Florida Prison Legal Perspectives

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INVESTIGATION UNCOVERS CIVIL RIGHTS VIOLATIONS AT FLORIDA COUNTY JAIL

In the September-October 1999 (Volume 5, Issue 5) issue of FPLP, we published news of a report released by Amnesty International regarding the deplorable conditions at the Jackson County Jail located in Marianna, Florida.

An investigation that had stalled has now moved forward and investigators have uncovered multiple civil rights violations within the jail. In a report prepared by the Department of Justice (DOJ), conditions were called so woeful that they violate the civil rights of the prisoners housed there. Those conditions prompted action by the DOJ. The DOJ's Civil-Rights Division delivered a bluntly worded 18-page letter to Jackson County administrators that its investigation has uncovered numerous violations at the jail, including medical care so poor that it endangered lives and a routine practice of shackling prisoners face down on concrete beds for hours at the risk of asphyxiation.

The report, however, does not address the most alarming allegation, which prompted the investigation in the first place. Nearly two years ago, immigration detainees alleged that they were shocked with riot-control devices while shackled to concrete platforms. As a result of the allegations, the Immigration and Naturalization Service removed all 34 of its detainees from the 300 bed jail and stopped using the facility.

While the report was silent on the allegation, government investigators did find indiscriminate use of the electronic shields and the concrete beds on detainees and regular prisoners alike. The electronic shields are supposed to be used only as a last resort. *Acting* Assistant Attorney General Bill Lann Lee skirted the allegation by writing, "Facility staff engaged in excessive and unwarranted use of restraints to control inmates, causing serious risk of bodily harm."

The letter to Jackson County administrators also criticized the jail for its treatment of juvenile offenders citing the denial of required exercise and education. The letter threatened legal action if these conditions were not resolved.

Among the most serious violations at the Jackson County Jail include:

- A system of medical care so deficient that nursing staff often ignore serious health complaints.
- The jail's lone physician exer-

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cised insufficient supervision, leaving nurses to make medical decisions for which they are unqualified. The result is that patients are often denied medications they need, or given medications without the required monitoring.

- Several files reviewed revealed poor decisions by the nursing staff that could lead to serious bodily injury or death.
- In some cases, the (un-named) physician denied care to patients who could not pay for it even though he is required by law to provide it.
- Jail officers frequently ignored procedures to handle medical emergencies. In one case an officer found that an inmate who reported chest pain had elevated blood pressure "but merely gave the inmate antacids."
- The jail has no infection control program, placing prisoners at risk for tuberculosis No tests were available to detect diabetes or HIV.
- Fire safety measures were inadequate.
- Legal materials for prisoners were limited and constituted a violation of the constitutional right to access the courts.
- Training of staff was inadequate. The report blamed the lack of training and strains caused by thin staffing and mandated overtime for the use of excessive force to subdue troublesome prisoners and detainees, including routine applications of Plexiglas stun shields that are supposed to be used only as a last resort. However, "in a number of instances" the shields were used as a first resort, which the report labeled as "*unreasonable*."

[Source: *Miami Herald 4-22-2000*]

FROM THE EDITOR

Welcome to this latest issue of FPLP. With this issue comes some changes, but then, we have always considered FPLP a work in progress. Those members and readers who remember when the newsletter was first started know that the staff has basically remained the same over the years. We have some dedicated people who work very hard and generously volunteer their time to keep FPLP going. One of those people, John Oaks, the Layout Editor, has been with us since the second issue, way back in 1994. John is a truly unique person. Unlike most of the FPLP staff, who either have a loved one in prison, or who is a prisoner, or who may be considered a prisoner advocate, John Oaks doesn't fit into any of those categories. No, John got involved, and for six years did a remarkable job getting FPLP ready to print, simply because he is a friend of my wife, Teresa Burns, and myself—a very dear friend. The last issue of FPLP was John's last as Layout Editor. He felt it was time to turn that job over to someone else.

With this issue we welcome Gayle Mullins-Russell in that position. Many of you may know Gayle already, or recognize her name. For many years Gayle was with Florida Institutional Legal Services, Inc., in Gainesville, as a legal assistant and intake coordinator. Gayle is extremely knowledgeable about the Florida prison system and brings a wealth of knowledge as a prisoner advocate with her. She only has limited experience with desktop publishing, but is confident that she can handle FPLP. We are very glad to welcome her aboard. As for John, we thank him with all our hearts for his valuable contribution to this effort over the past six years.

In this issue is the first of a planned series of projects that FPLAO members and FPLP readers can actively participate in. The project in this issue is a survey of Florida prisoners designed to gather data on how well the Inmate Grievance Procedure actually works.

(Continued on page 10)

FLORIDA PRISON LEGAL PERSPECTIVES
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FPLP is a Non Profit publication focusing on the Florida prison and criminal justice systems with the goal of providing a vehicle for news, information and resources affecting prisoners, their families, friends and loved ones, and the general public of Florida and the U.S. Reduction of crime and recidivism, maintenance of family ties, civil rights, improving conditions of confinement and opportunities, promoting skilled court access for prisoners, and promoting accountability of prison officials, are all issues FPLP is designed to address.

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

VISITATION RULES CHALLENGE —UPDATE—

In the last issue of FPLP was a report on a move by the Florida *Department* of *Corrections* (FDOC) to enforce numerous "new" visitation rules at institutions before the rules were legally adopted. As noted in that report, during April a chalenge was filed against that implementation of invalid, unadopted rules with the Florida Division of *Administrative* Hearings. That case is *Teresa Burns v. FDOC, DOAH Case No. 00-1687RU.*

The DOC responded to the petition with a Motion to Dismiss, claiming Ms. Burns (a visitor to FDOC institutions) had no standing to pursue such a challenge as visitation rules only apply to prisoners. In other words, the DOC claimed that it is the prisoners' privilege or right to receive visitors, not the visitors' privilege or right to enter the prison to visit the prisoners.

Ms. Burns responded that the rules being challenged only seek to regulate when, where and which visitors may visit and under what conditions. Ms. Burns further asserted that Florida Statute 944.23 authorizes the DOC to adopt rules related to visitors entering the prisons, and that the DOC has absolutely no statutory authority to adopt or implement rules concerning prisoners receiving visitors.

The Administrative Law Judge agreed with Ms. Burns, denied the DOC's motion, and directed the parties to prepare for a final hearing, which will probably be held in August or September.

FPLAO has received numerous phone calls and letters about the "new" visitation rules being enforced at many institutions. Please continue to provide such material, in writing, or any memorandums or lists of "new" visitation rules that may be being enforced at the institution you visit or are housed at. This material is needed for evidence of the FDOC's violation, and will be used to defeat these "rules" in their entirety if and when the FDOC ever attempts to use the proper methods to adopt those rules.

Thank you, to those who responded to the request for information, please continue to send such material or letters to FPLAO as soon as possible.

CHANGE IN VISITATION POLICY

As noted above, on April 16, 2000, FPLAO Chairperson Teresa Burns filed a petition against the Florida Department of Corrections (FDOC) with the Division of Administrative Hearings challenging the implementation and enforcement of new visitation rules within the prison system because such rules have not been adopted by the required procedures. One of the challenged rules was a provision that visitors may only take $15.00 into the visiting parks for use in the vending machines. The FDOC quickly *moved* to revise that provision.

On April 28, 2000, Stan W. Czerniak, FDOC Assistant Secretary for Institutional Security and Management, sent a memo to all regional directors and wardens that stated:

"Effective immediately, the amount of money that visitors, regardless of age, can take into the visiting park is increased from $15.00 to $25.00. The increase complies with Department rule Chapter 33-601.708(12) Florida Administrative Code. Please ensure that the inmate population and inmate visitors are informed of this change. Questions regarding this issue should be directed to Jerry Hewitt, Central Visitation Authority."

This change is more reasonable. Ms. Burns' primary challenge continues, however, against several other invalid visitation "rules." If the institution where you visit at is not complying with the above memo it is suggested that you contact Jerry Hewitt at (850) 410-4472 and request his assistance in correcting the problem.

HOW TO RECEIVE ADVANCE NOTICE OF ALL FDOC RULEMAKING PROPOSALS

Any Person (except a prisoner) may receive by mail a copy of every notice of proposed rulemaking issued by the Florida Department of Corrections (FDOC). There is no cost for these rulemaking notices and they are available with a simple request. You will receive them until you inform FDOC that you no longer wish to receive them. You will be informed on each notice where you may send comments or objections to the proposed rules, or how you may request a public hearing to be held on specific proposed rules. This service is especially useful to prisoners' family members, friends and advocates to object to proposed rules of the FDOC concerning visitation, telephones, mail to and from a loved one, etc., before unfavorable proposed rules are adopted. To receive the notices, send a request (similar to the one below,) to:

Perri Dale King
FDOC: Rulemaking Division
2601 Blairstone Road
Tallahassee, FL 32399-2500

Sample Request:

I am writing to request, pursuant to Sec. 120.54(3)(a)3., Fla. Statutes, advance notice of all Rulemaking proceedings of the Florida Department of Corrections.

