

poverty law **Report**

A REVIEW OF ADVANCES IN THE LEGAL RIGHTS OF THE POOR

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Judge is asked to quit S.C. 'brown lung' suit

GREENVILLE, S.C. — Southern Poverty Law Center attorneys have asked a federal judge assigned to hear a "brown lung" suit against the nation's largest textile mill, its medical director and its workmen's compensation carrier to recuse himself because of potential conflicts-of-interest.

Center attorneys have learned that the judge assigned to the case, P. Weston Houck, previously represented Burlington Industries and Liberty Mutual Insurance Company, two defendants in a suit filed by the Center on behalf of textile workers disabled by job-related lung diseases.

Before becoming a federal judge, Houck and the firm with which he was associated represented Liberty Mutual for twenty years.

On many occasions during that time he defended the insurance company against workmen's compensation

claims, including at least one in which the injured employee sought benefits for byssinosis, or brown lung.

Houck's ties to Liberty Mutual were very close. For example, when he left a law firm in which he was a partner in order to set up his own firm, he took Liberty Mutual with him.

Houck also has represented Burlington Industries on many occasions.

Center attorneys feel that these arrangements at the very least disclose an appearance of impropriety, and that is all the law requires for recusal. The judge has not responded to the Center's request, which was made in February.

The lawsuit, brought as a class-action, is styled *Burdette v. Burlington Industries*. It seeks \$15 million in damages from the defendants for intentionally exposing textile workers to conditions leading to the development of lung disease and then defrauding them out of workmen's compensation benefits.

Burlington is the nation's largest textile firm, while Liberty Mutual is the workman's compensation carrier for more than half of the American textile industry.

The defendants have moved the court to dismiss the suit, but a ruling is not expected on that motion until the judge decides whether to withdraw from the case.

Center attorneys filed a similar class-action suit against the Opelika, Ala., plant of West Point-Pepperell, another giant textile firm employing several thousand workers in the Southeast.

The suit is also directed at the company doctors, health and safety inspectors, and other individual and corporate "non-employer" defendants.

"The basic facts and issues are pretty much the same in both suits, although the law in South Carolina leans more to the side of the industry, because it's so powerful politically in the Carolinas," Ira Burnim, one of the SPLC attorneys working on the cases, said.

(Continued to Page 4)



Garry Nungester

In the last two years the sight of riot-equipped law officers on the streets of Decatur, Ala., has become almost routine.

In Klan trial

Venue change refused

DECATUR, Ala. — A state judge has ruled that a black man charged with shooting a robed Ku Klux Klansman during a civil rights march here last May can get a fair trial in this county, although a poll conducted for Poverty Law Center attorneys measured substantial support for the Klan among adults who might be selected to sit on the case as jurors.

The poll was conducted among voting-age residents of Morgan County, of which Decatur is the county seat. The survey results, along with other evidence, were submitted to the court by Center attorneys Morris Dees and John Carroll at a hearing in January in support of a request for a change of venue in the trial of Curtis Robinson. Robinson is accused of the shooting.

In all, Dees and Carroll offered nearly 700 exhibits into evidence and

called more than 35 witnesses, mostly law enforcement officers, media people, and Klansmen, to testify about the tense racial climate which has existed here for nearly two years, ever since a young, retarded black man was arrested in May 1978 for the alleged rape of a white woman.

Since that arrest Decatur has known no peace. Scores of demonstrations by blacks, and counter-demonstrations by the Ku Klux Klan, have taken place in the meantime, climaxed by the violent confrontation out of which the charges against Robinson arose.

Although three blacks were also shot in the incident, no arrests have been made in those cases.

Last fall, six months after the shootings, Center attorneys ordered the poll taken for the purpose of determin-

(Continued to Page 2)

Earl Charles damages suit to go to trial

SAVANNAH, Ga. — A \$7.2 million lawsuit filed against this city and several of its police officers by Earl Charles, a black man sentenced to die here in 1975 for murders committed while he was in another state, is scheduled to go to trial in federal district court April 21.

