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The Scottsboro Trials: A Legal Lynching

Faust Rossi

Cornell Law School, ffr1@cornell.edu

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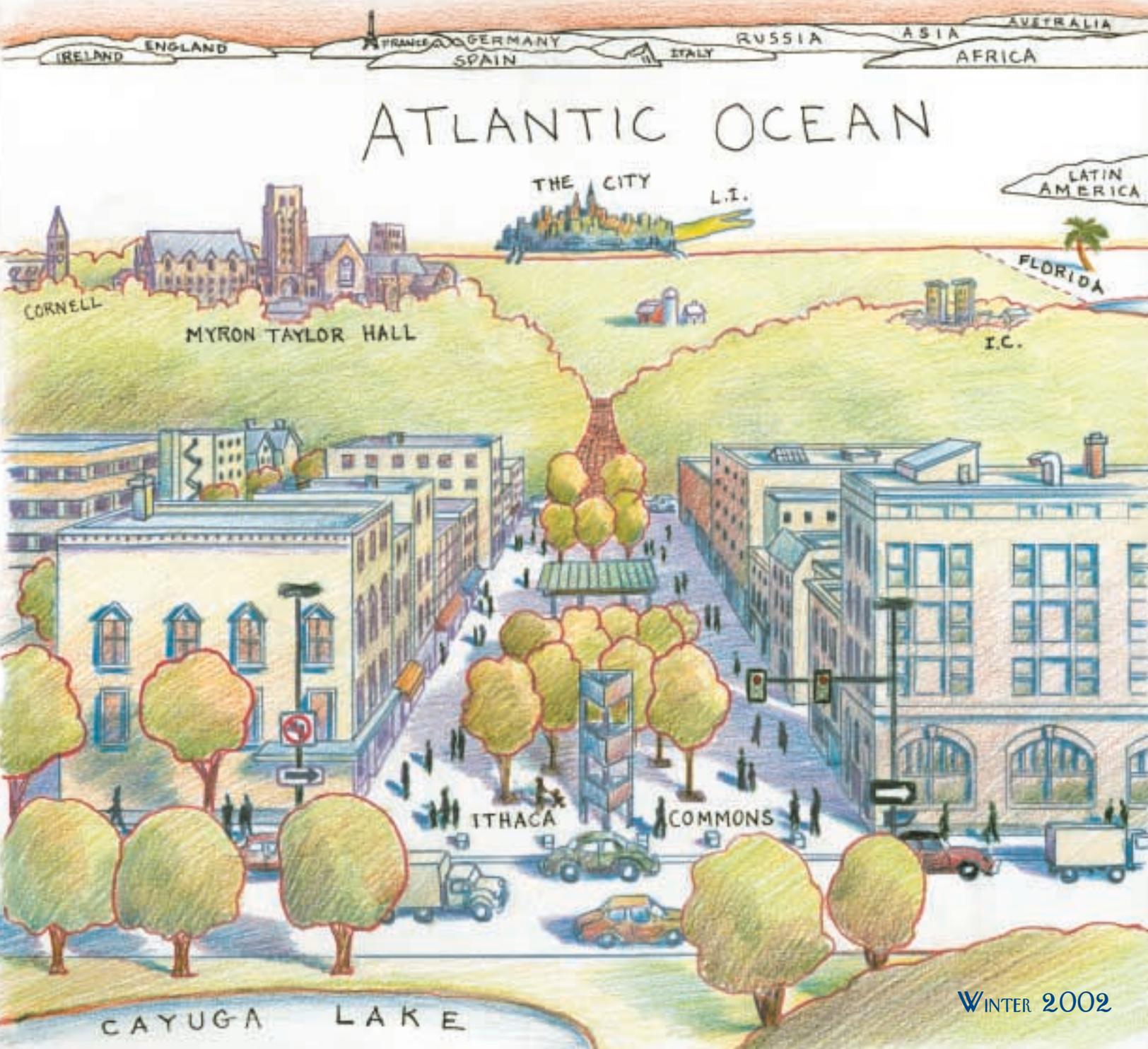