Prisoners should have their family members and friends start receiving the *notices*. If a request is made for the notices and you *don't* start receiving them within 4 to 6 weeks, you should contact the following to complain:

Joint Administrative
Procedures Committee
Room 120, Holland Bldg.
Tallahassee, FL 32399-1300
Ph. (850) 488-9110

STATE ATTORNEY COMMITS SUICIDE

TAMPA - On July 12, former judge and current Hillsborough County State Attorney Harry Lee Coe went under a city expressway located in South Tampa and shot and killed himself with a handgun.

According to the Medical Examiner, Coe, killed himself sometime during the night of July 12/13. Coe's body was found the next day about 11:15 AM. by a reporter for WFLA-TV.

Coe apparently opted for death over disgrace. Earlier in July, the same reporter had broken stories about Coe, one of Florida's most notorious prosecutors, trying to borrow $12,000 from employees who worked for him, and destroying public records in his office to keep them from the media.

Florida's Governor Jeb Bush had ordered the Florida Department of Law Enforcement of Law Enforcement to investigate the loan and destroyed records earlier in the day of the 12th. The records Coe was alleged to destroy were computer files of Coe using his office online service for gambling.

"Those who profess to favor freedom, and yet deprecate agitation, are persons who want crops without plowing up the ground. ".

Frederick Douglas

EDITOR'S NOTICE: In Vol. 5, Issue 6, and again in Vol. 6, Issue 2 of *FPLP*, a notice appeared requesting information concerning retaliation experienced by FDOC law clerks. Some of the responses described incidents of retaliation wholly unrelated to law clerks, and others sought information as to the identity and purpose of the organization posting the notice. Such responses are understandable; however, replies were not contemplated, nor possible at this time. The information was requested to be used in pending litigation against the FDOC by a well-known and competent prison litigator. I vouch that the request is legitimate and in the best interest of FDOC prisoners, and law clerks in particular. Any information received will be used to advance a serious challenge to the systematic practice of retaliation against law clerks. For tactical reasons, it was determined that the best approach would be to limit the information gathering process to one-way correspondence. Much of the information obtained thus far will be useful to establish a pattern and practice of retaliation. The litigator wished to thank all those who have responded, and further responses are encouraged.-Bob Posey

AGREEING WITH OUR GOALS IS GREAT NOW JOIN WITH US TO ACHIEVE THEM

There are now over 70 thousand people in prison in Florida. Their family members and friends number in the hundreds of thousands. Despite those numbers, and the potential power that they represent, the prison system is rife with abuse, neglect, poor management and actual corruption. Divided and alone, whether prisoner, family member or friend, you are often ignored, shunned and lied to by those in the prison bureaucracy when you attempt to have a problem corrected. The result is that the abuse, neglect and corruption rolls over you one at a time.

Only through unity is change possible. Florida Prisoners' Legal Aid Organization is the largest and oldest membership-based organization of prisoners, their families, friends, and advocates in Florida.

FPLAO has been on the front-line in providing a voice to address your concerns and in advocating for prisoners and their loved ones. We want and need you to join us in this work by becoming a member of FPLAO.

Don't wait on someone else to do something:
GET INVOLVED!.

Pro Se Tips and Tactics

Supreme Court Decides Georgia Parole Case

by John Midgley

In many states, there are parole boards that decide when prisoners will be released. In these states, the timing of when the parole board will consider parole – the timing of "initial" parole consideration and the timing of later "reconsideration" of parole if parole has not been granted at initial consideration – is crucial: You can't get parole unless the board is required to, or agrees to, consider whether you should be paroled.

Sometimes legislators or parole boards try to make longer the time in between parole considerations. For example, the law in a given state has been that the board must reconsider prisoners for parole every three years, but then that rule is changed to require reconsideration for parole only every five years.

Often prisoners claim that this type of change violates the constitutional ban on "ex post facto" laws. The Supreme Court has recently addressed this type of ex post facto challenge. In this column, I talk about what these decisions mean for how prisoners must plead and try to prove this type of ex post facto claim.

1. Ex Post Facto And Changes In The Time Between Parole Consideration: "Significant Risk" Of Longer Incarceration

Article I, § 10 of the United States Constitution prohibits states from passing ex post facto laws. "Ex post facto" means "after the fact." This constitutional ban on ex post facto laws has been interpreted to prohibit states from passing laws that, among other things, make worse the punishment attached to a crime after the crime has been committed. *Collins v. Youngblood*, 497 U.S. 37, 43 (1990).

When states change the time between required parole reconsiderations, prisoners whose crime was committed before the change often claim this change is ex post facto. The prisoners reason that when there was more frequent parole consideration, there was more frequent parole, and so extending the time between reconsiderations eliminates an opportunity for release that was available when the crime was committed, and this adds to the sentence. Courts have sometimes agreed with this argument. See: *Akins v. Snow*, 922 F.2d 1558 (11th Cir.), *cert. denied*, 501 U.S. 1260 (1991).

The Supreme Court has recently addressed this type of ex post facto claim. The Supreme Court has suggested that there may be some cases in which this kind of ex post facto claim might be successful, but the Court has made it considerably harder for a prisoner to win on this kind of claim than the 11th Circuit did in *Akins*. In two cases, the Court has placed on any prisoner who tries to show an ex post facto violation due to a change in frequency of parole consideration a burden of proof that there is a "significant risk" that the change increased that prisoner's punishment.

In *California Department of Corrections v. Morales*, 514 U.S. 499 (1995) [*PLN*, July '95], the Court decided that adding time between parole reconsiderations for a narrowly-defined group of prisoners did not violate the ex post facto clause. At the time of Morales' crime, California law required initial parole consideration at a set time (one year before a prisoner is first eligible for parole) and reconsiderations every year after that. But the law was changed after Morales' offense to state that for anyone convicted of more than one murder, the parole board could delay reconsideration hearings up to three years if the board found it was unlikely that parole would be granted earlier. So, under the old law, Morales could have demanded reconsideration for parole every year, while under the new law he could demand reconsideration only every three years.

The Supreme Court held that Morales had not made out an ex post facto violation. The Court said that it was significant that the group of prisoners affected by the new law (conviction of more than one murder) was particularly unlikely to be easily paroled anyway, that the new law required the parole board to hold a hearing and find that parole was unlikely sooner than three years before reconsideration could be delayed up to three years, and that even after reconsideration had been set at three years the board probably could change that and see the prisoner sooner. The Court also characterized the new law as being mostly about the "method" by which time in prison was determined, not about the length of time in prison.

Most significantly for this column, the Court majority in *Morales* put the burden on the prisoner making this kind of ex post facto claim to *prove* that the new law created a "sufficient risk" that his or her time in prison was increased by the new law. The two dissenting justices pointed out that it would be hard for prisoners to prove this, and said that the ex post facto clause should place the burden on the state to show that the new law did not create a risk of increasing prison time. The Court majority said instead that the burden of proof is on the prisoner, but did not say how a prisoner could meet this burden.

The Supreme Court looked again at this ex post facto issue very recently in *Garner v. Jones*, 120 S.Ct. 1362 (2000). In *Garner*, the 11th Circuit had looked again at its ruling in *Akins* that the Georgia parole board's rule changing the time of required parole reconsideration for prisoners serving life maximum sentences from every three years to at least every eight years was an ex post facto violation. In *Garner*, the 11th Circuit said that even after *Morales* this change in mandatory parole reconsideration from three to eight years was ex post facto violation as it seemed "certain to ensure that some number of inmates will find the length of their incarceration extended in violation of the Ex Post Facto Clause..." *Jones v. Garner*, 164 F.3d 589, 595 (11th Cir. 1999).

The Supreme Court disagreed with the 11th Circuit that Jones had proven an ex post facto violation, but decided to give Jones another try to prove it. The Supreme Court found that the change in Georgia law did not on its face violate the ex post facto prohibition because reconsideration could occur sooner than eight years and even if an eight-year time was set, the board could change that and reconsider sooner. Next, the Supreme Court found that the 11th Circuit had just guessed that the new law must have lengthened incarceration for at least some prisoners, without proof that it would do so. The

Pro Se Tips (continued)

Court said that instead prisoners must somehow show that a change in the frequency of reconsideration creates a "significant risk" of increased incarceration:

When the rule does not by its own terms show a significant risk, the [prisoner] must demonstrate, by evidence drawn from the rule's practical implementation by the agency charged with exercising discretion, that its retroactive application will result in a longer period of incarceration than under the earlier rule. 120 S.Ct. at 1370. The Supreme Court did not make a final decision, but sent the case back to the lower courts to give *Jones* a chance to prove that there is a "significant risk" that the change in frequency of reconsideration "will result in a longer period of incarceration."

2. Pleading And Proving "Significant Risk"

The first lesson of *Garner* is that if you plan to file a lawsuit on the ex post facto issue discussed in this column, make sure that you put in your complaint or petition what are now the elements of this kind of ex post facto claim:

- The law at the time of your crime (date the crime was committed, not sentencing date) provided for parole reconsideration every ___ years;
- The law was changed since your crime was committed to require parole reconsideration only every ____ years;
- This change creates a significant risk that you will spend a longer time in prison than you would have if the old law was still in effect.

The second lesson of *Garner* is that as soon as you file your case, you *must* ask for extensive discovery from the parole board about how the board has acted under the old parole reconsideration rules, and how the board has acted under the new parole reconsideration rules. You must ask for this discovery because without showing that under the old law some percentage of people in your crime category were paroled sooner than they likely would be under the new law, it will be hard to show "significant risk."

