

THE U.S. COMMISSION ON CIVIL RIGHTS

The Alabama State Advisory Committee

REPORT ON THE ADMINISTRATION OF JUSTICE  
1958-1961

INTRODUCTION

I. The State of the Problem

Though other states and regions have generally recorded great progress in the professionalization of the police and the improvement of the administration of justice since the 1947 report of the Truman Civil Rights Commission called attention to the urgent need for improvement in this area of American life, this committee is obliged to report that the State of Alabama has witnessed a comparatively grave worsening of affairs in the past decade.

This worsening is observable in practically all of the matters to which the 1947 report made special reference. It is especially grave in regard to the essential right to safety and security of the person, of which the 1947 report stated:

"Freedom can exist only where the citizen is assured that his person is secure against bondage, lawless violence and arbitrary arrest and punishment...Moreover, to be free, men must be subject to discipline by society only for commission of offenses clearly defined by law and only after trial by due process of law. Where the administration of justice is discriminatory, no man can be sure of security." (TO SECURE THESE RIGHTS, p.6)

In order to spell out the details of this worsening condition of our rights, the Alabama Advisory committee voted, during its February 1961 meeting, to draw up a report on the administration of justice and the exercise of police power in a wide sampling of communities across the state. Taking its cue from the 1947 report, the committee decided to explore the actual state of affairs on points indicated by the Truman commission. The broad framework for the investigation was hinted in these terms:

"We must report more widespread and varied forms of official misconduct. These include violent physical attacks by police officers on members of minority groups, the use of third degree methods to extort confessions, and brutality against prisoners...In various localities, scattered throughout the country, unprofessional and undisciplined police, while avoiding brutality, fail to recognize and to safeguard the civil rights of the citizenry. Insensitive to the necessary limits of police authority, untrained officers frequently overstep the bounds of their proper duties. At times this appears in unwarranted arrests, unduly prolonged detention before arraignment, and abuse of the search and seizure power." (TO SECURE THESE RIGHTS, p. 25)

Besides investigating these and other aspects of the police-citizen problem, the committee deemed it advisable to look also into those violations of civil rights to be found in other instrumentalities of justice, namely in the courts

and in the jails. In these areas too, the committee followed the lead of the 1947 Commission which deprecated "unfair and perfunctory trials," heavier fines and prison sentences, the abuse of the bail and bond system, the impairment of court impartiality by biased prosecutors, and the railroading of persons to jail in pursuit of abuses in the fee system.

Believing that the foundation of good government is the impartial administration of justice, the committee feels justified in presenting this report with its recommendations to the Commission and to the President and the Congress in order to help secure those rights for which governments are instituted among men.

## 2. The Fact-Finding Methods used in this Report

In conducting its investigations, the committee sent out a community fact-finding questionnaire to about 120 well-informed observers throughout the state in February and March 1961. The questionnaire comprehensively covered the many facets of the problem indicated above. It elicited replies to detailed queries concerning the exercise of police power, the abuses of the arresting authorities, the practices of officials in the booking, jailing, and detention process before trial, and the methods used by state and county solicitors in the prosecution of citizens accused or indicted for crimes, and finally, the actual operation of courts of justice in Alabama in cases involving the civil rights of whites and Negroes.

The questionnaire was to be answered anonymously, after the customary manner of a social science survey, in order to allow the respondents full freedom in expressing themselves in a quite delicate area. It was deemed advisable to use this method owing to the fact that the very abuses being investigated would be repeated in the case of each respondent whose identity was discovered by lawless and unscrupulous officials involved. In this sense, the committee feels morally obliged to speak for the silent and the silenced, especially for those citizens who are mutely incapable of seeking adequate and full redress for their just and constant grievances.

Owing to the pressures of time, the returns on the survey had to be compiled when only 46 of the 120 citizens had returned their forms. These respondents give their detailed testimony as regards 24 of Alabama's 67 counties, and about an equal number of cities in the state. The major share of the respondents concern themselves with the administration of justice by city police rather than by county sheriffs.

Questionnaires were returned by an almost equal number of whites and Negroes, about 25 of the latter and 21 of the former. None of the respondents were persons with criminal records. This class of citizens was deliberately excluded from the survey owing to the fact that their attitudes might understandably be somewhat extreme. Our respondents were mostly well-educated, well-informed middle and upper class persons who felt free responding to an intricate series of technical questions.

The forty-six forms returned actually indicate more than twice that number of citizens replying. In many cases, groups of a dozen or more gathered to assist in the completion of the questionnaire. In other cases, the returns indicate the combined and corporate experience of the entire organization whose officials responded in their name.

It is hoped that the findings of this pilot study will be supplemented by a much broader and more far-reaching series of on-the-spot investigations into

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these matters, conducted with all of the precautions necessary to prevent a further worsening of the condition of our rights by inept and clumsy efforts to alleviate the things that are treated in this report.

It is also expected that the shield and the sword of Federal protection of civil rights will be exercised in respect to the members of this committee whose own personal civil rights are being placed in jeopardy by the very carrying out of the congressional and executive commission to find out the facts about the miscarriages of justice and the abuses of governmental power in the field of civil rights.

