

Perspectives

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LET'S PLAY MONOPOLY:

Florida's Prison Phone System
by Linda Hanson and Teresa Burns-Posey

For Florida prisoners, maintaining contact with family and friends can be extremely difficult and expensive. Upon reception, the prisoner is usually assigned to an institution that is hundreds of miles from their home. This assignment renders regular visitation unlikely, if not impossible, because of the severe hardship it imposes on families who are juggling to maintain their personal lives in the absence of their loved one. Thus, the most meaningful option available for prisoners to maintain family contact is the prison phone system. This option is often the only means available to prisoners who can neither read or write. But make no mistake about it, prison phone calls are expensive.

Prison officials recognize that maintaining family ties is an important factor in helping prisoners make a successful return to society. The question that begs an answer is: Why are families of the prisoner forced to use an expensive collect-call system that saddles the innocent with telephone bills that often reach hundreds, even thousands of dollars? Most of the prison population come from the low to middle class spectrum and most were the primary breadwinners in their household. So when they enter prison they leave wives, sons and daughters to manage the affairs of the house on a very limited income. Most families can barely survive even without the burden of receiving their loved one's collect-call. And many sacrifice other essentials to be able to hear their loved one's voice if only for 15 minutes, the maximum time allowed per call.

In this article, we'll explore the genesis of the prison phone system, the cost for families including the many overcharges, and

possible solutions to this unjust dilemma.

The Boom In Prison Phone Systems

Watch too many TV police dramas, and you're led to believe that prisoners are restricted to making just one phone call. But the nation's telecommunications companies know better, and they are making more than pocket change off families of prisoners.

Most local and state prisons allow prisoners to make daily calls, creating a correctional phone market worth well over \$1 billion a year. As states across the country pack more prisoners into jails and prisons -- the latest count is over 2 million -- competition to provide phone service to those prisoners is fierce.

Through the history of the penal system in America, most saw prisons as a liability. But in the 1990's that view changed, at least with corporate America. Prisons became tremendous public works projects, throwing off money as a

FAMILIES ADVOCATES PRISONERS



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FPLP is a non profit publication focusing on the Florida prison and criminal justice systems. FPLP provides a vehicle for news, information, and resources affecting prisoners, their families, friends, loved ones and the general public of Florida.

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.

FPLP's non attorney volunteer staff cannot respond to requests for legal advice. Due to volume of mail that is received and volunteer staff limitations, all correspondence that is received cannot be responded to, but all mail does receive individual attention.

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wet dog throws off water. Once communication giants caught wind of the idea that a single pay phone inside a prison could earn its owner \$12,000 a year, companies like MCI, Sprint and others lined up at prison gates. The prisoners on the other side of the fence would place approximately \$1 billion a year in long distance phone calls. But unlike those on the outside, the prisoners would not have the option to pick their long-distance carrier – the prison does. And so MCI and its competitors learned that the way to get prisoners as customers was to give the prison system a legal kick-back: on a one-dollar phone call, the Florida prison system would make over 50 cents, more than the long distance carrier itself. In no time, corrections departments became phone call millionaires.

(RAPE) Reach out And Plunder Everyone

The attraction for these telecommunications companies is exclusive access to a portion of the inmate market. Unlike conventional pay phones, which let callers use the long-distance carrier of their choice, prison phones funnel all of the inmates' calls to a single company. In Florida, prisoners can make collect calls only, which is especially profitable to phone companies.

Under the current contract between the Florida Department of Corrections and MCI WorldCom Communications, which runs until May 31, 2006, rates and call surcharges charged to the called party for intralata and interlata collect calls shall be at eighty-five percent of the rate cap approved by the Florida Public Service Commission for operator-assisted non-person-to-person pay telephone collect calls. For interstate and international collect calls regulated by the Federal Communications Commission, MCI is permitted to charge up to the maximum toll rates

for operator-assisted non-person-to-person collect long-distance calls and the surcharge for residential Operator Station Collect calls set by the inter-exchange carrier with the highest yearly domestic long distance toll revenues.

The Florida Public Service Commission has approved the rate cap for operator assisted non-person-to-person in-state pay telephone collect calls at a maximum rate of \$0.30 per minute, plus a \$1.75 surcharge. (See Florida Administrative Code 25-24.516 Pay Telephone Rate Caps.) The eighty-five percent rate would translate to \$0.255 per minute, plus a \$1.487 surcharge, which means \$5.31 per 15-minute call anywhere in the state of Florida. Of course this rate does not apply to non-person-to-person local calls, which cost \$1.70 (eighty-five percent of the rate equivalent to the local coin rate, \$0.25, plus a \$1.75 surcharge), for a 15-minute call. The \$5.31 per 15-minute call in Florida is at least three-times more than the dime-a-minute rate Sprint charges the outside world.

For those out-of-state family members, the rate for receiving one 15-minute call is 4 times the rate for in-state calls. For example, one 15-minute call to Michigan costs \$19.01. The same holds true for other states like Ohio, Mississippi and Louisiana. This writer has reviewed phone bills from various parts of the nation and the most chilling was a phone bill from the Virgin Islands. This bill showed a total of 19 calls during a three month period totaling 93 minutes at a cost of \$179.15. That translates to \$1.93 per minute!

The contract between the DOC and MCI provides for the Department to receive 53 percent of gross revenues. During the 2000-2001 fiscal year, the DOC generated \$15,286,142.86 in prisoner telephone commissions. The commissions received by the DOC has steadily

climbed since the early 90's when such commissions were kicked-back to the Department as an incentive to award phone contracts to the most lucrative bidder. Instead of awarding the telephone contract to the company that guarantees the lowest rates for the customer - in this case families of prisoners-the Department awards the contract to the company that provides the greatest commission, or legal kick-back, to the DOC. This practice encourages telephone companies to submit bids showing large commissions for the DOC without regard to the actual rates being charged.

Under the current system, the average in-state amount a family member is charged per month to accept prisoner initiated collect calls is \$69.19. The average for out-of-state calls is three and four times that amount.

Clearly families and friends of loved ones in prison are being raped when it comes to prisoner initiated collect calls. The Florida Public Service Commission has openly identified and labeled prisons facilities as the last true "monopoly" environment. As the PSC reported in a April 24, 1997 memorandum, "the rates paid by callers are higher than rates charged to anyone else for station-to-station calling." And as if high-cost alone wasn't enough, families of prisoners have been subjected to numerous instances of overcharging. It began in 1991 and, not surprisingly, occurs today.

Overcharges

Since 1991, families of prisoners who have accepted collect calls have been overcharged eight different times by seven different telecommunications companies, totaling over \$3.5 million dollars.

In 1991, Peoples Telephone was ordered to refund \$653,000 in overcharges and was fined \$100,000 by the Florida Public Service

Commission.

In 1991, International Telecharge was ordered to refund \$750,000 and was fined \$250,000.

In 1993, North American Intelcom was ordered to refund \$414,000 and was fined \$25,000.

The most outrageous overcharging came at the hands of the current telephone contract holder, MCI. In 1996, MCI was ordered to refund \$1.6 million dollars. But, the overcharging was just the tip of the iceberg. Upon further investigation it was discovered that two DOC employees involved in the contract bidding process had rigged the bids so that MCI would be awarded the contract. Those DOC employees also were found to have attempted to destroy documents to cover-up their involvement in the bid rigging process. Ironically, the two employees were simply demoted to lower ranks and no criminal charges were filed.

The adage that a criminal will return to the crime scene also appears true for the criminally minded. MCI, who was caught overcharging in 1996, appears to be making a repeat performance. Under the current contract, MCI can charge up to 85 percent of the maximum rate cap approved by the PSC for operator assisted non-person-to-person collect calls made inside the state.

Following this methodology, for a prisoner-initiated collect call to a local exchange, the rate should be \$1.70 (85 percent of the set use fee of \$.25 = \$.2125 and the surcharge of \$1.75 = \$1.4875). When you combine the 85 percent fees, i.e. \$1.4875 and \$.2125, the total comes to \$1.70. However, the local phone bills reviewed by this writer reflect a charge of \$1.75, thus, a \$.05 overcharge per call.

There does not appear to be overcharging to other in-state calls, but out-of-state calls are suspect. (At the time of this writing the author

had not received the long-distance rate caps from the Federal Communications Commission.)

What Can Be Done?

During the late 1990s, organized efforts by prisoners' families in Nebraska and Nevada resulted in those states' DOCs being forced to forego or significantly reduce the commissions received by the prison system off telephone contracts. That resulted in much lower rates for prison collect calls. In Nevada, because of pressure from families, the state's Public Service Commission actually adopted rules limiting how much commission the Nevada DOC could receive on phone contracts.

In 1999, a lawsuit filed by prisoners' families in Kentucky resulted in that state's Public Utility Commission mandating lower rates for prison collect calls.

As family members have become more vocal in other states, lawmakers and public service commissions have had to pay more attention to their complaints. Legislation has been introduced or studies ordered to be done in several states to find ways to reduce the burdens on families.

In 2001, prisoners' families in New Mexico, tired of the exorbitant rates, organized and were successful in having a new law passed in that state that requires prisons and jails to provide phone services at the lowest reasonable cost. To achieve that, the law prohibits prisons and jails from receiving a kick back commission or share of revenues charged by the phone companies.

In Ohio, prisoners' families recently persuaded the prison system to require a 15 percent reduction to rates on all new phone contracts. And Missouri officials, pressured by prisoners' families, has announced that the state's prison system will forego any commission on that

state's prison phone contract.

In January 2000, a national organization, CURE, started a campaign entitled Equitable Telephone Charges (eTc.) designed to raise awareness of the huge financial burdens being placed on prisoners' families by exorbitant phone call rates. The campaign, aimed at educating legislators, has had some success in several states. CURE promotes allowing prisoners to make direct, instead of collect calls, through implementation of a debit card system. Money for calls under such a system comes out of prisoners' accounts, making them more aware of and responsible for how much to spend, while allowing lower cost calls to be made and retaining security features on prison calls that prison officials insist on.

Several states, including Colorado, Indiana, Vermont, Tennessee, Iowa and Montana have systems set up to allow prisoners to make debit calls. The Federal Bureau of Prisons allows prisoners to make either collect or debit calls.

FPLAO Takes On Phone Rates

In Florida, no relief on the phone rates has yet materialized. In 1998 and 1999, Florida Prisoners' Legal Aid Organization lobbied in Tallahassee to try to obtain some relief for families from the excessive prison collect phone rates.

Our state lawmakers are the people who hold the power to bring change to reduce or provide alternatives to exorbitant prisoner collect calls. As State Representative Allen Trovillion told the *Gainesville Sun*, "It's an additional hardship on the families." Trovillion wanted to find ways for prisoners to make calls at a reasonable rate for their families, or to cut the DOC's commission to achieve lower rates. To that end, in 2000, Representative Trovillion sponsored a bill in the state House of Representatives that would have required prison phone contracts to go

to the phone company that guaranteed the lowest rate to those paying the phone bills, i.e. prisoners' families. Under that bill, the DOC would not have received a commission. Unfortunately, that bill did not become law. (The text of that bill can be found at: www.leg.state.fl.us, under the "Session" section, House Bill 1975 (2000).)

FPLAO is once again gearing up for a major effort to obtain a reduction in the phone rates being charged Florida prisoners' families. Increasingly, family relationships and communications are being strained and obstructed by the outrageous rates being charged by MCI WorldCom to meet its obligation to give the FDOC one of the highest commissions in the country for the current phone contract that is scheduled to run until 2006.

The FPLAO Board of Directors have voted to take on the phone rate situations as a project that will not end until significant relief is afforded prisoners' families. All FPLAO members are called on to participate in this effort and get others to participate. Prisoners are asked to get as many people as they can on the outside to participate.

We have state elections coming up in November. As the first step in this project, between now and the election, you are asked to contact your local state representative and senator, those running for those positions, and Gov. Jeb Bush, and his opponents, Janet Reno and Bill McBride, with emails, phone calls, or letters, and simply inform them that you are a family member or friend of a Florida state prisoner who is being charged enormous and excessive collect phone rates to maintain contact with your incarcerated loved one and you would like to know *their* position on reducing that burden on prisoners' families. Please copy FPLAO with any emails sent and

responses received at: fplao@aol.com. Information on how to contact legislators can be found at: www.leg.state.fl.us. Jeb Bush can be emailed at: jeb.bush@myflorida.com.

Second, log on to FPLAO's website, www.fplao.org, and check out the information about the telephone situation under the Family Issues section. Stay tuned to that site. After the election that site will be used to launch an email campaign to get legislation introduced and passed to resolve the phone rate problem. That site will also carry information about events now being planned to address the situation.

