

poverty law **Report**

A REVIEW OF ADVANCES IN THE LEGAL RIGHTS OF THE POOR

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USDA errs

WIC funds misallocated; Alabama loses \$1 million

MONTGOMERY — The use of the wrong formula by the United States Department of Agriculture (USDA) in computing the distribution of funds for the Women, Infants and Children (WIC) nutrition program has caused the misallocation of millions of dollars of WIC funds, according to Southern Poverty Law Center attorney Stephen Ellmann.

Despite USDA's formal publication of the funding formula on two separate occasions, the actual allocations by the Department bore only the faintest relation to those prescribed in the published formula, Ellmann said in an amended complaint filed in federal court here.

The case, styled *Wimbley v. Bergland*, also contends that USDA's misinterpretation of the available data further distorted its results.

The Department sought to use census data to determine the number of

needy children in each state, and in the country as a whole — an important element in the allocations.

Inexplicably, the Department misinterpreted the data and as a result further underestimated the funding due for Alabama.

Based on calculations using the proper funding formula, and correct data, the State of Alabama apparently is losing over \$1.1 million in fiscal year 1979.

Consequently, the number of WIC participants in Alabama has dropped sharply. The funds which the state should have received would provide benefits for over 3100 persons.

The Center seeks to compel USDA to restore to the State of Alabama the funds of which it was mistakenly deprived and to force the State to spend the entire sum by providing benefits

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Because of a U.S. Department of Agriculture error the WIC allocation to Alabama was slashed for fiscal year 1979. As a result, benefits were cut off to hundreds of people. Others who were eligible for benefits, like this family, lost out because the counties in which they live were deprived of funds to start up the program. A third of the State's counties do not yet participate in WIC.

Troopers skirt trial, settle out of court

MONTGOMERY — The State of Alabama agreed last month to end discrimination in hiring, promotion and disciplinary procedures against its black state troopers.

There were no black state troopers in Alabama before 1972, when U.S. Dist. Judge Frank M. Johnson, Jr., ordered the state to hire one black for each white hired until the percentage of blacks on the force equalled the percentage of blacks in the Alabama population — about 25 percent.

But even after the Court's order, few blacks were hired, and those hired were often treated unfairly by their white supervisors.

This latest settlement provides for the immediate promotion of blacks to the rank of corporal, a position never before held by a black; the institution of

formal grievance procedures for blacks who feel they are being discriminated against, and the introduction of a departmental race-relations program.

The settlement was reached in *Paradise v. Hilyer*, a lawsuit originally filed by the Southern Poverty Law Center in 1972. Judge Johnson's ruling in that case was the first to require ratio hiring of public employees in the South.

But by 1975, with the trooper force still 95.5 percent white, it became evident that the Court's ruling was being frustrated, and Center attorneys reopened the case. The director of public safety at the time testified that, acting on then-Gov. George Wallace's direct order, the Department had frozen hiring. No whites or blacks were being employed, though the numerical strength of the trooper force had fallen below

1972 levels.

Judge Johnson stopped that obstructionist tactic and the case was closed again.

Between 1975 and 1977, Center attorneys heard a chorus of charges from black troopers that they were being harassed, passed over for promotions and choice assignments, and subjected to stricter discipline than white troopers.

Investigation by the Center proved the black troopers' complaints to be substantially true. Center attorneys Dennis Balske and John Carroll felt that the settlement would remedy these problems. They also felt that it provided as much relief as could have been obtained through a trial.

"For example, we were convinced that because of the unfavorable law in the area of promotions, it would have

been difficult to obtain the immediate promotion of any blacks to remedy past discrimination. Through settlement we won an agreement from the Department of Public Safety (DPS) for the immediate promotion of qualified blacks to corporal," Balske said.

The Department further agreed to validate its promotion procedures to ensure the fairness and objectivity of all future trooper promotions.

