

The GUARDIAN

Issue 60

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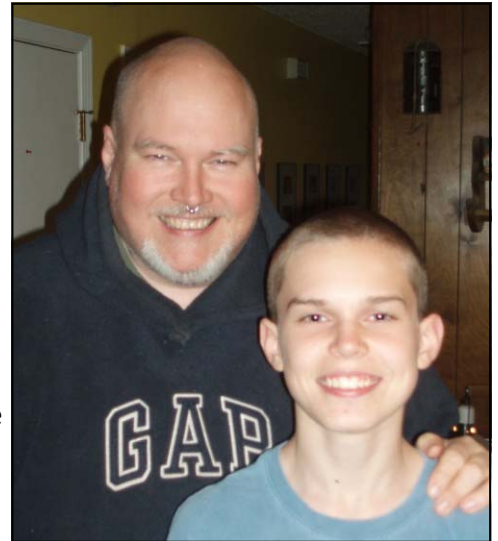
ALABAMA SCHOOL SYSTEMS AGREE TO END ILLEGAL SEX SEGREGATION; DECISIONS COME AFTER WARNING FROM ACLU

Two public school systems in Alabama recently agreed to stop sex segregation in public schools after being notified by the American Civil Liberties Union that their sex segregated programs were illegal and discriminatory. In March, the Board of School Commissioners of Mobile County approved a settlement agreement changing their policy. St. Clair County schools followed suit in May.

"We're very pleased that these school systems will end mandatory sex segregation," said Allison Neal, staff attorney with the ACLU of Alabama. "These programs are not only clearly against the law, but also diminish real life experiences and diversity in public

schools. We hope that Mobile and St. Clair Counties will focus on efforts that can improve all students' education, like more teacher training and parental involvement. While single-sex education is trendy, the evidence supporting its effectiveness just isn't there."

Without notifying parents, the Mobile County School System segregated the entire student body of Hankins Middle School by sex for the 2008-2009 school year. The policy went so far as to bar boys and girls from even speaking to each other in school hallways. Outraged parents contacted the ACLU



Mark Jones with his son Jacob, a student at Hankins Middle School.

(CONTINUED ON PAGE 2)

IMPORTANT VICTORY IN ACLU-AL FAIR HOUSING LAW CASE

By the beginning of 2007, Montgomery resident Yolanda Boswell had taken all she could take. The rental agent for the house Ms. Boswell had rented the previous year had repeatedly tried to coerce her into having sex with him, charged her higher rent, and threatened to evict her for refusing to acquiesce. In response to this harassment, the ACLU of Alabama brought suit in partnership with the ACLU's Women's Rights Project, the Central Alabama Fair Housing Center and Legal Services Alabama.

(CONTINUED ON PAGE 7)

A PRINCIPLED LIFE: AN INTERVIEW WITH DAVID SCHOEN, CIVIL RIGHTS LAWYER AND ACLU-AL COOPERATING ATTORNEY

When and how did you first become involved with the ACLU of Alabama?

I first got involved around 1987 or 1988 and the first major case we filed together was *R.C.*, I believe. [*R.C. v. Petelos* was a groundbreaking case that led to a major reform of the foster care system in Alabama.] The case as I recall it was a joint project between the Bazelon Center for Mental Health Law and the ACLU-AL. My role was to handle the legal issues and so I briefed and argued the opposition to the Defendants' motion for summary judgment and that resulted in the decision from Judge DuBina which let us



David Schoen

proceed and ultimately led to the settlement of the case.

Your work with the ACLU-AL has

(CONTINUED ON PAGE 3)

SCHOOL SYSTEMS AGREE TO END ILLEGAL SEX SEGREGATION

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in November 2008, after the school denied their earlier requests to resume coeducational classes. At least seven other schools in Mobile County also segregated students by sex; some of these schools did not provide a co-educational option for students or parents.

Under the settlement agreement, Hankins Middle School will immediately cease to segregate students by sex in elective classes, at lunchtime and all other nonacademic events. Beginning in the fall of 2009, all courses will be integrated in every school in the county and no school will institute any sex-segregated programs for the next three years. For the 2012-2013 academic year and two years thereafter, if Mobile County plans to institute new single-sex programs in any school, it must first notify the ACLU before implementing them.

Under the sex-segregation program at Hankins Middle School this year, teachers had been instructed to teach boys and girls differently. At a teacher training, teachers were informed that boys should have competitive, high energy classrooms and be taught about "heroic behavior" but that girls should have cooperative, quiet classrooms and learn "good character." Teachers were told that male hormone levels directly relate to success at "traditional male tasks" but that

when stress levels rise in an adolescent girl's brain, "other things shut down." A story in the Mobile Press-Register reported that a language arts exercise for sixth grade girls involved asking the girls to use as many descriptive words as possible to describe their dream wedding cake, while the boys were asked to brainstorm action verbs used in sports.