The following is the list of the cities and counties in the State of Alabama sampled in this pilot survey:

CITIES	COUNTIES
Anniston	Autauga
Attala	Calhoun
Auburn	Dallas
Bessemer	Etowah
Birmingham	Greene
Chickasaw	Hale
Fairfield	Jefferson
Florence	Lee
Gadsden	Lauderdale
Huntsville	Macon
Mobile	Madison
Montevallo	Mobile
Montgomery	Montgomery
Prattville	Shelby
Selma	Talladega
Sheffield	Tallapoosa
Sylacauga	Tuscaloosa
Talladega	
Tallassee	
Tuskegee	

## PART I LAW ENFORCEMENT OFFICIALS AND THE ADMINISTRATION OF JUSTICE

### Section I Law Enforcement Officials and the Police Protection Function

This section of the questionnaire concerns the activities of sheriffs, deputy sheriffs, police patrolmen and detectives in the carrying out of the protection function in respect to the civil rights of American citizens.

Generally speaking, the respondents did not believe that law enforcement officials were dedicated to the task of protecting the civil rights of all individuals in the community. They actually stated, in an overwhelming majority, that the local officials were not true to their oath to uphold the United States Constitution and the Constitution of the State of Alabama, which, in its first article, paragraph 35, states that "the sole object and the only legitimate end of government is to protect the citizen in the enjoyment of the right to life, liberty and property." Roughly 76 percent of the respondents denied that the local officials were concerned with the protection of the civil rights of their citizens and about an equal number also indicated that the local officials were not equally concerned for the protection of Negro's rights as they were for white citizen's rights; in fact, 65 percent of the respondents felt that local officials seemed concerned mainly with protecting the white citizen's rights and with

disregarding those of the Negro citizen.

Again, thirty-five of the respondents or roughly 76 percent of the total, believed that local officials were regarded by Negroes as posing a definite threat to their human and civil rights. The police were construed, by the majority of the respondents, as posing a threat to the rights of citizens to be free from intimidation and especially free from unreasonable search and seizure. About 56 percent of the respondents felt that the police were a threat to the Negro's right to freedom from false arrest and about half of the respondents also believed that the police were a threat to the Negro's right to freedom from bodily harm. Almost half the respondents also noted that the police were regarded as distinct threats to the Negro's right to the security of his person and the privacy of his home. Less than a majority of the respondents indicated that in the State of Alabama law enforcement officials are, to a greater or lesser degree, a threat to the individual's right to life, his right to freedom of assembly, his right to freedom of movement and freedom of speech as well as his right to property. Roughly 40 percent of the respondents seemed to think that the Negro's right to seek redress of grievances was threatened by the police methods used in the state. About eleven of the respondents felt that the police were a threat even to the Negro's right to freedom of religious worship and seven felt that the police were a threat to his right of religious belief.

As a result of this general and specific series of threats to Negroes' human and civil rights in the state, the majority of the respondents felt that the police did not enjoy the confidence of the Negro citizens to such an extent that the citizens would feel free to summon them for protection in case of threat of crime or harm against them. The picture of this lack of confidence varied from the larger cities to the smaller places across the state. The highest recorded vote of non-confidence was for the local officials of Montgomery and the next highest was for those of Birmingham. In the rest of the state, however, the majority of the respondents seemed to feel that the local officials did enjoy a measure of confidence on the part of the Negro citizens.

It was the opinion of a good majority of the respondents that the local citizens preferred to settle their own grievances where rights had been violated rather than call the police; at least, this was the opinion of 67 percent of our respondents. This seemed especially true among the Negro respondents. All except six of the Negro respondents felt that citizens preferred private settlement of their grievances rather than calling the police. In Montgomery and in Birmingham the sentiment in regard to this was unanimous.

As to the question of whether or not some further police measures for protection seemed to pose more of a threat to Negro citizens than the things which police pretended to be guarding them against, the sentiments of the respondents were somewhat mixed. Only half of the 46 respondents indicated that police protection measures were threatening to Negro citizens. But these respondents indicated that the police use of mounted posses and of vicious dogs as guards was regarded as a greater threat to Negro citizens than anything the police could guard them against. They also mentioned that they found policemen's use of weapons a greater threat than possible threats from potential murderers. At least nine of the respondents referred to the use of tommy guns in police work as threatening the Negro's peace of mind, and eight of them complained of the use of horses in crowded streets with the danger of trampling, kicking and injury, especially when inexperienced horsemen were mounted on them.



Another item that seemed to be symptomatic of the unfavorable attitude of local citizens towards the police was the response by the observers to the question about collusion between the police and the Ku Klux Klan. About 65 percent of the respondents intimated that local officials give the appearance of working hand in hand with the right-wing terrorist groups such as the Ku Klux Klan. This was especially pronounced among the Negroes, more than 65 percent of whom gave testimony about this aspect of police lawlessness. In fact, about 45 percent of the respondents indicated that local officials were known to hold memberships in the Ku Klux Klan or in these right-wing subversive, terrorist organizations.

