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Agitator of the Year

Georgia had to provide lawyers for the poor or else deal with this man, activist Stephen B. Bright, our Newsmaker of the Year

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Beyond Bright

Unlikely allies united to reform indigent defense.

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JOHN DISNEY



Stephen B. Bright lambasted judges for not facing indigent defense problems.

NEWSMAKER OF THE YEAR:

Stephen B. Bright

Angry Man of Indigent Defense

TRISHA RENAUD

While powerful State Bar leaders and politicians worked the Capitol this spring to help pass a historic indigent defense bill, activist Stephen B. Bright worked the courthouses.

As committees debated the details of a bill that would establish a statewide public defender system, Bright filed another suit—the sixth in which he and other prominent defense attorneys have demanded sweeping changes in how counties provide legal representation for the poor. This latest litigation targeted the four-county Cordele Judicial Circuit.

The message was hard for legislators to ignore. Bright had spelled it out for them time and again: If the system doesn't change, he warned, he would keep filing such suits around the state. Or, as he said about indigent defense litigation at a symposium in 2002, "Coming to a courthouse near you."

The zealotry of advocates like Bright "doesn't always help ... in the political process, and I say this with

the greatest affection,” said State Sen. Charles C. “Chuck” Clay, R-Marietta, whose politically savvy maneuvering in the Legislature was critical this year in indigent defense reform. But, he added, “The Steve Brights of the world bring the issue into focus.”

For his unrelenting efforts over the years to expose Georgia’s shortfalls in indigent defense, Bright is the *Daily Report’s* 2003 Newsmaker of the Year.

In a 2003 legislative session marked mostly by partisan bickering as the state adjusted to two-party government, the General Assembly managed to produce a remarkable reform.

After years of ignoring the abuses of an indigent defense system that, in many counties, provided the poor with lawyers who did little more than enter perfunctory guilty pleas, the Legislature, governor, State Bar and a Supreme Court commission found common ground on the issue.

As a result, starting in 2005, every Georgia judicial circuit will have a public defender office providing representation to the poor, presumably ending a system that left Georgia with a two-tier legal system—one for the poor, and one for those who could afford to pay lawyers.



RICHARD MILLER

Bright’s victory in a federal court was a turning point, forcing lawmakers and judges to take his threats seriously.

An Odd Choice?

At first, Bright may seem an odd choice for our Newsmaker of the Year. Others played equal, if not more prominent, roles in passing the legislation this year.

Clay pushed the public defender bill through an otherwise politically divided Senate in seven days. House Speaker Terry Coleman, D-Eastman, seemed to throw up roadblocks at first, and then worked hard to get a bill passed. In the year or so leading up to the legislative session, attorneys Emmet J. Bondurant and C. Wilson DuBose rallied support at the State Bar while BellSouth General Counsel Charles R. Morgan led the Supreme Court’s commission. Chief Justice Norman S. Fletcher threw the prestige of the Supreme Court behind the effort. The *Atlanta Journal-Constitution* published numerous editorials on the subject.

But Bright’s prodding over the years—some would say unrelenting agitation—was critical in bringing the issue to the fore. Sometimes with lectures, other times with pleas, threats or impassioned speeches, Bright was the most implacable and visible crusader for better legal defense for the poor.

He brought a sense of urgency to the fight for reform, railing in speeches, letters and reports against inaction.



FILE PHOTO

At an ABA meeting, Bright brandished documents in his inimitable style.

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FILE PHOTO



Bright convinced U.S. District Court Senior Judge Marvin H. Shoob that overcrowding at the Fulton jail was caused by inadequate indigent defense.

To Bright, it was a battle to fulfill a promise made 40 years ago by the U.S. Supreme Court in *Gideon v. Wainwright*, 372 U.S. 335 (1963), that the right to counsel is fundamental to a just system. And he has fought to ensure that right over the years, with little tolerance for compromise. As he put it in a recent interview, “So many people talk about the minimum. ... Shoot for the stars, not the floor.”

Practice Devoted to Poor

Championing the rights of the poor in court isn't new for Bright. The 54-year-old executive director of the Southern Center for Human Rights decided years ago to devote his law practice to advocating for the less fortunate. Over the nearly 25 years he has been in Georgia, he's represented indigents, frequently those on death row.

He handled landmark cases, including *Amadeo v. State*, 384 S.E.2d 181 (Ga. 1989), which held that special

League schools and penning law review articles on the need for better representation for the poor.

