

Florida Prison Legal Perspectives

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FDOC CORRECTIONAL OFFICERS INDICTED BY FEDS

Fort Myers, FL - Ten Florida Department of Correction's (FDOC) correctional officers were indicted July 10, 1998, on federal charges returned by a federal grand jury in the death of a state prisoner. The prison guards, two of whom were high ranking officers, were each charged with a seven-count indictment for violating the civil rights of prisoner John Edwards. Seven of the officers were from Charlotte Correctional Institution located near Fort Myers and two were from Zephyrhills Correctional Institution located near Tampa.

The grand jury found that prisoner John Edwards had been subjected to numerous beatings over a several day period before he eventually attempted to commit suicide by cutting his own wrists, and then chained to a steel bed, beat again and left to bleed to death by the the officers.

Edwards who reportedly was HIV positive had allegedly bit a corrections officer at Zephyrhills CI in August 1997. According to the indictment, the officers then plotted to injure, threaten and intimidate Edwards and to retaliate against him because he bit a colleague.

The beatings started at Zephyrhills CI and then continued when Edwards was transferred to the Charlotte CI prison.

The corrections officer allegedly

kicked and beat Edwards, repeatedly slammed him into walls, all while he was wearing handcuffs. After three days of being brutalized Edwards allegedly slashed his arm in an attempt to get away from the beatings. He was then moved to a psychiatric dorm at Charlotte CI where after another beating while chained naked to a bed he finally bled to death after 12-hours without medical treatment.

"He bled to death without receiving sufficient medical care," said U.S. Attorney Charles R. Wilson. Edwards was reportedly found dead, still chained to the bed, August 22, 1997. A medical examination after his death showed several cuts and bruises, but concluded that he died of blood loss from the self-inflicted wound. "He did not die as a result of the beating. He died as a result of bleeding to death over a 12-hour period," said Assistant U.S. Attorney Doug Malloy.

A tenth FDOC officer, John Robbins, apparently blew the whistle on the others. He was allowed to plead guilty to a single conspiracy count the same day the other indictments came down before U.S. Magistrate George Swartz.

Each of the correctional officers faces charges of up to ten years in

prison and a fine of \$250,000 on each count, if convicted.

The officers charged were: Capt. Donald B. Abraham, 38, of Punta Gorda; Capt. Kevin W. Browning, 33, of Punta Gorda; Michael Carter, 41, of Port Charlotte; Thomas J. McErlane, 38, of Port Charlotte; Robert M. Shepard, 48, of Port Charlotte; Gary T. Owen, 29, of Zephyrhills; Joseph P. Delvecchio, 50, of Zephyrhills; Paul R. Peck, 31, of Port Charlotte; and, Richard Wilks, 30, of Port Charlotte.

"I am not surprised that this occurred in a Florida prison," said Teresa Burns, *FPLP's* publisher, "I am only surprised that it resulted in indictments. Such beatings and abuse of prisoners does not appear to be uncommon, my office receives approximately 10-15 reports of such abuse in the Florida system each month. The abuse, and possibly deaths, are expected to increase now where prisoners have had their access to the courts severely obstructed. That access was basically the only check and balance on correctional officers who often are known to the FDOC to have a history of abusing prisoners, yet are seemingly encouraged to engage in more of the same by not being fired and in cases being promoted to positions



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overseeing other officers of the same stripe."

The above nine officers were fired after the FDOC realized that federal indictments were likely.

This is reportedly the largest single indictment of prison guards in Florida's history stemming from a prisoner's death. Federal investigators investigated this case for almost a year before the grand jury returned the indictments. While the justice department officials did not actually accuse the FDOC of attempting to cover up for the officers, little active cooperation from the FDOC was forthcoming until after the indictments came down.

On August 3, 1998, the FDOC announced that another officer had been fired in connection with Edward's beatings and eventual death. Sgt. Shawn Grueber, who had just transferred to Charlotte CI from Desoto CI, testified before the grand jury just days before the indictments were handed down against the other officers on July 10th. Before the grand jury Grueber revealed what he had withheld from federal investigators during their investigation. According to Grueber, while he was working in the psychiatric wing's housing unit at Charlotte CI a group of guards called him over to where they were beating Edwards and told him "This is how we do things in Charlotte." This apparently occurred after Edwards had slashed his arms with the sharpened edge of an ID card clip and was chained down naked on the metal bed. The guards, in Grueber's presence, then kicked and beat Edwards some more.

Even though Grueber has not been indicted, the FDOC finally concluded that he had joined in the assaults on Edwards and had failed to file the use of force reports required whenever force is used on a prisoner. Federal investigators had already concluded that a number of the indicted guards and supervisors had filed false reports concerning the incident, and that these reports had been "rubber-stamped" by those higher up. The FDOC has went into damage control mode and announced that Grueber's firing is the first in a series of disciplinary actions expected to be taken in connection with Edward's

abuse and death.

Prison activists are skeptical of the FDOC really taking any meaningful action to reduce prisoner abuse. The FDOC has been promising to straighten out Charlotte CI for years, but has been unable, or unwilling, to do so. Between 1991 and 1994 Charlotte CI had twice the prisoner-on-prisoner serious assault rate as any other prison in the state. Charlotte CI has experienced guards participating in racist rallies that resulted in indictments a few years ago.

During 1993 federal investigators found that a massive fraud scheme was being perpetuated by the superintendent of Charlotte CI and several high ranking officers at the prison regarding overtime pay. Prisoners have alleged that officers at Charlotte CI have for years used prisoners to assault other prisoners. Numerous prisoner lawsuits are pending against Charlotte CI because of the uncontrolled violence at the prison. This would be a good opportunity for the FDOC to finally clean up Charlotte CI and other prisons around the state that continue to condone prisoner abuse. This is not something that one would want to hold their breath waiting for, however. [Sources: *St. Petersburg Times*, *Ft. Walton Bch. Daily News*] ■

CENSORING READING MATERIALS

The FL Department of Corrections [FDOC] recently implemented new regulations at Chapter 33-3.012 (5/10/98) F.A.C., and Policy and Procedure Directive (PPD) 7.01.01 (5/13/98), concerning prisoners' access to admissible reading materials through the mail and procedures for rejecting such materials. FPLP is concerned that many of the new regulations do not appear to comply to established substantive or procedural law. Additionally, certain provisions in the PPD are not contained in the Chapter 33 Rules yet appear to meet the definition of "rule" at Ch. 120.52(12), F.S., that have not been formally adopted according to Ch. 120.54, F.S.

During early June FPLP received a notice of rejection from Jackson CI Work Camp indicating that FPLP, Vol. 4, Iss. 3, had been rejected by that institution for an alleged "threat to security or

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der." Following that notice, we received information that prisoners at other institutions were having Vol. 4, Iss. 3, also rejected based on the Jackson CI rejection (this is one of the new policies that do not appear to comply to established law). Our staff appealed the Jackson CI rejection, as did some of those prisoners who had their issues rejected, to the FDOC central office and we were notified on June 15, 1998, that the rejection had been overturned by the FDOC Literature Review Committee. All prisoners should have received their copies of Vol. 4, Iss. 3, that had been withheld. All institutions were required to be notified that the "rejection" was overturned.

FPLP prisoner subscribers are advised that FPLP staff will appeal every rejection of FPLP that we are notified about. If a rejection occurs, prisoner subscribers also need to appeal such rejections directly to the central office under the new reading material grievance appeal procedures at Rule 33-3.012(6), F.A.C. If the new rules and PPD are not changed to comply with established law it is suspected that litigation is going to be necessary.

The perceived problems with the new rules and PPD are numerous. In many instances they appear to intentionally circumvent established constitutional law, and statutes of the state. Below is discussed some of these problem areas that would be equally applicable to any publication that is rejected under these new rules and policies:

At Rule 33-3.012(5)(a) is stated with mandatory language that: "The Superintendent or designee shall reject any publication ... For the purposes of rejection of publications, the superintendent's 'designee' shall be limited to the assistant superintendent or chief of a community facility."

That rule would basically appear to comply with the guideline of the U.S. Supreme Court that only a superintendent of a particular institution may reject a publication. In Thornburgh v. Abbott, 109 S.Ct. 1874, at 1883 (1989), the court stated:

[W]e are comforted by the individualized nature of the determinations required by the regulation. Under the regulations,

no publication may be excluded unless the warden himself makes the determination that it is "detrimental to the security, good order, or discipline of the institution or ... might facilitate criminal activity." [Federal Code cite omitted]. This is the controlling standard. A publication which fits within one of the "criteria" for exclusion may be rejected, but only if it is determined to meet that standard under the conditions prevailing at the institution at the time. Indeed, the regulations expressly reject shortcuts that would lead to needless exclusions. See sec. 540-70(b) (nondelegability of power to reject publications); sec. 540.71(c) (prohibition against establishing an excluded list of publications). We agree that it is rational for the Bureau to exclude materials that, although not necessarily "likely" to lead to violence, are determined by the warden to create an intolerable risk of disorder under the conditions of a particular institution at a particular time.

The court stated that it is the "controlling standard" that "no publication may be excluded unless the warden himself makes the determination" The court was "comforted" by the individualized nature of the determinations, i.e., that only the warden [read superintendent in Florida] may reject a publication, and the court noted that they approved the regulations being examined in Thornburgh because the regulations had a provision that the warden's power to reject publications was nondelegatable.

