

THE LAW OFFICE
OF THE
SOUTHERN
CENTER FOR
HUMAN
RIGHTS

Celebrating 35 Years



HUMAN RIGHTS REPORT

2011 Annual Newsletter of the Southern Center for Human Rights

Lethal Injection

By Terrica Redfield Ganzy

States engage in questionable and possibly illegal actions to ensure that the machinery of death keeps killing

The drama that is unfolding around the shortage of lethal injection drugs in the United States has all of the makings of a good mystery novel – secrecy, suspense, back room deals, black market drugs, state corruption, and death. The difference is that in this case real human lives are at stake.

Background

Lethal injection is the primary means of execution used by most states that have the death penalty in the United States. Execution by lethal injection has traditionally been carried out using a three-drug “cocktail” consisting of sodium thiopental, pancuronium bromide, and potassium chloride, which are injected in a precise sequence. Sodium thiopental, an anesthetic, is administered first, rendering the prisoner unconscious. Pancuronium bromide, a muscle relaxant, is administered next, effectively paralyzing the prisoner. Potassium chloride is administered last, stopping the prisoner’s heart. Without proper administration of an effective dose of sodium pentothal, the administration of the other two drugs would subject the condemned to excruciating pain.

In 2010, Hospira, Inc., the sole manufacturer of sodium pentothal in the United States, announced that due to manufacturing problems new supplies of the drug would not be available until January 2011. The anticipated shortage of sodium thiopental for use in executions created a frenzy among state corrections departments that had limited or expiring supplies of the drug to acquire additional supplies of the drug. Initially, corrections departments entered into informal sharing agreements. For example, Arkansas corrections officials have acknowledged that they gave supplies of

sodium thiopental to Mississippi, Oklahoma, and Tennessee, and have received a supply of the drug from Texas. The understanding behind these exchanges was that the favor would be repaid at a later date. Once corrections officials were not able to obtain supplies from other states, they began to look to foreign countries for supplies of the drug. It was at this point that the State of Georgia became a key player in the importation of these drugs.

Courts Turn a Blind Eye to Obvious Problems with Importation of Sodium Thiopental from Foreign Sources

In January 2011, the Southern Center for Human Rights filed an Open Records Act lawsuit on behalf of Emmanuel Hammond, a Georgia death row inmate who was facing imminent execution. The lawsuit revealed that Georgia Department of Corrections officials obtained supplies of sodium thiopental from Dream Pharma, Ltd., a pharmaceutical company literally operating out of the back of a driving school in England. SCHR also discovered that the labels on the boxes of sodium thiopental that the State purchased from Dream Pharma identified the distributor as Link Pharmaceuticals, a company that was acquired by another drug distributor, Archimedes Pharmaceuticals, in 2007. When asked to explain why drugs distributed in 2010 bore the name of a company that had ceased to exist in 2007, the State had no response. The mislabeling of the boxes of drugs and Dream Pharma’s operation of a pharmaceutical supply company out of the back of a driving school provided ample reasons for concern about the reliability of the supply of sodium thiopental in the State’s possession.

Based on this information, SCHR sought an emergency stay of execution to further investigate the origins and reliability of the supply of sodium thiopental that the State planned to use to execute Mr. Hammond. Notwithstanding the substantial questions regarding the State’s supply of the drug, the Georgia courts denied Mr. Hammond’s request for a stay of execution and his appeals of the Superior Court’s ruling. On January 25, 2011, Emmanuel Hammond was executed with a supply of sodium thiopental that was obtained from a suspect source in a foreign country.

One week later, SCHR took up the fight for Roy Willard Blankenship, who was scheduled to be executed in Georgia on February 9, 2011. SCHR filed a civil rights lawsuit on behalf of Mr. Blankenship seeking to halt his execution because the supply of sodium thiopental that the State intended to use in his execution was almost certainly expired and therefore ineffective.

Continued on page 11. See Lethal Injection

IN THIS ISSUE

Executive Director’s Letter	2
GA General Assembly Honors SCHR’s Anniversary	3
Indigent Parents Languish in Debtors’ Jail	4
Atlanta Police Raid Prompts Lawsuit	5
Frederick Douglass Awards 2011	6
SCHR News	8
SCHR Million Dollar Challenge	9
Five Years of Litigation Advocacy	10

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Executive Director's Letter



The history of the Southern Center for Human Right is rich with stories – stories of struggle, stories of justice, and stories that speak truth to power. Thirty-five years ago, a group of ministers and activists responded to the United States Supreme Court's reinstatement of the death penalty by creating the Southern Prisoners Defense Committee. Our founders recruited a group of passionate Washington, DC lawyers who immediately headed south to start representing poor people who were facing the death penalty without counsel. That is just the beginning of SCHR's story.

As our organization grew, so did the sacrifices made by the growing SCHR staff. As Steve Bright and others struggled each day for our clients, they also spent time struggling to keep our office doors open. SCHR has experienced great wins and great losses, both of which are present in the story of our dear friend and colleague, Bob Bensing. Bob's life was tragically cut short as he was returning from Valdosta State Prison after spending the day with his clients, sharing with them the news of their victory, as the lawsuit that exposed the extraordinary violence they had been subjected to at the hands of prison guards had finally been resolved in their favor.

There are the lighthearted stories that give our SCHR family time to laugh together, like when we scare the new staff and interns by telling them about how Steve has sung the praises of Ensure because it can provide all of the daily nutrition necessary for SCHR staff investigating cases on the road. We share with them the moving stories too, recalling the moments when it seemed that true justice and fairness had become a reality. I will never forget when Dr. Joseph Lowery and Gary Parker, flanked by SCHR staff and interns, proclaimed in the Georgia State Capitol that now is the time for Georgia to fulfill Gideon's promise. Weeks later the legislature passed historic legislation that created a statewide public defender system. But, the promise has been tarnished by political maneuvering, so we continue to fight every day to protect the right to counsel. And for inspiration and continued motivation, we need only to look to the stories of SCHR's great victories in *Amadeo v. Zant*, *Ford v. Georgia*, and *Snyder v. Louisiana*, which resulted in decisions from the United States Supreme Court that set aside death sentences due to racial discrimination at capital trials.

The stories of our clients inspire us to succeed. We will never forget the story of 17-year-old Wendy Whitaker who, after engaging in a single act of consensual oral sex with a 15-year-old classmate, was forced to spend twelve years on Georgia's sex offender registry. Her story, as told through the innovative and exhaustive litigation brought by SCHR, transformed public policy by compelling Georgia's legislators to rewrite what they had previously boasted was the toughest law in the nation, leading to a process by which Wendy Whitaker and others like her would no longer be labeled sex offenders.

Earlier this year, while SCHR was representing Georgia death-row inmate Emmanuel Hammond less than a week before his scheduled execution by lethal injection, we exposed the outrageous story of how the State of Georgia decided to cope with the nationwide shortage of sodium thiopental by purchasing execution drugs from an unlicensed company housed in a back room of a driving school in London. Two months later, officials from the Drug Enforcement Administration showed up at the Georgia Department of Corrections' door and seized these black market drugs from the agency.

