

poverty law Report

A REVIEW OF ADVANCES IN THE LEGAL RIGHTS OF THE POOR

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Little wins venue change

WASHINGTON, N.C. — Defense attorneys won a significant victory for Joanne Little on May 1 when a state judge here ordered her trial moved to Wake County Superior Court in Raleigh.

Ms. Little is a 21-year-old black woman charged with murdering a white jailer when he attempted to rape her last summer. She was being held in the Beaufort County jail here when the incident occurred.

A trial date has not yet been set, but it is expected to be sometime in mid-July.

Defense attorneys Jerry Paul and Karen Galloway, both of Durham, and Morris Dees of the Southern Poverty Law Center in Montgomery, Ala., sought a change of venue for Ms. Little because they felt she could not receive a fair trial in her home county.

The prosecution agreed to a change, but the district attorney wanted the trial held within the same judicial district as Beaufort County, or in a neighboring county.

Ms. Little's attorneys presented detailed evidence during a four-day pre-trial hearing here which showed that publicity about the case was more slanted against her in the eastern part of the state — where Beaufort County is located — than in the Raleigh area.

Her attorneys also argued that racial prejudice was stronger in the eastern section than in the more urbanized Raleigh area. They bolstered their argument with extensive surveys indicating the attitudes of local residents.

Raleigh, the state capital, is a large metropolitan area located over 100 miles west of the racially troubled eastern seacoast town of Washington. "The court's decision to move the case to Raleigh is a major pre-trial victory," Dees said.

The change of venue order was important also because it does not follow North Carolina legal precedent. A change of venue in that state pro-

vides only for a move to an adjoining county. Or a judge may order jurors imported from a neighboring county to hear a case.

"This is most unusual," said Mrs. Bessie Cherry, Beaufort County Circuit Court clerk. "Raleigh is way off."

Superior Court Judge Henry McKinnon, who heard the arguments in the change of venue motion, said it was within the court's power to move the trial beyond the boundaries described in state law. He said "the interest of justice" suggested that Wake County was an appropriate site.

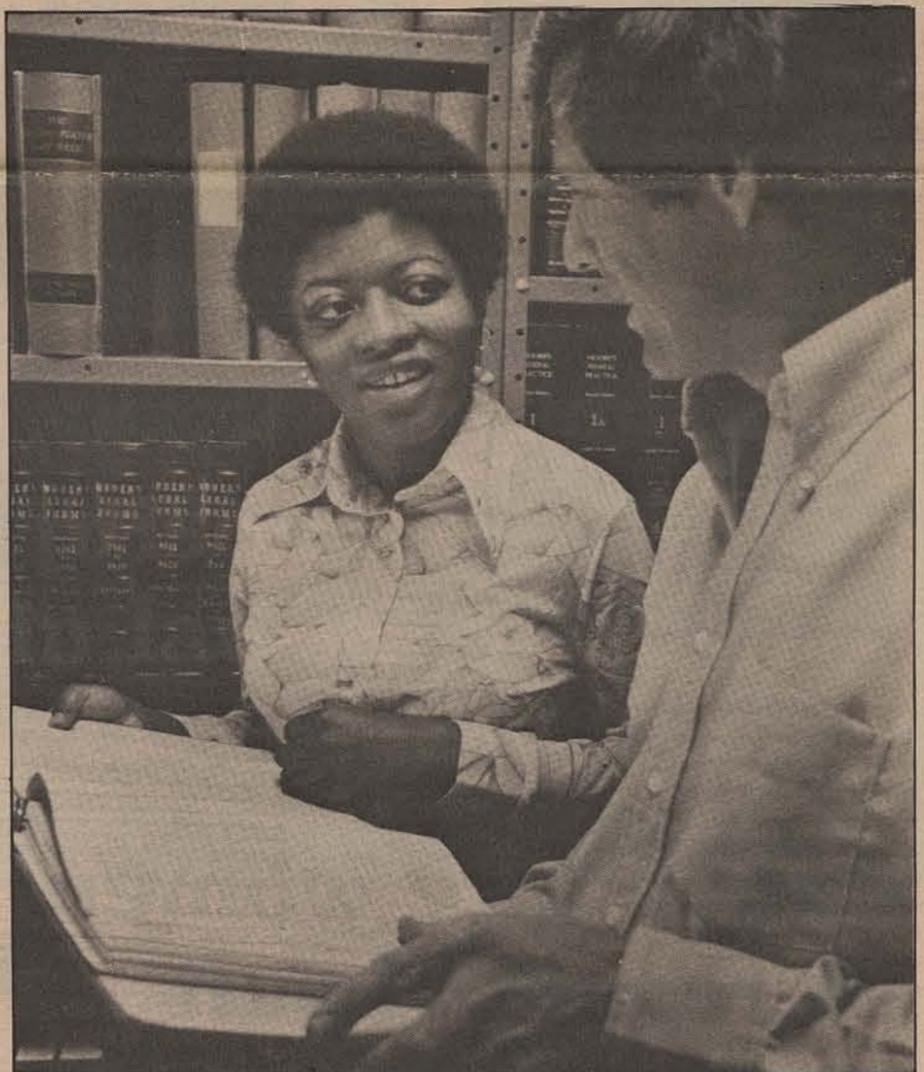
Ms. Little told reporters there was "no way" she could have received a fair trial in Beaufort County, where she had lived most of her life, and where the dead jailer's family and many relatives reside.