Florida stretches the nondelegation with Rule 33-3.012(5)(a) by authorizing the superintendent to delegate his power to reject a publication to an assistant superintendent or chief of a community facility. But, that is no big problem. A court would probably hold that an assistant superintendent or chief of a community facility had enough knowledge of the operation and security problems of his/her particular institution to make an informed determination whether to reject a publication or not. No, the problem is that the FDOC intends to circumvent the superintendent totally in certain instances. Even though Rule 33-3.012(5)(a) states that the authority to reject is limited to the superintendent or two specified designees, the new PPD is a much different matter. And

the PPD, not the Chapter 33 rule, is what the FDOC really intends to follow.

PPD 7.01.01 VII. A. 1. states:

If the publication has been rejected at another location, the mailroom supervisor shall prepare a rejection notice for each inmate receiving same, using the information provided in the "REVIEW" eform posted on the Admissible Reading Material Bulletin Board, and sign it.

Only in this instance can a rejection notice be signed by a mailroom supervisor. This is authorized in this instance because the mailroom supervisor is not the rejecting authority; rather, the rejecting authority is the Superintendent or designee at the correctional institution that posted the rejection notice on the Admissible Reading Material Bulletin Board [this "Board" is an FDOC computer network site that is accessed at every institution mailroom now] [these paragraphs revised 8/6/98, see End Note].

This PPD greatly expands the mandatory limits of Rule 33-3.012(5)(a) ~~that~~ the only persons authorized to reject a publication is the superintendent or assistant superintendent or chief of a community facility. This PPD has not been adopted as a "rule" even though it exceeds the adopted rule of Chapter 33, in apparent violation of the above stated F.S. 120.54 required rulemaking statute. See also: PPD 1.01.01 II. A., and 1.02.02 III. B.

Even more problematic is that the delegation of the authority to reject publications to a mailroom supervisor does not comply with Thornburgh, as above. Mailroom officers are usually low ranking officers and could not be said to be knowledgeable enough about the security of a "particular institution at a particular time" to make an informed decision to reject a publication. There is another problem apparent.

The PPD "claims" that the mailroom supervisor is authorized to make such a rejection because "the mailroom supervisor is not the [real] rejecting authority; rather the rejecting authority is the Superintendent or designee at the institution that posted the rejection notice" What this means is that not only does the PPD provide that someone other than the superintendent or assistant superintendent

at your institution is "authorized" to reject a publication, but also that the publication will be rejected in such case by a mail-room supervisor based on a determination by a superintendent, or his designee, who is at another institution. Such superintendent or designee certainly is not informed of security conditions at your 'particular institution.'

Look back at what Thornburgh said above. The court specifically stated it was comforted by the fact that the regulations only allowed a publication to be rejected by the warden himself based on a determination "under the conditions prevailing at the institution at the time." And the court agreed that such rejection should only occur after consideration is given to the conditions of a "particular institution at a particular time."

A superintendent at another institution cannot "authorize" publication rejections at your institution. The superintendent [warden] can only authorize rejection of publications at his/her institution; the institution where he/she is familiar with the security conditions. Even worse, when you read and understand exactly what the above referenced PPD is truly proposing, combined with the clear violations in PPD 7.01.01 VI. B., you will see that the FDOC intends that one superintendent at one institution will be able to "authorize" the rejection of a publication at every institution in the state. This definitely violates Thornburgh.

Now let us look at a specific type rejection that is occurring that is of interest to many prisoners: rejection of sexually explicit materials. As all Florida prisoners who subscribe to adult-type magazines now know, the FDOC is engaged in wholesale rejection of such magazines. Courts have split on whether such materials may be rejected or not, that will not be addressed here. But are the rejection "procedures" themselves in compliance with the law?

In 1995 the FL legislature added the following provision to F.S. 944.11:

(2) *The department shall have the authority to prohibit admission of reading materials or publications with content which depicts sexual conduct as defined by sec. 847.001 or presents nudity in such a way as to create the appearance that*

sexual conduct is imminent. The department shall have the authority to prohibit admission of such materials at a particular state correctional facility upon a determination by the department that such material or publications would be detrimental to the safety, security, order or rehabilitative interests of a particular state correctional facility or would create a risk of disorder at a particular state correctional facility.

It is obvious that the drafter of the above law was familiar with Thornburgh, note that the word particular is specified three times in this statute. It is equally obvious that the drafter of the new FDOC rules and PPD was either not familiar with Thornburgh, or, more likely, intentionally sought to circumvent Thornburgh. Compare PPD 7.01.01 VI. B. with the statute, note the way in which that PPD seeks to expand "particular institution" to the "entire department."

The legislature was aware of the potential problems that could be caused by this statute if not strictly complied with. In the Final Bill Analysis & Economic Impact Statement notes of the Committee on Corrections for the FL House of Representatives, dated June 23, 1995, concerning House Bill 2531, which examined the above proposed statute before its adoption, is stated at Section III. D. 18.:

The language lacks specificity with regard to the definition of reading material with content of a "sexual nature." The section would permit the Department to adopt rules which may or may not be much different than rules currently in place. Under current rules and case law, reading material which contains text and pictures of sexual behavior or pictures of unclothed males and female in provocative poses, may be received by inmates.

A prison regulation which impinges on an inmate's constitutional rights is valid as long as it is reasonably related to legitimate correctional interests Turner v. Safely (1989) 482 US 78. A particular restriction affecting the receipt of publications is permissible under the First Amendment where it is reasonably related to a legitimate correctional objective, such as the protection of prison security, and does not represent an exag-

gerated response to concerns of institutional security and safety.

A prison warden or superintendent may reject a publication only if it is detrimental to the security, good order, or discipline of the institution or if it might facilitate criminal activity. However, the publication may not be rejected solely because its content is religious, philosophical, political, social, or sexual, or because its content is unpopular or repugnant Thornburgh v. Abbott, (1989) 109 S.Ct. 1874. Correctional officials may prohibit sexually explicit materials where the materials could reasonably be expected to circulate among the inmates and cause a potentially disruptive environment because of the content of the material Lambrix v. Dugger (1992) Fla App D1 610 So2d 1366.

A broad definition of "sexual nature" as content in reading material would include articles in magazines such as Cosmopolitan. Even Time and Newsweek may contain articles dealing with content of a sexual nature such as safe sexual practices or homosexuality. In addition, there are numerous publications such as romance novels which have content of a sexual nature. If the definition of "sexual content" is broad or vague, it may be attacked on grounds that it violates an inmate's or a publisher's constitutional right of free speech.

Depending on how the Department crafts the rules in response to this section and how the rules are implemented at each correctional facility, this section may result in additional litigation against the State.

For the FDOC to comply with the above state law, two (2) determinations must be made by the superintendent [the statute uses the word "department," but Thornburgh noted the individualized nature requires that the "warden himself" of the particular institution must make the determination] before sexually explicit reading materials or publications are authorized to be rejected:

■ First, the superintendent of your particular institution must determine that

the material "depicts sexual conduct as defined by sec. 847.001 or presents nudity in such a way as to create the appearance that sexual conduct is imminent."

■ Second, the superintendent must determine that the "material or publications would be detrimental to the safety, security, order or rehabilitative interests of a particular [his or her] state correctional facility or would create a risk of disorder at a particular [his or her] state correctional facility."

According to this statute, these two determinations must be made to reject sexually explicit material. And, these two determinations must be made in relation to conditions at the particular institution where the materials are being rejected. The "security" determination is the most important, and essential, of the two determinations that must be made. The Thornburgh court applied the four-prong test that was established in Turner v. Safely, 107 S.Ct. 2254 (1987) in deciding Thornburgh. The first prong is that the reasons for the rejection must be "legitimate and neutral." Security reasons would meet the "legitimate" aspect of this prong [Thornburgh at 1882]; but without a determination that the material would present a security threat, it is prohibited to base the rejection solely on the contents of the material, such would not be "neutral". Id.

Rejection notices are being received by FL prisoners on adult magazines that only state that the material is being rejected because it "depicts sexual conduct as defined by sec. 847.001 or" Absolutely no determination is being voted on many of the actual rejection notices that the material is both sexual and "detrimental to safety, security, order or rehabilitative interests" of that particular institution. This is a serious error on the FDOC's part. Compare former Rule 33-3.012(4)(g) (repealed 5/10/98) with new Rule 33-3.012(2)(i) and (j) (Eff. 5/10/98) [security threat determination included in former rule concerning sexual content, missing from new rule].

Publications cannot be rejected because they are simply "sexually explicit." There must be a determination by the

superintendent at that particular institution that the material or publication presents a threat to security or order of that particular institution. Otherwise, you have a rejection based purely on the "content" of the material, which the Supreme Court in Thornburgh; Turner v. Safely, 107 S.Ct. 2254 (1987); and Procunier v. Martinez, 94 S.Ct. 1800 at 1811 (1974), condemned as "content-based restrictions" and "suppression of expression."

Without a determination that the material, regardless of the content, is detrimental to security or order of the institution, then the rejection cannot be said to be "neutral." See: Thornburgh at 1882-83. Failure to determine, and state on the rejection notice [Martinez due process requires notice to prisoner of reasons for rejection], that it has been determined that the material or publication is both sexual within the meaning of F.S. 944.11(2), and a threat to "safety, security, order....," makes the rejection unauthorized by the FL statute and unconstitutional pursuant to the First and Fourteenth Amendments. [While Martinez was overruled in Thornburgh concerning the standard to be applied when addressing the constitutionality of prison rules regarding censorship, the due process requirements established in Martinez survived Thornburgh, e.g. Lawson v. Dugger, 844 F.Supp. 1538, 1543-44 (S.D. Fla. 1994), and were even clarified with the Thornburgh court's specific approval of the due process protections contained in the regulations being examined in that case. Id. at 1878].

And where the rejection notice is signed by a mailroom supervisor, instead of the superintendent, based on a determination by a superintendent at another institution, then another violation exists as discussed above. [See End Note].