Bright brings a firebrand style to his mission, an uncompromising insistence that inspires some and antagonizes others. Not everyone likes him, but no one ignores him.

“
I send my students to court, and I say, ‘Count the constitutional violations.’”

—Stephen Bright

While the Supreme Court's Commission on Indigent Defense, which made an exhaustive study of the issue over the past two years, achieved consensus on the need for reform, it was Bright who constantly pushed the commission to do more. When the commission appeared reluctant to see Georgia's system firsthand by visiting courtrooms unannounced, Bright brought the realities of the state's problems to the commission hearings. He filled the meeting rooms with former defendants or with the family members of those still in jails. And for those who couldn't

expertise was needed to ensure good representation in death penalty cases, and reversed a Georgia trial judge's decision to appoint inexperienced local lawyers over a team of seasoned death penalty attorneys, including Bright, who were familiar with the case.

And he's litigated over prison and jail conditions around the South, while at the same time teaching and lecturing at Ivy

come, Bright spoke, recounting their stories as well as those collected by his monitors who had visited courthouses around the state.

Bright's Southern Center staffers mobilized the families of state prisoners to telephone legislators urging passage of the bill, enlisted the backing of civil rights groups in the cause and pressed the media for more and better coverage of the issue.

Bright inspired some but irritated others when his tall, lanky form rose to take strident and usually lengthy exception to anyone, including judges, he believed had downplayed the extent of the problem. Or to 'meet-'em-and-plead-'em' attorneys he said were providing shoddy lawyering for their clients.

It was the latter category for which Bright had particularly pithy words, virtual sound bites for the press. Those attorneys who meet and plead their clients in Fulton State Court for \$50 a case? “Bottom feeders of our profession,” he said at one bar meeting.

He told a September 2002 symposium on indigent defense that he'd seen court-appointed lawyers who were “walking violations of the Sixth Amendment. I send my students to court, and I say, ‘Count the constitutional violations,’” he said, referring to a class he teaches at Yale Law School.



W. Bruce Maloy

When the head of the Council of Superior Court Judges, Augusta Circuit Judge J. Carlisle Overstreet, remarked at the symposium that Georgia's indigent defense system had problems and needed money, but was fundamentally sound, Bright took him to task later in the session.

“I thought we all agreed that the system was a scandal. When people are languishing in jail for months without seeing a lawyer, [we] can't say that the system is fundamentally sound,” Bright insisted.

One Capitol observer, who declined

to be identified, likened Bright to the “bad cop” in the old good cop/bad cop routine police sometimes use when interrogating suspects. Bright’s threats of costly litigation make other advocates for reform appear more reasonable and sometimes propel compromise, the observer said.



Roy E. Barnes

Bondurant, whose commitment to indigent defense goes at least 40 years, said the times called for fearless advocates. “Some knew what [Bright] said was true, but wished he hadn’t said it in public.”

A Legacy of Activism

Bright inherited his activism from his parents, who raised four children on a farm near Danville, Ky., yet found time to participate in the civil rights movement. He graduated from the University of Kentucky College of Law but decided that making money wouldn’t be a priority in his legal practice. Effecting change through public service would, however.

While working as a public defender in Washington in 1979, the ACLU asked Bright to take on a Georgia

death penalty case because no other lawyers were available. That began his long involvement with Georgia’s legal system and his commitment to its indigents accused of crimes and its prisoners sentenced to die.

Bright has been director of the Southern Center, a nine-lawyer nonprofit organization, since 1982. He is also a regular lecturer at Harvard and Yale, where he recruits students to public service work, including his center. The center is involved in litigation, education and advocacy to protect civil, constitutional and human rights of defendants, including those facing the death penalty and prisoners in the South. Its attorneys also represent defendants in capital cases.

But Bright is much more than a well-meaning voice. He’s also a savvy tactician.

Years of Frustration

Litigating to reform indigent



FILE PHOTO

Sen. Charles C. Clay said Bright’s idealism wasn’t always politically expedient.

defense in Georgia had a frustrating history in the 1980s and early 1990s. An ambitious 1986 federal suit, *Luckey v. Harris*, No. C86-297R (N.D. filed Oct. 24, 1986), targeted the state and sought sweeping change. But the case bogged down in procedural issues, bouncing back and forth five times between U.S. District Court and the 11th U.S. Circuit Court of Appeals before it was eventually dismissed in 1992. It did, however, prompt the General Assembly, in 1989, to approve the first state money for indigent defense—\$1 million.

