

poverty law Report

A REVIEW OF ADVANCES IN THE LEGAL RIGHTS OF THE POOR

Volume 5 Number 2

A publication of the Southern Poverty Law Center

March/April, 1977



EXECUTIONS ARE sought by the state of Georgia for two of the children of Mrs. Fanny Watson of Dawson, Ga. Mrs. Watson says her sons, Henderson and Roosevelt, are innocent, but they face the electric chair. See Docket Update, page 4.

Mrs. Hamer rehospitalized

MOUND BAYOU, Miss. — Civil rights leader Fannie Lou Hamer was hospitalized here in serious condition during February.

The *Poverty Law Report* noted in its last issue that Mrs. Hamer was recovering from major illnesses of the past two years, but she unfortunately suffered a relapse. Friends say Mrs. Hamer suffers from a heart condition and from cancer. She earlier underwent a mastectomy.

Mrs. Hamer was born Oct. 6, 1917, the youngest of 20 children. During the 1960's, she was a leader of voter registration drives in several Southern states. She had served for several years as a member of the Southern Poverty Law Center's President's Council.

A fund to help pay her large medical bills has been established in her home town. Contributions can be sent to the Fannie Lou Hamer Fund, Bank of Ruleville, Miss. 38771.

Bail system challenged

"... Because of the presumption of innocence, the status of the accused in most criminal matters should be freedom, not incarceration. Yet, under the existing practice of requiring accused persons to buy their pre-trial freedom by paying a bond or pledging property, those without sufficient resources are stripped of these fundamental rights..."

The above quote is from the original complaint in *Mudd v. Busse*, a lawsuit filed by Indiana lawyers with the assistance of the Southern Poverty Law Center. The suit is intended to bring an end to the common practice where poor people have to pay non-refundable fees to

professional bondsmen before they can be released pending trial.

The SPLC is also assisting in a similar suit in Tennessee. That suit, *Clark v. Thomas*, seeks the implementation of a system which would allow defendants to pay fees to the court clerk rather than to bondsmen. The fee would be refunded when the defendant appears for court.

Money or property bail has historically been used to insure a defendant's presence for trial, but the practice has come under increasing attack recently as an unconstitutional abridgment of the due process and equal protection

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Disabled seek rights

ROCHESTER, N.Y. — A lawsuit to help handicapped persons gain access to public transportation here is stalled in federal court while a judge considers a request by the defendants to dismiss the suit.

The SPLC and the Monroe County (New York) Legal Assistance Corporation brought the suit to force the Rochester Regional Transportation Authority to provide buses which are accessible to persons in wheelchairs and on crutches.

The lawsuit is one of several now pending across the country as handicapped persons, often powerless in the past, are picketing, filing suits and lobby-

ing for the equal treatment promised by the Fourteenth Amendment.

Until four years ago, the disabled were not specifically protected by federal law against discrimination. But in 1973, Congress passed the Rehabilitation Act of 1973, an act similar to the Civil Rights Act of 1964 in the effect it could have, since part of the law prohibited federally funded institutions from excluding the handicapped from programs or facilities solely on the basis of handicap.

At this time, however, the regulations which would make the law effective have not been signed by the HEW Secretary.

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Neglect law improved

MONTGOMERY — Neglected and abused children are taken from their parents every day by welfare authorities in Alabama as well as in other states. Many of these children are put into shelter homes or under the care of foster parents.

The system is a necessary one, but experts are quick to admit that the chance of error is great. Who can say for sure when a child is being abused? Who

is to decide when poor parents are unable to properly care for their children? What standards are to be used?

The SPLC filed suit against welfare authorities in Montgomery when they took a child from his mother after police received complaints that the mother, a white woman, was living with a black man.

This case, *Wambles v. Comm.*, even-

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Will they give death to children? Yes.

I got a rather painful reminder of the limitations of the Southern Poverty Law Center last week. I was talking with a Center attorney about the case of Gary Lee Hawes, a 16-year-old convicted and sentenced to death in south Georgia. To my knowledge, he is the second youngest person on death row in the United States.