This article discusses only some of the more serious and obvious procedural due process problems with the FDOC's rejection of reading materials/publications under these new rules and policies. There are several other problems that become obvious when one becomes fully familiar with the law in this regard. The admissible reading material rules which the FDOC had adopted and had in effect before May 10, 1998, were generally in compliance with the law [Thornburgh]. The FDOC had been forced

to adopt those former complying rules during the case of Lawson v. Wainwright [ne' Dugger, ne' Singletary], 641 F.Supp. 312, aff in part, remand in part 840 F.2d 781, reh den 840 F.2d 779, cert grand vac 109 S.Ct. 2096, on remand 897 F.2d 536, on remand 844 F.Supp. 1538, rev 85 F.3d 501, adhered to 844 F.Supp. 1538, rev 85 F.3d 502 (11th Cir. 1996). Now that that case is over, the FDOC has went back to rules and policies that do not appear to meet constitutional muster.

Another area that needs to be looked at is that the former FDOC rules provided that a prisoner could look at rejected materials [as long as that would not be a security threat] before filing an appeal on the rejection. Former Rule 33-3.012(7) (Repealed 5/10/98). The new rule repealed that provision. Yet, such review appears to be required by due process. See: Montcalm Pub. Corp. v. Beck, 80 F.3d 105 at 109 (4th Cir. 1996), cert den Angelone v. Montcalm Pub. Corp., 117 S.Ct. 296 (1997).

Another problem area is that when the system-wide rejections occur under PPD 7.01.01 VII. 1., the rejection notices being given at the "other institutions" based on the original rejection do not contain notice of the "specific reasons" for the rejection that identifies the specific material in the publication that lead to the original rejection. This practice does not provide due process. See: Lawson v. Dugger, 840 F.2d 781, 786-87 (11th Cir. 1988), and 844 F.Supp. 1538, 1544 (S.D. Fla. 1994). The practice further appears to violate Rule 33-3.012(4)(b) (specific reasons for rejection must be given). A prisoner who does not receive notice identifying the specific "written or pictorial matter" that was found objectionable can hardly mount an effective appeal of the rejection. The prisoner who has material rejected without notice of the specific "written or pictorial matter" that was thought objectionable cannot be forced to rely on the appeal of the first prisoner who had the material rejected, at another institution, where the first prisoner was the only one noticed of the specific written or pictorial matter that was thought objectionable. This error obstructs those later prisoners receiving rejection notices from being able to mount an effective appeal of their particular rejection at their particular institution. Due process is not provided in

such a case.

Prisoners intending to challenge a publication rejection should not even attempt it without first fully researching this area of the law. The new PPD certainly cannot withstand constitutional scrutiny. All identified errors, rule violations, and legal issues, should be raised in the administrative appeal to preserve them for judicial review. For a further understanding of this subject one should read the sections in the *Self-Help Litigation Manual* and the two volume set *Rights of Prisoners* 2nd Ed., concerning publication rejections. An informative law review article is Thornburgh v. Abbott: Slamming the Prison Gates on Constitutional Rights, 17 Pepperdine Univ. L.R. 1011-1043, by Megan McDonald.

One should also read all the available case law on this subject. A starting point in finding such cases could be the case notes listed in the Federal Digest 4th Ed., PRISONERS, Key 4(8). The more one reads and becomes familiar with this area the clearer it will become. You will likely have to reread the cases and material several times. Remember the law has evolved since Procurier v. Martinez was decided.

There have been some negative articles written about Thornburgh, but with consideration that specific due process protections do exist when publications are rejected, and recognizing the limitations that Thornburgh did establish on prison officials, there is still plenty to work with to challenge the FDOC's new admissible reading material rules and "policies."

The remaining question is which forum would be best-state or federal. To help resolve that question look at a dated, but still relevant, article entitled Prisoners and Due Process Litigation: An Invitation to the State Courts, in *Prisoners and The Law*, Vol. I, 5-3 through 5-17. Where rules are being violated, state statutes violated, a PPD that exceeds formal rules not formally adopted according to law, etc, then serious consideration should perhaps be given to seeking state court relief.

End Note: On August 6, 1998, after the above article had been written, the FDOC revised PPD 7.01.01 VII. A. 1.. The author had already assisted numerous prisoners in filing rejection appeals that included a challenge to mailroom supervisors sign-

ing rejection notices. The FDOC denied the appeals, but then hurriedly revised the PPD to address the due process error. The PPD now states at this section:

If the publication has been rejected at another location, the mailroom supervisor shall prepare a rejection notice for each inmate receiving same, using the information provided in the "REVIEW" form posted on the Admissible Reading Material Bulletin Board, and forward it to the superintendent or designee for signature.

[The second paragraph is totally deleted in the revision.]

The mailroom supervisor can no longer sign the rejection notice, but that does not solve the problem where they had already signed rejection notices between 5/13/98 and 8/16/98, as in the above article. However, the revision only creates another problem for the FDOC. Where the superintendent at your particular institution signs a rejection notice, that was prepared by a mailroom supervisor based on a rejection at another institution by the other institution's superintendent, without your institution's superintendent having even seen the publication at issue, the rejection is still not in compliance with Thornburgh. How is your superintendent suppose to sign to reject a publication that he personally has not reviewed nor personally determined to be a threat to the security of his/her particular institution at that particular time? This revision still does not comply with the law. - BOB POSEY ■

ADA UPDATE

In the last issue of *FPLP* was reported the June decision of the U.S. Supreme Court that held that the Americans with Disabilities Act (ADA) does apply to prisoners. See: "U.S. SUPREME COURT HOLDS ADA APPLIES TO PRISONS," last issue. In direct response to that finding, U.S. Senator Strom Thurmond introduced a bill in the U.S. Senate on July 7, 1998, to specifically exempt state and local prisons from both the ADA and the Rehabilitation Act.

The bill, S2266, called the State and Local Prison Relief Act, was referred to the Committee on Labor and Human Re-

sources, and likely will be added to the Justice Department's appropriation bill. This would stream-line S2266 as the final appropriation's bill must be passed before the end of September.

The bill would exempt "any Federal, State or local facility that incarcerates or detains juveniles or adults accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law." This is the same definition found in the Prison Litigation Reform Act of 1996. Not only will this bill exempt juvenile and adult facilities from the ADA and Rehabilitation Act, but may also be considered to exempt psychiatric hospitals that incarcerate criminally committed prisoners.

Every prisoner, family member/friend, prisoner rights advocates, disability rights advocates, should contact their U.S. representatives to oppose the passage of this bill. Time is of the essence. Disabled Prisoners: have your family members and friends write letters or call Florida's U.S. senators and representatives immediately. The U.S. Supreme Court has ruled in your favor, now efforts must be taken to prevent the U.S. Congress from legislating that the ADA will not protect disabled detainees and prisoners.

Florida's U.S. Senators can be contacted as below:

*Senators Bob Graham or Connie Mack
The Senate
The Capitol
Washington, DC 20510
PH# 202-224-3121■*

BRIEFS

Religious Freedom - Florida voters will vote this November on whether to include a provision in the Florida Constitution concerning a Religious Freedom Restoration Act. This past legislative session a statute was adopted creating such a law in Florida, but a constitutional amendment would be even stronger and could not be changed as readily as a statute can be. Ken Conner, a member of the Florida Constitutional Revision Commission and a member of Justice Fellowship's FL Task Force was key in defeating an effort by state attorney general Bob Butterworth to exempt prisoners from the constitution amendment proposal. The proposal will be submitted to voters without exceptions.

The provision will make it mandatory that the state show a "compelling governmental interest" before infringing on any person's religious freedoms and that any "compelling interest" be tailored to the "least intrusive means."

Capital Punishment - In April the U.N. called for a world-wide moratorium on capital punishment. In a report prepared by Bacre Waly Ndiaye, a lawyer and death penalty expert from Senegal, it was found that the U.S. administers capital punishment outside international standards, and in instances in violation of international laws. The report found that the death penalty is tainted in the U.S. by racism, economic discrimination, and an excessive deference to victims rights. The report noted that the U.S. is only one of five countries world-wide (U.S., Pakistan, Saudi Arabia, Iran, and Yemen) that permits the execution of offenders who committed their crime under the age of 18.

This is a violation of the International Covenant on Civil Political Rights, which the U.S. signed.

Capital Punishment - Sr. Helen Prejean CSJ, author of *Dead Man Walking* and a leading activist in the Death Penalty Abolitionist cause, has been nominated for a Nobel Peace Prize. The prizes will be awarded in October and if she wins it may contribute to the pressure in the U.S. to abolish the death penalty. Letters in support of Sr. Prejean can be mailed to: Francis Sejerstad, Chairperson, The Norwegian Nobel Committee, Dammen 19, N0255 Oslo Norway. Airmail to Norway is 60 cents/½ ounce and \$1/ounce. Letters should be short, stressing why the death penalty should be abolished in the U.S., and how granting a prize to Sr. Prejean would pressure abolition of the death penalty in the U.S.

"If we are serious about stopping the violence in this country, then we simply must stop our government from giving us and our youth the examples that violence and vengeance are legitimate. We must demonstrate that killing is wrong no matter who does it, and that there are plenty of citizens willing to stand up and say 'Don't kill in MY name... We can do better than that.' Only when people stand up to be heard and counted will our politicians feel secure enough to vote for alternatives

to the death penalty. So we must educate them, then activate the people of this nation. We must lead by example." - Sr. Helen Prejean CSJ

Juvenile Curfews - A new study by the Justice Policy Institute examining the impact of juvenile curfews in the most populous California counties and cities found that curfews did not lower the juvenile crime rate. The study found that in four of the largest CA counties there was racial bias in curfew enforcement, and that while curfews did not reduce crimes committed by black and Latino youth, curfews were associated with a rise in misdemeanors by white and Asian youth. The study was funded by the CA Wellness Foundation and will be published in the Sept. issue of *Western Criminology Review* magazine.

