

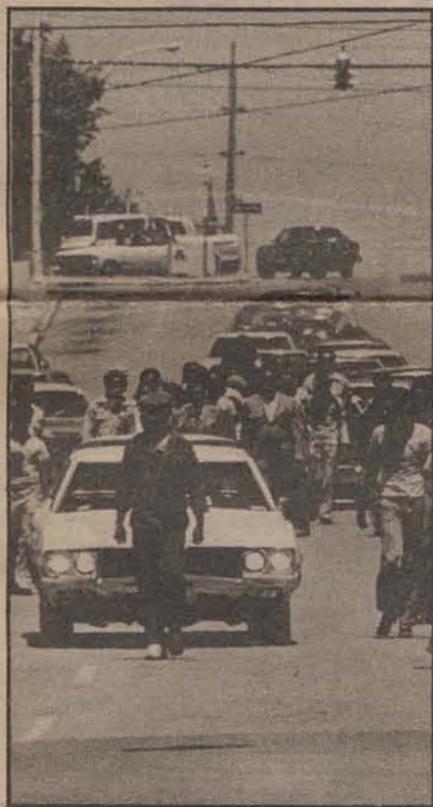
poverty law Report

A REVIEW OF ADVANCES IN THE LEGAL RIGHTS OF THE POOR

Volume 9, Number 1

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January/February, 1981



John Godbey



Garry Nungester

Peacefully protesting black demonstrators march along a downtown Decatur, Ala., street in 1979 (L) before being attacked by Klansmen waiting on them with clubs and two-by-fours. The blacks have now taken the Klan to court in a suit filed by the SPLC's Klanwatch project.

Klanwatch files first suit against KKK

The Southern Poverty Law Center's Klanwatch project, prepared to take the Ku Klux Klan to court wherever it violates the rights of minorities, has filed its first law suit, a \$1 million class-action case against the violent "Invisible Empire" faction of the Klan.

It accuses Klansmen from three states of conspiring to violate the civil rights of a group of black people peacefully demonstrating in Decatur, Ala., in May 1979, when they were attacked by more than 100 Klan members armed with clubs, tire tools, and baseball bats.

The Center filed the suit in Birmingham federal court in November on behalf of the Peoples' Association of Decatur, a community group that sponsored the demonstration.

The defendants are Bill Wilkinson, Imperial Wizard of the Invisible Empire, Knights of the Ku Klux Klan, individual Klansmen from Alabama, Mississippi, and Louisiana, their leaders and the Klan corporate organization. The case, styled *Peoples' Association of Decatur vs. The Invisible Empire, Knights of the Ku Klux Klan, et. al.*, is now in the discovery stage.

The suit is based on the "Klan laws" of the 1870s, which were enacted by the Reconstruction Congress to give recently freed slaves and the federal government a weapon with which to fight Klan terror in the South in the postwar years.

Federal laws like these were necessary because of the failure of the Southern states to protect the rights of black citizens.

One of these statutes, 42 U.S. Code § 1985, authorizes the filing of civil claims against individuals or groups who conspire to deny other Americans the right to equal protection of the laws on account of race (see article, page 2).

After hundreds of hours of investigation and research, Center attorneys say they have found convincing evidence of such a conspiracy in the Decatur incident.

On the day of the demonstration, a march to protest the prosecution of a retarded young black man for the rape of a white woman, about 75 Klansmen from all over north Alabama and Mississippi met at a roadside park just across the county line from Decatur. Their plans were made to block the march as it headed toward city hall where protesters had scheduled a rally.

Continued to Page 3

Court tries to revive death law

The Alabama Supreme Court ruled in late December that unconstitutional provisions of the state's death penalty law can be deleted and still leave a workable statute, meaning that 45 Death Row inmates whose convictions were reversed earlier this year may face the death penalty again.

The ruling puts no one in danger of imminent execution, however, and already plans are being made for appeal.

The decision came in the case of a client of the Southern Poverty Law Center, Gilbert Beck, whose conviction was reversed by the U.S. Supreme Court last June.

Voting 7-2, the Court said that the Alabama death penalty scheme is unconstitutional because it doesn't allow for juries to consider "lesser-included" offenses in capital cases.

