

THE LAW OFFICE
OF THE
SOUTHERN
CENTER FOR
HUMAN
RIGHTS



HUMAN RIGHTS REPORT

2010 Annual Newsletter of the Southern Center for Human Rights

SCHR Reinvigorates Indigent Defense Fight in Georgia

By Lauren Sudeall Lucas

Given the current economic climate, it would not surprise many to learn that the State of Georgia is in the midst of a budget crisis. The crisis has impacted all Georgians, but it has had a particularly severe impact on those who are subject to Georgia's criminal justice system and without the means to provide for their own defense. Funding cuts and budget shortfalls not only have resulted in a failure to provide counsel to indigent defendants in spite of their constitutional right to such representation, but have also had a sobering impact on the quality of that representation and the ability of counsel to effectively represent their clients.

SCHR has always been committed to ensuring that indigent criminal defendants receive adequate and effective legal representation. As funding cuts and shrinking budgets add pressure to an already overburdened and malfunctioning system, we have been faced with new challenges. Several of our recent cases demonstrate the ways in which we have reinvigorated our long-standing fight to ensure that all individuals in Georgia have the legal representation to which they are entitled.

Languishing in Jail without Pre-Trial Representation

The clearest and most egregious violation targeted by SCHR in its indigent defense litigation has been the complete denial of legal representation to indigent defendants awaiting trial and appeal.

SCHR recently targeted one instance of such denial in the Northern Judicial Circuit, a five-county circuit in northeast Georgia. In 2009, SCHR began investigating complaints from residents of the circuit that hundreds of people had been left to languish in jail pre-trial without a lawyer. In the Northern Circuit,

indigent defense is provided by the Circuit Public Defender Office. When there is a conflict of interest – for example, because there are two or more co-defendants in a criminal case and the Circuit Public Defender Office already represents one of the co-defendants – the public defender requests that a contracted “conflict attorney” be appointed to the case. In July 2008, however, the current conflict attorneys’ contracts were not renewed and the Georgia Public Defender Standards Council (GPDSC) reduced the budget for representation in conflict cases in the Northern Circuit to approximately \$37,000 (when approximately \$160,000 had been spent to compensate attorneys in the previous fiscal year).

At the end of June 2008, the contract defenders for the Northern Circuit were asked to continue representing clients even though their contracts had expired. After a month, however, the funds budgeted for conflict cases were exhausted. Two of the three conflict attorneys in the Circuit filed motions to withdraw from their cases, which were granted. The third attorney did not withdraw but was not paid and therefore stopped working on his appointed cases. As a result, people with pending felony charges in conflict cases were not provided lawyers at all. For many of these defendants, their time in jail awaiting the assignment of a lawyer resulted in termination of employment, loss of a home, or prevented them from attending the funeral of a loved one, following up on previously administered medical tests, or receiving necessary medications.

Despite the fact that hundreds of people were without legal representation, three Superior Court judges in the Circuit, with the acquiescence of the District Attorney, processed the cases of hundreds of people who were without lawyers, detaining some in jail and calling upon all of them to enter pleas, in clear

violation of the right to counsel.

In April 2009, SCHR brought the class-action lawsuit *Cantwell, et al v. Crawford, et al* on behalf of the unrepresented defendants with conflict cases in the Northern Circuit. At that time, many of the defendants had been without lawyers for seven or eight months. In the wake of the filing of the lawsuit, GPDSC signed contracts with three lawyers in the Circuit to handle a number of cases for a fixed fee.

A hearing was held before Judge Roper of the Augusta Judicial Circuit on March 3 and 4, 2010, on the issue of class certification. A ruling has not yet been issued and settlement negotiations are ongoing.

Backlog of Appeals Results in Denial of Counsel

Unfortunately, violations of the right to counsel in Georgia are not confined to trial. Such violations have extended into the realm of the motion for new trial and direct appeal – stages at which defendants are just as entitled to effective representation as they are at trial. In *Fournoy, et al v. State of Georgia, et al*, filed in

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Executive Director's Letter

When I started at the Southern Center for Human Rights in May 2001, I spent my first days on the job witnessing a sentencing hearing in Atlanta for one of our death penalty cases. The resulting plea agreement saved the life of Kimani Archie, a schizophrenic man who killed a police officer. I remember the victim's father with tears streaming down his face made shooting gestures with his thumb and forefinger from behind while Steve Bright's hand rested protectively on his young client's back. I left the hearing amazed and wondering how this remarkable group of lawyers ever negotiated a life sentence when death was so clearly desired.

In the following months, I continued to marvel at the incredible work of SCHR's team as one triumph after another emerged. Like when SCHR attorneys and investigators obtained the freedom of Gary Drinkard, who was wrongfully convicted and sentenced to death in Alabama. Or when we stood with civil rights icon Rev. Joseph Lowery on the steps of the State Capitol and unveiled a series of lawsuits challenging Georgia's broken, assembly-line indigent defense system. These lawsuits ultimately resulted in historic legislation that created a statewide public defender system two years later.

Most significant in this series of victories was the abolition of Georgia's electric chair, one of the enduring symbols of the harshness of the southern justice system. Between the time it was first used in 1924 and its last use in 1998, Georgia used the chair to electrocute 349 African-Americans and 86 white people. The Court, relying on the evidence and arguments presented by SCHR, declared that the electric chair "with its specter of excruciating pain and its certainty of cooked brains and blistered bodies, violates the prohibition against cruel and unusual punishment." This was the first time ever that any court ruled a method of execution cruel and unusual.

In 2010, SCHR's dynamic team is still bringing innovative and bold litigation to challenge the exploitation of the poor in the criminal justice system. Our independence affords us the ability to represent some of the most marginalized in society, like our federal class action lawsuit on behalf of the people at Alabama's Donaldson Correctional Facility. Donaldson is a horrific maximum security prison where men are packed in so tightly that the tension and volatility results in weekly stabbings, fights, and assaults and even the prison guards live in fear.

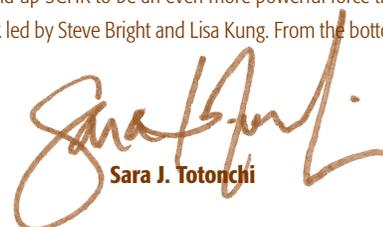
We do not shy away from cases that are politically charged. We have made strong headway in reversing a misguided residency restriction law that makes it illegal for persons on the sex offender registry to live in the state (while doing nothing to make our communities safer). We continue to challenge modern day debtors' prisons that lock people up because they are too poor to pay fines and fees. We have reinvigorated our litigation and advocacy to fight for the survival of Georgia's fledgling public defender system- much to the dismay of posturing politicians who prefer to cut constitutional corners. In fact, less than 24 hours after SCHR secured a phenomenal court order requiring the state to provide appellate counsel to indigent criminal defendants, one particularly hostile legislator released a report referring to us as "ardent defense advocates who eschew any use of the death penalty and lobby for the best defense money can buy" and "ideological crusaders who consistently work to hijack and manipulate the system."

