The Newsletter of North Carolina Prisoner Legal Services, Inc. Volume III, Issue 3, September 2003

NCPLS Access

Congress Passes Anti-Prison Rape Bill

By Senior Attorney Richard E. Giroux

For many years, sexual violence and predation have been one of the most inhumane realities of prison life. A developing awareness, at both state and federal levels, has resulted in legislation intended to address the problem. This article briefly looks at recent federal legislation, and then takes a look at a law that the North Carolina Legislature passed several years ago.

On July 25, 2003, Congress unanimously passed the *Prison Rape Elimination Act of 2003*. The Act creates and funds a new government program to analyze and prevent rape of male and female prisoners in correctional institutions throughout the United States.

As part of the legislation, the U.S. Department of Justice will conduct an annual study that will be based on surveys from 10% of the 8,700 correctional institutions in the United States. These surveys will include at least one institution from every state. The results will be evaluated by a commission that will set national standards for the prevention and prosecution of rape in prison. The Act will provide grants to states to combat the problem of prison rape. One supporter of the bill suggested that correctional institutions with high rates of sexual assault could lose their accreditation or federal funding if they fail to address the problem.

Stop Prisoner Rape (SPR) is a national organization committed to ending sexual violence against men, women, and youth, in detention and correctional facilities. SPR worked diligently for years to draw attention to the problem and to enact this federal legislation. SPR's address is 6303 Wilshire Blvd., Suite 204, Los Angeles, CA 90048.

In 1997, the North Carolina General Assembly passed Senate Bill 521, requiring the Department of Correction (DOC) to establish pilot programs on sexual assault at three units of the state prison system. The legislation required that within seven days of commitment to prison, prisoners were to be provided an educational program on sexual assault, including facts regarding sexual violence in prison, steps that can be taken to reduce the risk of, or to prevent sexual assault, and information on available counseling for victims of sexual assault. The statute also required the DOC to make available materials on sexual assault and rape trauma syndrome; to collect statistics of reported or suspected incidents of sexual aggression or violence at units participating in the

(Continued on Page 2)

Inside this Issue:

Access is a publication of North Carolina Prisoner Legal Services, Inc. Established in 1978, NCPLS is a non-profit, public service organization. The program is governed by a Board of Directors who are designated by various organizations and institutions, including the North Carolina Bar Association, the North Carolina Association of Black Lawyers, the North Carolina Association of Women Attorneys, and law school deans at UNC, Duke, NCCU, Wake Forest and Campbell.

NCPLS serves a population of more than 34,000 prisoners and 14,000 pre-trial detainees, providing information and advice concerning legal rights and responsibilities, discouraging frivolous litigation, working toward administrative resolutions of legitimate problems, and providing representation in all State and federal courts to ensure humane conditions of confinement and to challenge illegal convictions and sentences.

PLEASE NOTE: Access is published four (4) times a year.

Articles, ideas and suggestions are welcome: *tsanders@ncpls.org*

Anti-Prison Rape Bill (Continued)

(Continued from Page 1)

pilot programs; to develop and implement employee training on the identifi-cation and prevention of sexual assault among prisoners; to evaluate and classify prisoners with re-spect to the probable risk of sexual assault; and to rate prisoners as potential sexual assault offenders.

Pursuant to the statute, the DOC delivered a report to the General Assembly on implementation in the Spring of 1998. DOC reported that the units chosen for the pilot program were Odom and Eastern Correctional Institutions, and Morrison Youth Institution. The DOC advised that staff supervision is the primary means of controlling sexual assault, and that inmates share responsibility for their safety by avoiding risk and engaging in appropriate behavior.

The DOC reports that the inmate orientation program continues to include a component concerning sexual assault. Additionally, upon admission, prisoners are evaluated and classified based in part upon an assessment of the risk that the inmate might be targeted for sexual assault. Finally, correctional officers and staff receive continuing instruction regarding the identification and prevention of sexual assault.