Certain classes were also offered only to one sex. For example, a girls' Drama class was offered, but there was no boy's Drama class. Similarly, while there were four separate boys' Computer Applications classes, there were no Computer Applications classes for girls.

These classrooms were not equal and weren't constructively responding to differences between boys and girls; they were creating and enforcing gender stereotypes.

According to Mark Jones, whose son Jacob attends Hankins Middle School, the school principal told him that the changes at Hankins were necessary because boys' and girls' brains are so different that they needed different curriculums.

"Segregating boys and girls didn't make things any better for our children; in fact, it made things worse," said Jones. "Our kids were basically being taught ideas about gender that come from the dark ages."

In a letter sent to the school board in November 2008, the ACLU and the ACLU of Alabama informed the Mobile County School System that mandatory sex segregation in public schools violates Title IX of the Education Amendments, the Equal Education Opportu-

nities Act and the U.S. Constitution. The Mobile County school board initially seemed receptive to halting single-sex programs in county schools, but it wasn't until the ACLU threatened to file a lawsuit that the school board finally agreed to reintegrate.

"I really wish the school had checked in with parents before it went ahead and separated all the boys from the girls," said Terry Stevens, whose son attends Hankins Middle School. "I'm happy that next year the school will be integrated but very disappointed that my son will have had an entire year without any academic classes with girls. The real world is integrated, and it's important to both me and my son that he learn in a coed environment."

In May, the ACLU received a letter from the St. Clair County School System stating that it would end the single-sex education program at Odenville Middle School and would no longer offer single-sex education at any other school in the system for the 2009-2010 school year. Students in Odenville Middle School had been assigned to sex segregated classes this school year and sex segregated classes had been utilized in the middle school since approximately 2004. At the request of the school system, Neal spoke at a St. Clair County Board of Education meeting in April and outlined how sex segregated programs inevitably lead to inequality.

After learning of the single-sex program at Hankins Middle School, the ACLU-AL became aware of similar programs in other school systems across the state and sent Open Records Request Act letters to those systems. While information is still being gath-

(CONTINUED ON PAGE 4)

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A PRINCIPLED LIFE: INTERVIEW WITH DAVID SCHOEN

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spanned three decades. In the 80's, you worked on *R.C. and Shannon v. Folmar*, a church/state case. In the 90's, you worked on *ACLU-AL v. The Bulletin Board* and *ACLU v. The Village Voice*, cases dealing with fair housing and discriminatory advertisements, as well as *Harper v. Siegelman*, a case challenging the inadequacy of public education in Alabama. In this decade, you worked on *Lake v. Henry*, a case about religious freedom for Muslim inmates. Tell us more about these cases.

Shannon was the case that brought me the most threats and problems of any of the cases I handled because of the combination of high school football and Christian prayer. [*Shannon* was a suit against Montgomery Mayor Emory Folmar and other local officials for praying before a high school football game on public property.] I was contacted initially about 10:00 p.m. by Olivia Turner, Executive Director of the ACLU-AL, on the day Mr. Shannon was arrested for blowing off his air horn during the Mayor's prayer. He was charged with assaulting a police officer. I was asked first to represent him in the criminal case he faced and then in a civil action against the Mayor and others to challenge his arrest and the prayer, which violated recent 11th Circuit precedent as the Mayor well knew. The night of the arrest, I watched all of the television broadcasts and saw the incident unfold. It showed the cops grabbing the young man and roughing him up before dragging him out of the stadium and was completely inconsistent with the notion that Mr. Shannon had attacked the cops. It was quite clearly the other way around. We used the video to win the criminal case – in a

packed courtroom and with the Mayor-appointed judge threatening me. Afterwards, the police department held a press conference saying that they stood by the cops' version, so Mr. Shannon decided to sue and prevailed in a settlement. The case got a lot of coverage as it had resulted from the protest by university students over the decision by public officials to flout the law. Mr. Shannon was joined as a plaintiff by religious people who were offended at the public spectacle and by non-religious people who objected to the actions of their public officials for other reasons. Good Morning America did a piece about it during which the Chair of the County Commission defended their position by saying that prayer at football games is a longstanding tradition. I responded that if that were sufficient justification for violating the law, then the following week they should march out some people of color and have a lynching on the field, since lynching also had been a tradition. Routinely, wherever I went for quite a while, someone made some comment about that case. On one occasion I remember being in a restaurant and a couple stopped eating to ask me if I minded if they said a prayer over their food. Jeff Shannon became a lawyer after college in large part due to his role in this litigation and, I am sure, the support he got from the ACLU-AL. He is working as a public defender I believe.