Her attorneys had also sought to have her first degree murder indictment quashed, or thrown out, because of racial discrimination in the jury selection process. They presented data obtained from extensive researching to prove their argument during two weeks of hearings last month, but the judge ruled against that motion.

Ms. Little surrendered to state officials in Raleigh eight days after jailer Clarence Alligood, 62, was found stabbed to death in her empty cell at the Beaufort County jail here Aug. 27. He was naked from the waist down.

She was held in the maximum security unit of the state women's prison at Raleigh until she was released on \$115,000 bond Feb. 26.

Her case has roused the interest of thousands of people across the country because of the injustices implicated in it. But her attorneys have refused to view her upcoming trial as a political event, viewing it rather as a test of significant moral and social questions as well as legal issues.



Penny Jenkins

Ms. Little confers with Dees in Center library

MONTGOMERY, Ala. — Joanne Little and her North Carolina attorneys visited the Southern Poverty Law Center here immediately after the change of venue victory to discuss the status of the case and coordinate future defense efforts.

The defense team plans to undertake a scientific sampling of at least 1,000 citizens from Wake County juror rolls in order to do an extensive jury attitude survey. That survey will

aid in the selection of unbiased jurors when Ms. Little goes to trial this summer.

In addition, the defense attorneys are continuing their factual and legal investigation of the case.

Ms. Little seemed elated about the change of venue victory and was relieved that she would not have to be tried in Beaufort County. "It's really bad to go to the place where you live and be really scared," she said.

Supreme Court nixes jury trial

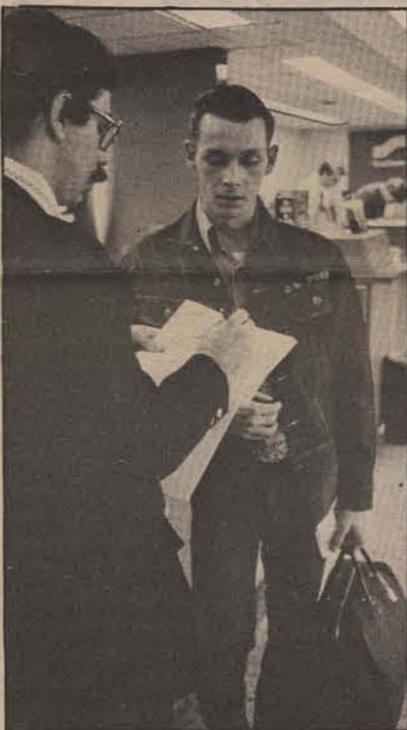
WASHINGTON, D.C. — Alabama prison officials have lost their bid before the Supreme Court for a jury trial in a Southern Poverty Law Center suit seeking adequate protection for prisoners.

