

SLC CURRENT DOCKET

August 2005

FBF STATE SUPPORT GRANT

Armstead v. Coler, Case No. 84-96-Civ-J-10 (M.D. Fla., JJ. Moore, Adams)
SLC Attorneys: Alice K. Nelson & Jodi Siegel

Summary of Case: This class action was brought by Jacksonville Area Legal Aid (JALA) and transferred to SLC in 1996 when Congress barred LSC programs from participating in class actions. The case challenged the State of Florida's practice of housing persons with developmental disabilities at Northeast Florida State Hospital (NEFSH), a facility for persons with mental illness, in Macclenny. The unit at NEFSH that housed our class members has closed and the individuals were discharged to the community.

Canupp, et al. v. Liberty Behavioral Health Corp., Case No. 2:04-CV-260-FTM-33DNG (M.D. Fla.)

SLC Attorneys: Peter P. Sleasman and Alice K. Nelson
Co-Counsel: Florida Institutional Legal Services

Summary of Case: This class action challenges the lack of an effective treatment regimen and adequate mental health care at the Florida Civil Commitment Center (FCCC). Approximately 450 men are currently detained at FCCC, with more arriving every day, under Florida's Jimmy Ryce Act. The State's failure to provide constitutionally adequate treatment makes their confinement essentially a life sentence. FILS is lead counsel. The Court certified the case as a class action, and created two subclasses.

Grayden, et al., v. City of Orlando, et al., Case No. 6:00-cv-888-Orl-22B (M.D. Fla., J. Conway)

SLC Attorney: Peter P. Sleasman
Co-counsel: Community Legal Services of Mid-Florida and Cathy Lucrezi

Summary of Case: This case challenged the constitutionality of the City of Orlando's condemnation procedures. The Court ruled that the City's condemnation procedures violated due process and ordered permanent injunctive relief to change the procedures. The only remaining matter is attorneys' fees for the fee litigation.

Houston v. City of Cocoa, Case No. 89-082-Civ-Orl-19 (M.D. Fla., J. Fawsett)
SLC Attorneys: Alice K. Nelson & Peter P. Sleasman

Summary of Case: This class action was originally brought by Central Florida Legal Services (CFLS), and transferred to SLC in 1996. It involves the preservation of a historically African-American neighborhood. It appears now that the City and our clients have the same basic goal of fostering more affordable single family housing in the neighborhood. However, the neighborhood still suffers from "benign neglect" from the City and downtown

redevelopment continues to pose a threat of commercial intrusion into this residential area. We continue to monitor the City's compliance with the terms of the consent decree.

Indigence Processing Fee

SLC Attorney: Alice K. Nelson

As part of the 2004 legislation implementing the Article V revisions, the process by which indigents are granted access to the courts was significantly changed. Fees must now be paid by all persons seeking access. Clerks of the court are authorized to charge processing fees in order to ascertain the indigence status of individuals and to enter payment plans. As can be imagined, this has caused significant problems in access. The 2005 Legislature made significant improved changes to the statute. In June, the Florida Supreme Court approved a form for use by all clerks' offices for the application for indigent status. SLC took the lead in providing comments to the Court on the form.

Richards v. Bono, Case No. 5:04-cv-00484-WTH-GRJ (M.D. Fla., J. Hodges)

SLC Attorney: Peter P. Sleasman

Co-counsel: Community Legal Services of Mid-Florida

Summary of Case: CLSMF asked us to assist on this federal Fair Housing Act case. The case involves sexual harassment by a male landlord against a female tenant. The defendant owns and manages approximately 20 single family rental properties in the Citrus County area. According to police records, this landlord has engaged in similar conduct with at least 10 other female tenants over the past several years.

Harris v. Gainesville Hous. Auth., Case No. 01-05-CA-0908 (Fla. 8th Cir. Ct.)

SLC Attorney: Peter P. Sleasman

Co-counsel: Mary O'Rourke, Three Rivers Legal Services

Summary of case: We are co-counseling this case with TRLS. This is a §1983 suit filed in state court challenging the criminal background screening policy of our local housing authority (GHA). Federal law allows housing authorities to deny federal housing subsidies to any applicant that has been involved in "criminal activity." GHA's policy disqualifies housing applicants on the basis of arrest reports alone, even if there is no prosecution or conviction. The complaint challenges GHA's policy on due process grounds alleging that it goes beyond what is allowed by federal law and that it lacks sufficient evidentiary standards and procedural protections.