The problem with *Luckey*, said Bright, who was not involved in that case, was that it was simply too big. A statewide suit can’t possibly encompass the varied systems in Georgia’s 159 counties. Targeting one county at a time, he said, is a much better tactic.

Bright began just that in 1996 after staffers kept seeing case after case where indigents were getting virtually no representation, he said. “We just had to start filing lawsuits.”

First, the Southern Center sued Sumter County, alleging that misdemeanor defendants there were not told they were entitled to a lawyer before deciding to plead guilty. The case was



FILE PHOTO



FILE PHOTO

Judges Lawton E. Stephens, left, and J. Carlisle Overstreet, right, often publicly sparred with Bright over his view of lawyers for the poor.

settled in 1998 when Sumter agreed to change its procedures.

The Southern Center also became involved, along with Atlanta lawyer W. Bruce Maloy, in the case of a pro se defendant who complained that he sat in the Fulton jail for three months before he saw a public defender. That case was settled in 1999, when Fulton commissioners agreed to fund 20 additional public defender positions in an attempt to provide prisoners with prompt representation.

In August 2001, a time when the Georgia Supreme Court's Indigent Defense Commission was conducting public hearings, the Southern Center sued Coweta County. Unlike the two previous cases, the Coweta suit attracted considerable media attention. The complaint alleged that indigent prisoners waited for months before one of the county's two part-time contract defenders saw them and that one judge routinely ordered unrepresented defendants to negotiate pleas with prosecutors. The Coweta litigation was settled early this year after the county set up a public defender office with three full-time attorneys.

Last year, Bright turned his attention back to Fulton, convincing U.S. District Court Senior Judge Marvin H. Shoob that overcrowding caused health care problems at the county jail and that poor representation of indigents created the overcrowding. Shoob ordered Fulton to improve its defense of indigent detainees immediately, and county officials complied.

By piggybacking on the medical care case, Bright secured the attention of a federal judge without being forced to litigate a separate suit.

"Our basic approach was to look everywhere we could to try to solve this problem," Bright said at the time.

"I have noticed that the county commission is much more responsive when there's a federal judge ... telling them what to do."

A month later, however, he was back before Shoob, complaining that misdemeanor prisoners were left in the Fulton jail awaiting adjudication longer than they would have served if convicted. Shoob ordered some inmates released immediately.

But Bright wasn't done.

When then-Gov. Roy E. Barnes urged activists to stay in the fight for reform because change wouldn't happen overnight, Bright answered that call with a vow that more suits were coming. Within the month, he had

delivered on his promise. The Southern Center filed suit against Fulton and its municipalities.

Then came Cordele—filed at the height of the debate in the Legislature. That suit is pending.

Some Discount Accomplishments

Some judges insist that Bright's suits were mere noise, and that change would have come anyway. The real

worry, said Clarke County Superior Court Judge Lawton E. Stephens, was the possibility of a larger federal suit.

Says Judge Overstreet: "I don't think anybody did anything out of fear."

Still, the litigation was hard for leg-



FILE PHOTO

Bright told Sen. Charles B. Tanksley he could do better than vote for a bill that only partially improved Georgia's system. Bright urged the senator to "go all the way."

islators to ignore, said Bondurant, who likened it to "a dead elephant lying in the middle of the floor." The thought of some larger federal or class action, he added, also was ever-present in the minds of many.

"I do think people were convinced ... that sometime sooner as opposed to later, there would be some sort of court interference," said Sen. Clay. There was the concern that "some judge somewhere would pick up the baton and issue a pretty Draconian order." Then, he added, "We lose control over both cost and what it looks like."

Bright's Center Overshadowed?

The suits at times overshadowed the more conventional advocacy and research of Bright's Southern Center. In the fall of 2000, the Georgia Indigent Defense Council held the first of three symposiums to discuss improving the system. At the event, the center released a report detailing numerous failings in the system. The center also delivered information packets to the Supreme Court's Indigent Defense Commission, providing an anecdotal sampling of indigent defense complaints from around the state, transcripts of testimony

“*Our judiciary has been on the wrong side of history so many times, with slavery and Jim Crow.*”
—Stephen Bright

related to indigent defense from other public hearings and a summary of the law providing for the structure, funding and oversight of Georgia's district attorneys.

