FLORIDA PRISON LEGAL

Perspectives

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Lockup Hotel: Florida's Growing Prison Complex

by Oscar Hanson

All the hype about prison overcrowding and early release for Florida's prisoners has been smothered by a recently passed state budget that earmarks funding for over 4,000 new prison beds. In a time when the state's education and health care woes continue to plague the state, the move to incarcerate Florida citizens intensifies.

As part of the 1.7 million dollar DOC budget, the Legislature appropriated funds to complete a 1,200-bed close management annex adjacent to Columbia Correctional Institution, build a work camp at Wakulla Correctional Institution and construct a brand new 1,500-bed prison in Franklin County.

And there's more.

During the special legislative session called to untangle Florida's medical malpractice quagmire, Gov. Bush requested an additional $66 million for more prison beds and for the hiring of additional prison guards. Bush cited the need to counter the rising number of prison admissions that has caught administration officials off-guard. Bush vowed to acquire the funding "one way or another" in order to avoid releasing prisoners early.

Ironically, at the time DOC's budget was approved, no one in the Bush administration said anything about a looming prison overcrowding crisis. In the months leading up to the special session, lawmakers constantly haggled over the details of a medical malpractice "reform" package that may neither lower malpractice insurance nor protect victims of bad medicine.

On the other hand, in just two short days, the governor requests and the Legislature delivers, an additional $66 million to further expand the state's prison complex.

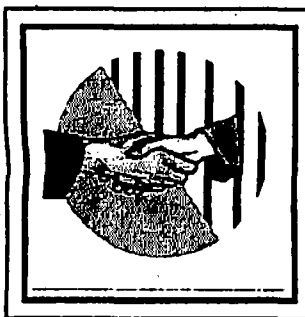
Bush clicks his heels and poof, more prisons. Just like that.

Here's how the $66 million will be spent:

- $30.2 million to hire more than 500 prison guards.
- $1.3 million to renovate and reopen Hendry C.I.
- $4.9 million to build 14 new dorms across the state.
- $27.5 million to begin construction of a 1,400-bed prison annex at Santa Rosa Correctional Institution.

The bill also included a unique provision that allows the DOC to bypass normal state bidding laws in choosing the contractor to build the Santa Rosa Annex and perform renovations at Hendry C.I.

Obviously lawmakers believe that 2,000 or so new prison beds must be built quickly – there's simply no time to follow proper procedures and make sure that taxpayers'



ON THE INSIDE

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

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

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

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Prisoners may pay membership dues with new unused postage stamps. Prisoners on death row or CM who cannot afford membership dues may request a waiver of dues, which will be granted as finances permit.

dollars are being well spent and not given to Bush cronies. But don't worry, Bush administration officials crossed their hearts and absolutely promised there would be no back door deals. Honestly.

Not everyone is convinced. Senator Rod Smith said, "It's dangerous to let a state agency say 'we screwed up and now we have a crisis' then allow them to circumvent safeguards for bidding. These numbers didn't just pop up yesterday." Certainly there were some early warning signs.

The question that begs an answer is: How did this crisis sneak up on the Bush administration? Apparently DOC Secretary James Crosby made the "astounding revelation" after months of increased admissions, 3,000 in the month of June, the most in any month since 1992. Crosby advised Gov. Bush that he needed more money or he would begin releasing dangerous drug offenders and other criminals.

So what led to this crisis? We need not look beyond Gov. Bush and Florida lawmakers. For the past few years they have passed tough new sentencing laws that will undoubtedly lead to prison overcrowding. And never mind that admissions into state prison have surpassed expectations for seven of the past ten months. Yet, it wasn't until that dramatic jump in admissions in June that alarms sounded that the DOC may have an emerging no-vacancy problem.

I must be candid and admit that I find the timing of this new-found crisis to be very disingenuous. After all, it would have been very bad timing had the DOC discovered it's overcrowding crisis last year during an election year when lawmakers were busy cutting taxes as party favors.

I can't help but wonder why it is a crisis that demands emergency funding to build more prisons. Isn't it just as much an emergency or crisis when funding shortages are forcing schools to fire educational staff and when our children are failing the FCAT?

Representative Ed Jennings made a valid point when he said it was wrong to use the state's Reserve Fund to add more prison beds at a time when community colleges, universities and public schools did not get enough money in this year's state budget. And let's not forget the crunch on social services, child welfare and juvenile rehabilitation programs, and the raiding of other state trust funds like the Inmate Welfare Fund. Perhaps this was a ruse to pay for their years-long orgy of tax cutting.

This latest act of legislation sends the obvious message that it is permissible to cram thousands of additional students into state universities and community colleges, but when it comes to warehousing prisoners, it's a cash-and-carry proposition.

Let's analyze this under the *reductio ad absurdum* argument. In the coming years the state will certainly have to continue to play catch up, building more and more

prison beds for more and more prisoners, many of which will be drug offenders. Last year drug offense sentencing rose 13.4 percent under Florida's Dranconian drug laws.

Looking ahead, Florida's spendthrift past will surface to haunt future lawmakers when thousands of prisoners incarcerated under the life without parole laws will begin to enter into their golden years – past the age when they are likely to commit further crimes. Inevitably, the DOC will find itself operating the largest chain of retirement homes in Florida, and the cost of housing and caring for an ageing inmate population will explode exponentially.

Jason Ziedenberg of the Justice Policy Institute, a non-profit group that advocates alternatives to prison, states that funneling more people to prisons is wrong, especially at a time when legislators are struggling to fund education, health care, and stave off spending cuts.

Other states faced with budget shortfalls have exercised sound judgment for their taxpayers and have made tactical decisions to release non-violent offenders in order to downsize their out-of-control prison budgets. States like Kentucky, California and Texas have implemented early release mechanisms to deal with swelling prison populations. Many states like Louisiana, Connecticut and Utah have taken legislative action to repeal tough sentencing laws such as mandatory minimums and 85 percent statutes. States have found the corrections animal simply too gluttonous to maintain.

Yet Florida remains committed to building a prison state instead of providing better education and health care. Florida's determination to erect more prisons comes as the U.S. Justice Department issued a report that shows the nation's prison population increased 2.6 percent as the crime rate continued to decline. The report reveals the prison population increase pushed the inmate total over 2 million for the first time in U.S. history, costing the federal government and states an estimated $40 billion a year.

Among other findings by the Bureau of Justice Statistics: The inmate population has grown an average of 3.6 percent annually since 1995. That means one in 143 U.S. residents were behind bars on December 31, 2002.

Locally, Florida had 75,210 prisoners under the custody of correctional authorities at the end of 2002, compared to 72,404 at the end of 2001, a 3.9 percent increase. New estimates indicate Florida will have 81,266 prisoners by the summer of 2004.

But don't fret. Rest assured, like Motel 6, Lock Up Hotel will leave the light on. ■

Judicial Discretion Under Attack

Earlier this year, new federal legislation was added to a popular child protection bill at the last minute that is going to have an unprecedented effect on how judges are allowed to sentence defendants. The legislation, known as the Feeney Amendment, for its author, Rep. Thomas Feeney (R-Fla), restricts the ability of federal judges to depart from sentencing guidelines in certain cases. Especially troubling is a provision in the amendment that mandates that the U.S. Sentencing Commission review downward departures by judges and, within six month, amend federal guidelines to "ensure that the incidence of downward departures [is] substantially reduced." The amendment was quietly and without hearings or much debate "logrolled" onto the Child Abduction Prevention Act, also known as the Amber Alert bill, that was rushed into law earlier this year. President George W. Bush, among much fanfare following a couple of highly publicized incidents purportedly showing the efficiency of the Amber Alert system, signed the entire package, with the Feeney Amendment rider attached, into law on April 30.

Fortunately, although an overwhelming majority of the House and Senate voted for the packaged bill, there was some quickly organized opposition to the wide-encompassing provisions of the Feeney Amendment that resulted in limits being placed on its provisions. As originally introduced, the Feeney Amendment would have essentially gutted judges' discretion to depart from mandatory guideline sentences, even where circumstances warrant a downward departure. Under the original amendment all grounds for judicial departure would have been eliminated except for those expressly permitted by the U.S. Sentencing Commission, which, as noted, is mandated under another provision to ensure substantial reductions in downward departures by changing the guidelines. A conference committee in the Senate modified the amendment to strip away some of the more egregious provisions but added some new provisions to limit judicial discretion in other ways.

Feeney's amendment, not coincidently, fit well into the Bush administration's obvious goal of getting legislation enacted to more tightly control and cabin the federal judiciary. Increasingly, as the full impact, and what has become to be viewed as assembly-line justice, of mandatory guideline sentences is being felt, more judges are stepping forward to criticize discretionless mandatory sentences. Over two-thirds of federal judges have spoken out in recent years against the unfairness of the sentencing system that essentially dehumanizes the process. This is seen by conservatives in the Bush administration and in political offices, who are banking on prisons and incarceration continuing to increase as an economic factor in the U.S., as a rebellion by the judiciary.

Bush's highly controversial appointee as attorney general, John Ashcroft, who has been highly critical of judicial discretion, and who seeks to even further increase the power of federal prosecutors by decreasing the power of judges, supported the Feeney Amendment. As a further

indication of the intent to bring judges to heel, in a recent memo Ashcroft, head of the U.S. Department of Justice, directed U.S. prosecutors to begin "monitoring" federal judges who impose lighter sentences than suggested by the guidelines. This is viewed as a threat by most judges.

In August, John Martin, a federal district court judge in New York, quit his lifetime job as a judge after 13 years on the bench. Martin, who was appointed to the federal bench by former President George H.W. Bush, said he was quitting because of the Feeney Amendment. He considers the changes to federal sentencing laws so unjust he no longer wanted to work inside the criminal justice system. Though extreme, Martin's reaction is part of a rare rebellion among federal judges to the new strictures on their discretion. And its not just disgruntled liberal judges who are speaking out.

In April, U.S. Supreme Court Justice Anthony Kennedy, certainly one of the high courts' conservative justices, spoke out against mandatory minimum sentences and limiting judicial discretion any further when testifying before a Congressional hearing about his courts' budget. When asked what he thought about the recent statistic showing that more than 2 million Americans are now incarcerated, Kennedy said, 'Two million people in prison is just unacceptable." Continuing, he observed, "Mandatory minimums are harsh and in many cases unjust." Justice Clarence Thomas, another conservative also at the hearing, was reported to be nodding in apparent agreement to Kennedy's remarks.

Amazingly, William Rehnquist, chief justice of the Supreme Court, has said be believes the changes go to far, stating they are "a good example of the law of unintended consequences."

Again, in August, Justice Kennedy in a speech before the American Bar Association, urged lawyers to lobby Congress to change the onerous federal sentencing guidelines that have led to "unjust punishments." Kennedy told the ABA conference attendees, "Our resources are misspent, our punishments too severe, our sentences too long."

Before he resigned, Judge John Martin, a former federal prosecutor, in a published opinion article commented on the continuing threat posed by politicians vying with each other to appear tougher-than-you on crime, saying "Every sentence involves human life, and its just absurd what we're doing with people."

As long as the neoconservatives remain in power in Washington, we can expect to see a struggle between them and the judiciary whose job it is to protect the constitution. Whatever the outcome, just as sentencing guidelines originated back in the early 80's with the federal government and then spread to the states, the impact will determine the future direction of criminal justice policies at the local level.

[Sources: *FAMMGRAM*, Summer 2003; *Christian Science Monitor*, 7/8/03, 7/30/03; *USA Today* 8/11/03, 3A]

[Editor: More info about state and federal minimum mandatory sentencing, and what you can do to get involved in the struggle to change them, can be found at Families Against Mandatory Minimums' (FAMM) website: www.famm.org, or by writing them at: FAMM, 1612 K Street NW, Ste. 700, Washington DC 20006, (202) 822-6700] ■

FDOC Shuffles Public Records In Potential Cover-Up Scandal

Under Florida law it is the policy of the state that all state, county, and municipal records shall be open for personal inspection by any person. However, recently, the DOC has taken evasive action to make inspection of such records problematic.

This past June, the *Indian River Press Journal* reported the allegations of four male juveniles housed at Indian River Correctional Institution that they were forced to have sex with teachers over a two-year period. A fellow educator at the institution was allegedly fired because he tried to report the incidents. And, in a twist of irony, the educator's diary lands in the lap of the husband of one of the accused. The husband happens to be a retired Vero Beach police captain.

