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RACIAL DISCRIMINATION
IN THE
SOUTHERN FEDERAL COURTS

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The exclusion of Negroes from the administration of justice in the state courts of the South has long been the subject of serious criticism and concern. But little attention has been given to the extent of exclusion of Negroes from the federal courts of the South.

One obvious reason is that, in the conflict between state and federal law on basic Constitutional questions of the past two decades, the state courts have with frequency appeared as the antagonist of the Negro Southerner, and the federal courts frequently as his protector.

This protection has come, however, largely through the over-riding decisions of federal appellate courts. As federal jurisdiction is extended, the role of the federal courts becomes ever more vital to the national effort to achieve full justice. The Civil Rights Act of 1964 enlarges the responsibility of the federal courts, including district courts, many of which in the past have been highly protective of segregation. The voting bill now before Congress seeks to by-pass these courts. New federal legislation to protect citizens against the Klan and other dispensers of death and ruin will, however, almost certainly increase the reliance on the district courts of the South for the protection of individual life and liberty.

Pressures to move civil rights issues out of the streets and into the courts continue. The question has to be asked (and it has always had its pertinency in criminal cases) -- what kinds of courts will handle them?

The federal court system in the South, guided by the Supreme Court and the Courts of Appeals, has slowly demonstrated the ability of a frankly white-dominated institution to deal justly with the broad, crucial questions of race. But now, not just the logic and principles of these very decisions but all the practical understanding of human dealings that is implied in the term "jury of his peers," require a closer look at the racial composition of the courts themselves, as administrators of justice to the individual as well as guardians of principle.

This report deals with employment practices and jury composition of the southern federal courts. It is based on such documentation as there is available plus interviews with lawyers practicing in the federal courts of each state.

States covered by the survey are Alabama, Florida, Georgia, Louisiana, Mississippi, and Texas in the Fifth Circuit; North Carolina, South Carolina, and Virginia in the Fourth; Tennessee in the Sixth, and Arkansas in the Eighth Circuit. Each state contains from two to four U. S. District Courts. Data on the Courts of Appeals refer only to their offices and operations within these eleven states.

Clerical records of the federal government do not designate race of court employees, and there are no compilations of statistics on racial composition of juries. No systematic examination of each court in each state was attempted. Respondents for the most part relied on memory and general knowledge. Results of such a survey are not definitive or finally authoritative; there is room for minor errors and oversights. But such a survey does reveal general

patterns, and it is with these that we are concerned. If more detailed and precise research is stimulated, that is good; but the immediate purpose is a new awareness of the need to improve the situation.

I. Employment

The broad patterns regarding the role of Negroes in the federal courts under study in this survey can be summed up in the following statistical table:

RACIAL DISTRIBUTION OF OFFICERS AND PERSONNEL IN SOUTHERN FEDERAL COURTS

	TOTAL	WHITE	NEGRO
Circuit Court Judges	12*	12	0
District Court Judges	65	65	0
Referees in Bankruptcy	55	55	0
U. S. Commissioners	253	253	0
U. S. Clerks	28	28	0
Deputy U. S. Clerks	321	321	0
U. S. Attorneys	29	29	0
Assistant U. S. Attorneys	158	153	5
Jury Commissioners	109	109	0
U. S. Marshals	29	29	0
Deputy U. S. Marshals	165	156	9
Secretarial and Clerical	364	**	**

*This is the number of judges of southern residence now serving on the Fourth, Fifth, Sixth, and Eighth Circuits. The numbers respectively are three, seven, one, and one.

**Exact number of Negroes not ascertainable. The number, from observation, is quite small.

The above table may possibly overlook some Negroes in some positions. But it cannot be far from the exact numerical situation.

The circuit court and district court judges are appointed by the President of the United States, with the advice and consent of

the Senate. So are the United States attorneys and marshals. The clerks of the respective courts are appointed by the judges. The judges also appoint U. S. commissioners, jury commissioners, and the referees in bankruptcy. The clerks select their own deputies and clerical assistants, subject to approval of the judges. Assistant U. S. attorneys are appointed by the Attorney General of the United States. The Attorney General authorizes marshals to appoint deputy marshals.

