

The Human Rights Report

2012 Annual Newsletter of the Southern Center for Human Rights ■ www.schr.org

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Celebrating Steve Bright's First 30 Years at the Southern Center for Human Rights

by George H. Kendall

Thirty years ago, Steve Bright departed Washington, DC, for Atlanta in a U-Haul truck. He had just become the Executive Director of the then-Southern Prisoners Defense Committee (SPDC), a small organization dedicated to seeing that indigent prisoners throughout the American South had access to legal counsel for post-conviction and prison conditions matters.

The SPDC Board had pursued Steve for months. Although still a young attorney, his reputation as a tireless, forceful, and highly skilled advocate had traveled widely. In two years at Apple Red, a legal services office in Kentucky, three at DC's vaunted Public Defender Service, and three more as Executive Director of the DC Law Students In Court Program, he set the standard for excellence in advocacy and client relations. The Board also sought Steve for yet another reason: beginning in 1980, Steve had taken on, in his spare time, the representation of four condemned inmates in Georgia, and had become thoroughly familiar with capital punishment and habeas corpus jurisprudence.

It was a good thing Steve agreed to become SPDC's Director because it is hard to imagine that anyone else would have wanted the job. The organization not only had no money, it had considerable debt. It also had a formidable caseload and only one full-time attorney. And in the southern states, the number of capital cases reaching state and federal habeas proceedings was growing in leaps and bounds, execution dates were common, and many of these condemned prisoners had no counsel.

During the early Atlanta years, Steve attended to a nearly infinite number of problems and demands. SPDC took on numerous new capital post-conviction cases, and kept its important (and expensive) prison condition cases. Bob Morin (now DC Superior Court Judge Robert Morin) accompanied Steve to Atlanta and stayed for 18 months. In addition to providing extraordinary representation to numerous capital petitioners, he took over the office books and gradually sorted out the financial morass. Russ Canan (now DC Superior Court Judge Russell Canan) also joined Steve and Bob, and provided invaluable representation.

With little money, lunch for Steve was usually a peanut butter sandwich, and an extravagant dinner was a hamburger at Wendy's. An early evening would find Steve leaving the office at midnight; more often, he would not depart until the wee hours of the morning. Yet in case after case, SPDC filed terrific papers, won stays, and developed arguments that would later win relief for numerous clients.

But the volume of cases was too great for Steve and SPDC's lawyers. Steve's solution was to use his considerable power of persuasion to cajole lawyers he knew in Washington and elsewhere to take cases. Several former PDS colleagues – Steve

Glickman (now DC Court of Appeals Judge Stephen Glickman), Andy Lipps, Ellen Kreitzburg, and others – signed on. By assuring Palmer Singleton that the sailing on Lake Lanier was comparable to the Great Lakes, Steve lured Palmer to join SPDC. Steve also reached out to the few foundations that would consider funding capital representation, and began to bring in resources to set SPDC on more secure financial footing.

By the early 1990s, Steve had firmly established himself as one of the country's best capital defense lawyers. He and Palmer, flanked by Mary and Lewis Sinclair, successfully tried the Marion ("Mad Dog") Pruett case in Mississippi to a life sentence in 1987. In 1988, Steve argued Tony Amadeo's case before the United States Supreme Court. He won 9-0. Justice Blackmun told his clerks that Steve's argument was the best he saw that entire Term. In 1991, he was lead counsel at William Brooks' retrial in Madison, Georgia. This was a highly aggravated mixed-race case in which Steve had earlier won habeas relief before the en banc Eleventh Circuit. Steve's penalty phase closing argument was so affecting that the jury unanimously agreed to sentence Brooks to life within 15 minutes, but did not announce its verdict for another hour so as not to hurt the DA's feelings. And all the while, he was lead counsel in numerous other capital cases.

While most attorneys would consider these achievements sufficient for a lifetime, Steve was only getting started. The SPDC evolved into the Southern Center for Human Rights (SCHR), and he set his sights upon new challenges.

In the early 1990s, he agreed to teach a course on the American death penalty at Yale Law School. The course materials were a challenging mix of transcripts, articles, reported cases, documentary film, and compelling guest speakers. Instead of a final paper, Steve matched student teams to lawyers in the South who were desperate for solid research and writing. Students fortunate enough to take the course that first year were so moved they voted Steve the school's most outstanding professor, a rare honor



Stephen B. Bright, SCHR President and Senior Counsel.

Fulton Daily Report photo

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Executive Director's Message



Jamie Weis sat in a rural Georgia jail awaiting his death penalty trial for five years. Jamie suffers from auditory and visual hallucinations, depression, and severe anxiety. During this period of incarceration, Jamie reached such a state of despair that he attempted suicide three times and repeatedly told the prosecutor that he would just as soon give up and receive the death penalty. Much of his distress was due to the delay caused by the State of Georgia's refusal to provide any money for his defense for over two years. He was without a lawyer for an entire year.

Fortunately for Jamie, Steve Bright intervened. Flanked by lawyers and investigators from the Southern Center for Human Rights, Steve filed brief after brief all the way up to the United States Supreme Court. Steve argued that the State's termination of funding for Jamie's defense violated his rights to a speedy trial and to meaningful assistance of counsel.

Steve's involvement not only succeeded in allowing Jamie's original lawyers to continue to represent him – though Steve and the Southern Center assisted with representing Jamie at trial – but also secured much-needed resources to allow for mental health and jailhouse security experts to provide critical perspective on sentencing options at trial.

At the sentencing hearing, Steve told the Court about how Jamie Weis, the son of a West Virginia coal miner, was rejected by his mother and then abused and neglected by his grandmother. Steve's connection with Jamie's family members, built during numerous trips to West Virginia, encouraged them to help tell Jamie's difficult story in the courtroom. Steve brought expert witnesses who testified that Jamie suffered brain damage when he frequently inhaled gasoline fumes to get high as a teenager. Jamie spent years battling an Oxycontin addiction, making multiple trips to rehabilitation facilities, and later got hooked on crack cocaine before breaking into his victim's home.

In his closing argument Steve told the Court, "There's no excuse for what happened, there's no justification. But Jamie Weis is more than the worst thing he ever did." The judge agreed. He rejected the death penalty and sentenced Jamie to life in prison.

Prior to last summer, Steve made this same case for the humanity of so many others. Steve secured life in the face of death for a long list of people, including Donny Thomas, William Brooks, Tony Amadeo, Marion "Mad Dog" Pruett, William Smith, and many more. Steve stood up for and with each of these men, in some cases physically holding them up, as their fate was determined by a court that wanted to kill them. Witnessing these moments in court is revelatory and core-shaking.

A quote from Eugene Debs hangs above Steve's desk in his office. It is

from a 1918 sentencing hearing at which Debs earned 10 years in prison for sedition and opposition to the military draft for World War I. It says:

"I recognized my kinship with all living beings, and I made up my mind that I was not one bit better than the meanest on earth. I said then, and I say now, that while there is a lower class, I am in it, and while there is a criminal element I am of it, and while there is a soul in prison, I am not free."

For Steve, we must add another line: "Where there is a Jamie, a Donny, a William, a Tony, a Mad Dog; Steve is with them."

Over the years, I've had many opportunities to ask supporters of the Southern Center for Human Rights how they became involved our work. The answer, almost always, is the same two words: "Stephen Bright." Everyone loves to recall their first or favorite moment of Steve, whether it was hearing him speak about Southern Center's work and our clients, or in one of the many classrooms where he's modeled the true meaning of zealous advocacy, or the particularly lucky folks that have witnessed his awe-inspiring courtroom acumen. There is simply no denying that for many people, Steve Bright IS the Southern Center.

This year, we couldn't be more excited to celebrate Steve Bright's 30th anniversary at the Southern Center for Human Rights. We honor his extraordinary dedication to and care for the people who have been most marginalized and discarded by society. We look to Steve's unparalleled ability to inspire us. With his vision as our compass, we push ourselves to secure sustainable wins that lead to true transformation of the Southern criminal justice system.

