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Felony "throwing" law

BILL NUMBER: A4198

PURPOSE OR GENERAL IDEA OF BILL:

To deter certain persons from harassing police or peace officers by inflicting such officers with bodily fluids.

SUMMARY OF SPECIFIC PROVISIONS:

A new section is added to the penal law creating the class E felony of aggravated harassment. A person is guilty of aggravated harassment of a police or peace officer when, with intent to harass, annoy, threaten, harm or alarm a person whom he/she knows or reasonably should know to be a police officer or a peace officer engaged in the course of performing

their official duties, he/she causes the police officer or peace officer to come into contact with blood, seminal fluid, saliva, urine or feces, by throwing, tossing or expelling such fluid or material.

JUSTIFICATION:

Police and peace officers are often faced with situations where suspects, criminals and convicted felons act out their frustrations through the act of throwing, tossing or expelling bodily fluids. By increasing the penalty for acting out in this fashion, this bill should discourage this type of unacceptable behavior.

PRIOR LEGISLATIVE HISTORY:

A.3792/S.1083 of 1995-96 - Referred to Codes. A4100/S2556 of 1997-98
Referred to Codes

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

First day of September next succeeding the date on which it shall have become a law.

S T A T E O F N E W Y O R K

4198

1999-2000 Regular Sessions

I N A S S E M B L Y

February 8, 1999

Introduced by M. of A. MARKEY, HARENBERG -- Multi-Sponsored by -- M. of A. ARROYO, CONNELLY, GALEF, KOON, LAFAYETTE, MAYERSOHN -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to establishing the crime of aggravated harassment of police officers, peace officers, court officers, emergency medical technicians or paramedics

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The penal law is amended by adding a new section 240.33 to

2 read as follows:

3 S 240.33 AGGRAVATED HARASSMENT OF A POLICE OFFICER, PEACE OFFICER, COURT

4 OFFICER, EMERGENCY MEDICAL TECHNICIAN OR PARAMEDIC.

5 A PERSON IS GUILTY OF AGGRAVATED HARASSMENT OF A POLICE OFFICER, PEACE

6 OFFICER, COURT OFFICER, EMERGENCY MEDICAL TECHNICIAN OR PARAMEDIC WHEN
7 WITH INTENT TO HARASS, ANNOY, THREATEN, HARM OR ALARM A PERSON WHOM HE
8 KNOWS OR REASONABLY SHOULD KNOW TO BE A POLICE OFFICER, A PEACE OFFICER,
9 COURT OFFICER, EMERGENCY MEDICAL TECHNICIAN OR PARAMEDIC ENGAGED IN
THE
10 COURSE OF PERFORMING HIS OFFICIAL DUTIES, HE CAUSES THE POLICE OFFICER,
11 PEACE OFFICER, COURT OFFICER, EMERGENCY MEDICAL TECHNICIAN OR
PARAMEDIC
12 TO COME INTO CONTACT WITH BLOOD, SEMINAL FLUID, SALIVA, URINE OR FECES,
13 BY THROWING, TOSSING OR EXPELLING SUCH FLUID OR MATERIAL.
14 AGGRAVATED HARASSMENT OF A POLICE OFFICER, PEACE OFFICER, COURT OFFI-
15 CER, EMERGENCY MEDICAL TECHNICIAN OR PARAMEDIC IS A CLASS E FELONY.
16 S 2. This act shall take effect on the first day of November next
17 succeeding the date on which it shall have become a law.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets { } is old law to be omitted.

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Senate Bills to Watch

GANGS

A Senate-passed bill would make numerous provisions increasing the penalties for gang-related activities. This would include creating the crimes of recruiting for enterprise corruption in the third, second and first degrees. (S. 6937 - Senator Dale Volker, R-C, Depew; delivered to the Assembly)

CORRECTIONAL FACILITIES

The Senate passed bills that would:

authorize the head of any correctional institution to charge taxes on

sales of commissaries and canteens to be used for the general purposes of the institution. (S. 2779 - Senator Michael Nozzolio, R-C, Fayette)

require inmates in New York State correctional facilities to make co-payments in the amount of seven dollars for medical treatment. (S. 3429 - Senator Nozzolio)

These bills were delivered to the Assembly.

RESIDENTIAL TREATMENT FACILITIES

A Senate-passed bill would establish the crime of absconding from a Residential Treatment Facility, a Class E felony. The bill would also provide for the interruption of the sentence of imprisonment for such an absconder. (S. 5180 - Senator Dale Volker, R-C, Depew; delivered to the Assembly)

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INMATE PUT IN SOLITARY FOR 4 YEARS AWARDED \$660,000 IN DAMAGES

Buffalo News, Saturday, 02/27/99

by Ben Dobbin, Associated Press

ROCHESTER - An inmate who killed a New York City police officer in 1988 was awarded \$660,000 in damages for being locked up in solitary confinement for more than four years.

A Federal jury found that David McClary was subjected to mental distress and his civil rights were violated by prison officials who kept him confined in a small cell for 23 hours a day from Nov. 20, 1989, to March 11, 1994.

Prison officials claimed that the notoriety of his crime made it risky to put McClary in the general prison population.

McClary's time in solitary was apportioned among three prisons, including two in Western New York; the Attica Correctional Facility and the Wende Correctional Facility. The other was the Southport Correctional Facility in Elmira.

