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The Scottsboro Trials: A Legal Lynching (Part II)

Faust Rossi

Editor’s Note: This account of the Scottsboro case, appearing in two parts and concluding in this issue of the Cornell Law Forum, was derived from a summer 2001 Cornell Adult University class, Great American Trials, that the author co-taught with Glenn C. Altschuler, the Thomas and Dorothy Litwin Professor of American Studies at Cornell.

After being arrested for the alleged rape of two white women in Alabama in 1931, the nine black “Scottsboro Boys” were quickly convicted and sentenced to die. The U.S. Supreme Court saved the youths by overturning the convictions. But now the Scottsboro nine would be retried, back in Alabama where little had changed.

The American Communist Party (ACP) and its legal arm, the International Labor Defense (ILD), had done very well so far in their efforts on the behalf of the defendants. But now they realized that to make their case for capitalist racist oppression, they needed to show that the boys were innocent; that is, to get an acquittal from an all-white Alabama jury. It would require a superb, maybe even a miraculous, defense. It is at this point that a new savior emerged: Cornell Law School’s own Samuel S. Leibowitz ’15. The ILD hired Mr. Leibowitz, who by 1933 had become one of the leading criminal lawyers in the nation, to represent the Scottsboro defendants. Mr. Leibowitz was a 37-year-old New York City trial attorney who had defended murderers, organized crime figures like Al Capone, and corrupt policemen. He was regarded as “the next Clarence Darrow” and had an unbelievable record of success. In 78 previous trials, he had won 77 acquittals and one hung jury.

Mr. Leibowitz agreed to represent the Scottsboro defendants without a fee. He was politically ambitious and believed that his reputation would be greatly enhanced by this endeavor—more so than by his previous successes in representing nefarious clients. And he had a national stage. Mr. Leibowitz made clear to the media that he was not a communist, never would be a communist, and that he disagreed with their philosophy. He was, he said, taking the case for only one reason: justice.

Mr. Leibowitz deserved his outstanding reputation. He believed in thorough preparation and had enormous skill as a litigator. He was a charismatic and dominant figure in the courtroom. Of course, no one is perfect, and some of Mr. Leibowitz’s flaws proved costly. He, like many successful trial lawyers, had a big ego. He was confident, sometimes overconfident. This ego, this overconfidence, made him insensitive to risk. Some might say he was naive. He was certain that he would secure acquittals. He was sure that what worked for him in New York would work equally well in Alabama. He did not fully appreciate the enormity of his task or the intensity of racial bias that opposed his efforts. Mr. Leibowitz entered the fray with serious disadvantages. He had been hired by the communists—not a plus. He was Jewish—not a plus in 1933 in the rural south. He was a northerner—not a plus. He was representing black male youths.
charged with defiling southern white womanhood, and he was defending them in front of an all-white jury—not a plus. He faced, in other words, three forms of prejudice: racial, religious, and regional.

Nevertheless, Mr. Leibowitz had his great talent, time for careful preparation, a well-financed investigation, a cause that was just, and one unexpected stroke of luck: the judge assigned to the case respected the rule of law. Perhaps, when all is said and done, Judge James Edwin Horton was the most heroic, most courageous figure in this tragedy.

Judge Horton was, in this sense, another “savior” of the Scottsboro boys. Assigned to sit for the retrials, Judge Horton was tall, thin, Lincolnesque—and better educated than his peers in the Alabama bar. He was the descendant of an old Alabama family; gracious and relaxed, Judge Horton almost never raised his voice and was well-liked by everyone. There is no doubt that Judge Horton was steeped in southern traditions. He accepted segregation, tolerated all-white juries, and probably started out believing that the defendants were guilty. But above all, he was fair. He believed in the law. He believed in the legal process. He wasn’t famous. He wasn’t politically ambitious. He was a judge to be proud of, as future events would show.

**Prejudice Trumps Justice**

The first defendant selected to be tried was Haywood Patterson. He looked to southern eyes to be the meanest, most fierce-looking of the accused. Appearing for the prosecution was the attorney general of Alabama, Thomas Knight. It is unusual for a state’s attorney general to be the one who actually prosecutes. But Mr. Knight wanted to be governor. This case would give him national exposure. It was a career-maker. It gave him an opportunity to fight communists, rapists, and northerners all in one trial. What more could a southern politician ask for?

