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FDRAG Newsletter July, 2014

Please share this newsletter with others who did not receive one because, for now, we are not able to cover every one of you. Please send us your ideas & suggestions for the next newsletter and let us know of any issues you want us to know about or that we may be able to help with. (use our FDRAG mailing address above) Ask your family & friends to check out FDRAG's website <http://fdrag.kk5.org/#>, or connect with FDRAG on Facebook . The next newsletter is due October 2014.

Penpals:

Please know that all your requests to us for a penpal are being read and you are added to our list. We are sorry we can not reply to all requests, so there is no need to write us again, consider you are on the list once you have contacted us. Also, please include some information about yourself when you write us regarding a penpal, that makes it easier for us to find you someone to correspond with. Please use the address above.

Fans: Let us know when you are indigent and don't have a fan, we can help you get one. We are however not able to help with TV's or canteen money.

Canteen vendor: Some of you asked us who the new canteen vendor is. From what we know the contract was extended and Keefe has the contract for another year. We will keep you informed.

Medical Issues:

Several individuals have expressed concern's about the quality of health care provided to death-sentenced prisoners since the private contractor "Corizon" took over. Looking into individual issues regarding medical care is almost impossible because of Federal Laws prohibiting the FDOC from discussing particular medical care. However, if you feel that you have been denied adequate medical care, you can provide us the specific information which will then be brought to the attention of the FDOC secretary's office, requesting an investigation.

Paul Hildwin's conviction overturned after 28 years!: On June 26, the Florida Supreme Court overturned the capital murder conviction of Paul Hildwin and ordered a new trial because new DNA evidence completely contradicted the state's evidence presented at trial. Paul Hildwin, 54, will remain on death row until prosecutors decide whether to retry him. The state's high court ruled 5 to 2 to vacate his conviction, saying DNA testing heavily influenced its decision.

Quarterly Legal Update

On numerous fronts there has been encouraging legal developments regarding Florida's death penalty and the constitutional viability of how the death penalty is being imposed and administered. The first substantial issue is that on May 28, 2014 by a 5 to 4 marginal vote the United States Supreme Court ruled that the Florida Supreme Courts adoption of the bright line rule that to establish entitlement to relief from unconstitutionally imposed sentence of death based on mental handicap was improper in this case attorneys for Freddie Lee Hall argued that that the Florida Supreme Court improperly denied Hall relief as the evidence established that Hall had an objective IQ of below the level widely recognized as being mentally impaired. In *Atkins v Virginia*, the Supreme Court had previously held that the Eighth Amendment prohibited the execution of those mentally impaired, but at that time the court failed to define what constituted sufficient mental impairment, leaving the states to adopt a governing standard.

The Florida Courts elected to establish a mathematical cutoff point of a score of 70 on an IQ test -- and Freddie Hall scored an average of 71. However, the American Psychiatry Association and numerous other renowned medical organizations have long recognized that a certain measure of flexibility must apply and that a score of as high as 75 may very well establish mental impairment. Adopting this medical community consensus the Supreme Court held that the Florida Supreme Courts denial of relief was improper, as it would result in the unconstitutional execution of death sentenced prisoners who are mentally impaired. The case, *Freddie Lee Hall v Florida*, 134 S. Ct. (2013) will require the Florida Courts to now reevaluate Hall's case, as well as numerous others in which the Florida Courts applied this now unconstitutional bright line "70 or below" rule. Each of these currently death-sentenced prisoners will be allowed to present additional evidence to establish that their functional capacity not merely their IQ score alone --- renders them sufficiently mentally impaired to prohibit the imposition of the death penalty.

In another case, a number of the Florida Supreme Court justices recently recognized that the Florida death penalty is unconstitutionally imposed. In this recent case, *Hurst v state*, 39 FLW S293 (May 1, 2014) Justices Pariente, LaBarga and Perry agreed that - dissenting with the majority-.the manner in which Florida continues to impose the death penalty is unconstitutional. The court, however, affirmed Hurst's death sentence.

This has been an ongoing issue since the U.S. Supreme Court ruling in *Ring v Arizona*, 536 U.S. 584 (2002) in which the Supreme Court finding of "aggravating circumstances" used to support imposition of a sentence of death must be found to apply only by a jury. In Florida although the state is required to present evidence beyond a reasonable doubt that at least one of the statutorily "aggravating circumstances" apply, Florida is the only state in the country that does not require the jury to find each alleged aggravating circumstances by a unanimous vote -- or even articulate exactly which aggravating circumstances were found to be applicable.