NCPLS "Intent" on Making a Difference

By Staff Attorney Elizabeth Raghunanan

NCPLS recently submitted a letter of intent to the Collaborative for Racial Justice Innovation - North Carolina Fund. That was the first step in the process for being considered to submit a grant proposal to the Fund. In its letter of intent, NCPLS described plans to partner with groups such as the North Carolina chapters of CURE (Citizens for the Rehabilitation of Errants) and FAMM (Families Against Mandatory Minimums) to develop a community-based network to promote racial equality within the criminal justice system, to advocate for a responsible, cost-effective approach to punishment, a correctional system that makes rehabilitation a high priority, and for the resources necessary to ensure that people who are imprisoned are treated humanely. We hope that we will be invited to submit a grant application so this initiative will have a chance to improve the criminal justice system for the benefit all North Carolinians.

U.S. Supreme Court Strikes Down Texas Sodomy Statute

Lawrence v. Texas

By Senior Attorney J. Phillip Griffin

On June 26, 2003, the U.S. Supreme Court held a Texas statute unconstitutional that prohibited "deviate sexual intercourse with another person of the same sex." Tex. Penal Code Ann. §21.06(a); *Lawrence v. Texas*, ___ US ___ (No. 02-102) (June 26, 2003). Justice Kennedy's opinion for the Court was joined by Justices Stevens, Souter, Ginsburg and Breyer. The Court's decision was based upon the doctrine of "substantive due process," that the state may not invade certain fundamental liberties. Writing for the Court, Justice Kennedy pointed to decisions striking down statutes that made it criminal to teach German, to sell contraceptives, and to perform abortions. These cases establish the right of individuals to make certain fundamental decisions that are protected as an exercise of liberty under the Due Process Clause. In the opinion, the Court explicitly overruled *Bowers v. Hardwick*, 478 U.S. 186 (1986), a decision that upheld a Georgia sodomy law. Although the Georgia statute did not discriminate against same-sex couples like the Texas statute, it would now be viewed as unconstitutional because it intruded into a constitutionally protected zone of privacy. Justice Kennedy summed up the Court's ruling by noting that the case involved private conduct between consenting adults and not minors or other persons who might be injured or coerced. Neither did the conduct at issue involve prostitution or public conduct.

United States Supreme Court
Washington, DC

Justice O'Connor voted to strike down the Texas statute, not on substantive due process grounds, but as a violation of equal protection principles. Under the Equal Protection Clause, "the State cannot single out one identifiable class of citizens for punishment that does not apply to everyone else, with moral disapproval as the only asserted interest for the law." Since the Texas statute singled out same-sex couples for punishment for sexual acts that were permissible for opposite-sex couples, the Texas law violated the Constitution. Justice O'Connor thought her decision to be consistent with the *Bowers* decision, and she declined to join the Court in overruling it. Justice Scalia, joined by the Chief Justice and Justice Thomas, filed a dissenting opinion.

At least two North Carolina statutes are called into question by the decision in *Lawrence*. N.C. Gen. Stat. 14-177 makes the "crime against nature" (buggery or sodomy) a Class I felony. N.C. Gen. Stat. 14-184 makes it a Class 2 misdemeanor for a man and woman to "lewdly and lasciviously, bed and cohabit together."

It is impossible to accurately forecast the full import of the *Lawrence* decision on North Carolina law. It seems clear that *Lawrence* would not preclude the prosecution of a defendant accused of violating a sodomy statute in the context of public conduct, prostitution, or with a person who cannot lawfully consent. Beyond that, however, the meaning of *Lawrence* will only be known as it is applied and distinguished in subsequent rulings by the courts.

OVERTON V. BAZZETTA: THE SUPREME COURT UPHOLDS RESTRICTIONS ON PRISON VISITATION

By Staff Attorney Tracy Wilkinson

In *Overton v. Bazzetta*, 123 S.Ct. 2162 (June 16, 2003), the Supreme Court considered a challenge to limitations placed on prison visits by the Michigan Department of Corrections (MDOC). The inmates argued that the restrictions violated their constitutional rights under the First, Eighth and Fourteenth Amendments. Although the lower courts had agreed that the regulations pertaining to non-contact visits were unconstitutional, the Supreme Court reversed, finding that the regulations were rationally related to legitimate prison objectives.