[Source: *The Nation*]

Female Prisoners - In the November 1997 Annual Report of the Florida Corrections Commission it was noted that female prisoners in FL are more likely than male prisoners to be placed in a facility hundreds of miles from their county of commitment. The Commission found that this makes it extremely difficult for female prisoners to maintain relationships with children and other relatives. The Commission recommended that the FDOC implement a parenting program at major female institutions and design a pilot work release program that incorporates parenting and reunification with children for female offenders. The Commission also recommended that the FDOC convert Jefferson CI into a male facility and convert a comparable south Florida male institution into a female institution so that female prisoners can be placed closer to home. The Commission should be contacted for more information on these recommendations and their current status. Female prisoners' families and friends should contact the Commission to express support for these recommendations: Florida Corrections Commission, 2601 Blair Stone Road, Tallahassee FL 32399; Web Page: www.dos.state.fl.us/fgils/agencies/fcc; Email: fcorcom@mail.dc.state.fl.us.

Corrections Abuse - During July federal agents arrested three current and for-

mer correctional officers charged with aiding and abetting the assault of prisoner Toby Hawthorne. Hawthorne was one of the Missouri prisoners being held in a Brazoria, Texas, private prison and whose beating was videotaped in 1996 and later released to the national news networks. ■

ARE FDOC EMPLOYEES SUPPLEMENTING INCOME FROM PRISONERS' FUNDS?

During April 1998 the U.S. Postal Service initiated an investigation of possible theft of prisoners' funds from mail entering the South Florida Reception Center (SFRC) located near Miami. The investigation was started after the families of more than 30 prisoners incarcerated at the prison contacted the Postal Service to report that money orders they had sent to their loved ones had not reached them. Reportedly, money orders had been turning up missing from approximately December of last year, and amounted to several thousand dollars.

Prisoners in Florida cannot possess cash. Any money they receive must be sent to them from someone on the outside through the mail and in the form of a money order. All incoming mail is opened by prison mailroom personnel who are suppose to remove any money orders and credit them to the prisoners' account.

SFRC superintendent Marta Villacorta responded to reporters that she was looking into the missing money, but it was too early to blame prison mailroom personnel. A spokesman for the union that represents many state prison guards in Florida, the Police Benevolent Association, stated that it was hard to believe that prison guards would steal prisoners' money, that such had never been heard of by the spokesman before.

Theft of prisoners' money orders and postal stamps is not a rare event in Florida's prisons. Almost every prison in Florida has experienced one or more incidents where prison mailroom personnel, who often are not correctional officers and are only part-time employees being paid minimum wage, have been caught stealing money orders, stamps and even prisoners' letters and cards. Usually these occurrences do not reach the media and are contained at the institution unreported to the police, with the guilty party often simply transferred to another prison to work, or laid off for a while until things cool down.

This situation at SFRC did make the front page of the local section of a Miami newspaper that was brought to FPLP's attention. If any FPLP readers have any further information on this investigation and its outcome, please let

FPLP know.

[Source: *Miami Herald*, 4/9/98]

NEW PROPERTY LIST/ DEFINITIONS BECOMES EFFECTIVE

In Volume 4, Issue 3, of *FPLP*, page 3, it was reported that the FDOC had proposed amendments to the list of property that FL prisoners may possess. That new list became effective on August 3, 1998, and should now be contained in all copies of Chapter 33.

The amendment makes significant changes to the definitions of what property is authorized and specifically lists a few exemptions to formerly acquired property that is no longer authorized but that may be kept until the specified items are no longer serviceable. The amendments are found in Rule 33-3.0025, APPENDIX ONE-PROPERTY LIST.

It is interesting to note that in the expanded text that was added to explain this new list is stated: "Inmates in possession of previously approved property which meets the description of property on the list shall be allowed to retain the property." This is without consideration of the designations "canteen" or "state issue." The definition text of the amendment clarifies that those definitions do not mean where property must have come from, only where it may now be obtained from. If you have formerly approved property that meets the basic description of approved property on the list the rule now states that you may keep it. It is suspected that many FDOC staff still will not be able to correctly interpret this new rule, so you should familiarize yourself with it so that if property is taken you can effectively challenge the confiscation.

The following formerly obtained items are specifically approved for possession as exemptions: Clothing items of a different color than specified on the property list; Locks other than V68 series; Plastic bowls, tumblers, cups and lids; Pantyhose; and Nail clippers larger than 3-1/2"

And, wedding rings no longer have to be just plain bands. The property case and injunction is still ongoing and the injunction is still in effect. We have no new news on that case at this time, but will cover same when something new is received. ■

NICOTINE CESSATION INFO

(Continued on page 12)

SMOKING GUN

The following memorandum (DOC Information Memorandum No. 22-79) was discovered in the recent tobacco litigation concerning FL prisoners. See: *FPLP* Volume 4, Issue 4, "SERIOUS MEDICAL CONDITION-NICOTINE ADDICTION." Prisoners who were in prison or juvenile facilities, who received the "free" tobacco that the FDOC pushed for many years and who are now suffering tobacco related diseases, may have very good claims against the FDOC in view of evidence like the following:

August 17, 1978

MEMORANDUM

TO: Regional Directors

Superintendents of Major Institutions

Superintendents of Community Facilities

FROM: Louie L. Wainwright

RE: Discontinuance of providing tobacco products to inmates

Free cigarettes or other tobacco products will not be available to State inmates after September 30, 1978. Although we have furnished inmates with free cigarettes for many years, we are discontinuing this practice when the present 60-day supply on hand is exhausted.

The Department of Corrections has been producing rolled, packaged cigarettes for inmate consumption for over six years. Prior to providing rolled cigarettes, the Department provided, free of charge, smoking tobacco in pouches which the inmates utilized in rolling their own cigarettes. It was the posture of the Department that this free issue of cigarettes was a part of the health and comfort item issue that the Department provided to the inmate by virtue of his incarceration.

During the past two years the Department has attempted to objectively address the feasibility of continuing the provision of free cigarettes to incarcerated inmates. This decision to eliminate free cigarettes is based on a thorough reassessment of the health hazards of smoking and the action of the Legislature in elimination of \$500,000 from the Departmental budget used to purchase wholesale tobacco.

As a result of the preponderance of evidence currently available which indicates cigarette smoking is hazardous to people's health, this has caused the Department to eliminate this practice of providing free tobacco in order to fulfill its responsibilities to protect the health of the inmates while incarcerated. Prominent among this evidence is the following: [Omitted list of general Surgeon General findings, etc.]

The Department of Corrections has also determined that with the cessation of the provision of free cigarettes to inmates that anti-smoking clinics will be provided to inmates within the facilities of the Department. Arrangements are being made with the American Cancer Society to train Department staff in presenting anti-smoking clinics and these clinics will be made available to all inmates involved in the education programs throughout the Department and will be made available on a voluntary basis to other inmates.

I request the each of you encourage and support inmates to discontinue this life-shortening habit of cigarette smoking and in the successful operation of the anti-smoking clinics.

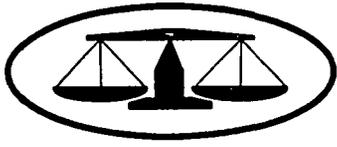
If inmates should chose to continue smoking, they have the option of buying commercial brand cigarettes from the inmate canteen. However, all inmates do need to be made aware of how smoking may shorten their lives and the detrimental diseases they may acquire by continuing this habit.

I have designated T.P. Jones, Assistant Secretary of programs, to establish and monitor the anti-smoking clinics, and I will appreciate your full support of this program.

In order that the entire Department might be aware of this decision, I would request that you disseminate this information to all Departmental staff and inmates.

[Signed: L. L. Wainwright, Secretary]

As those of you who were in during and after the above memo was issued know, there were never any "anti-smoking clinics" established. Free cigarettes continued to be distributed to prisoners, at some facilities, into 1980. Little, if any, information was ever distributed to prisoners concerning the dangers of tobacco. Many prisoners, who were addicted to tobacco for the first time upon entering the DOC where the free tobacco was almost forced on prisoners, have died from tobacco-related diseases or are suffering from such now. ■



NOTABLE CASES

by Sherri Johnson and Brian Morris

-Administrative Confinement- Due Process Not Required

In the first case following Sandin v. Conner, 115 S.Ct. 2293 (1995) that the Eleventh Circuit federal appeals court has addressed concerning due process in connection with administrative confinement in Florida prisons the decision is not favorable and may have serious consequences for Florida prisoners.

In 1993 prisoner Charles Rodgers filed a section 1983 action in the Southern District federal court of Florida, alleging that following a dispute with an FDOC corrections officer at South Florida Reception Center over a dining table the officer wrote a false DR against Rodgers and had him placed in administrative confinement. The DR was subsequently dismissed against Rodgers but he remained in administrative confinement for two more months awaiting disposition of outside criminal charges for the altercation (he evidently put his hands on the officer during the dispute). Rodgers continued to allege that he was not provided due process before or after being placed in administrative confinement in violation of his constitutional rights. Rodgers also alleged that the superintendent and FDOC secretary violated his due process rights because they did not act to release him from the confinement when given notice of same through the grievance procedure.