Fairley v. Kennedy Homes Ltd. Partnership, Case No. 01-05-CA-409 (Fla. 8th Cir. Ct.)

SLC Attorney: Peter P. Sleasman

Co-counsel: Mary O'Rourke, Three Rivers Legal Services

Summary of case: We are co-counseling this case with TRLS. This case is a followup to the case we filed last year against HUD regarding the closure of the Kennedy Homes a federally subsidized multi-family housing complex for low and extremely low income families. The complex was poorly maintained and, after a October 2003, fire caused by leaking gas lines, was closed due to unsafe conditions. All residents were forced to relocate. Many of the tenants, such as Ms Fairly, were unable to afford the increased costs of replacement housing. This litigation seeks to hold the private owner of Kennedy Homes and its parent Corporation AIMCO (the largest owner of privately held low income housing in the nation) responsible for the failure to maintain the complex that led to its closure. The complaint includes 6 causes of action against the owners. This is a “test case” on behalf of a single tenant, and will be very difficult from a legal standpoint. If any of the causes of action survive a motion to dismiss, we plan to bring similar actions for the other former tenants of Kennedy Homes.

FBF GENERAL SUPPORT GRANT

Dubois, et al., v. Meadows (Secretary for Fla. Agency for Health Care Admin.) & Agwunobi (Secretary of the Fla. Dep’t of Health), Case No. 4:03-CV-107 (N.D. Fla., J. Mickle)

SLC Attorneys: Andrea Costello and Peter P. Sleasman
Co-Counsel: Jane Perkins and Sarah Somers, National Health Law Program

Summary of Case: This class action, on behalf of individuals with traumatic brain or spinal cord injuries that are receiving, eligible for, or who have applied for Brain and Spinal Cord Injury Medicaid Waiver Program (BSCIWP) services, seeks to remedy the systemic problems faced by individuals eligible for this program. There are approximately 300 people on the waiting list for services some of whom have been on the list for several years. We continue to negotiate with the defendants over changes to the Waiver program.

Florida Ass’n of Retarded Persons, Inc., v. Bush, Case No. 79-418-CIV-ORL-18 (M.D. Fla., J. Presnell); 246 F.3d 1296 (11th Cir. 2001)

SLC Attorneys: Alice K. Nelson & Jodi Siegel

Summary of Case: SLC served as co-counsel in trial proceedings leading up to the October 1982 final injunction, having been retained by court-appointed guardian ad litem to represent the class, and as lead counsel on enforcement and compliance. The class consists of former residents of Orlando Sunland, a facility for persons with developmental disabilities, which the court ordered closed. Various enforcement injunctions were entered regarding the care and treatment of our class members. The state also was required to keep SLC apprized of where the class members were residing. We retained the original court monitor to serve as our expert to investigate whether class members are provided appropriate physical and nutritional management services.

Killmon, et al. v. City of Miami, et al., Case No.: 04-20707 (S.D. Fla., Miami Div., J. Altonaga)

SLC Attorneys: Andrea Costello and Alice K. Nelson
Co-Counsel: Robert W. Ross, Jr., Carol A. Sobel, Mara Verheyden-Hilliard, Carl
Messineo and Jonathan Moore

Summary of Case: This case arises out of the November 2003 demonstrations by a variety of labor and social justice groups during the meetings of the Free Trade Area of the Americas (FTAA) in Miami. There were massive arrests (over 280 people), as well as excessive uses of force by police against those at the protests and while people were in jail. The use of force against trade unionists, retirees, journalists, and activists alike involved chemical weapons (e.g., pepper spray bullets and tear gas), “less lethal” projectile weapons (e.g., rubber bullets), tasers, taser shields, concussion grenades, use of sticks and batons and the deployment of tanks. Several individuals also complained of illegal strip searches, sexual assaults and inappropriate verbal harassment while in custody. Many of the arrests were without probable cause and/or based on unconstitutional statutes. The equitable relief seeks to have law enforcement authorities cease the use of the brutal and unlawful tactics that were utilized during the demonstrations and for a declaration concerning the violations of the constitutional rights of those at the demonstrations. The damage claims seek compensatory and punitive relief for injuries sustained by the plaintiffs during the course of the demonstrations. Our co-counsel are nationally recognized and experienced litigators in this field, including litigating claims for damages under these types of circumstances.