But the whole law wasn't invalidated, leaving it up to the Alabama Supreme Court to decide what to do about re-trying Beck and how to apply this ruling to the 44 other Death Row inmates sentenced under the statute.

What the court has now done, Center Legal Director John Carroll says, is create a totally new law.

By dropping or "severing" the unconstitutional provisions from the statute and reading into it new procedures for the trial courts to follow, the state supreme court has written a new death penalty law, he says, in violation of the separation-of-powers principle.

"The law the court created by judicial action barely resembles the old one," Carroll said. "The holes the U.S. Supreme Court left in it last June have been plugged by features the legislature rejected when it was drafting this law several years ago."

Before this most recent court review of the statute, the law said that juries could not consider "lesser-included" offenses, but now they can.

Continued to Page 3

poverty law Report

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State agency agrees to place Willie Ferguson in school

MONTGOMERY — Willie Ferguson, whose disadvantaged past Southern Poverty Law Center supporters read about in the last *Report*, will be placed in a rehabilitation program after all, courtesy of the State of Alabama.

Willie, who is deaf and has behavior problems, has been accepted at the Woodrow Wilson Rehabilitation School in Fishersville, Virginia. He begins classes in early January. School officials have developed a structured program of instruction and counseling to meet Willie's needs, an agenda that is unavailable in Alabama.

The vocational-rehabilitation agency of the state Department of Education will fund Willie's placement at the school. The agency had at first refused to do so, but later reversed its position after SPLC attorney Ira Burnim began administrative proceedings on Willie's behalf.

At a hearing in October, Burnim

persuaded the agency that it had responsibility under the Voc-Rehab Act of 1973 to itself provide services to persons like Willie who have behavior problems, or to contract with other states to provide such services.

A panel convened by state special education authorities reached a similar decision concerning the state's responsibilities under the Education for All Handicapped Children Act at another administrative proceeding begun by Burnim. The panel directed that Willie's local school board and the Alabama Institute for the Deaf and Blind, Willie's last placement, participate in efforts to find appropriate services for him.

Because of Willie's case, the Center believes agencies whose responsibility is to provide rehabilitative services to handicapped young people will no longer refuse to provide them simply on the basis that their client has behavior problems.

Guards disciplined for lying about beating on Death Row

HOLMAN STATION, Ala. — Poverty Law Center attorneys have learned that three of the highest ranking guards at Alabama's maximum-security prison here have been disciplined for lying to state investigators about the beating of Charles Bracewell last May.

At the time, two of the officers were commanders of the Death Row unit, and the third was the captain of the guard of the entire prison. A lower-ranking officer was also disciplined.

Staff attorney Ira Burnim found out about the disciplinary action while taking the guards' depositions during the discovery stage of a damages suit filed by the Center last summer on Bracewell's behalf.

Bracewell is one of about 45 inmates on Death Row, and not the first to be beaten. Center attorneys see this suit as a way of deterring this form of prison brutality.

Bracewell was beaten because he jabbed at a guard with a piece of electrical conduit which had been left in front of his cell by workers the day before.

Although he missed, the guards were angered, and when he refused to hand over the pipe, they decided to enter his cell and take it by force.

Inmate witnesses said the officers were armed with ax handles, baseball bats, clubs and even a pitchfork.

At first the officers denied having the weapons, but later they were found to be lying. They were given punishments ranging from letters of reprimand to 15-day suspensions. One of the officers, the morning shift commander of the Death Row unit, was later reassigned to a low level-position.

The account the guards gave during the depositions of how they disciplined Bracewell was consistent with the version Burnim heard from Death Row inmates celled near Bracewell. The main difference was that all of the guards, except one, denied striking him,

and even the one who admitted it said that he only poked Bracewell in the back with his nightstick.

Bracewell's appearance, as well as the medical evidence, suggest that the guards are lying about that, too. Medical records show he had a black eye, "cauliflowered ears," and abrasions on the face — marks of a beating. There were also large bruises and abrasions on his back.

None of the guards involved in the incident was injured, however. According to the guard's testimony, Bracewell was incapacitated by mace just before they entered his cell and was immediately handcuffed without much resistance.

After the beating, Bracewell was carried to a free-world doctor and was examined for a possible concussion. When the tests proved negative, he was returned to the prison infirmary and held overnight for observation. He was given medication and placed on a liquid diet for several days.