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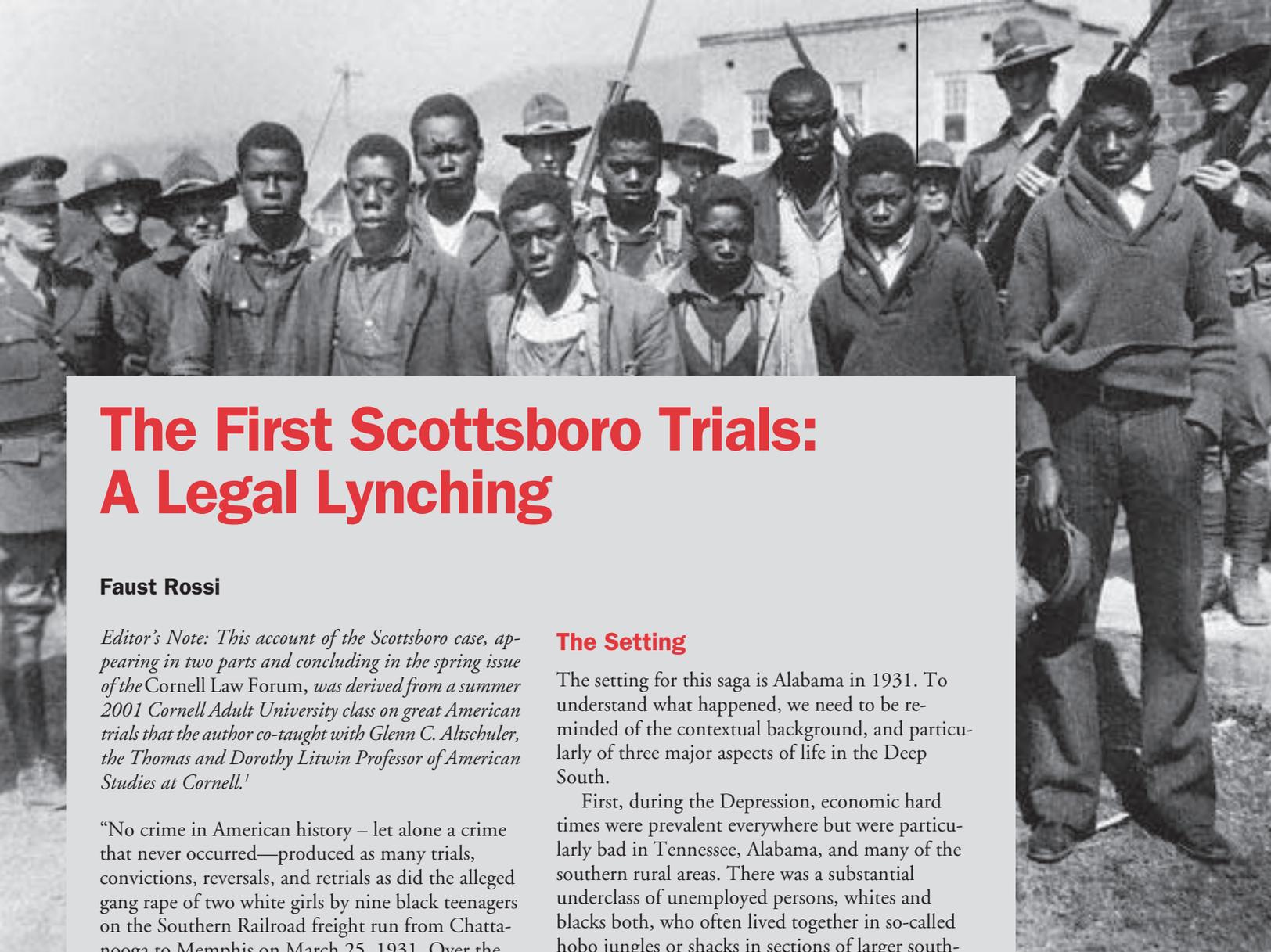
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The First Scottsboro Trials: A Legal Lynching

