

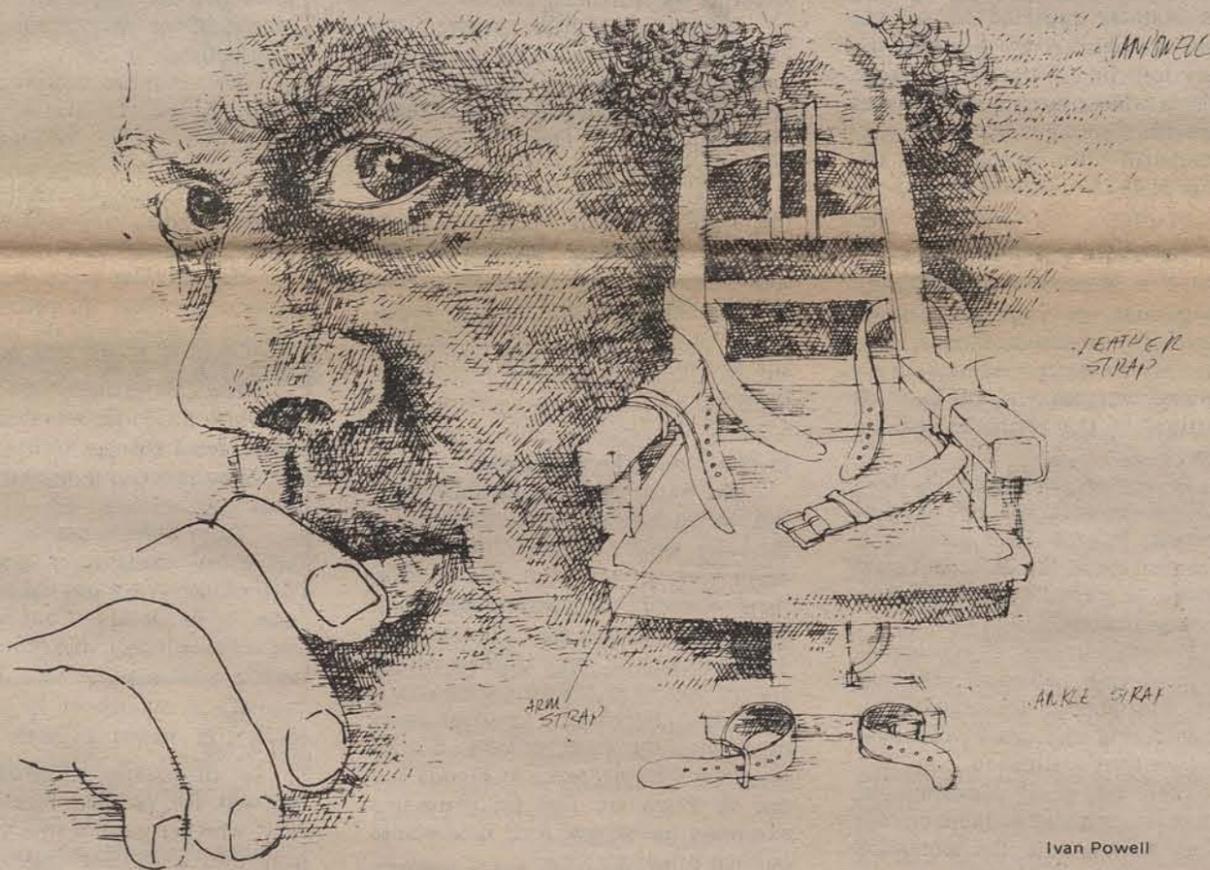
poverty law **Report**

A REVIEW OF ADVANCES IN THE LEGAL RIGHTS OF THE POOR

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Sept./Oct., 1976



Ivan Powell

New team to defeat executions

As a practical matter, the recent U.S. Supreme Court rulings on capital punishment mean that the battle against the death penalty now must be fought most vigorously at the trial court level.

This opens up a new area of technical legal problems, because the sad truth is that men and women indicted in capital cases are usually guilty, poor, uneducated and friendless.

A lawyer applying traditional approaches is helpless when the evidence against his or her client, who may even have signed a confession, is overwhelming. The death penalty verdict is usually certain in such cases.

Because special expertise is necessary for successful defenses, the Southern Poverty Law Center has created a death penalty defense team to defeat

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Court voids Alabama's child neglect law

MONTGOMERY — Major portions of Alabama's child neglect law were struck down as unconstitutional by a three-judge Federal court here during July.

The judges' decision is expected to have broad implications for the child neglect laws in other states as well. The judges held that the Constitution provides a fundamental right of family integrity. Thus the state could interfere through neglect proceedings only as a last resort and only if the due process rights of the parents and child were respected.

The case, *Roe v. Conn*, involved a four-year-old illegitimate white male child taken from his unwed white mother after a white man claiming to be the child's father

complained to the Montgomery Police Department that the woman and child were living in a black neighborhood with a black man.

A Montgomery family court judge had signed a pick-up order on the child on the basis of those facts alone, and later testified that the race of the man with whom the mother and child were living was relevant to his decision to order the child seized.

Following the seizure the same judge found the child "neglected" and placed him in the custody of the man claiming to be his father.

The case was argued by Southern Poverty Law Center attorneys Pamela Horowitz and John Carroll before U.S. District Judges Frank M. Johnson, Jr., and Robert Varner and

U.S. Circuit Judge Richard T. Rives.

The judges recognized the state's "interest in protecting children from harm as quickly as possible," but said that unless there was an emergency the state should, "as a matter of basic fairness," give the parents and child an opportunity to dispute the alleged abuse.

The judges thus ruled that the Alabama law allowing "summary" seizure of children without a hearing was unconstitutional.

The court also ruled that the Alabama law's definitions of "welfare" and "neglect" were too vague and that the child has a right to counsel in any neglect proceedings.

The family integrity may not be disturbed by such proceedings unless

"the child is subjected to real physical or emotional harm" and less drastic measures would not improve the situation, the judges said.

Before a child is taken from his parents, the state should try options such as seminars and weekly counseling sessions on child care and the responsibilities of parenthood or should order supervision of the parents by a welfare counselor, the judges said.

The judges also invalidated long-standing Alabama law which allowed the father of a born-out-of-wedlock child to legitimize the child simply by filing a declaration with a Probate Judge. Under Alabama law this could be done without the knowl-

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None since 1967

Executions imminent, first may occur by year's end

In decisions of July 2 and July 6, 1976, the U.S. Supreme Court upheld capital punishment laws in Florida, Georgia and Texas and declared unconstitutional the laws of Louisiana, North Carolina and Oklahoma.

Though these decisions have complex implications, the overwhelmingly important first fact is that the Supreme Court has now rejected the major constitutional arguments which have stopped executions in the United States during the past 10 years.

There have been no gassings, hangings or electrocutions in this country since June 2, 1967, only because capital punishment was under constitutional attack. That attack has failed, and the resumption of executions — possibly in numbers unknown since the 1940's — is imminent.

The Decisions' Meaning

To understand the present legal situation, it is necessary to review briefly the history of the death penalty in this country in this century. By 1965 all states which had capital punishment employed a form of discretionary death penalty under which juries and judges had complete freedom to choose between the punishments of death and imprisonment after convicting a defendant of a "capital" crime.

Without guidelines or standards, judges and juries simply passed the sentences of "guilty with capital punishment" or "guilty without capital punishment" on a case-by-case basis.

In 1972, the Supreme Court held in the case of *Furman v. Georgia* that imposing the death penalty in this manner was unconstitutional because it applied the uniquely harsh penalty of death in an arbitrary and capricious manner.

