

poverty law **Report**

A REVIEW OF ADVANCES IN THE LEGAL RIGHTS OF THE POOR

Volume 2, Number 2 A Publication of the Southern Poverty Law Center

February, 1974

Center Moves to Save Three Blacks From North Carolina Gas Chamber

The Southern Poverty Law Center has taken on the appeal of a North Carolina criminal case in which three young black men were convicted by a white jury of raping a white woman and sentenced to die in the gas chamber. Our fight to save their lives may lead ultimately to a United States Supreme Court ruling that capital punishment is unconstitutional.

The Supreme Court's June 1972 ruling on the death penalty, which struck down existing capital punishment laws, left unanswered the question of whether state executions are "cruel and unusual punishment" in violation of the Eighth Amendment. Legal authorities acknowledge that the Court's decision was based principally on the fact that the states have dealt out death penalties arbitrarily and discriminatorily. The overwhelming majority of convicts released from death rows by the 1972 ruling were black and impoverished.

Bobbie Hines, 24, Vernon Brown, 22, and Jesse Lee Walston, 23, were convicted of rape in December and sentenced to die in a Raleigh gas chamber under a North Carolina law which had been held unconstitutional by the 1972 ruling, but was then modified by the North Carolina Supreme Court through removal of its "mercy clause." The state's high court reasoned that only the exercise of discretion by juries made the

death penalty statute in North Carolina objectionable; therefore it removed a section of the law which had been inserted by North Carolina's Legislature in 1949 to give juries the opportunity to recommend life imprisonment instead of execution in convictions for murder, arson, rape, and burglary.

Hines, Brown and Walston received mandatory death sentences after being convicted of raping a white woman. But a study of the evidence introduced at their trial has convinced the Center's lawyers that the three were wrongly convicted.

Two witnesses testified that they saw the woman open the car door and enter willingly. Other testimony revealed she has been walking along the highway at midnight, bare-footed, after leaving her boyfriend because of an argument over her drinking. Later, she was let off in full view of several white men at a drive-in restaurant less than 200 yards from her home. Two policemen testified that she was inebriated. And a medical examination after the incident failed to disclose any signs of injury, bruises, scratches or other signs of a struggle. Her clothes were not torn or disarranged.

The three men declare that the woman voluntarily participated in sexual intercourse with them before they left her at the restaurant, but then apparently felt the need to protect her reputation after realizing she'd been seen with three black men.

In handling their appeal the Center will seek a reversal or retrial based on conflicts in testimony and errors during the first trial. But we must at the same time attack North Carolina's harsh capital punishment laws and the death penalty itself.

Capital Punishment Still Alive

Since the Supreme Court's 1972 decision, twenty-three states have enacted new death penalty laws, with at least a dozen more expected to follow suit this year. Forty-nine men and one woman have already been sentenced to die in electric chairs, in gas chambers, on gallows and before firing squads across the nation. Of these, twenty-two, including Bobbie Hines, Vernon Brown and Jesse Lee Walston, are in North Carolina.