Providing a voice for our clients and telling the stories that would otherwise go untold are SCHR's most critical responsibilities, and this is where the talented, insightful and dedicated SCHR staff truly excels. By telling our clients' stories we are able to expose the myriad abuses inflicted by the full spectrum of criminal justice policies and practices, and we are able to identify where we must continue the fight. The story of Randy Miller, a father and Iraq War veteran who was jailed for months without counsel even though he had committed no crime at all, shows that debtors' prisons are alive and well in rural parts of the South. And when patrons of an Atlanta gay bar had their evening brought to an abrupt halt after a SWAT team of police officers stormed into the bar and forced the patrons to lie face-down on a floor covered with spilled beer, dirt, and broken glass while they were illegally searched – in the absence of any evidence that anyone present had committed any crime – it underscores the dangers of allowing police powers to be exercised without restraint.

We know how the story of SCHR's work began and we have all envisioned how it will end – in fairness, justice and dignity for all people. But right now, we are still in the middle of our story. And I am asking you to help us write our next chapter.

It is my privilege to present to you the 2011 Human Rights Report and to share with you just a few of the stories that make up SCHR's recent history. Because of the generous and long-term financial support of our donors, we are able to tell our clients' stories while proactively intervening and uprooting injustice wherever it grows.

I hope that after reading this year's Report you will visit our website, www.schr.org, or use the enclosed envelope to contribute to our work. Together, we will continue our fight to resist the worst excesses of the criminal justice system and to transform it into a true instrument of justice.

Together, we will write the next chapter.

Thank you for believing in SCHR and in our clients' stories.

Sara J. Totonchi

Georgia General Assembly Honors SCHR's 35th Anniversary



In recognition of SCHR's 35th anniversary this year, members of the Georgia State House of Representatives and Senate adopted joint resolutions commending SCHR on its rich history and offering well wishes for continued success in the years to come. House Resolution 646 was sponsored by Representatives Stephanie Benfield, Karla Drenner, Simone Bell, Michele Henson, Tyrone Brooks and Minority Leader Stacey Abrams. Senate Resolution 509 was sponsored by Senators Vincent Fort, Nan Orrock, Jason Carter and Robert Brown. SCHR is moved and honored for our work to be recognized so prominently by legislators whom we respect very deeply and extends our thanks to them.

A RESOLUTION

Recognizing and commending the Southern Center for Human Rights on the occasion of its 35th anniversary; and for other purposes.

WHEREAS, the Southern Center for Human Rights (SCHR) is an Atlanta based nonprofit law firm dedicated to providing legal representation to people facing the death penalty, challenging human rights violations in prisons and jails, seeking to improve legal representation for poor people accused of crimes through litigation and advocacy, and advocating for criminal justice reform on behalf of those affected by the system in the Southern United States; and

WHEREAS, the SCHR was originally named the Southern Prisoners Defense Committee and was founded in 1976 by ministers and activists in response to the United States Supreme Court's reinstatement of the death penalty and to the horrendous conditions in Southern prisons and jails; and

WHEREAS, for the last 35 years, the SCHR has struggled alongside civil rights organizations, families of incarcerated people, and faith based communities to protect the civil and human rights of people of color, poor people, and those facing the death penalty or confined to prisons and jails in the South; and

WHEREAS, the SCHR is working towards building a society that does not use the existence of crime to justify capital punishment, mass incarceration, or the exploitation of poor people and people of color, and instead secures public safety through prevention, treatment, and economic justice; and

WHEREAS, the goals of the SCHR include reducing the number of people on death row in Alabama and Georgia by means other than execution, reducing the number of people under criminal justice control in Alabama and Georgia, securing a fully-funded indigent defense system with competent counsel in Georgia, and reducing the financial incentives driving the growth of the criminal justice system; and

WHEREAS, over the years, SCHR attorneys and investigators have earned a reputation for zealous advocacy and the highest quality legal work on behalf of individuals facing the death penalty and have set the standard in both fact and mitigation investigation; and

WHEREAS, two SCHR cases, *Amadeo v. Zant* and *Ford v. Georgia*, resulted in unanimous decisions by the United States Supreme Court setting aside Georgia death sentences due to racial discrimination at capital trials; and

WHEREAS, the SCHR also has a strong civil litigation practice that is able to bring impact litigation challenging the systemic deficiencies and has forced county, state, and federal governments to make significant improvements in prisons and jails across the South to reduce overcrowding, provide adequate medical and mental health care, abate violence and abuse, and thereby fulfill their constitutional obligations to protect the people in their custody; and

WHEREAS, the SCHR's civil litigation has resulted in the passage of the Georgia Indigent Defense Act of 2003 and the establishment of the Georgia Public Defender Standards Council and the Georgia Capital Defender Office; and

WHEREAS, in the course of advocating for people in prison, the SCHR has seen, and in turn publicized, a myriad of abuses inflicted by a spectrum of criminal justice policies and practices; and

WHEREAS, the Human Rights Internship Program at the SCHR is one of the most respected and competitive internship opportunities for law school and college students in the country, in which students are given significant responsibility, actively participate in SCHR's litigation and advocacy, and receive in-depth training throughout the program; and

WHEREAS, today, the SCHR continues to work towards its vision that the criminal justice system be used not as a tool to concentrate power and control, but instead as an instrument of true justice by which individuals and communities remain accountable to each other; and

WHEREAS, it is abundantly fitting and proper that the outstanding work of this fine organization be appropriately recognized.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES that the members of this body congratulate the Southern Center for Human Rights on its 35th anniversary, recognize the legacy of achievement and the contributions it has made to Georgia's legal community, and extend best wishes for continued success in its ongoing efforts to make a profound impact and footprint on the world and in Georgia courtrooms.

BE IT FURTHER RESOLVED that the Clerk of the House of Representatives is authorized and directed to transmit an appropriate copy of this resolution to the Southern Center for Human Rights.

Georgia Deprives Children as Indigent Parents Languish In Debtors' Jail for Inability to Pay Child Support

By Sarah Geraghty

On March 22, 2011, SCHR filed *Miller v. Deal*, Civil Action No. 2011-cv-198121 (Fulton County Superior Court), a putative class action lawsuit that seeks to secure lawyers for indigent parents who have been jailed or are at risk of being jailed without counsel for being unable to fulfill their child support obligations.

The Plaintiffs

The plaintiffs, six indigent parents, have tried to fulfill their child support obligations but, for reasons entirely beyond their control, cannot do so. Lance Hendrix is a veteran who returned from military service to his economically depressed town and has been unable to find full-time work. He was recently jailed for four months when he fell behind in his payments. Other parents, like Russell Davis, have serious mental illnesses that render compliance with their child support obligations impossible, yet they have been repeatedly jailed for falling behind in their payments. Randy Miller, an Iraq War veteran with an exemplary child support payment history, was recently jailed for three months after he lost his job. And Joe Hunter, age 20, has been in the Walton County Jail since October 2010; five months later he cannot afford to pay the \$250 fee that would secure his release.

Languishing in jail for weeks, months, and sometimes over a year, the plaintiffs and other indigent parents went to jail without ever talking to an attorney. Although Georgia law prohibits the State from continuing to incarcerate a parent who has no ability to pay child support, incarcerated parents have no meaningful ability to show a court that they are sitting in a jail for weeks or months without the means to pay their purge fee unless they are represented by counsel.

