

# Coalition For Prisoners' Rights Newsletter

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February 2002

## ASSET FORFEITURE UPDATE

One and a Half Years After CAFRA

On April 25, 2000, President Clinton signed into law the Civil Asset Forfeiture Reform Act of 2000 (CAFRA), which made substantial reforms in the procedures in federal civil forfeiture cases.

The positive reforms of the new law include: (1) raising the government's burden of proof to "preponderance of the evidence" (formerly it was "probable cause"); (2) abolishing the cost bond; (3) allowing the court to appoint counsel (at the government's expense) in some cases; (4) allowing the property to be returned pending trial upon a

showing of substantial hardship; (5) relaxed deadlines on claimants, and some deadlines (finally!) on the government; (6) allowing successful claimants to sue for damages to the property during the period of seizure, and (7) allowing successful claimants to get their attorney's fees reimbursed if they win.

Not all of CAFRA's changes are good. It added about 100 new forfeitable offenses. And even the positive reforms don't apply to all forfeiture cases - Customs, IRS and a few other types of forfeiture statutes were exempted from CAFRA's procedural reforms.

(continued on next page)

### WE STAND IN SOLIDARITY WITH ALL THOSE CELEBRATING BLACK HISTORY MONTH

"Black History *is* U.S. History. The grandmother who raised you *is* Black History. The time you spend within prison walls *is* Black History. The woman who must now raise your children in your absence *is* Black History. Being the first in your immediate family to graduate from college *is* Black History. Black History *is* human history." ~ Carl Wesley, in "The Prison Mirror" February 2000

**FORWARD TO THE STRUGGLES AND VICTORIES OF 2002!**



## ASSET FORFEITURE cont.

However, the reforms do apply to the most commonly used forfeiture statutes of the past decade.

When do CAFRA's reforms take effect?

By the terms of the statute, CAFRA's procedural reforms are to be applied to forfeiture proceedings "instituted" after August 23, 2000. The circuits differ on what that means.

The Sixth Circuit held that CAFRA's reforms applied to a forfeiture case pending on appeal when CAFRA took effect. *United States v. Real Property in Section 9*, 241 F.3d 796 (6<sup>th</sup> Cir. 2001). This is great news for federal forfeiture victims in the Sixth Circuit - who will be able to apply the government's new burden of proof even if their case was filed before CAFRA was enacted.

Courts outside the Sixth Circuit have not completely embraced the Section 9 ruling.

The Tenth Circuit held in *United States v. \$30,006.25*, 236 F.3d 610, 615 (10<sup>th</sup> Cir. 2000), that CAFRA did not apply to a case that was pending on appeal when CAFRA took effect. However, in *United States v. Lot No. One of the Lavaland Annex*, 256 F.3d 949 (10<sup>th</sup> Cir. 2001), the Tenth Circuit took a look at the Section 9 ruling and concluded that it could be "that it is the date of the commencement of the new trial that determines which statutory provi-

sion should be applied," and remanded the case for further consideration.

One district court in California rejected the Section 9 ruling. *United States v. \$100,348*, 157 F.Supp.2d 1110 (C.D. Cal 2001).

Are CAFRA's positive reforms helping?

Eliminating the cost bond was a great improvement, but it didn't apply to all cases. The change in the burden of proof finally gives claimants a fighting chance at trial! But innocent owners still bear the burden of proving their innocence.

For those who can't afford an attorney, CAFRA wasn't much help. Only indigent victims whose primary residence was seized have an actual right to counsel. If a forfeiture victim has a court appointed attorney in a related criminal case, the court may appoint counsel in the forfeiture case. However, victims not charged with a crime are not entitled to court appointed counsel at all!

## RESOURCES

Forfeiture Endangers American Rights Foundation (FEAR)  
20 Sunnyside, Suite A-419  
Mill Valley, CA 94941  
(415) 389-8551  
[www.fear.org](http://www.fear.org).

