Chapter Three

Scottsboro (1931) and Racial Injustice

A posse of about fifty men, armed with shotguns, rifles, and pistols, and hastily deputized as sheriffs, lined the railroad tracks near the depot in Paint Rock, Alabama, early in the afternoon on March 26, 1931. They were waiting for the westbound forty-two-car Great Southern Railroad freight train. The train had begun its journey in Chattanooga, then moved through northern Alabama on its way to Memphis. At the town of Stevenson, Alabama, a group of a dozen young white men, one of them with a bleeding head, had reported to the station master that they had been thrown from the train by a larger group of blacks and that they wanted to press charges against their assailants. Members of the deputized posse had been ordered to arrest all blacks on the train and take them to the sheriff at nearby Scottsboro, the seat of Jackson County, a town of about 3,500 people.

Nine young black men—who forever after would be known as the Scottsboro boys—were rounded up when the freight train arrived at Stevenson. They ranged in age from thirteen to twenty. Eight of the nine were illiterate, unable to sign their names. Most of them, in this year of severe economic depression, had been riding the rails off and on for some time, getting a job here and there, sometimes stealing, and otherwise living by their wits.

Three other people also were found on the freight train. One was Orville Gilley, a white male. The other two were white women dressed in overalls and wearing men's caps. Ruby Bates at seventeen was the younger of the women; Victoria Price, twenty-four, already twice-married, was the older. After the black men had been put in the back of a truck to be taken to Scottsboro, Price told a deputy sheriff that she and her girlfriend had been raped by the nine

blacks. This report triggered a series of events that would reverberate throughout the world and would include several perfunctory criminal trials, sentences of death, numerous appeals, and two landmark rulings by the United States Supreme Court. The Communist Party of the United States as well as several other national organizations would become deeply involved in the Scottsboro trials. The roster of those who would play a prominent part in the case included Samuel Leibowitz of New York, the most famous criminal trial lawyer of the time; a southern judge with unusual courage and integrity; and a very large number of persons who demonstrated how depressingly bad the administration of criminal justice can be when the aim is not to determine the truth of a matter but to uphold a way of life seen to be under siege.

The winding path that the Scottsboro case took in the courts as well as other events surrounding it can be a bit difficult to follow. To make it easier to track the case as it dragged its way for almost five years through what seemed to be interminable judicial proceedings, we have identified each of the trials by centered headings and then indicated subsequent appellate proceedings and other developments with sub-headings at the left-hand side of the page.

The First Trials: Scottsboro, April 1931

With lynch mobs threatening the suspects, they were moved from Scottsboro to a more secure jail in Gasden, a nearby town, and a National Guard unit was summoned to afford them protection. The four trials held at Scottsboro, which began less than two weeks after the arrests, were a judicial farce. An attorney from Chattanooga, secured by the black leadership in that city, and an over-the-hill member of the local bar were the only legal help the defendants had. Neither attorney had any preparation time except for a less-than-half-hour interview with the defendants. The attorney from Chattanooga, who carried the burden of the case, insisted that he was not to be regarded as the counsel of record, since he was not being paid, and that he was there only to help whichever local attorney would volunteer to carry the defense. A known alcoholic, the Chattanooga lawyer allegedly was intoxicated during much of the trial—so "stewed" he couldn't walk a straight line, one report said. He made only a feeble effort to rebut what often was contradictory and inconclusive evidence offered by the two young women and a handful of other state witnesses.

The trials were conducted before four separate juries—the state had asked for severances—and were completed in four days. Two of the young men—

Charlie Weems, at twenty the oldest, and Clarence Norris—were tried first. Their attorney cross-examined the few witnesses against the defendants listlessly and offered no closing argument. Particularly inculpating was the testimony of three of the Scottsboro young men that, though they had nothing to do with the rapes, they had seen others of the defendants having intercourse with the young women. This testimony would be repudiated later, accompanied by vivid tales of the threats and beatings that had prompted it.

The second trial, that of Haywood Patterson alone, got under way almost immediately after the first concluded, and it had not proceeded very far before the initial jury brought back a guilty verdict and a recommendation for death for Weems and Norris. Patterson's trial was also a parody of justice, and the jury reached a similar verdict with a similar sentence of death. Patterson would remember the moment of the jury's finding bitterly a quarter of a century later, when he cooperated in the composition of his biography: "I looked around," he said. "That courtroom was one big smiling white face."

Next came five defendants—Andrew Wright, Willie Roberson, Ozie Powell, Eugene Williams, and Olen Montgomery. Notwithstanding that Roberson had contracted syphilis and gonorrhea the year before and maintained that his genitals were so swollen he could not conceivably have had intercourse, the third jury quickly returned a verdict of guilty. All five defendants were condemned to die.

Leroy Wright, Andy's younger brother, only thirteen years old, was the defendant in the final trial. Because of his age, the prosecution asked for life imprisonment instead of death. The jury could not reach a unanimous verdict. Despite the state's specific request for a life sentence, newspaper reporters learned that seven of the twelve jurors had held out for death.

The four cases finished, the judge, with tears in his eyes (these were the first death sentences he had imposed in five years on the bench), declared a mistrial for Leroy Wright and then sentenced the other eight defendants to die.

The Aftermath of the First Trials

The Scottsboro case moved from the sleepy confines of its isolated Alabama venue onto the national scene when two organizations, the Communist Party, acting through its International Labor Defense (ILD) auxiliary, and the National Association for the Advancement of Colored People (NAACP), elected to rally to the convicted youths' cause. The NAACP was prodded by Clarence Darrow, Leopold and Loeb's defender, who was a member of its board of directors. For the Communist Party, which got on the case first and consider-

ably more effectively, what had happened at Scottsboro represented an opportunity to advance its revolutionary agenda by championing blacks and seeking to persuade them that the defects of capitalism lay at the heart of racist justice. Cynics believed that the Communists in the end would be willing to sacrifice the boys in order to add drama to their contentions about the terrible defects of capitalism. An accurate judgment of the Communist role in the Scottsboro case later was expressed by an Alabama lawyer who said: "The communists made an acquittal impossible, but they kept the boys alive."