Following the *Furman* decision, 35 states enacted new death-penalty laws. For simplicity, these can be divided into two basic categories:

— Mandatory death-penalty statutes required capital punishment for all persons convicted of a particular crime (first degree murder, for example).

— Guided-discretion death-penalty

statutes gave juries (in some states, judges) the power to choose between death and life imprisonment in each case after considering certain aggravating and mitigating factors which were set forth in the statutes.

In its decisions of July 2 and July 6, the Supreme Court invalidated the mandatory death-penalty laws and upheld the guided-discretion laws.

Mandatory death-penalty laws were held unconstitutional because, the Court said, death is a cruel and unusual punishment when it is applied to an offender without consideration of the specific aggravating and mitigating features of his crime and his personal history.

The Court reaffirmed its 1972 decision that standardless discretion in this process of picking and choosing among offenders to live or die was unconstitutional.

But it held that the guided-discretion statutes appeared to provide adequate standards to ward against the arbitrary infliction of death upon some defendants while others in similar cases were spared.

The rules that emerge from the 1972 and 1976 decisions, then, are these:

— The death penalty is unconstitutional if it is imposed automatically on all persons convicted of a certain crime, or if it is imposed under procedures that do not provide for an individualized sentencing hearing in which the features of the particular case are considered.

— To comply, death penalty laws must allow consideration not only of prosecution reasons for imposing a death sentence, but the defendant must be allowed to present evidence of mitigating circumstances.

— But the process of considering the facts of each individual case may not be standardless, for standardless death sentencing on a case-by-case basis also violates the Constitution.

— Therefore, to be constitutional, a death-sentencing statute must provide guidelines to structure the sentencing

decision; it must provide for the making of factual findings under those guidelines by the sentencing authority in each case; perhaps it must provide for appellate review of death sentences in the light of the guidelines and the findings.

— Finally, the death-penalty law of each individual state must be examined separately to determine its consistency with the foregoing four rules.

States Affected

What this means as a practical matter is that the impact of the Court's recent decisions upon the death penalty laws of many states is not yet clear.

The remaining state statutes must be examined individually, and they may or may not be held constitutional depending, for example, on whether they sufficiently allow for the presentation of mitigating evidence and whether they sufficiently guide and structure the sentencing process.

Lawyers who have reviewed the Court's opinions believe that the present death-penalty laws of Alabama, Arizona, Arkansas, Colorado, Connecticut, Montana, Nebraska, Ohio, Pennsylvania and Utah may be constitutional.

These lawyers think the statutes of California, Delaware, Idaho, Indiana, Kentucky, Maryland, Mississippi, Missouri, Nevada, New Hampshire, New Mexico, New York, Rhode Island, South Carolina, Tennessee, Washington and Wyoming are probably unconstitutional.

Awaiting Execution

The Supreme Court gave the green light to executions in three states where there are large numbers of people on death row. At the beginning of July, there were 71 condemned people in Florida, 39 in Texas and 37 in Georgia.

The cases of some of these people are on appeal in state supreme courts or in the U.S. Supreme Court on issues other than the death penalty. But 14 people in Georgia, seven in Florida and one in Texas are ripe for immediate execution unless new legal proceedings on their behalf are filed.

However, Justice Lewis Powell has issued a stay pending review of the July 2 decision which is now expected to delay any executions until at least October, when the full court reconvenes.

Four of the condemned men in Georgia are now without lawyers, and it is expected that lawyers in at least some of the other cases may drop them in the wake of the Supreme Court's decisions.

It is also expected that the appellate courts of Georgia, Florida and Texas will now affirm a considerable number of death sentences in the upcoming weeks and months. Estimates are difficult, but about 20 people in each of these three states may be ripe for electrocution within the next nine months.

How soon after a condemned person is "ripe" for execution he or she will actually be executed is also diffi-

Georgia jury challenged by team

BAINBRIDGE, Ga. — Team Defense scored an important victory here during August when it successfully challenged the sexual and racial composition of juries in Decatur County, Ga.

The case involved two young black men who had been indicted for the murder and robbery of a white insurance agent.

Team Defense attorneys John Carroll and Millard Farmer, along with social scientist Courtney Mullin, responded to a request for help from Mary Young, the local attorney representing the two defendants.

Team Defense members presented evidence to show that women and blacks were under-represented in the Decatur County jury pool, and presented expert testimony to show that the defendants could not receive a fair trial under those circumstances.

The Decatur County Superior Court Judge who was to hear the case threw out the indictments against the two men and ordered local jury commissioners to restructure the grand jury and petit jury pools.

He said these pools should more accurately reflect the percentages of women and blacks in the local population.

The case is one of the first ever in which a Georgia lower court judge has ordered changes in the jury pools based on sexual and racial representation.

Team Defense members said the successful challenge means that all defendants — not just the two in this case — in Decatur County will receive fairer trials in the future.

cult to say.

In some states, all death cases are reviewed for possible executive clemency whether or not the condemned man files a petition seeking commutation of his death sentence, and this process of review by the governor and/or pardon board may take some time.

In other states, clemency review is undertaken only if the condemned person applies for it. Some of the condemned men are without counsel or friends to make the necessary application, and virtually all of them are without the resources to lay before the governor evidence to support favorable action upon a clemency application. In these cases, executions may proceed very soon.

Without further legal proceedings, then, executions might begin in November unless the court reverses itself. Within six to nine months, there may be several executions in each of the three states of Florida, Georgia and Texas. Within a year, each of these three states should hit stride and begin to execute between 10 and 20 people annually.

Executions will begin somewhat

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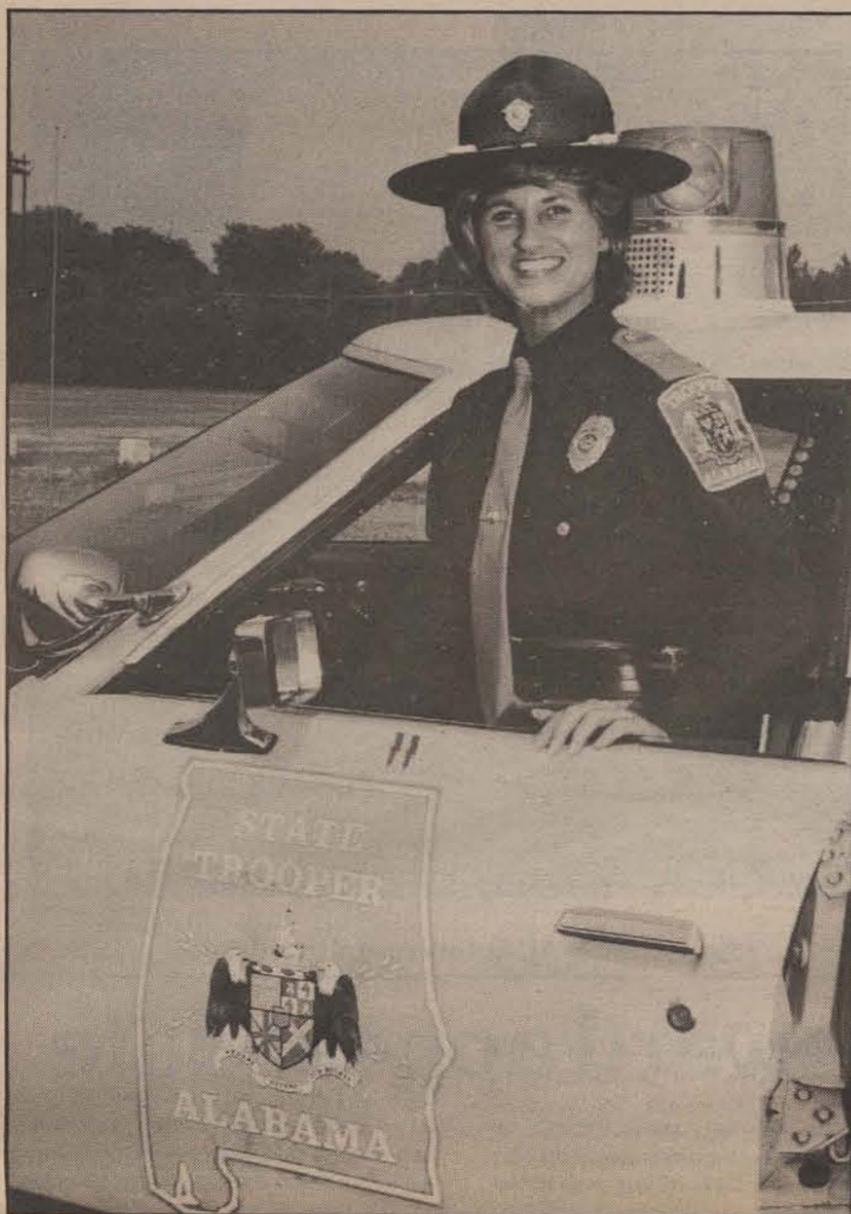
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Official trooper recruitment photo