As the Press Journal attempted to learn the truth about this sensational story, the DOC removed all the records out of Indian River County. The personnel files of the two accused teachers were shipped to Fort Lauderdale. The personnel file for the whistleblower was shipped to Orlando. And the files relating to the case itself are in, you guessed it, Tallahassee.

The DOC, in accordance with Florida's open-records law, says the voluminous files are available – just not in Indian River County. To view the material, the newspaper must either send reporters to the three other cities, or send a check for over $300 to get copies mailed. Redacted, of course. The costs logistics and delays in this particular case are unreasonable and fail to honor the spirit of the open-records law, according to the newspapers.

DOC officials maintain that they are following standard procedure. They say their use of four satellite service centers and a central repository in the capital is the most efficient deployment of resources. Whether this policy is the most efficient is questionable, but notwithstanding the DOC policy, the fact remains that this case involves a facility in Indian River County – not Fort Lauderdale or Orlando or Tallahassee. Why were the documents relating to this case removed from the county where they were generated in the first place?

When questioned about the shuffling of the documents in this case, DOC officials say they cannot return the case files to the scene of the alleged crimes because of the need to maintain the "chain of evidence." While this could be a valid claim, it begs the question: Was the chain of evidence broken when investigative reports left this county in the first place? Presumably, that chain runs both ways.

This problem is not new. Complaints have echoed across the state for some time as a host of state agencies use regional centers to keep vital public information at arm's length from taxpayers.

Barbara Petersen, president of the First Amendment Foundation, says this is wrong. She asserts that the right to view government records is effectively compromised when the press, or John Q. Public, encounters higher hurdles due to location. "Access shouldn't be any less of a right in Vero Beach than in Tallahassee," says Peterson.

Stan Mayfield, a Florida Legislator from Vero Beach, acknowledges that bureaucracies sometimes "hide behind the costs" when asked to turn over sensitive documents. These types of problems aren't what taxpayers bargained for when they voted to put open-records guarantees into the state constitution.

It is axiomatic that the essential job description of public agencies is to serve the taxpaying public. Requiring the media or the public to travel a hundred miles or more to a "service center" or sending them a bill for photocopied documents, sight unseen, isn't fulfilling the spirit of the open-records law. ■

FDOC Targets First Amendment

During August 2003 two new rules adopted by the Florida Department of Corrections (FDOC), designed to further restrict Florida prisoners' First Amendment rights, became effective. Where few prisoners in Florida are stepping forward to protect their rights anymore, the FDOC is engaged in steadily rolling back the gains that prisoners fought for over the past 30 years.

On August 5th, Routine Mail Rule 33-210.101(8), F.A.C., was amended and became effective to prohibit prisoners from using correspondence to commercially solicit or advertise for money, goods or services. Included in the prohibition is **advertising for pen-pals**. According to the new rule, Florida prisoners are now prohibited from receiving mail from people or businesses that sell advertising space and any prisoner who places ads or has someone on the outside place an ad for them shall be subject to disciplinary action.

In a recent news release the FDOC announced that it will have employees regularly search publications and websites that carry ads for prisoners seeking pen-pals and disciplinary action will be taken against any Florida prisoners who are found to have ads posted.

A few days later, on August 10, a new section of rules at 33-602.207, F.A.C., became effective that prohibit Florida prisoners from **establishing or engaging in a business or profession** while incarcerated. The new rules in that section define a business or profession as any revenue or profit making activity or any activity with the potential to generate revenue or profit. Included in the definition is writing for publication when the prisoner may obtain revenue or profit from the writing. Such writing may be allowed in some circumstances, if approved by the warden.

The new rules in that section also require all new prisoners who are engaged in a business or profession to turn same over to someone on the outside to operate within 90 days of being sentenced to prison. Prisoners now, under the new rules, are prohibited from sending or receiving mail concerning the operation of their business or profession and shall be subject to disciplinary action if they attempt to use the mail, telephone, or any other means of communication to direct the operation of a business or profession.

Prisoners can review the above new rules at their institutional law libraries, or they can be found on-line at www.dc.state.fl.us/secretary/legal/ch33 ■

Some Ex-Felons' Civil Rights To Be Restored, Law Still Archaic

by Anthony Stuart

Almost 125,000 felons did not receive proper advice and assistance from the Florida Department of Corrections (FDOC) in the rights restoration process upon their release from the state's prisons between the years of 1992 and 2001. On July 24, 2003, the FDOC acknowledged this during a suit that was brought against them by civil rights groups. In an attempt for a settlement in the suit action, FDOC agreed to help those felons in restoring their civil rights.

Before July 2003 ended, Circuit Court Judge P. Kevin Davey of Tallahassee signed the final judgment in the action. The ruling handed several thousand former prisoners a significant victory. Even though the order is retroactive, it does not affect those leaving prison after 2001. As a result, the American Civil Liberties Union (ACLU) is appealing the order saying that it should apply to those released after 2001 as well.

According to Randy Berg, lead counsel for the Florida Justice Institute on behalf of the ex-prisoners, about 30,000 ex-felons will qualify for the restoration without a hearing. The others, who generally have been arrested for more offenses or have committed more serious crimes, will have to seek their restoration of rights

by a clemency hearing brought before the governor and the independently elected Florida Cabinet, who will choose which felons gets a rights restoration hearing. However, as Berg stated, "It's a drop in the bucket." For an ex-felon to get his or her civil rights restored, he or she is required to navigate a process riddled with conditions and loopholes. Thus, about 95 percent of ex-felons who request clemency are denied. Certainly, further reform is needed. "The state needs to get rid of this antiquated, Jim Crow system," said Berg.

"Now they [ex-felons with restored rights] have to take that extra step and exercise their right to citizenship and exercise *their* right to vote," said Howard Simon, executive director of the ACLU of Florida.

Sterling Ivey, a spokesman for FDOC, claims that eight employees are working to contact the nearly 125,000 ex-prisoners to advise them how to seek restoration of their civil rights and expects notices to be mailed out to them within a year.

The law that is used to strip ex-felons of their civil rights was enacted in 1868 and was meant to disfranchise black slaves freed after the Civil War and weaken the ex-slaves' new found political voice. The law continues, more than 130 years later, to punish ex-offenders long after they have served their prison terms by stripping them of their civil rights – for life.

In Florida there are an estimated 625,000 ex-felons, of whom 38 percent are black. That's nearly three times the proportion of blacks in the general population (13 percent). Thus, according to critics of the law, a disproportionate share of black residents cannot vote. Nationwide, the numbers are even more staggering:

- Approximately 3.9 million people – one in fifty – are disenfranchised due to a felony conviction.
- Fully 13 percent of the African-America adult male population – 1.4 million men – is unable to vote.
- Given current incarceration rates, three in 10 African-American men will be disenfranchised at some point in their lives.

With so many people being sent to prison now and the huge number of ex-felons being released from prison each year (approximately 625,000), the impact of felon disenfranchisement on the political process has grown too large to ignore. Earlier this year U.S. Rep. Charles Rangel (D-NY) introduced a bill entitled the Ex-Offenders Voting Rights Act of 2003 into the U.S. House of Representatives. That Act would provide automatic restoration of voting rights in federal elections to all persons convicted of a crime once they complete their prison and jail sentence and any probation or parole supervision.

Felon disenfranchisement opponents maintain that the disenfranchisement laws are archaic, inhumane, and a waste of human capital. The laws impose second-class citizenship on ex-felons struggling to become law-abiding citizens and exact a toll long after the debt to society has been paid. Civil rights disenfranchisement bars ex-felons not only from voting, but from serving on a jury and getting certain jobs, such as x-ray technicians, building contractors, air conditioner installation, and the list goes on.

In Florida, lawmakers further stacked the deck against ex-felons recently by almost eliminating substance abuse treatment in the prisons and slashing already minimal education and job-training programs for prisoners, making those who'll be released in the future even less employable.

In sum, while the FDOC should advise prisoners being released about civil rights restoration, as the law requires, as a practical matter prisoners about to be released and ex-prisoners should take more responsibility to inform *themselves* about the restoration process, pursue restoration when released and exercise their precious civil rights when they are restored. Even more effective, Florida should reinstate civil rights once criminal sentences are completed and stop punishing ex-prisoners for the rest of their lives.

[Sources: *Tampa Tribune*, 7/25/03; *USA Today*, 7/25/03; *Miami Herald*, 7/30/03]

[Editor: A federal case challenging Florida's ex-felon disenfranchisement law is pending before the 11th Circuit Court of Appeals in Atlanta. See *FPLP*, Vol. 9, Iss. 4, for a report on that case – bp] ■

America's Race to Incarcerate

More than 5.6 million Americans are in prison or have been in prison and are now on the streets, according to a new U.S. Justice Department report that was released August 17, 2003. That means 1 of every 37 adults living in the United States is either in prison or has been, giving the U.S. the distinction of having the highest rate of imprisonment in the world.

This new report is the first time the U.S. Government has released statistics on the extent of America's race to incarcerate large numbers of the public. If the trend of the past two decades continues, as it is expected to, it means that an American black male has about a 1 in 3 chance of going to prison in his lifetime. Hispanic males have a 1 in 6 chance of going to prison, and white males have a 1 in 17 chance of becoming caught up in the American prison-industrial complex.

The report noted that by the end of year 2001, some 1,319,000 adults were in state or federal prisons and

an estimated 4,299,000 former prisoners are alive in the U.S. The report did not include figures for the several hundred thousand people in local jails. (See article in this issue on combined total in prisons and jails).

According to the new report, the prison population has quadrupled since 1980, with much of the increase attributable to the (so-called) war on drugs and mandatory minimum sentences. New drug policies have especially affected incarceration rates for women, which have increased at nearly double the rate for men since 1980.

By 2010, the number of Americans in prison or who have been in prison is expected to be 7.7 million, equaling 3.4 percent of all adults, according to the report.

[Sources: *Christian Science Monitor*, 8/18/03; *USA Today*, 8/18/03]. ■

Crime Rates Drop, Incarceration Rate Climbs

According to a new report released by the Justice Department in July 2003, last year the nations' prison population increased 2.6 percent even though crime rates continued their decade long drop and states sought to balance their budgets with lower cost alternatives to incarceration. The report presented statistics showing more than 2 million Americans are in state or federal prisons or in local or privately operated jails. During the same period, preliminary FBI numbers show a 0.2 percent drop in overall crime last year.

Since 1995, the number of Americans incarcerated in prisons and jails has grown an average of 3.6 percent each year, according to the report. On Dec. 31, 2002, one of every 143 people in the U.S. was behind bars. Out of the 1.3 million of them in state or federal prisons, 45 percent were black, 34 percent were white, and 21 percent were Hispanic or another ethnicity. Approximately 10 percent of all black males between 25 and 29 yrs. old were in state or federal prisons last year. ■

Blatant Injustice: A Look at Prosecutorial Misconduct

by Oscar Hanson

If I were to ask what branch of our government held the most power, the more likely answer would be the judiciary, especially in light of the recent landmark decisions by the Supreme Court. After all, they single-handedly determined our current president, who is the chief officer of the Executive branch of America's government. But if I were to ask what public officer held the most power, that answer may not be as readily apparent.

Without a doubt, the single most powerful official of both state and federal government is that of the prosecutor. Prosecutors are accountable to no one and they are shielded by the doctrine of absolute immunity for their actions, even misconduct.

Recently a study entitled *Harmless Error* was released by the Center for Public Integrity, an ethics watchdog, which reported that more than 2,000 cases over the past three decades have had convictions overturned or reduced because of abuses by prosecutors.

To punctuate this finding, during June twelve men and women were freed from a Texas prison after serving as many as four years in prison on bogus drug-selling charges. In the town of Tulia, Texas, 38 people were exonerated after it was discovered an undercover investigator lied repeatedly on the witness stand at criminal trials. A special investigation ordered by a Texas appeals court determined that the prosecutor knew the cop was lying yet did nothing about it.

The miscarriage of justice in Tulia was so outrageous, it might seem like an aberration. But other instances of blatant injustice have surfaced with troubling frequency all across our nation. Newly compiled reports such as the one from the Center for Public Integrity show that thousands of people have been wrongfully incarcerated over the years because of rogue law enforcement officers, poor lab work and overzealous prosecutors.