On April 28, the court rejected the state officials' motion for leave to seek an order reversing a decision by U.S. District Court Judge Frank M. Johnson Jr. of Montgomery, Ala.

Last January, Johnson dismissed a portion of the inmates' suit which sought damages, and then, saying there was nothing left in the case to be tried by a jury, denied Alabama Attorney General Bill Baxley's motion for a jury trial on the basic issue of a prisoner's right to protection.

Baxley appealed to the U.S. Fifth Circuit Court of Appeals, was rejected there, and unsuccessfully sought relief in the nation's highest court.

Jerry Lee Pugh, a 27-year-old Illinois man who was confined in Fountain Correctional Institute near



Penny Jenkins

Segall (l.) meets with Pugh at airport

Atmore, Ala., filed the class action suit claiming inmates suffer excessively cruel punishment because prison conditions promote violence. Pugh was nearly beaten to death by inmates housed in a barracks not long after he was sent to the prison in 1973.

Robert D. Segall of Montgomery, a Law Center cooperating attorney handling Pugh's suit, said that the class Pugh represents probably is about 4,000 persons. If a jury trial were granted, the prison officials "may next contend . . . that each of 40 prisoners, hypothetically injured by other inmates, may file claims similar to Pugh's and have 40 separate jury trials before the class of 4,000 can seek relief from unconstitutional prison practices and conditions," Segall said in his brief to the Supreme Court.

"While potential jury trials inch slowly toward a conclusion, some inmates will be killed, and many will be maimed who otherwise would not be," Segall said.

In fact, since Pugh's suit was filed, several Alabama prison inmates have been killed and wounded by fellow inmates. One young prisoner was stabbed to death just recently, while the defendants' appeal for a jury trial awaited a decision from the Supreme Court.

Johnson is expected to set an early summer trial date for Pugh's case.

Judge Johnson recently lambasted Attorney General Baxley for his "unprofessional approach" and "bad faith" after Baxley responded with a counterclaim when Law Center attorneys filed the suit seeking protection for Pugh and other prison inmates.

Not long after the suit was filed, Baxley, who represents the defendant state officials, filed a counterclaim asking in essence, that Judge Johnson order the prison inmates to behave themselves.

In the counterclaim, Baxley said prisoners at Fountain were prone to violence because of their background, that they arm themselves with deadly weapons which go undetected by prison officials, that the prison was overcrowded and understaffed, and that

"numerous and conflicting" federal court decisions prevented officials from taking steps to correct the situation.

In fact, the counterclaim admitted Pugh's allegations that the security of Fountain inmates is not assured and that flagrant violations of state law occur within prison walls with the knowledge of prison officials.

Baxley asked Judge Johnson to enjoin the plaintiff class — the prison population — from breaking the law. The counterclaim's tone throughout is flippant and disrespectful.

Judge Johnson, in his order denying the counterclaim, cited Baxley for his "manifest disregard of fundamental legal principles" and existing statutory law. He said the counterclaim evidenced "an unprofessional approach to this particular lawsuit and conduct

inclining toward contemptuous disrespect for this Court." The counterclaim, Judge Johnson said, was "clearly frivolous."

Jerry Lee Pugh was recently released on parole and has returned to his home town of Mattoon, Ill., where he can begin forgetting the horrors of the Alabama prison system. A plate in his skull and the memory of months in a hospital will be lifelong reminders of the terror he suffered the night he was attacked, beaten and left for dead by rampaging inmates housed in open barracks.

Segall spoke with his client in Mattoon recently and was told he is "doing fine." Pugh has a job in a service station there, and told Segall he is thinking about getting married.

Alabama leads U.S. in black troopers

MONTGOMERY, Ala. — Before 1972, not one of Alabama's state troopers was black. Today, as a result of a Southern Poverty Law Center lawsuit, Alabama leads the nation in its percentage of black uniformed police.