DPS agreed to create a thorough grievance procedure to handle future problems and to clear up old grievances. A three-member disciplinary review board, one member each to be appointed by the plaintiffs, the defendants and the Court, will examine all allegedly racially

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LEGAL AID

Picking the jury in a death case

In December of 1978, Southern Poverty Law Center attorneys Dennis Balske and Morris Dees defended Randall Lamb in a death case. Randall, a white 21-year-old male, brutally shot and stabbed a neighbor woman for no apparent reason. The crime took place in a middle-class neighborhood in Marietta, Georgia, in 1976. A jury found Randy guilty in 1976 and imposed the death sentence. The Georgia Supreme Court affirmed the guilt conviction but reversed the penalty phase of the trial and ordered a new sentencing hearing. Center attorneys represented Randy in the new penalty-phase trial that resulted in a life sentence for him.

Randy, like most capital defendants, was guilty with no chance for a factual defense. Avoiding the death penalty with a life sentence is considered a victory. To accomplish this goal, it is essential to select the right jury. The following is a chapter from the Center's recently published trial manual, *Voir Dire for Capital Cases*.

FINDING THE LEAST DEATH-PRONE JURORS

The key to jury selection in a death case is to select, from those jurors who believe in the death penalty, those least likely to vote death.

In the Joanne Little case, we conducted a county-wide phone survey of a thousand randomly selected people to determine what types of people had pro-defense attitudes, and vice versa. With this information, we quickly placed each potential juror in a broad category. We learned from the survey that pro-defense jurors had, as a rule, the following characteristics: they had a high school or better education and little or no church attendance; they came from Jewish, Unitarian or Episcopal backgrounds rather than Baptist, Church of Christ or Assembly of God ones; they read magazines such as *Psychology Today*, *New Yorker*, and *Harper's* rather than *Reader's Digest*, *Southern Living* and *Christianity Today*; they had no military background and were Democrats with incomes in excess of \$15,000 who had lived or traveled outside the state.

Jurors with these characteristics tended to: (1) believe that a person was probably not guilty because he or she had been indicted; (2) not fear going out at night in their neighborhood; (3) not see crime as a major problem; (4) not believe in the death penalty; (5) not be in favor of strict censorship; and (6) believe Joanne Little was innocent.

This type information is of value only in the most general sense. It is best to view each juror individually and with an open mind. One of the most pro-defense jurors in the Joanne Little case was a tobacco farmer's wife with little advanced education, very active in her Protestant church, and who read *Reader's Digest*. In answer to a voir dire question asking that she relate examples of prejudice she had seen, the juror told a moving story of how the tobacco farmers took advantage of migrant workers. She left the stand in tears.

To find the least death-prone jurors, determine their attitudes on the death

penalty. Let the juror tell, in his or her own words, why he or she favors executions. Ask: "Tell me, Ms. Juror, why do you believe in the death penalty?" and not, "Do you believe in the death penalty because you think it is a deterrent?" Don't suggest answers. Let the juror talk. If the juror says he or she does not really know why he or she favors executions, then go into various common reasons.

If the juror expresses a fear that, if they give life in prison, the defendant will be back on the street in ten years, you should face it square. The Manson television special ended with the announcer nervously noting, "Charles Manson will be eligible for parole in 1979." The announcer failed to say that the likelihood of parole would be remote to none. If the juror doubts that life in prison will adequately protect society, have he or she explain that answer. Ask if they have confidence in the state officials who are trained in penology to look after society's interest. We have even gotten the court to charge jurors that it is not their responsibility to be concerned with when the defendant might be paroled as a factor in considering whether to give a life sentence.

Very careful attention should be paid to jurors' answers and body language when they discuss the death penalty and life in prison. The juror who says, "I don't think much of life in prison because the taxpayers shouldn't have to feed a person for life," might be telling you he or she values money more than human life or that he or she is very insensitive to a person who makes a mistake.

Other fruitful areas of inquiry on death-penalty proneness are:

1. Law-and-Order Attitudes

Find out what the juror feels about crime in the community, severity of sentences, fear of home robbery or personal bodily harm, technical legal defenses, and prison reform.