The Supreme Court in *Garner* stated that this kind of information would be necessary to show "significant risk," and gave some clues about what you should ask for. In the quote above from *Garner*, the Court talked about the necessity of the prisoner drawing on "the rule's practical implementation." 120 S.Ct. at 1370. In addition, the Court said:

"In the case before us, respondent must show that as applied to his own sentence, the law created a significant risk of increasing his punishment. This remains the issue in the case, *though the general operation of the Georgia parole system may produce relevant evidence and inform further analysis on this point.*"

120 S.Ct. at 1370 (emphasis added). The Court also discussed how a parole board's "policies and practices" can be relevant, and added "Absent a demonstration to the contrary, we presume the Board follows its statutory commands and internal policies in fulfilling its commitments." 120 S.Ct. at 1371.

Given these statements from *Garner*, you should ask for at least the following categories of discovery from the parole board:

- Statistics on when all people sentenced for your crime were paroled under the old rules;
- Statistics on when all people sentenced for your crime have been paroled under the new rules;
- Information on how often and under what circumstances prisoners have been given earlier consideration under the new rules (that is, how often has the board decided to reconsider sooner than is required under the new law).

With the first two categories of information, you may be able to show a pattern suggesting longer actual times in prison for some or many prisoners under the new rules. With the third category of information, you may be able to show that the parole board only rarely grants reconsideration earlier than is required by the new law. If you can show this, you can then tell the court that the theoretical availability of earlier reconsideration is not available in practice, and so does not mitigate the significant risk of longer terms created by the actual implementation of the new law.

In order to get this crucial information, you should use the tools available to you for discovery. If you have filed a § 1983 case on your claim (as Jones did), I suggest a combination of interrogatories (Federal Rule of Civil Procedure 33) and requests for production of documents (Rule 34) requesting all information in the above categories. If you have filed a habeas corpus petition (as Morales did), you will have to ask the court to permit you to conduct discovery (Rule 6 of the Rules Governing Section 2254 Cases in the United States District Courts). Given what *Garner* says, you should be able to persuade a habeas court to allow you to get information to try to prove your claim.

If you have a choice (meaning you haven't started yet), it would be better to file your case as a § 1983, because discovery rights are clearer and you will not have to go through the state court system first. In the past, questions have been raised about whether § 1983 or habeas (which does require going through the state sytem first) is the proper way to proceed. Given that in *Garner v. Jones* the prisoner used § 1983 without comment from the Supreme Court, I think you have a good argument that § 1983 is a proper way to proceed. *See* also *Akins v. Snow*, 922 F. 2d at 1559, footnote 2.

If the parole board resists discovery on these topics, you should ask the court through local motion procedures to order the board to give you the information. *Garner* makes it very clear that board practices and parole rates are now relevant to the ex post facto determination. See the quotes above. (In *Garner*, the Georgia parole board did resist discovery, and the district court would not order the board to produce the information. Given what the Supreme Court said before remanding the case, it is unlikely a district court could now refuse to require reasonable discovery about board practices and statistics.)

Issues of discovery and proof are complicated. This column contains general information and is not intended to provide advice for your case. You should do your own research based on the facts of your case. ■

[John Midgley is an attorney with Columbia Legal Ser. In Seattle, WA. This article reprinted from June, 2000, issue of Prison Legal News. See ad in this issue of FPLP]

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U.N. panel cites U.S. prisons for incidents of torture, abuse

Associated Press

GENEVA — Electroshock devices to restrain prisoners, "excessively harsh" prison conditions and police ill-treatment of civilians were cited by a U.N. human rights panel yesterday in its first-ever report on torture in the United States.

The U.N. Committee against Torture recommended that the government end the use of stun belts and restraint chairs, finding they "almost invariably" breach a torture convention ratified by the United States in 1994.

In assessing federal and state compliance with the convention, the panel expressed concern over cases of abuse involving people arrested or imprisoned in the United States, and said "much of this ill-treatment by police and prison guards seems to be based upon discrimination."

HITTING HOME State and federal officials are investigating a possible culture of abuse in the Florida prison system, stemming in part from the July death of inmate Frank Valdes at Florida State Prison in Starke. Four guards have been charged with second-degree murder. Valdes' death led to numerous changes in the state Department of Corrections. Security cameras were installed in the prisons and a policy was implemented whereby video cameras are used to record any confrontations between inmates and guards.

The committee also voiced concern over "the excessively harsh regime" in prisons used for the most violent prisoners.

The report follows a two-day session last week in which officials defended the United States.

Cheryl Sim, a U.S. official, told the panel that the government would give the recommendations "very close and careful consideration." Officials declined further comment.

"We welcome the concern expressed by the committee," said Rob Freer of human rights group Amnesty International.

"It's a strong message to the United States that once you ratify these treaties you have to do so in the same way that everybody else does."

In a report to the committee released last week, Amnesty cited brutality, beatings and shootings by police officers, sexual abuse of female prisoners and cruel conditions in isolation units as violations of the torture convention.

Florida Times-Union, 5/16/00

Inmate murder trial postponed

BY PHIL LONG
plong@herald.com

STARKE — In a setback to any quick resolution in the case of Frank Valdes, lawyers won a delay — perhaps until early next year — in the trial of four Florida State Prison guards charged with the Death Row inmate's murder.

The defense attorney for former corrections officer Robert Sauls had asked Circuit Judge Larry Turner to allow his client to go to trial in July, as originally scheduled. Sauls' three codefendants wanted a delay, however, saying they need more time to examine evidence and interview witnesses.

Judge Turner ruled that all four defendants will be tried together and put off the trial date.

Sauls was arrested on second-degree murder charges along with three other corrections officers in connection with the death of Valdes in his cell last July. Valdes was on Death Row for killing a corrections officer in Palm Beach County.

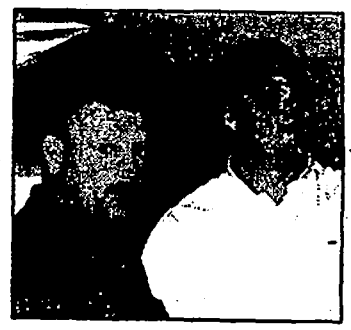
All four prison guards, along with Sgt. Montrez Lucas, who was indicted last year on aggravated battery charges for a fight with Valdes the day before the inmate died, have been fired.

The former prison guards, who have said they used no more force to subdue Valdes than was necessary, have denied any wrongdoing. But a medical examiner's report said Valdes was beaten so badly that all but two of his ribs were broken.

Sauls, 37, a 15-year Department of Corrections veteran, is believed to have played a lesser role in the confrontation.

Attorneys for the other three defendants — Capt. Tim Thornton, 34, and sergeants Chuck Brown, 26, and J.P. Griffis, 26 — say that the evidence and a witness list of more than 175 people from prosecutors is too much to digest between now and July.

State Attorney Rod Smith argued that the right of the three other defendants to have the trial held in Bradford County — where Florida State Prison is located and which is near where they live — "counterbalances any right for speedy trial."



PHIL LONG/HERALD STAFF

MURDER SUSPECTS: Tim Thornton, left, and J.P. Griffis won a delay of their trial in the death of inmate Frank Valdes.

Miami Herald, 5/11/00

APPEALS STYMIE FLA. SUPREME COURT

TALLAHASSEE - During January of this year a three day special session was held by the state legislature to pass a new law intended to reduce the time available to death-sentenced prisoners to file appeals. The new law was titled the Death Penalty Reform Act, which Governor Bush had promoted and then signed into law. Three months later, in April, the Fla. Supreme Court ruled that the new law was unconstitutional as it attempted to establish rules for speeding up executions in Florida that only that court was authorized to make. The court then proposed its own reforms as new judicial rules that basically followed the plan that the legislature and Bush had attempted. In July, however, the high court said it would not implement its own proposed rules. In an unsigned opinion issued July 14, the court wrote, "After receiving comments and hearing oral argument, we have been persuaded that further consideration and study is required." That means that the rules that have been in effect for several years will continue to be used for the capital appeals process--for now. Under those rules, condemned prisoners will continue to have up to a year after the automatic review they receive from the Fla. Supreme Court to file a second, or direct appeal. The new rules attempted by the legislature and Bush would have merged that dual-track system into one, and required prisoners to file the second appeal within six months of filing their first appeal in the Supreme Court.

In delaying any reform rules of its own, the court identified one issue of "utmost concern." That is how to make sure there are enough qualified attorneys to represent those sentenced to death under any streamlined process. The legislature failed this year to appropriate any more money for death-row attorneys or revise public record laws to enable such attorneys speedier access to such records, as had been suggested by the court in 1999. The court asked a study committee formed last year to study the death-sentenced process to look at it further and submit recommendations by this coming October.

Florida has executed 48 people since resuming capital punishment 21 years ago. The average length of time between sentencing and execution has been 10 years. There are almost 400 prisoners on Florida's death row, at least 20 of whom have been condemned to death over 20 years.

