

poverty law **Report**

A REVIEW OF ADVANCES IN THE LEGAL RIGHTS OF THE POOR

Volume 7, Number 1 A publication of the Southern Poverty Law Center January/February, 1979



Judy Ondrey

Nearly three years after their son was sent to death row, Mr. and Mrs. Bobby Lamb (right) weep in the arms of friends after a jury re-sentenced him to life in prison at a penalty-phase retrial ordered by an appeals court. At left, family friends and members of the SPLC defense team relax.

At new penalty trial

Georgian on death row given sentence of 'life'

MARIETTA, GA. — A young man who was sentenced to death in 1976 was recently re-sentenced here to life in prison after a week long penalty-phase trial. The new sentencing trial was necessitated by an error committed by the judge at the first sentencing hearing.

The defendant, Randall Ray Lamb, 23, was represented by the Southern Poverty Law Center. Lamb's mother, who had become active in prison reform after her son's 1976 death sentence, contacted Center attorneys in 1978 after she learned that her son would be entitled to a new sentencing trial.

It was easy for Center attorneys to understand why Lamb initially was

sentenced to death. "It was a brutal murder for what appeared to be no reason at all — a woman in her home by herself at night repeatedly stabbed and hit so hard in the head with a rifle that it broke the stock," said Dennis Balske, who with Morris Dees defended Lamb for the SPLC.

Balske and Dees set out to find out why Lamb, who never before had committed a violent crime, committed the murder. They found that Randall had been an alcoholic and had used addicting drugs, such as heroin, for an extensive period prior to the murder.

They discovered parents who had neglected their son his entire life be-

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Montgomery County 'at-large' plan voided

MONTGOMERY — U.S. Dist. Judge Frank M. Johnson, Jr., has ruled that the government of Montgomery County, which was changed to its present form only days after Congress passed a 1957 voting-rights bill, is unconstitutionally elected under a system that dilutes the voting power of blacks.

The judge ordered the county to discard the "at-large" system now used to elect the five-seat governing commission, and, together with the plaintiffs, to devise a new election plan in which candidates would run from individual districts.

The case, *Hendrix v. Joseph*, was filed by the Southern Poverty Law Center on behalf of T.J. Hendrix, a black man who had made repeated, unsuccessful attempts to get the county to pave a dirt road on which he and several black families lived.

The change to the at-large scheme late in 1957, which the Court found to

be racially motivated, occurred as the civil-rights movement was gaining momentum.

A year earlier Martin Luther King had led a successful integration of the Montgomery city bus system.

But it was the passage by Congress of a mild voting-rights bill in 1957 which inspired county officials to change the method of electing the commission.

Eleven days after final congressional approval of the bill, the Alabama legislature authorized the at-large system at the request of the county legislative delegation. It was the first time since 1875 that the county had been under such a plan.

In face of the odds which an at-large plan poses to racial minorities where there is racially polarized voting, no black has ever run for the Montgomery County Commission.

According to SPLC attorneys, whatever districting plan Johnson

approves is expected to create two "black" districts, giving blacks representation about equal to their proportion of the county's population. Montgomery County is more than a third black.

For the plaintiffs, it was the second victory in two tries before this Court. Johnson's original decision, in February 1976, was appealed by the county to the U.S. Fifth Circuit Court of Appeals, which remanded the case in the fall of 1977 for more detailed factual findings.

The Court's latest ruling again declared the county guilty of discrimination against blacks in employment and appointment practices, but its most significant findings were in the area of governmental services, where the county's responsiveness to the needs of black citizens was an issue.

On the basis of evidence submitted by the SPLC at the rehearing last January, the Court determined that

Montgomery County was operating a racially segregated recreation program.

The segregation was subtle by pre-1954 standards. Instead of running the program itself, the county "farmed" it out to segregated institutions.

Two directors, a black and a white, split responsibility for the county's program along racial lines, although the white director was the overall coordinator.

For black youngsters the county either staged separate activities in the black community or had no program at all.

The sole county basketball league played its schedule at a private, all-white academy. Tennis lessons and softball were also for white youths only.

Swimming lessons were provided for both races, but many black chil-

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LEGAL AID

Forcing 'cooperative federalism' to work

By Stephen J. Ellmann

Four months ago, the Center filed suit charging both Alabama and the United States with unlawful maladministration of the Women, Infants and Children Supplemental Food Program (WIC). WIC meets a particularly compelling need — to prevent the permanent harm which malnutrition in the first years of life can produce. But many other programs also fill — however inadequately — crucial gaps in people's lives, and the problems of maladministration are hardly confined to WIC. We have had many inquiries about the WIC case, and this article is meant to suggest, from what we've learned, some general principles for social welfare litigation.