Such abuses of the judicial system are allowed to continue because those who commit them are rarely punished. As long as this type of behavior is tolerated, the number of criminal prosecutions that undermine an individual's constitutional right to a fair trial will remain unacceptably high.

In the past few years, DNA has been used to exonerate over 100 men and women, many on death row. The Innocence Project, which uses DNA testing to overturn dubious convictions, found that 34 of the first 70 defendants it exonerated had been victimized by prosecutorial misconduct.

Within the past year, crime labs in Florida, Arizona and Texas have been exposed for issuing false reports on DNA, blood samples, and other critical evidence. As a result, many wrongful convictions in rape and murder cases have been overturned.

Prosecutors claim defendants receive fair trials in the vast majority of criminal trials. Yet recent decisions by Florida appellate courts show prosecutorial misconduct is on the rise. The documented cases involving mistakes and misconduct are too common. Perhaps part of the reason for the misconduct can be attributed to public pressure to solve crimes. But those officials sworn to uphold the law should never succumb to such pressure because the result will often force the prosecutor to take action to convict without ensuring they have convicted the actual culprits.

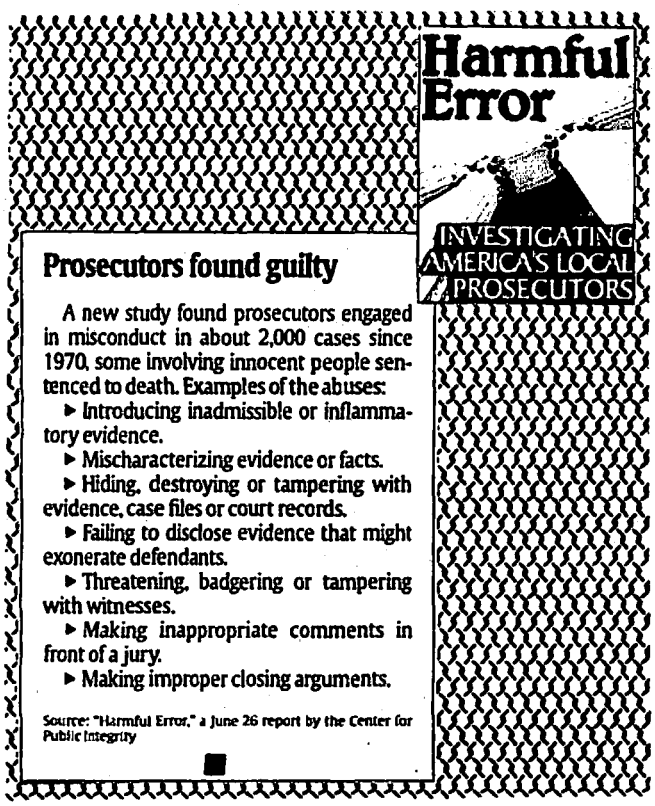
Steps must be taken to tame the wily prosecutor. The immediate ouster of prosecutors who engage in

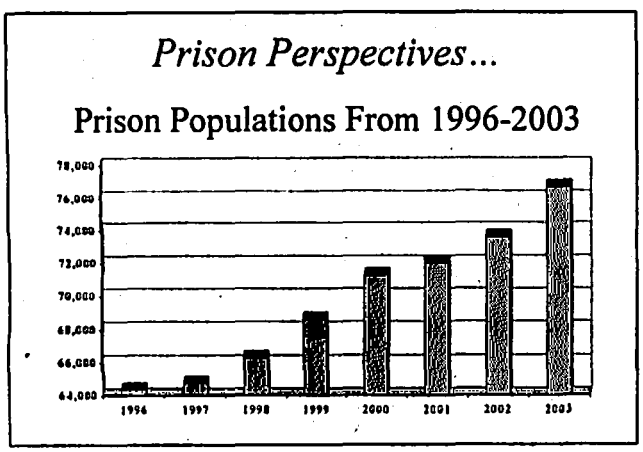
misconduct is a tougher sanction than what most now face: the next election. And as a sidebar, overcoming police union resistance to harsh punishment is necessary when police abuse their powers.

Those who violate the charge of public trust – not the people they wrongfully convict – deserve tough sentences.

[Sources: *Harmless Error*, Center for Public Integrity, 6/26/03; *USA Today*, 7/14/03]

For further information go to publicintegrity.org.





* Attention * Veterans

Have you ever been in the U.S. Military? Do you have a service-related disability? Are you in prison? If your answer is yes to those questions you may very well be eligible to receive disability benefits while you are incarcerated, as well as benefits for your spouse, children or parents. For more information about benefits for imprisoned disabled veterans contact or have someone contact:

Department of Veteran Affairs
P.O. Box 1437
St. Petersburg, FL 33731

or call Toll-free
1-800-827-1000

or on the web at:
www.vba.va.gov ■

POST CONVICTION CORNER

by Loren Rhoton, Esq.

Due to the applicable periods of limitation (both state and federal) for filing postconviction motions, many inmates are time barred from filing what may have at one point been meritorious postconviction issues. As a result they assume that there is nothing else that can be done to reduce their sentences. However, even with very old cases there are sometimes still options which may help to reduce a sentence. For example, there are provisions under Florida Law which provide for a commutation of a life sentence to a term of years for certain persons with life sentences.

A procedure for commutation of a life sentence was enacted by the Florida Legislature in 1975. Florida Statutes §944.30 provides that any prisoner who is sentenced to life imprisonment, who has actually served ten years and has not received any charges of misconduct (DRs) and has a good institutional record shall be recommended by the Department of Corrections for a reasonable commutation of his sentence. The recommendation shall be made to the Office of Executive Clemency. And, should the life sentence be commuted to a term of years, the inmate's sentence shall be treated as if it were originally sentenced as a term of years.

§944.30 applies to inmates with capital offenses that resulted in life sentences where the offense occurred prior to July 1, 1987. From July 1,1987 through July 1, 1988, §944.30 only applies to persons with sentences ranging from 40 years up to life and said convictions must have been for non-capital felonies.

One who qualifies for a commutation of sentence recommendation must pursue said action through the Office of Executive Clemency. A qualifying inmate is one who has an offense which was committed within the above addressed time periods and who has had any ten year period of incarceration under a current sentence with no Disciplinary Reports. A recommendation for commutation will need to be made by the Department of Corrections. Such a recommendation should be requested at the institution where the qualifying person is incarcerated. If the Department of Corrections fails to recommend an eligible person for a commutation of a life sentence to a term of years, the DOC can be compelled to do so via a petition for writ of mandamus.

Once a recommendation for a commutation of sentence has been given by DOC, the qualifying person must then pursue the commutation through the Office of Executive Clemency. Pursuant to Rule 8 of the Rules of Executive Clemency, the person requesting a commutation of sentence must request a waiver of the Rules of Executive Clemency. Clemency waiver forms, clemency applications forms, and the rules and instructions for said forms can be obtained at www.state.fl.us/fpc/execlem/html or by writing the Office of Executive Clemency at 2601 Blair Stone Road, Building C, Tallahassee, Florida 32399-2450.

Once the request for a waiver of the rules is filed with the Office of Executive Clemency the Florida Parole Commission will be asked to review the case and furnish an advisory recommendation for consideration of the Executive Clemency Board. Once the Commission has made its recommendation, the Clemency Board has 90 days to make a decision as to whether or not to grant a waiver of the rules. Thereafter, the Clemency Board (which is comprised of the

Governor and cabinet members) will decide whether or not to grant a waiver of the rules. If a waiver is granted then the Clemency Board will actually consider the recommendation for a commutation of sentence

It is important to present all relevant information in a request for clemency and a request for a waiver of the rules. If a person with a life sentence is denied a waiver of the Rules of Executive Clemency, then that person may not apply for another waiver of the Rules of Executive Clemency for at least five years from the date that the waiver was denied. Therefore, all relevant information to the applicant should be provided to the Office of Executive Clemency. Obviously evidence of efforts at self-betterment will be persuasive in a request for a commutation of sentence and all applications which relate thereto. The Parole Commission and Office of Executive Clemency will also be interested in what type of release plan (i.e., residence, employment, etc.) an applicant has. Therefore, it is recommended that any favorable information that may pertain to a request for a commutation of sentence be presented with said request.

While a commutation of a life sentence is not easy to obtain, it is still worth the effort if §944.30 applies to your case. Often persons who qualify for a commutation of sentence have not been recommended for such a commutation by DOC. Said persons often are not even aware that they potentially qualify for such a commutation of sentence. I recommend to qualifying inmates that they determine if they have previously been recommended for a commutation of a life sentence. If not, then it would be advisable to request such a recommendation from DOC and to obtain the necessary applications from the Office of Executive Clemency.

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

LEGISLATIVE WATCH

By John Hudson

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

NEW LAWS, 2003 LEGISLATIVE SESSION

HEALTH CARE – PRISONERS

Governor Bush approved an act of legislation relating to complaints against healthcare practitioners who provide health care services within the Department of Corrections (DOC).

Resulting from House Bill number 1553, Florida Statues section 456.073 is amended and now provides that a state prisoner must exhaust all available remedies administratively within the DOC before filing a complaint with the Department of Health (DOH).

There is one exception. If the DOH determines after a preliminary inquiry of a state prisoner's complaint that the practitioner may present a serious threat to the health and safety of any individual who is not a state prisoner, the DOH may determine the legal sufficiency of the complaint and proceed with discipline against the practitioner. Chapter 2003-84, Laws of Florida.

[Comment: This law seems to give broader power to the DOC in handling matters dealing with discipline of those practitioners treating prisoners. One would think such matters should be left to the professionals at DOH. In addition, it seems a double standard for the DOH to review a complaint by a state prisoner that may effect a non-prisoner more expediently than that of the prisoner himself.]

CRIMES AND OFFENSES

Burglary – The criminal offense of impairing or impeding the telephone or power to a dwelling to facilitate or further a burglary is created.

As a result of House Bill number 1675, Florida Statutes section 810.061 was created as part of an act relating to the crimes of facilitating or furthering a burglary contained in Chapter 2003-84, Laws of Florida. The law became effective July 1, 2003, and provides a third degree felony for the offense.

Controlled Substances – Florida Statutes section 893.13 has been amended adding state, county, or municipal parks, community centers, or publicly owned recreational facilities to the list of real property that penalizes persons for committing drug offenses within 1,000 feet of same.

Effective July 1, 2003, it is unlawful to sell, manufacture, or deliver or possess with intent to sell, manufacture, or deliver a controlled substance in, on, or within 1,000 feet of the above-named property along with educational property and parks, which were previously named within the statute.

For the purpose of this law, the term "community center" means a facility operated by a nonprofit community-based organization for the provision of recreational, social, or educational services to the public. Chapter 2003-95, Laws of Florida.

Stalking – The criminal offense of stalking in violation of Florida Statutes section 784.048 is amended to include cyberstalking.

The law enacted by the Florida legislature results from House Bill number 479 and defines "cyberstalk" to mean communication by means of electronic mail or electronic communications which causes substantial emotional distress directed at a specific person and does not serve a legitimate purpose.

The amendment also revised the elements of the offense of aggravated stalking for placing a person in fear of death or bodily injury to include the person's child, sibling, spouse, parent, or dependant. Chapter 2003-23, Laws of Florida.

Sexual Battery – Florida Statutes section 775.15 is reenacted and subsection (7) is amended to provide that there is no statute of limitations to prosecute on first-degree felony sexual battery if the victim was under 18 at the time the offense was committed. Chapter 2003-116, Laws of Florida.

Dangerous Sexual Felony Offender Act – Senate Bill 2172 passed amending Florida Statutes section

794.0115, which deals with repeat sexual batterers.

The law took effect July 1, 2003, and substantially rewords section 794.0115, Florida Statutes. The new law provides for certain individuals deemed dangerous sexual felony offenders to be sentenced to a mandatory minimum term of 25 years, up to and including life imprisonment.

This new change in law should be read in its entirety for proper determination of its applicable provision. In short, it defines dangerous sexual felony offender as one who is a repeat sexual batterer and is also convicted of a violation which causes serious person injury, uses or threatens to use a deadly weapon, victimizes more than one person, or was under the jurisdiction of a court at the time the offense was committed. Chapter 2003-115, Laws of Florida.