Denial of Fundamental Fairness

Georgia's policy of denying counsel to indigent parents facing incarceration has resulted in a breakdown in the fundamental fairness of child support contempt proceedings brought against indigent parents across Georgia. It has also resulted in cases of extraordinary injustice. For example, Frank Hatley was jailed for 19 months, without counsel, for his inability to pay child support arrears notwithstanding conclusive DNA evidence proving that Mr. Hatley was not the father of the child in question. Quinton Jackson was jailed for over one year, without a hearing and without counsel, for failing to reimburse the State for \$619.34 in child

Frank Hatley was jailed for 19 months, without counsel, for his inability to pay child support arrears notwithstanding conclusive DNA evidence proving that Mr. Hatley was not the father of the child in question.

support – an amount that became due before Mr. Jackson ever received an order to pay.

Effect on Families

The families of the plaintiffs have been left with gaping holes caused by the incarceration of a parent and the resulting loss of financial support. Many jails do not permit children to visit, so incarcerated parents are separated from their children for the duration of their confinement. Imprisonment may damage or sever the parent-child relationship and result in the lack of emotional and psychological benefits that children gain from their parental relationships.

Georgia Trends

In Georgia, aggressive efforts to incarcerate indigent parents are often focused on the poorest of the

poor, rather than on those parents of means who simply choose not to pay child support. Under federal law, if a custodial parent applies for welfare from Temporary Assistance to Needy Families (TANF), the custodial parent must assign his right to collect child support to the State. Georgia law then permits the State's child support office to sue a non-custodial parent whose child receives welfare in order to recoup the benefits expended on the child. Thus, much of the "child support" that the State collects from indigent parents does not go to children at all, but rather back to the State.

On any given day, there are over 500 parents in Georgia jails who have been incarcerated solely for their inability to pay court-ordered child support. The vast majority of these parents are indigent and unrepresented by counsel. According to the federal Office of Child Support Enforcement, 70% of child support debt is owed by parents with no quarterly income or with annual earnings of less than \$10,000.

Meanwhile, the State spends hundreds of thousands of dollars to incarcerate destitute parents and to compensate special assistant attorneys general who prosecute child support contempt cases on behalf of the Department of Human Services. The Special Assistant Attorney General who serves just one south Georgia child support office billed the State almost \$122,000 in fees and costs between July and December 2010.

SCHR attorneys Gerry Weber, Atteeyah Hollie, Sarah Geraghty, and investigator Vivianne Guevara represent the plaintiffs in *Miller v. Deal*. ■

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

Save the Date!



2011 Frederick Douglass Awards Dinner

October 27, 2011

JW Marriott Hotel
1331 Pennsylvania Avenue, NW
Washington, DC 20004

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.

2011 Honorees

C. Wilson DuBose
E. Barrett Prettyman & Stuart Stiller
Post-Graduate Fellowship Program

**Sponsor information and tickets on-line at
www.schr.org – coming soon!**

Atlanta Police Raid of Gay Bar Prompts Lawsuit Department Required to Reform Conduct

By Sara J. Totonchi

In September 2009, a heavily armed SWAT team-like force of Atlanta police officers stormed into a gay bar called the Atlanta Eagle without a warrant, claiming to be searching for drugs, illegal weapons, and patrons engaged in public sex. The police forced dozens of bar patrons – who, prior to the raid, had been enjoying their drinks, dancing, and socializing – to lie face-down on the floor, which was covered with spilled beer, dirt, and broken glass. Patrons who were not suspected of any criminal activity were illegally searched; police officers emptied their pockets, confiscated their IDs, and entered every patron's name into a police computer.

The police never explained why they were there. When patrons asked questions, they were told to “shut the f--- up.” Some patrons were told they would be hit in the head with a bar stool if they asked any questions, and some were shoved to the ground and kicked by the officers. Several patrons reported that some officers made racist and anti-gay slurs. 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 patrons engaged in sex were found.

SCHR – together with heroic Atlanta attorney Dan Grossman and attorneys from Lambda Legal Defense and the firm of Robins, Kaplan, Miller & Ciresi LLP – filed a federal lawsuit against the Atlanta Police Department on behalf of men who were victimized by the raid on the Atlanta Eagle. The suit, *Calhoun v. Pennington*, is one of SCHR's first attempts to challenge, through class-action litigation, law enforcement schemes aimed at targeting groups of law-abiding citizens in order to drum up arrests.

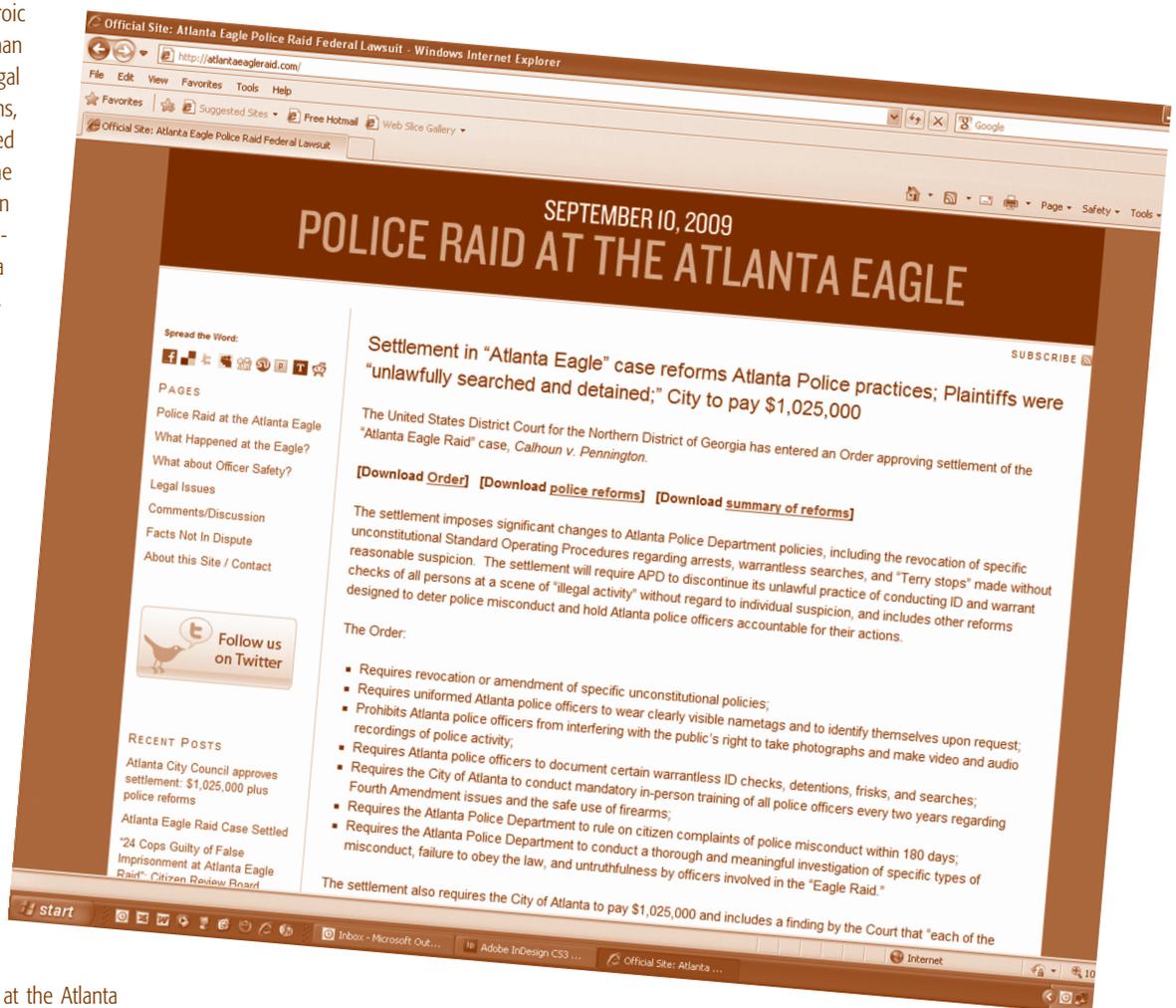
In the face of litigation, the Atlanta police chief stood in front of reporters and admitted that it is standard practice for the police to detain people without individualized probable cause and search them without reasonable suspicion.