Women win hiring suit against state troopers, prisons

MONTGOMERY — The State of Alabama, for the first time in its history, is recruiting women to serve as state troopers and full-fledged prison guards in the aftermath of a precedent-setting ruling by Federal judges in a sex-discrimination case here.

Prior to the ruling, the state had no female troopers and females were barred from jobs as prison guards in male, maximum-security facilities where they would have daily contact with inmates.

A three-judge Federal court ruled in June that the state's minimum height and weight requirements for law enforcement personnel illegally discriminated against women.

The judges ruled in a lawsuit brought by the Southern Poverty Law Center on behalf of Brenda Mieth, 28, who had applied for a job as a state trooper, and Diane K. Rawlinson, 22, who had applied for a job as a prison guard. Both women had been denied jobs on the ground that they did not meet the height and weight restrictions.

Ms. Mieth is 5 feet 6 inches tall and weighs 139 pounds, too short and too light to adequately perform as a

trooper, state officials argued. The state minimums were 5 feet and 8 inches and 160 pounds. But the court rejected that view.

Studies show that 97 per cent of the nation's police jobs have some minimum height and weight requirements, and the extension of the court's ruling would be that these requirements are without meaning for men and women.

Ms. Rawlinson is 5 feet 2 inches tall and weighs 110 pounds. She met the height requirement for Alabama prison guards, but was 10 pounds under the 130 pound weight limit.

SPLC staff attorneys Pamela Horowitz and John Carroll also presented expert testimony to show that women could perform as well in such jobs as men.

The expert witnesses based their testimony on the performance records of women police officers in New York City, Dallas and the District of Columbia, and of female Federal prison guards, records which proved that sex, as well as height and weight, had no relationship to job performance.

The court rejected state arguments that women troopers and guards could not adequately protect the public, ruling that it could find no evidence that women could not do the jobs as well as men.

In rejecting the state's argument that women were barred from such jobs for their own protection, the judges said, "Women do not need protectors; they are capable of deciding whether it is in their own best interest to take unromantic or dangerous jobs."

The judges also said, "One lesson the women's rights movement has taught us is that many long-haired conceptions concerning the sexes have been found to be erroneous when exposed to the light of empirical data and objectivity."

The ruling was the first time a three-judge court had struck down height and weight restrictions. Mr. Carroll and Ms. Horowitz said they believed the ruling would be used by women to strike down similar restrictions in other states.

States which already had women state troopers — but only token numbers — include Michigan, New Jersey, Massachusetts, Indiana, Louisiana, New York, Iowa, Arizona, California, Pennsylvania and Maryland. Alabama already had a few women prison guards, but they were assigned to sex-stereotyped jobs or to exclusively female prisons.

The case was believed to be the first to hold that the exclusion of women from these job categories violates Federal law and constitutional guarantees.

A final note: Alabama State Troop Chief E.C. Dothard is complying with the order, but grumbling all the way. He said recently that he has "... been in this business for years, and a woman can't do it." But he added, "I guess you could say the Alabama State Troopers need a few good women."

Execution

(Continued From Page 2)

more slowly in the 10 other states named in the preceding section as having death-penalty statutes that could be held constitutional.

Arkansas is probably first in line. Two Arkansas cases are presently pending in the U.S. Supreme Court challenging that state's death penalty law. The Court may refuse to review these cases when it reconvenes in October. If it does refuse to review, at least six condemned persons in Arkansas could become ripe for execution within the next six months.

The Ohio Supreme Court is presently considering at least 15 appeals in death cases. It will probably not decide them until September or October. Thereafter, a condemned person whose sentence is affirmed could request review by the U.S. Supreme Court. If the Court denies review, executions could begin in Ohio as early as April. Once they begin, they are likely to come thick and fast. There are now 47 people on death row in Ohio, and the number is increasing rapidly.

Arizona has 13 people on death row. The timetable there will be similar to or a little faster than in Ohio. Rough-

'Worst' decision

Former Supreme Court Justice Arthur J. Goldberg called the Court's decision to uphold the death penalty "one of the worst" since the Dred Scott opinion in 1857.

In that case, the Court held that slaves were property and could never become citizens.

ly the same timetable can be expected in Utah, where there are seven people on death row and where neither the state supreme court nor the governor is likely to do anything to decrease that number before the shootings or hangings begin.

In Utah, a condemned person gets to choose between being shot or hanged.

Death Row Discrimination

Although the Supreme Court has taken the view that, at least on paper, the new guided-discretion statutes provide sufficient safeguards against arbitrariness and discrimination, the record of actual application of the death penalty is sobering.

The U.S. nonwhite population is about 13 per cent of the total. Just prior to the *Furman* decision of 1972, 53 per cent of those on death row were nonwhite. Today, 51 per cent of death row inmates in the so-called guided-discretion states are nonwhite.

In other words, the racial record is essentially the same.

It is little wonder that Dr. Marc Riedel, project director of the Center for Studies in Criminology and Criminal Law at the University of Pennsylvania, concluded in a recent study of death-sentencing patterns:

"There is no evidence to suggest that post-*Furman* decisions have been successful in reducing the discretion which leads to a disproportionate number of nonwhite offenders being sentenced to death.

Furthermore, the racial breakdown on death row does not tell the final chapter of the story. The commutation process which is the final stage in selecting those condemned inmates who will actually die lies ahead; all available

evidence indicates that nonwhites fare disproportionately worse than whites in the commutation process.

The condemned also come disproportionately from backgrounds of poverty. Former Attorney General Ramsey Clark's statement that "it is the poor, the sick, the ignorant, the powerless and the hated who are executed," continues to be true.

In a study submitted to the Supreme Court by the State of Texas itself in the recent death-penalty cases, the Texas Judicial Council found that, "once convicted of capital murder, the defendants represented by court-appointed attorneys received the death sentence in 79 per cent of the cases (31 of 39) while defendants represented by retained counsel received the death sentence in 55 per cent of the cases (11 of 20).

Even those few defendants who have modest means at the beginning of their trials spend every last cent in the costly business of defending and appealing their cases. By the time their appeals to the state appellate courts have been concluded, they are totally without funds to pay for legal assistance in any further proceedings.

As a rule, the states do not provide lawyers to help indigent death-sentenced prisoners seek review of their cases in the U.S. Supreme Court, or to file petitions or applications for executive clemency on their behalf.

Often these condemned men are abandoned by their family and friends as well. They are usually poorly educated, sometimes illiterate, almost invariably incapable of preparing and presenting legal proceedings and clemency applications which might save their lives.