The suit, *Charles v. Wade*, was filed by attorneys of the Southern Poverty Law Center, and charges that his arrest and prosecution resulted from the intentional misconduct of a detective assigned to the case who was acting with the approval of his superiors.

In addition, the suit names the City of Savannah as a defendant because a city may be held legally liable for the misconduct of its police officials if it sanctions the misconduct.

Center attorney Dennis Balske will

(Continued to Page 2)

Earl Charles suit, asking \$7 million, to go to trial

(Continued from Page 1)

argue that the refusal of city officials or the police department to discipline the officers, whose improprieties nearly sent Earl Charles to the electric chair, is equivalent to approval of their misconduct.

Charles was released in 1978 after a new witness, a law officer in Tampa, Florida, was found who could corroborate his alibi. On this basis his attorneys then filed a motion for a new trial.

After considering the motion, the district attorney sent an investigator to verify the story of this witness. Upon doing so, the investigator recommended that the chain of events leading to the death sentence of Charles be re-examined.

The new investigation pointed strongly to the possibility that the chief detective investigating the murders, F. W. Wade, had committed serious improprieties: obtaining arrest warrants by coaching eyewitnesses into identifying Charles as the murderer, or by simply falsifying records; striking a deal to "take care" of a parole violation by an ex-offender in exchange for his perjured testimony; and committing perjury himself at the trial.

The investigation that uncovered these improprieties was conducted out of the district attorney's office for the purpose of determining Charles' innocence or guilt. It was not an internal investigation into the conduct of the police. No such investigation was ever held, nor any officers disciplined.

The investigation conducted by Balske during the discovery period of this suit is the first formal investigation into the conduct of the officers involved in the Charles case. Sworn testimony taken during the depositions of several officers revealed that others besides Wade were guilty of impropriety.

When another detective working on

the case reported to a supervisor that the arrest warrant for Charles had been obtained by Wade on the basis of a false identification, the detective was reassigned and Wade was made chief detective on the case.

A second supervisor helped Wade obtain the testimony of the parole violator by making a deal to "take care" of the infraction. In return the parolee testified that Charles admitted the murders while the two were in jail.

Balske will argue that these facts make the city liable, particularly in light of a press release issued by the police chief after Charles' exoneration that cleared the police of any wrongdoing.

Recently Balske received a tip from a well-placed source that Wade was guilty of similar misconduct in at least two other instances.

In both cases, it turns out, he coached witnesses into making false identifications. One of the "victims" of these misidentifications spent nearly two years in jail for a crime she, like Earl Charles, didn't commit.

In these instances too, police officials took no disciplinary action, refusing even to investigate Wade's behavior.

But because these incidents happened after the Charles case, it's likely the judge will not allow Center attorneys to introduce them at the present trial.

The suit, which will be heard by a jury of twelve persons, is expected to last a week.

AI seeks study

Amnesty International, the worldwide human rights organization, has asked President Carter to establish a presidential commission to study thoroughly the use of the death penalty in the U.S.

In the meantime, AI said, a moratorium should be declared on executions in the nation.

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Governor appointed Receiver of state mental health system

MONTGOMERY — U.S. Circuit Judge Frank M. Johnson, Jr., has appointed Alabama Governor "Fob" James the Receiver of the state's mental health-retardation system after reviewing the governor's proposal to achieve compliance with a court order to improve state care for the mentally disabled.

James asked to be given responsibility over mental illness-mental retardation when the Court announced last fall that control of the system would be taken away from the state's mental health board because of the board's failure to comply with the eight-year-old court order.

The governor sought the receivership because it appeared likely Johnson might appoint someone outside state government as Receiver.

The Center, representing the plaintiffs, and Justice Department attorneys and the local U.S. attorney, as *amicus curiae*, had advocated such a proposal,

nominating several independent mental health professionals in opposition to James.

Plaintiffs and *amici* argued that James had neither the expertise nor the time to give to the work and that his status as a defendant in the suit would color his ability as Receiver to evaluate objectively the progress being made toward compliance. James is also Receiver of the Alabama prison system, appointed by Johnson last year.