(manual available for a reduced price until March 1st)



# IN MEMORIAM

Sixty-four people were executed by state governments and two were executed by the federal government in the U.S. in 2001. By the end of 2001, 749 people had been executed since the U.S. moratorium on government murders ended in 1976.

1/9	Jack Clark	TX	6/11	Timothy McVeigh	US
1/9	Eddie Trice	OK	6/13	John Wheat	TX
1/11	Robert Glock	FL	6/14	Jay Scott	OH
1/11	Wanda Jean Allen	OK	6/19	Juan Raul Garza	US
1/16	Floyd Medock	OK	6/26	Miguel Richardson	TX
1/18	Alvin Goodwin	TX	6/27	Jim Lowery	IN
1/18	Dion Smallwood	OK	7/11	Jerome Mallett	MO
1/23	Mark Fowler	OK	7/11	James Wilkens Jr.	TX
1/25	Billy Ray Fox	OK	7/17	Jerald Harjo	OK
1/29	Caruthers Alexander	TX	8/08	Mack Oran Hill	TX
1/30	Loyd Lafevers	OK	8/16	Jeffery Doughtie	TX
2/1	D.L. Jones	OK	8/24	Clifton White	NC
2/7	Stanley Lingar	MO	8/28	James Elledge	WA
2/8	Adolph Hernandex	TX	8/28	Jack Dale Walker	OK
3/1	Thomas Akers	VA	8/31	Ronald Frye	NC
3/1	Robert Clayton	OK	9/18	James Roy Knox	TX
3/7	Dennis Dowthitt	TX	10/03	Michael Roberts	MO
3/9	Willie Fisher	NC	10/12	David Junior Ward	NC
3/14	Gerald Bivins	IN	10/18	Christopher Beck	VA
3/27	Robert Massie	CA	10/18	Alvie Hale	OK
3/27	Ronald Fluke	OK	10/22	Gerald Mitchell	TX
3/28	Tomas Ervin	MO	10/24	Stephen Johns	MO
4/3	Jason Massey	TX	10/25	Terry Mincey	GA
4/21	Sebastian Bridges	NV	11/06	Jose High	GA
4/25	Mose Young	MO	11/06	Terry Clark	NM
4/25	David Goff	TX	11/14	Fred Gilreath	GA
4/26	David Dawson	DE	11/14	Jeffery Tucker	TX
5/1	Marilyn Plantz	OK	11/15	Emerson Rudd	TX
5/8	Clay King Smith	AR	11/30	John Hardy Rose	NC
5/22	Terrance James	OK	12/04	Lois Nadean Smith	OK
5/23	Samuel Smith	MO	12/06	Sahib Al-Mosawi	OK
5/25	Abdullah Hameen	DE	12/11	Byron Parker	GA
5/29	Vincent Johnson	OK	12/12	Vincent Cooks	TX

*Seventeen or 26% of those killed were African-American.*





## VOICES FROM INSIDE

since 1976

### NOT SO EASY

Bangkok Thailand November 11, 2001

As you may know, life over here is not so easy. We get only 2 meals a day' remaining necessities we must buy. I am looking for help. Afzal H. Toor, Building #2, Klong Prem Prison, 33/2 Ngam Wang Wan Road, Bangkhien, Bangkok, Thailand 10900. (Postage: 80 cents)

### THE INCONVENIENCE

Ontario OR December 19, 2001

I regret the inconvenience that Oregon prisons pose to organizations. The mail regulations that ODOC and SRCI, in particular, follow are in direct contravention to a recent federal court ruling in the 9th federal circuit. A DOC official said the requirement that mail be 1st or 2nd class was "to cut down on the amount of mail an inmate receives - to save on personnel costs in the mail room" The court ruled that ODOC could not limit mail to 1st and 2nd class and must allow all US mail that does not violate or compromise safety and security. ODOC's response was twofold. First they informed the population that we could register to receive mail from NPOs and second, they promptly continued to refuse all classes of mail other than 1st or 2nd...

