THE LAW OFFICE OF THE SOUTHERN CENTER FOR HUMAN RIGHTS

Human Rights Report

2009 Annual Newsletter of the Southern Center for Human Rights

Public Accountability

and the Criminal Justice System in the South

SCHR Shines a Light

By Sarah Geraghty

In our years of litigating civil rights cases in the deep South, a few truths have become evident. First: no good comes from permitting government officials to perform their duties in secret. Second: officials who have become accustomed to operating without accountability are loathe to relinquish the power that comes from conducting their business without public scrutiny. And a third truth: when public officials vehemently resist efforts to shine a light on their activities, there is often something to hide.

The Southern Center for Human Rights (SCHR) has recently stepped up efforts to insist that government agencies – particularly prisons, jails, and law enforcement – come out from behind a veil of secrecy and take responsibility for their actions and inactions. Rather than operating prisons and jails as hidden, mysterious places at the far edge of democracy, we believe that correctional institutions and all parts of the criminal justice system should be transparent and accountable to the public.

A number of our recent cases involve government officials' attempts to operate in secrecy, and SCHR's insistence that they be accountable to the public.

Sheriffs Pocket Inmate Food Money, Resist Public Inquiry

In Decatur, Alabama, U.S. District Court Judge U.W. Clemon recently threw Sheriff Greg Bartlett in jail for the night after the Sheriff admitted in open court that in the last three years he had pocketed $212,000 in food money meant to feed people at the jail.

At a January 2009 hearing on the matter, SCHR presented testimony from skinny detainees who stated that they were fed paper thin bologna slices and bloody chicken, in meager portions, leaving them hungry. The Sheriff further admitted that in 2008, for the bargain price of $500, he purchased an 18-wheeler-truckload of corndogs from a friend who ran a trucking company. He couldn't sell the corndogs so Sheriff Bartlett and another sheriff purchased them and split the shipment. Inmates were served corndogs for breakfast, lunch, and dinner for at least three months.

Skimming money from the inmate food account is actually legal in Alabama. A Depression-era statute, still in operation in 55 of 67 Alabama counties, offers a perverse incentive for sheriffs to do just that: The state provides $1.75 per inmate each day to feed them, and lets sheriffs pocket any money not spent on food. The Morgan County Jail, however, is under a federal consent order, and SCHR successfully argued that Sheriff Bartlett's menu – where he spent 15 cents and pocketed 15 cents on each meal – violated a provision in the consent order requiring adequate nutrition.

After learning how Sheriff Bartlett fattened his bank account by thinning detainees, SCHR sought to determine whether other sheriffs were similarly profiting. When SCHR sent out Open Records Act requests to Alabama's other sheriffs asking how much food money they had pocketed, the director of the Alabama Sheriff's Association sent each of the sheriffs a letter telling them to ignore the open records law. "My recommendation to you is not to answer the letter or to receive their phone call," the director of the Sheriff's Association wrote. Only after SCHR threatened to sue, and the Birmingham News took the Sheriffs Association to task for advising local sheriffs to break the law, have sheriffs started to comply with our request. SCHR is collecting documents now, while working to reform the state law so that all inmate food money is actually spent on food.

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In This Issue

Director's Letter

In late January, President Obama issued two memoranda indicating his administration's commitment to creating "an unprecedented level of openness in Government." In the first, Obama instructed federal agencies to adopt a presumption in favor of Freedom of Information Act requests. In the second memo, he ordered the creation of an Open Government Directive to make the federal government more transparent. In the President's words:

> *Transparency promotes accountability and provides information for citizens about what their Government is doing. Information maintained by the Federal Government is a national asset. My Administration will take appropriate action, consistent with law and policy, to disclose information rapidly in forms that the public can readily find and use. Executive departments and agencies should harness new technologies to put information about their operations and decisions online and readily available to the public.*

The Obama administration's initial transparency efforts have been sincere and creative, implementing an open government blog, reworking the *regulations.gov* and *data.gov* websites, and using web tools to open dialogue about health care reform and other issues.

But then Obama got to prisons. The Obama administration has stumbled on the issue of releasing additional photographs of abuse at Abu Ghraib, and on how to close Guantánamo Bay.

In our cover article, SCHR Senior Attorney Sarah Geraghty describes how prisons and law enforcement routinely – and seemingly reflexively – resort to secrecy when challenged. Some refuse to comply with open records requests, while others change the laws to protect themselves from scrutiny. In Telfair County, Georgia, Beulah Dollar came to SCHR to let us know that the local jail is cramped and filthy and found herself being prosecuted by the Sheriff for talking to detainees.

Not all attempts to hide problems or wrongdoing are so stunningly blatant. An attempt by Republican lawmakers in Georgia to strip oversight power from the Georgia Public Defender Standards Council, described in *Against All Odds* on page 3, was in retaliation for members of the Council publicly stating the obvious – that Georgia's new public defender system is underfunded and poorly managed. For those with something to hide, perhaps one added "benefit" of underfunding public defender offices is that it weakens the one local institution best suited to notice and put a stop to systemic police or prosecutorial misconduct. Jon Rapping's article *Inching Toward a New Day*, page 6, gives us a sense of how individual public defenders are fighting on despite crushing caseloads.

While we expect that prisons, police and prosecutors will continue to resist in this new era of transparency, change is already happening. On page 7, SCHR's newest capital attorney Patrick Mulvaney analyzes the impact of *Snyder v. Louisiana*, which now instructs appellate courts to look more closely at the record to determine whether a prosecutor removed a prospective juror from the jury pool on the basis of his or her race. While we have great hope that this new focus on transparency and accountability will lead to change, we must remain vigilant and continue to attack disparities in the criminal justice system whenever and wherever we find them.