Faust Rossi

Editor's Note: This account of the Scottsboro case, appearing in two parts and concluding in the spring issue of the Cornell Law Forum, was derived from a summer 2001 Cornell Adult University class on great American trials that the author co-taught with Glenn C. Altschuler, the Thomas and Dorothy Litwin Professor of American Studies at Cornell.¹

“No crime in American history – let alone a crime that never occurred—produced as many trials, convictions, reversals, and retrials as did the alleged gang rape of two white girls by nine black teenagers on the Southern Railroad freight run from Chattanooga to Memphis on March 25, 1931. Over the course of the next two decades, the struggle for justice of the ‘Scottsboro Boys,’ as the black teens were called, made celebrities out of anonymous people, launched and ended careers, wasted lives and produced heroes, opened southern juries to blacks, exacerbated sectional strife and divided America’s political left.”²

In the course of their struggle against prejudice and an unresponsive court system, the Scottsboro Boys, together or separately, endured 16 trials, two United States Court reversals, as many as four series of death sentences, and prison terms ranging from 6 to nearly 17 years. Although the State of Alabama, try as it might, was unable to execute the Scottsboro youths, their lives were left in shambles.

The Setting

The setting for this saga is Alabama in 1931. To understand what happened, we need to be reminded of the contextual background, and particularly of three major aspects of life in the Deep South.

First, during the Depression, economic hard times were prevalent everywhere but were particularly bad in Tennessee, Alabama, and many of the southern rural areas. There was a substantial underclass of unemployed persons, whites and blacks both, who often lived together in so-called hobo jungles or shacks in sections of larger southern cities. In this surprisingly integrated society the

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common elements were poverty and joblessness. Women mill workers who became unemployed

Above: Fearing a mob lynching, Alabama Governor B. M. Miller called in the National Guard to protect the accused: Clarence Norris, Olen Montgomery, Andy Wright, Willie Roberson, Ozzie Powell, Eugene Williams, Charlie Weems, Roy Wright, and Haywood Patterson



The Scottsboro defendants leaving jail in Decatur, Alabama

often resorted to prostitution in order to earn enough to survive. The two white women, the alleged rape victims, came from this milieu. In the constant search for jobs, a preferred method of transportation was to hop a freight train. Hoboing, “riding the rails,” was a way of life for many.

Second, there was the extreme racism that prevailed in southern society—a ruthless oppression of black people. Most white citizens of the south were not cruel in their daily lives but they expected blacks to keep their place. They believed that black people were inferior. There was often a suspicion that young black males, if not controlled, would always be prone to rape a white woman. Even a well-educated, moderate Southerner of this period who would oppose lynchings and violence would doubtlessly support segregation, and would see nothing wrong in the fact that blacks could not vote or serve on juries. Such a person would certainly resent northern troublemakers who would try to meddle by criticizing southern customs.

Third, on a national level, the law was largely unresponsive to the plight of black people. In 1868, the Federal Constitution was amended to provide that no state shall deprive any person of life, liberty, or property without due process of law, nor deny to any person the equal protection of the laws. These Constitutional guarantees, articulated in the 14th Amendment, meant that the national government pledged to enforce legal equality between blacks and whites. After Reconstruction, however, the federal government and the courts—including the United States Supreme Court—failed to breathe life into these legal rules. The words were there, the promise was there, but the reality was ignored. Yes, black people were now entitled to vote, but somehow they didn’t. Yes, black people were now entitled to sit on juries, but somehow they didn’t. In the absence of specific evidence of actual state discrimination, little was done. And specific evidence usually meant an admission by state officials that they were intentionally discriminating. Our nation declined to enforce the 14th Amendment on behalf of black people. There was a reluctance in the federal government to meddle with state procedures when it came to civil rights issues. It reflected the tendency of the rest of the nation to let Southerners handle the race question as they pleased.³

The protections afforded to criminal defendants, white or black, were not clearly defined.

