

# The Vigil



American Civil Liberties Union of Tennessee

Spring 2001

## The Death Penalty: Fighting for a Moratorium

With recent events around the county highlighting the inequities and inconsistencies in the application of the death penalty, it is time to increase support for alternatives to capital punishment. Tennesseans have joined the national moratorium movement and are calling for a moratorium on executions in our state.

### Tennesseans for a Moratorium on Executions

In the wake of Tennessee's first execution in 40 years last spring and the pending execution of Phillip Workman—despite new evidence which casts doubts on his guilt—Tennesseans for a Moratorium on Executions (TME) was organized. Spearheaded by ACLU-TN and the Tennessee Coalition to Abolish State Killing (TCASK), TME's goal is to win public and political support for a moratorium in Tennessee. Public awareness activities and a legislative initiative are the tools TME is using to address the inequities of the death penalty.

While Tennesseans have different opinions on the use of capital punishment, supporters and opponents both are concerned about the flaws in the system by which our government imposes death sentences. Increasingly, Tennesseans agree there are enough serious concerns about the fairness and accuracy in the imposition of the death penalty that there should be a moratorium until these fundamental concerns are addressed.

TME currently is composed of over 50 groups, including Amnesty International, Restorative Justice Ministries of the United Methodist Church, Catholic Dioceses of Knoxville, Memphis, and Nashville, and civil rights and mental health groups. It is vital that our base of support continue to grow. If you are part of an organization that might be interested in joining TME or are an individual wishing to support the moratorium effort, please send an email to [hedy@aclu-tn.org](mailto:hedy@aclu-tn.org) for more information.

### ACLU-TN's Position

ACLU-TN has long been an opponent of the death penalty. The inherent problems with capital punishment are clear. Almost all of the people sentenced to death are poor and a wildly disproportionate number are people of color. Study after study demonstrates that race (particularly the race of the victim and of the defendant) and where the trial takes place are more important in determining whether a death sentence is imposed than the prior criminal history of the defendant or the severity or nature of the crime. Moreover, many death row inmates had grossly inadequate legal representation and faced

rampant prosecutorial misconduct during their trials. There also is no evidence that the death penalty acts as a deterrent to crime.

### Moratorium Bill

SB1805/HB1566, sponsored by Senator Roscoe Dixon (Memphis) and Representative Rob Briley (Nashville), imposes a moratorium on executions in Tennessee while a study committee reviews the issue.

The bill establishes the Death Penalty Fairness Study Committee, which will examine: the adequacy of counsel and investigative support in all stages of capital cases; the process for judicial review of the merits of claims in post conviction and federal habeas corpus proceedings; disproportionate racial impact upon any aspect of capital case proceedings; whether mentally ill persons should be executed and what criteria should be used in judging the level of illness; prosecutorial misconduct or judicial error as a factor in the imposition of the death penalty; and the presence of innocent persons on death row in Tennessee.

The fifteen member committee includes representatives appointed by the House and Senate Speakers and the Governor; the State's Attorney General; and representatives from the Public Defender's Conference, the District Attorneys General Conference, and the Office of the Post Conviction Defender.

The Committee will report its findings and recommendations to the Governor by April 2002. The moratorium will stay in effect until the Legislature acts upon the recommendations of the Committee and addresses the fair and impartial administration of the death penalty in accordance with due process.

### What You Can Do

Please join our legislative email alert to receive updates on the status of SB1805/HB1566 and to learn what you can do to ensure that your legislators support the bills. Send an email to [hedy@aclu-tn.org](mailto:hedy@aclu-tn.org) with "subscribe to legislative alert" in the subject line. Please make sure to include your street address so we will know your legislative district.