However, the sentiment was somewhat divided as to whether or not the local officials were known to run out of the county or the city individuals who advocated civil rights or American freedoms. Only about twelve of the respondents out of the 46 gave affirmation to this violation of this right of freedom of speech.

## Section 2 Law Enforcement Officials and the Arrest Process

If one may judge from the widely scattered testimony of our 46 respondents, one of the most sensitive points at which civil rights are violated in the State of Alabama is the point of initial contact between the police and the citizen in the arrest process. Our respondents generally showed themselves aware of the constitutional provisions that have been erected in the Bill of Rights against unwarranted arrest without reasonable suspicion and without a sworn warrant that specifically cites the crime that has been committed. Approximately 67 percent of our respondents indicated that there had been reports of arrests without warrants or without reasonable suspicion of the commission of crime by persons who were arrested. This violation seemed to focus on the arrest of individual persons by individual law enforcement officials. It did not seem to apply with equal force to the wholesale arrests of large bodies of citizens by large groups of law enforcement officials. In Montgomery, however, this violation of individual liberties through the ordering of wholesale arrests of citizens seemed to bulk large in the minds of the respondents, all of whom indicated that an unjustified use of wholesale arrest was observable in the community.

About 41 percent of the respondents indicated that individual officials in their areas had gained reputations for being hasty about picking people up or running people in for trivial matters. Seven of the respondents could list up to five officers in their areas who were guilty of this sort of indiscriminate violation of civil rights. Two others could list up to ten such officers; five others said that they could list up to 20 officers, and in three communities the number of officers who had gained this reputation was either slightly above or slightly below 50.

Our respondents generally, about 60 percent of them, indicated knowledge of cases involving police brutality towards persons being taken into custody since 1958. Eighteen of the respondents could recall up to five cases of this nature. Five others indicated that up to ten such cases had occurred in their communities. Three others indicated up to twenty such cases, and at least three manifested knowledge of between thirty and fifty cases, three others declaring that over 50 cases had occurred in their community.

As regards details for the cases of police brutality, the respondents were able to come down to specific citings of definite methods of brutality employed by the police in the arrest process. There were at least 114 cases of strong-arm tactics, the vast majority of which were recorded in the community of Montgomery. One hundred and eight cases of twisting of arms and wrists by law-enforcement officials were reported, again, the vast majority of these in the

Montgomery area. The respondents reported 33 cases of beatings with blackjacks, 32 cases of beatings with night sticks, 29 cases of kicking of victims, 23 cases of sluggings with fists, 20 cases of pistol whippings, 17 cases of throwing people to the ground, 14 cases of stomping on the victims and mugging them, 8 cases of breaking the victims' bones, and at least one case of police use of judo and karate, causing pain to the victim.

Another violation of civil rights that was noted by the respondents was a series of cases in which policemen were believed to have killed persons who were being taken into custody, wantonly shooting the victims and then declaring that they had "grabbed for" the officer's gun. There were, however, very few cases reported where the police officer had urged his victims to run in order to have an excuse for shooting them down because they were resisting arrest.

Only seven of the respondents reported this two-way abuse of police power--using the commanding power to make the victim run and then shooting him for resisting the policeman's exercise of arresting power.

Again, there was very little belief that law enforcement officials were accustomed to using vicious dogs in arrest, letting these dogs loose to attack the victims and bring them down. This inhumane method of arrest was reported by only nine of the respondents.

Again, the vast majority of the respondents believed that law enforcement officials were known as being more severe on Negroes than on whites when arresting Negroes for the same or similar offenses. Seventy-six percent of our respondents indicated this differential in the administration of justice, and fifty-eight percent felt that law enforcement officials were extra severe in arrest procedures in cases involving the infractions of segregation laws and customs in the area.

Another very sensitive point in this whole question of violation of civil rights on arrest was that reported by 63 percent of our respondents. They intimated that police were reported to have invaded private homes to make arrests without having previously secured warrants for the arrest of a specific person or a search warrant for entering the house. Slightly less than half the respondent indicated that police officers were reported to be especially rough and abusive in the arrest of female suspects, especially when the females were Negroes, and an almost equal number, about 37 percent, indicated that white officers were violent toward Negro juveniles when apprehending them and taking them into custody.

In summary, we can report that, on the basis of the findings of this survey, there is a vast field for exhaustive investigation in the State of Alabama of this whole pattern of police behavior in the arrest process. We believe that the Civil Rights Commission would do well to assign a full-time team of investigators to develop the evidence that would lead to the correction of these abuses of the police power in the unlawful and unwarranted use of the arresting authority with which the community endows the police in order to prevent crime.

### Section 3 Law Enforcement Officials and the Booking, Jailing and Detention Process Before Trial

Another area of civil rights to which our respondents reacted with a variety of patterns is the whole series of civil rights that can be violated in denying the citizen the due process of law after arrest. More than half of the respondents indicated that local law enforcement officials have been reported to hold persons in jail incommunicado after arrest without booking or without definite charges. This violation of the basic guarantee of the Bill of Rights of

the Constitution should not go unnoticed by the Civil Rights Commission in its investigation.