The Department of Corrections has made no comment on the beating since the first reports of it appeared in the press. At that time a spokesman characterized it as a minor incident, but promised that it would be fully investigated.

Dismissal motions pending in cases

The Alabama Supreme Court will hear oral argument January 14 on a lower court's decision to dismiss a "brown lung" suit filed by Poverty Law Center attorneys on behalf of disabled workers at an Opelika, Ala., textile plant.

A similar case filed by the Center in federal court in Greenville, S.C., against Burlington Industries still awaits a ruling on the defendants' motion to dismiss.

LEGAL AID

Counterattack: suits against the Klan

By Stephen J. Ellmann

We don't think of suing the Klan. They burn a cross, march armed through a black neighborhood, beat up a black minister who enters the wrong lunchroom, and still they seem above the law, somehow in another universe from the law. The impression isn't accidental. The Klan's blend of mystic danger and a conspiracy of silence has worked often and well.

But they are not immune from suit, nor invulnerable to legal process. In fact, Klan violence is the focus of federal legislation that has been on the books for a century, and this legislation in turn echoes provisions of the federal constitution, and complements state constitutional, statutory and common law provisions. There is no shortage of causes of action — but the cases alleging them are still few and far between.

The most important ground for federal suit against the Klan is a provision of the 1870s Ku Klux Klan Act, 42 U.S.C.

§ 1985(c). This statute prohibits conspiracies to deprive others of the equal protection of the laws, and also makes it unlawful to go in disguise upon the highway for this purpose.

Used primarily as a tool for successful employment discrimination cases, it in fact was plainly written to reach the mob action — and the use of robes and hoods — which the Klan has embraced for a hundred years. The Supreme Court has read into it a requirement that the conspiracy have a "class-based animus," but in a Klan case this is of course no barrier at all.

§ 1985(c) is the heaviest weapon in the federal statutory arsenal, but by no means the only one. It is buttressed by 42 U.S.C. § 1986, which catches the not-so-innocent bystander by imposing liability on all persons who, knowing that acts in violation of section 1985 are about to be committed, and able to aid in preventing them, fail to do so.

It is also supported by an often overlooked portion of 42 U.S.C. § 1981,

which guarantees to every person "the full and equal benefit of all laws . . . for the security of persons and property as is enjoyed by white persons."

When Klansmen burst through police lines to attack peaceful black demonstrators, they violate section 1981 by depriving the demonstrators of the law's protection of their right to march.

As they grow more violent, the Klan's actions also mature into violations of the best known civil rights statute, 42 U.S.C. § 1983, and of the Fourteenth Amendment.

These fundamental guarantees protect, of course, only against deprivation of rights by "state action" or "under color of" state law. Unfortunately, the Klan can meet these requirements. Sometimes the state is in league with the Klan; sometimes it is not, but the Klan has grown so bold that it can overcome state resistance and substitute its own vigilante power for the law of the

land. In either case, "Klan action" may be "state action."

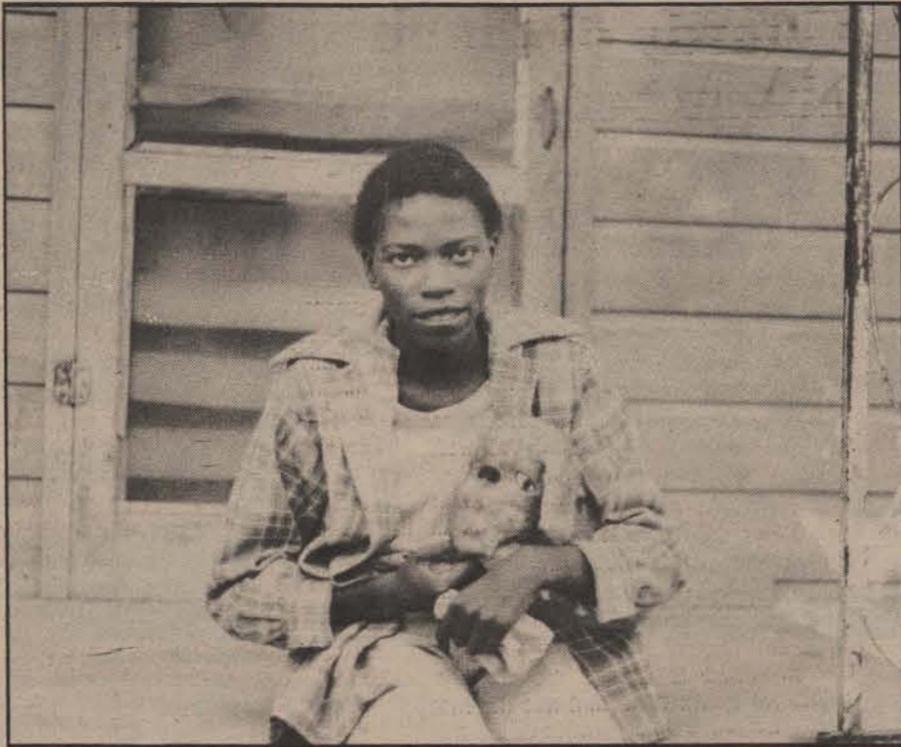
Nor is this all. Klan violence can run afoul of several other guarantees of the United States Constitution, such as the right to interstate travel, and the right to be free of the badges and incidents of slavery.