Contact Governor Sundquist immediately and urge him to support a moratorium on executions and to grant clemency to Phillip Workman. Handwritten letters are going to the top of the pile to be read first. The Governor's address is **Gov. Don Sundquist, State Capitol, Nashville, TN 37243-0001.**

## Maximum Intensity

*On January 25, ACLU-TN volunteer Dyer Ridley attended the clemency hearing of death row inmate Phillip Workman. The following is Dyer's account of his experience. Dyer is a freshman at Vanderbilt University majoring in political science. He is from Bowling Green, KY.*

The clemency hearing of Phillip Workman was to begin shortly and I waited patiently in the lobby of the administration building at Riverbend Maximum Security Institution. Finally, the prison personnel called for members of the public and I managed to make my way to the security checkpoint. After passing through, a prison guard led us inside the prison.

I didn't realize the hearing would be held inside the prison, and I had a few reservations about entering a facility that houses the most violent criminals in Tennessee. We walked through the perimeter fence and waited as the gate closed behind us. As clichéd as it might be, the sound the gate behind us made when it shut was terrifying.

We were led into a large room where members of the public could view the hearing on three televisions. I can vividly remember when the prison guards brought Phillip Workman into the hearing room. The door was open to that room, so I could see right inside. He was no longer just a name, no longer just a crime, but a man that was to be killed. This put the matter into real perspective. I couldn't imagine that the state of Tennessee was actually going to kill the man that was in front of me. Prior to that I merely thought of Phillip Workman as a criminal, not a person—a flash on the news. Everything I knew about this man and his case was through mediums that prevented me from actually realizing his humanity.

As Phillip Workman sat down, everyone in the large room continued conversing with each other, laughing, telling jokes, completely oblivious to the man that was not twenty feet from them. It was a harsh reality that would continue to amaze me throughout the hearing.

Phillip Workman's council, the state's Post Conviction Defender's Office, presented their case first. They brought witnesses that supported his innocence. It was especially interesting when a juror from the original trial testified before the parole board. He gave a moving explanation for his attendance at the hearing and said if the new evidence uncovered since the trial had been present in the original trial in 1982, he would not have voted for the death penalty and Phillip Workman would not be sentenced to die. His emotional testimony dissatisfied the parole board members. The

chairman of the board even asked the juror to "take the emotion out of this."

When the board took a break I saw, yet again, the inability of many in the room to recognize that they were in a maximum-security prison and in the presence of a man sentenced to die. The parole board members were actively socializing with anyone they knew, and it seemed that they could not have cared less what Phillip Workman's attorneys had said earlier. I merely sat and waited until the hearing was ready to begin again.

In their closing statements, Phillip Workman's attorneys reiterated their earlier points and made clear the testimony of their witnesses. I needed to leave and unfortunately would not be able to hear the state's case. I walked to the entrance of the room and waited as one of the guards escorted me back to the administration building.

On my way back to town, I couldn't help but think of the family of Lt. Oliver and the pain they must be going through. I can't begin to imagine the anguish they have endured for almost twenty years due to the loss of their loved one. However, I have a hard time believing that killing the accused, Phillip Workman, will end any of this pain or close this terrible chapter in their lives. The cycle of violence initiated by the death of Lt. Oliver will not end with the death of the man convicted of killing him. It will continue, another will kill and the state will kill them. Furthermore, the possibility that Phillip Workman may be innocent of this crime further supports the notion that our current system is too flawed to rely on for justice.

I am in no way advocating a breakdown in the judicial system where criminals are released to the public only to break the law again. I am, however, questioning the effectiveness and the appropriateness of the death penalty. I am not convinced this system is flawless, and I don't think that it ever will be an effective punishment as long as the risk of an innocent person being put to death by their state exists.

## Message from the Executive Director

2001 promises to be a challenging and busy year for ACLU-TN.

### ACLU-TN Legislative Agenda

With the 102nd Tennessee General Assembly well underway, ACLU-TN is actively lobbying on a range of civil liberties issues. We are analyzing over 400 of the 3,891 bills introduced, developing position statements, and organizing coalitions around particular bills. We also are meeting with new legislators to learn about their interests and to explain ACLU-TN's role at the Legislature.