Roughly 40 percent of the respondents indicated that local officials had become known for demanding excessive bail or for refusing to allow bail for a bailable offense, notwithstanding the constitutional guarantee which allows a citizen to maintain his freedom until duly indicted and convicted by a court of law. Twelve of our respondents indicated that they had heard of cases where persons were detained for more than 72 hours before being brought up for arraignment, hearing, or dismissal of the charge.

Twenty-four, or roughly 50 percent of our respondents, reported that police in their area have been known to make use of force and intimidation in order to extort confessions out of prisoners. Among the third-degree methods mentioned by these respondents were some of the standard practices of police brutality. At least fourteen of the respondents indicated that police were known to have slapped victims in the face. Thirteen reported the use of assault by the police in kicking or mugging victims. Twelve of the respondents cited the use of lashings, whippings, beatings, sluggings with fists and scourging with rubber hoses. An almost equal number cited the third-degree practice of hours-long questioning under strong lights. Ten referred to the strong-arm methods of twisting arms, and seven reported other excessive punishments used by police in the third-degree method. Two cited instances where police made use of electricity, either in batteries or in live wires, to shock victims in order to extort confessions.

More than half of the respondents reported that their local officials had been using insulting and abusive language towards persons held in custody for trial. An almost equal number stated that the local officials had denied jailed persons their right to have access to lawyers or legal counsel. Twenty-three or 50 percent of our respondents declared that custodial officials had denied medical care to jailed inmates who had been injured in arrest or who had become sick during their stay in jail before trial. This abuse was prominently mentioned by respondents from Montgomery as well as those from other cities. Only six of the respondents, however, declared that they had knowledge of jail-house lynchings, that is, the killing of persons being detained in custody before trial. These six seem to refer to the same two cases which were noted, one in Montgomery and one in Birmingham since 1958.

The paucity of cases in jail-house lynchings may actually be due to the practice of custodial officials of reporting these jail-house lynchings as jail deaths owing to natural causes or the violence of fellow inmates. Ten of the respondents indicated some knowledge of this practice on the part of law enforcement officials. Nine of the respondents indicated that officials were in the habit of reporting these jail-house deaths as suicides rather than as the result of third-degree methods or jail-house violence.

Other abuses of persons who were held for trial include the practice of placing first offenders or minor offenders in the same cells with hardened or violent persons in order to allow them to be beaten or abused by their cell mates. This abuse was cited by twelve of the respondents.

Only four of the respondents declared that local officials had actually taken precautions to prevent sexual abuse of youthful offenders by the more hardened offenders in the local lock-up. However, the vast majority of the other respondents, thirty-two in number, indicated no knowledge, either one way or the other, in this abuse of the rights of prisoners to respect for their persons. On another point, six of the respondents indicated knowledge of collusion between



court officials and local bondsmen who gave kick-backs for the bail or bond posted in cases of persons rounded up as suspects in wholesale or individual arrests. Only three of the respondents indicated knowledge of local custodial officials' profiteering in the fees paid for meals which they provided for the jail population, and only seven respondents indicated that custodial officials had been leasing out jailed persons to work on public or private projects in the community.

The most serious of these violations of civil rights in the detention process seems to be the use of physical violence by the police in the third degree methods customarily practiced in jail houses across the state. This is one area which certainly warrants thorough investigation by the F.B.I. and by the Civil Rights Section of the Department of Justice as well as by the field workers employed by the Civil Rights Commission.

## PART II COURT OFFICIALS AND THE ADMINISTRATION OF JUSTICE

### Section 1 Prosecuting Officials, State and County Solicitors

Exactly half of the respondents reported that state and county solicitors were illegally gathering evidence that led to indictments and prosecutions of individuals in the state through the use of "stool pidgeons," that is, paid and hired informants who violate confidences in order to turn states evidence on their friends or neighbors. The creation of an atmosphere of fear and distrust on the part of neighbors was one of the main points of contention raised in the notorious case of Harrison Salisbury's indictment for libel by the city of Birmingham and the city of Bessemer, Alabama. The use of the paid spy and the informant is a despicable violation of the due process of law and an unwarranted invasion of the privacy of individuals who are entitled to their own private opinions and to the privacy of their homes.

Though more than half of the respondents indicated that they did not have specific knowledge of the use of data drawn from extorted confessions in the indictment of persons accused of crime in that state, twelve indicated that this malpractice in violation of the constitutional provision against self-incrimination was in vogue in some areas within the state. The city of Montgomery was especially cited for this kind of violation of the civil rights of individuals as protected by the Fifth Amendment.

As regards court room practices by county officials, namely by the state prosecuting attorneys and county solicitors, more than half the respondents cited knowledge of attorneys who created a biased atmosphere in the court rooms by appealing to the racial prejudice of jurors. Thirty-four or 74 percent of the respondents indicated that the county solicitors were guilty of weighting juries against Negro defendants by excluding Negro citizens from the lists of names from among whom the jurors are chosen.

