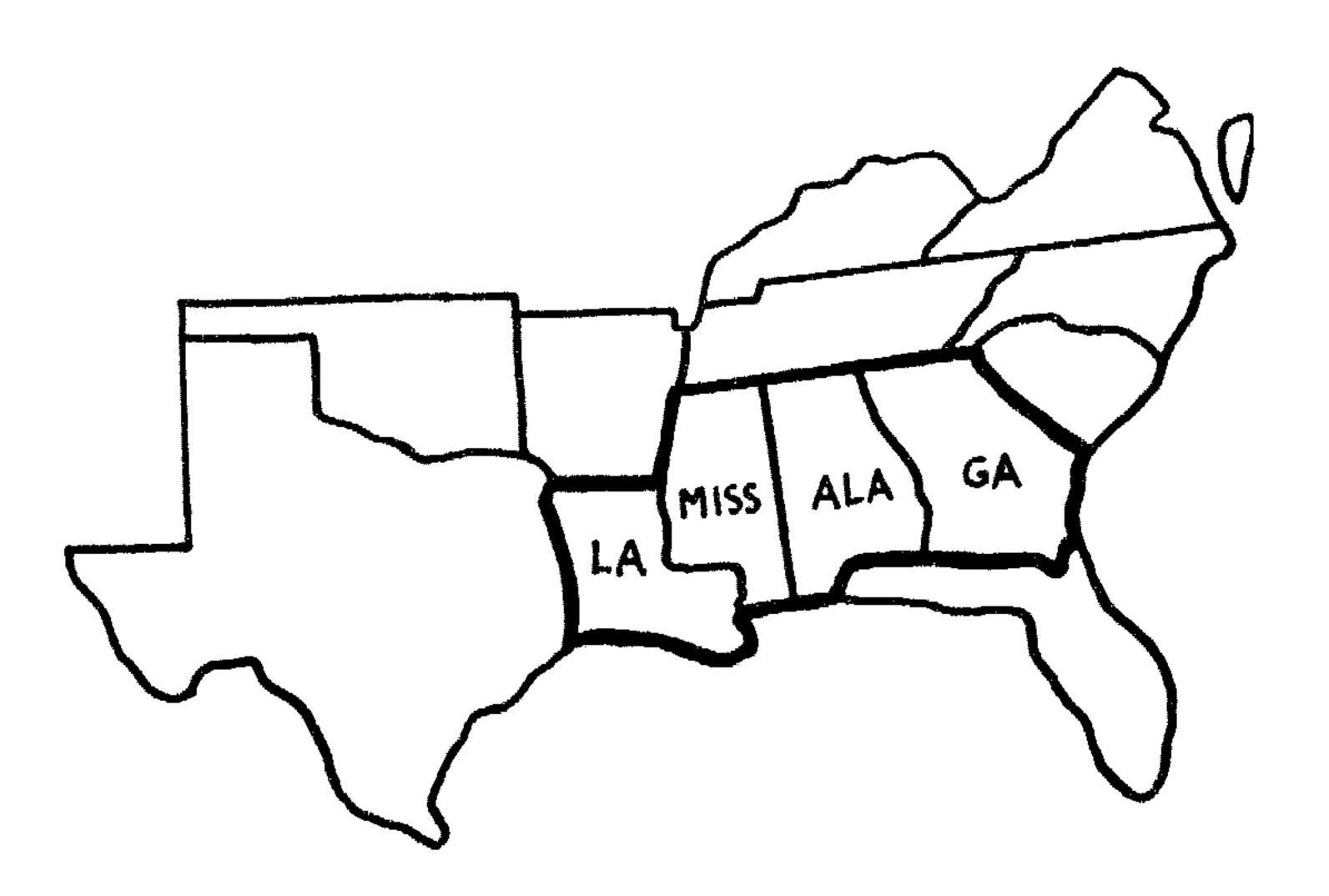
# Justice in the American South

ANTHONY LESTER



published by AMNESTY INTERNATIONAL I Mitre Court Buildings, Temple, London, E.C.4.

Post free charges 5/6d. 4 N.F. 3 DM. \$ 1.00 U.S.

#### Introduction

At its meeting in Hamburg in June 1964 the International Executive of AMNESTY EXECUTIVE decided to send a delegate to the Southern States of U.S.A. Its purpose was, as with all AMNESTY'S missions, to discover who was in prison for opinion or religion and what could be done to secure their release. The Executive knew that there were many Negroes and Civil Rights workers arrested, and imagined that there would be more during the period of what came to be called "The Summer Project," described in this report. The names of those arrested are not set out in this document, for the information would be repetitious, but it is all recorded in the "Prisoner of Conscience Library," in the Temple in London, along with details about such prisoners in 70 other countries. The methods to be taken to bring about the liberation of the prisoners is also not to be found here, since these are domestic matters within the AMNESTY movement, not for general publication.

The delegate selected to undertake this journey of exploration was Anthony Lester, a London Lawyer. He was chosen because of his expert knowledge of the Civil Rights movement and of the legal issues involved, gained during a previous period of study at Harvard Law School, during which he had visited the Southern States. The Executive is deeply indebted to Anthony Lester for giving up three months for this mission; like all AMNESTY delegates he received no fee. This is a voluntary organisation of those who are sufficiently concerned with personal freedom to be prepared to make sacrifices. As always it is now, as it was in July 1964, short of the money vital to save lives and liberties. This journey could not have been undertaken without the financial contribution of a German Bank and Trade Union paid to AMNESTY'S German Section, nor could this report be printed without funds provided by the Danish Section. To those who have given money the Executive returns its thanks; to those who are about to read this report it offers its welcome. Come and join us in our work. We need more than tacit approval; we need to quicken every deadened conscience in the world.

### THE INTERNATIONAL EXECUTIVE

Peter Benenson, Great Britain (President); Maitre Nicolas Jacob, France; Advokat Bent Knudsen, Denmark; Sean MacBride, S.C., Ireland (Chairman); Dr. Herman Todts, Belgium; Dr. jur. Hajo Wandschneider, Germany

AMNESTY INTERNATIONAL has Consultative Status with both the United Nations and the Council of Europe.

# JUSTICE IN THE AMERICAN SOUTH

#### 1. INTRODUCTION

This report is based on a ten-week visit to the United States, made for Amnesty International in the summer of 1964. The main purpose of my visit was to inquire into the administration of justice in the Southern States, in ordinary criminal cases involving Negroes, and in cases involving Negro or white civil rights workers. I was also asked to provide some background information about present conditions generally in the Deep South, the Civil Rights Movement, and the work of the Federal Government.

The "long hot summer of 1964" was a dramatic moment for such a visit. It was the time of the Mississippi Summer Project—a massive campaign by over eight-hundred students to enfranchise Negroes in Mississippi—which began tragically with the murder of three students in Philadelphia, Mississippi. It was the time when rioting broke out in Harlem and spread to Negro ghettoes in other Northern cities, and "backlash" became a household word. And it was the time when the new Civil Rights Act came into force, banning discrimination in public facilities and many areas of education and employment.

These events will be sifted and analysed over and over again by journalists, politicians, sociologists, and psychologists. They were largely anticipated twenty years ago by Professor Gunnar Myrdal in his brilliant study "An American Dilemma." The main justification for the present report is the curious gap in information on this side of the Atlantic. At least I can claim that what is described was seen or told to me at first hand, and that, although I went to the States as a committed sympathiser of the struggle for civil rights, I had the advantage of being a foreign observer.

As for my method, I began in New York and Washington D.C., and then went South to Georgia, Alabama, Mississippi and Louisiana. Since the Summer Project was centred in Mississippi, most of my time in the Deep South was spent in that state. I was able to interview over two-hundred Federal Government officials, State judges, attorneys, police officials, journalists, and members of civil rights and white supremacist organisations. With rare exceptions, everyone was helpful and courteous. As far as possible I tried to observe the actual conduct of trials. The major courts were in recess for the summer vacation, so that usually I was able to see only minor proceedings.

One word of warning must be stressed at the outset. It would be deplorable if this report were interpreted as an attack on the United States or its legal system. The "Southern way of life," as Southerners are proud to point out, is not the American way of life. The Deep South is different from the rest of the States in its political system, its economy, its press, its cultural values, and its social customs. It is also different in the way it administers criminal justice—at any rate where "the Race Question" is involved. On the other hand, the United States Government and most State governments are committed

to a policy of racial equality and integration, and, throughout the United States, hundreds of private and official groups are fighting to protect civil rights guaranteed by the Constitution. We have little to teach and much to learn from the United States about combating racial discrimination. In many ways the Deep South is as different from the States as it is from Great Britain. In most of this report the Deep South will be treated as though it were a separate foreign country, but, at the end, I shall try to relate it to the nation of which, in spite of itself, it remains part.

## 2. THE NATURE OF THE DEEP SOUTH

One can no longer speak of the American South as a single homogeneous area. Admittedly the eleven States of the Confederacy retain many common characteristics, and Washington D.C., although only an hour's flight from New York, is plainly a Southern city. But industrial change has splintered Southern unity. It has liberalised the States of the upper and mid South-Maryland, Virginia, North Carolina, Kentucky, Tennessee and Arkansas. South Carolina, fifty years ago a centre of white supremacy, is now in transition, and in Northern Georgia, for over twenty years Atlanta has been the city which is "too busy to hate." It is only in the lower South that the "Southern way of life" remains relatively unchanged. This is the Black Belt, a huge area of black soil stretching from Northern Florida and Southern Georgia, west across Alabama, Mississippi and Northern Louisiana. This is the Deep South. It has a higher proportion of Negroes than the rest of the South; it is largely rural; and it is the home of white supremacy. Within the Deep South, however, there are many souths. Broadly speaking large cities like Birmingham and New Orleans are relatively more liberal than the smaller cities like Montgomery and Jackson. Even Mississippi, the most conservative State, has liberal oases in the river town of Greenville in the North and the coastal strip along the Gulf of Mexico.

