

Justice Taking Root

The 40 year history of the
Southern Center for Human Rights



1976 – 2016

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In reflecting on 40 years of SCHR history, it is tempting to focus on the incredibly talented people who have done the work. There are so many, and it would be impossible to name all 125 fulltime staff, hundreds of law student interns over 36 years, co-counsel at firms across the country, and the dozens of board members who have dedicated years to seeking equal justice. Among the group are brilliant minds who have set legal precedent with their cases; innovative thinkers who have birthed new organizations from SCHR; passionate true believers who are not daunted by formidable opponents; and tenacious fighters who have gone to unimaginable lengths to save their clients from death.

There are a few who deserve special thanks. Mary Sinclair—exacting, thoughtful, and quietly full of rage—fought the death penalty as a SCHR investigator for decades, and although retired, still visits friends from death row often. Our mentor Palmer Singleton, who agreed to help on a case in 1986, has stayed and fought alongside dozens of clients. Julia Robinson-Hicks, who has kept our finances straight and lifted our spirits since 1992. Co-founder and board member David Lipman, who continues to support our work after 40 years. Murphy Davis and the entire Open Door Community, who have ministered to our clients and to us these last four decades. Maureen Del Duca, our current board chair who leads SCHR with wisdom and good counsel. Longtime board members Ginny Sloan and Betsy Biben-Seligman, who for the last 20 years have grown the DC dinner into our largest celebration and fundraising event. Our fearless president Stephen B. Bright, who has given his whole self to the cause of equal justice. And our dear friend Charles J. Ogletree, SCHR board chair emeritus, who has been with us since 1983, and we are grateful. Thank you to all for your immeasurable contributions.

The focus of this history, however, is on the clients who face death, discrimination, isolation, and cruelty; clients who are dogged

in their determination to change the unjust system, and who we are proud to claim as part of the SCHR family. This history is an attempt to bring to light their stories and their triumphs amid the broken system of justice.

We are most grateful to those clients whose lives are an inspiration to us every day. Tony Amadeo, William Anthony Brooks, David Crowe, George Dungee, Willie Gamble, Jimmie Horton, Carzell Moore, Levi Pace, Donald Wayne Thomas, to name a few. And those who had the courage to stand as lead plaintiffs in our class action civil cases, such as Rusty Bowling, Rev. James Davis, Kelvin Hampton, Barry Head, John Hicks, Maurice Flournoy, Lacya Fluellen, Linda Laube, and Wendy Whitaker. Without their bravery, the constitutional violations we fought to end may not have been exposed. There are no words for the ultimate sacrifice made by those clients whose struggle against the death penalty ended with their execution. For them, we fight on. J.C. Shaw, J.D. Raulerson, John Evans, Jimmie Lee Gray, Buddy Earl Justus, Edward Earl Johnson, David Washington, Timothy Baldwin, Velma Barfield, David Martin, Robert Wayne Williams, Larry Heath, Wallace “Buck” Fugate, Varnell Weeks and Darryl Grayson. Presente!

We appreciate the time and talents of Good Thinking founder Matt Porter, who donated many, many hours to help shape this story. And thanks to copy editor Virginia Cope and proof reader Eden Landow, who cheerfully took on this project on top of their already full schedules. Thank you to Renée Floyd Myers, SCHR’s operations and marketing director, who can take words on a page and turn them into art. We are deeply grateful to Charles and Eleanor Edmondson whose generous contribution funded the research and publication of this book. It is our hope that reading our history will leave you feeling proud of your connection to the Southern Center for Human Rights, feeling inspired to take action, and even more certain that all people deserve equal justice.

— Mary Sidney K. Harbert
Author, history researcher, and SCHR investigator

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Slavery was transformed by the 13th Amendment to the Constitution from *chattel slavery* into *penal slavery*. This damning phrase has shaped our institutions and dogged the aspirations for human rights, equality, and liberation ever since:

“Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted...” (my emphasis)

We must begin here to understand what the Southern Center for Human Rights is about. The Southern aristocracy resisted giving up slavery and continued the practice through the use of police, courts and work as punishment (slavery by another name). Worse still, the South led the way with mass imprisonment, executions, and the predatory capitalism that prey on the poverty and misery of the imprisoned and their families.

So the Center is first of all Southern. Without apology, its focus has been the Southern states that have lynched the most African American men, women and children; and the states where black folks are more likely to be poor, undereducated, malnourished and vulnerable to police power than anywhere in the country. Just as the convict lease system was conceived here in the wake of Reconstruction, the schools to prison pipeline was cooked up from the same foul brew in the (partial) demise of Jim Crow. Without pretending that these problems exist *only* in the South, this is where we start because of the peculiar nexus of race, class, gender, and socioeconomic domination found throughout our culture and politics.

The Center is about Human Rights. There are certain rights and obligations that are seen by most of the world as inherent and inalienable. Some of those rights find expression in the U.S. Constitution and Bill of Rights. Others go beyond our basic documents and cry out for an expanded understanding of human rights. For this reason, the Southern Center works diligently in the courts *and in* communities. Some of the finest and most courageous lawyers in the country continue to carry on the struggles of the abolitionists and human rights advocates through history. The organizers and inves-

tigators labor alongside the legal advocates to educate and advocate for a change in the *culture* that selects people of color and the poor for exclusion, domination and crushing punishment.

SCHR is a Center. For more than 40 years, this organization has functioned as an educational hub where interns, law students, social workers, young attorneys, and ordinary folk have come to learn *how* to be effective advocates for the human rights and dignity of all. Here, countless folk have been trained and encouraged to go out into courts, classrooms, communities and dungeons as agents of liberation and respect for civil and human rights. When the needs in other states have cried out, SCHR has sent staff to start other law centers around the South. Staff attorneys inspire and recruit students to cultivate a passion for the poor and excluded. The importance of the Center as an educational institution for justice and liberation is beyond calculation.

I, too, started visitation and advocacy in the Georgia prisons and jails forty years ago. It was a different time. There were very few attorneys and almost no one else visiting on death row. Only a few courageous souls were occasionally able to challenge brutal conditions for the imprisoned. In 1982, Steve Bright, the new Director moved what was then Southern Prisoners Defense Committee to Atlanta. Steve immediately became a dear friend, and each person who came to the staff brought fresh energy and commitment for the struggle. Over the years we at the Open Door Community have shared a rich journey with the Center. I have been privileged to perform a few weddings and welcome new babies, we have grieved together for our executed friends, celebrated the victories, cussed and fumed together at the cruelty of the system, and we've cheered our friends on as they challenge the use of death as punishment and the brutal excesses of mass imprisonment.

On the wall of my office is a large photograph of the day Tony Amadeo was released after 38 years in prison—13 of them on Georgia's death row. (You can read the whole story on page 40) I had met Tony in the late '70's when he was still a teenager and sentenced to die. It was grim; it was heartbreaking. But over the years, Center lawyers took his case, won a reversal of his death sentence, negotiated prison

time for him, and finally, won his parole. The Open Door Community joined the Center staff for an exuberant celebration that I will cherish forever.

So please, read this history. You will meet those who have been saved from execution and the interlocking chains of misery and oppression. You will meet those who have been wrongly convicted and terrorized by the system. You will meet whole populations in jails and prisons who have been starved, suffered violence and wrongful death, and those whose lives have been ruined by draconian laws. Most chillingly, you will meet a system that cares little for the lives of the poor, for human rights or for human dignity.

But you will also meet the courageous women and men who are their defenders. Those who visit in the prisons and forge precious friendships; those who challenge the systems that represent white supremacy and the denial of humanity of poor people who are criminally charged. Those who will not allow the systems of “justice” to ignore the demand for vigorous legal representation regardless of one’s economic status—those who see and make visible the humanity of every child of God, no matter what they have done.

Be inspired. Be thankful. Be moved to action. Support this work. Our very lives—our own human dignity—the human rights of all of us depend upon it.

Murphy Davis is a Presbyterian minister who has visited on Georgia’s death row for 40 years and continues to advocate for the abolition of the death penalty and mass imprisonment. As a Co-Founder of the Open Door Community, she and her family live and work in an interracial activist community in downtown Atlanta. She is proud to be a colleague and friend of the Southern Center for Human Rights.



Murphy Davis and Tony Amadeo on the day of his release.



SECTION I

JUSTICE TAKING ROOT



1

40 Years of Zealous Defense

Hope, Determination and Perseverance

Thousands of Faces Tell the Story of the
Southern Center for Human Rights

Since its founding in 1976, the Southern Center for Human Rights has given hope to people who have had no one to believe in them; it has restored the dignity of those within the criminal justice system, recognizing that they are more than the worst thing they have ever done. The Southern Center for Human Rights has fought to ensure a zealous defense for people who need it most: those who have been sentenced to the death penalty, those suffering under horrific conditions in prisons and jails, those who because of their poverty are facing charges with incapable or uncaring attorneys or no attorney at all, and those exploited by greed and thrown into modern-day debtors' prisons because of their inability to pay fines and fees.

PROSECUTOR'S RACISM SENT MEN TO DIE

Jimmie Lee Horton was sentenced to death for the 1980 shooting of a Bibb County district attorney during an attempted burglary. At his sentencing hearing, his court-appointed lawyer referred to him as a "worthless man" and said he didn't know whether Horton should die.¹ The Southern Center for Human Rights appealed, and the U.S. Court of Appeals for the Eleventh Circuit reversed Horton's conviction in 1991 on the basis that



Jimmie Lee Horton successfully challenged his death sentence by proving the prosecutor had engaged in systemic racial discrimination in striking African American jurors.

the prosecutor had engaged in a systemic practice of using his peremptory strikes to keep black people from serving as jurors in Horton's and other criminal cases, and that Horton received ineffective assistance of counsel. Jimmie Lee Horton was resentenced in 1993 and paroled in 2011.

The Southern Center's advocacy has transformed criminal justice systems throughout the Deep South. This is the story of how the Southern Center for Human Rights (SCHR) found its mission and saved the lives of the most ignored and neglected members of society.

SENTENCED TO DIE WITH A 49 IQ

Jerome Holloway, a man with an IQ of 49, was sentenced to death without his jury knowing about his disability; the trial judge denied him an independent evaluation and the state found him competent, despite the judge's misgivings.² Holloway's death sentence was reversed and he was resentenced to life when SCHR won a new trial and his new jury was made aware of his disabilities. SCHR went on to press for legislation banning the execution of intellectually disabled people. In 1988, Georgia became the first state in the nation to ban executing people with intellectual disabilities.

In criminal courts and prisons, justice is not served because our nation is still struggling with the legacy of slavery, Jim Crow laws and structural racism, all of which is evident in the disproportionate number of African Americans in the criminal justice system. By calling out inequality and insisting on fairness in how the police target communities, in how people in custody are treated, in how criminal cases are prosecuted and in how the poor are defended, SCHR has been loosening the chains of racial oppression.

However, after 40 years, the work of the Southern Center for Human Rights is as critically needed as ever. Georgia has executed six people in 2016, the most in a single year since the death penalty was reinstated.³

CRUEL, UNUSUAL AND DEADLY

While Terrell Gray was critically ill in 2003, he died in a prison van on route to the hospital.⁴ He was one of 42 men with HIV who died at Alabama's Limestone Correctional Facility between 1999 and 2004.⁵ The facility was a human rights disaster—a drafty, leaky sheet metal warehouse infested with bugs and infectious disease. Gray and other men had been exposed to TB. The prisoners provided medical care for each other, exposing themselves to infection. Many deaths were later deemed preventable. SCHR sued Alabama and the medical provider Naphcare on behalf of HIV-positive men at Limestone and won an order requiring an HIV specialist, more medical staff, infection-control measures and food served seven days a week.



Robin Nelson/Zuma Press

The dorm where HIV-positive men lived at Limestone Correctional Facility.

The cases and clients of SCHR tell the story of this organization over the past 40 years. Their stories illustrate the significance of the right to counsel in ensuring fairness in all aspects of our nation's criminal justice system. The right to counsel has made the difference between life and death, freedom and incarceration, fairness and inequality for thousands of individuals and their families across the South. Since 1976, SCHR has grown from two lawyers and a director to a staff of 25 including investigators and development, communications and public policy specialists. With its greater staff resources, SCHR has shifted from "putting out fires" to making systemic reforms using strategic litigation and public policy advocacy. However, even as the organization has grown, SCHR has maintained its focus on ensuring zealous representation to those most in need.