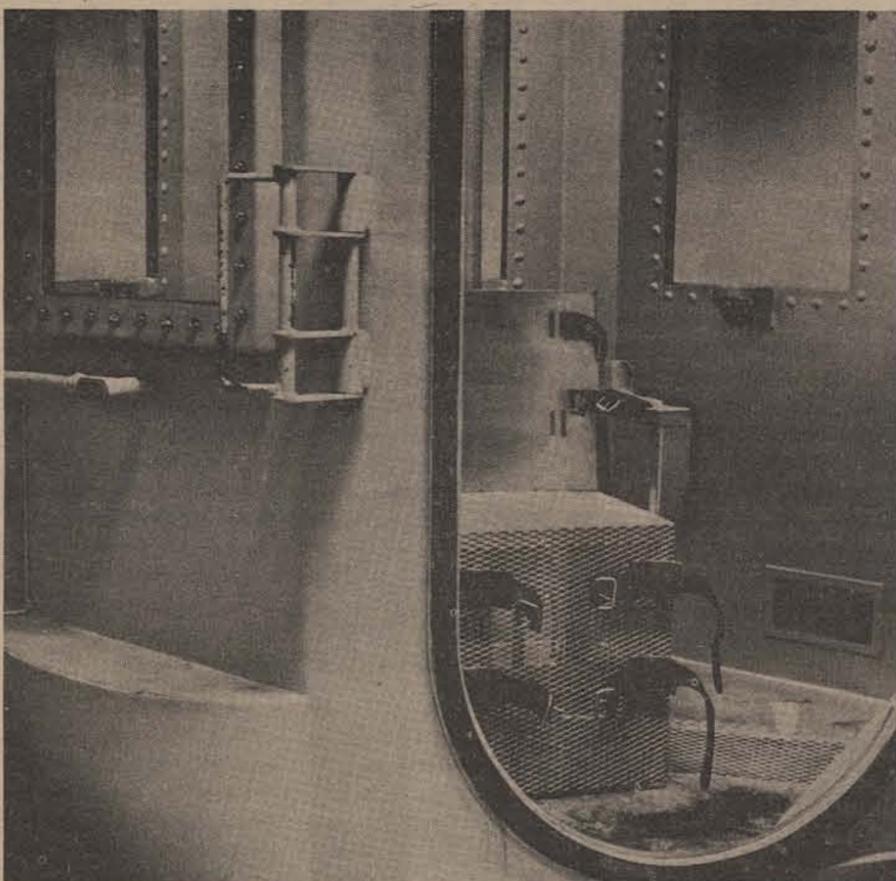
Although the newly enacted death penalty laws were theoretically designed to eliminate haphazard and discriminatory application, the vast majority of those awaiting the horrors of cyanide gas, lethal jolts of electricity, the noose or the firing squad are black. And *all* of them are poor. The new population of

America's death rows resembles in its racial makeup the 631 who were on death rows before June 1972.

The Center believes it can demonstrate that the new death penalty laws discriminate just as effectively as did the old ones, because plea bargaining, prosecutors' discretion and executive clemency remove nearly all but poor people and blacks from jeopardy. But our attack on capital punishment will be based, also, on the basic issue of whether the state should have a license to kill.

Witnesses to executions have reported that death by gassing or hanging can take as long as seven or eight excruciating minutes. Firing squads have been notorious for extreme cruelty as a result of carelessness. The ghastly sight of an individual writhing in the electric chair for several minutes, smoke and steam emanating from the helmet strapped on his shaven head, has sickened hundreds of witnesses.

If our efforts to save Hines, Brown and Walston culminate in a challenge of the death penalty in the United States Supreme Court, we hope to convince the judges that, regardless of the procedural system under which it is inflicted, capital punishment is excessively and unnecessarily cruel and therefore banned by the Eighth Amendment.



The Baltimore Sun

Fifty now face death by gassing, noose, firing squad or electric chair. In North Carolina, where 23 (including Brown, Hines and Walston) await state execution, death is administered in a gas chamber like this one. Eighteen of the 23 are non-white. Death Penalty is mandatory in North Carolina after conviction for arson, murder, rape or burglary.



JULIAN BOND

The Death Penalty: Cruel, But Not Unusual If You're Black and Poor

Six hundred thirty-one men and women — most of them black, all of them poor — slipped through the hands of America's legal executioners in 1972. The Supreme Court had ruled by the slimmest of margins (5 to 4) that capital punishment as it was being applied at the time was unconstitutional.

But our nation's wreakers of court-sanctioned vengeance haven't given up — far from it! More than twenty states have already rewritten their capital crime statutes, and the death penalty has been seriously debated in nearly every state's legislature. Fifty new bodies are suffering the painful wait for their own court-ordered extinction as I write this. By the time you read it, the number will probably have grown even higher.

Many lawmakers believe that the Supreme Court didn't rule, in 1972, against killing people — only against processes that allow one person (or twelve persons) to decide who should be killed and who should be jailed. The Justices noted that although no race has a monopoly on the commission of crime, most of those sentenced to die were black.

They noted that in several cases in the South involving a black and a white accused of committing a crime together but tried separately, the black was sentenced to die while the white was sent to prison.

They noted that blacks accused of raping and robbing whites practically always received the harshest possible sentences — and in many states that meant death.

They noted that people who could afford private counsel but were sentenced to death had their sentences later reduced or commuted nearly twice as often as those defended by court-appointed lawyers.

And, try as they might, they couldn't find a single case in recent history where a rich person was gassed, hanged, shot or electrocuted.