It is the generous and long-term financial support of our donors that allows the Southern Center for Human Rights to be an independent voice on the side of the accused, the marginalized, and the disenfranchised. I hope that after reading this year's Report, you visit our website, www.schr.org, or use the enclosed envelope to contribute to our work, and help us keep shining a light on the criminal justice system as we work to make it fair, accountable and effective.

Lisa Kung
Director

Against All Odds

SCHR Triumphs in 2009 Georgia General Assembly

BY SARA TOTONCHI

When the 2009 Georgia General Assembly convened in January, two things were certain to be eliminated: the Georgia Public Defender Standards Council (GPDSC), which is the state agency responsible for oversight of indigent criminal defense representation in Georgia, and the law requiring that a defendant can only be sentenced to death when a jury votes unanimously in favor of a death sentence. But against seemingly impossible odds, and after an extraordinarily challenging and chaotic legislative session, the Southern Center for Human Rights (SCHR) and our allies succeeded in defeating proposed legislation that would have deeply harmed poor people accused of crimes, particularly those facing a possible death sentence.

At the start of the session, conservative legislators were poised to exploit the tragedy of the Brian Nichols case for their political gains. We braced ourselves not only to fight against less than unanimous juries in death penalty cases, but also the abolition of the GPDSC which had come under fire because of the high cost of defending Nichols.

In December, 2008, Brian Nichols was convicted of hostage-taking and the killing of a judge, a court reporter, a sheriff's deputy and an off-duty federal agent during a 2005 shooting spree that began in a downtown Atlanta courthouse. The case generated considerable publicity and public hostility. After four days of deliberations, the jurors were unable to reach a unanimous agreement on Nichols' sentence, with nine jurors voting in favor of a death sentence and three in favor of life imprisonment. As a result of the current Georgia law requiring jury unanimity for a death sentence to be imposed, the judge sentenced Nichols to life imprisonment without possibility of parole.

The response to the Nichols case reignited longstanding efforts in the state Georgia legislature to pass a bill that would change the current law requiring jury unanimity for a defendant to be sentenced to death and would instead allow a death sentence to be imposed when ten or more jurors vote in favor of it. Similar legislation – including a proposal to allow a death sentence to be imposed when as few as nine jurors favor it – has been introduced in the last two sessions but was defeated as a result of vigorous opposition organized by the Southern Center for Human Rights and the Georgia Association of Criminal Defense Lawyers. The Nichols case provided new and significant momentum for this legislation to be passed.

However, SCHR spearheaded the opposition to the proposed legislation and succeeded in defeating the attempt to change the law and to lower the standard for imposing a death sentence. Maintaining the requirement of jury's unanamity in order to impose a death sentence is of critical importance to preserve vigorous jury deliberations in capital cases and to ensure that every juror's voice is heard and every juror's vote counts.

In addition to defeating the non-unanimous jury legislation, SCHR turned back a legislative attempt to eviscerate our recently created statewide public defender system. In 2003, the Legislature passed the Georgia Indigent Defense Act, establishing the Georgia Public Defender Standards Council to provide and oversee indigent criminal defense representation throughout the state. In addition to establishing the GPDSC, the passage of the Georgia Indigent Defense Act resulted in the creation of 43 circuit public defender offices, the Office of the Capital Defender, and the Office of the Mental Health Advocate. The entire system was funded for the first time in 2004.

During the 2009 legislative session, a bill was introduced that proposed to relegate the GPDSC to the role of an advisory body and to place all responsibility for the public defender program in the hands of one person, the executive director of GPDSC, who serves at the pleasure of the Governor. The passage of this legislation would have stripped the GPDSC of its political independence and would have amounted to a large step backwards in the ongoing effort to improve the quality of legal representation provided to indigent criminal defendants.

We celebrate these wins today, but we remain steeled to fight these proposals when they resurface, which may be even as soon as the summer and fall of 2009. But for now, no one will be sentenced to death in Georgia unless all 12 jurors vote in favor of a death sentence; and our struggling public defender system has survived reforms that would have seriously weakened it.

Read SCHR's full summary of the 2009 legislative session – which included a proposal to charge prisoners room an board fees and another proposal to dissolves all oversight of private probation companies – on our website: www.schr.org. ■

Sara Totonchi is SCHR's Public Policy Director

SCHR News

SCHR Defends Win in Alabama Court of Criminal Appeals In September 2007, SCHR succeeded in convincing an Alabama circuit court judge that LaSamuel Gamble's sentence of death was unconstitutional. After the Attorney General appealed that decision, SCHR defended their victory before the Alabama Court of Criminal Appeals in April 2009. SCHR attorneys William R. Montross, Jr. and Lauren Sudeall Lucas represented Mr. Gamble before the appellate court, arguing that the failure of Mr. Gamble's defense counsel to present any defense at the penalty phase of his trial constituted ineffective assistance of counsel. Ms. Lucas reminded the court of the devastating picture of abuse, parental violence, poverty, and hunger presented by SCHR at the post-conviction hearing, evidence which convinced the same court that originally sentenced Mr. Gamble to death that his sentence was now unfair. A decision is pending.

Correctional Officers Support Lawsuit Challenging Alabama Prison Conditions Donaldson Correctional Facility in Bessemer, Alabama was designed to hold 700 medium and minimum security prisoners. When SCHR filed suit challenging conditions at the prison in February 2009, it housed over 1,700 men. Donaldson, like many Alabama prisons, is overcrowded, understaffed, and out of control. At the time of filing, three men were crammed into 8 x 10 cells. Plumbing malfunctioned, drug use was rampant, the kitchen was filthy, and dormitories flooded when it rained. Stabbings and beatings with knives, ice picks, box cutters, and other objects left men with lacerations, punctured lungs, ruptured organs, loss of eyesight, partial paralysis, and other physical injuries, as well as severe psychological trauma.

