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History Corrected — The Scottsboro Boys Are Officially Innocent

Who were the Scottsboro Boys? They were nine black unemployed youths who made a most unfortunate decision to hobo a train that left Chattanooga for Memphis and passed through Scottsboro and Huntsville, Ala., along the way. They were called “boys” because their ages ranged from 13 (Roy Wright and Eugene Williams) to 19 (Charlie Weems). The authorities charged all nine of them with death penalty offenses for allegedly gang raping two hobo white women. A jury convicted the youths simply because of their race at a time when no jury composed of all white males in a deep Southern state would reject a white woman’s uncorroborated and unquestionably false testimony against a person of color no matter how unjust and absurd — even while the whole world watched.

Olen Montgomery, age 18, was completely blind in one eye and nearly blind in the other. He could only get around by placing his hand on someone’s shoulder and being led from one place to another. The so-called rape occurred in a gondola car, and Olen Montgomery was riding on an oil tanker car at the end of the train and knew nothing about any rape occurring until he was arrested for it. Willie Robinson had untreated gonorrhea and syphilis. His private parts were covered with sores

and swollen to the extent that he walked with a cane and was impotent. Sex for him would have been extremely painful and he would most assuredly have infected any partner (neither of the “victims” contracted venereal disease). Robinson had an IQ of 64 and a mental age of nine. He had not been in the gondola car at all on the day the alleged rape occurred.

Fateful Day in 1931

On a cool March day in 1931, a slow-moving freight train left Chattanooga headed west toward Huntsville. Just as the train left Stevenson, Ala., two bleeding white hobos ran to the stationmaster. They complained that a “bunch of Negroes” had beaten them up and thrown them from the train without provocation. The truth was that the two transients had told all the black people in the gondola car to either jump off the train or find another car to ride in because they did not want to “ride with niggers.” The fight was short; it was two against seven.

The stationmaster telephoned Sheriff M.L. Wann, and he in turn called a deputy to stop the train at Paint Rock station. His instructions to the deputy were to “capture every Negro on the train and bring them to Scottsboro,” which was the county seat of Jackson County. The Jackson County deputy did as he was told. There were nine black youths aboard, and to everyone’s surprise, also on board were two white females wearing men’s overalls and caps.

In 1931, riding a train in Alabama without a ticket or the money to purchase one constituted the crime of vagrancy and customarily resulted in a fine of \$30 or 30 days on the county work crew. To avoid the vagrancy

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arrest, Ruby Bates claimed that she and her friend, Victoria Price, had been raped by the nine black youths.

The deputy who stopped the train was there to investigate a simple misdemeanor assault. Upon hearing the rape allegation, the police took the two females to a doctor in Scottsboro and took the nine youths to the county jail. As word of the accusation spread, a mob formed outside the jail. The Alabama National Guard was called out to protect the prisoners.

In the Courts

An all-white grand jury, which had met the week before, reconvened and indictments for rape, a capital crime at the time, were returned against all nine. The trial in Scottsboro was a travesty. The court appointed a local attorney who was experiencing senility, Milo Moody, along with an “advisor,” Stephen R. Roddy from Chattanooga. Roddy’s practice consisted primarily of writing title opinions. Ada Wright of Chattanooga, the mother of two of the boys, Andrew and Roy Wright, had paid him a small fee to assist their Alabama attorney.

The grand jury returned the nine indictments on a Tuesday morning and Judge Alfred E. Hawkins set the trials for the following Monday. The court appointed counsel on the date set for trial. On that day lawyer Roddy was reported to be drunk (“he couldn’t even walk straight”).¹ The court gave the two lawyers less than half an hour to confer with their nine clients in a capital case before starting the voir dire. The drunken Roddy agreed that all nine defendants could be tried at the same time even though Alabama law at that time permitted each co-defendant, on motion, the absolute right to a separate trial if he requested one. When questioned by the trial judge, Roddy said he wanted no severances. District Attorney H.C. Bailey told the court he wanted three trials — one for 13-year-old Charley Weems, one for Clarence Norris and Roy Wright, and one for the other six.

The trials resulted in nine guilty verdicts. As to Roy Wright, who was only 13, the jury voted seven for death and five for life imprisonment even though the prosecution asked for life imprisonment for Wright. Thus, there was a mistrial as to Wright. The other eight transients were sentenced to die. These were the first death sentences for Judge Hawkins as a jurist, and he cried as he pronounced them. The Alabama Appellate Court affirmed the convictions and death sentences.