If the Justices objected only to the haphazard and arbitrary manner in which death sentences were being dealt out, the lawmakers reasoned, there would be no opposition to capital punishment laws that were *mandatory*. So the lawmakers in many states passed new death laws designed (so they believe) to eliminate the possibility of judges' and juries' haphazard, arbitrary, and discriminatory dealing out of death sentences.

But it isn't turning out the way they planned. Most of the fifty new death row occupants are black, and all of them are poor . . . because prosecutors can still decide who to prosecute, and on what charge, and because juries can still convict on "lesser included offenses" punishable with lesser sentences.

In North Carolina, most vengeful state in the nation, twenty-three poor people are currently awaiting execution in the gas chamber. (There are *two* seats in North Carolina's gas chamber, to eliminate bottlenecks.) Eighteen of the twenty-three are non-white.

Three of these, represented by the Center in their appeal from conviction for rape, would probably never have been brought to trial had they been white. (The facts revealed at their trial are outlined on page one of this issue of *Poverty Law Report*.)

Because innocent people can (indeed, *must*) be condemned to die . . . because blacks can be killed by state executioners while whites nearly never are . . . and because capital punishment is as demeaning to the state as it is final to the victim, it's time that the death penalty was abolished in America forever.

Newly Founded Miles Law School Answers Need For Black Lawyers

The Southern Poverty Law Center has been instrumental in founding a new law school serving a predominantly black student body of approximately one hundred men and women at Birmingham's Miles College. The Center is contributing expertise in developing the school's unique experimental curriculum, resources for practical casework training, and financial support for the new institution.

The Center initiated this project six months ago, recognizing the need for black lawyers in Alabama and other Southern states. At present there are only twenty-eight black lawyers in Alabama, serving a black populace of nearly one million. Less than one percent of Alabama's practicing attorneys are black; the ratio in every other Southern state is comparable.

George Jones, former assistant to the Dean of the University of Alabama Law School, has been appointed Director of Miles Law School. He says the new school will offer a full curriculum of classes at night beginning this fall, so that young men and women who must support themselves and their families while completing their studies will be able to attend.

The curriculum is designed to train individuals with disadvantaged educational backgrounds in essential communications skills while preparing them to pass the state Bar Examination. In addition, students will have an opportunity to receive practical experience in actual casework under the close supervision and guidance of Southern Poverty Law Center attorneys and others.

Graduates of Miles Law School will be eligible to take the Alabama Bar Examination. Provisional accreditation by the American Bar Association is expected to be granted immediately.

Miles College President W. Clyde Williams says that in addition to alleviat-

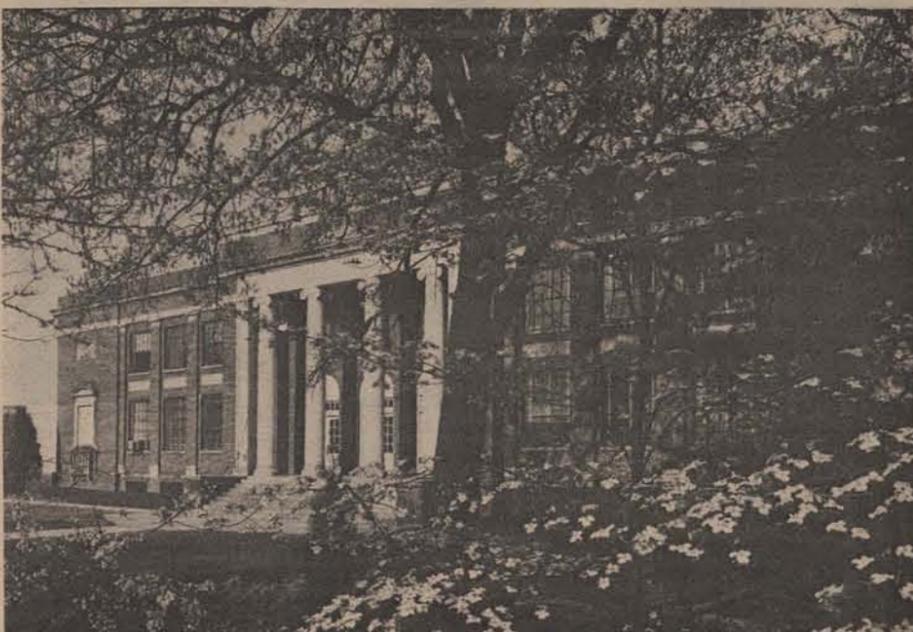
ing the shortage of black lawyers in the state, the new school will help to offset the problem that blacks have getting into school because of quota systems restricting the number of blacks attending most other institutions in the state.