While our adversaries spew vitriol, we know that across the state, lawyers representing poor people in capital and non-capital cases are struggling with overwhelming caseloads and inadequate funds for investigative and expert assistance. SCHR has responded to this constitutional crisis with multiple impact lawsuits while our capital attorneys provide zealous representation to individuals who have had ineffective assistance of counsel -- or no counsel at all, such as in the case of Jamie Weis. Weis is a mentally ill man who has gone for more than two years facing capital charges without a lawyer (a petition of writ of certiorari is currently pending in the United States Supreme Court).

It is the generous and long-term financial support of our donors that allows SCHR to be an independent voice on the side of the accused, the marginalized, and the disenfranchised, and it is my privilege to share with you some of these stories in the 2010 Human Rights Report. 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.

I have been honored to be part of SCHR's work for the last nine years and am humbled to have been recently asked to step up to the helm. With your help, we will build up SCHR to be an even more powerful force that has the capacity to secure great wins and continue the incredible work led by Steve Bright and Lisa Kung. From the bottom of my heart, I urge you to join us in this critical struggle.




Sara J. Totonchi

Addressing Prison Violence & Trauma in Alabama

By Sarah Geraghty

men with slit throats, punctured lungs, ruptured organs, loss of vision, paralysis, head trauma,

Each week, the Southern Center for Human Rights receives letters and calls from persons who report that they have been assaulted or live in daily fear of assault in prison or jail. We often find ourselves working to support family members whose loved ones have been stabbed, raped, or even killed while confined in a correctional facility. Prison violence is a significant public health issue that receives almost no attention from the media. Too often, state officials turn a blind eye to the high incidence of violence in their facilities, deeming it an inevitable consequence of prison culture.

Violence at Donaldson Correctional Facility

Alabama has the lowest officer-to-prisoner ratio in the country, and of all Alabama prisons, Donaldson Correctional Facility in Bessemer, Alabama, is the most understaffed. Donaldson has long been a dangerous institution at which stabbings and beatings have left men with slit throats, punctured lungs, ruptured organs, loss of vision, paralysis, head trauma, disfigurement, and other injuries. In February 2009, SCHR brought a lawsuit to improve safety for the men at Donaldson.

When SCHR filed *Hicks v. Hetzel*, over 1,700 men were packed into a prison designed for 968 prisoners. More than 500 men were triple-bunked in cells measuring 7 x 10 feet in cell blocks in which officers were often absent; 620 men were packed into open dorms, often supervised by just two roving officers; and the prison operated with half the number of officers recommended by the State's own staffing study. Security was so lax that men openly used and traded drugs, prisoners could leave supposedly secure areas of the prison in large numbers and spend days at a time in less secure areas, and huge numbers of prisoners carried knives and ice picks. As a consequence of inadequate security, assaults with knives occurred roughly once every ten days, and men were regularly rushed to the hospital with serious injuries.

SCHR's lead plaintiff in the litigation, John Hicks, was a minimum custody inmate serving time for a non-violent offense. He was blinded in one eye after being assaulted by a prisoner with mental illness. Mr. Hicks, now released, is one among many carrying the physical scars of confinement at Donaldson.

In addition to physical trauma, many men at Donaldson bear the emotional burden of living in an environment in which they are forced to be in a state of constant vigilance to protect their safety. One of our named plaintiffs, who was slashed in the face with a razor while asleep on his bunk, testified that he tries not to sleep at night so that he can be alert to the ever-present threat of assault. To give an example of the pervasiveness of the violence at Donaldson, during a five-week period last summer, the following assaults occurred: one prisoner was rushed to the hospital after being found in a locked cell with multiple stab wounds; another prisoner was hospitalized for uncontrollable bleeding after being

assaulted; a third man was found covered in blood after he had been stabbed eleven times; and a fourth man was stabbed in the chest and transported to the hospital by helicopter. During just one month in 2008, moreover, five men required transport to the hospital to receive emergency medical care for violent trauma.

How Prison Violence Can Extend Prison Sentences

As we have litigated this case, we've seen how a pervasive pattern of prison violence can actually extend prison sentences, as men who are forced to defend themselves from assaults incur disciplinary infractions or new charges. One man, C.D., was attacked while he was asleep in an open dorm by an inmate bearing a knife. Even though C.D. was not at fault, he received a disciplinary ticket for fighting and was denied parole. Several SCHR clients incurred new criminal charges after trying to defend themselves from unprovoked attacks.

Correctional Officers Support SCHR Lawsuit

SCHR's Donaldson lawsuit is notable not only for the extreme level of violence it challenges, but also for the support that correctional officers have expressed for the case. Indeed, Captain Lloyd Wallace, President of the Alabama Correctional Organization (ACO) even filed an affidavit in support of the lawsuit. According to the ACO, the combination of overcrowding and understaffing in Alabama prisons has led to a dangerous environment for both officers and prisoners. Correctional officers are often asked to enter housing areas with 250-400 prisoners, alone and without sufficient security reinforcement. "Our members at Donaldson and other prisons are being placed at risk on a daily basis," Captain Wallace told the federal court.

The State Misrepresents Assault Statistics

The response of the Alabama Department of Corrections (ADOC) to SCHR's lawsuit has been to insist that the level of violence at Donaldson is "acceptable." During the course of the Donaldson litigation, however, SCHR discovered that the ADOC had released inaccurate information to the public and the court, significantly underreporting the number of persons assaulted in its custody. For example, ADOC underreported the number of assaults, sexual assaults, and suicides at Donaldson between April 2008 and April 2009 during every month of that year except one. During this period of time the Department disclosed to the public only one "assault with serious injury" when in fact at least sixteen Donaldson prisoners were taken to hospitals for emergency treatment for violent trauma. At least two of these men suffered collapsed lungs, one was blinded in one eye, another was urinating and vomiting blood after being beaten, and another suffered eye trauma.

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Reflections on *Ordinary Injustice*

By Amy Bach

People sometimes ask what it was that made me decide to write a book about “ordinary injustice” in state criminal trial courts in America. The defining moment occurred when I was writing a series of stories on civil rights for *The Nation* magazine and had gone to a courthouse in Greene County, Georgia. It was an early morning and I walked up the stairs outside the courtroom to find a swarm of people accused of crime surrounding a man who was the public defender. Most had called him but not heard back. Now, standing outside of court, their lawyer would spend mere minutes with them and tell them this: the prosecutor is offering you this deal. Then, the defendants would go wait in court where another lawyer, who knew even less about them or their cases, would stand at their sides and they would plead guilty before the judge.