2. Rehabilitation

One of the main reasons a death-prone juror will vote life is the belief that the defendant has a good chance of rehabilitation. If the juror says that few people can really change their life habits, be careful. Use an indirect approach to the subject. Ask for examples of people they might know about who committed unlawful or improper acts and then changed in later life. Ask what they think about counseling services, psychologists, etc. This is all relevant since it concerns mitigating circumstances, which have been construed to include any possible factor a sentencer should consider in setting punishment.

3. Attitude Toward Victims of Crime

A favorite prosecution closing argument appeals to sympathy for the victim: "This defendant, who now wants you to give him mercy, showed no mercy when he acted as judge, jury and executioner that cold December night as he put five bullets in the head of Mrs. Goodright." Ask the juror what relationship there should be between sympathy for the victim or victim's family and setting the punishment. Educate the juror on the role of a sentencer. This line of inquiry can sensitize the

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Law Center sues to obtain job in corrections for ex-felon

MONTGOMERY — A law that stereotypes ex-felons as incorrigible is being challenged here by Southern Poverty Law Center attorneys on behalf of an applicant for the position of a state pardons and paroles officer.

Eugene de Valera, the plaintiff, has felony convictions from three states, including Alabama, which automatically bar him from eligibility for employment as a parole officer.

There is no room in the law for consideration that the State of Alabama has formally pardoned de Valera for his conviction here; or that he has graduated from a criminal justice program at a state university in Alabama; or that he has worked as a consultant with numerous correctional facilities, including one in this state.

Alabama law categorically excludes ex-felons from consideration for employment as pardons and paroles officers.

"Two years ago the law was more flexible on this point," Dennis Balske, who is handling de Valera's case for the Center, said. "At that time pardons and

paroles officers were reclassified by the State as law enforcement officers in order for them to receive higher pay and better benefits."

"But an effect of that action was to require parole officers to be hired like other law enforcement personnel under the Peace Officers' Training and Standards Act, which excepts applicants convicted of felonies."

The Center will argue that due process entitles each applicant for employment to individual consideration. "A person with a post-release record of accomplishment like de Valera's might be far better qualified than many others for this kind of work," Balske said.

USDA misallocates millions of WIC funds

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to people eligible for the WIC program.

Ellmann contends that the easiest way to rectify the funding error would be to distribute the amounts due out of WIC funds which have accumulated, unspent, from past operations.

These funds total well over \$14 mil-

lion, and could compensate every state which has been damaged by USDA's actions without taking funds away from any other state.

"That would be the simplest way to set things right," Ellmann said, "but the Department of Agriculture is now planning to redistribute the unspent money without regard to its past viola-

tions of the law."

The error was discovered by Judith Currie, a program analyst at the Atlanta-based Southern Regional Council.

Not surprisingly, numerous other states are concerned about the misallocation, and legal action is contemplated in three other states.

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ROY PATTERSON

Jury challenge of Patterson to be heard

CORDELE, Ga. — Roy Lee Patterson, a black Marine sergeant, was tried and convicted here in Crisp County in 1975 under a jury system which excluded half or more of the eligible blacks from jury service.

Patterson's attorney, John Carroll of the Southern Poverty Law Center, will try to win a new trial for him by challenging that jury system in the Georgia courts.

Crisp County's population, for the ages eligible for jury service, is 34.1 percent black. But the pool of jurors from which juries are chosen to hear criminal cases — Patterson's and others — was only 11.2 percent black in 1971, only 12.5 percent black in 1973, and only 18.9 percent black in 1975.

Such systematic exclusion of blacks from jury service violated Patterson's constitutional rights, Carroll will argue. If the appeal is unsuccessful in the state courts, it will be taken to U.S. District Court in Macon, Georgia.

Patterson was convicted and sentenced to life for the 1975 shooting deaths of two Cordele law officers. Strong evidence in the case suggests that the shootings were in self-defense.

Center moves to prevent execution

Attorneys for the Southern Poverty Law Center have asked the Alabama Supreme Court to block the execution of John Louis Evans III, because of a fundamental error which occurred in his trial.

The Court has scheduled Evans' execution for April 6.

Like Gary Gilmore, Evans has asked that his appeal be dropped and that he be allowed to die. He has often said that death would be preferable to the conditions on Alabama's death row.