Shortly after SCHR filed suit, the President of the Alabama Correctional Organization (ACO), a group of over 500 correctional officers, filed an affidavit in support of the litigation. The ACO has called Alabama prisons "a ticking time bomb," at which officers and inmates are at risk on a daily basis.

Federal Court Stops Criminalization of Protected Religious Activity On March 30, 2009, Judge Clarence Cooper of the U.S. District Court for the Northern District of Georgia granted SCHR's request for a preliminary injunction to stop the State of Georgia from criminalizing protected religious activity. Specifically, the Court enjoined a portion of Georgia's sex offender law that made it a crime, punishable by 10-30 years in prison, for all persons on the sex offender registry to "volunteer" at any place of religious worship. Under this law, all 15,000 people on the registry faced long terms of imprisonment for activities such as singing in the church choir, speaking in front of their congregations, or participating in adult Bible study classes on church grounds.

SCHR Files Lawsuit on Behalf of Hundreds of Poor People without Lawyers In April 2009, SCHR filed *Cantwell v. Crawford*, a class action lawsuit in the Superior Court of Elbert County to protect men and women in Elbert, Franklin, Hart, Madison and Oglethorpe Counties from being prosecuted without representation. Approximately 300 people were without lawyers to represent them after Mack Crawford, Director of the Georgia Public Defender Standards Council, failed to renew contracts with three lawyers who were providing representation to defendants whose interests conflicted with those of defendants represented by the Northern Judicial Circuit public defender office. SCHR Director Lisa Kung stated to the press, "The lack of conflict counsel in the Northern Circuit reduces the fundamental right to counsel to a crapshoot. If two people are accused of a crime, one person gets a lawyer and the other doesn't. This has to change." This lawsuit is still pending.

SCHR Obtains Stay of Proceedings Based on Client's Incompetency Clarence Simmons is an inmate on Alabama's death row. He does not know that he is on death row, recall that he was convicted of capital murder or remember what he ate the previous day. That Mr. Simmons is incompetent has yet to bar legal proceedings from continuing forward. SCHR attorneys Amanda Parks and William R. Montross, Jr. represented Mr. Simmons and recorded the first stay of federal habeas corpus proceedings in the 11th Circuit Court of Appeals based on a client's incompetency.

Legislation Passed to Enhance Successful Reentry from Prison During the 2009 Georgia General Assembly, SCHR successfully passed two proactive pieces of legislation that will aid re-entry for people coming out of prison. One measure allows people under mandatory minimum sentences to serve their final year in a work release program or transitional center. Currently, these individuals are required to serve every day of their sentence in a hard prison bed; upon sentence completion, they are then released directly into the community. The new legislation will help reduce recidivism for those who have completed long sentences by providing them with much needed life and career skills to prepare them for living in the community. The other measure requires the Georgia Department of Corrections to provide pre-release planning for people in prison who are HIV+. We believe this legislation is a strong public health measure that will protect those entering prison and their families at home waiting for them.

SCHR Frees Indigent Debtor Quinton Jackson, age 26, was held in the Cook County Jail in Adel, Georgia for over one year, without a hearing or counsel, for failure to reimburse the State for $614 in public assistance paid for his 6-year-old son. Under Georgia law, whenever a custodial parent receives TANF benefits for the support of a child, the State may file a complaint to recover the cost of the welfare benefits from the non-custodial parent. Mr. Jackson was being incarcerated in perpetuity for failing to make his first two scheduled welfare reimbursement payments, both of which became due before Mr. Jackson ever received an order to pay them. Mr. Jackson was released on May 27, 2009 after SCHR filed a petition on his behalf.

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Eviction of Woman Convicted of "Sodomy" for Engaging in Consensual Sex as a Teenager Prevented In November 2008, SCHR stopped the State of Georgia from evicting Wendy Whitaker from her home near Augusta, Georgia. Ms. Whitaker faced eviction on Thanksgiving Day for engaging in consensual oral sex, over a decade ago, with a high school student who was one year and three months her junior (Ms. Whitaker was 17; the young man was 15). Because of this conviction, Ms. Whitaker is required to register as a sex offender and abide by all sex offender residence restrictions. Ms. Whitaker faced eviction because her home is within 1,000 feet of a church child care center. SCHR attorneys obtained a temporary consent order permitting Ms. Whitaker and her husband to remain in their home while the case proceeds.

SCHR Continues to Challenge Georgia's Loaf and Linger Law In April 2008, SCHR challenged a Georgia statute that made it a crime to "loaf" or "linger" near where inmates are housed or working in federal court. Although the preliminary injunction was denied, and the Defendants' motions to dismiss were granted, SCHR continues the fight in state court. The lawsuit was re-filed in Fulton County in May 2009.

Visit www.schr.org for more detailed information on SCHR's legal and policy work.

4th Annual Benefit

Justice *taking root*

Thursday, June 18, 2009
6:30 - 9:00 p.m.

Come out for justice with an evening of entertainment, food, and beverages in the heart of Atlanta's Castleberry Hill District.

LOFT at Castleberry Hill
170 Northside Drive
Atlanta, GA 30313

- cocktail attire
- free valet parking
- live entertainment
- hot hors d'oeuvres
- cash bar

Visit www.schr.org to buy your ticket today!

2009 Frederick Douglass Awards Dinner

Save the Date!

Thursday, October 22nd
Reception, Dinner & Program

SCHR's annual dinner to honor those who have made outstanding contributions to the protection of human rights in the criminal justice system.

Renaissance Mayflower Hotel
1127 Connecticut Avenue, NW
Washington, DC 20036

More information & tickets online at www.schr.org – Coming soon!