During the first two days this lawyer pled 48 people guilty. As I looked on in court, several cases broke down with people crying, saying that they didn’t understand what was happening to them. One woman was saying over and over again, “I didn’t know I was going to jail.”

Afterwards, the prosecutor, defense attorney, and the judge all told me they saw nothing wrong with the process. I found out later that the public defender represented about twice as many people that year as the American Bar Association (ABA) recommends as the absolute maximum that an attorney can handle effectively. But the people who shaped justice didn’t seem taxed. “We have successfully done a 10-page calendar in one day,” the public defender boasted on that first day I saw him. He said it proudly as if speed equals success. When I asked him if he felt people were treated fairly he said something I would never forget: “Nobody could say that they didn’t have their day in court.”

What fascinated me then and now is how smart, committed, hard-working professionals can routinely act in ways that fall short of what people in their positions are supposed to be doing. And still, they did not even realize that anything was missing. Many did not realize that their behavior had devastating consequences for ordinary peoples’ lives. Their mistakes had become so routine that they could no longer see their role in them. This is ordinary injustice.

There was something else I noticed in that Georgia courtroom. As I watched the cases proceed, it became increasingly harder to hear what was going on. The judge, prosecutor and defense attorney were huddled around the bench, speaking softly. It looked like they were all on the same team – rather than two opposing advocates duking it out before a neutral arbiter.

The harder it became to hear, the more restless people became. All you could hear was the creaking of the dark wooden benches. I was sitting in the second row next to Steve Bright, who was then the director of the Southern Center for Human Rights. I had told Steve I was going to sit in this court. And he decided to join me. Anyway, we couldn’t hear a thing. So Steve says to me, “Amy, why don’t you ask the judge to speak up?” And I say, I am not going to do this. This is court after all and I wanted to be a neutral observer. He stands up and bellows, “Your Honor, would you please speak up? Thank you very much.”

Court all of a sudden got really quiet. The judge looked like she had been slapped in the face. She said, please come before me. So Steve stays sitting down and says, “No your Honor, that’s okay I will just stay right here, thanks, I just wanted you to speak up. Thank you very much.”

The judge ordered Steve to come before her.

So Steve crawls over everyone’s legs and he takes over the courtroom. He says, “Your Honor, there are a lot of people here today, they are all here missing work, or left their children in the care of others. This is a public hearing. So if you wouldn’t mind, please speak up.”

The place went wild. People were clapping and screaming “amen” and laughing and in the break went up to him and hit him in the arm to say thank you. Many asked if he would be their lawyer. After the break, the judge installed a microphone. And everyone could hear.

The next day Steve went back to Atlanta and the microphone was gone. I was able to follow up in this court for the next five years. There was never another microphone. And there was always a huddle. Ordinary injustice is about that huddle. It’s about people who become more attached to the people we work with than making the adversarial system work.

There’s a twist to this story. The lawyer that I saw that day ended up working in Houston County, one of the best public defender offices in the state. When I saw him several years later he was blossoming professionally. By all accounts, he was doing a terrific job for his clients in a better system where there was better oversight and resources.

But his successor in Greene County seemed stuck. “Still trying to juggle 400 to 500 cases a year,” he wrote to me in March of this year. “Same-O, Same-O.” No attorney, no matter how talented, can handle this load, which is again about twice as high as what the ABA recommends as the maximum an attorney can manage.

These kinds of systemic problems remain, despite the sweeping changes that were supposed to have occurred with the creation of the Georgia Public Defenders Standards Council. There are still defense attorneys with impossible jobs, and there are still places where defendants appear without counsel on a regular basis. In March, the state’s highest court ordered that the case of Jamie Ryan Weis, facing capital murder in Georgia, had to go forward despite the fact that for two years the state couldn’t provide his attorneys with funding for experts and investigation. The Georgia Supreme Court denied arguments that there had been a “systemic breakdown in the public defender system,” even though Weis’ attorneys petitioned to be taken off the case, saying that in addition to the money issues they lacked the “time and expertise to handle the case.” “There are still attorneys within that system who are available to represent the criminal defendant,” the majority wrote.

But in what form? Like placeholders that resemble advocates so that the prosecutor and judge can go through the motions that justice is being served? In courts across America it has become too easy for the people who shape justice to turn a

blind eye to major problems. What needs to be done is to change what has become ordinary. To do what Steve Bright did that day – to throw a wrench in the regular workings so that citizens are mobilized to ask for the courts that they deserve. ■



Amy Bach, member of the New York bar, has written about law for *The Nation*, *The American Lawyer*, and *New York* magazine, among other publications. For her book *Ordinary Injustice*, Bach received a Soros Media Fellowship, a special J. Anthony Lukas citation, and a Radcliffe Fellowship. It was recently awarded the 2010 RFK Book Award from the Robert F. Kennedy Center for Justice and Human Rights. Amy lives in Rochester, New York, where she has taught legal studies at the University of Rochester.

There are still defense attorneys with impossible jobs; and there are still places where defendants appear without counsel on a regular basis.

Indigent, Childless Man Jailed for Nonpayment of Child Support Freed After SCHR Action Frank Hatley languished in jail in Adel, Georgia, for over one year for failure to make child support payments – even though Hatley has no children. Hatley had been ordered to pay child support in 1989, and he did so for 11 years. When a DNA test performed in 2000 showed a 0% possibility that Hatley was the father of the child in question, Hatley asked a South Georgia judge to be relieved of his child support obligations. The judge refused his request. Over the next eight years, Hatley continued to pay thousands of dollars the state said he owed for support. After losing his job and becoming homeless, Hatley still made payments out of his unemployment benefits. When he ran out of money in 2008, the state sought Hatley's incarceration, and the same judge sent him to jail at a hearing at which he was not represented by counsel. In July 2009, SCHR secured Hatley's release from jail and succeeded in ending his child support obligations.

Open Records Act Case Win: Records Documenting Prison Deaths, Suicides, Beatings No Longer “Secret” in Alabama The Alabama Department of Corrections (ADOC) long believed that it could forever shield from public view every document in its possession relating to incidents that occur in Alabama prisons. The ADOC consistently refused to make public any records regarding any incidents – even deaths, stabbings, or assaults – that occurred behind prison walls. SCHR and attorneys Jake Watson and Herman Watson sued the ADOC for violating the Alabama Open Records Act and won. In a unanimous and strongly-worded opinion, the Alabama Supreme Court made it clear that the ADOC must comply with the Open Records Act like any other public, taxpayer-funded institution. The court ordered the ADOC to produce the records it had kept secret. The case is *Allen v. Barksdale*.