Motor Vehicles – Test For Alcohol, Chemical Substances – Motor vehicle provisions are amended in Florida Statutes 327.352 to provide that all operators of motor vehicles or vessels are deemed to have given consent to urine tests for chemical substances or controlled substances in the event of a lawful arrest. Chapter 2003-54, Laws of Florida.

Leaving Scene of Accident – Resulting from House Bill 1683, Florida Statues, section 921.0022, is amended enhancing penalties for the offense of leaving the scene of an accident involving a fatality. The offense, leaving the scene, is contained in Florida Statutes, section 316.027(1)(b). The offense is now deemed as a level 7 versus a level 6 as previously set forth in the statutes. Chapter 2003-176, Laws of Florida.

INMATE WELFARE TRUST FUND (IWTF)

As a result of Senate Bill 954, the IWTF has been completely eliminated. Effective July 1, 2003, revenues which would have previously been deposited in the IWTF to fund benefit and welfare programs for state prisoners are now placed in the General Revenue Fund.

This new law was unanimously approved by both the Senate and House and signed into law by Governor Bush on June 23, 2003. Chapter 2003-179, Laws of Florida.

[Comment: This law could mean the end of programs for prisoners. The IWTF consisted of funds generated by prisoners and their families in the form of profits from canteen purchases, visitation vending machines, and the commissions collected off collect telephone rates charged to prisoner families. It was a trust fund administered by the Florida Department of Corrections (FDOC) for the sole purpose to disperse net profits made from revenues generated from prisoners and their families to be, in a sense, given back to them in the form of legitimate programs that would benefit prisoners and families. For the FDOC to continue the programs beneficial to prisoners, versus utilizing millions of dollars for some other self-serving purpose, is very doubtful.] ■

Florida Supreme Court Suspends DNA Deadline

On September 30, 2003, the state Supreme Court suspended the DNA deadline that was to expire on October 1, 2003. The decision to suspend the deadline comes as attorneys and several dozen law students at two universities struggle with a backlog of about 600 requests from inmates who say DNA evidence will exonerate them. Jenny Greenberg, director of the Innocent Initiative at Florida State University in Tallahassee, and Craig Trocino, co-director of the Florida Innocence Project at Nova Southeastern University in Fort Lauderdale say the requests are continuing to come in daily. By a 4-3 vote, the Supreme Court agreed to suspend the deadline indefinitely to give them more time to consider arguments that the deadline is unconstitutional. The court set oral arguments for November 7, 2003. *FPLP* will continue to monitor this development and report any and all actions in future issues.

NOTABLE CASES

BY OSCAR HANSON & ANTHONY STUART

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

U.S. SUPREME COURT

Stogner v. California, 16 Fla.L. Weekly Fed. S437 (6/26/03)

In 1993, California enacted a new criminal statute of limitations governing sex-related child abuse crimes. The new statute permitted prosecution for those crimes where "the limitation period specified in prior statutes of limitations has expired" – provided that (1) a victim had reported an allegation of abuse to the police, (2) there was independent evidence that clearly and convincingly corroborates the victim's allegation, and (3) the prosecution was begun within one year of the victim's report. A related provision, added to the statute in 1996, makes clear that a prosecution satisfying these three conditions "shall revive any cause of action barred by prior statutes of limitations." The statute thus authorized prosecution for criminal acts committed many years beforehand – and where the original limitations period has expired – as long as prosecution began within a year of a victim's first complaint to the police.

In 1998, a California grand jury indicted Marion Reynolds Stogner, the petitioner of the writ of certiorari to the Court of Appeal of California, charging him with sex-related child abuse committed decades earlier – between 1955 and 1973. Without the new statute allowing revival of the State's cause of action, California could not have prosecuted Stogner. The statute of limitations governing prosecutions at the time the crimes were allegedly committed had set forth a 3-year limitations period. That period had run 22 years or more before Stogner's prosecution.

Stogner had moved from the complaint's dismissal. He argued that the Federal Constitution's Ex Post Facto Clause, Art. 1, section 10, clause 1, forbids revival of a previously time-barred prosecution. The trial court agreed that such a revival is unconstitutional. But the California Court of Appeal reversed, citing a recent, contrary decision by the California Supreme Court. Stogner then moved to dismiss his indictment, arguing that his prosecution is unconstitutional under both the Ex Post Facto Clause and the Due Process Clause, Amdt. 14, section 1. The trial court denied Stogner's motion, and the Court of Appeal upheld that denial.

The U.S. Supreme Court agreed that the State's interest in prosecuting child abuse cases is an important one. But there is also a predominating constitutional interest in forbidding the State to revive a long-forbidden prosecution.

The Supreme Court ruled that the statute is unfairly retroactive as applied to Stogner. A long line of judicial authority supports characterization of this law as ex post facto.

It was further concluded that a law enacted after expiration of a previously applicable limitations period violates the Ex Post Facto Clause when it is applied to revive a previously time-barred prosecution.

U.S. COURT OF APPEALS

Siebert v. Campbell, 16 Fla.L.Weekly Fed. C756 (11th Cir. 6/23/03)

Daniel Siebert appealed from the dismissal of his petitions for habeas corpus under 28 U.S.C. section 2254. This case reached the 11th Circuit eleven years after he first sought collateral review of his convictions and sentences of death where the courts had determined only that he is subject to procedural bars and therefore have never allowed the merits of his claims to control. The district courts dismissed Siebert's petitions on the ground that they were untimely under the one-year statute of limitations established by the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA), now codified at 28 U.S.C. section 2244(d)(1). Siebert had argued that the one-year deadline did not bar his petitions because a separate AEDPA provision, 28 U.S.C. section 2244(d)(2), tolled the limitations period for the time during which his "properly filed" applications for postconviction relief were pending in the Alabama courts.

Because state courts had held in these proceedings that Siebert had missed the expiration of Alabama's own post-conviction statute of limitations, the district courts concluded that Siebert's state petitions were not "properly filed" and that AEDPA's tolling provision thus did not apply. So the question brought to the 11th Circuit Court of

Appeals is whether Siebert's Alabama petitions, which were accepted by the courts but ultimately found to have been filed late, should be considered properly filed within the meaning of AEDPA's tolling provision and the Supreme Court's interpretation of that term in *Artuz v. Bennett*, 531 U.S. 4 (2000).

The 11th Circuit goes into quite an extensive discussion regarding the term "properly filed" which inturn led into discussions of discretionary application of the State's post-conviction time bar and discretionary time bars as "conditions to obtaining relief."

Highlighted in this discussion is where the U.S. Supreme Court in *Artuz v. Bennett* held that an application is properly filed "when its delivery and acceptance are in compliance with the applicable laws and rules governing filing." Contrasting a "condition to filing" with a "condition to obtaining relief," the Court concluded that non-compliance with conditions to obtaining relief does not prevent a habeas petitioner's state application from being "properly filed."

It was also pointed out in this discussion, *Weekley v. Moore*, 244 F3d 874 (11th Cir. 2001), where it was held that a Florida prisoner's post-conviction motions were "properly filed" even though the Florida courts had dismissed them as successive.

Since timeliness is the only issued raised by the state in arguing that Siebert failed to comply with the laws and rules governing filings under the state rule, the 11th Circuit concluded that his petitions were properly filed within the meaning of section 2244(d)(2).

DISTRICT COURT OF APPEAL

Boatwright v. State, 28 Fla.L.Weekly D1476 (Fla.3d DCA 6/25/03)

Boatwright was on community control when he obtained permission to attend church services on Sunday between 8:00 a.m. and 12:00 p.m. A church bus picked up Boatwright and drove him to the church. At the conclusion of the services, Boatwright decided to attend a group counseling at the bishop's home until 5:30 p.m. when he was returned home by the church bus.

Boatwright's community control supervisor initiated a violation notice and the trial court conducted a revocation hearing and imposed a 15-year sentence for the underlying charges on the ground that Boatwright had an unauthorized absence from his residence.

The Third DCA reversed and held that while the decision was worthy of Draco, an Athenian of the 7th century B.C. who drew up a code of laws noted for their severity, but not in this case.

The Court correctly noted that to support a violation of community control, the violation must be "willful and substantial." The Court reversed and noted their decision would take effect immediately without regard to the filing of a motion for rehearing.

Valencia v. State, 28 Fla.L.Weekly D1637 (4th DCA 7/16/03)

Jeffrey Valencia appealed the denial order of his Florida Rule of Criminal Procedure 3.850 motion for postconviction relief as untimely.

In this case the district court of appeal affirmed the denial, finding that Valencia failed to establish any proof, i.e., documents, affidavits, or even an actual copy of the motion that he alleged he delivered to prison authorities in February 2001, within the time period for filing the motion. Instead, Valencia relied only on his own statement that he did so.

Because Valencia did not keep an actual copy of his motion filed in 2001, the district court had no way of substantiating that his 2002 redrawn motion was the same motion or that it raised the same issues as the 2001 motion.

[Note: This case is being pointed out for those who wish to be sure that their motion, whatever it may be, will be considered and able to prove it was timely within the rules that govern it. When delivering your legal documents to prison officials:
(1) Always be sure you attach a certificate of service (if applicable) and include any required oath with the date you delivered the documents to prison officials for mailing.
(2) Always photocopy legal documents you are filing and keep that photocopy in your personal files.
(3) Deliver your legal documents to the proper mail representative and make sure they date stamp the documents and that you initial and date it.
(4) Do not place your legal document in mail drop boxes, you have no guarantee how your legal mail will be processed, which could be important later. Besides, according to FAC 33-210. 102 (8) (b), prisoners are prohibited from placing legal mail in routine mail drop boxes.-as] ■

Correction

In the last issue (Vol. 9 Issue 4), there was a misstatement regarding the case of *Johnson v. Florida Parole Commission*, 841 So. 2d 615 (Fla. 1st DCA 2003). The summary should have read that the circuit court in Gulf County *improperly* denied Johnson's petition for writ of habeas corpus challenging the factual basis for his parole revocation on the ground that it was a successive petition to a writ of mandamus filed in Leon County challenging his PPRD date established by the Parole Commission. The First DCA granted the petition for writ of certiorari and remanded back to Gulf County for further proceedings. The full text of the opinion can be read at the cite listed above. We apologize for the printed error. ■

FPLAO Parole Project Former FPC Chairman Arrested, Investigation Continues

by Bob Posey

"I believe you have a warrant for my arrest," former Florida Parole Commission (FPC) Chairman Jimmie Lee Henry, 53, stiffly said as he stepped up to the booking window at the Leon County Jail on the morning of August 21, 2003. He was released a few hours later on his own recognizance, after being fingerprinted, having his mug shot taken, and being booked and charged with three felony counts of grand theft and 21 misdemeanor counts of expense-account, salary and records falsification, and using taxpayer monies for personal purchases.

Henry refused to comment when asked questions in the waiting area of the jail. His attorney, Stephen Dobson, who has successfully defended several public officials and prominent Tallahasseeans in criminal cases, accompanied him to the jail to turn himself in and later that day entered a not-guilty plea before the court on the charges.

Henry resigned as the Parole Commission Chairman on May 9, 2003, citing "personal reasons" for quitting as head of the agency that makes the decisions on parole for Florida's remaining 5,000-plus parole eligible prisoners and on those prisoners placed on conditional release supervision. The FPC also does pre-clemency investigations, but has been under increasing fire in recent years as most of what the agency does is duplicative of work already done by the Department of Corrections.

Three days after Henry resigned the Florida Department of Law Enforcement (FDLE) announced it had started an investigation on Henry and the Parole Commission involving possible crimes.

Personal Piggy Bank

As the FDLE pursued its investigation, the state Auditor General's Office was also continuing to audit FPC records following information provided earlier this year pointing to misuse of tax-payer money and thefts that were occurring at the Parole Commission.

On August 1, the AG's Office released a preliminary audit that showed that Henry, as head of the FPC, was using the agency's funds as his own personal piggy bank. According to that audit Henry used his state-purchasing card – known as a "P-Card" – for personal purchases at various stores, for a private attorney and for cell-phone and cable-TV services, used his state cell phone for personal business without reimbursement, and falsified attendance records and travel vouchers. "These questioned and improper expenditures exceeded $22,500," and occurred beginning April 2002, said the audit. The audit noted that records concerning earlier spending by Henry, who was chairman of the FPC since 1998, were missing from the agency's files.

