

ACLU OF ALABAMA LITIGATION DOCKET

Spring 1996

(pending and recently completed litigation)

<p>Education Reform (<u>Harper v. James</u>, Circuit Court, Montgomery Co., Judge Sally Greenhaw)</p>
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In 1993, the Court found unconstitutional Alabama's system of public elementary and secondary education because the system is both inequitable and inadequate, and ordered the state to implement a plan to remedy the system. The remedy order requires a performance based system, school based decision making and equitable and adequate financing. Of the approximately two dozen similar cases in the nation, only one half have been decided in favor of the plaintiffs, and of those half none have previously found the system under attack to be inadequate as well as inequitable. The Court recently appointed a Monitor only to have the defendants challenge the appointment and the Court's power to make the appointment. A funding bill which would modestly address inequities is pending in the legislature. The State Supreme Court will decide whether the liability order will remain in effect.

Attorneys: Bobby Segall, Martha Morgan, and Richard Izzi (cooperating), ACLU, ADEP and "Bo" Torbert.

<p>Religion in Schools (<u>Chandler v. James</u>, USDC, Middle District, Judge Ira DeMent)</p>

On February 1, the ACLUA filed suit on behalf of an assistant principal in DeKalb County and a family in Talladega claiming Alabama's student initiated prayer statute is unconstitutional and that egregious violations of long established law such as prayer in classrooms and Gideon Bible distribution at schools should be enjoined. The Court held an initial status conference encouraging the parties to resolve as many issues as possible.

Attorneys: James Tucker and Pamela Sumners (cooperating), ACLU and Americans United

Child Welfare and Foster Care Reform (R.C. v. Corley, USDC,
Middle District, Judge Truman Hobbs)

In 1988, ACLUA, MHLP and SPLC sued DHR on behalf of all children with emotional or behavioral disorders who are in foster care and all children at imminent risk of placement in foster care (those who have or are at high risk of developing emotional or behavioral disorders). DHR is currently in the process of implementing the reforms of the consent decree approved by Judge Hobbs in 1991. Child welfare and foster care reforms are underway in more than half of the state and a national child welfare expert recently cited the Alabama reform as one of the two best such efforts nationwide.

Attorneys: James Tucker, Bazelon Center for Mental Health Law, Southern Poverty Law Center

Gay and Lesbian Rights -- Gay Lesbian Bisexual Alliance Sessions and University of South Alabama, UADC, Middle District, Judge Myron Thompson

This suit challenges a 1992 legislative act which prohibits a university from spending public funds or using public facilities to "support any group which promotes a lifestyle of actions prohibited by the sodomy or sexual misconduct laws." USA officials relied on the statute to bar GLBA from receiving funds from the Student government association. After Attorney General Sessions threatened to rely on the statute to prohibit a southeastern gay and lesbian student conference from occurring as scheduled at the University of Alabama the Court found the statute unconstitutional, calling it "naked viewpoint discrimination."

Attorneys: Fern Singer (cooperating), Ruth Harlow, ACLU, NLGP

Mental Illness and Mental Retardation Institution Reform
(Wyatt v. Hanan, USDC, Middle District, Judge Myron Thompson)

Plaintiffs sued the State of Alabama 25 years ago claiming conditions at facilities operated by the Alabama Department of Mental Health and Mental Retardation violated residents' rights under state and federal law. In a landmark opinion, Judge Frank Johnson entered injunctions requiring defendants to bring state facilities into compliance with enumerated minimal constitutional standards. After a consent decrees, expert studies and repeated requests from the defendants to terminate the suit, plaintiffs seek community placements and services for hundreds of class members who are confined in institutions and for whom community placement has been recommended or is otherwise

appropriate. Legal claims are based on 1) historic Wyatt standards, 2) the 1986 consent decree, and 3) the Americans with Disabilities Act (ADA). After a 10 week trial in the spring of 1995, the Court appointed a monitor and issued injunctive relief protecting children at the Eufala Adolescent Center from further abuse and harm.

Attorneys: Fern Singer (cooperating), James Tucker, Bazelon Center for Mental Health Law, US Department of Justice

**Treatment in State Prisons of Persons Infected with HIV (Onisha v. Thigpen,
USDC, Middle District, Judge Robert Varner**

District Court opinion generally affirmed decision of prison officials to test/screen/segregate prisoners in challenge brought by HIV-infected inmates in the State prison system. Opinion gave little sympathy to claims that screening and segregation violate inmates' due process, equal protection, liberty, association, speech and rights to be free from cruel and unusual punishment. On remand, the trial court found "the general population will not readily accept the integration of" HIV prisoners and found for the State in a 476 page order. We are appealing, based on the judge's hostility toward persons with HIV and AIDS.

