

poverty law **Report**

A REVIEW OF ADVANCES IN THE LEGAL RIGHTS OF THE POOR

Vol 11, No. 4-5

A publication of the Southern Poverty Law Center

April 1984

3 Years on death row —

Man awarded \$75,000 for wrongful conviction

SAVANNAH, Ga. — Earl Charles, an innocent man who spent three and a half years on death row, has won a \$75,000 settlement from the police detective who framed him.

Charles was sentenced to death in 1975 and then released in 1978 only after faithful family members and a former employer kept protesting his innocence and brought forward more evidence.

After his release from the Chatham County Jail in Savannah, Charles's case came to the attention of Southern Poverty Law Center attorneys and a lawsuit was filed in federal court. The suit accused a Savannah police detective of framing Charles with the knowledge and approval of his supervisors and also named the City as a defendant for, in effect, sanctioning the detective's behavior.

The lawsuit was tried in April 1980, and a federal jury at that time returned a verdict in favor of the detective, F.W. Wade. But SPLC attorney Dennis Balske, who handled the case for the Center, appealed the decision and won a retrial, and the case went back to court in October 1983.

In the retrial the defendants waived their right to a jury, and U.S. Dist. Judge B. Avant Edenfield returned a verdict against Wade and assessed damages of \$417,000. However, the City itself was cleared of any liability.

Both sides appealed. Because of problems in collecting a judgment of this magnitude against Officer Wade, who had no assets to speak of, the Center entered into negotiations with Wade and the City. The City agreed to pay \$75,000 in return for which the Center dropped its appeal.

Charles received the entire award. Because of the smallness of the figure and the magnitude of Charles's suffering, the Center declined to take attorneys' fees or expenses out of the settlement. Total expenses ran close to \$30,000.

Charles's case is a good argument against the death penalty, and also a terrible human tragedy that didn't have to occur.

The murders which brought Charles so close to the electric chair were committed in Savannah on Oct. 3, 1974. The victims were Max and Fred Rosenstein, co-owners of a downtown furniture business, who were brutally shot to death in a robbery of their store during broad daylight.

At the time of the killings, Charles was pumping gas at a Tampa, Fla., service station several hundred miles away. He and a friend, Michael Williams, had moved there just two weeks before.

How Charles wound up on Death Row is a staggering story of police misconduct.

Within minutes of the murders, Savannah police officers were at the furniture store showing photos of potential suspects to the only two eyewitnesses to the killings, Myra Rosenstein, Max's wife and Fred's mother, and Bessie Corcelius, a long-time family friend and store employee.

In the photo spread was a picture of Earl Charles, who had grown up in Savannah and had been arrested previously on a few minor misdemeanors. Neither Mrs. Rosenstein nor Mrs. Corcelius recognized Charles as one of the killers, either then or during repeated viewings

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CARROLL



BALSKE



SWEET



ELLIS



CAVER



BLISS

Staff expands —

Balske succeeds Carroll as SPLC legal director

John Carroll, legal director of the Southern Poverty Law Center since 1977, has resigned to enter private practice, and has been succeeded by staff attorney Dennis N. Balske.

Both Carroll and Balske have been active in civil and criminal litigation, and the SPLC objective of advancing the legal rights of the poor will continue unchanged under the new leadership.

Carroll will join the Montgomery, Ala., law firm of Mandell and Boyd, who as private attorneys have compiled their own excellent reputation for civil rights-related legal work. Carroll joined the SPLC staff in

1975. He is a Vietnam combat veteran of the U.S. Marine Corps and earned his law degree from Cumberland School of Law and an advanced degree from Harvard Law School.

As legal director, Carroll tried numerous capital cases throughout the Southeast, argued before the U.S. Supreme Court, and testified before the U.S. House of Representatives Subcommittee on Criminal Justice.

In addition, he has written and lectured extensively on the defense of capital cases. Most recently, he completed a postconviction manual

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Staff changes

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for capital cases to be made available to lawyers throughout the country through the National Association of Criminal Defense Lawyers (NACDL).

Carroll will remain Of Counsel for the Law Center.