Lake Worth for Global Justice, Inc. v. City of Miami, Case No.04-20262 (S.D. Fla.,
Miami Div., J. Graham)

SLC Attorneys: Andrea Costello and Alice K. Nelson
Co-Counsel: Carol A. Sobel and Robert W. Ross, Jr.

Summary of Case: This was the first case filed involving the demonstrations against the FTAA meetings in Miami. It sought, *inter alia*, a temporary restraining order for enforcement of the City of Miami’s permitting scheme concerning marches and demonstrations on public sidewalks, streets and parks. Lake Worth Group for Global Justice wished to participate in demonstrations during the course of the Miami Civilian Investigative Panel’s investigation into police action at the demonstrations, as well as other demonstrations in the Miami area. The Court ordered an expedited permit process to all groups seeking to demonstrate and a requirement for the City to advise the Court of any denials of any permits. The City repealed two of the challenged ordinances and revised the permit scheme four times. The parties met several times with a Special Master appointed by the Court, George Knox, to attempt to settle the remaining issues. The City agreed to most of our proposals with the exception of a few remaining issues and the parties reached an impasse in discussions. Mr. Knox filed a Report and Recommendation with the Court which is very favorable to us on the remaining issues. However, the Court did not accept the Report, and we lost on those few issues. All that remains are the fees and expenses.

Florida Alliance for Retired Americans, Broward Anti-War Coalition, Lake Worth for Global Justice, Haiti Solidarity, Green Party of Florida & Green Party of Broward

County v. City of Fort Lauderdale & Broward County, Case No. 05-60813 (S.D. Fla., Miami Div., J. Moore)

SLC Attorneys: Andrea Costello and Alice K. Nelson

Co-Counsel: Carol A. Sobel, Robert W. Ross, Jr., Mara Shlackman, Randall Marshall and Zeina Salam (Florida American Civil Liberties Union).

Summary of Case: This case was filed prior to the demonstrations in Fort Lauderdale on June 4-6, 2005, related to the first U.S. meeting of the Organization of American States (OAS). It sought, *inter alia*, a temporary restraining order (TRO) against enforcement of the City of Fort Lauderdale's permitting scheme concerning marches and demonstrations on public sidewalks, streets and parks and other unlawful regulations of public assemblies and parades in public areas. It also sought to limit a so-called "security perimeter" set up by the County to keep demonstrators. Hundreds of yards from the convention center where the meetings were taking place, which put the activists well out of sight and sound of their intended audience in violation of their constitutional rights. We represent several human rights, environmental and labor organizations that wished to participate in demonstrations. The City agreed at the TRO hearing not to enforce certain provisions of the City code related to public assemblies on sidewalks and to issue permits for marches or rallies requiring street closures on 48 hours notice. The day before the groups' march and rally was to take place, the Court issued a ruling barring the City from enforcing a newly enacted law which impermissibly regulated the items that demonstrators could use, such as sticks and poles to support banners and signs, on the basis of speech by providing an exception if the group is part of a "bonafide religious sect or organization" carrying out a "well-established religious right or practice." The law also prohibited activists from gathering together for a "common purpose" in public assemblies of eight or more people with such objects. (A similar law was enacted by the City of Miami prior to the FTAA meetings and was repealed in response to the *Lake Worth for Global Justice, et al. v. City of Miami, et al.* reported above.)

Tummino, et al. v. Lester Crawford, Acting Cmm'r of the Food & Drug Admin., Case No. 05-366 (E.D.N.Y. J. Korman)

SLC Attorneys: Andrea Costello and Shelbi Day

Co-Counsel: Simon Heller and Nan Strauss, Center for Reproductive Rights

Summary of Case: We represent the individual plaintiffs, several women active with women's rights organizations in Gainesville, New York and Tennessee, on behalf of a class of all women that need access to the "Morning-After Pill" (MAP) (also known as "emergency contraception" or "Plan B"). This challenge under the Administrative Procedures Act (APA) and the right to privacy and equal protection under the U.S. Constitution is based on the FDA's failure to approve MAP as an over-the-counter drug. The case seeks to challenge the agency's failure to act upon firm medical and scientific evidence, but, instead, on the anti-reproductive rights policies of the Bush administration.