In addition, another aspect of the law was undeveloped. The protections afforded to criminal defendants, white or black, were not clearly defined. The 14th Amendment imposes limitations on the states but these limitations are phrased in the somewhat vague and general words “due process” and “equal protection.” On the other hand,

the Bill of Rights—the first 10 amendments, enacted in 1791 when our Constitution was originally adopted—are more specific. The Sixth Amendment, for example, speaks of the right to the assistance of counsel in a criminal case, the right to confront witnesses, and the right to trial by jury. But the Bill of Rights was framed to limit federal power, not state power. Thus, the question was whether these specific protections, like the right to counsel and the right to a jury trial, were included in the 14th Amendment phrase, “due process,” or in the meaning of “equal protection.” In 1931, the answer was not clear. In many instances, the United States Supreme Court had not yet decided which portions of the specific guarantees in the Bill of Rights were incorporated into 14th Amendment due process. It was unclear, in other words, which of the specific limitations on the federal government and on federal courts were also limitations on state governments and on state courts.⁴

The Tragedy Begins

The Scottsboro tragedy began on March 25, 1931. A Southern Railroad freight train left Chattanooga, Tennessee, on its way to Memphis. Scattered among the cars were some two dozen people—some white, some black. The train followed the course of the Tennessee River. It traveled west, then dipped south into rural northern Alabama, where its path would take it through places like Stevenson, Paint Rock, and Huntsville until it ran north again to Memphis.

Shortly after the slow-moving train crossed the Alabama border, a white youth walked across the top of a railroad car and stepped on the hand of an 18-year-old black man named Haywood Patterson. A fight broke out between the whites and blacks. The larger group of blacks got the better of it and forced all the whites except one off the train. The whites who were ejected from the train complained at a nearby depot that they had been assaulted by a gang of blacks. The stationmaster telegraphed

The idea that a capital case could be tried less than two weeks after the crime seems incredible even by the prevailing standards of 1931.

ahead to the Paint Rock station. Word reached the county sheriff, who deputized every man in Paint Rock who had a gun and lined them up along the tracks at the depot. This posse was ordered to arrest every black person on the train when it stopped at Paint Rock.

The train arrived and was searched. The posse found nine black males ranging in age from 12 to 20 years old. Only four of the nine had known each other before they were arrested. Then came a surprise. Two young white women, with men’s caps on their heads and dressed in men’s overalls, were also found on the train. They were unemployed mill workers named Victoria Price and Ruby Bates. They had gone to Chattanooga, they said, in search of work; having found none, they were now returning home to Huntsville.

As the deputies were tying the blacks together, one of the girls told a deputy that she and the other woman had been raped by the nine of them. Everyone was transported to Scottsboro, the county seat. In the jail, the older of the two girls, Victoria Price, identified six of the nine blacks as her assailants. The guard concluded that “if those six had Miss Price, it stands to reason the others had Miss Bates.” One of the accused, Clarence Norris, protested and called Vickie Price a liar. The guard hit him with a rifle butt. The women were promptly sent downtown to be examined by two local physicians.

Farmers from the nearby hills began gathering. By dusk, a crowd of several hundred had assembled. They surrounded the dilapidated two-story jail. There were shouts of “Give them to us,” and “If you don’t, we’ll come in and get them!” The sheriff called the governor in Montgomery and the governor ordered the National Guard to Scottsboro. There would be no lynching tonight.

The First Trials

Now events moved rapidly. Under the threat of mob violence, with the National Guard's constant presence and manned machine guns on the courthouse steps deterring hostile crowds of thousands, the nine blacks were hustled to trial just 12 days after their arrest. The idea that a capital case could be tried less than two weeks after the crime seems incredible even by the prevailing standards of 1931.