It is my honor to be part of the team at the Southern Center for Human Rights that is dedicating our lives to carrying forward Steve Bright's vision. I am pleased to present to you some of the stories of how we are doing exactly this in the 2012 Human Rights Report.

With hope,

 Sara Totonchi

P.S. Please join us in Washington DC on November 15, 2012, at the Frederick Douglass Awards Dinner as we celebrate and thank Steve for 30 years in pursuit of justice! See page 14 for more info on the event and sponsorship opportunities.

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SCHR and NACDL Launch Capital Defense Training Partnership

By Raoul Schonemann

In January 2012, SCHR and the National Association of Criminal Defense Lawyers (NACDL) announced an agreement to work together to conduct intensive training for capital defense trial teams in the most active death penalty jurisdictions in the nation. The training program, which is made possible by a federal grant awarded to NACDL, will provide direct support for approximately 60 capital defense teams across the country in 2012-13.

The agenda and curriculum for the training program has been developed with the assistance of the National Consortium for Capital Defense Training, a panel of experienced capital defense practitioners. The training program utilizes what is called the "Bring Your Own Case" model, which calls for training participants to spend a significant portion of the training program applying the lessons learned during the training presentations to an actual pending capital case on which they are currently working. All members of each capital defense team – trial attorneys, investigators, and mitigation specialists – are encouraged to attend and participate in the training sessions together. At the training, the capital defense teams attend presentations by experienced capital defense practitioners and then spend five two-hour brainstorming sessions discussing issues and strategies in their cases with different pairs of faculty members.

Another unique aspect to the program is that NACDL and SCHR have pledged to provide follow-up consulting and technical assistance to the capital defense teams who participate in the training programs, to ensure that the teams have access to resources and the opportunity to consult with experienced capital defense litigators until the case is resolved. The training and consulting program will be coordinated by SCHR attorney Raoul Schonemann.

SCHR has begun consulting with capital defense teams that attended recent "Bring Your Own Case" training programs that were conducted in Prairie

View, Texas, Orlando, Florida, and Phoenix, Arizona. SCHR plans to conduct a fourth training later this year in Memphis, Tennessee. As of May 2012, three capital defense teams that participated in these trainings have successfully resolved their cases for non-death sentences, while no death sentences have been imposed in any case involved in the training program.

NACDL Executive Director Norman L. Reimer said, "This new partnership is wonderful news for the lawyers and their teams who are on the front lines in the struggle against the death penalty. The Southern Center for Human Rights brings unmatched expertise in all aspects of capital defense to this project. The coupling of that expertise with the innovative and highly effective curriculum designed by the Consortium will provide cutting-edge support for capital defenders. While NACDL has provided support for the SCHR for many years, and collaborates on other training programs, this arrangement will enable the capital defense community to make the most of this federal support."

David Bruck, speaking on behalf of the National Consortium for Capital Defense Training, said, "For some three decades, the lawyers and legal workers of the Southern Center for Human Rights have been an inspiration to everyone who has been working against the death penalty and for basic fairness in the American criminal justice system. They are tireless, creative, and courageous. This partnership with NACDL and the National Consortium for Capital Defense Training brings the most talented people to where they're needed most – supporting the court-appointed lawyers whose capital clients are on trial for their lives. And it should bring us closer to the day when life and death is no longer decided by the adequacy of whatever legal defense the state happens to provide."

Raoul Schonemann is SCHR's Managing Attorney for Capital Litigation, and is the coordinator of the new training program.

"This new partnership is wonderful news for the lawyers and their teams who are on the front lines in the struggle against the death penalty. . ."

SCHR's Historic Home Undergoes Major Renovation

The unique character of the Southern Center for Human Rights is epitomized by its locale.

A combination of vision and fiscal restraint led to our purchase of two buildings on Poplar Street in the 1980s which were renovated and adjoined. Without the concern of rent, SCHR has been able to devote more resources to staff and our work. Owning a building in the Fairlie-Poplar Historic District demonstrates our commitment to the city of Atlanta. The building with the main entrance was constructed circa 1880-1899 and the adjacent structure was constructed circa 1911-1922. Having the 11th Circuit Court of Appeals across the street provides a constant reminder to our young legal staff as to the importance of our work and our place in the Georgia legal community.

In January 2012, SCHR began a top-to-bottom renovation of its buildings. Prior to embarking on this major project, SCHR hired a building engineer to assess the issue of massive ceiling, roof, and window leaks. The resulting engineer's report showed the need to repair structural damage to areas in

both buildings, which made the structure unsafe in certain areas. With the added issue of heating and cooling problems, SCHR leaders were moved to approve the major renovation. The project, which will cost between \$275,000 and \$350,000 when all phases are complete, will conclude in 2012.

In addition to implementing the crucial renovations, SCHR took this opportunity to demonstrate a new level of commitment to "green" principles. Thanks to generous support from the Atlanta Community Foundation's *Grants to Green* program, we have updated our HVAC system so that it not only meets our needs as an office environment, but also provides efficiencies to reduce our environmental impact. Upgraded windows and more efficient plumbing fixtures, neither of which had previously been replaced for more than 20 years, will also go a long way to increasing our sustainability. In addition to the reduced environmental impact, these new systems will enhance the health and well-being of our staff, especially since many of us spend more time at SCHR than we do in our own homes.



We invite you to consider making a gift to underwrite the cost of these renovations. Such gifts will ensure that valuable resources to litigate and advocate for change remain available while SCHR works to preserve our home. To make a donation, visit www.schr.org or contact Barbara Horwitz at bhorwitz@schr.org or 404-688-1202.

The High Price of Prison Privatization in Georgia

By Elizabeth Compa

In the past year, private interests have assumed a growing role in Georgia's corrections system. This is occurring even as mounting evidence calls into question privatization's touted benefits, on both a local and national level. As legislators and other shapers of public policy are learning more about the fundamental problems inherent in – and questioning the wisdom of – privatizing criminal justice functions, the momentum that privatization has built up over three decades continues to drive the trend forward. Many cash-strapped states, seeking to cut short-term costs by any means available, have turned to privatization out of a sense of desperation.

In Georgia, the movement toward privatization conflicts with the recent efforts of Governor Nathan Deal's Criminal Justice Reform Council to reduce the state's prison population, and thereby reduce its financial expenditures for corrections. Private prison corporations in Georgia have incentives to lobby for ever-greater numbers of incarcerated individuals, and they have expanded their market in the state this year.

At the same time, there is evidence that companies have declined some expansion opportunities in Georgia this year: one rural prison remains only half filled; a preliminary agreement to explore building yet another facility appears to have died on the vine. Yet efforts to not only slow privatization's momentum, but instead reverse it, will require sustained work over many years, by SCHR as well as our allies around the state and in the region.

The American South is an epicenter of privatized criminal justice. The two largest private prison companies in the country (one of which operates facilities around the world) are based in Florida and Tennessee, respectively. Much of their growth has been within the region, fueled by campaign donations, lobbying, and political and personal connections. In the period from 2003 to 2011, the Corrections Corporation of America (CCA) and the GEO Group had lobbyists in Texas, Oklahoma, Louisiana, Mississippi, Alabama, Georgia, Florida, Kentucky, Tennessee, North Carolina, and Virginia. Georgia, Florida, Tennessee, and Louisiana were among the seven states with the largest lobbying expenditures. In the past year, Florida narrowly escaped a push to privatize nearly 30 prisons in the southern part of the state, a proposal that had the support of the governor and several legislators.

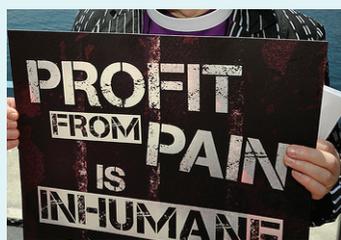
Given its proximity to the headquarters of the major private prison companies, perhaps it should not come as a surprise that Georgia is home to nine private prisons. But what may be surprising is the amount of activity on this front in just the past year: two of Georgia's nine facilities have opened in the last six months. Moreover, the proposed budget for fiscal year 2013 includes an allocation of \$35 million to fund 2,650 private prison beds. It is hard to see how, in the face of this dramatic expansion in the private prison market in Georgia – and that market's incentive to ensure its own future by pushing for ever-harsher criminal justice policies – the state will succeed in its stated goal of reducing its prison population and corrections expenditures.