Inching Toward a New Day

By Jonathan Rapping

Recently a young lawyer named Marie Pierre-Py decided to leave her position as a public defender in Walton County, Georgia. After graduating from Cornell Law School, she moved to Georgia to be a part of a statewide reform effort that promised to build a model public defender system. She was a member of the inaugural class of the Honors Program, a state funded project designed to recruit the most committed young attorneys to public defender offices throughout Georgia, and to provide them with intensive training and support in an effort to make them effective advocates immediately and future leaders of the indigent defense movement.

As the founder and first training director of the Honors Program in Georgia, I came to know Marie, and many young public defenders like her, well. They represented Georgia's commitment to a better criminal justice system. Unfortunately, over the last couple of years, that promising system has been challenged and systematically dismantled by members of the legislature who apparently would prefer to return to a world in which poor people are quickly and quietly processed through the criminal justice system. To them, it is just not worth funding justice.

In a recent letter to the Fulton County Daily Report, Marie described with sadness the reason for her decision to leave her position as a public defender in Georgia. By her final year her caseload had become so unmanageable that she was forced to close nearly 900 cases annually, giving each client only a couple of hours attention on average. She was asked to pretend to provide representation to her clients without being able to conduct basic investigation or legal research. The expectation became that she would overlook her ethical obligations that bind all of us in the legal profession. There simply was not any money to do otherwise. In her letter to the Fulton County Daily Report, Marie explained that "[she] resigned because [she] drove home on a daily basis with the knowledge that [she] was not providing effective representation to [her] clients."

Marie provided us a dose of reality that was in stark contrast to an op-ed piece written by Georgia State Senator Preston Smith earlier this year. Smith is one of those legislators who believe the world Marie describes is "constitutionally adequate," and that anything more is akin to a "Lexus-level defense." He points to the cost of the Brian Nichols case as evidence that advocates for indigent defense "simply cannot be satisfied."

> . . . things had become so bad that she was forced to close nearly 900 cases annually, giving each client on average only a couple of hours attention.

But a case like that of Brian Nichols comes along once in a generation. The high cost is driven by the strategic decisions of the State itself, to which defense counsel must react. For every Brian Nichols there are hundreds of thousands of citizens like Marie's clients.

Marie's experience is shared by public defenders across the South, who are in a constant struggle to get their State governments to live up to their constitutionally mandated obligation to provide every poor citizen accused of a crime with effective legal representation. States in our region of the country have responded by ratcheting up prosecutions, tying public defenders' hands behind their backs, and wishing them luck.

Few people are more resilient than these public defenders. In post-Katrina New Orleans, a group of committed young attorneys, provided with an opportunity to reform one of the most dysfunctional indigent criminal defense systems in the country, built a public defender office from the ground up. The office is now staffed with some of the most committed public defenders one can find anywhere. While still facing extraordinary challenges to their ability to ensure constitutionally effective representation for every client, these attorneys work around the clock to try to make up for significant resource shortfalls. In Greenville, Mississippi, a remarkable young chief public defender has started to introduce a new mindset to her courthouse ensuring that no client will go through the criminal justice system without a fierce advocate by his or her side. And throughout Georgia, many public defenders have responded to the crisis described in Marie Pierre-Py's letter by coming together as a community to try to provide one another with whatever support they can.

These public defenders know all too well the landscape Marie describes. They know it leads to inevitable injustice. Everyday they do what they can to mitigate the unfairness.

When Georgia turned away from its commitment to support its newly created public defender system, these courageous lawyers were left without the training and support they needed to effectively represent their clients. In an attempt to fill the void, the Southern Center for Human Rights worked with me to develop the Southern Public Defender Training Center, an organization based on the Honors Program model, committed to providing training and support to public defenders across the southeast. Through our joint efforts many of these Georgia lawyers have been provided with funds to continue with this training and support program, modeled after the one they had available to them when they joined the system in its infancy.

Marie is leaving Georgia to join the Public Defender Service, a public defender office in Washington, DC, that has the resources and the organizational culture necessary to give its clients the representation demanded by the Constitution and the rules of professional responsibility. The backbone of that office lies in its commitment to recruit the most dedicated law graduates from across the country and to provide them with intensive training and supervision as they develop into first-rate attorneys. This allows the office to instill in every lawyer values associated with a client-centered practice, such as zealous advocacy, client loyalty, and the

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Snyder v. Louisiana One Year Later

BY PATRICK MULVANEY

The full effect of the U.S. Supreme Court's March 2008 decision in *Snyder v. Louisiana* has continued to take shape in early 2009. In *Snyder*, which was argued by SCHR President and Senior Counsel Stephen Bright, the Supreme Court reversed Louisiana death row inmate Allen Snyder's conviction and death sentence because it found that the State discriminated on the basis of race when the prosecution used peremptory strikes to remove all five black prospective jurors from Snyder's jury pool at trial.

A peremptory strike is a procedural device with which the prosecution or the defense can remove a prospective juror from the pool of qualified jurors for almost any reason. However, the Supreme Court has held that removing a prospective juror on the basis of his or her race – as the prosecution did in Mr. Snyder's case – violates the Equal Protection Clause of the U.S. Constitution.

The year following the Supreme Court's decision in *Snyder* has brought several positive developments.

First, the District Attorney's Office in Jefferson Parish, Louisiana, has decided to seek a second-degree murder conviction, rather than a first-degree murder conviction, at Mr. Snyder's retrial. So while Mr. Snyder spent more than eleven years on death row and still faces the possibility of a lengthy prison sentence, the death penalty is no longer an option in his case.

Second, state and federal courts across the country have applied the Supreme Court's decision in *Snyder* to determine that prosecutors exercised peremptory strikes improperly. In more than a dozen cases, from Texas to Illinois and from North Carolina to California, appellate courts have cited *Snyder* when reversing convictions or sending cases back to trial courts for because of issues of racially discriminatory strikes.