From the outset of the litigation, SCHR denounced the Police Department's policy of detaining, searching, and taking IDs from every person at the Atlanta Eagle as a violation of the Fourth Amendment's protection against unreasonable searches and seizures. After more than a year of litigation – during which details of many other incidents of Atlanta police misconduct emerged – the City of Atlanta agreed to settle the lawsuit and Mayor Kasim Reed issued an apology to the patrons and the community.

Most importantly, the terms of the settlement require the Atlanta Police Department to address the many unconstitutional policies on their books. These reforms should transform the way the Police Department carries out searches, seizures, and arrests of citizens, and will compel other changes to protect the public from police misconduct. Other police policies that were found to be unconstitutional – such as stopping and searching people without reasonable suspicion or warrants – have been completely removed from the standard operating procedures of the Atlanta Police Department.

In addition, the settlement requires the Police Department to adopt policies and procedures designed to deter police misconduct and hold Atlanta police officers accountable for their actions. From now on, the Atlanta Police Department must investigate and fully resolve all citizen complaints of police misconduct of any kind within 180 days of the complaint, and all Atlanta police officers will receive training about the new procedures to reduce the chances that an incident like the Eagle raid will ever happen again. ■

Sara Totonchi is SCHR's H. Lee Sarokin Executive Director.





15th Annual Frederick Douglass Awards

SCHR is thrilled to announce the recipients of the 2011 Frederick Douglass Awards: **C. Wilson DuBose**, an Atlanta-based attorney, and the **E. Barrett Prettyman and Stuart Stiller Post-Graduate Fellowship Program** at Georgetown Law School in Washington, D.C.

Our 2011 honorees join a prestigious group of organizations and individuals whom SCHR has previously honored with the Frederick Douglass Award for their leadership in the fight for human and constitutional rights in the criminal justice system, including **Solicitor General Seth Waxman** for his successful advocacy striking down the death penalty for juveniles; **Solicitor General-designate Donald Verrilli** for his pro bono representation of people in capital cases; **New York Times** columnist and **Gideon's Trumpet** author **Anthony Lewis**; and last year's recipient, **The Public Defender Service for the District of Columbia**, for its representation of indigent defendants in Washington, D.C. SCHR is delighted to add the Prettyman Program and Wilson DuBose to this exemplary list of honorees.

The awards will be presented at SCHR's annual Frederick Douglass Awards Dinner on Thursday, October 27, 2011, at the JW Marriott in Washington, D.C.

Honoring Indigent Defense Hero C. Wilson DuBose

By Sara J. Totonchi

For the last decade, the Southern Center for Human Rights has tremendously admired C. Wilson DuBose's tireless efforts to transform Georgia's indigent defense system. His dedication to Gideon's promise has remained strong over the years, despite the lack of adequate funding and other obstacles including politically-based assaults on the system from angry legislators. From his service as Chairman of the State Bar's Indigent Defense Committee and on the Chief Justice's Commission on Indigent Defense, to his advocacy for passage of the Indigent Defense Act of 2003, to his leadership as the Chairman of the Georgia Public Defender Standards Council – our gratitude to him runs deep. We know that the bold advances of Georgia's public defender system would have never happened if not for his commitment and willingness to devote his life to this cause.

It is therefore with tremendous gratitude and enthusiasm that SCHR extends the 2011 Frederick Douglass Equal Justice Award to C. Wilson DuBose in recognition of his efforts to obtain fairness and justice for the poorest and most powerless people in Georgia's legal system.

A significant portion of Wilson's professional career has been devoted to leadership within the organized bar. In 1997, the president of the Georgia Bar tapped Wilson to head the bar's Indigent Defense Committee. DuBose, whose practice at DuBose Massey Bair & Evans LLC focuses on construction, commercial and corporate work, accepted the assignment, which would become a mission.

In an interview with the *Fulton County Daily Report*, Wilson stated that in retrospect his lack of previous involvement in the indigent criminal defense system would bestow his work with credibility. "Someone like me, who was seen as part of the bar establishment, was needed to really get the attention of the bar." He went further to explain at a bar meeting in July 2001 that he was not a "rabble-rouser or a liberal do-gooder," but what he had learned about Georgia's indigent defense system had opened his eyes "to a scenario that I cannot be proud of as a lawyer."

As chair of the State Bar of Georgia's Indigent Defense Committee, Wilson led the effort to pass the Georgia Indigent Defense Act of 2003. The bill created the Georgia Public Defender Standards Council (GPDSC), an independent agency within Georgia's judicial branch, whose mission is to ensure, independently of political considerations or private interests, that each client whose cause has been entrusted to a circuit public defender receives zealous, adequate, effective, timely, and ethical legal representation. Wilson was appointed to the Council and served as its Chairman from 2007-2009.

As Chairman of the Council, Wilson consistently did his best to steer the GPDSC in the right direction, despite the lack of adequate funding and constant attacks from legislators and others. All of this was volunteer work – thousands of hours of volunteer work in the public interest in an effort to obtain fairness and justice for the poorest and most powerless people in the legal system.

Even after the end of his term as the Council's Chairman, Wilson's advocacy to strengthen Georgia's fledgling public defender system has not waned. In 2010, Wilson spearheaded efforts to submit an amicus brief to the U.S. Supreme Court in support of Jamie Weis, who was denied counsel for all but six months of the three-and-a-half years that he sat in prison as his capital case was pending trial. The prominent amici – including former Chief Justice of the Georgia Supreme Court Norman S. Fletcher; Charles R. Morgan, the former chair of the Chief Justice's Commission on Indigent Defense; Emmet J. Bondurant, a former chair of the Georgia Public Defender Standards Council; among others – expressed grave concern in the brief that the systemic crisis in Georgia "has left scores of persons completely without counsel for months or years while facing serious felony and even capital charges."