Exclusion of Negroes from the top positions in the system obviously has the practical effect of virtually eliminating them from lesser positions. The influence on appointments and hiring by southern office-holders through political party patronage channels can't be overlooked.

Of the nine Negro deputy marshals there are two in Alabama, one in Mississippi, two in North Carolina, one in South Carolina, two in Tennessee, one in Virginia. Of the five assistant United States attorneys, one is in North Carolina, one in Tennessee, two in Texas, one in Virginia. This is at best tokenism.

In no state are Negroes serving in the positions of importance and highest responsibility except in token numbers as deputy marshals and assistant U. S. attorneys, and in four states - - Arkansas, Florida, Georgia, and Louisiana - - in none of these positions at all.

In lesser positions, a Negro clerical worker was noted in Alabama, a bailiff in both Florida and Georgia, court criers in Virginia and South Carolina, and two secretaries in Texas. Again, some may have been overlooked, but not enough to change the general picture.

In nearly every state, employment of Negroes in custodial jobs

was noted. Use of Negro employees designated as "criers" or "messengers" as valets, chauffeurs, and the like was reported. In Georgia, such an employee's duties were described as helping the judge with his robes, bringing his books, and driving for him.

A respondent in Alabama said: "If it were not for the lone Negro deputy marshal, the District Court in Birmingham would look like the County Courthouse." A respondent in Virginia, when asked if he were describing Negro employment in addition to a deputy marshall and two criers as "negligible," replied: "non-existent." Instances were cited in Tennessee, Texas, and Georgia of Negroes turning down appointments or jobs. Strenuous opposition was encountered to appointment of the three Negroes in responsible jobs in North Carolina. This came from various sources, including political ones.

II. JURY SERVICE

Negroes are called and do serve on petit and grand juries in the southern federal courts. Estimating and evaluating the degree to which they do is of course not an exact science. One respondent's "tokenism" might be another's "substantial numbers" or another's "fair amount."

But for the very most part, lawyers interviewed in each of the eleven states were not satisfied that Negroes are serving on juries to the extent that they should be.

In Alabama, a typical jury panel was described as five or six Negroes among 110; Negroes occasionally serve on grand juries. An Arkansas respondent said he and others estimated that out of double panels of 40 to 50 persons, three or four might be Negroes, and out of a single panel of 24, one or two might be Negroes. In most

cases in Arkansas, lawyers consider Negroes as "ciphers" who will go along with the majority, but they are said to dismiss Negroes when opposing counsel has been active in civil rights. There is a general understanding in Arkansas, a respondent said, of the need to avoid the appearance of systematic exclusion. In Florida, one sees "as many Negroes as women" on jury panels; their service was termed "more than token," but less than reflective of Negro population. Negroes were said to be called "fairly" for jury duty in Louisiana, but more than average numbers are eliminated by challenge or excuse from serving on the jury. The same was said of South Carolina. Mississippi's situation was described as "token." So was Tennessee's, Georgia's, and North Carolina's, with recognition in the latter of some improving efforts. In Texas, the estimate ranged from "token" to "substantial numbers," with more of a conflict of opinion among respondents over whether enough Negroes serve than in other states. A Virginia respondent said that from five to seven Negroes might be on a panel of 30, from two to five on a grand jury. A respondent said the number serving on federal juries throughout the state is "not sufficient."

The respondents described two problems involved in getting satisfactory numbers of Negroes on federal juries. One is whether or not enough Negroes are called for jury service in the first place. The other is whether among those called, even if it is a "fair" number, enough Negroes get through the various processes of attrition to do what really counts -- actually serve on a jury.

One often cited reason for a smaller number of Negroes called for jury duty is the lack of knowledge of the Negro community on

the part of the mostly white court personnel. (All southern jury commissioners are white.) Prospective jurors are generally selected by a procedure described by the Judicial Conference of the United States in The Jury System in the Federal Courts, September, 1960. It involves getting persons of substance to recommend those who might be selected. Often, only white persons make these recommendations. Even the Negroes who make them might not be persons of knowledgeable acquaintanceship in the Negro community. They are often the Negroes who happen to come into contact with white persons.