Twenty-three or exactly 50 percent of our respondents reported that state soliticors tried to undermine or disparage the Negro witness' credibility by making references to his race and an even larger number cited instances where prosecuting attorneys have been known to exhort white juries to do their duty as Southern gentlemen or as defenders of the white way of life in cases involving Negroes as defendants.

Finally, the common consensus of our respondents seemed to be that prosecutors in the state either wittingly or unwittingly have been impairing the tone of impartiality that should prevail in a court of justice and in the conduct of their office in accordance with the due process of law. This seems



to indicate that the Civil Rights Commission along with the Civil Rights Section of the Department of Justice should give some special scrutiny to these elected officials and determine whether or not they are fulfilling their oath of office which requires them to conduct themselves in accordance with the Constitution of the United States and even the Constitution of the State of Alabama which they are either consciously or unconsciously violating in the conduct of their office.

## Section 2 Judges and Other Court Magistrates and Officials

As a symptom of the times and also of the general attitude of the whites towards this whole problem of civil rights, only one of the 46 respondents could ever recall that any judge had ever disqualified himself from presiding at a trial of a Negro on the grounds that he did not feel impartial.

Many of our respondents reported that the local magistrates in the lower courts of the cities and counties around the state had become known for their differential administration of justice in the dispensation of cases involving Negroes as contrasted with those involving whites. Sixty percent of the respondents reported that local magistrates tended to impose stiffer sentences and sterner fines on Negroes than on whites for the same or similar offenses.

Exactly half our respondents registered complaints against the characteristically perfunctory manner in which the local magistrates disposed of cases involving Negroes without weighing circumstances, questioning witnesses, or giving the defendant a chance to present his side of the case. Almost 80 percent of our respondents declared that local court officials seemed to operate on the assumption that a white person's word is always to be believed when it conflicts with a Negro's testimony. Over 87 percent of our respondents indicated the standard practice in the state for court officials to enforce segregation patterns in the court rooms, indicating what some judges in Montgomery have openly declared in the open courts, that "this is a white man's court room."

Though twenty of our respondents had no knowledge of cases involving Negro lawyers, seventeen of the observers stated that some judges seemed to show partiality towards the opponents of colored lawyers when a colored lawyer was pitted against a white lawyer in a litigation. This was especially noted in regard to Montgomery and Birmingham. A few (ten) of the respondents also noted that judges showed lack of concern for the right-to-counsel of Negroes who were poor or destitute. They reported that the judges showed this unconcern in the choice and assignment of court-appointed legal counsel for these impoverished defendants.

By far the most serious area of complaint against magistrates and judges was that of their practices in sentencing defendants in cases involving Negroes. Thirty of the respondents mentioned that judges showed discrimination in the pattern of sentences imposed on white criminals for crimes against Negroes. Thirty five of the observers stated that local judges showed disregard for Negro rights by passing light sentences on Negro offenders who violated rights of fellow Negroes.

In cases where Negroes were defendants, the observers also in fourteen areas indicated that judges manifested partiality against the colored person by instructing the jury to return the strictest possible verdict in punishment of capital offenses, even though the general trend has been away from capital punishment of whites for similar offenses. Maximum penalties were reported by thirty-seven of the respondents when the victim of a Negro's crime happened to be a white person.

Again, about half of the respondents (twenty-two) commented that local judges made use of technicalities of the law and rigid interpretations of court procedures in order to aid white litigants in civil or criminal suits against Negroes. Where the Negro seemed to have a just cause and a chance of winning this kind of suit, local judges were viewed by the respondents as hindering due process by unduly continuing the cases, postponing hearings, and refusing to hand down a verdict for months and even years. This last response was noted on eighteen of the returned schedules. Due process was also hindered, in the opinion of nineteen of the respondents, by the ways in which local judges made it difficult or impossible for Negroes to secure appeals to higher courts.

On the rather difficult and delicate matter of the handling of witnesses who might favor Negro litigants over white ones, eighteen of the observers felt that local judges seemed to condone the suborning and intimidation of persons who might be able to aid Negro litigants as witnesses. An equal number of observers felt that judges had rendered the defense of Negroes more difficult by failing to guarantee the protection of witnesses favoring colored litigants.

A surprising number (eighteen) of the respondents stated that instances had been reported where judges seemed to be influenced by right-wing, terroristic, and subversive organizations like the Ku Klux Klan. Nine of the respondents, however, noted the history-making cases of verdicts against Klansmen by Birmingham and Montgomery judges in cases involving crimes by Klansmen against Negroes.

In summary, it may be said that this brief survey confirms many of those matters of common knowledge that point to frequent and flagrant miscarriages of justice and maladministration of the courts in the state. This committee recommends that the Commission continue to consider this as among the unfinished business of democracy in the state, and that the staff of the Commission be empowered to concentrate strongly upon the investigation of the matters which are touched on but briefly in this pilot survey. It would be tragic if the Commission would devote all of its attention to what are lesser aspects of civil rights while by-passing this grave and important area where the fundamental and essential rights of human beings are being constantly violated under the color of law and under the guise of justice.

