I'm concerned about those demonstrations [that developed into riots], and I think the cause of advancing equal opportunities not only loses [as a result]. . . . But you just can't tell people "don't protest" . . . On the other hand "we're not going to let you come into a store or a restaurant." . . . It's a two-way street. . . . And I think the Washington march has now developed, which is a peaceful assembly, calling for the redress of grievances . . . they're going to express their strong views [and] I think that's in the great tradition.

'DUE PROCESS'
October 8, 1962

Nearly a month ago Associate Justice Black ordered the University of Mississippi to enroll a Negro, James Meredith, at the opening of the current semester, on the general ground the justice knew as a fact the state's pending appeal to the Supreme Court for formal, final review of the issue would be dismissed without a hearing when his judicial brethren reassembled. Today his forecast was borne out by the event. The Supreme Court caught up with "due process" with a formal, but *ex post facto*, order rejecting the state's appeal to be heard in support of its petition for final review.

Meanwhile, Meredith had been enrolled over official state resistance, followed by mob resistance on the university campus that cost two lives and many injuries, and was quelled only after President Kennedy sent Federal and Federalized troops to assist the United States marshals on whom he and his brother, the Attorney General, had first depended for enforcement of the Federal court orders involved. And on the day the Supreme Court passed judgment on Mississippi's review appeal, in the formal way any litigant, particularly a state, deserves from the highest tribunal when this final step is legally to be taken, 17,000 members of the national armed forces were still enforcing the order Justice Black issued after taking an informal, Gallup-type poll of his summer-scattered brethren.

Those lawyers and others, who are not at all disturbed by the casual judicial attitude toward "due process" in this instance and reject the

view there was any relationship between it and the fury of the resistance on the university campus at Oxford, will probably not be in the least swayed by a differing evaluation, especially by a Southerner in political office. But a deluge of communications to this department from all parts of the United States indicates that many other lawyers and citizens are very disturbed over such aspects of the controversy. These at least will give respectful hearing to the following observations from Senator Sam J. Ervin Jr. of North Carolina, a "moderate" on the racial issue from an equally moderate state, and a former Associate Justice of the North Carolina Supreme Court.

". . . If the execution of judgment in the [Meredith] case," he writes, "had been postponed [from Sept. 10] until the Supreme Court had ruled [as it did today, Oct. 8] upon the application of Mississippi . . . for review, it is possible that the tragic events . . . within the last few days might well have been avoided. . . . Mr. Justice Black stated in substance that he would not stay the judgment in a case the [Supreme] Court had never considered because he thought the Court would probably decide the case against the applicant. . . . Mr. Justice Black's statement might be becoming to a crusader. It certainly does not befit the occupant of a judicial office.

". . . The Constitution would not have been destroyed, the heavens would not have fallen, if the efforts to force the entrance of Meredith . . . had been postponed until the Supreme Court had acted on [the state's] application . . . for review. . . ." (The postponement would have been for 28 days.)

That is a concept of due process which, by total contrast, the Supreme Court has meticulously followed in cases affecting Communist and criminal defendants. For example, in 1957 it freed one Mallory, convicted of an especially brutal rape, by a District of Columbia jury, whose death sentence was upheld in the Federal Court of Appeals here, because of "unnecessary delay" by the police between the interrogation of Mallory and his arraignment. Obedient to this vague formula, the same appellate court has just quashed the conviction for manslaughter of one Killough because his voluntary oral confession was preceded by a written one the court found inadmissible under the "Mallory rule." Killough strangled his wife and buried her in the city dump.

Chief Judge Miller, dissenting, said he was "shocked" by reversal of the conviction on such "tortured grounds" of due process. And, commented The Washington Evening Star today, the effect will be that the situation of unpunished violence now rampant in Washington will "get worse" until Congress specifies that confessions, otherwise valid, shall not be held inadmissible because of a delay in arraignment.