The tactics and antics involved in the tug-of-war between the Communists and the NAACP for control of the Scottsboro case might have been comic if the stakes had not been so high, with the lives of the youths in jeopardy. The Communists recruited many of the defendants' parents to their side, providing them with small stipends and inviting them to New York to address large audiences. The NAACP hired an outstanding southern lawyer and tried to convince the Scottsboro defendants that there was so much antagonism against the ILD that their appeal to the Alabama courts and, ultimately, to the governor would be rejected on that ground alone. At a court session in nearby Fort Payne arguing for a rehearing of the case, an ILD attorney, Joseph Brodsky, had been threatened by bystanders with death if he did not get out of town—and immediately.

The young men on trial would sign a declaration of allegiance to one group and then switch to the other when its representatives visited them. Finally, Darrow and two NAACP lawyers met with three ILD attorneys. Darrow's offer was that the attorneys act as a team of independent counsel, beholden to nobody but the clients. The ILD, though anxious to have Darrow's talents enlisted in its cause, would agree to cooperate only if it could retain the right to veto any strategy decision. At that point, negotiations broke down; the quest for justice was being undermined by politics and ideology. "Any real fight," the *Daily Worker*, the Communist newspaper, declared regarding the Scottsboro case, "must necessarily take the character of a struggle against the whole brutal system of landlord robbery and imperialist national oppression of the Negro people." Most fundamentally, the Communists sought to recruit masses of black people to their cause, something that, rather to their surprise, they so far had been unable to accomplish.

The appellate strategy focused on demonstrating that the trials had been a travesty. The cases had been inadequately prepared and hastily tried. The noise of the outside mob cheering the first guilty verdict, it was maintained, had unduly influenced the second jury. The defense attorneys also argued on

appeal that statements of several of the young men had been offered only after they were told that they might go free if they would implicate others; if they would not do so, they were warned, they ran the risk of being lynched.

In addition, Hollace Ransdall, a young teacher-journalist-activist sent by the American Civil Liberties Union (ACLU) to Alabama, had discovered that both Victoria Price and Ruby Bates supplemented their factory wages by prostitution. A deputy sheriff told Ransdall that he didn't bother Price because she was a "quiet prostitute, and didn't go rarin' around cuttin' up in public and walkin' the streets solicitin', but just took men quiet-like." Despite this evidence, Price continued to say: "I hope to see every one of them burned to death," adding that the crime was particularly awful because she was a "virtuous woman." Price had recently been convicted of fornication and adultery, both misdemeanors, and spent time in jail for the offenses, but this information had been inadmissible at the trial because only state court verdicts involving felonies could be put into evidence.

Observers outside the South would claim that the trial of the Scottsboro defendants was another form of lynching, one that was being camouflaged as a judicial proceeding. Before 1929, lynchings had declined in the South from a high of about one hundred a year to a dozen or so annually, though there had been a rise during the Depression, from 1930 onward, to an annual rate of thirty. Southerners were aware of the poor image that lynchings gave them in the rest of the country. Many saw criminal trials as a route to accomplish the same thing and to mute outside criticism. Michael Meltsner, an attorney, interprets the situation in these terms: Southern justice became "a sham used not to grapple with tenacious questions of fact and law, guilt or innocence, but solely to maintain class and race power."

The Communist Party presumed, incorrectly as it turned out, that a huge mass of people, both blacks and whites, but particularly blacks, would so threaten and intimidate the Alabama appellate court judges that they would decide in favor of the Scottsboro defendants in order to save their own skin and that of other capitalists. The only thing that could stay the Alabama executioner, Communist Party leaders proclaimed, was the aroused anger of the workers. In the face of the people's protests, the court might decide that it was "better policy to hold off this cold blooded butchery so as to avoid arousing the masses to further fury." This proved to be pure bombast. While a following began to form in support of the Scottsboro defendants, it offered little if any direct threat to entrenched interests in Alabama.

Alabama Supreme Court, March 1932

In late March of 1932 the Alabama Supreme Court, in separate opinions on each of the Scottsboro trials, voted to uphold the convictions of seven of the Scottsboro defendants, reversing Eugene Williams's sentence because he was a juvenile.

Arguing before the court for the state was Thomas G. Knight, Jr., the son of the justice who wrote the majority opinion in one of the cases. The younger Knight would personally handle the prosecutor's role in most of the later trials. Justice Knight compared the Scottsboro cases to the assassination of President McKinley in 1901, when retribution had been swift and severe. That case might have involved murder, Knight declared, but he was "of the opinion that something worse than death . . . happened to this defenseless woman, Victoria Price."

The court ruled that the verdicts were amply supported by evidence and that the proceedings had been fair. "The presence of the militia," the senior Knight wrote, "instead of having a coercive influence on the jury was a notice to everybody that the strong arm of the state was there to assure the accused a lawful trial." It also was the majority's opinion about the undue and unseemly rapidity with which the case had been tried that "if there was more speed . . . in the administration of the criminal laws . . . , life and property would be infinitely safer" and criminals would have greater respect for the law.

The majority thought that local newspaper coverage was not inflammatory and that stories in the Montgomery and Chattanooga papers, which it granted were less than impartial, probably did not circulate much in the Scottsboro region. Under Alabama law the character of Victoria Price had nothing to do with the charge, since rape "may be committed on an unchaste woman, even a common prostitute." The tumult outside the courtroom was nothing more than a band playing such tunes as "They'll Be a Hot Time in the Old Town Tonight" to promote the sale of Ford trucks. The trial record, the majority agreed, was more than ample to convince a reasonable person that the defendants had committed the offense with which they were charged, that "most foul and revolting crime, the atrocity of which was only equaled by the boldness with which it was perpetrated." The details of the case, in fact, were so "shocking" that they would not "admit of being repeated here."

The lone dissenter on the seven-judge bench was the chief justice, sixty-nine-year-old John C. Anderson. Anderson was said to "dominate" the Alabama court "by his sheer legal brilliance" and his "unassuming courtesy"

during the thirty-six years he served on it, until his death on April 27, 1940. The seventh child in the family of a physician educated in Philadelphia, Anderson had been born during the Civil War. Most of his uncles served with the Confederate forces, though Anderson would note in an autobiography he wrote for his children, "my Alabama kin opposed secession."