Johnson rejected plaintiffs' arguments in naming James Receiver.

James' compliance plan, while pledging to correct the deficiencies and abuses that have made Alabama's mental treatment facilities institutions of human degradation, fails to commit the governor to provide adequate funding.

Johnson has given James eighteen months to bring the mental health system into full compliance.

The case is styled *Wyatt v. Ireland*.

Judge refuses to move Klan trial from Decatur

(Continued from Page 1)

ing the attitudes of the community toward the shooting incident, blacks, and the Klan.

The survey was conducted by Dr. William Kimmelman of the University of Alabama in Birmingham. A political scientist with expertise in polling, Kimmelman had recently picked the winner in a volatile Birmingham mayoral contest that was decided by tenths of a percent and that ended with the election of the city's first black mayor.

As expected, the poll revealed an informed awareness here of the shooting, and of the long series of protests and confrontations that preceded and followed it, especially on the part of whites.

Kimmelman found that whites, a majority of whom was found to oppose protests of any kind, generally blamed the peaceful black demonstrators for provoking the violence on the day of the shootings.

(More objective observers saw the clash differently. Media people reported that a group of more than 100 Klans-

men blocked the route of the marchers, scuffled with a small force of police assigned to keep the two groups separated, and then attacked the marchers themselves with clubs and sticks. At that point, they said, shooting broke out from an undetermined direction.)

A survey of voting-age adults in a five-county surrounding area indicated that they, too, thought the black protesters, not the Klan, were the cause of the trouble.

Unlike most change-of-venue hearings, the motion to move Robinson's trial did not rest solely upon the existence of specific prejudice against the defendant, but on broader issues.

Center attorneys argued that no black person charged with shooting a Klansman could receive a fair trial in the present racial climate here.

Things are to the point that much of Decatur's black community, about 15 per cent of the city's total population, lives in fear.

Since the racial trouble began, acts of violence by whites against blacks

have not been solved by the police, and some go uninvestigated.

Even overt Klan lawlessness occurs without challenge from local officials. A week after the city council passed an ordinance last year banning guns near public demonstrations, truckloads of armed Klansmen motorcaded defiantly through town, running stoplights, in view of several police officers.

In contrast, enforcement of the law against blacks is rigid and severe. Shortly before the motorcade incident, three blacks were arrested for assembling inside the county courthouse to protest the arrest of the retarded black man. They were charged under a rarely used riot act.

Racism is conspicuous here even in the etiquette of the courtroom. During testimony in the change-of-venue hearing, the district attorney addressed white witnesses by the title "Mr." or "Ms.," but called a black witness by his first name, over objections by Center attorneys and with the approval of the judge.

No date for the trial has been set.



Garry Nungester

In Decatur some children are taught to hate before they're taught to read.

High court considers death law

The U.S. Supreme Court heard arguments in late February on the constitutionality of a narrow provision of Alabama's death penalty law in the case of Gilbert Beck, who was sentenced to death under it in 1977 for robbery-murder.

The Court reviewed a section of the law that precludes a jury that is deliberating a death penalty case from finding guilt for lesser-included offenses. That is to say, the law does not allow a jury to return a guilty verdict for anything less than "capital murder" — for instance, manslaughter. The jury's sole option is guilt — with the automatic death sentence that accompanies it — or acquittal.

No other death penalty law in the U.S. limits the discretion of the jury so completely.

While the Supreme Court agreed to review only one aspect of the law in the Beck case, a fuller attack on the constitutionality of the statute will be heard by the U.S. Fifth Circuit Court of Appeals in April in the appeal of John Evans. Evans is represented by Center attorneys.