It undoubtedly will also affront state constitutional guarantees, state criminal laws and a whole host of rights protected by the common law.

These theories are not academic — for these suits are very serious enterprises. They give the plaintiff access to court-ordered discovery, and the mere revelation of the full facts about the Klan's activities in a case will shock many opponents and perhaps shame some Klan supporters.

These suits also can win damages for the physical and psychological injuries which the Klan inflicts — and given the nature of those injuries the damages will not be small. (By virtue

Continued to Page 3



Because the State of Alabama provides no services for retarded children with behavior problems, Joycette Gray may be committed to a mental hospital.

State agencies neglect troubled, retarded children

Joycette Gray is a mildly retarded, fourteen-year-old black girl with behavior problems whom the State of Alabama keeps trying to put in a mental institution.

Ira Burnim and Steve Ellmann, her Southern Poverty Law Center attorneys, think there are probably a couple of hundred other youngsters like her in Alabama, potentially thousands nationwide.

They are in jails and mental hospitals because so few facilities exist to cope with slow youngsters with adjustment problems. Like Joycette, all many of them need is a stable environment.

Joycette's home life has been anything but that. Her mother has given her little supervision or guidance, and her stepfather has a drinking problem. She lives in a neighborhood that only contributes to her confusion.

After she threw a rock through a neighbor's window recently for some reason, or perhaps no reason at all, a petition was passed up and down her street calling for someone to do something about her.

What one juvenile court referee would like to do is to send her to Bryce Hospital, the state institution for the mentally ill. Her Center attorneys are vigorously opposed to that, because

Bryce has problems of its own, like not being able to protect its patients from one another.

Furthermore, Joycette is not mentally ill. A psychiatrist who examined her for the Center found no traces of psychosis or other mental disorders.

For now it looks like Burnim and Ellmann have blocked the move to have her committed to Bryce. They have also filed a special education complaint against the Montgomery County School Board to force it to provide appropriate services for her.

Realistically, Burnim says, there are few services currently available for children like Joycette in Alabama or anywhere else. She functions too highly to be institutionalized. She can't get into the state's facilities for children with behavior problems because she's retarded. She can't get into facilities for the retarded because she has behavior problems.

What Joycette needs, Burnim says, is a community-based, residential facility that offers a structured environment, educational, vocational and supportive services.

Center attorneys intend to use her case to pressure state officials to develop these kinds of programs and facilities, which will create a model for other states to copy.

Klan is sued for conspiring to violate rights of blacks

Continued from Page 1

About the time the blacks were to begin their march, the Klansmen left the park in a caravan bound for a pre-arranged site along the demonstrators' parade route. At the designated point they were met by 25-50 more Klan members. All were armed. In addition to various types of clubs they carried, the Klansmen hid knives, machetes, and guns beneath their robes.

As the marchers approached the spot where the Klansmen were massed, about 40 law enforcement officers formed a line down the middle of the street to make a corridor for the demonstrators to pass through. But as the marchers attempted to walk by, the Klan attacked, injuring several officers before breaking through the line and heading toward the blacks.