While he could not bring his judicial brethren with him on this decision, Anderson's reputation and his leadership position on the court seem to have provided an important, and very possibly essential, background for the later decision of the U.S. Supreme Court favorable to the Scottsboro defendants. Had the Alabama bench been unanimous or had one of its lesser members written the dissent, there would not have been as much leverage for the reversal that constituted a thoroughgoing repudiation of the state high court majority opinion.

In his dissent, Anderson noted that "the record indicates that the appearance of the lawyers was rather pro forma than zealous and active . . . which is indicated by declination on the part of counsel to argue the case," a point that would find its way into the U.S. Supreme Court ruling. He objected to the swiftness with which the Scottsboro case had been tried, given that the "entire atmosphere was at fever heat." Anderson noted that all the defendants were given the same sentence—the statute prescribed a penalty that could be anywhere from ten years in the penitentiary to death—despite the fact that they differed in age, leadership, and other important elements of their alleged participation in the offense. For Anderson, this was evidence that the jurors were "coerced by public feeling or sentiment or actuated through passion or prejudice." Quoting a prior Alabama opinion that he had written in an especially brutal murder case in which a mob had threatened to break into the jail and lynch the offender, Anderson set forth what he believed should be a guiding principle:

> *No matter how revolting the accusation, how clear the proof, or how degraded, or even brutal, the offender, the Constitution, the law, the very genius of Anglo-American liberty, demand a fair and impartial trial. If guilty, let him suffer such penalty as an impartial jury, unawed by outside pressure, may under the law inflict on him. He is a human being and is entitled to this. Let not an outraged public, or one which deems itself outraged, stain its own hands—stamp on its soul the sin of a great crime—on the false plea that it is but the avenger of innocence.*

Using this guideline, Anderson was convinced that the defendants had not gotten an adequate trial. In justice to them, to the "fair name of the state of

Alabama, as well as the county of Jackson," he declared, "these cases should be retried after months of cooling time have elapsed and by their vigilant employed counsel."

The U.S. Supreme Court, November 1932

The next step was the U.S. Supreme Court. This was a highly conservative bench—the "nine old men," some critics later dubbed them—that would drive Franklin Roosevelt to despair by refusing to uphold much of his New Deal legislation. In an ill-fated political misplay, Roosevelt unsuccessfully would seek to remodel the court by means of a law that would permit him to add a new court member when any of the incumbents reached the age of seventy.

Conservative though it was, in November 1932 the court, by a 7–2 vote in *Powell v. Alabama* (287 U.S. 45), overturned the Scottsboro jury's verdict on the ground that the defendants had not received the adequate legal counsel to which they were entitled under the Sixth Amendment. Justice George Sutherland, one of the most conservative judges sitting, was assigned to write the opinion after the chief justice, Charles Evans Hughes (in a move that made another justice, Harlan Fiske Stone, "furious"), would not allow the judges more time to study the case. Stone believed that Hughes wanted to bring a rapid end to the demonstrations that were being carried out in front of the court building by Communist supporters.

Sutherland's usual reluctance to interfere with state sovereignty had been highlighted earlier in *Meyer v. Nebraska* (262 U.S. 390, 412, 1923), in which he had dissented in a ruling that disallowed the state to prohibit the teaching of any language but English in either public or private schools. But Sutherland clearly was personally and judicially offended by what had taken place in Scottsboro, and he was determined to locate a basis for repudiating the jury verdict. In the *Powell* ruling he spelled out the reasoning behind his and his colleagues' decision to send the case back for another trial:

> *In light of . . . the ignorance and illiteracy of the defendants, their youth, the circumstances of public hostility, the imprisonment and the close surveillance of the defendants by the military forces, the facts that their family and friends were all in other states and communication with them necessarily difficult, and above all that they stood in deadly peril of their lives—we think the failure of the trial court to give them reasonable time and opportunity to secure counsel was a clear denial of due process.*

Justice Sutherland noted that the issue of adequate counsel had been handled at Scottsboro in a "casual fashion" and quoted at length the Chattanooga

attorney's protestations that he was unprepared and was unfamiliar with Alabama procedure, was not being paid, and was merely appearing to offer what assistance he could to the defendants.

The ruling was a departure for the Supreme Court, which historically had maintained a hands-off attitude toward the way states carried out their criminal justice business. So flagrant was the injustice at Scottsboro against black Americans that the justices could not temper their outrage and write the events off as an unassailable prerogative of the Alabama courts. Commentators came to see the *Powell* case as a revolutionary extension to state proceedings of the rights guaranteed by the Sixth and Fourteenth Amendments. But Sutherland was too cautious and too conservative a judge to go quite that far. What he objected to, as a recent analyst of his legal thinking has noted, was the "bumbling nonchalance" and the "maddening tentativeness" about legal representation of the defendants at Scottsboro in a case in which lives were at stake. As Justice Cardozo would note later in *Palko v. Connecticut* (302 U.S. 319, 1937):

> *The [*Powell*] decision did not turn upon the fact that the benefit of counsel would have been guaranteed to the defendants by the provisions of the Sixth Amendment if they had been prosecuted in a federal court. The decision turned upon the fact that in the particular situation laid bare for us in the evidence that benefit of counsel was essential to the substance of a fair hearing.*

Felix Frankfurter, a Harvard law professor, and himself later a member of the Supreme Court, immediately recognized the import of the *Powell* ruling, calling it "the first application of the limitations of the Fourteenth Amendment to a state criminal trial." Thereafter, the federal courts would continue to broaden their selective incorporation of constitutional protections into state proceedings, though it was not until thirty years later that the court would grant an indigent defendant the right to have a lawyer appointed in any felony case (*Gideon v. Wainright,* 372 U.S. 335, 1963). This right was extended in 1972 in *Argersinger v. Hamlin* (407 U.S. 25) to misdemeanor cases in which imprisonment was a possible punishment. In 1966, in the pathbreaking *Miranda v. Arizona* (384 U.S. 486) decision, the court by a 5–4 vote reversed a conviction that involved the introduction into Miranda's trial of a confession secured by the police in the absence of counsel or without an effective waiver of counsel. The importance of the *Powell* decision can be seen from the result of a recent computer search that found 3,708 subsequent citations of it by American courts.