Albert S. Foley, S.J., Ph.D., presented a paper entitled "The Administration of Justice in the State of Alabama, 1958-1963" at the Conference of Alabama Sociologists held at Tuskegee Institute in December 1965. Father Foley is professor of sociology at Spring Hill College in Mobile. The following article is excerpted with permission from Father Foley's paper.

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Following a pilot study on the Administration of Justice in Alabama published in the 1961 50 States Report, this present research was designed as a more exhaustive and deeper analysis of the problems connected with the exercise of police power, the abuses of arresting authorities, the official practices of booking, jailing and detention before trial, the methods used in the prosecution of citizens indicted for crimes, and finally the actual operation of courts of justice as well as jails and prisons in the State.

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In the fall of 1962 and the spring of 1963 court records in a sampling of 15 counties and cities were transcribed. The disposition of major felonies in these counties was determined for the years of 1958-1963. The felonies examined in each of the counties were: (1) murder in the first and second degree; (2) armed robbery, (3) rape.

The transcription of these records was not obtained without interference on the part of the court officials and public authorities. Although many county clerks were cooperative, others were reluctant to allow any delving into their public records. In one county the sheriff personally intervened by coming into the record room and actually sitting on the papers being used to transcribe the records. In other counties, sheriff's deputies and State Highway patrolmen endeavored to block the field worker's return by threats and intimidation. In still other counties, evidence was uncovered that court records had been mutilated in order to conceal the disposition of some cases. Pages were found to be torn out of the record books. Cases were mysteriously terminated with no notation of the actual process or final disposition. Nevertheless, about 1,508 cases were assembled as a body of workable data for this study.

#### Court Record Results

Type of Crime	No.	Freed			Less			
W-White	of	by		Pro-	than	10 to	Life in	Death
N-Negro	Cases	Jury	Other	bation	10 yrs.	20 yrs.	Prison	Sentence
N vs W	462	1.8%	8.2%	0.8%	53.5%	30.8%	5.8%	0.4%
N vs N	497	6.4%	16.3%	4.4%	50.5%	15.2%	6.0%	0.0%
W vs W	534	8.0%	22.6%	7.8%	37.8%	19.0%	4.5%	0.3%
W vs N	15*	0.0%	46.7%*	13.3%*	20.0%*	20.0%*	0.0%	0.0%

\*Not statistically significant

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At first sight. . . it appears that Negro offenders against white victims were not penalized significantly more than whites committing crimes against fellow whites. . . . But the general conclusion from this study will have to await the further investigation into the disproportionately small number of cases of white crimes committed against Negroes that actually reached court trial. No doubt the tendency of the Grand Juries not to indict whites for major crimes against Negroes is reflected in the fact that only 15 cases in the 15 counties actually place on record some court action involving some white crime against Negroes.



Marvin E. Frankel, Professor of Law at Columbia, published an article entitled "The Alabama Lawyer, 1954-1964: Has the Official Organ Atrophied" in the Columbia Law Review in 1964. The following excerpts are from Mr. Frankel's content analysis of The Alabama Lawyer, which is the official publication of the Alabama State Bar.

The July 1954 issue, though it followed Brown v. Board of Education, contained nothing on the general subject of civil rights or claims to racial equality. By October, however, there had been time to prepare for publication the first of a long series of reactions to the Supreme Court's unanimous interment of "separate-but-equal." In that issue there appeared a second article by R. Carter Pittman, whose exuberant adjectives and italics were to become increasingly familiar during the course of this ten-year jaunt. The title of this effort, Liberty or Equality, Americanism or Marxism--Which Shall it Be? epitomized its author's opinion of the Supreme Court's opinion. Mr. Pittman was, and evidently remains, displeased. Elaborating on his title, Mr. Pittman charged that an alien and erroneous notion of equality has threatened increasingly through the years to rob Americans of personal liberty. He wrote that Jefferson was guilty of an artful perversion when he changed the conception of equality in the Virginia Bill of Rights ("all men are by nature equally free and independent") to read, in the Declaration of Independence, that "all men are created equal." Here and elsewhere he states that Jefferson's distortion has invited the pernicious, "Marxist," "cybernetic" fallacy that all men "are" in fact equal rather than being merely "born" equal.

I am not always certain that I understand Mr. Pittman. Risking a paraphrase, I think he is saying it is wrong to the point of perniciousness to claim that people like Willie Mays, Ross R. Barnett, Ralph J. Bunche, George C. Wallace, Billie Jo Hargis and Martin Luther King are all identical in size, shape, strength, virtue, intelligence or whatnot. If this is his thesis, I believe Mr. Pittman is right. The reason I'm not sure this is what Mr. Pittman means is that he's so fierce about it. For if I read him correctly, I know of nobody who disagrees with him.