The preliminary audit also describes a Parole Commission where accountability for major managerial functions – spending, sexual-harassment investigations, pay raises, bonuses, criminal-background checks of employees and monitoring nepotism and dual-employment – was out of control from at least July 2001 through February 2003. (FPLP, Volume 9, Issue 3, accurately reported that the corruption can be documented back to at least 1998).

Within a couple of weeks of the preliminary audit report being released the FDLE wrapped up its investigation of Henry in a 71-page arrest affidavit and issued a warrant for his arrest. That affidavit, prepared by Mark Perez, an inspector in the FDLE's Office of Executive Investigations, details in page after page a trail of lies, deceit and overt theft from Florida tax-payers.

The affidavit says that Henry is documented using his state P-Card to make personal purchases, including buying airline tickets for a friend, and buying more than $5,000 in merchandise from Sears, Wal-Mart, Home Depot, Lowe's, a video store and Comcast Cable television. He also used the P-Card to pay personal attorney fees and to pay personal cell phone bills. The affidavit, which cites the AG Office's preliminary audit, also alleges numerous instances where Henry padded his claimed expenses for business trips to other Parole Commission field offices, meetings and other official appointments. Perez notes that between April 2002 and March 2003 it was determined that Henry submitted 21 fraudulent travel vouchers, most of which contained fraudulent expense items.

Perez's affidavit accuses Henry of receiving a salary while not performing state business by turning in false time sheets amounting to $14,959.73. Actions questioned in the affidavit include Henry using his state credit card to purchase airline tickets for a friend, Frances Cox, to accompany him on a supposedly official trip to Cincinnati in September 2002. Allegedly, the trip was for a meeting with the board of a residential center for young offenders. However, "from witness testimony, it was determined that Jimmie Henry spent the majority of this time with the individual (Cox) visiting friends and sight-seeing in the Cincinnati area," Perez wrote.

The affidavit describes how cell phone records were painstakingly compared to Henry's travel vouchers to determine that he frequently was not even in the city where he obtained reimbursement for being.

In addition to the Cincinnati "vacation," Henry also paid himself a salary and expenses to go to Atlanta to attend his daughter's college graduation, during the same week in which he upgraded from a $99-a-night hotel room to a $159-a-night "crown suite" at the downtown Hyatt Regency. During one trip where he claimed he went to

Tampa and Orlando on parole business he actually went to the Florida Classic football game between Florida A&M University (Henry's alma mater) and Bethune-Cookman College.

According to the affidavit, other records and witness accounts show that Henry filed for and received reimbursement for a four-day trip to Miami to visit a commission office when he was really in Greenville, S.C., visiting his female friend Cox. On other occasions he received reimbursements for supposedly official parole trips to Jacksonville, Tampa and Houston, TX, when he was in South Carolina. He was also reimbursed for travel to Pensacola – a trip that never occurred.

The more than $14,000 in false travel vouchers is the basis of one of the grand theft charges against Henry. The other two felony charges are based on over $1,600 he used to pay for personal phone calls from state funds and over $8,000 in personal purchases that he made with the state P-Card. With a more detailed accounting than the Auditor General's preliminary audit, the FDLE accuses Henry of stealing more than $25,000 in just the one-year period from April 2002 to March 2003. The affidavit also notes that records on Henry's spending before April 2002 are missing from the FPC's offices and presumptively have been destroyed.

Tip of the Iceberg

Although the FDLE's affidavit focused primarily on Henry's wrongdoing at the Parole Commission, the story doesn't end with his arrest – as apparently is the intention of some.

During August, between the time when the Auditor General's office release its preliminary audit and when Henry was charged, top officials at the Parole Commission initiated a CYA strategy.

Although Henry's fraudulent trips and personal expenditures were observed by and known to numerous Parole Commission employees and top officials, who never reported them to the police, they now claim that at least some subordinates questioned him about the legality of his actions. However, when issues of impropriety were raised, Henry brushed them aside and defended his actions, they claim.

"I don't see these (employees) as buddies of his. I think they thought they had to do this because he was boss," commented Monica David, appointed May 13 to be Henry's successor as chairman of the Parole Commission. "He was told by two or three different people he shouldn't do these personal purchases, and his response was, 'I know the rules. I can do this.'" David said. She had nothing to say about what knowledge she had of Henry's activities or what action she took to stop same.

"People felt he was the chairman; he knows what he's doing," Fred Schuknecht lamely said. Schuknecht was hired by David in May to be the FPC's new director of administration, a move seen by some as an attempt to clean up any remaining incriminating records or evidence of wrongdoing at the Commission. Schuknecht formerly worked at the FPC's next-door neighbor, the Department of Corrections, where he was the Inspector General in charge of internal investigations and cover-ups. "Any records that were overlooked by or hidden from the auditor's investigators, are certainly gone by now," said Sherri Johnson, a research specialist at Florida Prisoners' Legal Aid Organization based in Orlando, Florida. Johnson, working with other researchers at FPLAO, surreptitiously documented corruption at the FPC for two years before turning their findings over to state officials earlier this year.

Johnson also noted that there are other serious problems that have occurred at the Parole Commission that are not under the purview of the Auditor General, and so have not been addressed yet. She says those problems will be exposed and addressed by the Parole Project started by the organization.

After Henry was charged and arrested, a final audit report was released by the Auditor General. It reiterates and expands on the preliminary report and contradicts Monica David's claims that Henry didn't have "buddies" at the commission. In fact, several employees and top FPC officials were working with Henry to cover up his activities and sharing in the fraud on Florida taxpayers.

Hands in the Cookie Jar

Included in the findings of the Auditor General's preliminary and final reports is the following:

Jimmie Henry's Personal Assistant:

- Made travel arrangements using State resources for Henry and his traveling companions knowing the travel was not business related.
- Completed travel vouchers for Henry (including reimbursement for mileage and departure and return times) before Henry made the trips.
- Informed the Finance and Accounting Administrator when travel vouchers needed to be revised to cover Henry's personal P-Card purchases.
- Prepared travel reimbursement vouchers for Henry with knowledge that Henry never made the claimed trips.

The Finance and Accounting Administrator:

- Approved Henry's personal P-Card purchases.

- Knowingly coded Henry's personal P-Card charges as travel expenditures when they were not travel-related.

- Worked with Henry's Personal Assistant to manipulate travel vouchers to cover up Henry's personal P-Card purchases.

- Obtained almost $2,000 reimbursement from FPC funds to pay for personal college tuition in violation of Florida laws.

- Was working a second job unrelated to the FPC while using FPC equipment and computers to do the second job on FPC time.

- Received large salary increases, bonuses and financial awards from Henry while he was chairman that auditors found to be unjustified and questionable.

The Director of Administration:

- Gave his approval for personal P-Card purchases made by Henry.

- Approved falsified travel vouchers for Henry including deductions for personal P-Card charges.

- Received large salary increases, bonuses and financial awards from Henry that auditors found to be unjustified and questionable.

The Human Resources Administrator:

- Hired his brother-in-law as an FPC employee then promoted him to being Purchasing Agent.

- Failed to perform criminal background checks on employment applicants resulting in employees being hired with, in at least one case, extensive criminal histories.

- Had a sexual harassment/attempted sexual battery complaint filed against him by another male FPC employee that resulted in a secret settlement being made to the employee of $53,964 in taxpayer monies. (FPLP reported on that incident in Volume 9, Issue 4. Since then the Leon County Sheriff's Department has said it will not charge former Human Resources Administrator Frank Trueblood with a crime because the victim refuses to cooperate.)

- Received large salary increases and bonuses from Henry that auditors found were not justified and were questionable.

Other FPC Employees:

- Auditors found that between 2001 and 2003, other FPC employees made over $80,000 in P-Card purchases for which no documentation exists showing what was purchased or if it was ever received by the Commission.

- A prior audit report (No.02-095) shows that in 2000 instead of turning unused FPC budget money back over to the general revenue fund at the end of the year, Henry gave every FPC employee bonuses out of the surplus and then failed to report same as required by law. (See: FPLP, Volume 9, Issue 3.)

- Were allowed to use FPC equipment at their homes for personal purposes.

- Were allowed to dispose of FPC property without following required procedures to verify that property should be disposed of.

- The daughter-in-law of the Vice Chair of the FPC, Frederick Dunphy, was hired as an Executive Secretary in apparent contradiction to Fla. nepotism laws. She has been asked to resign.

Investigation Continues

None of the other FPC employees who were found to have been helping cover for Henry or committing possibly illegal acts themselves have been charged with a crime. Quietly, however, they have been getting the ax. The Director of Administration, Shirley A. Miller, was forced to resign June 30. The Finance and Accounting administrator, Lee Baldwin, resigned August 7. The Human Resources Administrator, Frank Trueblood, resigned July 3, and the Information Services Administrator, Michael Francis, resigned July 24.

Monica David, the new FPC chairman, who so far has avoided allegations of wrongdoing, has vowed to clean up the agency. "The audit was very helpful to me as the new administrator of the agency to have this management tool to assist me in making the changes I had to make," said David. She may come to regret her promotion.

FPLAO has vowed that the corruption at the FPC has gone on long enough. When the FPLAO Parole Project was launched May 1 of this year, the commitment was made to parole-eligible prisoners and their families to expose the FPC's corruption and seek relief for those prisoners the Commission has been holding hostage to

continue its corrupt existence. There are still those at the Commission, including Commissioners David and Dunphy, who believe they have weathered the storm and survived, and that the agency can continue to operate as it has been. They've only seen the tip of the iceberg. As the Parole Project continues, further revelations about the FPC are going to come to light.

So far, several hundred parole-eligible prisoners and their families have joined the FPLAO Parole Project. The support provided so far has allowed the Project to expand its investigation of the FPC, resulting in more valuable information being obtained for the struggle. Those parole-eligible prisoners who have not joined the Project are called on to do so now. Much important work remains to be done; everyone's involvement and support is needed. The time is now. To obtain information about how you can join the Parole Project, contact:

FPLAO, Inc.
Parole Project
P.O. Box 660-387
Chuluota, FL 32766 ■

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

In the last issue of *FPLP*, Vol. 9,Iss. 4, "Florida Parole Commission: A Culture of Corruption," relying on mainstream media reports, it was erroneously reported that former FPC Human Resources director Frank Trueblood had been accused by a fellow FPC employee of rape, resulting in a payoff of $50,000 to silence the victim. According to official documents recently obtained by the *FPLAO* Parole Project, which mainstream media obviously did not have access to, the victim actually accused Trueblood of attempted rape, exposing himself to the victim, and sexually harassing him in August 2001, resulting in the victim quitting his job with the FPC. Further, documents show the total payoff to the victim was $53,964. The Leon County Sheriff's Office has now said it will not charge Trueblood with any crime as a result of his conduct because the victim refuses to cooperate with police. Ironically, The contract settlement agreement requires the victim to not cooperate or assistant in any actions regarding this incident whatsoever.

Attention
Parole-Eligible Prisoners

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

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

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

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

Parole Commission Replacement Sparks Criticism

by Teresa Burns Posey

On August 26, 2003, Gov. Jeb Bush cast the pivotal vote to reject Robert Woody, an African American finalist, for the vacancy on the three-member Florida Parole Commission created when former Commission Chairman Jimmie Henry was forced to resign in May amid allegations of criminal misconduct. Much to the dismay of the black community, black legislators and civil rights activists, Bush voted to appoint his victim services coordinator, Tena Pate, to the Commission, breaking a tie vote between the other four Executive Cabinet members.

Pate, 45, has been the state's victim rights coordinator in the governor's office since 1993, serving under three governors. She also served as clemency assistant to Gov. Lawton Chiles, Gov. Buddy MacKay and Bush from 1993 to 2001 and previously worked as a victim rights coordinator in the First Judicial Circuit. Part of her duties in the governor's office has been consoling the families of crime victims during the execution process. Her appointment as a parole commissioner came only five days after Henry was arrested and charged with three felony counts of grand theft and 21 misdemeanors for crimes allegedly committed when he was the chief parole commissioner. The position pays $85,355 a year and Pate will have to have her appointment confirmed by the Florida Senate during the 2004 legislative session.