United States Supreme Court Conference Chambers

Under the Michigan regulations, inmates can have visitation from attorneys, clergy, immediate family members, and ten other persons. Minor children are not allowed to visit unless they are the children, stepchildren, grandchildren or siblings of the inmate. Inmates are not permitted visitation from children in cases where their parental rights have been terminated. All child visitors must be accompanied by a family member of either the child or the inmate or the child's legal guardian. Inmates cannot receive visits from former inmates, unless the former inmate is an immediate family member and the visit is approved by the warden.

Finally, inmates who have been convicted of two or more substance abuse infractions can only receive visits from clergy or attorneys. However, after two years they may apply for reinstatement of visitation.

The inmates argued that the regulations infringed upon their constitutional right of association. While acknowledging that previous cases had spoken of constitutional protection for certain types of personal relationships, particularly familial relationships, the *Overton* Court found it unnecessary to explore the extent to which such rights exist after incarceration. Even assuming that such rights do exist in the prison context, the Court concluded that restrictions placed on those rights by the Michigan regulations were permissible.

In *Turner v. Safley*, 482 U.S. 78 (1987), the Supreme Court held that a four-factor test would be used to determine whether a prison regulation that was alleged to infringe upon a constitutional right would be upheld against a constitutional challenge. These factors are: (1) whether the regulation has a "valid rational connection" to a legitimate governmental interest; (2) whether inmates have alternative means to exercise the rights in question; (3) what impact an accommodation of the right would have on other inmates, guards, and prison resources; and (4) whether there are "ready alternatives" to the regulation. Significantly, the *Overton* Court stated that [t]he burden . . . is not on the State to prove the validity of prison regulations but on the prisoner to disprove it." *Overton,* 124 S.Ct. at 2168.

Applying these factors to the Michigan regulations, the Court found that "the regulations bear a

(Continued on Page 5)

Overton v. Bazzetta (Continued)

(Continued from Page 4)

rational relation to MDOC's valid interests in maintaining internal security and protecting child visitors from exposure to sexual or other misconduct or from accidental injury." The restrictions on visits by ex-offenders were found to be rationally related to the goal of rehabilitation. Further, the Court observed that drug smuggling and use in prison were "intractable problems," and held that the two-year denial of visitation for substance abuse violators served the goal of deterring the use of drugs and alcohol in prisons. *Id*.

After concluding that the regulations were rationally related to legitimate penological interests, the *Overton* Court addressed the remainder of the *Turner* factors. First, the Court observed that prisoners had access to alternative means of communicating with family members. Prisoners could send messages through those persons who were approved for visitation, and even those who were subject to the two-year ban could communicate by telephone and through the mail. Next, the Court stated that accommodating the demand for less restrictive visitation "would cause a significant reallocation of the prison system's financial resources and would impair the ability of corrections officers to protect all who are inside a prison's walls. When such consequences are present, we are particularly deferential to prison administrators' regulatory judgments." *Id.* at 2169 (internal quotations omitted). Finally, on the question of ready alternatives, the Court noted that "*Turner* does not impose a least-restrictive-alternative test, but asks instead whether the prisoner has pointed to some obvious regulatory alternative that fully accommodates the asserted right while not imposing more than a *de minimis* cost to the valid penological goal." *Id.* No alternatives meeting this standard had been suggested by the inmates.

The *Overton* Court rejected the prisoners' argument that the visitation restrictions violated the Eighth Amendment. It observed that many prison systems used visitation restrictions as a means of enforcing discipline. The court also found that the restrictions did not "create inhumane prison conditions, deprive inmates of basic necessities or fail to protect their health or safety. Nor does it involve the infliction of pain or injury, or deliberate indifference to the risk that it might occur." *Id.* at 2170. The Court acknowledged that a different result might be reached if the withdrawal of visitation privileges were permanent, or if the denial of visitation were applied to a particular inmate in an arbitrary manner.