At any rate, Mr. Pittman's article for October 1954 rakes the Supreme Court, its reasoning and its supporters with a withering fire. The members of the Court are accused of being willing or unwilling sheep who were "led into a vacuum by the cybernetics of sociological doctors, who found a judicial blind spot and practiced a fraud upon the judges to victimize a helpless people." America finds itself in exclusively totalitarian company now that it has embraced a diseased notion of equality; according to Mr. Pittman:

The doctrine of socio-racial equality no longer stands forth in this world, except in four communist countries and within the secret chamber of a strange Supreme Court of the United States!

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Having exposed an equalitarian conspiracy of aliens, Marxists, lying professors and gulls, Mr. Pittman concludes in thundering italics: "Eternal vigilance is not the price of Anglo-Saxon liberty. The price of Anglo-Saxon liberty is blood."

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As I read on, however, through the pages for the 1950's and on into the 1960's, I looked expectantly for the nonconformist reaction of some disputatious lawyer, for one of those not-so-rare mavericks our profession breeds to argue the other side. I waited with interest to see whether it would be an Alabama lawyer, someone from elsewhere in the South (Mr. Pittman is from Dalton, Georgia), or some disreputable Yankee who would publish in those pages a defense of the United States Supreme Court.

I read and waited in vain. Article after article treated States' Rights; the glorious Confederacy; Negro inferiority; the Supreme Court's communistic, atheistic, nihilistic destruction of the Constitution; the peril to the nation of denying state power to exact flag salutes from small children, etc. Nowhere through the decade was there a single dissenting piece as against literally dozens chanting miniscule variations on the Pittman themes of October 1954. Now and then there were acknowledgments that some in the South hold views differing from those uniformly espoused in The Alabama Lawyer. These deviates were never identified by name, but only characterized in terms that could hardly encourage them to come forward and speak for themselves. Governor Byrnes, for example, spoke of "people who call themselves 'moderates,'" described them as "integrationists who lack the courage to admit it," and said such types could be assured audiences and acclaim in the North. Dr. Charles Callan Tansill invited free discussion by asking: "Will the South accept betrayal by its clerics as well as by its Communist-slanted educators, or will the South be true to its own way of life and resist with success the dubious drive towards liberal values that have no real meaning?" And Mr. Charles J. Block spoke of "some so-called publishers" who had the temerity to criticize controlling opinion in the South. One is left with the impression that the obligation "to present the less popular side of a controversy" is the "glory of our profession" and that "difference of opinion" are "healthy" only for welcoming addresses and for sermons to new law graduates.

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It is said repeatedly in the official organ of the Alabama Bar that a Supreme Court decision on a constitutional issue is "law" if it is the first decision on the issue. That means, not surprisingly, that Plessy v. Ferguson is law, but not Brown, which overruled it. The authors of this one-bite principle of constitutional law cite nothing in its support that derives weight either from age or reason.

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Every issue of The Alabama Lawyer reads in substantial measure like orations celebrating all at once the Fourth of July, the birthday of Robert E. Lee and Grant's surrender at Appomattox. This is particularly true when the discussion turns to religious dogma like states' rights and racial segregation. Then the pages crackle with italics, roar with capital letters and prove that the pen, if not always mightier, can surely be more fiercely clangorous than the sword. Among the more loving capitalizations are such expressions as "Southland" and "Southern Civilization." These are reminders of Northern bloodlessness or lack of patriotism; one seems never to read, whether in professional or unprofessional journals, of things like the Northland or Northern Civilization.

But The Alabama Lawyer is pervasively, vigorously patriotic--forever manning the ramparts of an evidently deathless Confederacy. It is never possible to read too far without coming upon an ode to (1) the Confederacy, (2) a Confederate general, (3) a Confederate private or (4) some other Confederate rank. A narrow-minded Northern lawyer might have tended to feel somewhat bemused to read in January 1955 an article by a Kentucky Assistant Attorney General with the catchy title The Secession of Southern States Did Not Constitute a Rebellion or an Insurrection Against the United States Because They Legally Exercised Their Reserve Powers. The bemusement might have arisen from the tacit assumption of this Yankee that the War Between the States had ended some time earlier. But not for The Alabama Lawyer. Here, the South fights on, is proved right again and again, marches grandly and ever anew to the bitter but glorious defeat--brought on, several writers here remind us, largely by an excessive attachment within the Confederacy to, of all things, States' Rights! This is not the place (and the present writer is not equipped anyhow) to consider the possible psychiatric implications of a fierce attachment to a lost cause of long ago. Whatever it might

reflect generally, one speculates about its role and its utility as a pervasive subject for a lawyers' journal.

The steady refrain of Southern patriotism includes strong and frequent notes of xenophobia. As noted earlier, one comes away with the impression that Alabama mothers use the name "Gunnar Myrdal" to scare bad children; the Swedish scholar is among the most regularly reviled of Alabama Lawyer enemies. And the falsity of his views on racial questions appears to be sufficiently demonstrated by the fact that he is an "alien from Sweden." The cumulative message of all the patriotism is the usual one, not infrequently explicit, that foreign ideas, because they are foreign, are wrong. The only references to the United Nations are expressions of hostility, of fear that adherence to international agencies will dilute or destroy American principles, including prominently the principle of racial segregation.