In February 1972, a federal court judge ordered Alabama officials to hire one black for every white until the state's Department of Public Safety personnel numbered one-fourth black, a percentage which fairly represents the state's black population. Twenty-eight blacks — 4.5 per cent of the 623-man force — were hired.

That number, though smaller than several other states, represents the largest percentage of minority state troopers in the nation, according to a national survey by the Race Relations Information Center in Nashville, Tenn.

After the initial hirings, Gov. George C. Wallace, obviously unhappy with the federal court edict, ordered his Public Safety director to "hold up on hiring" additional troopers. As the months rolled by, Alabama's state trooper force dropped to about 520.

Rather than comply with the court order, the public safety department allowed itself to become woefully understaffed.

Early this year, Law Center attorneys went back to court to seek an order providing supplementary relief in the state trooper case. They asked the judge to enforce his 1972 ruling, but as yet, there has been no additional ruling to make the state comply with the earlier order.

Law Center attorneys succeeded in their effort to have Wallace named a defendant in the suit and to have him explain his interference with the federal court order. Wallace claimed there were no qualified blacks to serve as troopers, while in fact, there were several hundred blacks on a safety department eligibility roster who had passed qualification requirements.

On March 26 a class of 30 recruits entered the state's police academy. They were the first trainees since Gov. Wallace's hiring freeze. Half of those recruits are black.

Police hire women as result of suit

MONTGOMERY, Ala. — A federal court judge here recently refused to dismiss a Southern Poverty Law Center sex discrimination suit against the Montgomery police department.

In addition, police officials — obviously as a direct result of the filing of the suit — have named two women to active patrol rank and two women to detective status. It is the first time in Montgomery's history that women have served in either position.

Montgomery Police Chief Ed Wright said the female officers will have the same salaries and responsibilities as their male counterparts.

Interestingly enough, one of the new female detectives is Chief Wright's daughter. The other is the daughter of the assistant police chief. Both women are married to Montgomery police officers.

The suit was filed by Carolyn M. Jordan, a clerk-typist in the police department who says she wasn't hired as a police officer solely because of her sex.

There are still no female officers serving in the department traffic division, administrative division or on the bureau of special investigation.

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Suit challenges N.Y. tax law

HYDE PARK, N.Y. — For 24 years Mrs. Audrey M. Wager has lived in her modest home on East Dorsey Lane in this southern New York State community. She and her husband Robert built the home the year they married, and they reared their seven children there.

In 1967, Mr. Wager died, leaving his wife and children with Social Security benefits as their sole income source. Now, because Mrs. Wager failed to pay \$174.02 in property taxes, she may lose her \$15,000 home.

She was never notified by the county tax assessor that a tax sale would take place, nor was she told she had a right to redeem her property following the sale.

The sale of Mrs. Wager's house and subsequent eviction proceedings were strictly legal under New York Real Property Tax Law.

The Southern Poverty Law Center, through cooperating attorneys at the Mid-Hudson Valley Legal Services Proj-

ect in Poughkeepsie, has filed a federal court class action suit to prevent Mrs. Wager from losing her home and to have the law which allows that loss declared unconstitutional.

The Dutchess County tax assessors' office could have mailed a notice to Mrs. Wager, but instead chose to follow procedures outlined in New York law by simply publishing notice of default in two local newspapers. The notice was in tiny print, among hundreds of similar notices. Mrs. Wager did not see any of the tax sale notices published in the newspapers nor did any friend or relative bring it to her attention.

The home was sold, without Mrs. Wager's knowledge, for \$174.02. The sale occurred despite the fact that both the tax assessor and the new owner knew that she lived on the property, and they knew she could have been easily notified of the proceeding with minimal expense to the county.

New York law gives the owner of

property sold at a tax sale the right to redeem the property and negate the sale by paying the tax due plus interest to the county assessor within 12 months of the sale. Mrs. Wager's redemption notice was placed in a local newspaper amidst 599 other similar notices, and again she did not learn of it.

