

# poverty law Report

A REVIEW OF ADVANCES IN THE LEGAL RIGHTS OF THE POOR

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Spring, 1978



This photo depicts the first integrated graduating class of Alabama State troopers and other law enforcement officials. It was a proud day for these black officers, because racist state policies had kept them out of these uniforms in the past. Continuing patterns of discrimination have been used, by trooper officials, however, in an effort to frustrate the court's order. Only three of the black officers pictured are still on the force.

## Case reopened

### Black state troopers pressured to quit jobs

MONTGOMERY — Five years ago, a Federal judge ordered the hiring of the first black state troopers in the history of the Alabama Public Safety Department. The judge's order followed a Southern Poverty Law Center suit, and required Alabama officials to hire one black trooper for every white hired until the number of blacks reached 25 per cent, the same as the population of the state.

Center attorneys now have evidence that even though the state has been grudgingly hiring black troopers, it has also been pressuring them to quit their jobs, applying one standard of discipline to black troopers and another standard to whites, and generally attempting to frustrate the intentions of the lawsuit and the court's order.

Five years after the original order, there are only 65 black troopers in Alabama, less than 10 per cent of the

force, and Center attorneys estimate that it will take 15 more years at the present rate to reach the 25 per cent level set by the court. In addition, there are no blacks in supervisory positions within the trooper force, and white troopers receive arbitrary preference over blacks in job assignments.

The court has now decided to reopen the case so that additional evidence can be presented. The case was reopened once before, when Center attorneys argued in 1975 that the state trooper officials, acting at the request of Gov. George Wallace, had artificially frozen trooper hiring to avoid hiring blacks. The court agreed, and ordered a resumption of hiring.

To bring about a speedy remedy to the continued discrimination, Center attorneys are asking that the Alabama officials be ordered to hire four black

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## Death penalty avoided in major S.C. trial

BEAUFORT, S.C. — Clemmie Moultrie, a 62-year-old black man accused of killing a white deputy sheriff, has been convicted of manslaughter, the least severe punishment allowed by law.

Moultrie's March trial was a significant one because few poor blacks accused of killing white lawmen have ever escaped the death penalty in the South, and because Beaufort attorney Mike McCloskie, Southern Poverty Law Center attorneys Dennis Balske and John Carroll, and jury selection expert Cathy Bennett combined the best legal techniques available to give him the type of defense usually reserved for the very wealthy.

Moultrie was sentenced by Circuit Judge Clyde Elzroth to 30 years, the maximum allowed for a manslaughter conviction. There will be an

appeal. Moultrie's attorneys said that Elzroth's refusal to charge the jury on the law of self-defense had the practical effect of eliminating the possibility of an acquittal.

Self-defense was an integral part of the case, however. Moultrie was inside his home and shots were being fired into the house by law enforcement officers when Moultrie fired the rifle which killed Deputy Tony Brelan.

The jurors who heard the case had been carefully chosen after a week of intensive individual questioning probing their attitudes on race, capital punishment, individual rights and the right to resist threats against one's home.

Moultrie was from Walterboro, S.C., where he lived in a house in such bad shape that it had been condemned. The house was a shack, but it was Moultrie's

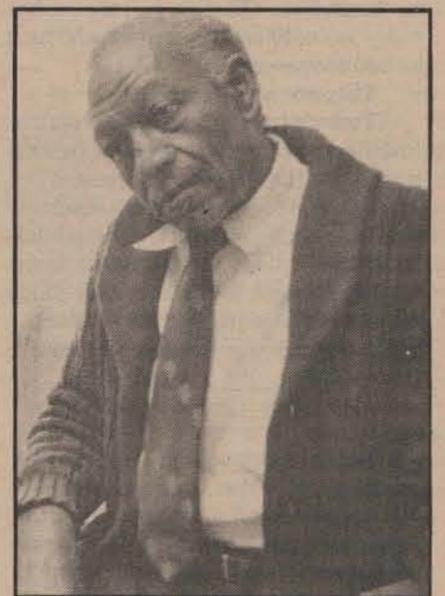
home and he mistakenly believed that the rent payments he had been making over a 15-year period made the house his own.