'I knew I couldn't go back to what I was'

RALEIGH, N.C. — About this time two years ago, Joanne Little's troubles looked as if they might never end. A fugitive from a North Carolina jail, she had been convicted of breaking and entering and faced murder charges in the self-defense stabbing of a jailer who had forced her into a sexual act.

Ms. Little credits the Southern Poverty Law Center and a fair jury for her acquittal on the murder charge, but her future is only up to her.

She has been in the North Carolina Correctional Center for Women this past year, serving the rest of her unfinished term for breaking and entering.

She has a parole hearing scheduled during September, and if parole is granted plans to enroll in Shaw University in Raleigh.

"The best thing any person who comes to prison can do is come here, do her time, abide by the rules as

best possible and hurry and get out," she says.

Ms. Little had gone only as far as the 11th grade before dropping out of school, but she realized, during the months of her trial and the speaking tour which followed her celebrated acquittal, that life could never be the same for her.

"I knew I couldn't go back to what I was, what I used to be," she said. Through prison courses she has completed her high school education.

And she has put off thoughts of marriage because "I think I should wait and go after all the goals I've set."

Ms. Little said she met many people during her travels who advised her on a direction for her new life, but she listened most closely to one of her attorneys, Karen Galloway, who told her to complete her education and find a job.

And that's what Joanne Little plans to do.

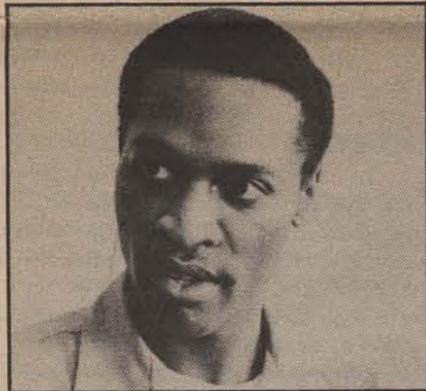


Jill Krementz

Joanne Little (left), and attorney Karen Galloway

Roy Patterson moves toward appeal date

CORDELE, Ga. — Roy Patterson remains in Crisp County Jail here while Southern Poverty Law Center staff attorneys prepare an appeal of the



former Marine sergeant's wrongful conviction for the murder of two Georgia law officers.

Meanwhile, attorney John Carroll has written county officials warning that a Federal lawsuit may be filed in nearby Americus, Ga., if jail conditions are not improved.

Patterson is confined to a two-bunk maximum-security cell which measures about 8 by 11 feet. He shares this space with two other inmates, though the "bullpen" where prisoners are normally kept is not crowded.

This summer has been one of the hottest in recent memory in south Georgia. Temperatures inside Patter-

son's tiny cell are uncomfortable at dawn, begin to climb as soon as the sun rises, and reach their stifling peak in the late afternoon.

The inmates are allowed no outside recreation, are fed only two meals per day, are allowed only infrequent showers and can have visitors for only a half-hour on Saturdays. Carroll said he believes these are illegal conditions.

Carroll learned at press time that Patterson's cellmates had been removed from the crowded cell.

Patterson has been able to spend much of his time during August reading the transcripts of his trial, which made a stack of paper more than one foot high.

The transcripts are filled with statements which Carroll will use in the appeals court to show that Patterson did not receive a fair trial. The motion for a new trial will be argued about mid-September.

Carroll said flaws in Patterson's trial include:

- The judge's failure to grant a change of venue despite blatant local prejudice against Patterson. A local church leader who had preached fiery sermons calling for Patterson's execution was incredibly allowed to open trial proceedings with prayer.

- The extensive pre-trial publicity. Georgia newspapers carried inflammatory statements and the prosecution's version of the case was splashed on front pages for weeks.

- The overall community prejudice against the defendant. During the trial, members of the victims' families were allowed to weep openly in court. Other Cordele residents and police in the courtroom glared at the defense team. Carroll was run off the road by a Cordele citizen.

- The prosecutor's closing statement to the jury. Carroll said this performance was so biased, prejudicial and inflammatory as to be unconstitutional, but was allowed by the trial judge.

Carroll said he believes that Patterson should have been acquitted because of self-defense. Patterson was not armed at the time of the May, 1975, deaths and Carroll said the evidence supports Patterson's testimony that the slain state trooper verbally and physically abused him then drew his gun.

Patterson testified that he thought he was about to be shot, and instinctively grappled for the gun. As the two men were locked in a death struggle, the gun began firing and the trooper and a policeman who had entered the fight were fatally wounded.

The trooper had a proven record of drunkenness and racial bullying of defenseless people.

Patterson had invoked the trooper's wrath by inquiring about the charges on which his brother had been arrested minutes earlier — for having a burned-out light on his car. The trooper told Patterson to shut his mouth, and Patterson said he was going to get an attorney and turned and started out of the Cordele police station.

The trooper leaped after Patterson, struck him and pulled his gun. The shooting was over in seconds.

Patterson was given a life sentence, but the Cordele community made no effort to conceal its disappointment that he would not be executed.

Patterson's life is apparently still in danger. Twice in the past few months there have been mysterious breakouts from the fortress which is the Crisp County Jail. Though Patterson is in maximum security behind a series of locked doors, his cell somehow was conveniently opened.

Patterson's cellmates were among those who escaped the last time, but Patterson wisely chose to remain in the cell. He is confident of winning a new trial and wants to be alive to participate in it.

"I am not a murderer," Roy Lee Patterson has said, and he is not letting himself be set up for a shotgun execution.

Johnny Ross no longer threatened with execution

ANGOLA, La. — Johnny Ross, once the youngest person on Death Row, is no longer threatened with execution because the Supreme Court ruled that the Louisiana death penalty was unconstitutional.

Ross remains in a death row cell, however, because Louisiana prison officials have not known what to do with the inmates there following the Supreme Court ruling in July.

Ross's attorney, John Carroll of the Southern Poverty Law Center, has petitioned for his release on the ground that the rape law under which Ross was convicted allows only one penalty, death, which now cannot be imposed.

Carroll has also filed an "assignment of errors," a listing of flaws in Ross's original trial. This motion is the first step toward having the Louisiana Supreme Court order a new trial, according to Carroll.

The Southern Poverty Law Center will continue to represent Ross, helping him to win a fair trial even though he is no longer subject to execution.

Ross's original trial, before the SPLC became involved, began when he had met just once with a court-appointed attorney. The circumstances in his case are questionable.

Ross was convicted of raping a young white woman, but he does not match her description of the rapist and the victim was unable to pick him from a lineup.

More than a week after the rape occurred, the police came to Ross's home, where they first tried to take his younger brother. Ross says he was beaten until he signed a confession.

Although he was only 16 at the time, the New Orleans court tried Ross as an adult and he was quickly convicted.

Ironically, at the time of his conviction and sentencing, Ross was too young to attend his own execution.

A Louisiana law regulating officials and witnesses at electrocutions says, "No person under the age of 18 years shall be allowed within said execution room during the time of executions."

Utility rates readjusted in lawsuit

ATLANTA — Housing project residents here won their case for fair utility rates against the Atlanta Housing Authority during June. For many poor families it meant a free month's rent, and the class action lawsuit may bring similar gains to residents of housing projects throughout the Southeast.

A 1969 act of Congress known as the Brooke Amendment makes Federal Law of the principle that public housing families should not have to pay more than 25 per cent of their incomes for shelter, including reasonable allowances for utility usage.

But in Atlanta, the schedules for utility allowances used by the Housing Authority had not been adjusted to keep pace with inflation and rapidly rising utility costs. Thus, housing project residents had gradually paid higher and higher percentages of their incomes for shelter.