Of the nine defendants, one was 12 years old and away from home for the first time. Another was 13. A third was practically blind. Another was suffering from a venereal disease so acute that any act of intercourse would have been extremely painful; to walk, this man needed a cane. All the blacks were illiterate, far from their homes, and without access to their families. They were not asked whether they had or could get a lawyer. They were not asked whether they had relatives who could be called and who might be able to hire a lawyer for



them. They were not told that a lawyer could be appointed to defend them.

Just before the proceedings began, the judge asked simply if the case was ready for trial. Yes, said the prosecutor. No one answered for the defendants. A Tennessee real estate lawyer, not a member of the Alabama bar and unfamiliar with Alabama law, stood up and said he was not representing the defendants but was willing to advise them. An elderly local lawyer who had not tried a case in many years agreed to advise the Tennessee lawyer. It was never clear whether either of these “advisors,” or anyone else, represented the accused. The Tennessee lawyer did participate on behalf of the Scottsboro defendants—in a manner of speaking. He was allowed 25 minutes to confer with his clients. No time was provided for a reasonable investigation of the alleged crime or of the backgrounds of the alleged victims. There was no time to find witnesses. So the trials began.

The defendants were tried in four groups. Clarence Norris and Charlie Weems were tried first, because they were the oldest. Next came Haywood Patterson, the one whose hand had been stepped on. The third trial involved a group of five defendants: Ozzie Powell, Willie Roberson, Andy Wright, Eugene Williams, and Olen Montgomery. The fourth and final trial was that of Roy Wright, the 12-year-old.

Before each of the four juries, the key prosecution testimony was that of the alleged victims, Victoria Price and Ruby Bates, and the local doctors, Bridges and Lynch. Both doctors testified to having found semen in the vaginas of the two

The prosecutor did not ask for the death penalty—only life imprisonment. That act of mercy disappointed the jury, a majority of which held out for the death penalty.

Haywood Patterson

women. The adviser, or “lawyer,” for the accused did not question the medical testimony, did not make much of an opening statement, and, incredibly, saw no purpose in giving a summation. Worse still, because the adviser did not have the opportunity to speak to his clients at length, he could not prepare them to testify. He called them to the stand nonetheless, so they could say whatever they wanted. As you might expect, some of the nine said, in effect, “Not me and not my two or three friends, but, yes, these other defendants, they are the ones who did it.” No single lawyer can represent multiple clients if the latter blame each other for the crime charged. It would constitute a gross conflict of interest. But these “technicalities” went unnoticed or were ignored. In short, the defense, insofar as it existed at all, was a disaster.

These rapid-fire trials were over in three days. Most took five hours or less. The jury deliberations for most of the trials averaged about 30 minutes. The verdict for eight of the nine was “guilty of rape” and the penalty in each case was death. The exception was the trial of Roy Wright, the 12-year-old. Here the jury could not agree and the result was a hung jury. Why couldn’t the jury agree? Well, because Mr. Wright was only 12, the prosecutor did not ask for the death penalty—only life imprisonment. That act of mercy disappointed the jury, a majority of which held out for the death penalty. As a result, they could not render the required unanimous verdict.

From the time of arrest to the time of the death sentences only two weeks had passed.

Saviors

The Scottsboro Boys did not die in the electric chair. Not then, and not later. Who saved them? In this tragedy there were heroes—individuals or groups whose skill or courage or commitment saved the lives of these young victims.

In chronological order of appearance, the first of these saviors was the American Communist Party (ACP). The initial media response to the convictions was limited to a few brief stories in several newspapers. There was no national media presence at the trial. Soon after the convictions, the ACP became involved. They knew a good issue when they saw it. The convictions, the ACP argued, were a dramatic example of capitalistic repression of the poor. Obviously, their motive in helping the Scottsboro Boys was propaganda. But were their motives important? When you are powerless and facing death, when no one else is aiding your cause, you take what help you can get. The ACP had the means and the network to mobilize mass protests that brought the case national and international attention. Within days, demonstrations throughout the United States, as well as in Germany, Spain,

The convictions, the American Communist Party argued, were a dramatic example of capitalistic repression of the poor.

and Moscow, raised a storm of protest. Moreover, the communists had a well-established legal defense team; the International Labor Defense and its chief lawyer, Joseph Brodsky, were experienced and dedicated. The Scottsboro Boys now had support and competent legal representation.

