

SEGREGATED JUSTICE

The following report is excerpted from the Congressional Record, July 15, 1965. The original source is a series of articles by Jack Nelson which appeared in the Los Angeles Times during June, 1965. The report documents the contention that white justice in the South perpetuates the totality of a segregated society dominated by whites and repressive toward Negroes. The interlocking centers of white power are able to maintain their control in the economic and political areas because of their control of the forms of justice---they are the 'key men' who serve on all white juries, and they are the jury commissioners who select those segregated juries with impunity. The prosecution of officials guilty of systematic exclusion of Negroes from juries (under Section 243 of Title 18, U.S. Codes) is thus essential to the transformation of the South.

"Both by conscious efforts of segregationist officials and by the use of systems hatched in a Jim Crow society, Negroes are excluded from Juries in many areas of the South---even from some Federal juries. Although court decisions and laws have assured Negroes equal seating on buses and even in privately owned restaurants, they still must sit in segregated sections in many county courtrooms in the South. A survey in Alabama, for example, indicated that almost 90 percent of the State's judges enforced segregation in their courtrooms. The processes of justice, so often perverted to protect the southern way of life remain the South's last stronghold of segregation and discrimination by government.

"The Federal Government has done little to lift this yoke from the Negro's neck. The U.S. Civil Rights Commission has developed more information about Jim Crow justice and documented more cases of its injustices than any other agency. But the Commission's pleas for Congress and the Justice Department to take steps to change this system have gone largely unanswered. The need for reform is urgent, for without an impartial system of justice, the Negro's right to protest discrimination and his right to enjoy his newly won freedoms are hampered severely.

"In 1963, Charles Morgan, Jr., a white attorney representing Beaz Sanders, a Negro accused of murdering a white man in Birmingham filed a motion to quash the indictment. Morgan's motion carried Sanders from arrest by white officers and transportation in a segregated paddy wagon, driven by a white man, to a segregated jail staffed solely by whites, to a courthouse of all-white officials and all-white jurors where Negro spectators are segregated.

"Conditions have changed but little in Alabama since the State's advisory committee to the U.S. Civil Rights Commission reported in 1961 'frequent and flagrant miscarriages of justice and maladministration of the courts in the State.' At the same time the Mississippi Advisory Committee reported receiving 'many and at times unbelievable reports of atrocities and brutalities perpetrated by elected and appointed public officials in the capacity of law enforcement officers and under color of law.'

"The U.S. Civil Rights Commission has said that segregation of Negroes in justice facilities, such as police stations, courthouses and prisons--as well as exclusion of Negroes from service as police officers, prosecutors, judges and jurors--raise 'equal protection' issues. The commission reported that 87 percent of county jail facilities and 93 percent of State penal institutions in Southern and border states were segregated. The survey showed 63 percent of the courthouses had segregated restrooms and 17 percent had segregated courtrooms. In some areas of the South the system is so loaded against the Negro that his only choice may be to throw himself on the mercy of the courts. A parole official for a Southern State says: 'Ignorant Negroes often waive their rights to a grand jury hearing, plead guilty to an accusation drawn by a county prosecutor, and hope for the best. This doesn't necessarily mean the Negro is guilty. It might mean he prefers to seek leniency instead of fighting the charge in a white man's court.' A Negro who understands his rights and insists on a grand jury indictment before trial may be dissuaded from this course in some rural counties by a prosecutor's emphasis on the fact that he would have to remain in jail several months awaiting the next session of the grand jury.

"That innocent Negroes sometimes are 'railroaded' to prisons and convict work camps is a fact obvious to anyone who has studied 'Jim Crow' justice or even compared a cross-section of cases involving Negro defendants with a cross-section of similar cases involving white defendants. Negroes frequently are convicted of manslaughter--and sometimes murder--for traffic accidents fatal to white persons. Reverse the races and there are no charges, much less trials and convictions. The fact is that despite no reference to race in State murder laws, a white man just isn't convicted of murder, no matter how heinous the crime, when the victim is a Negro. On the other hand, when both victim and offender are Negroes, the outcome depends not so much on the evidence as on other considerations: Was the victim a 'good' Negro who gave nobody any trouble while the offender was not well liked by whites? In that case the punishment could be severe. Especially if the victim worked for one of the community's leading white citizens.