SCHR Files Brief in Alabama Supreme Court on Behalf of 13-Year-Old Tasered by Police In January 2009, T.T., age 13, was tasered by a police officer outside his middle school without provocation or justification. Following the taser incident, T.T.'s mother made numerous attempts to obtain records regarding the incident from the City of Mobile. The City declined to produce records. At issue in T.T.'s case is whether Alabama law enforcement agencies may forever shield from citizens all law enforcement investigative reports pertaining to citizen complaints of police brutality. T.T. is represented by SCHR and attorney Henry Brewster. The case is *City of Mobile v. Regenia Turner Howard*.

Atlanta Police Sued Over Raid on Gay Bar SCHR, along with Lambda Legal and private attorney Dan Grossman filed a lawsuit against the City of Atlanta, the chief of police and 48 individual officers of the Atlanta Police Department (APD) on behalf of 28 individuals who were forcibly searched and detained at a local gay bar. This is one of SCHR's first ventures into police practices prior to arrest, and reflects our efforts to address schemes aimed at targeting groups of law abiding citizens to try to drum up arrests. On September 10, 2009, the Atlanta Police Department dispatched dozens of officers to the Atlanta Eagle, including its “Red Dog Unit” dressed in SWAT team gear, claiming to be searching for public sex, drugs or illegal weapons. During the raid, patrons of the bar were forced to lie facedown on the floor while background checks were run on everyone. Eagle bar patrons heard antigay slurs and were forced to lie in spilled beer and broken glass. One patron was forced to lie on the floor even though he had injured his back in the Iraq War. Not a single patron was charged with any crime, and no weapons, drugs or sex was anywhere to be found.

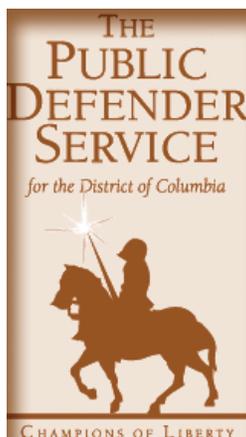
“The Atlanta Eagle is one of my favorite bars. I usually go there to drink a beer, unwind, and watch a football game after rehearsing with the Gay Men’s Chorus,” said Mark Danak, an SCHR client named in the case. “But that Thursday night was a very serious experience that I will never forget.”

The lawsuit challenges the APD officers’ actions, claiming violations of the U.S. and Georgia Constitutions and Georgia state law. We have defended depositions of all our clients, and now are working our way through depositions of dozens of officers involved in the raid. Press and updates on the lawsuit are available at www.atlantaeagleraid.com.

SCHR Prevails in 2010 Georgia General Assembly Just four years after the passage of the so-called “toughest sexual predator bill in the country,” SCHR compelled Georgia legislators to rethink their approach to sex offender registries and move away from unconstitutional policies that banish families from their homes and do nothing to make women or children any safer. House Bill 571, sponsored by Georgia’s Speaker of the House, makes great strides in correcting some of the significant problems with residency and employment restrictions enacted in 2006 (and the subject of SCHR’s ongoing federal class action, *Whitaker v. Perdue*). When presenting the bill in the Senate, Judiciary Chairman Seth Harp told his colleagues, “We may have gone too far. In fact, we have gone too far.” The passage of this bill also marks the culmination of coalition-building efforts initiated by SCHR with women and children’s advocates, sheriffs and prosecutors.

Our legislative success is also defined by what bad bills we prevented from passing. For the second consecutive year, SCHR succeeded in halting legislation that if passed, would have dismantled the statewide public defender system. The 2010 legislative proposal would have transferred responsibility for providing counsel to indigent defendants in “conflict of interest” cases from the state to Georgia’s counties. Requiring counties to shoulder the burden of multi-defendant cases would mark a move backwards, creating inequalities across the state and likely lead to ineffective representation of indigent criminal defendants which is what the 2003 Indigent Defense Act aimed to eliminate. Working in coalition with county commissioners and public defenders, SCHR deflected detrimental amendments to our public defender system for another year. Additionally, working closely with criminal defense lawyers and the Constitution Project, for the third year in a row SCHR successfully orchestrated the defeat of legislation that, if passed, would have allowed death to be imposed in the event of a less than unanimous jury. ■

... a few words about



recipient of the 2010 Frederick Douglass Human Rights Award

in recognition of its 50th Anniversary



Stephen B. Bright
President and Senior
Counsel for SCHR

There have been strong ties between the Public Defender Service and the Southern Center for Human Rights since I came to the Center in 1982, just three years after leaving PDS, my graduate school in criminal defense.

Every day I have relied on lessons learned at PDS. As we at the Center have tried to bring some of these lessons to jurisdictions where there has never been respect for the rights of those accused of crimes, we have benefited immensely from the support of the alumni and current staff at PDS.

There has been a special interrelationship of people, ideas and energy between the Center and PDS for 30 years.

My colleague and close friend at PDS, Charles Ogletree, became chair of the board at SCHR almost immediately after I became director and has remained in that position ever since. He has helped in every way possible, including raising funds in the 1980s so that the Center survived. He has been involved in our litigation. He argued *Ford v. Georgia* at the United States Supreme Court in 1991, winning 9-0, a case that removed a procedural barrier so that our client got relief for a prosecutor's racial discrimination during jury selection.

Two other PDS colleagues serve on the Southern Center's board, **Betsy Biben**, chief of the Offender Rehabilitation Division, and **Angela Davis**, former director of PDS and now a professor at the Washington College of Law at American University (See Ms. Davis' comments on the facing page). In addition to their service on the board, both have been instrumental in the growth of our Annual Awards Dinner in Washington, DC. Betsy also brought her formidable skills to bear on the first application for clemency in Georgia.

Many PDS alumni have joined us in representing people on death row who were without counsel. **Andrew Lipps** tried a case in Alabama, winning a life sentence, and won a new trial for a condemned man in Georgia by showing that the prosecutor had systematically excluded blacks from juries throughout his career.

Stephen Glickman, now a member of the DC Court of Appeals, won a new trial for a man who was so mentally retarded that he did not understand the Miranda warnings given to him.

David deBruin, now at Jenner & Block, and others have answered the call on more than one occasion.

Peter Krauthamer, deputy director at PDS, testified for the Center as an expert witness in a case that ended the practice of people languishing in jails for months on minor charges before seeing a lawyer or a judge.

Many of SCHR's student interns, including **Brandi Harden** and **Premal Dharja**, became PDS lawyers after graduating from law school. Many interns and investigators from PDS have come to the Center.

Will Kendall joined us on the recommendation of **Ed Ungvarsky**, for whom he had investigated cases at PDS. Ed was then trial chief at PDS. Will was an outstanding investigator at the Center before going to Northeastern Law School.

Crystal Redd will be going to law school this fall after seven years of teaching third graders at a school in southeast Atlanta. Before that, she was an outstanding investigator at the Center who came to us from PDS. Her thoroughness in investigating case was legendary and her rapport with clients was such that she persuaded one of our most reluctant clients to accept a plea offer that saved his life.