Pate's selection to serve with the two other current white parole commissioners, Monica David, who took over as chairman after Henry resigned, and Frederick Dunphy, revealed a split between Bush and Chief Financial Officer Tom Gallagher, a fellow Republican who said Robert Woody was more qualified. Gallagher, a Cabinet member, along with Agriculture Commissioner Charles Bronson, voted for Woody over Pate. Gallagher pointed out that a majority of state prisoners are black and Woody's selection would acknowledge that "disparity." Otherwise, he said, "We would be lacking for the first time in many, many years African American representation on the Parole Commission, and that, I think, would be a mistake," adding that 66 percent of prisoners are black.

Attorney General Charlie "Chain Gang" Crist (as he likes to be called) voted along with Bush for Pate, rejecting the argument that a mostly black prison system should not have an all-white parole board. The parole board decides hundreds of parole cases and thousands of conditional release and clemency cases of state prisoners each year.

Bush pointed to Pate's more than two decades of victim advocacy work for his decision in her favor. Gallagher pointed out that Woody has more experience in criminal justice and is more qualified, to no avail.

Woody, 50, is the head of the Department of Corrections' victim assistance program, has been a parole officer and probation supervisor and received a master's degree in criminal justice from Rollins College in 1979. Pate has no experience in the parole or probation fields and only has a bachelor's degree from Florida State that she received last summer.

State Representative Arthenia Joyner denounced the governor's decision. "This is an injustice to the state correctional system...This is a sad day in Florida when 66 percent of the controlled release population and 48 percent of parole-eligible inmates are African American and there is no minority representation on the board that evaluates these prisoners," said Joyner.

Senator Les Miller said that not having an African American on the parole board sends a bad message. He said it's significant because the board is responsible for evaluating clemency, civil rights restoration and other important prisoner issues.

State Senator Mandy Dawson said Pate's appointment was a setback for African Americans in Florida. "It's frightening to me to think we may be going backwards," Dawson said. "I guess we're back on the plantation."

Betty Reed, chairperson for the NAACP Political Action Committee, called Bush's decision "awful." She is encouraging a letter-writing campaign to all state senators since they will have to confirm Pate's appointment when they go into session March 2004. Reed said the NAACP will help people write letters to senators if they will call 813/234-8683 and leave their name and number. Someone will return their call.

[Sources: Gov. Office Press Release, 8/26/03; *St. Petersburg Times*, 8/27/03; *Florida Star Banner*, 8/27/03; *Tallahassee Democrat*, 8/27/03; AP 8/27/03] ■

Attention Reader:

All inmates that were convicted in Orange County, FL, after a jury trial during the time frame of January 1991 - December 1996 in Court Room P, Room 215, (Alice Blackwell White's Court Room) are encouraged to write Mr. Peter K. H. Hansch, P.O. Box 76249, Ocala, FL 34481-0249.

Mr. Hansch is specifically looking for persons that remember a large support column which obstructed their view during their trial proceedings.

All correspondence will be kept confidential, and all inmates that respond will be kept informed of any possible future litigation regarding this matter.

Membership Drive

Check it out. For the next six months, until Jan. 31, 2004, Florida Prisoners' Legal Aid Organization, Inc. (FPLAO) is engaging in a drive to increase memberships. During that period we hope to gain 1,000 new members. To do that your help is needed. Those who help will not only be helping the organization to grow and become more effective, but will also be benefiting themselves.

Here's how it will work: For every person who gets three people to become an FPLAO member between now and Jan. 31st, whether prisoners or free citizens, that person will receive either a free one-year membership, or if they are already a member, then their membership will be extended for a year with no dues owed. This is a great and easy way to either become a member of FPLAO or to get a free membership extension. All members receive the organization's news magazine *Florida Prison Legal Perspectives*, of course.

You don't have to stop at getting three new members. If you get six people to join, your membership dues will be covered for two years; get nine to join and you will not have to pay any membership dues for three years being a member of Florida's largest and most effective organization that works to help Florida prisoners and their families and loved ones. Don't delay; start signing up new members today!

Simply have new members complete the below membership form, putting your name on the "sponsored by" line so you get credit for signing them up, and have them send in the form with their indicated membership dues. We'll let you know every time three new people sign up that you sponsored. Prisoners: Been hesitating to become an FPLAO member because your funds are tight, but want to receive *FPLP*? You can't get it any easier than this. If you aren't interested, tell someone else about it. Let's build up FPLAO!

Yes, I want to become a member of Florida Prisoners' Legal Aid Org.

1. Check type membership:
□ $15 per year Family member/friend/individual
□ $9 per year Prisoner

2. Please Print:
Name:_____
Address:_____
_____
City:_____State_____Zip_____

3. Sponsored by (name & DC#)
_____

4. Send this completed form plus indicated yearly membership dues made payable to:
Florida Prisoners' Legal Aid Org. Inc.
Membership Dept.
PO Box 660-387
Chuluota, FL 32766

Yes, I want to become a member of Florida Prisoners' Legal Aid Org.

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Florida Prisoners' Legal Aid Org. Inc.
Membership Dept
PO Box 660-387
Chuluota, FL 32766

Judicial Alert!!!

A recent ruling in the Second Judicial Circuit Court for Leon County has created a major shift in the traditional jurisprudence with regard to filing petitions for writ of mandamus challenging disciplinary actions within the DOC.

On August 19, 2003, Circuit Judge Charles A. Francis issued an order dismissing a petition for writ of mandamus filed by state prisoner Peter Babala in case number 2003-CA-1409. The landmark order terminates the long-standing home venue privilege enjoyed by the Florida Department of Corrections.

In reaching this conclusion, Judge Francis construed the Florida Supreme Court's opinion in Schmidt v. Crusoe, 28 Fla.L.Weekly S 367 (Fla. 5/1/03) as the controlling authority for his premise that petitions challenging the loss of gain time in disciplinary proceedings must be filed in the county where the petitioner was convicted.

The Schmidt decision resolved the much debated question of whether the provisions of the prisoner Indigency Statute found in section 57.085, Fla. Stat. was applicable to quasi-judicial disciplinary proceedings where the loss of gain time directly affects the prisoner's sentence. The Supreme Court held that this type of action was a collateral criminal proceeding to the judgment and sentence, which resulted in the petitioner's incarceration. Thus, section 57.085 was not applicable.

In the case above, Judge Francis interpreted the supreme court's decision to require Florida prisoners to file their mandamus actions challenging the loss of gain in disciplinary proceedings in the county of their judgment and conviction.

All Florida prisoners need to be mindful of this potential Catch-22. In Babala's case, the judge issued the order dismissing his mandamus action after the time period for refiling in his home county had expired. This is significant as Babala is now procedurally barred from refiling. A motion for rehearing has been filed asking the court to reconsider its decision to dismiss in lieu of transferring the action under rule 1.060, Fla. R. Civ. P. To deny Babala the opportunity to seek judicial review of the disciplinary action against him would be arbitrary and capricious.

To add to this legal quagmire, the Second DCA recently issued an en banc decision on the home venue privilege that is diametrically opposed to the circuit court's ruling above. When preparing to file your mandamus action it would be wise to fully research the law in your district to see what the proper filing procedure is for your case. Undoubtedly, this will be placed on the supreme courts' docket for definitive resolution. But until then, it's a crapshoot.

[Note: The 2d DCA case referred to above is *Stovall v. Cooper*, Case No. 2D02-4606 (8/27/03). It has not appeared in the FLW as of this writing.] ■

Phone Information Needed

Recently FPLAO staff has received some letters stating that family members of prisoners are being contacted by MCI or local phone companies requiring them to make advance deposits to continue receiving collect phone calls from Florida state prisoners. If you or your family has received such a letter from MCI or a local phone company, FPLAO would like a photocopy of that letter. Please send only a copy of the letter that does not have to be returned. If FPLAO can establish that MCI or local phone companies (subcontracted to MCI) are requiring such advance deposits, we will file an administrative complaint with the Fla. Public Service Commission (PSC). Such advance deposits have been previously prohibited by the PSC. Please send any copies of deposit-requiring letters to:

FPLAO, Inc.
FAIR Campaign
PO Box 660-387
Chuluota, Fl 32766 ■

Where's My Mail?

Fairly often FPLAO staff receive letters from prisoners complaining that they are having problems with the mail at their institutions. The alleged problems may be with incoming or outgoing mail not being received or sent, or with not receiving publications or receiving them late, or with mail simply disappearing, or requests or grievances to prison officials never being responded to, etc. Occasionally, when several letters are received from the same institution making similar complaints, FPLAO staff will contact the institution mailroom or other officials to try to straighten out the problem for prisoners. Sometimes we can correct the problem, and sometimes we just get blown off with claims there is no problem, or if a problem exists it's with the post office. Sometimes the staff has to go to the FDOC central office or other officials to get a problem resolved with mail issues.

Recently we received a copy of an email from a vigilent FPLAO member (Thanks) concerning an institution's mailroom earlier this year that exhibits just how bad mail problems can get sometimes. It's printed verbatim below. The email below was sent by an FDOC employee, conducting an audit on the mailroom at Martin Corr. Inst., to an FDOC employee at the FDOC Region IV office on Jan. 29, 2003:

On January 28, 2003, I, Pat Lindsay upon request from Pete Defosses went to the mailroom at Martin C.I. to perform an audit. While there I observed the following items that were not in compliance with the DC rules.

1. *Mail is not being distributed in the 48-hour time frame.*
2. *Inmate request are not answered in 10 days.*
3. *Magazines are not handled in 15 days.*
4. *Inmate mail is not forwarded in 10 days.*
5. *Inmate mail that contains contraband is not being returned to sender in a timely manner.*
6. *Inmates are not being notified when mail is rejected.*

The mailroom was no organization [sic] at all. There were at least 15 mail tubs on the floor located in different spots with bits and pieces of mail. There was no way to know what days the mail arrives because of the way the tubs are just thrown in the mailroom. There were inmate request placed in several different locations in the mailroom. I pulled out tubs that contained inmate mail that was rejected that had not been wrote up with postmarks of August and September 2002. In these same boxes was inmate mail that had been transferred to other institutions that had not been forwarded. There are two tubs that contain inmate-rejected mail that dates 2001. I found a tub of inmate request that date back to December 2002 that had request for all departments that had not been forwarded to them. I found stamps that inmates had sent to have mail sent home that dated June 2002 that had not been sent. When I left Mr. Richard Barker, who is filling in for the GSS, has already answered the largest part of the inmate request. He is working on trying to bring the mailroom in compliance.

Pat Lindsay, GSS
Desoto C.I.

While many of the institutional mailrooms do a good job of keeping up with what is after all a lot of mail, the above examples are an extreme example of just how bad things can get out of wack. Of course, prisoners or their correspondents or magazine publishers would never be informed by the FDOC that such problems occurred for fear of lawsuits, and without such admission (or access to such inside information as above) prisoners and their correspondents would likely never be aware what happened to their mail, or the post office or the prisoner / mail sender / publisher would be blamed by FDOC staff to cover up the problem. We must all remain vigilant to such problems and protective of our First Amendment rights.

FPLAO will continue to help with these problems where it can. ■

Unconventional Wisdom: Slash Prisoner Education

by Linda Hanson

Recently Corrections' spokesman Sterling Ivey declared that Florida's priority is, and needs to remain, keeping prisoners locked up. This declaration comes on the heels of a legislative windfall to the tune of $66 million for the construction of over 4,000 new prison beds. While there is a generous amount of funding for warehousing Florida citizens, the funding for the most successful prison rehabilitation programs have suffered the ax.

In an effort to trim the DOC operating budget, the state has slashed 339 positions. These cuts are projected to save the state $20.8 million. So, gone are over 100 vocational and academic teachers and supervisors. Also gone are dozens of job and transition counselors, thirteen chaplains, and thirteen health teachers and coaches.

The prison system made the cuts because the overall state budget was extremely lean. This year's cuts come on top of 85 positions sliced from last year's educational staff. The official who operated the educational programs for the past five years was so outraged by the cuts that he resigned.

Bill Woolley cited the department's abandonment of its long-standing mission to rehabilitate and repair people in lieu of a new philosophy of care, custody and control as reasons for his departure last month.