Frank Roberson, a resident of one of the 15,000 public housing units operated by the Atlanta Housing Authority, went to the Atlanta Legal Aid Society three years ago to challenge the utility allowances and rent schedules.

The case dragged on and on, but was settled after the Southern Poverty Law Center said it was willing to help the Legal Aid Society pay for extensive studies and experts needed to prove the utility and rent schedules were unfair.

Faced with this threat, the Housing Authority and the U.S. Department of Housing and Urban Development (HUD) agreed to adjust the schedules.

To compensate for excessive charges in the past, the Housing Authority awarded many Atlanta housing project families a free month's rent. All families will pay lower rent-utility charges in the future. Legal Aid Society attorney Richard Ellenberg estimates the savings to the residents at about \$800,000 per year.

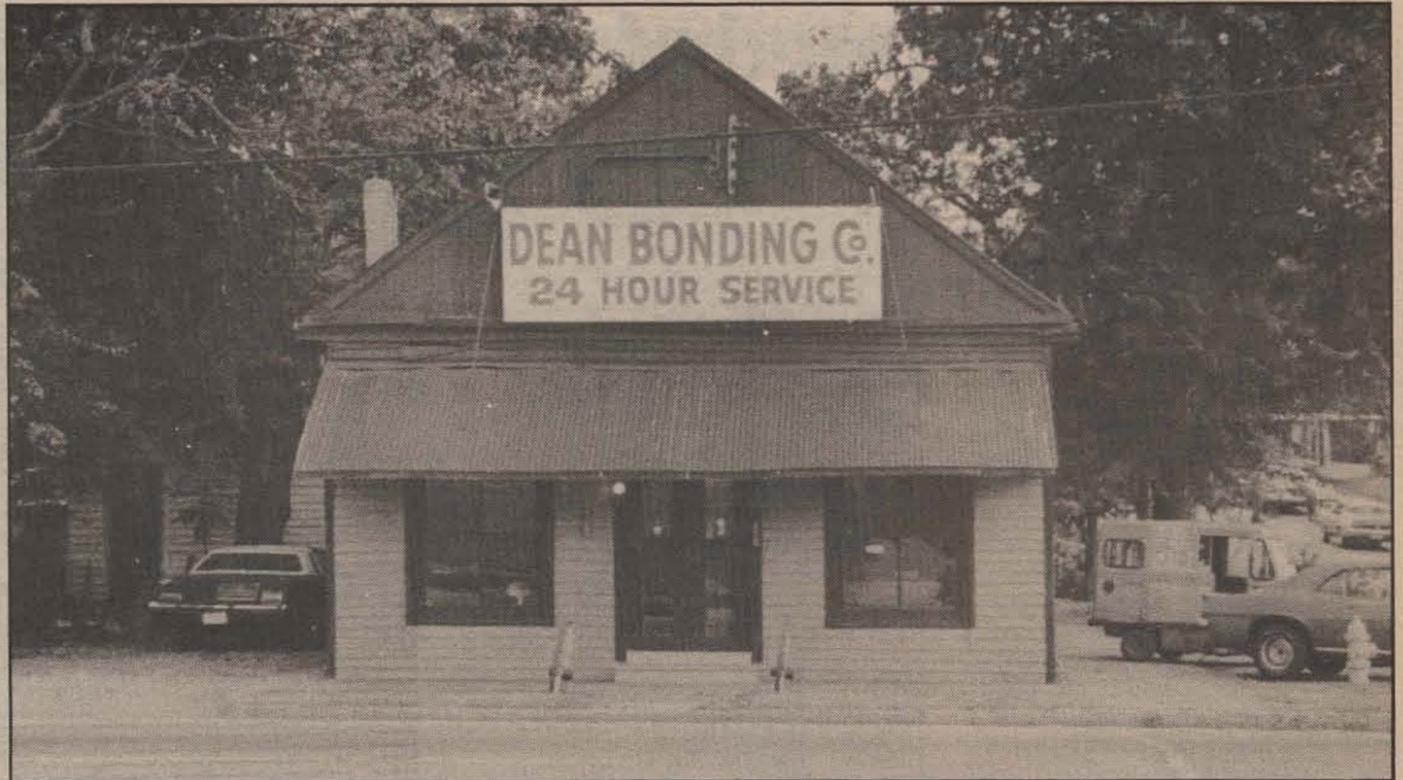
Since HUD sets the rent-utility schedules for all other public housing projects in the Southeast, the precedent has been set to win similar savings for public housing families in other cities.

HEW ordered to give SSI cutoff notices, hearings

NASHVILLE — Oscar and Leona Miller, blind and poor, have forced the U.S. Department of Health, Education and Welfare to give advance notice and provide a hearing before reducing or cutting off Supplemental Security Income (SSI) benefits to any of the needy recipients.

In legal proceedings before U.S. Dist. Judge L. Clure Morton, Social Security Administration officials admitted that their notification procedures were error-filled, but submitted a plan which would send automatic computer notices to SSI recipients before payments could be suspended or reduced.

Since SSI recipients have no other



Bonding company offices like this one in Montgomery are found near city and county jails everywhere.

Suit seeks cash deposit bail system; end to professional bond companies

NASHVILLE — The Southern Poverty Law Center has joined in a challenge to the use of professional bonding companies.

The lawsuit, *Clark v. Thomas*, is being handled by Nashville Legal Services, Inc., with the SPLC providing research assistance and expert testimony.

The lawsuit attacks the state's practice of demanding, through a bonding agent, non-refundable bond premiums as a condition of bail.

The suit asks the court to order the state instead to accept cash deposits equal to the 10 per cent bail fee and to refund this, less clerical costs, if the defendant appears in court.

The suit also asks for an injunction which would prohibit the state from collecting any profits or other fees over and above such clerical costs.

The effect would be to eliminate professional bonding companies, which in practice penalize those too poor to post their own bail.

The cash deposit system is practiced in Illinois, and the experience there, according to the lawsuit, is that

bail is more accessible to indigents with no increased risk of forfeiture.

The suit charges that by allowing private individuals to make a profit off the bail bond business, the state has interposed an additional unnecessary cost — the bonding agent's profit — between the accused and his or her access to the constitutionally protected right to bail.

Even if the function performed by the bonding companies has some significant value to the state, the function should be performed by the state and not by commercial companies, the lawsuit says.

One of the plaintiffs in the class-action lawsuit is Myrtle S. Henson, 32, the mother of three children.

Ms. Henson was involved in a minor traffic accident near her home during June. Since there were no injuries she drove to her home two blocks away to call the police, but then became involved in an argument with the driver of the other vehicle, who took out a warrant charging her with leaving the scene of the accident.

She was arrested and jailed and her three children were taken to juvenile detention facilities for safe-keeping. Her bond was set at \$750.

Ms. Henson was unemployed. She did not have \$750 and had no way to get that much money, so she agreed to pay \$150 to a bonding company so she could be released and reclaim her children.

Ms. Henson could not afford the \$150 payment, either, but if she failed to pay the bond fee she would not be released from jail.

In desperation, she went to Nashville Legal Services, who in turn contacted the Southern Poverty Law Center. Together these organizations will seek an end to a punitive bail system which creates two classes of criminal defendants:

— those who are relatively affluent and are able to make a property or cash bond which costs them no money if they appear for trial, without regard to

their guilt or innocence;

— those who are indigent and unable to post the full amount of bail and must thus forfeit to a bond agent a percentage of the bail which is non-refundable regardless of the defendant's guilt or innocence or his appearance for trial.