The Communists, nonetheless, were hardly placated by this victory. They noted that the court had ignored their claim that no trial in which blacks were excluded from the jury could possibly be fair. The *Daily Worker,* the official Communist Party newspaper, thought that all the court opinion accomplished was to instruct Alabama authorities "how to 'properly' carry out lynch schemes." Its cynicism aside, the party had achieved a crucially important goal. Speaking for his mates, Olen Montgomery wrote the ILD, "Since the Supreme Court have granted we boys a new trial I think it is my rite to express thanks and appreciation to the whole party for their care. . . . I my self feels like I have been born again from the worrying . . . I have had."

The Second Trials: Decatur, March 1933

For the new trials that the defendants were to receive, the Communist Party had agreed to hire as the chief defense attorney Samuel Leibowitz, a thirty-nine-year-old New York lawyer in Darrow's image, despite the fact that Leibowitz made it clear that he would not be beholden to Communist dictates.

Seven of the Scottsboro defendants meeting with their attorney, Samuel Leibowitz. Left to right are Deputy Sheriff Charles McComb, Leibowitz, Roy Wright, Olen Montgomery, Ozie Powell, Willie Roberson, Eugene Williams, Charlie Weems, and Andy Wright. AP/ Wide World Photos

The party leaders agreed to keep their class warfare propaganda more or less under wraps until the trials had concluded. The new defense lawyer sought to have the trials transferred to Birmingham to avoid the overwhelming tide of local opposition, but the judge would agree to move them only as far as Decatur, fifty miles to the west of Scottsboro.

In this new round, the first case heard was that of Haywood Patterson. Patterson, his black heritage mingled with one-quarter Creek Indian genes, was now regarded as the ringleader of the Scottsboro defendants. He was, in southern eyes, "an uppity nigger," a tough, independent-minded man who steadfastly refused to bend to the dictates of southern racial etiquette and who challenged and threatened the traditional rules.

Patterson often would fight when aggrieved. When they were to be moved from death row in the state's Kilby Prison before their second trial, the Scottsboro defendants began to pack their few belongings. Leave everything here, the warden told them, you'll be back. "That wasn't all we left," Patterson writes. "We had our opinions of the death house and we left them in the beds and covered them with sheets. . . . They had put it on us and we put it on them. In hell, if the guests get a chance, they don't treat the devil any better than he treats them."

To build a record on which to appeal, Leibowitz opened this second set of trials by arguing that blacks had been illegally excluded from the grand jury. As expected, the judge ruled against him, and again ruled for the prosecution when Leibowitz sought to demonstrate that, contrary to the requirements of the U.S. Constitution, blacks had been excluded from petit jury service. He called a number of witnesses, all of whom granted that they had never seen a black person on a jury in the county. The court reporter, who had not missed a session in twenty-four years, testified to the same effect.

After that, Leibowitz took on Victoria Price, the state's prime witness, in cross-examination. Years later, he would grant that in his long courtroom practice he had rarely met so formidable an opponent as Price. She often gave him back as good as she got. Once, when Price said from the witness stand, "I do know one thing, those Negroes and this Haywood Patterson raped me," Leibowitz stared at her dramatically for a long moment. "You are a little bit of an actress," he said slowly. Price responded quickly: "You're a pretty good actor yourself."

Evidence presented by Leibowitz documented the confrontation between whites and several of the blacks on the freight train. The whites had thrown rocks and shouted "black sons of bitches." The blacks had gathered support

from throughout the train and thrown off all but one of the white youngsters. Orville Gilley had been spared, all agreed, because the train had picked up speed and nobody wanted to see him seriously injured or perhaps killed. After the fight, the blacks said that they dispersed to the various cars in which they originally had been riding.

The scientific evidence was very strong in favor of the defendants. Dr. R. R. Bridges, a gynecologist, pointed out that it had been necessary to insert a swab as far back as the neck of Price's cervix to locate enough semen for a slide smear. He maintained that if she had been raped, as she claimed, by six young, healthy men and had not douched it was impossible for him not to have found very large quantities of semen in her vagina. Nor were there bruises, cuts, or other signs in her vaginal area congruent with an allegation of rape. Also, the floor of the gondola car had been covered with a thick layer of chert, a fine quartz gravel used as track ballast and around railroad stations, yet there were no cuts or other indications that Price had been manhandled on that rough surface.

Defense testimony was offered by Leslie Carter, who said that he had intercourse with Ruby Bates in a hobo camp the night before the train ride while, nearby, Jack Tiller had been doing the same with Victoria Price. Carter said that Price had manufactured the rape story to avoid being arrested for vagrancy and for crossing a state line with a man for immoral purposes. Her boyfriend in fact had refused to ride the rails with her for fear of being arrested for precisely that latter offense. "What the hell do we care about Negroes," Carter had Price saying to him.

Then came the defense's greatest hope. Ruby Bates, who had been reported missing, was dramatically ushered into court and testified that everything she had said in the initial trials at Scottsboro was a lie, that her words there had been thrust upon her by Victoria Price. Both Carter and Bates, however, made poor witnesses. Both were, for one thing, too well dressed. The prosecution got them to admit that they had been outfitted and subsidized up North—in New York City—by the Communist Party. Carter was shrill and flamboyant; Bates had trouble trying to reconcile her previous testimony with her new version of what had taken place and often was evasive under cross-examination. Almost half a century later, Victoria Price would tell a *Washington Post* reporter with a certain glee that when Bates left the courtroom that day bystanders threw tomatoes at her: "There was three bushels of tomatoes on her face, on her dress and down the front of her." Price added, "I was standin' in the window watchin' and yellin' 'Hallelujah, Hallelujah.'"

A final argument to the jury by Wade Wright, the county solicitor, turned ugly. Bates, Wright said, had been misled in New York by "Jew language." Referring to Carter's time in the North, Wright wondered if he might have changed his name to Carterinsky. "Did you watch his hands?" Wright asked. "If he had been with Brodsky another two weeks he would have been down here with a pack on his back a-trying to sell you goods." Then he roared at the jurors: "Show them," he said, pausing for effect. "Show them that Alabama justice cannot be bought and sold with Jew money from New York." Both remarks, over Leibowitz's furious objections and his call for a mistrial, seemed to find favor with the jurors and court spectators.

The verdict was preordained. The jury found Patterson guilty and sentenced him to death in the electric chair.