The district court dismissed the due process claim against the correctional officer for failure to state a claim pursuant to 28 U.S.C. section 1915. The district court granted summary judgment for the superintendent and FDOC secretary after concluding that Rodgers failed to show a deprivation of a liberty interest as required by Sandin v. Conner (following Sandin "liberty interests" are generally limited to (1) actions that unexpectedly alter term of imprisonment, and (2) actions that impose an atypical and significant hardship in relation to the ordinary incidents of prison life.)

Rodgers appealed to the Eleventh Circuit which affirmed the lower court's actions. Rogers had claimed on appeal that since his case facts occurred before Sandin was decided in 1995 that the law at the time of the incident controls. The appeal court disagreed and cited several cases holding that decisions of the Supreme Court gener-

ally must be given full retroactive effect on cases still pending when the decision is rendered. Therefore the district court's application of Sandin standards to Rodgers' case was appropriate according to the appeal court.

This case is significant in that it effectively overturns prior established case law that had controlled in Florida requiring that full due process protections be provided before and after administrative confinement is imposed. Parker v. Cook, 642 F.2d 865 (5th Cir. 1981), and Adams v. Wainwright, 512 F.Supp. 948 (N.D. Fla. 1981).

However, the results of Rodgers is not surprising following Sandin v. Conner. What this means is that following Sandin administrative confinement in Florida prisons can generally be imposed without any due process protections (e.g. hearing, opportunity to be heard, periodic review of status) unless there exists a law or rule creating a "liberty interest" in remaining free of administrative confinement and due process protections before and after imposition and that the prisoner's length of time in prison is affected by the confinement and/or that the confinement is an "atypical and significant hardship" in relation to what confinement a prisoner can ordinarily expect while in prison.

Following this decision in Rodgers' case it is expected that the FDOC will dismantle existing rule mandated requirements that prisoners be allowed to speak with someone and give a statement on his behalf before administrative confinement, and possibly repeal existing rules requiring periodic review of administrative confinement status. This would mean that prisoners could then be placed in such confinement without any reason being given and be kept there for as long as prison officials wish without any review of the status until they decide to review it. See: Rodgers v. Singletary, 142 F.3d 1252 (11th Cir. 1998).

Importance of Exhausting Federal Claims in State Court

A recent case out of the Eleventh Circuit Court of Appeals illustrates the importance of raising and fully exhausting federal issues at the state court level before attempting to proceed to the federal courts with a petition for habeas corpus on a criminal conviction. On February 18, 1998, the 11th Circuit issued a ruling that is useful for clarifying to Florida prisoners correct procedural remedies in pur-

suing postconviction relief from a state criminal conviction.

Harold Snowden, a Florida state prisoner, was convicted in 1986 of several counts of child abuse during a jury trial. Snowden filed a direct appeal of his conviction to the Third District Court of Appeals, which affirmed the conviction. See: Snowden v. State, 537 So.2d 1383 (Fla. 3rd DCA 1989). The Fla. S. Ct. denied discretionary review. See: Snowden v. State, 547 So.2d 1210 (Fla. 1989). Snowden then correctly filed a motion for postconviction relief per Rule 3.850, F.R.Crim.P., which was denied by the trial court without an evidentiary hearing. Snowden appealed that denial and the DCA affirmed the denial. See: Snowden v. State, 589 So.2d 911 (Fla. 3rd DCA 1991).

Snowden, proceeding correctly, next filed a petition for federal habeas corpus relief in the federal district court pursuant to Section 2254. In June of 1994 a magistrate judge issued a report and recommendation that relief should be denied and the district court judge adopted that recommendation and denied the habeas corpus petition.

Snowden then, again correctly, and in the correct order, filed an appeal from the denial of his federal habeas corpus petition to the 11th Circuit Court of Appeals. That court has now reversed the district court's denial of the habeas corpus while issuing an opinion that may be very useful to other pro se prisoners challenging a criminal conviction.

It is important to note the order in which Snowden prosecuted his claims. He followed an orderly progression; first taking a direct appeal (if the conviction was obtained by plea negotiations, then you would probably not have a right to a direct appeal and would skip that step). Upon denial of that he proceeded to a Rule 3.850 postconviction motion back in the trial court. When that was denied he appealed it and lost. He then, having exhausted all available state court remedies, in the correct order and raising every issue the first time around, proceeded to the federal district court. When that court denied him relief he appealed to the 11th Circuit, which has now granted him relief, finding that several of his issues demonstrated a violation of due process.

The 11th Circuit also, in a clear and understandable manner, pointed out the importance of raising and exhausting any federal claims that you might have at every step in the state courts. The Court noted that, "In general, a federal court may not grant habeas corpus relief to a state prisoner who has not exhausted his available

state remedies. (citing 28 U.S.C. Sec. 2254(b)(1)(A))."

The Court, relying on established U.S. S. Ct. case law, also found that, "Exhaustion of state remedies requires that the state prisoner 'fairly present[] federal claims to the state courts in order to give the State the opportunity to pass upon the correct alleged violations of its prisoners' federal rights (cites omitted).'" And, "Thus, to exhaust state remedies fully the petitioner must make the state court aware that the claims asserted present federal constitutional issues." Failure to raise all possible federal constitutional issues at every step in the state court will bar those claims from being raised in the federal court.

Some of Snowden's claims had not been properly raised in the state court and were thus barred, some of his claims that had been exhausted lacked merit according to the 11th Circuit. But several of his claims had been fully exhausted in the state court, presented as federal constitutional violations at every stage, and thus were considered and found to be due process violations by the 11th Circuit affording Snowden his long sought relief. See: Snowden v. Singletary, 135 F.3d 732 (11th Cir. 1998).

[Follow-up: On March 26, 1998, Harold Grant Snowden, an excop, was set free on a \$50,000 bond by the Southern District Court of Florida, pending a retrial. His original conviction was overturned based on the above decision by the 11th Circuit. Source: *The Orlando Sentinel*, 3/27/98, A-1-sj]

Using Rule 33-3.006(1)(b) to Confiscate Legal Material in Other Prisoners' Possession Not Unconstitutional

Prisoners Frank Bass, Leonard Bean, Enrique Diaz, and Bill Van Poyck challenged prison officials' action in using a contraband rule to confiscate legal materials that had been given from one prisoner to another in order to assist each other in court cases. The U.S. District Court for the Middle District of Florida, Jacksonville, granted a summary judgement in favor of FDOC prison officials finding that the plaintiff prisoners had not presented evidence that they, personally, had suffered a denial of access to the courts pursuant to Lewis v. Casey, 116 S.Ct. 2174 (1996). The plaintiff's appealed to the 11th Circuit Court of Appeals, and that court affirmed the lower court's summary judgement with a rather extensive opinion.

The prisoners, who are on 24 hour lockdown at Florida State Prison (FSP), filed a two-count 42 U.S.C. 5. 1983 action alleging

that Rule 33-3.006(1)(b) is unconstitutional where prison officials at that institution used that rule to allegedly confiscate and destroy plaintiff's legal documents which other prisoners possessed, and other prisoners' legal documents which plaintiffs possessed. Pursuant to that rule, legal documents found in the possession of another inmate at FSP are "contraband" if they are transferred from one prisoner to another without authorization.

The rule being challenged in this action provides that "[a]ny item or article not originally contraband shall be deemed contraband if it is passed from one inmate to another without authorization."

The district court had found that the rule was valid under the four-prong test of Turner v. Safley, 482 U.S. 78 (1987), and specifically that the plaintiffs had failed to show that prison officials hindered their efforts to present a legal claim where the plaintiff failed to present any evidence that such an injury had been sustained by them personally.

The plaintiffs attempted to argue on appeal that the lower court should have applied the test established in Johnson v. Avery, 393 U.S. 483 (1969). The appeal court considered both Johnson v. Avery and Bounds v. Smith, 430 U.S. 817 (1977). The plaintiffs had argued that this was not a Bounds case, but the appeal court disagreed. Citing from Lewis v. Casey, the appeal court noted that Bounds and Johnson "focused on the same entitlement of access to the courts," and found that neither of those cases created a free-standing constitutional right independent of the right of access to the courts, and those case did not create separate, independent, standards to be applied in assessing access to court cases. Therefore, the plaintiffs' case must be examined under the standards as established in Lewis v. Casey.

The appeal court noted that under Lewis, prisoners' claims of denial of access must fit within the narrow limits of being related to an underlying habeas corpus petition, a challenge to a criminal conviction, or a civil rights action concerning conditions of confinement. Lewis established that those are the only areas of litigation that prison officials have a constitutional duty to accommodate prisoners with in accessing the courts. The appeal court noted that if the plaintiffs' claims in this case involved claims of denial of access concerning those enumerated reasons, that the plaintiff had provided no evidence that they have had one or more such actions denied or dismissed because of prison officials alleged actions under the stated rule. The appeal court emphasized several times that after Lewis prisoners can only bring denial of access claims if the action (or inaction) of prison officials actually resulted in an underlying case concerning a habeas petition, challenge to a criminal conviction, or civil action on conditions of confinement,

being dismissed or denied.

The appeal court also pointed out several times that Lewis requires "personal injury," prisoners can not claim that they were denied access to the courts because they were prevented from assisting other prisoners, citing Adams v. James, 784 F.2d 1077 (11th Cir. 1986) ("prisoner has no standing to litigate another prisoner's claim of denial of access to the courts."). The appeal court implied that this is what the instant plaintiffs were doing, absent any evidence that they personally had one of those type legal actions denied or dismissed because prison officials had confiscated legal materials in another prisoner's possession.

In closing, the appeal court again addressed whether an "independent" right exists for prisoners to give or receive legal assistance to each other. The court found that no such right exists, citing Johnson v. Rodriguez, 110 F.3d 299, 311 n.15 (5th Cir), cert. denied 118 S.Ct. 559 (1997). The appeal court noted that it joined several other circuit courts of appeals in this position (cites omitted here). See: Bass, Bean, Diaz, and Van Poyck v. Singletary, ___ F.3d ___, 11 FLW Fed. C1487 (6/19/98).