As a member of TME, ACLU-TN drafted legislation creating a Death Penalty Fairness Study Committee and imposing a moratorium on executions. (*See article on page 1.*)

As with every year, a great deal of our energies are focused on defeating anti-civil liberties legislation. We are lobbying against bills that would allow the posting of the Ten Commandments in public buildings, redesign the state flag to include "In God We Trust," prohibit state funding of abortions and increase barriers to obtaining an abortion, and require fingerprinting of anyone pawning an item at a pawnbroker.

While ACLU lobbyist Joe Sweat and I share the civil liberties perspectives on bills with legislators, **your elected officials need to hear from you.** Please sign up for ACLU-TN's legislative email alert network and we will send you updates on pending bills and information on what you need to do to protect constitutional freedoms in Tennessee. Send an email to [hedy@aclu-tn.org](mailto:hedy@aclu-tn.org) with "subscribe to legislative alert" in the subject line. Please make sure to include your street address so we will know your legislative district.

### Student Wins ACLU College Scholarship

ACLU-TN nominee Eli Arnold is one of 12 recipients of the 2001 National ACLU College Scholarship for Youth Activism. Eli, a senior at Page High School in Williamson County, was selected from a pool of high school seniors across the county because of his demonstrated commitment to civil liberties.

Eli volunteers in the ACLU-TN office twice a week. As a committed abolitionist, Eli is mobilizing involvement against the death penalty among his peers and teachers through leafleting, emails, and speaking out in support of a moratorium on executions.

The Annual Scholarship program, which awards \$4000 to each recipient, was created in 2000 by an anonymous ACLU donor.

### Get Involved

The nominating committee is now accepting suggestions from the ACLU-TN membership to fill at-large positions on the Board of Directors. In addition to submitting names for consideration, actual nominations can be made by petition of any twenty members (include signatures on your petition) or by the Board of Directors of ACLU-TN chapters. Board member responsibilities include setting and implementing organizational and substantive policy, actively fundraising, and regularly attending Board meetings and participating in at least one committee. Suggestions for nominations should be sent to: **ACLU-TN Nominating Committee, P. O. Box 120160, Nashville, TN, 37212**, and should include confirmation that the nominees are willing to serve on the Board, their qualifications, and how they can be reached. The deadline for submissions is **March 30**.

## 2000 Bill of Rights Celebration: The Best Yet!

At the 2000 Bill of Rights Celebration, a sell-out crowd enjoyed the company of civil libertarians from across the state at the most successful fundraiser in ACLU-TN history.

Nashville attorney Harris Gilbert received the Bruce Kramer Cooperating Attorney Award for his current involvement with the ACLU-TN case [Vinson v. Wilson County School Board](#) and his ongoing assistance and advice to ACLU-TN regarding potential litigation. Becky Brodersen received the Heather Harper Volunteer Award for her more than six years

of work at the ACLU-TN office.

The evening, which included dinner and a silent auction, culminated in remarks by nationally syndicated columnist Molly Ivins. Ivins discussed the 2000 presidential election, offering her own witty and irreverent insight into the problems in Florida.

Over 325 people attended the annual event, which was held at the University Club in Nashville last November.

## New Year, New Website!

For the latest information on ACLU-TN's activities, check out our website at [www.aclu-tn.org](http://www.aclu-tn.org). The site has been redesigned and expanded and now includes a students' rights page, information on our chapters, and a comprehensive "Issues" section.

The new site also has a "What's New" feature (updated weekly) that provides information on current civil liberties issues in Tennessee and nationwide.

Our website development plan is still not complete! We hope to add a lobbying guide and a more detailed students' rights page in the next few weeks.