Gary asked us to defend him at his trial for the shooting of a person during a robbery. He was 15 at the time.

We didn't help him because we simply can't take every death penalty case. The size of our staff and our limited resources demand that we take only the cases which seem hopeless, where death seems the certain punishment unless innovative defense techniques are used.

We didn't think any jury would give death to a 16-year-old, especially one who had no prior record at all.

But we were wrong. The south Georgia jury which tried Gary Hawes gave him death, though Gary's co-defendants, his two older brothers, got lesser sentences. Is this just?

Aside from the sensitive questions of Gary's youth and lack of a prior record, this case illustrates the capriciousness of the death penalty.

There are hundreds of crimes like the one Gary Hawes is accused of every year, and I am not condoning any of them. Violence can't be justified and I am sickened when people resort to crime. It is a waste of human potential.

But out of these hundreds of crimes, how many other death sentences will be given? One? A half dozen, maybe?

It is a proven fact that the severity of the sentence depends not on the

crime, but on the defendant's race, on his level of education, his wealth and on the community in which he is tried.

I opened an envelope recently and out fell a cartoon with this punchline: "Capital punishment is punishment for those without capital." How true that statement is.

The Southern Poverty Law Center must represent indigents against the death penalty until it can be proven that death sentences, if we must have them at all, can be given fairly.

Gary Lee Hawes is a good example that we haven't yet reached that point.



Julian Bond

Neglect law procedures

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tually resulted in a precedent-setting decision in federal court in which three judges struck down as unconstitutional major portions of the Alabama child neglect law.

The judges held that the Constitution provides a fundamental right of family integrity, and that the state should not interfere, through neglect proceedings, except as a last resort and only if the due process rights of both parent and child are protected.

The case was argued by Center attorneys Pamela Horowitz and John Carroll, who considered the judges' ruling a major victory for individual rights.

Now, the director of a Montgomery shelter care operation says the ruling has had a significant impact on the way welfare authorities are handling child neglect cases.

George Holy, director of the Montgomery Group Homes, said his shelter care program handled an average of nine children per day before the *Wambles* ruling, but since the ruling the average has dropped to three.

"Most of the people in my business agree that children are better off with

Capital punishment is a treatment indistinguishable from the disease for which it is recommended.

— Leon Eisenberg

their parents in just about all circumstances, provided you can keep them with their parents," Holy said.

"Even an abused child loves his parents. There's no way you can replace that love."

Holy makes it clear that there are times when children must be separated from their parents, but that the *Wambles* ruling has made welfare officials and family court judges review each case more carefully and consider the alternatives to separating parents and children.

In the *Wambles* ruling, the judges said "family integrity" may not be disturbed unless "the child is subjected to real physical or emotional harm" and less drastic measures would not improve the situation.

The judges suggested that the state should try options such as seminars and weekly sessions on child care and the responsibilities of parenthood or should order supervision of the parents by a welfare counselor before a child was actually taken.

"We obviously need shelter homes," Holy said. "When parents throw a child out a second story window as happened in a case we had recently, you have to have somewhere you can put the child. But sometimes children get taken away from their parents and they don't know why. That does more harm than good."

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Vol. 5, No. 2

March/April, 1977

The Poverty Law Report is published bi-monthly by the Southern Poverty Law Center, 1001 S. Hull St., Montgomery, Alabama 36101.

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Bail system is challenged

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rights guaranteed by the Fourteenth Amendment.

Recent studies have also shown that whether a defendant is freed on bail may have significant effect on the outcome of his or her trial.

A New York study showed that more than half of those released on bail were acquitted at their trials, while only slightly more than one-fourth of those not released on bail were acquitted.

Not only is the jailed defendant unable to assist his attorney in preparation of the case, but a defendant who is under guard during his trial is often viewed more harshly by the jury. And the jailed defendant is unable to help support his family or to earn money to pay for his own defense.