Attorneys: Howard Mandel (cooperating), ACLU National Prison Project and Southern Center for Human Rights.

**Indigent Criminal Defense (May v. State of Alabama,
Alabama Court of Criminal Appeals**

The appellant, a practicing attorney in Baldwin County, was appointed by the trial court to represent an indigent defendant charged with first degree rape. After the defense attorney's request for payment of services and reimbursement of expenses in an amount greater than allowed by state was denied, the attorney advised the court he could not continue representing his client. As a result, the trial court held the attorney in contempt of court. The ACLU-AL filed an amicus brief arguing that adequate compensation is required to provide indigent criminal defendants with competent counsel. We recently received a favorable ruling.

Cooperating attorney: Joel Sogol

**Court Prayer (James and Sessions v. ACLU of Alabama, Circuit Court,
Montgomery County, Judge Price)**

After ACLUA filed suit on behalf of individual plaintiffs who challenged the routine practice of Judge Roy Moore, Circuit Court, Etowah County, of conducting Christian prayer and displaying the 10 Commandments in his courtroom, the Governor and the Attorney General of Alabama sued the plaintiffs in the original suit and the ACLU of Alabama for declaratory relief regarding essentially the same issues. We recently took Judge Moore's deposition.

Attorneys: James Tucker, Bobby Segall, Joel Sogol, Pamela Sumners, and Drinker, Biddle & Reath, Washington D.C. (cooperating)

Religious Freedom in Prisons (Knight v. Thompson, USDC, MD, Ala., Judge Ira DeMent)

Pro se prisoners filed suit claiming they are not allowed to practice their Native American religion in state prisons. Thereafter, the ACLUA entered the case seeking to file an amended complaint, declaratory and injunctive relief, adequate training of correctional officers regarding prisoners' exercise of religious freedom, and compensatory and punitive damages. Discovery is underway.

Attorneys: Mark Sabel (cooperating) and James Tucker

Religious Freedom in Prisons (Hornsby v. Alabama, USDC, Middle District, Judge Myron Thompson)

ACLUA filed suit on behalf of prisoner who challenges the State's absolute ban on the practice of the Wiccon religion. The State has based its defense, in part, on a claim the federal Religious Freedom Restoration Act is unconstitutional. Discovery is underway.

Attorney: Mark Sabel (cooperating)

Privacy/Right to Die (in Re: The Matter of Correan Salter, Supreme Court of Alabama)

The ACLU filed an amicus brief in this case of first impression in Alabama involving common law and constitutional rights of incompetent persons in a persistent vegetative state to refuse unwanted medical treatment. This case was expected to have a substantial impact in determining the liberty interests and privacy rights of all persons -- whether competent or incompetent; however, the Court dismissed the case as moot.

Attorney: James Tucker; assisting on the brief, summer law clerk Jody Yetzer

Summer 1996

(pending and recently completed litigation)

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promised to cease all illegal activity while the suit is pending. Trial is scheduled for January, 1997.

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Attorneys: Fern Singer (cooperating), Ruth Harlow, ACLU, NLGP

Mental Illness and Mental Retardation Institution Reform
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Attorneys: Fern Singer (cooperating), James Tucker, Bazelon Center for Mental Health Law, US Department of Justice

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District Court opinion generally affirmed decision of prison officials to test/screen/segregate prisoners in challenge brought by HIV-infected inmates in the State prison system. Opinion gave little sympathy to claims that screening and segregation violate inmates' due process, equal protection, liberty, association, speech and rights to be free from cruel and unusual punishment. On remand, the trial court found "the general population will not readily accept the integration of" HIV prisoners and found for the State in a 476 page order. We are appealing.

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Attorneys: James Tucker, Bobby Segall, Joel Sogol, Pamela Sumners, and Drinker, Biddle & Reath, Washington D.C. (cooperating)

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Attorney: James Tucker; assisting on the brief, summer law clerk Jody Yetzer

Winter 1996
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Education Reform

Harper v. James, Circuit Court, Montgomery Co., Judge Sally Greenhaw

In 1993 the Court found Alabama's system of public elementary and secondary education to be unconstitutionally inequitable and inadequate, and ordered the state to remedy the system. The remedy order requires a performance-based system, school-based decision making and equitable and adequate financing. Of the approximately two dozen similar cases in the nation, only one half have been decided in favor of the plaintiffs, and of those half none have previously found the system under attack to be inadequate as well as inequitable. The State Supreme Court held that the liability order remains in effect and recently heard oral argument regarding whether the remedy order shall remain in effect .