Tamara Theiss was another investigator who came to us from PDS, did outstanding work at the Center and then went to law school. She did great work as a public defender in Atlanta for many years before going to the federal defender in Maryland, where she works now.

There have been many others and there will be many more. PDS and SCHR share the same commitment to clients, the same respect for the dignity of every person, and the same dedication to quality representation and equal justice. Together, through our staffs and through our alumni, we are moving – against great resistance – toward the goal of equal justice and making the right to counsel a reality.

We're not settling for mediocrity; for "adequate representation." We are demanding a full measure of justice for every client – zealous representation. We are providing it to our clients. We are pointing it out when people do not get it and shouting "shame!" at a system that doesn't provide it. And we are not going to rest until every person accused of a crime receives it. ■

New Staff Join SCHR



Vivianne Guevara
Investigator/Paralegal — October 2009

Vivianne investigates prison conditions, indigent defense, juvenile issues and civil rights in Georgia and Alabama as an investigator/paralegal with the Impact Litigation Unit. She earned an M.S. in Social Work from Columbia University and a B.S. in Psychology from NYU. Prior to joining SCHR Vivianne worked as a Street Outreach Social Worker for The Bowery Resident's Committee.

Jessica Oats
Staff Attorney — October 2009

Jess rejoined SCHR in 2009 as a SPILF-SLS Public Interest Fellow and is now a staff attorney. She represents indigent clients on Alabama's death row in appellate and postconviction litigation. For the four years before she attended Stanford Law School, Jess worked at SCHR as an investigator on capital cases in Georgia and Alabama; for the last two of those four years, she also served as a defense-initiated victim outreach specialist in pretrial capital murder cases in Alabama, Georgia, and South Carolina. Jess earned her A.B. from Harvard University in 2002; she is a member of the Georgia and California bars.



Jeric Murphy
Investigator/Paralegal — November 2009

Jeric works as an investigator/paralegal with the Capital Litigation Unit providing assistance to staff attorneys and investigating capital cases in various stages of litigation. Prior to joining SCHR he worked with a number of community programs in the Atlanta area such as The Man-Up Organization and Hosanna Therapeutic Support Services. Most recently he served as a canvass director for the Kasim Reed for Mayor Campaign and AFL-CIO labor union in the 2009 Atlanta mayoral race. Jeric earned a B.S. in Theology from Oral Roberts University in 2004.

Kathryn Hamoudah
Public Policy Associate — January 2010

Kathryn supports the efforts of SCHR through media, legislative and community advocacy. Prior to SCHR, she worked at the Atlanta Alliance on Developmental Disabilities. Kathryn is Vice-Chair of Georgians for Alternatives to the Death Penalty and is Amnesty International's Southern Regional Death Penalty Abolition Coordinator. In addition, she is an organizer for a local Palestine solidarity organization. Kathryn received her B.A. in Political Science from the University of St. Thomas in Houston, Texas.



Addressing Prison Violence continued from page 3

In another instance, the ADOC's March 2009 statistical report stated that there were "0" assaults, "0" fights, and "0" sexual assaults at Donaldson that month. Internal ADOC reports obtained in discovery, however, revealed two knifings, three other assaults with weapons, and seven assaults/fights in March 2009. One of these assaults required a man to be transported to the hospital for eye trauma; another required a prisoner to be transported to the hospital after being beaten in the face with a lock; a third man was severely beaten with a piece of wood; another alleged he was raped. The Department has denied intentional misreporting and has now vowed to release accurate information.

Conclusion

One year after the lawsuit was filed, some improvements have been made. The population at Donaldson has been reduced by 150 men, the ADOC stopped the practice of cramming three men into 7 x 10 foot cells, there has been some limited improvement in staffing, and there has been a dramatic drop in the number of men sent to the hospital for injuries from assaults. SCHR continues to work for improved safety for prisoners and officers at Donaldson. A trial date is set for June 9, 2010. ■

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

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SCHR News

Capital Litigation

Stephen Bright Testifies Before Congress Regarding Re-Authorization of Innocence Protection Act On September 22, 2009, SCHR President and Senior Counsel Stephen Bright testified before the House Subcommittee on Terrorism, Crime and Homeland Security of the Judiciary Committee during hearings concerning re-authorization of the Innocence Protection Act.

Bright emphasized that the best way to prevent wrongful convictions is to provide defendants with adequate legal representation: "The best protection against conviction of the innocent is competent representation for those accused of crimes and a properly working adversary system. Unfortunately, a very substantial number of jurisdictions throughout the country do not have either one."

He noted that DNA testing is no substitute for good lawyers, especially since such evidence is not available in most cases: "Some people believe that we can rely on DNA testing to protect the innocent, but DNA

testing reveals only a few wrongful convictions. In 90 % of cases, there is no biological evidence that can be tested. In those cases, we must rely on a properly working adversary system to bring out all the facts and help the courts find the truth."

SCHR Petitions the Supreme Court to Review Georgia Capital Case In Which Defendant Was Deprived of Meaningful Representation for More Than Two Years Due to Lack of State Funding for the Defense In a case that the *National Law Journal* has said "shines a spotlight" on the nation's "underfunded and overburdened state indigent systems," SCHR and other lawyers filed a petition for a writ of certiorari in the United States Supreme Court on May 10, 2010, seeking review in the case of Jamie Ryan Weis, a defendant awaiting trial on capital murder charges who was deprived of legal representation for two-and-a-half years due to a lack of state funding for lawyers, investigators and expert witnesses.

Eight months after Weis' arrest in February, 2006, two experienced capital defense attorneys were assigned to represent him. Five months later, the attorneys were informed by the state agency responsible for indigent criminal defense, that it did not have sufficient funds to continue to pay for the defense. In November 2007, the trial judge, on the motion of the District Attorney, removed Weis' lawyers from the case and replace them with two salaried public defenders, one of whom was already lead counsel in 222 cases. The two public defenders filed several motions seeking to withdraw, citing their overwhelming caseloads and a lack of expertise handling capital cases. It was apparent that had the public defenders remained on the case, Weis was going to had a perfunctory trial with only token representation and would be sentenced to death.

When the judge refused to allow the public defenders to withdraw, SCHR intervened in an attempt to protect Weis' right to counsel and to a fair trial by obtaining reinstatement of his original attorneys and compelling the State to provide funding for his defense. SCHR appealed the trial court's denial of Weis' motion for a speedy trial, contending that the State's termination of funding for Weis' defense violated his rights to a speedy trial and to meaningful assistance of counsel.