The judge, James Edwin Horton, Jr. (he looked like a picture of Abe Lincoln, Patterson would write in his memoir), had increasingly become convinced of the innocence of the Scottsboro boys and postponed the trials of the other defendants until the ugly local mood had calmed down. Horton, fifty-five years old at the time, came from an aristocratic southern background; his maternal grandfather, John Branch, had been the governor of North Carolina and secretary of the navy under Andrew Jackson.

Back in New York, where he was welcomed as a hero, Leibowitz would lose his temper, injuring what few chances he might have had in the later trials of the Scottsboro defendants. A newspaper reporter asked him how the Alabama jury could have ignored the persuasive evidence of innocence. You would not have to ask how they could reach that verdict, Leibowitz said, descending to the same level as his opponents, if you had seen "those bigots whose mouths are slits in their faces, whose eyes pop out like frogs', whose chins drip tobacco juice, bewhiskered and filthy." After two weeks in Decatur, Leibowitz declared, he needed "a moral, mental, and physical bath."

Rallies for the accused blacks burst out all over the northern states, and 3,000 persons came to Washington, D.C., to protest the Decatur verdict in front of Franklin D. Roosevelt's White House. Roosevelt, dependent on the traditional support of southern white voters, pled urgent other business as an excuse not to address the crowd or to receive its emissaries.

The Communist control of the case drew continuous fire from both supporters and enemies of the Scottsboro boys. The Communists by far had been the dominant force rallying support for the defendants, but there always was suspicion that they were not fundamentally concerned with the defendants' fate but with the party's own political and financial prospects. Southerners,

who almost uniformly despised the Communists, were more than willing to sacrifice the defendants rather than line up behind what they regarded as a despicable, alien political threat. Nonetheless, southern newspapers, especially in metropolitan areas such as Birmingham and Montgomery, began to shift a bit in their views, now at times maintaining that the evidence against the Scottsboro defendants was at best inconclusive.

At the end of June, lawyers for both sides met in Athens, Alabama, Judge Horton's hometown, to present arguments regarding a possible rehearing of the Patterson case. Horton preempted discussion of the issue, and, to the surprise of all, he read a long, formal statement in which he said that he had become convinced that the verdict against Patterson was not based on satisfactory evidence of guilt. Therefore, he was ordering that it be set aside and a new trial held. Horton's carefully crafted words represent the essence of what the Scottsboro case fundamentally was about:

> *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 than to the one on whom it is imposed. The victim may die quickly and his suffering cease, but the teachings of Christianity and the uniform lessons of all history illustrate without exception that its perpetrators not only pay the penalty themselves, but their children throughout endless generations.*

Horton declared that "the evidence greatly preponderates in the favor of the defendant," insisting that the medical findings demonstrated conclusively that there had not been a group rape of Victoria Price. Price's testimony, he insisted, was not only uncorroborated but also improbable and contradicted by the doctors' reports. Horton did not reveal what must have been a powerful impetus for his conclusion. During the trial, the prosecutor had asked him to excuse Dr. Marvin Lynch from testifying, since Lynch merely would repeat what Dr. R. R. Bridges had said. But Lynch subsequently had asked for a private conference with the judge, and, as Horton revealed many years later, Lynch confided that he was convinced that the rape charges had been manufactured. "I looked at both the women and told them they were lying, that they had not been raped—and they both laughed at me." But Lynch believed that it would be the death of his medical practice if he testified against the claims of rape.

The rape allegedly had occurred, Judge Horton noted, during the thirty-eight miles between Stevenson and Paint Rock. Victoria Price maintained that during this time she had sexual intercourse with at least six of the black youths

in a railroad car whose bottom was filled with a jagged quartz rock. Yet when she was carefully examined by a doctor an hour or so after she was taken from the train, there was no evidence of marks on her body, no live semen in her vagina, no scalp wounds, though she said that she had been viciously hit on the head. Nor was there any mention in the court records of the presence of the slightest amount of semen on the clothing of any of the defendants.

Unfortunately, to support his decision, Horton went into such gynecological detail that the Alabama press refused to print most of the material he discussed on the ground that it was not fit family fare. Alabamans who might have been persuaded by Horton were thus denied access to the specific grounds on which he had reached his conclusion. As for Horton himself, he was unsuccessful in his attempt to retain his position as circuit court judge in the 1934 election, and he returned to the private practice of law and gentleman farming until his death at the age of ninety-five in March 1973. While it is obvious that his defeat at the polls was a direct result of Horton's decision to

Dr. R. R. Bridges testifies during the Scottsboro trial. His finding that the medical evidence contradicted the accusations of rape failed to sway the jury. AP/Wide World Photos

overturn the jury verdict, it should be noted that Wade Wright, the Jew-baiting county solicitor, also failed in his reelection bid, while Chief Justice Anderson was returned to the state supreme court several more times despite his dissent in the first Scottsboro case.

The Third Trial, Decatur, November 1934

The state, though stung by Horton's decision, persisted, perhaps in part because the prosecutor had his eye on being elected governor of Alabama and could not politically afford to back away from the case. In late November 1934, seven of the Scottsboro boys again faced a Decatur jury; the cases of Roy Wright and Eugene Williams had been transferred to juvenile court. The state had maneuvered to get a new judge, William Washington Callahan, a seventy-year-old curmudgeon who let it be known that he had little patience with drawn-out attempts to present or extend what he regarded as unnecessary defense evidence.

The judge frustrated Leibowitz at every turn. Callahan was peremptory and impatient, underlining his distaste for the defense's case by severe looks, sighs of disbelief, and tones of voice and facial expressions that would not be discernible in the transcript, which reported only what was said during the trial. When it came to his summary of the case, Callahan introduced a statement that appalled the defense lawyers:

> *Where the woman charged to have been raped, as in this case, is a white woman, there is a very strong presumption under the law that she will not and did not yield voluntarily to intercourse with the defendant, a Negro; and this is true, whatever the station in life the prosecutrix may occupy, whether she be the most despised, ignorant and abandoned woman of the community, or the spotless virgin and daughter of a prominent home of luxury and learning.*

Callahan found it impossible to believe that any white female would permit a black man to have sexual intercourse with her: "the fact that she [Price] might have been convicted or had relations with white people does not mean in any sense of the word she would submit to the embraces of a Negro." The ugly racist nature of the trial judge's words is compounded by the fact that the statement was beside the point. The defense was not arguing that Price had consented to intercourse, but that none had taken place.

