEREST EARNINGS | | 960,958.82 |
| CONTRIBUTIONS/INMATE CLUB EARNINGS | | 14,331.81 |
| INMATE BANK BALANCE LESS THAN $1 | | 1,133.83 |
| OTHER REVENUE | | 72,644.93 |
| TOTAL REVENUES | $ | 52,671,485.25 |
| OPERATING EXPENDITURES | | |
| COST OF SALES | | 22,715,573.23 |
| EMPLOYEE SALARIES | | 2,210,891.19 |
| SALARIES - OPERATORS | | 239,482.27 |
| OPER. EXP.-CONTRACTUAL SERVICES | | 108,647.68 |
| MATERIALS, SUPPLIES, AND EQUIPMENT | | 2,261,296.13 |
| OPER. EXP.-DEPRECIATION | | 369,327.50 |
| OTHER OPERATING COSTS | | 30,554.35 |
| TOTAL OPERATING EXPENDITURES | $ | 27,935,772.35 |
| DIRECT BENEFIT PROGRAMS | | |
| EDUCATION | | 18,361,758.36 |
| DRUG ABUSE SERVICES | | 4,388,197.19 |
| LIBRARY | | 2,434,997.67 |
| RELIGION | | 2,595,792.81 |
| VISITING PROGRAMS | | 31,258.35 |
| LEGAL SERVICES | | .00 |
| INMATE CLUB ACTIVITIES | | 25,284.76 |
| OTHER INMATE ACTIVITIES | | 37,077.10 |
| TOTAL DIRECT BENEFIT EXPENDITURES | $ | 27,874,366.24 |
| OTHER NON-OP EXPENDITURES | | |
| EXPEND.-FIXED CAPITAL OUTLAY | | 100.00 |
| TRANSFERS OUT WITHIN THE AGENCY | | .00 |
| GENERAL REVENUE SERVICE CHARGE | | 1,944,873.77 |
| OTHER NON-OPERATING EXPENSES | | .00 |
| TOTAL OTHER NON-OPERATING EXPENDITU | $ | 1,944,973.77 |
| TOTAL EXPENDITURES | $ | 57,755,112.36 |

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Agency/Library/Institution /Org/

Address

City State Zip

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Address

City

State Zip

☞ Complete and Mail to:
FLORIDA PRISON LEGAL PERSPECTIVES
P.O. Box 660-387, Chuluota, FL 32766

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Address

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P.O. Box 660-387
Chuluota, FL 32766
Or
Email: FPLP@aol.com

## VISITATION COMPLAINTS

Every year hundreds of family members and friends of Florida prisoners experience problems in visiting their incarcerated loved ones. While paying lip service to the fact that maintenance of family ties is important and should be encouraged, in reality, many FDOC prison guards and administrators resent or feel threatened by prisoners who have an outside support system. It is not uncommon for those type prison employees to work to vex, harass, and create unnecessary roadblocks to impede or make visitation as uncomfortable as possible.

Visitors who experience problems with visitation that they are unable to resolve at the institutional level should file a complaint with the following FDOC departments in Tallahassee:

*Family Ombudsman*
*Toll Free: 1-888-558-6488*

*Central Visitation Authority*
*Toll Free: 1-877-822-1987*

Address for both:
*2601 Blair Stone Road*
*Tallahassee, FL 32399-2500*

If those two departments are unable or unwilling to resolve the problem, the next step would be contacting your local state representative or state senator and requesting their assistance to resolve the problem. Where the problem affects many visitors at a specific institution, the governor's office should also be asked for assistance.

## CONTACTS

The Florida Corrections Commission is composed of eight citizens selected by the governor to oversee the operation of the Florida Department of Corrections. The Commission makes recommendations to the governor and state legislature concerning problem areas within the prison system. The Commission welcomes input from the public identifying problem areas. The Commission's activities can be found on its website. The Commission is independent from the FDOC.

*Florida Corrections Commission*
*2601 Blair Stone Road*
*Tallahassee, FL 32399-2500*
*Ph# (850) 413-9330*
*Email: fcorcom@mail.dc.state.fl.us*
*Website: http://www.fcc.state.fl.us/*

Additional:

*Inmate Bank Information*
*Toll Free: (850) 488-6866*

Email Addresses:
Gov. Jeb Bush – *jeb.bush@myflorida.com*
Michael Moore, FDOC –
*moore.michael@mail.dc.state.fl.us*

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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.

FLORIDA PRISON LEGAL Perspectives

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Moving? Transferred? If so, please complete the enclosed address change form so that the membership rolls and mailing list can be updated. Thank you!

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