The next savior to enter the picture was the United States Supreme Court. After the convictions were affirmed in the Alabama courts, they were appealed to the United States Supreme Court. In the landmark decision of *Powell v. Alabama*,⁵ the Court reversed the Scottsboro convictions. This decision appears in all the constitutional law and criminal procedure casebooks. Let me explain why.

There was no question that the Justices regarded the legal representation of the Scottsboro Boys inadequate. It was never clear whether the Tennes-

see lawyer was really representing the defendants. He seemed tentative, probably because of the mob atmosphere. He had no time to prepare. Counsel was never formerly appointed by the court. The unfairness was obvious. But the Supreme Court needed a legal basis on which to reverse. The specific Sixth Amendment right to counsel would do nicely except, as I've mentioned, the Sixth Amendment operated only against the federal government, not against the states. The 14th Amendment's "due process" clause does apply to the states but what does "due process" entail? There was no precedent that said the right to counsel applies to the states through the operation of 14th Amendment due process—no precedent, that is, until *Powell v. Alabama* created it in 1932.

This decision is a legal landmark because it extended and clarified the meaning of due process. It is a seminal right-to-counsel decision—seminal because it is the basis of the decisions that followed. In *Powell*, the Court said two things. First, it read the right to counsel into the due process clause. Therefore, this guarantee would now apply to all state trials. Second, it applied that principle to the Scottsboro trial and found that due process was lacking. That insufficiency saved the Scottsboro Boys from being executed—at least for now.

To understand the long-term significance of this decision, we have to appreciate that the actual holding was a narrow one. What the Court said was that 14th Amendment due process requires the effective right to counsel in this case because in this case the defendants were all young, uneducated, and illiterate. A mob atmosphere surrounded the trial and this was a capital case. The Court left open a host of questions that would be answered later. Does the right to counsel apply to all capital cases—even if the defendants are mature and educated, and there are no mobs? Yes, said the Court in a later decision. Does the right to counsel apply to non-capital, serious felony cases? Yes, said the Court some years later. Does the right to counsel apply to all felonies, whether serious or not? Yes,

said the Court in another decision. When in the trial process does the right to counsel attach—only at the time of trial? No—earlier; at least at the time of indictment, answered the Court. Why not even earlier than that, such as at the time of initial arraignment? Good point, said the Court, and it so held. Why not still earlier? The Court ultimately agreed, and held that the right to counsel attaches at the time of custodial interrogation. If the police arrest a suspect and the suspect asks for a lawyer, at that point all interrogation of the suspect must stop. But how will the suspect know he has this right to counsel? Ultimately, the Court held in *Miranda v. Arizona*⁶ that if the police take a suspect into custody, they must advise him that he has the right to a lawyer and that if he cannot afford one, a lawyer will be appointed for him. Thus, over the course of 35 years, in decision after decision, the Supreme Court expanded the right to counsel in state as well as federal trials. Where did all this begin? It began with *Powell v. Alabama*.

This is not the end of the story. Now the nine Scottsboro defendants must return to the Alabama courts to be tried again. And back in Alabama, not much has changed.

To be continued

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 website of Professor Douglas Linder, on "Famous American Trials," at www.law.umkc.edu/faculty/projects/ftrials/scottsboro/scottsb.htm; and 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 now available on videotape.

2. Linder, *supra*, note 1.

3. Carter, *supra*, note 1 at 321-324.

4. Carter, *supra*, note 1 at 161-164.

5. 287 U.S. 45 (1932).

6. 384 U.S. 436 (1966).



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