Now, let's get busy and show the FDOC how to really play the monopoly game. If you are sick and tired of the excessive phone rates, join with us to do something about it. Right Now! ■

AROUND THE SYSTEM

Severely Restrictive Mail Rules Proposed. In the last issue of FPLP it was noted that the FDOC had proposed new amendments to the Department's mail rules that are intended to severely restrict prisoners' and their outside correspondents' ability to communicate. Specifically, it was noted that the FDOC had proposed changing the routine mail rules to allow only 3 pages of "additional written materials" to be included with an actual letter and sent to a prisoner as routine mail. It was noted that such proposed rule, if adopted, would prevent prisoners from having someone outside send them legal materials they may have stored with a family member or friend, or prevent them from having family members, friends, or typing services type legal documents for them. The proposal would also

prevent the receipt of bank statements, legal transcripts from court reporters (which are private companies and not "courts or attorneys," and thus not "legal mail"), Internet research, clippings and any other type "written material," except and unless sent 3 pages at a time. For example, under that proposed rule it would require 7 envelopes, with postage for each, for someone outside to send a prisoner 20 pages of information about DNA testing that had been printed off the Internet, or 67 envelopes, with postage for each, to send a prisoner a 200 trial transcript that was stored at home and was now need to work on a case.

FPLP noted that the FPLAO staff strongly objects to the FDOC's proposed rules in this regard and had taken steps to challenge such rule adoption.

The result of that challenge was that on August 23 the FDOC published notice that it is changing the rule proposal. The proposed change would provide that instead of 3 that 5 pages of "additional written materials" could be included along with letters in routine mail.

Additionally, in an effort to get around FPLAO's challenge - which asserted the fact that the FDOC was attempting to create an economic barrier to those outside the prisons ability to send written material to and communicate with prisoners - the FDOC added the following in the change to the proposed rule:

Requests to send enclosures of greater than five pages shall be made to the warden or his designee prior to sending the material. Exceptions to the five page limitation are intended for enclosures concerning legal, medical, or other significant issues, and not for material for general reading or entertainment purposes. The warden shall advise the sender and the mailroom of his

approval or disapproval of the request.

FPLAO has now rechallenged the proposed rules with the changes. The proposal remains infirm, even more so with the changes.

Five pages instead of three make little difference to the deterrent effect or negative financial impact of the proposed rule. As in the above example, that would only mean 50 envelopes and postage for each to mail the 200 page trial transcript, instead of 67 envelopes.

As for the "exception by warden approval," normally it takes a month or two now for prisoners' outside supporters to receive a response to a letter to a warden, much too long when dealing with those correspondents' First Amendment rights.

Concerning the warden exception, the term included in same about "other significant issues" is vague, fails to establish clear criteria, and thus is subject to arbitrary and capricious interpretation by wardens or their designees.

Additionally, the exception is not neutral, as required by law, where it excludes material (or allows other material) based on subject matter content not found to be detrimental on a case-by case basis to institutional security.

The fact that the "warden approval" process can be circumvented by those financially able and willing to send the exact same material that the warden cannot approve as more than five pages (general reading or entertainment material) by simply sending it five pages at a time supports that the proposed rules' intent is not to achieve a legitimate penological purpose, but simply to obstruct communication. Nor is there a provision in the proposed rule establishing a procedure, where if a mail sender does apply to the warden

for a page limit exception and is denied, to appeal the warden's denial to someone other than the warden with authority to overturn his decision, as is required by U.S. Supreme Court case law.

FPLAO is determined to pursue all available remedies, administrative and legal, to prevent adoption of these proposed rules. The ability of those outside to communicate with, share information with, and assist those locked inside our prisons in maintaining contact with the outside world is too important and too precious a right to allow prison officials to obstruct any further than it already is, just on a whim. Stay tuned to FPLP for further information on this serious situation as it proceeds. ■

PRISONER CIVIL RIGHTS PETITIONS DECREASE, WHILE HABEAS CORPUS PETITIONS INCREASE

Recently the Bureau of Justice Statistic released a new report detailing the number of petitions filed by federal and state prisoners in U.S. District Courts during 2000. The report analyzes the impact that the 1996 Prison Litigation Reform Act and the 1996 Antiterrorism and Effective Death Penalty Act have had on the number of federal petitions filed by prisoners.

The report sets out the statistics showing that the Prison Litigation Reform Act (PLRA) has resulted in a decrease in the number of civil rights petitions that have

been filed by federal and state prisoners, while the Antiterrorism and Effective Death Penalty Act (AEDPA) appears to have resulted in an increase in the number of habeas corpus petitions being filed by state prisoners.

Included in the report are statistics and trends concerning prisoner-filed petitions between 1980 and 2000.

A free copy of the report entitled: *Prisoner Petitions Filed in U.S. District Courts, 2000, with Trends 1980-2000*, NCJ No. 189430, is available by writing to: NCJRS, P.O. Box 6000, Rockville, MD 20849-6000, or on the 'net at: www.ojp.usdoj.gov/bjs/abstract/ppfuso00.htm ■

U.S. PRISON POPULATION NUMBER SLOWS

A report released during July 2002 by the Bureau of Justice Statistics shows that the nation's prison population during 2001 grew at the lowest rate since 1972 and had the smallest numerical increase since 1979.

The report found that at the end of 2001 there were 2.1 million people in federal and state prisons or in local jails. However, according to the report, there was only a 1.1 percent increase in the number of incarcerated Americans for that entire year. That is the lowest increase for a year since before the prison building and incarceration boom began. In fact, states the report, in the last six months of 2001, the number of state prisoners nationwide actually decreased by 3,700 people.

This latest report was released only a month after a report by the F.B.I. claiming that crime is beginning to increase again after a decade of declining crime rates.

Allen J. Beck, co-author of the BJS's report, said there's no real contradiction between the two reports. Beck noted there is always a lag between commission of a crime and the arrest, conviction and sentencing.

Alfred Blumstein, a criminologist at Carnegie Mellon University, points to another possible reason for the stagnant prison population rates in the face of a claimed increase in crime rates. He notes that the slowing in the number of prisoners is not only a result of a decade of falling crime rates, but also a result of more states rethinking their prison policies. That rethinking stems from states trying to save money where they face budget problems and where some states have looked more to alternatives to prison to deal with drug problems.

[Source: *NY Times*, 7/31/02] ■

BOOK REVIEW

by Bob Posey

Florida Prisoner's Litigation Manual, Volume One: Legal Information on Prison Discipline, Mandamus, and Appellate Review. GEO; Albert Publishing Co., LLC; Softbound; 313 pages; \$24.95 plus \$3.95 S & H.

Both prison officials and prisoners have a substantial interest in prison discipline. For prison officials, their interest is in maintaining order and the safety of both staff and prisoners by imposing disciplinary measures against prisoners who violate prison rules. For prisoners, what is at stake when disciplinary action is taken against them for an alleged rule violation depends on the alleged charge and penalties authorized for such charge. In Florida prisons, prisoners can face a wide range of punishments if charged with violation of prison

rules. Often, prisoners charged with a rule violation at the least will find themselves faced with loss of gain time if found guilty of the charge in a disciplinary hearing. Additionally, or alternatively, prisoners can be placed in confinement for rule infractions and for certain charges have mail, telephone, or visitation access restricted or terminated. Repeated, or what prison officials view as very serious infractions, can even result in loss of all gain time and/or long-term confinement for many months or even years in what the FDOC terms Close Management.

Obviously, because of the sanctions that may be imposed in prison disciplinary proceedings, prisoners have an interest in ensuring that they are punished only for infractions that they are actually guilty of. Prison officials, especially lower ranking staff who interact with prisoners on a daily basis, sometimes exceed the purposes and goals of responsible discipline by falsifying disciplinary reports for a variety of reasons, including personal dislike, retaliation, reliance on false information from confidential informants, etc. In such cases, disciplinary procedural rules are often bent or completely ignored by disciplinary hearing officials eager to support their fellow staff member who brought the charge. Often, disciplinary hearing members in Florida have little actual knowledge or understanding of the disciplinary procedure rules, why they exist, or what rights under the law prisoners have when faced with disciplinary action. Unfortunately, the same is true of most prisoners.

Most often when Florida prisoners are accused of a rule violation of any seriousness, they will be placed in confinement to wait for a disciplinary hearing. In such a situation, suddenly, they realize that don't know what the rules are governing disciplinary proceedings are or even how to obtain a copy of

them. They may have a vague idea what the rules are, but often that idea is based on erroneous information gleaned from compound gossip. Panicking, they discover that trying to get a copy of the disciplinary rules, administrative appeal rules, or other rules, such as those they allegedly violated, is a whole ordeal in itself that may not be possible to accomplish within the time available. They also come to realize that it's almost impossible to get assistance from the prison law libraries anymore and that the few law clerks left are more interested in criminal law and have little knowledge themselves about disciplinary matters. On top of all that, the charged prisoner may have an idea that there are certain rights involved in disciplinary action, but they don't know how to do the necessary legal research to find information about, or legal cases that have defined, those rights. They discover there is no one source for all that information; it's like a treasure hunt in itself trying to track down the information needed to effectively defend oneself against disciplinary action, the information is scattered throughout so many different sources. At least, that was true until now.

Recently I had the opportunity to review the new *Florida Prisoner's Litigation Manual, Volume One: Legal Information on Prison Discipline, Mandamus, and Appellate Review*. In a word, this professionally-printed all new and up-to-date manual is excellent. It is exactly what has been needed by Florida prisoners for a very long time. This manual brings it all together on Florida prison discipline into one source, but doesn't stop there.

The manual is designed to be a complete guide for Florida prisoners defending against, or administratively or legally challenging, prison disciplinary actions, in addition to providing comprehensive coverage of how to

file and litigate petitions for writs of mandamus (whether used to challenge disciplinary actions or to compel prison or other officials to comply with the law or rules governing them). Extensive coverage is also given to explain the difference between petitions for writs of certiorari and direct appeals and how to litigate both.

Divided into fourteen chapters, the manual begins with sections discussing the distinction between legislative, administrative, and judicial law and continues into sections on how to read and analyze rules and legal decisions. There is a well laid out chapter for the prisoner that has no litigational experience on how to do legal research. That chapter is not just for the novice, however, it has some very useful lists detailing where statutes, rules, session laws, and case decisions can be located on the Internet and obtained from state universities. Also included is a Florida statute reference listing, a glossary of legal terms, research references for further research, and an appendix of full-sized forms with examples of how-to-do-it.

An important and much needed book, this first volume in the *Florida Prisoner's Litigation Manual* series has the potential to greatly improve conditions of confinement for Florida prisoners. It is a must-have self-help survival guide for all Florida prisoners. ■

PRISON RAPE NOT FUNNY

The LA-based group Stop Prisoner Rape, SPR, earlier this year appealed to 7-UP to stop airing an ad that depicted prisoner rape as a humorous punch line. SPR, with the support of more than 80 other prisoner advocate groups - including Florida Prisoners' Legal Aid Org. - asked 7-UP's parent company,

Britain's Cadbury Schweppes, to pull the ad that was scheduled to run 120 to 150 times this year, often on youth-oriented programs.

"No company would make jokes about rape outside the prison context," said Lara Stemple, an attorney and executive director of SPR. "Men and women are routinely raped and sexually brutalized in prisons throughout the country. It's time to stop the joking and start taking sexual violence against men and women behind bars seriously."

7-UP initially responded that the ad would not be pulled. However, in June, as prisoner advocate groups continued to rally in support of SPR, 7-UP changed its position and pulled the ad.

-Commentary- SPEAKING OUT

In the last issue of FPLP an article that had run in the *St. Petersburg Times* was the source of an article about Aramark Corporation, a private company providing food services to Florida state prisoners. Following the *Times* article, that paper ran an editorial critical of Aramark, which in turn resulted in a letter to the editor by a citizen basically stating that prisoners deserve whatever happens to them in prison. That letter sparked FPLAO director and FPLP co-editor Oscar Hanson to write his own letter to the *Times'* editor, which that paper printed on July 19. That letter stated:

As a Florida prisoner, I would appreciate the opportunity to voice my opinion regarding Aramark Corp., the Department of Correction's food-service provider for most of Florida's prisons.

While the department's prison population is indeed incarcerated as punishment for crimes allegedly committed against the state and its citizens, we, as

prisoners, are not stripped of our status as human beings living in a civilized society, albeit a more restricted one. As such, we should not be expected to live in the lap of luxury, but neither should we be subjected to subhuman treatment.

The July 7 letter to the editor, Prison is for Punishment, conceived while the writer enjoyed his morning smorgasbord, commented that "prison is a place of punishment. It's not a nice place to be....So what if their (prisoners') sloppy joes are a little runny?"

Runny sloppy joes are one thing; spoiled chicken soaked in vinegar to disguise the rottenness is another. Further, the writer fails to recognize that what Aramark has done in the name of profit would constitute serious charges should he receive the same treatment at his local eatery.