After hearing two weeks of testimony, a jury on Tuesday night found former state prisons Commissioner Thomas A Coughlin III and three former superintendents at the Attica and Wende prisons liable for damages. A deputy superintendent at Attica was found liable for \$10,000. But for the three years McClary spent in solitary in Wende, \$650,000 in damages were awarded against Coughlin, prison superintendent Frank Irvin and Ricky Branning, Irvin's deputy for security.

The verdict sends a message to prison authorities that "when they treat people like that, there are going to be consequences," John Boston, of the Legal Aid Society, said Friday.

"Most people are out of solitary within a matter of months," Boston said, "Four years or even one year is definitely on the other side of the line."

But a state lawmaker, Sen. Michal Nozzolio, described the confinement as "completely proper and just."

"Criminals who kill cops should not expect an easy time of it in prison," said Nozzolio, chairman of a Senate committee for crime and corrections.

Prosecutors said they will ask U.S. Magistrate Jonathon Feldman to set aside the verdict, and the state is considering an appeal.

McClary, now 33, is serving 25 years to life in prison for killing Officer Edward Byrne in February 1988

as he sat in a patrol car guarding the home of a witness in a drug case in the borough of Queens.

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Contract between Council 82/AFSCME and Hite and Casey, P.C.

Agreement for Legal Services

This agreement is made effective the first day of July, 1998 between the New York State Law Enforcement Officers Union, District Council 82, AFSCME, AFL-CIO, ("Council 82") having it's principal offices at Hollis V. Chase building, 63 Colvin Ave. Albany, New York 12206 and Hite and Casey, P.C. ("Law Firm") having an office at 63 COLvin Ave. Albany, New York 12206.

Scope

The Law Firm will undertake the following and all other legal services assigned to it by Council 82's President, Executive Vice President, Executive Committee, Executive Board and/or Convention body.

- 1) Represents members of bargaining units represented by Council 82 with respect to internal affairs and disciplinary investigations and/or interogations.
- 2) Represent Council 82, it's officers, affiliates and/or members of bargaining units represented by Council 82 with respect to the folowing:
 - A) Improper Practice charges filed with the Public Employees Relations Board;
 - B) Contract Grievance Arbitrations relating to collective bargaining agreements to which Council 82 and/or it's affiliates are parties.
- 3) Represent Council 82, it's officers and affiliates in connection with litigation brought against those individuals or entities concerning actions taken on or behalf of Council 82 and its affiliates in furtherance of their responsibilities as recognized and/or certified bargaining agents.
- 4) Provide legal counsel and advice to Council 82, it's officers and affiliates with respect to union affairs.
- 5) Represent members of bargaining units represented vy Council 82 with respect to disciplinary charges in instances which meet criteria established by the Council 82 Executive Committee or Executive Board.
- 6) Represent members of bargaining units represented by Council 82 and its affiliates with respect to appeals of disability retirement applications in cases in which Council 82 detirmines there could be substancial merit.
- 7) Provide legal advice on parliamentary matters and. upon request, acting as parliamentarian at sessions of the Executive Board and Convention body.
- 8) Coordinate the conduct of Council 82 elections.
- 9) Draft legislation and providing legal opinions with respect to any pending or proposed legislation.

TERM

The term of this agreement shall be for a period of two (2) years commencing on July 1, 1998, and ending on June 30, 2000. This agreement may be extended and/or modified upon the mutual consent of the parties.

LAW FIRM STAFF

The law firm shall provide the services of seven (7) full time attorneys, one part time (.6) attorney, three (3) legal secretaries and a part time law clerk whose duties will be principally devoted to attending to the legal matters assigned by Council 82.

In the event it becomes necessary for the Law Firm to engage the services of additional personnel in order to properly and adequately handle matters assigned to it by the Council 82 President, Executive Vice President, Executive Committee, and the Executive Board, the Law Firm will make a request for additional funding to the Council 82 Executive Board.

FEES AND EXPENSES

When the Law Firm is staffed at the level described above, Council 82 will pay the Law Firm a base fee in the amount of \$803,150.00 during the first year of the agreement. This amount includes payments for salary, simplified employee pension plan, medical disability, group term life, workers compensation and unemployment insurances coverages and benefits, professional dues and memberships, and payroll taxes. During the second year of the agreement that portion of this amount which relates to compensation will be increased in a percentage equal to the percentage increase negotiated in 1999 for members of the Security Services and Security Supervisors bargaining units represented by Council 82. If applicable, said amounts will be retroactive to July 1, 1999. In the event the Law Firm is not staffed at the above described level, the annual fee and bi-weekly installments will be adjusted accordingly.

In addition to paying the amounts considered fees set forth in this paragraph, Council 82 will pay directly or reimburse the Law Firm for any of the following expenses, if incurred:

- 1) Professional malpractice insurance;
- 2) Lodging, meals, tolls and mileage at the federal standard for necessary or requested travel;
- 3) Payroll services;
- 4) Court filing and fees;
- 5) Deposition and hearing transcripts;
- 6) Subpoena and witness fees;
- 7) Continuing legal education not to exceed \$500. per attorney;
- 8) Computers, telephones and other miscellaneous office equipment and supplies;
- 9) Law library;
- 10) Postage;
- 11) Photocopying;
- 12) Furniture; and
- 13) Office space and upkeep.