Many of those courts relied on *Snyder* for the principle that an appellate court cannot simply assume that a prosecutor's purported reason for exercising a peremptory strike – for example, that the prospective juror looked "nervous" – was in fact the actual reason for the strike where evidentiary support for the reason does not appear in the record. As the U.S. Court of Appeals for the Seventh Circuit stated in remanding a case for a hearing: "Like *Snyder*, the record here does not show that the prosecutor based the strike on [the prospective juror's facial] expression alone and, as *Snyder* teaches, we cannot presume that the prosecutor's race-neutral justification was credible simply because the district judge ultimately denied the challenge."

Similarly, a state appeals court in Colorado drew a direct comparison between *Snyder* and a case before it. "The circumstances here are very similar to those in *Snyder*," the court stated. "At least three of the race-neutral reasons articulated by the prosecutor are affirmatively refuted by the record, and the district court did not specifically credit the others. . . . Accordingly, defendant's convictions must be reversed."

Courts have also relied on *Snyder* for the principle that a reviewing court must consider "all of the circumstances that bear upon the issue of racial animosity" when evaluating whether a peremptory strike was exercised on the basis of race. For example, the U.S. Court of Appeals for the Sixth Circuit remanded a case in part because a videotape obtained by the defense after trial showed the prosecutors discussing the race of prospective jurors when deciding how to use their peremptory strikes. Likewise, the U.S. Court of Appeals for the Eleventh Circuit reversed a conviction and death sentence in a case in which the prosecution used 16 of its 22 peremptory strikes to remove all of the black prospective jurors.

Stephen Bright after arguing the Snyder case before the U.S. Supreme Court in 2007

Finally, various courts have relied on *Snyder* for the principle that a reviewing court must consider peremptory strikes in the context of the striking party's failure to strike similarly-situated jurors of a different race. In the words of the U.S. Court of Appeals for the Seventh Circuit: "[T]he critical issue . . . is why the prosecutor would excuse an African-American potential juror based on the answers to [a certain] question, but would not excuse a similarly-situated white juror for that same reason. The continued importance of this inquiry was recently recognized by the Supreme Court in *Snyder*."

Although not all of the cases citing *Snyder* involve the death penalty, many do – including numerous cases in the so-called "Death Belt." In one notable case, *Reed v. Quarterman*, the U.S. Court of Appeals for the Fifth Circuit cited *Snyder* repeatedly in the course of reversing a 1979 conviction and death sentence because the prosecution exercised racially discriminatory peremptory strikes at trial. The petitioner in that case, Jonathan Bruce Reed, had spent 30 years on death row in Texas prior to winning reversal. (Raoul Schonemann, who joined SCHR as a Senior Staff Attorney in July 2008, was a member of Mr. Reed's federal habeas corpus legal team when he was practicing in Texas in the 1990s.)

Of course, racially discriminatory peremptory strikes still plague criminal justice systems throughout the country, particularly in the South. Several of SCHR's capital cases attest to that unfortunate fact. But with *Snyder* now on the books, both state and federal courts have made use of the decision to question the propriety of peremptory strikes and to dig deeper into the circumstances surrounding them, and SCHR and similar organizations seeking to eradicate race discrimination from the criminal justice system have an additional tool to use to challenge the use of racially discriminatory peremptory strikes in jury selection. ■

Patrick Mulvaney is a Staff Attorney in SCHR's Capital Litigation Unit

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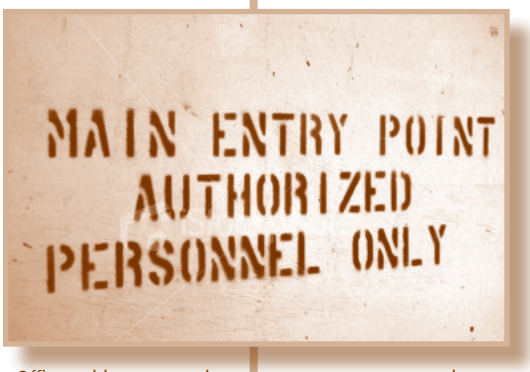
Records Documenting Prison Deaths, Suicides, Beatings: All "Secret" in Alabama

On August 6, 2007, 32-year-old Farron Barksdale, a man with paranoid schizophrenia, was sentenced to life imprisonment without parole for killing two police officers. On August 11, Barksdale was found comatose in a punishment cell at Kilby Correctional Facility near Montgomery. He died ten days later. The cell had reached temperatures above 105 degrees, and an autopsy revealed numerous large, fresh bruises and contusions covering his body. When Barksdale's mother asked for records to determine the cause of her son's death, the Department of Corrections refused.



Over a year later, citing "ongoing investigations," the Department continues to block Ms. Barksdale from discovering the events leading to her son's death, while picking and choosing facts to release to the public. When asked about the bruising on Barksdale's body, for example, the Department's Public Information Officer told a reporter that the injuries might have been "self-inflicted." When asked under oath if he had an evidentiary basis to suggest that Mr. Barksdale injured himself, the Public Information Officer acknowledged that he did not:

Q: Upon what factual basis did you suppose here that the wounds could have been self-inflicted?

A: Well, there was no factual basis.

Q: Do you have any evidence to suggest that the bruises were self-inflicted?

A: No. As it says, [it] could have been.

The Department's response in this regard was not an isolated instance. When SCHR sought to investigate claims of deplorable conditions, brutality, and corruption at Donaldson Correctional Facility in Bessemer, Alabama, the answer was the same: no documents would be provided. The Department takes the position that it may forever shield from public view every document in its possession relating to incidents that occur in Alabama prisons. In a recent deposition, the Commissioner readily admitted that the Department never discloses such records:

Q: When a homicide occurs in prison, are there any documents generated by the Alabama Department of Corrections that may be released to the public under the Open Records Act?