However the similarities are more important than the differences. The whole area is poor and underdeveloped. Its per capita personal income is \$1,724 per annum compared with \$2,357 for the United States as a whole. And Mississippi is poorest of all with a per capita personal income of \$1,282. In February 1963, one in three people in the Mississippi Delta received free food from the Federal Government. Mississippi is also the most rural state. Its largest city, Jackson, has about 150,000 inhabitants, and Meridian, the second largest, has about 50,000.

The white population of the Deep South is of mainly British descent. White Southerners constantly remind the English visitor of their racial purity, their aristocratic tradition, and their gallantry. One is struck by the nostalgia, sentimentality, chivalry, and, above all, the fantasy in the proud explanations by Southerners of their way of life.

The Southern way of life is segregation and every aspect of Southern life is affected by the "Race Question." There is only one political party—the party of white supremacy—whether for the moment it is

called Democrat or Republican. The white electorate in the Deep South does not choose between competing political programmes or philosophies, but between rival demagogues, each attempting to show that he can best preserve the status quo. There is no significant public dissent on white supremacy, whether by politicians, lawyers, businessmen or journalists. The role of the Southern press is particularly important in the absence of any national newspapers. With certain courageous exceptions, Southern newspaper editors have been prepared to echo the views of the demagogues. Such dissent as there is, is privately expressed to the visitor in conspiratorial tones. The prevailing mood is one of fear: fear by the white conservative of the "Black Peril," a guilty foreboding that one terrible day the Negro population will rise up against the whites: and fear by the Negro and white dissenters of economic reprisals, imprisonment, beatings, and killings.

These then are some of the most striking aspects of the "Southern Way of Life"—its diversity, the rapid changes in recent years, the diehard conservatism, the poverty of whites and Negroes, the lack of many big cities, the value placed on chivalry and violence, the lack of realism, the one-party system of government, the absence of public dissent, and the atmosphere of fear. But, of course, the most striking feature of Southern life is racial segregation itself.

#### 3. SEGREGATION AND DESEGREGATION

The system of racial segregation was first developed in the States as recently as the 1880's and 1890's. The slave trade was prohibited in the States in 1808, and slavery was finally abolished in 1863 by the Emancipation Proclamation, which freed about four million slaves. So long as the Negro's status was fixed by slavery there was no need to resort to segregation to keep him in his place. But even before the Civil War there were several hundred thousand Negroes who were not slaves and yet were not altogether free. They were deprived of full rights and privileges of citizens, of equality in the courts, of freedom of assembly and movement, and they were socially ostracised. They were scarcely better treated in the North than in the South. They were often segregated in churches and schools. Laws prohibiting intermarriage with whites were common in both Northern and Southern states. In 1843, three railways in Massachusetts maintained separate carriages for Negroes.

After the Civil War for the brief period of Reconstruction, the Federal Government attempted, with some clumsiness, to improve the condition of newly-freed Negroes. The South was occupied by Federal troops. Discriminatory laws were repealed. Negroes were enfranchised and enjoyed considerable political influence. Negro senators and judges were elected. A Freedman's Bureau attempted to improve Negro working conditions. Northerners came South to teach. But Northern interest in the position of the Negro was fickle, and it effectively ended with the withdrawal of Federal troops from the South in 1877. The Northern liberals left the South to handle its own internal government, and soon it was the extremists who did the govern-

ing. The Ku-Klux-Klan, a secret organisation of Confederate war veterans, became the champions of white supremacy, and initiated a reign of terror marked by lynchings, rape, and floggings. The revenge upon the newly emancipated Negroes was swift and terrible. By terror they were dispossessed of their rights as free men. In the wake of violence, in the 1890's, Southern legislatures adopted the notorious "Jim Crow" laws which completely segregated the two races. In 1890, Mississippi became the first state to disenfranchise the Negro. making payment of a \$20 poll tax and the passing of a test interpreting the Constitution requisites for the privilege of voting. South Carolina followed suit in 1895, and Alabama, North Carolina, and Louisiana created similar obstacles excluding Negroes from the ballot. In Mississippi the number of those entitled to vote was reduced from 257,305 to 76,742. In 1896 there were 130,334 registered Negro voters in Louisiana; in 1904 there were 1,342. In 1896 Negro registrants were in a majority in 26 parishes: by 1900 in none. Separate facilities were created for Negroes on railways, in waiting rooms, toilets, restaurants, cafes, and schools. There were even separate bibles for Negro jurors. Complete segregation was legalised by statute, and in 1896 it received the blessing of the U.S. Supreme Court which sanctioned "separate but equal" facilities in transport. The Negro. already cowed, was crushed by this combination of law and lawlessness. Within a generation of the abolition of slavery, the modern system of segregation was almost complete.

Negroes migrated to the North, especially in two waves during 1916-18 and 1922-23, and obtained some advantages as a result of the labour shortage created by the First World War, but the improvement was slight, and generally they met with discrimination in employment and housing. During the Depression in the 1930's, Negro unemployment was much higher than white, but the social welfare programmes of the New Deal gave relief to many Negroes. The Second World War increased industrial production and employment opportunity, and in 1941 Negro trade union leaders persuaded President Roosevelt to establish a policy of equal opportunity in industry engaged on Government defence work. But the half million Negroes who served overseas in Europe and the Pacific during the war fought in separate units, and it was not until 1948 that President Truman eliminated racial discrimination from the Armed Services. After the Second World War, two factors were profoundly to affect the fate of Negroes in the North. The first was that, following the migration of large numbers of Negroes from the South, Negro ghettoes were created in Northern cities like New York, Detroit and Chicago. The Southern Negro may have been segregated, but he did not usually live in a ghetto. Indeed, in many ways, the Southern white boast of greater intimacy with Negroes than in the North, was true—even if it was only the intimacy of Master and Boy, or the Negro mammie or mistress. In the North, the rural poor Negro became the urban slum-dweller, subject to exploitation, overcrowding, and disease. The ghetto became the forgotten part of the city to which Negroes returned each night. The white population

largely withdrew into apathetic indifference, lamenting the higher crime rate among Negroes, without taking action against its social and economic causes. The second crucial factor is employment. There are over 18,000,000 Negroes in the United States, about 10% of the total population. More than three-quarters of them are in the three lowest occupational categories compared with 39% of all white workers. In 1952 the average annual income per Negro family was 43% less than that of a white family, and by 1963 the gap had widened to 45%. These figures indicate that most Negroes do unskilled or semi-skilled work, for which they are paid less than equivalent white workers. Furthermore, unemployment rates for Negroes are substantially higher than for whites in all age groups. The National Urban League has estimated that in 1961, 13% of non-white men were unemployed as compared with 5.7% of whites. Negro youth constitute 15% of the total youth population between the ages of 16 and 21, yet are 50%, of the youth population in this age bracket who are both out of school and unemployed. Terrible though these figures are, they do not take account of the future effects of automation. It is in the area of unskilled employment in which Negroes are concentrated, that automation will create the greatest redundancy. Negroes will be competing for jobs which are constantly disappearing.

The extent of the Negro housing and employment problems can be measured by percentages. The appalling social and cultural consequences are less easily quantified. The Southern Negro might be cowed by violence, viciously exploited, living in abject poverty, and deprived of every opportunity for self-fulfilment, but (at least until recently) he could hope for a better life for himself or his children in the cities of the North. The Negro in Harlem feels that he can go no further. He is deprived even of hope. It was this hopeless trapped feeling of claustrophobia which erupted in rioting in the Northern Negro ghettoes in July and August 1964. Whatever the influence of Negro militant groups, they could have accomplished little without this collective frustration and despair.

The condition of the Southern Negro is starkly simple. The barriers are plainly visible and are sanctioned by Southern laws. Southern white supremacy can be fought by liberal whites and Negroes with the certainty that they will overcome one day. But many perceptive members of the Civil Rights Movement realise that when they have won the battle against legalised segregation in the South, they will have to fight the apparently endless war against de facto segregation in both North and South. Perhaps, since the North is far more industrialised, it is there that the worst problems will ultimately have to be faced. The great difference is, of course, that in the North, State and urban authorities are committed a policy of racial integration and equal opportunity, and are willing to co-operate with Federal programmes to attain these ends. In the North, the political significance of the Negro vote is considerable, and will become more important as the result of recent decisions of the U.S. Supreme Court. Liberalism apart, the Northern Negro vote will mean that the plight

of Negroes throughout the States will increasingly become the concern of the Federal and State Governments. Meanwhile, the role of private civil rights groups is crucial in bringing problems of racial discrimination into American politics.

#### 4. THE CIVIL RIGHTS MOVEMENT

It is difficult to know at which point to date the beginning of the Movement to obtain equality of treatment for Negroes. There were ride-ins and sit-ins in the South in the 1870's. In 1909 the National Association for the Advancement of Coloured People (NAACP) was founded. In 1941, it was a threatened march on Washington which led President Roosevelt to create the Fair Employment Practices Committee. In 1942 the newly-formed Congress of Racial Equality (CORE) organised sit-ins in Chicago. In 1954 the U.S. Supreme Court, in the momentous Brown decision, held that segregated State schools were inherently unequal, and therefore unconstitutional. However, the spiritual growth of the present Civil Rights Movement is usually traced to the Montgomery Bus boycott of 1955, which assumed a symbolic quality under the leadership of Dr. Martin Luther King Jr. The Montgomery Bus boycott did not stimulate immediate action elsewhere, but it indicated what might be achieved by collective action. The technique became known as "direct action." Its aims were defined by Dr. King in his letter from Birmingham City Gaol written in April 1963:

"Non-violent direct action seeks to create such a crisis and establish such creative tension that a community that has constantly refused to negotiate is forced to confront the issue. It seeks so to dramatise the issue that it can no longer be ignored."