His successor, Balske, is founder and past-president of the Alabama Criminal Defense Lawyers Association, and was recently elected to the Board of Directors of the National Association of Criminal Defense Lawyers, where he serves as Death Penalty Committee chairperson. He is also Chairperson of the Alabama State Bar Indigent Defense Committee.

For the past six years, Balske has specialized in capital case trials throughout the Southeast and has written and lectured widely on capital trial techniques. He also has worked extensively in the area of class-action civil rights litigation.

A graduate of Bowling Green State University in Ohio and Ohio State University School of Law, Balske taught a Criminal Defense Practicum course at Ohio State and practiced law for a firm in Columbus before joining the SPLC staff in 1978.

Two new staff attorneys will join the SPLC in June. They are Dennis Sweet, who comes to the Center from the District of Columbia Public Defender Service, and Deborah Ellis, from the New York firm of Kornstein, Meister and Veisz.

Sweet, a graduate of Tougaloo College, Jackson, Miss., and the George Washington University Law School, Washington, D.C., has worked as a law and judicial clerk and trial attorney in the District of Columbia.

The author of a manual for the Criminal Practice Institute, Sweet is active in the National Conference of Black Lawyers, and has lectured extensively.

Ellis is a cum laude graduate of Yale University and New York University School of Law, where she was a Law Review member. As an undergraduate, she worked in an internship program for the Office of Senator William Proxmire, and did volunteer work for a halfway house, Headstart and for a battered women's shelter.

She served as law clerk last year to the Honorable Frank M. Johnson, Jr., of the U.S. 11th Circuit Court of Appeals in Montgomery.

In the Center's KLANWATCH Project, a new face, Carolyn Caver, has joined the staff as research analyst.

Caver is a graduate of Huntingdon College, Montgomery, and the University of Alabama.

Before joining KLANWATCH, Caver was a program manager for the Central Alabama Rehabilitation Center in Montgomery. She earned a Master's Degree in Social Work policy, planning and administration, during which she interned in Washington, D.C., with a U.S. Senate Subcommittee on Aging, Families and Human Services, as well as at the National Office of Action's Policy Development Division.

Caver is an instructor in sociology at Troy State University in



Construction begins in May on the Southern Poverty Law Center's new headquarters building, thanks to the generosity of thousands of supporters who responded to the arson attack on our existing offices last July. The new building has been designed for security, efficiency and attractiveness. The site, marked (1) on this aerial view, is in the area where much significant civil rights history has occurred. SPLC attorneys have frequently

argued in the Alabama Supreme Court (2). George Wallace has dominated the State Capitol (3), to the steps of which Martin Luther King Jr. led the Selma March in 1965. SPLC attorneys brought the lawsuit which forced the desegregation of the State Troopers (4). Dr. King's sermons were preached from the pulpit of, and the Montgomery Bus Boycott was organized in, the basement of the Dexter Avenue King Memorial Church (5).

A supporter writes —

"Truth crushed to earth shall rise again"

Editors' Note: Following the arson attack on the Law Center last July, many of our long-time supporters responded not only with contributions to build a new office, but also with letters of concern. One especially meaningful letter is reproduced below.

Gentlemen:

Thanks for informing of the supposed crime perpetrated by the KKK. This is right "down their alley" so be not afraid or disgusted because TRUTH CRUSHED TO EARTH SHALL RISE AGAIN.

I am 94 years old and my wife is 88 and we have been married 68 years. So since we both were born and reared in the South, this kind of lousy stuff does not surprise us one bit. In fact, at a very tender age I saw

Montgomery.

Also joining the SPLC staff is Rachel Bliss, who is Associate Director of Development and Editor of the Poverty Law Report.

A graduate of The University of Iowa with a degree in journalism, Bliss has worked in the print and broadcast media for the last 15 years.

One of her public service announcements for television, "Mommie Hurts," won a Best-of-Show Award in a recent regional ad competition. Bliss is a member of the National League of American Pen Women and is on the fundraising committee for the Alabama Prison Project.

from a distant the public burning of Sam Hose in Newnan, Georgia, Coweta County.

This Negro was accused of "raping an old white woman" so a PUBLIC Burning was advertised and excursions from all over the State of Georgia rolled in with many white people who came to witness this public burning.