## Save the Date!

**2001 Human Rights Campaign Tennessee Dinner**  
Saturday, March 24, 2001 in Nashville

Featuring:

**Keynote Speaker**—Hilary Rosen, CEO,  
Recording Industry Association of America  
**HRC Equality Award**—Vanderbilt University  
**HRC Community Leadership Awards**—John Bridges and  
Fletcher Foster

**For tickets:** 1-800-494-8497

**For more information:** 615-269-6782



## Protest Rights Protected

ACLU-TN won a temporary victory in Vinson v. Wilson County School Board last September when U. S. District Court Judge John Nixon granted a preliminary injunction in the case.

ACLU-TN filed the case on behalf of Cory and Kista Vinson after they were suspended from Mt. Juliet High School for protesting the school's dress code policy. Cory and Kista wore logos on their dress-code compliant shirts that said "I miss my old clothes" and "The School Board voted and all I got was this lousy uniform."

The injunction prevents the school from punishing students for protesting the dress code and requires any record of punishment relating to the wearing of logos to be removed from students' files.

The School Board has asked the court to dismiss the lawsuit because the original plaintiffs are no longer in the school. They hope to return if students' right to protest is upheld. ACLU-TN Cooperating Attorneys Harris Gilbert and Stephen Zraleck are representing the plaintiffs in this case. The next hearing will take place before Judge Nixon on March 10.

## Defending Parental Rights

ACLU-TN recently filed an amicus brief in a divorce case, Eldridge v. Eldridge, after a joint custody order

# In the Courts and...

was modified to prohibit the parent's youngest child from spending the night with her mother when her mother's partner also spent the night. ACLU-TN Cooperating Attorney Abby Rubenfeld recently received permission to argue our amicus before the Tennessee Supreme Court. Rubenfeld also took questions from the justices.

ACLU-TN's amicus argues that the right to privacy under the Tennessee constitution includes the right to parent without government interference, and that this right cannot be restricted based on the sexual orientation of the parent. We are currently awaiting a ruling.

## Abortion Restrictions Overturned

After seven years of appeals, the Tennessee Supreme Court has struck down restrictive provisions in Tennessee's abortion statute in the ACLU-litigated case Planned Parenthood of Middle Tennessee v. Sundquist.

The case, filed by ACLU-TN, the National ACLU Reproductive Freedom Project and the Planned Parenthood Federation of America on behalf of PPMT, argued that the Tennessee abortion statute placed burdensome restrictions on women seeking abortions. These restrictions included a mandatory two-day waiting period and the requirement that all abortions after the first trimester take place in a hospital.

In its September 15 decision, the Tennessee Supreme Court ruled the statute violated privacy guarantees under the state constitution, which ensures greater privacy protections than the federal constitution.

This important case marked the first time the Tennessee Supreme Court considered the issue of abortion and reaffirmed reproductive freedom rights in our state.

**If eternal vigilance is the price of liberty, then eternal fundraising is the price of vigilance!**

Won't you please consider making a tax-deductible gift to the ACLU Foundation of Tennessee to support our advocacy, litigation and public education programs, which protect the Bill of Rights? Just clip this coupon and return with your tax-deductible donation made out to ACLU Foundation of Tennessee to:

ACLU Foundation of Tennessee  
P. O. Box 120160  
Nashville, TN 37212

Name \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

\$ Amount of Gift \_\_\_\_\_



# ... In the Communities



## An Ongoing Battle...

In January 2001, ACLU-TN and Americans United for the Separation of Church and State (AU) sent a letter to the Rhea County Superintendent regarding religious practices in the public schools. ACLU-TN and AU learned of several religious practices, including prayers, daily Bible readings, and the posting of religious messages throughout the Rhea County school system.

ACLU-TN and AU's letter outlined the current state of federal law regarding religious activities in public schools and urged the Superintendent to end these unconstitutional practices.

Seventy-five years ago, Rhea County was home to one of the most famous church/state debates in American history when biology teacher John Scopes was prosecuted for violating a state ban on the teaching of evolution. ACLU Cooperating Attorney Clarence Darrow represented Scopes at the trial.