Matter of J. B.

SLC Attorneys: Shelbi Day and Peter Sleasman

Co-Counsel: National Center for Lesbian Rights

Summary of Case: Our client is a woman who, at a routine doctor's office visit for bronchitis, was given discriminatory and offensive information by the treating physician assistant. The information, which was given to Ms. B. as medical information, included three pages from a religious treatise condemning homosexuality. The information included summaries of and citations to Christian Biblical Scripture professing that "Homosexual activity is sinful and sexually impure" and that "it is possible with God's help to change." It went on to urge "homosexuals" to *change* their sexual orientation. The physician assistant documented her actions in our clients' chart. Ms. B., who had been under the care of a primary care physician at the practice for over two and a half years, found this unsolicited proselytization extremely offensive and discriminatory. Her sexual orientation was not medically relevant to her doctor appointment, and the only way that the physician assistant knew that she is a lesbian is by looking at her confidential medical records. Ms. B. filed a complaint with the Senior Physician at the practice, who essentially said "so what." Ms. B. feels that the trust that she had for her physician has been violated and she is reluctant to return to another physician. A growing body of research indicates that actions such as these extremely harmful and are the primary reason that lesbians are a medically underserved community.

Aged/Disabled Adult Medicaid Waiver Project

SLC Attorneys: Andrea Costello and Alice K. Nelson

Possible co-counsel: Anne Swerlick, Florida Legal Services

This is another of Florida's home based and community services waiver programs. The project will provide advocacy to the elderly and elderly disabled who are eligible for Medicaid Waiver Programs. The ultimate purposes of the project are to ensure that: (1) all elderly persons eligible for waiver services have access to the programs, and (2) the Waiver Programs provide appropriate services.

SLC will conduct outreach out to individuals who meet *Olmstead's* requirements and assist them in applying for and obtaining community services. Through this advocacy, SLC attorneys will document systemic problems or limitations of the waiver programs and bring those problems to the attention of state officials. If informal efforts to resolve the problems fail, SLC will initiate administrative proceedings and litigation on behalf of individuals, and if appropriate, classes of individuals, to force the state to comply with its obligations under the ADA and to have an effective, working system for placing qualified elderly persons into appropriate community based programs. These efforts will be utilized to determine larger strategies similar to the litigation in *Dubois*.

FBF CHILDREN'S LEGAL SERVICES GRANT

Special Education Advocacy Project

SLC Attorneys: Jodi Siegel & Alice K. Nelson

SLC provides intensive consultation, co-counseling and direct representation as appropriate with education advocates at legal service and legal aid programs. This grant year, SLC expanded to providing state support on special education, *i.e.*, rather than working with a few specified programs, SLC has become a statewide resource for all IOTA programs to assist advocates in their cases.

Further, we are working collaboratively with several programs to develop strategies on several impact issues:

- Race and Special Education in Alachua County with Three Rivers Legal Services
- Homeless Education Issues in Leon County with Legal Services of North Florida and Florida Legal Services
- Systemwide failures to comply with IDEA in Gadsden County with Legal Services of North Florida
- Exploration of an “adequacy” in education suit in Jefferson County with Legal Services of North Florida

And we are providing a variety of trainings around the state:

- Training parents on what they need to know about the newly reauthorized IDEA
- Training juvenile judges, public defenders, state attorneys, guardian ad litem, DCF attorneys and others involved in the care of wards of the State regarding the newly reauthorized IDEA’s provision for juvenile courts to appoint surrogate parents
- Training legal service education advocates to develop advocacy skills in this area
- Training guardian ad litem attorneys and guardian ad litem so they can incorporate education advocacy in their representation.