Council 82 will pay the Law Firms fees and expenses in bi-weekly installments. The Law Firm will submit to Council 82 bi-weekly statements setting forth the amount of fees due, projected expenses and expenses paid.

OFFICE SPACE

Council 82 will provide the Law Firm with office space, furniture, equipment and supplies suitable to provide the services covered by this agreement. The Law Firm will not be responsible for rent, taxes, upkeep or any other expenses relating to office space, furniture, other equipment and supplies utilized to provide services under this agreement. The office space, furniture, computers and equipment which is provided, paid for or reimbursed by Council 82 shall be the property of Council 82 and not the Law Firm.

NON-COUNCIL 82 WORK

It is understood and agreed that the Law Firm will be permitted to work on matters other than those assigned by Council 82, its officers and affiliates. The Law Firm will be permitted to work on a maximum of eight (8) paying non-Council 82 matters at any one time.

OTHER TERMS

Council 82 expects that legal services provided by the Law Firm will be supervised and managed by Robert S. Hite and/or Kevin S. Casey, and this arrangement shall be an express condition of this agreement.

Council 82 can reduce or increase the level of legal services required of the Law Firm, but in the event it does so, it must negotiate the amount of the fee payable to the Law Firm.

If a dispute arises regarding the application, interpretation or enforcement of this agreement, the dispute will be referred to arbitration in accordance with the rules of the American Arbitration Association.

This agreement is subject to the approval of the Council 82 Executive Board.

This agreement is governed by the laws of the State of New York.

**NEW YORK STATE LAW ENFORCEMENT
OFFICERS UNION, DISTRICT COUNCIL 82, AFSCME, AFL-CIO**

by _____
Richard S. Abrahamson President

Hite & Casey, P.C.

by _____
Robert S. Hite

by _____
Kevin S. Casey

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Infirmary consolidation affects only unused beds

1999-2000 Executive Budget proposal

Nine infirmaries would be consolidated with eight infirmaries at nearby facilities for an annual savings of

almost \$1.7 million under Governor Pataki's proposed budget for the 1999-2000 fiscal year.

"This is a sound and prudent move which will in no way adversely impact the level of health care which we are required to provide to inmates under the law," said Commissioner Goord.

Standard inmate sick call procedures and general health care units would remain operational at the nine facilities whose infirmaries are targeted for closure and consolidation. Only the 82 overnight infirmary beds and corresponding security coverage at the nine affected facilities would be affected under the plan.

Under the Governor's proposal;

- The 10-bed infirmary at Marcy would be closed and consolidated with the 18-bed infirmary at Mid-State. The 10-bed infirmary at Ogdensburg would be closed and consolidated with the 10-bed unit at Riverview.
- The 10-bed infirmary at Bare Hill would be closed and consolidated with the 18-bed infirmary at Franklin.
- The nine-bed infirmary at Woodbourne would be closed and consolidated with the 18-bed infirmary at Sullivan.
- The 10-bed infirmary at Greene would be closed and consolidated with the 20-bed infirmary at Coxsackie.
- The 10-bed infirmary at Washington would be closed and consolidated with the 12-bed infirmary at Mt. McGregor.
- The 10-bed infirmary at Wyoming would be closed and consolidated with the 30-bed infirmary at Attica.
- The nine-bed infirmary at Livingston, and a similar four-bed unit at the Groveland Annex, would be closed and consolidated with the 16-bed infirmary at Groveland.

The proposed consolidation would reduce security staffing by 41 positions for a potential annual savings of \$1,678,600. Eight of the nine infirmaries to be closed under the consolidation plan are staffed around-the-clock by security staff, requiring five positions a day. The infirmary at the Groveland Annex is staffed by one Correction Officer, during the afternoon shift.

All positions will be eliminated through attrition, because of Governor Pataki's continuing opposition to the layoff of even one Correction Officer. Instead, Correction Officers holding these positions will perform other duties at their currently assigned facilities.

No civilian care positions would be eliminated under the plan. All facilities that currently have 24-hour nursing coverage would maintain such coverage under the plan.

No new positions would be required at any of the eight facilities whose infirmaries would be accepting new patients under the consolidation plan as they are now staffed appropriately for the number of existing beds.

"Health care in our prisons has improved dramatically under Governor Pataki, decreasing our reliance upon infirmary beds," said Commissioner Goord. "On January 27, for example, there were just two inmates in Marcy's 10-bed infirmary and three in the 18-bed unit at Mid-State. Consolidating infirmaries such as these and others will in no way jeopardize the quality of inmate health care. We will continue to provide appropriate health care to all inmates."

The infirmaries to be closed and consolidated under the proposal are not scheduled to be used for any other purposes. Thus, they could be quickly reopened and staffed on a temporary basis in the event of an overflow at an adjacent infirmary to ensure the continuum of appropriate health care.

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Turmoil tests the mettle of Council 82's leader

Albany -- Union president fights to keep the local intact as pressure mounts from dissidents seeking an alternative

JAMES M. ODATO

Capitol bureau

Shortly after Rich Abrahamson began his career guarding criminals at Attica State Prison, colleagues gave him a tough-love lesson.

"I was a (wise guy) from the west side of Buffalo," he recalls. "They took me aside and beat me up and taught me."

Twenty-four years later, as president of the union that represents almost 26,000 correction and law enforcement officers statewide, Abrahamson is again absorbing blows.