It is no longer so easy as it once was to urge that the solution of a national problem is the creation of a federal program. And it is now, more than ever, a commonplace to decry the power of the federal government. In particular, the ponderous carrot of federal money is often seen as so powerful an inducement that it can turn the heads of the most self-reliant of state officials.

In fact, the relationship of federal and state governments — at least in the administration of social welfare

programs — is much more equivocal than these claims admit. As the courts often observe, a great many federal spending programs are schemes of 'cooperative federalism,' in which the states can play a very significant and independent part. To take just one example, the massive federal spending on Aid to Families with Dependent Children (AFDC) reaches the ultimate beneficiaries through separate agencies in every state. Each state, moreover, remains essentially free to decide how generous or niggardly the amounts of federal money paid out within its borders shall be.

I do not mean to imply that the only or even the main problem in various federal-state programs is state recalcitrance. The federal government is equally capable of distorting a statute or simply failing to enforce it. But where the state is the governmental unit directly administering a program, the federal government's main function is to monitor the state. The lawyer's function, in turn, is to monitor both governments and, where necessary, to compel each to carry out its responsibilities.

This can be done. On the way to a victory on the merits, however, lie both procedural and substantive obstacles.

The first question, of course, is whether the federal courts have jurisdiction of the case. As far as the fed-

eral government is concerned, jurisdiction is assured. The "federal question" jurisdictional statute, 18 U.S.C. § 1331, allows suit against federal officials regardless of how minute the dollar amount in controversy. But under this same statute, a suit against state officials can only be brought if more than \$10,000 is at stake. This sum can easily exceed the dollar value of, for example, the welfare benefits an individual client might receive over several years.

Fortunately, there are a number of ways around this problem. The first, and most certain, is to assert a substantial constitutional claim, based on the same facts, against the state officials. Constitutional claims can be brought without regard to amount in controversy, under 28 U.S.C. § 1343, and statutory claims can then be treated as "pendent" to the constitutional ones. A second tack is to change the focus: rather than adding up the annual medicare payments, for example, to see if they total \$10,000, treat the right at stake as "the right to good health," a right which is surely worth more than \$10,000. A number of cases have done just this. A third possibility, in a class action, is to focus on the total amount at stake. If the entire class is the claimant to an undivided, and massive, sum, then the \$10,000 barrier is no barrier at all.

There are other procedural ob-

stacles — such as exhaustion, class certification, and others — but they can be dealt with. The substantive law, happily, is somewhat less intricate. A host of precedents establish that the agencies which administer these programs are legally and enforceably bound by the statutes and regulations under which they act. Beyond this generalization, of course, there are complexities. Frequently, for example, the statute which creates the program does not establish any private right of action. The courts today are less receptive to implied rights to action than they once were. On the other hand, judicial sentiment continues to resist subjecting program beneficiaries to programs over which they have no say at all.

So far as the potential federal defendants are concerned, the argument over implied rights of action is unnecessary. The Administrative Procedure Act provides for review of final federal agency action and inaction in virtually every instance. The only exceptions are two: where statutes preclude judicial review (which is very rare), and where "agency action is committed to agency discretion by law." The latter exception could have been read to swallow the rule, but fortunately the Supreme Court has made very clear that few actions are committed to agency discretion in this sense.

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Payments reach workers disabled by 'brown lung'

DURHAM, N.C. — Money has finally begun to reach the first "brown lung" victims given disability awards by the South Carolina Industrial Commission, according to Candace Carraway, director of the Brown Lung Legal Center headquartered here and an associate counsel of the Southern Poverty Law Center.

But compensation has been in the form of out-of-court settlements rather than the awards to which the commission said the textile workers, who contract brown lung, or byssinosis, through prolonged exposure to cotton dust in the mills, were entitled.

Carraway said that victims of brown lung frequently are forced to settle out of court because the mills and their insurance carriers fight the industrial commission's awards every inch of the way along the commission's own appellate process and then into the state courts.

The appeals process can drag out a year-and-a-half to two years before the claimant, too sick to work and drawing no income, can receive compensation.

"We're ambivalent about settlements because they're lower than the awards, and it's clear that the mills are counting on folks to settle cheap in the face of endless appeals," Carraway said. "Still, to most folks and most lawyers these settlements are encouraging."