FREED MAN REMAINED IMPRISONED

Samuel Moore, charged with disorderly conduct and parole violation, sat in a South Georgia jail cell in 2002 for 13 months without ever meeting a lawyer or going before a judge before SCHR discovered that his charges had been dismissed four months earlier. His court-appointed lawyer never checked on his case, so he failed to notice that Moore was still in jail.⁶ SCHR filed a lawsuit to end the judicial circuit's right to counsel violations. Shedding light on the way Moore and many others were treated by Georgia courts led to a public defender system in Georgia in 2003.



Special to AJC/Todd Stone

Samuel Moore of Cordele, Georgia. His case was emblematic of Georgia's failed indigent defense system.

Those facing criminal charges and those in prisons or jails need legal representation by competent lawyers to prevent or remedy injustices. Unfortunately, not many are able to afford it. Too many awaiting trial are appointed lawyers without the time and resources to provide real representation. Many who are in prison cannot challenge inhumane conditions. The Constitution does not guarantee a lawyer to assist those who claim their rights have been violated. In the United States, and particularly in the Deep South, the need is great but the advocates are few. The Southern Center for Human Rights began in response to this great need; a need that has yet to be fulfilled; a need that grows as the numbers in prison grow; as the criminal justice system expands even today.

GUILTY OF BEING POOR

In 2005, Ora Lee Hurley was imprisoned at a state diversion center until she paid her fines from a 15-year-old sentence of probation. She spent nearly a year working five days a week for \$6.50 an hour at a diner, reporting back each night to the diversion center. The state took money from her paycheck for room and board, medical care and administrative fees, leaving her nothing to pay off her \$705 fine. She had no means to challenge the punishment.⁷ In 2006, SCHR filed a habeas corpus petition and Hurley was released.

The Southern Center for Human Rights began in 1976 as the Southern Prisoners' Defense Committee, providing lawyers to prisoners on death row facing imminent execution and to prisoners suffering cruel and inhumane conditions in jails and prisons across nine states (Kentucky, North Carolina, Tennessee, South Carolina, Georgia, Alabama, Louisiana, Mississippi and Florida). The staff consisted of one executive director and two attorneys located in New Orleans and Nashville.

Then, as now, the need for competent legal help was greater than the supply. This challenge made SCHR more determined to build up necessary capital and human resources to fight injustice.

The following chapters tell the story of the Southern Center for Human Rights, from its beginnings as a small legal arm of a prisoners' rights coalition to the thriving criminal justice reform organization it is today. These chapters tell important stories—but there are too many to include them all. The determination and perseverance of the staff and volunteer legal interns made SCHR what it is today. The resilience and the grit of SCHR's clients will be a constant source of inspiration.

TRAPPED BY A VICIOUS SYSTEM

In 2012 Shana Shackelford was living in her car after being charged with arson that destroyed her apartment. She was a nursing student working two jobs at the time. She knew she was innocent of the charges and a conviction would prohibit her from pursuing her dream of a medical career.

As Shackelford grew desperate awaiting trial and considered suicide, her appointed lawyer suggested she accept a plea bargain of 20 years without even looking at the facts of her case.⁸ SCHR stepped in, providing to Shackelford a lawyer with experience in arson cases and a leading forensic expert. Shackelford prevailed. Charges were dismissed.



Shana Shackelford wrote a letter to SCHR describing her despair at being charged with arson, a crime she did not commit, and being offered a plea bargain of 20 years in prison. With her permission, Steve Bright read her letter at his 2012 Yale Law School commencement address.

2

Early History

Sowing the Seeds of Justice, 1972-1976

SCHR: Born on a Farm in Tennessee

In 1973, David Lipman, a lawyer with the Lawyers' Committee for Civil Rights Under Law (LCCRUL), originated the idea of a law firm dedicated to prisoners' rights. At the time, Lipman was monitoring Mississippi's compliance with the ruling of *Gates v. Collier*⁹, a massive prison-conditions case filed by Roy Haber of the LCCRUL on behalf of prisoners at Mississippi State Penitentiary to end barbaric practices at the institution. The penitentiary was better known as Parchman Farm, a prison plantation—and, unsurprisingly, given the times—segregated.

At Parchman, all prisoners were brutalized, but black prisoners suffered the most. They were subject to indiscriminate whipping and isolation in “sweat boxes” so small that prisoners could not stand. They were forced to lie naked on the floor in their own waste. Sanitation conditions were abysmal. The overworked staff at the understaffed prison did not maintain even basic safety and security, much less provide education or recreation opportunities. The prisoners were the equivalent of slaves, working the plantation fields from dawn to dusk. There was an insidious imaginary line—no sign, no post, no fence—that prisoners were not allowed to cross without risk of being shot. Anyone attempting to escape Parchman was shot dead, no questions asked.

During *Gates* litigation, David Lipman saw an acute need for legal representation for all Parchman prisoners, not only to ensure compliance with the various *Gates* court orders, but also to pursue other prisoner rights litigation. Lipman would soon secure funding to create the Mississippi Prisoners' Defense Committee (MPDC). The MPDC would monitor compliance after the *Gates* litigation resulted in a consent order at Parchman for the next two decades. *Gates* ended the practices of segregating prisoners, handcuffing prisoners to fences and rails, and forcing prisoners to stand, sit or squat for prolonged periods. MPDC also supervised the abolition of the trustee guard system—a system prison administrators encouraged to fill the security vacuum created by understaffing, which gave prisoners the ability to use weapons, violence and cruelty against fellow prisoners.

Other systematic prisoner rights litigation followed: representation of a Parchman prisoner, stabbed in the back and rendered a paraplegic, for monetary damages against the Parchman warden¹⁰; enjoining the Mississippi State Penitentiary from using general maintenance funds to pay tuition for the children of prison employees to attend nearby private, segregated academies and recovering those funds paid by Parchman to the segregated academies¹¹; implementing and challenging various parole procedures^{12 13}; providing Parchman prisoners with a law library and assistance for habeas corpus proceedings¹⁴; and establishing legal standards for incarceration of pretrial detainees in jails throughout the five Southern states comprising the Fifth Circuit Court of Appeals at that time.¹⁵

As these litigation efforts were prosecuted, David Lipman met Michael Raff, executive director of Mississippi's Council on Human Relations. Raff, a former priest, was working to provide legal services to impoverished Mississippians through pro bono legal aid programs. He had also led legal action against Mississippi for racial discrimination. Together, Lipman and Raff saw an acute need for legal representation for prisoners throughout the South.

In the South, the civil rights movement emerged from the African American religious community and much later received support from progressive white churches. The Church had the moral authority to demand an end to racial segregation. Churches were responding not only to the biblical call to proclaim liberty to the captives, they were experiencing the imprisonment of their own leaders as a result of civil rights demonstrations. The conditions at Parchman reached the public as word spread of the arrest of Freedom Riders when they arrived in Mississippi and were taken to Parchman.

It was because of those imprisoned civil rights demonstrators—the Rev. Martin Luther King not the least of them—that attention was brought to the plight of the rest of the prison population. In 1975, Lipman recruited L.C. Dorsey, a 10-year veteran of the movement in Mississippi and colleague of Fannie Lou Hamer—a Mississippi icon—to direct the Mississippi Prisoners’ Defense Committee. Because she was an African American woman, Dorsey’s leadership of a prisoners’ rights organization was unprecedented.

Meanwhile, Will Campbell and his Committee of Southern Churchmen set up the Southern Prison Ministry in 1972. Headed



L.C. Dorsey

by Tony Dunbar, the ministry grew an offshoot called the Southern Coalition on Jails and Prisons, made up of a collection of activists from across the South. Joe Ingle, himself a minister, became the director of this coalition. This flurry of activity all took place in a matter of three years, and it fomented the efforts to achieve justice around the South.

These separate paths toward prisoners' rights converged one spring day in 1976 on a farm in Mt. Juliet, Tennessee, at the home of Will Campbell. Perhaps best known for his memoir "Brother to a Dragonfly," the enigmatic guitar-picking, whisky-sipping Baptist preacher had puzzled followers after two decades of civil rights activism—including desegregating the University of Mississippi—by praying with Klansmen. Campbell's theology was summed up famously as: "We're all bastards, but God loves us anyway." His farm was a refuge where outcasts and outlaws were welcomed and where the souls of prisoners were not considered to be in need of salvation. In Campbell's view, the wealthy white churches and the academic institutions were the ones that needed rescuing from self-importance.

"There was a gradual awareness as we came in direct contact with prisoners and were advocating for their rights with legislators, [Department of Corrections] officials and the general public, that we needed legal assistance to help them," remembered Joe Ingle of

Barbara (center) and
David Lipman (right).



Michael Raff



Tony Dunbar



the decision to start a legal organization. “And believe me, that legal help was not coming from most lawyers and existing legal organizations in the South.” The Mississippi Prisoners’ Defense Committee served as a model—the infusion of litigation with clergy-based community activists.

The Southern Coalition on Jails and Prisons

The Southern Coalition on Jails and Prisons was comprised of organizations from across the South, including the Clearinghouse on Georgia Prisons and Jails, Alabama Prison Project, Florida Clearinghouse on Criminal Justice, North Carolina Prison and Jail Project, Kentucky Prisoners’ Support Council, Louisiana Coalition on Jails and Prisons, South Carolina Criminal Justice Project, Southern Prison Ministry and Delta Ministry.

At Will Campbell’s farm in Mt. Juliet, Tennessee, these activists founded the Southern Prisoners’ Defense Committee in spring 1976. It was renamed the Southern Center for Human Rights in 1991. The march of social justice in the South took a bold step forward.



SECTION II

DEATH ROW DEFENSE



3

Arbitrary Application
of the Death Penalty

Like “Being Struck by Lightning”

Arbitrary Death Sentence a Grave Injustice

F*urman v. Georgia* in 1972 described the death penalty as both arbitrary and discriminatory—and thus unconstitutional. Across the nation, and especially in the Deep South, death could be imposed for a number of crimes, such as rape or, as in *Furman’s* case, for shooting through the door and killing a homeowner in an attempted burglary. Juries received no punishment standards or guidance in deciding between the death penalty and life imprisonment. Those on death row often had three things in common: they were poor, black, and grossly underserved by their court-appointed lawyers.

Writing in *Furman*, Justice Potter Stewart said: “These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual. . . . I simply conclude that [the Constitution] cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed.”¹⁶ By 1976, 35 states had written new statutes that purported to remove arbitrariness by including standards to guide judges and juries in deciding between death and life imprisonment and by splitting the trial into two distinct phases: Guilt-Innocence and Sentencing. These new statutes were subsequently found to not violate the Constitution in the case *Gregg v.*

Georgia, which reinstated the death penalty after the short four-year moratorium.

Although the states rewrote their statutes, problems of inadequate representation and systemic racism persisted. African Americans were excluded from juries. Prosecutors sought the death penalty arbitrarily. Many lawyers appointed to handle death penalty cases didn't know the first thing about the law. Some of these lawyers referred to their clients in court with racial slurs; made statements to distance themselves from their clients; fell asleep in court; showed up to court drunk; missed important deadlines; refused to object when their clients were discriminated against; and did not bother to get to know their clients as people, with families and histories of their own. Southern court officials reinforced such performance and behavior by accepting it as adequate—and deserved—for those facing death.

Joe Ingle clearly remembers the Fourth of July, 1976—not because it was his country's bicentennial, but because of the *Gregg* ruling from the Supreme Court that reinstated the death penalty.



Joe Ingle, former director of the Southern Coalition on Jails and Prisons, is one of the founders of the Southern Center for Human Rights. He continues to visit people on death row today.

“We were expecting that, but it reinforced the need for legal involvement, because we knew from our work with death row prisoners that many of them had no lawyers and now we had another death penalty to deal with,” recalled Ingle. “Hence a huge emphasis, which began that spring, was put on finding lawyers for the condemned to avoid a slaughter.”

Ingle hired David Lambert, a Memphis Area Legal Services attorney, as the first director of the Southern Prisoners’ Defense Committee. In addition to death penalty cases, Lambert oversaw class-action prisoner rights cases in Kentucky¹⁷ and Tennessee. He represented 10 men who had been shot by officers during the Tennessee State Penitentiary riots in 1975. After two years as director, Lambert left SCHR to return to the practice of juvenile law at the National Center for Youth Law.

The SCHR operated on a shoestring budget. Some funding came from a three-year grant from the Campaign for Human Development of the Catholic Church. Less than two years into the grant, the church threatened to cut off funding because SCHR was defending a black man who had been accused of killing a white Catholic girl in New Orleans.