"This school will not only produce more lawyers but will also provide legal training for persons and agencies who need legal knowledge," says President Williams. He also notes that black politicians will be able to learn about law procedures which will give them expertise in handling their elected offices.

The opening of Miles Law School is another step in the expanding educational program of the college which, since 1905, has been the principal four-year collegiate institution open to blacks in the metropolitan Birmingham area. The college has an enrollment of more than 1,100 men and women, most of them black, although admission is open to all qualified persons regardless of race.



Work is already underway on conversion of Miles College's Erskine Ramsey Hall to accommodate extensive law library for newly founded Miles Law School. Classes will begin this fall.



Administration Building at Miles College, Birmingham's principal four-year collegiate institution open to blacks. Opening of Miles Law School expands educational program available to black community, will increase number of black attorneys practicing in state.

poverty law Report

VOLUME II NO. 2

February 1974

The Poverty Law Report is published quarterly by the Southern Poverty Law Center, 119 So. McDonough St, Montgomery, Alabama 36101

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Threat of North Carolina Gas Chamber Is Constantly In Thoughts Of Hines, Walston and Brown As They Await Their Execution

Vernon Brown, Bobbie Hines and Jesse Lee Walston have been locked up in maximum security cells at North Carolina Prison since early December, when they were convicted of raping a white woman and sentenced to die in the gas chamber. They have seen only each other, their guards, one or two working inmates who are not permitted to speak with them, and an occasional visitor. Walston is the only one of the three who is married. But his wife, Deborah, has been unable to leave their Washington, D.C. apartment and their two small children long enough to visit the prison in Raleigh.

The nightmare began for Vernon, Bobbie and Jesse last August, after Jesse went back to Tarboro, North Carolina, to visit his mother. Out for an evening with Vernon and Bobbie, Jesse committed an indiscretion for which he may have to pay with his life. The three young men offered a ride to a white wo-

man and after she willingly accepted, all had sexual relations with her.

Soon afterward Jesse returned to Washington, then learned from his mother that the Tarboro police wanted him for rape. Declaring his innocence, Jesse returned to Tarboro to square things. But a white jury believed the woman's version of the incident, and the three men have been sentenced to die.

"They were convicted because that girl had to protect her reputation (she was seen by several whites getting out of Jesse's car), and she's willing to pay these men's lives to do it," says Jesse's brother, Leroy.

Jesse, who like his two companions had no previous police record, has lived in Washington since 1969. He is 24, a high school graduate, worked for a Washington department store, and has been married 2½ years. His son is 1½, his daughter six months.

Vernon Brown is 22, and also graduated from high school. Until his arrest last August he had worked at night while studying auto body repair at a technical school. He had never before been in any kind of trouble; his mother proudly displays a certificate of appreciation Vernon was awarded for his military service.

Bobbie Hines, 23, completed the eleventh grade before getting a job as a tow motor operator to help support his family, which now receives welfare assistance. Bobbie, also, has no past record of trouble.

The families of the three men went heavily into debt to retain the services of a local attorney for their trial. After their conviction, the attorney agreed that the Southern Poverty Law Center's attorneys enter the case for appeal proceedings. From here on, the case will have to be fully financed by the Center.

"These men are innocent," says

Morris Dees, a Center lawyer who interviewed Walston, Brown and Hines recently. "And the long, painful wait until we can get them freed is as cruel a punishment as anything the state could do to them." Offered a chance to plead guilty to a lesser offense prior to their trial, the three steadfastly refused to admit to a crime they hadn't committed. Even in the face of a mandatory death sentence, they refused to accept a conviction and sentence that could have seen them freed within three years.