The Georgia Supreme Court rejected Weis' arguments by a 4-3 vote, saying Weis should have accepted the representation from the public defenders which was tantamount to accepting a death sentence. Justice Hugh Thompson, dissenting with two other justices, said, "The failure to move this case forward is the direct result of the government's unwillingness to meet its constitutional obligation to provide Weis with legal counsel and the funds necessary for a full investigation. The State cannot shirk this responsibility because it is experiencing budgetary constraints," wrote Justice Thompson in his dissent. "The State should not be allowed to fully arm its prosecutors while it hamstring the defense and blames defendant for any resultant delay."

The petition to the Supreme Court states that it "presents the question of whether 'Equal Justice Under Law' is just an etching on the front of the Supreme Court building" or part of the Constitution and asks the Court to decide "whether a court, on motion of the prosecutor, may remove appointed counsel who has developed an attorney-client relationship" with the accused. The case is *Jamie Ryan Weis v. Georgia*.

SCHR Appeals Exclusion of African-Americans from an Georgia Capital Jury SCHR filed a brief in the case of Georgia death row inmate Timothy Foster on May 17, 2010, challenging the prosecution's use of its discretionary jury strikes to exclude all eligible black prospective jurors from his jury. SCHR based its challenge on evidence it discovered that strongly undermines the prosecution's claims that race was not a factor in striking all the black prospective jurors. Because of the prosecution's strikes, Foster, an African American, was sentenced to death by an all-white jury.

After the defense objected, the prosecutor offered various "race neutral" reasons for the strikes, and the trial judge sustained the prosecutor's reasons. In his closing arguments to the all-white jury, the prosecutor urged the jurors to sentence Foster to death to "deter other people out there in the projects."

After the Georgia Supreme Courts upheld the prosecutor's claims that the jurors were struck for reasons other than race, SCHR obtained evidence that prosecutors conducted an extensive background investigation of each of the black prospective jurors but did not conduct a similar investigation of any of the white jurors and highlighted with fluorescent marker the names of the black jurors on the jury lists and designated them with labels such as "B#1," "B#2," and "B#3." The case is under submission to the court for decision. The case is *Timothy Tyrone Foster v. Stephen Upton*.

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WITH

Stephen B. Bright

PRESIDENT AND SENIOR COUNSEL, SOUTHERN CENTER FOR HUMAN RIGHTS

December 2009, SCHR brought a lawsuit on behalf of nearly 200 individuals across the state of Georgia who had been denied the assistance of conflict-free counsel on their motions for new trial and on appeal.

The GPDSC's Appellate Division is the entity responsible for providing representation to such individuals. (Under Georgia law, the courts can no longer make appointments of counsel directly, so mandamus is the proper remedy for seeking the appointment of counsel by state agency GPDSC). However, as of December 2008, the Appellate Division had been assigned 249 cases and was unable to assign lawyers to 75 indigent defendants. This was in part because, as a result of gross underfunding, the Appellate Division has been staffed since 2008 by only two full-time attorneys and one part-time attorney. The Division contracts with private attorneys to handle some of the additional caseload, but it has not been allocated sufficient funding to provide representation to all who need it.

The increase in cases assigned to the Appellate Division was caused in part by the Georgia Supreme Court's 2008 decision in *Garland v. State*, which held that an indigent defendant, upon conviction, is constitutionally entitled to new, conflict-free counsel to raise a claim of ineffective assistance of trial counsel on appeal. The addition of these cases to those which the local Circuit Public Defender Offices were already unable to handle for various reasons led to a sharp spike in the number of cases requiring alternative representation at the motion-for-new-trial stage and on appeal. In November 2009, just before the complaint in *Flournoy* was filed, the Appellate Division reported a total number of 476 cases on its docket and an inability to assign counsel to 187 persons. Of those 187 individuals without counsel, more than half had been without counsel for over a year. By January of this year, the Appellate Division's caseload had reached 515, with 191 individuals unrepresented in their motions for new trial and on appeal.

On the day immediately preceding the hearing on class certification and mandamus scheduled for February 5, 2010, the GPDSC purported to assign lawyers to 117 of the 191 unrepresented indigent defendants, including all of the named plaintiffs. To achieve this end, the GPDSC executed contracts with ten attorneys who agreed to take a set number of cases for a fixed fee. (It has since been discovered that the monies used to fund these contracts were improperly allocated and must be returned to individual counties; the ultimate fate of these contracts is therefore unclear.)

In spite of this last minute attempt by the State to moot the case, on February 23, 2010, Judge Jerry W. Baxter of the Fulton County Superior Court issued an order granting class certification and mandamus relief to the plaintiff class. The court ordered that GPDSC provide all members of the class with effective and conflict-free counsel "at the earliest possible opportunity" and no later than 30 days after the entry of the order. As to future members of the class – those who will inevitably become part of the ever-growing backlog awaiting appointment of counsel upon conviction – the court held that effective conflict-free counsel must be provided no later than 30 days after GPDSC receives the request for new counsel. Perhaps obvious, but still important to note, the court held that the appointments must comply with all applicable state and federal law – including caseload standards (applicable to staff attorneys) that have long been ignored by GPDSC.

Contracting Conflicts to the Lowest Bidder

In the *Cantwell* and *Flournoy* cases, the State has turned to the use of flat-fee contracts to address the need to provide counsel to indigent defendants in the face of a dwindling budget. In other words, the State has chosen to assign these cases to the lowest bidder, often at the expense of the bidder's new clients. More often than not, these contracts compensate attorneys at extremely low rates per case (without

benefits) and they often cap other expenses that can be sought, such as fees needed to hire experts or travel expenses for investigation.

In the *Flournoy* case, the attorneys hired by GPDSC in a last-minute effort to moot out the case were offered between \$1,200 and \$1,500 per case. In using estimates by GPDSC attorneys for the number of hours spent on an average motion for new trial and direct appeal (excluding travel), this amounts to between \$8.57 and \$10.71 an hour. In *Cantwell*, contract attorneys signed contracts for \$50,000 a year in exchange for handling 175 cases – a rate of compensation that boils down to approximately \$285 per case. Under these circumstances, lawyers are forced to choose between sacrificing their own financial stability in order to provide the representation required by the Constitution or, as is more often the case, taking shortcuts in the representation of their non-paying clients.

One recent instance in which SCHR has taken on the issue of contracts directly is its lawsuit involving the Metro Conflict Defender Office, which handles conflict cases in the felony and juvenile cases in the Atlanta Metropolitan area.

On June 6, 2008, GPDSC Director Mack Crawford informed all employees of the Metro Conflict Defender office that they would be terminated at the end of the month, abruptly ending their incomes, health insurance and other benefits. He did so without making any arrangements for how their clients would be represented once their lawyers were gone. This was the second time in two years that such drastic cuts had been made. (The year before, 41 positions were eliminated.)