Both the Florida Supreme Court, *State v Steele*, 931 So.2d. 538 (Fla. 2005) and the media have encouraged the Florida legislative to rewrite the laws governing application of the death penalty to require a unanimous jury recommendation before a sentence of death can be imposed. But the Florida legislative has refused to do so. Several years ago in *Paul Evans v Secretary DOC* and Federal District Court Miami ruled that Florida's refusal to require a unanimous jury recommendation prior to the imposition of a sentence of death rendered the Florida death penalty unconstitutional but the Eleventh Circuit Court of Appeals overturned that ruling upon the finding that only the United States Supreme Court can decide whether the Florida death penalty is unconstitutional under *Ring v Arizona*.

To date, the US Supreme Court has refused to address this ongoing issue. It is hoped that in the light of this recent ruling in *Hurst v State* in which 3 of the Florida Supreme Court justices found that the Florida death penalty is unconstitutional, the Supreme Court will now accept review and declare the Florida death penalty in violation of *Ring v Arizona*. It is widely believed that the Supreme Court will eventually address this issue and find that the Florida Death Penalty is unconstitutionally imposed. The imposed would be retroactively applied to those already under an illegal sentence of death.

Next, in *Daniel Lugo v Secretary DOC* 24 FLwl-FeD.C1260 (Eleventh Circuit, April 14, 2014) the Federal Court of Appeals called upon Federal Courts to establish a federally funded "Capital Habeas Unit" ("CHU") in Florida to oversee Florida cases, For many years now a large number of Florida's death sentenced prisoners have been denied any Federal review of their capital convictions and sentences of death because their state appointed counsel missed the deadline for filing their Federal appeals resulting in any Federal court review being procedurally barred.

A few years ago, in *Lawrence v Florida*, 549 US 327(2007) the Supreme Court addressed this issue of whether death sentenced prisoners can be procedurally barred from Federal court review of their capital convictions and sentences of death, and by marginal majority concluded that under the rules passed by Congress 1996, known as the "Anti-terrorist and Effective Death Penalty Act" ("AEDPA") the Federal Courts had no choice but to deny review if the deadline was missed.

Since this AEDPA took effect at least 30 Florida death sentenced prisoners have been procedurally barred from any Federal Court review despite widespread recognition that the State of Florida has been deliberately stacking the deck by routinely appointing unqualified and incompetent lawyers to represent death sentenced prisoners with the predicable result being procedural default prohibiting judicial review.

The Eleventh Circuit's recognition of this virtual epidemic of capital cases being defaulted is unprecedented and opens the door to compel the creation of a Federally funded agency that already exists in many other death penalty states. Once this new federally funded "Capital Habeas Unit" is established almost certainly in the Northern District Federal Court in Tallahassee, it will serve as a watchdog agency to monitor Florida cases with the power to intervene before a deadline is missed and even provide for "quality" legal representation for death sentenced prisoners. This certainly is something to watch for, and is long over due.

Finally the continue debate over the constitutionality of the lethal injection process remains unresolved. At the time of this writing the mainstream media continues to question the way many states refuse to disclose their sources for obtaining the drugs used to carry out executions as well as how these drugs are being administered. Florida is one of the few states that refuses to disclose both its source for the drugs as well as the qualifications of those administering the lethal cocktail of drugs, despite the fact that Florida has had more "botched executions" than any other state. The Florida Supreme Court has proven itself to be categorically unwilling to adequately address this issue, leaving the federal Courts and the US Supreme Court as our only realistic hope that Florida will be forced to disclose the crucial information necessary to ensure that the lethal injection process is carried out without inflicting unconscious suffering. More importantly, this ongoing debate is forcing more people to realize that there is no humane way to murder those the state has arbitrarily selected to be put to death. By forcing this continuing legal debate on the constitutionality of the death penalty, it is hoped that this will lead to having the death penalty abolished altogether.

On numerous fronts Florida is becoming the focus of the legal debate as to how the death penalty is both imposed and subsequently carried out. As of 2014 Florida has now been practicing capital punishment for 40 years since the landmark decision in *Furman v Georgia* (1972) declared the death penalty "cruel and unusual: perhaps this year will finally see the tide turn against this intolerable vestige of punishments long banned in all other western nations.