In February, with the drive to pass reform in the Legislature well under way, the center released a second report, based on three years of defendant interviews, courtroom monitoring and research, titled "If You Cannot Afford a Lawyer." A press release accompanying the booklet called the current legislative session an "opportunity for much-needed reform."

Still, many lawyers and judges associate the Southern Center more with Bright's activism and challenges to authority.

At the Georgia Indigent Defense Council's first statewide symposiums three years ago, Bright sparred with Judge Stephens.

Bright said some court-appointed defense lawyers feared that vigorous defense of their clients might make judges reluctant to give them future appointments. Stephens countered that the "last thing" judges want are incompetent lawyers.

"The idea that a judge would intentionally appoint an incompetent attorney is ludicrous," the judge insisted.

Bright jumped from his seat again. "It may be ludicrous, but it happens all the time."

At a June 2001 meeting of the Georgia Supreme Court's Indigent Defense Commission, after hearing lengthy presentations from prosecutors, Bright finally had his say—a long one.

Georgia, he told commission members, had failed to live up to the promise of *Gideon*. Instead, he said, it had ignored its responsibilities. The defense of indigents in many parts of the state was not representation, but processing, he insisted. Defendants are processed "like a hamburger at a fast-food restaurant. You don't need a bar card to do that," he said.

He criticized judges and prosecutors for opposing reform in years past. "We've been on the wrong side of history. Our judiciary has been on the

wrong side of history so many times, with slavery and Jim Crow. We really ought to get on the right side of history."

As attendees shifted restlessly in their seats, Bright dug in his heels. He would finish what he had to say. "I'm gonna stop. I know. But these prosecutors talked all morning."

He argued with another judge a month later at a bar committee meeting, claiming Floyd County Superior Court Judge Walter J. Matthews had said there was no such thing as an indigent defense problem in Georgia. Matthews interrupted to deny he had said that, but Bright snapped back: "That's what you said."

'You Have to Speak the Truth'

In a recent interview, Bright offered no apologies. He said he believes "very strongly that you have to speak the truth to power." Judges and court officials, he said, are often reluctant to admit the failings of their own system. "I knew that was not right," Bright said.

When the Senate Judiciary Committee passed the indigent defense bill, Bright's words of thanks were brief before he began pointing out the bill's shortcomings.

The bill, he said, left out a requirement that state board members have significant experience with and commitment to indigent defense.

Committee Chairman Sen. Charles B. Tanksley, R-Marietta, asked Bright if he believed that only "passionate defense lawyers" were qualified to be on the state board. Tanksley added that many lawyers who supported indigent defense reform didn't do criminal defense work at all.

Every bar member, Bright said, had a responsibility to support reform. "But those who run the system need expertise," he said. Then he complained that the bill required judges to approve lawyers appointed to conflict cases. Georgia's judges, he said, have not always been guardians of the Sixth Amendment's right to counsel.

Tanksley said he believed the bill "goes a significant way toward correcting that." It does, Bright said. "My sug-

gestion is that it go the rest of the way."

Clay, in a later interview, said he found the exchange frustrating.

"After we just passed the bill, they sat up there and said everything that was wrong with the bill," Clay said.

Strident advocacy is essential to reform, said Chief Justice Fletcher, but sometimes more moderate voices are needed.

"If you've been an advocate forever, and a real strong advocate, sometimes perhaps you've burned too many bridges," the chief justice said. New faces, he added, "can sometimes capture the victory."

But the Brights and Bondurants provided an important historical background to the issue, Fletcher said, "and they will continue to play a strong role."

Bright said in a recent interview that he wouldn't be filing more suits right away. The center, he said, is busy with the Cordele case, and he will wait to see if legislators come up with sufficient funding for the new system.

The legislation, Bright said, is not perfect. "But I'm reasonable about what can be expected out of the legislative process," he added.

"At the end of the day, the idea that [Georgia will have] 49 public defender offices throughout the state is a major step forward in providing representation," he said.

But if Bright had any thoughts of satisfaction, they were fleeting at best. He already had begun a new list in his mind.

The new system won't cover state courts or municipal courts. And complying with new Supreme Court dictates laid out in *Alabama v. Shelton*, 535 U.S. 654 (2002), which required lawyers for any indigent who faces a possibility of jail, including via probation revocation, will be a tremendous task. And then there's the problem of finding the best possible lawyers to fill the new defender positions, and money to make it all work.

"There's lots more to be done," Bright insisted. □

Staff Reporter Rachel Tobin Ramos contributed to this story.