PLRA's "Three-Strikes" Provision Upheld by 11th Circuit

In an extensive opinion, the federal 11th Circuit Court of Appeals has upheld as constitutional the "three-strikes" in forma pauperis (IFP) provision of 28 U.S.C.A. Sec. 1915(g), section 804(d)7f the Prison Litigation Reform Act of 1995 (PLRA).

On May 9, 1997, FL prisoner Vincent Rivera filed a 42 U.S.C. Sec. 1983 complaint in the federal district court for Northern Florida. Rivera alleged that a prison doctor had disregarded his medical needs and sexually fondled him during an examination. Rivera sought monetary damages, correction of his record, and restoration of gaintime that was taken through disciplinary action (it is obvious that Rivera had absolutely no clue as to the proper remedy, even if his claims were true).

Pertinently, Rivera sought to proceed in forma pauperis, and after the case was transferred to the Middle District Court within which Rivera was incarcerated, the district court dismissed Rivera's case because he had filed three previous lawsuits that had resulted in dismissals because they had been frivolous, malicious or failed to state a claim upon which relief could be granted. The district court determined that 28 U.S.C. Sec 1915(g) rendered Rivera ineligible to proceed IFP in the instant action as the three prior dismissals all counted as "strikes" under the PLRA and Rivera had not shown he was in imminent danger of

physical injury." The district court found that Rivera could only proceed if he prepaid the entire filing fee-up front.

Rivera, not knowing when to leave well enough alone, filed an appeal and sought to proceed on appeal IFP. The district court found that the appeal was not in good faith and ordered Rivera to prepay the appeal filing fee before he could proceed. However, the clerk of the court obtained Rivera's written consent to pay a partial payment and place a hold on his account to satisfy the rest of the appellate filing fee (exactly what Rivera had been seeking to do). Rivera failed to realize something was up when the clerk appeared to be going around the court so his appeal could be heard. The court had denied IFP status and the clerk, unofficially, granted same.

The 11th Circuit took this made-to-order opportunity to address PLRA issues of first impression for that court. Rivera raised constitutional challenges to Sec. 1915(g) on four grounds: (1) First Amendment access to courts; (separation of powers; (3) Fifth Amendment due process; and (4) Fourteenth Amendment equal protection. Alternatively, Rivera alleged that the district court erred by using cases dismissed before the PLRA became effective in a retroactive manner to count towards the "three strikes" against him, and that two of the "three strike" cases could not be counted as dismissals due to being frivolous, malicious or failing to state a claim.

Almost routinely, the 11th Circuit disposed of Rivera's First Amendment challenge noting that proceeding IFP in a civil case that does not involve "fundamental rights" is a privilege rather than a right.

The court also found that Sec. 1915(g) does not violate separation of powers, based on the same cases that Rivera sought to argue did show such violation.

Rivera's claims of denial of due process under the Fifth Amendment the court equated to a restatement of his First Amendment denial of access to the court claim, as Rivera alleged due process -was denied in a application of *res judicata*. The court held that Sec. 1915(g) does not violate the Fifth Amendment.

The court noted that a district court in the 8th Circuit had found that Sec. 1915(g) was unconstitutional in violation of equal protection rights of prisoners, but that had been overturned on appeal to the 8th Circuit appeals court. The court went further to agree with the 5th and 6th Circuits that Sec. 1915(g) does not violate the Fourteenth Amendment right to equal protection, as

incorporated through the Fifth Amendment.

Regarding Rivera's claim that the district court's counting of the three cases previously filed by him as "strikes" produced a retroactive effect, the court found that "Congress intended Sec. 1915(g) to apply to prisoner actions dismissed prior to its enactment." The court agreed with several other circuits that have held that Sec. 1915(g) does not preclude consideration of cases dismissed before the PLRA became effective in reviewing or denying IFP status under Sec. 1915(g).

Considering Rivera's claim that two of the three previous cases could not be counted as "strikes," the court examined them. One had been dismissed because Rivera improperly sought to use a Sec. 1983 action to challenge a disciplinary action, without having had the disciplinary action first reversed by administrative ruling, state court proceedings, or federal habeas corpus. This dismissal was for failing to state a claim for which relief could be granted. The second case the court found was "equally, if not more, strike-worthy" where the court had found that Rivera had lied under oath about the existence of the first lawsuit. The dismissal in this case was a sanction where Rivera was found to have abused the judicial process, which was also properly considered as a strike.

In summation, the court held that the "three-strikes" provision of 28 U.S.C.A.

Sec 1915(g) does not violate the First Amendment right of access to the courts; the separation of powers doctrine; the Fifth Amendment right of due process; or Fourteenth Amendment right to equal protection. The court further held that district courts in this circuit may properly count as strikes lawsuits that were dismissed prior to the PLRA being enacted on April 26, 1996, and that the district court did not err in counting as strikes the two contested prior cases of Rivera. See: Rivera v. Allin, et al., ___ F.3d ___ 11 FLW Fed. C1570 (11th Cir. 6/23/98).

There Is No Constitutional Right of an Accused to Proceed Both Pro Se And With Counsel

Although indigent criminal defendants are entitled to the appointment of counsel and, under certain circumstances, have a constitutional right to waive their right to representation by counsel, "there is no constitutional right of an accused to representation both by counsel and by himself." Whitfield v.

State, 517 So.2d 23 (Fla. 1st DCA 1971).

Appellant, William Carter, filed a pro se motion seeking rehearing and clarification of the Fourth DCA's decision entered in his appeal. In striking the pro se rehearing and clarification motion, the Fourth DCA found that Carter "does not have the right to file motions pro se when he is represented simultaneously ... by counsel." See also, State v. Tate, 387 So.2d 338 (Fla.1980); Hooks v. State, 253 So.2d 424 (Fla.1971) (defendants have no absolute right to proceed on appeal both with representation by counsel and pro se). See: Carter v. State, ___ So.2d ___, 23 FLW D1705 (Fla.4th DCA 7-22-98).

[If one were to ask what FPLP staff found so significant about this particular case, a hidden warning sign would be the answer. With all the hurdles that have derived from both the Antiterrorism and Effective Death Penalty Act and Florida's Criminal Appeal Reform Act of 1996, the number of procedural bars - resulting from untimely filed pleadings appear to be on the rise. That is, one of the most commonly raised defenses to collateral challenges seems to be -that the challenge was untimely presented. Appellate attorneys often fail to provide their client with a copy of the DCA's mandate. Additionally, many prisoners are not aware of the fact that there is no authorization for filing a pro se rehearing motion when they were represented on appeal by an attorney. The two year period for filing a rule 3.850 motion begins to run when the DCA issues its mandate from the plenary appeal, not when it enters an order denying a motion for rehearing that was filed by a pro se defendant who was represented on the appeal by counsel. As for the one year period for filing an -application for federal habeas corpus relief, "[t]he time during which a properly filed application for State post-conviction or other collateral review . . . is pending shall not be counted...." 28 U.S.C.A Sec. 2244(D)(2). In light of the fact that procedural bars are being strictly enforced, FPLP staff suggests that its readers should look to the date the mandate from the plenary appeal was issued rather than the date of any order denying rehearing motions from that appeal. A copy of the mandate can be obtained from the Clerk of the Court-bm]

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(Continued from page 8)

FPLP has received some requests for case information concerning the nicotine cessation article that ran last issue. Thomas Waugh's case, which forced the FDOC to provide him with Zyban and nicotine patches to stop smoking, was styled: Waugh v. Harry K. Singletary, et al., Case No. 95-605-Civ-J-20A, and was filed in the federal District Court, Middle District, Jacksonville Division.

The State of Florida's case against the major tobacco companies, in which the tobacco companies filed a counterclaim alleging that the FDOC, a state agency, had also manufactured and distributed cigarettes for decades to prisoners, and in which a significant amount of discovery materials concerning that claim was filed, was styled: State, et al. v. American Tobacco Company, et al., Case No. 95-1466AH (Civil), and was filed in state court, Fifteenth Judicial Circuit Court, In and For Palm Beach County, Florida.

FPLP has most of the key documents that were filed or used in litigating the above two cases. If enough interest is received we will consider making copies of those materials available for order. Let us know.

Tom Waugh was provided Zyban and nicotine patches following his settlement, and has now been smoke-free for several weeks. He informs FPLP that the Zyban was more beneficial in helping him to stop smoking than the nicotine patches, but recommends them both as necessary cessation aides to those heavily addicted to nicotine as he was.

All Florida prisons are suppose to have adopted a written Institutional Operating Procedure (I.O.P.) outlining the steps that prisoners can take to participate in nicotine cessation programs and possibly receive nicotine patches. If interested check your law library for the I.O.P. or contact your doctor or classification officer for more info. ■

1998 LEGISLATIVE HIGHLIGHTS

The 1998 FL legislative session produced few changes to state law that will affect prisoners, unlike the past few years. The following notes selected highlights from this most recent session:

Criminal Procedure, Death Sentence, Method of Execution: Session Law 98-3, C.S.H.B. 3033, created Sec. 922.105, F.S., and amended Secs. 775.082 and 790.161, F.S., to provide that electrocution is the official method of execution of death-sentenced prisoners and that lethal injection will only be utilized if electrocution is ever

held to be unconstitutional by the FL or U.S. Supreme Courts. Became effective 3/26/98.