Wilson lives in Madison, Georgia with his wife Patricia Rayle DuBose. Together they have raised three children, Charles, Margaret and Frank. SCHR is grateful to Wilson's family for supporting his outstanding advocacy, and allowing him to be what we would all hope the members of the bar would be in standing up for indigent defense. ■

Sara J. Totonchi is SCHR's H. Lee Sarokin Executive Director



Reflections on the E. Barrett Prettyman & Stuart Stiller Post-Graduate Fellowship Program By Ty Alpert

It's great to have one place you worked honor another place you worked. It's kind of like your favorite restaurant having a concession stand in the ballpark of your favorite baseball team. What am I talking about? SCHR has chosen to honor the E. Barrett Prettyman and Stuart Stiller Post-Graduate Fellowship Program at Georgetown University Law Center with its annual Frederick Douglass Human Rights Award.

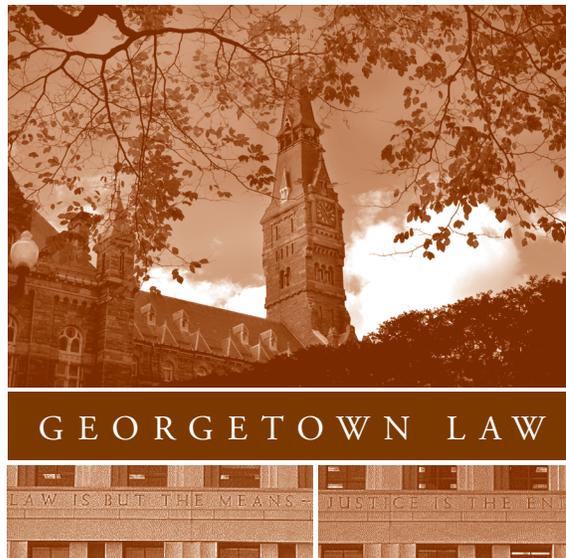
I'm nervous about having been asked to write this article to celebrate that honor because I am in awe of both institutions – the Prettyman program and SCHR – and I don't use that word "institutions" lightly. In the criminal courts of Washington, D.C., some of the best lawyering is accomplished by an unlikely pairing: third-year law students, working under the supervision of brand new lawyers, the "Prettyman Fellows." It is not uncommon to hear "I want a Georgetown lawyer" in the holding cell behind the D.C. Superior Court arraignment courtroom – a testament to the reputation of the Prettyman Program for aggressive, innovative, pull-out-all-the-stops defense of its indigent clients.

In a 1963 article, the program's first director, Ken Pye, explained that the Prettyman Fellowships sought to address the "ineptitude of bright law school graduates when confronted with the practical problems of office and courtroom." That may sound like an obviously worthy goal in light of the glaring ineptitude of the representation that many indigent defendants receive, as Steve Bright and SCHR have so well documented over the years. And that goal has been reiterated many times over, as demonstrated by the proliferation of clinical programs at law schools today. But the mission and methods of the Prettyman Program were truly revolutionary when it originated fifty years ago, before *Gideon v. Wainwright* even required appointment of counsel to indigent defendants in criminal cases. The program was a pioneer in seeking to recruit and train talented lawyers to represent indigent defendants, and was one of the first to experiment with clinical teaching methods. Indeed, although criminal clinics abound for law students today, there are still very few post-graduate law fellowships for young lawyers who seek intensive training in the representation of poor people charged with crimes.

When I arrived at SCHR as a graduate of the Prettyman Program, two of my mentors, Palmer Singleton and Charlotta Norby, were former Prettyman Fellows. We soon recruited Adnan Sultan, who had been my investigator when I was a Prettyman Fellow, to come to work at SCHR as an investigator. After law school he completed the circle by becoming a Prettyman Fellow himself. William Montross and Raoul Schonemann, currently two of SCHR's senior capital attorneys, were Prettyman Fellows. Former SCHR staff attorney Brooke Sealy was a Prettyman Fellow before coming to the Center, and several SCHR summer interns have gone on to be Prettyman Fellows.

It should not be surprising that SCHR has a rich historical association with the Prettyman Program, and it is fitting that the former is honoring the latter with its Frederick Douglass Award this year. The shared values of these two institutions represent everything that is good and worthy about the law: recognizing the dignity of all people, even (and sometimes especially) those whom society has cast away; championing a dogged, creative and client-centered approach to lawyering; and believing in the enthusiasm and idealism of young law students to effect change real change in pursuit of social justice. ■

Ty Alper is Assistant Clinical Professor and Associate Director of the Death Penalty Clinic, University of California Berkeley School of Law.



In 1960, Georgetown University Law Center established a pioneer legal internship program for recent graduates of law schools.

The E. Barrett Prettyman and Stuart Stiller Fellowship Program combines instruction in the Law Center's graduate school with representation of indigent clients in the local courts of the District of Columbia. It trains recent law graduates in both the academic and practical aspects of courtroom advocacy. At the same time, the program contributes to the improvement of defense advocacy in the criminal justice system by providing able, devoted counsel under mature supervision for indigent defendants.

The Fellowships are awarded to three outstanding recent law graduates selected to participate in a two-year program leading to the LL.M. degree. Two fellowships were established in honor of E. Barrett Prettyman, the distinguished former Chief Judge of the United States Court of Appeals for the District of Columbia Circuit, and one fellowship honors the advocate and lecturer Stuart Stiller. Participation in the Fellowship is contingent upon admission to the District of Columbia Bar.

SCHR News

Alabama Appeals Court Upholds Reversal of Death Sentence for LaSamuel Gamble On October 1, 2010, the Alabama Court of Criminal Appeals affirmed the Shelby County Circuit Court's reversal of LaSamuel Gamble's death sentence, concluding that his trial lawyers failed to investigate and present compelling mitigating evidence at the penalty phase of his 1997 capital trial.

When SCHR took on Mr. Gamble's case in 2002, he had been on Alabama's death row for five years without a lawyer. At an evidentiary hearing conducted in Shelby County Circuit Court in June 2006, SCHR presented testimony from numerous witnesses and hundreds of pages of records that trial counsel failed to discover and present to Mr. Gamble's jury in support of a life

sentence. In September 2007, the Shelby County Circuit Court granted Mr. Gamble's habeas corpus petition and vacated Mr. Gamble's death sentence.

On appeal, the Alabama Court of Criminal Appeals affirmed the circuit court's ruling. According to the appellate court, trial counsel failed to discover available mitigating evidence that "painted a bleak picture of Mr. Gamble's childhood." Mr. Gamble's father was an "abusive and violent" alcoholic who beat his wife and once passed out drunk on top of his infant daughter, smothering her to death. Mr. Gamble's mother was described as "slow" and had a full-scale IQ score in the mentally retarded range. At three months old, Mr. Gamble – described as "dirty and emaciated" – was placed in the custody of Child Protective Services because of parental neglect. Even the state's own social service records indicated that Gamble grew up in a "'run down shack,' with 23 relatives in four rooms." As the Alabama Court of Criminal Appeals observed: "The testimony and exhibits presented a bleak and troubled childhood marked by neglect and indifference."

SCHR attorneys William Montross and Lauren Sudeall Lucas, and former SCHR attorney Vanessa Buch, represented Mr. Gamble in state habeas proceedings successfully challenging his death sentence.