The *Bulletin Board* and *Village Voice* cases were interesting cases, challenging under quite clear legal principles what had been a regular practice throughout the country. Each paper ran housing ads that discriminated based on race, religion, etc., in clear violation of the Fair Housing Act. In one, the battle was very tough with

COMINGS AND GOINGS



We are pleased to welcome Office Assistant Braxton Harris to the ACLU-AL staff. Braxton (above), a native of Montgomery, is a senior and President of the Student Government Association at Auburn University Montgomery where he is pursuing an Information Systems Degree.

We also say farewell to our legal intern Mark LeQuire. Mark (below), a third-year student at Jones School of Law, previously worked as a Programmer for almost 20 years. He is active in ACS, Animal Legal Society and Phi Alpha Delta, and hopes to practice Tech Law in Mobile.



some very mean lawyers from Birmingham and D.C. who threatened sanctions and lied. That made prevailing very satisfying and the cases stopped the practices altogether.

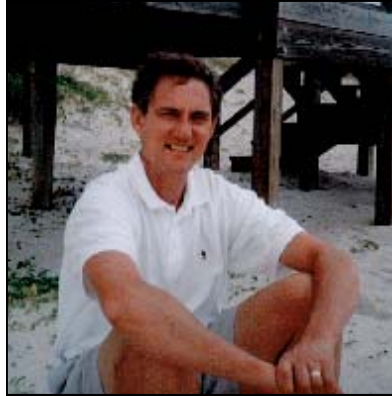
There were several other important cases I did during that time period. For example, I brought a case challenging the law in Alabama on how small parties gain access to the ballot [*New Alliance Party v. Hand*] and then

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MEMBER SPOTLIGHT

Dear Fellow Members:

I am a proud card-carrying member of the ACLU since 1992. My views were formed from outside my family and the deep south. The public library and local bookstore were my portal to the larger world. My conservative, religious family could not understand my views on race, gender and religious freedom. As a result, I felt isolated from family and peers in regards to politics and freedom of expression. My epiphany came one Sunday afternoon as I watched Bill Buckley's Firing Line. His guest was Ira Glasser [then Executive Director] of the ACLU. Glasser quietly and firmly presented a view of civil rights that had me cheering. He met each of Buckley's challenges politely and with intelligence. I had found a group! I remain a member because the ACLU continues to speak for me. Issues change but the ACLU defense of the Bill of Rights is constant. I am proud to support the ACLU.



Edward C. Brueggemann,
proud card-carrying member
of the ACLU!

Sincerely,
Edward C. Brueggemann

SCHOOL SYSTEMS TO END SEX SEGREGATION

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ered from various systems, the Dothan School System responded that they will no longer be operating single-sex programs beginning in the 2009-2010 school year.

A recent review of existing data by the U.S. Department of Education showed that there is no reliable evidence that segregating students by sex improves learning by either sex. Yet, school districts across the country are experimenting with sex-segregated programs, which all too often rely on questionable "brain science" theories based on outdated gender stereotypes that suggest that teachers should treat boys and girls radically differently.

In addition to the ACLU, organizations that have opposed sex segregation in schools include the national NAACP, the National Education Association and the American Association of University Women.

A copy of the Mobile County School System settlement agreement is available at: www.aclu.org/womensrights/edu/39130lgl20090324.html

A copy of the St. Clair County School System letter is available at: www.aclu.org/womensrights/edu/39544res20090505.html

The ACLU's Open Records request is available online at: www.aclu.org/womensrights/edu/38096res20081215.html

More information on the ACLU Women's Rights Project work on sex segregation is available at: www.aclu.org/womensrights/edu/34504res20080228.html

Member Spotlight: Tell Us Why You Are a Card-Carrying Member of the ACLU!



Why did you join the ACLU?
How long have you been a member?
Why are you still a member?

Send your story to
info@aclualabama.org or to

ACLU of Alabama
207 Montgomery St., Ste 910
Montgomery AL 36104

If you want, include a picture of
yourself for publication! We may use
your story in a future
newsletter or on our website.

A PRINCIPLED LIFE: INTERVIEW WITH DAVID SCHOEN

(CONTINUED FROM PAGE 3)

another case about how independent candidates get on the ballot. The first one went to trial and the second one settled. For the trial, I was assisted by an ACLU intern, Rodger Citron. The case was a great one. It succeeded in changing the law to make it easier for small parties to get on the ballot in Alabama. The independent candidate case settled pretty quickly because of the result in the first case. Rodger is now a law school professor.