The 1950's were also the period of the growth of new organisations to resist the Civil Rights Movement. In particular, White Citizens Councils were formed in Mississippi and spread throughout the South. The strength of the Citizens Councils was in their respectability. Unlike the Ku-Klux-Klan, and its recent new sister organisation—Americans for the Preservation of the White Race—the Citizens Councils did not officially advocate violence and terrorism, but used more subtle techniques of resistance to the U.S. Supreme Court and the Civil Rights Movement. They gained their support in the towns and played a crucial part in crystallising public opinion against any desegregation, at a time when no responsible Southern leaders were urging compliance with the law.

The next milestone in the recent history of the Movement occurred on February 1st, 1960, in Greensboro, North Carolina, when four Negro students sat down at the lunch counter of a department store where Negroes were forbidden, and tried in vain to be served. This gesture was the beginning of the Sit-In Movement. Within six weeks, sit-in demonstrations had spread to every Southern state except Mississippi. The Southern Regional Council (the main research organisation on the South) has observed that "the spread of the sit-ins

was largely spontaneous and imitative: students (including some white ones) were the participants, and lunch counters the targets. The protest was easily understood. It was against the refusal to serve food to Negroes by stores only too glad to sell them anything else. The spirit (and in all but the rarest of cases, the performance) was in the tradition of non-violence."

Many demonstrators were beaten and arrested. The Southern Regional Council estimates that 70,000 Negroes and whites actively participated in sit-in activities in 20 States. 3,600 students and supporters were arrested in Southern and Border states, and at least 141 students and 58 faculty members were dismissed by Southern colleges and universities. By September 1961, however, one or more eating establishments in 108 Southern or Border State cities were desegregated as a result of the sit-ins. Only in Alabama, Louisiana, Mississippi, and South Carolina did they fail to achieve any desegregation. One other result of the sit-in movement was the creation in April 1960 of the most militant civil rights organisation—the Student Non-Violence Co-ordinating Committee (SNCC), which grew out of Dr. Martin Luther King's own organisation the Southern Christian Leadership Conference (SCLC). SNCC was to become the spearhead of subsequent direct action.

On March 13th, 1961, the next step was taken, when the Congress of Racial Equality (CORE) announced that a small group of Negroes and whites would travel on interstate buses from Washington to New Orleans to test racial discrimination in interstate travel terminals. The "Freedom Ride" set out on May 4th, 1961, in two buses. When one bus was six miles from Anniston, Alabama, it was met by a mob which slashed its tyres and destroyed it with fire. The other bus reached Birmingham, Alabama, where the Freedom Riders were savagely beaten by another mob. Other Freedom Rides followed, in which members of CORE, SCLC, and SNCC participated. Violence became so dangerous in Alabama, that on May 20th, 1961, President Kennedy sent 600 Federal Marshals to Montgomery. Those riders who travelled on from Montgomery were arrested by the hundred when they reached Jackson, Mississippi. These mass arrests effectively ended the Freedom Rides, but the rides achieved their aim. In November 1961, the Inter-State Commerce Commission (a Federal Government agency) banned the use of segregated terminals by interstate carriers.

The Freedom Rides also led indirectly to a different form of direct action. In November 1961 attempts were made by members of SNCC and NAACP in the bus terminal at Albany, Georgia, to test compliance with the Inter-State Commerce Commission ruling. The attempt was met with arrests, which in turn provoked protests against all forms of segregation in Albany, in transport, employment, hospitals, the library, and parks, and against police brutality. The Albany Movement, as it became known, was the first general attempt to challenge segregation in the heart of the Deep South by protest marches,

boycotts, and pickets. In immediate terms the Albany Movement failed. The local police force acted with great efficiency. Demonstrators were quickly arrested and white mob violence was prevented. The Albany police force received national congratulation for thus preventing violence. Their role in preventing the demonstrators from exercising their constitutional rights was largely forgotten. The police used the same technique that had been tried successfully by the police in Jackson, Mississippi during the Freedom Rides—to arrest all demonstrators on sight.

However the Movement could no longer be contained. In April 1963 the scene of activity shifted to Birmingham, Alabama. For five weeks, under the leadership of the SCLC there were demonstrations and sit-ins, in which thousands of young school children took part. It has been estimated that 6,499 of the 7,386 Negro high school pupils in Birmingham were absent from school during one day at the height of the demonstrations. The reactions of the police were seen on television across the world—dogs and high pressure hoses were used against the demonstrators. There was a brief truce, and then on May 11th the motel in which several civil rights leaders were staying was bombed. Within hours the streets of Birmingham were filled with several thousand angry Negroes who threw bricks and stones at police and firemen. The Alabama State Troopers headed by Al Lingo, Director of Public Safety, arrived, and, despite protests from the City police, took control of the city. Independent observers reported that the State Troopers behaved with unparalleled brutality. During the ten weeks after Birmingham there were demonstrations in 186 cities, and between April 1st and November 1st, 1963, there was some desegregation in at least 161 cities and counties of the eleven States of the old Confederacy. In 1963, over 20,000 Negro and white demonstrators were arrested in the South for their Civil Rights activities. The argument of the white South that "their" Negroes were content with their way of life lost whatever plausibility it may have had. On August 28th, 1963, 200,000 Americans (mostly Negro) took part in the peaceful March on Washington D.C., demonstrating the extent of the national commitment to racial equality.

Finally, there came the 1964 Mississippi Summer Project, in which once again the form of protest by direct action changed. The origin of the Summer Project was in August 1961 when SNCC moved from merely co-ordinating student civil rights activities to employing full-time field workers. Robert Moses, who has since become a legendary figure in the Movement, travelled to the most dangerous part of Mississippi, the rural South-West, and established himself in the tiny town of Mc Comb as a SNCC Field Secretary. No civil rights group had previously dared to work in this area. Moses quickly became a marked man. He was threatened, beaten, and arrested, on several occasions, but he stayed, and SNCC stayed in Mississippi. The SNCC workers realised that sit-ins were not relevant to conditions in Mississippi, where Negroes were too cowed by the local tradition of beatings and lynchings, and, above all, too poor, to consider even

attempting to eat at white lunch counters. The need was to build morale among local Negroes. The U.S. Department of Justice was urging civil rights leaders to concentrate on registering Negroes as eligible to vote rather than on testing public facilities by sit-ins, freedom-rides, pickets and mass marches. Many civil rights workers interpreted this advice as intended to distract attention from further direct action, but Moses and others realised that any attempt to register Negroes to vote would create at least as violent a reaction from the whites in Mississippi as the more traditional forms of direct action, for votes meant political power—the key to white supremacy in the South.

It may be helpful at this point to give some account of voting conditions in the Deep South. Under the American Constitution, the separate States have power to regulate the conduct of elections. In 1865, the only States which permitted Negroes to vote on the same footing as whites were Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and Wisconsin. New York and Tennessee permitted restricted Negro suffrage. Since 1870, the Fifteenth Amendment to the U.S. Constitution has prohibited the States from denying or abridging the right to vote on account of race or colour. Individual States retain the right to prescribe qualifications for voting so long as they do not discriminate on account of race or colour. After the withdrawal of Federal troops in 1877, Negroes were at first disenfranchised in the South by the fraud of stuffed ballot boxes and the violence of the Ku-Klux-Klan. From 1890 changes were made in the voting laws to introduce tax, property, residence, and education qualifications designed to make "legal" discrimination against Negroes easier to accomplish. Although the situation has recently improved in the upper and mid-South, in Mississippi, Alabama, and Louisiana the Negro remains largely disenfranchised. In Mississippi, about 28,500 Negroes are registered; another 394,000 are eligible but unregistered. In Alabama, a 110,000 Negroes are registered, and 370,000 are eligible but unregistered. In Louisiana, 164,800 Negroes are registered, and 350,000 are eligible but unregistered. In March 1963, the Voter Education Project, which has been attempting to enfranchise Negroes in the South, described the combination of "economic pressure, threats, coercion, physical violence and death" by which Negroes were prevented from registering. The right to vote is crucia<sup>1</sup>, since not only are State representatives to Congress and to the State legislature elected, but also the local judges, sheriffs, school boards, and other local officials. If the Negroes in Mississippi, Alabama, and Louisiana (and to a lesser extent, Georgia), can win the vote, and can then exercise it without fear of intimidation. Southern white supremacy will be over.

This background is necessary to understand the meaning of the 1964 Summer Project in Mississippi. The inspiration for the Summer Project came largely from SNCC. One of its aims was to publicise conditions in Mississippi to the American people. Another was to build up morale among Mississippi Negroes. It was never thought that the Summer Project would lead to an immediate substantial increase in the number of Negroes actually registered. As Martin Luther King

pointed out, even at a slightly better rate than exists at present, it would take 135 years to register half of Mississippi's eligible Negro voters.

The Summer Project was organised in late 1963, when SNCC, CORE, SCLC, and NAACP combined to form the Council of Federated Organisations (COFO). About eight hundred young people volunteered to participate in the project. The volunteers were given two main tasks. They were to operate as voter registration workers throughout Mississippi, mobilising the Negro community, and they were also to staff 30 "Freedom Schools" for Negro children in which to "begin to supply the political education which the existing system does not provide for Negroes in Mississippi." In addition, Community Centres were to be established to provide educational and cultural programmes, instruction in pre-natal and infant care, and adult literacy and vocational training. The volunteers received intensive preparation in Oxford, Ohio, in June 1964, during which the dangers of their mission were forcefully brought home to them.