Will Campbell and Joe Ingle traveled to New Orleans to meet with Archbishop Philip Hannan. The archbishop was dismayed that the Catholic church was funding the defense of an accused killer of a Catholic. However, he agreed to hear them:

“Archbishop Hannan, I’m a simple farmer and preacher,” said Campbell. “But I wonder, do you think Jesus loved that girl?” Hannan replied that of course Jesus loved a faithful Catholic. Then Campbell looked at him directly in the eye and said: “I think you are right that Jesus loved that girl. But as I read the Gospel, he also loved that black teenager that killed her. Indeed, that is the power and scandal of the Gospel.” There was a palpable silence in the room. Archbishop Hannan stopped his pursuit of defunding SCHR.

For the first several years, the organization struggled to stay afloat. And for years after that, it operated on a small budget, stretch-

ing every dollar. The generous support of friends and allies such as the American Civil Liberties Union (ACLU) of Georgia and the Open Door Community, provided community for SCHR staff¹⁸ and grounded the work in a context of social justice.

Richard Shapiro was subsequently hired as director, based in SCHR's New Orleans office. Shapiro filed many death penalty cases and was honored by the ACLU of Louisiana with the Benjamin E. Smith Civil Liberties Award in 1982.

New Day: Steve Bright Arrives at SCHR

When Shapiro left SCHR in 1982, Steve Bright began his tenure, serving as director from 1982 to 2011 and as president since 2011. When Bright started, SCHR was litigating 20 capital cases as well as cases involving conditions in prisons and jails with only two staff attorneys. The offices in New Orleans and Nashville were consolidated to save money into a central office in Atlanta, where SCHR is today. The workload was untenable. Few lawyers at the time could afford to work death row cases full-time. Bright viewed SCHR as a last bulwark against the tide of injustice brought by death row cases across the South: "We knew we had to hold on as long as we could," he remembered. "We took on cases of people without lawyers and where execution was imminent. We were fighting for stays that would buy us time. Trying to serve nine states was clearly impossible. We did not have enough lawyers to adequately serve even one of them. We were just trying to put out fires."

Bright knew the solution: recruit and train as many lawyers as he could as quickly as possible.

Too Many Executions; Not Enough Lawyers

By 1984, fewer than 15 attorneys in the United States devoted their work to death penalty post-conviction review.

- The same year, 1,400 people sat on death row.
- Thirty had been executed since *Gregg* was decided in 1976.
- 700 death sentences had been vacated or reversed.

- Over half of the death sentences that reached the federal appeals courts were set aside.
- Thirty-five people were without lawyers on death rows in Georgia, Florida and Mississippi.¹⁹

Recruiting Gideon's Army

Those facing the death penalty have the right of court-appointed counsel through the trial and the direct appeal only. No constitutional guarantee of counsel extends to people who challenge their convictions or sentences of death beyond the appeal (known as the post-conviction stage). Historically, many death sentences are reversed or resentenced to something less than death at this stage. Consequently, the few lawyers providing assistance to these clients feared that, any day, someone would be put to death before a lawyer could review the case.

SCHR had little money to pay salaries. Staff was paid sometimes every other month, and salaries were a tiny fraction of what other lawyers made. Most often, the lawyers SCHR could afford to hire and train on the job were recent law graduates. Travel was by bus. Accommodations were friends' sofas. But for those who were true believers, the mission fed them. However, the handful of staff attorneys was clearly not able to represent all who needed it.

Bright and the modest staff at SCHR began recruiting and training pro bono lawyers to take on death row cases. Whenever anyone from SCHR spoke at a death penalty conference, panel or training, they implored the attorneys gathered to take on the cases of people on death row without lawyers. In the early days, volunteer lawyers were recruited from New York, Washington, D.C., and Chicago, but it soon became apparent that Southern lawyers needed to step up. As the South ramped up death sentences, the need for lawyers was far too great for the demand.

At SCHR's urging, in 1983 the American Bar Association set up a Death Penalty Representation Project to match volunteer lawyers with clients around the country.²⁰ In 1984, SCHR persuaded the

Florida State University Law School to establish a resource center to recruit and train volunteer counsel in death penalty cases.²¹ The case of Robert Waterhouse provided a stark example of cutting it close.

Robert Waterhouse was scheduled to be executed March 19, 1985. Only seven days before, SCHR agreed to take his case, after the Florida resource center could find no one else. Steve Bright prevailed on getting a stay of execution, but the state appealed, leaving SCHR to work around the clock on a reply.

“We worked till 2 a.m., and then I drove straight to the Florida Supreme Court, with no time for error; shaved, changed into a suit . . . and argued the case,” Bright said.²²

SCHR argued before the Florida Supreme Court that it needed more time to work on Waterhouse’s appeal—and that denying that time would be a violation of due process. SCHR had begun to learn of details of Waterhouse’s troubled childhood that the jury never heard, which could serve as evidence mitigating against the death penalty. The Florida Supreme Court not only granted more time but threatened to halt all executions in Florida until the state responded to the shortage of lawyers. In response, the state created the Office of the Capital Collateral Representative to provide full-time public defenders for death penalty post-conviction representation. It was a first in the country. Waterhouse won a new sentencing hearing—although he was resentenced to death, the case was a victory for justice.



SCHR staff in 1985 included (from left) attorneys Sandra Barnhill, Julie Edelson, Carla Friend, and Christine Freeman. Missing are Palmer Singleton, the second-longest serving staff member after Steve Bright, office administrator Ellen Spears, secretary Vertis Bailey, and attorneys Bryan Stevenson, Robert McGlasson, and Clive Stafford Smith.

The rest of the country was a step behind Florida, and for years the need for death penalty lawyers remained urgent. SCHR worked to bridge the gap, starting resource centers in Alabama, Texas and Louisiana. In 1990, after staff attorney Bryan Stevenson had been working for about five years at SCHR, the organization sent him to start the Alabama Resource Center in Montgomery and asked Robert McGlasson and Steve Howe to join a lawyer from the ACLU to set up a project in Texas. In 1993, staff attorneys David Utter and Clive Stafford Smith left SCHR for Louisiana, where they co-founded the Louisiana Capital Assistance Center.

SCHR: Not Enough to Go Around

SCHR clients understood the dire need for attorneys who could effectively challenge illegal death sentences. Client Levi Pace wrote a letter to SCHR at the conclusion of his retrial for capital murder. Pace's conviction had been overturned after SCHR presented evidence of racial discrimination in Morgan County, Alabama's grand jury selection process. He was convicted of a lesser charge at his retrial.

"Mr. Bright, there's a shortage of real legal representation during the trial of death-penalty cases for indigent defendants here in Alabama (and elsewhere, I'm sure). Whether or not this is due to appointed attorneys not being properly compensated for their services in defending the indigent; a lack of investigative efforts put into death-penalty cases; a lack of interest in defending death penalty cases properly; or simply keeping 'good ol boy' relationships intact by sacrificing the lives of indigent defendants—these are areas open for debate. What is not debatable is the fact that I thank God for SCHR because the work done in my case was more about competent attorneys and investigators collectively working with their client to save human life reaching for right over wrong. Mr. Bright, I truly wish that every capital defendant had a chance to be represented by SCHR. Unfortunately, I realize that there's not enough of you all to go around."

4

The Significance of Mitigation

Zealous Defense, Dogged Investigation

Every capital case is unique. Each requires dedicated lawyers and investigators to sort through vast quantities of facts to discover any evidence of prosecutorial misconduct, police mishandling, judicial error, shoddy representation or evidence that impugns witness credibility. Such evidence demonstrates that a case was improperly handled—and bringing it forward could save a person from the sentence of death.

Every defendant has a story to tell, and many times that story is not the one that prosecutors have presented. These stories are revealed during the dogged search for mitigating evidence, such as childhood abuse, parental drug addiction, parental neglect, mental illness or intellectual disability, as well as defendants' records as loving parents or caregivers, trustworthy employees, volunteers and students, military veterans or through acts of personal courage.

Day after day, year after year, SCHR investigators have taken to the streets, visiting churches, homes, schools, military bases and job sites to gain a deeper understanding of their clients. Aside from the difficulty of finding sources of information, an investigator's toughest task is earning the trust of the clients and their families, who often have been scarred by their experiences with trial attorneys. Developing these relationships is critical not only to the case, but also to the mission of the SCHR. Clients become part of the SCHR family and serve as constant inspiration for why the staff does this work.

“From the very beginning, Steve Bright instilled in this organization the belief that a person’s life was worth more than the worst decision they ever made,” said Sara Totonchi, current executive director of the SCHR.

A Lifetime of Abuse and Deprivation

LaSamuel Gamble, an 18-year-old African American, was sentenced to the death penalty for killing two people in a pawnshop robbery near Birmingham, AL. In state post-conviction proceedings, SCHR presented evidence about Gamble’s youth that had never been shared with the all-white jury at his first capital trial because the defense counsel failed to conduct any mitigation investigation.²³ Gamble grew up in abject poverty, shared a rundown shack with 23 relatives,²⁴ attended 13 different schools by the time he reached seventh grade,²⁵ moved to 40 different homes by the time of his arrest in 1996 and was raised by parents with serious mental illness. Throughout his life, he had been surrounded by violence, drugs and alcohol.²⁶ The court agreed that this evidence—if it had been presented by Gamble’s trial counsel—would likely have changed the outcome of his case. He was granted a new sentencing hearing in 2007,²⁷ and ultimately he was sentenced to life without parole.

Severe Mental Illness but Sentenced to Death

At Jerome Holloway’s trial, his limited intellectual capacity was not presented as evidence in mitigation of the death penalty. Jerome Holloway was known as “the most retarded man on death row anywhere in the nation” in 1987.²⁸ His IQ of 49 put him in the bottom tenth of one percent of the population,²⁹ according to Dr. Brad Fisher. Fisher was hired and paid out of the defense attorney’s own pocket, so convinced was he that Holloway’s limited capacity had been overlooked.

The evidence against Holloway was his own confession. Given Holloway’s IQ, SCHR attorney Clive Stafford Smith believed that

confession was utterly unreliable. Smith allowed Holloway to testify at a hearing in order to demonstrate how easily he could be led into making false statements.

“That was terrible for him, but it was the only way to get across to people how terribly dysfunctional he was and how he would confess to anything and to convince them that actually this confession was not worth the paper it was written on,”³⁰ recalled Stafford Smith.

While the Georgia Supreme Court granted Holloway a new trial, public outcry of the 1986 execution of Jerome Bowden, IQ 65, prompted a coalition, of which SCHR was a part, to persuade the Georgia General Assembly to ban the execution of people with intellectual disability in 1988,³¹ 14 years before the U.S. Supreme Court agreed in the landmark case *Atkins v. Virginia*.³²

Gary Drinkard (second from left) stands outside the SCHR office in Atlanta with legal team investigators Jason Marks (left), Kate Weisburd (right) and attorney Chris Adams (far right) after he was exonerated of capital murder in 2001.



Police Misconduct Revealed

SCHR's thorough investigation led to the 2001 exoneration of Gary Drinkard, who spent five years on death row in Alabama. Drinkard had been appointed two lawyers to represent him at trial who knew nothing of criminal law; one specialized in bankruptcy cases, the other in commercial law. These attorneys failed to present evidence of misconduct or to question the credibility of the witness, Drinkard's half-sister, who had been given immunity from prosecution in her criminal cases in exchange for testifying against him. SCHR represented Drinkard at his retrial, and the jury found Drinkard innocent. The case involved extensive investigation into Drinkard's family, who provided the testimony that led to his conviction.³³ The investigation revealed that police had tampered with a taped interview of Drinkard's half-sister and that his stepdaughter lied to avoid prosecution.³⁴

Since his acquittal and release from death row, Gary Drinkard has become an outspoken critic of the death penalty, and has traveled around the country speaking out about its inherent flaws. Only three weeks after his acquittal, he went with his SCHR legal team before the United States Senate Judiciary Committee as an example of the urgent need for competent counsel for those facing the death penalty.³⁵

5

Racism in the Courtroom

On Trial for His Life

Fighting Court-Sanctioned Discrimination

Criminal courts in the South appear locked in a time warp. They look much as they did in 1950. Almost invariably, the judge is white. The prosecutors are white. The court-appointed lawyers are white. And, even in communities with substantial African American populations, often the entire jury is white. Often the only person of color in a criminal court is the accused: on trial for his or her life.