A: No.

Q: When a suicide occurs in prison, are there any documents generated by the Alabama Department of Corrections that may be released to the public under the Open Records Act?

A: No.

Q: When a serious physical assault occurs in prison, are there any documents generated by the Alabama Department of Corrections that may be released to the public under the Open Records Act?

A: No.

Q: When an incident of excessive force occurs in prison, are there any documents generated by the [Department of Corretions] that may be released to the public under the Open Records Act?

A: No.

The Warden of Donaldson Correctional Facility confirmed this policy and further testified under oath that he could see no reason why documented allegations of officer brutality should ever be made available to the public.

SCHR has sued to reverse this policy, which is at once in violation of the state's open records law and contrary to Alabama's professed commitment to open government. Litigation by SCHR and Huntsville attorneys Jake Watson and Herman Watson, Jr. resulted in a Montgomery Circuit Court judge's order in October 2008 directing the Department to turn over documents, but the Department refused to do so and appealed the order. The case, Allen v. Barksdale, is now fully briefed before the Supreme Court of Alabama. The Alabama Press Association, The Huntsville Times, and other news organizations recently filed an amicus brief in support of our position.

Resistance to Public Accountability

When challenged, it is not surprising – but still deplorable – that those in power often use their ability to arrest, prosecute or intimidate those who are trying to bring the truth to light.

In Clinch County, Georgia, SCHR discovered that the county sheriff was illegally charging people $18 per day for every day they were incarcerated in the county jail. A typical situation: one man was billed over $4,500 of "room and board" for the eight months he spent in the jail even though the charges that put him behind bars in the first place were eventually dropped. When Ronda Cross-Scott, an African American County Commissioner, asked SCHR for help to stop the practice, she was targeted by the local police, charged with 14 felony crimes for what amounted to giving an incorrect address on her voter registration card, threatened with 100 years in prison for this offense, jailed, and then judicially banished from Clinch County. A year later, it became clear why Ms. Cross-Scott's questions were so threatening: nearly a dozen criminal justice actors, including the chief judge, juvenile court judge, sheriff and clerk of court, were indicted by federal prosecutors for crimes including fraud, obstruction of justice, collecting an illegal "tax" on people facing criminal charges, and then pocketing the fees. The federal prosecutions are ongoing. SCHR is assisting Ms. Cross Scott in efforts to have parts of her sentence overturned.

In April 2009, Captain Lloyd Wallace, the elected president of a 500-member group of correctional officers and a 23-year veteran of the

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Alabama Department of Corrections, wrote an affidavit in support of SCHR's effort to investigate working and living conditions at the failing and chaotic Donaldson Correctional Facility. Captain Wallace stated in his affidavit that conditions in Alabama prisons are reaching a "crisis point" and that many are a "ticking time bomb." Two days later, he was reprimanded for violating departmental policy. Department of Corrections officials further discouraged Wallace and other officers from speaking out by telling them that disclosing conditions within the prisons would "start a riot" for which they would be responsible.

In Telfair County, Georgia, Beulah Dollar is another outspoken African American former county commissioner who is committed to shining a light on the hidden corners of the criminal justice system. Commissioner Dollar, who visited the local jail regularly to keep an eye on operations there, contacted SCHR about poor jail conditions. SCHR investigated and confirmed that, indeed, the jail is cramped, filthy and poorly managed. Rather than improve the conditions at his jail, the Telfair County Sheriff brought criminal charges against Ms. Dollar for trespassing and for violating an obscure Georgia law that disallows anyone to "loaf, linger or stand around" near inmates. SCHR is representing Ms. Dollar in a federal lawsuit challenging the constitutionality of the statute. The Sheriff's attempt to intimidate Ms. Dollar and silence her by finding a way to arrest her is a manifestation of the culture of concealment that permeates criminal justice system.

> . . . in 2006, Georgia's General Assembly passed . . . a law that made "all reports, files, records, and papers of whatever kind relative to the supervision of probationers by a private corporation" a confidential state secret.

Profiting From the Poor, In Secret

In Augusta, Georgia, SCHR investigated the practices of a private probation company, Sentinel Officer Services, Inc., on behalf of Marietta Conner. Ms. Conner, age 63, was charged with "failure to yield to a pedestrian in the crosswalk" and fined $140. Because she was unable to pay the $140 fine on the day of court, she was placed on probation with Sentinel, at a rate of $39 per month.

Over the course of four months, Ms. Conner made five payments totaling $185.99. Yet, every time Ms. Conner made a payment, more money was allocated to her probation fees than to her fine. For example, when Ms. Conner made a $20 payment, only $1 went toward the fine, whereas $19 went to Sentinel. When Ms. Conner made a $40 payment, only $11 went toward the fine, while $29 went to Sentinel.

Ms. Conner was caught in a cycle in which she was unable to pay her fine in full before the next month's supervision fees were added. By the time she had paid $185.99, she still owed $119.01 in "supervision" fees. In other words, because she was poor, Ms. Conner was being required to pay more than twice the amount of the original fine. To add insult to injury, Sentinel employees told Ms. Conner she may be jailed if she did not increase her payments.

Surely, companies like Sentinel, performing public services under contract, should be subject to Georgia's open records law. Yet, remarkably, in 2006, Georgia's General Assembly passed Ga. Code Ann. § 42-8-106, a law that made "all reports, files, records, and papers of whatever kind relative to the supervision of probationers by a private corporation" a confidential state secret.