If convicted, the defendant not released on bail has a significantly higher chance of going to prison than the defendant who was free on bail pending trial, the studies also show.

The New York study indicated that 36 per cent of those released prior to trial did not receive a prison sentence, but only 9 per cent of those jailed awaiting trial avoided prison through probation or similar measures. The difference remained as great even when the defendants' cases were otherwise the same.

The professional bonding company system is cruel not only to the defendant, but also to his or her family. Consider the case of Myrtle S. Henson, 32-year-old mother of three arrested in Nashville, Tenn., last summer.

Mrs. Henson was involved in a minor traffic accident near her home. After inspecting the vehicles and seeing the damage to be slight and that no one was injured, she drove on to her home to call the police. The driver of the other vehicle followed her, an argument developed, and the other driver took out a warrant charging her with leaving the scene of an accident.

At 10:30 that night, Mrs. Henson was arrested, her three children, ages five to 12, were taken to a juvenile detention home, and her bail was set at \$750. Mrs. Henson was unemployed and did not have \$750 or have any hope of getting that much money.

When a professional bondsman came through the jail shortly after midnight, he offered to make Mrs. Henson's bail if she would promise to pay a non-refundable "premium" of \$150 (double the usual rate) within five days. Mrs.

Henson, desperate to get out and see about her children, agreed.

She still had no way to get the money. She had barely enough for food for herself and the children. Her choice was to pay the bond and deprive her family or to return to jail. Mrs. Henson went instead to the Nashville Legal Services and a lawsuit was filed.

Stories like Mrs. Henson's are typical of the hardships caused by professional bail bondsmen throughout the U.S. The bondsmen also decide which bonds they will make on arbitrary grounds, usually centered on profit for the bondsman.

Both *Mudd v. Busse* and *Clark v. Thomas* are still pending in the courts.

Stay won in Georgia case

Team Defense attorneys Millard Farmer and Robert Altman have won a stay of execution for Wayne Coleman, one of several men convicted and sentenced to death in a sensational and widely publicized case in rural southwest Georgia.

Coleman had a court appointed lawyer who had stopped working for him, writing to him or visiting him. His execution was scheduled for Feb. 18, and on Feb. 13 he contacted Farmer and Altman.

Farmer called Coleman's former attorney, who refused even to go to the trouble of putting the transcripts of Coleman's trial in a box and putting them on the bus so Farmer could review them.

Farmer drove 300 miles to pick up the transcripts and to meet with Coleman, then returned to his Atlanta office where he and the rest of the staff worked frantically to prepare a motion for a stay of execution.

Forty-eight hours after Coleman contacted Farmer, the stay had been granted.

Why all the fuss over a man convicted of a brutal crime?

One of the justices on the Georgia Supreme Court, in his dissenting opinion to the court's upholding of Coleman's death sentence in an earlier ruling, said this:

"In summary, four . . . jurors thought that the publicity indicated that the defendant was guilty but felt

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Once on death row, Brown and Walston have made new lives



At Central Prison in Raleigh, N.C. (above) Brown, Walston and Hines faced the gas chamber after they were wrongly convicted for raping a white woman.

Glad to be back with his wife and children, Jesse Walston (below) stands proudly beside the truck he drives for Hecht Company department store, which rehired Jesse after he won his freedom.

Vernon Brown (far right) has gone back to school to learn auto body repair since his release. The skills he is learning will one day allow him to have his own business.

Jesse Walston, Vernon Brown and Bobby Hines — the Tarboro Three — had already been tried for raping a white woman, convicted and then sentenced to death in North Carolina when the Southern Poverty Law Center first heard about them.

Winning a reversal of their convictions for them and finally their freedom in 1975, Center attorneys helped Jesse get back his old job as delivery driver for the Hecht Company department store in Washington, D.C. Since then, Jesse, his wife, Deborah, and their three small children have been leading comfortable and happy lives.