In South Carolina only about a half-dozen disabled workers have received compensation so far.

Here in North Carolina nearly 150 people have received a total of about \$2 million in payments. Most of these were settlements.

Carraway said that on January 22 a mass filing of compensation claims by brown-lung victims will be made to the South Carolina Industrial Commission in order to draw attention to the inadequacies of the compensation procedure.

In the past neither of the Carolina industrial commissions has been receptive to suggestions that representatives of brown-lung victims have made to improve the procedure.

Little effort has been made by either state to insure against conflicts of interest on its panel of examining physicians. Some doctors serving on these panels perform industry-funded research at the same time.

An examining physician who recently removed himself from the North Carolina panel has made it known that he is available to testify as a defense expert witness in brown-lung compensation cases.

In overall disability benefits awarded to all workers, North Carolina ranks last in the nation; South Carolina is third-to-last.



Glassroth

Boston student ends internship

Steve Glassroth, a student at Northeastern University School of Law, recently completed an internship at the Southern Poverty Law Center.

Glassroth graduated from the State University of New York at Buffalo and was a street worker with adolescents in the Boston area before he entered law school. He has also worked as a paralegal.

Under Northeastern's "co-op" system, which gives law students the chance to get practical experience while they are still in school, Glassroth has held a labor-law internship in Washington, D.C. and a legal-services clerkship in Lynn, Mass.

At the Center he interviewed prisoners on Alabama's death row for a death-row conditions suit and worked on a jury-composition appeal, in addition to other tasks.

"I believe if Robert E. Lee and Martin Luther King, Jr., were here today, their cry to us — their prayer to God — would call for the 'politics of unselfishness' — a people together. . ."

Alabama Gov. Fob James
Inaugural Address, 1979

poverty law Report

Vol. 7, No. 1 January/February, 1979

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

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In Alabama

Prisons ordered to end racial use of discipline

MONTGOMERY — The Alabama Board of Corrections, a defendant in system-wide litigation on two other fronts, has been ordered by U.S. Dist. Judge Frank M. Johnson, Jr.,

to stop discriminating against black inmates in the use of punitive segregation, a disciplinary tool.

Southern Poverty Law Center attorneys represented the plaintiff, a black

inmate, in the suit, *McCray v. Bennett*.

The judge gave the Board 60 days to devise and distribute to inmates in segregation formal guidelines for the use of the punishment.

In addition, the Court told prison officials to provide each inmate denied release from punitive segregation with a written notice of reasons for the denial.

It is thought to be the first ruling regarding racially discriminatory use of punitive segregation, but its fallout should help whites as well, SPLC attorney John L. Carroll, said.

"Up to now the rules regarding punitive segregation have been vague," Carroll explained. "The judge's ruling limits the segregation review board's discretion and should ultimately make the system fairer to all inmates."

In Alabama the segregation unit for the entire penal system has been located at Holman Prison, the state's maximum-security facility near Mobile. All inmates sentenced to punitive segregation were transferred "down south" to Holman.

There they were placed in tiny, single cells and kept in a "lock-down" situation for 23½ hours a day.

Although they were permitted infrequent visitation, they have never

had contact with the general prison population.

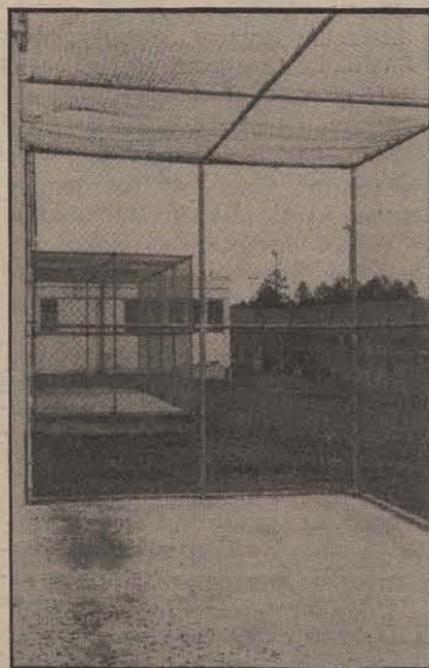
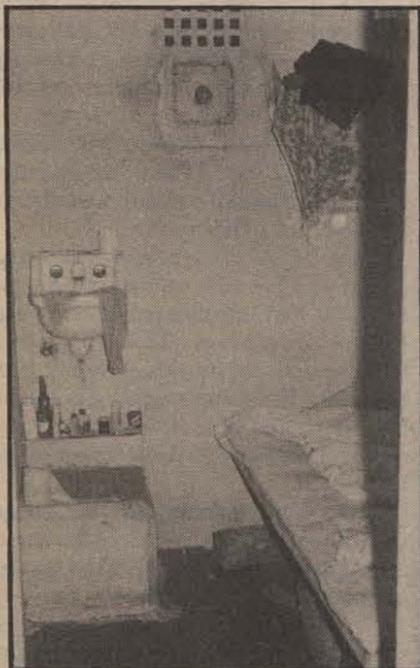
Punitive segregation has been reserved only for inmates guilty of "major infractions," but the range of violations encompassed by the definition of this term has been broad. It could mean anything from "insubordination" to violence.