Overton is another in a long line of Supreme Court cases that demonstrate the extent of the Court's deference to the judgment of prison officials regarding the day-to-day operation of prisons. Under this line of authority, federal courts are unwilling to second-guess the decisions of prison administrators as to whether particular regulations are necessary or appropriate. That is particularly true when such regulations are based upon security concerns, which seem to be the most compelling of legitimate interests in the operation of prisons. *Overton* suggests that such regulations will not be overturned, absent clear evidence of arbitrary or baseless governmental action.

[*Editorial Note: The author, Staff Attorney Tracy Wilkinson, has accepted a position with the Wilmington law firm of Boseman & Boyette. Her practice will focus on family law and criminal matters, including court appointed cases. NCPLS appreciates Ms. Wilkinson's service to our clients and wishes her every success as she undertakes new challenges.*]

ROELL V. WITHROW AND IMPLIED CONSENT TO FEDERAL MAGISTRATE JUDGE JURISDICTION

By Staff Attorney Ken Butler

Federal magistrate judges are judicial officers of the U.S. District Courts. They aid the district court judges and exercise jurisdiction over matters pursuant to statutory authorization and assignment by the district judges. As a practical matter, they may preside over every type of federal case, with the exception of felony criminal cases. In the context of civil cases, magistrate judges are allowed to preside over cases, including conducting jury trials and entering judgments, so long as the parties have consented to having the magistrate judge decide the case. The most significant difference between a magistrate judge and a district court judge is that district court judges are appointed by the President and confirmed by the Senate. Magistrate judges are appointed by the judges of the district courts.

United States Federal District Court
Wilmington, North Carolina

In the case of *Roell v. Withrow,* 123 S.Ct. 1696 (2003), the U.S. Supreme Court held that the parties' consent to the jurisdiction of a magistrate judge could be inferred from their conduct during the proceedings.

The position of federal magistrate judge was created by Congress in 1968 to replace the former post of United States Commissioner. The Judicial Improvements Act of 1990 changed the title of the position to that of magistrate judge. Magistrate judges are appointed by the district judges for the federal judicial district, and they are required to be a member of the bar of the highest court within the state where they serve. Full time magistrate judges are appointed for eight year terms and part-time magistrate judges serve for four year terms.

In non-criminal matters, magistrate judges are authorized to exercise jurisdiction in one of the following ways. First, a district court judge may refer a *non-dispositive* pretrial matter, except for a motion for injunctive relief, to a magistrate judge for ruling. 28 U.S.C. §636 (b)(1)(A). Such referrals may include the entry of scheduling orders for the conduct of civil cases, the resolution of discovery disputes, and the conduct of civil pre-trial conferences. Second, a district judge can refer *case dispositive* matters to a magistrate judge. 28 U.S.C. §636(b)(1)(B). Such a referral typically includes the authority to conduct evidentiary hearings and issue a *recommended* ruling to the district judge. The statute specifically provides that such referrals may be made in prisoner cases, including both federal habeas corpus and civil rights claims arising from conditions of confinement. A magistrate judge can also be designated as a special master by the district court. *Id.* §636(b)(2). Finally, "[u]pon the consent of the parties, a full-time United States magistrate judge . . . may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves." *Id*. §636(c)(1).

In *Roell v. Withrow*, Jon Withrow, a Texas inmate, brought a civil rights action under 42 U.S.C. §1983 against three members of the prison medical staff alleging that they violated his rights under the Eighth Amendment by disregarding his medical needs. During a preliminary hearing, Withrow was informed that he could consent to having a magistrate judge decide the case. Withrow subsequently consented to the jurisdiction of the

(Continued on Page 7)

Roell v. Withrow (Continued)

(Continued from Page 6)

magistrate judge. One of the defendants, who was represented by a private attorney, also gave written consent to magistrate judge jurisdiction. The remaining defendants, who were represented by the Texas Attorney General's Office, did not expressly consent. However, they or their attorneys were present on several occasions when the magistrate judge indicated her belief that all parties had consented to her jurisdiction.