CCA and the GEO Group are exceptionally active companies both in terms of the number of facilities they operate, and their involvement in political operations. Both companies are large and lucrative. CCA operates 66 facilities (45 of which they own) in the U.S. and its revenue in 2010 was \$1.67 billion, up \$46 million from the previous year. The GEO Group operates 118 facilities worldwide (roughly 46 in the U.S. based on a count of their locations map) and in 2010 earned \$842 million in revenue from its U.S. corrections contracts (66% of its total revenue). The GEO Group also acquired what had previously been the third largest private prison company in the U.S., Cornell Companies,

in 2010.

It is difficult to overstate the role that financial incentives play in how private prison companies conduct business. Their goal is to warehouse a maximum number of people at a minimal cost – without regard for public safety or the public fisc. And they do so very effectively, from a business perspective, given that CCA and the GEO Group took in nearly \$3 billion in revenue in 2010.

CCA and the GEO Group have a major financial stake in ensuring that effective, evidence-based criminal justice reform is stifled. CCA's 2010 Annual Report stated: "The demand for our facilities and services could be adversely



affected by the relaxation of enforcement efforts, leniency in conviction or parole standards and sentencing practices or through the decriminalization of certain activities that are currently proscribed by our criminal laws. . . . [R]eductions in crime rates or resources dedicated to prevent and enforce crime could lead to reductions in arrests, convictions and sentences requiring incarceration at correctional facilities."

Likewise, the GEO Group stated in a 2011 SEC filing: "Our growth depends on our ability to secure contracts to develop and manage new correctional, detention and mental health facilities, the demand for which is outside our control [R]eductions in crime rates could lead to reductions in arrests, convictions and sentences requiring incarceration at correctional facilities."

Both companies dedicate part of their financial resources in Georgia to political campaign donations and lobbying. According to a recent report by the Justice Policy Institute, these actions dovetail with existing personal relationships between individuals and entities to ratchet up the power of and the need for the private prison operators, in a self-reinforcing cycle: the greater the private prison companies' stake in Georgia policy, the greater their say in shaping that policy. Georgia ranked third among states in campaign contributions from the three largest companies, CCA, the GEO Group, and Cornell Companies, during 2003-2010. During that period, CCA donated \$241,750 in state-level contributions in Georgia and the GEO Group donated \$58,333; during 2006-2009, Cornell Companies donated \$25,000. Also during the 2003-2010 period, CCA employed five state lobbyists in Georgia and the GEO Group employed two.

Together, these activities have brought a total of nine private prisons to Georgia as of 2012. CCA operates six facilities in the state, and the GEO Group operates three. CCA contracts with the Georgia Department of Corrections (GDC) to run facilities in Nicholls and Alamo that were both expanded in the last year to include new housing units and segregated housing; a third GDC facility in Millen opened in March 2012. Together these three prisons comprise 5,600 detention beds. CCA also operates a facility in McRae for the Federal Bureau of Prisons, and facilities in Gainesville and Lumpkin for U.S. Immigration and Customs Enforcement (ICE); together, they total 3,800 beds. The GEO

Group operates a 1,500-bed prison in Milledgeville for GDC that opened in 2012; and facilities in Folkston and Lovejoy for the Bureau of Prisons and the U.S. Marshals with 3,200 beds.

Georgia's ICE facilities are of increasing concern. Private immigration detention is a growing field, with a growing political lobby, both in Georgia and nationwide. As of 2009, while private companies managed some 8% of state and federal prison beds, they managed about 49% of immigration detention beds, totaling nearly 16,000 people. Georgia is second-highest among the states in average daily population of ICE detainees, with 1,804 individuals in detention on a given day. The Stewart Detention Center, in Lumpkin, is the largest ICE detention center in the country. The deportation rate from the facility is reportedly above 98%. Georgia's anti-immigrant bill HB-87 is expected to increase the number of people detained in Georgia.

Financial incentives drive the activities of for-profit businesses in any market. Yet in the context of criminal justice and correctional systems, financial incentives work directly in opposition to fundamental rights. Cost-cutting creates conditions in many privately-run facilities that come dangerously close to violating prisoners' right to be free from cruel and unusual punishment under the 8th Amendment. Medical care, rehabilitative programs, and other costly but essential services are sacrificed in favor of bolstering the bottom line. Poorly trained guards may more quickly resort to the use of force because of their inexperience in managing prisoner populations. Profit-seeking prison companies by their nature also compromise the liberty interest of untold numbers of people, having successfully lobbied, over many years, for greater reliance on incarceration as a matter of public policy – making prison sentences more common, lengthier, and more likely to be served in full.

Many of these harsh sentencing policies succeeded because of the activities of the American Legislative Exchange Council (ALEC), an organization that brings together state legislators with corporate sponsors (who pay thousands of dollars for the access) to discuss and draft model legislation advancing policies that benefit the corporate interests. In the 1990s, ALEC championed the wave of mandatory-minimum, truth-in-sentencing, and three-strikes laws that passed in dozens of states. As a result, over-criminalization of nonviolent offenses has forced more people into prison. Mandatory minimum sentences keep people in prison longer, increasing the population at any given point in time. Truth-in-sentencing laws keeps people in prison for most or all of their sentences, doing away with the rehabilitative incentives of parole, good-time credits, and other similar programs. Three-strikes laws deliver life-long prisoners to companies for even low-level repeat offenses. ALEC has also been directly tied to the harsh new immigration laws in Arizona, Georgia, Alabama, and elsewhere.

To the extent they do trim costs, CCA and the GEO Group draw much of their "savings" from personnel and programming. They pay undertrained guards significantly less than their public sector counterparts, and provide few or no rehabilitative services to prisoners. Staff turnover rates in private prisons have been four times higher than in public facilities in recent years: average turnover rates for state correctional officers in 1999 were 16% in public facilities and 53% in private ones. Cutting corners for both inmates and staff fosters an environment where violence, riots, and even escapes occur. Mismanagement has given rise to lawsuits across the country, several of which settle for millions of dollars – a tab which is ultimately paid by taxpayers. A study by the Department of Justice found that "privately operated facilities have a much higher rate of inmate-on-inmate and inmate-on-staff assaults and other disturbances," while a Bureau of Prisons study found that private prisons "had much higher escape rates from secure institutions, and much higher random drug hit rates" than public counterparts. Private prison companies have an incentive to do nothing

to see to it that prisoners who are ultimately released will not return to criminal activity on the outside, as high rates of recidivism help keep their beds filled.

Towns like Littlefield, Texas, and Hardin, Montana, have been all but completely devastated after pouring scant municipal resources into private prison contracts, only to have the promised facilities never open. The towns are left deep in debt, their economic prospects even more grim, while the private prison companies pull up stakes to seek more lucrative contracts elsewhere. With each expansion of private prisons – especially as the state deliberately seeks to reduce its prison population – we risk this happening in Georgia too.

In the South Georgia town of Ocilla, the Irwin County Detention Center is a facility under contract with ICE. It is owned not by one of the major private prison companies, but by Municipal Corrections LLC, a smaller company based in Las Vegas; it is operated by another small company, Detention Management LLC. As of now, the detention center sits only half occupied and on the verge of failure. Having been issued \$55 million in lease revenue bonds by the county to expand its capacity, the prison found itself unable to find enough detainees. This year, the facility went into Chapter 11 bankruptcy procedures in Nevada, owing \$1.6 million in back taxes.

In spite of being dramatically under capacity, the detention center is the largest employer in Irwin County. Those responsible for the prison are still seeking ways to increase its occupancy, but competing interests in Alabama and around the region, and in Washington, have prevented the Ocilla facility from reaching its capacity. The county and the jail's owners are left to hope that enough people are put in immigration detention that all the facilities in the region can enjoy full occupancy. For now, the financial crisis for all the parties involved remains serious.