A Tennessee respondent said officials go to persons such as the presidents of chambers of commerce for names for jury lists. Use of state jury lists was reported in parts of Georgia and Virginia. Use of voter registration lists -- which are notoriously low in the number of Negroes -- was reported in Mississippi.

Some respondents singled out individual district courts where genuinely conscientious efforts seem to be made, with varying degrees of success, to get representative numbers of Negroes on the jury lists. These included the Middle District of Florida, the Atlanta Division of the Northern District of Georgia, the Middle District of North Carolina.

The lawyers interviewed were inclined to attribute the high amount of attrition among prospective Negro jurors mostly to racial circumstances, partly to other causes.

Peremptory challenges by opposing attorneys account for some of the attrition, particularly where the case involves Negroes. Negroes, in the view of defense attorneys, value Negro life and welfare, it seems, more highly than whites. Another reason often cited is economic, and it applies to large numbers of whites as

well. Hourly wage earners (unless they have a union contract or other agreement guaranteeing compensatory pay) and persons of low income generally are unable to give up the working time (and pay) that jury service entails. So they get excused if they can. Negroes in disproportionately large numbers, compared with whites, are hourly wage earners and low-income workers in the South. A respondent in Mississippi commented that most Negro hourly workers there could probably earn more serving on a federal jury.

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The broad findings of the study show that a Negro involved in federal court action in the South could go from the beginning of the case to the end without seeing any black faces unless they are in the court audience, or he happens to notice the man sweeping the floor.

The problem of the personnel of the courts seems easily and obviously remediable. More Negro appointments and hiring are needed. There are reports of political and other opposition when conscientious efforts are made to accomplish this. There are also reports of instances where Negroes turned down appointments or jobs. Negro attorneys are in short supply in the South, but the survey does not indicate by any means that their number or that of other qualified persons has been fully called upon.

The courts seem out of line with the fair employment hiring practices of federal agencies, not to mention the spirit and philosophy of the civil rights statute.

But the employment practices of the court system is not the only, or even the largest, issue. The responsibility for the appointment of federal judges and the U. S. attorneys is the

President's. At its 1964 Annual Meeting (November 20-21) the Southern Regional Council adopted and conveyed to the President a resolution which said in part:

> It is our strong conviction that only men of the highest professional competence and the fullest devotion to the declared principles of the Constitution should be charged with the judicial responsibility of enforcing federal laws in the South. It is our further conviction that no appointment contrary to these qualifications, however strongly urged by state or Congressional spokesmen, can satisfy the new politics of the South. In a situation where plain talk is desirable, we would report as plainly as we can that the progressive leadership of the South, both Negro and white, would find the appointment or promotion of any judge of well-authenticated segregationist views to be a severe blow to regional, national, and democratic interests.

The problem of jury service is more complex. If the impressions of respondents in this survey are correct, then a great many more Negroes need to be called and to serve on southern federal juries. The widespread reports of nonuse of low income and hourly income workers on southern juries raise 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.

Proposals have been made to select jury lists much as public opinion poll samples are chosen -- at random in such numbers from lists of all qualified persons so as to get a true cross-section of the community in terms of the various socio-economic factors, including race and income level. Some such fresh approach seems needed.

There is an urgency to this. The goal of nondiscriminatory selection of juries is to assure that only the facts and evidence of the case will affect outcome of a trial. It would be just as much a tragedy if public clamor and legal maneuvering over exclusion of Negroes from juries were to become a factor in the outcome of a trail as when this results from discriminatory bias in the composition of a jury.

Reform of the basic institutions of American society is compelled by the logic of the civil rights movement. What began as an effort to correct the most glaring inequities of racial discrimination requires that the general structure of inequity be overhauled, looking toward the ideal of liberty and justice for all.