Moultrie's troubles began when the owner of the house decided to tear it down rather than to make repairs, and sent a house wrecker to begin tearing off the roof. Moultrie chased the man away with his rifle, and the man took out a warrant against Moultrie.

Rightly or wrongly, Moultrie saw all of this, including the warrant, as a part of the landlord's attempt to get him out of the house so it could be torn down. Moultrie reasoned that if he were in jail for the warrant, there would be nothing stopping the destruction of his house.

At any rate, on Sept. 19, 1977,

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Moultrie

# Study shows executions used mostly for killers of whites

BOSTON, Mass. — Advocates of the death penalty claim that today's laws have eliminated racism as a factor in determining who gets executed, but the preliminary results of a new study show that race is still a factor, though in a different way than in the past.

Northeastern University professor Dr. Bill Bowers surveyed the death sentences in Texas, Georgia and Florida, the three states which account for about half of all condemned men in the nation today, and found that capital punishment is almost always reserved for those who kill whites.

Bowers is the author of "Executions in America," a critical study of death penalty laws, their history and application. Bowers' current study is being financed by the Southern Poverty Law Center, and will ultimately find its way into court in another challenge to capital punishment statutes.

The new survey has found that in the three states under consideration, 45 per cent of the death row inmates were blacks who killed whites, while only 5 per cent were blacks who killed blacks. Fifty per cent were whites

who killed whites, and Bowers has not yet found a case where a white who killed a black has been placed on death row.

"This study proves that blacks still make up a far greater proportion of the death row population than are represented in the general population," said Morris Dees, the chief trial lawyer of the Poverty Law Center. "But the real clincher is that death is reserved for those who kill whites."

The new survey is of special significance because it concentrates on the states where death laws survived a 1976 Supreme Court challenge that invalidated such laws in North Carolina and Louisiana. Most of the laws written by other states since that decision have been patterned after one of these three states' statutes.

Though the Court upheld the laws in Georgia, Texas and Florida as they were written, the question of application of the laws was not considered. Proof that some aspect of race can be linked to the application of death sentences would greatly increase the likelihood that the laws will be found unconstitutional in the future.

Dr. Bowers found that the killers of blacks were grossly underrepresented on death rows. "A majority of murderers have killed blacks," he said, "but only 5 per cent of those on death row have done so."

He found striking racial disparities between the percentages of those arrested for homicide and those on death rows. Six per cent of all homicide arrests were of blacks who allegedly killed whites, compared with 45 per cent on death rows. Fifty per cent of those arrested were blacks who allegedly killed blacks, compared with 5 per cent on death rows. Forty per cent of those arrested were whites who allegedly killed whites, compared with 50 per cent on death rows. Four per cent of those arrested were whites who allegedly killed blacks, and none of those were on death rows.

Those results seem to indicate that the judicial system, at least as far as capital punishment is concerned, places a premium value on white lives, and a relatively low value on black lives.

Nothing has changed, after all.

## Poverty Law Report

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# Lawyer views arbitrariness in Ohio death case

By DENNIS BALSKE

On Sunday, Sept. 25, 1977, I watched a television movie entitled *Kill Me If You Can*. It revealed the famous story of Caryl Chessman, the alleged "red-light bandit," who was sentenced to die and eventually executed, even though he killed no one.

This movie portrayed Chessman as an innocent man, at least with respect to the crimes for which he was executed. Secondly, it indicated that Chessman did not receive a fair trial. Whether or not these aspects of the portrayal were accurate, it is undisputed that Chessman killed no one.

Being an opponent of capital punishment (as well as a criminal defense attorney), I sank into despair after watching the film. On the other hand, I do not suppose the story had much effect on those who favor capital punishment. More specifically, I expect that many people who were unmoved cast this atrocity aside, saying to themselves, "That's a real shame, but today we only execute people who have killed other people."

They are wrong.

Today's laws do not limit executions to killers. It is still possible to be electrocuted without killing someone.