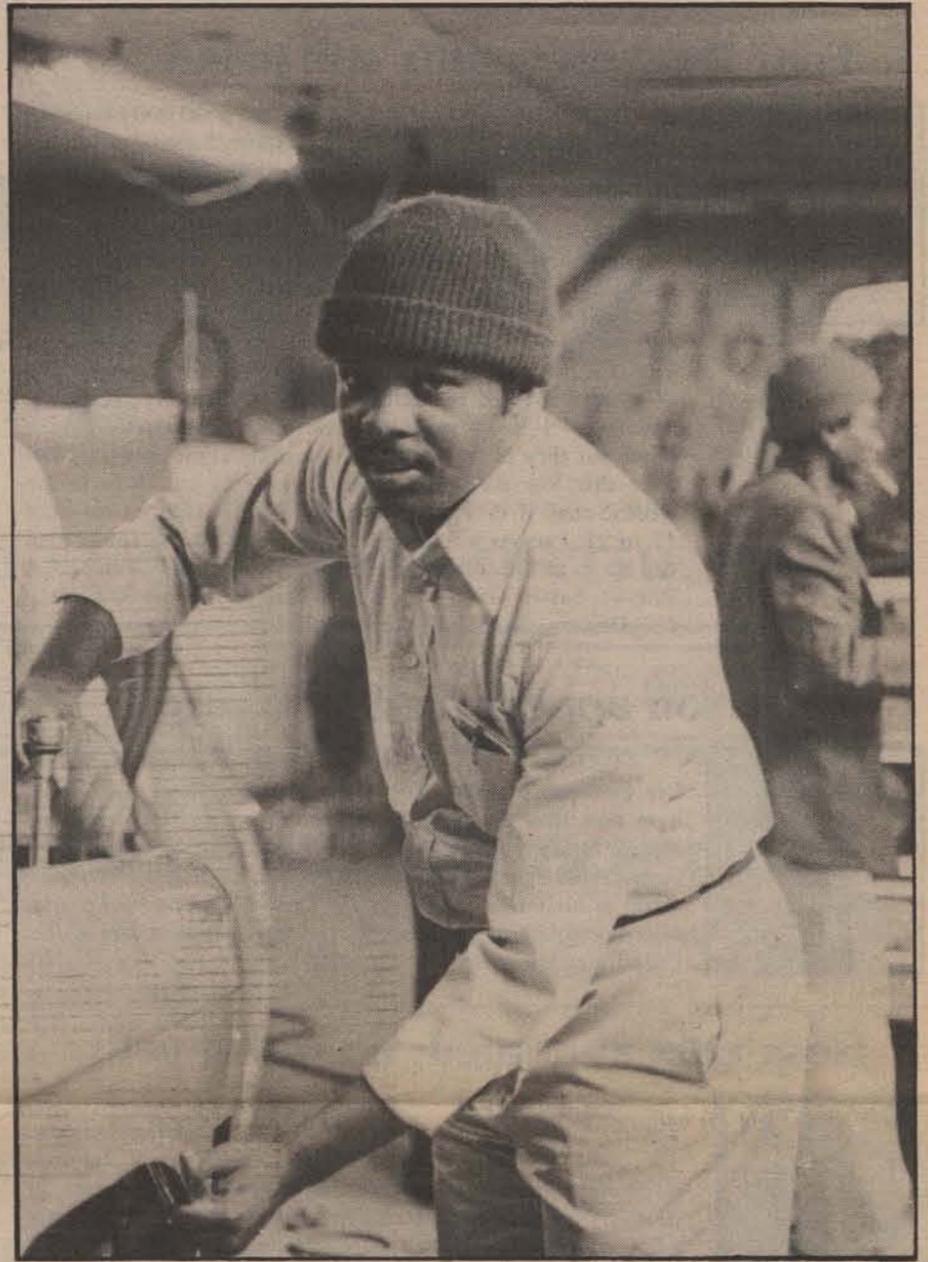
Because he is deeply grateful for what the Center and its supporters did for him, Jesse has become a Center contributor.