Sexual Predators, Civil Commitment: Session Law 98-64, C.S.H.B. 3327, created several new statutes entitled the "Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act." This Act establishes state laws that allows for the involuntary civil commitment of offenders designated as sexual predators. The Act will affect presently incarcerated and future sexually violent predator offenders as defined under the Act. This bill was modeled after a law that was adopted in Kansas and that was upheld as constitutional by the U.S. Supreme Court last year. Kansas v. Hendricks, 117 S.Ct. 2072 (1997). Essentially, the Act provides for continued incarceration of those offenders designated as sexually violent predators through civil commitment after their prison sentence has ended and/or civil commitment incarceration for those not sentenced to prison but who fall within the parameters of the Act. Effective January 1, 1999.

Sexual Offenders: Session Law 98-81, C.S.S.B. 1992, provides changes to numerous statutes concerning identification, notification, registration, DNA typing, and other related requirements of sexual offenders in FL. Effective dates: 6/1/98 and 10/1/98. Became law 5/21/98.

FDOC/Parole Commission Rule Adopt Authority: Session Law 98-200 Secs. 227-28, C.S.S.B. 1440, provides minor in appearance, but significant, changes to Secs. 944.09(1) and 947.07, F.S. The amendments add language to these two statutes, that authorized the FDOC and Parole Commission to adopt rules, to provide that such adoptions shall be pursuant to Secs. 120.54 and 120.536(1), F.S., of the Administrative Procedures Act. To bring Sec. 944.09, F.S., into compliance with Sec. 120.536(1) (1996), the FDOC's "general" rulemaking authority at Sec. 944.09(1)(r) was totally repealed. The FDOC may no longer adopt rules unless there is a specific statute authorizing such adoption. Became effective 5/24/98; **

FDOC Salaries: The 1998-99 Appropriations Act provides, beginning September 30, 1998, an increase in the base rate of pay for FDOC career service employees, correctional officers and correctional probation officers as follows: (1) Employees with salaries of \$20,000 or less shall receive an annualized increase of \$1,200; those with salaries from \$20,001 to \$36,000 shall receive an annualized increase of \$1,000. (2) Employees earning \$36,001 or more shall receive an

annualized increase of 2.78 percent; professional health care employees of the department will receive a 3 percent increase in pay. On January 1, 1999, an across-the-board special pay additive of \$1,900 will be available to increase the base salary of correctional officers in Regions I and II. Officers in Region III, IV, and V will also receive the \$1,900 special pay additive to increase base salary, but this will replace the current \$1,900 they receive as Competitive Area Differentials. Becomes effective October 1, 1998.

**The Florida Department of Corrections (FDOC) sought to obtain legislative support this past session to further limit, or totally eliminate, prisoners' ability to participate in Rule Promulgation or Adoption procedures pursuant to Sec. 120.81(3), F.S.. Fortunately, the FDOC could not find a legislator to introduce such a proposal this year.

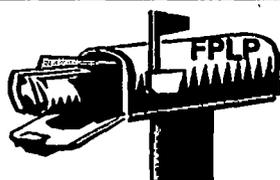
The only vestige of FDOC rulemaking participation still remaining to prisoners is the right to submit comments/evidence to proposed rulemaking notices of the department (per 120.54(3)(c) and 120.81(3)(b)), and file petitions for rule adoption, amendment, or repeal (per 120.54(7) and 120.81(3)(a)). Prisoners still have the right to appeal an FDOC decision to deny a petition filed pursuant to 120.54(7) directly to the DCA pursuant to 120.81(3)(a), 120.68, F.S., and Rule 9.110, F.R.App.P.

Recently, the First DCA confused this ability to appeal under 120.68 by issuing a vague opinion in Tungate v. FDOC, ___ So.2d ___, 23 FLW D1352 (Fla. 1st DCA 6/3/98). Prisoners may only appeal under 120.68 when they have filed a 120.54(7) petition to the FDOC and it has been denied. This is a very narrow remedy and the procedures must be fully understood and complied with. The courts are not allowing any procedural leeway in FDOC rule challenges. Although a complaint for declaratory judgment under Chap. 86, F.S., still remains viable for rule challenges, but still administrative remedies must have been exhausted or a 120.54(7), F.S., petition must have been filed and denied to create a controversy ripe for declaratory judgment. See: Endress v. FDOC, 612 So.2d 645 (Fla. 1st DCA 1993). ■

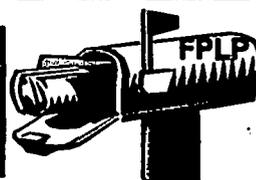
FPAN Meeting Update by Traci Rose

There was a FPAN meeting on Sunday, June 28 in Orlando. Several members from different groups attended: PEN, FLIP, along with Glen Boucher from Florida Institute of Legal Services (FILS) Teresa Burns from FPLP and myself, and the Co-Founder of TIP (The Illumination Project). Even though there wasn't a large turnout for the meeting, we made great progress. Those of us that were there left with more knowledge and a better understanding of what we actually can do to help our forgotten

(Continued on page 14)



FPLP SOUND OFF



Dear FPLP

As usual, I waited until the last minute to renew my subscription. So, I decided to plan ahead. Enclosed is my donation for two years. I would encourage all subscribers to renew for two years. It will allow FPLP to move forward, farther and sooner. And to my fellow convicts- Get up off them lunches. Don't be cheap! You can do without those nabs for a week. And by the way, are you cheapo's the same whiners that keep crying about what the DOC is taking away from us? When are you going to get off your butt and start pushing the paper. Remember-Research, Educate, and put into Action! TWJ CCI

Dear FPLP

Just want to renew my subscription early. Have been down since 89, and the FPLP is the best publication I've come across. I have in the past gotten several inmates to apply for FPLP. So please keep up the great job your doing and helping us inmates. I thank you. G.R. WCI

FPLP,

Enclosed you will find nineteen \$.32 Stamps as payment to renew my subscription for your newsletter. If I'd had more stamps I'd sure have sent them to you. For I personally really enjoy this newsletter and all the information your staff provides me with. People like you and your staff are the ray of sunshine for me at least. Having spent more then 30 years in the prison systems of this country I'm all to well aware of the reality of 'Those that have no-one to represent or fight for them' will surely get lost in these systems. That your organization spends time, energy, funds in our behalf is fantastic. Without people like you out there in the free world speaking up for those of us inside these barbed wire reservations, well with out a doubt, we inside would be back in the old chain gang daily routine. Which wouldn't be bad if there was a chance of earning release from these lost in space sentences. Yet personally I'm sure that sooner or later the tax payers will get tired of paying for a system that can never work, the way that it currently is being run. Statistics concerning recidivism should show that this system does not...can not...will not work. No matter how many millions...billions of tax payers dollars they spend on it year after year. Those of us old enough to remember the old system (chain gang) remember the hard work, long hours, and if you wanted to be a loud mouth the pain and bruises that went with that. But, my issue is that back then you could earn a parole. Stats I'm sure will verify that under that system the recidivism rate was right around 25-27%. After all the changing was done what did the recidivism rate go up too around 70+ %. I might be just an old convict, but even I can see that today's systems are mega failures. A very sad joke, at the taxpayers expense. But do the politicians ever let the taxpayer know the true facts and realities? Hell no they wouldn't get elected if they did. Yet with more organizations like yours out there, maybe just maybe the public could become informed of the truth and reality. For myself I'm not crying. I did what I did, I got what I got, so be it. But for the young dudes that I see coming into this system I feel sad. They have no chance at all, this system isn't designed to give them a chance or any help even if they want it. To me that's the biggest shame of all. All of those that vote for these politicians that promote or believe in this system should be made to tour a place like this. So they can see first hand the lives that are being wasted because of their vote. The public gets all bent out of shape when someone that just got out of a prison system re-acts in a violent negative way, but why should they? The public allowed these systems to become what they are, where only the strong can/will survive. The ones that re-act with violence once they get out, well I can't say this with sureness, yet I'll bet that they were the ones that were subjected to the violence in these systems. Its sad to think, let alone say...that they learned it in here...Well I've run my mouth all to long. Just want to say Keep Up The Good Work!!! I for one really do appreciate all that your doing...All the time you spend doing it. BAC UCI

Greetings,

I have just read my first copy of your newsletter, received from an inmate in Everglades C I. You are doing a wonderful job for inmates and their loved ones. I too have had a problem with visiting privileges at ECI. I recently made a trip from Maryland to Florida to visit my son, who is an inmate at ECI. He had an ok by his classification officer and was told my name was on the visiting list. When I arriver at ECI, the guard told me my name was not on the visiting list, and he did show me the list, which did not have my name on it. I was not allowed in to visit. I had visited before in January 1998 and my name was on the list then. Needless to say I was hysterical to have come all that way and not see my son. The next time I heard from my son, he said he was told there was a mistake and that my name was on the computer, but not on the list at the gate. The same day a family of four coming from Ecuador was also turned away because of the same reason. What can a person do? Margaret, Maryland

To whom it may concern,

In reading the May volume 4 issue 3 of FPLP. I noticed that there isn't enough information that benefit the incarcerated women in Florida's institutions. On the subject of restoring Personal Property, nail-clippers, tumblers, and weightlifting gloves are acceptable for Men. As an African-American woman hair-care products, hair accessories, cosmetics are very limited, if not non-existent. Support bras and pant-girdles are needed but, no longer able to receive these and other items that once were permitted through personal property are still needed. JCI has it's own unofficial Sovereignty Commission due to Nepotism. Inmates here are repeatedly subjected to victimization within the institution. In this institution there are many family members employed, from Asst. Superintendent, Lieutenants, and other subordinates: Sisters, brothers, mother, son, daughter, cousins and in-laws, mostly all working for security. They are supposed to work different shifts but they do not. This is a direct violation of FL.St. 20.315 After an accumulation of instances of misconduct the problem of Nepotism still goes unnoticed. It is almost impossible for inmates to exercise their rights through-the grievance process and not be subjected to impartial, improper conduct by other &/or relative staff members here at JCI. We are now expected to purchase tampons, raincoats, toothpaste, and stamps on the canteen. Where does that leave the indigent person who cannot use their brand of sanitary napkins or tampons, due to sensitivity or allergic reactions? Where does it leave indigent inmates with HIV?Aids, Asthmatics, and other respiratory illnesses? As far as JCI is concerned oppression, victimization, and a total disregard that persons incarcerated are here for as punishment not to be punished. Will the infliction continue will someone take a stand? For even though the training of Correctional Officers consist if "dehumanizing" the inmates. We the incarcerated are still human. GG JCI

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

family members in the FDOC.