Perhaps having watched these events unfold, CCA decided in March not to renew its development agreement with the Valdosta Lowndes County Industrial Authority, also in South Georgia, bringing an end to negotiations that had been going on since 2010. The executive director of the Industrial Authority lamented the loss of hundreds of potential jobs.

Fortunately, there is also reason to think that the state is less interested in increasing its partnerships with private prisons. In February, CCA sent a letter to 48 states offering to buy and operate existing prisons, promising a quick infusion of cash in exchange for a guarantee of at least 90% occupancy over 20 years. Georgia officials had reportedly already declined the offer by the time the letter reached the media.

Bringing Georgia's prisons and federal facilities within the state back under exclusively public control will take many years of hard work. Evidence continues to mount showing that the touted benefits of privatization do not bear fruit. Private prisons do not offer meaningful cost savings to taxpayers, fail to energize small-town economies, and do nothing to improve public safety.

SCHR will strongly encourage members of the ongoing Special Council on Criminal Justice Reform to address the stake that CCA and the GEO Group have in ensuring their beds remain filled, at the expense of Georgia's state budget. The Special Council should pursue transparent cost comparisons between private and public prisons currently operating in Georgia; insist on transparent processes in any future Requests for Proposals regarding new private prison beds; investigate the role of the private prison companies in the passage of harsh sentencing statutes in Georgia; and develop a plan to draw down the number of private prison beds in the state as criminal justice reforms are implemented.

Fulfilling Gideon's Promise: SCHR Settles Indigent Defense

Next year marks the 50th anniversary of *Gideon v. Wainwright* (1963), the U.S. Supreme Court's seminal decision on the Sixth Amendment right to counsel, which held that an attorney must be provided at government expense to indigent defendants accused of a felony under state law who face imprisonment. Georgia will also celebrate the 10th anniversary of the Indigent Defense Act (2003), which created a statewide public defender system to provide representation to poor criminal defendants mainly through circuit public defender offices staffed by full-time public defenders (with a few single-county circuits permitted to opt out of the statewide system). Both were pivotal moments of change and are cause for celebration. SCHR is marking the anniversaries by pushing forward to fulfill the promise of *Gideon* and Georgia's Indigent Defense Act.

Since its creation, Georgia's indigent defense system has been inadequately funded. The economic downturn has postponed relief yet again for the system. The result is that some people who are poor and accused of crimes have awaited trial or appeal without any lawyer to advocate for them, or have been provided attorneys burdened by caseloads that surpass any reasonable measure, including standards set by the American Bar Association.

Throughout its history SCHR has pressed the State of Georgia to provide indigent defendants with lawyers who are zealous advocates. This year, SCHR's achievements in the area of indigent defense include reaching a comprehensive settlement agreement with the State of Georgia on behalf of a class comprised of hundreds of people convicted of crimes who require the assignment of new attorneys to represent them on their motion for new trial and on direct appeal. This group required new counsel in order to raise a claim based on the ineffective assistance of their trial counsel – a claim trial counsel could not assert on appeal about their own performance. The settlement agreement was approved and entered as a Consent Decree by Judge Baxter of the Fulton County Superior Court in March 2012. The case is *Flournoy v. State*.

A Look Back: Many Stranded Without Attorneys for Appeal

In December 2008, Appellate Division Director Jimmonique Rodgers wrote in a memo to superiors at the Georgia Public Defender Standards Council (GPDSC) that the Appellate Division had an "impossible caseload" and that

as a result it had "passed the crisis point." At the time, the Appellate Division had been assigned 249 cases and was unable to assign 75 people appellate attorneys. GPDSC's Appellate Division is responsible for providing representation at the appellate stage for cases in which the public defender or private trial counsel is unable to continue to represent the indigent defendant due to a conflict. Yet, at the end of 2008, GPDSC's Appellate Division staff was limited to two full-time attorneys and one part-time staff attorney.

In response to the growing number of individuals left without attorneys on appeal, on December 15, 2009, SCHR and co-counsel Michael Caplan of Bondurant, Mixson & Elmore, LLP, filed the complaint in *Flournoy v. State*. We sought class certification and mandamus relief to force the State to carry out

its mandatory duty to provide attorneys to indigent criminal defendants in need of counsel at the motion for new trial and appellate stages. Due in part to the Georgia Supreme Court's 2008 decision in *Garland v. State*, which held that a defendant is constitutionally entitled to new, conflict-free counsel to raise a claim based on ineffective assistance of counsel, the number of cases assigned to the appellate division of GPDSC increased. Soon after the suit was filed, the Appellate Division's caseload swelled to 515, with 191 individual defendants left without attorneys to advocate for them at the motion for new trial and direct appeal stages.

Judge Baxter of the Fulton County Superior Court scheduled a hearing on the requests for mandamus and class certification for February 2010. On the eve of the hearing, GPDSC hired private attorneys for between \$1,200 and \$1,500 per case to represent people in the proposed class who did not have counsel assigned, in an effort to have the court dismiss the suit as moot. GPDSC attorneys estimated under oath that the number of hours spent on an average motion for new trial and direct appeal, excluding travel, is about 140 hours, making the wage paid to attorneys under these fixed-fee contracts between \$8.57 and \$10.71 an hour. By comparison, the federally established minimum wage is \$7.25 an hour.

SCHR won an early victory. The court certified the proposed class and granted plaintiffs mandamus relief. The relief included requiring the State to appoint counsel to class members within 30 days of the order and, for future class members, within 30 days of GPDSC receiving a request for appointment



Fulton County Courthouse in Atlanta, GA.

Continued on next page

Class Action Against State of Georgia

By Melanie Velez

of counsel. In the court's order, Judge Baxter took issue with the fixed-fee contracts GPDSC used to hire private attorneys: "Given the low rate of total compensation and the significant limitations placed on reimbursement of expert and other expenses, it is highly unlikely, if not practically impossible, for an attorney to provide effective representation to the named Plaintiffs and other class members under such a contractual arrangement. . . ." Judge Baxter also found that "the duty to provide a legal defense to those whose liberty is at stake and who cannot afford an attorney is unqualified and unconditional, and it does not give way in times of economic distress."

After the February hearing, GPDSC implemented a new strategy: providing counsel to class members by assigning cases to public defender offices across circuits. Public defenders already assigned full misdemeanor and felony caseloads would now be assigned to represent *Flournoy* class members on their appeal in circuits that were, in many cases, far from the courts and opposing counsel they had experience with, and potentially hundreds of miles from the evidence and witnesses they would need to litigate a claim based on ineffective assistance of counsel.

Court-Ordered Reform: New Attorneys, Workload Limits, Increased Funding

After two years of hard-fought litigation and refusal by the State to settle the suit by instituting necessary reforms, on the eve of trial in December 2011, SCHR and co-counsel reached a settlement with defendants that addresses many of the structural problems impeding the provision of effective representation to the poor on appeal.

The consent decree requires the State to hire seven additional, qualified appellate attorneys by July 1, 2012, for GPDSC's Appellate Division. By hiring seven additional attorneys, GPDSC will more than double the number of attorneys in the central office who handle direct appeals.

The consent decree also addresses the problem of excessive attorney caseloads. In the 2011 ABA publication *Securing Reasonable Caseloads: Ethics and Law in Public Defense*, Norman Lefstein writes, "[t]here is abundant evidence that those who furnish public defense services across the country have far too many cases, and this reality impacts the quality of representation, often severely eroding the Sixth Amendment's guarantee of the right to counsel." This is true of Georgia. According to data SCHR obtained from GPDSC, many state public defenders are laboring under caseloads that exceed ABA and GPDSC's own standards, and private attorneys under contract with GPDSC at times also handle cases through their private practice that push well past caseload limits.