A 15-second sequence of videotape taken by a TV photographer that begins at this point shows more than a dozen Klansmen charging past the police and attacking the marchers while other Klansmen circled around behind them.

Shooting then broke out, forcing everyone to run for their lives.

Although three blacks and two Klansmen were wounded from the gunfire, only one person, a black man, was arrested in the shootings. Center attorneys Morris Dees and John Carroll defended the man, Curtis Robinson, in a trial last October before an all-white jury. He was convicted despite videotape evidence indicating that the Klansman he shot was running toward him with a raised club less than ten feet in front of him. The conviction has been appealed.

Since the Center began its investigation into the case, more than 35 Klansmen pictured in photographs taken at the shooting scene and at the roadside park have been identified and

served with copies of the suit. In all, there are more than 40 Klan defendants.

Many of the Klansmen identified at Decatur have been connected by the Center with recent acts of violence and intimidation in other parts of the South.

Two of the defendants, for instance, served terms in federal prison in 1980 for beating up two black ministers outside a restaurant in Florence, Ala.

Although Imperial Wizard Wilkinson insists that Klansmen proven of engaging in violence are expelled from the organization, neither of these individuals is known to have been banished.

Other defendants in the suit were found to have participated in acts of harassment in Mississippi in 1978 and Tennessee in the summer of 1979, as well as in north Alabama.

The Peoples' Association suit, besides requesting damages, asks the court for an injunction against the Klan from participating in the future in acts of violence or intimidation against blacks in Alabama. If the Klan is enjoined, violation of the order would be considered contempt of court, making prosecutions of future acts easier.

Lawyers for the Klan have already filed a motion to dismiss the suit, which was filed last November, contending that the one-year statute of limitations governing the bringing of such suits has run out. But SPLC attorneys Morris Dees and Steve Ellmann, who are handling the case, say that the statute doesn't run in a conspiracy case until the date that the plaintiffs suspect that a conspiracy exists.

Dees doesn't expect the case to go to trial anytime soon, possibly not until the middle of this year. He foresees a lengthy period of discovery, during which the Center will try to identify as many Klansmen and gather as much information on the Klan as possible.

Ways abound to fight Klan in courts

Continued from Page 2

of 42 U.S.C. § 1988, attorneys' fees are also readily available.)

Finally, the injunctive relief which the Court can issue can blunt a campaign of Klan violence permanently as an injunction issued by Judge Frank Johnson in Montgomery almost two decades ago has done here.

Contempt in and of itself is a fierce weapon, and lawyers around the country are developing injunctive refinements such as reporting requirements, or orders

which must be posted at all Klan meetings, which can provide the Klan with a constant reminder of the majesty and scrutiny of the law.

None of these is the main effect, however. The most important reason for suing is simply to meet the Klan threat head-on. The suit may lose; the anti-Klan organizing may be slow; but the veil of silence and apathy can be pierced.

LEGAL AID is a column for SPLC attorneys.

SPLC files suit against FBI over FOIA dispute

BIRMINGHAM — The Southern Poverty Law Center has sued the Federal Bureau of Investigation in an attempt to vindicate Curtis Robinson and prove a Klan conspiracy to violate the civil rights of a group of black people in Decatur, Ala., in May, 1979.

Center Legal Director John Carroll has sued the F.B.I. under the Freedom of Information Act (FOIA) to obtain the names of police officers and bureau agents whose identities should have been made available to the Center months ago through regular administrative procedures.

The identities of the law enforcement officers in question were with-

held, along with other information, from an F.B.I. report released to the Center concerning the bureau's investigation into a Ku Klux Klan attack on a group of peaceful black demonstrators in Decatur on May 26, 1979.

The names of the Decatur police and county deputies who witnessed the incident and the F.B.I. agents who interviewed the witnesses were deleted from the report under a provision of the FOIA which permits the bureau to withhold the identities of its informants.

Carroll appealed the decision on the ground that law enforcement officers performing in the line-of-duty were not informants, but the F.B.I. rejected the

appeal.

Center attorneys want to interview the policemen and deputies because portions of their statements to the F.B.I. concerning the Klan attack contained exculpatory evidence for the defense of Curtis Robinson, whom the Center de-

fended in October for shooting an armed Klansman in self-defense.