US Supreme Court Declines Review of Georgia's Failure to Fund Defense in Indigent Capital Case On October 4, 2010, the United States Supreme Court declined to review the Georgia Supreme Court's 4-3 decision rejecting an indigent capital defendant's claim that he was denied his right to counsel and a speedy trial by Georgia's failure to provide funding for his lawyers, investigators and expert witnesses and by the trial judge's removal of his defense counsel and substitution of local public defenders.

SCHR petitioned the Supreme Court to review the case of Jamie Ryan Weis, who is awaiting trial on capital charges in Pike County, Georgia. After the prosecution announced it was seeking the death penalty against Mr. Weis, two capital defense lawyers, Robert H. Citronberg and Thomas M. West, were assigned by Georgia's indigent defense agency, the Georgia Public Defender Standards Council (GPDSC), to defend Mr. Weis beginning in October, 2006. However, less than six months later, the GPDSC announced that it had run out of funds for investigative and expert expenses, bringing a halt to the case.

At a hearing on November 26, 2007, without any notice to Mr. Weis or his lawyers, the District Attorney moved to have Mr. Weis's appointed lawyers replaced by two lawyers from the local public defender office. The trial judge, Johnnie Caldwell, Jr., granted the motion without giving Mr. Weis or his lawyers any opportunity to respond to it. The public defenders protested their appointment from the outset, filing three motions to withdraw. One of the public defenders was not certified to handle capital cases and was carrying a case load of over 400 cases, half of them felonies. The other public defender was administrator of a four-county public defender office and was handling 93 felony cases.

With the assistance of SCHR, Mr. Weis eventually secured the reinstatement of Mr. Citronberg and Mr. West as his counsel. Even though the lawyers resumed representation in April 2008, the GPDSC did not make any funds available for the defense of the case until June 2009 and, even then, provided only about 40% of the estimated budget for the case. SCHR then moved to bar the prosecution from seeking the death penalty against Mr. Weis on the ground that the State's failure to provide funding for his defense for three years violated his right to a speedy trial.

The four justices in the Georgia Supreme Court majority said that Weis should have accepted the trial judge's removal of the lawyers representing him and the substitution of local public defenders even though the public defenders stated in motions to withdraw that they lacked the time, resources and expertise to "perform adequately in representing the Defendant, no matter how good our intentions or diligent our efforts." Justice Hugh Thompson, joined by Chief Justice Carol Hunstein and Justice Robert Benhan, dissented, stating: "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."

In the petition to the United States Supreme Court, SCHR argued that the denial of counsel for Mr. Weis for such a long period of time made a fair trial impossible because of lack of investigation during the critical pre-trial period and because Mr. Weis's mother, who would have been an important witness for him at his trial, had died during the period in which the trial proceedings were delayed. The U.S. Supreme Court's denial of the petition for review is not a ruling on the merits. Weis can appeal the issues if he is convicted and petition the federal courts for habeas corpus relief. Mr. Weis's capital trial is now scheduled to begin on June 20, 2011.

SCHR President and Senior Counsel Steve Bright, together with Atlanta attorneys Robert Citronberg and Thomas West, is representing Mr. Weis.

SCHR Settles Suit Addressing Prison Violence in Alabama's Maximum Security Prison for Men After over two years of litigation, on April 19, 2011, SCHR entered a comprehensive settlement agreement in *Hicks v. Hetzel*. SCHR filed suit against the Alabama Department of Corrections (ADOC) in federal court, on behalf of men incarcerated at Donaldson prison, Alabama's maximum security facility for men, alleging that the ADOC impermissibly tolerated an exceedingly high level of violence at the prison and that overcrowding and understaffing exacerbated the risk of harm to the men incarcerated there. At the time suit was filed over 1,700 men were packed into a prison designed for 968 prisoners and more than 500 men were triple-bunked in cells measuring 7 x 10 feet in cell blocks in which officers were often absent. After extensive discovery, including dozens of depositions, SCHR has reached a settlement agreement that requires the ADOC to undertake certain obligations over the next year to further improve conditions at the prison. Specifically, the ADOC must extensively revise its use of force policy; require officers to be physically present 24 hours per day in many of the prison's dorms; maintain a certain level of allocated correctional officer positions, end (and not re-instate) the practice of triple-bunking prisoners in cells built for two men; solicit technical assistance from the National Institute of Corrections for help in reducing the presence of weapons and other contraband at Donaldson; make certain repairs to the prison's physical plant; reconfigure dormitories to provide officers with clear lines of sight; and produce to SCHR on a month basis documents regarding violent incidents at Donaldson.

SCHR Million Dollar Challenge for Justice & Fairness

Near the end of 2010, SCHR was presented with an extraordinary opportunity, thanks to the generosity and vision of two longtime friends who made a gift of \$500,000 in honor of SCHR's President and Senior Counsel, Steve Bright, and his legacy.

The donors, who wished to remain anonymous, sought to increase the power of their donation by challenging SCHR to raise an additional \$500,000 in matching funds. With this exciting incentive to other donors in hand, SCHR's Million Dollar Challenge for Justice & Fairness was launched to help us encourage individuals who believe in our work to stretch their financial commitment by increasing their support to SCHR by the end of 2011.

To meet the challenge **every new and increased contribution to SCHR received through December 31, 2011, will be counted toward meeting the challenge's goal.**

Funds raised through this challenge will provide needed additional resources for our attorneys to advance and expand their efforts to seek justice and fairness in the criminal justice system in the South. Your generous donations allow us to continue to investigate and try the many cases you've read about in this issue, as well as the new cases we'll bring in 2011 and 2012, and support SCHR's highly competitive Human Rights Internship program.

We are nearly halfway to meeting the challenge and hope to exceed the goal by December 2011! Your support will help us get there, so if you did not contribute in 2010 and do so this year, your gift will count! Or, if you made a gift in 2010 and do so again in 2011 your gift will count!

Please consider as generous a gift as you can and help us meet this tremendous challenge and opportunity by using the envelope provided with this issue.

If you have questions please contact Barbara Horwitz, Development Director, at 404-688-1202 or bhorwitz@schr.org.

Thank you. ■

Announcing New CLE Seminar

Litigating RACE: Social Science & Trial Tactics A Continuing Legal Education Seminar sponsored by the Southern Center for Human Rights

Friday, September 16, 2011 – 12:00-2:00 p.m.

Atlanta, GA (location TBA)

Purpose

It is important, particularly in the Deep South, to arm attorneys with the tools they need to successfully attack racial bias and discrimination in various aspects of the justice system. CLE participants will leave with renewed energy to tackle racial issues in their cases and will have the practical tools to help them do so.

Speaker

EVA PATERSON, President, Equal Justice Society

The Equal Justice Society is a national strategy group heightening consciousness on race in the law and popular discourse. As heirs of the innovative legal and political strategists of *Brown v. Board of Education*, the organization broadly models its programmatic efforts after the late Honorable Constance Baker Motley and the Brown litigation team.

Using a three-prong strategy of law and public policy advocacy, cross-disciplinary convenings, and strategic public communications, EJS seeks to restore race equity issues to the national consciousness, build effective progressive alliances, and advance the discourse on the positive role of government. Eva will speak about EJS's race litigation and share litigation tactics.