Mr. Leibowitz began by moving that the indictments be quashed because of the systematic exclusion of blacks from both the grand jury and the pool of trial jurors. He called to the stand the editor of the local newspaper, who had to admit that he had never seen or heard of a black person sitting as a juror. For a day, witnesses testified. Some were jury commissioners who denied discrimination but could not remember a single black person who had sat on the grand jury. Well-qualified black citizens with college degrees testified that they had never been called. Mr. Leibowitz’s motion to dismiss was denied but now he had a good record for appeal, should an appeal be necessary.

The prosecution’s case was dependent essentially on 1) the testimony of Victoria Price about how she had been raped by Haywood Patterson and the others—a story she had told four times in the first set of trials; and 2) the medical testimony of Doctors Bridges and Lynch that semen had been found in Victoria Price and Ruby Bates. Mr. Leibowitz would have to weaken the testimony of these witnesses on cross-examination. Ruby Bates, the younger alleged victim who had testified at the first trials, had disappeared. The prosecution couldn’t find her and would have to do without her. It would be up to Victoria Price alone to describe the rapes.

Miss Price testified that on the night before the rape on the train, she had stayed with Ruby Bates at Mrs. Callie Brochie’s 7th Ave. boardinghouse in Chattanooga. She testified that she had hopped the train the next morning and had been riding in an open gondola car, sitting or lying on top of the...
Mr. Leibowitz wanted to go further and attack Miss Price’s character, to show that she was no flower of southern womanhood. To some extent, he did.

cargo of gravel stones with some white youths. Then, she claimed, a group of blacks had jumped down from an adjoining tank car. The blacks had thrown the whites off the train and then six blacks, including the defendant, had raped her one after another, brutally and constantly, until the train had reached the posse at Paint Rock.

Mr. Leibowitz was convinced that Miss Price was lying and set about to destroy her on cross-examination. And he had the ammunition.

First, no one had been able to find Callie Brochie or any such boarding house. Mr. Leibowitz had a witness, Lester Carter, who would testify that he had been with Vickie Price the day before she boarded the train. Vickie’s boyfriend, one Jack Tiller, Lester himself, and Ruby Bates had all spent the night at a hobo swamp near the rail yards. During that night, Lester would testify, “I had sex on the ground with Ruby while Mr. Tiller had sex with Vickie right next to us.” That, of course, was crucial evidence. Not only would it show that Victoria Price was a liar, but it would negate the medical testimony by providing an alternative explanation for the presence of semen.

Mr. Leibowitz wanted to go further and attack Miss Price’s character, to show that she was no flower of southern womanhood. In short, he wanted to expose her as “white trash.” To some extent, he did. Miss Price was somewhere around 21 years old, twice married, convicted and jailed for adultery and fornication. Judge Horton properly excluded some of this evidence but the jury heard some seamy details.

Mr. Leibowitz also intended to show that when the defendants had been found, some of them had been in railroad cars nowhere near the gondola car where Miss Price claimed she had been raped. For this purpose, Mr. Leibowitz had the Lionel Corporation construct an exact scale replica of the original train. He would use it during his cross-examination.

Mr. Leibowitz also planned to expose the sheer absurdity of Miss Price’s testimony. Miss Price testified that she had been forcibly raped by six males without respite while lying on her back on gravel stones. She claimed she had been hit on the head. She had claimed at the previous trials that she had been bleeding—that her back, her cut head, and her genitals were bloody. This ordeal had come to an end when the train had pulled into Paint Rock. But Miss Price’s testimony of physical injury was not supported by the physical evidence—as the doctors who had examined her soon after the alleged rapes would testify.

How, then, did the actual cross-examination go? It depends on whom you ask. Victoria Price might have been as Mr. Leibowitz saw her: a woman of the underclass, a world of hoboes and casual sex. She was certainly uneducated but just as certainly “street-smart.” She was tough and fierce under cross-examination. She absolutely refused to concede anything, even the most basic facts.