But these rhetorical punches are coming from officers who want to push him and his entire organization from office in a decertification vote that starts later this month.

After three years at the helm of Council 82, the burly leader of the troubled union says he's prepared to shed civilian clothes and don the gray cotton uniform again.

In fact, Abrahamson, in a lengthy interview, admits he looks forward to returning to his old job behind "the wall" -- but not just yet.

He's fighting to keep Council 82, a unit of AFSCME, in charge of the 21,000 prison guards and 5,000 other security officers watching over universities, forests, the Capitol and other state and county facilities.

Although he was elected in Council 82's first-ever open election in 1996 and re-elected to a two-year term in 1997, Abrahamson is facing tough opposition.

Council 82's foes managed to gather 30 percent of members' signatures (and survive Council 82's challenge to those signatures) to force a vote for a new -- independent -- organization. The vote starts March 26. Ballots will be counted April 29.

Abrahamson says he's confident Council 82, with 30 years of history, will rebuff the challenge. But the challengers, calling their group the New York State Correctional Officers & Police Benevolent Association, say they have substantial support from guards across New York who dislike the modest pay raises and retirement terms negotiated by Council 82. They are led by dissident Brian Shanagher, a

correction officer at Green Haven Correctional Facility.

Abrahamson, who characterized the dissidents as mentally retarded and unfit to be elected dogcatchers, picked up his campaign to hold onto office, advertising in newspapers, sending out brochures and polling members in recent days. He admits many of the dissidents once supported him. They liked him because he stood for reform.

"He didn't reform anything," says Ricky Harcrow, a prison guard at Attica who helped unite reformers behind Abrahamson during the past two elections. "He flipped on us."

Harcrow complains that the grievance and disciplinary process is stacked against guards and that Abrahamson is too cozy with the state Department of Corrections.

Dissident leaders are particularly angry that Council 82 hasn't cut ties with the American Federation of State, County and Municipal Employees, AFSCME. The dissidents want their union to negotiate contracts independently, like the better-paid State Police and unaffiliated associations in other states.

Council 82 members pay dues of about \$460 a year, and about \$2 million annually flows to AFSCME with little return, the dissidents claim.

Abrahamson complains that the dissidents don't credit AFSCME for helping to bail out Council 82 when it was in trouble. Now, Abrahamson says, AFSCME provides substantial resources and other support -- giving Council 82 political muscle in Washington to block efforts to privatize prisons and create legislation helpful to the corrections industry.

AFSCME moved in to clean up the union and invested more than \$500,000 in Council 82 in 1995 amid federal investigations of top Council officers. Those officials were removed in a scandal involving thousands of dollars of lavish spending.

When Abrahamson, a political neophyte, took over in 1996 the union had about \$300 in the bank. Now its account exceeds \$3 million.

"When this union was corrupt, AFSCME helped get us straight," he says.

He says reformers who wanted change three years ago got most of what they sought: "Fifteen things we wanted, 14 of them happened. The 15th was (cut) AFSCME."

Considered a renegade when he campaigned for office three years ago, Abrahamson traveled 13,000 miles, visiting 62 prisons. He says he spent \$10,000 of his own money.

If he had lost, he said, he would have refereed and umpired more softball and baseball games to make up the financial loss. His true love is officiating on the ball diamonds of Buffalo, his hometown.

During the week, Abrahamson lives at the Quality Inn in Albany. Twice married and with two daughters, he returns to Buffalo to his wife, a legal secretary, each weekend.

Among his accomplishments during the past three years, he lists a bill that passed in the Legislature that gives three-quarters pay to correction officers who are forced onto disability by work-related health problems or injuries. The state had paid just one-third before. Dissidents say the former deal actually is superior to the new one, which they call "window dressing."

Abrahamson also lists restructuring compensation for union officers and staffers. He is paid \$75,000 -- his \$45,000 prison guard pay from the state plus \$30,000 from the union. The next-highest union officer receives \$20,000 on top of his guard pay.

But Abrahamson says he can't exercise all his power just yet. For instance, he says, he hasn't been able to make a mark on pay scales, partly because of the dissidents.

The current four-year contract, which expires at the end of this month, negotiated by the former leaders. Abrahamson is eager to negotiate a new deal. But the state has postponed negotiations until the union representation vote is concluded.

The Civil Service Employees Association, which also is part of AFSCME, just concluded negotiations with the state on a contract that would provide 2, 2.5, 3 and 3.5 percent raises over four years. Council 82 members fear the CSEA contract will serve as a model for other state contracts.

"CSEA got 11 percent over four years," said Rod Ashby, a veteran officer at Auburn Correctional Facility. "We got five zeros in 10 years . . . Guys are going to want more than 11 percent over four years."

Ashby, a lieutenant who backs Council 82 but also appreciates the position of the dissidents, said the CSEA deal could affect the election, helping the dissidents.

He added that if Council 82 had won a pending case with the state for pay upgrades for correction officers, the union's re-election effort would have been bolstered. But as in contract negotiations, the state postponed ruling on the upgrade issue until after the election. Dissidents can now use the failure to gain upgrades as a campaign tool.

"There's a lot of grumbling out here. I didn't think it had a chance before because history says it's very tough to beat an incumbent," Ashby said. "I'd give it a 50-50 shot right now."