Once sentence was passed — usually for an indefinite term — each prisoner's case was reviewed by a board of prison officials which met every 60 days.

The board deliberated quickly, normally reviewing about 100 cases in six-and-a-half hours — or roughly three or four minutes per prisoner.

Center attorneys discovered great disparities in sentences given for similar offenses. In one instance a black inmate served 120 days in segregation for "aiding and abetting the violation of institutional rules," while a white prisoner was released for the same infraction after 33 days. Past records did not always explain the discrepancies.

In 1977, 92 of 95 inmates placed in segregation for insubordination were black.



When an inmate is put in the 'doghouse' (left), prison slang for isolation, he is locked up for all but a half-hour each day. The other 30 minutes he may spend exercising in a fenced-in pen (right). A federal judge has ordered the Alabama Board of Corrections to draw up guidelines to prevent past abuses of punitive segregation.

Like lovers, ties of 'feds,' state, tangled

(Continued from page 2)

What remains is "merely" the gathering and analysis of the facts. Inevitably this task will vary from case to case. Still, some common features may appear, particularly in large cases. First, the relationship of the state and federal governments, like the tie of lovers, is tangled. The federal government commonly will be reviewing the state's annual proposed plan of evaluations, conducting a management evaluation, possibly reviewing reported violations, and in any event communicating off and on about program matters throughout every year.

Second, the range of significant aspects of the program's actual operation can be very wide. Programs may vary from county to county within a state, and in ways which the state's own administrators are not well aware of. The program's beneficiaries may be entirely content with aspects of the program that abstractly seem questionable, and conversely are very likely to have complaints which an outsider would not anticipate. The upshot is that discovery from the other side is not enough, and that what is needed to supplement it is wide contact with the people whom the program affects.

Fully developed, a lawsuit of this kind is a powerful weapon. The claim for relief can be compelling, both in the eyes of the court and in the eyes of the public. And the lesson that the beneficiaries are not voiceless, passive subjects of the program's action is in itself an important one to teach, and to learn.

Legal Aid is a rotating column for SPLC attorneys.

Still Life: Inside Southern Prisons

Study conveys sterility of prisons

Stupid, this whole system is stupid, there's no rehabilitation here, just work and useless expenditure of energy and harassment. God, I want out of here. I'm rehabilitated by fear of spending the rest of my life in this futile environment.

William O. Causse
in *Still Life*

For longer than there have been prisons in the South the Southern penal system has been the object of reform movements. It was public outcry that ended the convict-lease system early in this century.

The latest in the long line of attempts to direct attention to the state of the region's penal system is the winter issue of *Southern Exposure*, a quarterly magazine published by the Institute for Southern Studies at Chapel Hill.

The single issue is called *Still Life: Inside Southern Prisons*. It is a readable blend of essays by penologists, academics, journalists, and prison reformers and of testimonies from behind prison walls.

The magazine is organized around the topics of who goes to prison in our society, what it's like being there, and what the alternatives to incarceration are.

A fourth section deals with capital punishment, or State violence, in the South, the most execution-prone region of the country. In it is an article on John Spenke-link, the man Florida may kill in the electric chair this Spring.

Some of the best writing and most informative reading in *Still Life* is found in "Behind Walls," a section dealing with the principals of Southern prisons, prisoners and institution officials.

One story takes the reader behind the walls of Angola, a Louisiana prison often called the "Alcatraz of the South," and typical of many of the worst problems of Southern prisons.

According to the author, the word "Angola" derives from a Latin term meaning "place of anguish."

For its inmates it has been all of that. In 1951 37 of them severed their left-heel tendons with razor blades to protest their brutalization.