Segregated academies challenged

WASHINGTON, D.C. — Secretary of the Treasury William Simon and Internal Revenue Service Commissioner Donald C. Alexander are the defendants in a lawsuit challenging the tax-exempt status of private, racially-segregated schools.

The suit charges that the officials have "fostered and encouraged the development, operation and expansion" of the schools through regulations which "permit schools to receive tax exemptions merely on the basis of adopting and certifying — but not implementing — a policy of non-discrimination."

According to the complaint, the resulting strengthening of the private schools interferes with Federal desegregation efforts because white students are siphoned away from public schools.

The named plaintiffs in the class action lawsuit are parents and their school-aged children in Memphis, Tenn.; Montgomery, Ala.; Prince Edward County, Va.; Cairo, Ill.; Beaufort County, S.C.; Orangeburg, S.C.; Boston, Mass.; Natchitoches and Madison parishes, La., and Monroe, La.

The lawsuit was filed by the Washington firm of Hogan and Hartson and the Southern Poverty Law Center, the Lawyers' Committee for Civil Rights Under the Law and several other law firms and groups.

Handicapped plaintiffs sue city bus line

ROCHESTER, N.Y. — Donna Leary, 31, is the personnel director of a Rochester hotel. Since she both lives and works within the city, she should be an ideal customer for the Regional Transit Service, which with the help of the Federal government just bought 46 new passenger buses.

But Donna Leary is a polio victim and is confined to a wheelchair. She can't get up the steps of the Rochester buses her tax money helps support, and her wheelchair is too wide to fit inside the bus if someone were to take the time to help her aboard.

The Southern Poverty Law Center has joined with the Monroe County (New York) Legal Assistance Corporation in a lawsuit to help Donna Leary and other mobility-handicapped individuals who have been denied access to transportation services.

Defendants in the class-action lawsuit are the commissioners of the Rochester-Genesee Regional Transportation Authority, U.S. Department of Transportation Secretary William T. Coleman, Jr., and the administrator of the Urban Mass Transit Administration, Robert E. Patricelli.

The lawsuit alleges that the defendants have violated the Urban Mass Transportation Act, the Rehabilitation Act of 1973, the Department of Transportation and Related Agencies Act, the Civil Rights Act, and the Fifth and Fourteenth Amendments to the U.S. Constitution.

There are thought to be some 3,000 mobility-handicapped persons in Monroe County, New York, all of whom suffer because the bus system has not made provisions for them as the law requires.

The Regional Transit Service has 235 buses, but only four have the wide doors and special lifts which are necessary to be fully accessible to the handicapped.

These four vehicles pick up passengers only in limited areas of the county and will take passengers only to 12 locations, primarily hospitals and social service agencies. The waiting time for these buses is longer and the cost to ride is higher than for conventional bus trips in Monroe County.

Most of the handicapped citizens have limited incomes, but even if they could afford the higher costs, the limited bus stops keep them from enjoying cultural, social and educational opportunities available to other citizens.

Bernice Henriksen, another plaintiff in the lawsuit, is a good example of the hardship this works on the handicapped. Ms. Henriksen is 67, has multiple sclerosis, is confined to a wheelchair and cannot operate a car.

As a result, she is able to leave the Monroe Community Hospital where she lives only once every six or eight weeks, when she manages to obtain a ride from a friend or a hospital employe.

The lawsuit asks the federal courts in Rochester to order the Regional Transportation Service to halt its discrimination against the handicapped and to stop the purchase of other buses which are not equipped for the handicapped.

At the end of July, the transportation officials had indicated no intention to correct the grievances named in the lawsuit, but were preparing to ask the courts to dismiss the complaint.



The narrow doorways and high steps of these buses, typical of those used in most cities, bar the handicapped from convenient, economical transportation.

Female inmates face discrimination

By CLARK LEMING

Women in prison face double discrimination — as women and as prisoners. For black women, who make up the majority of female inmates, the discrimination is tripled.

The mere idea of a female criminal has traditionally been a difficult concept for the male law enforcement or judiciary officer to comprehend. "Ladies" do not commit crimes, according to the popular ideal.

Six times more men than women are arrested, 20 times as many are convicted and 35 times as many actually serve sentences. Criminologists call this the "chivalry factor."

Belying these attitudes is the 75 per cent rise in the female crime rate in the past decade.

Over 40 per cent of urban female crime is today drug-related. Women are arrested for prostitution, larceny, forgery, shoplifting, burglary — crimes which support drug habits. Disorderly conduct, vagrancy, drunkenness and prostitution account for half of female arrests.

Those training programs available to female inmates are usually limited and stereotyped. Women are trained to be domestics, hair dressers, typists or seamstresses. Men inmates usually receive training in higher-paying occupations such as carpentry, brick masonry, plumbing, auto repairs, electronics and printing. The average number of industries in male prisons is three times greater than in female prisons.

In California, Nebraska and Alabama eligible males may receive four years of college education while incarcerated. However, only two years is available for women.

Approximately 80 per cent of women inmates were supporting children before being jailed. Female pri-

soners are frequently encouraged to give up their children for adoption; some prisons do not allow children to visit their mothers regularly.

An inmate at Pennsylvania's Muncy Prison says, "When I first came here you couldn't visit with your children. It was four years before I saw them. And when I finally did, they didn't remember me."

The "chivalry factor" collapses with sentencing. Women are generally sentenced for longer terms than men and studies show that black women receive higher bails and longer sentences than whites, male or female.

Currently, about 7,000 women are incarcerated in the United States, 800 in federal institutions, 4,000 in state prisons and more than 2,000 in local jails.

Twenty-six states have fully separate institutions for women. Eight states transfer women to neighboring state institutions, severing community ties and family contacts. The remaining states have segregated female prison areas inside male institutions. No state operates more than one facility for women.

Many prison facilities — recreational, educational, vocational, medical, religious, psychological — are denied to women because of potential contact with male inmates. Eighty per cent of female prisons lack a full-time physician; 40 per cent do not have a full-time chaplain. Seventy per cent of female prisons do not have full recreational facilities.

Prison officials blame low budgets and small staffs for missing programs.

Abortions are seldom, if ever, offered as alternatives to prison pregnancies. Nurseries are usually available for no more than the first 18 months and the children must then go into fos-

ter homes. Once they are released from prison, mothers often have great difficulty in regaining custody of their children.

Women inmates, like their male counterparts, are often punished with confinement in the "hole," or "strip cell," or "dungeon." Male guards often handle discipline problems, and inmates complain of harassment ranging from impudence and profanity to "degrading and abnormal" sex acts.

Homosexuality is an increasing problem. Inmates say they become involved in homosexual relationships because of the unnatural living conditions, feelings of dependency, self-condemnation, and most of all, loneliness.

Women are discriminated against upon release as well as when confined. Female "ex-cons" have two obstacles to overcome — their sex and their record. Parole standards for women are generally higher than for men.

Paroled women caught living with men outside wedlock often lose their parole, though similar conduct for male parolees is considered acceptable.

The fact that sexual discrimination is unconstitutional seems to matter little to prison or enforcement officials, despite a 1973 Supreme Court decision in a case argued by the Southern Poverty Law Center — *Frontiero v. Richardson*.

The Court ruled that "classifications based upon sex, alienage, and national origin, are inherently suspect and must therefore be subjected to close judicial scrutiny."

Clark Leming, a Rollins College (Florida) student, spent a recent school term doing independent study at the Southern Poverty Law Center. This article is excerpted from reports he made after researching prison issues.

Reforms cited in prisons

MONTGOMERY — The chairperson of a Human Rights Committee appointed by the Federal court here to oversee Alabama prisons says the Alabama legislature and prison officials are acting in good faith to make reforms.

Inmate population in the severely crowded prisons has dropped from 4,340 at the time of the lawsuit to 3,850 at the end of July.

