

Legal History

The Supreme Court Gets It Right (Twice): The Trials of the “Scottsboro Boys”

By C. Evan Stewart



On March 25, 1931, as a freight train crossed the Alabama state border, a fight broke out between a group of whites and blacks. The blacks won and forced all the whites (save one) off the train. The de-trained whites reported to local authorities that they had been assaulted by a gang of blacks; and at the next station a deputized posse corralled nine black males (their ages ranged from 12 to 20 years old). Also found on the train, dressed in men’s overalls with caps on their heads (covering their hair), were two white girls (Victoria Price and Ruby Bates). Price and Bates were unemployed mill workers who said they had traveled on the train in search of work.

As the nine males were being restrained, one of the girls said that they had been raped by all of them. Later, at the jail (in Scottsboro),

Price identified six out of the nine as her rapists. It did not take long for local whites to assemble at the jail demanding vigilante “justice”; and the local press quickly reported that the arrested males were guilty of “a heinous and unspeakable crime that savored of the jungle.”

Twelve days after their arrest, the nine were put on trial. They had no lawyer(s) representing them, although a Tennessee real estate lawyer (Stephen Roddy) volunteered to advise them (and an elderly trial lawyer from Alabama said he was willing to advise Roddy). After Roddy met with the nine for a 25 minute consultation, the proceedings commenced.

There were actually four trials – the two oldest were tried first; and the youngest (the 12-year old) was tried last. Price and Bates testified at each trial, as did two local doctors, both of whom testified as having found semen within the women. Roddy not only did not cross-examine the doctors, he called each of his “clients” to testify – without any preparation! Some of the defendants, while denying their own guilt, gave contradictory accounts, pointing fingers at various others in the group.

After three days, all of the trials were completed. The jury verdicts for eight were guilty, with the death penalty. For the 12-year old, there was a hung jury because the prosecutor had *only* asked for life imprisonment – a majority of that jury held out for the death penalty.

The eight guilty verdicts were appealed to and affirmed by the Alabama Supreme Court (although the Alabama Chief Justice strongly

dissented, believing that the eight had not received fair trials). The United States Supreme Court thereafter took the case and reversed the convictions of the “Scottsboro Boys”: *Powell v. Alabama*, 287 U.S. 56 (1932).

The Supreme Court – Part I

Although the petitioners raised multiple Constitutional challenges to the trials, the Court considered only one: were they denied the right of counsel in contravention of the Sixth Amendment via the due process clause of the Fourteenth Amendment. Associate Justice George Sutherland, for the majority, first noted that the “ignorant and illiterate” defendants “were not asked whether they had, or were able to employ, counsel, or wished to have counsel appointed.” Sutherland then went on to recite the lengthy colloquy between the trial judge and Roddy, in which:

- (i) Roddy did not accept designation as trial counsel;
- (ii) He acknowledged he had “not prepared this case for trial”;
- (iii) He further acknowledged that he was “not familiar with the procedure in Alabama”; and
- (iv) He also offered his opinion that “the boys would be better off if I step entirely out of the case.”

Nonetheless, with the local lawyer telling the trial judge that he was “willing to go ahead and help Mr. Roddy,” that was enough; in Sutherland’s words, “in this casual fashion the matter of counsel in a capital case was disposed of.”

Sutherland next moved to the Constitutional issue. Recognizing that the Alabama Supreme Court had found the trial met the standards of the Alabama State Constitution, he wrote that that determination had no binding effect on the Court's purview of the federal Constitution. Clearly influenced by the factors in play (it was a capital case, the defendants were minors and illiterate, there was no time to prepare, the existing public hostility, etc.), the Court ruled that the Sixth Amendment's right of counsel applied to the states for the very first time in the country's history – via the Fourteenth Amendment.

Associate Justice Pierce Butler (joined by Associate Justice James McReynolds) dissented. Not only did Butler believe the record did not support the notion that the defendants had not gotten an eminently fair trial, he also objected to the extension of federal authority into a field hitherto occupied exclusively by the several States. Thus, it was his view that “[t]he record wholly fails to reveal that petitioners have been deprived of any right guaranteed by the Federal Constitution.”

More Trials

Unfortunately for the Scottsboro Boys, all that meant was they would be retried in Alabama state court. Fortunately for the group, it was arranged (by the Communist Party) that going forward they would be represented by one of the leading criminal defense lawyers in the country: Samuel S. Leibowitz of New York City.

Once more, there would not be a group trial. Rather, the first trial to

go forward was against the young man (Haywood Patterson) whose physical appearance seemed to meet the most deep-seated prejudices of Alabama whites. For the prosecution, Alabama Attorney General, Thomas Knight, stepped into the first chair (he had also argued *Powell* in the U.S. Supreme Court). Leibowitz initially moved to dismiss the indictment on the ground that blacks had been barred from both the grand jury and the pool of potential jurors. Spending a day with witnesses who proved that point without dispute would provide an issue for appeal, notwithstanding his motion's defeat.