My Uncle and a few other well known Negroes were invited and allowed to stand on a hill that looked down where the burning took place,

so he took me along and what I saw I will never forget.

We can only spare \$25 for this cause of helping you come back but here are a few names of friends that I want you to contact using my name if you care to, and I am sure a few will respond. So GOOD LUCK, GOD BLESS, and KEEP THE FAITH.

Yours truly,

Wallace S. Hayes (An OLD MEMBER for years)
New York, N.Y.

poverty law Report

Volume 11, Number 4-5

April 1984

The Southern Poverty Report is published five times a year by the Southern Poverty Law Center, 1001 S. Hull St., Montgomery, Alabama 36101

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Joseph J. Levin, Jr.

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Kentucky suit seeks fair property taxes

PADUCAH, Ky. — The Southern Poverty Law Center and the Kentucky Fair Tax Coalition have filed an unusual and potentially precedent-setting class action lawsuit here against the Kentucky officials in charge of assessing property for taxes.

The lawsuit alleges that land, property and unmined mineral deposits owned by coal, oil and gas interests are systematically under-assessed in Kentucky, resulting in a taxation system whereby Kentucky's richest assets contribute practically nothing to the state's tax revenues.

If collected, the millions of dollars in lost taxes could be used for better roads, schools, housing, water and sewer systems, and other resources which Kentucky so desperately needs. In many of Kentucky's rural counties, the poverty of the people who live on the surface of the land is in sharp contrast to the riches of the minerals beneath the surface.

The average coal miner's pickup truck may be taxed at a higher rate than the acres of mineral rights owned by absentee corporations. Through a subsidiary, for example, the Norfolk Southern Corporation owns 81,333 acres of mineral rights in Martin County alone, representing over half of the mineral in the county. Yet their annual property tax bill on this holding comes to only \$74 a year.

Martin County is the second leading coal producing county in the state, with 1982 production exceeding 16 million tons. Coal companies pay little in taxes, and the profit usually goes elsewhere, leaving nothing for an investment for the future.

Martin County has no sewer system. The water system is unstable and in poor condition. There is no garbage collection system or 24-hour medical service. The nearest hospital is an hour away and only recently have state funds been provided for development of a public library.

Unfortunately, Martin County is no exception in the coal fields. In the

top ten coal producing counties, the school revenue raised per pupil from local property tax sources averages \$121 per year, compared with \$1,076 per pupil in Jefferson County (Louisville) and \$936 per pupil in Fayette County (Lexington), the state's major urban areas.

It is tax inequities like those described above that motivated Agatha Nowak of Christian County, Alison Moore and Mark Ingram of Hopkins County, Jerry Schultz of Ohio County, and J.D. Miller and Elaine Stoltzfus of Harlan County to file suit against their respective county property valuation administrators and other state officials.

Their lawsuit, *Nowak, et. al., v. Foster, et. al.*, has been filed in the U.S. District Court for the Western District of Kentucky, Paducah Division. The complaint challenges "the failure of Kentucky's Property Valuation Administrators to assess property owned in this State by coal, oil, and gas interests at its fair cash value."

The result, continues the complaint, is that the oil, gas and coal interests are not paying their fair share of property taxes and that unmined coal has what is in effect an exemption from any property taxes.

Thus, Nowak, the other plaintiffs, and the general class of Kentucky taxpayers — who do pay their fair share of taxes — are deprived of their right to equal protection of the laws, guaranteed by the Fourteenth Amendment to the U.S. Constitution.

Ira Burnim is the lead counsel for the Southern Poverty Law Center on the case, and Joe Childers is handling the legal work for the Kentucky Fair Tax Coalition. The suit is being prosecuted jointly by the SPLC and the KFTC.

Burnim and Childers have asked the court to certify the case as a class action, to issue injunctions declaring that the current tax assessments violate the law, and to order that the defendants begin assessing all Kentucky property fairly.

The defendants have been ordered to make a response in the case by March 30.