It was generally believed that Southern white reaction would be violent during the "long hot summer," and so in the late Spring 1964, the NAACP Legal Defence and Educational Fund, the American Jewish Committee, SNCC, the American Jewish Congress, the National Council of Churches of Christ, CORE, and the American Civil Liberties Union formed a Lawyers Constitutional Defence Committee to send lawyers to Mississippi to try to protect the legal rights of the volunteers and of Negroes seeking the right to vote. Over a hundred and fifty lawyers went to various cities in the Deep South on two-week tours of duty. Many of these lawyers had little experience of constitutional or criminal law, or of conditions in the South, but their courage and competence in the face of considerable danger was impressive. A similar group of doctors moved to Mississippi to care for the health of the volunteers. Perhaps these preparations sound melodramatic, but given conditions in the Deep South they were necessary.

The volunteers in Mississippi have been attempting to accomplish a revolution. But it is an odd revolution; it does not seek to oppose, but rather to implement national Government policy. The techniques of revolt are non-violent, and, though often illegal according to Southern State laws, have the approval of Federal law. One major cause of the revolution was the Supreme Court's *Brown* decision in 1954. One main obstacle to the revolution is Southern law—made by State legislatures, enforced by police, judges and juries. Therefore the role of law in the South, which is the subject of the rest of this report, is at the very centre of the civil rights struggle.

#### 5. THE BACKGROUND TO SOUTHERN JUSTICE

#### (i) INTRODUCTION

Throughout America the main responsibility for the administration of justice rests with the individual States. Each of the 50 states of the Union administers its own laws in local courts, while the separate

system of Federal law is applied nationally in the Federal courts. Almost all State laws are based upon the English Common Law, much of which is preserved in an older form in the States than in England.

Trial by jury is the rule, and the sheriff, is responsible for law and order in his county. Policing functions are shared by State, city and county officials. One crucial difference from the English system is that, in America, local judges, prosecuting attorneys, court officials, sheriffs, and police chiefs are usually elected rather than appointed. They are therefore directly dependent on local opinion. This dependence on local elections has particular significance in the Deep South in view of the disenfranchisement of Negroes. Judges and police reflect white supremacist attitudes, and the basic ideal of impartiality in the administration of justice is frustrated.

The problem goes still deeper. The Deep South is poor, and pays its police force badly. Not surprisingly, the calibre of country (as opposed to State) police officials is extremely low, and it is the county police who often have the immediate responsibility for maintaining law and order. There is little encouragement of professional standards in local police forces, and very few county policemen have attended a police training college. There is a handful of Negro policemen, but almost always they are not permitted to arrest whites.

The Negro is brought to court in the South by white police. He is kept in a segregated cell. On the way to the courtroom he passes drinking fountains labelled "white" and "coloured." In the courtroom, his Negro relatives and friends sit separately from whites. The court officials are white, as are judge and jury. The laws have been enacted by politicians elected by whites. In the words of one Alabama lawyer, only the electric chair is desegregated. The absence of any effective legal aid system is a national problem in the United States. Since a recent Supreme Court decision, counsel must be assigned to persons accused by serious crimes, but few States provide any satisfactory aid to indigent persons who are accused of less serious offences or who are parties to civil suits. The problem is aggravated in the Deep South, first, because it is a poor region, second, because Negroes make up the majority of the poor, and third, because only a handful of attorneys will act on behalf of Negroes against whites unless they receive substantial fees. To add to the problem, there are very few Negro attorneys, they are concentrated only in the larger towns, and are subjected to intimidation, and occasionally violence, if they venture to act on behalf of civil rights workers.

#### (ii) TRADITIONAL ROLE OF LAW

The modern pattern of Southern justice must be understood in perspective. Under slavery the Negro was merely a piece of property. His master could use bodily force, in certain circumstances even to the point of death, against his slave. Most States enacted laws to protect slaves from unnecessary suffering, but they were not in practice enforced. Similarly although many statutes regulated the behaviour of slaves, forbidding them to possess weapons, to assemble in the

absence of whites, or to leave their plantations without permission, they were rarely enforced, since it was left to the master to control his slaves as he wished. White people in general were regarded as having the right to control the conduct of slaves. Self-defence by any slave against a white man was forbidden and if a white killed a slave, his offence was regarded as against property and could be absolved by payment of a fine. "The police system in the South to a great extent served the explicit purpose of supervising Negro slaves and free Negroes and of hindering the former from escape. They were given the widest licence to seize, whip and punish Negroes and generally to act as the agents of the masters. The police in the South were, by tradition, watchdogs of all Negroes, slave or free, criminal or innocent." (Myrdal, An American Dilemma, 1964 edition, Volume 2, page 532.)

After the abolition of slavery, in a society in which violence was already a respected mode of behaviour, the Negroes lost the protection which their value as property had hitherto provided for them. The Reconstruction Amendments to the Constitution, which gave Negroes equality under the law, only aggravated the paranoia of Southern whites, who feared ultimate Negro domination. The whites reacted violently, and although henceforth inequality had to be disguised so as not to conflict with the U.S. Constitution, in reality, laws, courts, and police were used to keep the Negro as close to slavery as was possible. In 1879, Sir George Campbell, M.P., wrote after a visit to the Deep South, "One thing did astonish me during my tour, and that is, to find how much 'Judge Lynch' survives, especially when the accused are blacks. I imagined he was a thing of the past, but I found that several lynching cases of atrocity occurred before I had been many weeks in the States; that is, hanging by popular movement without the intervention of judge and jury. This is generally the case when there is any alleged assault of any kind by a black on a white woman. The blacks are popularly said to be prone to that kind of crime; with what justice I cannot say. An experienced judge told me that he had known many accused and many hanged, but none convicted on trial. The mere suggestion a black man would like to do something of the kind if he could seems enough to hang him." (Campbell, White and Black, 1879.)

# (iii) SOUTHERN JUSTICE TOWARDS THE NON-POLITICAL NEGRO

The Deep South remains true to its heritage. The segration of the machinery of justice, police, judges, courts and juries, remains. Most Negroes still cannot afford to retain attorneys to defend their rights. Southern officials freely admitted to me that there are four standards of justice. First, where white is against white (apart from the absence of sufficient aid to the poor), there is equal protection of the law. Second, where Negro is against Negro, the common complaint is that Southern courts and police are too lenient. One senior official explained to me that Negroes are primitive and emotional, like children or animals, with little sense of right and wrong. If a Negro commits a crime against another Negro he will usually receive a far lighter punishment than a white against white. If anything the law therefore

encourages lawlessness in Negro communities. Third, where a white commits a crime against a Negro, he will be punished lightly if at all, and the Negro complainant may expect reprisals. Rape is a capital offence in all Southern States, but no white has ever been executed for raping a Negro woman. The last time a white was executed in Mississippi for a crime against a Negro was in 1890. Fourth, where a Negro commits a crime against a white, especially an offence against the person, retribution is swift and severe. The statistics on capital punishment are revealing. In Louisiana, between 1900 and 1950, no Louisiana-born white man, and only 2 out-of-State whites, were ever executed for rape, while 41 Negroes were executed for raping white women. No-one, Negro or white, was executed for rape of a Negro woman. Since 1956, one white has been executed (for murder), and 10 Negroes (3 for rape). In Mississippi, since 1955, 24 Negroes have been executed. 14 for murder, 9 for rape, and one for armed robbery. In the same period 7 whites were executed, but only one was a Mississippian. Even on the assumption that more Negroes than whites commit murder and rape in the South, these figures indicate the extent of discrimination in Southern justice.

But really statistical evidence is unnecessary. One need only enter a Southern courtroom to see discrimination at work. In every trial which I have observed in State courts in the Deep South, Negro witnesses were called by their first names in an obviously patronising manner, in spite of a recent decision of the US Supreme Court that such a practice was unconstitutional. Whenever there was a conflict of evidence between Negro and white, the judge appeared automatically to believe the white man. On no occasion was a policeman's evidence challenged. On one occasion in Canton, Mississippi, a Negro who attempted to sit on the white side of the courtroom was rudely ordered away by a uniformed policeman. Most Negroes are not represented by counsel, yet on no occasion did I see a judge attempting to put the case for a Negro against opposing witnesses.

Perhaps the greatest abuse of legal process occurs outside the courts. The white employer is still regarded in rural areas as the proper person to discipline "his" Negroes, but in the last resort the local police will perform this function. It is the proud boast of the Deep South that its crime rate is lower than elsewhere in the States. Certainly, in such a predominantly rural region, there is little organised crime. But, although throughout the States, there are allegations of police brutality, nowhere are complaints more bitter than in the South. In 1964, a report was published by Loyola University of Police Handling of Arrestees in New Orleans, generally regarded as the most enlightened, liberal, city of the Deep South. The authors found it "hard to avoid the generalisation made by some of the policemen themselves, that harassment is a frequently used weapon to keep the Negroes in line. One attorney told us that the police make a lot of needless arrests just for the sake of filling their statistical quotas. They will go in and clean out an entire Negro bar, arresting twenty to thirty Negroes, while they would never do this to a white bar because of political

peace, apparently only on the basis of evidence that their presence at bus and railway terminals in Jackson in racially-mixed groups put other people in a "foul mood." The police captain in charge neither spoke to nor arrested any people who allegedly were threatening the Freedom Riders. When the Freedom Ride cases came before a Federal court, Judge Wisdom stated in his judgment that "we again take judicial notice that the State of Mississippi has a steel hard, inflexible, undeviating official policy of segregation. The policy is stated in its laws. It is rooted in custom. The segregation signs at the terminals in Jackson carry out that policy. The Jackson police add muscle, bone and sinew to the signs." (United States v. City of Jackson 318 F.2d. 1 at pp. 5-6).

In May 1963, about 1,080 Negro students were expelled or suspended from public schools in Birmingham, Alabama, by order of the Board of Education because, during the civil rights demonstrations, they had been arrested for parading without permit. No hearings were held to determine the propriety of the dismissals. The students were simply told that not enough time remained in the school term to hold any hearings.