In the trial itself, Liebowitz went on a frontal assault against Price. Armed with evidence, inter alia, that both women had had sex with other men the night before the alleged rapes, that Price (21 years old) was twice married and had been convicted of adultery and fornication, that Price's description of her injuries was not supported by the doctors, Leibowitz systematically destroyed Price's credibility. But that destruction was double-edged because, to the Southern ear, Leibowitz (an alien from New York City) had violated basic “Southern chivalry” by portraying her as “white trash.” In the words of one local newspaper: “Mr. Liebowitz's brutal cross-examination makes one feel like reaching for his gun while his blood boils to the nth degree.”

With respect to the first doctor's testimony, Leibowitz was more strategic. Not only was Price's story not supported by the physical evidence, there was barely any semen found (notwithstanding her claim of multiple

rapes only hours before); moreover, the semen found was immobile or dead (thus, most likely to have been there for day(s) prior). Based upon those facts, the doctor agreed that Price's story about successive rapes on the night alleged was unlikely. As to the second doctor, Leibowitz did not get a chance to question him – he refused to be a prosecution witness, privately telling the judge: “these women were not raped.” And although the judge urged him to testify, he refused because he believed it would destroy his local medical practice.

Then came the kicker: Ruby Bates, who had disappeared before trial and could not be called by the prosecution, suddenly appeared in court to testify for the defense. Bates recanted her entire story. She had agreed to lie because Price had convinced her that they would be arrested. Further, she corroborated other testimony about both women having had consensual sex the day before the alleged rapes.

Unfortunately, the prosecution's cross-examination of Bates played well to the jury (and the broader Southern audience). Bates admitted that her fancy new clothes, her trip to New York (where she had disappeared), her expenses, etc., had all been paid for by the Communist Party. Eek! This cavalcade of bad news then allowed the assistant prosecutor to urge the jury in summation to “[s]how them, show them that Alabama cannot be bought and sold with Jew money from New York.”

After getting the case in the afternoon, the jury took just a few minutes to agree that Patterson was guilty. But it took then until the next morning to

agree on death in the electric chair, only because one juror held out for a while for life imprisonment.

This was Leibowitz's first loss in seventy-nine trials. Undeterred, he moved to set aside the verdict. The trial judge, after agonizing over the matter (and undoubtedly his future) for weeks, ultimately granted the motion after a meticulous review of the physical evidence and Price's credibility. (Not surprisingly, the trial judge lost his re-election bid.)

Attorney General Knight then decided to retry the same defendant (Patterson), together with another one of the Scottsboro Boys (Clarence Norris), but this time before a new, and more compliant, judge. Leibowitz made his same dismissal motion because of the jury pool. But that motion, along with anything else that might help the defendants, was denied. In fact, most of the evidence so damning to the prosecution in the prior trial was excluded. This new judge was so in the tank that he actually told jurors the form they should use to find the defendants guilty! And, of course that is what happened, with both defendants being given the death penalty.

The Supreme Court – Part II

After the Alabama state court appeals proved unfruitful, the United States Supreme Court again granted certiorari and again overturned the convictions: *Norris v. Alabama*, 294 U.S. 587 (1935). Writing for a nearly unanimous Court (Associate Justice McReynolds did not hear arguments and did not participate in the decision), Chief Justice Charles Evans

Hughes ruled that the systematic and arbitrary exclusion of blacks from juries violated the equal protection guarantees of the Fourteenth Amendment. While the Court had established this principle in earlier cases, *Norris* was the first case where the Court not only rejected the factual determination found by the Alabama courts that there had been no such wholesale exclusion of blacks from the jury(ies), but also found – as a matter of record and testimonial evidence – that there had been well-qualified blacks in the Alabama jurisdiction who had never been called to serve on a jury.

Oral argument before the Court was also significant. After the aforementioned trials (and the record of exclusion Leibowitz had established), some Alabama official(s) had added the names of six black men to the jury rolls. When Leibowitz identified this as a fraud coopered up by the State, he was asked at oral argument: "Can you prove it?" Replying "Yes, your Honor," Leibowitz then handed up to the Court the doctored 1931 Alabama county jury roll, with the six names hastily scrawled into a small spot on the last page of the roll. Leibowitz paused his oral presentation while each of the Justices reviewed the document with a magnifying glass. Observers said it was a critical inflection point in the argument; moreover, it would appear that this was the first time the Supreme Court was presented with (and reviewed) evidence during oral argument.

The Unfortunate Aftermath

The State of Alabama was undeterred. Ultimately, it prosecuted

three of the Scottsboro Boys for the alleged rapes and got convictions (but without the death penalty); another defendant was convicted for assaulting a police officer. But even the Alabama prosecutors had limits – they publicly dropped charges against the remaining defendants because the physical evidence was indisputable that they could not have committed the alleged rapes (of course, this came after years of incarceration).