Predictably, the jury again returned a guilty verdict and again recommended death in the electric chair.

Aftermath of the Third Trial

Two things were becoming increasingly apparent. Though he had carried out the defense of the Scottsboro seven with consummate skill and dedication, Leibowitz was so despised in Decatur, as an outsider, a Jew, and the man who had ridiculed the town's citizens, that it was questionable whether he was more of an asset than a handicap to the case. The same could be said of the ILD: its brash Communist propaganda tended to drown out whatever else it might be saying about the defendants' case. The ILD tended to ignore details of the charge against the Scottsboro boys and men and to concentrate on the more generic task of broadcasting the horrors of the political system that was condemning them. The ILD also devoted much of its energy to recruiting party members and raising money to finance the Communist cause.

The marriage of convenience between Leibowitz and the ILD was further shaken when two ILD lawyers were ensnared by the Alabama authorities while offering Price a bribe to change her testimony. They had suggested $1,000, then gone up to $1,500 when she demurred. Price reported the offer to the police, who advised her to play along. Law enforcement officers were at the scene in Nashville when the ILD attorneys arrived there to hand over the money. The attorneys were arrested and then left the state, forfeiting their $500 bail.

Alabama Supreme Court, July 1934

Everyone interested in criminal justice, after becoming familiar with the trial transcript of the Decatur proceedings, ought to read the decision of the Alabama Supreme Court in *Norris v. State.* The opinion will prove infuriating to fair-minded people. It demonstrates the ability of the highest court in a sovereign state to reach a conclusion that is so out of line with the facts before it that a reader has to wonder how the justices could conceivably have endorsed the decision with a straight face (without at least crossing their fingers to indicate that, after all, guys, this is a political and social decision that has nothing to do with justice).

The issue the appellate court wrestled with was whether Leibowitz and his colleagues had demonstrated that blacks were systematically excluded from Alabama grand and petit juries. The justice who wrote the decision insisted that "the jury commissioners made no exclusion of any negro from the jury roll on account of his race or color." This is what the commissioners had said and the justices could find no reason to doubt them. It was only that somehow

blacks had not been suited for "such important service." The jury commissioners said that they paid no heed to race, and therefore they could not testify whether there was a single black on the jury rolls, though Leibowitz had been willing to go through the entire roster name by name. Besides, plenty of whites were excluded from jury duty because they failed to meet the standards; therefore, it hardly would be surprising if every black proved deficient. The court noted that the editor of the local newspaper, who granted that he knew some "good Negroes," was unwilling to say whether any truly possessed the necessary qualifications to serve on a jury that required "good judgment." For "such high service," the Alabama Supreme Court decision declared, one needed "men of intelligence, character, and sound judgment"; this could not be stressed too greatly. The appeal had to be denied since it was evident that the failure to have blacks on the jury represented nothing more than the conscientious manner in which the commissioners had followed the laws and could not be deemed to demonstrate any racial animus or bias.

U.S. Supreme Court, April 1935

The U.S. Supreme Court thought otherwise. The rupture between Leibowitz and the ILD led to his pursuing Norris's appeal, while the ILD handled that of Patterson. Leibowitz focused on the failure of Alabama authorities to place blacks on the jury rolls and pointed out that they later had forged the names of several blacks in the jury register to seek to defuse his contention. He demonstrated that no black had served on a jury in Decatur for more than sixty years. The trial record showed, as the Alabama Supreme Court opinion had noted, that the editor of the Scottsboro newspaper had granted that he had seen no blacks on any jury during the two dozen years that he had attended court sessions. This was, he insisted, because blacks lacked "sound judgment." Asked by Leibowitz what he meant, the editor had said: "I know some good Negroes as far as Negroes go, but I think that 'sound judgment' part of the statute—I think they can't get around that." It was common knowledge, he said, that most Negroes steal: "They're not trained you know, and I might say the same applies to women."

So compelling was Leibowitz's claim that Supreme Court Chief Justice Hughes asked to examine the forgeries in the Alabama county jury roll, an extraordinary move on the part of a court that confines itself to deciding questions of law and not to determining the accuracy of evidentiary allegations.

Leibowitz's argument persuaded the Supreme Court, in *Norris v. Alabama*

(294 U.S. 587, 1935), to reverse the conviction of Norris and to order the Alabama Supreme Court to do the same for Patterson (*Patterson v. Alabama,* 294 U.S. 600, 1935) on the ground of exclusion of blacks from the grand and trial juries. "In the light of the testimony given by the defendant's witnesses," Chief Justice Hughes ruled, "we find it impossible to accept such a sweeping characterization of the lack of qualifications of Negroes in Morgan County." Hughes quoted the Alabama jury commissioner who had said: "I do not know of any Negro in Morgan County over twenty-one and under sixty-five who is generally reputed to be honest and intelligent and who is esteemed in the community for his integrity, good character and sound judgment, who is not an habitual drunkard, who isn't afflicted with a permanent disease or physical weakness which would render him unfit to discharge the duties of juror and who can read English and who has never been convicted of a crime involving moral turpitude."

The chief justice in his decision regarded this claim as utter nonsense: "It is so sweeping and so contrary to the evidence, as to the many qualified Negroes, that it destroys the intended effect of the commissioner's testimony."

The Fourth Trial, Decatur, January 1936

Despite this setback in the U.S. Supreme Court, the state of Alabama refused to back away from the Scottsboro case. Thomas Knight, the ever-persistent prosecutor, was now lieutenant governor, but he had himself appointed a special prosecutor so that he could again try the Scottsboro case. Meanwhile, a major realignment of the defense's support groups had taken place. The ACLU, the NAACP, the ILD, the League for Industrial Democracy, and the Episcopal Federation for Social Service had agreed to form the Scottsboro Defense Committee (SDC) with no one group to have a dominant voice. They appointed Allan Knight Chalmers, a thirty-eight-year-old minister of considerable ability and total dedication, to run the committee. Chalmers, admired by all, selflessly followed the principle he would set forth in the self-effacing story of his work on the Scottsboro case.