The evidence is clear: Our criminal justice system has disenfranchised huge numbers of African Americans and other minorities, legally barring them from housing, employment and civic participation, and, as a result, perpetuating the caste system of slavery and Jim Crow. Even now.

The legal system is the place where racial bias thrives; where the bias of police, prosecutors and judges is difficult to overcome. Injustice is not just a regional issue; it is a national shame. Consider these skewed realities:

- Disproportionate numbers of black youth are incarcerated for the same crime compared to white peers.
- Disproportionate numbers of black people are serving longer prison sentences for drug crimes than white people, who were convicted for the same crimes but sentenced less harshly.
- The death penalty is four times more likely to be imposed in cases in which the victim is white and the defendant is black.³⁶

- Prosecutors continue to use discretionary strikes to prevent or minimize participation of racial minorities on juries of death penalty cases.

Damning Evidence: *Amadeo v. Zant*

The U.S. Supreme Court has invalidated four capital convictions due to race discrimination in the past 30 years. Three of them were argued by SCHR: *Amadeo v. Zant*, *Snyder v. Louisiana*, and *Foster v. Chatman*. These SCHR-led cases are significant achievements. They established precedent-setting case law that has reaffirmed the constitutional right for the defendant and all prospective jurors to be treated fairly.

In the first of these U.S. Supreme Court cases, Tony Amadeo, an 18-year-old Marine who was AWOL from Camp Lejeune with two other Marines, shot and killed James Turk, Sr., during a robbery in Putnam County, Georgia, in 1977. Amadeo was convicted at trial and sentenced to death two months after the crime. After his trial, a lawyer reviewing 30 years of master jury lists discovered by chance a memorandum by District Attorney Joe Briley instructing the jury commissioners in the county to underrepresent African Americans and women in the jury pools by 10 percent—exactly the percentage that would avoid a legal challenge to the underrepresentation.³⁷

The Georgia courts refused to consider the memorandum on appeal because Amadeo had not raised it before trial. The federal court of appeals rejected Amadeo's argument that he could not have possibly raised it at that time because he was unaware of its existence. The U.S. Supreme Court unanimously reversed the court of appeals, holding that Amadeo could not be faulted for not knowing of the secret conspiracy to limit the participation of black people and women on the jury pools.³⁸

Supreme Court Rules: Special Counsel Required

When Tony Amadeo's case returned to the state court for retrial, the presiding judge appointed inexperienced lawyers to represent

him and refused to allow SCHR attorneys previously representing Amadeo to continue as counsel. SCHR immediately appealed this ruling. The Georgia Supreme Court reversed the trial court's decision and required reappointment of Amadeo's SCHR lawyers. The court agreed with SCHR's contention that special skills were required for death penalty representation.³⁹

Tony Amadeo's case was ultimately resolved with a sentence of life imprisonment. During his nearly 40 years in prison, he took advantage of every learning opportunity he was presented. He graduated summa cum laude from Mercer University as valedictorian. He became a skilled craftsman and was highly regarded by the officers and wardens for whom he worked. He read books voraciously.



SCHR Attorney Ryan Primerano (left) and Tony Amadeo on the day he was released.

Tony Amadeo was paroled from prison in 2015 and now lives on a ranch in Texas where he works as a handyman.

Prosecutorial Racism: The Horton Case

Jimmie Lee Horton, an African American, also was prosecuted by Joe Briley for capital murder. Briley used his peremptory strikes to exclude any African Americans from serving on the jury. Horton was sentenced to death by an all-white jury. He was convicted in 1980, when the law held defendants who claimed prosecutorial discrimination through jury strikes to a high bar; one so high, in fact, that in 1986, the case of *Batson v. Kentucky* removed the requirement that a defendant must prove that the prosecutor “in case after case, whatever the circumstances, whatever the crime and whoever the defendant or the victim may be” was “responsible for the removal of [African Americans] . . . with the result that no [African Americans] ever serve on petit juries,”⁴⁰ because it would be a violation of the Equal Protection Clause of the Fourteenth Amendment.

SCHR investigators researched Briley’s jury strikes from 1974, his first year in office, to 1981, the year after Horton’s conviction. The statistical evidence of racial discrimination was overwhelming: Between 1974 and 1981, Joe Briley exercised:

- 1,580 peremptory strikes, 1,095 of them (70%) against black prospective jurors;
- 234 peremptory strikes in capital cases, 184 of them (79%) against black prospective jurors;
- In capital cases involving a black defendant and a white victim, Briley used 94.1% of his peremptory strikes (96 out of 103 strikes) against black prospective jurors.⁴¹

Statisticians calculated the likelihood that Briley was not using strikes in a discriminatory manner as less than 0.00001%.⁴² Joe Briley’s behavior was blatant discrimination. Horton’s own attorney did little to counter it, telling the jury at sentencing that Horton was a

“worthless man” and that he wasn’t sure whether he should live.⁴³ Based on this evidence, the U.S. Court of Appeals set aside Horton’s conviction and sentence in 1991. His case was resolved with a sentence of life imprisonment. Over the next 20 years in prison, Horton was a model prisoner. He became foreman of the crew that painted the insides and outsides of Georgia prisons. In 2011, he was granted parole, and he lives in metro Atlanta with his wife, Addie.



Jimmie Lee Horton’s death sentence was invalidated based on racial discrimination, and he was resented to life. While serving his sentence, he met his wife Addie. In 2011, he was paroled.

Rubber Stamp Racism: *Snyder v. Louisiana*

The second case about race discrimination in jury selection that SCHR argued before the U.S. Supreme Court was on behalf of Allen Snyder, an African American man who was convicted and sentenced to death by an all-white jury in Louisiana in 1996.

In Snyder's case, the prosecutor used peremptory strikes to dismiss all five black prospective jurors. The prosecutor then baited the white jurors in the closing argument, saying that "down here, in Jefferson Parish, the good citizens wouldn't let Snyder get away with it the way O.J. Simpson had."⁴⁴

Steve Bright argued the case in 2007, pointing out that the Louisiana courts had rubber-stamped the prosecutor's strikes.⁴⁵ The U.S. Supreme Court ruled 7-2 for Snyder, with Justices Thomas and Scalia dissenting. He was later resentenced to life in prison.

"B" Stands for Blatant: *Foster v. Chapman*

In its third such case, SCHR lawyers returned to the U.S. Supreme Court in 2015 on behalf of Timothy Foster to argue that prosecutors had struck all the black prospective jurors on the basis of their race. And once again, the prosecutor had provided the evidence of discrimination.

This time, the prosecutor had highlighted the names of all the prospective black jurors, written the letter "B" next to their names and ranked them against each other "in case it comes down to having to pick one of the black jurors."⁴⁶

Steve Bright, former SCHR attorney Ruth Friedman (left) and Julia Robinson-Hicks after *Snyder v. Louisiana*.



The Floyd County, Georgia, prosecutor also urged the all-white jury to send a message “that, if you send somebody to death, you deter other people out there in the projects from doing the same again.”⁴⁷ Foster’s profile matched many before him on death row: poor, black, intellectually limited, mentally ill and with a history of being abused and neglected.

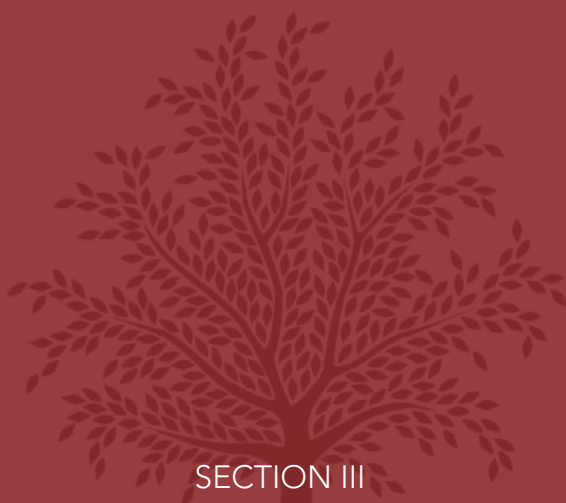
On May 23, 2016, the U.S. Supreme Court ruled 7-1 that Timothy Foster was sentenced to death in violation of the high court’s decision in *Batson v. Kentucky*. The opinion, written by Chief Justice John Roberts, made it clear that discrimination in the selection of juries is unconstitutional and will not be tolerated:

“Two peremptory strikes on the basis of race are two more than the Constitution allows,” he wrote.⁴⁸

The decision has given oxygen to a growing fire of criticism about the use of peremptory strikes in perpetuating racial discrimination.⁴⁹

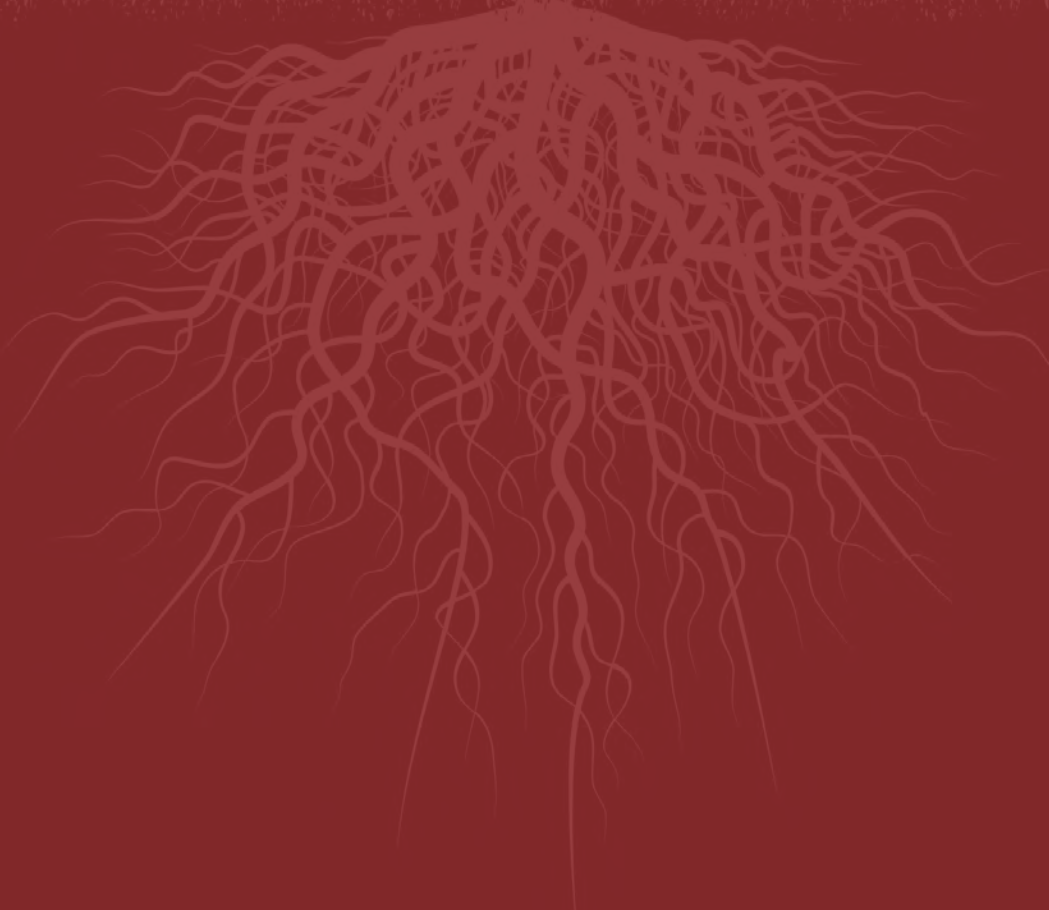
“It’s important to note that *Foster*, the Supreme Court case, is about race discrimination in the jury selection. But the *Foster* case that we know is about race discrimination from beginning to end, from charging to sentencing and everything in between,” said Patrick Mulvaney, one of Mr. Foster’s attorneys and the managing attorney for the SCHR Capital Litigation Unit.





SECTION III

PRISON CONDITIONS



6

Where Cruel Is the Norm: Southern Prisons

“Medieval and Barbaric:” Corn Dogs Three Times a Day

The 1981 case *Rhodes v. Chapman*⁵⁰ declared that harsh prison conditions were not unconstitutional by rejecting a challenge to housing two people in a cell designed for one. Evidence revealed that the prisoners spent the majority of their time in crowded cells inside a facility that was 38 percent over capacity. The ruling touched off a landslide that eroded human rights for prisoners.

In dissent, Justice Thurgood Marshall pointed to this callous disregard: “In the current [political] climate, it is unrealistic to expect legislatures to care whether the prisons are overcrowded or harmful to inmate health.”⁵¹ The callous climate that Marshall lamented in 1981 has only worsened.