I happen to be personally acquainted with one such individual, Sandra Lockett. Like Caryl Chessman, Sandra denies any involvement in the crime for which she has been sentenced to be electrocuted. Sandra was charged, along with

three other individuals, with the 1975 slaying of an Akron, Ohio, pawnbroker. The others charged were Sandra's stepbrother, James Lockett; Al Parker, and Nathan Dew. I represented James Lockett.

Since no one in the group had a gun, and because Parker had some bullets, it was decided that Parker would obtain a gun by asking the clerk to see one.

So it went. Parker drove past the pawnshop and parked on a nearby side street. Lockett and Dew went into the shop and looked at some rings. A few minutes later Parker left the car, leaving Sandra as a getaway driver, and entered the pawnshop.

According to the transcripts of the subsequent trials, here is what happened: Parker asked to see a gun. It was too small for his bullets. He asked to see a bigger gun. When the clerk handed it to him, he inserted the bullets and said something like "this is a stickup."

The clerk did not follow the script of the plan. Instead of handing over his money, he either grabbed the gun, at which time it went off, or he pushed the burglar alarm, at which time Parker shot him. Since things didn't go as planned, everyone ran without taking anything (except the gun itself). Only Parker returned to the car where Sandra was waiting, Sandra never having left the car. Everyone was eventually arrested.

Under current Ohio law, who is to be executed for the pawnshop killing? Parker? Guess again.

Parker was the star witness at Sandra's trial. He testified that all four people had planned the robbery. Parker further stated that when the clerk grabbed the gun Parker was holding, it accidentally fired.

For this testimony, as well as testimony against James Lockett,

Parker received a life sentence. So did Dew. James Lockett was sentenced to death, and amazingly, Sandra, who never set foot in the pawnshop, also received the death sentence.

You see, the Ohio death penalty statute contains no provision which takes into account the fact that a person such as Sandra, who is convicted of aiding and abetting in a murder, did not kill or plan to kill anyone.

Does such a law, which mandates the execution of persons like Sandra, but gives prosecutors the leeway to see that people like Parker receive life sentences, make any sense?

Don't get the idea that Sandra is the only person in this situation. I have personally represented three individuals who faced electrocution if convicted, who likewise never touched, let alone killed, the victims of someone else's bullet.

Every time I represent such an individual, my opposition to capital punishment grows. You see, it is just as difficult to answer the question "Why?" to the family of a person like Sandra Lockett as it is to the family of someone killed in a robbery.

Please don't get the impression that I support the release of persons convicted of such crimes. They should be severely punished. But a life sentence seems just to me, while others might argue for a life sentence with no chance for parole.

On Dec. 30, 1976, four justices of the Ohio Supreme Court affirmed Sandra's conviction and sentence, while three other justices dissented. The justices of the California Supreme Court voted the same way, 4-3, on the morning of Chessman's execution.

Will Sandra's execution be carried out?

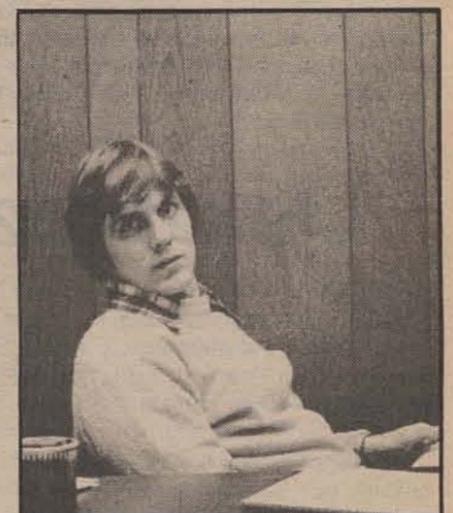
Now at the Marysville Reformatory,

she is still appealing her case, but so was Chessman at the very moment he was executed, when the warden, answering the phone, told the judge who had decided to stay the execution, "I'm sorry, it's too late!"

History has a way of repeating itself, so maybe it's already too late for Sandra and many others like her.