Legislative leaders say Council 82 deserves to survive. They describe the union as a more sophisticated, better-organized outfit under Abrahamson's tenure. He has made the union more visible, building a political action committee funded with \$1 million, 60 percent of which was spent on elections last fall.

"Rich Abrahamson is responsible for putting together a team; this team has seen more success in last four years than Council 82 has had in the 15 years prior," said Seneca Falls Republican Michael Nozzolio, chairman of the Senate Corrections Committee.

"My personality isn't to go around and yell and scream," says Abrahamson. "My personality is to talk to people."

First published on Monday, March 8, 1999

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Letter to the Editors

" As an Organizer for the " dissident group" mentioned in a recent ad placed placed in Newspapers throughout New York State by the " Law Enforcement Officers Union Council 82", I would like to

comment on their unauthorized use of membership dollars for such a purpose.

The "dissident group" N.Y.S.C.O.P.B.A. (New York State Correctional Officer and Police Benevolent Association) is a Union Organized to bring Unity and Independence back to a faction of State Employee's who have been demoralized and lied to for over a Decade by Council 82 .

Council 82 is a subordinate body of an International Union called AFSCME. (American Federation of State, County and Municipal Employee's) of which C.S.E.A. (Civil Service Employee's Association) is an integral part.

Council 82's failure to mention this affiliation between AFSCME and CSEA is a conscious effort to disassociate itself during the Challenge period and an attempt to play down " Pattern Bargaining" .

The ad falsely informs members of C-82 that their " Negotiating Team" will reject the Contract offer recently made to CSEA , while the truth of the matter is that CSEA has set the Pattern for any future Contracts negotiated between AFSCME/Council 82 and the State . AFSCME cannot go against its CSEA members by attempting to negotiate a larger percentage raise for the members of Council 82 without upsetting Hundreds of Thousands of CSEA members. CSEA makes up a large percentage of AFSCME's 1.4 million members Nationwide and AFSCME has been losing members to " dissident groups" at an alarming rate. Therefore, as a dues payer to C-82/AFSCME/CSEA. I must protest the use of my money to pay for this ad . I support Independence and Unity through a " dissident group" named NYSCOPBA. Vote NYSCOPBA for your future, not the future of AFSCME/CSEA."

Herb Wild
Organizer New York State Correctional Officer P.B.A.
403 Race St.
Elmira NY

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Another Letter to the Editors

Elmira Star Gazette :

Council 82 isn't doing the job for us any more Is it time? Time for all corrections officers in New York to stand up and gain some respect back from our communities and New York state. The respect we use to have with both before our union representative -- or should I say the state's representative, Richard Abrahamson, -- started smoking the proverbial pipe with New York's elected officials.

We all have a good idea where the smoke from that pipe ended up, don't we -- two back-to-back contracts that would embarrass most elected officials of a good union.

If the public had any idea of a typical day inside New York state prisons and how serious incidents are handled, played down or accepted, I am sure there would be more support for the correction officers. God knows we need some.

Time for better representation? You bet! Time for a tough job to be taken seriously by everyone, from the public to the representatives in Albany? You bet. The time is here for all corrections officer throughout New York state to rally together and gain the respect back that has long been overdue with

the public and the state's representatives for correction officers.

Council 82, the smoke from your pipe is not going to do the job any more. We want to put pride and dignity back into a tough job. All officers throughout the state deserve decent union representation that will fight, work and obtain a respectable contract.

Is the New York State Correction Officers and Police Benevolent Association that union? You bet.

FRED J. MILLER JR.

Horseheads

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Rockefeller laws under fire

Joel Stashenko

Associated Press Writer

AUBURN CITIZEN 3-11-99

ALBANY - Some opponents of the Rockefeller Drug Laws are seeking to do more than reform the statutes they see as a hysterical and failed response to New York's drug problem, circa 1973.

They are also aiming to downsize an industry they believe the Rockefeller laws helped give rise to, one better known as the state's prison system.

The opponents of the drug laws say the coldblooded equation of supply-and-demand is at work: The more demand there is in the form of prison cells, the more the supply is supposedly produced, chiefly through the arrest, conviction and sentencing of drug offenders.

When the drug laws were enacted 26 years ago, there were 14,700 state inmates in New York. Today there are more than 70,000. In 1973, there were 18 state correctional facilities. Today there are 70, and three new facilities, at a total cost of \$540 million, are either about to open or on the drawing board.

Each inmate now costs about \$29,000 a year to take care of, and the prison system employs 32,000 people to guard, feed, teach or otherwise administer these wrongdoers.

"It has a profit motive," Brooklyn Rev. Herbert Daughtery, an opponent of the drug laws, said. "Any time you put a profit into the mix, then you've got to have a product. The product must be found somewhere." That "somewhere" is inevitably in black or Hispanic communities, he and others argue. Better than nine out of every 10 offenders sentenced under the statutes known by former Gov. Nelson Rockefeller's name are minorities, though nonwhites total about 25 percent of New York state's population. Offenders of the harshest of the statutes can get up to life in prison. As a whole, the state prison population in New York is 85 percent nonwhite.

The former Black Panther and longtime inmate Eddie Ellis refers to the state's expanding prison system as a "prison-industrial complex." That is a variation on the "military-industrial complex," which some people blame for pushing the United States into its disastrous involvement in Vietnam for the sake of corporate profits.

