



Newsletter # 32
March, 2014

We will try to make a newsletter like this one every 3 months. We are depending on members and volunteers to print and send the newsletters and to make this easier and more affordable we will keep the newsletters relatively short, **Please share this newsletter with others** who did not receive one because, for now, we are not able to cover every one of you. Do send us your ideas & suggestions for the next newsletter and let us know of any issues you want us to know about or we may be able to help with. Our next newsletter will be due around June 2014

Requesting a Penpal

Please know that all your requests to us for a penpal are being read and you are added to our list. We will try to find you someone to correspond with, without abusing the FDOC rule on soliciting for penpals, and will let you know once we succeed. 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.

Info on the new 2014 USPS Postage Rate Increases

- Letters (1 oz.) — 3-cent increase to 49 cents
- Letters additional ounces — 1-cent increase to 21 cents
- Letters to all international destinations (1 oz.) — \$1.15
- Postcards — 1-cent increase to 34 cents

We received a lot of answers to the Christmas Einstein puzzle, most of the answers were correct, that proves how many Einsteins there are on the row. (The answer was: "The German owns the fish") However there can only be one winner and the winner of the Christmas Einstein puzzle is **Robert Consalvo**. Robert, congratulations from all of us at FDRAG and we will send you the money order of 25 dollar. FDRAG is offering again a **money order of 25 dollar** to the winner of another challenging puzzle: **The Monkey and the Coconut**. Please send your answers, before May 30, to: FDRAG-CARDS, 325 Garden Lane, Atlantic Beach, FL 32233

The Monkey and the Coconut

Ten people land on a deserted island. There they find lots of coconuts and a monkey. During their first day they gather coconuts and put them all in a community pile. After working all day they decide to sleep and divide them into ten equal piles the next morning. That night one castaway wakes up hungry and decides to take his share early. After dividing up the coconuts he finds he is one coconut short of ten equal piles. He also notices the monkey holding one more coconut. So he tries to take the monkey's coconut to have a total evenly divisible by 10. However when he tries to take it the monkey conks him on the head with it and kills him.

Later another castaway wakes up hungry and decides to take his share early. On the way to the coconuts he finds the body of the first castaway, which pleases him because he will now be entitled to 1/9 of the total pile. After dividing them up into nine piles he is again one coconut short and tries to take the monkey's slightly bloodied coconut. The monkey conks the second man on the head and kills him. One by one each of the remaining castaways goes through the same process, until the 10th person to wake up gets the entire pile for himself. What is the smallest number of possible coconuts in the pile, not counting the monkeys?

Death Penalty Information Center's Press Release on the Death Penalty in 2013

Executions Drop Below 40 for Only Second Time since 1994

Death Sentences Remain Near Record Lows, Number of States Repealing Capital Punishment Grows, and Public Support for Death Penalty at 40-Year Low

(Washington, D.C.) With 39 executions in 2013, this year marks only the second time in nearly two decades that the United States executed less than 40 people, according to a report released today by the Death Penalty Information Center (DPIC). One of the reasons for fewer executions in 2013 was states' inability to obtain lethal injection drugs.

Executions declined about 10% compared to 2012 - from 43 last year to 39 this year - and by 60% since 1999. There were 80 new death sentences in 2013, about the same as last year (77), which was the lowest number since 1973. Death sentences have declined by 75% from 1996, when there were 315.

"Twenty years ago, use of the death penalty was increasing. Now it is declining by almost every measure," said Richard Dieter, DPIC's Executive Director and the author of the report. "The recurrent problems of the death penalty have made its application rare, isolated, and often delayed for decades. More states will likely reconsider the wisdom of retaining this expensive and ineffectual practice."

In line with the death penalty's decline, the number of states with capital punishment laws dropped to 32 this year, as Maryland became the 18th abolition state. Six states in six years have abandoned capital punishment: Maryland, Connecticut, Illinois, New York, New Jersey, and New Mexico.