On World-wide Communion Sunday, in October 1963, three young women, two of whom were Negroes, were arrested for attempting to attend religious services together at a Methodist Church in Jackson, Mississippi. They never entered the church. When they reached the steps they were told that they were not welcome. A policeman gave them two minutes to move on. As they started to walk away he told them that they had taken too long, and arrested them. They were indicted for trespass and disturbing divine worship. The Police Justices' Court of Jackson, sentenced them to one year's imprisonment and fined each \$1,000.

On December 15th, 1961, 1,500 Negroes demonstrated in front of East Baton Rouge Parish Courthouse, Louisiana, where 23 Negroes had been sentenced to imprisonment for picketing. On April 1st, 1962, Rev. B. Elton Cox a CORE field secretary was convicted of three misdemeanours arising out of the demonstrations. He was sentenced to one year's imprisonment and a \$5,000 fine for impeding the administration of justice by holding a demonstration near the courthouse, and 5 months imprisonment and a \$500 fine for obstructing the pavement.

Clyde Kennard was a Negro from Mississippi, who had served in the United States Army in Korea, and graduated from Chicago University. He returned to Mississippi, and in 1959 in spite of several attempts to dissuade him, he applied to Mississippi Southern College (which was segregated) for admission as a graduate student. Kennard's application was rejected, but he intended to re-apply. Under Mississippi law, no one convicted of felony can be admitted to a State college or university. On September 25th, 1960, Kennard was arrested and prosecuted for being an accessory to the burglary of chicken feed worth \$25 (in Mississippi any accessory to any felony is deemed to be a principal). Kennard was convicted largely on the

evidence of an illiterate 19-year-old Negro who admitted having actually stolen the chicken feed, and was himself placed on probation. The trial had several unusual features (See generally, the *Reporter*, November 8th, 1962, pp. 30-34). The local white jury convicted Kennard, and the judge gave him the maximum sentence of 7 years' imprisonment. When I was in Mississippi, I examined the records of sentences imposed in one county for the past 4 years. The following are typical heavy sentences: forgery, 3 years; burglary and larceny, 4 years; manslaughter, 6 years; armed robbery, 12 years; kidnapping, 5 years; rape, 2 years plus 3 years probation. Assuming that Kennard was guilty, it is hard to avoid the conclusion that the sentence against him was deliberately vindictive. Kennard served a few years, then contracted cancer, was released and died shortly thereafter.

At about 3 a.m. on May 8th, 1963 (according to the brief of the U.S. Department of Justice in a case now pending), unidentified white men exploded 3 fire bombs in the home of Hartman Turnbow, in Holmes County, Mississippi. Turnbow was a Negro who had previously attempted to register to vote. His house was newly decorated but not insured, and he and his family were asleep inside. When Turnbow heard the noise of the explosions, he seized his rifle and ran out of the house. One of the men allegedly shot at him and his family, and Turnbow returned the fire before they escaped. The Turnbows succeeded in putting out the fire and told a local civil rights worker what had happened. They also indirectly informed the High Sheriff. Shortly thereafter, Robert Moses, Programme Director of COFO, came to the house and began to take photographs. The Deputy Sheriff then arrived, and told Moses to stop taking pictures. However, when the Sheriff himself arrived, Moses tried to take another photograph and was promptly arrested on a charge (as he was later told) of refusing to obey an officer. During that afternoon, three Negro civil rights workers, who tried to visit Moses in gaol, were arrested on suspicion of arson, and Moses was also charged with arson and impeding an investigation. Later Turnbow too was arrested and charged with arson. In their brief, the Department of Justice described these charges as "false and baseless" and allege that the prosecutions were brought "for the purpose of intimidating, threatening and coercing Negro citizens of Holmes County from applying for registration and from registering to vote." The charges of arson were subsequently dismissed against all but Turnbow himself, and he himself was not ultimately indicted by the Grand Jury. The transcripts do not indicate that there was any evidence whatever that Turnbow or the civil rights workers had committed arson.

Between June and September 1964 in Mississippi there were over a thousand arrests of civil rights workers. Many of these were for alleged traffic offences or breaches of the peace. There can be little doubt that by these tactics the local law enforcement officials hoped to weaken the spirit and financial resources of the Movement. As for the civil rights lawyers, their tactics were either to attempt to transfer the cases to a Federal court, on the ground that their clients could not expect

a fair trial in a State court, or to appeal from the State court's verdict. But many such cases are transferred back to the State court, by which time the accused civil rights workers, out on bail, may be back in college in the North. The civil rights organisations cannot afford continual appeals to the State and Federal appellate courts, and, in spite of the large number of lawyers who volunteered to work for the Lawyers Constitutional Defence Committee during the Summer Project, there are not enough lawyers to deal with myriad minor cases throughout the Deep South.

(c) BAIL

Sir George Campbell, M.P., reported in 1879 that "arrest means very little in the United States. Under their old-fashioned English laws every process, criminal or civil, is commenced by arrest, followed by bail. De Tocqueville instances this as showing how an English law favourable to the rich, who can give bail, has prevailed even under Democratic institutions." On August 10th, 1964, in a speech to the American Bar Association, the U.S. Attorney-General, Robert F. Kennedy, referred to the problems facing the poor in criminal courts, and continued, "one of the plainest of these problems is bail. Its legitimate purpose of ensuring that defendants appear for trial has been distorted into a systematic injustice." The problem, which affects America generally, is that hundreds of thousands of people are charged with crimes, and remain in prison until trial, simply because they cannot raise the necessary funds for their bail. On the other hand, in a country as large as the United States, with so many different jurisdictions, it is important to provide adequate means of compelling the presence of accused persons at their trials. The bonding system has developed to meet the problem, whereby in return for a small money premium and usually some security, a bonding company (licensed under State insurance laws) sells a bail bond to the defendant, guaranteeing his appearance at his trial. The bonding company operates as a profitable commercial adjunct in selling bail bonds to the judicial function of setting bail. There are obvious dangers of corruption in such a system.

Northern civil rights workers accused of crimes in the South must expect to have to raise larger sums for bail than local civil rights workers, since sterner sanctions may be necessary to secure their presence at their trials. One of the problems which the civil rights organisations have had to face is the cumulative effect of high bail. In December 1962, the cash requirements for bail bonds in the Freedom Ride cases in Jackson, Mississippi, amounted to \$372,000. In June 1963, bonds for demonstrators in Danville, Virginia, exceeded \$145,000. Another problem is that many civil rights workers return to Northern universities after their work in the South. If they fail to attend their trials in the South, not only will they forfeit their bail, but they will provide Southern officials with justification for increasing bail requirements in the future. On the other hand, the Northern student, after travelling several hundred miles to attend his trial, may find that it has been adjourned, that he must come again, at further expense and

loss of time at university. These are problems of the legitimate use of bail, but there are still greater problems where the bail system has been deliberately used to intimidate the Movement.

A survey of "Bail and Civil Rights" was recently carried out by Louis F. Claiborne, a staff member of the U.S. Department of Justice, for the 1964 National Conference on Bail and Criminal Justice. It found that in some rare cases, a civil rights worker had been accused of a felony in order to justify prohibitive bail, or a denial of bail. For example, in Americus, Georgia, four demonstrators were held without bail on the capital charge of "insurrection" until ordered release on bail by a Federal court. Sometimes, bail problems are aggravated by the "unnecessary multiplicity of charges instituted for a single course of conduct." For example, in March 1964, demonstrators at a theatre in New Orleans were required to post \$4,500 on 8 charges: "trespass," resisting arrest," "disturbing the peace," refusing to move on," criminal mischief," "blocking an entrance," and two counts of contributing to the delinquency of a minor."

Another abuse, apparently confined to Louisiana, consists of "pyramiding." The case of the Rev. B. Elton Cox has already been referred to. When he was arrested in December 1961, after the demonstrations in front of the East Baton Rouge Parish Courthouse, bail was originally set at \$2,000. When this sum was paid, bail was increased to \$4,000, then on each successive payment, to \$6,000 and \$8,000. Eventually, after protests by attorneys, it was settled at \$6,000.

Exorbitant bail is not usually set before trial though there have been exceptional cases in the South and North. However after conviction the position is different. In Atlanta, Georgia, in one case, involving a 77-year-old Californian minister, convicted of disturbing public worship, bail on appeal was set at \$20,000. The Georgia Supreme Court reduced it to \$5,000, but the minister spent 7 months in gaol because his tender of \$5,000 in cash was refused, and he was unable to post that amount in unencumbered property, as required by the Court.

The Justice Department Survey finds that in Jackson, Mississippi, "the bond required on appeal to the circuit court has almost invariably been set at the legal maximum: \$1,500 (\$500 "cost bond" plus \$1,000 "appeal bond"). Bonds of \$1,000 or more pending appeal are apparently common in civil rights cases in many Southern jurisdictions. Since the sentence is often a much smaller fine, there is a great temptation to abandon the appeal . . . nor is the distinction between local residents and others observed. In Itta Bena, Mississippi, last June, some forty local Negroes were held on \$500 or \$750 bond pending trial de novo in the county court, on a charge of disturbing the peace, the only distinction drawn being between men and women." There is difficulty in obtaining local property bonds, and local bonding companies are often unwilling to do business with civil rights organisations, while out-of-State companies are not accepted as qualifying

locally. During the Mississippi Summer Project, it was impossible to obtain help from any of the local bonding companies.

The Survey concludes that "in many Southern communities (and perhaps elsewhere) bail requirements in civil rights cases did much more than merely assure the defendant's appearance in court. In many instances, the net effect of bail demands was to arrest the demonstrations, by exhausting the organisation's treasury or temporarily removing the participants, or their leaders. Doubtless, that consequence was sometimes unintentional. But, in other cases, bail was obviously used, even manipulated, to achieve that end. The nature and number of the charges, the amount of the bonds, and the form of security required, in some instances were plainly intended to delay or prevent release."