Faced with the court order, the Alabama Board of Corrections administratively restored lost "good time" to a number of inmates, allowing immediate release of some.

And the Alabama legislature, in contrast to other Southern legislatures, has passed bills which liberalize good time procedures and which will encourage rehabilitation by bringing in prison industry programs which teach relevant "free-world" skills, the committee chairperson said.

U.S. Dist Court Judge Frank M. Johnson Jr. had said in his order last January that he would close the Alabama prisons if reforms were not implemented.

His order, in a lawsuit brought by the Southern Poverty Law Center, is considered the most comprehensive ever issued to a state corrections board. He said inmates must be given meaningful prison jobs and opportunities for education, annual classification reviews, safety from other inmates and decent food and living conditions.

Judge Johnson anticipated outcries from state officials and said inadequate funding could not be an excuse. "A state is not at liberty to afford its citizens only those constitutional rights which fit comfortably within its budget," he wrote.

Faced with this warning, Alabama voters approved a \$6 million bond issue for construction of new prisons. The Alabama Board of Corrections estimates that at current conviction and sentencing levels the inmate population may rise to 8,000 by 1980.

Presently these additional inmates are backing up in city and county jails because Judge Johnson had said no more inmates could be admitted to the state prisons until their populations reached manageable levels.

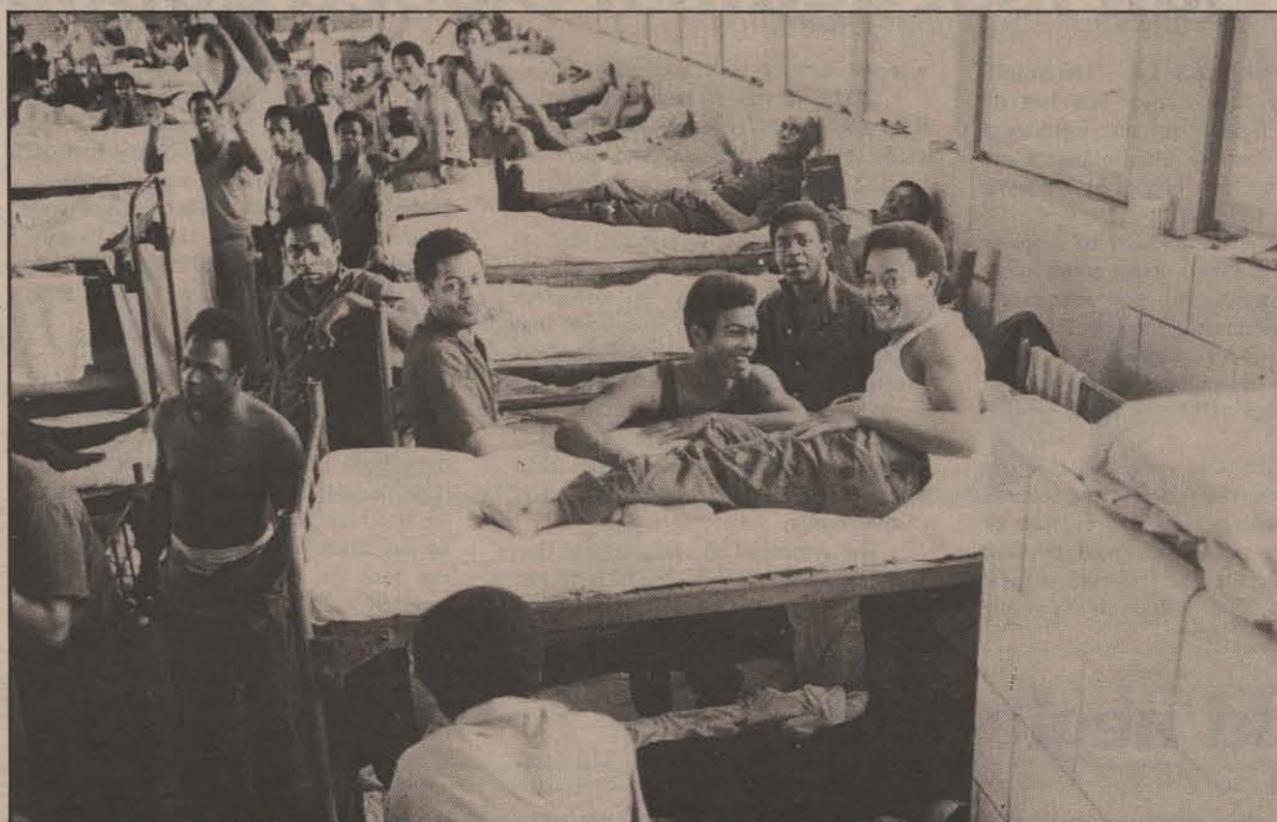
The Board of Corrections estimates that processing of new inmates into the system may resume at the first of the year.

A Board official said there are complications, however, since the Board was appropriated a budget this year of only \$14.5 million, about \$1 million less than necessary to maintain staffing at current levels. "The court says we have to operate constitutionally and this might mean that we have to close some facilities if we run out of money," the official said.

Meanwhile, the "good time" and prison industry laws passed by the legislature are viewed by prison officials and the Human Rights Committee as honest efforts to cope with the Alabama prison crisis.

Other Southern Legislatures, however, are taking harder lines, concentrating solely on building larger

Before



Alabama prison officials say these two photographs, taken at the same prison, reflect the changes made since Judge Frank M. Johnson Jr. issued his comprehensive order last January. The officials concede that much remains to be done, but complain of shortages of trained personnel and money.

After



prisons rather than trying to reduce the number of inmates.

South Carolina prison facilities were built for 4,600 inmates, but the population is about 7,000. The General Assembly has responded by setting a minimum 10-year sentence for armed robbery, with no parole for seven years. Some 220 inmates are serving time for non-support or drunken driving.

Texas prisons have 20,563 inmates and the number grows by 269 each

month. Only 45 Texas inmates are involved in work release programs, and it will be up to the Legislature in January to decide the fate of work release programs and parole reform.

The Arkansas legislature is expected to tighten parole laws next year, and Gov. David Pryor says he will force criminals to serve longer terms. Excess inmates are being kept in mobile homes inside prison compounds.

An Arkansas prosecuting attorney started a petition drive to place before

the voters a proposal to abolish inmates' time off for good behavior.

Angola State Penitentiary in Louisiana has trimmed its population to 2,600, the design capacity accepted in a Federal Court order, but 1,500 inmates are backlogged in local jails.

A Louisiana prison official said if a requested \$82 million for new construction is granted, "We'll be in pretty good shape in the long run. But nobody is going to solve this thing as long as we keep putting so many people in jail."

Suit lost against biased appointments

NEW ORLEANS, La. — The Southern Poverty Law Center has lost its three-year fight for an injunction against the racially discriminatory appointments to state boards by Alabama Gov. George C. Wallace.

The 5th Circuit Court of Appeals upheld during June a lower court ruling that the lawsuit did not adequately prove discrimination since the percentage of blacks qualified to fill the appointed posts might be different from the percentage of blacks in the general population.

The court also said the question involved "delicate issues of federal-state relationships" and the exercise of discretionary power allocated by Alabama law to the chief elected official of the state, though the court's ruling

was not made on these grounds.

SPLC attorneys had proved that less than 1 per cent of appointments made by Gov. Wallace had been of blacks, though the state population is 23 per cent black.

The court said it rejected the assumption that blacks do not possess the required qualifications in sufficient numbers to establish the case, but that as a point of law the plaintiffs had not proved that they do.

SPLC attorneys called this "frustrating and disappointing" logic, since there are no qualifications other than "good citizenship or the like" for many of the boards.