It's just that I'll never become convinced, even though the present law provides for such executions, that the people of Ohio want to execute these people.

Am I wrong?



Balske

Dennis N. Balske recently joined the Southern Poverty Law Center as staff attorney. He had previously been the supervising attorney teaching the criminal defense practicum at the Ohio State University College of Law, where he graduated in 1974. He was a member of the steering committee of the Ohio Coalition Against the Death Penalty and served on various bar association committees on criminal law and constitutional rights. He is 29.

*Sandra Lockett's case has been argued before the United States Supreme Court and a decision is forthcoming. A number of other death row inmates around the country might also be affected by the decision in her case.*

## Job pressure used against black officers

(Continued from Page 1)

troopers for every white trooper hired (instead of the one for one ratio now in operation) until the 25 per cent level is reached.

The attorneys are also asking that the court appoint an impartial monitor to oversee implementation of the court's orders.

"Even though the court made the department hire blacks, I think they hired me to fire me," said Billy Ray Jackson.

Jackson, before joining the troopers, had been the first black detective hired by the Auburn Police Department, and his superiors there consistently praised his work and his qualifications. But state trooper officials charged that Jackson has a bad background and would cause trouble for the troopers, so they fired him before he had completed the probationary training period.

Black trooper Clifton L. Brown has also asked for relief because he was passed over for a choice assignment which was given to a white trooper with less seniority.

Finally, the Center attorneys are continuing their efforts to open state trooper employment doors to women. The courts have already ordered trooper officials to hire women on the same basis as men, but to this date none has been hired because of a system known as veteran's preference.

This system gives trooper candidates who are military veterans extra points on their test scores. Because few women are military veterans, most women are thus ineligible for the extra points, and cannot get high enough on the employment register, regardless of how well they do on the tests, to be hired.

Center attorneys are attacking the veteran's preference hiring system.



John Carroll, left, and Morris Dees discuss the essentials of death penalty trial strategy before a group of public defenders in Seattle, Wash.

## SPLC lawyers outline trial skills in seminar

SEATTLE, Wash. — Southern Poverty Law Center attorneys Morris Dees and John Carroll conducted a two-day death penalty defense seminar here recently.

Sponsored by the Washington State Criminal Justice Training Commission, the seminar was designed to give public defenders in that state a first-hand look at the techniques and strategies of defending an indigent person accused of capital murder.

Washington has a new death penalty law, but few defense attorneys in the state have had experience with death penalty cases.

One of the points hammered home in the seminar was that a death penalty case is unlike any other type of criminal defense case. Dees and Carroll outlined the crucial techniques.

These, they said, spell the difference between acquittal and conviction, or, where the client has no defense, between life sentence and an execution order.

Carroll and Dees took the public defenders at the seminar from the opening client interviews all the way to the

final penalty phase arguments of the trial.

Carroll, for example, reviewed the recent Supreme Court cases on capital punishment, as well as pending cases which may affect the current laws. He also explained various motions which are vital in a death penalty defense.

Dees explained the importance of a trial strategy in which the defense takes the aggressive role, presenting numerous arguments to show why a death verdict would be unacceptable. He also conducted a demonstration, using a clerical worker as a mock juror, to show how carefully selected questions allow the defense attorneys to pick the best jurors for the case.



Nowell

## Boston student interns at SPLC

Marian Nowell, a student at Northeastern University School of Law, recently completed a legal internship at the Southern Poverty Law Center.

While at the Center, she assisted in the trial of a death penalty case; and researched and wrote legal memoranda concerning class action certification in a sex discrimination case, compositional jury challenges in two death penalty cases, and substantive and procedural challenges to parole release proceedings of state parole boards.

Nowell is a Massachusetts native and an honor graduate of Emmanuel College. During a previous internship with a Florida legal organization, she investigated migrant labor camps and assisted with related litigation and research.

## Students give assistance on death cases

The first six students in a new project to assist attorneys with death penalty cases in the South have completed their assignments.

The project is jointly sponsored by the Law Students Civil Rights Research Council and the Southern Poverty Law Center, and is intended to help indigent death penalty defendants by giving their appointed lawyers free aid in preparing their cases.

