

# ACLU OF ALABAMA LITIGATION DOCKET

1997

(pending and recently completed litigation)

## Education Reform

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

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 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. **The State Supreme Court has held the liability order remains in effect, but the Governor has requested reconsideration.**

*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. **The Court recently struck down the statute as unconstitutional and the Governor announced he will not appeal. All issues with Talladega were resolved through a partial consent decree and we are preparing for a June 1997 trial with 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 Alabama DHR on behalf of all children with emotional or behavioral disorders who are in foster care or are at imminent risk of placement in foster care. The case was settled with a Consent Decree which requires State DHR to adequately and timely investigate allegations of abuse and neglect, provide services to keep children safe in their homes, adequately care for children in foster care, timely reunify children with their families when they can live safely together, and provide permanence and stability for all children in DHR custody. **Four years into the seven year compliance schedule, Commissioner Nachman and the Attorney General moved to vacate the Decree and we filed for contempt and receivership. A hearing on the Motion to Vacate will be held on May 6.**

*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.*

## **Gay and Lesbian Rights**

Gay Lesbian Bisexual Alliance v. Pryor and University of South Alabama, Eleventh Circuit Court of Appeals

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 trial court found the statute unconstitutional, calling it "naked viewpoint discrimination." **The Eleventh Circuit affirmed in all respects on April 29, 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

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 entry of a consent decree, expert studies and repeated requests from the defendants to terminate the suit, plaintiffs now 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 historic Wyatt standards, the 1986 consent decree, and 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. **The Eufala Adolescent Center has since closed. The defendant's attempt to have the Judge disqualified was recently denied and the District Court's decision on substantive trial issues is pending.**

*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.*

## **Treatment in State Prisons of Persons Infected with HIV**

Onishea v. Thigpen, Eleventh Circuit Court of Appeals

The District Court opinion generally affirmed the decision of prison officials to test, screen and segregate prisoners in a challenge brought by HIV-infected inmates in the State prison system. The court's opinion gave little sympathy to claims that screening and segregation violate inmates' due process, equal protection, association and free speech rights and right 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.**

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

## **Indigent Criminal Defense**

May v. State of Alabama, Alabama Court of Criminal Appeals

The appellant, an attorney in Baldwin County, was appointed by the trial court to represent an indigent defendant. After the defense attorney's request for payment of services and reimbursement of expenses in an amount greater than allowed by the 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 of AL filed an amicus brief arguing that adequate compensation is required to provide indigent criminal defendants with competent counsel. We received a favorable ruling.**

*Attorney for the ACLU of AL: Joel Sogol, cooperating.*

## **Court Prayer**

James v. ACLU of Alabama, Alabama Supreme Court

After the ACLU of AL 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. Thereafter, Judge Moore filed a cross-claim against ACLU of AL claiming the ACLU of AL was unlawfully intimidating him, restricting his free speech rights and attempting to establish the "religion of secular

humanism." The ACLU counterclaimed against the State. **Moore's secular humanism claim was dismissed and the trial court ruled the prayer and display were both unconstitutional. The State and Moore obtained a stay of all orders while they appeal to the State Supreme Court. Trial Court Judge Charles Price recently received the John F. Kennedy Profiles in Courage award for his brave rulings.**

*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

Hornsby v. Dept. of Corrections, USDC, Middle District, Judge Myron Thompson

Pro se prisoners filed suits claiming they are not allowed to practice their religious beliefs in state prisons. Thereafter, the ACLU of AL entered the cases and filed an amended complaint seeking declaratory and injunctive relief, adequate training of correctional officers regarding prisoners' exercise of religious freedom, and compensatory and punitive damages. **The trial court has temporarily stayed the cases pending the U. S. Supreme Court's decision regarding the constitutionality of the Religious Freedom Restoration Act.**

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

### **Privacy and the 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. **The U.S. Supreme Court has now said it will address these important issues in a similar case.**

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

### **RELIGION IN SCHOOLS**

Herring v. Key, USDC, Middle District, Judge Ira DeMent

In August 1997, we filed suit against the Pike County School Board on behalf of the only Jewish family in the system asserting free exercise, establishment, and equal protection violations. The child plaintiffs have been subjected to school-sponsored religious sermons, told they may not wear Stars of David and yarmulkes, and harassed mercilessly, among other things. No trial date has been set.

*Attorneys: Pamela Sumners and Joel Sogol (cooperating), James Tucker*

## **FREE SPEECH**

Montgomery Study Group v. Eberhart, USDC, Middle District, Judge Ira DeMent

A Community group reserved a Montgomery public school auditorium to host a rally led by Minister Lewis Farrakhan. When the School Board withdrew its permission for the rally, we filed suit and obtained injunctive relief to ensure that the rally would occur and to prevent the Board's attempt to restrict speech based on content.

*Attorneys: Ed Still (cooperating) and Shannon Holliday*

## **DUE PROCESS/NOISE ORDINANCE**

City of Montgomery v. Eddie Moore - Alabama Court of Criminal Appeals

Moore was convicted of playing his 1978 Chevrolet Impala factory-issued radio too loudly while listening to a local talk radio show. The case initially was thrown out of court, but reinstated by the City when Moore conducted an interview with a local newspaper regarding what he felt to be an unconstitutional ordinance. We have appealed.

*Attorneys: Tommy Goggans (cooperating) and James Tucker*

## **ESTABLISHMENT CLAUSE**

Twarog v. Hooper - USDC, Middle District

Inmates in the custody of the Department of Corrections allege their First Amendment right to freedom of religion has been violated by DOC requirements that they participate in substance abuse programs with explicit religious content, such as Alcoholics Anonymous/Narcotics Anonymous. Most states provide alternatives, including non-religious programs.

## **PUBLIC ACCOMMODATIONS**

Reid v. Goodwin, USDC Northern District, Judge Sharon Blackburn

Defendants, owners and proprietors of a Phillips 66 gas station in Winfield, Alabama, refused to provide service to a white mother and her adopted biracial child as they passed through Alabama on their way home to Missouri. One of the defendants pointed a shotgun at and threatened to shoot the plaintiffs and shouted, "Get that nigger out of here." We have requested a jury trial.

*Attorneys: mark Sabel (cooperating) and James Tucker*

## **DUE PROCESS**

Smallwood v. DHR, Alabama Court of Civil Appeals

Appellant claims that the Alabama central registry abuse and neglect statute is unconstitutional on its face and violates the procedural due process rights of child care workers and licensees. For example, under the statute a hearing officer may place a child care worker's name on the registry even in cases not deemed "indicated." The case has been briefed and awaits oral argument.

*Attorneys: Hugh Lee (cooperating) and Shannon Holliday*

**FREE SPEECH**

Stowe v. Jefferson County Board of Ed., USDC, Northern District

Plaintiff, a distributor of Confederate memorabilia, was denied the right to participate in a government sponsored Business Fair based on the content of his merchandise. Plaintiff represented himself pro se until we filed an opposition to summary judgement on his behalf. We believe a total ban was far too extensive, and any legitiment concerns of the defendants could have been resolved through reasonable time, place and manner restrictions.

*Attorneys: Ed Still (cooperating) and James Tucker*

**DUE PROCESS**

Sandoval v. Hagan, USDC, Middle District, Judge Ira DeMent

Class action on behalf of all legal residents of Alabama who are otherwise qualified to obtain a driver's license but cannot do so because they are not sufficiently fluent in English. Discovery is underway.

*Attorneys: Shannon Holliday, ACLU of Northern California, Southern Poverty law Center, Employment Law Center*