No human - incarcerated or free - should be compelled to eat rotten food from the hands of a nefarious food-service provider.

-Oscar Hanson, Sumter Correctional Institution, Bushnell.

Whether Oscar's letter caused the writer of the original editorial letter to change his mind is not known. However, Oscar's letter probably did cause some citizens to at least think about what is going on in Florida's prisons, and that's what is important. Instead of just griping and complaining to other prisoners about what the media was reporting, Oscar took action to have his voice heard by the public. More prisoners need to do the same.

Letters to editors and reporters of the media are considered "privileged mail" by the FDOC and the envelopes may be sealed before mailing them. There is no reason not to write the media, and every reason for prisoners to do so. The FDOC doesn't want the public to know what is really happening in our prisons. It is prisoners' responsibility to inform

the public and letters to newspaper editors is an excellent way to do that. You can either exercise your First Amendment right to speak out, or you may just find it taken away too. ■

"RAT MAN" TRAPS \$3,000 IN RETALIATION SUIT

by David M. Reutter

A 42 U.S.C. §1983 action filed in a Florida State Court alleging retaliatory job changes for the filing of grievances and lawsuits that challenged the general living conditions at Glades Correctional Institution (GCI) has been settled for \$3,000. In June 1993, I began filing a large amount of grievances challenging the living conditions at GCI, which was built in 1934. GCI sits on the tip of the Everglades, a mile south of Lake Okeechobee, and is surrounded by sugarcane grown in the mucky soil; hence, GCI's moniker: "The Muck."

By 1993, The Muck was a dilapidated run down prison that was infected by rats and insects. Its overcrowded, single story, open bay dormitories are built on pylons and housed 184 to 242 prisoners each. While housed in C dorm, I discovered the putrid smell that permeated the air was from a pool of raw sewage that sat under the dorm. The windows were broken, window screens were ripped or non-existent, subjecting prisoners to the Everglade's population of giant mosquitoes. The roof leaked and we marked the floor to indicate the best location to set mop buckets when it rained. Electric wiring was exposed, and there was no battery operated emergency lighting. The guards had

no keys or radios after the nightly yard lock down; they could only contact assistance by telephone.

My grievances and complaints to GCI and the Florida Department of Corrections (FDOC) were met with denials and inaction. Only the State Fire Marshall ordered corrections. After a complaint to the County Public Health Unit (CPHU) resulted in an inspection, I was called for interview with Charles Morris, Assistant Superintendent of Security, and was told I would receive a job change so I would not have so much time to litigate. It was changed that day.

I then filed a motion for Temporary Restraining Order (TRO) to correct the unconstitutional conditions. Ultimately, I received a job in the law library as a clerk. By then, the TRO was set for hearing and I informed Donald Obrakta, head librarian, of my deadline. As was GCI law library custom, he told me to work on the deadline and do my job. Such a custom was necessary because FDOC policy mandates priority use of all law library materials is provided to prisoners with deadlines imposed by rule or court order. I went to court twice on the TRO. Upon return the first time, I was reinstated as a law clerk. The second time I was terminated. Present at the TRO hearing was Superintendent Gerald Abdul-Wasi and John Townsend, Assistant Superintendent of Programs. At the hearing, a guard testified he went on workman's compensation for two weeks after a rat bit him while reaching into a cabinet in the guard's station. Sgt. John Runkles testified there was a rodent control problem, and not enough time was being devoted to correcting that problem. The Court denied the TRO.

Upon return to GCI from the TRO hearing, Obrakta informed me Townsend ordered my termination. GCI institutional operating procedures prohibited Townsend

USE OF FORCE AND CHEMICAL AGENTS ON THE RISE IN FLORIDA PRISONS

from making such an order. According to Obrakta's detailed daily log, he contacted Townsend in order to respond to my request seeking the reason for my termination. Townsend replied law clerks may not work on personal law work on duty, and I violated that rule. The defendants during litigation of this action were unable to provide any such rule. On discovery, I obtained a memorandum that showed action to create such a rule was taken 30 days after the termination. My new job assignment was as a "Rat Man" on the newly created Rodent Control Squad, which required setting rat traps 7 days a week over a 4 month period. After denials of administrative remedies in this pre-PLRA suit, I filed the §1983 action in state court alleging the job changes violated my First Amendment right to be free from retaliatory action for exercising my right to file complaints with courts and administrative bodies.

After eight arduous years of litigation and discovery, the case was set on the trial docket and ordered into mediation. On June 5, 2002, I agreed to dismiss the suit for \$3,000. As the "Rat Man" I learned perseverance, adherence to civil procedure, and a good document trail catches administrative rats. Although Townsend, Morris and Obrakta avoid admitting liability, the settlement shows these rats were ensnared in the Rat Man's trap. Many thanks to the "litigation warriors" who taught me so much over the years; you know who you are. See: *Reutter v Townsend*, Case No: CL 94-8349AI, Fifteenth Judicial Circuit Court, Palm Beach County, Florida. ■

Following the death of Frank Valdes at Florida State Prison, corrections officers now must carry a handheld video camera when they use force to remove an inmate from a cell, called cell extraction.

The DOC also began installation of cameras throughout the state's prison confinement wings, like the confinement wing where Frank Valdes was housed, and is further considering placing cameras throughout prisons designated as confinement or close management facilities.

Prison officials state that improved record keeping and investigation of inmate complaints and the videotaping demonstrate DOC's commitment to prevent anything like the Valdes death from occurring again.

Despite the noted changes, critics argue that loopholes exist. The most visible example is a rule that exempts incidents where prison officials use chemical agents, such as pepper spray, from having to be videotaped.

DOC figures show the use of chemical agents, which includes pepper spray and tear gas, increased 17 percent during 2000 and 2001.

Use of force incidents increased 2.6 percent over the same two-year period.

In a news article published by the *Gainesville Sun*, Lisa White Shirley, an attorney with Florida Institutional Legal Services in Gainesville, said, "I don't think that

it's a sincere effort, and the videotaping exemption is an example of that."

A representative of the human right group Amnesty International said it has "serious concerns" about conditions in Florida's prisons, especially regarding confinement units and what it calls overuse of chemical agents.

Since the DOC began keeping statistics on use of force and use of chemical agents, the numbers continue to escalate. The prison with the highest number of incidents is FSP, followed by Santa Rosa, Washington and Columbia.

DOC spokesperson Sterling Ivey said the Department encourages the use of chemical agents to avoid physical contact between officers and prisoners, which he attributes to the increase in the number of incidents.

Christopher Jones, Executive Director of Florida Institutional Legal Services, said the problem has shifted from beatings to overuse of chemical sprays. "Our prisoners are showing up with extensive chemical burns," Jones said. "The injuries don't match prison reports," he said, "where officers say they only used three, one-second bursts of the chemical spray."

Shirley, the attorney with FILS, who is working on a lawsuit over the issue of chemical spray abuse, said they have evidence of inmates with second-degree burns. "They're soaking the prisoners," she said.

Shirley has collected evidence from 15 prisoners at various prisons for the case.

[Note: See Use of Force chart in this issue—ed] ■

Use of force

Figures collected by the Florida Department of Corrections show the following number of reported use-of-force incidents at North Florida prisons from 2000 through 2002:

Prison	2000	2001	2002
Baker Correctional Inst.	45	47	3
Columbia Correctional Inst.	127	188	63
Cross City Correctional Inst.	11	10	3
Florida State Prison Main Unit	822	460	88
Gainesville Correctional Inst.	5	2	0
Hamilton Annex	29	24	5
Hamilton Correctional Inst.	20	25	7
Lake City Correctional Inst.	67	35	8
Lakecraft Correctional Inst.	63	83	11
Lawley Correctional Inst.	4	4	0
Mayo Correctional Inst.	38	48	5
New River Correctional Inst. East Unit	17	13	2
New River Correctional Inst. West Unit	18	15	2
North Florida Reception Cent. Main Unit	162	121	21
North Florida Reception Cent. West Unit	0	6	0
Union Correctional Inst.	47	59	11
Statewide	3753	3852	324

through May 15, 2003

Chemical agents used

Figures collected by the Florida Department of Corrections show the number of times when chemical agents were used at North Florida prisons from 2000 through 2002:

Prison	2000	2001	2002
Baker Correctional Inst.	21	16	1
Columbia Correctional Inst.	58	103	46
Cross City Correctional Inst.	4	5	0
Florida State Prison Main Unit	241	866	77
Gainesville Correctional Inst.	0	0	0
Hamilton Annex	16	12	1
Hamilton Correctional Inst.	0	15	3
Lake City Correctional Inst.	10	18	0
Lakecraft Correctional Inst.	12	45	16
Lawley Correctional Inst.	0	1	0
Mayo Correctional Inst.	17	20	4
New River Correctional Inst. East Unit	9	4	1
New River Correctional Inst. West Unit	2	3	1
North Florida Reception Cent. Main Unit	68	44	10
North Florida Reception Cent. West Unit	0	1	0
Union Correctional Inst.	18	47	3
Statewide	1503	1764	376

through May 15, 2003

In memory of those who have passed on...

March

Frank Whitehead - SFRC
 Richard Jones - Martin
 William L. Garber - CFRC
 Allen R. Linkhorn - NFRC
 Gabriel A. Baena - SFRC
 Charles H. Polite - NFRC
 Jimmy L. Riggins - NFRC
 Rudolph B. Jones - NFRC
 Jack Postell - NFRC
 Robert J. Durham - NFRC
 Solomon Drayton - SFRC
 Ulanda B. Baker - Lowell W
 Charles D. Kushmer - Columbia
 Jesse R. Miles - NFRC
 Alvin J. Gibson - SFRC
 Jacob A. Floyd - NFRC
 James Davis - NFRC
 Leisha K. Courtney - NFRC
 Juan L. Becerra - Washington
 Steven J. Caporale - NFRC
 John B. Crutchley - Hardee
 Risey Darden - NFRC

April continued

James Burton - So. Bay
 Illinois Underwood - Everglades
 Zebbie Edwards - Lowell W

May

Andrew F. Delaney - Union
 Willie J. Spencer - CFRC
 Joseph E. Larose - Columbia
 Alfred Vazquez - Opatocka WRC
 Lynn O. Feldpausch - CFRC
 Larry L. Addison - Gulf
 William Curran - NFRC
 Broward C. Turner - Okeechobee
 Willie Blacksore - NFRC
 Lucious F. Hines - NFRC
 Isaiah Alford - Taylor
 Bobby L. Brown - NFRC
 Cecil Johnson - NFRC
 Reginald P. Cooper - NFRC

June

Joseph L. Salter - Santa Rosa
 Frank L. Wiley - NFRC
 Arthur L. Barkley - Taylor
 Ruben Estrada - NFRC
 Wilbur Jenkins - NFRC
 Robert Carridine - SFRC
 Tanya R. Collier - Hernando
 Larry D. Clements - SFRC
 William R. Blandon - Jackson
 Armondo Sierra - Dade
 James D. Hall - Martin
 Tony Vasquez - SFRC
 Robert Rigby - NFRC

April

Herman Wiggins - NFRC
 Donald Hicks - NFRC
 Jerome A. Harris - Wakulla
 George I. Barkoskie - NFRC
 Bobby Keller - Wakulla
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POST CONVICTION CORNER

by Loren Rhoton, Esq.

My most recent articles have dealt with the filing of a U.S.C. Title 28 §2254 petition for writ of habeas corpus with the federal district courts. Unfortunately, since the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) was passed it has become extremely difficult for state prisoners to obtain collateral relief from a judgment and/or sentence in the federal courts. The likelihood is that a federal 2254 habeas petition will be denied at the district court level. Unlike at the state level, the petitioner does not automatically have the right to appeal the denial of a 2254 petition. This article will deal with initiating an appeal of the denial of a §2254 petition and requesting a certificate of appealability in order to obtain permission to pursue an appeal.

Once a district court has issued an order denying a §2254 petition, the habeas petitioner has several options. Firstly, the petitioner can file a postjudgment motion asking the district court to reconsider the denial of the §2254 petition. Federal Rules of Civil Procedure 52(b), 59, and 60 all provide vehicles for filing such postjudgment motions. Federal Rule of Civil Procedure 52(b) provides that “[o]n a party’s motion filed no later than 10 days after entry of judgment, the court may amend its findings- or make additional findings- and may amend the judgment accordingly.” Therefore, if the petitioner wishes to request rehearing or reconsideration of the denial of a §2254 petition, a motion should be filed requesting such reconsideration within 10 days of the order denying relief. Such a post trial motion should usually be filed pursuant to Federal Rule of Civil Procedure 52(b) and should be presented in the form of a *Motion to Alter or Amend Judgment*.

