

poverty law **Report**

A REVIEW OF ADVANCES IN THE LEGAL RIGHTS OF THE POOR

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July 1975

'Tarboro 3' to be freed

TARBORO, N.C. — Three young black men once sentenced to die for the rape of a white woman will be freed from prison next month under a settlement reached in May as their case went to trial a second time.

The settlement ended a two-year nightmare for Jesse Lee Walston, 24, Vernon Leroy Brown, 23, and Bobby Hines, 25, and marked a victory for Southern Poverty Law Center attorneys who had struggled to free them.

Under the terms of an agreement negotiated between the defense and the prosecution, the three pleaded nolo contendere — no contest — to a charge of assault with intent to rape, and received a six-year sentence. The trial judge suspended the sentence, effective Aug. 18. On that day, Walston, Brown and Hines will walk out of the Edgecombe County jail, free men for the first time since their arrest in August 1973.

The three were convicted of rape on Dec. 9, 1973, and, in accordance with North Carolina's capital punishment statute, sentenced to die in the gas chamber.

Law Center attorneys, convinced of their innocence, appealed their conviction to the North Carolina Supreme Court and won a reversal. Last January, the high court ordered a new trial for the three. Jury selection in that trial was about to begin when the agreement was announced.

There was to be a cruel twist in this second trial. The North Carolina legislature had revoked the death penalty for rape since their 1973 conviction, but it had refused to make the new law retroactive. Walston, Brown and Hines faced execution for what was no longer a capital crime.

The three men never denied having intercourse with the white woman, but they steadfastly denied raping her. Knowing the death penalty hung over their heads, they refused to accept the district attorney's first settlement offer — a 12-year sentence in exchange for a guilty plea — because they would not plead guilty to a crime they did not commit.



Brown (from left), Hines and Walston await their freedom

Penny Jenkins

On the morning of the new trial, the prosecutor again offered a settlement — six years in exchange for a guilty plea. He argued the offer was a "good deal" because Walston, Brown and Hines would likely be paroled within a year. But again the three refused to accept his offer. Jesse Walston, as spokesman for the three, said they would refuse any settlement which meant pleading guilty or returning to the state prison in Raleigh.

Center attorneys had done exhaustive investigation into the facts of the case and had uncovered important evidence which was not produced in the first trial. They were primed for trial when the final acceptable settlement was offered by the district attorney.

Walston, Brown and Hines will have spent two full years behind bars when they are freed next month. Al-

ways close to their families, they have been permitted only brief visits with relatives during that time. Walston had held his two young daughters only twice since he voluntarily turned himself in for what he thought would be a quick settlement of an obvious misunderstanding.

Yet, in an interview a few weeks before the second trial was to begin, all three quickly denied feeling anger or bitterness about their situation.

"I feel I've been a man by holding up. Even though this ruined part of my life, it can help others," Vernon Brown said. "I'll never forget it, but I won't feel bitter about it."

Their spirits were maintained through their friendship with one another and through their prayers. "We've been in this so long, we just adjusted ourselves," Brown said. "We learned to help each other with our

problems."

Their families' steady support and their faith in Center attorney Morris Dees, who handled the case throughout the Center's involvement, helped give them strength, they said.

In a letter written to Dees shortly after the settlement was reached, Walston — on behalf of all three men — wrote of their gratitude to the Center and the Center's contributors:

"... We really appreciate all they have done in support of our cause. You know words could never express how very appreciative we are for all you have done for us over the past year and nine months. It's a debt that we could never repay. With what you have done for us, we can now look forward to a new life and future with our families."

(Continued on page 2)

Sterilization trial set in S.C.

AIKEN, S.C. — The trial of a federal court class action suit resulting from the forced sterilization of welfare mothers in this small town begins July 14. It will be held in Barnwell, about 30 miles south of here.

The suit was brought on behalf of two women who are called Jane Doe and Mary Roe in the suit in order to protect their privacy. It seeks a total of \$1.5 million in damages and asks the court to issue an order prohibiting further coercive sterilizations which violate constitutional rights.

Plaintiff Doe is a 25-year-old unmarried mother of four children. Her last child was born in the Aiken County Hospital on April 16, 1972. At the

time of her pregnancy, she received public assistance from the Aiken County Department of Social Services and Medicaid benefits.