Constantly, she answered by saying, “I don’t know,” “I don’t remember,” “I won’t say,” “I can’t say,” and “I didn’t pay attention to that.” She spat out her answers, eyes flashing. She was evasive, sarcastic, angry. And so it went. She vehemently denied that she had had sex with her boyfriend the night before the train ride. When asked if she had ever been convicted of any offense, she answered, “Absolutely not” in the face of court records of her conviction for adultery and lewdness. When asked how she explained the record, Miss Price said, “I don’t, it’s wrong.” Usually, when witnesses say, “I don’t know” or “I don’t remember,” they are defensive. They try to explain why they don’t remember. Their manner is apologetic. Not Vickie Price. She was blatantly aggressive.

For three hours, Mr. Leibowitz dueled with this witness. Was it an effective cross-examination? If a witness refuses to answer, refuses to concede the obvious, then the cross-examiner can’t get the leverage he needs to expose lies. In that sense it was frustrating for Mr. Leibowitz and not effective. But if a witness denies knowledge of matters that the witness must know, facts that any reasonable person would remember, then the witness has destroyed herself. No impartial person will believe an obviously and consistently evasive witness. So,
by any objective standard, the cross-examination was very effective. Mr. Leibowitz asked the right questions, and Miss Price’s refusal to answer should have effectively discredited her. Mr. Leibowitz, the ILD, and the northern press saw it just that way. Headlines in news accounts said, “Victoria Price Destroyed by Brilliant Cross-Examination.”

But the southern audience and the ones who counted, the jurors, saw it differently. They were furious at Mr. Leibowitz. Yes, Victoria Price was not a model of southern womanhood. Yes, Victoria Price might be a hobo, a drunk, a prostitute. Nevertheless, the locals felt that “we don’t want a Jewish lawyer from New York, especially one hired by the Communist party, treating our women—even our poor white trash—like this.” One spectator in the courtroom was heard whispering to another, “It’ll be a wonder if Leibowitz leaves town alive.” An editorial in a Decatur newspaper spoke for many locals when it wrote,

One possessed of that old southern chivalry cannot read the trial now in progress in Decatur and publish an opinion and keep within the law. Mr. Leibowitz’s brutal cross-examination makes one feel like reaching for his gun while his blood boils to the nth degree.

Then came the testimony of Dr. Bridges—a key part of the prosecution’s case. Dr. Bridges and his colleague, Dr. Lynch, had examined Victoria Price and Ruby Bates about 90 minutes after the alleged rapes. As he had at the first trial, Dr. Bridges testified on direct that there had been semen in the vaginas of Victoria Price and Ruby Bates. Dr. Bridges was an honest witness. Because he was honest, Mr. Leibowitz on cross-examination turned him into a witness for the defense. When Dr. Bridges examined the girls, Mr. Leibowitz asked, what was their manner? Were they upset? Were they crying? Were they hysterical? No, Dr. Bridges said, they were completely composed and calm. Dr. Bridges also acknowledged that although Vickie Price had allegedly been raped repeatedly, there was barely enough semen found to make a smear slide. Dr. Bridges went on to explain that the semen that was found was non-motile, or dead. He conceded that these facts made Vickie Price’s story of recent successive rapes unlikely because spermatozoa normally live in the vagina for at least 12 hours and sometimes as long as two days. Miss Price had testified that she had been bleeding from her vagina and that her forehead had been cut. But the doctor said there had been no visible signs of blood.

Attorney General Knight this time did not call Dr. Lynch to the stand. He explained to Judge Horton that Dr. Lynch’s testimony would just repeat Dr. Bridge’s statements; therefore, there was no reason for the State to call him. So Dr. Lynch did not testify.

Mr. Knight’s explanation for not calling Dr. Lynch was not accurate. Some time later, Dr. Lynch asked to speak to Judge Horton privately. When they were alone, Dr. Lynch told Horton, “Judge, these women were not raped. When I examined them, I told them that they were lying and they just laughed at me.” Judge Horton said, “My God, you have got to testify.” Dr. Lynch said, in substance, Judge, I can’t. I graduated from medical school four years ago. I now have a fair number of patients. If I testify for these boys I’ll
never be able to practice medicine in Jackson County. I’ll have to start all over.  
Judge Horton was shaken. What should he have done? Should he have forced Dr. Lynch to testify? Judge Horton could have done so; as the judge, he had the power to call witnesses. Or he could have forced Dr. Lynch to repeat his assertion in the presence of Mr. Knight and Mr. Leibowitz. That’s what Judge Horton should have done—the defense would then have called Dr. Lynch—but he couldn’t bring himself to do it. Instead, Judge Horton most likely consoled himself by thinking that the strong defense case would result in an acquittal. And after all, what Dr. Lynch had said was not factual. It was one man’s opinion. So Judge Horton did nothing—for now—and the trial continued.