It is not necessary to file a *Motion to Alter or Amend Judgment* in order to pursue an appeal of the denial of a §2254 petition. The filing of such a motion, though, does toll (stop) the running of the jurisdictional period for filing a notice of appeal. The decision whether to file a *Motion to Alter or Amend Judgment* or other appropriate postjudgment motion is a judgment call on the part of the petitioner. It has been my experience that once a federal district court denies a §2254 petition, it is unlikely that a postjudgment motion requesting reconsideration will be granted by the same judge. Nevertheless, the right to file

such a motion does exist, and, as long as it is timely filed, does not jeopardize the ability to file a notice of appeal in a timely manner. I recommend that before filing such a postjudgment motion, though, that the petitioner determine whether he or she is willing to accept the additional delay of the appellate process that will follow. If such a delay is acceptable, then there is no harm done by filing a *Motion to Alter or Amend Judgment* or other appropriate postjudgment motion..

Generally, once a court has entered a final order on a §2254 petition, the petitioner has 30 days therefrom to file a *Notice of Appeal* if an appeal is to be pursued. See, Federal Rule of Appellate Procedure 4(a)(1). The requirements for a *Notice of Appeal* are listed in Federal Rule of Appellate Procedure 3(c) and a *Notice of Appeal* form is provided in Form 1 of the Appendix of Forms to the Federal Rules of Appellate Procedure. If a *Motion to Alter or Amend Judgment* or other appropriate postjudgment motion has been timely filed, then the 30 day period for filing the *Notice of Appeal* begins running from the date of the entry of a final order disposing of said motion. See, Federal Rule of Appellate Procedure 4(a)(4). Otherwise, if no such postjudgment motion has been filed, the 30 day period for filing of the *Notice of Appeal* begins running from the date of the final order on the §2254 petition.

Once a *Notice of Appeal* has been filed, it does not automatically mean the petitioner is allowed to appeal the district court’s denial of relief. Unlike many other litigants in the federal courts, habeas corpus petitioners must obtain permission to take an appeal of their case to the circuit court of appeals. The permission to appeal must be granted by either the district court or the circuit court of appeals. Said permission is granted in the form of a *Certificate of Appealability* (hereinafter, *COA*).

Upon filing a *Notice of Appeal* with the district court, the district court is automatically required to determine whether or not a *COA* should be granted. Federal Rule of Appellate Procedure 22(b)(1) provides in part: “[i]f an applicant files a notice of appeal, the district judge who rendered the judgment must either issue a certificate of appealability or state why a certificate should not issue.” Therefore, technically, as long as the *Notice of*

Appeal is timely filed with the district court, there is no need to file any pleadings in support of a request for a *COA*. Nevertheless, I recommend that an *Application for Certificate of Appealability* be filed in the district court along with the *Notice of Appeal*. Said *Application for Certificate of Appealability* should explain to the district court why it would be proper for the court to issue a *COA*.

Title 28 U.S.C. Section 2253(c)(2) provides that a certificate of appealability will be issued only if the applicant "has made a substantial showing of the denial of a constitutional right." Furthermore, in *Barefoot v. Estelle*, 463 U.S. 880 (1983), the United States Supreme Court held that in order for a certificate of probable cause (the pre-Antiterrorism and Effective Death Penalty Act equivalent of the current Certificate of Appealability) to be issued the appellant must make a "substantial showing of the denial of [a] federal right." In defining the "substantial showing" standard, the Supreme Court admonished district courts that they may not deny applications for probable cause certificates solely because they have already denied the petition on the merits: "[O]bviously the petitioner need not show that he should prevail on the merits. He has already failed in that endeavor" *Id.* at 893.

The United States Supreme Court held that rather, a certificate must issue if the appeal presents a "question of some substance," i.e., at least one issue: (1) that is "debatable among jurists of reason"; (2) "that a court could resolve in a different manner"; (3) that is "adequate to deserve encouragement to proceed further"; or, (4) that is not "squarely foreclosed by statute, rule or authoritative court decision, or [that is not] lacking any factual basis in the record." *Barefoot* at 893. It has been held, in *Hardwick v. Singletary*, 126 F.3d 1312 (11th Cir 1997), that the standard governing certificates of appealability for appeal of the denial of a habeas corpus petition under the Antiterrorism and Effective Death Penalty Act (AEDPA) is materially identical to the pre-AEDPA standard for certificates of probable cause for the appeal of a denial of a habeas corpus petition.

Therefore, in an *Application for Certificate of Appealability*, it is crucial for the applicant to demonstrate a substantial showing of the denial of a federal right. The factors listed in *Barefoot* must be sufficiently argued and applied to the applicant's case in order to obtain a *COA*. While it is likely that the district judge who denied a §2254 petition will also deny an *Application for Certificate of Appealability*, it is still recommendable that the habeas petitioner file such an application.

If the district court denies a request for a *COA*, Federal Rule of Criminal Procedure 22(b) also provides for the issuance of a *COA* by the circuit court of appeals. Once again, there is no explicit requirement that a formal

Application for Certificate of Appealability be filed with the circuit court for the circuit court to grant a *COA*. See Federal Rule of Appellate Procedure 22(b)(2). Nevertheless, it is strongly recommended that such an *Application for Certificate of Appealability* be filed with the circuit court if and when the district court declines to issue a *COA*. The right to appeal the denial of a §2254 should not be left to the chance that maybe one of the courts will see that a *COA* is appropriate. It is better to spoon feed the courts the precise reasons that a *COA* should issue.

While it is rare that permission to appeal the denial of a §2254 petition is granted, *COA*'s are occasionally issued and petitioners do sometimes pursue appeals to the federal circuit courts of appeals. Therefore, I hope that this article has been helpful in pointing habeas corpus petitioners in the right direction when attempting to obtain a *COA*.

◆ ◆ ◆

Loren Rhston is a member in good standing with the Florida Bar and a Member of the Florida Bar Appellate Practice Section. Mr. Rhston 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.



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NOTABLE CASES



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 APPEAL COURT

Ford v. Moore, 15 Fla. L. Weekly Fed. C 717 (11th Cir. 7/2/02)

This case involves the habeas corpus time limitations set forth in the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA).

AEDPA sets forth a one-year statute of limitations for a prisoner to apply for federal habeas relief from the judgment of a state court. The limitations period is tolled, however, while a properly filed state post conviction petition or other collateral review attacking the pertinent judgment or claim is pending.

At issue in this case is whether AEDPA's statute of limitations is tolled when a state collateral attack does not present a federally cognizable claim.

The 11th Circuit aligned itself with both the Ninth and Seventh Circuits in light of the Supreme Court opinion in *Artuz v. Bennett*, 531 U.S. 4 (2000). The Court held the plain language of the AEDPA statute merely demands a state challenge related to the pertinent judgment or claim at issue, not that the state challenge must be based on a federally cognizable claim.

[Note: This case involved a Rule 3.800 motion that the 11th Circuit deemed an attack on the judgment notwithstanding the fact that this particular motion attacks the sentence of a conviction.]

Tucker v. Moore, 15 Fla. L. Weekly Fed. C 914 (11th Cir. 7/13/02)

In this case the Eleventh Circuit resolved a question left open in the case of *Smith v. Jones*, 256 F.3d 1135 (11th Cir. 2001) as to whether the discretionary review exhaustion rule of *O'Sullivan v. Boerckel*, 119 S.Ct. 1728 (1999), would also apply to 2254 petitioners seeking review of Florida convictions.

In an important decision, the Eleventh Circuit held that in the absence of stronger indication that there was an established right to seek review in the Florida Supreme Court, the *Boerckel* rule does not apply to petitioners who invoke the required "one complete round of the State's established appellate review process" and use "the State's established appellate review procedures." There is not a requirement to resort to any "extraordinary procedures."

[Note: The method of review involved in the *Boerckel* case was "a normal, simple, and established part of the State's appellate review process."]

FEDERAL DISTRICT COURT

Carruthers v. Jenne, 15 Fla. L. Weekly Fed. D 358 (S.D. Fla. 6/24/02)

Ollie Carruthers filed a action with respect to conditions of his confinement while housed in the Broward County Jail system.

On July, 1994, the parties entered into a consent decree, which was ratified by the United States District Court, Southern District of Florida.

The consent decree provided for broad prospective relief with respect to confinement conditions and monthly payment of the Plaintiff's attorney fees, as well as compliance monitoring, which would be completed by the Plaintiff's counsel.

In August, 1996, subsequent to the enactment of the Prison Litigation Reform Act (PLRA), the Defendants filed a Joint Motion to Terminate /Dissolve Consent Decree. The motion remains pending.

On August 2, 2001, the Court appointed an expert to examine the conditions of the Broward Jail and prepare a report as to their constitutionality. The report has yet to be filed.

The Defendants argued that until the Court rules on their Motion to Terminate, all prospective relief is automatically stayed by operation of the PLRA.

The Court rejected this proposition and held the automatic stay provision of the PLRA stay only prospective relief within a consent decree and not the consent decree itself. Attorney fees and monitoring cost are not prospective relief for purposes of PLRA, and neither is automatically stayed by operation of the PLRA.

Johnson v. Bush, 15 Fla. L. Weekly Fed. D 441 (S.D. Fla. 7/18/02)

Thomas Jefferson and seven other lead Plaintiffs filed suit against the state of Florida on behalf of all Florida citizens convicted of felonies who have completed their sentences but nonetheless remain ineligible to vote because of Florida's disenfranchisement law.

The Plaintiffs alleged that the disenfranchisement law arbitrarily and irrationally denies them the right to vote because of race, discriminated against them on the account of race, and imposed an improper poll tax and wealth qualification on voting in violation of the First, Fourteenth, Fifteenth and Twenty-Fourth Amendments to the United States Constitution.

The United States District Court for the Southern District of Florida held that the state of Florida was entitled to summary judgment on claim that Florida's disenfranchisement law violates substantive due process and equal protection under Fourteenth Amendment, give clear Supreme Court precedent, which held that felon disenfranchisement laws do not violate the Due Process Clause or Equal Protection Clause found in the Fourteenth Amendment.

As for the First Amendment claim, the Court held it does not guarantee felons the right to vote. The Court went on to reject the remaining claims and granted summary judgment to the State of Florida.

FLORIDA SUPREME COURT

State v. Byars, 27 Fla. L. Weekly S 625 (Fla. S.Ct. 7/3/02)

In this case the Florida Supreme Court accepted jurisdiction to resolve the issue of whether a restraining order enjoining a defendant from entering a structure applies to structures "opened to the public" for purposes of a burglary

charge.

The Supreme Court held that existence of an injunction prohibiting defendant from entering his wife's place of employment is irrelevant to strict analysis of whether premises are open to the public. For purposes of the burglary statutes, the issue is not whether defendant has been prohibited from entering a structure, but whether "the premises are at the time open to the public." In other words, it is the nature of the property that is described in the applicable statute, not the status of a person.

Thus, the Supreme Court agreed that the trial court properly dismissed burglary charge that was based upon defendant's having entered wife's place of employment, which was open to the public, in violation of existing domestic violence injunction.

[Note: It is possible for a defendant to be charged and convicted for trespass under the facts of this case.]

Hall v. State, 27 Fla. L. Weekly S 627 (Fla. S.Ct. 7/3/02)

In this case the Florida Supreme Court addressed the constitutionality of Florida's Criminal Punishment Code codified under Section 921.002, Fla. Stat. (Supp. 1998).

In addressing each constitutional challenge, the Supreme Court held that the Criminal Punishment Code does not violate due process rights, does not violate constitution prohibition against cruel and unusual punishment, does not violate double jeopardy principles, does not violate right of access to courts or right to appeal, does not violate principles of separation of powers, and does not violate holding of United States Supreme Court in *Apprendi v. New Jersey*.

Spencer v. F.D.O. C., 27 Fla. L. Weekly S 646 (Fla. S.Ct. 7/3/02)

Florida prisoner Randy

Spencer petitioned the Florida Supreme Court for a writ of mandamus seeking to overturn the finding of frivolousness and a restoration of his gain time as a result of a disciplinary report.

Spencer's odyssey began when he filed a civil rights complaint in the United States District Court, which was dismissed without prejudice for Spencer's failure to comply with Court's order. Spencer appealed the decision and sought to proceed without paying the filing fee, but the federal district court found the appeal had been taken in bad faith. The Eleventh Circuit Court of Appeals upheld the order and dismissed the appeal as frivolous. The Eleventh Circuit's Order was sent to the prison where Spencer was incarcerated, which instituted disciplinary proceedings, held a hearing, and made a finding of guilt forfeiting 120 days of Spencer's gain time pursuant to Section 944.279, Fla. Stat. (2001).