She sought the services of Dr. Clovis H. Pierce, the only local doctor who would agree to deliver the baby of a welfare mother. Prior to her baby's birth, Dr. Pierce told Ms. Doe she must submit to sterilization following delivery or he would refuse to attend her during labor and would deny her access to the Aiken hospital. In addition, he threatened to have her welfare payments terminated if she refused sterilization.

When Ms. Doe informed the local

welfare office of the doctor's ultimatum, she was told no one there could assist her in the matter.

The day after her fourth child was born, Dr. Pierce performed a tubal ligation on Ms. Doe, an operation which severs the Fallopian tubes and results in permanent sterilization.

Dr. Pierce has said it is his policy to sterilize mothers of at least three children who receive welfare benefits. He did so, he said, to help reduce the welfare rolls.

He forced plaintiff Mary Roe to leave the Aiken hospital the day after her third child was born in September 1973 when she refused to submit to his sterilization policy.

Between January 1 and June 30, 1973, 18 of 50 women receiving Medicaid assistance who had children delivered at the Aiken County Hospital have been sterilized. Of that number, 16 were black and unmarried, one was black and married, and one was white and separated from her husband.

Defendants in the suit include Dr. Pierce; the Aiken hospital administrator; the Aiken hospital; the director of the Aiken County Department of Social Services; and the director of the state social services department.

Southern Poverty Law Center attorneys and American Civil Liberties Union lawyers represent the plaintiffs.

Regulations resisted by HEW

WASHINGTON, D.C. — Two years ago, the involuntary sterilization of two young Alabama girls by a federally funded family planning agency caused a public uproar. Today, the U.S. Department of Health, Education and Welfare is still resisting efforts to insure that sure improper sterilizations won't happen again.

The recalcitrant HEW was recently the object of a stinging federal court memorandum because of its continued resistance to the implementation and enforcement of sterilization safeguards.

In June 1973, the Southern Poverty Law Center learned that 14-year-old Minnie Lee Relf and her 12-year-old sister Mary Alice had undergone tubal ligations in a Montgomery hospital after their illiterate mother signed a consent form with her "X," thinking that her daughters were merely going to get "some shots." The Relfs were a welfare family, and the girls' steriliza-

tions were paid for with federal Medicaid funds.

Law Center attorneys promptly filed a class action suit on behalf of the Relfs, asking the Washington, D.C., federal district court to issue an order prohibiting the expenditure of federal funds for sterilization of minors and persons with the inability to give a voluntary or knowledgeable consent. The suit claimed that sterilization of those persons under 21 or mentally incompetent was unconstitutional and outside the statutory authority granted HEW by Congress.

In February 1974, HEW presented its proposed sterilization regulations to U.S. District Court Judge Gerhard Gesell, the judge assigned to the sterilization suit.

Those regulations, however, did not by any stretch of the imagination insure voluntariness, Law Center attorneys said, and Judge Gesell agreed. He rejected HEW's proposed guidelines

and said that voluntariness must be guaranteed in federally funded sterilizations. That was in March 1974.

In order to comply with Judge Gesell's ultimatum, HEW issued a moratorium on federally funded sterilizations of minor and mentally incompetent persons until regulations were established and approved by the court. The moratorium went into effect over a year ago.

But the government failed to monitor and enforce its own moratorium, and numerous federally funded programs continued to operate without court-prescribed safeguards. Studies done by the American Civil Liberties Union and the Health Research Group showed that most teaching hospitals were "in complete noncompliance."

This past May, attorneys for the Relfs and the National Welfare Rights Organization — also a plaintiff in the suit — met with HEW before Judge Gesell. HEW stubbornly refused to discuss its moratorium enforcement procedure and told Judge Gesell the court lacked the power to raise questions about it.

"HEW appears to take the view that it only was required to issue a regulation and that it is not obliged to

implement any such regulation by effective means," Gesell said in a May 13 memorandum. He criticized HEW's "intransigent position" and lack of regard for its effect on the public interest. He blamed the government for forcing the plaintiffs to proceed in formal, adversary litigation, thus prolonging the establishment of sterilization safeguards.