Carroll would like to interview the F.B.I. agents who investigated the case because of knowledge they have regarding the Klan's conspiracy to block the black marchers' demonstration that day.

Court rules death law still usable

Continued from Page 1

By the same token, the "old law" gave trial judges ultimate sentencing authority over the jury, but the "new law" restricts the judge's role in the sentencing procedure.

The court also adopted an "appellate review" procedure, whose purpose

is to ensure that death sentences are handed out fairly and consistently from one court to another.

Carroll says changes like these which alter the character and intent of a law must be made by the legislature, not the courts.

KLANWATCH

A Klan KKKronology

Spring, 1866: Confederate veterans formed the Klan in Pulaski, Tennessee.

1867: With General Nathan Bedford Forrest as Grand Wizard, the organizational structure of the KKK developed to accommodate its spread across the South. Invasion of black homes, flogging of blacks and whites became commonplace.

July 4, 1867: Klansmen, most of whom were ex-Confederates, marched in major Southern cities in full regalia.

1871: 297 blacks lynched in one month in New Orleans.

1871-1872: Congressional investigations led to a few hundred Klansmen being brought to trial for violence. Congress passed the Ku Klux Klan Act that made it a crime for anyone to deprive citizens of their constitutional rights.

1874: 200 blacks killed in one week before elections in Vicksburg, Mississippi.

1866-1875: 3,500 blacks killed in the South by the Klan.

1896-1900: Ku Klux Klan and Red Shirts (another paramilitary organization) conducted campaigns of terror to break up white-black political coalitions.

1900-1914: The KKK lynched 1,100 blacks.

1915: *The Birth of a Nation*, Hollywood's first full-length motion picture, glorified the role of the Ku Klux Klan in saving the South from "carpet-baggers and niggers." President Wilson was given a private showing of *Birth of a Nation* and remarked "It is like writing history with lightning."

1915: On Thanksgiving Eve, William Joseph Simmons invited 15 friends to the top of Stone Mountain, near Atlanta, built an altar, and set fire to a wooden cross. This ceremony launched the Invisible Empire of the Ku Klux Klan, which became the largest KKK organization in the history of the United States.

1918-1921: Twenty-eight blacks burned alive. Some of these had just returned from World War I and were murdered in their military uniforms.

1920: The Invisible Knights of the KKK grew to an estimated three-and-a-half million members and directed their wrath toward blacks, immigrants, Catholics, Jews and "nigger lovers."

December, 1921: 6,000 people attended a public rally of the Ku Klux Klan in Portland, Oregon.

1920-1930: Klan-supported candidates won top political offices throughout the nation.

July 4, 1923: David C. Stephenson was sworn in as Indiana's Grand Dragon before a crowd of 100,000 Klansmen.

August 8, 1925: 40,000 Klansmen marched through the streets of Washington, D.C.

1930: The Ku Klux Klan was on the road to collapse from internal pressure, and a broadening of opposition from anti-Klan groups.

1944: The Internal Revenue Service filed suit against the Invisible Empire for \$685,000 in back taxes.

1947: Stetson Kennedy exposed the Klan in his book *I Rode with the Ku Klux Klan*.

1954-1965: U.S. Justice Department

figures show that the Klan was responsible for 70 bombings in Georgia and Mississippi, 30 black church bombings in Mississippi, the castration of a black man in Alabama, and 50 bombings in Birmingham.

1963: The Sixteenth Street Baptist Church was bombed in Birmingham and four young black girls killed in their Sunday School class.

1964: Michael Schwerner, Andrew Goodman and James Chaney, young civil-rights workers, were killed by the Original Knights of the Ku Klux Klan near Philadelphia, Mississippi.

1965: Viola Liuzzo, a Detroit housewife, was killed by four Klansmen (including FBI informer Gary Thomas Rowe, Jr.), following the historic march from Selma, Alabama, to Montgomery, Alabama.

1966-1969: The House Un-American Activities Committee held hearings on the KKK. Several leaders were sentenced to jail for contempt of Congress for refusing to turn over records of finances and membership. The Klan went underground.

1969: A Charlotte federal district court ordered the Charlotte School Board to bus school students to achieve racial balance in schools. Klan-led violence began but then subsided, a pattern duplicated across the South.