Critics such as Woolley contend that cutting these programs will inevitably lead to a much larger demand for prison beds later. And while other states' budget woes have forced tough decisions on spending this year, no one appears to be following Florida's unconventional wisdom of building more prisons to warehouse its citizen without equipping them for successful re-entry into society. California, for example, considered trimming 330 teachers this year before recognizing the potential future costs of recidivism were too great.

Surprisingly, the cuts come even though the department's own research showed inmates with job training and high school equivalency diplomas are less likely to commit new crimes and return to prison. And within the prison system, inmates who get spiritual help create fewer security problems according to the research report.

"Religious programming not only is an essential element to control inmate idleness, it is a cost-effective means of providing a safer, more manageable environment," the report concluded. Last year the corrections department measured behavior of inmates who attended chapel programs. It found those who participated in at least 10 a month received, on an average, only a third as many disciplinary reports as the rest of the prison population.

Education programs have been proven to save the prison system money, too. A 2001 report found inmates who get a GED are 8.7 percent less likely to reoffend. Inmates who get vocational diplomas are 14.6 percent less likely. For every 2,000 inmates who earn GED's, Florida taxpayers save $1.9-million a year by keeping them out of prison. The savings was $3.2-million for vocational program graduates.

Ivey claims prisons will not abandon their educational programs, and said GED classes, for example, will continue. But they will offer fewer sections.

This writer is unsure what the phrase "fewer sections" actually means, but a flash survey shows that many prisons throughout Florida have absolutely no educational programs. Walton, Zephyrhills, and Lawty are only a few of many institutions statewide that have terminated education programs. And for the few institutions that continue to offer education programs, their classrooms will undoubtedly resemble a mosh pit.

Wooley pointed to the state class-size amendment, passed by voters who believe Florida's school children can't learn with more than 25 students in a class. "Can you imagine having 45 or 50 inmates in a class?" he asked

[Sources: *Miami Herald*, 8/30/03; *St. Petersburg Times*, 9/3/03] ■

– Book Review –

PRISON NATION: The Warehousing of America's Poor. *Tara Herival and Paul Wright, Editors. Routledge, 2003, softcover, 264 pages, $19.95 + $5 shipping. Order from: Prison Legal News, 2400 NW 80th St. #148, Seattle, WA 98117.*

Review by Sherri Johnson

Every once in awhile a book comes along that demands to be read – *Prison Nation* is one of those books. With more than 2 million people now incarcerated in America's prisons and jails, one in every 143 U.S. residents, and with the rate of imprisonment steadily escalating, no longer can a blind eye be turned on the impact such mass incarceration is having on the very fabric of our nation. This important book, in more than 40 essays arranged in seven chapters, looks beyond the numbers to the reasons behind and effects of America's race to incarcerate more of its own citizens than any other country in the world. *Prison Nation* explores the political factors underlying the imprisonment trend, the cost to our society – especially to the poor, the profits being made by the greedy, the often horrible and chilling conditions behind the jail walls and prison fences, and why the courts are unwilling and often helpless to prevent such conditions.

An anthology of thought-provoking articles by investigative reporters, social commentators, scholars, legal professionals and prisoners who are activists and journalists, this book makes convincing the connection between incarceration and poverty, and is a convincing indictment of the class aspect of America's criminal justice / prison systems. Articles are included on issues ranging from the inadequate resources provided to public defenders, the often ineffective and incompetent representation in capital cases, the politics and profits of prison privatization and prison slave labor, to prisoner rape and abuse and medical neglect.

The well written and documented stories in *Prison Nation* provide a compendium of the "rest-of-the-story" behind our country's prison-industrial complex that most Americans know little or nothing about.

The articles' authors, many recognized as authorities on the subject, including Stephen Bright, Naom Chomsky, Nell Bernstein, Christian Parenti, Willie Wisely, Mumia Abu-Jumal, and (FPLP's own) Bob Posey, don't pull any punches with their hard-hitting, gritty, and sometimes shocking reports.

This book will appeal to prison activists, professionals and students of law and criminology, prisoners and their families, and anyone else concerned about the direction our country is going in, the growing separation between the haves and the have-nots, and the use of imprisonment and ostracism for social control. The images generated by this book will last long after the last page is turned. ■

IN THE NEWS

CA – During early Sept., the Federal Ninth Circuit Court of Appeals in San Francisco overturned 100 death sentences in Arizona, Montana, and Idaho because they were imposed by judges, not juries. The court relied on a 2002 US Supreme Court ruling in commuting the sentences to life in prison. When the Supreme Court ruled it did not specify whether its decision applied to prisoners already on death row, but the Ninth Circuit appeals court held the 2002 decision must be applied retroactively. However, two other federal circuit courts have made an opposite ruling. The high court may now have to declare whether its 2002 decision should apply retroactively. Arizona's attorney general says his state will ask the Supreme Court to review the Ninth Circuits' decision. Currently, America has about 3,500 prisoners on death row. Last year 71 prisoners were executed nationwide. As of Sept. 5, 53 prisoners had been executed so far this year.

CT – Connecticut's prison population has grown from 4,800 in 1982 to 19,500 in 2003. Faced with a budget crunch, the state has reduced drug penalties for non-violent drug offenders to divert them to treatment instead of incarceration, which is seen as a more effective and cost-saving approach. CT State Rep. Mike Lawler, co-chair of the House Judiciary Committee, noted, "We now spend more on our prisons than our colleges."

GA – State officials are considering releasing sick prison inmates whose medical bills can become a burden to taxpayers. With a prison population of 47,000 and faced with budget cuts, the Department of Corrections and the Board of Pardons and Paroles are working on ways to remove some inmates, particularly nonviolent offenders.

FL – Earlier this year the Fla. Department of Corrections began moving younger prisoners out of the general population at Union Correctional Institution (formerly known as The Rock) and transferring in prisoners aged 50 or older from other prisons around the state. Then, in August, the FDOC began doing the same at Zephyrhills Corr. Inst., with the age criteria for going there being 60 or older. Both UCI and ZCI have more extensive medical facilities than average institutions, so the moves may be a cost saving measure by concentrating elderly prisoners closer to medical care. Already, in 2001, Florida had changed New River CI, located on the grounds of the state mental hospital at Chattahoochee, into a work camp for 378 able-bodied prisoners mostly older than 50. As of May 31, 2003, Florida had 7,636 prisoners 50 yrs. old or older, an increase of 12% from the year before.
[Sources: AP reports; *Lakeland Ledger*, 4/30/03; FDOC records; FPLAO members]

FL – During Aug. a Fort Lauderdale man, Bruce Silverman, 39, appeared before Broward Circuit Judge Stanton Kaplan seeking an early release from his one-year probation sentence for aggravated stalking of a co-worker. Silverman told the judge that he likes poppy seed bagels every day but hasn't been able to eat them for the past 8 months for fear they will give him a positive on his routine drug tests. Because he's been forced to eat plain bagels for months, he argued that his probation should be cut short. Judge Kaplan politely asked Silverman if he was crazy and then told him and his attorney to leave the courtroom.
[Source: *Daytona Bch. News Journal*, 8/15/03]

FL – Beginning Oct. 1, 2003, Florida state prisoners at community work release centers will no longer be driven to or from their jobs by permanent party prisoner drivers. Starting that date it will be the prisoners' responsibility to get to their jobs,• classes, or training by walking, bicycling, riding public transportation, or getting a ride with a family member or employer. The new policy was initiated by the Fla. DOC following several major accidents when prisoners were driving other prisoners to or from work. Some of the prisoner drivers did not have a valid driver license. The DOC appealed to the Legislature, which amended sec. 945.0913, Fla. Statutes, during this year's session to prohibit prisoners from transporting other prisoners on work release to their jobs and prohibit the DOC itself from providing them transportation. There is a provision for those totally unable to obtain transportation, but it is contingent on specific appropriations from the Legislature. Happy pedaling, Guys.

FL – Continuing its trend of the past decade, last year (FY 2001-02) the Florida Parole Commission only released a few Florida parole-eligible prisoners on parole while revoking an approximately equal number off parole – mostly for petty technical violations that did not amount to a crime. Less than one-half of one percent of the 26,299 prisoners released from Florida prisons last year, or 62 people, were released on parole. During the same period, 87 parolees had their parole revoked and were returned to prison (8 for committing a new crime, 79 for technical violations).

FL – During May, former televangelist-turned pizza deliveryman, George Crossley, 62, who was convicted five years ago in a failed murder-for-hire plot, was rearrested on a probation violation concerning a dispute with a co-worker over an ink pen. Allegedly, Crossley told the co-worker he would kill him, which was reported to the police. Crossley was fired from his job and was held in jail without bail.
[Source: *Daytona Bch. News Journal*, 5/19/03]

FL – W.D. Childers, who once controlled politics in Northwest Florida, was sentenced to 3 ½-years in prison during May. Childers, a former dean of the Florida Senate, was convicted on Sunshine Law violations earlier this year after he had joined the Escambia County Commission and became embroiled in charges of corruption and scandal. Childers will have 1 year of probation to do after serving his prison time, 250 hours of community service, and have to pay prosecution costs of upwards to $30,000.
[Source: *Pensacola News Journal*, 5/19/03]

FL – A Fort Lauderdale judge has denied a request from a drug offender dying of AIDS to be released early from jail to spend his last months with his family. Jean Felix, 41, was sent to jail until Sept. 5 for violating probation in a drug possession case. But jail doctors say he will die before his sentence expires. Medical experts testified before Judge Cheryl Aleman that Felix has a very short time to live and that the humane thing to do would be to send him home to his family. Judge Aleman denied that request.

FL – Staff members at the Florida Institute for Girls are using force and restraints too quickly and too often, according to a recent review of the state's only maximum-security facility for girls. State officials have given the facility 60 days to overhaul their protocol for dealing with unruly inmates. In one incident, Serai Moreland punched one young girl in the face as they struggled. More than two dozen times between April 2000 and February 2003 workers have been accused of using their authority to cross the sexual abuse line, according the Florida Juvenile Justice records. Since February 15 workers have been disciplined and two criminally charged for sexual offenses.

FL – An autopsy report said that Ruth Hubbs, who died May 16 at the Leon County Jail, was killed by an overdose of prescription drugs likely administered by the jail's infirmary. She is one of three people to die in the Leon County jail since March. Prison Health Services, which has been under scrutiny since the deaths, has more than 1,000 lawsuits pending against it.

IL – During March a coalition of criminal defendants represented by the People's Law Office of Chicago, petitioned that all Cook County judges be disqualified from hearing the 50 pending cases that allege that Chicago Police Commander Jon Burge and his officers routinely tortured confessions out of suspects. The petition argued that of the 61 judges assigned to the county's felony courts, 18 had material involvement in the torture cases. Forty-one of the 61 judges are former prosecutors. Michael Deutch of the People's Law Office said no courtroom in the county is free of the prejudice inflicted by police torture practices.
[Source: *National Law Journal*, 3/3/03]

NJ – For the past year, since Sept. '02, state prisoners in New Jersey haven't been watching sit-coms, soap operas, or trashy, violent shows like Jerry Springer. Now the NJ prison population, all 27,000, can still watch television, but under a new programming change called the "Correctional Learning Network," initiated by Corrections Commissioner Devon Brown, prisoners are limited to watching mostly educational TV. Of the eight hours of television available a day, six hours are devoted to instructional shows about hepatitis, HIV, AIDS, and finding employment, and documentaries. The other two hours are limited to news and sports shows. "It's a brilliant idea," said Richard Moran, a criminologist and sociology professor at Mt. Holyoke College in Massachusetts. "For most prisoners, their intellectual sense has been neglected. If they learn to think more deeply and learn to be more culturally aware, that is an excellent thing." New Jersey's systemwide approach is unique. Maryland and Ohio have educational programming on a smaller scale and the Co. jail in Hillsborough County, Fla., has only allowed prisoners to watch educational TV for eight years.

NY – Starting August 2003, all meals consumed by prisoners will be prepared at the Oneida Correctional facility and then sent to individual prisons around the state. Officials say meals made at individual prisons cost 14 cents more a day to produce. The new arrangement is expected to save taxpayers more than $3 million annually.