"The entire HEW sterilization program unnecessarily remains in a state of uncertainty, subjecting participants to indeterminate liabilities," Judge Gesell said.

Another conference on the Relf suit is scheduled in Judge Gesell's court on July 10.

Tarboro

(Continued from page 1)

Walston, who worked in a large Washington, D.C., department store before the arrest, is hopeful his employer there will rehire him when he is released. Brown, whose son was born shortly after his incarceration, plans to re-enroll in the Edgecombe County technical college. Hines said he plans to move to Virginia where he has other relatives.

Pregnant students gain equal rights

THOMASVILLE, Ala. — Southern Poverty Law Center attorneys have won a victory for the equal rights of pregnant students in this small southwestern Alabama town. Because of a Law Center suit, the Thomasville school board has voted to eliminate its discriminatory policy governing pregnant students.

The Thomasville school system, like many others across the country, forced a female student to leave school as soon as she was "visibly pregnant." This rule was waived in the case of a white student, but black females were sent home when their pregnancy became apparent.

Law Center attorneys filed a federal court class action complaint seeking reinstatement of a 15-year-old black honor student who, despite her good health, was required to leave her tenth grade classes because of pregnancy. The suit was also filed on behalf of a black senior whose baby was born this spring, and all others who were similarly situated.

The suit was in preparation for trial when the school board voted to abandon its policy of expelling visibly pregnant students. The board, in accordance with a consent agreement between plaintiffs and defendants which was affirmed by the court, agreed to treat pregnant students no differently from other students with temporary physical disabilities. After the baby's birth, a student may now return to school and make up school work she may have missed.

The school board's decision to eliminate its pregnancy policy is in line with new sex discrimination prohibitions mandated by Congress and outlined in Title IX of the Educational Amendments of 1972. President Ford recently endorsed the new guidelines which are expected to equalize school athletic programs and eliminate a wide range of sex discrimination in education. All schools which receive federal funds are affected by the new rules.

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Julian Bond
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Joseph J. Levin, Jr.
Legal Director

Penny Jenkins
Editor

Suit seeks damages for Little

NEW BERN, N.C. — Attorneys for Joanne Little have filed a federal court suit here seeking \$1 million in damages for their client and asking that constitutional standards be set for care of female inmates in the Beaufort County, N.C., jail.

The suit was filed June 5 by Southern Poverty Law Center attorneys.

Ms. Little, a 21-year-old black woman, is charged with murdering white jailer Clarence Alligood when he attempted to rape her last August. She was a prisoner in the Beaufort County jail when the incident occurred. The trial, in which she faces the death penalty on conviction, is set for July 14 in Raleigh.

The suit seeks damages from Alligood's estate and from former Beaufort County Sheriff Jack Harris, who was responsible for supervision of the county jail last summer.

In addition, the suit is a class action which, in part, is asking the federal court to protect all female inmates in the Beaufort County jail from sexual abuse by male attendants.

In the early morning hours of August 27, Ms. Little was sexually attacked in her cell by night jailer Alligood, who threatened her with an ice pick. While resisting him, she wrested the ice pick from Alligood and stabbed him in self defense. After fleeing the jail, she voluntarily surrendered to state authorities on Sept. 3.

Ms. Little is seeking damages because she suffered severe emotional and mental anguish and humiliation as an immediate consequence of the attack. Such trauma would not have occurred had she been provided adequate care and supervision while incarcerated in the Beaufort County jail.

Mail jail employees and trustees had complete control of female inmates at the time of Ms. Little's attack, a

direct violation of the North Carolina Department of Human Relations regulations which require that all female inmates in county jails be supervised by women. Those males had total access to the women held there.

Women imprisoned in the Beaufort County jail had no privacy while bathing, changing clothes or using toilet facilities. Prior to Alligood's death, they were under 24-hour surveillance by closed circuit television cameras which male personnel, or anyone in the jailer's office, could watch.

Jailers and other males placed their hands on the women's bodies and made sexual advances to them. The men, with free run of the jail, often exposed their genitalia to female inmates and made lewd and vulgar sexual propositions to them.