Legislators continue to exploit criminal laws for their own gain, writing “tough on crime” statutes, including mandatory minimum sentence policy and removing the right of trial judges to use their discretion in deciding punishment.

The results are a moral and economic tragedy. Since 1976, incarceration has risen a staggering 500 percent, from 200,000 to 2.2 million people today.⁵²

Since 1976, SCHR has exposed the most inhumane prison conditions with litigation and in the court of public opinion. Prisons in the South are most often built in rural communities with depressed economies, inaccessible by public transportation and largely hidden

from view. Prisons pump jobs into the community, but no one wants to know what really goes on inside the razor wire fences. As an organization that demands transparency from public institutions, SCHR has shone a light on the grim realities of prison, beginning with a challenge to South Carolina's entire prison system. Partnering with the ACLU's National Prison Project in 1982, SCHR filed suit in *Nelson v. Leeke* to address a multitude of human rights violations.⁵³

1982 *Nelson v. Leeke*: South Carolina's Prison Plantations

In *Nelson*, SCHR and ACLU sought relief from deplorable conditions brought on by severe crowding and decrepit buildings, including overcrowded cells, medical and dental care that caused death and injury, and lack of educational and recreational programs. These conditions contributed to violence, death and illness at all 27 state prisons in South Carolina. To accommodate the exploding prison population, South Carolina had triple-bunked cells and, when that option was exhausted, converted unused and inadequate old buildings into more prisons.

Central Correctional Institute, South Carolina's maximum security prison, was built in 1866.



South Carolina was still holding prisoners in the decaying Central Correctional Institute, the state's first prison, built in 1866. It operated for over 130 years and became the maximum security prison that housed death row. The 5-foot-by-6-foot granite cells were just over 6 feet high with narrow door openings and bars built with hammered molten steel so thick there was little air circulation.

Amid these deplorable conditions, understaffing allowed certain prisoners to terrorize others.⁵⁴ Plaintiff Gary Nelson spoke to the heart of the matter: the consequences of the trauma of prison violence on prisoners that extends beyond their release. "One day," he noted, "Ninety-nine percent of us will be turned back on the streets. Do they want me better or worse?"⁵⁵

In 1985, a settlement by consent decree was reached.⁵⁶ Standards were established across South Carolina's prison system. Access to health care and educational programs was ordered. Triple-bunking was prohibited. Some outdated and unsafe prisons were closed

Loretta Sanders, a prisoner at the South Carolina Women's Correctional Center, signs the consent decree negotiated in *Nelson v. Leeke* as two other prisoners seated at the table, Harry Plyler (left), of the Campell Work Release Center, and Phillip Therrien, of the Central Correctional Institution, await their turn. Steve Bright, standing 2nd from left; and Christine Freeman, lead attorney (2nd from right) represent SCHR as other participating organization directors look on.



while the practice of housing prisoners in gyms, hallways, dayrooms, classrooms or other uninhabitable rooms was suspended. Staff sizes were increased and more training was mandated. Personal hygiene products were supplied. The consent decree stood until 1996, when a district court judge terminated it.

1984 *Head v. King*: Horror at Angola Penitentiary

In March 1984, SCHR filed *Head v. King* on behalf of prisoners suffering mental illness and intellectual disabilities who were incarcerated in lockdown units at the infamous Louisiana State Penitentiary in Angola. These disabled prisoners suffered indefinite terms of confinement, with no explanation or recourse to gain release. Their punishments were often the result of behavior directly linked to their diminished mental capacity, yet Louisiana offered zero mental health services to them.

Plaintiff Kevin Barry was a prime example of the consequences of this cruel lack of concern. A violent and untreated schizophrenic, Barry was placed in lockdown. Repeated requests for mental health treatment were denied. Soon after filing suit, Barry hanged himself using bedsheets in his isolation cell.⁵⁷ It would be another five years until changes came.

In 1989, a consent decree was reached. SCHR attorneys fought for and won mandates for mental illness treatment plans; hiring and training of mental health staff; and a program to prevent overdoses of psychotropics that had killed and injured many mentally ill prisoners.⁵⁸

1985 to 2001: Alabama's Grossly Overcrowded Jails

Between 1985 and 2001, SCHR stepped up the pressure to end inhumane conditions of confinement. More than a dozen Alabama county and city jails were sued for deplorable conditions. The horrifying conditions were exacerbated by the same old problem: swelling jail population and state and local officials' lack of will or money to correct the situation. Local jails were demonstrably unsafe, unclean, unhealthy and unmaintained, as well as grossly crowded, with little

or no medical staff, mental health care or privacy.

Presiding over a case from Alabama's Morgan County, U.S. District Court Judge U.W. Clemon wrote that the jail's "[S]ardine-can appearance of cell units more nearly resemble the holding units of slave ships during the Middle Passage of the eighteenth century than anything in the twenty-first century."⁵⁹ Morgan County Jail crammed more than 300 human beings in a facility built to hold 96. People were crowded together on bare floors and slept under bunks, beside toilets and next to sewer drains. Those with infectious disease and mental illness were mixed into the general population. Judge Clemon entered an emergency order to relieve overcrowding and improve medical and mental health care and safety.⁶⁰

Due to an antiquated 1939 law, Alabama sheriffs were encouraged to feed detainees as cheaply as possible and pocket the remaining money for their personal use. The state provided \$1.75 per person a day for meals. Morgan County's sheriff, Greg Bartlett, was particularly adept at cost-cutting, spending only 56 cents instead. Detainees described being fed corndogs for weeks because the sheriff got a deal on a truckload.⁶¹ They complained of losing weight and being hungry constantly from the meager portions. Judge Clemon held the sheriff in contempt of the settlement agreement that required nutritious meals.⁶² SCHR discovered he had pocketed "savings" of \$212,000 over three years at the expense of the detainees' health.⁶³ Marshals took Bartlett off to jail, until he purged the contempt by providing larger and more nutritious meals.



The Morgan County Jail was so crowded, Judge U.W. Clemon likened it to the hold of a slave ship.

7

Where Alabama Prisons are Warehouses

Warehousing the Ill: A Depraved Solution

Tucked into the rural northwest corner of Alabama was the state's prison for men diagnosed with HIV: Limestone Correctional Facility. The country was slow to respond to the HIV health crisis, but prisons were years behind, segregating and isolating men out of fear and ignorance. Alabama's prisons were beyond full, after three decades of harsh sentencing. Buildings were outdated and maintenance neglected from years of budget cuts. The combination of crowding and negligent or indifferent medical care proved deadly at Limestone.

In 2002, SCHR filed a class action lawsuit, *Leatherwood v. Campbell*, on behalf of all HIV-positive prisoners at Limestone. HIV-positive prisoners were isolated in a building unfit for animals. All prisoners living in this ghastly building suffered from various communicable diseases and levels of illness—and were forced to stand in line outside in the predawn hours to receive their antiretroviral medications. Because they took the medications on empty stomachs, many of the prisoners vomited them up.⁶⁴

Saving Money, Costing Lives

Medical care at Limestone and all other Alabama state prisons was provided by Naphcare, a contracted private provider. Alabama was Naphcare's first statewide correctional system contract, which



Men with HIV at Alabama's Limestone Correctional Facility were subjected to widespread human rights violations, among them, being required to stand outside in the cold for medication at 4:00 a.m.

it had won by underbidding Correctional Medical Services Inc. by more than \$7 million. The state was spending \$1,000 per person on medical care—less than half of what other states spent.⁶⁵ Over the course of three years, between 1999 and 2002, 49 HIV-infected patients died at Limestone,⁶⁶ more than twice the rate of death by AIDS in other prisons.⁶⁷ One man suffocated from pneumonia while an inert Limestone medical staff stood watching.⁶⁸

“It is evident that lives were lost due to preventable lapses in the medical treatment,” found U.S. Magistrate Judge John E. Ott. He continued, “HIV prisoners died without necessary intervention by the Limestone medical staff or Alabama Department of Corrections.”⁶⁹

The settlement required the addition of an HIV specialist and nursing staff and dozens of changes to care and conditions to stop the unnecessary and preventable deaths, including infection control and chronic disease care to prevent opportunistic infections from spreading.

“It was a milestone,” remembers Eddie Wilson, who was recently paroled after 15 years at Limestone. He credits SCHR for the lives saved. “If you hadn’t stepped in and done something, we’d still be treated that way.”⁷⁰

Within a month of bringing the case at Limestone, SCHR filed a similar suit against the Alabama Department of Corrections and its private medical provider on behalf of all women prisoners at Tutwiler Prison for Women. It was SCHR’s third lawsuit against the inhumanity at Tutwiler.⁷¹ Neither prison at Tutwiler or Limestone had air conditioning. Instead, prisoners relied on fans and ice to escape the Deep South heat and humidity. Due to the crowding, the plumbing was overtaxed and rendered useless in many dorms.

The prison building was in such poor shape that women had to sign up on a list to use a working toilet or shower.



Women put their names on a list to use the toilet or shower. Moreover, even though Tutwiler in 2002 held more than 1,000 women, staffing remained at the same levels as when it was built in 1934 to house 334 prisoners.⁷² The staff-to-prisoner ratio was the worst in the country.⁷³ Each officer alone guarded 240 prisoners.⁷⁴

The only reason more beds had not been added to Tutwiler, noted U.S. District Court Judge Myron Thompson, was because “not one more bed would fit.”⁷⁵ Women were packed in bunks so close together that their arms touched.⁷⁶ “Women fight for an opportunity to use an operable sink or toilet, be near a fan in the heat of the summer, or obtain drinkable water or ice,”⁷⁷ read the lawsuit.

Settlement agreements to improve medical care and conditions were entered in 2004.

These hard-won changes came slowly to Alabama’s prisons. Anti-federalist defendants disliked being ordered by a U.S. district judge to comply with an agreement made with what they considered agitators. Department of Corrections officials were repeatedly told they needed to make do with their slim budgets. It was only under these pressures that the criminal justice system in Alabama began to look seriously at alternatives to incarceration.

8

Where Inhumane Conditions are the Norm

Whack-a-Mole Justice: Fulton County Jail

While Alabama officials viewed SCHR as outside agitators, the Fulton County Jail is only a 15-minute drive from the office, and the county government in the heart of Atlanta only a 10-minute walk. While not welcoming SCHR with open arms, Fulton County has been more agreeable to achieving a joint resolution. SCHR has gone to court twice over jail conditions and once regarding public defense to bring relief to the tens of thousands of people incarcerated there each year. Only recently has legal and public pressure led to improvement.

Foster v. Fulton County, 1999-2004

In 1999, SCHR sued Fulton County Jail and its medical provider for its abysmal care of HIV-positive prisoners. The litigation, *Foster v. Fulton County*,⁷⁸ led to the replacement of the jail's for-profit medical provider with one that offered HIV specialists, effective medications, and improved medical care. While the outcome in *Foster* was welcome, SCHR's investigation revealed an unfathomable level of county-sanctioned indifference to human suffering. Grady Memorial Hospital had been providing treatment for HIV-infected prisoners at the jail, but once it was discovered that the jail medical provider was ignoring the prescriptions and treatment plans, Grady



Jamal Spencer and 200 others were released from the Fulton County Jail by order of the court for the county's failure to provide attorneys within 72 hours of their arrest.

pulled out, not wanting to contribute to drug resistance, leaving the county commission and the jail completely responsible.⁷⁹ The medical care went from bad to abysmal. Critically ill prisoners were cared for by other prisoners because officers and medical staff refused to touch them, bring them food or deliver medication.

SCHR plaintiff Ruben Foster reported his HIV status when jailed. He had been taking an anti-retroviral regimen prior to his arrest, but despite filing grievances and medical requests, the jail's doctor refused Foster those medications and only sporadically pro-

vided him others. He received no treatment for his HIV-related conditions, which grew worse in jail.⁸⁰ While he survived, others did not. Defying accepted standards for HIV care, the medical provider's refusal to treat existing HIV-positive prisoners with their normal drug regimen was a recipe for greater epidemic. Once released, re-infected patients posed a graver threat to public health: They were carriers of drug-resistant HIV.⁸¹

The lawsuit was settled in 2001 by consent order; afterwards, a court-appointed medical monitor made regular inspections and provided guidance on improving care. While progress was made in this area, SCHR learned of new problems affecting even greater numbers of people in jail.