The Communist menace is worked expansively. The principle of non-discrimination pronounced by a unanimous Supreme Court of the United States is said to rest upon Communist doctrine. Sometimes this position entails strenuous feats of intellectual agility. Mr. Pittman, for example, credits Thurgood Marshall with having used a "Marxist trick . . . to seduce the inexperienced Judges of the Supreme Court into believing that human equality is somehow imposed by our fundamental law," and explains that this is alien poison, equality being really "the central theme of Marxism." He points out, however, that Russia has been "careful not to interfere with the segregation practices and racial mores of her people." He explains that in this the Russian Government sensibly refrains from a suicidal effort to fight the most primeval of human demands:

Even Russian despots have more sense than to attempt to do a thing like that. That low mark was reserved for American despots sitting on judicial benches.

Three pages later he ties this forensic whirlwind together with the observation that the Russians are doing it after all, because equality is "nowhere sought to be imposed except in the communistic sewers of slavish slavery." Nobody appears ever to have scented anything to add to, or to question in, that pungent analysis.

Judged by The Alabama Lawyer, Alabamians, though they rightfully share in the glories of a nation of "foreigners," look with suspicion and hostility upon anything alien. And the concept of "alien" is not drawn merely to cover foreign countries. The "nation" in this respect seems often to mean only the "Southland." There is an explicit sentiment that Southerners, courageously defending the eternal truths, are surrounded by evil or misguided outlanders, especially in the North and East of the United States. The Southland--that is, white Southerners--is said to be an embattled minority within the Nation, as if any of us (Methodist, Catholic, Jew, Yankee fan, New Englander, etc.) is ever more than a member of sundry minorities. \* \* \*

Closely related to the spirit of Southlander patriotism in The Alabama Lawyer is the constant premise of white supremacy. Inveighing against the Brown ruling that racial segregation by government cannot be "equal," the writers in that journal cite everything from Scripture to Plessy to demonstrate the righteousness--nay the holiness--of the principle that people should be kept separate by the state according to skin color. And, the familiar argument runs, the separation of races is "equal" for both: black is no more separate than white; the Supreme Court could not rationalize its ukase, but necessarily left us "in ignorance as to what law or social science supports a judicial ruling that separate bathing or golfing facilities are inherently unequal."

But these same pages demonstrate constantly and expressly how Pickwickian--



one struggles not to say "hypocritical"--is the sense of the word "equal" as employed in the argument.

Year in and year out every issue of this official organ of an integrated bar supplies heady reminders that it is written by white men for white men. More than this, numerous articles exalt the Great White Race as the race of achievement and progress, while establishing beyond question that Negroes comprise an inferior race of "slothful" and unclean people. We are told that the great American culture is of, by and for the white man. When it is argued in learned papers that the desegregation requirement must destroy public education in the South, the authors proceed to chart programs for white private schools; if the Negroes want to try to educate their inferior children, "they" will have to look to comparable arrangements for themselves.

Such are the sentiments published in this "official organ" of the entire Alabama bar, supposedly including its nonwhite members. Is it permitted to speculate whether the writers are never embarrassed to mourn the ghost of the myth of "separate but equal"?

Not infrequently this organ sounds not so much like that of the White Race generally, but like that of a substantially smaller elite. At least, there is for an official journal in a state of this diversely-peopled Nation a surprising numbers of paeans to Nordic, White Protestant, Anglo-Saxon, Christian values to be defended against the Supreme Court and other Communist agencies. One finds references to the rich superiority of "Anglo Saxon blood" and fierce hatred of the Northerners who would "pollute our Anglo-Saxon bloodstream." There is no similar or "equal" fear of polluting the Slavic, or Indian, or Semitic, or Oriental--or Negro--bloodstream.

To be sure, this Nordic refrain, with its echoes of recent but still scarcely imaginable horrors, is not repeated by all Alabama Lawyer writers on problems of race. The fact remains that no one during the troubled decade just ended was seen to write a word in any way questioning or inconsistent with the frequent writings of the Aryan Superman theorists.

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Forsaking an apparently cozy existence in Birmingham, a young Alabama lawyer charges that his departure from the state was the only alternative to changing or concealing his dissent from the dominant views on race and civil rights. He describes, briefly but vividly, what sounds very like a totalitarian society. His book does not appear thus far to have been reviewed or mentioned by The Alabama Lawyer, although it presents an indictment that ought to stir grave concern at the Alabama Bar. [See Morgan, A Time to Speak (1964)] On the other hand, the volumes of The Alabama Lawyer, at least in the years since 1954, could have been cited by Morgan as evidence for his thesis. I have mentioned already some of the racist ideology and the dread counterparts it recalls. The chauvinist tones, the gallery of foreign devils, and the bombast are further items. Weightiest of all is the fact that this official organ of a contentious profession speaks always with one voice on the most debatable and momentous of subjects. The dissenters, who surely exist, are terribly silent. What does appear looks like the work of lawyers in a closed society.

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