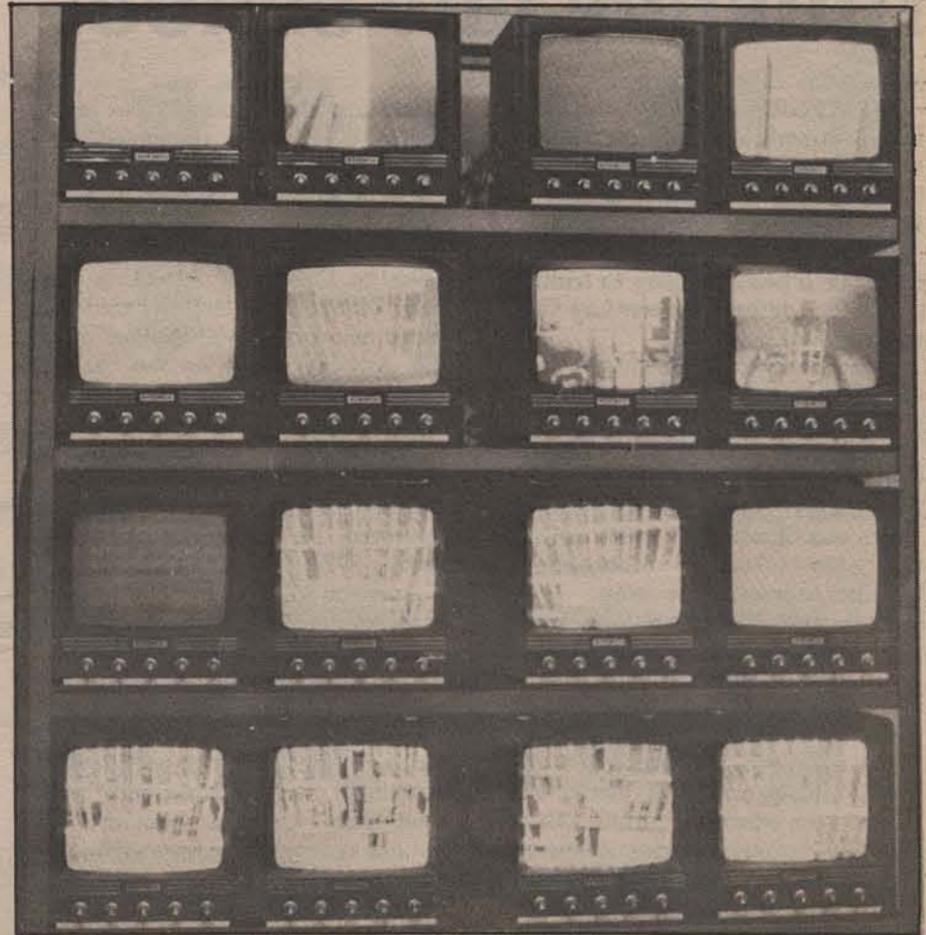
Even though the Beaufort County jail now has a part-time matron, men are still involved in the supervision, care and feeding of female inmates.

There is no exercise or recreation provided for women in the jail, and they often must remain idle in their small cells — many for months — without counseling, education or any rehabilitative programs.

There is no classification of female inmates, and they are not segregated from mentally ill, alcoholic and dangerous inmates.

Such conditions, which exist in hundreds of other local jails across the country, flagrantly violate women inmates' rights to privacy, due process, and freedom from cruel and unusual punishment as guaranteed by the U.S. Constitution.

The Law Center suit asks the court to enjoin Beaufort County officials from continuing to provide inadequate care to female inmates and to establish standards which would eliminate such atrocities.



North Carolina S.B.I.

Beaufort jail TVs monitor cells 24 hours a day

The death penalty: cruel and unusual

By EDWIN M. YODER JR.

Whether or not the U.S. Supreme Court decides that execution is "cruel and unusual" in a constitutional sense, the death-penalty debate is certainly that.

It is cruel, for instance, to read about electrocution, still the instrument of capital punishment in many states: "Two thousand volts; delivered at the maximum eight amperes, crashed Julius violently against the straps . . . His body snapped back and forth like a whip . . . His neck seemed to grow several sizes. Yellow-gray smoke rose in wisps from his head . . . There was a hideous stench in the room of burning flesh, urine and defecation . . ." (Louis Nizer's description of the execution of Julius Rosenberg.)