In 2013, public support for the death penalty as measured in the annual Gallup poll declined to 60%, its lowest level in 40 years. In Boston, a strong majority (57%) of residents supported a sentence of life without parole for Dzhokhar Tsarnaev, the suspect in the Boston Marathon bombing, while only 33% of respondents supported a death sentence.

State-by-state data illustrate the decline in death penalty use this year:

- Two states, Texas and Florida, were responsible for the majority (59%) of executions nationwide. Texas had 16 executions and Florida had 7.
- For the sixth year in a row, Texas had less than 10 death sentences, a stark contrast from 1999, when it recorded 48.
- Prominent death penalty states, including South Carolina, Virginia, Tennessee, and Louisiana, had no death sentences in 2013.
- California had about 30% of the country's death sentences, though the state has not carried out an execution in seven years.

In October, DPIC released an analysis of the death penalty by county that showed only two percent of the counties in the U.S. have been responsible for the majority of cases leading to executions since 1976. Eighty-five percent of the counties in the U.S. have not had a single case resulting in an execution in more than 45 years. (deathpenaltyinfo.org/twopercent)

We want to remind you of the proposed rule to disallow inmate internet presence on any social network websites such as Facebook, Twitter, Instagram, Tumblr, Vine, MySpace, LinkedIn, Pinterest, as well as pen pal and dating websites.

"Florida Capital Legal News Update"

The Florida death penalty continues to remain the subject of legal controversy on cross multiple fronts, not the least of which is the recent political push to expedite more executions under the 2013 Florida "Timely Justice Act", which conservative pro-death penalty politicians pushed through on the eve of an election year. See, Florida Statutes, Chp. 922.052 (2013), For those unfamiliar with this T.J.A., it creates a process in which the Clerk of the Florida Supreme Court will now be statutorily mandated to compile a list of death sentenced prisoners who have completed their first round of state and federal appeals (i.e., "direct appeal" and state "post conviction", as well as federal "habeas" review), and forward this list to the Governor, with continuous updates every three months.

Upon receipt of this presumably "death warrant eligible" prisoners, the Governor's office must then determine whether each prisoner has completed the "clemency" review process. Once the Governor's office determines that clemency is not warranted, under this new law the Governor is now required to sign a "death warrant" within 30 days and the prisoner must then be scheduled for execution within 180 days. As of this writing, there are now 124 men (no women) on the "Warrant Eligible" list. The constitutionality of this new law remains pending before the Florida Supreme Court. It should be noted that a similar political attempt to manipulate the process back in 2000 ("Death Penalty Reform Act of 2000") was sub sequentially declared unconstitutional by the Florida Supreme Court upon the finding that under the "separation of powers" clause of the Florida Constitution, the State Legislature cannot pass laws requiring another separate branch of government to act. Once again, this new "Timely Justice Act" of 2013 appears to clearly violate that constitutional prohibition, and it is widely believed that this T.J.A. of 2013 will also be declared unconstitutional by the Florida Supreme Court in coming months.

Other substantial challenges remain pending. Although in 2013 the United States Supreme Court declined to review the question of whether Florida's death penalty was unconstitutional under "Ring v Arizona", that does not mean the issue is resolved. In Paul Evans v State of Florida, the primary constitutional argument was that Florida is now the "only" state that allows a person to be sentenced to death by a simple majority (rather than unanimous) jury recommendation. Of the 32 states that allow for the death penalty, Florida remains alone in this continued practice despite strong condemnation by many lower courts. The significance of this issue cannot be overstated. The vast majority of those currently under sentence of death in Florida were sentenced by a less than unanimous vote, which arguably renders their death sentences unconstitutional if and when the Supreme Court agrees to hear the issue and presumably finds it to violate the constitutional prohibition against imposing and inflicting a "cruel and unusual punishment." This is an issue that will continue to be raised until the Supreme Court does grant review and hopefully declare the Florida death penalty itself unconstitutional by not requiring unanimous vote by the jury and refusing to compel Florida juries to specifically identify what "statutory aggravators" they relied upon to make their recommendations to impose the death penalty.