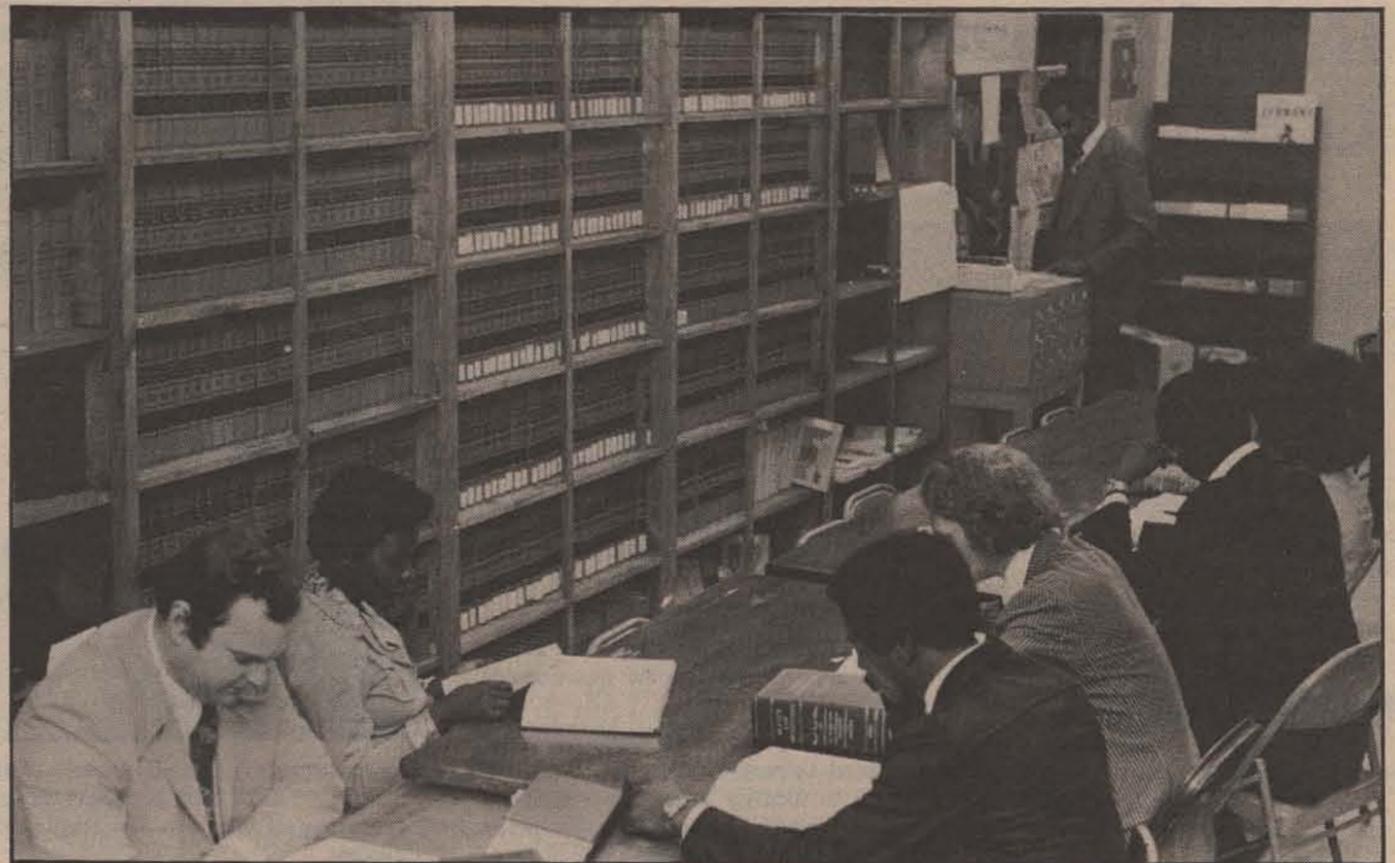
Should the Supreme Court uphold the provision of the law it chose to review in *Beck* — it is expected to rule in late Spring — the Fifth Circuit could still declare the entire law unconstitutional in *Evans* on the basis of its other defects.

Chief among these, Legal Director John Carroll says, are the lack of a requirement for comparative review of death cases and wording in the statute that makes it easy for the prosecutor to introduce aggravating circumstances in the mitigation hearing. This has the effect of increasing chances for a death sentence.