The first six students worked on cases in Alabama, Florida and Georgia. Their work included research on issues ranging from post-conviction remedies to insanity defenses, the development of trial strategy, drafting of motions and habeas petitions, investigation of facts, petit and grand jury challenges, change of venue preparation, and assistance during both guilt and penalty phases of trials.

Students for the project are selected by the Law Students Civil Rights Research Council, then assigned to attorneys who have asked for help with a pending case.

In his analysis of the work of the students assigned to him, attorney William Shepard of Jacksonville, Fla., wrote that the students had performed work which will make a substantial difference in the outcome of his defendant's case, but had also, through their dedication, provided motivation for him to take other death penalty cases.

The first students assigned to the project were: Frank Viehmann, University of Denver; Andy Nason, University of North Carolina; John Trebon, University of Arizona; Nancy Budd, University of California at Davis; Aleen Rothschild, University of Georgia; and Victoria McCandless, University of Wisconsin.

Peter Joy coordinates the project for the Law Students Civil Rights Research Council. Joy said 15 students are expected to be assigned to cases this summer.

## Black gains little

Despite seeming advances during the "Civil Rights Decade" of the 1960's, more than twice as many blacks are unemployed today as 10 years ago, and there are as many poor black families now as there were in 1967.

These facts are revealed in a new National Urban League report called "The State of Black America."

"We're trying to say in this report to white people that what happened in the 60's was just a beginning. The 70's are much more difficult because they deal with making real those things defined and conferred on black people in the 60's. White people never understand that the 60's were about checking into the hotel while the 70's are about getting the wherewithal to check out of the hotel," said the league's president.

The report piles up more evidence that black poverty is as bleak as ever: Though the number of poor white families had decreased in the last decade, there are as many poor black families as ever; the gap between median white and black incomes has narrowed by only one percentage point during those years, the black income having risen from 58 to 59 percent of the white.

## Nobel-winning group will oppose capital punishment

Amnesty International, the organization which won the Nobel Peace Prize last year for its campaign against political imprisonment and torture, has launched an international effort against capital punishment.

Some 250 delegates from 55 countries attended a conference on this subject in Stockholm, Sweden, recently. The following declaration was written by the delegates:

"The Stockholm Conference on the Abolition of the Death Penalty... considers that —

— Execution is irrevocable and can be inflicted on the innocent; the death penalty is frequently used as an instrument of repression against opposition, racial, ethnic, religious and underprivileged groups; execution is an act of violence and violence tends to provoke violence; the imposition and infliction of the death penalty is brutalizing to all who are involved in the process; the death penalty has never been shown to have a special deterrent effect.

"Affirms that —

— It is the duty of the state to protect the life of all persons within its jurisdiction without exception; the application of the death penalty is a violation of the right to life, and constitutes cruel and inhuman punishment; executions for the purposes of political coercion whether by government agencies or others are equally unacceptable; abolition of the death penalty is imperative for the achievement of declared international standards.

"Declares —

— Its total and unconditional opposition to the death penalty; its condemnation of all executions, judicial, arbitrary or summary, committed or condoned by governments; its commitment to work for the universal abolition of the death penalty.

"Calls upon —

— All governments to bring about the immediate and total abolition of the death penalty; the United Nations unambiguously to declare that the death penalty is contrary to international law."

# Docket Update

## Prison classification completed



MONTGOMERY — When U. S. Dist. Judge Frank M. Johnson Jr. took control of the Alabama prison system in January, 1976, in response to a Southern Poverty Law Center lawsuit, the prisons were vastly overcrowded. Judge Johnson ordered that no more prisoners be accepted into the system until the overcrowding was relieved, and he ordered a complete reclassification of all inmates. The reclassification project is now completed and its experience is of great significance since procedures similar to those used in Alabama prior to the Johnson rulings continue to be used in other states. At the time of the original order, about 40 percent of Alabama inmates were classified maximum security (the maximum security prisons were the most overcrowded, with the most inhumane conditions). Only 3 percent were eligible for community programs. At completion of the reclassification, only 3 percent of the inmates were found to require maximum security. Almost 25 percent of the inmates in confinement were identified as being non-dangerous and appropriate for community placement. In addition, more than 33 percent were assigned to minimum custody. The Southern Poverty Law Center is continuing to monitor the implementation of Judge Johnson's orders in the prison lawsuit.