In response to the impact of high caseloads on the representation of class members, the *Flournoy* consent decree establishes workload controls. In particular, the decree establishes a weighted point system that takes into account the complexity of a case and imposes a caseload limit based on the total number of points assigned. A workload cap will help ensure that attorneys assigned to class-member cases have sufficient time to adequately and effectively represent each person. (Litigation in New Orleans, Louisiana; Kingman, Arizona; Knoxville, Tennessee; and Miami, Florida since 2006 has sought relief, with mixed success, from excessive public defender caseloads. See *Securing Reasonable Caseloads*.)

The consent decree also increases compensation for contract attorneys. Judge Baxter identified low compensation as compromising the level of representation provided to class members.

GPDSC must now compensate contract attorneys with \$2,000 for the first 40 hours of work, paid in installments as work in the case is completed. Importantly, more compensation may be paid to contract attorneys if additional hours are reasonably worked on the case. This is an important change from the contracts in use prior to settlement, which capped compensation at the outset without any possibility of additional compensation due to the complexity of the case. Contract

attorneys will also be better resourced in representing their clients since the decree prohibits automatic limits on expenses, including the cost of retaining an expert and travel expenses for investigative and other purposes.

The *Flournoy* settlement is vital for many reasons, chief among them its guarantee that present and future class members have and will be appointed counsel in a timely fashion. The suit also demonstrates that seeking systemic relief from courts regarding the right to counsel is essential to improving indigent defense systems. The lead plaintiff, Maurice Flournoy, said of the settlement: "It's only fair that inmates around the state get adequate counsel. The class action settlement works for the inmates, it works for the lawyers. The settlement, if followed, can help both. It's like a working engine hitting on all cylinders." As we mark anniversaries for *Gideon* and Georgia's Indigent Defense Act, SCHR will continue to advocate for an indigent defense system that provides zealous representation for the poor and recognizes once and for all that constitutional rights are not and should not be contingent on a person's wealth.

Melanie Velez is SCHR's Managing Attorney for Impact Litigation.



Parole Advocacy by SCHR Legal Interns Continues to Make Strides

... since Alabama inmates are not permitted to attend their own parole hearings and many do not have anyone to advocate on their behalf, SCHR interns fill a critical void.

SCHR continued its parole advocacy in Alabama and took on several parole cases in Georgia in 2011. In the process, SCHR not only secured the release of more than a dozen inmates, but also drew attention to the cases of numerous long-serving inmates who epitomize the problems of mass incarceration in the South – inmates convicted of non-violent offenses, inmates in their fifties and sixties, and inmates who had been literally lost in the prison system.

Since 2005, SCHR has relied heavily on its interns for its parole advocacy in Alabama. The Alabama Board of Pardons and Paroles holds hearings on the parole cases it considers; however, since Alabama inmates are not permitted to attend their own parole hearings and many do not have anyone to advocate on their behalf, SCHR interns fill a critical void. (Parole advocates in Alabama are not required to be attorneys.) In 2011, SCHR interns advocated on behalf of twenty-one inmates in Alabama, several of whom had served substantial prison time for drug possession or property offenses. More than half of the twenty-one inmates were released on parole, including Kimberly Edwards, for whom SCHR has advocated 2007. Several others were denied parole but given favorable reconsideration dates.

Meanwhile, SCHR became involved in several parole cases in Georgia, including some requiring collateral litigation. For example, David Jones was granted parole by the Georgia Board of Pardons and Paroles in March 2011, but the Department of Corrections refused to release him due to an outstanding warrant for his arrest in DeKalb County. With SCHR's representation, Mr. Jones won dismissal of the outstanding arrest warrant—which alleged an offense for which the statute of limitations had long expired—and was released from prison. SCHR also advocated successfully on behalf of Jimmy Horton, a 57-year-old man who had served thirty years of a life sentence; Mr. Horton is now working on construction projects in the Atlanta area. As with the Alabama cases, SCHR's Georgia parole work has been fueled in large part by outstanding contributions from interns.

Human Rights Internship Program Adds Public Defender Track

In its effort to help train the next generation of public defenders, SCHR has teamed up with the Southern Public Defender Training Center (SPDTC) to incorporate a Public Defender Track into the SCHR summer internship program. Through the Public Defender Track, two to three law students split their summer between SCHR and a public defender office in the South. In addition, SCHR and SPDTC coordinate a series of trainings for SCHR interns, SPDTC interns, and interns participating in the joint project.

In the summer of 2011, Jessica Hallett, a law student from Columbia, and Kerrel McCrimons, a law student from Howard, became the first two participants in the Public Defender Track. SCHR is extremely grateful to the Albert & Elaine Borchard Foundation, which provided funding for the launch of the project.

Praise for SCHR

In 2011, **Philanthropedia recognized SCHR as a Top Nonprofit Working in Criminal Justice in the United States.**

Philanthropedia, an organization working to improve nonprofit effectiveness by directing money to and facilitating discussion about expert-recommended, high-impact nonprofits, convened a group of 127 experts who identified SCHR as:

- One of 16 high-impact nonprofits working in criminal justice on a national level. SCHR ranked 6th nationally among criminal justice programs.
- One of 21 high-impact nonprofits working in criminal justice on a local/state level in the U.S. SCHR ranked 2nd nationally.

Read more about what the experts said about SCHR by visiting www.myphilanthropedia.org.

The recognition from Philanthropedia is one of several awards SCHR received in 2011:

- Emory University's Rollins School of Public Health and Goizueta Business School honored SCHR with their *Martin Luther King Jr. Community Service Award*.
- The Sapelo Foundation bestowed upon SCHR the 2011 *Smith W. Bagley Advocacy Award*.
- The Georgia Association of Black Women Attorneys presented SCHR with their *Zenith Award for Service to the Community*.
- Atlanta's John Marshall Law School recognized SCHR with the 2011 *Fred Gray Social Justice Award*.

In addition, several members of SCHR's team were recognized individually for their success and contributions:

- President and Senior Counsel **Stephen Bright** was the recipient of the prestigious 2011 *Mike Farrell Human Rights Award* from *Death Penalty Focus*.
- Executive Director **Sara Totonchi** was named by *Georgia Trend Magazine* as one of the *Top 40 Under 40* and a 2012 *Notable Georgian*. *Atlanta Magazine* named her as one of its *Five for the Future Influential Atlantans*. Sara also received *The Future is Now Young Leader Award* from the Young Democrats of Atlanta.
- The Georgia Chapter of the American Constitution Society honored Senior Attorney **Gerry Weber** with their inaugural *Legal Legend Award*.
- The Georgia Association of Criminal Defense Lawyers (GACDL) honored Senior Attorney **Sarah Geraghty** with the 2011 *Indigent Defense Award*.
- Staff Attorney **Lauren Sudeall Lucas** was recognized as one of *10 On the Rise* Georgia lawyers under 40 by the Fulton County Daily Report and received the *Stuart Eizenstat Young Lawyer Award* from the Anti-Defamation League, Southeast Region.

Steve Bright continued from page 1

for an adjunct. He was further honored when the graduating class asked that he deliver their commencement address. Vintage Steve, he pulled no punch, and before an audience that included United States Senators, Supreme Court justices, and other luminaries, he spoke unsparingly about the very real absence of fairness and due process for the poor in our nation's courts. His talk ended with a sustained standing ovation. Yale's firm two-year limit on adjuncts has been permanently waived for Steve, and he continues to teach his popular and challenging course today.

Steve's speaking and teaching at Yale, and later at several other prominent law schools, has produced a bounty of riches for the capital defense bar. Bryan Stevenson heard Steve speak at Harvard, and decided to spend his winter break at SCHR. Bryan found the work so rewarding that after graduation he signed up and became a full-time SCHR attorney. After very quickly learning the ropes, he agreed to move to Montgomery, and eventually started the Equal Justice Initiative (EJI), which today is an enormously important and successful public interest law center. Clive Stafford-Smith was so determined to work with Steve at the Center that he found his own modest funding for his first year there. He too would later leave to attend to very serious problems in Louisiana. He founded the Louisiana Crisis Assistance Center, and after returning to his native England, founded Reprieve, an international human rights charity based in London. Many other highly talented lawyers, including Ruth Friedman, now director of the capital post-conviction project for federal capital 2255 cases, came into capital punishment work due to Steve's example.