.SUPREME COURT ACTIONS

On April 18, 2000, the U.S. Supreme Court, in a 5-4 decision, issued a ruling that curtails the power of federal judges to override state court decisions against death row prisoners who claim their trials were tainted. The decision was the first major interpretation of the Antiterrorist and Effective Death Penalty Act of 1996, a law designed to limit death penalty appeals and speed up executions in the U.S. The high court limited federal judges' authority to review prisoners' claims that their sentences were constitutionally flawed - for example, that their lawyers were incompetent or that prosecutors had failed to turn over helpful evidence to the defense. The court's opinion, written by Justice Sandra Day O'Connor, said that even if a federal judge independently believes that a state court was wrong to reject a prisoner's claims, the federal judge can only reverse it if the state court used an "unreasonable" interpretation of federal law. See: *Williams v. Taylor*, ___S.Ct. ___, 13FLW Fed.S225 (4/18/2000).

MIRANDA REVISITED

On June 26, 2000, the U.S. Supreme Court reaffirmed the requirement and importance of the Miranda warning that police are required to explain to suspects before questioning them. Prosecutors had argued in this case that a suspect had made voluntary statements that were allowed to be presented in court,even though the statements were made before his Miranda rights were explained to him, because of a law approved by the Congress in 1968. That law gives federal judges the authority to admit statements from suspects if the judge believes that the statements were voluntary - even if the Miranda warning wasn't given. The Supreme Court justices, however, ruled that the Congress did not have authority to supersede that court's interpretation that the U.S. *Constitution* requires the protections that were established in the prior Miranda case.

CONGRATULATIONS!

Like many of your readers, I was not one to correspond, but I just had to say a big THANK YOU for what you are doing on behalf of the DOC population. Imagine my surprise when, 5 days after I received your issue, I visited Arcadia C.I. and was as astonished as the other families to see a brand new bench that seats between 4 and 6 persons. Prior to that, there were just long lines with no seating arrangement for even the most elderly or disabled to sit and hardly any covering so that standing in the hot sun was the norm. Because of you and those who initiated the new law, things are beginning to look up for visiting families. Keep up the good work. C.K. (Miramar, FL)

FPLP,

I arrived at Gulf C I main unit on 8-27-99. I was transferred to GCI annex 9-13-99. I have been incarcerated in California, New Jersey and Florida, never in my life have I seen such disregard for administrative rules and regulations as I am seeing at GCI in Florida.

Falsifying documents is part of a days work. If an inmate writes a grievance, saying, for example, that an officer used profane or abusive language in dealing with an inmate or person under his supervision, a few days will pass and another officer will come in lock up the inmate saying that the inmate used profane or abusive language on the officer. I have seen many, many inmates get set up like this at GCI. I have spoken to and shown officers hazardous items in this institution that I have been around when they were used as weapons and I was told "keep it to yourself, we don't need the paper work on that" and yet, it seems, accepted to falsify reports on inmates, badger and harass inmates that the officers are upset with. Planting items in rooms, taking gain time and falsifying disciplinary reports is an everyday thing in GCI. Contact cards are being used in GCI to take gain time from inmates. The use of contact cards was rescinded in chapter 33 and are not to be used. The Law Library at GCI does not have all the books it should have under chapter 33 as a minor library—it is missing many books. All buildings leak when it rains and have poor ventilation and heat. There is no heat in confinement, as it was shut off all together by officers or staff.

All of the above and much more is committed by corrections officers and staff at GCI. They would not have occurred but for the fact that the persons committing them were an official exercising his or her official powers outside the bounds of lawful authority. A lot of the staff are people just trying to do their jobs and are following orders and it's a shame that the bad apples are trying to spoil the whole basket.

I for one pray I'm not in this camp once it's full with inmates, because with the harassment that exists, this camp is not going to be a safe place to be for anyone once it's filled. B. (GCI)

FPLP,

I'm currently on CM at Santa Rosa, and I can say it's bearable. I read your publication regularly and was inspired to write the following: The media is an articulate artist—meaning, it paints a fabricated picture on its canvas that society knows as a TV screen or newspaper. They would go so far as to assassinate my character and portray my image to society being that of a medieval barbarian. How society depicts this false representation weighs heavily on the ability to decipher fact from fiction. Society is spoon fed the old cliches in regards to prison inmates (unintellectual, non-rehabilitative, incorrigible, sub-human species), that can only serve to keep the revolving door well oiled. The good ole boy mentality is in full effect in Florida prisons.

For these reasons society is told that prison inmates are next to nothing in terms of being people. Let the powers that be say we're good for nothing, but we're generating revenue, providing job security in slave like conditions through free inmate labor. I'm here to voice my thoughts to society that I am capable of being a productive and accountable citizen in society. I'll be the first to admit I made a mistake, and I'm solely remorseful. That's why I'm thankful for publications such as the FPLP. Your publication serves as a vehicle to the masses to deliver the truth. FPLP constantly exposes the counterproductive measures that the media and the FDOC try to pull off on uninformed citizens.

To all participants locked in the struggle for prison reform my call goes out to you. Take up arms in the form of your writing utensils: Pen & Paper. Inform your media outlets that you're up on the tactics they use to mislead and deceive the unsuspecting people. In turn, use your pen as a sword for Justice. The saying goes "No Justice, No Peace." You may think a pen scribbling against paper makes no noise. It's the most deadliest of silent assassins. Just when the powers that be think we have succumbed, we become the quiet before the storm. This is my challenge to the institutionally oppressed. To the FPLP organization much respect goes to you for contributing to the struggle repeatedly. It's a good feeling to know that if I or one of the others drop our sword you have our back. May God bless FPLP, and continue to bring up the rear for the participants locked in the struggle for Prison Reform. The Ink Bandit (SRCI)

FPLP,

Thank you for the article on close management. It was well done and really gives a true picture of what close management confinement is about. I found it particularly interesting because it focused on Hardee Correctional, and the person I know is housed at HCI and in close management there. DA (OH)

To all my Latino brothers, as well as my fellow prisoners,

Please get yourselves and especially your families involved in "The Struggle". Realize that fighting one another, telling on each other and

watching TV is not the way we are going to overcome the degrading, humiliating and oppressive manner in which we are being treated. The abuse of power is out-of-control. White, black, brown, red—it doesn't matter to them. We must not let it matter to us! Only by overlooking our differences, joining together, and getting our people on the outside involved in our situation, will anything get better.

Get your family a subscription to FPLP and let them read what's really happening! Let them see that there are ways they can get involved and that they are needed. Phone calls, letter writing, participating in hearings or rallies. Until we join together and our families get involved, we will continue to be treated as less than animals. Communication and information! FPLP is the best thing to happen to Florida prisoners. Support FPLP and urge your people to contact them to see what they can do to help. United we stand tall—divided we fall. "Papo" (MCI)

Dear Friends,

Greetings, with a special shout out to the intricates of the FPLP, i.e., the real movers and shakers! Having proven themselves to the powers that be, the FPLP and its staff and volunteers, small though they are, are worthy of demanding an allegiance to the Truth from those who benefit most, nay, those who additionally benefit from the FPLP's patient persevering—How? Be responsible in all that you do. Consider that the FDOC relies on the repeated examples of our own irresponsibility to justify their trafficking in wickedness. In effect, we, by our misguided actions, supply the FDOC with the weapons to resist and fight against FPLP, all included. Therefore, we must stop being "Benedicts" and empower ourselves with responsibility and drain the FDOC of its justification.

Let's form for ourselves a true correctional community—yes, we are a community! In closing , leave you with this example: An officer announces he intends to do a mass search down of your dorm. The announcement causes a wave of anxiety to ripple through the residence. However, the power in that officer's proclamation lives in the fact that you have contraband stashed in your room. For if you do not have contraband, the threat of a search-down means nothing! Thus, by being responsible and observant of the parameters that govern our correctional community, YOU have the power! Good day. LH

(Continued from page 2)

The FDOC maintains that the grievance procedure is effective and a meaningful forum for the resolution of legitimate grievances. FPLAO is interested in how those required to use that procedure to grieve a problem really feel about it. The results of this survey will be used to focus attention on problem areas of the grievance procedure in an effort to correct or improve such areas. All prisoners are requested to participate in this survey and encourage others to also. Please send in only one survey per person.

In future issues of FPLP you will find more surveys and other types of activities, such as calls for letter writing campaigns, that members of FPLAO will be asked to participate in. These activities can be very effective and useful in focusing attention on specific areas of the prison system that need to be changed. We believe that FPLAO members are the people who are ready to take action for change not just talk about what's wrong or what somebody else needs to do.By working together and getting our family members and friends to participate, we will be a force that cannot be ignored. We can affect policies, and even laws. We can compel reason in decision-making that molds our lives. While we won't win every time, we will make a difference and know that we are doing something.

We cannot become complacent now. After a year of the FDOC being a target of the news media, which kept Michael Moore in check, the media has now lost interest and turned its attention elsewhere. In the past few months the librarians have been severely reduced in the prisons. Now classification officers are being let go. Soon Florida's prisons will be stripped to nothing but security. At that point, security will believe it has total control and authority to treat prisoners in any manner desired. I predict you haven't seen anything like what's coming. We must be ready and strong. We must have our people informed and organized on the outside. That's it for this issue. It is hoped you will find the information in this issue useful.