It was a different story in the U.S. Supreme Court. In the landmark case of

Powell v. Alabama,² the Supreme Court held it to be ineffective assistance of counsel and a denial of due process for a trial court to put a capital defendant on trial with counsel who had only 30 minutes to interview his client and prepare before striking a jury. Later in a subsequent appeal to the Supreme Court in *Norris v. Alabama*,³ the Court deemed it a violation of the Fourteenth Amendment to have a “gentlemen’s agreement” among the Jury Commissioners of Alabama that no blacks be considered for grand jury or petit jury service. These commissioners in each county compiled the jury rolls from which potential jurors were chosen and the Jackson County Grand Jury returning the nine indictments was all white. Neither Jackson County nor any other Alabama county had ever had a black grand or petit juror.

After the Court decided *Powell v. Alabama*, the youths filed a motion for change of venue. Judge Hawkins determined that the case should be moved to the town of Decatur in Morgan County as opposed to Birmingham, where the defendants wanted it to go. The case was assigned to Judge James Edwin Horton.

The year was 1933, and Judge Horton was nearing the end of his second term as circuit judge. He was the son and grandson of Confederate veterans. A product of the Old South, he nonetheless possessed a strong sense of justice and a firm belief that all persons must be equal before the law. Judge Horton’s life ambition was to be an appellate justice. When the case was assigned to Horton, Gov. Bibb Graves sent an assistant to see him with a promise that if he handled the Scottsboro cases “with the least embarrassment to the state of Alabama,” the governor would appoint him to a place on the Supreme Court soon to be vacated by a justice who had a serious heart condition.

Famed New York lawyer Sam Leibowitz and Joseph Brodsky represented the Scottsboro Boys in Decatur. The evidence at trial overwhelmingly proved that they were innocent. Ruby Bates recanted her previous testimony in Scottsboro. Bates testified that she was never raped and that she and Victoria Price made up the whole story to keep from being arrested for vagrancy. The gondola car where the supposed rape occurred had been used to haul crushed gravel. While Victoria Price testified she was forced down, held down and raped, there was not a scratch on her from the sharp edges of the gravel remaining in the gondola.

Lester Carter, one of the hobos thrown from the train, testified that he had sex with Ruby Bates the night before in the

hobo jungle in Chattanooga. He further testified that several feet away, Victoria Price had sex with Price’s boyfriend, Jack Tiller. The semen found inside Victoria Price was small in quantity and the sperm were dead. A physician in Scottsboro examined Victoria and Ruth immediately after the rape accusation. The medical testimony supported the defense, not the prosecution, in that the doctors found nothing consistent with forcible intercourse and certainly not by nine different people. In fact, Victoria Price testified that she was never in a hobo jungle in Chattanooga but stayed at a ladies’ boarding house owned by Callie Brochie. Sam Leibowitz proved that no such person lived in Chattanooga and that there was no such boarding house there. Leibowitz established that Callie Brochie was a fictional character who owned a boarding house in a *Saturday Evening Post* series. In his closing argument, Morgan County Solicitor Wade Wright repeatedly insulted Sam Leibowitz for his Jewish faith. Because Sam Leibowitz bought Lester Carter a suit, tie and shoes to wear to court, the solicitor made the following argument in his closing:

Lester Carter sold his Alabama birthright for a suitcase full of New York Jew ready mades.⁴

Judge Horton never realized his dream of an appellate judgeship. Instead, he chose conscience and justice over politics and ambition. In a rare and singular act of courage, after the jury convicted Haywood Patterson and sentenced him to die, Judge Horton granted Sam Leibowitz’s motion for a new trial, for Patterson based on the “verdict of the jury being against the great weight of the evidence.” His ruling ended his political career forever and he was overwhelmingly defeated for re-election in 1934.

After Judge Horton granted the motion for new trial, the case went to Judge William Callahan of the same circuit. Judge Callahan proved to be the antithesis of Judge Horton by resorting to heavy-handed tactics and braised rulings. In the new trial of Haywood Patterson, due to a number of complications the tenacious legal giant Sam Leibowitz was forced to relegate his role as lead attorney to that of an advisor to newly appointed Huntsville attorney Clarence Watts. Watts did his best, but just as in the 1950s classic *To Kill a Mockingbird*, powerful societal codes trumped any semblance of justice. In his closing argument he said these words:

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Gentlemen of the jury, the hardest thing in life is to do what you know is right when everyone around you is urging you to do what you know is wrong.⁵

Guilty verdicts and death penalties followed for the defendants.