I also did a case on behalf of a female inmate at Tutwiler Prison who was accused of sharing a needle with an HIV/AIDS-infected inmate and was kept in a small room in sweltering July heat without a bathroom for 5 days until she would give up the needle. She never had it and was finally released. We tried the case and defended the judgment on appeal to the 11th Circuit. She was given money for each day she was locked in the room.

The more recent case, the *Lake* case,

was particularly compelling. Mr. Lake, a Muslim inmate, had been thrown in solitary for a long time for holding a Muslim prayer service and raising the idea of reparations for slavery. He was charged with threatening to cause a riot, despite the absence of any such evidence. He filed a case on his own. The case was thrown out, and he was sanctioned by a ridiculous magistrate judge and district judge in Birmingham. We took over the case after a letter he wrote to the ACLU and handled it before the 11th Circuit Court of Appeals, which reversed the lower court. The lower court had missed the whole First Amendment aspect of the case. We reached a settlement requiring Alabama to include Muslim clergy among its Chaplains for the first time.

Beyond being a cooperating attorney for the ACLU-AL, you also served on the board and on the legal committee. What was that experience like?

I was on both in the 80s and 90s. We reviewed legal requests that came in,

discussed the cases, decided whether it was something the ACLU should take, and whether we had volunteer lawyers willing to handle the case. Olivia really did all the hard work.

What are you most proud of from your work with the ACLU-AL?

The cases which made the most impact were *R.C.* [foster care reform] and *Harper* [educational equity], and then *New Alliance Party* [ballot access]. I loved the *Shannon* case [prayer before football game] as well because of all of the various aspects to it and the use of the video, which gave rise to a very fun cross-examination. *Lake* [religious liberty in prison] was satisfying because Mr. Lake was finally able to get some power over an administration that had abused him for a long time. He will always have a tough time of it though, I am sure. I also credit my work with the ACLU as being mainly responsible for the ABA's National Pro Bono Publico Award that I was honored with in 1995.

(CONTINUED ON PAGE 7)

ACLU of Alabama Hosts "Restore Our Rights" Town Hall Events



Photo courtesy of Glynn Wilson at the Locust Fork News-Journal

Michael W. Macleod-Ball, the ACLU's Chief Legislative and Policy Counsel, was the special guest speaker at two recent Town Hall events hosted by the ACLU of Alabama. The events, held in Huntsville on May 11 and Birmingham on May 12, were attended by over 100 ACLU members and the general public.

Macleod-Ball (pictured) spoke about the ACLU's legislative priorities under the new presidential administration, including closing the prison facilities at Guantanamo Bay, ending the practice of extraordinary rendition, placing a moratorium on the death penalty, and stopping the monitoring of peace activist.

Please check actualabama.org for information about future events in your area.

2009 BOARD ELECTION NOTICE

The Board of Directors of the ACLU of Alabama, has an election schedule as follows:

Directors will be elected by the ACLU-AL membership in September. A slate, including candidates nominated by the Board and candidates nominated by petition, will be sent to the membership by July 10. Further instructions will be included in the ballot. Ballots postmarked no later than July 31 will be counted. Election results will be certified by the Secretary of the Board at the next meeting of the Board on September 12. The results will be reported in the 1st issue of the newsletter following that meeting.

If you are interested in serving on the Board or want to nominate someone for the Board, please submit the following by July 3 : a petition signed by twenty-five (25) members of the affiliate, a written statement of the candidate's willingness to serve and a biographical sketch of one page or less. Mail the information to: Nominations Committee, ACLU of Alabama, 207 Montgomery Street, Suite 910, Montgomery, AL 36104. Board member qualifications and responsibilities are listed below.

For further information, please contact Olivia Turner, Executive Director, at (334) 265-2754 ext. 204 or otaclual@bellsouth.net.

BOARD OF DIRECTORS QUALIFICATIONS AND RESPONSIBILITIES

1. Membership in the ACLU.
2. Availability and willingness to assume the following responsibilities:
 - A. Regular attendance at Board meetings. (The Board sets the time and location of its meetings. The current Board meets four to five times a year. Meetings are typically on Saturdays and last approximately three hours. Meetings are generally held in Birmingham or Montgomery, although the Board may meet in other cities from time to time.)
 - B. Participation in policy determination and administrative oversight of the organization.
 - C. Willingness to actively participate on at least one Board Committee.
 - D. Active participation in resource development which includes supporting the organization within one's means, raising funds for the Major Gifts Campaign consistent with the plan of the Board and assistance with membership recruitment.
 - E. Commitment to analyze, discuss and determine issues in a collegial manner.
 - F. Maintain confidentiality about confidential ACLU Board decisions and respect the confidentiality of sensitive committee work, such as the work of the Nominations and Finance Committees.
 - G. Submit a letter of resignation or decline to stand for re-election when you are no longer able to meet these qualifications or when you have a conflict of interest with the goals, purposes, interest and/or mission of the ACLU of Alabama.