Docket Update

Judge orders black trooper promotions



MONTGOMERY, Ala. — Attorneys for the Alabama State Troopers have appealed a federal judge's order of last fall that blacks be promoted to the rank of corporal on a one-for-one basis until 25 per cent of trooper corporals are black. SPLC attorneys had sought the order from U.S. District Judge Myron Thompson of Montgomery after black troopers were denied promotions solely on account of their race. Blacks are arbitrarily kept at entry-level positions on the force. Although 21 per cent of the total troopers are black, there are only four black corporals out of 66 on the force. There are no blacks at all any farther up the command ladder even though it has now been 12 years since an SPLC civil suit forced the department to hire its first black troopers. In an unrelated matter, four black troopers who had received transfer orders because they supported a fellow black wrongfully accused of starting an altercation with a white supervisor have had their transfers rescinded because of legal actions taken by the SPLC. Despite findings by a state personnel hearing officer that the supervisor was at fault, the commander of the Tuscaloosa post fired the black trooper and approved orders to transfer the blacks who came to his support to another post, while only re-assigning the white trooper to a desk job at the Tuscaloosa post.

SPLC aids "brown lung" damage suits



MONTGOMERY — Ex-cotton mill workers who suffer from "brown lung" (*byssinosis*) disease are continuing to win damage suits against their former textile manufacturing employers, according to SPLC attorney Ira Burnim. Since becoming active in this area of occupational health in 1978, the Law Center has won several such suits for workers whose breathing was impaired by inhalation of cotton fiber dust. The theories developed and evidence collected in these SPLC cases have made it much easier for private attorneys to win similar lawsuits. Thousands of former textile workers in the South are believed to have brown lung disease, but the existence of the disease was denied for many years by the textile industry. Burnim is now frequently asked by interested groups to share the knowledge developed on the subject by himself, paralegal Rick Laufer, and other SPLC staff over the course of the Center's six-year investigation.

Indictments expected in KKK assault case



BIRMINGHAM, Ala. — Approximately 50 Klansmen from across north Alabama have been called before a federal grand jury here investigating a KKK attack on a group of peaceful black demonstrators in nearby Decatur in 1979. Court observers speculate that criminal indictments charging a number of Klan members and leaders with civil rights violations may be forthcoming. Since the statute of limitations on federal civil rights violations is five years, any indictments would have to be handed down by May 26 of this year, five years to the day after more than 100 armed Klansmen blocked and attacked about 60 black protesters holding a civil rights march. The Birmingham grand jury was convened after two former Klan members testified in federal court in a civil suit brought by KLANWATCH that KKK leaders had conspired to violate the marchers' civil rights. Plaintiffs in that suit include the Southern Christian Leadership Conference, which sponsored the march, the Alabama State NAACP, and a number of march participants. The FBI conducted an investigation shortly after the incident but closed the case five months later, saying no federal violations were found.

Jail improvements ordered in Louisiana



HOUMA, La. — Unconstitutional conditions at the Terrebonne Parish Jail here are finally being remedied, seven years after SPLC attorney John Carroll went to court over deplorable living standards and inhumane disciplinary actions. A new parish jail, designed by a professional jails consultant, will be open by 1986. Meanwhile, improved standards for the existing jail have been ordered by the U.S. District Court for Eastern Louisiana.

Voting rights cases filed

Despite the rapid increase in the number of black elected officials in the South, many smaller, more rural areas still have no black representation on city councils, county commissions and boards of education.

The Southern Poverty Law Center is currently engaged in several voting rights lawsuits in Alabama and has been instrumental in organizing an Alabama Voting Rights Project. Here is a summary of pending cases:

— Opelika, Ala. This case was tried by former SPLC staff attorney Stephen J. Ellmann in the summer of 1978 but the trial judge found for the city. The decision is being appealed on the ground that the judge's factual findings were incorrect and

that the whole case must be reconsidered in light of the changes by Congress in the Voting Rights Act.

The judge found, for example, that there was no racial bloc voting despite overwhelming evidence that there was, that blacks had equal access to the elections process although black registration was depressed, and that blacks were not illegally discriminated against even though there were no blacks on city boards or commissions and very few blacks in management or supervisory positions on the city's workforce.

Opelika is a city of about 30,000 in east-central Alabama. It has a three-member commission and no black has ever held commission office

Man awarded

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over the next several days.