Foreigner visits SPLC

Mr. Yoka Mangono, a member of Parliament and a well-known attorney in Zaire, visited the Poverty Law Center in March during a trip to the U.S. sponsored by the African-American Institute of Washington, D.C.

Mr. Yoka spent the day discussing differences in the legal and judicial systems of our two countries and sight-seeing with employees of the Center.



If the Alabama Bar Association has its way, Miles Law School, a mostly black institution, may have to close.

Bar recommendation threatens Miles

When officials of Miles College in Birmingham sought the assistance of the Southern Poverty Law Center in establishing a law school in 1974, Center attorneys were glad to help.

The idea proposed by Miles, a mostly black, four-year liberal arts school affiliated with the Methodist Church, was a chance to augment the number of black lawyers in the state.

At that time Alabama had only about 50 black attorneys, not many for a state with more than a million black citizens, a quarter of its total population.

The number was so few because blacks for many years were effectively barred from the legal profession by law, and more recently by custom and policy.

Only two years before Miles Law School opened, the University of Alabama Law School graduated its first black student, though by then the school had been in existence for a hundred years.

The removal of formal legal barriers improved the situation little. The University and two of Alabama's three private law schools have enrolled a few black students but make little or no effort to recruit qualified blacks in proportion to their numbers.

A third private law school had to be sued by the Center before it began admitting blacks at all. (That decision, in *Amerson v. Jones*, was the first time a federal court had prohibited racial discrimination by a private institution.)

For these reasons the idea of a law school at Miles was attractive, and with the advice and financial assistance of the Center it was organized in 1974. Since then, it has graduated nearly as many blacks as the other four schools combined.

An accreditation drive that began soon after the school's establishment continues, but it is a process that takes time and hundreds of thousands of dollars, money the school, its benefactors, and students don't have.

Now the bright future of Miles Law School, and maybe its existence, is threatened by a recommendation of the Alabama Bar Association that graduates of unaccredited law schools not be allowed to take the Alabama bar in the future. The recommendation has been made to the state supreme court, which adopts the rules of procedure that govern Alabama lawyers.

The proposal, which coincidentally was first made the year Miles Law School was established, ostensibly is based on the association's concern that the current practice of allowing graduates of in-state unaccredited law schools to take the bar while denying this privilege to graduates of out-of-state unaccredited schools may violate the equal protection doctrine.

But Center attorneys perceive another motive behind the association's sudden idealism, a desire to limit the number of black lawyers in the state.

They point to the fact that the current practice was around for more than half-a-century before Miles was founded, during which time thousands of graduates — all of them white — of in-state, unaccredited law schools were permitted to take the bar.

In an *amicus* brief filed on behalf of Miles, staff attorney Dennis Balske urged the Court not to adopt the bar's recommendation.

If the proposal is approved, it will be challenged by Center attorneys in a suit.

Suit challenging Death Row conditions is settled

MOBILE, Ala. — Alabama prison officials in January agreed to improve living conditions on Death Row, just as a suit challenging those conditions was about to go to trial here.

The settlement of the suit, styled *Jacobs v. Britton*, has been formalized by a federal judge after first being approved by a majority vote of Death Row inmates. Nine prisoners out of 42 wrote objections to the settlement, but their objections were overruled by the court.

The agreement affects most aspects of Death Row life, untightening rules regulating recreation, visitation, and the purchase of free-world articles from the prison store, while improving medical care and providing Death Row with its own law library.

Specifically, the consent decree provides for:

- An increase in contact visits from once a month to once a week, for a period up to two hours. The restriction that all but one of the eight people allowed on each prisoner's visitation list be family members is removed. There can now be any combination of family and friends totaling eight.
- Stocking the prison store with items commercially available in plastic containers but which are currently available in the store only in glass or metal containers, substances that are not allowed on Death Row.
- Improved medical care. Each Death Row inmate is to receive a

thorough mental and physical check-up soon after his arrival, with improved regular care.