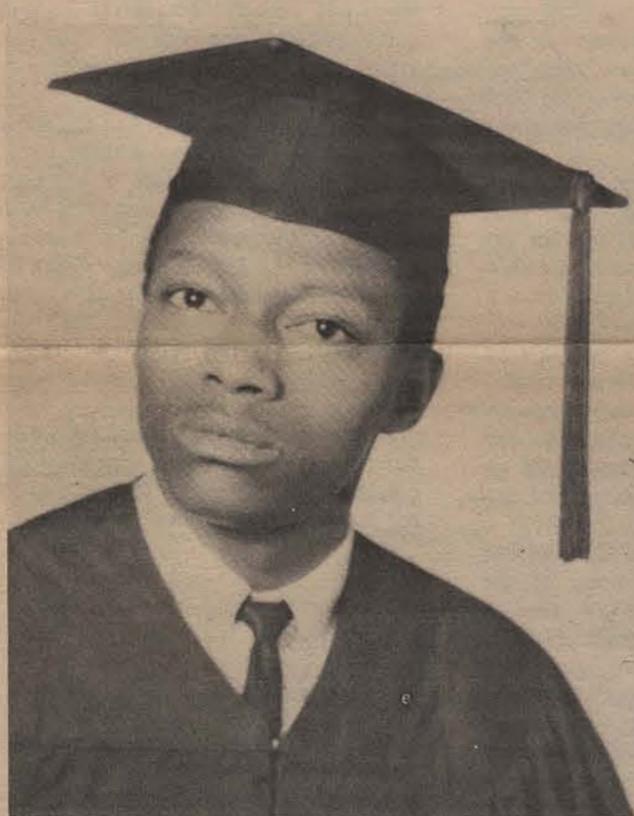
The Unending Boredom of Death Row

Life in a maximum security cell is extremely monotonous. If they have been able to sleep, the men awoken at seven or eight o'clock, are taken by themselves to breakfast, then returned to their cells to wait out the day. They cannot see each other from the cells, and communicate only through subdued conversation. They spend most of the time thinking about the day when they may have to face death in the gas chamber.

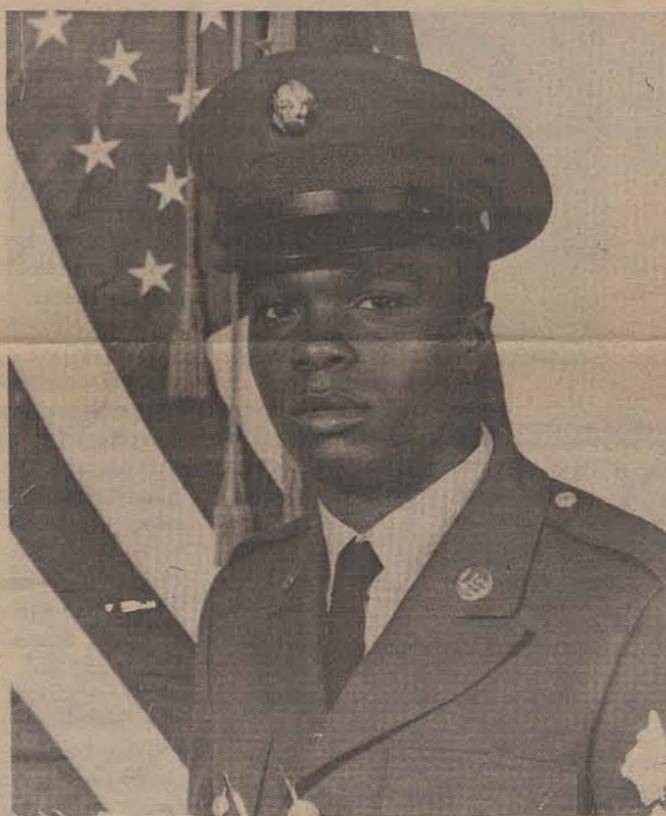
The days are broken only by meals. They are permitted one exercise period a day, and one night to watch television each week — always in the company of none but each other. They are allowed to take two showers a week.

The Center has made arrangements for Jesse, Bobbie and Vernon to be allowed to have radios in their cells, and has ordered a few magazine subscriptions for them to help combat the boredom — and take their minds off the constant threat of their execution. The Center has also seen that they have materials for writing letters, but they report that it's hard to concentrate on something to write when they never do anything and the end is constantly on their minds.

While Jesse Lee Walston, Vernon Brown and Bobbie Hines spend their every waking hour waiting and suffering, Southern Poverty Law Center attorneys are working to find a way to set them free. If we succeed, we may also rescue forty-seven other condemned men and women living similar existences on death rows across America.