In slave times Angola was an enormous, productive sugar plantation. Like other Southern prisons, whose officials are among the staunchest advocates of free enterprise, Angola is still run as a farm, and with an eye to profit. It has been that way in the South since prisoners were rented out to planters, mineowners, and politicians.

In 1975 a federal judge declared conditions at Angola unconstitutional.

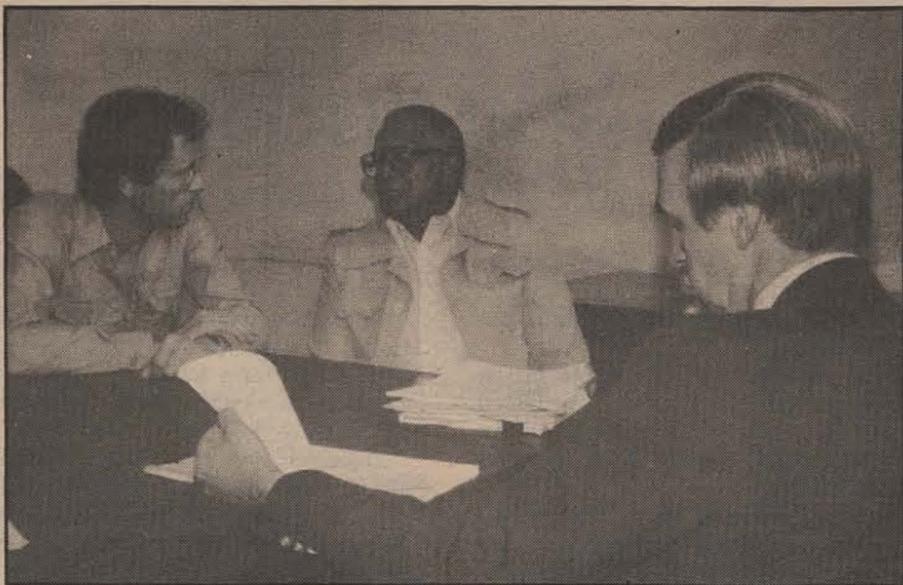
"When the Preacher Carries Keys," an excellent piece written by the co-director of a North Carolina prison ministry, asks whether the prison chaplain can serve two masters — God and the State — and still serve the needs of prisoners.

When the preacher carries keys, writes the author, "the justice of God becomes indistinguishable from the justice represented by the prison system."

"Behind Walls" ends with separate interviews of three generations of Alabama prison guards from one family — father, son, and grandson. One hopes that the battle-some old man, who thinks that "[t]he criminals has absolutely took this country over," and the grandson studying for a M.S. in correctional counseling may represent an evolution in attitude that symbolizes more than just a generation gap.

Still Life is an excellent guide to Southern prisons. Without being maudlin it conveys the stillness and sterility, the "useless expenditure of energy" of these holding-pens for society's human expendables.

Copies of *Still Life: Inside Southern Prisons* may be obtained for \$3 per copy from the Institute for Southern Studies, P.O. Box 230, Chapel Hill, NC 27514.



Morris Dees (left), Center attorney, and T. J. Hendrix (center), plaintiff in *Hendrix v. Joseph*, wait to be interviewed by a television newsman after a federal judge ruled the Montgomery County Commission unconstitutionally elected. Representation is based on an at-large system implemented just days after Congress passed a law in 1957 to make it easier for blacks to vote.

Judge orders county divided into districts for elections

(Continued from page 1)

dren were bused to a black community center at one end of the county for their lessons even though they lived within walking distance of the segregated academies where lessons for whites were given.

"In simple terms, the county recreation program is both separate and unequal," Johnson said in the opinion. "Had these factors been presented twenty years ago, they would have occasioned little surprise.

"Offered as current practices, they represent startling proof that the Commission is little more responsive to the black community than it was twenty years ago."

Investigation performed by the Center after the case was sent back to Johnson's court in 1977 showed that blacks were deprived of additional county-government services that whites generally enjoyed.

Before the lawsuit was filed no guidelines existed for setting paving priorities. As a result, roads where whites lived tended to get paved; those on which blacks lived stayed dirt.

Three-fourths of the households on dirt roads were black before the plaintiffs went to court. Since then the county has undertaken an ambitious paving program.

Predictably, most of the work has been done in the black community.