The Court held that no due process violation occurred as alleged by Spencer. Statute provides courts the authority to refer inmates to DOC for discipline when they have engaged in misconduct in the judiciary, including federal courts. Further, despite Spencer's claim, discipline for frivolous suits does not violate prisoner's rights to free speech and to petition the government.

Tormey v. Moore, 27 Fla. L. Weekly S 661 (Fla. S.Ct. 7/11/02)

Kelly Tormey, a former state prisoner, had petitioned the Florida Supreme Court for a writ of mandamus prior to her release, arguing that the single subject clause of the Florida Constitution was violated when a new provision enhancing punishment for all murderers was added to the Law Enforcement Protection Act, which originally only enhanced punishment for offenses committed against law

enforcement personnel.

The Supreme Court recognized that the title to the new legislative act indicated that it was "an act relating to criminal penalties," it goes on to significantly narrow and restrict types of criminal penalties addressed in the act. An honest reading of the title results in the conclusion that the act provided for increased "criminal penalties" for persons who commit criminal offenses against law enforcement personnel and only law enforcement personnel.

The Court further noted that the exclusion of provisional credits for persons convicted of general murder is not reasonably connected with the expressed subject. The Court determined to sever part of the act that was not properly identified in the title.

In finding a single subject violation, the Supreme Court held only those persons who were excluded from receiving provisional credits because of general murder exclusion created by chapter 89-100, section 4, Laws of Florida, who committed their offenses on or after January 1, 1990, but before May 2, 1991, the date on which the Legislature reenacted the provision, will be entitled to relief under this opinion.

FLORIDA APPEAL COURT

Nettles v. State, 27 Fla. L. Weekly D 1432 (Fla. 1st DCA 6/17/02)

The question in this case is whether a defendant may, pursuant to a negotiated plea, be sentenced under both the Criminal Punishment Code (CPC), and also the Prison Releasee Reoffender Act (PRRA). The First DCA held that such a sentence is not necessarily illegal and certified conflict with *State v. Wilson*, 793 So.2d 1003 (Fla.2d DCA 2001) and *Irons v. State*, 791 So.2d 1221 (Fla. 5th DCA 2001), which held where the state attorney establishes that a defendant is "a prison releasee

reoffender as defined in this section, such defendant is not eligible for sentencing under the sentencing guidelines and must be sentenced [as a prison releasee reoffender]."

Brazeail v. State, 27 Fla. L. Weekly D 1606 (Fla. 1st DCA 7/9/02)

Florida prisoner, Thomas Brazeail, appealed an order rendered by the trial court that denied his motion for post conviction relief.

Brazeail entered a plea of guilty to various offenses and received a negotiated prison sentence of seven years. Later, Brazeail filed a motion for post conviction relief under Rule 3.850 and alleged that his plea had not been voluntarily, knowingly, and intelligently entered because his counsel had incorrectly advised him that he would be eligible for release after serving no more than four years of his sentence.

The First DCA held that misadvice by counsel that defendant would be eligible for release after serving no more than four years of his sentence when, in reality, defendant would have to serve at least 85 percent of his seven year sentence stated a colorable claim for relief since he alleged he would not have entered plea but for the misadvice.

The First DCA recognized conflicting views of whether a defendant must also make further factual allegations that there is a reasonable probability that the ultimate outcome of the prosecution would have been more favorable for him had he not entered the plea.

The Court extensively discussed the other state court ruling that relied on *Hill v. Lockhart*, 474 U.S. 52 (1985) to require these additional factual allegations in order to satisfy the prejudice prong established in *Strickland v. Washington*, 466 U.S. 668 (1984).

The Court held that a defendant's allegations that he would not have entered a guilty plea had he been accurately advised by counsel

of the consequences is a sufficient allegation of prejudice. The prejudice test to be applied under these circumstances is not whether defendant would have ultimately fared better had he not entered plea, but whether he would have entered the plea had he been competently advised by counsel.

Roberts v. State, 27 Fla. L. Weekly D 1539 (Fla. 3d DCA 7/3/02)

Florida prisoner Solomon Roberts sought appellate review of the trial courts' denial of his "Petition To Invoke All Writs," and argued that he was denied due process and equal protection when the trial court retained jurisdiction for thirty-three (33) years of his life sentence. Roberts argued that the trial court lacked statutory authority under Section 947.16 (3), Fla. Stat. (1981), to retain jurisdiction over one-third of his life sentences because a life sentence is indefinite.

The Third DCA agreed and cited *Cordero-Pena v. State*, 421 So.2d 661, 662 (Fla.3d DCA 1982) for its reasoning. As in *Cordero-Pena*, the DCA held the trial court cannot retain jurisdiction over a life sentence imposed under section 947.16 (3) and that a defendant's entitlement to parole consideration is solely controlled by the separate statutory requirement that he be required to serve no less than twenty-five years before becoming eligible for parole. See Section 775.082 (1) Stat. (1981).

[Note: Effective October 1, 1995, parole eligibility for capital felonies was eliminated].

Zollman v. State, 27 Fla. L. Weekly D 1579 (Fla. 2nd DCA 7/10/02)

In this case the Second District Court of Appeal held that it was error to summarily deny Zollman's Petition For DNA Testing. Zollman had been convicted of sexual battery, kidnapping and robbery. As a result of the recently

enacted Rule of Criminal Procedure 3.853, Zollman sought DNA testing of the contents of a rape kit, victim's clothing and cigarette butts found at the rape scene.

The circuit court denied the motion on the ground that it was facially insufficient. The Second DCA disagreed. The Court held that rule 3.853 (b), subsection 4, requires a defendant to allege sufficient facts to establish two things: first, that identification was a genuinely disputed issue at trial; and second, that the requested DNA testing would either exonerate the defendant or mitigate his sentence. In this case, the appellate court found Zollman made sufficient allegations on both issues. Because Zollman made

sufficient allegations that would bear directly on his guilt or innocence, the case was reversed for further proceedings.

[Note: Rule 3.853, unlike Rule 3.850, does not allow the trial judge to simply summarily deny the motion if the record conclusively shows that the defendant is not entitled to relief. Rather, if a Rule 3.853 motion is facially sufficient, the trial court *must* order a response. However after considering the State's response, the trial court may either enter an order on the merits of the motion or set the motion for hearing.] ■

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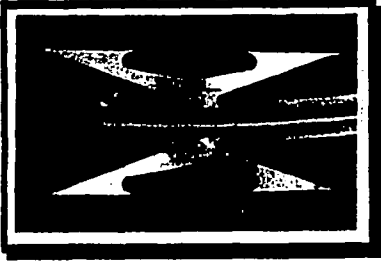
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***I.N.S. DEPORTATION**

I am a former Assistant State Attorney (Felony Division Chief), Assistant Public Defender (Lead Trial Attorney), and member of the faculty at the University of Florida College of Law. I have devoted over 25 years to the teaching and practice of criminal defense law, and I am an author of a 1,250 page text on federal practice in the Eleventh Circuit. The major thrust of my practice has been post-conviction oriented. There is approximately 70 years of combined experience in my office. I do not believe you can find more experienced representation in the State of Florida or elsewhere.

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RAZORWIRE

Perspectives: Inside & Out

Greetings! My name is Edward Bailey, I work at Oviedo Publishing, and in the course of my work I am sometimes in the position of working on your newsletter. Many times when we print we only examine the paper in the context of printing (on the press) as opposed to reading it. With your publication, however, I always read it, and over the last two years that I've been working at Oviedo, I've become very impressed with your work. Keep up the good work!

Dear FPLP, I am a new subscriber and have only received one issue. I enjoy reading each of them, but most of the guys that receive them are either, not willing to share their copy with others, or they have several people waiting to read them when they pass them on. I think it's wonderful that you are all so dedicated to helping others see what is truly going on in our judicial system in this state.

I had the privilege to meet Oscar at another institution when I first came into the system, and I found him to be someone that is not out to sell someone a dream. He is a realistic person that is only out to help others to help themselves. Oscar knows that when I first came into the system, I only had a sixth grade education, but as determined as I've been, I now have my GED and attending a computer course to further my knowledge. Thank you Oscar for being a friend to others.

I have developed a strong friendship with some wonderful people through correspondence, and they have kept me optimistic and fighting my case. Your publication is very important to me also, so please keep them coming. LH TCI

FPLP, as the new era of the FL DOC begins, does anyone care? I really don't believe anyone does. Do you? I've been building time since the 70's Sumter, Brooksville road Prison, Polk, Baker, Marion, Hamilton, Jackson and Lake. I got out in '97' and just got violated for technical's this year.

To be honest I'm overwhelmed with the insanity I've found, and experienced since my return to the New FDOC. I've witnessed inmates being tortured, assaults by brown shirts and white shirts on prisoners. It's like open season or more like Dante's hell made real on earth. No one knows why Valdez got kicked to sleep permanently. We all know he was murdered. Not the first, not the last to meet his fate in a concrete box.

Back in my day beatings were used as an educational tool the lesson was, "your in prison you don't run shit". I myself once brought on an understanding session upon myself. A convict knew, don't cross the line, and you were safe, as far as brown shirts went. Everyone remembers K wing slim, Nigger Charlie, Breezeway Red, Shithouse Shorty. Also a few at the Rock, I've never met, but have heard about, many other brutal Legend's of the FDOC. I guess what I'm saying is Valdez was no hero. He was a convict. He made his choice, cheated of spunky, the hangman, or whatever they use now to kill people the state decides needs killing.

Florida has built one massive prison system. And are scraping the barrel passing new laws every day to keep it full. We're no longer punished for what we've done. We're punished for what we might do. Because as was explained to me, the powers that be have decided it's

cheaper to lock a man up now than allow him to jump in and out of prison in the future.

There are people in here that have lost any right to ever be free, or really to breathe. But the larger portion of the "hardcore criminal's" Florida wants to lock up and let die in prison, are drug addict's that don't even know how to steal to support their habit. Soon it will be a 5-year felony for prostitution. Drug's and poverty are the enemy, not the people, regardless of race.

Make a choice to get out and stay out, make this insane experience mean something, make your life mean something. BAMA

Dear FPLP, I receive the newsletter and wanted to tell you how much I enjoy it. This is the only way I can find out what is going on in Florida. I am a Florida inmate doing my time here in TN. On an interstate compact, I have a life sentence and have been in for 26 years, hope to go home soon. Thanks MM TN

Dear Perspectives, I would like to thank you for the time and effort you put in your magazine. I do enjoy reading it especially the Post Conviction Corner. I find so much truth in what you write. Thanks. W N CFRC

FPLP, now that I'm away from Gulf Annex, I have a little tidbit for you.

The Osterback case made it illegal for the prisons to put coverings over the windows in the T dorms especially in CM, as it was inhumane sensory deprivation. Gulf Annex still has the coverings on 2 T-dorms, P and O dorm and refuses to take them down. The men in these dorms are doing regular time without any disciplinary problems, some minimum custody, yet the window blocks are up.

I just thought I would mention it, as it is sadistic and wrong for them to do that and also be allowed to violate a court ruling. There are many other atrocities going on at G A that should be dealt with. JM BD WC

Dear Razorwire, May 10th was my second anniversary of being in prison. Today was the scariest of all of them combine. I witnessed a young woman being brutally beaten down with a baseball bat. Horrific? Extremely. But the part that is the most disturbing is that it could have all been avoided. Just yesterday the same two were fighting and yesterday was not the first time either! Within minutes the entire yard was complete chaos. Making the whole situation worse was several inmates actually cheering the girl on. You see the inmates expected this whole situation. The 'batter' (for lack of a better term) had been waiting all day for an opportunity. She had been carrying an unopened soda in her back pocket all day. I assume in her warped mentality an aluminum baseball bat would make a better statement. After all of the brouhaha the compound was closed. Then I had to come back to a dorm being run by a male officer who is from the Men's unit across the street. He is under investigation for bringing in a gun. A man with AIDS 'gave him up', while on his deathbed. Florida Department of Corrections has the gall & audacity to claim "Care, Custody & Control"? I beg to

differ. The women's unit is full of drugs, heroine, crack, powder coke or pot, not to mention the misuse of Psychotropics. Take your pick! It's all here. A week ago Saturday there was 6 fights before lunch. I sincerely wish more people out there knew about what is really happening on the inside. Perhaps some of these lazy, illiterate people (guards) might have to work to earn their living instead of smuggling in drugs or guns, or turning their backs while people are dieing. Name withheld at authors request.

FPLP, Rotten food and shortages are nothing new for prisoners I thank you for making it known to the public for the few who care.

I would like to bring to your attention the long term medical effects are devastating from improper nutrition, and no vitamins or mineral supplements. In 1997 I developed Gastric Reflux Disease, and Irritable Bowel Syndrome, all long-term effects from eating rotten garbage. There are many inmates suffering digestive and intestinal disorders. In the future my esophagus and stomach linings will erode and then what?