The matter proceeded to a jury trial and resulted in a verdict for the defendants. Withrow appealed and the Fifth Circuit Court of Appeals, on its own motion, remanded the action back to the district court to determine whether the parties had consented to magistrate judge jurisdiction.

Upon remand in the district court, it was observed that the defendants had voluntarily participated in proceedings before the magistrate judge, and had not voiced any objections to the court's jurisdiction. However, because existing Fifth Circuit precedent held that consent to jurisdiction had to be *express*, it was determined that the magistrate judge lacked jurisdiction. The defendants submitted a formal letter of consent during the district court's review, but that was insufficient to confer jurisdiction after the fact.

In a 5-4 decision, the U.S. Supreme Court reversed the Fifth Circuit, holding that a party's actions can create implied consent to magistrate judge jurisdiction. In reaching this decision, the majority was clearly guided by what it viewed as "pragmatic" reasons. In particular, the Court was concerned with a rule that would allow a party to sit silently when a magistrate judge believed that consent had been given and then contest an adverse decision based upon a claimed lack of jurisdiction in order to get a "second bite" at the apple. In the majority's eyes, recognizing implied consent avoids such a waste of judicial resources while preserving a party's right to have the case heard by a district judge. Justice Thomas, writing for the dissent, expressed the view that the textual language of the relevant statutes and rules required express consent. The dissent also believed that it was preferable to have a "bright line" of express consent, rather than trying to determine when a party's conduct crossed the line into implied consent.

As indicated previously, federal magistrate judges are widely used in cases involving inmates. In many instances, magistrate judges make recommended rulings in prisoner cases, including recommendations for the disposition of motions to dismiss or for summary judgment. Magistrate judges can conduct evidentiary hearings without an inmate's consent, but in such cases, their rulings take the form of recommendations. Such recommendations are subject to review by the district court judge and both parties have the opportunity to present objections to the magistrate judge's recommendations.
For almost all purposes, when the parties consent, a magistrate judge has the same powers and authority as a district court judge. (There may be limited exceptions with respect to the contempt powers of a magistrate judge. See 28 U.S.C. §636(e).) Consent to magistrate judge jurisdiction confers the power for a magistrate judge to render judgment, which can be immediately appealed to the federal appellate court. When the parties have given consent, there is no requirement of review by the district judge.

One of the main advantages of consenting to the jurisdiction of a magistrate judge is a more prompt disposition of the case. The schedules and case loads of magistrate judges permit them to devote time and attention to a civil rights case that a district court judge may not be able to spare because of lengthy criminal dockets that take priority over civil cases.

In most cases, the question of consent will not be in doubt, as parties are asked to file written consent forms for magistrate judge jurisdiction. While NCPLS attorneys generally encourage parties to consent to the jurisdiction of magistrate judges, every party has the right to have his case decided by a federal district judge. If you want to exercise that right, you should advise the court in writing.