It is cruel, also, to hear an assistant attorney general of North Carolina confess, on national television, that he really doesn't care what happens to one of the 70 now on death row in Raleigh's Central Prison — it's the General Assembly's business.

It is cruel to read an account of Prof. Isaac Ehrlich's tidy mathematical calculation of the "deterrent" effect of execution, in a yet-unpublished paper that the Department of Justice has introduced in support of the death penalty before the court.

Edwin M. Yoder Jr. is associate editor of the Greensboro, N.C., Daily News.

Professor Ehrlich, described in one press account as "a cloistered academic type" who personally has reservations about the death penalty, submerged his reservations in math and concluded that between 1933 and 1969 "an additional execution per year . . . may have resulted, on average, in seven or eight fewer murders."

The implications are intriguing. Does the Ehrlich paper suggest, logically, that if enough people were fried or gassed the murder rate would go to zero? And would life, in that event, sustain a net gain?

Not least of the cruel disciplines of trying to decide about capital punishment is to consider whether the execution of Jesse T. Fowler (whose case is before the high court) would be "just." In the summer of 1973, Fowler quarreled during a dice game with an old gambling buddy, John Griffith, accusing him of slipping a \$10 bill into his pocket. After tanking up overnight on 16 beers, a quart of wine and a pint of Scotch whisky Fowler finally shot and killed Griffith the next day.

It was an absolutely representative murder — the victim a friend or acquaintance; the provocation trivial; the mood passion inflamed by alcohol. One of Fowler's NAACP Legal Defense Fund lawyers calls it, accurately, "a one-issue case," and that issue is whether the state is ever justified in taking a life for a life.

(Continued on page 4)

Trial is July 14

RALEIGH, N.C. — Joanne Little's trial will begin here Monday, July 14. A special two-week court term has been set aside for the trial, but defense attorneys say it could continue three or four weeks.

A judge with more than 20 years experience has been selected to preside at the trial. He is Superior Court Judge Hamilton H. Hobgood, described as a calm-mannered man with a hearty reputation as a storyteller.

He replaced Superior Court Judge Henry A. McKinnon Jr., who heard weeks of pretrial motions in Ms. Little's case but requested he not be assigned to her trial for personal reasons.

McKinnon, after hearing lengthy defense testimony proving Ms. Little could not receive a fair trial in Washington, N.C., the site of her alleged crime, ordered the trial moved to Raleigh.

Beaufort County District Attorney William Griffin appealed the change of venue order to North Carolina's Supreme Court, claiming the change was "inconvenient" to court personnel and violative of state law. But the high court acted swiftly and upheld McKinnon's order.

Hobgood is an outspoken man, particularly in the area of prison reform, according to a Raleigh News and Observer reporter. He has urged broader systems for representation of indigents and programs to insure the quality of legal representation.

First black sheriff finishes law school

TUSKEGEE, Ala. — In 1966, Lucius Amerson was elected sheriff of Macon County, Alabama, the first black man in America to win that office since Reconstruction.

This spring, Amerson graduated from law school, bringing to fruition one of the Southern Poverty Law Center's earliest lawsuits.

A few years after his historic election, Amerson began thinking about becoming a lawyer. The University of Alabama law school, 150 miles northwest of his hometown here, was out of the question because of its distance. There was, however, a small, private night law school in Montgomery, less than an hour's drive away.

"I thought Jones Law School was right down my line. I could work in the day, go to school at night. And it was only 40 or 50 miles from home," Amerson said.

But Jones was not receptive to the idea of a black man — no matter who he was — attending its all-white classes. Amerson began inquiring about an application, but he got no response from Jones. After his letters were ignored, he finally called the school's

owner and flatly asked: "Can blacks attend?" The owner responded, "No, they can't."

In the spring of 1971, Amerson — through Southern Poverty Law Center attorneys — filed a suit seeking admittance to Jones Law School. A little more than a year later, a federal court judge held that Jones's refusal to admit Amerson solely on the basis of race was illegal and unconstitutional.

Meanwhile, the private school was purchased by the state-supported University of Alabama, and Amerson was notified his application had been approved. He began classes in September 1972.