Ultimately, all the imprisoned Scottsboro Boys were paroled (except Patterson, who escaped from prison). In 1976, *Norris* (the last living Scottsboro Boy) was pardoned by the State of Alabama; the pardon was signed by Governor George Wallace. On April 19, 2013, Alabama Governor Robert Bentley issued a posthumous pardon to all of the Scottsboro Boys ("This has been a long time coming. But it's never too late to do the right thing.").

Postscripts

- The right to counsel precedent created by the *Powell* decision would, of course, be expanded by later Supreme Court jurisprudence. See, e.g., *Gideon v. Wainwright*, 372 U.S. 355 (1963); *Escobado v. Illinois*, 378 U.S. 478 (1964); *Miranda v. Arizona*, 384 U.S. 436 (1966).
- The Scottsboro Boys served as an inspiration to Harper Lee for her book "To Kill a Mockingbird."
- Sheila Washington, who was the catalyst for the creation for the Scottsboro Boys Museum and

Culture Center, as well as a major force in winning the 2013 pardons, died on January 29, 2021.

- For those wanting to dig deeper into this tragic story, the best first-stop is a two-part article by Faust F. Rossi, Samuel S. Leibowitz Professor of Trial Techniques, Emeritus, at Cornell Law School: “The First Scottsboro Trials: A Legal Lynching,” *Cornell Law Forum* (Winter 2002 & Spring 2003). Also recommended is Dan T. Carter’s “Scottsboro: A Tragedy of the American South” (LSU Press 2007).

Lawyers Who Made A Difference

Judge Martha Mills

By Pete Eikenberry and Aneesa Mazumdar

In the summer of 1966, White & Case hired its first woman lawyer, Martha Wood.

Even before her first day as a law student, Judge Martha Mills, now retired, was a trailblazer. She graduated from Macalester College in three years, even though her parents thought girls should not attend college. Then, she (and three of her classmates) were the first female law students admitted to the University of Minnesota Law School. After law school, in the summer of 1966, she was hired by White & Case as its first woman lawyer.

At White & Case, Judge Mills was assigned to the Trusts & Estates

Department as one of her required three month rotations through three out of the four departments at the firm. The partner heading the department found her first memo very well done, yet he asked her to spend more time on it. Feeling that the request was made merely to increase billable hours, she objected. The next day she was transferred to the Litigation Department. In Judge Mills’ career, she appears always to have determined to “do the right thing.”

While aware of the milestone of her presence at the firm, Judge Mills focused solely on doing very good work. As a litigation associate, she was assigned to several high-profile matters including the “Salad Oil Scandal” matters. While most people at White & Case were supportive, there was one partner, David Hartfield, whom she knew had opposed hiring women lawyers. For him, Judge Mills just stayed focused on her tasks. Over time, given her excellent work in complex assignments, she gained his trust, and Hartfield became her favorite mentor at the firm. For young lawyers, Judge Mills emphasizes the importance of staying in touch with everyone – from the partners to the receptionists – and fully integrating with her coworkers.

In 1969, three years into her career in the White & Case Litigation Department, Judge Mills volunteered for a one-month volunteer assignment in Mississippi to work with the Lawyers’ Committee for Civil Rights Under Law. When the month was up, she had seen firsthand the pressing need for more lawyers to dismantle the structures of systemic racism; White & Case, however, turned down her request to stay another year. Without looking

back, she returned to New York, wrapped up her matters at White & Case, and rejoined the Lawyers’ Committee full-time. She was one of the first female trial lawyers in the Deep South. In Mississippi, Judge Mills worked as a trial lawyer on dozens of civil rights cases.

Judge Mills won the first million dollar verdict in the state since Reconstruction on behalf of a Black man murdered by the Ku Klux Klan. She was the first attorney in Mississippi to try a case before an integrated jury. In the criminal cases she defended, she routinely moved to quash jury venires on the ground that they excluded Blacks. The names on the jury lists came from voter registration lists. Most Blacks at the time were unable to register to vote, despite passage of the Voting Rights Act. While she often lost at the county level, she always obtained reversals in the Mississippi Supreme Court. Step by step, juries in Mississippi became integrated.

Although she was under constant threat of fire-bombing or death, Judge Mills stated that she never had been concerned for her safety. She simply felt that “this was the right thing to do.” She commented upon the impact of her work, by saying, “I made a difference, but so did everyone else who went down there.”

In 1971, after two years in Mississippi, Judge Mills moved to Cairo, Illinois, to be chief counsel of the Lawyers’ Committee, where it was located. There, she continued trying civil rights cases and helped to develop a program for migrant workers. After three years in Cairo, she returned to her home city of Chicago and engaged