Ellis calls the Rockefeller Drug Laws the "linchpin" of an alleged plot to enrich upstate New York at the expense of young, low-income, minority New Yorkers. Seven in 10 state prison inmates come from New York City, while only a half-dozen smaller prisons are in the city.

State Assemblyman Roger Green, a Brooklyn Democrat, called prisons "a perverse economic stimulus program for people in upstate New York who themselves are faced with economic recession and economic depression." Sofia Bendele of the Women's Development Center at Medgar Evers College in New York City said that while drug laws rob young minorities of opportunity, the prison system they populate allows upstaters to say to their sons and daughters, "There's a future for you in corrections." Indeed, prisons have been an economic godsend for some upstate communities, and often for succeeding generations of their residents. Local officials and their state representatives have lobbied hard to get prisons in much the same way they would seek to have an insurance company or a manufacturer put in a local office or factory.

If anything, a prison could be seen as an even more desirable commodity than a private-sector employer. No one sees the state going out of business or closing a prison once it is opened, at least not a maximum-security one. With a nearly fivefold increase in inmates over the past quarter century, no one sees the demand for cells slackening, either.

Prisons have become concentrated upstate because downstate communities have not wanted them there, and because land is far more available and affordable upstate than around metropolitan New York, said state Sen. Michael Nozzolio, a Seneca County Republican. He referred to it as an "accidental progression" over a number of decades. It does a great disservice to the upstate communities which host prisons to portray them as beneficiaries of a racist penal system that uses young blacks and Latinos as grist for a grinding, dehumanizing economic vehicle, Nozzolio said. "I think it is an extremely giving situation," he said of prison communities. "There are a lot of benefits that go to communities, but a there is a lot of hard-working, dedicated people that do the work."

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Letter to the Editors Star Gazette 3/11/99

" I don't want my Union Dollars paying for ad " As an organizer for the "dissident group" mentioned in a recent ad placed in newspapers throughout New York state by the "Law Enforcement Officers Union, Council 82," I would like to comment on what I consider to be the union's unauthorized use of membership dollars for such a purpose. The so-called dissident group, New York State Correctional Officer and Police Benevolent Association, is a union organized to bring unity and independence back to a fraction of state employees who have been demoralized and deceived for more than a decade by Council 82.

Council 82 is a subordinate body of an international union called American Federation of State, County and Municipal Employees, of which the Civil Service Employee's Association is an integral part.

Council 82's failure to mention this affiliation between AFSCME and CSEA is a conscious effort to disassociate itself during the challenge period, and an attempt to play down "pattern bargaining."

The ad inaccurately tells members of Council 82 that its "negotiating team" will reject the contract offer

recently made to CSEA, while the truth of the matter is that CSEA has set the pattern for any future contracts negotiated between AFSCME/Council 82 and the state.

AFSCME cannot go against its CSEA members by attempting to negotiate a larger percentage raise for the members of Council 82 without upsetting hundreds of thousands of CSEA members.

CSEA makes up a large percentage of AFSCME's 1.4 million members nationwide, and AFSCME has been losing members to "dissident groups" at an alarming rate. Therefore, as a dues payer to Council 82/AFSCME/CSEA, I must protest the use of my money to pay for this ad.

I support independence and unity through a "dissident group" named NYSCOPBA. Vote NYSCOPBA for your future, not the future of AFSCME/CSEA.

HERB WILD

Elmira

Organizer New York State Correctional Officer Police Benevolent Association

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Letter to the Editors Press Republican 3/15/99

We have recently read a letter to the editor encouraging correctional officers to support a dissident group of con-artists. On behalf of the Local 1272 membership, I am writing to express our strong disagreement with your opinions and to criticize you for being hypocrites. It is unfortunate that you all do not have the decency to step down from AFSCME local offices if you do not support AFSCME or Council 82.

Clinton's local 1272 overwhelmingly is in support of Council 82. This local has been a chartered member of AFSCME since Dec. 31, 1953, and has been a proud member of that organization at all times. This local has a long history of standing up for what is right, fighting for our members' rights, taking care of the members' needs, and when the time requires, reaching out to Council 82 for assistance in resolving an issue, like the vacation schedule issue that we had taken to arbitration.

We also realize that we have the luxury of assistance from a large national organization like AFSCME in representing us in the prevention of privatization of prison work.

It makes me feel proud that we are a target of a dissident group of extremists because that proves that this local's team is doing their job in keeping their membership informed and well represented, as all should be. An informed member makes an educated decision. We do not insult our members or deny them information or give one-sided stories. It is becoming more apparent that some Western Region members have been denied the full facts regarding the dissidents' complaints.

With impending negotiations with the state, we are focused on who our opponent is at this time, and it's not our fellow officers. Rather than try to tear this union apart under false pretense of being AFSCME local leaders, you should stand united with us at Clinton! Support your union, Council 82, and your fellow officers.

Andrew Guynup

President

Local 1272

Dannemora

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Clinton CF Letter, mailed from Albany

Local 1272 - Clinton Correctional Facility and Clinton Annex
72 Cook St. - Box 757
Dannemora, New York 12929

March 5, 1999

Richard Harcrow, Carl Canterbury, and
Other Members of the Local 1040 Executive Board
P.O. Box 149
Attica, New York 14011

Gentlemen:

We have recently read a letter to the editor from you encouraging Clinton Correctional Facility officers to support a dissident group of con-artists. On behalf of the Local 1272 membership, I am writing to express our strong disagreement with your opinions and to criticize you for being hypocrites. It is unfortunate that you all do not have the decency or good character to step down from your AFSCME Local offices if you do not support AFSCME or Council 82.