Notary Services for Prisoners

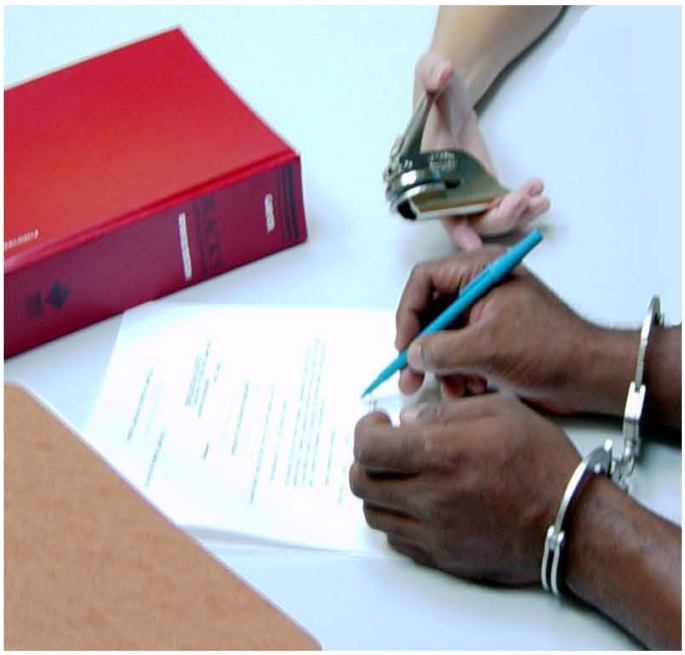
By Senior Attorney Kristin D. Parks

When a document might be used in a legal proceeding, or when it has legal significance of some kind, it may be necessary to have the document "notarized." A "notary public" has the legal authority to notarize a document.

A notary public is a person authorized by law to administer oaths and to witness and attest to the signing of important documents. The purpose of notarizing a document is to ensure that the person who signs the document is who he or she claims to be. It is thought that such a process deters fraud. A notary generally performs the job by verifying the identity of a person and witnessing that person's signature on the document that is to be notarized. A person's identity is usually verified by providing the notary satisfactory proof, such as a driver's license, a birth certificate, or an ID card that is current.

A notary public is not responsible for ensuring the accuracy of the information contained in the document. The notary simply verifies that the person signing the document is who he claims to be. Notaries public are not authorized to give legal advice.

Not every document must be notarized. Only documents that have some sort of legal significance should be notarized. The kinds of documents that might require notarization include wills, deeds conveying an interest in real property, or (more commonly in prison) tort claim affidavits, witness statements, and formal requests that are intended to prove that the recipient was put on notice of some fact.



Even among documents that have legal significance, it may not be necessary to have them notarized. Under 28 U.S.C. Section 1746, many of the purposes for which a notary public is required to formalize a written document can be equally satisfied by a declaration.

To be of use in a federal court, a declaration must (1) be made on personal knowledge, (2) set forth such facts as would be admissible in evidence, and (3) show that the declarant is competent to testify to the matters stated in the declaration. Competence to testify generally requires a showing that the person is an adult and that he suffers from no physical or mental impairment that would make his perceptions unreliable. Additionally, the declaration must be signed and dated, and must contain the following phrase: "I declare under penalty of perjury that the foregoing is true and correct." Finally, in order that the declarant may be located if his testimony should be needed in the future, it is important that a permanent address be given (either that of the declarant's spouse or a family member through whom he can be located). In this regard, a prison ID number can often be helpful.

Inmates without funds are entitled to certain services at state expense, such as paper and pens to draft legal documents, stamps, and notary services to authenticate legal documents. *Bounds v. Smith*, 430 U.S. 817 (1977). However, the right of access to the courts is limited. *Lewis v. Casey*, 518 U.S. 343 (1996). For example, the law recognizes that prison officials must make notary services reasonably available, but not continuous. *Dugar v. Coughlin*, 613 F.Supp. 849, 854 (S.D.N.Y. 1985); *Robbins v. South*, 595 F. Supp. 785, 789 (D. Mont. 1984).

NCPLS has received reports that some units are limiting the time and availability of notary services. If you have a document that needs to be notarized, you should be

(Continued on Page 11)

PRISONER-MOTHER PROGRAM

By: State Senator & Staff Attorney Ellie Kinnaird and Kady McDonald, Certified Legal Assistant

Ten years ago, NCPLS received a grant to study the needs and to explore issues of interest to women prisoners. One goal was to ensure that NCPLS provides the same level of services to women in custody of the N.C. Department of Correction as we provide to men who are incarcerated.