"Reports by the U.S. Civil Rights Commission document hundreds of instances in which Negroes in desegregation cases and Negroes and whites in civil rights demonstrations have been treated unjustly by court and law enforcement officers in the South. Daniel H. Pollitt, professor of law at the University of North Carolina, has pointed out that even attorneys seeking to defend civil rights workers often run into trouble in Jim Crow courtrooms. Writing in the December 1964, North Carolina Law Review, Pollitt declared: 'The small band of southern attorneys who undertake 'racial' litigation often find the common courtesies of the bench and bar denied them.' Of the arrest of Clyde Kennard, the first Negro applicant to all-white Mississippi Southern University, Pollitt wrote: 'He was convicted of stealing five sacks of chickfeed on the basis of rather tenuous evidence. His lawyer was charged with contempt of court for explaining to the press that the sentence of 7 years labor was a 'mockery of justice.'"

"Warren Fortson, a young white attorney in Americus, Ga., recently charged that officials used morals charges against two teenagers, the daughter and son of two prominent Negro families, to prevent them from taking part in civil rights demonstrations. 'We have made great progress in desegregation and race relations,' Fortson said, 'But the courthouse crowd has done everything they could to harass. The oppression of the courts and law enforcement are Negroes' major grievances now.'

"State-compelled courtroom segregation, as well as exclusion of Negroes from juries, has been declared a violation of the 'equal protection' provisions of the 14th amendment. Discrimination in Jury selection also is prohibited by Federal statute, but the law has not been enforced. Although the systematic exclusion of Negroes from juries in many southern communities is common knowledge, the Department of Justice has yet to prosecute in this century any official under an 1875 Federal law prohibiting such discrimination. On at least three occasions since 1950, the Justice Department, embarrassed at not learning of specific cases until they reached the Supreme Court, called on the U.S. attorneys to report such matters to the Department. Despite the Department's appeals and its suggestions that a Federal law was being violated, when the last appeal was made in 1956 the Department still had not received any reports from the U.S. attorneys.

"The Federal law provides: 'No citizen possessing all other qualifications prescribed by law shall be disqualified for service as grand or petit jurors in any court of the United States, or of any State on account of race, color, or previous condition of servitude.' It states further that 'whoever, being an officer or other person charged with any duty in the selection or summoning of jurors, excludes or fails to summon any citizens for such cause, shall be fined not more than \$5,000.' Several reasons are given for failure to enforce the law: Lack of specific complaints from Negroes that they have been excluded, difficulty in proving systematic exclusion, and the feeling that Federal juries in the South (not many Negroes serve on Federal juries either) would not convict state jury officials regardless of the evidence.

"A civil law provides that excluded minorities can seek a Federal court order enjoining officials from discrimination under pain of contempt of court. The 1964 Civil Rights Act empowers the Justice Department to join such class action, but does not authorize the Department to originate the suit. The Civil Rights Commission has declared that 'a distinct disadvantage' in the injunctive suits under the present law

is that they burden private citizens with the expense of correcting racial discrimination. The only other civil remedy applies to individual criminal cases and has a rather minor and remote effect upon the overall problem. A Negro may raise the issue before his trial, thus laying the groundwork for an appeal if he is indicted or convicted by an illegally-drawn jury. Attorneys often are reluctant to even raise the issue before trial. Usually they don't dare challenge the local system or often they are a willing part of it. In some cases, attorneys fail to raise the question for fear it would prejudice the juries against their clients.

"That the case-by-case appeals have no overall effect is shown forcefully by the experience in Carroll County, Miss., where Negroes comprise more than half of the population. In 1959 the murder conviction of Robert Lee Goldsby, a Negro, was reversed on grounds of jury discrimination. Yet the Civil Rights Commission heard testimony only 3 months ago that Negroes still don't serve on juries in Carroll County.

"The Justice Department, with guarded optimism that the need for voting investigations will diminish with passage of the voting rights bill of 1965, is considering a major drive on jury discrimination. Some cases have been investigated in Mississippi, Georgia, Kentucky, Virginia, and Tennessee. But there have been no indictments, and Justice officials decline to discuss the cases. The Justice Department also reportedly stands ready to proceed under title III--desegregation of public facilities--of the 1964 Civil Rights Act to prevent segregated practices in courthouses. Again, a written complaint first must be filed, in this case with the Justice Department, before action can be taken.