Clinton's Local 1272 overwhelmingly is in support of Council 82. This Local has been a chartered member of AFSCME since December 31, 1953 and has been a proud member of that organization at all times. This Local has a long history of standing up for what is right, fighting for our members' rights, taking care of the member' needs and when the time requires, reaching out to Council 82 for assistance in resolving an issue, like the Vacation schedule issue that we had taken to arbitration. We filed legal papers in December, 1995 and, after fighting for a long period of time in getting an arbitration date, received a decision in December, 1998. Attica's Local was then able to piggy back on this result when Council 82's attorneys later succeeded in preventing the implementation of the vacation schedule change at Attica.

We also realize that we have the luxury of assistance from a large national organization like AFSCME in representing us in the prevention of privatization of prison work.

It makes me feel proud that we are a target of a dissident group of extremists, because that proves that this Local's team is doing their job in keeping their membership informed and well represented, as all should be. An informed member makes an educated decision. We do not insult our members or deny them information or give one-side stories. It is becoming more apparant that some Western Region members have been denied the full facts regarding the dissident' complaints.

With impending negotiations with the State of new York we are focused on who our opponent is at this time, and it is not our fellow officers.

Rather than try to tear this Union apart under the false pretense of being AFSCME Local Union leaders, you should stand united with us at Clinton! Support your union, Council 82.

Support your fellow Officers in unified voice for a reasonable and just contract.

In Solidarity,

Andrew T. Guynup
President, Local 1272
Council 82, AFSCME, AFL-CIO
16.5 Year Correction Officer
9 Year Local Activist

cc: Western Region Presidents
members of Local 1040

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Letter from Attorney Michael Axelrod

CERTILMAN BALIN ADLER & HYMAN, LLP

**Michael Axelrod
Attorney at Law
90 Merrick Avenue
East Meadow, New York 11554**

DIRECT DIAL NUMBER
(516)-296-7172

email: maxelrod@cbah.com

March 8, 1999

Dear Council 82 Member:

I am writing to you with a status report on your negotiating team's preparation for collective bargaining with the State of New York.

Your negotiating team was announced by Council 82 President Richard Abrahamson, and is made up of a cross-section of the members who occupy the various job titles in the two affected bargaining units. The bargaining team includes individuals from all parts of the State and includes State law enforcement personnel and correction personnel who work at maximum, medium and minimum security facilities.

In early December, I met with the negotiating team to provide training on the proper conduct of negotiations, and to review the results of member contract surveys which reflect the priorities of the membership. These priorities are reflected in the proposals the negotiating team has since formulated. The team also received training regarding costing and valuing contract proposals, although we will have a professional labor economist at the negotiating table.

Over a two-week period of time, the negotiating team engaged in a line-by-line analysis of the existing contract to identify the particular language and provisions which could be improved, and they developed language to address the needs of the membership. This was a tedious and time-consuming task which

was imperative to the professional conduct of collective bargaining negotiations. We have completed that task.

We are now fully prepared to go to the negotiating table as soon as the dissident group is removed as an obstacle. The existence of the dissident group necessitated the filing of an improper practice charge to obtain information relating to the proposals. We have developed scores of proposals and have conducted the necessary research to justify them. Although we do not want to tip off the

State regarding specific details of our demands, I am comfortable with providing you the following general overview:

- Significant increase in base salary, longevity, location pay, inconvenience pay, pre-shift briefing pay, travel allowances and uniform allowances;
- Reduction in the number of years required to reach job rate;
- New stipends providing more money for our members;
- Significant benefit enhancements and member cost reductions in health, dental, vision and prescription drug insurance;
- New vacation and personal leave buy-back provisions;
- Sick leave incentive which may result in cash payments for minimal utilization of sick leave;
- Expansion of the rights and benefits of our members injured in the line of duty;
- Sharp reduction in the time it takes for a contract grievance to reach arbitration, and an expansion of the individual grievant's right to participate in the process;
- Greater rights and more equitable treatment of those members accused of wrongdoing;
- Substantial increase in the types of disputes that may be sent to a neutral arbitrator for resolution.

The overview of proposals listed above is not a complete listing of the ideas of the negotiating committee. Needless to say, we expect tough bargaining with the State.

We are now completely prepared to go forward with negotiations, and I urge you to stand in support of your negotiating team. A unified union is far more effective at the bargaining table than one weakened by internal divisions.

Very truly yours

Michael C. Axelrod

MCA/jb

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Prison union up for vote

Pension benefits are one of the issues for correction officers

By KYLE HUGHES
Star-Gazette Albany Bureau

ALBANY - When New York's 22,000 correction officers start voting next week on whether to scrap their union known as Council 82 and regroup under a new banner, many of them will likely be thinking about money.

Council 82 dissidents say New York correction officers are underpaid, have the worst pension benefits in state government, and are forced to send \$2.3 million in dues annually to the American Federation of State, County and Municipal Employees, the huge parent union.

Their thoughts will also likely turn to memories of Council 82's last set of leaders, who were ousted by AFSCME in 1995. Officials from the parent union declared that Council 82's leaders "treated the members' hard-earned dues dollars as their personal piggy bank."