An interesting, but disheartening, film was shown about prison education in New York. Also, members from PEN reported that they still need over 20,000 petitions signed in order to get the issue regarding abolishing the Parole Board on the ballot. Anyone that wants to volunteer please contact Twyla from PEN. She really needs the help.

In addition, there was an update, and enlightening discussion, about the rally FPAN coordinated in Tallahassee during the legislative session this past April. As most of you know, several members of FPAN were at that rally. Family members were talking to their representatives, and to others, about the obstacles a family must go through when they have a loved one incarcerated in the FDOC. Basically, concerned family members were conveying a message to the legislature that families of prisoners are not going to be quiet about how they are being treated. FPAN will again be coordinating this event in 1999. Listen families, these rallies are extremely important. *This is the place.* This is where all our decisions are made for us. *We must be present and be heard every year.* FPLP will keep everyone updated about the 1999 rally, but we also desperately need family members to participate. If there was just one family member from half of the inmates in the FDOC attending these rallies, we'd have over 30,000 people up at the Capitol. *Now that's powerful.* Please get involved.

The outcome of the legislative update was that selected members of FPAN will be targeting appropriate committees about important issues we, as a group, would like to see changed. For instance, the main focus right now is presenting, to the appropriate committee(s), the idea that every family member has the right to visit a loved one incarcerated in the state of Florida. Members were encouraged to write their representatives regarding this and other issues they have concerns about.

We also had a guest speaker, the Public Defender from the 9th Judicial Circuit in Orlando, The Honorable Joseph W. DuRocher. Mr. DuRocher gave the group an overview of the role the Public Defender's office has in the system. This gentleman is very caring, and is extremely active in his commitment to speak out for inmate's rights. In addition, Mr. DuRocher announced the great news that Sister Helen Prejean, author of "Dead man Walking," was nominated this year for the Nobel Peace Prize.

Towards the end of the meeting, Susan Cary from the Public Defender's office in West Palm Beach showed up and gave the group an update on the proposed rule that will severely, if it

passes, restrict items allowed to be sent to inmates through the U.S. mail. Ms. Cary reported that this rule is being challenged, and that there is a hearing scheduled for Tuesday, July 14 in Tallahassee.

Having a loved one in the FDOC has been extremely difficult, as I'm sure it is for anyone in the same situation. Feelings of despair, powerlessness, hopelessness, and isolation used to overcome my entire life. I used to live with the feeling that no one understood what it was like to experience something so terrible and heartbreaking. I'm not sure when it happened or how it happened, but I found a little bit of hope. Hope that things could be different if I would just believe. Hope that situations could change if I would only do the footwork. As a member of this group, I find that together we can make a difference in the lives of our loved ones in the FDOC's care. My motivation for getting involved started when I wanted to do something about the issues I was facing due to my fiancé being incarcerated. That still remains my main motivation; however, several other elements have become important these past few years. I realized my fiancé and I weren't the only people suffering. There are many others that are faced with the same problems. My added motivation is simple. It's compassion for another human being, combined with severe sadness about what is going on behind the cement walls in our prisons in Florida. Before I was exposed to the DOC, I never dreamed a legal entity could be so blatantly dishonest and cruel. I just don't have it within myself to sit back and let this state-run department destroy people's lives. Please get involved and speak out for our forgotten loved ones. ■

PROPOSED MAIL RULES UPDATE

In the last issue of *FPLP* a summary was given of recent proposals that the FDOC has made to amend routine, legal and privilege mail rules. *FPLP*, Vol. 4, Iss. 4, "RULE REVIEW," pgs. 8 and 12.

On July 14th a public hearing was held following a request for such hearing by several interested citizen parties concerning the proposed mail rule amendments. *FPLP* staff had contacted numerous attorneys and individuals seeking support for objections to the proposed rules along with the staff submitting objections themselves. The staff thanks all those who responded to this request for support in opposing these proposed rules that were extremely restrictive. Numerous prisoners also submitted written objections in response to

FPLP's Call for Action, thank you.

The opposition was effective. Following the public hearing the FDOC decided that changes were needed to address the concerns and objections that had been raised. Most importantly, the proposed amendment to prohibit prisoners from receiving postage stamps, blank greeting cards, blank paper and envelopes in routine mail has been deleted in a Notice of Change published August 21, 1998. The FDOC is now proposing that prisoners will still be able to receive up to the equivalent of 20 (1 oz.) postage stamps in routine mail. This will positively affect all prisoners and their families and friends in maintaining correspondence. Those responsible in the FDOC are thanked for reconsidering this very important issue.

Less changes were made to the proposed amendments to the legal and privilege mail rules. Pertinently, the FDOC refused to delete the proposed provision of 33-3.005(9)(b) that would require indigent prisoners to pay or be responsible for paying ALL legal mail postage costs. *FPLP* staff had not only contacted the FDOC objecting to that proposed provision, that does not appear to comply with establish law or state statutes, but they had also filed objections with the Joint Administrative Procedures Committee which oversees agency rulemaking. The JAPC has indicated that they are "carefully evaluating" this proposal for a possible objection by the JAPC.

If JAPC fails to act and the FDOC allows the adoption of proposed 33-3.005(9)(b), litigation is going to be necessary. Attorneys who may be interested in representing such a case are requested to contact *FPLP*. If the rule goes into effect placing holds on indigent prisoners' accounts for the cost of legal mail postage, prisoners should immediately exhaust their administrative remedies on this issue. See: *Bounds v. Smith*, 97 S.Ct. 1491, 1496 (1977), and progeny; and Fla. Stat. 944.09(1)(o) (1996). ■

HUMAN RIGHTS WATCH

Human Rights Watch, the largest international human rights organization based in the United States, is conducting preliminary research into the problem of prison rape: when it occurs, why it occurs, how it occurs and how to stop it from occurring. Anyone who has been targeted for any kind of unwanted sexual contact in prison, whether simple harassment, touching or anal penetration, please contact: Prison Project, Human Rights Watch, 350 Fifth Ave, 34th Floor, New York, NY 10118, attn: Joanne Mariner, Attorney-at-Law. The names and identifying information of all persons contacting Human Rights Watch will remain strictly confidential.

PRISON LEGAL NEWS

"Perhaps the most detailed journal describing the development of prison law is Prison Legal News." -- Marti Hiken, Director Prison Law Project of the National Lawyers Guild.

PLN is a 24 page, monthly magazine, published since 1990, edited by Washington state prisoners Paul Wright and Dan Pens. Each issue is packed with summaries and analysis of recent court rulings dealing with prison rights, written from a prisoner perspective. 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 \$15 for prisoners. If you can't afford to send \$15 at once, send at least \$7.50 and we will pro-rate your subscription at \$1.25 per issue. Please send no less than \$7.50 per donation. New (Unused) U.S. postage stamps may be used as payment.

For non-incarcerated individuals, the subscription rate is \$20/yr. Institutional subscriptions (for attorneys, libraries, government agencies, non-governmental organizations, etc.) are \$50/yr. Sample copies are available for \$1. Contact:

Prison Legal News
2400 N.W. 80th St., Ste 148
Seattle WA 98117

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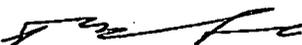
(PROVIDING CONSULTING SERVICES TO INMATES ON ADMINISTRATIVE, CLEMENCY AND PAROLE MATTERS)

Dear FPLP Subscriber:

As many of you know, I suffered through many years on the receiving end of the Florida Judicial System, before I was released after winning my direct appeal. See *Smolka v. State*, 662 So.2d 1255 (Fla 5th DCA 1995), *rev. denied*, *State v. Smolka*, 668 So.2d 603 (Fla. 1996).

Undoubtedly, many of you may be in need of effective representation on a variety of inmate related matters. In this regard, I would urge you to contact me, as I provide prompt assistance on a fee paid basis.

Best wishes,



Thomas E. Smolka

James Fultz, Inc. offers many legal services to prisoners and their families. We are a legal aid society, and have many qualified professionals on hand to assist you.

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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, so that everyone can be informed. Thank you for your cooperation and participation in helping to get the news out. Your efforts are greatly appreciated.

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Web Site: www.dc.state.fl.us

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

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Alma B. Littles, MD
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Office of Executive Clemency
2601 Blair Stone Rd.
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(850)488-2952
Coordinator: Janet Keels

Florida Parole/Probation Commission
2601 Blair Stone Rd., Bldg C
Tallahassee FL 32399-2450
(850) 488-1655

Department of Law Enforcement
P.O. Box 1489
Tallahassee FL 32302
(850)488-7880
Web Site: www.fdle.state.fl.us

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1110-C NW 8th Ave.
Gainesville FL 32601
(352)955-2260
Fax: (352)955-2189
E-Mail: flis@afn.org
Web Site: www.afn.org/flis/

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

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FLORIDA PRISON LEGAL PERSPECTIVES

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