The testimony of Lester Carter further strengthened the defense case by providing the explanation for the dead semen. He confirmed what Vickie Price denied: that she had had sex with her boyfriend, Jack Tiller, in the freight yard the night before the train ride, at the same time that Ruby Bates had had sex with Lester himself.

Then came the most dramatic moment of the trial: the defense’s final witness. To the astonishment of everyone, the courtroom doors opened and in walked Ruby Bates, the missing prosecution witness. Miss Bates, the other alleged rape victim and Victoria Price’s friend, stepped forward to testify for the defense.

Under oath, Ruby Bates recanted all the testimony she had given in the first set of trials. In response to Mr. Leibowitz’s questioning, she testified that neither she nor Vickie Price had been raped on the train. She explained that she had lied before because Miss Price had told her that otherwise they themselves might be jailed for crossing a state line with men. Miss Bates confirmed that she had had consensual intercourse in the railroad yard with Lester Carter before boarding the train and that, at the same time and place, Vickie Price had had intercourse with Jack Tiller. Miss Bates also denied Miss Price’s claim that they had spent the night before the alleged attack in a Chattanooga boarding house.

How was it that Ruby Bates disappeared from view? Where had she been? Miss Bates explained that she had gone to New York. She had visited a minister there and told him about her lies. He had urged her to return to Alabama and tell the truth.

One might imagine that Ruby Bates’s testimony destroyed the State’s case. But it did not. The reason was simple: almost no one believed her.

Mr. Knight’s cross-examination was devastating. He extracted from Miss Bates admissions that her beautiful clothes, her travel north, her lodging and upkeep had all been paid for by what appeared to be representatives of the Communist Party.

Mr. Knight succeeded in insinuating that Ruby Bates had been bought and paid for by the ILD, had been housed by them in New York City, and had been enticed by communists and their New York City lawyers into giving false testimony.

Either Mr. Leibowitz or the ILD had miscalculated badly. It was a mistake to overdress Ruby Bates. It was a mistake to keep her in New York rather than in Alabama. It was a mistake not to prepare her better for cross-examination. Ruby Bates, the surprise witness, was no help to the defense.

The State’s summation was, in large part, an appeal to prejudice. Defense witness Lester Carter was referred to as “Carterinski,” a tool of the communists. Ruby Bates had fallen under the influence of New York Jewish communists. The assistant prosecutor, Wade Wright, finished by exhorting the jury to “Show them, show them that Alabama justice cannot be bought and sold with Jew money from New York.” Judge Horton scolded Mr. Wright and Attorney General Knight was embarrassed, but the point was made.

Judge Horton’s charge to the jury was a plea for tolerance, an effort to eliminate prejudice and to urge the jury to decide the case on its merits, on the evidence.

Judge Horton’s charge to the jury was a plea for tolerance, an effort to eliminate prejudice and to urge the jury to decide the case on its merits, on the evidence.
You are not trying whether or not the defendant is white or black—you are not trying that question; you are trying whether or not this defendant forcibly ravished a woman.

You are not trying lawyers, you are not trying state lines. You are here at home as jurors—a jury of citizens under oath sitting in the jury box taking the evidence and considering it, leaving out any outside influences.

We are a white race and a Negro race here together—we are here to live together—our interests are together. The world at this time and in many lands is showing intolerance and hate. It seems sometimes that love has almost deserted the human bosom. It seems that only hate has taken its place. It is only for a time, gentlemen, because it is the great things in life, God’s great principles, matters of eternal right, that long live. Wrong dies and truth forever lasts, and we should have faith in that. Do your duty.5

The judge’s charge was soothing. It probably extended the jury deliberations by a few hours.