Greetings, to all my friends who I left recently when I transferred from Columbia C.I. to Lake C.I., and to the new friends I made along the way—Bob Posey

EDITOR'S NOTICE: In Vol. 5, Issue 6, and again in Vol. 6, Issue 2 of *FPLP*, a notice appeared requesting information concerning retaliation experienced by FDOC law clerks. Some of the responses described incidents of retaliation wholly unrelated to law clerks, *and* others sought information as to the identity and purpose of the organization posting the notice. Such responses are understandable; however, replies were not contemplated, nor possible at this time. The information was requested to be used in pending litigation against the FDOC by a well-known and competent prison litigator. I vouch that the request is legitimate and in the best interest of FDOC prisoners, and law clerks in particular. Any information received will be used to advance a serious challenge to the systematic practice of retaliation against law clerks. For tactical reasons, it was determined that the best approach would be to limit the information gathering process to one-way correspondence. Much of the information obtained thus far will be useful to establish a pattern and practice of retaliation. The litigator wished to thank all those who have responded, and further responses are encouraged.-Bob Posey

NOTABLE CASES

by Brian Morris and Oscar Hanson

United States Supreme Court Reverses Eleventh Circuit On Prisoner Ex Post Facto Claim

Previously, FPLP covered this case regarding a Georgia prisoner's ex post facto claim that the Georgia State Board of Pardons and Parole (the board) retroactively applied an amendment to parole rules to him. *(See: FPLP Vol. 5, Issue 2, P 9)*, The United States District Court denied prisoner Robert Jones' motion for discovery and granted the Board summary judgment.

The Eleventh Circuit Court of Appeals reversed because it found that the amended Rule's retroactive application was necessarily an ex post facto violation and that the Rule differed in material respects from the change in California parole law sustained in *California Dept. of Corrections v. Morales, 514 U.S. 499 (1995).*

The Supreme Court granted certiorari and reversed the judgment and remanded for further proceedings. The Court held that the Eleventh Circuit's analysis failed to reveal whether retroactive application of the amended rule violated Ex Post Facto Clause.

The Court further noted that the controlling inquiry is whether retroactive application of the amended rule created a significant risk of prolonging Jones' incarceration.

The Court found that the Eleventh Circuit erred in not considering the Parole Board's internal policy statement regarding how it intended to enforce the amended rule. The Eleventh Circuit was incorrect to say that the Board's policy statements were of no relevance.

The Court reasoned that policy statements along with the Board's actual practice, provides important instruction as to how the Board interprets its statutes. An agency's policies and practices usually indicates the manner in which it is exercising its discretion. And finally, the Court held that the Eleventh Circuit's analysis failed to reveal whether the amended rule, in its operation, created a significant risk of increased punishment consistent with the Ex

Post Facto consideration.

The Court noted that Jones had not been permitted sufficient discovery to make this showing. The matter of adequate discovery is one for the Eleventh Circuit or, if need be, the District Court. The Court ordered further proceedings consistent with these concerns. *Garner v. Jones, 13 Fla. L. Weekly (Fed) (S) 218 (3/28/00)* —oh

Florida Supreme Court Finally Opens the Window

The Florida Supreme Court has finally resolved the conflict regarding the class of persons having standing to challenge a violent career criminal sentence on the basis that chapter 95-182, Laws of Florida, violates the single subject rule contained in Article III, Section 6 of the Florida Constitution. The Court held that the window period for challenging the violent career criminal sentencing provisions created by Chapter 95-182, Laws of Florida, opened on October 1, 1995 and closed on May 24, 1997. *See: Salters v. State, 25 Fla. L. Weekly S365 (Fla. S.Ct. 5/11/00)* —oh

Florida's Administrative Nightmare Receives A Piece of the Axe

The January-February 2000 issue of FPLP (Vol. 6, Iss. 1) reported the Supreme Court's decision, which addressed subsection (7) of section 57.085, Fla. Stat. (1997) (Prisoner Indigency Statute). In that decision, the high court expressed concern over the strict enforcement of the copy requirement part of the statute and the consequences that it could bring to both the judicial and administrative entity. The high court appropriately labeled that portion of the statute as an "administrative nightmare."

Perhaps haunted by the statute's portent character, the Court has lowered the axe and ruled subsection (7) of section 57.085 unconstitutional. The Court reasoned that subsection (7) violated the separation of powers doctrine and usurped the Supreme Court's exclusive rulemaking authority. *See: Jackson v. FDOC, 25 Fla. L. Weekly S353 (Fla. S.Ct. 5/4/00)* —oh

Prisoners Not Entitled to Pay for Work Performed While in the Department of Corrections

After years of speculation that prisoners will begin to receive payment for work performed while incarcerated

in the DOC, the Florida Supreme Court brings closure to the vacuous rumors.

A Florida prisoner sought mandamus relief in the Supreme Court and argued that being forced to work without compensation violated the Thirteenth Amendment of the United States
Constitution and that section 946.002 (3), Fla. Stat. (1997), mandated that he be compensated for his work.

The Court correctly recognized that section 946.002 provides that prisoners "may" be compensated for work performed; thus, the statute does not "mandate" that prisoners be compensated. Further, the Court pointed out that convicted felons are exempted from the general prohibition contained in the Constitution. *See: Jackson v. DOC, 25 Fla. L. Weekly S353 (Fla. S.Ct. 5/4/00)* —oh

Heggs Revised

The Florida Supreme Court has revised its opinion regarding the constitutionality of he 1995 Sentencing Guidelines. In sum, the Court has clarified that if a person's sentence imposed under the 1995 guidelines could have been imposed under the 1994 guidelines (without a departure), then that person shall not be entitled to relief under the Court's decision. *See: Heggs v. State, 25 Fla. L. Weekly S359 (Fla. S.Ct. 5/4/00)* —oh

DCA Again Addresses Prison Regulation Regarding Visitation

The Courts of Florida have spoken and their message is clear. Under section 944.09(1)(n), Fla. Stat., Florida prisoners with a conviction for any offense under Chapters 794.800, 827, or 847, shall not be allowed visitation with anyone under the age of eighteen years, unless special visitation is approved by the warden.

Trial courts are without jurisdiction to enter orders directing the DOC to allow visitation in contravention of section 944.09(1)(n). See: *Moore v. Perez, 25 Fla. L. Weekly D1063 (Fla. 5th DCA 4/28/00)* [Editor's Comment: This is a very unfortunate statute because it does not serve any penalogical purpose other than to impose additional punishment on certain prisoners. Those affected prisoners are still permitted to use the visitation park, the same park other prisoners use who may have their children present. However, prisoners who want to visit their children must find a way to challenge the statute. It is not an easy task to undertake. But trying to get trial court orders will not work as evidenced by the numerous cases rendered on this point. Yet, if visitation with persons under the age of eighteen was an integral part of *your* plea agreement as was the case above, you *may* have a valid argument to collaterally challenge that plea agreement.—oh

Fourth DCA Reverses Trial Court's Dismissal of Complaint That Arose Out of Private Correctional Facility

Phillip Adlington, a Florida prisoner currently housed within a private correctional institution that is under contract with the Florida Department of Corrections, filed a civil complaint seeking damages against an employee of the private facility. Adlington had filed a formal grievance to the DOC, apparently because the private facility did not have a grievance procedure as required by the Florida Administrative Code.

Adlington's formal grievance was returned by DOC officials because the grievance was not in compliance with Rule 33-103.005, which requires that an informal grievance be filed at the facility first. It is not known whether Adlington advised DOC officials of he nonexistence of a grievance procedure within the private facility or whether Adlington filed his formal grievance under one of the delineated provisions for avoiding the informal process. Thus, the correctness of the DOC's response to Adlington's formal grievance can not be determined. The circuit court dismissed Adlington's complaint because exhaustion of administrative remedies was required under the Prison Litigation Reform Act, 42 U.S.C. 1997 e(a) prior to filing suit.

On appeal Adlington argued that his complaint sought relief under sections 944.105(2) and 957.05(1), Fla. Stat., which make private contractors liable in tort for claims arising with respect to the care and custody of inmates. Adlington further argued that exhaustion of administrative remedies is not a prerequisite for filing such a tort claim.

The Fourth District disagreed. The DCA found that the FLorida Administrative Code requires private facilities to adopt inmate grievance procedures that are consistent with the DOC procedures under Rule 33 -103 of the Code. While the DCA recognized that all prisoners must exhaust these procedures before filing any civil complaint relating to the care and custody of inmates, the DCA found a problem with Adlington's case.

The DCA discovered that the Florida Correctional Privatization Commission adopted Rule 60AA-29.001 (grievance procedures) after Adlington filed suit. Based on this information, the DCA reversed the dismissal and remanded to allow the circuit court to determine whether there was an inmate grievance procedure available to Adlington during the relevant time period.

If the procedures were not in place then Adlington's failure to exhaust would be excused and the com-

plaint could proceed. *See: Adlington v. Moore, 25 Fla. L. Weekly D1019 (4th DCA 4/26/00)*—oh

Clerk of Circuit Court Must Provide Without Cost Certified Copies, of Documents Needed for Prisoner's Application for Clemency

The Second DCA has correctly held that section 940.04, Florida Statutes (1999) requires the Clerks for the Circuit Courts to provide certified copies, without cost, of documents needed by prisoners to file an application for executive clemency. See: *Marshall v. State, 25 Fla. L. Weekly D1037 (Fla. 2d DCA 4/26/00)* —oh

Fourth DCA Construes Ryce Act Regarding the Five Day Period for Holding Probable Cause Hearing

The Fourth DCA has addressed the immediate release provision of section 394.9135, Fla. Stat. (1999), which is part of the Jimmy Ryce Act.