> *There are enough staid people in the world holding things as they are. We need no more of them. What we need is people caught by the truth that no one is free when anyone is bound. That is not an easy idea to have get a hold on you. It has to be applied person by person, not just in the pious generalities of the resolutions good people pass when they gather for a moment and separate without effective action.*

Leibowitz agreed to keep a low profile in future trials, which would be led for the defense by Clarence Watts, a highly regarded local attorney with traditional southern views on the proper relationship between the races, but a man with a firm belief that Victoria Price had never been raped.

This time one black man was placed on the fourteen-person grand jury that brought back an indictment against Haywood Patterson. Since only a two-thirds vote was needed to indict, there is no record of the position that black man took.

During Patterson's trial, Judge Callahan mercilessly hassled the defense. A correspondent from the *Nation* captured what went on: "Judge Callahan said that if such and such things were true, in a tone implying they probably were, then the defendant was a 'rapist' and should be convicted." When Callahan uttered these words, the reporter observed, "he glared over at the defendant in fury, his lips drawn back in a snarl, and he rolled out the word 'r-r-rapist' in a horrendous tone." The judge employed such tactics "hour after hour and day after day in an already prejudiced courtroom." Typical was this courtroom interchange:

Prosecutor: If we let this nigger go, it won't be safe for your mother, wife, or sweetheart to walk the streets of the South.

Leibowitz: Your Honor, must we continue to try this case in a welter of such inflammatory appeals?

Prosecutor (hurt): I ain't done nothing wrong. Your Honor knows I always make the same speech in every nigger rape case.

Judge: Objection overruled.

The jury again returned a verdict of guilty, but this time, largely due to the obstinacy of one member, the sentence was set at seventy-five years instead of death.

Aftermath of the Fourth Trial

As three of the manacled defendants were being driven back to the state prison, Ozie Powell stabbed a deputy sheriff (who would recover) and he himself then was shot in the head, destroying some brain tissue, which impaired his mind for the remainder of his life. Powell was sitting on the right-hand side of the car, and slashed the deputy's throat with his free hand. Clarence Norris, who sat in the middle of the back seat of the car, shackled to the other two defendants, said that the deputy had been cussing out Powell,

castigating the "Communist, Jew, northern lawyers" who were defending him. Powell had "sassed" the deputy by saying that he thought they would do a "damn sight" better with what they had than with some southern lawyers. The deputy then slapped him across the mouth. Powell had purchased a pocket knife in the prison, and kept it hidden during shakedowns by placing it in the extra lining of the fly on his pants that ran straight along the buttons, a place where custodians never would search. The driver managed to bring the car to a halt, jumped out, and then fired back into it, hitting Powell in the head.

In prison, the Scottsboro defendants were placed in solitary confinement, where their mental health deteriorated noticeably. Several of the men, most notably Patterson, often had been involved in prison disciplinary actions. Of all the defendants, Patterson had become the most "adjusted" to prison: he was shrewd and enterprising, and could be defiant or humble, as his best interests dictated. Patterson often conned the defense committee out of money, which he lent to fellow inmates at high interest rates, and he maintained homosexual relationships with several other inmates, taking the role of a "wolf" who protects "gal-boys" and takes his reward in sexual favors.

There were signs by 1936 that officials and the Alabama public were wearying of the bitingly negative publicity their state was receiving throughout the world because of the Scottsboro case. The nerve ends that the original accusations had exposed had become numb. The governor offered to see that a mild sentence was imposed if the men would plead guilty to miscegenation—that is, having sexual relations with members of the white race—an offer the defense turned down. Birmingham's leading newspapers wondered in print whether all the fuss on behalf of "two hook-wormy Magdalenes" was worth the trouble. When Knight died early in 1937, hopes rose for some kind of a settlement, but Judge Callahan refused to budge.

The Fifth Trial, Decatur, July 1937

On June 14, 1937, the Alabama Supreme Court again upheld Patterson's conviction and his sentence. The appeal had largely concentrated on what the defense claimed was the trial court's unreasonable refusal to allow the case to be transferred to a federal court. The state supreme court found no merit in that claim nor had it changed its mind about not permitting Victoria Price to be interrogated about her sexual behavior prior to the alleged rape.

A month later Clarence Norris was put on trial, found guilty, and sentenced to die in the electric chair. Callahan had so badgered the southern lawyer,

Clarence Watts, that Watts became emotionally distraught and had to withdraw from the remainder of the cases. In the Andy Wright trial, which followed, the state reduced the penalty it sought to ninety-nine years imprisonment. "I'm entitled to an acquittal in this case and I ask you men in all seriousness to do what you swore at the outset you would do," Leibowitz told the jurors. That case was lost, too.

At the end of the Weems trial (the state had asked for and obtained a seventy-five-year sentence), Leibowitz, overwhelmed by the impossibility of his task, abandoned any pretense of dignity and tact and assailed the court procedure: "I'm sick and tired of this sanctimonious hypocrisy," he shouted. "It isn't Charlie Weems on trial in this case, it's a Jew lawyer and New York State put on trial here by the inflammatory remarks of [the assistant attorney general]." The prosecutor, paying no heed to what Leibowitz said, scolded him for jeopardizing the chances of his clients with his outburst.

The state decided to prosecute Ozie Powell only for the knife assault on the deputy sheriff, to which he pleaded guilty and received a twenty-year sentence. Then, stunningly, the prosecutor asked the court to drop the charges against the remaining four defendants and set them free. These defendants were then released despite the fact that the evidence against them was precisely the same that had been used to convict the others. As one northern observer sarcastically noted, the decision left Alabama in the "anomalous position of providing only 50 percent protection for the 'flower of Southern womanhood.'" The state declared that it had concluded that Roberson and Montgomery probably were not guilty, one because of his venereal disease and the other because he was almost blind, and also because they had been seen in freight cars other than where the rape allegedly had taken place. There was no explanation why, if this was true, they had been locked up for six and a half years, despite their innocence.

After the trial, the governor reduced Norris's sentence from death to life imprisonment. Subsequently, there were numerous maneuvers and meetings, some delicate, others heavy handed, seeking to persuade Alabama's governor to exercise clemency on behalf of the Scottsboro defendants still in prison and thereby to put an end to the continuing charade of justice. At first, it looked as if this would happen, but the state's chief executive, despite gentle pressure from President Franklin D. Roosevelt, developed cold feet, fearing that releasing the Scottsboro prisoners would end his political career.