Made Homeless by Injustice

While monitoring *Foster v. Fulton County*, SCHR discovered hundreds of people languishing in the jail with minor charges. Chris Phillips, for example, was jailed for two weeks for a criminal trespass case that had been dismissed five years earlier. Phillips neither appeared in court nor met a public defender. While waiting in jail, he was evicted from his apartment and lost his job.⁸²

Phillips was only one example. SCHR found nearly 200 others charged with minor offenses and held for weeks or months before ever making a court appearance or meeting a court-appointed attorney. The medical monitor discovered a Vietnamese man jailed for almost two years who spoke no English and was literally hidden away in jail.⁸³

U.S. District Court Judge Marvin Shoob oversaw the release of nearly 200 people who had served more time awaiting their court hearing than they would have served if convicted of their alleged crimes. Such "front-end punishment" is cynically practiced to clear the streets of undesirable people who disrupt business with their poverty, mental illness and addiction. "These people haven't been convicted of anything," said Steve Bright. "It's like 'Alice in Wonderland.' They do their time and then they're brought to court."⁸⁴

Harper v. Fulton County, 2004-2015

During the medical monitor's trips to the Fulton jail, he documented more and more issues compromising the delivery of medical care; in particular, the exploding population and its strain on the building's infrastructure. So great were these problems that SCHR filed a new lawsuit in 2004 against Fulton County, appending the court monitor's final report on the *Foster* case to the new complaint as evidence. Air conditioners broke, plumbing clogged, people were forced to sleep on the floor and cell locks were broken, permitting prisoners to come and go inside the jail. The final report documented jail conditions that read like a Steven King novel:

"It was dank, full of sweaty bodies. . . . Extremely tense. Each of my senses raising an alarm. Scary. With almost two decades of visiting inmate housing units, it was the first time that I declined to go in."⁸⁵

For the next decade, SCHR continued to fight to improve living conditions, reduce overcrowding, increase numbers of officers and ensure access to medical care at the Fulton County Jail. The case was terminated in May 2015 at the defendants' request, despite evidence SCHR provided at a hearing of violence among prisoners, including the death of a mentally ill man at the hands of his mentally ill roommate.⁸⁶ SCHR continues to receive complaints and learned of the death of another mentally ill prisoner in spring 2016.

Protecting Georgia prisoners from constitutional violations is a struggle SCHR will never cease to fight.

9

Where Violence Goes Unchecked

Violence Unchecked: Georgia's Prisons

"A Dadgum Shark Frenzy"

Violence is the most intractable problem plaguing our nation's prisons. Often a result of chronic understaffing, or a response to inhumane conditions, violence takes root. Life in prison becomes a daily struggle to survive. Many turn to gangs for their own protection to fill the void in security. Others try to steer clear of gangs and find safety in educational or trade programs, and still others request isolation as the last resort.

Lawyers at SCHR have zealously fought to change policies and practices that foment such violence and to remove administrators and officials who condone it. SCHR has challenged the violent conditions at numerous prison facilities on behalf of individuals who have been severely beaten or killed. SCHR also has brought national attention to the alarming levels of violence.⁸⁷ This work has two principal goals: to force the state to take responsibility for the violence and to bring immediate relief to individuals subjected to it.

"Ain't Fit to Kill"

In 1995, Gov. Zell Miller appointed a mortician named Wayne Garner to be Georgia's prison commissioner. Miller's aim was to carry out his promise to make prisons harsher. His decisions made them more violent. Garner began immediately removing education

and exercise programs that not only helped rehabilitate prisoners but also helped make prisons safer. Garner's views about prisoners are best summed up in his own words: that one-third of Georgia's prisoners "ain't fit to kill."⁸⁸

In 1996, SCHR, led by attorney Robert Bensing, filed two lawsuits to expose the brutality of Georgia prisons and the incompetence of those like Wayne Garner who received taxpayer money to run them. Dogged investigation by SCHR proved Wayne Garner personally encouraged and participated in tactical raids at state prisons in which prisoners were systematically slammed, punched and abused.

More than 20 corrections employees testified about the raids, with one describing an operation at Georgia's Hays State Prison as a "dadgum shark frenzy."⁸⁹ Another employee saw a prisoner's face shoved into a wall accompanied by a "sickening crack."⁹⁰ He continued, "Blood went up the wall. Blood went all over the ground and all over the inmate."⁹¹ Such details were grist for the mill of Pulitzer Prize winning editorial cartoonist Mike Luckovich of *The Atlanta Journal-Constitution*, who lampooned the state's management of and participation in prison violence.

YOUR
WEEKLY
TOONUP
By Mike Luckovich
The Atlanta Journal-Constitution





Family members of Pippa Hall-Jackson testify about his death at an April 2014 legislative hearing on violence in Georgia's prisons.

This and other evidence helped bring an end to the abuses of Garner. It also led to the public humiliation of both: courts awarded to injured inmates the largest settlement ever against the Georgia Department of Corrections, \$283,500.⁹² Tragically, SCHR attorney Robert Bensing was killed in an automobile accident while returning from Valdosta State Prison, where he had been sharing news of the settlement with clients.

An SCHR Titan: Robert Bensing (1956-1997)

At the time of his death, Robert Bensing, 42, had served the SCHR for only two years. His many contributions to justice for prisoners live on. Before his death, Bensing successfully led numerous cases in defense of prisoner rights and against prison inhumanity.

He ended the barbaric practice at one Georgia prison sadistically known as the “Motorcycle,” a graphic example of the cruelty of Georgia’s prison administrators. Prisoners were forced into football helmets, then shackled to a metal beam (the so-called motorcycle) by their arms, legs and waist. The practice was described by victims as “unbearable torture.” That particular form of torture ended, thanks to Robert Bensing.

Famous for not taking himself too seriously, Bensing’s calm presence and humor brought needed levity to the office. Said Steve Bright, “Bob exemplified what it is to be a public interest lawyer. His life was a ministry to those most in need of legal representation.”⁹³



Robert Bensing, shown here wearing a cap from his favorite baseball team, the Montreal Expos.

A Crisis of Violence

In 2010, SCHR again sued the officers and administrators at the Georgia Department of Corrections on behalf of four prisoners at Hays State Prison who were beaten by officers while handcuffed.⁹⁴ While SCHR prevailed in this case, the violence inside Georgia's prisons led to 34 deaths between 2010 and 2014.⁹⁵

One murder victim was Damion MacClain, 24, killed by a prisoner at Hays State Prison on Dec. 26, 2012, after telling his mother he feared for his life. Hays State Prison maintenance contributed to the violence and lack of security, with missing or broken cell locks that had been well documented by audits but ignored. SCHR sued the Georgia corrections commissioner, citing these audits and the escalating record of violence and death across the state. Damion MacClain's family was compensated as a result.⁹⁶

SCHR's small army of zealous defenders continues to battle, advocating for reform at legislative sessions inside the Georgia Capitol and gathering evidence of prison overcrowding, poor officer training, understaffing, cost-shaving, poor maintenance, inadequate rehabilitation programs and substandard medical care. Equally important, SCHR provides abused prisoners and the families of murder victims an outlet for their grief. SCHR often is the sole voice of support for these fellow human beings.

10

The Right to Counsel

The Heart of Our Mission

Right to Counsel, Regardless of Income or Race

At the heart of SCHR's mission is the belief that every individual deserves justice regardless of wealth or skin color. The vast majority of Americans share this belief, no matter their socioeconomic background or political identification. It is here that we find common ground for Americans of good conscience and respect for the Constitution to work together for change.

The records of Georgia's criminal courts reveal that, for decades, those who are poor, vulnerable or ethnic and racial minorities have been treated unequally. The legacy of Jim Crow pervades many courtrooms (and prisons) across the Deep South, deepening injustice and harming generations of minorities and poor people. In courts, such people have few friends or advocates. We are one such ally: The Southern Center for Human Rights stands among the few organizations and law firms with the will and resources to stand up to the status quo of justice in the South. We take cases few others will.

For 40 years, we have gathered the evidence to demonstrate that unequal treatment persists in the criminal justice system. This is true in the criminal courts, especially in death penalty cases. It is true in the treatment of prisoners. This 40-year body of evidence SCHR has gathered underscores the importance of one fundamental right: Every accused person, no matter the color of their skin or their economic status, is guaranteed fair legal representation.

SCHR has litigated and agitated for fairness for all. We have fought to ensure all people are given respect in the court of law and treated humanely in their punishment. We have assiduously recruited and trained an army of talented and skilled lawyers and investigators to fight for equal rights under the law. Our work is making real the right to counsel in Georgia and improving criminal justice across the South.

Georgia's Patchwork of Representation

In Georgia, eight out of 10 people are too poor to hire an attorney and must rely on the government to provide an attorney to represent them. In 1963, in the landmark case *Gideon v. Wainwright*, the right to counsel was established. It took Georgia another 40 years to respond in earnest to the constitutional mandate. Prior to passage of the 2003 Indigent Defense Act, which created a statewide public defender system, Georgia's 159 counties applied their own rules to indigent defense. Some counties contracted private lawyers on a flat-fee basis to handle all indigent representation, while they continued representing paying clients. In some counties, judges appointed lawyers to a case, drawing names from a list. By far the fewest counties, only 20, had public defender offices with full-time staff but fought for staff and adequate funding. The net result of this hodgepodge system of indigent defense was pervasive and persistent unequal justice for people most in need of the assistance of counsel.

During the late 1990s, SCHR began to challenge the violations of the right to counsel; first in Sumter County State Court in Americus, where poor people charged with misdemeanors routinely waived their right to the assistance of counsel and pleaded guilty to their charges because they were not told they had a right to a lawyer.⁹⁷ Next, SCHR joined Bruce Maloy in settling a case against the Fulton County Commission for underfunding the county's public defender system, which led to impossible caseloads for lawyers and, for those accused of a crime, months-long waits in jail before ever meeting their lawyer or being brought to court.⁹⁸ Again in Ful-

ton County, on the back of another lawsuit concerning HIV care at the Fulton County Jail, SCHR made the case that the overcrowding and poor conditions were the result of too many poor people charged with minor crimes waiting to go to court to resolve their cases. The county paid appointed lawyers \$50 per case to represent people charged with misdemeanors. Their representation did not begin until the defendant was brought from the jail to court. Every incentive was provided to encourage the accused to plead guilty to get out of jail and go home. Routinely, as SCHR documented, these people spent more time in jail waiting for court than they would have been sentenced to serve.⁹⁹

“The right to counsel is essential to protect all other rights of the criminally accused. Yet this most fundamental right has received the least protection,” says Steve Bright.

After logging hundreds of hours observing criminal court hearings, interviewing poor defendants across Georgia and reviewing public records, SCHR amassed extensive knowledge on the widespread violations of the right to counsel. In winter of 2000, SCHR released its report “Promises to Keep,”¹⁰⁰ which provides a detailed account of the many failures of Georgia’s court-appointed system of public defense.

Court Coerced Guilty Pleas: *Bowling v. Lee*, 2001

Keeping up the drumbeat for reform, SCHR in August 2001 filed a lawsuit in Coweta County. In *Bowling v. Lee*, SCHR carefully documented how Superior Court Judge William F. Lee had been directing hundreds of poor people charged with felonies to negotiate plea bargains directly with the district attorney without the assistance of a lawyer. Judge Lee’s pressure on defendants to plead guilty led to a staggering statistic: More than 50 percent of all persons accused of felonies in Coweta County pleaded guilty without legal advice.¹⁰¹ This lawsuit grabbed attention because it came after the Georgia Supreme Court commissioned a Blue Ribbon committee to study the state’s failed system of public defense. Civil rights leader

and Georgia's public conscience the Rev. Joseph Lowery viewed the fight for indigent defense as the next frontier in civil rights: "African Americans are two-thirds of the prison population. This is a clear indication that the indigent defense system in Georgia represents a new form of slavery," he said.¹⁰²

The blatant constitutional violations were impossible to defend. In 2002 Coweta County established a full-time public defender office to represent people who could not afford to hire an attorney.

In concert with the *Bowling* case, SCHR began a coordinated, forceful lobbying effort at the Georgia Capitol. Led by then SCHR public policy director Sara Totonchi, SCHR set out to reform Georgia's broken system of public defense. From that moment on, SCHR not only would be a zealous defender of indigent rights in the courtroom, it would be a forceful advocate for those rights in the public domain.