"In 1950, 1953, and 1956 the Justice Department, on the front pages of bulletins sent periodically to U.S. attorneys, urged reporting of all jury exclusion cases for possible enforcement of the criminal statute. 'Nevertheless, the Criminal Division has not received a single report or reference concerning a possible violation.' The Civil Rights Commission, acknowledging it might be 'very hard to persuade a jury to convict a white official,' has suggested that the Justice Department enforce the federal law--title 18, section 243. 'presumably the requirements that criminal cases be proved beyond a reasonable doubt would increase the difficulty of establishing jury exclusion,' said the Commission. 'On the other hand, this remedy would to some extent relieve private citizens of the time and expense of vindicating their Federal right. The resources and experience of the FBI would be particularly valuable in gathering the necessary evidence. Finally, section 243 actions, like injunctive suits, would directly protect the rights of all members of the racial group within the community.' Since the offense is a misdemeanor, the Commission pointed out, prosecution could be brought directly to trial on an information by a U.S. attorney, instead of having to proceed through a grand jury.

"A Federal judge in Mississippi has charged that a civil suit accusing his court of systematically excluding Negroes from juries is 'unwarranted meddling by outsiders.' Regardless of the merits of the Mississippi case, the fact is that various systems of selecting jurors in Federal courts in the South have largely excluded Negroes. Jim Crow perches just as surely, although perhaps not as securely, in some of the South's Federal courthouses as in some of its State courthouses. The exclusion of Negroes from the Federal processes of justice goes beyond juries. Clerks and jury commissioners are appointed by Federal judges. All 65 district Federal judges in the 11 States of the old Confederacy are white. So are all 28 district clerks and all 109 jury commissioners. The Southern Regional Council noted that of 1,124 officials of the Federal courts in the 11 States, less than 25 are Negro and they are lower echelon officials. Of 196 assistant U.S. attorneys in Southern States, 10 are Negroes and all were hired after Robert F. Kennedy became Attorney General in 1961.

"The 'key man system' is used by most Federal jury commissioners for jury selection. 'Key men' are substantial citizens, almost invariably white, selected by the clerks and commissioners to recommend jurors. They recommend people they know--usually white. Negroes do serve on Federal juries in the South, of course, but usually in token numbers. The system also tends to exclude whites in low-income and low-education categories. The Southern Regional Council said the exclusion of low income and hourly income workers from jury service

raises questions beyond racial considerations. 'One may not only ask if it is possible under present circumstances to get a Federal jury of peers for people who are not white, but also for persons who, regardless of race, are not middle class,' the counsel said.

"A Justice Department survey in 1961 showed that the 92 Federal district courts had '92 different systems of selecting juries.' Most of the courts use the 'keyman' system, discriminating not only against Negroes, but against poor whites. New York Attorney Burke Marshall, who headed the Justice Department's Civil Rights division from 1961 to 1965, says the need for reforming the Federal systems is 'very important.' But he says the issue is much like reapportionment: 'Not very sexy and hard to get people interested.' Marshall says Federal judges should not be free to adopt whatever jury selection methods they desire. After the 1961 survey, a bill backed by the Department was introduced to set up uniform standards in the selection of jurors. It died for lack of support.

"Since it is the Federal courts to whom Negroes must look when they have been denied equal protection in State courts, reform in the Federal judiciary seems long overdue. Equal access to the ballot will tend to chase Jim Crow from some of the courthouses of course, because Negroes will become a factor in electing court officials and sheriffs. But discrimination in the administration of justice is much more widespread than discriminatory voting practices. Nor is it confined entirely to the South. Exclusion of the Negro from the ballot box is a serious problem only in Mississippi and parts of Alabama, Georgia, Louisiana, South Carolina, North Carolina, and Virginia. Exclusion of Negroes from the agencies of justice--from law enforcement to judicial and penal institutions--is widespread throughout the 11 ex-Confederate States.

"Direct action against the courts--any courts--is risky business. It entails contempt charges and possible charges of obstruction of justice. But some civil rights groups have seriously discussed taking the risk to dramatize their plight in the Jim Crow courts. Sit-ins in jury boxes are among the tactics that have been discussed. How far the courts would tolerate such civil rights protests remain to be seen. But both Federal court judges and some State appellate court judges have only to read their own decisions to see repeated warnings that Jim Crow justice breeds disrespect for the law and corrupts the democratic processes far beyond the courthouses.

"Judge Robert H. Hall, of the Georgia Court of Appeals, in a decision last year, quoted a Federal ruling: 'For racial discrimination to result in the exclusion from jury service of otherwise qualified groups not only violates our Constitution and the laws enacted under it, but is at war with our basic concepts of a democratic society and a representative government.' In his decision, granting a new trial to a Negro civil rights demonstrator convicted by an all-white jury, Judge Hall declared: 'The injury is not limited to the defendant--there is injury to the jury system, to the law as an institution, to the community at large, and to the democratic ideal reflected in the processes of our courts.'"

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