## The Right to an Attorney...

In October 2000, ACLU-TN received a letter from an inmate in Mississippi who had been notified that a termination of parental rights hearing would take place in Memphis to determine the custody of her only child. The inmate did not have an attorney and the facility where she was incarcerated refused to allow her to attend the hearing.

ACLU-TN contacted the Department of Children's Services to make them aware of the situation and raise due process concerns. DCS responded by asking the court to appoint an attorney to the inmate. The court agreed, and the hearing was rescheduled to allow the inmate time to meet with her lawyer.



## Volunteer Spotlight

As a third year law student at Vanderbilt University, Laura Coon had studied constitutional law in the classroom. She decided to become an ACLU-TN volunteer to see the Constitution in action.

"I had taken constitutional law classes involving individual rights," Laura said, "and I was interested in seeing how the issues that came up in class played out in people's lives."

Laura has witnessed this phenomenon every week during this school year by answering phone calls and letters from Tennesseans seeking help and advice.

"I really enjoy the opportunity to talk to people who think that the government did something wrong but didn't know what they could do about it." Laura said. "I like applying what I learned in class to formulate potential constitutional claims."

Laura also has performed research, prepared legal memos, and drafted letters on sensitive topics. She is most interested in free speech, church/state, and search and seizure issues.

This is not the first experience Laura has had with ACLU. In the summer of 2000, Laura clerked at the Washington, D.C. law firm of Wilmer, Cutler, & Pickering, which has handled ACLU-sponsored litigation in the past.

Laura, who is originally from Lapeer, Michigan, graduated from Michigan State University in 1997 with a bachelor's degree in international relations and social relations. She will graduate from Vanderbilt Law School, where she is a Wade Scholar, in May 2001.

After graduation, Laura will move to San Diego to spend a year clerking for a federal district court judge. After that, she hopes to work in the areas of constitutional law or federal regulatory law, perhaps in Washington, D.C.

ACLU of Tennessee  
P.O. Box 120160  
Nashville, TN 37212

Change Service Requested

NON-PROFIT ORG.  
U.S. POSTAGE  
**PAID**  
NASHVILLE, TN  
PERMIT #3169

## ACLU-TN Around the State

- ACLU-TN Board President Bruce Barry was a panelist on a Vanderbilt University student-sponsored program on the First Amendment implications of the Napster lawsuit.
- ACLU-TN Executive Director Hedy Weinberg was invited by the Metro Human Relations Commission (MHRC) of Nashville/Metro Davidson County to participate in a training for police recruits at the Police Training Academy and to speak at the first annual MHRC Retreat. At both events, she discussed racial profiling and the new data collection law regarding traffic stops.
- Joseph Sweat, ACLU-TN National Board Representative, visited with students at Riverdale and Oakdale High Schools in Rutherford County to discuss ACLU and students' rights.
- Weinberg spoke about pending legislation calling for a moratorium on executions at the February meeting of The Covenant Association, a clergy group in Nashville, and she participated in a panel discussion on the Internet and privacy at the annual Conference of the Tennessee Chapter of the American Society for Public Administrators.
- Barry appeared on Nashville's CBS affiliate's series on workplace privacy and as a guest on the News Channel 5+ call-in show to debate public funding of faith-based programs.
- ACLU-TN Board Member Sheri Lipman discussed ACLU issues with business students at the University of Memphis.
- ACLU-TN Board Members Bruce Kramer and Lipman were interviewed by media outlets in Memphis on a range of civil liberties issues, including government funding for faith-based groups, the death penalty, and reproductive freedom.
- In a teleconference with an East Tennessee State University journalism class, Weinberg discussed the media and the First Amendment.
- Weinberg participated in a press conference with the League of United Latin American Citizens (LULAC) and NAACP calling for a civilian review board in Lebanon.