Evidence showed three top union officials freely spent union funds on dinners, presents, trips and other personal expenses. They were expelled from the union.

Still, the leader of the faction trying to decertify Council 82 and create a bargaining unit independent of the AFL-CIO said Friday that he's looking at the future, not the past.

"We don't bring up past history," said Brian Shanagher, president of New York State Correctional Officers and Police Benevolent Association. "The membership knows what that is."

More to the point is what Shanagher views as "just a total erosion of benefits over the past 15 years," with Council 82 settling for contract packages patterned on the deals given to the CSEA, the largest state employee union and another affiliate of AFSCME.

To Daniel Curran and other Council 82 officials, such criticisms ring hollow.

"It would be like leading the lambs to slaughter," Curran said Friday, calling the dissidents "inexperienced, self-appointed and determined to rule with an iron fist."

Ballots in the decertification drive - led by Shanagher and other dissidents who want to form an independent bargaining unit - go out on Friday and must be returned by April 19. They will be counted on April 29.

Those eligible to vote include the 22,000 prison workers as well as an additional 4,000 union members, a varied group that includes municipal police, SUNY officers, environmental conservation police and forest rangers.

As for the complaints about Council 82 members sending their hard-earned dues money to Washington-based AFSCME, Curran said the parent union provides "financial resources, research services and lobbying power."

"I firmly believe they want to break away from AFSCME because they want to do away with any financial oversight of how they spend the members' dues money," Curran said.

He said the scandal in 1995 was unearthed only because of AFSCME's oversight.

Shanagher, an Orange County resident who is a correction officer at Green Haven, said the dissidents want nothing to do with other unions affiliated with the AFL-CIO or AFSCME.

"Not if you held a gun to my head," he said. "The AFL-CIO is just another dues-collecting machine."

They have no idea what we do for a living."

He said correction officers in New York, who earn between \$37,860 and \$52,161 annually, are underpaid. If Council 82 survives, he predicted that union members will have to settle for an 11 percent raise over four years.

"We're very, very confident that we're going win," he said. "It's just a matter of how much we're going to win."

The decertification drive is happening because a third of the membership signed cards requesting an election, but Curran hinted that some of the names were forgeries.

"We're confident Council 82 will win the election because the members are pleased with Council 82's performance," Curran said.

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Inmate gets hard time

for tossing urine, feces

By JOHN MILGRIM

Staff Writer, Th-Record 3/20/99

KINGSTON – A Shawangunk prison inmate already serving the better part of his life for murder, bank robbery, kidnapping and shooting a police officer, will likely remain in prison the rest of his life because he tossed urine and feces on a correction officer.

For that most recent crime, considered a minor felony, Ulster County Judge Frank LaBuda sentenced 46-year-old Jamal Thomas to another 25 years to life, and recommended he serve the rest of his years locked in solitary.

LaBuda also recommended he serve the entire sentence in solitary because, during court yesterday, Thomas said he would have, and will if he has the chance, cut a correction officer's throat.

"No he won't," said James Flateau, spokesman for the state Department of Correctional Services. "If Mr. Thomas wants to act like an animal we have the capability to cage him like one. There's lots of different ways to handle inmates that threaten staff and you can rest assured that Mr. Thomas' level of security will be equal to his mouth."

Thomas, most recently, was convicted by jury Dec. 14 of tossing urine and feces on Shawangunk Correctional Officer Ralph Rohl.

At sentencing yesterday, LaBuda declared Thomas a persistent felony offender. If the urine tossing was his first offense, the maximum sentence would have been 16 months before being eligible for parole. Instead, the persistent offender status let LaBuda sentence Thomas to the same as if it was second-degree murder.

He has since been transferred to the Southport Correctional Facility in upstate Chemung County.

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Letter to the Editor (3/22/99)

Council 82's president recently stated in the Times Union newspaper, that anyone who is in support of NYSCOPBA are "retards and couldn't get elected to dog catcher," with over 30% signing NYSCOPBA's petitions to decertify from council 82. We are back to "old guard" tactics. Old guard are those that feel they know what's in the best interest of their membership without ever asking, because they feel we as general members are not smart enough to make our own decisions. They threaten and push-up on you because your views are different than theirs. Real democracy, right?

There still remains some confusion concerning our vision and dental benefits; both are contractual issues. Article's 12.8 and 12.9 which states, NY State provides and pays the full cost. Local labor management agreements were another concern, as well as seniority. According to Bob Hite Attorney for council 82, has stated, " just by changing bargaining units it does not allow the state to unilaterally change any of the terms of the contract or any other mandatory terms and conditions of employment. The contract remains in effect, labor management agreements until negotiated otherwise and any other practices or policies."

AFSCME's own chief negotiator Don Wasserman negotiated our last and worst- ever contract. Where was AFSCME's "size matters?" AFSCME is a dictatorship! You have never voted on issues such as president, vice-president or secretary/treasurer of AFSCME. Council 82 says they are more accountable, yet have you seen any minutes or financial statements from their conventions, correction policy or executive board meetings! I know local 1272 does not afford its membership their constitutional rights, such as; voting on amendments or delegates to the convention. The local officials do as they see fit. Vote for council 82, because they have nowhere to go but up! You better hope.

Darren Butchino
Clinton CF
Dannemora