### PUBLICATIONS

Rosharon TX December 20, 2001

The United Nations Department of Public Information, United Nations Plaza, New York NY 10017, publishes a booklet: "Standard Minimum Rules for the Treatment of Prisoners" and also "Procedures for the Effective Implementation of the Rules."

### MADE UP

Santa Fe, NM December 23, 2001

...Wardens and other officials have made up rules or regulations that say some inmates cannot receive mail or possess such things as books, magazines or any type of material from an outside vendor. And officials are actually sending back or refusing to accept or to give prisoners literature, court documents, and mail from vendors, lawyers and their families. Prison guards, with the approval of these wardens have and are using things like showers, recreation and prisoners' mattresses, blankets and even their meals - their FOOD - as a means of leverage or punishment...



**Mailing list additions and address changes should go into effect within two months from their postmarked date. We don't have the resources to acknowledge these requests by letter. Requests for referrals and other correspondence will be answered within four to six weeks. Letters intended for publication must say "Do Print."**

The Coalition makes information available on resources and services for prisoners. We strongly urge that readers keep copies of all papers, especially legal papers, sent to those offering assistance, and be careful about sending money. *In most cases we do not have direct experience with the quality or reliability of the services provided by the groups mentioned. NONE OF US ARE LAWYERS.*

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## **MORE HELP**

Huntsville TX      December 25, 2001

This March the lawsuit regarding offender disciplinary and grievance processes and procedures will finally be filed from all the system-wide information provided. More help is needed. Please send an unsworn declaration, consisting of your name and number, and permission for Gregory Douglass Johnson 652074 of the Ellis I Unite to use your disciplinary and grievance history. Also attach a note re whether you would like to be subpoenaed for trial.

## **SEEKING**

Livingston TX      December 28, 2001

I am seeking inmates who were represented by a Candelario Elizondo, attorney from Houston. Write: Howard Rich, 847823, 12002 South FM 350, Livingston TX 77351-9630.

## **F.O.R.C.E.**

Beaumont TX      January 2002

The F.O.R.C.E. (Foundation Opposing Repressive Correctional Environments) is a prison based, nonprofit operation formed and maintained by prisoners, because we understand and believe that until we, as inmates come together in solidarity our cries are going to go unheard...the primary focus of F.O.R.C.E. is the repressive mental and physical conditions being imposed on prisoners in super max/super seg/ad seg, closed custody and solitary, especially in TDCJ, which has the largest number of such facilities. For more information on F.O.R.C.E. and its sister organization P.E.E.P (Prisoners Ethics Evaluation Poll), contact Robert (J.D.) Smith, 775157, 3060 FM 3514, Beaumont TX 77705.

## **PRISONER OUTREACH PROJECT (POP)**

East Lake MI      January 2002

Is a project for Gay, Lesbian, Bisexual, and Transgender prisoners, to put a stop to the harassment and discrimination that happens in prisons. We are currently working on: membership, bunkie situations, and the comments and actions of prison officers and employees of the DOC. Contact: Lee Wilson II, 325150, PO Box 38, East Lake MI 49626.





### **TIME LIMIT**

Gatesville TX      January 16, 2002

TDCJ inmate mail policy, as defined by Guajardo litigation sets a 72 hour time limit for the inspection and approval by officials of incoming and outgoing prisoner mail. Yet there is (with the CPR Newsletter) a 3 to 4 week approval period

### **ONE OF THE OLDEST UNITS**

Parchman MS      January 2, 2002

Unit 17, "Death Row" at Parchman is filled to capacity with inmates who do not have a death sentence. "Death Row" is one of the oldest units at Parchman. Inmates on Death Row had to go through the courts to prove the unit is unfit to live in, e.g. no hot water, no heat, cold food. The superintendent put 56 inmates in this unit without doing the necessary repairs to receive the \$1.5 million the condemned unit generates...