A suit challenging those conditions has been filed but has not yet been tried.

The execution of Evans would be the first in Alabama since 1965.

Experts run series of tests

Health conditions on death row cited

HOLMAN STATION, Ala. — After examining Alabama's death row at Holman Prison here, a handful of experts in the fields of public health, sociology, psychology, nutrition, and corrections has concluded that conditions pose a health and psychological hazard to death-row inmates. Alabama penal officials contend these conditions are justified by security considerations, but these experts disagree.

The experts were asked to perform their studies by the Southern Poverty Law Center, which plans to use the findings at the trial of a suit brought by death-row inmates challenging the conditions of their confinement. The case is styled *Jacobs v. Bennett*.

The group, which consisted of Dr. Ted Gordon of the District of Columbia Environmental Health Administration; Ms. Judy Wilson, a nutrition specialist; Dr. Stanley Brodsky, associate professor of the Center for Correctional Psychology at the University of Alabama; Robert Sarver, professor in the Graduate School of Social Work at the University of Arkansas at Little Rock and former Arkansas commissioner of corrections; and Dr. Robert Johnson, professor of sociology at American University, concluded that:

- Locking down inmates for 23 and a half hours a day in 5 x 8 foot cells and severely restricting their contacts with other people, including family and friends, constitutes a health and psychological hazard to 70 percent of the inmates so confined;

- The diet of death-row inmates, other than being repetitive, unappetizing, and customarily served cold, shows a calcium deficiency that is likely exacerbated by a superabundance of phosphorus and by the extreme stress of confinement;

- The concrete-block toilets in each 5 x 8 cell are virtually uncleanable because of their porousness, and are breed-

ing grounds for disease;

- Security in the institution would not be jeopardized by allowing death-row inmates some freedom of movement and giving them some privileges accorded inmates in the general population.

The confinement of death-row inmates in isolation began relatively recently in Alabama. For most of the period before the state's old death-penalty law was struck down, inmates condemned to death were locked down in more spacious, but by no means adequate, cells accommodating as many as six or eight individuals.

Then for a relatively short period just preceding the 1972 ruling, inmates on death row were locked down in solitary, but "only" for 10-12 hours a day.

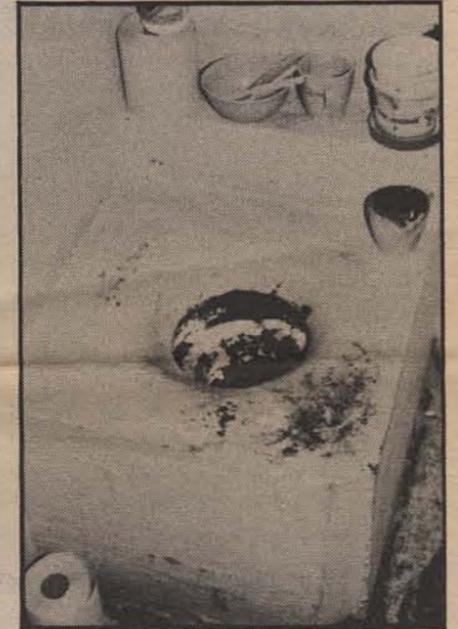
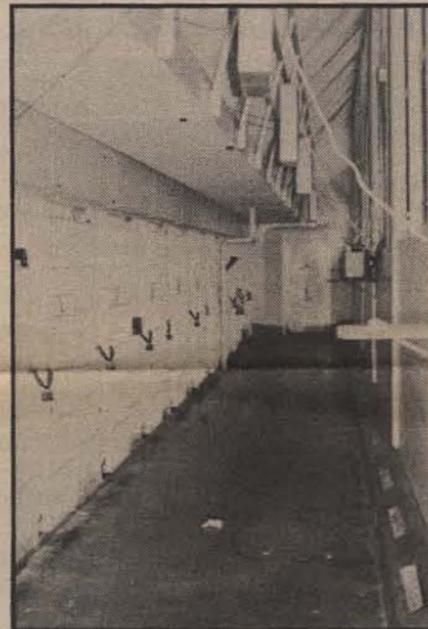
But since the passage of the current death-penalty statute in 1975, persons

sentenced to death have been locked down for 23 and one-half hours a day in 5 x 8 foot cells.