#### (d) POLICE CONDUCT

The role of the police in "keeping the Negroes in their place" has already been discussed. With the growth of civil rights activity in the Deep South, this role has even extended. Police action is the key to Southern resistance. In remote rural areas, even though he may have inadequate forces to help him, the sheriff regulates the conduct of local citizens towards civil rights workers. I have been able constantly to observe the difference which the local sheriff or police chief can make. For example, I travelled to Rolling Fork, Sharkey County, Mississippi, on August 12th, 1964, to observe a "Freedom Day," on which COFO workers were going to attempt to encourage local Negroes to register to vote. The High Sheriff had sealed the fate of the attempt by closing the whole town (including the courthouse) for the day. On the previous night, he had arrested and imprisoned two civil rights workers for " littering," a charge which was subsequently changed to "distributing literature without a permit." But it was also clear that the High Sheriff had somehow restrained the local inhabitants from acts of violence against the civil rights workers. I and my companions (a group of lawyers) were followed throughout the day by car-loads of threatening men. At one point one of them menaced us (from a distance) with a knife. But their tactics were limited to frightening us, and we were convinced that the Sheriff protected us from something worse.

On the other hand, in particularly violent areas, it is often the sheriff or police chief, who is most violent of all. There is little doubt that the great increase in numbers of FBI officials in Mississippi this summer deterred the local police from actual violence. However, it did not prevent them from committing numerous acts of intimidation against civil rights workers.

It is impossible to estimate how many law enforcement officials are members of white supremacist organisations, like the Citizens Councils, Americans for the Preservation of the White Race, and Ku-Klux-Klan. In September 1964 the Federal Bureau of Investigation reported to the Governor of Mississippi that the State Highway Patrol in Southern Mississippi had been heavily infiltrated by the Ku-Klux-Klan. The Mississippi State Highway Patrol is of far higher calibre than local police forces in the State which are presumably even more infiltrated.

The Klan openly advocates violence and disobedience to law, so that it is a reasonable inference that significant numbers of police are dedicated to the use of illegal violence against civil rights workers.

Evidence of police brutality and condoned private violence in Mississippi is overwhelming. It has been documented by the 1963 Report of the Mississippi Advisory Committee to the U.S. Commission on Civil Rights, which concludes that "justice under law is not guaranteed for the Negro in Mississippi in the way that it is for the white man . . . terror hangs over the Negro in Mississippi and is an expectancy for those who refuse to accept their colour as a badge of inferiority." At the end of the four months of the Summer Project, the New York Times reported a total of 3 dead, 83 persons injured, 35 churches burned, 31 bombings, and over 1,000 arrests of civil rights workers. In a case brought by the Council of Federated Organisations, still pending at the time of writing, the brief for COFO alleges that "Murders, bombings, burnings, beatings, terrorisation and intimidation continue throughout the State . . . without any attempts by state or local authorities to prevent them. In many instances, the police themselves were—and are—directly involved or tacitly or openly encouraged—and encourage —the form of brutalisation being employed." The brief then summarises a number of affidavits filed in support of the case as follows:—

"(a) Approximately 90 affidavits as to illegal acts of Mississippi law enforcement officers against civil rights workers and the Negro citizens of Mississippi, including physical violence, intimidation, harassment, unprovoked arrests and prolonged unjustified

incarceration which are daily continuing.

"(b) Approximately 75 affidavits as to the murder, physical violence and other terroristic acts against civil rights workers and Negro citizens of white Mississippians which are daily continuing.

" (c) Approximately 18 affidavits as to the burning or destruction by other means of churches and other buildings being used by civil rights workers and Negro citizens in connection with voter registration drives, protest meetings and other civil rights assemblies which are daily continuing.

"(d) Approximately 35 affidavits as to the failure of Mississippi law enforcement officers to take any or any adequate steps to safeguard civil rights workers and Negro citizens against physical violence and property destruction although fully warned in advance of the probability of their occurrence, all of which is daily continuing.

"(e) Approximately 4 affidavits as to the misuse of power by members of the Mississippi judiciary in connection with the prosecution of civil rights workers and Negro citizens of Mississippi,

all of which is daily continuing.

"(f) Approximately 35 affidavits as to the failure of the law enforcement officers of Mississippi to prosecute known perpetrators of violence, destruction and terrorism against the persons and property of civil rights workers and Negro citizens, all of which is daily continuing."

I have read all these affidavits. What they allege is, of course, untested, and they contain evidence of interested parties. However, unless the allegations are challenged and answered, they will remain a terrible indictment of justice in Mississippi, and of police misconduct.

Enforcement in Mississippi, published in July 1964, lists numerous instances of violence and open intimidation committed since January 1st, 1964, and concludes that "the crimes set out above could not have been committed in this number and frequency without the indulgence, and in too many cases the co-operation, of local law enforcement authorities." Again, the Delta Democrat Times, a courageous newspaper published in Greenville, Mississippi, stated in an editorial on April 22nd, 1964, that "With monotonous regularity, civil rights activists in Mississippi claim they have been beaten either by law officers or prisoners bribed by the officers to attack them in various jails. Some of these protests can be discounted as so much propaganda... but too many... are simple truth. Even one would be too many; there have been far more than one... we have personal knowledge of this." These charges, too have not been answered.

#### (e) SOUTHERN JURIES

In many parts of the Deep South, Negroes have traditionally been and remain systematically excluded from juries. In recent years, the U.S. Supreme Court has reversed a number of convictions of Negroes on the ground that such racial exclusion violated their constitutional rights to equal protection of the law. It is encouraging to note that the Georgia State courts have followed this example. However, most Southern juries are still predominantly or entirely white. The role of the Southern jury in the trial of civil rights workers has already been discussed. Its effect is equally important in the trial of white persons accused of crimes against Negroes and civil rights workers.

The right to be tried by one's peers is deeply embedded in Anglo-American law. Allegations of serious Federal or State crimes are usually investigated by a grand jury drawn from the appropriate locality to determine whether there is a prima facie case to be tried. The trial itself is by jury. Federal juries are usually drawn from a wider area than local State juries and are better educated, but they are still selected from the State in which the offence has allegedly been committed. Naturally, the Southern jury reflects white Southern opinion and, in effect, the prosecutor is faced with the task of persuading a representative group of white Southerners to punish the accused for defending their way of life. Not surprisingly, the accused is acquitted, or, more often, never prosecuted at all. The virtual impossibility of convicting the murderer of a civil rights worker is one of the most potent sources of injustice in the Deep South. Some recent examples will illustrate the problem.

On the night of June 10th, 1963, Medgar Evers, Negro NAACP Field Secretary in Mississippi, was killed by a sniper's bullet outside

his home. A few days before his death he said, in a press interview, "If I die it will be in a good cause. I have been fighting for America just as much as the soldiers in Viet Nam." Byron De La Beckwith, a fertiliser salesman from Greenwood, Mississippi, was arrested by FBI agents on June 22nd 1963, and indicted for the murder of Evers by a Grand Jury of 17 white persons and one Negro. Beckwith was well known for his racial views and had once written that a "lot of shooting" would be required of Mississippians in the future to protect their families from bad Negroes. While Beckwith was in prison awaiting trial, he was treated as a hero and given every possible comfort. A White Citizens' Legal Defence Fund collected \$15,000 on his behalf. At his first trial, in early 1964, 2 taxi-cab drivers gave evidence that Beckwith had asked 4 times for Evers' address, a few days before Evers was shot. Beckwith's car was identified by a number of witnesses as having been in the area twice before the murder and, on the night of the killing, 300 feet from Evers' house. Beckwith gave evidence that the rifle found near the scene of the crime "could be" his, but that it was lost or stolen shortly before the murder. Beckwith had incidentally been traced by a fingerprint on the telescopic sight of the rifle found near the scene of the crime. He claimed that at the time of the murder he was 90 miles away. During the 24 hour wait for the jury's verdict, former Governor Ross Barnett and former Major-General Edwin A. Walker were at Beckwith's side. Barnett had entered the courtroom during the trial and shaken hands with Beckwith. The all-white jury was unable to agree on its verdict, so there was a mistrial. Several police officials called the decision "a moral victory for the state." Beckwith was tried again in April 1964 before a second all-white jury. On April 12th, 1964, the New York Times reported that "The Ku-Klux-Klan is putting on a show of force on behalf of . . . Beckwith . . . Ten crosses were burned in the Jackson area last night. Today, about 75 tough-looking men, some linked with Klan activity, showed up as spectators in court." At the second trial, one of the taxi-cab drivers testified that Beckwith "resembled" (rather than was) the man who had asked where Evers lived. The prosecuting District Attorney later told the press that the taxi-cab driver had been beaten since the first trial. Incidentally, during the trial, the local press in Jackson gave extensive coverage to the evidence on Beckwith's behalf, but little to that of the prosecution. For a second time the jury failed to agree, and Beckwith returned home as a hero. To many people whom I met in Mississippi, the Beckwith case was shocking because a white Mississippi jury had actually disagreed, instead of unanimously acquitting Beckwith, while Federal officials regarded this disagreement

On July 11th, 1964, Lemuel Penn, a Negro schoolteacher and Army Reserve Colonel was killed while driving through rural North Georgia by a shotgun blast from a passing car. On August 6th, 1964, 4 Ku-Klux-Klansmen were arrested, and 2 were indicted for Penn's murder.

as a sign of substantial progress towards justice in the State. In

theory, since the case is still pending, Beckwith could be tried for a

The FBI had obtained a confession from an accomplice incriminating the 2 men. They were tried before an all-white jury in September 1964. Two witnesses gave evidence that they saw the men walk into a garage 24 miles from the scene of the crime at about 5.0 a.m. on the morning of the murder, carrying a sawed-off shotgun. The defence attorneys urged the "Anglo-Saxon Madison County Jury" not to "send these here boys into those cold grey stone walls" to be electrocuted, and said that FBI agents were "carpet-baggers... who are infiltrating our justice." The jury acquitted the men. Federal charges of depriving Penn of his civil rights are still pending against them. If they are indicted by the Federal Grand Jury, they will be tried by a

Federal jury, drawn from the State of Georgia.