By the early 1990's, Steve's frustration that most people had no idea just how rotten the capital punishment system was prompted him to set out and write, again in his "spare time," articles that would describe the system as it really functions. His 1994 Yale Law Journal article, *Counsel for the Poor: The Death Penalty Not for the Worst Crime but for the Worst Lawyer*, catalogued numerous failures, not small but catastrophic ones, that appeared in capital trials. This piece, unlike many law review articles, became widely read and cited, and helped open eyes that our broken indigent defense system was repeatedly failing the cause of justice in cases where the stakes could not be higher.

Steve wrote articles about the continuing influence of racial bias in the administration of capital punishment, and collected many examples where bias had altered the composition of the jury or made some other presence at trial. His experience of presenting meritorious constitutional claims before elected state court judges, only to see them denied, led him to write a series of articles on the importance of the independent judiciary and dangers of irresponsible attacks on elected judges. These same concerns also led to articles on the importance of the federal writ of habeas corpus.



David Lipman, left, one of the founders of the Southern Prisoners Defense Committee and current SCHR Board Member; and Steve Bright, then director of the Defense Committee.



From left, Robert McGlasson, Russ Canan, Steve Bright, Bob Morin, Norma Townsend, and Bryan Stevenson.

Steve's rising profile brought repeated requests for his testimony before committees of the United States House and Senate Judiciary Committees and subcommittees. His testimony has covered the arbitrariness of the death penalty, how racial discrimination continues to influence the criminal justice system, the need for indigent defense reform, innocence protection, remedies for abused prisoners, and habeas corpus. He has similarly testified often before state legislatures.

In 2007, Steve returned to the U.S. Supreme Court to argue whether it was permissible for the Jefferson Parish prosecutor – notorious for both his racism and his bloodlust in prosecuting capital cases – to strike all five prospective black jurors so he would be able to ask an all-white jury to return with a death sentence to avenge the O.J. Simpson verdict. In a 7-2 opinion, *Snyder v. Louisiana*, the Court reversed Allen Snyder's conviction and sentence of death

on the basis of racial discrimination at jury selection, holding that the prosecutor's motives for striking potential jurors were "highly speculative" and "suspicious." In the courtroom, Steve's description of the judge's passive – obsequiously tolerant to the prosecution – role in questioning the State's discriminatory intent prompted a good-humored exchange with Justice Alito and an eruption of laughter throughout the courtroom. But it was Justice Souter, tuned into Steve's eloquent argument, who observed that that pattern of permissive discrimination went beyond the district court, and throughout the entire system of courts in Louisiana, which had for years uncritically licensed prosecutors to remove African Americans from jury service.

Steve's gifts as a stirring speaker have led him to universities and law schools throughout the country where he repeatedly speaks about problems in the criminal justice and court systems and of sensible reform that would make both much fairer. These talks are usually very well attended, and after each one, he is besieged by audience members with questions and comments.

While always busy with too much on his plate, Steve has routinely found time for colleagues who need advice. For anyone who has spent any time with him, his phone constantly rings or buzzes to let him know an urgent call or email needs returning. His advice about trial strategy, how to comfort a distressed client, or how to extract a client from an enormously difficult circumstance, has been a godsend for many attorneys throughout the country. He is equally generous with his responsibility to mentor. Time and again, he has made time to speak to students about career paths.

He has also felt the need to aid organizations that seek to improve our system of justice for all. He is presently a Board member of the Texas Defender Service, a not-for-profit law office that represents condemned Texas prisoners, and the Mississippi Innocence Project. He has formerly served on several other boards.

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SCHR Wins Life Sentence for Jamie Ryan Weis On July 14, 2011, Superior Court Judge Tommy Hankinson, rejecting the State's calls for the death penalty, sentenced Jamie Ryan Weis to life imprisonment on capital murder charges following a sentencing hearing in Pike County, Georgia. Judge Hankinson's sentence brought an end to a case that the *Atlanta Journal-Constitution* said "epitomized the funding problems plaguing the state's public defender system." Six months after Robert Citronberg and Thomas West were appointed to represent Mr. Weis, the Georgia Public Defender Standards Council (GPDSC) – the state agency responsible for overseeing indigent defense representation – announced that it had run out of funds to pay them, bringing the case to an abrupt halt. In November 2007, then-trial judge Johnnie Caldwell granted the prosecution's motion to have Mr. Weis's appointed lawyers removed from the case and replaced by two local public defenders. Those lawyers – each already burdened with massive caseloads – immediately moved to withdraw, arguing that they did not have the time, resources, or qualifications to properly represent Mr. Weis in a capital trial.

SCHR then intervened in the case. After securing reinstatement of Mr. Citronberg and Mr. West as Mr. Weis's appointed lawyers, SCHR sought to bar prosecutors from seeking the death penalty on the ground that Mr. Weis's right to a speedy trial had been violated by the nearly three years of delay caused by the GPDSC's suspension of funding for the defense. In a 4-3 decision, the Georgia Supreme Court narrowly rejected that argument and returned the case to the superior court for trial.

At Mr. Weis's sentencing hearing, the defense presented evidence that Mr. Weis had been abused and neglected as a child, and had developed a debilitating drug addiction as a teenager. An expert witness testified that Mr. Weis likely incurred brain damage from inhaling gasoline fumes as a teen, and suffered from severe depression and anxiety disorders as an adult.

SCHR attorneys Stephen Bright and Patrick Mulvaney and investigators Sarah Forte and Mary Sinclair, together with Atlanta attorneys Robert Citronberg, Thomas West, and Sandra Michaels, represented Mr. Weis at trial.

SCHR Litigation Updates

SCHR Seeks Revocation of Execution Doctor's Medical License for Unlicensed Transactions of Lethal Drugs On June 20, 2011, SCHR filed a complaint with the Georgia Composite Medical Board seeking revocation or suspension of Dr. Carlo Musso's medical license because of Dr. Musso's involvement in importing and distributing sodium thiopental, a drug used to carry out lethal injections.

Since the spring of 2010, there has been a nationwide shortage of sodium thiopental, one of three drugs commonly used by states to carry out executions. An anesthetic, sodium thiopental is traditionally administered to render the prisoner unconscious prior to injection of the other two drugs, which cause death. Because the shortage of sodium thiopental threatened to interfere with states' ability to carry out executions, state prison officials scrambled to obtain supplies of sodium thiopental from a variety of sources, including shady pharmaceutical dealers and corrections officials from other states.

As a result of lawsuits brought by SCHR challenging Georgia's lethal injection procedures in January and February 2011, SCHR revealed that the Georgia Department of Corrections secured its supply of sodium thiopental from Dream Pharma, a pharmaceutical company operating out of the back of a driving school in London. In March 2011, the Drug Enforcement Authority (DEA) seized Georgia's supply of sodium thiopental after SCHR raised questions as to whether the drug was lawfully imported into the United States.

SCHR also learned that Dr. Musso's company, CorrectHealth, had purchased and imported a supply of sodium thiopental from Dream Pharma and then sold it to prison officials in Kentucky and Tennessee for use in executions in those states. As it had done with Georgia's supply of the drug, the DEA tracked Dr. Musso's transactions and seized the supplies of drugs purchased by Kentucky and Tennessee officials.

SCHR filed a complaint with the Georgia Composite Medical Board, which is charged with authority to evaluate "when a physician's or other allied health care provider's professional conduct . . . warrants modification, suspension, or revocation of the license to practice their profession in the State of Georgia," and to take disciplinary action in the event of a violation of laws, rules, or regulations.

"This complaint is not about Dr. Musso's role at state-sponsored executions – this is a complaint about the law and whether the person importing and distributing the drug is properly licensed. Dr. Musso was not," stated SCHR attorney Jessica Oats in the complaint. "Georgia's Medical Board should revoke Dr. Musso's license to practice medicine; at the very least, it should suspend his license pending a full investigation." The complaint remains pending before the state medical review board at this time.