## Patterson appeal in Federal court



JACKSON, Ga. — Roy Patterson's appeal for a new trial has now moved into the Federal courts, and issues in his case will be decided by the U. S. District Court in Macon, Ga. Sgt. Patterson, meanwhile, has been moved from the County Jail in Cordele, where he had been held while his case was argued in state courts. It has been almost three years since Sgt. Patterson, a career Marine and decorated Vietnam veteran, was given a life sentence for the shooting deaths of two Georgia law officers. Sgt. Patterson was a participant in a tragic chain of events initiated by one of the victims, a white Georgia highway patrolman with a proven history of racial abuse and drunkenness. Sgt. Patterson acted in self-defense to protect himself, his wife and his child, but the State of Georgia wanted to put him in the electric chair. Sgt. Patterson's Southern Poverty Law Center attorneys were able to avoid the death penalty for him, but he received a sentence of life imprisonment. His trial was marked by racial prejudice and unfairness, and his attorneys continue their efforts to get a new trial. Sgt. Patterson's current mailing address is: Roy Lee Patterson, D-108358, Georgia Diagnostic Center, P. O. Box 3877, Jackson, Ga. 30233.

## Retrial petition filed for Ross



ANGOLA, La. — Southern Poverty Law Center attorneys have filed a new petition in state court in Louisiana asking for a new trial for Johnny Ross, who was once the youngest prisoner on death row in the United States. Ross was sent to death row for rape, but he continues to protest his innocence. His death sentence was removed last year when the United States Supreme Court ruled that the death penalty could not be imposed for rape, and he has since been resentenced to a 20-year prison term. Because of errors in his original trial, however, his attorneys are still trying to win him a new trial. Johnny's address, meanwhile, is: Johnny M. Ross DOC No. 84505, Camp H, Louisiana State Penitentiary, Angola, La. 70712.

## Redistricting suit filed in Alabama city

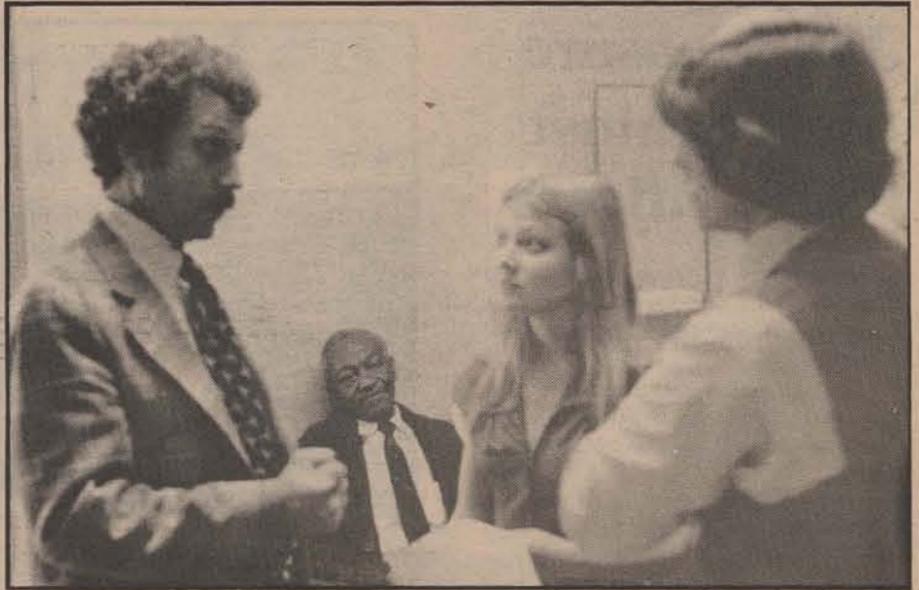
OPELIKA, Ala. — This medium-sized Alabama city has a substantial black population, but its government is composed of and operates primarily to the benefit of whites.