- The replacement of a stool and small desk that used to be in each cell.
- A separate law library, outfitted by plaintiffs and maintained by defendants to be set up for the exclusive use of Death Row.
- An end to the practice of forbidding more than one inmate out on the small exercise yard at one time.

The settlement was criticized by the nine prisoners who wrote objections because it does not contain all the improvements they sought, and particularly because it gives the warden some discretion in granting privileges.

Center Legal Director John Carroll,

who handled the case for the SPLC, says that the differences of opinion were not unexpected, but that in reality the settlement tends to diminish the discretionary power of the warden.

"This is the first time any rules governing the rights and privileges of Death Row prisoners have been put down on paper in a binding agreement. Death Row has been in an administrative limbo. They're legally county prisoners; the state keeps them as a favor to the counties for security purposes, but they've not been granted the rights of state prisoners. They've had the worst of both worlds. Now they have rights that can't be taken away capriciously."

The suit was handled by attorneys of the Center and the National Prison Project of Washington, D.C.

Ross, in petition, asks U.S. court for freedom

NEW ORLEANS — Johnny Ross, once the youngest person on Death Row in the country, has asked a federal court to order his release from prison in a petition for habeas corpus filed by his Southern Poverty Law Center attorneys.

Ross, who is black, was sentenced to die in 1975 at the age of 16 for the alleged rape of a white woman, an off-duty law enforcement officer. He escaped execution when the U.S. Supreme Court struck down the Louisiana death penalty law in 1976.

The petition lists several reasons why Ross should be released, including the failure of the police to advise him properly of his rights, the ineffective presentation of his defense by his attorney, and the refusal of the Louisiana Supreme Court to apply retroactively to his case a recent ruling that would overturn his conviction.

Ross was arrested here in the middle of the night as he slept in his bed in the slum where he and his family lived.

He was then taken to the scene of

crime with which he was charged carried a mandatory death sentence.

In 1978 the Louisiana Supreme Court ruled in another case that the confession of a juvenile cannot be admitted unless it can be shown that the youth has had a "meaningful consultation" with a lawyer or an informed adult "interested in his welfare" before he waives right to counsel and against self-incrimination.

The court refused to apply this new standard retroactively to Ross' case, however.

Like the confession, the identification of Ross by the victim of the attack was also obtained under questionable circumstances.

During a pretrial lineup in which several suspects took part, she was unable to identify Ross as her assailant. Following a brief conference with police she was shown a photographic array of suspects. Of the men she had viewed in the lineup, only the picture of Ross was included in the photographic spread.

Naturally, she picked him out as



Cotton dust kills. Thousands of textile mill workers have been disabled, and many have died, from breathing tiny particles of cotton released into the air during processing of the fiber. The textile industry has done little to clean up these conditions.

Textile mills in two states ask dismissal of SPLC suits

(Continued from Page 1)

The experience of Nat Wilkins, the named plaintiff in the Alabama suit, is typical of thousands of Southern textile workers.

He worked in an area of high concentrations of cotton dust in the Opelika mill for 27 years. His lungs became so impaired that he couldn't keep up the pace of work anymore, so he had to stop.

He was examined by company doctors at the West Point mill in Opelika on several occasions and was monitored by them over a period of several years.

They knew Wilkins' breathing problem was due to his years of work in the mill but didn't tell him.

So he was placed on medical leave. Eventually it ran out, and without even being offered a less strenuous job Wilkins was fired.

Because he didn't know his lung disorder was job-related Wilkins never filed a workmen's compensation claim.

By the time he found out and sought legal help from the Center, the time period for filing a claim had expired.

Wilkins receives meager social security benefits which he was assisted in obtaining by West Point officials.

It is a part of the textile industry's strategy to help workers disabled by job-related lung diseases to obtain social security benefits, thus shifting the fi-

nancial burden of their existence from the mill owners to the American taxpayer.

West Point, which has hired one of the state's most prominent law firms as well as Opelika's most prominent firm, to assist its own lawyers, denies doing anything wrong and has filed a motion to dismiss the suit.

In addition, the mill asked the court for a "gag order" to restrict Center attorneys from talking at all to workers with experiences similar to Wilkins'.