VT – Vermont prisoners being held in Virginia to ease overcrowding are likely to be moved this fall. The Vermont Corrections Department said it has received lower bids from private companies in other states to house the prisoners. The VT Legislature ordered prison officials to reduce the budget for out-of-state prisoners up to $200,000. ■

Mail Rule Challenge Update

On Aug. 14, 2003, Administrative Judge Michael Ruff, of the Fla. Division of Administrative Hearings (DOAH), dismissed FPLAO Chairman Teresa Burns Posey's formal rule challenge to Fla. Department of Correction's mail rules implemented Dec. 5, 2002. Judge Ruff, who failed to rule on any of Ms. Burns Posey's motions, and relying on an untimely-filed Motion to Dismiss filed by the Department, relied on an invalid legal test to determine that Burns Posey did not have standing to challenge rules that restrict the amount and content of routine, legal or privileged mail that she sends to prisoners in various capacities. Judge Ruff, ignoring Burns Posey's showing that non-prisoners have an established constitutionally protected right to send mail to prisoners, sided with the Department's position that the rules at issue only impact the rights or privileges of prisoners. Judge Ruff also ignored Burns Posey's repeated motions and letters seeking authorization to allow her qualified representative to appear on her behalf, thus violating Florida Statutes and the DOAH's own rules.

Ms. Burns Posey filed an appeal of the dismissal with the First District Court of Appeal on Sept. 11, 2003. *Burns v. DOC*, DOAH Case No. 02-4604RP; DCA Case No. 1D03-3894 (2003).

The rules at issue in this case involves restrictions on the amount and content of mail that may be sent to prisoners by family members and friends, and by attorneys/legal aid organizations and media representatives. The rules include a prohibition on more than 5 pages of general reading or entertainment materials, and fail to establish a legally sufficient mail rejection review process for non-prisoners.

This case will continue to be updated in *FPLP* as it proceeds.

[Editor's Note: In *FPLP* Vol. 9, Iss. 2, an update to the above case was provided that noted only 15 prisoners out of the 75,000 prison population filed written objections to the FDOC concerning the rules at issue in the above case. Subsequently, two prisoners wrote asserting that they also had filed written objections but did not appear on the *FPLP* list. A review of the letters and documents provided by those prisoners revealed they had filed objections to a different set of legal mail rules, adopted and implemented at a different time, involving prisoners' outgoing legal mail. The list published in *FPLP* was, sadly, accurate.

Florida prisoners are reminded that they may file written objections to any rule proposed by the FDOC. Sec. 120.81 (3)(b), Florida Statutes. They may also file formal Petitions to Adopt, Amend or Repeal Rules with the FDOC. Secs. 120.81 (3)(a) and 120.54(7), Florida Statutes. But they *may not challenge* proposed or existing FDOC rules in a proceeding before the Division of Administrative Hearings (DOAH) as non-prisoners may. Sec. 120.81 (3)(a), Florida Statutes. The proper vehicle for prisoners to use to challenge proposed or existing rules or denials of their Petitions to Adopt, Amend or Repeal Rules is with a Petition for Declaratory Judgment filed in the circuit court. Sec. 120.73, Florida Statutes. -- bp]■

*** Success ***

Modular Office Obtained

by Teresa Burns Posey

In the last two issues of *FPLP*, donations were requested from FPLAO members and supporters to allow a modular-type office building to be purchased to provide more office space for volunteers in the Orlando area to help work on *FPLP* and FPLAO projects. We are very pleased to announce that such a building has been obtained by FPLAO. While only approximately $1,000 in donations have been received so far, we were able to locate a larger than expected office building owned by an individual who wished to sell it, and FPLAO member Charles Morgan Kindly loaned us the remaining money needed to purchase the building. Everyone who made a donation for the building is thanked very much, as is Charles. We still need donations to pay off the loan, any amount will help, but we'll be able to get the new office set-up and open to volunteers much sooner than expected now. This new office space is going to make a lot of difference. We expect to have it open in the next month or so and invite anyone in the Orlando area who wishes to help out to contact us. Working together, we are going to make a difference. Again, Thank you to those who made this possible. ■

Past Perspectives...

From the 1902 DOC Annual Report

The annual report for 1902 included an expenditure of $4,000 for bloodhounds. According to the report: "These dogs bring to bear a two fold benefit. They are trained each week under the full knowledge of the prisoners and this tends to deter prisoners from making an effort to escape. Recaptures made with the assistance of these bloodhounds has made them an indispensable acquisition to our work."

Flashback: Florida Prisons Yesteryear

by Oscar Hanson

Following the article on Lock Up Hotel that described the *current* state of affairs for the Department of Corrections, I decided to look into the *history* of the department. What I found was rather interesting. Florida's first prison did not appear until after the Civil War. In 1868, Governor Harrison Reed obtained the U.S. Arsenal property at Chattahoochee near Tallahassee and converted it into a prison; it remained a prison for almost a decade. That same year, the prison received its first prisoner, Calvin Williams, who had been convicted of larceny and sentenced to 12 months incarceration.

Chattahoochee opened with 14 officers and nine inmates. Six months later the population had swelled to 42 prisoners. Those prisoners shared the same space with the insane. The first commander of the prison system held the rank of colonel and received $3 per day, a lieutenant earned $2 per day, sergeants $12 per month and a "private of the guard" $10 per month. The state provided employees with living quarters, rations, clothing and equipment. In 1876, the Florida State Hospital acquired Chattahoochee and patients started making mattresses, giving it the nickname, "the mattress factory."

During this period the people elected George Drew as governor to preside over a state heavily in debt from Civil War Reconstruction. Drew determined that prisoners could become an economic asset for the state, and successfully pushed for a prisoner labor lease system.

On December 1, 1900, twenty-two years after Calvin Williams arrived to serve his sentence, the population of prisoners had grown to 778 divided into 13 labor camps. Seven camps mined phosphate and six manufactured naval products such as turpentine. Prisoners ate bacon, meal, flour, grits, rice, dried beans, peas, syrup, and in the summer, fresh beef once a week. In winter they ate fresh pork once a week, as well as fish. At each camp the local manager cultivated one to three acres of garden vegetables. All cells had water, and inmates were required to bathe and put on clean clothes every Sunday morning.

The system began leasing prisoners to private contractors who clothed and cared for them in exchange for their labor. In some cases the conditions turned harsh. The brutal side of the leasing system led to its downfall. In 1921, Martin Tabert was beaten to death while on the lease program. Tabert was arrested for riding a train without a ticket and because he could not pay the $25 fine, he was placed in the custody of Leon County Sheriff J.R. Jones. Tabert had wired for the money and while he awaited its arrival, Jones leased him as a laborer to the Putnam Lumber Company where Tabert died. The sheriff returned Tabert's payment unclaimed. The case attracted nationwide attention and set the stage for abolishing the convict lease system.

Prior to these events, Florida began building its oldest and largest correctional institution. The new State Prison Farm occupied an 18, 000-acre tract purchased for $5.00 an acre. In 1912, the first buildings served as temporary stockades to house infirm inmates who could not be leased to private businesses. In early 1919, the State Prison Farm property consisted of 4,000 acres under cultivation, extensive pastures, a garment factory, a shoe factory which made 10 pairs of shoes a day, and 40 prison guards who were paid $35 per month and room and board.

In 1917 the Legislature created the State Road Department and State Convict Road Force. Inmates continued to work on roads in chain gangs. Florida discontinued the convict-leasing program in 1923 and as a result, the number of convicts in prison increased. In 1927 prison industries also expanded, opening a shirt factory and an auto tag plant. The main housing unit (called "The Rock") was built in 1928, and the guards there worked 12-hour days in return for $720 yearly plus quarters and meals.

During the twenties and thirties, the State Prison Farm grew rapidly under the direction of Superintendent J.S. Blitch. He was recognized by the Legislature as being an outstanding Superintendent because he reduced expenses by 50 percent, even though the prison population had increased 100 percent. This explosion in numbers now required compliance to a strict regimen. Discipline included the use of leg-irons, shotgun squads, chain gangs and sweatboxes. Sweatboxes were small buildings where inmates were placed to stand for hours, even days, often with two of three others. Another common punishment device, called an American Collar, pressed a metal thong against the prisoner's neck.

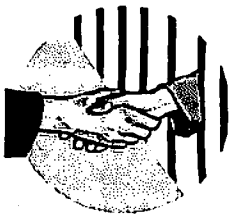
Hanging carried out Captial punishment. Prisoners were hanged in the county seats, usually in the yard of the courthouse. Contrary to how it is depicted in the movies, hanging was a complex procedure. An error in determining the condemned person's weight, or the use of an incorrect length of rope, could result in decapitation. Sometimes, the public sold souvenirs and cotton candy at executions. Many families attended these executions and according to one reporter, the whole thing took on a festival-like quality. However, the Legislature found it inappropriate. The electric chair was seen as a humane alternative to the gallows and in 1922 lawmakers approved its use. One year later, state prisoners, ironically, built Florida's electric chair from oak. Condemned murderer Frank Johnson became the first man to die by electrocution in 1924 in the execution chamber at Raiford.

In the early twenties approximately 40 prison guards worked at Raiford, each earning $35 per month plus board. The inmate population was 485. By 1932, Raiford's prison population numbered more that 2,000 men and women. There were 85 employees on the payroll, including officials, prison guards, matrons and other employees. Florida expanded its prison system by building Glades Correctional Institution in Belle Glade.

That same year Leonard Chapman became Raiford's new warden and he quickly discovered things weren't as orderly as they appeared. He served 25 years at Raiford, implementing a strong philosophy about good health, education, work habits and positive contact with the community. He prohibited the use of the word "convict," encouraging "inmate" instead. He offered prisoners school classes, vocational programs, and even replaced old solid barriers with chain link fences so prisoners would see the world beyond. *To be continued....*

[Source: 1999-2000 DOC Archival Study]

Florida Prisoners' Legal Aid Organization Inc.



BECOME A MEMBER

YES ! I wish to become a member of Florida Prisoners' Legal Aid Organization, Inc.

1. Please Check ✓ One:

- ☐ Membership Renewal
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- ☐ $15 Family/Advocate/Individual
- ☐ $9 Prisoner
- ☐ $30 Attorneys/Professionals
- ☐ $60 Gov't Agencies/Libraries/Orgs./etc.

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☞ Please make all checks or money orders payable to: Florida Prisoners' Legal Aid Organization, Inc. Please complete the above form and send it with the indicated membership dues or subscription amount to: *Florida Prisoners' Legal Aid Organization Inc., P.O. Box 660-387, Chuluota, FL 32766.* For family members or loved ones of Florida prisoners who are unable to afford the basic membership dues, any contribution is acceptable for membership. New, unused , US postage stamps are acceptable from prisoners for membership dues. Memberships run one year.

MEMBERSHIP/SUBSCRIPTION RENEWAL

Please check your mailing label to determine your term of membership and/or last month of subscription to FPLP. On the top line of the mailing label will be a date, such as ***Nov 04***. That date indicates the last month and year of your current membership with FPLAO or subscription to FPLP. Please take the time to complete the enclosed form to renew your membership and/or subscription before the expiration date.

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

Past Perspectives...

From the 1900 DOC Annual Report:

"Punishments are inflicted with a leather strap, two inches wide and about twenty inches long for disobedience, quarreling, fighting, using profane or obscene language...usually three to fifteen licks according to the offense."

MCI Newsflash

On August 10, 2003, *FPLAO* director Linda Hanson sent DOC Secretary James Crosby a formal request for him to terminate the contract with MCI in light of the recent fraud and racketeering charges pending against the communications giant. The letter cited Article VI, Section A of the MCI contract, which authorizes the termination of the contract *at any time*. Linda reminded the DOC Secretary of the multiple instances of overcharging by MCI that resulted in the payment of over $2 million dollars in fines and restitution to families and friends of Florida prisoners. Currently, MCI has a monopoly on the prison contract that has prisoners' family and friends in a financial stranglehold. *FPLAO's* F.A.I.R. campaign is moving forward in an effort to bring reasonable rates back to the families and friends of Florida's prisoners.

SUBMISSION OF MATERIAL TO *FPLP*

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

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

PRISON LEGAL NEWS

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

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

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

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

See *PLN*'s Website at:
http://www.prisonlegalnews.org

Email PLN at:
webmaster@prisonlegalnews.org

HAVE YOU MOVED OR BEEN TRANSFERRED?

If so, please complete the below information and mail it to FPLP so that the mailing list can be updated:

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