This statute, a gift to the private probation industry at the expense of public accountability, underscores the power of private entrepreneurs, intent on expanding the criminal justice system to line their own pockets. At the helm of this movement is Representative Clay Cox, a state legislator and owner of one of the largest private probation companies in Georgia. This legislative term, Representative Cox proposed a bill to abolish the state agency that oversees his business. (The legislation was withdrawn after the Atlanta-Journal Constitution took Cox to task for his monumental lapse in judgment).

The notion that our criminal justice institutions are somehow "naturally" closed, hidden institutions is wrong, but entrenched, and the work of changing that notion must be intentional and strategic. It is also critical; with one in thirteen adults in Georgia under correctional control, the corrections system has become the state's largest and most expensive public institution. SCHR will carry on the work of bringing sunlight into our prisons and jails. ■

Sarah Geraghty is a Senior Attorney in SCHR's Impact Litigation Unit

Lewis Sinclair

Honoring the Life of a Legendary Community Organizer

BY KORI CHEN

On June 8, 2008, our dear friend and comrade Lewis Sinclair peacefully passed on from this world. Throughout his remarkable life of ninety-three years, Lewis was tirelessly devoted to grassroots community organizing and social justice. With a vibrant, infectious spirit, and a love for people, music and good southern cooking, Lewis was the kind of person who made you want to be a part of the movement.

Lewis believed that grassroots social movements were the only way to create real change. In his view, people did not need to be told what changes were needed in their communities; they already had the answers. It was simply a matter of bringing members of the community together to collectively identify what their challenges were and to strategize about how to meet them. To Lewis, effective movements were those that were led by "ordinary" people, who are the real "experts" on social change.

"What each individual has to decide is to do something instead of doing nothing," Lewis once said. He believed deeply in the power and ability of everyday, grassroots people coming together to solve their own problems and challenges; pushing social change to happen from the bottom up.

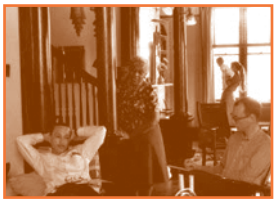
"His beliefs make a lot of sense if you knew him," says Mary Sinclair, his beloved partner of 27 years. "As a person who did not trust the authorities, he had no choice but to go and talk to neighbors and everyday people to try and get things done!"

Born in Pass Christian, Mississippi in 1914, Lewis would go on to serve in the US Army during World War II and later work for the Tennessee Valley Authority (TVA) as a statistician, economist, and eventually chief of economic research and program manager for minority economic development.

From the 1950s onward, he was actively involved with the legendary Highlander Center in Tennessee. Marginalized people and advocates have gathered there since 1932, working together to organize for social change, nonviolent resistance against institutional discrimination and oppression, and to seek progressive social and cultural change. At the time of its founding, the Highlander Center was one of the few places in the South where Blacks and whites could meet, work and share meals together, which is extraordinary when thinking about the deep racism embedded in the culture and laws of the time. Lewis was involved in Highlander's education dialogues in which participants from all over the country came together to discuss challenges they were facing in their communities. Together, they would come to see how the issues someone was facing in one place were similar to the issues faced by someone else in a completely different area, and they would collectively strategize around how to challenge the systemic oppression that was affecting people all over the country and the world.

One of Lewis's favorite stories involves a famous participant, Rosa Parks, who attended sessions at Highlander before the Montgomery Bus Boycott, for which she would become famous. When asked what she had learned at the end of a training session, she replied that she hadn't been very involved in her community before and she didn't know how involved she would be when she returned. Instead, she "might just go home and sit down."

Lewis was deeply committed to Highlander's principle of not dictating what needed to be done to the many young organizers who passed through its doors, but instead listening to what they felt were the needs of their communities and adapting strategies to suit the needs of the people. He was always supporting and pushing organizers to try new strategies and embrace new ideas so as to stay relevant and adjust to the changing times and conditions.



Highlander Center photo

Lewis Sinclair (left) at Highlander's Knoxville facility; 1960s.

Highlander Center photo

Lewis and Mary Sinclair at Highlander's 75th anniversary; 2007.

After retiring from TVA, Lewis moved to Atlanta in 1977 and became immersed in the work of the American Civil Liberties Union, the Open Door Community, Emmaus House and the Southern Center for Human Rights.

While deeply committed to SCHR's excellent legal work, Lewis also believed that you could only achieve so much through the courtroom. Lewis remembers that SCHR – then known as the Southern Prisoners Defense Committee – was founded to be the legal support for local activists organizing against the death penalty and brutality in prisons and jails. Thus, he was very supportive of broadening the scope of its work to include strategies such as community organizing through programs like Fairness for Prisoners' Families and our campaign against private probation companies in Americus, Georgia. In essence, Lewis saw these efforts as returning SCHR to its roots.

In a recorded interview Mary conducted with him in 2007 at the King Center here in Atlanta, Lewis reflected on the Civil Rights Movement and where we are now, saying: "It was nice that we had charismatic leaders such as Dr. King during that Movement, but now, individuals must look at their own communities and decide what needs to be done and take it upon themselves to work at it and try to correct those problems."

While he was very excited about the prospect of seeing Barack Obama, a Black man with a community organizing background, become President of the United States, he steadfastly maintained that people cannot afford to wait for charismatic leaders to emerge. Rather, Lewis strongly believed that people hold the power within themselves to create the change that is needed.

Lewis, we thank you for your spirit, your dedication, and your tireless faith in the power of the people. Rest in peace. ■

Kori Chen, a community organizer, worked with SCHR from Jan. 2008 to May 2009

New Staff Join SCHR

Barbara Horwitz
Development Director — May 2009

Barbara, a veteran fundraiser, joins SCHR as the development director after eight years as senior major gifts/planned giving officer with The Nature Conservancy's Georgia program working with individuals, foundations and corporations. Barbara's previous development experiences included serving as development director for the Crohn's & Colitis Foundation's Georgia chapter and special programs director for Georgia Public Broadcasting.