SCHR had coordinated Lowery's appearance at the announcement of the *Bowling* suit and recruited other civil rights organizations to join the cause of advocacy for public defense reform. Sara Totonchi recalled the public advocacy effort: "Our litigation was shining a light on the failures around the state, and we were prepared to bring more legal challenges. Georgia legislators were put on notice that another lawsuit was coming soon to a courthouse near you."

Assembly Line Justice: *Hampton v. Forrester*, 2003

In 2003, SCHR and the local NAACP filed *Hampton v. Forrester* on behalf of all indigent defendants in the Cordele Judicial circuit in South Georgia.¹⁰³ Both of Cordele Judicial Circuit's superior court judges, the district attorney and the county commissioners were named in the suit. SCHR's investigation discovered a man named Samuel Moore. His story epitomized Georgia's failure to protect the right to counsel. Unbelievably, he had been held and forgotten in Crisp County Jail for 13 months. SCHR learned that the district attorney had dismissed charges against Moore four months

earlier. No one told him, and his court-appointed lawyer had no knowledge of the case. Meanwhile, Moore, now exonerated of all charges, remained locked in a jail cell.¹⁰⁴

As facts came to light, it became clear that hundreds of indigent defendants were being processed through the courts in assembly-line fashion, in disregard of the right to counsel. Hundreds charged with crimes had little or no contact with defense attorneys. Many others met court-appointed lawyers for the first time when they appeared in court and in most cases agreed immediately to plead guilty in order to gain release from jail. Guilt or innocence was beside the point.

Landmark Legislation Achieved

SCHR's attorneys continued to challenge Georgia courts to address their failure to provide counsel to the indigent, raining upon the Georgia Supreme Court Commission a deluge of testimony. Meanwhile SCHR's advocacy campaign applied relentless public pressure to lawmakers with a strategic dissemination of data and updates to the local news media and media-savvy offices of allied civil rights organizations.

In April 2003, the Georgia Legislature passed the Indigent Defense Act.¹⁰⁵ The act created public defender offices, staffed by full-time public defenders, investigators and other staff, in all but six of the state's 49 judicial circuits.¹⁰⁶ The Georgia Public Defender Standards Council was established as the state agency providing oversight and funding. Chastened defendants in the Cordele lawsuit agreed to establish the first office in exchange for dismissing the lawsuit against them. The act also established the Office of the Georgia Capital Defender to represent people facing the death penalty at trial and on direct appeal.

SCHR's contribution to passage of the Indigent Defense Act was recognized in *Daily Report*, Georgia's most widely read legal newspaper. The newspaper named Steve Bright "Newsmaker and Agitator of the Year" for 2003, honoring his contribution to passage of the act and the creation of a statewide public defender system.¹⁰⁷

Although a major step forward, the public defender system created by the 2003 Indigent Defense Act has its shortcomings. SCHR has continued to advocate and fight for compliance and improvement through continued litigation. Between 2008 and 2014, SCHR filed four lawsuits seeking to correct deficiencies where it found ongoing violations of the right to counsel. SCHR brought suit in one case in which defendants who had been convicted at trial were denied lawyers for their appeals. Some sat in prison for years waiting for an attorney to review their convictions. In the most recent case, the state failed to provide counsel to children charged in juvenile court. Public defenders frequently missed juvenile court due to their obligations in superior court. The fact that children were left unrepresented prompted the U.S. Department of Justice's Civil Rights Division to file a statement of interest.¹⁰⁸ That case was resolved with a consent decree requiring that a lawyer representing children in juvenile court be present in every case. SCHR is still monitoring the status of the agreement.¹⁰⁹

The Rev. Joseph Lowery, the moral compass of the effort to secure the right to counsel, used the 40th anniversary of *Gideon v. Wainwright* for a rally at the Georgia Capitol to call for reform to public defense.



11

Guilty of Being Poor

Nicked and Dimed

Criminalization of Poverty

Debtors' prisons are illegal.¹¹⁰ This has not stopped many local courts from incarcerating (or threatening to incarcerate) poor people who cannot pay fines for traffic violations and other misdemeanors. Many of these courts have become complicit in generating money by squeezing money from the populace. Those of means easily pay the fine and walk away. The poor cannot do the same. And the price they pay for their poverty is their freedom.

Courts routinely sentence those unable to pay their entire fines on the day of court to probation. The purpose of this is to give people more time to pay their fines. The system is rigged against them. During the probation period they are required to pay fees to a private probation company above and beyond the original fine, compounding their debt. Privatization of municipal fine collection exacerbates the problem, as for-profit collection companies receive incentives on collections and profit by charging to supervise people who need not be on probation in the first place. Moreover, many are subject to drug tests and reporting requirements during probation, under threat of arrest for failure to comply. For the poor, this burden is more onerous if they have limited means of transportation, children at home and jobs that are far from probation offices, creating a vicious and malicious cycle of despair that unjustly impacts poor people.¹¹¹

“Courts are supposed to dispense justice and protect public safety, so there’s something unseemly about the extent to which municipal courts are now seen as a source of revenue for cash-strapped cities,” says Sarah Geraghty, managing attorney and SCHR leader on litigating the criminalization of poverty.

The New Debtors’ Prison: Modern Georgia

Today, Georgia has the greatest number of people on probation and more than twice the percentage of people on probation based on population as the next-highest state.¹¹² More than 80 percent of people on misdemeanor probation here are supervised by private companies¹¹³ with a profit incentive to keep as many as possible for as long as possible under supervision. In short, Georgia’s probation system has remade it for many a modern-day debtors’ colony. SCHR has systematically been tearing out this injustice by the root since 2003 through litigation, community organizing, legislative advocacy and public education.

Beginning in 2003, SCHR filed habeas corpus petitions on behalf of individuals incarcerated solely because they were poor. Sabrina Byrd was one such individual. Byrd, then 27, was jailed for violation of probation when she failed to pay \$1,012 in fines imposed due to dog leash law violations. At that time, Byrd was a single mother of three children under the age of four. The family survived off of sporadic child support payments and food stamps.¹¹⁴

SCHR secured her release from jail and found new homes for her dogs.

In 2006, Marietta Connor, 63, an assistant church minister in Augusta, was unable to pay her \$140 traffic fine in court. Connor was placed on probation. When she failed to make payments to a private company contracted to collect her fine, its representative threatened her incarceration. Terrified by the prospect of jail, she borrowed ingredients to bake and sell apple pies to raise the necessary funds to settle her debt.¹¹⁵

SCHR successfully terminated Marietta Connor's probation sentence.¹¹⁶

In 2013, SCHR sued to terminate Judge William Bass' extortionist practice of adding unauthorized "administrative costs" of \$700 or more to fines assessed for disorderly conduct, speeding and other low-level charges. In one year, Grady County added \$296,711 to its treasury due to Bass' illegal collections. Bass sought a pay increase for himself in exchange for creating this fee.¹¹⁷ The suit ended in a settlement that provided compensation to those people who paid the unauthorized fee.¹¹⁸

In 2015, SCHR filed suit on behalf of poor people who had been abused by Red Hills Community Probation, a private probation company contracted by Bainbridge and Pelham, Georgia's municipal courts.¹¹⁹ SCHR complained that Red Hills employees routinely demanded upfront money from probationers, holding them for ransom in the courthouse until they or their family members came up with the money.¹²⁰

Following SCHR's litigation, the company closed its business.¹²¹

Vera Cheeks was held in the Bainbridge courthouse by a probation officer until she came up with a \$50 payment, which she raised by pawning her engagement ring.



12

Bringing Cases No One Else Will

Reaching Beyond Prisons

Reforming Registry Restrictions

As with the focus on the criminalization of poverty, SCHR is extending the roots of justice beyond prison walls and courthouse doors. In 2006, SCHR took on the challenge of repealing unconstitutional laws and practices that impose sweeping restrictions on every individual listed on the Georgia Sexual Offender Registry. Through litigation, media education and legislative advocacy, SCHR has successfully challenged the most restrictive measures imposed on those labeled as sex offenders.

In 2006, Georgia's Legislature prohibited all people convicted of sex offenses from living within 1,000 feet of a school bus stop. In practice this made it impossible for people on the registry to live in any urban area.¹²² Plaintiff Wendy Whitaker was one such person. As a 17-year-old high school student, she was convicted of having consensual oral sex with a 15-year-old.¹²³ Nine years after this conviction, HB 1059 forced Whitaker and her husband to leave their home. SCHR challenged HB 1059 in federal court and won an injunction preventing enforcement of parts of the law.¹²⁴ In part due to SCHR's litigation, the Georgia Assembly in 2010 passed HB 571, which not only eliminated many aspects of the sweeping legislation of 2006, but also created a way for people who met certain requirements to petition to be removed from the registry.¹²⁵ Since



Wendy Whitaker's teenaged indiscretion was treated the same as aggravated child molestation by legislation that the Columbus Ledger-Enquirer described was "as wisely crafted as a concrete canoe."

then, SCHR has assisted many clients with removal from the harsh, unnecessary restrictions this registry imposes.



SECTION V
WHO WE ARE

13

Who We Are

Since SCHR opened its doors in 1976, its lawyers have been willing to take on cases few others would. As it built its reputation by taking on death penalty cases during the 1970s and 1980s, SCHR staff attorneys gained experience, confidence and willingness to tackle the powerful interests of state, county and municipal corrections systems, racist and abusive courts, and predatory contractors hired by such courts to enforce their fines and punishments. Fighting for justice is not what we do. It is who we are.

“Looking back over the whole 40 years, SCHR has been very fortunate that many truly exceptional people have come to it as attorneys, investigators, administrative staff, student interns and volunteers, because of their commitment to the mission,” said Steve Bright. “They have worked exceptionally hard for modest salaries while devoting their enormous talents and creativity to the challenges we face.”

Death Penalty Defense Today

The work of the Southern Center for Human Rights is as urgent now as it was 40 years ago. There are 2,943 people on death row in the United States.¹²⁶ In Alabama, 196 people face the death penalty; in Georgia, there are 78.¹²⁷ States will continue to fill death rows far into the future with people of color disproportionately impacted by a flawed criminal legal system that is allowed to impose the ultimate penalty.

SCHR gathers evidence and brings litigation to address ongoing racial disparities in our legal system. It uncovers evidence of judicial and prosecutorial misconduct. With each successful settlement, we bring needed relief to people and places often hidden, raising awareness of the unfairness of the criminal justice system. We are making progress—but more progress must be made.

The fight for justice does not come without a struggle. Georgia, for example, was the first to pass legislation banning execution of persons with intellectual disabilities. Yet it was premature to celebrate: Georgia remains the only state that requires a person charged with capital murder to prove beyond a reasonable doubt—the highest burden of proof—that he or she has an intellectual disability.¹²⁸ Consequently, and tragically, Georgia's intellectually disabled continue to be executed.

Former SCHR capital unit staff attorneys (from left), Ty Alper, William Montross, and investigator Celia Perry with Client Walter Rhone (2nd from right).



On January 27, 2015, Warren Hill, a man with an IQ of 70 and an undisputed claim of intellectual disability, was put to death by the state of Georgia.¹²⁹ SCHR is rarely a place for boasts or celebration. Instead, we fight on.

Ending Judicial Override

SCHR has repeatedly challenged Alabama's practice of allowing judges to override jury sentencing decisions in capital murder cases. We have made oral arguments on this matter before the U.S. Supreme Court. In the 1995 oral argument of *Harris v. Alabama*, SCHR worked to prevent the execution of Louise Harris.¹³⁰ for planning the murder of her husband.

In 1994, an Alabama jury recommended in a 7 to 5 vote for life without parole, citing Louise Harris' good standing in the community and her lack of a criminal record. A popularly-elected judge, H. Randall Thomas, rejected the jury's vote and sentenced Harris to death. In 1995, the U.S. Supreme Court upheld Alabama's capital sentencing scheme as constitutional.¹³¹ Justice John Paul Stevens was the only dissenter, arguing that political considerations influenced the judge's decision to override the jury's more humane sentence.¹³² SCHR continued to defend Louise Harris, and she was later resentenced to life.