Continuing Legal Education

Anticipate 2 CLE credits (1 Trial Practice and 1 General Credit).

For seminar information and to reserve a seat, contact Deonna Green at 404-688-1202, ext. 203.

Sponsorship opportunities available

SCHR News continued from page 8

Alabama Supreme Court Compels County to Disclose Information Related to Claim of Race and Gender Discrimination in Jury Selection On December 10, 2010, the Alabama Supreme Court upheld an order of the Alabama Court of Criminal Appeals compelling the Tuscaloosa County Circuit Court to disclose information about the race and gender of persons summoned for jury service, in connection with a claim of race and gender discrimination brought by SCHR in the case of Alabama death row inmate Albert Mack.

SCHR has alleged in Mr. Mack's case that the Tuscaloosa County Clerk's procedures for summoning citizens for jury service at the time of Mack's trial routinely resulted in underrepresentation of women and African-Americans in juries in criminal cases. In 2003, the Alabama Court of Criminal Appeals ordered the Tuscaloosa County Circuit Court to provide to Mr. Mack demographic information about persons summoned for jury service but, seven years later, the Circuit Court had still taken no action whatsoever in response to that order.

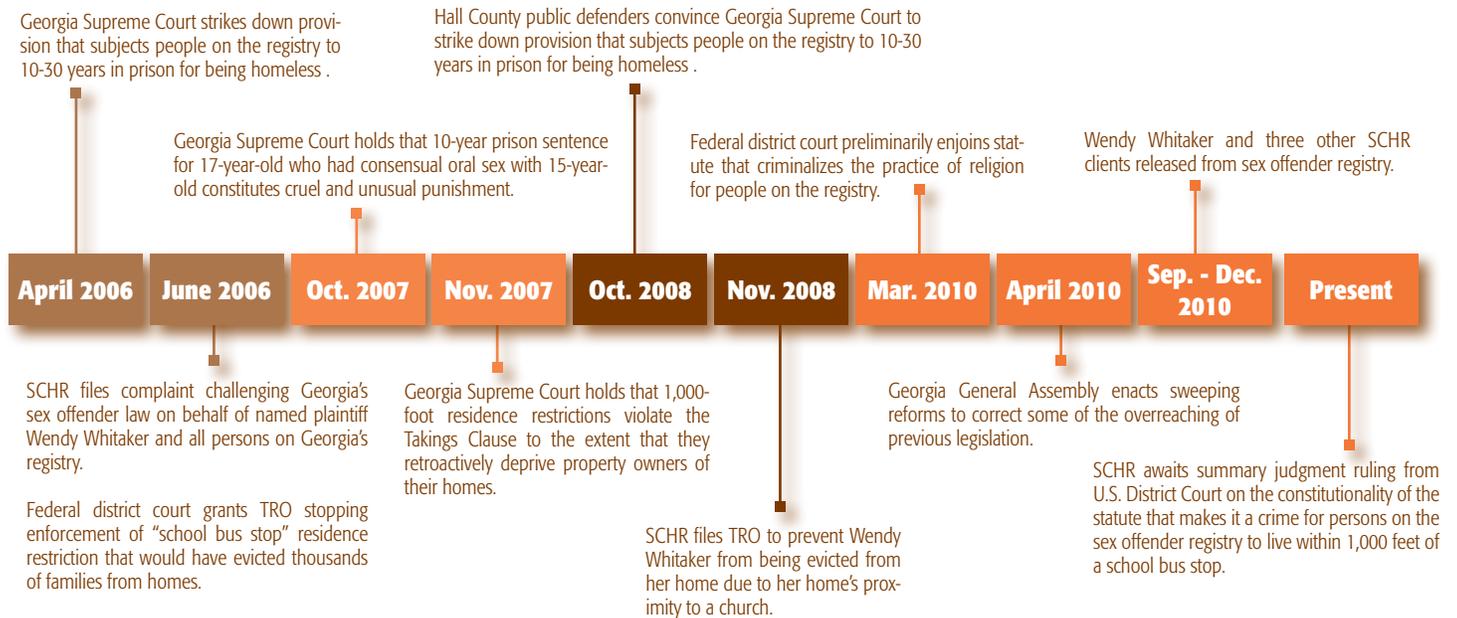
Finally, in late March 2010, Mr. Mack was granted access to thousands of pages of jury lists that the Tuscaloosa County Clerk indicated would contain the information Mr. Mack sought. As it turned out, only two of the several hundred lists to which SCHR was granted access contained demographic information about the jurors. As SCHR later learned from an interview with the current Tuscaloosa County clerk, the clerk at the time of Mr. Mack's trial had instructed her staff to exclude the demographic information of prospective jurors when the jury lists were assembled from electronic data files provided by the Administrative Office of Courts. The reason for excluding the race and gender information was apparently to deter defense lawyers from litigating precisely the issue that Mack's legal team was attempting to pursue.

In April 2010, SCHR filed a petition for writ of mandamus in the Court of Criminal Appeals seeking to compel the Tuscaloosa County Circuit Court to comply with the Court of Criminal Appeals' 2003 order. In June 2010, the Court of Criminal Appeals issued an order requiring Tuscaloosa County to disclose the demographic information. The State sought review of that order in the Alabama Supreme Court but on December 10, 2010, the Alabama Supreme Court upheld the Court of Criminal Appeals' order. The case was remanded to the Circuit Court for further proceedings regarding Mack's jury discrimination claim.

SCHR attorney Terrica Redfield Ganzy is representing Mr. Mack, together with Samantha Southall of the Philadelphia firm of Buchanan Ingersoll & Rooney PC. ■

Five Years of Litigation and Advocacy to Reform Unjust Sex Offender Laws

In April 2006, the Georgia General Assembly passed HB1059, a draconian reform to sex offender law seeking to banish persons on the registry from the state, criminalizing the status of homelessness, and providing 10-30 year prison sentences for persons without compliant residences. SCHR sued to enjoin portions of the law and pushed for reform in the legislature. Five years later, many of the most draconian provision of the law have been overturned by the courts or repealed by the legislature.



Four SCHR Clients Released from the Sex Offender Registry

Wendy Whitaker, who was the lead plaintiff in SCHR's lawsuit challenging Georgia's sex offender registry law, no longer has to register as a sex offender.

Ms. Whitaker was on the sex offender registry for engaging in a single act of consensual oral sex as a seventeen-year-old high school student with a young man who was just thirteen months her junior. Both were sophomores in high school at the time. For this act, Ms. Whitaker was arrested, convicted of sodomy, and required to spend twelve years on Georgia's sex offender registry.

As a "sex offender," Ms. Whitaker was subject to repeated threats of eviction for living within 1,000 feet of prohibited locations. In 2008, Ms. Whitaker had to obtain a court order to prevent her from being evicted from her home on Thanksgiving because sheriffs' deputies determined that she lived within 1,000 feet of a church, in violation of Georgia's sex offender residence restrictions.