But again Bush brags about how much money they save at our expense. Bush employing Aramack was a conflict of interest, wash my back I'll wash yours. Respectfully LM DCI

Dear FPLP, I am writing in regards to an incident that took place here at Charlotte C I on August 25. Inmate John Harlow has been in a wheel chair ever since I met him back in 2001. Recently with the arrival of a new Doctor, Dr. Drattler, his wheel chair was taken from him. I along with numerous other inmates can attest that John cannot walk two steps with out extreme pain. While on a visit the District Director Marta Villacosta gave John back his wheel chair after personal appeals from many concerned inmates. On Monday Dr. Drattler again took Johns wheel chair and sent it to the property room with strict instructions not to return it to inmate Harlow under any circumstance. I was a witness to this. Fast-forward to Sunday the 25th of August, John hasn't been to the chow hall in six days because he can't make it there; well he was called to the visiting park to see his daughter and brother. John has to crawl on his hands and knees. The assistant warden stands and watches him. When two inmates try to help him the warden orders them to drop him, screamifg, "he can walk". A Sgt. Finally gets him a walker from medical and it takes the two inmates helping him to finally get there 15 minutes later, a normal 40-second walk. After crawling and fighting with a walker the Asst. warden allows him a wheel chair only after bitching him out and of course for his family's sake. Five minutes into Johns visit He DIED! And sadder to the story his brother had a stroke. John was my friend and I am mad as hell! Wexford runs the medical here and their main concern is saving money not treating inmates. The same as most prisons. I believe it is a lot worse here. We have many inmates with hepatitis C. Because Inferon is so expensive they just do not treat them. Numerous grievances are filed most go unanswered. Well nothing will bring John back but I hope and pray that justice is reached here. I hope John's life does not go out in vain. TT CCI

Dear FPLP, Over the years I have written the Perspectives many times, never have received any replies, but I write it off as "The Perspective can not answer all the letters received." Then I wonder if in fact the letters reach you across the state, we do not know if our letters are received by the Perspective at all and thought that perhaps a page in the Perspectives could mention or list the letters received but cannot be answered. Being incarcerated since 1967 I feel that this would make men/women not feel they are unheard. Its hard for people in prison to give support to others when they feel that no one is listening and only a few are recognized.

The Perspective is a movement for all and many of us understand what it takes to keep it going, but sorry to say thousands of others don't.

The "new breed" as I call them, doesn't understand that what the "ole timers" are going through today- will affect them tomorrow. As I see it the so-called System has regressed into a deeper hole and in time no one will be able to climb out.

The Perspective has been the light into that hole from the beginning and only support can keep its light from burning out, if that happens, its total darkness.

I've always told others "once you confine your mind and heart all hope for you is lost, stay alive inside your head and heart, and you can beat the

system by the use of pen and paper. We must do the time and not let time do us."

I want to let you know I read every line written in your publications even when they are not mine, so keep the truth coming. Sincerely JB GCI

Dear FPLP, I would like to say what a wonderful job you are doing to keep the inmates informed as to what is going on in the state prison system. I read your latest edition and I must say Bravo! What an excellent job. Keep up the good work. JH HCI

Thank you for your Sept. 19 message that " you can find all of this information on our web page www.fplao.org." I have spent a good bit of time looking at your web page, and congratulate you on the excellent information that is there, and thank you for the good work your organization does. Email Audrey Rivers

Dear Friends: As Prison Reform Unity Day approaches, we are faced with the usual mix of enthusiasm from some states and silence from others. We are at a loss to understand why this is so, since it's universally acknowledged that no state has a prison system which respects the basic human rights of prisoners and their families.

We know this is NOT ok with the folks who are receiving this message. Many of you are getting actively involved in demanding changes in America's penal system beyond exchanging e-mails, writing letters and signing petitions, but many more of you are not.

Exchanging e-mails, writing letters and signing petitions are good steps to take, but let's be honest here; thus far these things have NOT brought about any noticeable changes. That's because a few e-mails, letters, and sparsely signed petitions here and there are easily ignored - millions of voters standing in unity are NOT!

A few e-mails, letters and petitions are not even local news. Millions of voters standing outside prisons, state capitols, court houses, at the graves of murdered prisoners all across the country on the same day would be INTERNATIONAL NEWS, and force our government to address the problems we and our loved ones live with daily.

If you are tired of worrying about the safety of your incarcerated loved one; if you are tired of horrible visiting conditions; if you are tired of paying exorbitant long distance bills; if you are tired of state murder; if you are tired of the cruelty of Segregation Units; if you are just plain sick and tired of how you and your loved one are being treated, then DO SOMETHING ABOUT IT! Coordinate or participate in a rally in support of the basic human rights of prisoners and their loved ones on October 19!

There are at least TEN MILLION PEOPLE in this country whose lives are DIRECTLY AFFECTED by the inhumane conditions in America's prisons. Individually, we have no power. Small groups and organizations have little or no power and few, if any successes. But all of us together are a FORCE no politician can ignore.

It's not going to happen overnight. Nothing this big ever is. Many people are reluctant to participate in public rallies for various reasons - although none that I've ever heard are valid. The bottom line is, if something is important to you, you will find a way to do it. We all have to talk to other prison visitors while we wait in line, and encourage them to participate in PRUP. We can't reach the people who aren't online without YOUR HELP!

The prisons will change even if we don't all participate. The problem is that the changes will be for WORSE, instead of BETTER! If that's not ok with you, please participate in a Prison Reform Unity Day observance in your state. Please don't think that there will be enough people without you. Only YOU can fill your place in a rally, and it's going to take ALL OF US to get the job done! Email LINDA TANT MILLER

- PART TWO - THE FLORIDA PAROLE GAME

by Bob Posey

The Florida Parole Commission (FPC) has been around for more than 60 years and continues to exist today, although parole was abolished in Florida in 1983 for almost all prisoners who have been incarcerated since that date. How does the Commission continue to survive? How does it justify its existence? Why has it proven to be impossible to phase out this largely redundant and taxpayer-revenue-draining bureaucracy, and when will it end? Those questions and more are not something citizens in Florida sit around and ask themselves. The public, if it is even conscious that there is still a Parole Commission in Florida, has little, if any, correct idea what the Commission does, and probably cares less. The only ones who does care are a minority; family members and friends of the remaining 5,000+ Florida prisoners who are parole-eligible and who the Commission ruthlessly has trapped as pawns in a game where the Commission controls the board.

Even those people who do care find it hard to remain informed about the FPC. The Commission, with an arrogance born from decades of welding almost unquestionable power over who was released or who remained in prison, coupled now with a desire to avoid close scrutiny as to why it still exists, cloaks its activities in mystery and obfuscation.

And its not only parole-eligible prisoners and their supporters who are stymied by the Commission. Occasionally, state lawmakers have questioned the FPC's existence and are surprised with the resistance encountered against changing the Commission in any manner.

In the meantime, those prisoners locked into the Parole

Commission's game keep getting older, Florida taxpayers blindly continue to fund and agency past its time, and the agency itself blithely basks in the shadows cast by the Florida sun.

Confident and Strong

According to the Parole Commission's rudimentary website, the "Commission is confident and strong. By working towards its goals and planning for the future, the Florida Parole Commission will play an important role in the State's Criminal Justice system in the new millennium." Just where does such confidence come from?

The Florida Parole Commission is authorized by the Florida State Constitution under Article IV, Section 8 (c), which states:

There may be created by law a parole and probation commission with power to supervise persons on probation and to grant paroles or conditional releases to persons under sentences for crime. The qualifications, method of selection and terms, not to exceed six years, of members of the commission shall be prescribed by law.

Where the Parole Commission is a constitutionally authorized body, any changes to its overall powers and duties can only be made by amending the Florida Constitution in one of two ways. The State Legislature may propose to amend the State Constitution by a joint resolution passed by three-fifths vote of both the Florida House of Representatives and the Florida Senate. The proposal then would have to be placed on the general election ballot.

The second method of changing the Florida Constitution, to change or even abolish the FPC's fundamental authority, would require a citizen-led initiative to have the proposal placed on the ballot. To do

that is a huge undertaking. Foremost, a percentage of Florida's population, approximately 450,000 people would have to sign a petition in favor of the proposal. The signatures would then have to be verified by the Florida Elections Commission, and if approved, then the proposal could be placed on the ballot. Funding the organization necessary to get a citizens' initiative on the ballot is often very expensive, frequently requiring hundreds of thousands or even millions of dollars, unless there is a large group of dedicated people willing to collect signatures.

However, even if either of those two hurdles could be overcome and the proposal is placed on the ballot, the biggest hurdle would remain - convincing the voting public to vote for the proposal. The FPC has reason to be confident those hurdles cannot be jumped.

Masters of Survival

In 1975 the state Legislature enacted the Correctional Organization Act of 1975 (Chapter 75-49, Laws of Florida) and created the Department of Offender Rehabilitation (what is now the Department of Corrections), thus reorganizing the correctional system into a separate state agency. The new Department of Offender Rehabilitation was made up of the Division of Corrections, which formerly had been a division of the Department of Health and Rehabilitation Services, and the field staff of the Parole and Probation Commission. The Act transferred the authority to supervise persons on probation or parole for felonies from the Florida Parole Commission to the Department of Corrections, contrary to the supervision powers granted to the Parole Commission by the Florida Constitution.

The Parole Commission challenged the Act in *Howard v. Askew* in the second judicial circuit and the court declared the

supervision-transfer provisions of the chapter law unconstitutional. Rubin Askew, then governor of Florida, who had signed the Act into law, appealed the lower courts' decision to the Florida Supreme Court, which ruled, without ever addressing the merits of the case, that the petitioners lacked standing to appeal. Apparently, a backroom deal was struck with the Parole Commission not to push the issue as no further action was taken and the DOC continues to (unconstitutionally) provide supervision to released prisoners and probationers.

Though unconstitutionally stripped of its supervision staff, the Parole Commission survived the 1975 reorganization. In 1983 that survival was shaken when the parole system was abolished in favor of guideline sentencing. The Legislature left the Parole Commission intact to deal with those prisoners, already sentenced to parole-eligible sentences, but clearly notified the Commission that it was to wrap up its business in that regard over the next few years as the Commission would eventually be phased out. The end of the Commission was in sight.

By the end of the 1980's, however, under the new guideline sentencing scheme, the Florida prison system was bursting at the seams. Lack of prison capacity and federal litigation concerning prison overcrowding forced the state Legislature to craft several early release valves. Two of those valves were Conditional and Control Release.

The Conditional Release Program was created in 1988. Under conditional release, guideline-sentenced prisoners convicted of serious crimes are subject to mandatory supervision (by the DOC) after prison equal to the gain time received while incarcerated. This allowed some early releases to alleviate overcrowding, but wasn't enough.

In 1989 the Control Release Program was created. That program established a uniform criteria for determining the number and type of guideline-sentenced prisoners who could be released early under supervision (again, by the DOC) to maintain the prison population below 99 percent of lawful capacity.

Neither of those programs had anything to do with parole. But the Parole Commission, teetering on the brink of elimination, saw them as potential lifesavers. Although release under either Conditional or Control release was largely an administrative function that could be performed by the DOC (that would provide the actual supervision anyway) the Parole Commission called in political "favors" and lobbied other lawmakers to be included in the programs. The result was, essentially, the Parole Commission being given the authority to review release decisions made by the DOC and to approve them. Once again the Parole Commission was given a new lease on life. And although control release was ended in 1994, when prison capacity increased with the prison building boom, conditional release remains in effect and was the Parole Commission's bread and butter throughout the 1990's (along with the decreasing pool of parole-eligible prisoners).

The real test to the Parole Commission came in 1996. The attention of lawmakers in both the House and Senate turned to the Parole Commission following a string of publicized events. The Commission had been accused of releasing early the son of a business associate of then Gov. Lawton Chiles. One parole commissioner, Gary Latham, was in the news accused of sexually harassing a secretary. And the Commission was being vilified in the press for the mistaken release of more than 100 prisoners. Lawmakers, many of who owed no favors to the Commission,

having not been in office during the Commission's heydays before and shortly after 1983 when parole often depended on who you knew or could pay off, went into the 1996 Legislative session determined to cut the Commission down to size.

Bills were introduced in both houses that would have transferred almost all duties of the Commission, except the parole decision-making function, to the Department of Corrections. If passed, the bills would have reduced the Commission to about 50 employees, down from over 200, and would have slashed its budget from over \$10 million to \$3 million a year. The bills sailed through House and Senate Criminal Justice Committees with approval before the Commission could marshal its defenses, but once it did, the fight was on. When the dust settled, the compromise reached was reducing the number of commissioners from 6 to 3, cutting approximately 50 employees, and \$3 million from the budget.