The Aftermath

No one was executed. Haywood Patterson, ultimately convicted in four trials, went to prison. In 1948 he escaped and hoboed a train to Detroit. The governor of Michigan refused his extradition back to Alabama. He died in 1950 in Michigan while serving a sentence for manslaughter. After six and one-half years of confinement, the state moved to dismiss the charges against the blind Olen Montgomery, the crippled William Robinson, Roy Wright, and Eugene Williams. The charges were not dismissed upon insufficient evidence, but solely on the basis of the defendants having served a sufficient amount of time behind bars. Charlie Weems made parole in 1943. He had contracted tuberculosis and would soon die in Atlanta, Ga. The state paroled Andy Wright in 1943. He also had tuberculosis and would be returned to Kilby

Prison several more times for minor felonies (thefts and assaults). Roy Wright made parole and died by his own hand in 1959 after killing his wife. Ozie Powell had stabbed a Morgan County deputy while awaiting a new trial. The rape charges against him were dismissed in return for his plea to a 20-year sentence for assault from Judge Callahan. He made parole in 1944. Clarence Norris remained under a death sentence that was commuted by Gov. Graves. Paroled in 1943, he returned to prison on a parole violation and in 1946 was paroled again. In 1974 he learned that he was wanted in Alabama for a parole violation. He was living in Queens. The governor at the time, George Wallace, signed a pardon for Clarence Norris in 1975. When he died in 1989, Norris was the last living "Scottsboro Boy."

It is not often one can actually witness history corrected. Yet this is precisely what happened on April 19, 2013, in Scottsboro, Ala., when Gov. Robert Bentley signed two pieces of legislation into law. The Alabama Legislature passed a resolution recommending a posthumous pardon for all the defendants against whom charges were not dismissed. Legislators also passed a resolution declaring all nine Scottsboro Boys to be innocent. Even the pardon given Clarence Norris by Gov. Wallace did not declare him innocent. The two acts unanimously passed both houses of the Alabama Legislature, all Republicans and all Democrats voting in the affirmative. At the side of Gov. Bentley, with tears in his eyes, stood Clarence Norris Jr., witnessing the complete exoneration of his father.

Seven months later, on November 21, 2013, the Alabama Board of Pardons and Paroles granted posthumous pardons to Charles Weems, Andy Wright, and Haywood Patterson. They were the final three defendants to have convictions from the case on their records.⁶

So much time has passed since the early 1930s, and all the Scottsboro Boys are dead. The pardons and exonerations never helped them while they were alive, yet it is never too late to do the right thing. Equal justice before the law cannot be a dream. Advocates involved in the criminal justice system must make it a reality. It is never too late to right a wrong — especially one in the name of justice. History has been corrected. The Scottsboro Boys are all, each and every one, innocent.

The authors are honored to have participated in this long overdue fight for justice.

Notes

1. DAN T. CARTER, *SCOTTSBORO: A TRAGEDY OF THE AMERICAN SOUTH* 22 (1969).

2. 287 U.S. 45 (1932).

3. 294 U.S. 587 (1935).

4. In 1933 the closing arguments of attorneys were never transcribed in Alabama. See DAN T. CARTER, *SCOTTSBORO: A TRAGEDY OF THE AMERICAN SOUTH* 235 n.99 (1969). We therefore look to quotes from the press. See N.Y. TIMES, April 7, 1933, at 3. See ROBERT LEIBOWITZ, *THE DEFENDER: THE LIFE OF SAMUEL S. LEIBOWITZ* 242 (1981).

5. At that time closing arguments were not transcribed. Dan T. Carter, *supra* note 4. See the bronze plaque on the second floor of the Madison County Courthouse dedicated to Clarence Watts, a member of that Bar.

6. Colleen Jenkins, *Alabama Pardons Scottsboro Boys After 82 Years*, Nov. 21, 2013, available at <http://www.nbcnews.com/news/investigations/alabama-pardons-scottsboro-boys-after-82-years-v21563495> (last visited Feb. 20, 2014). ■

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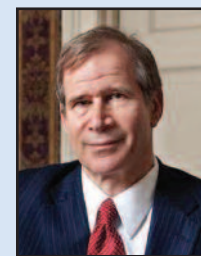
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