Mrs. Wager was totally unaware that her title and interest in her home was evaporating as the weeks passed by. Again, there were no notices mailed, phone calls made or signs posted on her property to inform her of the proceedings.

After waiting out an additional 24-month redemption period, available for persons who actually live on their property, the new owner began steps to have Mrs. Wager evicted. It was at that time that she first learned her home had been sold.

The new owner, under the law's provisions, had the option of notifying Mrs. Wager of the tax sale after the initial 12-month redemption period.

Had he done so, she would have been allowed a six-month additional redemption period rather than the 24-month period. But the new owner chose not to exercise that option, deciding instead to wait out the second 24-month redemption period rather than run the risk of Mrs. Wager's redeeming her property when she learned that her 20-year investment was about to go down the drain for \$174.02 in back taxes.

The entire proceedings were a clear violation of the Fourteenth Amendment's guarantee of due process of law, according to the suit's allegations.

The New York law, similar to those in many other states, favors bankers and mortgage homeowners while denying Constitutional rights to low-income property owners.

Currently, the case is pending before a three-judge federal court which will decide if it will be allowed to continue as a class action.

'I still wonder why it was him'

TARBORO, N.C. — Mrs. Elizabeth Brown's home is a tin-roofed, tarpaper house a few miles west of this small eastern North Carolina town. Sitting at the end of a narrow dirt road, it seems lifted from the desolate cottonlands of the Mississippi Delta, out of place in a prosperous, growing community like Tarboro.

She and her husband have lived there 20 years. They reared their six children there, and they both worked hard to do so — Mrs. Brown until recently as a domestic servant and Mr. Brown as a city water department laborer. Despite long hours away from home, Mr. and Mrs. Brown were able to provide their children with the love necessary for a strong sense of family and home.

Four of the Brown children still live at home, their own children playing happily about the well-worn house. The youngest daughter has moved away. The fourth-born — 23-year-old Vernon — is in Tarboro, but in the last two years he hasn't seen much of the family he loves so well.

Vernon Brown is one of three young black men facing death for the alleged rape of a white Tarboro woman. He and two friends — Jesse Lee Walston and Bobby Hines — were arrested in August 1973. They were convicted the following December and sentenced to die.

For a year they sat on death row in the state prison at Raleigh. Last January, the state's supreme court ruled they must have a new trial. Now Brown, Walston and Hines spend idle hours in the Edgecombe County jail here, awaiting the chance to win their freedom when their case is re-tried on May 19.

The Southern Poverty Law Center handled the successful appeal of the first conviction and is underwriting all expenses for the three men's defense at their second trial.



Penny Jenkins

Mrs. Brown pauses at home to ponder son Vernon's fate

Mrs. Brown was shattered by the charge brought against her son. She is totally convinced he is innocent of any crime. Vernon had never been in any sort of trouble — at home, in school, or in the Army when he served his country in Korea.

"He's different from the rest of my kids. He's more of a momma's boy. He didn't much like to go out, spend the night messing around with his friends. He'd rather be around here with me," she said.

She proudly shows visitors a huge scrapbook, filled with photographs of Vernon and his Army pals, Vernon and his girlfriend, and Vernon with the Korean children he befriended. Even

after two years, she hasn't got used to missing him.

When Mrs. Brown found her son locked up, facing death for what his defense terms a brief moment of indiscretion — not rape, she did what she knew she must. She quit a job she liked and went to work at one she didn't at a nearby factory so she could earn money for a lawyer.

The lawyer charged her \$1,600, the same fee he charged each of the other two men. Mrs. Brown borrowed \$900 from a bank and paid the rest to him in \$25 weekly increments. She is still repaying the bank loan.

Her hopes were dashed when the jury returned a guilty verdict, and she

slipped into depression during the following weeks.

"One day I got a call at the factory. Vernon's lawyer wanted me to come to his office. When I went there, I met Mr. Dees. He said the Center wanted to help Vernon and the others," Mrs. Brown said.

Law Center attorney Morris Dees, after consulting with Mrs. Brown and the families of Walston and Hines, assumed responsibility for the case and secured a reversal from the North Carolina Supreme Court.