IMPORTANT VICTORY IN ACLU-AL FAIR HOUSING LAW CASE

(CONTINUED FROM COVER)

The case, *Boswell v. GumBayTay and Bahr*, filed in U. S. Federal Court in Montgomery, charged that the conduct of the rental agent and property owner violated the federal Fair Housing Act, which prohibits discrimination in housing based on race, color, national origin, sex, religion, familial status, and disability. Ms. Boswell asked the Court to order the defendants to stop harassing her, to cease any effort to evict her, and to pay her compensatory and punitive damages.

Ms. Boswell rented the house in October 2006 from Elite Real Estate Consulting Group for herself, her mother and her four children. In the months that followed Jamarlo GumBayTay, a property agent doing business with Elite Real Estate, offered to help her with utility bills and order home re-

pairs in exchange for sex. In January 2007, following Ms. Boswell's repeated rejections, Mr. GumBayTay posted a letter on her door raising her rent \$100 a month. Later he refused to order critical repairs to the property and threatened to evict her.

The lawsuit described Mr. GumBayTay's actions as "unlawful discrimination on the basis of sex, including severe, pervasive and unwelcome sexual harassment," which violates the federal Fair Housing Act. Matthew Bahr, the owner of the property, was also named in the suit based on the assertion that he shared liability for Mr. GumBayTay's conduct.

In February 2007, U. S. District Judge Keith Watkins issued a preliminary injunction against Mr. GumBayTay. On June 1, Judge Watkins issued a series of rulings in this case, vindicating



Yolanda Boswell

Ms. Boswell's rights and ordering Mr. GumBayTay and Mr. Bahr to pay her \$50,860 in damages.

We applaud Ms. Boswell's courage and determination to pursue justice for herself, her family and other women who have few affordable housing options. We hope this case encourages other women to come forward and sends the message that such exploitation is never acceptable.

A PRINCIPLED LIFE: INTERVIEW WITH DAVID SCHOEN

(CONTINUED FROM PAGE 5)

What has your career been like outside of the work you did for the ACLU-AL? How and why did you come to do civil rights work?

I wanted to become a lawyer to do civil rights work. That is what led me to Howard University Law School originally, before transferring to and graduating from Boston College Law School. And it is what led me to come to Alabama for my clerkship. I had a mentor growing up who was a judge on the 3rd Circuit Court of Appeals and a civil rights historian – Judge A. Leon Higginbotham. He guided me to the Deep South and helped me keep my interest in civil rights work invigorated. I was always struck by the line credited to Charles Hamilton Houston,

that "a lawyer is either a social engineer or a parasite on society" and believed that I had an obligation to do civil rights work. Without the ACLU and Olivia, I firmly believe the legal landscape in Alabama would be much different, and I know my career would have been a lot less interesting during those years.

Please tell us more about yourself. Where are you from, and what you are doing now?

I was born in New York. My father died when I was four, so my mother (a school teacher), brother, and I had to move out of N.Y. then, and my mother remarried. I grew up in Virginia. I was acutely aware that my father had been a lawyer, so I wanted to be one, and I wanted to help people with less

power struggle against those with power over them. I always wanted to do civil rights law and criminal law for these reasons. I came to Alabama at Judge Higginbotham's suggestion. I knew I wanted to do a federal clerkship, but I also thought I wanted to be a trial lawyer. When I got a great offer from Judge Truman Hobbs to be his law clerk in Montgomery in 1984, I jumped at it. It was the best experience I ever have had in the law. I have practiced on my own since then, focusing mainly on any kind of constitutional litigation and, more recently, some commercial litigation, but mainly representing alleged organized crime figures in N.Y. I miss my work in Alabama and still find those to have been my most satisfying and fulfilling cases and wish I had a great case to do for the ACLU always.



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Inside This Issue:

Ala. Schools End Sex Segregation.....cover
Fair Housing Case Victory cover
Interview with David Schoen..... cover
Comings and Goings p3
Member Spotlight..... p4
Town Hall Events..... p5
Board Election Notice p6
ACLU-AL E-News p8