Our study revealed that women were primarily concerned with their children, and the separation resulting from incarceration. In response, NCPLS established a family law section staffed by Attorney Eleanor Kinnaird and Certified Legal Assistant Kady McDonald. This team provides advice, information and forms to all inmates who request help. Our informational packets include *pro se* divorce, modification of child support orders, paternity determinations, and equitable distribution. However, the decision to provide legal representation is based upon the strict application of acceptance criteria and careful screening. Over the years, the team has won visitation rights for many inmates, both women and men.

After working with women on custody issues for several years, the Family Law Team realized that many women are pregnant when they enter the system. When the baby is delivered, the child is taken away from the mother to an uncertain future, sometimes with relatives, sometimes in foster care. The caretakers often cannot or will not bring the baby to visit the mother in prison. The separation between mother and child grows greater with time, until the child doesn't know the mother and cannot relate to her. The mother also has not had a chance to bond with her infant and has not had the opportunity to learn how to be a good parent. This separation has profound and lasting ramifications on both mother and child.

Children who have a parent in prison are themselves six times more likely to be involved in the criminal justice system. Several states have community facilities that house both the prisoner-mother and her child. Such an arrangement facilitates the bonding process between infant and mother, and minimizes the impact of incarceration on the child and the family. The recidivism rate of participants in mother-child programs is much lower in those states that have a prisoner-mother program.

Out of the Family Law Team's experience was born the vision for a North Carolina facility that would house women and their young children. The goal is to create a facility to unite mother and child into a whole, healthy family, both in body, mind and spirit. As it is envisioned, the facility would not be inside prison walls, but in the community, as are the units in California. With the help of cooperating religious institutions, the facility would provide intensive services for the women, including drug abuse treatment, group and individual therapy, parenting skills and preparation for a life after prison. There are also plans to include a component focusing on fatherhood.

The facility would provide assistance and support to the mothers and their infants through a nursery, and for the older children, a daycare and a school. Eligibility for participation will require a minimum sentence of 18 months (so that there will be time to receive the maximum benefit of the program). A careful screening process will be in place to ensure the selection of the best candidates.

The facility will be costly. Planned services include professional care for both women and children. The building will be designed and constructed to provide a safe and secure environment for children. But the program can draw in many services from surrounding universities and agencies that will both help defray the costs as well as provide training for professionals in the field. To that end, Attorney Kinnaird has worked with a Steering Committee made up of prison authorities, academics from universities and health care professionals for the past three years to set up a non-profit. Through those efforts, the dream is becoming a reality.

Families and our communities will benefit from such a program.

North Carolina Has Two New Federal Judges

By Staff Attorney Betsy ColemanGray

Two North Carolinians were recently appointed to the Federal bench by President Bush. Judge Allyson Duncan was appointed to the U.S. Court of Appeals for the Fourth Circuit, and Judge Louise Flanagan was appointed to the U.S. District Court for the Eastern District of North Carolina.

Allyson Duncan is originally from Durham. She attended Hampton University, where she graduated first in her class. Ms. Duncan received her legal education at Duke University School of Law. She worked in Washington at the Equal Employment Opportunity Commission for nine years before returning to Durham as a professor at the North Carolina Central University School of Law. Thereafter, Ms. Duncan was appointed to the North Carolina Court of Appeals, and was later appointed to the North Carolina Utilities Commission. Ms. Duncan joined the Raleigh law firm, Kilpatrick Stockton LLP, where she was a partner. In June, Ms. Duncan was elected as President of the North Carolina Bar Association. Her term of office had hardly begun when the United States Senate confirmed her appointment to the Fourth Circuit, the Federal appellate court for U.S. District Courts in North Carolina, South Carolina, Virginia, West Virginia, and Maryland. Judge Duncan is the first female African-American to serve on the court.