Jesse Lee Walston as he appeared at his high school graduation in 1969. Now married, with two small children, he had never been in trouble of any kind before his arrest last August.



Vernon Leroy Brown served with honor in the U.S. Army. Shortly after his honorable discharge, he began studies to prepare himself to earn a living as an auto body mechanic.

A Center Attorney Interviews Three Determined Men On "Death Row"

Morris Dees, the Southern Poverty Law Center attorney who is heading up efforts to save Vernon Brown, Bobbie Hines, and Jesse Lee Walston from the gas chamber, recently visited the three at North Carolina Central Prison in Raleigh. During the interview they discussed the incident which led to a charge of rape against them, events leading to their trial, the trial itself, and the weeks in maximum security confinement that have followed their conviction and sentencing.

Dees became convinced beyond doubt, after talking with the men, that they are innocent of the crime for which they were convicted. Especially compelling is the manner in which Hines, Walston and Brown comported themselves from their first contact with

police, described in these excerpts from the interview:

DEES: How soon after that night did the police come to get you?

BROWN: It happened Saturday night, and the police came for me Thursday at the plant, took me to the station, asked me some questions, then let me go and told me to come back next morning.

DEES: They let you go home? Did they tell you that they thought you'd raped the girl?

BROWN: They just said come back in tomorrow, they wanted to ask me some more questions. And I wanted to clear everything up, so I went back the next day.

DEES: That's when they charged you?

BROWN: Right . . .

HINES: They came for me Friday night, told me they had Vernon, and charged me.

DEES: I see . . . Jesse, you were in Washington, weren't you?

WALSTON: That's right, I'd already gone back but my mother called and told me the police said I raped a little white girl. I talked it over with my brother — he lives in Washington — and we decided that the best thing I could do was go back and straighten everything out . . .

DEES: Did they ever offer you a chance to plead guilty to a lesser charge and avoid the death sentence?

WALSTON: Yeah, the (North Carolina) lawyer told us it didn't look good, that if we said we were guilty of kidnapping with intent to rape we could

get fifteen years. But we all said we weren't going to say we'd done anything we didn't do, even if it would get us out in fifteen minutes . . .



The Baltimore Sun

New Poverty Law Center Directors Named At Annual Board Meeting

W. Clyde Williams, President of Miles College; Rufus Charles Huffman, Southern Education Field Director of the N.A.A.C.P.; and Morris S. Dees, Jr., a prominent civil rights attorney were elected Directors of the Southern Poverty Law Center at the regular annual meeting of the Board last January 21st. The three were elected to one-year terms, and will serve without compensation.

W. Clyde Williams, an ordained elder of the Christian Methodist Episcopal Church, has been President of Birmingham's Miles College since 1971. Miles College is the site of Miles Law School, founded this year by the Center.

Rufus Charles Huffman coordinates the NAACP's policies on education throughout the South from his office in Union Springs. His expertise in developing strategies for social change has won him administrative responsibilities with numerous organizations, including Community Action Projects and the



Morris S. Dees, Jr.



Rufus Huffman



W. Clyde Williams

THE DOCKET

CURRENT STATUS OF SOME SOUTHERN POVERTY LAW CENTER CASES

Relf v. Weinberger

On Monday, January 28, the Department of H.E.W. finally published sterilization regulations providing safeguards for poor persons who appear for help at federal family planning clinics and welfare offices. H.E.W. has promised federal judge Gerhard Gesell that the regulations would be ready last November 1st.

Center attorneys studying the new guidelines contend that they are not only three months late, they are also three points short. The regulations 1) fail to insure that patients receive adequate information on which to base an informed choice, 2) fail to insure that the choice is voluntarily made, and 3) fail to monitor doctors and clinics who might abuse the rules.

Renewed proceedings will begin in Judge Gesell's court in early February. The Center will not seek to halt all federal sterilizations, but rather to have federal agencies supply the same adequate information and counseling to poor persons as private hospitals and doctors provide to the rich.

Center attorneys plan to put into evidence a recent survey which shows that the wives of surgeons performing sterilization operations very rarely choose the birth control method promoted by their husbands, preferring instead to rely on less drastic conventional birth control methods.