The attorneys also pointed out that Gov. Wallace, in his deposition, had testified that the class of black Ala-

bamians represented by the plaintiffs was qualified for the appointed jobs, and had stipulated that point.

The boards include County Boards of Registrars, County Jury Commissions, Trustees of State Universities, Board of Corrections, Mental Health Board, State Board of Pensions and Security, Youth Services Board and others.

At the time the lawsuit was filed, blacks were filling eight of the 1,556 posts on these boards.

Gov. Wallace had testified in a deposition that he did not deliberately discriminate since he only appointed on the basis of recommendations made by his advisers and that he did not ask the race of the person being recommended.

But SPLC attorneys argued that such a system was patently discriminatory because the governor's advisers are white and recommend only whites and because the application system for appointments is informal and not known to blacks.

SPLC attorneys are now studying whether to initiate new action. Meanwhile, the lawsuit has apparently softened the governor's attitude.

A black man now serves on the Board of Corrections and another black man occupies a semi-Cabinet position as the Governor's Coordinator for Highway Safety. Gov. Wallace also now has a black administrative aide.

The vast majority of appointed board jobs, however, still go exclusively to whites.

Child neglect law

(Continued from Page 1)

edge or consent of the mother or child and the child's name could be changed at the same time.

The judges said a man claiming the rights of a natural father was thus able to withhold consent to the adoption of the child by any person, even a future stepfather, and would be in a "strong position to claim custody of the child," none of which was necessarily in the child's best interest and violated the mother's and the child's rights to due process.

The court ruled that the name change of a child "touches on his right to maintain the integrity of established family relations" and that the "preference for the wishes of the father cannot be said to serve a legitimate state interest."

The judges said the mother and the child have a right to notice before such proceedings could be held and the right to be heard.

The judges said the state's policy giving the father complete control over the child's name was unconsti-

tutional and discriminated against the mother because of her sex.

SPLC attorneys declared the judges' decision a victory for the rights of children and parents, but the immediate results have been disappointing for the four-year-old child taken from his mother here in Montgomery.

The Federal court had ordered the child returned to his mother if the state did not initiate a proper neglect proceeding within 30 days of the court's order.

Both the alleged father and the welfare department promptly filed custody petitions with the family court. Although neither petition claims that the child is neglected, efforts to prevent the family court from hearing the petitions have been unsuccessful.

At this writing, no date has been set for custody hearing. SPLC attorneys continue to represent the mother in the state court proceedings.

Court having previously awarded custody of children in divorce proceeding.—The circuit court in equity had jurisdiction to determine custody of minor children upon the death of the father, where the court had previously awarded custody to father in a divorce proceeding, and could not decline to exercise jurisdiction on the ground that juvenile court had exclusive jurisdiction. *Snead v. Davis*, 265 Ala. 229, 90 So. (2d) 825. Discussed in Rep. Atty. Gen., 1922-24, p. 426. Quoted in Ex parte Bains, 251 Ala. 46, 36 So. (2d) 470. Cited in Rep. Atty. Gen., 1930-32, p.

Marriage as affecting jurisdiction of juvenile court over delinquent or dependent infant. 19 ALR 616, 14 ALR2d 336.

Constitutionality of statutes providing for custody or commitment of incorrigible children without a jury trial. 67 ALR 1082.

Applicability of rules of evidence to juvenile delinquency proceedings. 86 ALR 1008, 43 ALR2d 1128.

Right to and appointment of counsel in juvenile court proceedings. 60 ALR2d 691.

Power of juvenile court to require children to testify. 151 ALR 1229.

§ 352. (3530) (6452) Title of proceeding; petition; examinations and summons; custody of child pending hearing; service and summons; when summons unnecessary; contempt; who shall serve papers; when rights barred.—(1) The style or title of the proceedings herein provided for shall be State of Alabama, in the matter of (inserting name of child), a child under sixteen years of age, in the juvenile court of county (inserting name of county). (2) Any person having knowledge or information that a child, residing in or who is actually within a county of this state, is within the provisions of this chapter, or subject to the jurisdiction of the juvenile court, may file with the court of said county a verified petition, setting forth the name, residence and age of the child, the name and residence of the parent or parents, if known to the petitioner, and the name and residence of the person or persons having guardianship, custody, control, or supervision of such child, if such facts be known, or can be ascertained by the petitioner, or that such facts are unknown or cannot be ascertained, if that be the fact. The petition shall state the facts which bring the child within the provisions and terms of this chapter, and it shall be sufficient for that purpose to aver that the child named therein is dependent, neglected, or delinquent, as the case may be, and in need of the care and protection

Team

(Continued from Page 1)

capital punishment at the trial court level. The "Team Defense" concept, as it is called, is the result of trial techniques learned during the Joanne Little trial and other cases argued by the Center.

Center attorneys have proved in eight cases over the past two years that death verdicts can be avoided if the right legal approach is followed. Team Defense combines law and social science in a new perspective with the client, the community, the jury and the trial. Special emphasis is put on an offensive trial strategy, from pretrial motions through the sentencing phase.

The team members are social scientist Courtney Mullin and trial lawyers Millard Farmer and Morris Dees. Ms. Mullin did the community surveys and psychological profiles of jury members in the Joanne Little trial. Mr. Farmer has been the senior defender for the Georgia Criminal Justice Council where he specialized in death

penalty cases. Mr. Dees, a founder of the Southern Poverty Law Center, has more than 15 years experience as a civil rights lawyer specializing in defending indigents against the death penalty.

Supporting the team will be Center associate attorney John Carroll, a graduate of Cumberland School of Law and the Harvard Law School, and journalists and student volunteers who will assist in pretrial surveys and jury challenges.

A key theme of Team Defense is total involvement of the client in trial decisions. Psychologists work to make the client and lawyer sensitive to the other's role. The jury quickly picks up this personal relationship and begins to see the accused as a human being. It is harder for a jury to vote death when its members have accepted the accused on a personal level.

Community-wide surveys by social scientists reveal citizens' attitudes toward the defendant, the victim, certain legal defenses, the death penalty and crime in general.

The survey results help the Team Defense make juror selections and determine whether the accused can get a

fair trial in the community where the crime occurred.

One valuable trial tool developed for the Team Defense is the careful study of the jurors' body language. Persons trained to read the nonverbal messages of the jurors can help the attorneys and the client decide whether the jury is receptive to the team's approach and what corrective measures should be taken if the response is not good.

If the accused is convicted, the Team Defense challenge is to persuade the jury to vote for life imprisonment rather than execution.

According to the new Supreme Court guidelines, the sentence is decided by the same jury which heard the evidence, but in an entirely new court proceeding. But the case put forward for mercy in most death trials is little more than having family members of the accused beg for his or her life, which does little good when the prosecutor is screaming for vengeance and for setting an example.

The Center's defense team has found that juries react more favorably to a logical and scientific approach.

Expert witnesses are brought forward to tell the jury that the death penalty is not a deterrent to crime. Complicated statistical studies proving this point are explained to the jury, using charts and plain language.

The jury also hears from witnesses who have been on death row but avoided execution through legal action. Some of these former death row inmates are now rehabilitated and lead productive lives (many murders are crimes of passion, committed by persons without criminal records and without the tendency to commit future crimes).

Prison experts, prison chaplains, theologians and philosophers testify to the jury that the death penalty is not a crime deterrent and furthermore is a cruel punishment unfit for a civilized state, violates basic moral principles and is contrary to the Judeo-Christian ethic.

The Center will try several selected death penalty cases during the next year. Each case will be carefully recorded and studied. Seminars to explain the Team Defense method will be held for public defenders and social scientists around the country.