Monitoring Period Concludes in Lawsuit Over Violent Conditions and Officer Brutality at Alabama's Donaldson Correctional Facility Over the past year, SCHR monitored conditions at Donaldson Correctional Facility pursuant to a settlement agreement entered in a lawsuit contesting violent conditions at the prison. When SCHR sued the prison in 2009, stabbings occurred once every ten days, beatings by correctional officers went uninvestigated, and men were regularly rushed to local hospitals with serious injuries. Over the past year, the number of serious injuries sustained by men in prisoner-on-prisoner assaults dropped significantly. In addition, the settlement agreement required the Department of Corrections to improve its investigations into allegations of officer brutality, and significant progress was seen in this area. The case was *Hicks v. Hetzel*, 2:09-cv-00155-WKW.

Settlement Reached in Lawsuit Filed Against Alabama Department of Corrections Officers for Assault Resulting in Fractured Arm Last year, SCHR was appointed by the federal trial court in Montgomery, Alabama to represent a man who alleged that officers at Bullock Correctional Facility repeatedly punched him in the face and beat him with batons, leaving him with a fractured arm. In March 2012, SCHR obtained a monetary settlement for the injured man. The case was *Barker v. Jones*, 10-cv-860-MEF (M.D. Ala.).

Settlement Reached in Lawsuit Filed Against Georgia Department of Corrections Officers for Beating of Handcuffed Prisoners at Hays State Prison

On August 12, 2010, three men at Hays State Prison were handcuffed, led into a prison segregation area, and serially beaten by correctional officers until they lost consciousness. One of them, Miracle Nwakanma, was punched, stomped on, kicked in the groin and face, struck with a flashlight, and hit with batons. He suffered injuries including splintered teeth, a fractured toe, and a fractured jaw. Oral surgery was required to repair the damage to his face.

In July 2011, attorneys from SCHR and Hunton & Williams LLP filed *Nwakanma v. Clark*, 4:11-cv-00188-HLM (N.D. Ga.), a civil rights lawsuit seeking compensation for the injured men. A settlement agreement entered in February 2012 provided for a payment of \$93,000 to the injured plaintiffs and required the State to provide the men with specialty medical care to treat their injuries.

Georgia Trial Court Certifies Class of Thousands of Indigent Parents Jailed Without Counsel for Child Support Debt

In Georgia, aggressive efforts to incarcerate parents for child support debt are often focused on the poorest of the poor, rather than on parents of means who willfully dodge their child support obligations. Georgia is also one of the few states in the country that forces indigent parents who owe child support debt to plead for their liberty, without counsel, against an experienced, state-funded lawyer who is trying to send them to jail. In the past two years, Georgia has jailed over 3,500 unrepresented parents for child support debt in proceedings initiated by the State. Many of these parents are victims of the downturned economy and are incarcerated for months even though they have no money to pay and no way to earn money while in jail.

In March 2011, SCHR filed *Miller, et al. v. Deal, et al.*, Case No. 2011-cv-198121 (Fulton County Superior Court), a lawsuit that seeks to secure lawyers for indigent parents who are facing jail, without counsel, for child support debt. On December 30, 2011, the Superior Court of Fulton County granted SCHR's clients' request for class certification. SCHR will soon defend the trial court's class certification decision in the Georgia Court of Appeals.

The new policy, which now exposes an officer to dismissal, provides in part: All employees shall be prohibited from interfering with a citizen's right to record police activity by photographic, video, or audio means.

Anderson v. City of Atlanta: Police Arresting Those Documenting Abuse

Citizens documenting police misconduct have become effective overseers. Across the country, ordinary folks who witness police misconduct have stepped up. With the proliferation of camera phones, the ability to document abuse – free of “he-said, she-said” debates – has led to institutional reforms. Unfortunately too, some officers have not reacted kindly to the citizen-documenters. In cases across the country, citizens have had phones seized and have even been arrested for documenting police abuse.

In our *Eagle* litigation, SCHR first took on this issue in 2011. As part of a systemic and multi-million dollar settlement against the Atlanta Police Department where we represented innocent citizens detained at a gay bar, the City adopted a policy that: “The City of Atlanta shall prohibit Atlanta police officers from interfering in any way with a citizen's right to make video, audio, or photographic recordings of police activity, as long as such recording does not physically interfere with the performance of an officer's duty.”

Unfortunately, the policy change did not put an end to the practice of seizing camera phones. Another lawsuit the same year by Copwatch of East Atlanta settled for \$40,000 after police again seized camera phones and apparently erased images.

In October 2011, SCHR was back at it. Along with Atlanta-based attorneys Daniel J. Grossman and Albert Wan, we filed *Anderson v. City of Atlanta, et al.*, a civil rights lawsuit against the City of Atlanta and an officer with the Atlanta Police Department (APD), on behalf of Felicia Anderson whose constitutional rights were violated when she was arrested as she peaceably monitored and photographed police activity.

Felicia Anderson is a 24-year-old woman who lived in the West End at the time of the incident. On October 14, 2009, Ms. Anderson observed APD's now-disbanded RED DOG unit raiding her neighbor's house. Ms. Anderson and others came out of their homes in response to the police activity, and noticed police officers repeatedly kicking and dragging a man while he was laying handcuffed on the ground. Ms. Anderson went home to retrieve her camera and returned moments later to film the incident as she stood on a public sidewalk across the street from where the man was being beaten. Right away, several officers began to shout at Ms. Anderson and demand that she stop recording. She stopped filming the officers and walked back to her house. One of the officers charged up behind her and demanded that she give him her camera. Taken aback by the behavior of the police officer, Ms. Anderson dropped her camera and the officer seized it. She was ordered to step off of the sidewalk into the middle of the street and produce her identification.

When Ms. Anderson asked for the officer to return her camera, the officer refused and proceeded to delete all close-up photos. Without any provocation, the officer handcuffed and arrested Ms. Anderson, citing her with: 1. No driver's license, 2. Pedestrian walking in roadway, and 3. Disorderly conduct. The lawsuit filed on behalf of Ms. Anderson stated, “The stop, search, and seizure of the plaintiff and her property was without probable cause or reasonable suspicion of any criminal activity and was for the sole and exclusive purpose of chilling speech and taking the information gathered by police activity.”

After several months of litigation, the City of Atlanta came to the table to settle Ms. Anderson's lawsuit. She was awarded \$50,000 in damages and attorneys' fees. But more importantly, teeth were added to the policy changes. The new policy, which now exposes an officer to dismissal, provides in part:

1. All employees shall be prohibited from interfering with a citizen's right to record police activity by photographic, video, or audio means. This prohibition is in effect only as long as the recording by the citizen does not physically interfere with the performance of an officer's duties.
2. Employees shall not intentionally delete or destroy the original or sole copy of any photograph, audio, or video recording of police activity created by a member of the public.”

With the additional exposure to the harshest discipline available, we believe that officers will be hard pressed to confront citizens documenting abuse, and citizens will have powerful tools of recourse if officers still seek to secret their conduct.

As one federal judge recently noted: “The proliferation of electronic devices with video-recording capability means that many of our images of current events come from bystanders with a ready cell phone or digital camera rather than a traditional film crew, and news stories are now just as likely to be broken by a blogger at her computer as a reporter at a major newspaper. . . . The filming of government officials engaged in their duties in a public place, including police officers performing their responsibilities, fits comfortably within the [First Amendment]. . . . This is particularly true of [documenting] law enforcement officials, who are granted substantial discretion that may be misused to deprive individuals of their liberties.” *Glik v. Cunniffe* (1st Cir. 2011).

2011 Advocates Honor Roll

We honor and extend our deepest appreciation to the individuals, law firms, foundations, and businesses across the country who are dedicated to SCHR's mission, and whose continuing financial support has sustained us for more than 35 years. In 2011, over 1,000 donors supported our work through events, contributions, grants, and more. We thank each and every one of you for your generosity. It is a privilege to present the SCHR Advocates Honor Roll, recognizing donors whose 2011 total gifts exceeded \$1,000, and whose investments have made possible the successes highlighted in this Report.