On a more limited issue, the Supreme Court did grant review in the case of "Freddy Lee Hall vs. State of Florida" and a decision will be rendered within the coming months. In Hall v Florida, the Supreme court must decide whether the Florida courts practice of deciding whether a person is mentally disabled, and therefore cannot be executed, by strictly adopting an I.Q. "cut-off" at 70 and below as the threshold violates "Adkins v Virginia" 536 US 304(2002), which held that mentally retarded prisoners cannot be put to death. The argument is that by adopting a strict and inflexible "70 or under" numerical threshold, it improperly precludes consideration of a functional capacity standard that will often find those who might possess an I.Q. of marginally above 70 to never the less properly take into account the functional capacity of prisoners that by less draconian standards would be declared mentally disabled, it would effectively vacate death sentences imposed upon a number of Florida prisoners who are unquestionably "marginally" mentally disabled. On March 3, the U.S. Supreme Court heard oral arguments in Hall v. Florida and has taken on the case,

Last but by no means least, the question of how the Supreme Courts 2012 ruling in "Martinez v Ryan" 132 A.Ct. 1308, will apply remains uncertain. In Martinez the Supreme Court departed from a long established rule of law that held that since there is no per se "constitutional" right to collateral, post conviction counsel, there

was no right to the "effective" assistance of counsel, and has now held that in states that require the convicted prisoner to raise claims that he or she was deprived of the constitutional right to competent legal representation at trial in collateral, post conviction appeals then there is an "equitable" right to effective assistance of collateral, post conviction counsel. This is an important development as Florida has a long history of deliberately appointing lawyers to capital cases that are not qualified or worse, incompetent. In too many cases, the death sentenced prisoners ability to challenge his or her conviction and death sentence are circumvented when the assigned lawyer fails to raise the claims properly or fails to timely file the appeal altogether, resulting in review of all claims "procedurally barred". But the Florida Supreme Court has held that *Martinez v Ryan* does not apply to state court review and can only be presented to the Federal Courts, while the Federal Courts are refusing to recognize claims raised under *Martinez*. By refusing to allow *Martinez* based claims to be brought before the state courts, it raises the issue of whether the Florida post conviction review process is itself constitutionally adequate as in *District Attorney's Office v Osbourne* 129 S.Ct. 2306(2009) the Supreme Court held that a states post conviction review process remains constitutional providing that it "supports with fundamental fairness" and allows adequate opportunity to vindicate the substantive rights in state court. This is currently now before the Florida Supreme Court in *Lambrix v State*, Fla.S.Ct. case no. SC13-1471, and will be pursued to the U.S. Supreme Court.

In Memoriam

Remembering those we have lost on the row since Christmas 2013. May they now R.I.P.

Juan Chavez

16 March 1967 – 12 February 2014

Paul Howell

25 June 1965 – 26 February 2014

Thomas Knight

4 February 1951 – 7 January 2014

Robert Patton

28 April 1957 – 7 January 2014

Anthony Washington

27 September 1956 – 19 January 2014

Our thoughts and prayers are with all their families, friends, pen-friends, and friends they have left behind on the row.

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., but we unfortunately can't help with most legal issues or financial help. For those who would like help from FDRAG, we do ask that you contact us directly. Please do not ask others to ask for our help, except in special circumstances, of course. When we are contacted directly, we can decide if we can help and how, or why we can't. All the best on behalf of,

The Florida Death Row Advocacy Group (FDRAG) www.fdrag.kk5.org

FDRAG Director

Geesje de Jong

Lykourgou 21,

15231 Chalandri,

Athens, Greece

FDRAG Assistant Director

Janneke van Steenbergen

Maasdijk 1c W/S LEBA

5317 KP Nederhemert- Noord

The Netherlands