Mid-1970s: Klan membership increased in the North following integration of schools through crosstown busing.

1977: 250 Klansmen rallied in President Jimmy Carter's hometown of Plains, Georgia. The event ended when a speeding car crashed into the speaker's platform.

Sources: John L. Stewart, *KKK Menace: The Cross Against the People*, 1980; Robert P. Ingalls, *Hoods, The Story of the Ku Klux Klan*, Putnam, 1979; Ted Quant and John Slaughter, *We Won't Go Back: The Rise of the Ku Klux Klan and the Southern Struggle for Equality*, Equal Rights Congress, 1980.

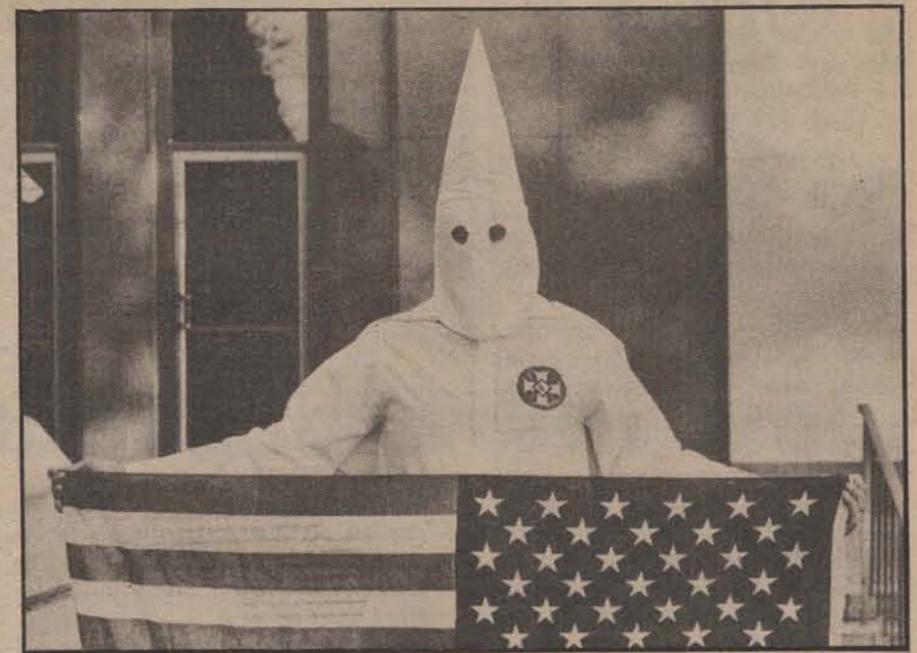
This article is excerpted from "Mark of the Beast," a special issue of Southern Exposure devoted to a study of the Klan. It is recommended for Center supporters who want to learn more about the KKK, past and present, and is available for \$3 from The Institute of Southern Studies, P.O. Box 531, Durham, NC 27702.



Religious News Service Photo

"America is a nation for white people... The Klan will stand up and 'strike up' and kill the enemy. It's them or us. Don't let it be us."

An Alabama Klansman, 1980



Jimmy Dempsey

Blacks win election to commission

MONTGOMERY — For the first time, blacks now have a hand in running county government here, thanks to a voting rights case won by Southern Poverty Law Center attorneys in 1978.

That was the year a federal judge ruled in a lawsuit brought by the Center that Montgomery County's "at-large" election scheme was unconstitutional because it had been adopted in the 1950s for the purpose of diluting black voting strength. He then ordered the county to devise an election plan

based on district representation.

Last November, in the first elections since the districts were drawn, two blacks running from majority-black wards won seats on the county commission, the county's governing body.

A third black candidate running from a mixed district narrowly lost his party's nomination in the primary.

Until now the five-place commission has been all-white, despite the fact that Montgomery County's population is more than a third black.

At-large election plans like the one invalidated in *Hendrix v. Joseph*, the Montgomery County case, deprive thousands of black citizens across the South of a meaningful vote. And because of recent court decisions it has become more difficult than ever to bring, and win, voting rights suits.

Center attorneys have brought about changes in the election plans of many communities in the Southeast and have a case pending before a federal judge asking for the invalidation of an at-large plan in Opelika, Alabama.