Then Rep. Robert Sindler, chairman of the House Corrections Committee, commenting on the Legislature being stymied in its intent, said, "They have a lot of political connections and they call them in. They (Parole Commission) are a master at surviving."

And the Game Continues

Viewing the 1996 cuts as only a minor setback, by Fiscal Year 2000-2001 the Commission again had over \$10 million a year in budget and almost 200 employees, again. Going into the 2001 Session, lawmakers again sought to cut the Commission and were only partially successful. Many of the administrative functions being performed by the Commission concerning conditional release, that were also being done by the DOC, were turned entirely over the DOC. And the Legislature mandated that the Commission close and relocate its field offices to unused space

within DOC facilities. No significant cuts were made to employees or budget, however. And no action was taken (or suggested) to provide any relief or benefit to parole-eligible prisoners.

On June 30, 2001, there were 825 people on parole in Florida that had been released from the state's prison system. On that same date there were 5,682 Florida prisoners remaining in the system who were parole-eligible.

The Parole Commission has worked it out so those people are its ace-in-the-hole. Each year a few will be released on parole as an almost equal number have their parole revoked and are returned to prison, largely for petty "technical" violations, to make up for those released. In that way the Commission never runs out of game pieces.

In Fiscal Year 1998-99, for example, 110 were released on parole, 116 had their parole revoked; in 99-00 only 89 were released on parole, but 96 had their parole revoked; and last year, 00-01, there were 101 released on parole and, by an amazing coincidence, 101 had their parole revoked. But then, its hardly surprising that few paroles are granted, during the 2000-2001 Fiscal Year parole determinations only made up 8 percent of the Commission's entire "operations" (less, it is expected, than what was devoted to coffee and smoke breaks).

Growing old, an endless round of mostly fruitless hope, failing health, poor medical care, suffering and then death in prison. That's what most Florida parole-eligible prisoners have to look forward to as long as they are willing to be pawns in the Florida Parole Game.

[Sources: FPC, FCC and FDOC Annual Reports; Florida Constitution and Statutes; *The Tampa Tribune*, 3/20/96; *St. Petersburg Times*, 3/8/96; OPPAGA Report No: 95-44, "Information Brief of Control

Release Workload of FPC;" Auditor General Report No: 13433, "Audit Function of the Florida Parole Commission."]

[Note: The first part of this article appeared in the last issue of *FPLP*. This article is not intended to be all-inclusive. Much more could be written about the Florida Parole Commission and the conundrum parole-eligible prisoners are in, and more will be written. As stated in the note to Part One, a special section of FPLAO's new website, at: www.fplao.org, has been devoted to the parole issue in Florida with the intent to create debate and activism on the problem. At this point FPLAO is interested in hearing from parole-eligible prisoners to determine if they, and how many of them, are interested in joining a project to place pressure on lawmakers to make the Parole Commission more accountable and to step up the release of those who have been languishing in our prisons now for 20, 25,30, and 35 or more years waiting to be paroled. If FPLAO hears from enough parole-eligible prisoners, FPLAO will take the project on, and changes will come. Write: FPLAO, Attn: Parole Project, P.O. Box 660-387, Chuluota, FL 32766. Write today!]

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During June 2002 Florida Prisoners' Legal Aid Organization, Inc. (FPLAO), launched an exciting and innovative new website. Over the next few weeks and months this site will become a major source of news, information, resources and advocacy for Florida prisoners and their families, friends, and loved ones. Spread the news about:

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Corporate-Sponsored Crime Laws

by John Biewen

Over the past two decades, America's prison population doubled, then doubled again, before finally leveling off at about two million inmates. One result: a \$50-billion corrections industry. That's bigger than tobacco. The crackdown on crime has enriched corporations that build prisons or sell products to them, prison guard unions, and police departments that use budget-fattening incentives to pursue drug criminals. In this special report, American Radio Works correspondent John Biewen explores how some groups with vested interests work to influence public policy—helping to keep more people locked up longer.

Prison Industry a Revenue-Generating Opportunity

The annual trade show sponsored by the American Correctional Association is like other big trade shows: a sprawling bazaar of colorful display booths. This one fills a huge hall at the Pennsylvania Convention Center in Philadelphia. It brings together shoppers — mostly prison administrators — and hundreds of vendors hawking their wares. You can find plenty of companies selling the basics, of course: prison design and construction; fence and razor wire; uniforms as well as RIT dye to color-code those uniforms and a system for stamping them with numbers and bar codes; handcuffs; surveillance equipment; janitor services; steel doors and powerful locks and the electronic control rooms from which to operate them. The major phone companies are here — Sprint, Verizon, AT&T and the Bells and former Bells — vying to provide collect-call service to inmates' families. Dupont shows off a new

lightweight, Kevlar protective vest just for prison guards. It won't stop a bullet but it will protect against inmates attempting to "stab and slash" the officer, explains Dupont's Gary Burnett. Of the 450,000 guards in the nation's prisons and jails, "only about fifteen-percent of them are now protected, so the goal is to get protection on as many as possible," Burnett says.

Then there's the eye-catching B.O.S.S. chair. With its wires and straight back and gray finish it looks electric. But it's not what you think. It's the Body Orifice Security Scanner, a device designed to detect metal contraband hidden inside the body. "We're looking for handcuffs, keys, razor blades, small shanks, etcetera. Basically the person sits down in the chair; if they have any metal contraband hidden in the vaginal or anal cavity," the chair's display panel lights up and beeps, explains David Turner of Ranger Security Technologies. You can get a B.O.S.S. chair for \$5,000.

On its Web site, the American Correctional Association points to the \$50 billion spent each year to run the nation's prisons and jails. And it warns companies, "Don't miss out on this prime revenue-generating opportunity."

Is the Prison Industry Self-Serving?

Think of it. Two million prisoners eat six million meals a day. Here to help meet that need is Jim Carroll of Canteen Correctional Services. "We provide food services and commissary services to correctional facilities nationwide." Inmates get sick. Another corporation, the St. Louis-based Correctional Medical Services, is the leading provider of "comprehensive medical care in jails and prisons on a contract basis," explains company representative Jim Chaney. Prisoners exercise and kill time in the game room. "We sell a lot of sporting games, board games,

puzzles, table games to prison facilities," says Brian Wexler, Vice President of Sales and Marketing with Quality Table Games. Some people point to all this money being made on prisons and wonder: Is the industry serving the needs of inmates, or is it the other way around? Outside the convention center in Philadelphia, a few hundred people block traffic for a peaceful march through Center City. These protesters say a powerful web of private and public interests — the prison-industrial complex — perpetuates the war on crime for money. "No more prisons! No more prisons!" they chant. A young woman shouts through a scratchy megaphone: "We are no longer asking. We are demanding! No more making money off of the flesh of other human beings!" Some conventioners with the Correctional Association seem bemused at the notion that they're causing people to get locked up.

"I think it's Halloween in Philadelphia, man," says conventioner Ray Zaroufie as he waits to cross the street outside the convention center and watches chanting protesters dressed in striped inmate costumes. Zaroufie works for a Tennessee-based company that supplies prison commissaries. "Do prisoners got to eat?" he asks. "Do they got to shave? I mean, somebody's got to sell that to the state to put in those jails and the prisons, right?" Zaroufie has a point. Just because people make a profit from prisons, that doesn't mean there's a corrections lobby that works to drive up the inmate population. Certainly other forces have helped to do that. Crime soared in the 1970s and '80s. The news media devoted headlines and the tops of newscasts to the crack epidemic and gang warfare. Many Americans were alarmed. Politicians from both major parties seized the issue and held on tight. For two decades, a political

consensus prevailed: the nation needed tougher sentences, more police, more prisons. Sure, when it snowed prison-related contracts, businesses flocked to grab them. But do corporations also try to boost demand for their services? To some activists concerned about a "prison-industrial complex," the American Legislative Exchange Council presents a striking case in point.

Corporate-Sponsored Legislation

The American Legislative Exchange Council — ALEC for short — is not well known to the general public and doesn't try to be. But the organization, founded in the early 1970s, boasts of helping to pass hundreds of state laws every year: From tax cuts to loosened environmental regulations to longer prison sentences. "As you know, ALEC plays a vital if understated role in shaping our national agenda," Tennessee State Representative Steve McDaniel told a luncheon audience of a thousand at ALEC's annual meeting last summer at the Marriott Marquis in New York City's Times Square. "We are the unsung heroes of American public policy."

More than a third of the nation's state lawmakers — 2400 of them — are members of ALEC. Most are Republicans and conservative Democrats. ALEC says its mission is to promote free markets, small government, states' rights, and privatization. Members gather at ALEC meetings to swap ideas and form "model legislation." Legislators then take those "model" bills home and try to make them state law. In a luncheon speech to the group, former Wisconsin Governor Tommy Thompson—now the Bush administration's health and human services secretary—fondly remembers his days as a state rep and an early ALEC member in the 1970s. "Myself, I always loved going to these meetings because I always found new ideas. Then I'd take them

back to Wisconsin, disguise them a little bit, and declare that 'It's mine.'"

In forming and spreading its ideas, ALEC gets help from corporate leaders. More than a hundred companies co-sponsor ALEC conferences — including Turner, a construction giant and the nation's number one builder of prisons; and Wackenhut Corrections, a private prison corporation. Another 200 companies and interest groups join ALEC as "private-sector members." They pay dues for the privilege of helping to write ALEC's model bills. The result is corporate-sponsored legislation, says Edwin Bender of the National Institute on Money in State Politics. "Bayer Corporation or Bell South or GTE or Merck pharmaceutical company sitting at a table with elected representatives, actually hammering out a piece of legislation — behind closed doors, I mean, this isn't open to the public. And that then becomes the basis on which representatives are going to their state legislatures and debating issues."

Tough-on-Crime Measures Increase Prison Population

ALEC's corporate members include at least a dozen companies that do prison business. Like Dupont; the drug companies, Merck and Glaxo Smith-Klein; and the telephone companies that compete for lucrative prison contracts. And Corrections Corporation of America (CCA). It dominates the private prison business — building and running prisons and renting cells to governments. At last count the company housed 55,000 inmates in 65 facilities in twenty-one states and Puerto Rico, says CCA Vice President Louise Green. Neither CCA nor the American Legislative Exchange Council will say how much CCA pays for its ALEC membership. The latter group's corporate memberships go for \$5,000 to \$50,000 a year. Green says

belonging to ALEC gives the corrections corporation a chance to explain the benefits of privately-run prisons to state lawmakers — "that if those states and counties have considerable overcrowding in their jails and prisons that partnering with a private corrections company can realize cost savings to their taxpayers and we can offer effective programming for their inmates."

But CCA does more than chat up lawmakers at ALEC meetings. On top of its membership dues and contributions to help pay the bills for ALEC meetings, the prison company pays two thousand dollars a year for a seat on ALEC's Criminal Justice Task Force. That panel writes the group's "model" bills on crime and punishment. Until recently, a CCA official even co-chaired the task force. For years, ALEC's criminal justice committee has promoted state laws letting private prison companies operate. And at least since the early 1990s, it has pushed a tough-on-crime agenda. ALEC officials say proudly that lawmakers on the group's crime task force led the drive for more incarceration in the states — "and really took the forefront in promoting those ideals and then taking them into their states and talking to their colleagues and getting their colleagues to understand that if, you know, we want to reduce crime we have to get these guys off the streets," says ALEC staffer and Criminal Justice Task Force director Andrew LeFevre.

Among ALEC's model bills: mandatory minimum sentences; Three Strikes laws, giving repeat offenders 25 years to life in prison; and "truth-in-sentencing," which requires inmates to serve most or all of their time without a chance for parole. ALEC didn't invent any of these ideas but has played a pivotal role in making them law in the states, says Bender of the National Institute on Money in State Politics. "By

ALEC's own admission in its 1995 Model Legislation Scorecard, they were very successful. They had introduced 199 bills [that year]. The Truth-in-Sentencing Act had become law in 25 states, so that right there is fairly significant." By the late 1990s, about forty states had passed versions of truth-in sentencing similar to ALEC's model bill. Because of truth-in-sentencing and other tough sentencing measures, state prison populations grew by half a million inmates in the 1990s even while crime rates fell dramatically. The result: more demand for private prison companies like CCA.

Truth-in-sentencing in Wisconsin

In Wisconsin, a group of lawmakers led passage of truth-in-sentencing in 1998. "Many of us, myself included, were part of ALEC," says the bill's author, Republican state representative Scott Walker. "Clearly ALEC had proposed model legislation," Walker recalls. "And probably more important than just the model legislation, [ALEC] had actually put together reports and such that showed the benefits of truth-in-sentencing and showed the successes in other states. And those sorts of statistics were very helpful to us when we pushed it through, when we passed the final legislation."