The Act allows for civil detainment for violent sexual predators following release from incarceration.

The Court held that the five day period for holding an adversarial probable cause hearing begins to run from the date upon which a request for a hearing is made.

See: *State v. Kobel, 25 Fla. L. Weekly D1028 (Fla. 4th DCA 4/26/00)* —oh

Error to Dismiss Petition for Mandamus Relief for Failure to Comply with 57.085, Fla. Stat.

The First DCA has echoed the legal principle that a trial court can not dismiss a prisoner's petition for mandamus relief without first affording the prisoner and opportunity to comply with the statutory indigency requirements of Section 57.085, Florida Statutes. *See: Woullard v. Bishop, 25 Fla. L. Weekly D1051 (Fla. Ist DCA 4/25/00)* —oh

Third DCA Holds That Prisoner Remains Incarcerated at the Parole Commission's Discretion

Florida prisoner Charles Sanders sought judicial relief from repetitive suspensions of his presumptive parole release date (PPRD) by the Parole Commission. Sanders, who was sentenced to life in prison in 1972, is parole eligible.

Following the enactment of the Objective Parole Guidelines Act of 1978, the Commission, in accordance with the guidelines, granted Sanders a PPRD of 1987. However, Sanders was not paroled. The Commission suspended Sanders' date and has done so since 1987; the latest came in 1998.

The circuit court denied Sanders relief and on certiorari review, the DCA recognized that section 947.18, Fla. Stat.(1971), gives broad discretion to the Commission when considering a prisoner's PPRD. *See: Sanders v. State, 25 Fla. L. Weekly D1017 (Fla. 3d DCA 4/16/00)* —oh

SUBMISSION OF MATERIAL TO FPLP

Because of the large volume of mail being received by *FPLP*, financial considerations, and the inability to provide individual legal assistance, readers should not send copies of legal documents of pending or potential cases to *FPLP* without first having contacted the staff and receiving directions to send same. Neither *FPLP* or its staff, are responsible for any unsolicited material sent. Readers are requested to continue to send news information including newspaper clippings (please include name of paper and date), memorandums, photocopies of final decisions in unpublished cases, and potential articles for publication. Please send only copies of such material that do not have to be returned. *FPLP* depends on YOU, its readers, and supporters to keep informed. Thank you for your cooperation and participation in helping to get the news out. Your efforts are greatly appreciated.

Computers/Typewriters Donations Needed

All prisoners have legal problems. Many are incarcerated each year in Florida even though errors were committed during the conviction or sentencing phases of their trials. In Florida's race-to- incarcerate, large numbers of the accused who cannot afford a high priced attorney are subjected to a drive-though type of justice by the overburdened court system.

Once in prison those people are on their own in trying to appeal their cases and sentences. While the DOC trains law clerks to assist other prisoners in preparing such appeals, and most prisons make typewriters and computers available to the law clerks who are called on to assist the entire prison population, at some prisons the clerks do not have access to such equipment. The prison officials simply deny the request for such essential equipment which hampers the clerks' ability to assist others.

To help remedy that problem, FPLAO is requesting donations of used computers and typewriters in working condition that will be distributed to prison law libraries in Florida. Computer monitors and printers are also needed. Computers only need to be capable of word processing capacity, so old 286, 386 and 486 units would work fine.

Prisoners are asked to check with their family and friends about donating such equipment. Regardless of what it's like where you are now, your next transfer may send you to one of the prisons with a bare-bones law library-right when you need legal assistance.

Donations of equipment to FPLAO is tax-deductible. If you prefer, cash donations for FPLAO to purchase used computers and typewriters would be equally welcome. To make a donation, contact:

Attn.: Law Library Project
Florida Prisoners' Legal Aid Organization, Inc.
PO. Box 660-387
Chuluota, FL 32766
E-mail: fplp@aol.com

LIVING WITH HEPATITIS C

Gregory T. Everson, M.D. and Hedy Weinberg, ***Living with Hepatitis C: A Survivor's Guide.*** 253 pages. New York: Hatherleigh Press, 5-22 46th Avenue Suite 200, Long Island City, New York, 11101-5215. Regularly priced $14.95, this book is available to prisoners for a special price of $7.50 plus $1.50 S&H through *Southland Prison News.*

Living with Hepatitis C: A Survivor's Guide, now in its second edition, is a valuable guide to comprehending and accepting a little understood, widely misunderstood and frightening disease. Authors Gregory Everson, a medical expert on hepatitis C, and Hedy Weinberg, a writer with hepatitis C, seek to present the disease, its implications, and treatment options in simple language while at the same time sharing the personal emotions and needs of patients with hepatitis C.

This book's target audience is not people in prison. Stories from people with hepatitis C are interspersed throughout the text, and none of the stories are from prison. Obviously prisoners with hepatitis C deal with specific issues that are not addressed. But many of the emotions and consequences of hepatitis infection, such as confronting loved ones, fear, and stigma caused by ignorance are universal. One goal of this book is certainly fulfilled: reading *Living with Hepatitis C* makes you feel less alone. The Centers for Disease Control and Prevention estimate that 3.9 million Americans are infected with hepatitis C; people with hepatitis C live in all segments of society, and they do not conform to a stereotype.

If you're looking for fast, easy answers to your questions about hepatitis C, you won't find them here or anywhere else. Even when the facts are written in plain language, it takes time to become familiar with new terms from medicine and biology. Most people haven't spent much time thinking about the multiple and complex functions of their livers.

This book will answer questions on how hepatitis C is transmitted, how to avoid infecting others and how the disease effects your body. It will also explain what different enzyme levels (ALT, AST, GGT, etc.) mean and when you should get a biopsy. The authors and the anecdotes from other patients will teach you how to adopt a lifestyle that will help you to best fight hepatitis C. Most of your questions will be answered, but others will be raised as you engage with the enormous amount of information presented in this book.

Living with Hepatitis C is widely recommended for people on the outside who suffer from hepatitis C, people who see their doctors regularly. While this book is very important for those patients, it is crucial for those on the inside who may not have access to the medical profession and health education resources. Understanding hepatitis C is critical to survival, and this book will help you to do that.

* * *

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ORDER

LIVING WITH HEPATITIS C:

A SURVIVOR'S GUIDE

For a special price of $7.50 plus $1.50 S&H when you mention *Southland Prison News.* This book contains essential information for understanding and living with hep C. Order a copy today and encourage your prison library to do the same.

SOUTHLAND PRISON NEWS

SPN is a prisoner—produced monthly newsletter covering prison news from New England to Florida. The newsletter is composed mainly of clippings from local papers that might not otherwise be seen, along with feature articles and book reviews. For more information or to subscribe ($15 yr. for prisoners/$25 for non—prisoners) contact: SPN, PMB 339, 955 Massachusetts Ave., Cambridge, MA 02139

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SURVEY
INMATE GRIEVANCE PROCEDURES

This survey is being conducted by Florida Prisoners' Legal Aid Org., Inc., to evaluate inmates' perceptions and experiences with the inmate grievance procedures of the Florida Department of Corrections. In order for this survey to be effective we need as many prisoners as possible to complete this survey form and return it to FPLAO. All prisoners who are FPLAO members are asked to complete this survey and encourage other non-members to also. If you do not wish to give your name or number on this form simply leave those spaces blank, but please complete the rest of the form. Once you complete both pages of the survey, mail it to: *Florida Prisoners' Legal Aid Org., Inc., Attn: Survey, P.O. Box 660-387, Chuluota, FL 32766.* Thank you for your valuable participation.

Please Print

Name:_____ DC Number:_____ Institution:_____
Race:_____ Sex: ☐ M ☐ F Date of Birth:_____
Year you were incarcerated:_____ Custody Level: ☐ Minimum ☐ Medium ☐ Close
Length of Sentence:_____ Number of institutions you have been to:_____

1. Have you ever filed an informal grievance? ☐ Yes ☐ No
2. Have you ever filed a formal grievance? ☐ Yes ☐ No
3. Have you ever filed an appeal to the Central Office? ☐ Yes ☐ No
4. When you first came to prison, while at the reception center, did you receive four (4) hours of instruction in how to use the grievance procedures? ☐ Yes ☐ No
5. If your answer to 4. Above was No, how long was the instruction in the grievance procedures that you received at the reception center?
   ☐ 3 hours ☐ 2 hours ☐ 1 hour ☐ 30 minutes ☐ 15 minutes or less
6. Have you ever received thirty (30) minutes of instruction on how to use the grievance procedures when transferring to a new institution? ☐ Yes ☐ No
7. Have you ever received "refresher" instructions on how to use the grievance procedures after being at an institution over one (1) year? ☐ Yes ☐ No
8. Have you ever filed a grievance to which you never received a response? ☐ Yes ☐ No
9. If you answered 8. Above Yes, how often have you not received a response to grievances?
   ☐ Rarely ☐ Sometimes ☐ Often
10. If you answered 8. Yes, which type of grievances have you not received a response to?
    ☐ Informal ☐ Formal ☐ Appeal
11. How many levels are there in the inmate grievance procedures? ☐ One ☐ Two ☐ Three
12. Have you ever been threatened by a staff member for filing a grievance? ☐ Yes ☐ No
13. Have you ever been retaliated against for filing a grievance against a staff member? ☐ Yes ☐ No
14. Do you believe that if you file a grievance against a staff member for retaliation that the staff member will be told about your grievance? ☐ Yes ☐ No