Prison officials contend the lockdown is a security measure, claiming that all death-row inmates must be isolated because of the nature of their crimes and sentences.

Center attorneys contend that death-row inmates, like all other inmates, should be examined and classified according to the security risk each presents.

"Death-row inmates are confined in segregation not by virtue of a process which has determined them to be rule violators, not by a process which has found them to be institutionally violent, but rather, simply, because they are under sentence of death," Center attorney John Carroll said.



These photographs depict conditions on death row at Alabama's Holman Prison. Inmates are kept locked in tiny cells for all but a half-hour each day; their toilets are simply concrete holes built into their cells.

Juror questioning must be thorough

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juror to avoid being taken in by the prosecutor in closing and to check the natural tendency to empathize with tearful family witnesses.

4. Authoritarian Indicators

Authoritarians are people who defer to those in authority and almost blindly follow the rules or regulations governing whatever they might be doing. This is a tricky area to play amateur psychologist. Many people with authoritarian characteristics are good defense jurors and oppose capital punishment. The National Jury Project published a booklet that includes a good discussion of authoritarianism.

5. Liberal/Conservative Indicators

The best questions to detect a liberal versus a conservative philosophy are not allowed by most courts. If you could learn whether the juror would vote for George McGovern or Ronald Reagan, preferred Marlon Brando to Clint Eastwood, would employ a gay schoolteacher, or would invite a black home to dinner, you could quickly categorize the panel. The next best thing is to check reading habits, overall penal attitudes, child-raising practices, hobbies, etc.

6. Emotional Factor

Taking a person's life is a very emotional experience. Look for jurors who show their emotions easily. Much of the penalty-phase trial consists of the defendant's family and loved ones begging the jury to have mercy. The defendant's background probably consists of family abuse, a parent who used alcohol excessively, poor economic conditions, and generally a deprived environment. A strong case of sympathy can be made for the most hardened criminal. Post-trial interviews have shown that jurors go through a very traumatic personal experience in death cases. One of the male jurors in the Lamb case related to his fellow jurors during deliberations his experiences as an alcoholic, no doubt feeling sympathy for Randy.

Playing on sympathy can backfire. If you feel your client should not die, get this feeling across to the jury through evidence. Phony attempts to con the jury with tearful relatives could give the prosecutor an opening to compare the plight of the victim's family.

7. Non-verbal Responses

Jurors say more with their eyes and bodies than with their mouths. Do they avoid looking at the defendant? Do they

partially cover their mouth when answering questions about being fair in sentencing? Do they make obvious visual gestures of sympathy to the victim's family? If you can't have a body-language expert to assist you, study some good books on body language. Body language, like any other factor, is only part of the analysis and should be used with care.

In conclusion, you should be cautioned that not all of the above ideas can or should ever be used with every juror. If you, the client, and your jury selection team get good feelings about the juror early in the voir dire, cut the questioning short. If you have lingering doubts, go deeper into certain areas. The only person you might educate with continued questioning of a good juror is the prosecutor. Prosecutors often see jurors as character types, i.e., they consider white males over forty in blue-collar jobs to be pro-prosecution. The prosecutor might not have understood what the forty-year-old truck driver was telling you when he related the problems he had with his son's drug use.

A description of Voir Dire for Capital Cases, and an order blank for your convenience, appear on page 4.



From having their heads beaten at the Edmund Pettus bridge in Selma in 1965 to being part of a recruitment poster in 1978, blacks have come a long way with the Alabama State Troopers. A settlement just reached in the discrimination case filed against



the troopers in 1972 may mean the official end of decades of racial bias. The State was required in 1972 to hire blacks for the trooper force. Now it has agreed to stop discriminating against the black troopers who have been hired.

Blacks win promotions; grievance plan agreed on

Continued from Page 1

discriminatory disciplinary actions against black troopers. Those confirmed to have been racially motivated will be stricken from the trooper's file.