Ms. Horwitz is involved in projects which advance and promote environment sustainability and women's issues, including Planned Parenthood of Georgia and The White House Project, and tutors at the International Community School in Decatur. Barbara holds a B.A. in American Studies from Wellesley College.

Raoul Schonemann,
Managing Attorney, Capital Litigation — July 2008

Raoul joined SCHR as a senior staff attorney in capital litigation. Mr. Schonemann received his B.A. from Washington University in 1985 and his J.D. from New York University School of Law in 1989. From 1989 to 1991, he was a Prettyman Fellow at Georgetown University Law Center, where he taught and supervised students in the Juvenile Justice Clinic. He received an L.L.M. degree from Georgetown in 1994.

Prior to joining SCHR, Mr. Schonemann represented death-row inmates in Texas and California for 17 years. He began representing death-row prisoners in 1991 as a staff attorney at the Texas Resource Center in Austin. From 1995 to 2001, he was an adjunct professor and supervising attorney of the Capital Punishment Clinic at the University of Texas School of Law. From 2001 to 2008, he represented death-sentenced inmates in California as a deputy public defender with the Office of the State Public Defender in San Francisco.

Patrick Mulvaney
Reprieve Fellow & Staff Attorney — September 2008

Patrick joined SCHR in September 2008, and focuses primarily on capital litigation in Alabama.

Mr. Mulvaney graduated from the University of Pennsylvania Law School in May 2008. While a student at Penn, he represented clients through the Philadelphia Defender Association's clinical program, served as an executive editor of the university's Journal of Law and Social Change, and interned with Reprieve and SCHR. Upon graduating, he received the Summer Jackson-Healy Award for Public Service.

Prior to law school, Mr. Mulvaney spent a year on the staff of the National Coalition to Abolish the Death Penalty in Washington, D.C. He also spent two years in journalism, writing for various publications and earning his M.A. in journalism from New York University. He earned his B.A. from Saint Joseph's University in 2002 and is a member of the Alabama bar.

Inching Toward a New Day continued from page 6

importance of client communication and relationship building. Caseloads are kept manageable so that lawyers can thoroughly prepare, research, and investigate every case as required by professional and constitutional standards. Adequate funding ensures that lawyers do not need to trade on their ethical obligations to provide clients with conflict-free counsel and appropriate expert services – something many public defenders are forced to do on a daily basis.

I am excited for Marie. She will have the opportunity now to represent her clients in accordance with the principles underlying the Supreme Court's landmark decision in *Gideon v. Wainwright*. She will have the chance to provide each client "constitutionally adequate" representation. She will be able to give poor citizens the quality of service that people who are able to retain their own counsel receive. This is not a Lexus-level defense. It is what every citizen is entitled to under the Constitution. It is, unfortunately, a standard far too many public defenders passionately strive to achieve but are never able to realize for their clients because of overwhelming caseloads, inadequate funding, and lack of institutional support.

Meanwhile, in the South, we continue to fight to ensure that young public defenders in the future do not have to face the dilemma Marie faced: either provide substandard representation or flee the system altogether. This battle is being waged on several fronts. The Southern Center for Human Rights engages in legislative and legal advocacy to force these States to live up to their constitutional obligations. The Southern Public Defender Training Center works to recruit young public defenders to the South, and to provide them with the training and support they need in an effort to build a community of public defenders across the region who will be able to help carry on these battles down the road.

The road is long, but with the energy of dedicated, young public defenders, like those who came to Georgia to help build a new system and those who are working in fledgling public defender offices in New Orleans and Mississippi, there is hope. With the help of seasoned defenders like many of the Chief Public Defenders in Georgia, Mississippi, and Louisiana, there is promise. With the backing of private partners and supporters like members of the Georgia Criminal Defense Lawyers Association, the National Association of Criminal Defense Lawyers, and the National Legal Aid and Defender Association, there is cause for optimism. And, with organizations like SCHR and SPDTC, there is reason to be encouraged. Despite those who want to set indigent defense back to the pre-Gideon era, we are inching towards a more just world, a world in which every attorney responsible for the representation of indigent criminal defendants will have the resources and institutional support necessary to provide the quality of legal representation that is required by the Constitution. ■

Jonathan Rapping is Founder & CEO of The Southern Public Defender Training Center

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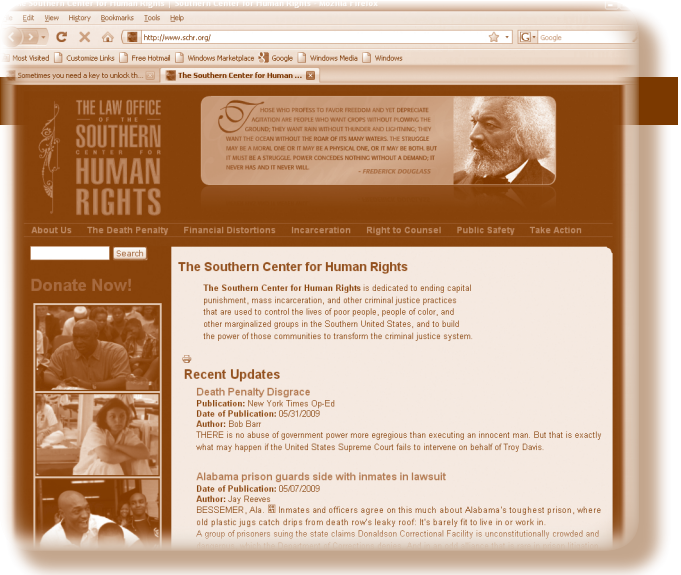

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