Continued on reverse side

15. Have you ever known another inmate to be threatened or retaliated against for filing a grievance against a staff member? ☐ Yes ☐ No

16. Do you believe that inmate law clerks who are known to help other inmates file grievances are retaliated against by prison officials? ☐ Yes ☐ No

17. Have you ever known an inmate law clerk to be retaliated against for helping other inmates file grievances or legal actions? ☐ Yes ☐ No

18. Do you believe it is common for inmate law clerks to be retaliated against for helping other inmates to file grievances or legal actions? ☐ Yes ☐ No

19. How many times have you seen a grievance posted on bulletin boards with a notice that the administration requests comments on the subject of the grievance from all inmates and staff?
☐ 0 ☐ 1-5 times ☐ 6-10 times ☐ more than 10 times

20. Have you ever had a grievance denied, but then later see the relief you had asked for taken to correct a problem? ☐ Yes ☐ No

21. How often do you receive responses to grievances that do not address the issue that you were grieving?
☐ Often ☐ Sometimes ☐ Never

22. Have you ever had a grievance responded to within the time limit allowed, but then not receive the grievance back until it is too late to go to the next step in the grievance process? ☐ Yes ☐ No

23. From your experience, how do you rate the effectiveness of the inmate grievance procedures?
☐ Effective ☐ Somewhat Effective ☐ Ineffective

24. If you had a choice between buying hygiene items from the canteen or paying a filing fee to file a grievance appeal to the Central office, which would you choose to do?
☐ Buy Hygiene Items ☐ Pay to File Appeal

25. Do you believe that staff members in general know the rules? ☐ Yes ☐ No

26. Do you believe that staff members in general follow the rules most of the time? ☐ Yes ☐ No

27. Would you be afraid to file a grievance against a staff member who threatened you? ☐ Yes ☐ No

28. Would you be afraid to file a grievance against a staff member who you knew had engaged in sexual misconduct on the job? ☐ Yes ☐ No

This form may be copied

AROUND THE NATION

Arizona - Arizona defense lawyers and law students are launching a project to *reexamine* convictions of people they believe may have been unjustly convicted of murder. So far, the Justice Project has identified 23 prisoners whose cases will be reviewed.

California - During June, eight Corcoran State Prison guards, who had been indicted for conspiracy and violating prisoners' civil rights by staging deadly gladiator-style fights in the exercise yard, were acquitted by a federal jury. The verdict was reached after only six hours. The California Correctional Peace Officers Assn., the strongest political lobby in CA, along with the CDOC funded the guards' defense.

Colorado - The ACLU has filed suit in federal court, challenging the right of the state prison system to censor publications prisoners want to read. Unlike lawsuits filed in other states, this one does not seek to block censorship of sexually explicit materials. The First Amendment protects the right of prisoners to read information and opinion from a wide variety of sources, state ACLU Director Mark Silverstein said.

Connecticut: - A union representing prison guards has sued Correction Commissioner John Armstrong, claiming the state is failing to protect correctional officers from exposure to diseases such as AIDS and hepatitis. The Superior Court lawsuit claims AIDS and hepatitis are "near epidemic proportions" in state prisons. There has been no word from union representatives for prisoners who are at much higher risk than correctional employees in the wake of the epidemic.

Florida— A prisoner serving a life sentence for a 1983 strangulation of a South Florida woman, who was murdered on May 6. Another prisoner serving a life sentence at Columbia Correctional Institution told guards he killed Raymond Wigley. The officers went to a cell where they found him early in the afternoon with a sheet tied around his neck, according to a release issued by the Department ofCorrections. Wigley, 39, was found naked and bleeding from the head. The cause of death was strangulation. John Blackwelder, 45, is a suspect in Wigley's death. Blackwelder was sentenced to life two years ago in St. Lucie County for sexual battery of a child. Wigley was in prison for the murder of Adella Marie Simmons, a 47 year old secretary on her way back from a vacation when her car broke down on the Florida Turnpike near Jupiter. Wigley and John Marek, who was sentenced to death, offered to give Simmons a lift to the next emergency phone booth but instead drove 60 miles to Dania, where Simmons' body was found the next morning in a lifeguard shack. Wigley, who claimed to be passed out during the incident, was convicted as a principle to the murder.

ó DOC guard John F. Walker was fired on May I for allowing a prisoner, Melvin Hunter, to have sex with a woman while he was supposed to be working on a prison road crew. Walker had been a guard for 3 years and was a. supervisor of a CFRC work crew that cleans up along highways. Hunter was serving 2 years for possession and sales of cocaine. Prison officials learned of the situation after reviewing phone calls between Hunter and the woman. Hunter was placed in DC confinement after telling DOC investigators he knew nothing about the woman, but later admitted to having sex with her. Hunter was charged with lying to staff. Walker had also brought sandwiches to other prisoners on the work crew... thanks to another "snitch," sandwiches and sex on the road crew has been discontinued.

ó Michael Moore, Secretary of DOC, has informed some 36 librarians around the state that their services will no longer be needed by DOC as of June 30, 2000. Moore, in a move to "cut costs," has decided that librarians are not needed to operate libraries in DOC. Instead Moore has proposed a system where one qualified librarian will travel throughout a given region spending one to two days at each institution, leaving correctional officers in charge of the libraries the rest of the time.

Kansas – Three employees from the U.S. Penitentiary in Leavenworth have been indicted in the beating of two prisoners, U.S. Attorney Jackie Williams said. Stewart Venable, 37, and Willie Mack, 36, both of Leavenworth, and Gordon Cummings, 47, of Tonganoxie, were charged with civil rights violations in an indictment returned by a federal grand jury.

Iowa - Visitors to Iowa's prisons will get a second chance to enter If a high-tech machine turns up traces of illegal drugs. Prison officials have decided to relax the rules after they were bombarded with complaints when the ion scanners found traces of drugs on grandmothers and children. Those who test positive now get a retest instead of being automatically barred from entering for a

AROUND THE NATION (continued)

Louisiana - On February 4, 2000, former 3rd Judicial District chief juvenile court officer Daniel Conway III, was sentenced to one year in federal prison for bank fraud and wiretapping. Conway stole almost $20,000 in state funds for his personal use and illegally tapped an employee's phone...Conway claims he was in an alcoholic haze and doesn't remember anything.

ó On March 1 a $39,000.00 ION-SCAN device was installed at the Louisiana State Prison for use in searching visitors. During the first week of use the device, which detects trace amounts of drug residue on a person's hands or clothes, at least 54 people were barred from visiting after flunking a scan.

Mexico - In December, 1999, Raul Zarate Diaz, warden of the Tapachula prison, fell to his death while spying on prisoners having conjugal visits with their spouses. Zarate tripped and fell through a skylight, landing and dying next to a prisoner and his wife having sex. Police investigators found binoculars and a pornographic magazine on the roof where the warden had been watching.

Pennsylvania - On June 7, the Philadelphia NAACP filed a lawsuit on behalf of ex-felons who under state law are prevented from registering to vote for five years after they are released from prison. According to the Sentencing Project, a criminal - justice organization in Washington, D.C, about 1.4 million ex-felons nationwide have permanently or temporarily lost their voting privileges.

South Dakota - Twelve prisoners at a South Dakota prison want separate housing for prisoners with HIV and AIDS. They have filed a lawsuit in federal court saying prisoners with the virus have threatened to infect others at Mike Durfee State Prison in Springfield. Only four inmates in state prisons are known to have tested positive for HIV.

ó During March the South Dakota Supreme Court held that a parole system that took effect on June 1, 1996, does not have to be applied to prisoners whose crimes were committed before then. Thirteen prisoners had challenged the new policy claiming it should be applied retroactively.

Virginia - During May, Stanley Young, Warden of the Wallens Ridge Supermax prison in VA, filed a $14 million lawsuit for defamation against two state legislators, two NAACP officials, and three of Connecticut's leading newspapers who accused Young of encouraging prison guards to abuse Connecticut prisoners being housed in VA.

ó In April, the VA DOC adopted a new regulation that limits all incoming mail to prisoners to only five sheets of paper. A VA DOC spokesman said incoming mail is a privilege and can be taken away altogether.

FLORIDA DOC MOVES TO IMPROPERLY BLOCK INMATE ACCESS

Susan Maher, Deputy Gen. Counsel, Fla. DOC has sent a letter to all Wardens alleging various facts against Thomas E. Smolka. FPLP has conducted its own research and determined that Ms. Maher's statements are untrue. For example, FPLP has verified with the Virginia State Bar that Thomas E. Smolka is a member in good standing and licensed to practice law in Virginia. As such, Tom Smolka is considered a "foreign attorney" in Florida, per rule 2.060 (b) Fla.R.Jud. Admin.