Recently, at the urging of SCHR and others, the Georgia legislature revised the state code to permit people like Ms. Whitaker to petition a superior court to be removed from the registry. On September 9, 2010, the Superior Court of McDuffie County, Georgia granted Ms. Whitaker's petition and removed her from the registry.

SCHR client Jeffery York was similarly labeled a "sex offender" when he was 17. Mr. York, a gay man who lives in rural north Georgia, was convicted of sodomy after engaging in a single act of consensual sex with a 15-year-old classmate. Georgia's onerous sex offender residence restrictions caused Mr. York to lose jobs and evicted him from his residence, forcing him to live in a

trailer in the woods without plumbing or running water. SCHR succeeded in having Mr. York removed from the registry in October 2010.

Donnie Boone and Omar Howard were also removed from the sex offender registry in December 2010 after SCHR filed petitions on their behalf. Neither man had ever been convicted of a sexual offense.

In 1994, Mr. Boone was convicted of robbing a restaurant. None of the employees sustained physical injuries during the robbery. However, one of the employees was two months shy of his eighteenth birthday when the robbery occurred. Because Mr. Boone's co-defendant ordered the young man to move from one location in the restaurant to another, at the time of the crime, the robbery fell within the statutory definition of kidnapping. Mr. Boone was released on parole in 2008. Because of his kidnapping conviction, he was required to register as a sex offender – even though he was never convicted of any sexual crime.

Similarly, Mr. Howard was required to register as a sex offender for a robbery, even though he has never been convicted of a sexual offense.

In 2010, Georgia's legislature allowed persons like Mr. Boone and Mr. Howard to be released from the registry if a judge found that the person did not commit a sexual crime and did not pose a risk of committing future sexual offenses.

Since his release from prison, Mr. Howard has been a frequent speaker at youth crime prevention programs. He has recently been appointed the acting chaplain at the Atlanta Men's Transitional Center, where he conducts worship services, coordinates programs for residents, and helps residents find housing and services upon release. ■

SCHR argued that because the State's supply of the drug was purportedly manufactured by a company that had ceased to exist in 2007 and the drug has a four-year shelf life, the drug was almost certainly expired as of February 2011. SCHR further argued that use of expired drugs in Mr. Blankenship's execution would violate the Eighth Amendment's prohibition against cruel and unusual punishment because there would be a substantial risk that the drugs would fail to render Mr. Blankenship unconscious prior to his execution. Again, the courts expressed little concern about the substantial questions that had been raised about the origins and efficacy of Georgia's supply of sodium thiopental. The courts dismissed Mr. Blankenship's complaint and denied his request for a stay of execution. Fortunately, Mr. Blankenship received a stay of execution on other grounds—in order to allow Mr. Blankenship to conduct DNA testing of physical evidence found at the crime scene—and SCHR is now appealing the district court's ruling on the lethal injection claim.

Unlawfully Importing Drugs in an Effort to Punish Crime?

Less than two months after Mr. Hammond was executed and one month after Mr. Blankenship's lawsuit was dismissed by the courts, the Federal Drug Enforcement Agency (DEA) seized Georgia's supply of sodium thiopental. Apparently, Georgia corrections officials may have broken federal law in their zeal to keep the wheels of capital punishment turning. According to the Controlled Substances Act, "[n]o person shall import or cause to be imported any non-narcotic controlled substance listed in Schedule III . . . unless and until such person is properly registered under the Act (or exempt from registration) and has filed an import declaration to do so with the Administrator." The Georgia Department of Corrections failed to register as required under the Controlled Substances Act and failed to file an import declaration as required under the Act before importing sodium thiopental from a foreign country. Moreover, Georgia Department of Corrections documents reveal that after the State's shipment of sodium thiopental from Dream Pharma, Ltd. in England was held up by customs officers in Memphis, Tennessee for inspection by the FDA, Georgia corrections officials sought ways to bypass customs with respect to future drug shipments. Corrections officials requested that Dream Pharma ship the controlled substance directly to the Georgia Diagnostic and Classification Prison in Jackson, Georgia (the location of death row), labeling the shipment as "pharmaceuticals not restricted."

According to documents authored by a Kentucky corrections official, Georgia may have shared these illegally obtained drugs with Kentucky and/or shared with Kentucky officials how to obtain them. Corrections officials in other states, such as Arizona, apparently instructed foreign suppliers to indicate that the shipments of sodium thiopental were for veterinary use. Armed with information linking Georgia's supply of sodium thiopental to other states, attorneys representing death row inmates in various states are requesting that the DEA conduct an investigation into the legality of their own state's procedures for obtaining sodium thiopental.

States Change Lethal Injection Protocols

In January 2011, Hospira announced that it would no longer manufacture sodium thiopental. In response to pressure from Reprieve, an international organization dedicated to abolishing the death penalty, as well as other anti-death penalty groups, European countries have imposed bans on shipments of the drug to the United States for use in executions. A supplier in India also recently stopped shipments to the United States due to international pressure.

Faced with the looming reality of no longer being able to use sodium thiopental in lethal injection procedures, some states are changing their execution protocols. Ohio was the first state to change its lethal injection protocol from the three-drug cocktail to a single lethal dose of pentobarbital. Oklahoma was the first state to substitute pentobarbital, a drug frequently used by veterinarians in animal euthanasia, for sodium thiopental in the three-drug cocktail. Texas and Alabama have also changed their protocols to substitute pentobarbital for sodium thiopental in the three-drug cocktail.

While the new protocols have already been used to execute inmates in Ohio and Oklahoma, they are likely to face further legal challenges. Meanwhile, European manufacturers of pentobarbital have expressed disapproval of the use of their drugs to carry out executions.

The Cost of Cutting Corners

Emmanuel Hammond was not the only Georgia inmate to have been executed by a lethal injection that included a dose of Georgia's questionable supply of sodium thiopental. Brandon Rhode was executed in September 2010 using those same drugs. Witnesses at Mr. Rhode's execution have reported that he kept his eyes open throughout the execution, when he should have been comatose following the injection of sodium thiopental. Similarly, witnesses at Mr. Hammond's execution have said that they saw him close his eyes after being administered the sodium thiopental, only to open them again a while later. They also said Mr. Hammond appeared to move his lips with short puffs of air and that he seemed to be grimacing in pain. These accounts by witnesses to each execution provide further evidence that the sodium thiopental used in those executions did not work as it should have. Whether the drug was expired or adulterated, there is substantial reason to believe that it failed to prevent either prisoner from enduring needless and possibly excruciating pain.

Because the state of Georgia unlawfully obtained from a dubious supplier controlled substances of questionable origin and efficacy, two men have been executed in an apparently cruel and unconstitutional manner. Certainly, those who are charged with enforcing the law are expected to also abide by it. This is true even for minor traffic offenses. Death, however, is the ultimate punishment, and the State's violation of federal law in an attempt to carry out executions is especially appalling. ■

Terrica Redfield Ganzy is a Staff Attorney in SCHR's Capital Litigation Unit.

Justice

taking root

2011 Events

New York – September 8
Chicago – October 6
San Francisco – December 10

If you'd like to support the work of SCHR by attending an event, please join us for a 2011 **Justice Taking Root** reception in your area. Visit us at www.schr.org for details

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Ways to Support Our Work

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

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