But a former head of Wisconsin's prison system, Walter Dickey — now a University of Wisconsin Law Professor — says he finds it "shocking" that lawmakers would write sentencing policy with help from ALEC, a group that gets funding and, supposedly, expertise, from a private prison corporation. "I don't know that they know anything about sentencing," Dickey says. "They know how to build prisons, presumably, since that's the business they're in. They don't know anything about probation and parole. They don't know about the development of alternatives. They don't know about

how public safety might be created and defended in communities in this state and other states."

The Wisconsin Department of Corrections says the truth-in-sentencing law will add to the state's prison population in the years to come. A recent analysis by the state estimated that the 990 inmates imprisoned just in the first 21 months after the law took effect would spend 18,384 additional months in jail, costing taxpayers an extra \$41 million. That's money in the bank for Corrections Corporation of America, the company that sits on the committee that wrote ALEC's truth-in-sentencing bill. Wisconsin is a CCA customer. Its prisons are overcrowded, so the state houses more than three thousand inmates at CCA facilities in Minnesota, Oklahoma, and Tennessee. The price tag: more than \$50 million a year. Representative Walker says he understood that CCA and some other ALEC contributors stood to profit from the truth-in-sentencing bill. He insists he took that into account before deciding to sponsor the measure. "Oftentimes that's your greatest challenge, as a legislator, is trying to weed through what everybody's hidden agenda is, and figure out who's giving you credible information and in many cases playing one interest off of another to try and figure out what the truth is. More information to me is better," Walker says.

Still, Walker says that he and his fellow ALEC members relied on an ALEC report that credited Virginia's truth-in-sentencing law with a five-year drop in that state's crime rate. The trouble is, crime dropped in all states in the 1990s whether or not they passed laws like truth-in-sentencing. Experts struggle to understand why, but they generally give sentencing policies just a small fraction of the credit, says criminologist Alfred Blumstein of Carnegie-Mellon University and

editor of the recent book, *The Crime Drop in America*. Other likely factors include economics, changing drug markets, demographics, and social change — that is, more young people catching on that drug use and trafficking are self-destructive. Simple cause and effect equations like the one produced by ALEC — crediting truth-in-sentencing with a given state's dropping crime rate — are frequently used by advocates, not scientists, Blumstein says. "Whenever somebody with an interest in some aspect of the crime-fighting business is asked why crime has gone down or gone up, somehow they always are able to point to the issue they're most interested in as the cause of it."

The Place of Profit in Criminal Justice Policy

The Corrections Corporation of America booth, with its black and yellow logo, has a prominent place at the American Correctional Association trade show. CCA's Vice President of Customer Relations, James Ball, says CCA does not take an active role in writing or promoting ALEC's model sentencing bills. "You don't see CCA advocating for longer sentences; that's not true. If government, through its elected representatives, identified that, well, we are going to need to provide for public safety by incarcerating individuals — that is not a vendor-driven issue," Ball says. Asked if giving money and time to the American Legislative Exchange Council doesn't constitute support for tough sentencing policies, Ball says ALEC is just a research group and doesn't drive public policy. In fact, ALEC's stated mission is to drive public policy.

The former Wisconsin Corrections Administrator, Walter Dickey, says he paid close attention to the debate over truth-in-sentencing in Madison. "There was never any mention that ALEC or anybody else

had any involvement" in the crafting of the bill, Dickey says. The public debate over criminal justice policy — how to make the streets safe, what it means for the punishment to fit the crime — is an especially profound one, Dickey argues, in which profit has no place.

"As I used to tell the troops when I worked in corrections, we lock the door, we deny people autonomy and freedom, the most cherished things in American life. I've always understood political people as having differences of opinion — tough on crime, soft on crime. But I've usually thought that whatever views were being held in that debate, they were sincerely arrived at. And to discover that there's a group pushing criminal justice policy not because it's in the public interest, but because it's a way to make money, is disappointing to me."

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**NOTICE
PRISONERS**

In the last issue of FPLP a notice appeared requesting information from Florida prisoners about denial of witnesses or evidence at prison disciplinary hearings. Due to an overwhelming response to that notice, no further information is needed on that issue. Superior Investigations of Florida requests that no further information be sent. Those who did respond are thanked for their participation. Editor.

AL - During July it was announced that the Alabama DOC will set up a hospice program to care for terminally ill prisoners at the state's prison for aged and infirmed prisoners. The program will be set up at the Hamilton Aged and Infirmed Center and will allow dying prisoners to remain in general population with other prisoners as long as possible and will allow prisoners' families more involvement and control over the dying prisoners' care.

AL - Lethal injection became legal in Alabama on July 1, replacing the electric chair, but no death row prisoners will be executed until the state acquires lethal injection facilities. Additionally, the state's Supreme Court has imposed a moratorium on setting any execution dates for the 183 prisoners on death row while it considers the effect of a recent U.S. Supreme Court decision that held only juries, not judges, can impose a death sentence.

CO - Lawmakers in Colorado went into a special session during July to try to fix the state's death penalty laws. Colorado was one of a few states that allowed judges to impose a death sentence. The U.S. Supreme Court recently ruled that practice is unconstitutional, holding that only juries can make such a decision.

FL - Claiming that she had lied to him, Hillsborough County State Attorney Mark Ober fired top homicide prosecutor Shirley Williams in July. According to Ober, in June sheriff detectives charged Alan Thompson, 21, with second-degree murder in the punching death of high school senior Christopher Fannan, 18, this past May. Williams had told Ober that the detectives decided on their own

to charge Thompson with second-degree murder. However, upon checking, Ober stated that the detectives claim Williams pushed for the tougher charge. Ober's office later reduced the charge against Thompson to manslaughter.

FL - On July 3 the Office of State Comptroller informed the Florida Correctional Privatization Commission (CPC), which oversees prison privatization in Florida, that former CPC Executive Director Mark Hodges had made an unlawful expenditure of state funds to pay for legal fees defending ethic charges against him. The Comptroller concluded that Hodges had used \$6,582.62 of CPC funds to pay an attorney to defend him on ethic charges initiated by a complaint filed by the Fla. Police Benevolent Assoc. In Jan. the Fla. Commission on Ethics found probable cause to bring seven charges against Hodges for violating state ethics law. The charges involved Hodges' outside criminal justice consulting business and using his CPC position for personal gain.

FL - An assistant facility administrator at a privately-operated state juvenile lockup was fired in July when a Dept. of Juvenile Justice investigation found he had held a 16-year old prisoner in a headlock, punched him in the face and threw him against a wall for flooding his cell. The facility, Cypress Creek, is operated by Correction Services Corp./Youth Services International on behalf of the state. Other prisoners and staff verified that Bill Newkirk had assaulted the prisoner without provocation. Other staff claimed Newkirk had later bragged about what he had done to the boy in a staff meeting.

FL - Former corrections guard Deritha E. Barth, who worked at the juvenile facility Cypress Creek Academy, avoided prison for having sex with prisoners by a plea bargain in July. Barth was fired from Cypress Creek in Jan. when two co-workers said they caught her and a 19-year old prisoner on the prisoner's bed with their pants down. According to those witnesses, Barth was kneeling on the bed with the prisoner sitting behind her. Both Barth and the prisoner claim no intercourse took place. With further investigation, Barth was charged with sexual misconduct for having sexual intercourse with three Cypress Creek prisoners, all over the age of 18. Under the plea agreement, Barth was sentenced to 100 community service hours and a \$200 fine. The Citrus County circuit judge agreed to withhold adjudication, which means there is no formal finding of guilt. The judge told Barth when sentencing her, "They (prisoners) must have been lining up in South Florida to come to Cypress Creek when they heard about you."

FL - Federal District Court Judge Ralph Nimmons, Jacksonville, is expected to rule on a class-action lawsuit brought on behalf of Florida death row prisoners about temperature later this year. The lawsuit, originally filed by death row prisoners Jim Chandler and William Kelley, claims the heat inside the death row unit at Union Correctional Institution is cruel and unusual punishment, and could lead to mental or physical illness or even death. Randall Berg, an attorney with the Fla. Justice Institute that is representing the prisoners, claims temperatures in the unit are almost always in excess of 90 degrees, frequently in excess of 100 degrees, and as high as 110 degrees at times.

Caryl Killinski, an assistant attorney general representing the state in the case, claims it is a "borderline frivolous lawsuit." Killinski claims since 1992 there has not been a single case of a prisoner suffering a heat-related illness. Court documents show 30 prisoners received heat-related medical treatment at the unit during the summer of 2000, and 18 more during the summer of 2001. Judge Nimmons recently toured the unit and interviewed some of the 300 prisoners.

[Source: AP, 8/8/02]

FL - Second Judicial Circuit Court Judge P. Kevin Davey dismissed the major part of a lawsuit filed by civil rights groups that claimed the state isn't doing enough to help ex-felons get their voting rights restored. One count of the suit remained after the dismissal, that Davey instructed attorneys for the state and civil rights group to work out a settlement. Florida is one of only eight states that does not automatically restore ex-felons civil rights. Approximately 410,000 Floridians are prevented from voting because of felony convictions, according to some estimates. One-third are black, claims the ACLU. Davey specifically held that the Fla. Dept. of Corrections is not violating state law that requires it to help ex-felons get their voting rights restored.

[Source: *Tampa Tribune*, 8/16/02]

ID - State official claim that everything wrong in the Idaho DOC Correctional Industries division that lead to the DOC director resigning behind the scandal over a year ago has now been corrected. An internal memo outlined new policies implemented by the DOC to solve the problems that had allowed some prisoners to visit strip clubs, have conjugal visits and steal furniture.

IL - During June Illinois Gov. Ryan announced that prisons would be

closed to help balance the state's budget. In July Ryan was presented with eight new crime bills that would add hundreds more prisoners to the prison system and cost the state more than \$80 million over the next ten years.

IN - Three guards at the Indiana Women's Prison were arrested during June for coercing female prisoners to have sex with them. If convicted on the sexual misconduct charges each guard will only face up to three years in prison and up to a \$10,000 fine.

IN - The practice of charging prisoners a \$25 processing fee when they are booked into an Indiana county jail is being challenged in two federal lawsuits filed by three former prisoners. The lawsuits are challenging the practice in Clark and Bartholomew counties. While many counties use the booking fee to offset prisoners' medical expenses, in Clark County \$10 of the fee is deposited into a police pension fund.

MA - Massachusetts prison officials have proposed new regulations designed to restrict media access to prisoners. The proposal would prohibit cameras and tape recorders at all medium and maximum-security prisons and prohibit media access to all prisoners in confinement and deny confidential interviews between prisoners and the media at all state prisons. This move by the MA DOC follows moves by several other states in the last two years, including California, Michigan and Virginia, to curb the media's access to prisoners. Florida is currently in the process of trying to adopt new regulations to restrict what is considered confidential written materials in mail sent from the media to prisoners.

NE - Nebraska prison official claim that the results of drug tests performed on state prisoners during

June were the lowest in more than a decade.

PA - The U.S. Court of Appeals for the Third Circuit reinstated a class-action federal lawsuit filed by prisoners at a federal prison in Pennsylvania who claim that a 1996 federal law prohibiting the viewing of R, X and NC-17 rated movies by prisoners is unconstitutional. The law was adopted during the "get tough on prisoners" frenzy of the mid-1990's. The prisoners' attorney admits that X-rated movies can probably be banned, but that a categorical ban on R and NC-17 rated movies bans movies such as "Shindler's List," "Amistad," "Glory" and "The English Patient," which is unconstitutional. The appeal court apparently agreed and sent the case back to the District Court for further consideration.

UT - Citing state budget shortages, Utah lawmakers have cut out the practice of giving newly released state prisoners about \$100 as release money. Now, released prisoners will no longer get any money when released unless they can prove it is sorely needed.

VA - In the wake of 911, several states, including Virginia, suspended prison regulations requiring legal mail to be inspected only in the presence of prisoners. In Virginia, after protest by the state ACLU, the state reverted to the old policy of prisoners having to be present whenever legal mail is opened by prison officials, during March 2002. In Massachusetts, New Jersey, Vermont and Michigan, which also had adopted similar policy, all have now returned to only opening legal mail in prisoners' presence when legal actions were brought or threatened by prisoners' attorneys. ■

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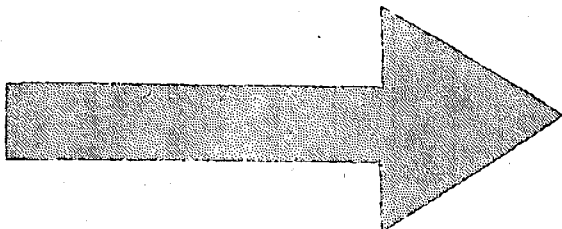
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PRISON LEGAL NEWS

SUBMISSION OF MATERIAL TO FPLP

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 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 advice. 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.

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