Unknowing, Center helps win case

LIVINGSTON, Ala. — Shortly before the defense was to begin its case in a death-penalty trial here recently, the prosecutor agreed to settle for life in what Southern Poverty Law Center attorneys agree is a model illustration of the way the Center can help local attorneys win capital cases.

In this instance the Center wasn't even aware it had helped until the trial was over.

Late last fall David Reid, a private-practice attorney only four years out of law school, was appointed to represent a young black man in a capital murder case. It was Reid's first, and the state was asking for the death penalty.

Reid was determined not to lose, though he didn't know exactly where to start, and the facts of the case were ugly: an execution-style killing of an elderly white storeowner during a robbery.

A fellow attorney familiar with the case dropped by one day to give Reid some material on trying death-penalty cases. It turned out to be the SPLC's motion book on capital cases and a memorandum on the legal arguments supporting the granting of state funds to pay for experts to assist in the defense of an indigent.

"It was like an angel bringing help," Reid said later. "I pored over everything I could, and it seemed like

it was talking to me."

Out of his study came ideas for 17 pretrial motions. In addition to the usual ones, Reid asked to "voir dire" the Court, a very capital-punishment prone judge.

He also challenged the exclusion of blacks and young adults from the grand jury and petit jury rolls. He moved to restrict the prosecutor from exercising strikes in a racially-biased manner. He asked for individual sequestered voir dire.

Many of Reid's motions were denied, but the Court and prosecutor got the message — Reid would wage a serious defense.

"Before the case began and prior to the pretrial motions, the state said they wanted to fry him [Reid's client], that they wanted an execution," Reid said.

But strangely, after the prosecution rested, the D.A. approached Reid and asked him if he'd accept life.

He did, but not before calling Clinton Duffy, the former warden at San Quentin, and Don Reid, the Texas Associated Press reporter who witnessed more than 150 executions, to the stand to put their testimony into the record — for good measure.

The courtroom was filled for the brief trial, but Reid said he didn't feel overwhelmed.

"I felt like there were a number of

Man leaves death row, re-sentenced to 'life'

(Continued from page 1)

cause of their own problems, but who loved their son and wanted to help him. And they found a changed Randall Lamb, who had learned to live without drugs and who wanted to live to help others in prison.

Finally, Dees discovered in the middle of the retrial that one of the drugs Randall was using in the weeks immediately prior to the murder, known as "horse tranquilizers," had been voluntarily taken off the human market by its manufacturer because it caused unexplainable violent behavior in those who took it — sometimes days or weeks after its consumption.

The trial itself ran eight days, going well into the night and through the weekend. The stress left some of the jurors, the defense, and members of the victim's family in tears at the verdict.

The proceedings were the subject of considerable publicity in Marietta, a suburb of Atlanta.

Using the publicity to their advantage, Balske and Dees were able to convince the judge to give them individual, sequestered voir dire. In this way they were able to interview each prospective juror individually and outside the presence of other jurors.

"In a death penalty case you can be virtually assured of a life sentence if you can obtain this type of voir dire, because, among other things, you can discover in detail how jurors feel about capital punishment and how they will react to your defense and your client," he said.

In all, more than 60 individuals were examined in nearly five full days

of juror selection. Center attorneys were able to select jurors who they felt would be open-minded and sympathetic to family, drinking and drug problems, and who would be reluctant to impose the death penalty.

The prosecution presented essentially the same evidence it had produced at the first trial, including Lamb's confession and gory photographs of the victim.

The defense presented selected members of the Lamb family, who described Randall's childhood of neglect and lack of discipline.

They brought forth Randy's young friend who not only sold Randy drugs, but who had encouraged Randy into heavier drug usage. This friend had been so sobered by what Randy had done that he had quit taking and selling drugs, and he is now a model citizen and head of the youth program at his church.

Next, a psychologist testified about the delayed, violent effects of the horse tranquilizers Randy had taken in the weeks preceding the murder. The defense also presented two other responsible persons who had seen Randy change since 1976, both of them ministers. These two, an 83-year-old Seventh Day Adventist elder and a young Presbyterian woman, had visited Randy numerous times and seen a gradual transformation in him.

Randy took the stand as the last defense witness and explained his life and the horrible act he had committed. He told of the changes in his life since 1976 and asked to be given a life sentence.

During closing argument the defense stressed that there was no excuse for Randy's conduct, including his heavy alcohol and drug usage, but that a life sentence would protect and serve society as well as would a death sentence.

After approximately ten hours of deliberation, the jury returned a unanimous life sentence verdict.

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