"What I give may not seem like much," he told a Center attorney who has kept in touch with him, "but I've seen how a lot of little people working together can get a lot of big things done. I wouldn't be free today if nobody had cared, and I want to do what I can to help the Center help others in trouble like me."

Vernon Brown, who lives in Tarboro, N.C., with his wife and two children, is studying auto body repair at the Edgcomb Technical Institute and also working at Monarch Mills.

Vernon has two more years of school to go, and he hopes to open his own body repair shop when he completes his studies. Describing himself as "a typical family man," Vernon says that thoughts of his death row experience "cross my mind sometimes, but I put it all behind me. I like what I'm doing now and I feel good."

Bobby Hines's whereabouts are unknown.



Death verdict appealed, stayed

The SPLC's Team Defense attorneys have appealed to the Georgia Supreme Court to grant a new penalty phase trial for Jesse Lewis Pulliam, a 24-year-old black man who has been convicted of the robbery and murder of a taxi driver.

Team Defense attorney Millard Farmer had argued to a Georgia trial court that Pulliam's death sentence, issued before the July 1976 Supreme Court rulings, came at a time when jurors doubted that the death penalty would actually be imposed and were simply setting a sentence which insured that Pulliam would never be paroled.

The trial court rejected the argument, and Farmer then argued the same issue before the state supreme court, which has not yet ruled.

Pulliam's execution was originally set for January, but Farmer won a stay. Pulliam's mother, meanwhile, has died.

A.B.A. won't back executions repeal

The American Bar Association rejected during its annual convention last month a proposal that the A.B.A. urge the repeal of all state death penalty laws. The vote by the organization's policy making body of delegates was 168 to 69.

Docket Update

Four Dawson youths still jailed



DAWSON, Ga. — Efforts to raise the \$400,000 needed to meet the bonds set for Henderson Watson, James and Johnny Jackson and J.D. Davenport continue, but a trial date for the four young men accused of killing a store customer during a robbery has not yet been set. A fifth defendant, Roosevelt Watson, is free on \$100,000 bond which the center raised, and he is working at odd jobs and helping his family around the house. The five young men had never been in trouble with the law before they were arrested in January of 1975. They say they are innocent, and the storeowner's testimony on which they were arrested is confusing and contradictory. A deputy admitted, "I know we don't have much of a case on these boys, but they're the only ones we could come up with." Despite this, the state of Georgia intends to put them in the electric chair if they are convicted. The five range in age from 17 to 21. Persons who would like to write to the young men can do so at the following addresses: Roosevelt Watson, Rt. 4 Box 47, Sasser, Ga. 31785, and in care of the Terrell County Jail, Dawson, Ga. 31742, for the others.

Patterson appeal filed in Georgia



CORDELE, Ga. — A Cordele judge has denied Sgt. Roy Lee Patterson's motion for a new trial, and Center attorneys have now filed an appeal of his conviction and life sentence. The Georgia Supreme Court will hear arguments on the case during April. Meanwhile, Sgt. Patterson is nearing the two-year mark in his imprisonment in the Crisp County Jail. Persons who would like to write to him can send letters in care of the Crisp County Jail, Cordele, Ga. 31015.

Ross appeal argued; no ruling yet



NEW ORLEANS — Johnny Ross's appeal for a new trial was heard by the Louisiana Supreme Court here during January. The court has not yet issued a ruling on the appeal. Johnny, once the youngest prisoner on death row, was sentenced to death by a Louisiana jury in 1975. He was accused of raping a white woman and was convicted despite conflicting testimony at his trial. Johnny maintains his innocence, and the Center's attorneys argued that he should have another trial. He is no longer subject to execution, however, since the U.S. Supreme Court ruling in July of 1976 struck down the Louisiana death law under which Johnny had been convicted. Louisiana legislators enacted a new death penalty, but it cannot be applied retroactively to Johnny. Pending the outcome of his appeal, Johnny remains in state prison. His mailing address is Johnny M. Ross, Cell 108, Louisiana State Penitentiary, Angola, La. 70712.