The jury was given the case on Saturday afternoon. They returned this verdict on Sunday morning: “We find the defendant, Haywood Patterson, guilty as charged and fix the punishment at death in the electric chair.” Just a few minutes after getting the case the day before, the jury had voted unanimously for a guilty verdict. It took them until the next day to set the punishment because one juror at first thought life imprisonment might be the more appropriate penalty.

Mr. Leibowitz was shocked. He had fully expected to win. Instead, he had lost, for the first time in his career. The next day there were demonstrations in the north. Mr. Leibowitz appeared before a crowd of thousands in Harlem. The roaring welcome seduced him into making unwise, rash statements. Mr. Leibowitz was angry. He was resentful. His ego required him to explain that the verdict was not his fault. About the jury that had convicted Haywood Patterson, he said, “If you ever saw those creatures, those bigots whose mouths are slits in their faces, whose eyes pop out like a frog’s, whose chins drip tobacco juice, bewhiskered and filthy, you would not ask how could they do it.” And he followed this up by saying that two weeks in Alabama made him feel that he needed a “moral, mental and physical bath.”6

What a blunder! Mr. Leibowitz had eight other clients still to be tried in the same courthouse before the same community he had just thrashed. His words were widely reported in the south, particularly in Alabama. Newspapers quoted his comments and reacted with angry editorials.

As luck would have it, Mr. Leibowitz’s insults did not hurt his clients. Judge Horton postponed the trials of the other defendants. He announced that he did not know if Mr. Leibowitz had been quoted accurately or not, but that the widespread publicity and the angry community reaction indicated that now was not the time to go ahead with the other trials.

**Judge Horton’s Decision**

The Haywood Patterson trial was not yet finished. The defense made a motion to set aside the jury verdict, arguing that the verdict went against the weight of the evidence.

Judge Horton was a decent man. He was, however, very much a southerner, steeped in southern traditions. His ancestors had fought for the Confederacy in the Civil War. He had come up through the system. He owed his position to his support in the community. If he set aside the jury verdict, he would not survive as a judge. He knew that. After deliberating for weeks, he rendered his decision.

Mr. Leibowitz had not convinced the jury. He had not convinced the community. But he had convinced Judge Horton, who began his decision by noting that

Social order is based on law and its perpetuity on its fair and impartial administration. Deliberate injustice is more fatal to the one who imposes it than to the one on whom it is imposed. The victim may die quickly and his suffering cease, but the teachings of religion and the uniform lesson of all history illustrate without exception that its perpetrators not only...
pay the penalty themselves, but their children through endless generations …?  

Point by point, Judge Horton dissected Victoria Price’s testimony about the rape. If her account were true, it would be easy to corroborate. But there was no corroboration. She said she had been cut and bleeding, but no one had seen blood. She claimed she had been repeatedly raped. Examined within one-and-a-half hours of these alleged assaults, she would be expected to have abundant semen in her vagina. There were, however, no physical signs of forcible intercourse, and the small amount of dead sperm was more plausibly explained by the consensual intercourse that Lester Carter testified Miss Price had had with her boyfriend the night before she boarded the train. Judge Horton found that the prosecution’s charges were highly improbable. Rape is usually a crime committed secretly. Here the State would have us believe that these rapes were committed on a bright, clear day at about noon, on a gondola car filled with gravel to within eighteen inches of its top, and that the assaults continued in plain sight as the train moved slowly through a succession of country towns. The judge also noted that Victoria Price, instead of testifying with candor and sincerity, had been evasive on the witness stand and had refused to answer pertinent questions.

Judge Horton concluded by stating,

The law declares that a defendant should not be convicted without corroboration where the testimony of the prosecutrix bears on its face indications of improbability or unreliability, and particularly when it is contradicted by other evidence. The testimony of the prosecutrix in this case is not only uncorroborated, but it also bears on its face indications of improbability and is contradicted by other evidence, and in addition thereto the evidence greatly preponderates in favor of the defendant. It therefore becomes the duty of the court under the law to grant the motion made in this case.