Amerson will take the Alabama bar examination this month. "Right now, I'm interested in passing the bar. If I do pass, I'll probably go into private practice. I'd like to be in an area where there're lots of problems, where indigent people are involved," he said. He hinted that his name will "more than likely" be on a ballot in 1976, but not as a candidate for sheriff.

Amerson, 41, grew up in Greene County, Alabama, where now another black man serves as sheriff.

Mississippi jail is termed inhuman

DEKALB, Miss. — Clare Cotton, an indigent Choctaw Indian, was placed in a cage measuring six feet on each side and about seven feet in height. It had no ventilation and no running water. There was only an open bucket for a toilet, and that bucket was not emptied for a week.

The cage was on the second floor of the Kemper County Jail here, and the nightmarish incarceration which Clare Cotton endured for 13 days last February has resulted in a class action suit filed by the Choctaw Legal Defense Association with assistance from the Southern Poverty Law Center.

Ms. Cotton was not alone in her degradation.

The conditions for other Kemper County jail inmates — particularly for Choctaws and blacks — are "so shockingly oppressive, unsanitary, unhealthy and degrading that they are an affront to basic human decency and a violation of fundamental constitutional rights," the suit says.

Those charges are outlined in grim detail in the suit, recently filed in federal court in Meridian, Miss., seeking an order prohibiting any further incarceration in the jail until prisoners can be assured of sanitary conditions and legal protections.

The reforms called for cover virtually every wrong imaginable in a forgotten, decrepit jail.

Clare Cotton, after 13 days in a bug-infested cage where she had no facilities to even clean herself, was turned over to relatives with instructions to

pay a \$140 fine. She was given this order without ever having appeared before a judge of any sort and without knowingly waiving her rights.

She's not even sure of the charge against her — either possession of a beer, or burglary, or both.

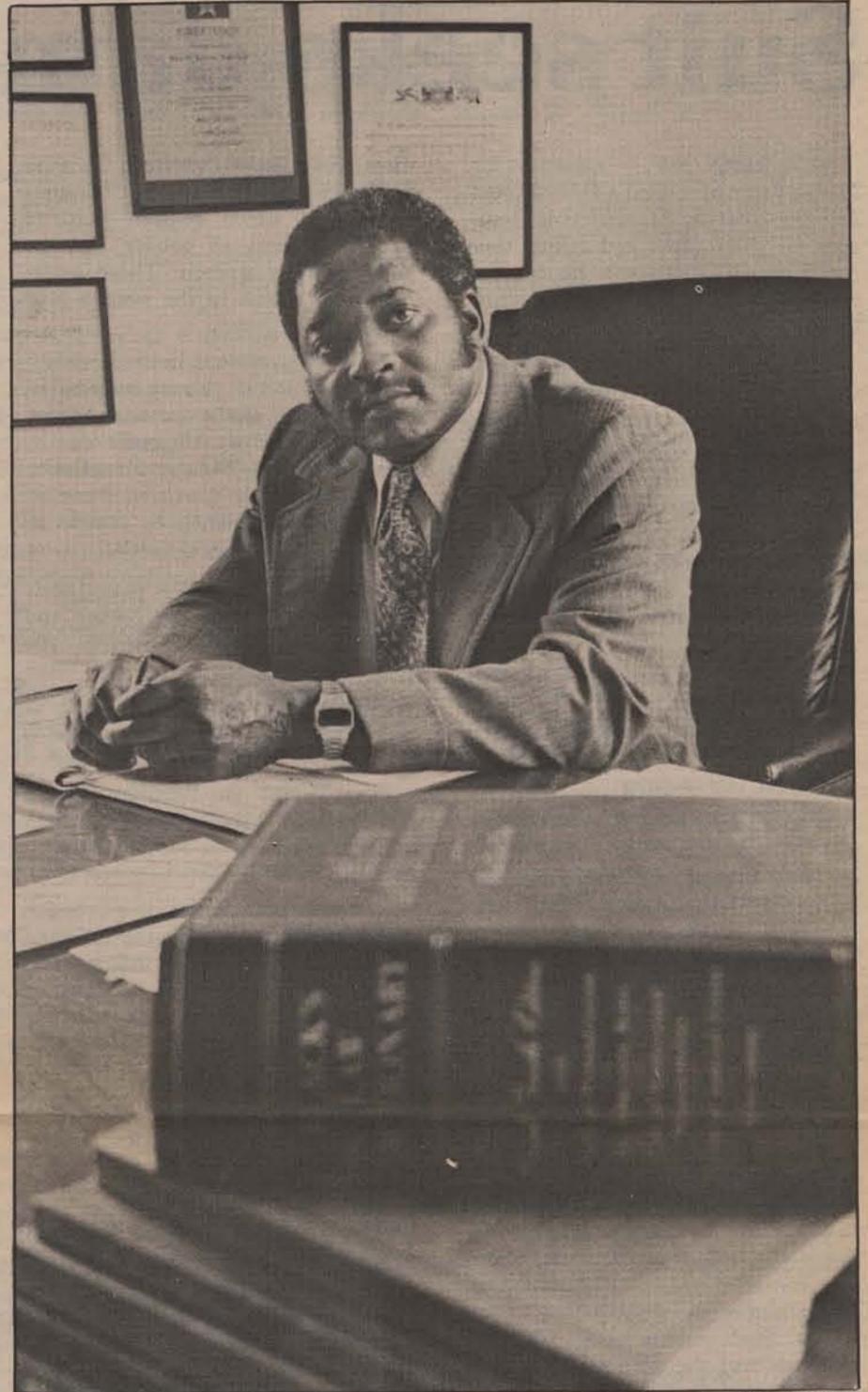
She had no money to pay the fine, and her husband Kenneth Cotton, a deaf mute who cannot communicate in either English or Choctaw, was also in the Kemper County jail for charges he did not and could not know.