Several weeks later, Wade entered the case. Acting on what he said was information provided by an informant, Wade took a new set of pictures, which included shots of Charles and of Michael Williams, to display to the eyewitnesses on the premise that the new photo of Charles was more recent and in color.

Again, neither Mrs. Rosenstein nor Mrs. Corcelius could make a positive identification, according to statements they later made to investigators looking into Charles's wrongful conviction. (Mrs. Corcelius even said Wade had made coaching comments.) But Wade indicated that they had identified Charles and Williams, and on that basis warrants were taken out for their arrests.

The suspects were soon picked up in Florida and held for an extradition hearing. Only Charles was extradited back to Georgia, however, after neither woman could positively identify Michael Williams as one of the killers.

Mrs. Corcelius did positively identify Charles but she picked out as his accomplice a second man who had been in prison on the day of the killings.

Knowing that he was innocent, Charles went back to Savannah believing that he would be quickly cleared. Wade, however, set out to destroy Charles's alibi.

On a trip to Florida to check out Charles's story, Wade met with Robert Zachary, Charles's boss at the service station. Zachary testified at Charles's murder trial that he told Wade that Charles was working at the Tampa gas station on Oct. 3. But Wade followed Zachary to the witness stand and directly contradicted him, testifying that Zachary had said in the interview that Charles was not working that day.

The jury believed the testimony of the local law enforcement officer over the murder defendant's chief alibi witness.

Curiously, Wade's partner on that Florida trip later testified that Wade never mentioned that Zachary had blown Charles's alibi apart, as one might have expected him to do if he had just broken one of the biggest murders in Savannah's recent history. Nor did Wade mention that fact in his report on the Florida trip.

Zachary's supervisor, Johnny Owens, who is white, also testified in Charles's behalf and brought company timecards which showed that Charles had not been reported absent from work on Oct. 3. Weighed against Wade's version of events, Owens's testimony was also rejected by the jury.

Besides Wade, Charles's chief accuser at trial was a parole violator who was Charles's cellmate while he was jailed and awaiting the extradition hearing in Florida.

The witness, James Nixon,

testified that Charles had admitted killing a furniture store owner and his son in Savannah before coming to Florida, and this testimony locked down the prosecution's case.

Nixon's facts were somewhat confused, though the jury overlooked the inconsistencies: He continually called Charles by the name of Charles Earl instead of Earl Charles, and he asserted that Charles had claimed to have "burned" a man and his "little boy." Fred Rosenstein, Max's son, was middle-aged at the time of his death.

It appeared Nixon had been coached on what to say, and in an interview during the investigation that led to Charles's exoneration, Nixon claimed he made a deal with Wade to testify against Charles in exchange for help with his parole problems. Evidence discovered in the course of the SPLC civil suit substantiates Nixon's claim.

The truth was no match for Wade's manufactured case against Charles, and a jury of 10 whites and two blacks promptly convicted him and sentenced him to death, over the anguished cries of Charles's mother, who fainted, and Charles himself, who was dragged from the courtroom yelling, "I'm innocent. I wasn't even in the state. I wasn't even in the state."

Charles remained on Death Row in the Chatham County Jail until July 1978, when the district attorney announced that an investigation his office had conducted into the case proved Charles's innocence beyond a reasonable doubt, and so he was



CHARLES

freed.

The thing that saved Charles's life was the friendship between his boss, Zachary, and a Tampa deputy sheriff, Lemon Harvey, who is now deceased. Harvey, who is black, frequently stopped in to check on Zachary and his attendants at the service station Zachary managed.

Because Charles and Michael Williams were new employees, Zachary asked Harvey to keep an especially sharp eye on the station when Zachary was away, as he was part of the time on Oct. 3, the day of the murders.

On that day, Harvey began his shift by checking in with headquarters via his patrol car from Zachary's station. As Zachary had asked him to do, Harvey noted that Charles and Williams were also working.

Voting

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though the city is about one-third black.