On June 21st, 1964, the day the Mississippi Summer Project began, three civil rights workers, James E. Chaney, a Mississippi Negro, Michael Schwerner, and Andrew Goodman, went to Neshoba County, Mississippi, to investigate the burning of a church. That afternoon, Deputy Sheriff Cecil Price arrested the three men in Philadelphia, Mississippi, and held them in gaol for several hours on a speeding charge. Price said he released them at about 10-30 p.m. after Chaney had paid a \$20 fine. Two days later, their car was found burned in a swamp a few miles from Philadelphia. After a massive search, on August 4th, the FBI found the bodies of the men under an earthen dam 5 miles from the town. In the course of the search, they also discovered 2 half-bodies of Negro men in the Pearl River, about whom there had previously been no concern or interest. The State authorities refused to release the official autopsy report on the three civil rights workers even to the coroner's jury, and, on August 25th, the coroner's jury reported that the available information was insufficient to enable it to determine the cause of death. On September 30th, the local grand jury failed to return any indictment in the case. It publicly exonerated local law enforcement authorities, stating that they had done well to maintain law and order "in the face of drastic provocations by outside agitators." After their report was read, Circuit Judge O. H. Barnett, told the jurors that they had "exhibited the courage of men of the Revolutionary days of this country." On October 2nd, a Federal grand jury indicted Sheriff Rainey, Deputy Price, two policemen, and a former sheriff, all from Philadelphia, Mississippi, on charges of violating the rights of local Negroes by unlawfully detaining and beating them. These indictments grew out of the FBI investigation into the murders of the three civil-rights workers, but related to crimes allegedly committed long before the murders. On December 4th, the FBI arrested Sheriff Rainey, Deputy Price, and 19 other white men in connection with the murders. The FBI alleged that Sheriff Rainey had been involved in a conspiracy, but had not been involved in the actual killings, while Deputy Price had unlawfully arrested and detained the 3 men before giving them to a lynch mob of which he was part. Nineteen of the defendants, most of them members of the Ku-Klux-Klan, were charged under Federal law with conspiring to violate the constitutional rights of the 3 dead men. Two others were charged with failing to disclose information about the crime. It was not possible to prosecute

any of the accused for murder, since murder is only a State crime, and the Mississippi State authorities apparently refused to prosecute. On December 10th, the FBI disclosed in a preliminary hearing before the U.S. Commissioner in Meridian, Mississippi, that they had obtained a signed confession from one of the defendants. The Commissioner proceeded to rule that the FBI agent's evidence about the confession was hearsay and inadmissible, and to dismiss the charges against 19 of the defendants. A spokesman for the U.S. Justice Department later stated that "In the experience of the Department, the refusal by a U.S. Commissioner to accept a law enforcement officer's report of a signed confession in a preliminary hearing is totally without precedent." The Department decided to withdraw the charges against the remaining 2 defendants, and to refer the case to the Federal grand jury. At the time of writing, 16 of the men have been re-arrested and indicted by the Federal grand jury. They are now awaiting trial before a Federal jury in Mississippi.

#### 7. INTERVENTION BY THE FEDERAL GOVERNMENT

The first fact about the Federal Government is that after the end of Reconstruction in 1877 and the withdrawal of Federal troops, and until the 1950's, it made no serious attempt to intervene in the Deep South. Under the U.S. Constitution, every American citizen is guaranteed the rights to free speech and freedom of assembly, to vote without discrimination, and to equal protection of the law. No State official may discriminate against him or deprive him of his rights on grounds of race or colour. The President of the United States has a duty to see that the laws are faithfully executed. For over 70 years, these laws were dead letters. The Deep South received Federal aid without strings. There was no effort to bring the South into the mainstream of American thought, no education of local police forces about their proper responsibilities, or about the civil rights of Negroes. no Federal actions to enforce these rights, few Federal arrests of lynchers, Klansmen, or brutal policemen, and no pressure by the Executive on Southern politicians. Much blame for present conditions in the Deep South rests on successive Federal Governments, which failed to take responsibility in the first half of this century. Southerners are quick to point out that their region has remained economically under-developed, despite huge increases in prosperity in the East, Mid-West and West of America. It is also culturally deprived.

In a situation in which the Legislature and Executive were failing, the Supreme Court assumed responsibility in 1954 in the Brown case, which decided that segregated education was unconstitutional. In the last 10 years, the Court has been in the vanguard of the civil rights struggle, and in so doing, has become the target of political groups. There have been attempts to impeach the Chief Justice and to weaken the Court, either by dilution or by narrowing its jurisdiction. The Supreme Court has ruled that there shall be no racial discrimination in inter-State travel or in hotels and restaurants serving inter-State customers. It has provoked violent reactions by limiting rights of

property in favour of other civil rights (for example, by nullifying the conviction of sit-in demonstrators accused of trespass). It has increasingly evolved fair standards in the administration of justice, deciding, for example, that counsel must be assigned to people without means, who are accused of serious crimes, that coerced confessions may not be used in evidence, that Negroes must not be systematically excluded from juries, nor addressed contemptuously by their first-names in legal proceedings. The Federal appellate judges in the Deep South have given effect to Supreme Court decisions. Often Southerners themselves, and living in the local community, they have displayed outstanding courage in performing their judicial duties. However, there are inherent limitations to what the Federal courts can accomplish. In the face of wholesale resistance by the local Southern judicial and police officials, the *enforcement* of Federal law becomes a crucial problem, which cannot be solved without powerful Executive action.

In 1963 the Mississippi State Advisory Committee Report to the U.S. Commission on Civil Rights found that "the Federal Government has not provided the citizens of Mississippi the protection due to them as American citizens. The Department of Justice has acted in good faith, but the present interpretation of the function of the Civil Rights Division of the Justice Department is unduly narrow and limited. This may be due to the inadequacy of funds available to the Division for staff and the like, and it may be due to the reluctance to bring cases to trial under existing Civil Rights Acts in view of the prospect of facing an all-white jury likely to return a verdict in favour of a white law enforcement official accused by a Negro. Whatever the reason, the fact that police officials are rarely tried on civil rights charges has led the public to believe that few serious charges are ever made, and has reinforced the belief among offending peace officers that they may treat or mistreat Negroes as their whims direct them." Similar criticisms have been made by leaders of civil rights organisations, as well as lawyers who have returned from the Deep South. The answers by the Executive are inevitably complex and difficult to evaluate.

First, the Department of Justice points out that the need to preserve the Federal system must be balanced against any Federal intervention to enforce constitutional rights. The separate States have the prime responsibility for exercising police power to maintain law and order, and the Federal Government cannot or should not usurp this power. The importance of Federalism in the States is underestimated by foreign observers, who sometimes argue that Federal troops should take over the South, without realising that such action, even if politically possible, would destroy the constitutional basis of American government. However, American critics of Federal inaction point out that Federalism depends upon some consensus of values which is not at present shared by the Deep South, and that the Southern States are not properly exercising their police power. They advocate Federal intervention which falls short of complete occupation by force. On June 24th, 1964, the US Attorney-General Robert Kennedy stated that the situation in Mississippi was a matter for local law enforcement and that

the power of the Department of Justice was "very limited," 29 law professors replied in an open letter that there was ample Federal power to intervene, and that non-intervention by the Federal Government was a matter of policy rather than power.

The Department of Justice complains that it is expected to do everything. Given the difficulty of winning convictions from Southern white juries, it has recently concentrated its energy on bringing over 40 voting suits in the Deep South before Federal judges, in an effort to enfranchise Negroes by court order. The Department claims that it is doing all it can, and that, in the long run, if Southern Negroes can win the vote, white supremacy will be destroyed more effectively than through vain criminal prosecutions or massive intervention by Federal troops. To this the critics reply that court orders will achieve little unless Southern Negroes are reassured that they will be protected and the laws enforced. I saw a vivid illustration of the point when I was in one of many typical counties in Mississippi, where a Federal court had ordered desegregation of local schools, but, in the absence of Federal protection, the Negro community were too frightened to send their children to the schools. Some critics claim that the Department of Justice could not only bring voting suits but also vigorously prosecute local State officials who violate constitutional rights. Such prosecutions might not succeed, but the very fact that they were brought would act as a deterrent. Oddly enough, the members of the Department of Justice with whom I talked, did not complain that they had inadequate resources. They stressed that the Civil Rights Division of the Department, which was created in 1957, had 40 attorneys and a budget of almost \$1 million in 1963, and that it was seeking 49 more attorneys and a doubling of its budget to enforce the 1964 Civil Rights Act. They felt that, provided that Congress approved these increases, they would have sufficient funds and personnel.

The Federal Bureau of Investigation is a major source of criticism by civil rights leaders. Its Director, J. Edgar Hoover, has consistently maintained that the main function of the Bureau in the field of civil rights is to gather facts. Only July 10th, 1964, he stated in Jackson Mississippi, that the FBI "will not give protection to civil rights workers . . . the protection of individual citizens . . . is a matter for the local authorities. The FBI will not participate in any such protection." Nevertheless, the fact that the number of FBI agents in Mississippi was increased in July 1964 from about 15 to over 150, undoubtedly deterred many local acts of violence against civil rights workers. On June 26th, 1964, FBI agents in Itta Bena, Mississippi, arrested 3 white men on the spot for depriving civil rights workers of their constitutional rights. Traditionally, the FBI has promptly arrested persons suspected of other Federal crimes (e.g., narcotics, or bank robbery) but has stood by taking notes while Negroes were assaulted by local officials or citizens. It is possible that FBI policy is changing, and that in future it will use its undoubted powers of arrest in civil rights cases as well.