It is therefore ordered and adjudged by the court that the motion be granted; that the verdict of the jury in this case and the judgment

Original “Scottsboro” Documents and Artifacts in the Cornell Law Library

• “The Scottsboro Case”: a ten-volume set of original and photostat copies of documents from the Scottsboro trials and appeals, collected by defense counsel Samuel S. Leibowitz ’15. Cornell Law Library has both the original set and a microform copy that it lends to scholars upon request.

• The Train: the scale-model replica that Samuel Leibowitz had the Lionel Corporation make for his illustrative cross-examination. After the trials were concluded the train model was given to the Law School and is currently in the custody of the Law Library.

• Original Photographs: The photos used in this article are available in the Dawson Rare Book Room in the Law Library.

FOR FURTHER READING (AND WATCHING)

Books


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See also Cornell Law School’s own site at lawschool.cornell.edu/library/scottsboro/
of the court sentencing this defendant to death be set aside and that a new trial is hereby ordered.8

It was probably Judge Horton’s hope that his opinion would be so convincing, so logical, that the State would decide to drop all charges and would not continue the prosecution of the Scottsboro youths. It was a vain hope. Neither the state of Alabama nor Attorney General Knight was ready to give up. Judge Horton’s career was over, however. He was defeated in his next election a year later and never again held public office. Haywood Patterson was saved—at least for now. But there would be a retrial.

**New Judge, New Trials, Same Verdict**

Attorney General Knight, using his political power, had Judge Horton replaced as the trial judge. The new judge was 70-year-old William Callahan.

In rapid succession, Haywood Patterson and then Clarence Norris were retried. Mr. Leibowitz again sought to dismiss the actions by reason of the exclusion of blacks from the jury. All motions were denied. Indeed, Judge Callahan systematically undermined the defense presentations during these trials. He overruled almost every defense objection. He sustained almost every prosecution objection. He excluded much of the defense case—whether or not Mr. Knight objected.

A few examples: Judge Callahan refused to allow any cross-examination of Victoria Price about her background or the fact that she had had sex with her boyfriend, Jack Tiller, the night before the alleged attack; nor did the judge allow Lester Carter to testify that he had seen Victoria Price having sex with Jack Tiller. As a result, the jury never had any alternative explanation for the semen that had been found in Victoria Price and Ruby Bates. These rulings were clearly erroneous and they were devastating to the defense.

In his charge to the jury, Judge Callahan instructed them that they could “presume that no white woman would ever have sex voluntarily with a Negro.” He told the jury the form in which they should report a guilty verdict. He neglected to tell them how to report an acquittal. Both Mr. Patterson and Mr. Norris were convicted and sentenced to death.

Haywood Patterson was, for the third time, on death row. For the second time, Clarence Norris faced electrocution. Who could save them now? All appeals through the Alabama courts failed. But once again, the United States Supreme Court rescued the defendants. On April 1, 1935, the Court overturned the convictions of Patterson and Norris, holding in *Norris v. Alabama*9 that the systematic exclusion of blacks from sitting on juries in this case was a denial of equal protection.

*Norris v. Alabama* was another landmark case. Never again would the criminal justice system in the south be the same. The significance of this decision was not the legal principle itself; the Court had held years ago that blacks could not be systematically and arbitrarily excluded from juries. But this principle was difficult, even impossible to enforce because one had to prove systematic and arbitrary exclusion. Before *Norris v. Alabama* it was not enough to show that no blacks sat on juries. It might be a coincidence or possibly a result of no blacks wanting to serve or being qualified to serve. It proved difficult to show a discriminatory intent on the part of state officials who made up jury lists. Heretofore, the Supreme Court had been reluctant to meddle in state procedures. It had been unwilling to look deeply into the facts and to make reasonable assumptions on the basis of the facts. Of course, if a state commissioner of jurors were to admit racial discrimination, then the Court would reverse convictions. Understandably, that never happened.

In *Norris v. Alabama*, the Supreme Court refused to accept the facts as found by the Alabama appellate court. It said that the testimony showed that no black person had served on a jury in recent history, and that there were well-qualified black people in Jackson County who had never been
called to serve. That was enough to indicate discriminatory exclusion.