1 In 25 Death Sentence Prisoners Is Likely Innocent, Study Finds

WASHINGTON (AP) Science and law have led to the exoneration of hundreds of criminal defendants in recent decades, but big questions remain: How many other innocent defendants are locked up? How many are wrongly executed? About one in 25 people imprisoned under a death sentence is likely innocent, according to a new statistical study appearing in the Proceedings of the National Academy of Sciences. And that means it is all but certain that at least several of the 1,320 defendants executed since 1977 were innocent, the study says. From 1973 to 2004, 1.6 percent of those sentenced to death in the U.S. 138 prisoners were exonerated and released because of innocence. But the great majority of innocent people who are sentenced to death are never identified and freed, says professor Samuel Gross of the University of Michigan Law School, the study's lead author. *Huffington Post* 04/28/2014

'Timely justice' death-penalty law upheld' TALLAHASSEE -- The Florida Supreme Court on Thursday upheld the constitutionality of a 2013 law that legislative supporters said would reduce delays in carrying out the death penalty. Justices, in a unanimous decision, rejected arguments that the so-called "Timely Justice Act" would be an unconstitutional infringement on the court system's authority and separation of powers, and violate due-process and equal-protection rights. In a concurring opinion, Justice Barbara Pariente emphasized that the law would not affect the Supreme Court's "solemn responsibility" to block executions if necessary to ensure that defendants' rights are protected. *Miami Herald*, June 12th 2014

Puzzle: The answer to the March puzzle (The Monkey and the Coconut) is: 2519 coconuts. We received many correct answers to this challenging puzzle, we randomly pick out 1 name among the right answers and the winner is Jose A Jimenez. Jose congratulations from all of us at FDRAG and the prize of 25 dollars will be sent to your account through Jpay.

Faces of Death Row: We want your stories! Please send us your life stories, photos, websites, blogs, so we can add them to the section Faces of Death Row of our FDRAG website. Also send us your artwork or poems. (We can send the art work & pictures back to you if you want) Please use the address on top of the newsletter.

Release of execution-drug information could cause “jeopardy,” state says

The Tampa Tribune Published: June 3, 2014

The state has rejected a public records request about its execution drugs, saying releasing the information would “jeopardize a person's safety.” The letter from the Department of Corrections to a Tallahassee anti-death penalty activist was dated May 8 and provided to the Tribune/Scripps Capital Bureau this week.

In March, Sheila Meehan, chair of Tallahassee Citizens Against the Death Penalty, asked the department for records showing how it was getting the drugs used for lethal injections and from where. Meehan's request came after a botched execution in Oklahoma, in which the procedure was halted but the condemned man later died of a heart attack. The information Meehan sought is “confidential” and exempt from the state's open-records law, department attorney Rana Wallace wrote. Specifically, Wallace cited the exemptions of “information which if released would jeopardize a person's safety” and “information which identifies ... any person prescribing, preparing, compounding, dispensing, or administering a lethal injection.”

Religious Diet Program and Hot Meals:

Many of you have written in regard to the revised "Religious Diet Program" ("RDP") and the refusal to provide any hot meals. FDOC eliminated all hot meals in the RDP before subsequently amending Fla. Admin. Code 33-204.003 to eliminate the statutory requirement of providing "at least" two hot meals each day. FDRAG and numerous others formally opposed the then "proposed rule", but without any form of administrative hearing and ignoring the strong opposition to the elimination of requiring hot meals, The FDOC padded and adopted this amendment to FAC 33-204.003 on May 15, 2014.

In communication with the FDOC secretary's office (all email exchanges are posted in their entirety of the FDRAG website at FDRAG.org. FDRAG specifically pointed out that both the American Correctional Standards on minimal treatment of prisoners, and established Federal Case Law, recognize the requirement of at least two hot meals each day. Incredibly, the FDOC acknowledged this requirement, but stated that "standard 4-4326 of the American Correctional Associations Standards for Adult Correction Institutions" (4th edition)... is not mandatory standard and noncompliance would not result in an automatic failure of an accreditation unit". Further communications with the FDOC Food Service Director seemed to indicate that the real problem with the unexpected cost of the Religious Diet Program as the FDOC did not anticipate at least 3,000 inmates requesting participation in the RDP with many thousands more still waiting. The Food Service Director implied that this year's budget will address these concerns. The FDOC fiscal year runs from July 1 to June 30 of each year. If the FDOC did allocate additional funds to improve the RDP, then we should see substantial changes after July 1. FDRAG is doing all it can to continue to advocate on behalf of all death sentenced prisoners on this issue. This continued advocacy is intended to benefit the collective death-row population and for that reason it is imperative that we hear from you so that we can identify the issues that are most important. Although it is not always possible to convince the FDOC to make positive changes, even with our extremely limited resources we do what we can.

FDRAG is dedicated to working to improve the living conditions on death row in Florida and we are here to try to help you with your concerns, complaints, issues etc. For those who would like help from FDRAG, we do ask that you contact us directly. All the best on behalf of, The Florida Death Row Advocacy Group (FDRAG) www.fdrag.kk5.org

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