Judge Allyson Duncan
U.S. Fourth Circut
Court of Appeals

the first female African-American to serve on the court

Judge Louise Flanagan
U.S. District Court,
EDNC

the first female U.S. District Court Judge for the Eastern District of North Carolina

Judge Louise Flanagan was appointed by President Bush to serve as a Judge on the U.S. District Court for the Eastern District. She was born in Virginia, attended Wake Forest University as an undergraduate, and received her law degree from the University of Virginia Law School. She worked as an attorney with Ward and Smith, P.A. Beginning in 1995, Judge Flanagan served as a U.S. Magistrate Judge for the Eastern District of North Carolina. With her confirmation, Judge Flanagan became the first female U.S. District Court Judge for the Eastern District of North Carolina.

Notary Services (Continued)

(Continued from Page 8)

attentive to the availability of this service, especially if you are trying to meet a filing deadline or a statute of limitation. If you miss such a deadline, it is doubtful that you would be excused because a notary was not available when you needed the service.

To sum up, you should notarize only those documents that are legally required to be notarized, such as tort claim affidavits, affidavits to be filed with pleadings, or other documents in which the identity of the signer must be verified. Most legal forms that require notarization will have a place for the notary to date, sign, and affix a seal. If you expect to proceed in federal court, you will not need to notarize your documents. Instead, you may rely upon 28 U.S.C. §1746 and follow the procedure described above. Letters to NCPLS generally need not be notarized unless you are trying to establish that you put us on notice about some matter. (In fact, our receipt of your document would establish the same purpose.)

Notary services are costly and generally, unnecessary. If you have questions about what should be notarized, or problems in getting timely notary services, please write to NCPLS.

IMPACT Update: Sentence Reduction Credits Benefit IMPACT Participants

By Senior Attorney Susan H. Pollitt

One year ago, the N.C. Supreme Court ruled that time people spent in IMPACT (Intensive Motivational Program of Alternative Correctional Treatment) must be credited against their activated sentence. *State v. Hearst*, 356 N.C. 132, 567 S.E.2d 124 (N.C. 2002). Since then, NCPLS has been working hard to make sure inmates who participated in IMPACT receive the credit to which they are entitled. The Department of Correction (DOC) has helped by providing us periodic lists of people in prison who went to IMPACT. They also assist us by promptly crediting court orders for the additional sentence reduction credits.

There are still people in the DOC who have not received credit for the time they spent in IMPACT. However, only a judge can award the credit. When NCPLS receives a request for IMPACT credit, our legal staff quickly investigate the persons' situation to determine whether there is a meritorious legal claim to the credit. In meritorious cases, NCPLS attorneys seek orders providing credit.

Since the last edition of ***Access***, NCPLS has received orders for 29 inmates for their IMPACT credit. These 29 people received credits totaling 2,480 days.

If you went to IMPACT and believe that you did not receive credit for the time you spent in IMPACT, you should write to NPCLS now!

Client Contributions Sought

At NCPLS, we often receive letters from our clients showing remarkable artistic talent and revealing skills and accomplishments. Our clients also frequently demonstrate the ability to use language in sophisticated, creative, and expressive ways. Such works communicate the full range of human intellect and emotion, often in unique and moving ways.

In recognition of the talent of our clients, ***Access*** will accept submissions from North Carolina inmates to share with our readers in the next edition of our newsletter. Poems, short stories and drawings will be considered for publication. Entries should be submitted on standard 8½ x 11 inch paper, and any writings should not be more than 600 words. All entries should be addressed to the ***Access*** Editor. Please understand that we will consider any submission as authorization by the author or the artist to publish the work. Also, all submissions will become the property of NCPLS. We look forward to sharing our client's creativity with the readers of ***Access***.

The Newsletter of North Carolina
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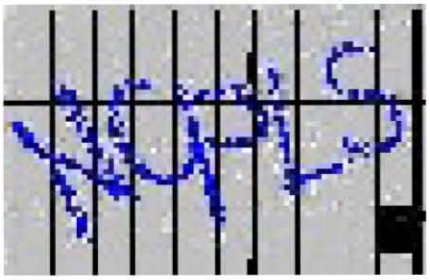

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