One hopeful recent development was the creation by the Executive in August 1964 of the Office of Criminal Justice as part of the Department of Justice. The Office will attempt to improve the administration of criminal justice both under State and Federal law, and, no doubt, its work will include some of the problems referred to in this report. Unfortunately, Congress does not yet appear to take as serious a view of the problems of criminal justice as does the Executive. For example, the U.S. Commission on Civil Rights made several recommendations in its 1961 Report on Justice. The Commission asked Congress to consider (1) creating an aid programme to State and local governments to increase the professional quality of their police forces, (2) amending Federal law so as to facilitate criminal prosecution of persons (including responsible State and local officials) accused of depriving others of their constitutional rights, and (3) empowering the U.S. Attorney-General to bring civil proceedings to prevent the exclusion of Negroes from juries. However, in its 1963 Report on Civil Rights, the Commission indicated that no action had been taken on its recommendations for the better administration of justice. Similarly, although the 1964 Civil Rights Act dealt boldly with discrimination in public accommodations, voting, education and employment, it hardly touched the administration of justice. Officials in Washington, D.C., explained to me that there was not a sufficient lobby on the subject to secure reforms, even though they agreed that without equal protection of the law, it was not possible to guarantee enforcement of the Civil Rights Act.

Another problem concerns the Federal judges who must administer the law. The Executive and Congress are together responsible for their appointment. This power of appointment is crucial in the Deep South, where a segregationist Federal judge can make nonsense of Federal law, and delay actions to protect civil rights. Improvements in police training and necessary amendments of Federal laws will accomplish little without co-operation from the Bench. The Federal appellate judges in the Deep South have courageously applied the decisions of the Supreme Court, but, especially at the District Court level, segregationists are still made Federal judges. For example, J. R. Robert Elliot of Georgia, who was appointed by President Kennedy, was known at the time to have stated that he did not want "these pinks, radicals and black voters to outvote those who are trying to preserve our segregationist laws and other traditions." Judge W. Harold Cox of Mississippi, who was also well known for his racial views before he was recently appointed, once stated from the Bench that he was "not interested in whether the registrar is going to give a registration test to a bunch of niggers on a vote drive." No doubt there are political obstacles blocking the appointment of more liberal judges. Southern politicians know that if they can weaken the Federal Bench, they will effectively prevent Negroes from enforcing their legal rights. Southern senators are therefore fighting fiercely against approval by the U.S. Senate of new liberal judicial appointments. Before there is any substantial improvement in the administration of

justice, the Federal Government will have to insure that all its representatives in the Deep South—judges, FBI agents, U.S. attorneys, and commissioners, will keep their promise to uphold the American Constitution, for though government is by laws and not men, it is men who decide how laws are in practice applied.

#### 8. CONCLUSION

There are many hopeful signs in the Deep South. A year ago, few would have dreamed that there would be such peaceful and substantial compliance with the new Civil Rights Act throughout the South, or that in Mississippi, Negroes would ever be admitted to segregated restaurants or schools. At last, Southern businessmen, whose interests are hurt by bad publicity, are asking to be protected from lawlessness and violence. The American Government knows that it can no longer ignore its responsibilities. Millions of Americans now understand the horror of the Southern way of life, and the new voting strength of the Northern Negroes will insure that the liberals do not again turn their backs on the South. However, so far there has been very little Negro violence in the South, and no one can predict the effect which growing Negro militancy might have in North or South.

The facts in this report are not original. Much of my information comes from similar reports published regularly during the past 10 years. vam able to confirm at first hand that, in most of the Deep South, Negroes do not receive equal protection of the law. On the contrary, the law is used to preserve segregation and deny to Negroes their constitutional rights. No doubt, because of the peculiar nature of the present struggle, Federal and State courts are a main arena for both sides. Whenever the law becomes a tool for political controversy, one may expect a decline in impartiality, but in the Deep South, injustice existed long before the Civil Rights Movement, and is likely to die more slowly than other aspects of segregation. The commitment of the Federal Government and thousands of Americans to the struggle for racial equality is impressive, but, to this foreign observer, it appeared that insufficient political energies have yet been directed to improving the process by which law is administered, rather than the laws themselves. The needs are obvious: to educate local police forces and improve their recruiting, to ensure that Federal officials are really working for the Federal Government, to provide Federal protection for those who are exercising their undoubted rights, to end the exclusion of Negroes from juries (or else the need for local trials by jury), and, through Governmental and professional bodies, to educate Bench, Bar, and police as to their responsibilities. It is unnecessary to point out that, unless Negroes are given justice in the courts, they may, at last, emulate their white fellow-citizens, and take the law into their own hands.

#### SOURCES

#### Books

- W. H. Burns: The Voices of Negro Protest in America (London, 1963).
- G. CAMPBELL: White and Black (New York, 1879).
- W. J. CASH: The Mind of the South (New York, 1941).
- J. DOLLARD: Caste and Class in a Southern Town (New York, 3rd ed., 1957).
- J. H. FRANKLIN: Reconstruction after the Civil War (Chicago, 1961).
- V. O. KEY: Southern Politics (New York, 1949).
- G. Myrdal: An American Dilemma (New York and London paperback ed., 1964).
- C. E. SILBERMAN: Crisis in Black and White (New York, 1964).
- J. W. SILVER: Mississippi: The Closed Society (New York and London, 1964).
- G. T. Stephenson: Race Distinctions in American Law (New York, 1911).
- A. S. TREBACH: The Rationing of Justice (New Jersey, 1964).
- C. V. WOODWARD: The Strange Career of Jim Crow (New York, 1955).
- C. V. WOODWARD: Reunion and Reaction (New York, 2nd revised ed., 1956).
- A. F. WESTIN (Editor): Freedom Now (New York and London, 1964).
- H. ZINN, The New Abolitionists (New York, 1964).

#### Reports and Periodicals:

- New York Times and various weekly and monthly periodicals.
- J. HENNING: The Role of Non-Violent Police Abuses in Maintaining Segregation (unpublished thesis, Harvard Law School, April 1964).
- Police Handling of Arrestees: A Research Study of Police Arrests in New Orleans (Loyola University, 1964).

# Southern Regional Council Publications:

- New South.
- The Freedom Ride, May 1961.
- The Freedom Ride, May 1961. The Unequal Badge: Negro Policemen in the South, 1962. Law Enforcement in Mississippi, 1964.
- D. J. FREED and P. M. WALD: Bail in the United States (Washington, D.C., 1964).
- Mississippi State Advisory Committee Report to the U.S. Commission on Civil Rights, January 1963.
- U.S. Commission on Civil Rights 1961, Reports on Voting, Education, Employment, Housing and Justice; 1963 Report on Civil Rights.
- Miscellaneous publications by civil rights and white supremacist organisations.

# EUSTOMY and ANASTOMY

an explanation:--

The International Secretariat started to publish a regular quarterly journal called "Eustomy" in January 1964. At the time there was some inquiry about the significance of the title; the word comes from the Greek and means "speaking well or keeping silence to avoid words of ill-omen." "Eustomy," which circulates among fully-paid members of AMNESTY INTERNATIONAL, contains references to situations in different countries so worded that their reproduction in the press is permitted. Among members who receive the publication are numerous editors and journalists; reproductions and quotations from "Eustomy" have appeared in many different papers and languages.

There are, however, some situations in certain countries which will not be improved by general publication of AMNESTY INTER-NATIONAL reports. The most general reason is that the situation itself is under what lawyers call 'sub judice'; governments and nongovernmental organisations are making up their mind about what action they should take, or else are in the process of re-defining their policy. Publication of disturbing facts or strong views might prejudice the process of policy-formation. For this reason it has been decided to publish a second series of reports of this character under the title "Anastomy." Derived also from the Greek, the word has the meaning "to furnish with a mouth or to open up a blocked passage." It is a title which is appropriate in the circumstances. Some of the "Anastomy" series of reports, which will be published irregularly, deal with countries where owing to drasticallyenforced censorship the citizens are unable to speak for themselves; others will suggest a remedy for what has become a potentially dangerous international problem.

"Anastomy" reports will, in the first place, be sent singly and free to governments, international non-governmental organisations and opinion-forming journals thought to be concerned with the subject-matter of the particular report. Copies will also be provided without charge to all the agencies of the United Nations Organisation and of the Council of Europe, as well as to members of the Consultative Assembly of the Council of Europe individually. AMNESTY INTERNATIONAL has Consultative Status with both UNO and the Council of Europe.

Further copies of "Anastomy" will be supplied at the price marked on the report in question to those on the original circulation list. It is not intended that this series of reports should be quoted in the press or over the air. Its purpose is to provide background material for those whose function it is to form and influence policy.

# amnesty international what it is and what it does

# what amnesty international is

an impartial humanitarian movement for freedom of opinion and religion, organised internationally to work for the release and relief of 'prisoners of conscience' and their families.

# what amnesty international does

- it publishes the plight of prisoners
  - it pleads for their release
- it watches political trials without political bias
  - it reports on conditions in prisons
- it helps families of prisoners of conscience

#### 'Prisoner of Conscience'

"A person who does not advocate violence, yet is physically prevented—by imprisonment or other means—from expressing his own opinions through the spoken or written word."

# how you can help

# \* join the movement

pay £1 a year for membership or £2 a year for membership and literature service.

# \* join your local group

Oi

#### \* form a new group

Details from

AMNESTY INTERNATIONAL,

I Mitre Court Buildings, Temple, London, E.C.4. CENtral 7867 OR YOUR NEAREST LOCAL GROUP

Co-operative Printing Society, E.C.4-97816