### **WHERE TO TURN FOR HELP**

Santa Fe NM      January 9, 2002

If someone you know is afflicted with mental illness and serving time in New Mexico and they don't know where to turn for help, come to the new Alternative Placement Area (APA) at the North supermax. We have it all: inmates not capable of general population living due to mental illness, housed in lockdown with self-mutilation, inadequate care...

### **FAMILIES AGAINST FELONY MURDER (FAF)**

East Lake MI      January 10, 2002

We must unite as a people to change the felony-murder law in Michigan. It is cruel and unusual punishment. FAF is dedicated to changing this unjust law. For information contact: Families Against Felony-Murder, PO Box 1425, Lincoln Park MI 48146.

### **BEAR WITNESS FOR ONE ANOTHER**

Tamms IL      January 13, 2002

It's up to us prisoners here at Tamms to bear witness for one another. Although it may not be you today, it may be you down the road and the same treatment they deny me today, they'll deny you in the future! If worst comes to worst, we can be witnesses for each other's families because medical officials at Tamms are all about profit, not health care! I know there are several men here who are sick. We all need to be aware and be witnesses for each other that's locked in these cells





## **VOICES IN SOLIDARITY**

### **A JAILHOUSE LAWYER'S MANUAL (JLM)**

The 5th Edition of this invaluable resource published in May of 2000, is currently available at the special price of \$31 for orders shipped directly to individual prisoners. All orders must include name, prisoner number, mailing address and a check, money order (or the equivalent in postage stamps) payable to the Columbia Human Rights Law Review. Allow 8 weeks for delivery. There are no used copies. A Supplement to the 5th Edition should be out by the Summer of 2002; more information about it will be available by April. There are also plans for a Spanish language JLM. Write: Columbia Human Rights Law Review, 435 West 116th Street, New York NY 10027.

### **NEW PRISON CORRESPONDENCE MINISTRY**

Is looking for women and men prisoners to correspond with. Send letters: c/o Deacon Charles Nixon, Director, Beloved Saint John Evangelistic Church, 2601 W Lehigh Ave, Philadelphia PA 19132.

### **"HEART TO HEART"**

This free Christian Newsletter is available for the asking. It contains faith and hope building messages, and also the addresses of many bible study programs. Write: PO Box 1442, Woodward OK 73802.

### **WWW.PRISONTALKONLINE.COM**

"As a recently released federal inmate, my goal is to establish a means of communication for everyone with an interest in the prisoner support system. I have just started a non-profit website dedicated to enhancing information delivery and communication in this area. Access is completely free."

### **L'ABOLITION DE LA PEINE DE MORT**

"Twenty years after France abolished the death penalty in 1981 the fight engaged in by supporters of the abolition of the death penalty is still a current issue in many countries...I give you my support and encouragement in your fight to obtain this victory for humanity."  
Raymond Forni, President de l'Assemblée nationale, France.

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# Crime of the Month

aka Crimetoppers

When the Anthrax scare hit, Bayer Corporation, in what appeared to be a patriotic and magnanimous gesture, offered to sell Cipro, a drug for treating anthrax, for 98 cents a pill instead of the \$1.89 it had been charging the US government. The drugstore price for Cipro was roughly \$4.50 a pill while companies in India were selling a generic version for under 20 cents.

However, it seems Bayer was not motivated by altruism but by congressional threats to force the administration to use its authority to issue compulsory licenses to generic companies to make Cipro for sale to the government. According

to the Health GAP Coalition, "If the US had agreed to license production of generic Cipro, their arguments against patent flexibility in poor countries for the generic AIDS drug would have fallen apart."

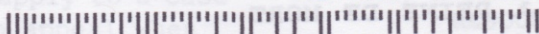
By striking a deal with Bayer, the administration avoided setting a precedent on the generic issue. Other countries quickly alleged hypocrisy in the US position, noting US willingness to use compulsory licensing at home as they work to block poor countries' efforts to do the same thing while thousands of their citizens die from untreated AIDS.

That is our Crime of the Month.



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CAROL L. COUCH



02/20

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