Two Victims Of Southern Land Monopoly

By JOHN DEWEY

* Reprinted by permission of the author from The New York Times, May 16th, 1942, where this article was published as a letter to the editor.

The United States Supreme Court, on May 4, declined without opinion to review the case of Odell Waller, colored sharecropper, convicted of first degree murder in the shooting of his white farmer landlord during a quarrel induced by Waller's attempt to get his share of their wheat crop. Colored people regard this unexplained refusal as just one more evidence that when white people speak of fighting to preserve freedom, they mean freedom for their own race.

It is particularly gratifying, therefore, to learn that Waller's counsel, John F. Finerty, is about to petition the court for a rehearing, and that an amicus curiae brief will also be filed with the court on behalf of the National Association for the Advancement of Colored People, the American Civil Liberties Union and other organizations, and such prominent citizens as Dr. Henry Sloane Coffin, president of the Union Theological Seminary. In such a case the court, it seems to me, should be mindful of the late Mayor Gaynor's great dictum, "We must act not only with justice but with the appearance of justice."

Waller pleaded self-defense. The only eyewitness to the shooting was a colored boy of 18, in the employ of the slain man's family. This witness refused to talk to the defense attorneys after the shooting. At the trial he testified that Waller, after a friendly conversation in which Davis told him he would get his wheat soon, shot Davis in the back as he turned to go to breakfast.

Against this testimony we have Odell Waller's story, which fits much more logically into the known pattern of Oscar Davis's repeated mistreatment of the Waller family. Waller testified that Davis refused to give him the wheat, cursed him, and reached for the pocket in which Waller had known him to carry a gun. In fear of his life he shot Davis, and the defense contends reasonably enough that the first two shots hit Davis in the side of the head and on the arm, their force, coupled with his attempt to flee, whirling him around so that the second two shots hit him in the back.

It is hard to believe that Waller would have shot a man with whom he had just had a friendly conversation. Moreover, reliable Negroes who know the South insist that it is incredible that any colored man in that region would give testimony against a white employer's interest, in a white man's court, after a conference with a white prosecutor.

Not only the credibility of the testimony is in question. The case also involves the constitutional right of an accused person to be tried by a jury of his peers. The Virginia Constitution makes the payment of a $1.50 poll tax for three consecutive years the test of a citizen's qualification to vote, a provision which the present Senator Carter Glass, at the time of its adoption, frankly stated was intended to disfranchise Negroes. In effect it disfranchises more white people than colored, and is widely resented. The lists of qualified voters are commonly used in making up the lists of qualified jurors. Thus Odell Waller, a colored man disfranchised by poverty, was convicted by a jury of white voters, ten of them farmers employing sharecroppers. On this basis his attorney contends that he was denied his constitutional right to trial by a jury of his peers.

In the public discussion of this case I have noted the argument that, since payment of the poll tax is not in law the condition for jury service in Virginia, this contention of the defense is invalid. But if payment is in fact the condition of service, as the defense has proved with sworn statements, then this argument is irrelevant and technical.

The Supreme Court, in failing to state why it refused to review this case, left it unclear whether it regards a jury of poll-tax payers as peers of a man disfranchised by poverty, or whether it considers that, because Waller's young trial attorney raised the commonly known fact that jurors are selected from the tax lists, without adducing specific proof, the condemned man must die solely because of this error. It is vital to the integrity of our judicial procedure that the Supreme Court either grant the petition for a rehearing or state its reasons for refusing. If it shall develop that the court refuses to review the case on the basis of any technicality, dodging the issue of trial by one's peers, the effect will certainly be to weaken the faith of the poor—and especially poor Negroes—in the democratic processes.

And now a word about the social and humanitarian aspects of this case. It is clear from the record that both the slayer and the slain were victims of the economic forces which for some decades have exerted terrible pressure on both white and colored farmers. The white man was a debt-ridden renter; the colored man, a destitute sharecropper. As Jonathan Daniels has put it, "both the white man and the Negro were caught at the bottom of an American agriculture in the South which gives so little that fighting over it—maybe even murder over it—is not to be taken as an unexpected result."

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In dealing with this profoundly tragic issue we must invoke something better than the law of "an eye for an eye and a tooth for a tooth." It calls for compassion—for mercy. If the Supreme Court shall once more decline to review Waller's case, a plea for commutation of sentence will no doubt be made to Governor Colgate W. Darden of Virginia, who has already shown humanity and a courageous disregard of political considerations in granting two reprieves. Because of this record, one may dare to hope that Governor Darden will decide that both justice and mercy can be better served through commutation of sentence than through forcing Odell Waller to pay the extreme—and irrevocable—penalty.