Women's job rights disputed



WASHINGTON, D.C. — The U.S. Supreme Court has scheduled for the end of March oral arguments on a women's rights case previously won by the Southern Poverty Law Center. Staff attorney Pamela Horowitz will argue that height and weight restrictions which have previously barred women from becoming prison guards in Alabama and other states are illegal under sex discrimination regulations. She will ask the Supreme Court to uphold the earlier decision made in Montgomery by a three-judge Federal court which ruled that the fact that prison jobs are dangerous is not sufficient reason to bar women from them. The original lawsuit was brought by the SPLC on behalf of Kim Rawlinson, who had applied for a job as a prison guard but was rejected because she was five pounds under the minimum weight set by the state.

D. C. Council votes against death

WASHINGTON, D.C. — The Council of the District of Columbia, which is similar to a state legislature in its power, adopted a resolution against the death penalty during December.

A committee report on which the resolution was based concluded with the argument "that the state's execution of people teaches its citizens that homicide is a legitimate and useful mode of resolving human conflict, making it easier then

for an individual, in a moment of passion, to justify similar action on his or her part."

Jefferson's view

I shall ask for the abolition of the punishment of death, until I have the infallibility of human judgment demonstrated to me.

— Thomas Jefferson



High steps and narrow doors bar the handicapped.

Disabled seek equal rights

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tary, now Joseph A. Califano.

Suits such as the one against the Rochester bus system are building pressure for the signing of the regulations. When that happens, it will bring a new day for people like Charles Smith, 29, who is one of the plaintiffs in the Rochester lawsuit.

Mr. Smith has been a victim of cerebral palsy since birth. He is confined to a wheelchair and is unable to use the buses of the Regional Transportation System, though the buses are supported with tax dollars and some were purchased with federal grants.

The Rochester bus system has only four buses (of 235) which are equipped with the wide doors and special lifts which can accommodate Mr. Smith's wheelchair. These four buses charge more than the other buses, and take passengers only to special locations, mostly hospitals and other service facilities.

Charles Smith cannot operate an automobile, and in the past he depended on his father to take him places he needed to go. But his father became ill recently, and Mr. Smith no longer has transportation. He is shut off from employment, shopping areas, movies, museums, sporting events and other activities which the non-handicapped take for granted.

The handicapped find such transportation barriers extremely frustrating to their campaign for acceptance by the public.

But until the handicapped have full access to public transportation, and are able to go to and mix freely with the non-handicapped at jobs and social and cultural events winning acceptance will be a long, slow process.

One victim of cerebral palsy put it this way at a recent New York demonstration by two dozen people in wheelchairs: "They portray us as poor helpless cripples. But people with C.P. grow up,

and a lot of us work, keep house and make love."

The intent of the 1973 Rehabilitation Act was to help the handicapped move into the mainstream of society. But despite the federal policy set by that act, when the Rochester transit authority bought 46 new buses recently, none of them had the special features necessary for handicapped use. Despite the federal policy, the Urban Mass Transportation Administration approved the use of federal funds to buy the buses.

There are thought to be 3,000 handicapped persons in Monroe County, New York, who, like Charles Smith, cannot use the new buses. The lawsuit filed jointly by the SPLC and the Monroe County Legal Assistance Corporation is a class action suit on behalf of all those handicapped persons.

The Rochester Regional Transportation Authority and the Federal Urban Mass Transportation Administration are among the defendants.

Stay won

(Continued from Page 2)

that they could be impartial. Another juror attended the (victims') funeral and another went to the (victims') trailer to pay his respects. A majority of the jurors knew one or more of the victims... In summary, I personally cannot make the necessary determination that the jury which imposed these sentences of death acted dispassionately."

According to Farmer, the issue of a fair trial for Coleman can't be viewed in the conventional way. In a death as punishment case, the jury must not only determine guilt or innocence, but it must pass on the circumstances and ultimately decide whether the defendant's life should be taken.

This can't be done if the minds of the jurors are "inflamed by excessive publicity," as was the case with Coleman, Farmer said.