In 2013, SCHR petitioned the U.S. Supreme Court on behalf of Mario Woodward, a man convicted of capital murder and sentenced to death by a judge who exercised his privilege to override the jury's 8 to 4 sentence of life in prison. The high court declined to take Woodward's final appeal. In dissent, Justice Sonia Sotomayor wrote, "Eighteen years have passed since we decided *Harris*, and in my view, the time has come for us to reconsider that decision."¹³³ Sotomayor pointed out that, since 2000, only 27 life-to-death overrides had been ordered by courts.¹³⁴ Of those, 26 overrides were ordered in Alabama.¹³⁵

Sotomayor’s explanation of Alabama’s aberrant predilection for overrides in death penalty cases echoed the dissent of Justice John Paul Stevens made 18 years earlier:

“The only answer that is supported by empirical evidence is one that, in my view, casts a cloud of illegitimacy over the criminal justice system: Alabama judges, who are elected in partisan proceedings, appear to have succumbed to electoral pressures.”¹³⁶

Continuing to chip away at unconstitutional practices, in August 2016, SCHR published its research on how judicial override increases the risk of wrongful executions.¹³⁷

Real Progress: Georgia’s Council on Criminal Justice Reform

Across the country, states are seeking reforms to address the “tough on crime” policies that have filled our prisons with more

Wilmart Martin (left) was sentenced to life without parole and served 24 years in prison for possession of 3.4 grams of cocaine before SCHR fought for his release. Shown here with managing attorney Patrick Mulvaney.



than 2.2 million human beings. Many state legislatures now view such policies as prohibitively expensive and ineffective in the prevention of crime, and bipartisan committees are focusing on crime prevention, re-entry programs and drug rehabilitation. Still others have come to believe that mandatory sentencing laws are not only excessive, but nonsensical, filling our nation's prisons and jails with first-time offenders. The tide is changing.

In 2011, Georgia Gov. Nathan Deal offered further hope with the formation of Georgia's Criminal Justice Reform Council. The council has shepherded such reforms as reduced incarceration of juveniles¹³⁸ (especially youth under 13) and creating accountability courts empowered to divert those suffering from drug addiction, mental illness and other special needs to community-based rehabilitation.¹³⁹ The council also has helped change statutes governing for-profit companies contracted to "supervise" misdemeanor sentences, including fine collection and probation.¹⁴⁰ The council is helping Georgia's judicial system become more compassionate toward the poor by lifting lifetime bans on food stamps for those convicted of felony drug charges.¹⁴¹

SCHR has supported the work of Georgia's Criminal Justice Reform Council by contributing subject matter expertise and will continue to support any progressive policies that help reduce reliance on incarceration and criminalization of poverty. For example, SCHR is working for the release of those sentenced to life in prison under outdated drug-sentencing laws, such as SCHR clients Charlie Scandrett and Wilmart Martin. Today, 12 people are serving life without parole due to drug convictions. All are African American.¹⁴² Meanwhile, the council reports that the number of African Americans committed to Georgia prisons in 2015 was at its lowest point since 1988.¹⁴³

Enduring Impact

The impact of SCHR's work can be seen throughout the South in the number of lives saved from execution; in the cases that have

reasserted the rights of accused people; in the number of people who experienced relief from abuse in jail or prison due to inadequate medical care, indifference, racial, sexual and gender discrimination; and in the many people who left SCHR and continued their careers in public interest law on behalf of the poor and people of color. Former staff and legal interns have carried on SCHR's tradition of providing legal representation to the neediest, as evidenced by the creation of the Louisiana Capital Assistance Center (now the Louisiana Crisis Assistance Center); Reprieve UK; Alabama Resource Center (now Equal Justice Initiative); Texas Death Penalty Education and Resource Center; and Southern Public Defender Training Center (now Gideon's Promise).

Today, SCHR is led by Executive Director Sara Totonchi. Steve Bright now serves as SCHR president and senior counsel. We continue to be a public interest law office that attracts high achievers and scholars to the Human Rights Internship program each summer and the brightest law school graduates to join the staff. Our current staff of 25 has logged 228 collective years at SCHR in service to justice. We come from across the country, bringing our varied interests and experiences, but we speak with one voice on behalf of our clients, whose lives are entrusted to our representation. It is an uncommon dedication to justice and compassion that binds us together and compels us to travel hundreds of miles on the road each week and sacrifice personal lives in service to our clients.

Anyone who has ever volunteered, interned or been on staff at SCHR is part of a special family.

We save people from execution. We shield people from abuse. We will continue to educate the public on systemic injustice and advocate inside the Georgia Legislature for reform. We will continue to challenge the use of judicial override until it is eliminated. We will seek an end to racial discrimination in our justice system. We will continue to expose cruel and inhumane prison conditions. We will continue to fight for equal protection for all people, regardless of their race or economic status. We will continue to fight to end



SCHR staff in May 2016 included (l to r): Mary Sidney K. Harbert, Ben Smith, Sarah Forte, Gerry Weber, Julia Robinson- Hicks, Cortez Wright, Sarah Geraghty, Steve Bright, Sara Totonchi, Kristen Samuels, Kathryn Hamoudah, Crystal Redd, Atteeyah Hollie, Patrick Mulvaney, Renée Myers, Terrica Ganzy, Katie Chamblee, Maya Chaudhuri, Mark Loudon-Brown and Rachel Stanley. Staff not present: Marissa McCall Dodson, Patricia Hale, Ryan Primerano, and Palmer Singleton.

the death penalty because evidence proves it is unjustly imposed on people of color and the poor.

We fight these fights with clear-eyed understanding. We know better than most that our rights enshrined in our Constitution are imperiled by the prejudice, ignorance and injustice of those who believe others deserve fewer rights than they. We fight these fights to change laws—and minds. We seek to engage a majority of citizens to join our cause.

Poor or marginalized victims of injustice have forceful, effective advocates in the Southern Center for Human Rights. We bring cases others can't or won't. We fight back and call out injustice wherever we find it—in our courtrooms, in our prisons and in our laws. We do this because we believe fervently that all people should be treated with dignity and respect, regardless of their circumstances. Equal justice under the law should, and can, be a reality. We will continue to stand, as we have for the past 40 years, for Equal Justice for All.

- 1 *Horton v. Zant*, 941 F.2d 1449, 1462 (11th Cir. 1991).
- 2 *Holloway v. State*, 361 S.E.2d 794, 795 (Ga. 1987).
- 3 *Georgia Prepares to Execute John Conner Despite Evidence of Intellectual Impairment, Traumatic Upbringing*, Death Penalty Information Center, <http://www.deathpenaltyinfo.org/news/past/110/2016>
- 4 *Magistrate Judge's Report and Recommendation*, filed in *Leatherwood et al. v. Campbell et al.*, No. cv 02-BE2812-W (N.D. Al.) at 5-6, 8, available at https://www.schr.org/files/limestone_ott_report_recommendation.pdf.
- 5 *Id.* at 8.
- 6 See Second Amended Complaint, filed in *Hampton et al. v. Forrester et al.*, Civil Action No. 03v-118 (Crisp Cty. Super. Ct.)
- 7 See Petition for a Writ of Habeas Corpus, filed in *Hurley v. Hinton*, Civil Action No. HC00532 (Fulton Cty. Super. Ct.), available at https://www.schr.org/files/hurley_habeas.pdf.
- 8 See The Interview: Shana Shackelford, available at https://www.schr.org/featured/interview_shana_shackelford.
- 9 See *Gates v. Collier*, 349 F.Supp. 881 (N.D. Miss.1972) affirmed, *Gates v. Collier*, 501 F.2d 1291 (5th Cir. 1974).
- 10 *Bogard v. Cook*, 586 F.2d 399 (5th Cir. 1978).
- 11 *Armstrong v. Reed*, 462 F.Supp. 496 (N.D. Miss. 1978).
- 12 *Holmes v. Mississippi State Probation and Parole Bd.*, 502 F.2d 1165 (5th Cir. 1974).
- 13 *Leonard v. Mississippi State Probation and Parole Bd.*, 373 F. Supp. 699 (N.D. Miss. 1974).
- 14 *Stevenson v. Reed*, 391 F. Supp. 1375 (N.D. Miss. 1975).
- 15 *Jones v. Diamond*, 636 F.2d 1364 (5th Cir. 1981).
- 16 *Furman v. Georgia*, 408 U.S. 238, 309-10 (1972) (Stewart, J., concurring).
- 17 See, e.g., *Kendrick v. Bland*, 541 F. Supp. 21 (W.D. Ky. 1981).

18 At one such dinner, Steve Bright met attorney Robert McGlasson, who volunteered regularly at the Open Door. When he heard Steve describe the work at SCHR and the need for attorneys, within a week he quit his job at Bondurant, Mixon & Elmore and became a staff attorney at SCHR.

19 S. Prisoners' Defense Comm., Report on Capital Punishment Project Oct. 1, 1983 to Sept. 30, 1984, at 2 (on file with author).

20 *Id.* at 5.

21 *Id.* at 4-5.

22 Sandra Torrey, *Lawyers Scramble to Fill Void in Death Row Appeals*, Wash. Post, July 24, 1988.

23 Order 84-85, *LaSamuel Gamble v. State of Alabama*, No. CC-96-813.60 (Shelby Cty. Cir. Ct. Sept. 5, 2007).

24 *Id.* at 94.

25 *Id.* at 96-98.

26 *Id.* at 92.

27 *Id.* at 131.

28 Joe Parham, *Condemned man called "most retarded man on death row,"* United Press Int'l, Oct. 12, 1987.

29 *Holloway v. State*, 361 S.E.2d 794, 796 (Ga. 1987).

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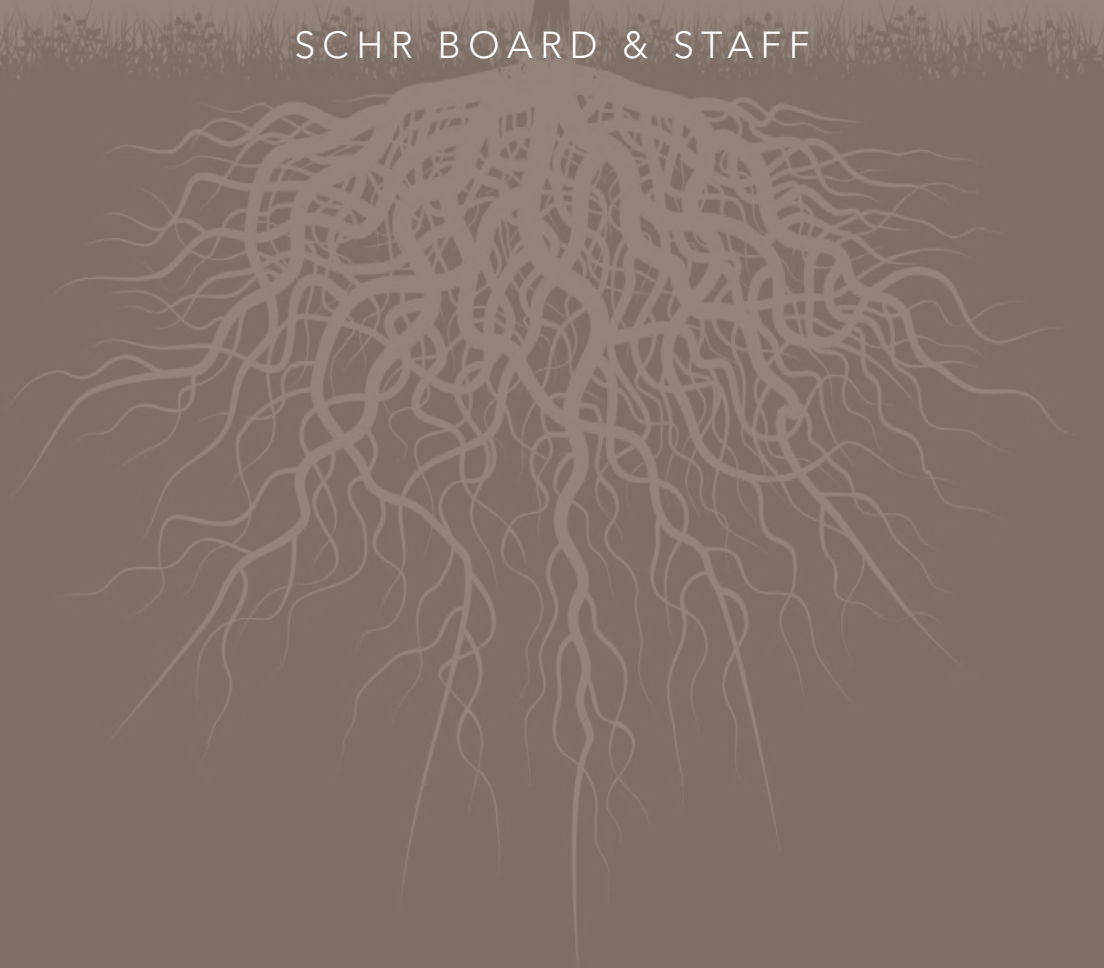
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