"I said the Lord must have sent him. I didn't know which way to turn. If Mr. Dees hadn't come around, there's no way in the world I could've helped Vernon," she said. (Continued on page 4)

Center fights death penalty

The Southern Poverty Law Center, concerned about the increasing number of persons sentenced to die in America, recently established a fund to provide money for competent representation for individuals facing the death penalty. The special project, named the Life Litigation Fund, is a national effort to fight the death penalty at the trial level.

Thirty-one states have enacted new death penalty laws since the U.S. Supreme Court's 1972 *Furman v. Georgia* decision. They are Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia and Wyoming.

Under these laws, more than 200 persons have been sentenced to die. Well more than half are non-white; all, of course, are poor. Most were represented by court-appointed counsel with neither the resources nor the expertise to give their clients "the best defense money can buy."

In a letter to the Law Center, a public defender in Florida wrote: "The statement . . . about the lack of truly adequate representation in cases of this nature is truly correct. Our office as a whole is currently over-loaded with cases, and this, of course, puts a strain on all the attorneys and cannot help but jeopardize the representation given . . . During the last year alone, I repre-

sented 13 people in death penalty cases, and one of my associates in the office represented 12 persons for capital offenses. Obviously, representing this number of people in death penalty cases in addition to the heavy caseload of other felonies means that there are not enough hours in the day to do the kind of preparation that a capital case demands."

The Supreme Court heard impassioned arguments from both sides of the capital punishment issue on April 21, when the case of *Jesse T. Fowler v. North Carolina* was debated before the high court. Unless the Court takes decisive action to ban capital punishment as unconstitutional in violation of the Eighth Amendment, death penalties will continue to be prescribed in America. It is the Life Litigation Fund's position that only the most competent and thorough legal representation is good enough in court proceedings where lives are at stake.

Legal aid organizations and public defenders in those states with capital punishment statutes have been notified of the Life Litigation Fund. Those attorneys who request assistance are asked to complete application forms which are carefully evaluated by Center officials. Funds for the defense of several indigents have been committed. A summary of several of those cases follows.

ALABAMA — Center attorneys have appealed the first degree murder conviction of Johnny Harris, a 35-year-old black inmate sentenced to die in

connection with the death of a white guard last year. Although Alabama has not yet enacted a new death penalty law to comply with the standards set in the Supreme Court's *Furman v. Georgia* decision, Harris was prosecuted under a narrowly defined 1868 law providing death for any person convicted of first degree murder while serving a life prison term. A hearing on the Center's motion for a new trial is set for this month.

FLORIDA — The Center is providing money for a psychologist to aid in the case of Stephen W. Purwin, charged in Brevard County with the murder of his wife and two children. The court has held that Purwin is insane and unable to stand trial at this time.

INDIANA — Because of a previous rape conviction 13 years ago when he was 16, Donald A. Lock is facing the death penalty in Allen County. He is charged with first degree murder during the course of rape. Lock is the product of a broken home and has a history of mental problems. Money has been committed for expert consultation fees. His case has not yet been tried.

NEW YORK — John E. Ruzas was the first person indicted under New York's new death penalty statute. Indicted in Madison County, Ruzas is charged with killing a state trooper. The Center is paying a fee to private counsel. The case has not yet gone to trial.

OKLAHOMA — The Law Center has committed funds to two death penalty cases in this state. In Woodward County, Bobby Wayne Collins was charged with first degree murder in connection with the murder of a family of four. He was convicted and sentenced to death in February. The Center contributed money for trial expenses. His

attorney, who estimated he spent 275 hours on the trial phase of the case, thinks there is a good chance for reversal on appeal. Collins has been allowed to appeal *in forma pauperis*, which means the state will assume expenses since he is an indigent.

Dahlia June Hall of Tulsa is a 33-year-old woman charged with killing her two children, ages six and eight. She also shot herself. The Law Center committed funds for psychiatric testimony at her recent trial, which ended in a deadlocked jury. The Center has agreed to provide funds for her second trial, currently scheduled for June 2.