After at first issuing a blanket order to that effect, without a hearing, the judge modified the ruling in accordance with recommendations outlined in the Manual for Complex Litigation to permit SPLC attorneys to talk with workers who, on their own initiative, consult the Center for assistance.

A hearing on the motion-to-dismiss was held in January, and later briefs were submitted, but the judge has scheduled further argument on the motion for April 15 and asked for the submission of additional briefs.

Attorneys for the mill rest their defense on the "exclusive remedies" provision of the Workmen's Compensation Act. This provision, the heart of the act, says that a worker gives up his or her right to sue for a job-related accident or injury in exchange for not having to prove the employer's negligence, his own lack of negligence or that of a fellow employee, or that he had legally assumed the risk of his injury.

But Burnim says the act was intended to grant the employer immunity only in cases of accidental injuries, not intentional ones.

The suits against West Point and Burlington both allege that the mills intentionally exposed their workers to high concentrations of cotton dust, despite knowing the health dangers this exposure posed.

In the Alabama suit the "non-employer" defendants, such as the plant manager and the safety inspector, have also tried to hide behind the workmen's compensation law.

In South rape meant death

Virtually every person legally executed in the U.S. for the crime of rape during the last fifty years was put to death in the South, and most were black, according to U.S. Bureau of Prisons statistics reproduced in *The Death Penalty in America*, edited by Hugo Bedau.

Between 1930 and 1962 the South, defined as the states of the Old Confederacy plus Kentucky, Maryland, Oklahoma, Delaware, West Virginia, and the District of Columbia, executed nearly 98 percent of the 446 persons put to death for rape.

Of 436 persons executed in the South, 392, or 90 percent, were black. Most blacks received the death penalty for alleged rapes of white women, though exact race-of-victim statistics are not available.

In 1977 the U.S. Supreme Court struck down the death penalty for most rapes in *Coker v. Georgia*. However, the Court left open the question of the appropriateness of the death penalty for rape when the victim is a child.

According to the Legal Defense Fund in New York, which tracks the appeal of every death sentence in the U.S., there is currently only one individual on Death Row in the nation for such a rape.

the rape, where a few hours earlier his arresting officers had shot to death another black youth whom they were attempting to arrest on the same charge.

After that, he was carried down to the police station and questioned intensely for the next several hours. Finally he confessed, without the benefit of advice from an attorney, friend, or family member.

While the police later testified Ross never formally asked to see an attorney, they admitted never telling him that the

the rapist. On this identification her trial testimony was based.

At his trial, which lasted just one day, Ross was represented by an attorney who was unwilling or unable to present an adequate defense.

The only witness to take the stand for the defense was Ross himself. Though he had given his attorney the names and addresses of several people who could vouch for his alibi, the attorney said he was not able to locate them, so he did without them.

Georgia court hears Patterson appeal

ATLANTA — The appeal of Roy Patterson's self-defense shooting of two white law enforcement officers has been brought here to the Georgia Supreme Court, where it was argued in January by Poverty Law Center Legal Director John Carroll.

Carroll argued that Patterson, who is black, was denied a fair trial in 1975 because the grand jury lists from which the jury that sat on his case was chosen systematically excluded blacks.

Carroll asked the court to order a new trial.

Underrepresentation of blacks on the grand jury lists of Crisp County, where Patterson was tried, ranged from 81 per cent in 1971 to 37 per cent in 1975, based on the county's population, which is about 40 per cent black.

Crisp County is south-Georgia farming country, a region of small towns and big landowners where the racial attitudes of whites have been slow to change.

Patterson, a decorated former Marine sergeant, is serving a sentence of life in prison. He was convicted for killing two white law officers who tried to

stop him from leaving the Cordele, Ga., police department to get a lawyer for his brother, who had been jailed by the officers for having a faulty taillight on his car.

A fight between Patterson and his brother's arresting officer, who had a record of harassing blacks, led to the shootings.

Through the efforts of Carroll, Patterson's wife, Virginia, and their young son continue to receive military benefits.