Attorneys for the ACLU of AL: Bobby Segall, Martha Morgan, Richard Izzi, cooperating; Shannon Holliday, staff.

Religion in Schools

Chandler v. James, USDC, Middle District, Judge Ira DeMent

The ACLU of AL filed suit on behalf of an assistant principal in DeKalb County and a family in Talladega claiming Alabama's student-initiated prayer statute is unconstitutional and that egregious violations of long-established law such as prayer in classrooms and Gideon Bible

distribution at schools should be enjoined. The defendants, at the Court's encouragement, promised to cease all illegal activity while the suit is pending. Plaintiffs recently submitted a partial consent decree resolving all issues with the Talladega defendants. Trial is scheduled for June 1997 regarding claims against the State and DeKalb County.

Attorneys for the ACLU of AL: Pamela Sumners and Liz Hubertz, cooperating; James Tucker, staff. The ACLU of AL is litigating this case with Americans United for the Separation of Church and State.

Child Welfare and Foster Care Reform

R. C. v. Nachman, USDC, Middle District, Judge Ira Dement

In 1988, the ACLU of AL, the Bazelon Center for Mental Health Law and Southern Poverty Law Center sued the Alabama Department of Human Resources on behalf of all children with emotional or behavioral disorders who are in foster care and all children at imminent risk of placement in foster care (those who have or are at high risk of developing emotional or behavioral disorders). DHR is currently implementing child welfare and foster care reforms in more than half of the state pursuant to the Consent Decree and a national child welfare expert recently cited the Alabama reform as one of the best such efforts nationwide. Despite demonstrated progress, DHR filed a motion in July to vacate the Consent Decree.

Attorney for the ACLU of AL: James Tucker, staff. This case is being litigated with the Bazelon Center for Mental Health Law and Southern Poverty Law Center.

Related case: Carr v. Nachman (USDC, Middle District, USDC, Middle District, Judge Ira DeMent)

When state employees' association sued DHR regarding personnel actions affecting implementation of the R.C. v. Nachman Consent Decree, the ACLU intervened as amicus to assure that the Court would be made aware of the implications of the personnel actions as they affect the R.C. case. Trial is scheduled for June 1997.

Attorney for the ACLU of AL: James Tucker, staff. This case is being litigated with the Bazelon Center and Southern Poverty Law Center.

Gay and Lesbian Rights

Gay Lesbian Bisexual Alliance Sessions and University of South Alabama, USDC, Middle District, Judge Myron Thompson

This suit challenges a 1992 legislative act which prohibits a university from spending public funds or using public facilities to "support any group which promotes a lifestyle or actions prohibited by the sodomy or sexual misconduct laws." USA officials relied on the statute to bar GLBA from receiving funds from the Student Government Association. After Attorney General Sessions threatened to rely on the statute to prohibit a southeastern gay and lesbian student conference from occurring as scheduled at the University of Alabama, the Court found the statute unconstitutional, calling it "naked viewpoint discrimination." The state has appealed to the Eleventh Circuit and both sides have filed briefs. Oral argument is set for January 28, 1997.

Attorney for the ACLU of AL: Fern Singer, cooperating. This case is being litigated with the ACLU's Lesbian and Gay Rights Project.

Mental Illness and Mental Retardation Institution Reform

Wyatt v. Hanan, USDC, Middle District, Judge Myron Thompson

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Attorneys for the ACLU of AL: Fern Singer, cooperating; James Tucker, staff. This case is being litigating with the Bazelon Center for Mental Health Law and the US Department of Justice.

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Attorney for the ACLU of AL: Howard Mandel, cooperating. This case is being litigated with the ACLU's National Prison Project.

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Attorneys for the ACLU of AL: Bobby Segall, Joel Sogol, Pamela Sumners,, Drinker, Biddle & Reath, Washington D.C., cooperating; James Tucker, staff.

Religious Freedom in Prisons

Knight v. Thompson, USDC, Middle District, Judge Ira DeMent

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Attorneys for the ACLU of AL: Mark Sabel, cooperating; James Tucker, staff.

Related case: Religious Freedom in Prisons (Harris v. Chapman, Eleventh Circuit Court of Appeals)

Because of ACLU of AL's concerns about a trial court's ruling in a case closely related to Knight, we have filed an amicus brief in the Eleventh Circuit addressing related issues. Our brief was filed jointly on behalf of the ACLU of AL and the National Congress of American Indians.

Attorney for the ACLU of AL: Mark Sabel, cooperating.

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in Re: The Matter of Correan Salter, Supreme Court of Alabama

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Attorneys for the ACLU of AL: James Tucker, staff ; assisting on the brief, Jody Yetzer, summer law clerk.