The Southern Poverty Law Center is representing the Lee County NAACP in a lawsuit challenging the current at-large form of election for Opelika city officials. The lawsuit seeks a district form of elections, in which blacks living in Opelika would be able to share proportionately in municipal affairs.

Center attorney Steve Ellmann says

that no black has ever been elected to a public office in Opelika, and that the white officeholders have been unresponsive to the needs and interests of black citizens.

"Black residents of the City of Opelika suffer from the effects of invidious racial discrimination in most or all areas of life, including education, employment, economics, the administration of justice, the allocation of public services and the electoral process," according to the complaint which initiated the suit.



Mike McCloskie, left, Cathy Bennett, and Dennis Balske discuss the imminent selection of a juror. Moultrie watches intently, as he did every aspect of his trial.

## Manslaughter verdict will be appealed in Moultrie case

(Continued from Page 1)

Moultrie refused to go to the Sheriff's office with Deputy Jim Smith, who was attempting to serve the arrest warrant. Smith, a black man who had been a deputy for 10 years, called on his radio for a backup unit. One of the two officers who responded was Deputy Johnny Beach, a young white man who had been on the force for two years. Beach took charge, saying "Let's get him out."

Moultrie told the jury that Beach snatched open his front door, stepped inside the house and shot at him. Beach admitted snatching open the door and stepping inside, but denied that he had shot. Moultrie said he fired back, hitting Beach in the chest. Moultrie was using ammunition the wrong size for his rifle, and the shot incredibly bounced off a button on Beach's shirtfront, leaving Beach uninjured.

After Beach was hit, all three deputies retreated and Beach radioed in that he had been shot at. Soon there were 20 or more deputies, local police, reserve deputies, state police and firemen surrounding the house with sirens wailing, riot guns firing and tear gas launchers shooting canisters of gas into Moultrie's house.

Moultrie testified that the officers came at him "like ants crawling on the ground" and his description left no doubts that, rightly or wrongly, he viewed the entire chaotic episode as further efforts by the landlord to get him out of the house.

"They wanted to take my rights. Once I was behind bars it would be my word against his and they would take his word. I wouldn't leave because I

hadn't done nothing. They had no right at my house," Moultrie said from the witness stand.

As the one-way gun battle raged, Moultrie was crouched inside. He told the jury he saw a deputy creep up beside the house, then raise up by a window and point a pistol at him. Moultrie said he fired then, hitting the deputy outside the window. That was Breland, who died.

Moultrie said he fired only twice during the entire episode. His version of the events was supported both by Deputy Jim Smith, who stated that he only heard two shots fired from inside the house, and by Sheriff John Seigler, who testified that he later sent officers inside the house to look for the slain deputy's handgun.

Still, Seigler and the state's prosecutor wanted their pound of flesh from the man who had shot the deputy, regardless of self-defense. If he had been convicted of murder instead of manslaughter, Moultrie could have received the death sentence.

Attorneys Balske and McCloskie spent days preparing the defense. Two dozen law officers and other witnesses were interviewed, and their contradicting statements and evasions allowed the lawyers to pick holes in their testimony during the trial, revealing to the jury that the case was not the cold-blooded killing that the state attempted to prove.

In a series of pre-trial motions, attorney Carroll attacked the grand jury system which had indicted Moultrie. Carroll showed that blacks had been substantially underrepresented on the grand juries for many years.

During jury selection, the defense managed to exclude several prospective jurors whose answers to carefully formulated questions showed that they were biased in favor of the state.

Moultrie's case proves that the death penalty can be beaten if the battle is fought in the trial courts using innovative legal techniques and with the clear understanding that a capital trial is not simply another murder case, but is in a category by itself.

The Southern Poverty Law Center will send a death penalty trial motion book and a memorandum on jury selection to attorneys who have a pending capital murder case.