A week after the Conflict Defender employees were fired, SCHR filed a class-action lawsuit *People Accused of Crimes and Their Lawyers, et al v. Crawford, et al* in Fulton County Superior Court on behalf of all indigent defendants who were or would be represented by the Metro Conflict Defender Office as well as attorneys employed by that office, seeking a preliminary injunction to prevent termination of the staff in order to maintain ongoing attorney-client relationships; to protect the legal, professional and ethical responsibilities of the attorneys with regard to their clients; and to ensure the orderly operation of the courts.

On June 20, GPDSC voted to retain six of the eight attorneys in the Complex Division of the Conflict Defender Office but to replace the four salaried staff attorneys in the Non-Complex Division with contract attorneys.

A hearing on the plaintiffs' motion for a temporary restraining order and preliminary injunction was held on July 24, 2008. On August 1, Fulton County Superior Court Judge Westmoreland certified the class. He did not find, however, that the use of contracts amounted to ineffective assistance of counsel and held the case in abeyance for 18 weeks while defendants in the Non-Complex Division continued to be represented by contract attorneys. This arrangement failed in practice, as the contract lawyers lacked necessary investigative and administrative support and were forced to balance their contract cases against their private caseload to make ends meet. The contract attorneys were employed for only five months before they were fired and new full-time lawyers were hired. As a result, on January 16, 2009, plaintiffs moved to dismiss the case as moot.

While Judge Westmoreland stopped short of declaring the contracts in the Metro Conflict Defender case unconstitutional, SCHR has since secured a ruling that casts serious doubt on the use of contracts in this context. In *Flournoy*, Judge Baxter held that the use of contract attorneys under certain contract terms – e.g., a low rate of total compensation and significant limitations on reimbursement of travel and expert expenses (the contracts executed in *Flournoy* provided for caps of \$150 per case for travel and \$150 for experts and other incidental expenses) – rendered it "highly unlikely, if not practically impossible for an attorney to provide effective representation."

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He went on to hold that “[t]he inadequacy of compensation and the disincentives created by these arrangements raises a serious doubt that an attorney can provide effective assistance without suffering severe financial detriment or sacrifice.” Therefore, the court ruled, the State’s obligation to provide effective assistance of counsel to the plaintiffs could not be satisfied through such contractual arrangements.

It has become apparent through SCHR’s indigent defense litigation that the use of contract attorneys under the terms set forth by GPDSC is not a feasible way to provide effective representation to those conflicted out of representation by public defender offices. The contract defenders hired in *Cantwell* testified at the March hearing regarding their obligations outside of their contract cases which, for one attorney, included working as the appointed public defender in several municipal courts and serving as a juvenile court judge in the Northern Judicial Circuit in addition to managing his privately retained cases. GPDSC routinely fails to inquire of the contract attorneys it hires as to their workload or their ability to handle the cases assigned to them under the contracts. Moreover, GPDSC often hires attorneys without any regard for their experience with the type of case they will be handling under the contract (i.e., hiring transactional attorneys specializing in real estate and corporate matters to handle direct appeals in murder and rape cases). Under these contracts, clients can have little confidence that their lawyers will provide the diligence and zealous representation to which they are entitled.

Capital Defense Not Immune From Funding Setbacks

Georgia’s indigent defense problems affect even those defendants charged with capital offenses. On November 10, 2009, SCHR President and Senior Counsel Stephen Bright argued the case of *Weis v. State* – a pre-trial direct appeal of the trial court’s denial of Jamie Weis’ speedy trial motion – in the Georgia Supreme Court. Weis was charged with capital murder in 2006 and has still not proceeded to trial because the State of Georgia has not provided the funds required for his defense.

Solo practitioners Robert Citronberg and Thomas West began representing Weis in fall 2006, but made motions for a continuance in 2007, claiming they had not been paid and lacked money to hire experts. Although Citronberg and West had forged a relationship with Weis, they were removed from the case and two public defenders with no experience trying capital cases were appointed to replace them. From the vantage point of the State, the advantage of the replacement attorneys was that they

would not require payment beyond their regular salaries. The more senior of the two public defenders carried more than 100 other cases, 91 of them felonies; the junior public defender served as lead attorney in 222 cases, 103 of them felonies. The public defenders subsequently moved to withdraw, claiming they did not possess adequate time or resources to litigate a capital case given their existing caseloads. Even if the public defenders had been able to handle the case, they would have been similarly situated to Citronberg and West in that they would have been without funds to hire additional investigators and experts.

A year later, Citronberg and West were reinstated as counsel for Weis, without much time before the scheduled trial date and still without adequate funds to defend Weis against the death penalty. GPDSC had previously agreed that \$225,000 would be necessary for Weis’ defense; however, as of July 2009, it agreed to pay only \$75,000 in attorneys’ fees and \$40,000 for expert and investigative assistance.

SCHR eventually joined Weis’ legal team in the limited capacity of protecting his right to adequate and effective counsel. In their filing to the Georgia Supreme Court, Weis’ attorneys asked that the charges against him be dismissed or that the death penalty be struck as a potential punishment because funds had not been made available for his lawyers or investigators, or for expert witnesses and mitigation specialists – all necessary components of litigating a death penalty case.

On March 25, 2010, the Georgia Supreme Court denied Weis’ speedy trial claim in a 4-3 decision, holding that “although the lack of funding contributed to some of the delay in this case, it was not the sole factor contributing to the delay.” Three justices dissented, arguing that the delay in Weis’ case was excessive and that the blame for the delay was attributable to the State: “[A]ny delay or prejudice attributed to the [Georgia Public Defender Standards] Council’s budgetary problems and its refusal to provide funds for the defense must be laid at the feet of the prosecution.” In the wake of the decision, Stephen Bright told reporters that Weis’ case represents a “complete and fundamental breakdown of the indigent defense system in Georgia.”

For many indigent defendants in Georgia, hard financial times have led to a complete denial of justice. As long as there is a price attached to constitutional rights that the State claims it cannot afford, SCHR will continue to fight for the basic protections afforded to indigent defendants and to ensure that cost containment never suffices as an excuse for unconstitutional and unjust treatment. ■

Lauren Sudeall Lucas is an SCHR Staff Attorney

SCHR Teams with Reed Smith, LLP to Prevent Statute of Limitations from Foreclosing Post-Conviction Review in Three Alabama Death Penalty Cases Beginning in early 2009, SCHR began training and consulting with several teams of attorneys associated with the law firm of Reed Smith LLP, who agreed to provide pro bono representation to three Alabama death row inmates – Dionne Eatmon, Westley Harris, and Ulysses Sneed – who were unrepresented by counsel and in desperate need of legal representation. Each case was on the verge of the expiration of the deadline for filing a state post-conviction petition for writ of habeas corpus when Reed Smith agreed to provide pro bono representation to these prisoners. Habeas petitions are now pending in Alabama circuit court in each case. The cases are *Ex parte Dionne Eatmon*, *Ex parte Westley Harris*, and *Ex parte Ulysses Sneed*.