Second, an Equal Employment Opportunity Program will be set up within DPS to conduct race-relations classes at the cadet academy and for each supervisory in-service training program held by the Department.

An EEO officer specially trained in race relations will also be appointed to each state trooper district.

In apparent response to the re-

opening of the case in 1977, the Department belatedly adopted measures to meet hiring requirements of the Court's order and to cover up evidence of discrimination against then-employed black troopers.

Blacks were hired in greater numbers, and only weeks before the scheduled trial date the ratio of blacks-to-whites hired since 1972 reached the mandated 1:1 figure.

Similarly, the attrition rate of black troopers declined sharply between September, 1977, and the present. Fewer were fired or forced to resign and the

rate of attrition among black troopers now approaches that of whites.

Trooper officials have also improved their policies for job transfers and initial assignments. Prior to the latest reopening, transfer requests of blacks were disapproved at a rate twice as great as whites, but since that time the disapproval rate has evened out exactly.

For the period following the Court's order through September 1977, black troopers received only 7 percent of their first choices for assignments, while whites received 39 percent of theirs.

This disparity was narrowed when

the Department made its most recent assignments in November, 1978. Black graduates were given 28.6 percent of their first choices compared to 43.8 percent for whites.

Still, blacks continue to be disciplined at double the rate of their white counterparts. From 1972-1978 blacks received 330 disciplinaries to 89 for whites, a ratio of 4-1.

The Department of Public Safety will remain under court order at least until the number of black officers reaches the 25 percent level.

1972 case reopened

Judge sets August trial date for mental health suit

MONTGOMERY — The State of Alabama's system of caring for its mentally ill and mentally retarded citizens, declared unconstitutional by a federal judge in 1972, is being re-examined to determine if it now meets the standards set out in that ruling.

The case, *Wyatt v. Hardin*, was a landmark one in the development of legal principles guaranteeing the adequate care and treatment of mentally ill and mentally retarded people committed by the state.

U.S. District Judge Frank M. Johnson, Jr., who has heard the suit throughout its pendency in the courts, responded to the evidence before him in 1972 with detailed orders designed to rectify past abuses and prevent their repetition.

The mental retardation phase of the case was the subject of intense discovery last year, and was brought to trial by the U.S. Department of Justice, the Mental Health Law Project of Washington, D.C., and the Southern Poverty Law Center, in November.

At that time the Court heard almost two weeks of testimony, largely from expert witnesses, concerning the state's care for the mentally retarded. The court is not expected to hand down a decision in that phase of the case for

some time.

Meanwhile, discovery has begun, and the first wave of depositions set, on the mental health side of the case, which is tentatively scheduled to be tried in late August.

"The issues of greatest concern in this phase of the case — the patient's physical environment and treatment, the qualifications and numbers of staff people, and inadequacy of state efforts to move people out of institutions and back into community settings — were also the main issues on which the mental retardation trial was based," SPLC attorney Stephen Ellmann said.

Preliminary investigation by the plaintiffs suggests that, nearly seven years after the court order, sanitation, privacy, and minimally adequate facilities, including such necessities as furniture, are still major problems at state institutions, Ellmann added.

The plaintiffs in the mental retardation phase of the case have asked the Court to appoint a special monitor to oversee Alabama's institutions for the mentally retarded, and similar relief may be necessary on the mental illness side of the case.

A monitor would be able to intervene forcefully in day-to-day operations

of the institutions, an unusual power that courts have invoked with increasing frequency in the face of states' resistance

to the reform of institutions whose actions drastically affect the lives of thousands of individuals.

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\$3.75 **Motions for Capital Cases**

192 pages containing pretrial, trial and penalty phase motions actually used by SPLC lawyers in death cases. Also contains trial strategy ideas on how to make pretrial proceeding more effective, along with a short legal memo on the higher standard of due process mandated for death cases.

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\$6.50 **Penalty Phase of a Capital Case**

384 pages containing the complete penalty trial of Randy Lamb, a white male convicted of the senseless murder of a neighbor woman. The manual begins with a penalty trial strategy analysis followed by opening statements, defense witnesses, closing arguments, and defense requested legal charges.

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