Organization for Equal Opportunity.

Morris S. Dees, Jr. has been a non-salaried senior attorney with the Southern Poverty Law Center since its founding, and has handled many precedent-setting lawsuits for the A.C.L.U., NAACP and other organizations.

The Center's Directors are charged with the responsibility of setting priorities among areas of poverty law in which Center attorneys are active, and coordinating efforts with those of other groups.

Low-Income Consumers Victimized By Self-Help Repossession Laws

BY CHARLES F. ABERNATHY

Sinking deepest roots into our democratically organized society is the principle that no decision should be made until both sides of the issue have been heard. This thought underlies the First Amendment, by which we allow minority views to be voiced on important political decisions so that they may become majority views. The idea is also reflected in our constitutional guarantee that a criminal defendant have competent counsel to present his side of the case to the jury.

But in commercial affairs many powerful banks and financial institutions have persuaded state legislatures to ignore this basic democratic principle. State laws were written so that loan collateral, wages, and other personal income could be seized summarily without an opportunity for the consumer first to object to the seizure.

If the consumer later objects to the seizure of his property, then he must bear the cost of filing suit to defend his rights.

Predictably, the law threatens poor people most. Forced to take on the expense of suing to recover their property, poor citizens cannot afford their day in court to present their side of the case.

Recently in rural south Alabama a black woman fell behind in her payments for a home heater, and the gas company promptly repossessed the unit. The consumer later explained that a company clerical error was at fault, and, hoping to avoid costly court action, she paid all payments except those relating to the clerical error. The company, however, kept both the back payments and the heater. The woman never had an opportunity to explain her side of the case.

In the last three years the Supreme Court has struck down some of the more arbitrary summary seizure statutes. *Sniadich v. Family Finance Corp.*, 395 U.S. 337 (1971), brought an end to summary garnishment of wages, and in *Fuentes v. Shevin*, 407 U.S. 67 (1972), the Court declared unconstitutional Pennsylvania and Florida statutes which authorized finance companies to have state officers summarily seize property claimed by the company.

Despite these advances one enormous loophole remains: in forty-nine states the Uniform Commercial Code allows banks and sellers to repossess summarily any product or property given as collateral for a loan or installment sale contract. This set of laws authorizes the banks to act for themselves without even a sheriff's guiding hand.

The greatest abuse under these laws comes in the sale of automobiles. When the car buyer falls behind on a payment, the bank hires a "repossession goon" to go out to get the car. Sometimes the auto is literally stolen as the "goon" hot-wires the auto and drives it away.

On other occasions subtle threats and pressures are involved. The Brantley family (now represented by the Center) fell behind on its auto payments while the husband was ill. Then while Mr. Brantley was out of town hunting a job, a bank agent woke Mrs. Brantley at 6:00 a.m. to pick up the car. After an hour of threats of high court costs, the wife handed over the car keys.

Bankers argue in support of their extraordinary private power to repossess that they need some quick way to cut their losses from loan defaults. One recent study, however, shows that auto repossession almost amounts to a racket in itself — far from merely cutting losses, bankers seem actually to make greater profits from repeated financing and repossession of an automobile.

Vesting summary repossession power in the hands of private finance companies effectively gives them the power to be judge and jury of their own claims. The potential for abuse in such an arrangement is astronomical.

In one case now before the Fifth Circuit Court of Appeals (handled by Center attorneys) a finance company agent had extorted several hundred dollars from a young black man as well as charging him with an exorbitant and unconscionable 20.65% interest rate on his auto loan. Having these defenses which could be asserted if the finance company chose to sue, the young man never had a chance to tell his story in court because the finance company seized the auto without court order.

Once again state laws favoring bankers over consumers had forced a young man into poverty. Without transportation how can you get to your job?

The two auto repossession cases mentioned in the text are now awaiting decision in the United States Court of Appeals for the Fifth Circuit. Attorneys may contact the Center for appellate briefs.

Charles F. Abernathy, former Editor-in-Chief of the *Harvard Civil Rights - Civil Liberties Law Review*, is an attorney at the Southern Poverty Law Center.



Mr. and Mrs. Jerry Brantley and daughter, outside the mobile home in which they live at Brundidge, Alabama. The Brantleys missed a payment on their car while Jerry was ill; financing company repossessed after threatening legal action.