Mr. Leibowitz successfully argued this appeal before the Supreme Court. The oral argument was unusual in one respect. It happened that in Jackson County, the commissioner of jurors or one of his staff had tried after the Scottsboro trials to add the names of six black people to the jury rolls. The inclusion of those names would have shown that blacks were not excluded from consideration. Whoever attempted this fraud had had to squeeze the names into the small space that was left on the page for the year 1931. The forgery was blatant, obvious to anyone who looked at it. During oral argument, Mr. Leibowitz accused the State of having fraudulently added the names. Can you prove that? asked one of the Justices. Yes, your Honor, look at this—and Mr. Leibowitz presented the 1931 Jackson County jury roll to the Court. Each of the Justices, one after another, looked at the relevant pages with a magnifying glass while Mr. Leibowitz silently waited to continue his presentation. It was a decisive moment—and, some say, the first time the Supreme Court was presented with demonstrative evidence during an oral argument.

Final Decisions

The rest of the story is anticlimactic. The state of Alabama was tired of the Scottsboro cases. They had been costly. They had earned Alabama terrible publicity all over the world. Alabama wasn’t ready to give up, but there was talk of compromise.

In 1936, again before Judge Callahan, Haywood Paterson was convicted of rape for the fourth time. His sentence was 75 years in jail. In the history of the state of Alabama, this was the first time that a black man found guilty of raping a white woman had not been given the death penalty. Then, in 1937, Clarence Norris was convicted of rape and sentenced to death. The governor commuted his death sentence to life imprisonment. Charlie Weems was convicted of rape and sentenced to 99 years. Ozzie Powell got 20 years for assaulting a sheriff. Then, suddenly, all charges were dropped against four other Scottsboro boys. At a press conference, the prosecution team explained the release of Eugene Williams, Roy Wright, Willie Roberson, and Olen Montgomery:

After careful consideration of all the testimony, every lawyer connected with the prosecution is convinced that the defendants Willie Roberson and Olen Montgomery are not guilty.

The doctor that examined Willie Roberson the day after the commission of the crime states that he was sick, suffering with a severe venereal disease and that in his condition it would have been very painful to have committed that crime, and that he would not have had any inclination to commit it. He has told a very plausible story from the beginning: that he was in a box car and knew nothing about the crime.

Olen Montgomery was practically blind and has also told a plausible story, which has been unshaken all through the litigation, which put him at some distance from the commission of the crime. The State is without proof other than the prosecutrix as to his being in the gondola car, and we feel that it is a case of mistaken identity.

The prosecution team all entertain the same view as to these two black people, and in view of the doubt generated by the fact that their physical condition was as stated above, we feel that the policy of the law and the ends of jus-
The Scottsboro cases, the trials, the convictions, the years of imprisonment—much of them spent on death row—were a tragedy for the “Scottsboro Boys,” for the south, and for the state of Alabama. Did anything worthwhile come out of it? Lawyers and historians point to two things. First, the Scottsboro cases produced two landmark Supreme Court decisions that advanced racial justice and protected the rights of the accused. Second, it is considered by some as a forerunner of the civil rights movement. In the Scottsboro case, whites joined blacks for the first time since the abolition movement in demonstrating for racial justice. The American Communist Party started the demonstrations, but as the Scottsboro case continued in the 1930s, Scottsboro defense leagues formed. Whites and blacks, rich and poor, men and women: the same kind of coalition that served American society well in the 1960s and 1970s came together to protest the inequities visited upon the “Scottsboro Boys.”

Faust Rossi is the Samuel S. Leibowitz Professor of Trial Techniques at Cornell Law School.

1. This description of the Scottsboro case draws heavily from court transcripts, newspaper articles, court opinions, and secondary sources, including in particular materials accessible at the impressive Web site of Professor Douglas Linder, on “Famous American Trials,” at law.umkc.edu/faculty/projects/ftrials/scottsboro/scottsbo.htm; and materials contained in the acclaimed book, “Scottsboro: A Tragedy of the American South” (LSU Press 1969, 1979) by historian Dan T. Carter. Also helpful in telling the story were documentaries by the Public Broadcasting System and Courtroom Television Network, which are now available on videotape.
2. Carter, supra, note 1 at 215.
3. Ibid.
6. Carter, supra, note 1 at 244.
7. Carter, supra, note 1 at 265.


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