White prisoners are jailed on the first floor of the Kemper County jail while blacks and Indians are held on the second floor. Prisoners are divided by race without regard to age, crime, record, sexual abnormality, or viciousness.

No prisoner gets exercise or fresh air in any form, the suit says, and no clean clothing even after two months of confinement. No bedding, no laundry, no soap and no toothpaste are available.

No health care and no means of calling for help in the event of an attack are available. Only two meals a day are served and these must be eaten in crowded, filthy sleeping areas.

Because of the psychological and physical debilitation suffered by inmates forced to endure such conditions, substantial numbers of persons who would never plead guilty if they were able to make bond or imprisoned under constitutional conditions, do in fact plead guilty solely to get out of the Kemper County jail.



Sheriff Amerson in his Tuskegee office

Penny Jenkins

Death penalty

(Continued from page 3)

When it agreed to hear the Fowler case last fall, the U.S. Supreme Court tacitly acknowledged, I think, that it has botched the capital punishment issue. It did so in the case of *Furman v. Georgia*, a case in which by a split vote it left capital punishment standing but sought to make it less "capricious" in application.

Because of that decision, North Carolina has a booming death-row population — the decision having forced the state Supreme Court to decide, logically enough, that laws allowing juries to recommend mercy in first-degree capital verdicts could allow "caprice" and were no longer constitutional. But the single most important effect of the *Furman* decision, for North Carolina, was to guarantee that juries in capital cases tend to be hanging juries — juries stacked with stern partisans of the life-for-a-life philosophy.

The taking of life today, for whatever reason, is an act of ultimate judgment for which few of us have any appetite — especially if we are acquainted, by reading or observation, with the usual nature of executions.

Executions had become increasingly private, almost furtive, events — the victim's last agony delicately hidden by a hood, and even the executioner's "responsibility" diluted by mechanical devices designed to leave in final doubt whose hand actually does the deed.

The apparent cruelty of capital punishment, to most of us, does not spring from sentimentality or lack of horrors at crimes. It springs from, it represents, a stage of growth in man's long and blundering struggle to master base instincts. That is why I, at least, am not helped very much in the consideration of capital punishment by clashing theories of deterrence, by quarrels over constitutional words and phrases, or still less by mathematical formulae of the sort employed by Professor Ehrlich.

These may all be relevant, for those of us who do not rely on feeling. But like all supreme issues capital punishment is an issue of the heart; and the clear tendency of the human heart is away from judicial slaughter.

Perhaps the Supreme Court, this time around, will set aside the technicalities and face the real issue.