Other death penalty cases are being totally funded by the Center. They include the Joanne Little case (see story on page 1) and the Walston, Brown and Hines defense (story, page 3).

Brown

(Continued from page 3)

Dees spent most of March and April working on the Tarboro case. He and two local attorneys hired by the Center will argue the three men's innocence at the May 19 trial.

Mrs. Brown and Vernon's girlfriend, Bobbie Jean Jones, sat through a week of pre-trial motions last month. Mrs. Brown says she will be at every minute of his new trial.

When and if he is acquitted, Mrs. Brown is willing to pull up her roots in Tarboro and move her family elsewhere if Vernon wants to leave his hometown but not his family.

"I still wonder why it was him," she said, shaking her head. "He always stuck by the house. It just didn't seem like it should be him."

Amsterdam argues death penalty case

WASHINGTON, D.C. — When the death penalty issue was argued here April 21 before the U.S. Supreme Court, its most articulate foe was Anthony G. Amsterdam, a member of the Southern Poverty Law Center's President's Council.

Amsterdam, a law professor at Stanford University in California, represented Jesse Thurman Fowler, a young black man who killed a one-time friend after an argument and who now faces the gas chamber in North Carolina.

Capital punishment, Amsterdam said, is only tolerated by society because it is seldom used and is reserved for "a mute and disfavored few" — racial minorities and the poor.

Since the Supreme Court's June 1972 ruling, which forbids arbitrarily selective impositions of the death penalty, 253 men and women in 23 states have been sentenced to die. Well over half are non-white all are poor. Some were sentenced to die under judicial reinterpretations of state law, others under new death penalty statutes.

Amsterdam argued that the mandatory penalty ordered by judicial reinterpretation — since supplanted by new legislation in North Carolina — did little if anything to limit the latitude with which the death penalty could be applied.

He said the prosecutors could still plea bargain; they could choose to try a murder indictment as a second-degree murder case rather than first-degree, and the governor could still commute death sentences.

"Whether you get sentenced to life or whether you get sentenced to death is the luck of the draw at best and invidious discrimination at worst," Amsterdam said.

But beyond that, he said, "the death penalty for any conceivable peacetime crime is now inconsistent with the evolving standards of decency" that help determine whether a punishment is cruel and unusual.

'Debtors' prison' is attacked in lawsuit

POUGHKEEPSIE, N.Y. — A class action suit challenging a New York law which allows imprisonment of poor people for non-payment of debt was recently filed in federal court here.

The suit was filed by Mid-Hudson Valley Legal Services Project attorneys with assistance from the Southern Poverty Law Center.

The U.S. Constitution provides that no state shall deprive any person of life, liberty or property without due process of law. But the New York judicial code authorizes a county sheriff to arrest and imprison indigents without proper court hearings and without affording them the right to counsel.

In January 1974, Harry Vail, Jr. of Poughkeepsie lost his job and found himself unable to make installment payments on his debt to a loan company. Despite efforts to explain his indigency and to make at least a partial payment, Vail was ultimately held in contempt of court, fined \$250 payable to the loan company in addition to his original debt, and finally jailed without a hearing when he couldn't pay the fine.

Only after relatives pooled their resources to cover the fine was Vail released.

Two other Poughkeepsie men who had also lost their jobs found themselves in similar straits because they were unable to pay their wives' medical bills. They have joined with Vail as plaintiffs in the class action lawsuit.

The idea of debtors' prison in modern America is almost unbelievable. Yet hundreds of New York's poor citizens can legally be committed to jail for an indefinite time period under civil court contempt proceedings.

Under the law, a New York citizen can be locked up without ever facing the judge who ordered him jailed, a procedure which violates the due process clause of the Fourteenth Amendment.

In addition, there is no provision in the law to inform the debtor he has a right to an attorney.

Mid-Hudson Valley Legal Services attorneys are in the discovery stage of litigation and hope to argue the case before a three-judge federal court panel.