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Mark Your Calendar

16th Annual Frederick Douglass Awards Dinner

Celebrating

Stephen B. Bright

on his 30th Anniversary at the Southern Center for Human Rights

Thursday, November 15, 2012

Grand Hyatt Washington, Washington, DC

Visit our website for event information, to register and to purchase sponsorships or program ads. Event contact: Barbara Horwitz, Development Director, bhorwitz@schr.org, 404-688-1202

For more than 30 years, the Southern Center for Human Rights has relied on the generous contributions of foundations, individuals, firms, and businesses to continue the fight to expose the injustices and inhumane practices found in the criminal justice systems in the South. With limited resources, SCHR is recognized as one of the most effective legal advocates for the constitutional and human rights of the poor, the marginalized, and those facing the death penalty in the South. As the economic downturn has hit the states, SCHR is working hard to ensure that the hard won victories are not reversed. To do this, your continued and increased investment is vital! There are a number of ways to make significant contributions. Attend our events, support us at year's end and consider these other options which offer so many advantages. Use the enclosed envelope, register online at www.schr.org, or call 404-688-1202.

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This is a simple and important way to really make a difference. Regular support ensures that our legal teams have the resources to take action when necessary. Each month your contribution is automatically transferred from your credit/debit account to SCHR.

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The Southern Center for Human Rights is a 501(c)(3) nonprofit organization and all contributions are tax deductible to the extent provided by law. Our tax ID number is 62-102532. Visit www.schr.org/donate to contribute securely online. For more information on how to make these gifts and other options, contact Barbara Horwitz, Development Director, at 404-688-1202 or bhorwitz@schr.org.



New Staff Join SCHR

Elizabeth Compa, Attorney, joined SCHR in 2011 as an Arthur Liman Public Interest Fellow, to examine the effects of privatization in Georgia's criminal justice and prison systems. She holds a J.D. from Yale (2011), where she was Editor in Chief of the Yale Human Rights & Development Law Journal, a director of the Rebellious Lawyering conference, and a member of the Detention & Human Rights Clinic. She also holds a B.A. in History from New York University (2004). Before law school, Beth worked as a curatorial assistant at the Museum of the City of New York.



Deonna Green, Administrative Assistant, joined SCHR in June 2011 to provide support to the administrative, legal, and development operations. Prior to joining SCHR, Deonna was an account manager for OnPeak, where she played an essential role in providing clients with services including event planning, marketing, and logistics. Deonna has 8 years experience in hospitality and studied marketing and public relations at Troy State University.



Lochlin Rosen, Investigator, was a summer intern at SCHR in 2010 while an undergraduate at Elon University and joined SCHR as an investigator in June 2011 soon after his graduation from college. He has also worked at the Federal Public Defender's office in Pittsburgh, PA.

Steve Bright continued from page 9

Given this extraordinary career, it is no wonder that Steve has been repeatedly recognized. He has won many of the law's most prestigious awards, including the ABA's Thurgood Marshall Award, the ACLU's Roger Baldwin Medal of Liberty, NLADA's Kutak-Dodds Prize, NACDL's Lifetime Achievement Award, as well as the ABA's John Minor Wisdom Professionalism and Public Service Award. He has also been awarded honorary doctorate of law degrees from several universities in the United States and England.

What has brought him most satisfaction is the continuing success and important contributions of SCHR. While Steve and the Center were long considered outside troublemakers by many Georgia decision-makers, the Center today is a highly respected and powerful litigation and policy force. Steve and the Center were primarily responsible for the State of Georgia adopting a state-wide public defense system in 2003, an extraordinary feat under any circumstances.

The Center's legal staff continues to provide leadership and highly imaginative representation in its capital cases, and ever-increasingly difficult prison cases. It has also pioneered litigation techniques to deal with wayward and ineffective indigent defense systems. It took on Georgia's highly restrictive sex-offender registry statute several years ago, and won reform, first in the courts and later in the Legislature. And its more successful recent efforts to save unanimous capital jury sentencing in the wake of the Brian Nichols' jury decision to reject the death penalty required very sophisticated legislative advocacy. Steve's successors as Executive Director, first Lisa Kung, and presently Sara Totonchi, have continued Steve's efforts to see that the Center is one of the most effective not-for-profit law centers in the country.

So, as Steve's 30-year anniversary draws closer, there is much to celebrate.

George H. Kendall is Of Counsel for Squire Sanders and worked side by side with Steve Bright in the early days of SCHR, and continues to be a national leader in death penalty and prison litigation.

SCHR Recognizes Georgia Champions of Justice and Fairness with Inaugural Lifetime Achievement & Gideon's Promise Awards

On May 8, 2012, at SCHR's annual Atlanta benefit reception, *Justice Taking Root*, SCHR recognized the first recipients of its *Lifetime Achievement and Gideon's Promise Awards*.

In recognition of her accomplishments – as legal educator, author, speaker and advocate – and continuing efforts to advance justice and fairness in Georgia's legal system, SCHR was proud to present **Anne S. Emanuel** of the Georgia State University College of Law with the first Lifetime Achievement Award.

In recognition of and with gratitude for his tireless contributions as co-counsel in the recently settled right to counsel class action suit, *Flournoy v. State*, SCHR was delighted to present **Michael A. Caplan**, Associate at Bondurant, Mixson & Elmore, LLP, with the inaugural Gideon's Promise Award.



SCHR deeply values its relationships with its allies throughout the legal community who strive to transform the criminal justice system. "We cherish those who emerge as true partners in justice like Anne Emanuel and Mike Caplan," states SCHR Executive Director Sara Totonchi. "SCHR's ability to bring bold and innovative litigation that wins sustainable change is multiplied by the direct involvement of these two individuals."

In response to being chosen as the first recipient of SCHR's Lifetime Achievement Award, Anne Emanuel said, "It is not possible to overstate the importance of the work done by the Southern Center for Human Rights. To be honored by this extraordinary institution is humbling. I am more grateful than I can express."



"I am so honored to receive the Southern Center's inaugural Gideon's Promise award," comments Mike Caplan. "This recognition is a tribute to the dedicated work of the talented lawyers, investigators, and paralegals on the *Flournoy* trial team, who worked diligently to achieve significant reforms in the manner in which the state provides counsel in conflict appeals. That

result would not have been possible without the leadership of the Southern Center, which has been invaluable to the pursuit of justice in Georgia and elsewhere."



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Donor Spotlight

Stuart Liebowitz, Roseland, Oregon



Stuart Liebowitz and Mary Cooper have contributed to SCHR on a monthly basis for nearly 20 years.

Stuart Liebowitz first became familiar with SCHR's work in an article. "What struck me was the passion, dedication, and eloquence of Mr. Bright in defending death row inmates, particularly in a region infamous for its zealous pursuit of executions."

Stuart Liebowitz and his late wife Mary Cooper have been financially supporting SCHR on a monthly basis for nearly twenty years. He explains, "It is rare that you can find an organization that matches so well word and deed. SCHR's commitment and dedication to a cause that too few are willing to embrace is truly inspirational."

Ten years ago, Stuart spent three weeks at SCHR and experienced its work first hand. "I was able to see the work you do on behalf of prisoners who have been denied even the most rudimentary elements of due process or who have been mistreated in a way that harkens back to an earlier century. SCHR serves as an inspiration to those of us who understand that the death penalty has no place in a civilized society and that ensuring fair and humane treatment of prisoners is a noble cause."

Asked why he has made such a deep financial commitment to SCHR, Stuart responds, "For too long we have lived in times marked by a desire for excessive punishment and indifference or even antipathy to justice for those accused or convicted of criminal behavior. It is gratifying to know that in the face of such a culture, SCHR stands steadfastly for basic decency and human rights. I give to several charities, but no organization commands a greater financial commitment than SCHR. It has been a privilege to have done what I can to support these efforts and [I] would strongly encourage others to do the same."

SCHR is deeply grateful to Stuart, Mary, and every one of our supporters for their gifts that make our work possible!