Federal District Court Persuaded by SCHR to Suspend Post-Conviction Proceedings Because Alabama Death Row Inmate is Not Mentally Competent to Proceed SCHR attorneys have represented Alabama death row inmate Clarence Simmons in post-conviction proceedings since 2002. In the past few years, Simmons, who is 72 years old, has exhibited symptoms associated with dementia and Alzheimer’s Disease. Several mental health experts evaluated Simmons and reported that he does not understand that he is on death row, does not remember his trial or his trial attorneys, and thinks his mother (who is deceased) cares for him and cooks his meals. In March 2009, SCHR persuaded the federal district court to suspend the proceedings in Simmons’s case on the grounds that he does not possess sufficient mental competency to proceed with his appeals. This is the first time that a federal district court in the Eleventh Judicial Circuit (the federal circuit encompassing federal cases in Alabama, Georgia, and Florida) has entered an order staying pending habeas corpus proceedings on grounds of mental incompetency, and one of the first such orders in the nation. The case is *Clarence Simmons v. Grant Culliver et al.* ■

PDS alumni share their thoughts on its legacy



Angela Davis

PDS continues to provide the best criminal defense representation in the country – not just the best for poor people, the best period. The fact that the representation is being provided for poor people makes the contribution even more significant. Unfortunately, although PDS clients receive the best representation, the promise of *Gideon* has never been fulfilled for most poor people in this country. PDS works to improve representation for all poor people by helping to train other lawyers in the District of Columbia and throughout the nation.

There is no doubt in my mind that my work at PDS was the most important work that I have ever done or will ever do. I feel so fortunate to have been taught how to be a lawyer by Charles Ogletree, Michele Roberts, Rhonda Reid Winston, Jim McComas and so many others before me. The lessons I learned have shaped

the way I think about the justice system and the world. In addition, my work at PDS has informed my teaching, writing and advocacy to this day. At my core, I still am, and always will be, a PDS lawyer.

I am so proud to be an alumnus of this great institution. On its 50th Anniversary, PDS is stronger than ever, continuing to fight and stand up to prosecutors, judges, and anyone who stands in the way of justice for its clients. Congratulations Champions of Liberty!

Angela Davis is a law professor of at American University's Washington College of Law.



James Forman, Jr.

Since I left PDS most of my work has been in education, and my time at PDS set me down that path. As a new lawyer in juvenile court, I quickly learned that the education system was desperately failing our clients. One day I chastised a client for failing to go to school as required by the judge. "Just go to school, man, how hard can that be?" To which my client responded, "Why don't you come with me and see for yourself."

It was a school for kids who had been kicked out of the regular public schools. The auto body class had no car or car parts, just an outdated textbook. The only trade program with functioning equipment was the "barbering" class. The teaching was largely terrible; on the day I went the class was watching a bootleg martial arts video that the teacher had brought in. The standards were so low he wasn't even embarrassed for an outsider like me to see what was going on. Interesting videos are the only way to keep the class "in control and in their seats," he said.

My experiences were not unique. Cynthia Jones and Laura Hankins, two classes ahead of me at PDS, had a famous "quote wall" in their office where they recorded some of the absurdities that other lawyers would report from their day. One of the quotes described an attorney in juvenile court asking a teacher when she could visit her to discuss a client. The lawyer had assumed that the teacher would ask her to come at the beginning or end of the school day, or perhaps

over lunch. The teacher instead responded that the lawyer should come "during class, because that's when I am free to talk." During class—that's when she was free to talk!

I came to believe that until we had better educational options for our kids, my success as a public defender would always be limited. Even if I won a case, my client would return to unconscionably bad circumstances. So along with David Domenici, and with the strong support of my colleagues and Director Jo-Ann Wallace, I decided to start an after-school tutoring and job training program. We bought a tiny pizza shop on the corner of Florida and North Capitol Streets. The kids all wanted to work, to have a job that paid, and we told them that if they came for tutoring they could work.

That program eventually grew into the Maya Angelou Public Charter School. We now have four campuses, serving a total of about 750 kids, and three years ago we took over operation of the school at Oak Hill Youth Center. It is now called the Maya Angelou Academy at New Beginnings and, as the Washington Post has documented, it is setting the standard for education in a juvenile corrections setting.

None of it would have happened if not for PDS.

James Forman, Jr. is a law professor at Georgetown University Law School.



Barbara E. Bergman

I still remember the day I started as a staff attorney at PDS – the first Monday in October 1978 – walking into the old conference room at 451 Indiana Avenue. It was still hot, the air conditioning did not seem to be working, and the windows had been painted shut. I had left a plush uptown law firm where the air conditioning always worked and salaries were substantially higher. And as Gary Kohlman started the training program, I remember thinking to myself: "I can't believe they are paying me to do this."

I learned so much during my five years at PDS. For example, that first week in the training program I learned about being creative and credible. Gary came into the conference room one morning without any explanation but with a brick in his hand. Within minutes, a crew of workmen were prying open the windows. We later learned that he had informed the administration that if the windows were not open within ten minutes, he would throw the brick through them so that we could get some fresh air. Apparently, Gary had credibility and he was certainly creative.

We were taught to apply those same principles to our cases. Usually, the government had a fairly strong case against most of our clients so we had to think outside the box in terms of how we investigated and litigated on behalf of our clients. Every case in its own way was challenging, and we quickly developed a dogged sense of never giving up and always fighting as hard as we could for the people we represented.

Perhaps the most important lesson I learned at PDS was that your work need never be boring and that life is far too short not to love the work you do. I have

tried to apply that throughout the rest of my professional career and by and large I have succeeded. I have rarely ever been bored. I quickly learned at PDS that every client had a story – some were amusing but most were heartbreaking. Often we were the only people in the courtroom who knew our client and who cared about what happened to them. That was a tremendous responsibility, and it was coupled with the expectation that every client deserved our best and we had better make sure they got it.

Those were lessons that I have carried with me throughout my life since leaving PDS. I now teach at the University of New Mexico School of Law, and I try to instill in my students, as best I can, those same principles. A number of the attorneys I got to know at PDS are now teaching at law schools around the country: Steve Bright at Yale and Georgetown; Charles Ogletree at Harvard; Ellen Kreitzburg at Santa Clara, Bob Mosteller and Rich Rosen at University of North Carolina. The list could go on much longer than that, but I have no doubt that PDS not only has had a substantial impact on the quality of representation provided to its clients – but also in the training that its alumni are providing to law students who hopefully will bring the same dedication and skills to their clients.

Barbara E. Bergman, Professor of Law & Associate Dean for Academic Affairs, New Mexico University School of Law. She is a past president of the National Association of Criminal Defense Attorneys.

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