In Ms. Maher's letter she alleged the following: #1. *The Florida Bar has recently notified DOC of disciplinary proceedings taken against Thomas Smolka... for the unlicensed practice of law.* FPLP has discovered this statement made by Ms. Maher to be false, as only an "investigation" was being conducted, which was subsequently closed; #2. Ms. Maher alleged: *In many cases, when acting on their own, the services of these individuals offered were things which these nonlawyers could not provide. In many other instances, the inmates or their families paid for services which were never provided.* These statements made by Ms. Maher have been determined by FPLP to be untrue; #3. *The Florida Bar believes that it would be beneficial to post the Court's order in the Florida prison so that any inmate who hired these individuals would learn that they were not authorized to practice law and cannot provide the services as promised.* This statement is untrue. Tom Smolka is licensed to practice law in Virginia and is authorized to represent inmates in Florida on administrative, clemency and parole matters; #4. Ms. Maher wrote to the Wardens that *posting the orders would also alert the inmates not to use the services of these individuals in the future.* This statement clearly demonstrates that Ms. Maher and DOC have chosen to wrongfully interfere with the ability of inmates to choose who they desire to represent them - as Tom Smolka has a proven track record of fighting for inmate rights. Consequently, FPLP urges its subscribers to disregard Ms. Maher's letter. FPLP subscribers wishing to contact Tom Smolka regarding administrative, clemency and parole matters may do so at (850) 222-6400. Inmates in need of legal services in Virginia may contact Tom Smolka's law office at (804) 644-4468.

Criminal Justice Standards and Training Commission
Correctional Officer Discipline Statistics
Fiscal Year 1998-99

Disposition of Case	Total Offenses Cited	Top Categories					
		#	First	#	Second	#	Third
Decertified	123	16	Unprofessional Relationship with Inmate	12	Smuggle Contraband Into Prison	12	Possession of Marijuana
Voluntarily Relinquished Certificate	27	6	Smuggle Contraband Into Prison	4	Assault	3 each	Dangerous Drugs Unprofessional Relationship with Inmate
Letter of Acknowledge-ment	48	23	Driving Under the Influence of Liquor	4	False Statement	4	Excessive Force by Corrections
No Caused by Staff	123	31	Unprofessional Relationship with Inmate	14	False Statement	14	Assault
Letter of Guidance	7						
Certification Denied	16	2	Unprofessional Relationship with Inmate	2	False Statement	2 each	Pass Forged Instrument Larceny
Placed on Probation	12	4	Assault	2	Driving Under the Influence of Liquor		
Case Dismissed, Certification Suspended, or No Caused	9						
Total	365						

Source: Florida Department of Law Enforcement, Public Records Request #99PP-383, Officer Discipline Statistics – State Correctional Officers, dated September 13, 1999.

A review of the Criminal Justice Standards and Training Commission officer discipline statistics show that for FY 1998-99 the most prevalent reason for decertification was "Unprofessional Relationship with an Inmate", followed by "Smuggling Contraband into Prison."

High on the list of reasons for decertifying state correctional officers is "Unprofessional Relationship with an Inmate."

Statewide Disciplinary Reports
FYs 1996-97 through 1998-99

Fiscal Year	Population as of June 30	Number of Disciplinary Reports	Ratio of Reports to Population
1996-97	64,698	77,295	1.1947
1997-98	66,275	78,765	1.1884
1998-99	68,592	87,710	1.2787

Source: Bureau of Research and Data Analysis, Department of Corrections

Comparison of Department of Corrections Male and Female Inmates
Top Ten Categories of Disciplinary Reports Expressed As a Percentage of Total

For Fiscal Year 1997-98

	Males		Females	
	Description	% of Total	Description	% of Total
1	Disobey Verbal/Written Order*	19.29%	Disorderly Conduct	16.12%
2	Disorderly Conduct	12.24%	Disobey Verbal/Written Order	15.14%
3	Verbal Disrespect	9.74%	Verbal Disrespect	8.84%
4	Possession Of Contraband	6.50%	Disobey Institution Regulations	7.78%
5	Obscene Profane Act	4.55%	Possession Of Contraband	6.42%
6	Fighting	4.48%	Lying to Staff Member	5.19%
7	Spoken Threats	4.47%	Being In Unauthorized Area	4.73%
8	Disobey Institution Regulations	3.65%	Unarmed Assault	3.94%
9	Unarmed Assault	3.54%	Fighting	3.94%
10	Lying to Staff Member	3.14%	Sex Acts	3.34%
	Subtotal Top Ten	*71.60%*	*Subtotal Top Ten*	*75.45%*
	Subtotal All Other	*28.40%*	*Subtotal All Other*	*24.55%*
	Total All Categories	100.00%	Total All Categories	100.00%

Source: Bureau of Statistical Analysis, Florida Department of Corrections,

For Fiscal Year 1998-99

	Males		Females	
	Description	% of Total	Description	% of Total
1	Disobey Verbal/Written Order	19.44%	Disobey Verbal/Written Order	15.18%
2	Disorderly Conduct	12.68%	Disorderly Conduct	14.03%
3	Verbal Disrespect	9.86%	Verbal Disrespect	10.99%
4	Possession Of Contraband	6.56%	Disobey Institution Regulations	7.07%
5	Fighting	4.92%	Possession Of Contraband	6.45%
6	Obscene Profane Act	4.90%	Lying to Staff Member	5.00%
7	Disobey Institution Regulations	4.34%	Sex Acts	4.73%
8	Spoken Threats	3.83%	Fighting	4.68%
9	Lying to Staff Member	3.24%	Unarmed Assault	4.24%
10	Unarmed Assault	3.18%	Being In Unauthorized Area	4.03%
	Subtotal Top Ten	*72.94%*	*Subtotal Top Ten*	*76.39%*
	Subtotal All Other	*27.06%*	*Subtotal All Other*	*23.61%*
	Total All Categories	100.00%	Total All Categories	100.00%

Source: Bureau of Statistical Analysis, Florida Department of Corrections.

Membership Form

You are invited to become a member of, or renew your membership in, Florida Prisoners' Legal Aid Organization, Inc. Membership benefits include a one—year subscription to the organization's popular bimonthly newsletter, *Florida Prison Legal Perspectives*. Contributions to the organization (a registered 501(c)(3) non profit) are *tax—deductible*. Contributions will be used to organize and advance the interests of members; to provide a voice for Florida prisoners and their families, loved ones and advocates; and, to educate the public about the Florida criminal justice and prison systems.

1. Please check one:

☐ Membership Renewal

☐ New Membership

☐ Subscription to FPLP without membership

2. Select Category:

☐ $12 Family/Advocate/Individual

☐ $6 Prisoners

☐ $25 Attorneys/Professionals

☐ $50 Gov't agencies, libraries, organizations, corporations, etc.

☐ I understand that FPLAO depends on the generosity of its members to grow and operate effectively. Therefore, I would like to make an additional contribution of:

___ ___ ___ ___ ___ ___
$10 $25 $50 $100 $250 Other

3. Your Name and Address:

_____
Name DC# (if applicable)

_____
Prison, Agency, Organization (if applicable)

_____
Address

_____
City State Zip

_____
Phone Number

4. Total Enclosed_____

Please make all checks or money orders payable to: Florida Prisoners' Legal Aid Org., Inc., P. O. Box 660-387, Chuluota, FL 32076, or Florida Prison Legal Perspectives (same address). New, unused, U.S. postage stamps are acceptable from prisoners for membership contributions. For family members of prisoners unable to afford the basic membership dues, any contribution is acceptable.

FREE COPY OF FPLP

Prisoners: Have a free copy of FPLP sent to a family member or friend. Simply send us their name and address on this form. Please Print.

Name :_____
Address :_____
City :_____
_____
State :_____ Zip:_____

Complete and mail to:

FLORIDA PRISON LEGAL PERSPECTIVES
P.O. Box 660-387, Chuluota, FL 32766

HAVE YOU MOVED OR BEEN TRANSFERRED?

If so, please complete the below information and send it to FPLP so that the mailing list can be updated and so you don't miss an issue.

OLD ADDRESS:
Name_____
Inst._____
Address_____
City_____State____Zip_____
NEW ADDRESS:
Name_____
Inst._____
Address_____
City_____State____Zip_____
(PLEASE PRINT CLEARLY)
Dates:_____

Mail To: FPLP, P.O.BOX 660-387, Chuluota, FL 32766

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

FDOC FAMILY OMBUDSMAN

: FDOC has created a new position in the central ce to address complaints and provide assistance to ioner's families and friends. Sylvia Williams is FDOC employee appointed as the "Family Om- lsman." According to Ms. Williams, "The Om- lsman works as a mediator between families, in- :es, and the department to reach the most effective olution." The FDOC Family Services Hotline is -free: 1-888-558-6488.

FDOC SPANISH HELPLINE

: FDOC has also created a help line to assist Span- speaking citizens obtain information from the artment. Tina Hinton is the FDOC employee in position. Contact: 1-800-410-4248.

ease inform FPLP if you have any problems with ig the above services]

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

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

Office of the Governor
PL 05 The Capitol
Tallahassee FL 32399-0001
(850) 488-2272

Chief Inspector General.....922-4637
Citizen's Assistance Admin.....488-7146
Commission/Government Accountability to the People.....922-6907
Office of Executive Clemency
2601 Blair Stone Rd.
Bldg. C, Room 229
Tallahassee FL 32399-2450

Florida Resource Organizations

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

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

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

MEMBERSHIP/SUBSCRIPTION RENEWAL

Please check your mailing label to determine your term of membership and/or last month of subscription to *FPLP*. On the top line will be a date such as ***Nov 00***. That date indicates the last month and year of your current membership or subscription to *FPLP*. Please take the time to complete the enclosed form to renew your membership and subscription to FPLP.

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

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