— Troy, Ala. This voting rights case was filed by local black attorney Calvin Biggers, who sought the help of the SPLC. Also working on the case is Ed Still, an experienced voting rights attorney from Birmingham. At this time, a tentative settlement has been reached pending a referendum. The settlement would allow at least one black district in a council form of government whereas the existing government is a three-member at-large commission.

— Pike County, Ala. This case is a companion to the Troy, Ala., case above. Troy is the county seat and the most-populated area in Pike County, and the voting rights attorneys found that to redistrict Troy they would have to redistrict Pike County as well. The county is grossly malapportioned. The county commissioners are elected from districts, but over half the population lives in one district, which is Troy. This violates the one-man, one-vote standard for elections. The settlement which is being sought would result in one black or very heavily black influenced district.

— Camp Hill, Ala. This case has been settled pending the receipt of findings from a special census which was necessary to draw accurate district voting lines. Camp Hill, located in east central Alabama, has a population of about 2,000 and is currently governed by five commissioners elected at-large. Despite a

substantial black population, no black had ever been elected to office. The settlement calls for six council members to be elected from districts, with at least one black and one black-influenced district.

— Chambers County, Ala. Suits are being prepared for a number of communities in this east Alabama county where there are substantial black populations but no black representation on city or county governing bodies. Also being considered are a number of annexations that have not been approved by the Justice Department under the Voting Rights Act. Such annexations usually bring adjacent white communities into existing governments for the purpose of diluting the black voting strength.

All of the above lawsuits are typical voting rights actions and illustrate the need for continued enforcement of the important voting rights legislation of 1965 and 1982. Opening up the local electoral process to black officeholders is often the single most effective civil rights action that can be taken in a community.

Anti-Klan handbook available

KLANWATCH and the National Anti-Klan Network will soon publish a handbook suggesting ways communities afflicted with Ku Klux Klan activity can effectively respond to the problems that inevitably arise when the Klan comes to town. The manual, titled *When the Klan Comes to Town: A Handbook of Model Community Responses*, focuses on how to put together a unified community response that would halt the spread of the Klan, provide for the protection of victims of KKK intimidation and violence, and point the way toward rooting out conditions that allow the Klan to exist in the community. It is available by writing KLANWATCH. Cost is \$10.

Fortunately, Harvey's logbook reflected their presence, and thus Charles's alibi was corroborated. Harvey took and passed a lie detector test at the request of the Chatham District Attorney's Office.

The lawsuit was filed after it became apparent that the City would not compensate Charles for his ordeal. Repeated attempts to obtain compensation through the Georgia legislature also failed.

According to SPLC Legal Director, Dennis Balske, both sides had reason to make the recent settlement. From Charles's standpoint, it was probably the best deal that could be gotten. The verdict of \$417,000 against Wade — while it looked good — was only a paper judgment. Career law enforcement officers don't have that kind of money.

The shame is that Charles had to settle for \$75,000 in compensation. No settlement could adequately compensate for the nightmare of potential execution for something he didn't do nor could money restore the three and a half years of his life he lost while imprisoned.

EDITOR'S POSTSCRIPT: Despite Earl's exoneration, difficult days lie ahead for him. The effects of his wrongful imprisonment persist, frequently manifest in a mistrust of people, a desire to be alone much of the time, and trouble holding a job. He has now returned to Savannah, his home, after trying to start over elsewhere, and is working part time.

When previously all-white governing bodies are fairly redistricted, the blacks who win election have the opportunity to participate in every facet of local government. Blacks get appointed to boards and agencies, black contractors get a fair chance to bid on city jobs, the overall discrimination improves, etc.

This realization is behind the joint organization of an Alabama Voting Rights Project by the Southern Poverty Law Center, the Civil Liberties Union of Alabama, the Southern Legislative Research Council, the Alabama Black Legislative Council, the Alabama branch of the NAACP, the Alabama chapter of the Southern Christian Leadership Conference, the Alabama League of Women Voters, and the Alabama Democratic Conference.

SPLC staff attorney Ira Burnim has spearheaded the organization of the Voting Rights Project and says he expects it to serve as a clearinghouse for voting rights efforts in the state and to provide assistance to local groups who are seeking better representation for minorities.

About half the funds for starting the project, which includes hiring a staff person, have been raised.