EQUAL JUSTICE WORKS (EJW) FELLOWSHIP ON THE CRIMINALIZATION OF HOMELESSNESS

Criminalization of Homelessness

Fellow/Attorney: Shelbi Day

Summary of Project: This project aims to address the civil rights and human rights violations that result from criminalizing the life-sustaining activities of homeless people and the status of being homeless. The “criminalization of homelessness” is a phrase that was adopted a decade ago to reference the growing trend of arresting, citing, and harassing homeless people for life-sustaining activities such as eating, sleeping, and going to the bathroom in public when there is no alternative. The phrase is also used to explain efforts by local governments to enact and enforce local ordinances that target homeless people simply because they are homeless. This is an ever-growing trend in Florida, winning it the ranking of second meanest state in the nation for the second year in a row in the National Coalition

for the Homeless' annual report. Many Florida cities, including Gainesville, were found to rank amongst the top twenty meanest cities in the country in the most recent report.

In addition to making little moral, social, or economic sense, criminalization measures are counter-productive in that they make it more difficult for homeless people to escape homelessness. Moreover, many of the laws and associated policies and practices are unconstitutional. The project, which began in September of 2004, addresses these issues through public education and outreach, public policy advocacy, and litigation. We worked with FILS and the Alachua County Coalition for the Homeless and Hungry to create Street Information Cards for Gainesville. These "Street Cards" contain information on resources available to the homeless and "Know Your Rights on the Streets" legal information. We also are working with the Public Interest Law Section's Committee on Homelessness to plan a CLE Seminar on Homelessness, which will be held in Orlando on November 17, 2005. This day-long event will be cosponsored by the ABA Committee on Homelessness.

In Sarasota, Shelbi was involved in efforts to repeal an anti-sleeping provision that was being aggressively enforced against homeless people. She represented the Florida Homeless Coalition as *amicus curiae* in a certiorari appeal to the Second District Court of Appeals, arguing in support of the public defender who successfully challenged the ordinance in the lower court in the context of a criminal appeal. The *amicus* brief was accepted by the court, and the court denied certiorari leaving intact the lower court's decision finding the ordinance unconstitutional. Shelbi also assisted an assistant public defender in forming a constitutional challenge for a criminal lodging ordinance that was enacted to replace the unconstitutional anti-sleeping ordinance that is the subject of the previously mentioned appeal. The county court found the newly enacted anti-lodging ordinance unconstitutional and the City did not appeal its decision. Shelbi is currently monitoring the City's actions towards its homeless population.

City of Gainesville Dep't of Community Develop. & Code Enforcement Div. v. Chrysalis Community, Inc.,

SLC Attorneys: Shelbi Day and Peter Sleasman

Summary of Case: Our client, Chrysalis Community, is a non-profit organization that assists homeless women who were formally involved in prostitution and drug abuse. Chrysalis Community offers a service under which it creates a case plan, coordinates social services and treatment, and provides long-term transitional housing for the women in its program. Under the housing portion of its program, Chrysalis rents two houses which are occupied by up to three women at one time who get subsidized rent and have a shared responsibility to pay utilities and rent once they begin working. Recently, a Gainesville Code Enforcement Officer issued a notice of violation, which alleged that the house was operating as a half-way-house in a neighborhood zoned only for residential purposes. SLC is representing Chrysalis Community to challenge the violation, which we believe is in error. Plainly, the house at issue and the activities therein do not meet the definition of a half-way-house. It is serving only as a residence, as nothing occurs at the house other than housing and drop-in supervision. All other services provided by Chrysalis Community occur outside of the house.

**EJW FELLOWSHIP TO INCREASE AFFORDABLE,
ACCESSIBLE HOUSING FOR PEOPLE WITH DISABILITIES**

Fellow/Attorney: Natalie Maxwell

Summary of Project: National Studies have documented that the lack of adequate housing presents the most substantial barrier to persons with disabilities living in the community rather than in institutions. Under the Supreme Court's landmark decision in *Olmstead v. L.C.*, people with disabilities have a right to receive public benefits and services in the most integrated setting appropriate to their needs. The decision in *Olmstead* confirms that no one should have to live in an institution if he/she can live in the community with the appropriate supports and services. In Florida, the lack of housing is among the top barriers confronted by people with disabilities that reside in institutions who want to live in the community and can obtain funding through the Medicaid program to provide for their other needs. Due to a lack of housing, they are forced to remain in institutions. This project combines legal advocacy, public policy advocacy and public education to increase access to accessible and affordable public housing for low-income persons with mobility impairing disabilities in Florida.