Meanwhile, up North the freed men were a continuing source of concern to their sponsors, who feared that if they got into trouble it would harm the

chances of the others for release. Montgomery was particularly worrisome, drinking heavily, drifting across the country, and in and out of trouble with the law.

Then Charlie Weems was released by the parole board in November of 1943 and Andrew Wright and Clarence Norris the following January. Though required to stay in Alabama on parole and work in a factory, both soon fled north, but they agreed to turn themselves in to the authorities to avoid hurting the release and parole prospects of the remaining Scottsboro defendants. They were returned to prison, but Norris was released again in late 1946 along with Powell. In the summer of 1948, after being incarcerated more than seventeen years, Haywood Patterson escaped from the prison farm, and using a harrowing series of tactics to evade the guard dogs that were set on his trail (he drowned two of them), Patterson worked his way north to Detroit, where he later was apprehended by the FBI. Michigan's governor refused to extradite him. Finally, on June 9, 1960, Andy Wright, the last of the Scottsboro defendants, walked out of Kilby Prison on parole after having served nineteen years and two months for a crime that he had not committed.

A reporter asked Wright how he felt. "I have no hard feelings toward anyone," Wright said. Someone else asked him about Victoria Price. "I'm not mad because the girl lied about me," he said. "If she's still living, I feel sorry for her because I don't guess she sleeps much at night." Then, without waiting for any more questions, Wright turned and walked away.

The nine men accused of rape at Scottsboro suffered different fates as their lives proceeded and then wound down. Andy Wright, the last released, was again accused of rape, largely, he believed, because of his reputation as a Scottsboro boy. This time he was acquitted. His younger brother, Roy, returned from a voyage as a merchant marine sailor in 1959, twenty-two years after his release, and discovered his wife at the home of another man. He stabbed her to death and then went back to their apartment and killed himself. Patterson was sentenced to prison for manslaughter in Detroit in 1951 after stabbing a man fatally in a barroom brawl. He died in prison of cancer the following summer. Olen Montgomery reportedly died in Alabama in 1974 and Ozie Powell in Atlanta a year later.

Clarence Norris was the last survivor the group. He had acquired a considerable taste for gambling in prison and that, plus a quick temper (he stabbed a girlfriend once but she did not press charges), often got him into trouble. Or, as Norris puts it: "Over the years I have been arrested and fingerprinted so many times I have lost count." Nonetheless, law enforcement authorities never tum-

bled to the fact that, seeking to avoid apprehension as a parole violator, he was using his brother Willie's name and his brother's identification papers. Finally, Norris, then living in New York City, got "the best job I ever had," working for the city, cleaning and waxing the floors of a warehouse. "I was my own boss, with nobody hovering over me, telling me what to do." After congressional pressure and much negotiation, Norris finally was granted a full pardon on November 29, 1976, forty-five years after his arrest in Paint Rock, Alabama. He died early in 1989 in New York, at the age of seventy-six. Victoria Price and Ruby Bates disappeared from public sight. Bates, after a speaking tour for the ILD, had gone to work in an upstate New York spinning factory.

NBC v. Victoria Street

Then in 1976 there was a national television show, NBC's "Judge Horton and the Scottsboro Boys," viewed by some forty-one million people. It won numerous prizes, including the Peabody Award for playwriting and awards from the Screenwriter's Guild and the American Bar Association. The show had been produced with the assumption, reported in the first edition of Dan Carter's monumental study of the Scottsboro case, that both Price and Bates were dead—indeed, that they had died in 1961 within thirty miles of each other. The television drama mercilessly portrayed Price as a whore, perjurer, and suborner of perjury.

But Price, married for the preceding twenty-eight years to a sharecropper named Walter Street, was very much alive and had been residing for thirty-five years in the small Tennessee town of Flintville under the name of Katherine Victory Street; on her Social Security card, issued in 1936, she had added "Queen" before Katherine and insisted that this was what she had been christened. She lived on a tobacco farm in a dwelling, a *Washington Post* reporter wrote, "that most people would call a shack." She claimed her correct name always had been "Victory," and that the court had got it wrong in the Scottsboro trial. She sued NBC for $6 million in damages.

In the trial, after the plaintiff had presented her evidence, the judge declared a mistrial on the ground that there existed no material evidence upon which the jury could find in Price's favor on claims of slander or invasion of privacy. When all the evidence had been heard, the same result was reached in regard to the libel claim. On appeal, in a lengthy and difficult decision, the court concluded that Price had remained a "public" person and therefore, on the basis of judicial precedent, she did not have the right to recover

damages for defamation. "[O]nce a person becomes a public figure in connection with a particular controversy, that person remains a public figure thereafter for purposes of later commentary or treatment of that controversy." A case that was relied on was *Gertz v. Robert Welch, Inc.* (418 U.S. 323, 1974), involving the Chicago lawyer who, readers may remember, had befriended Nathan Leopold and successfully quarterbacked Leopold's effort to be paroled.

Later, when the U.S. Supreme Court agreed to hear an appeal of the Price case, NBC settled for an amount that remains confidential as part of the agreement. Disregarding her attorney's advice, Price accepted the offer and used the money to buy a small house, a dream she said she had carried with her all her life.

Price, according to one of the lawyers who handled her defamation case, died in 1983 in Lincoln County, Tennessee, about twenty or so miles north of Huntsville, Alabama, where she had been brought up. "She was a pretty good ol' lady," the lawyer recalls. The second attorney who worked with her on the defamation suit retains vivid memories of his client. She had showed up in his office the day after the NBC television show, and her first words were "Does the name Victoria Price mean anything to you?" Taken aback, he blurted out, "But they said you were dead."

Still the mistress of retort, Price answered, "Do I look dead?"

Price was, the lawyer says today, a "country woman, highly intelligent, but feisty and, well, mean-spirited." Price never would say forthrightly that she had not been raped, but the attorney saw in her a certain "swagger," an attitude that conveyed that the Scottsboro boys would not have dared to touch her, combined with a certain pride that she had played the part she chose for herself so well. Ruby Bates Schut, who also filed suit against NBC, was living with her carpenter husband in Washington State; she died on October 27, 1976, in a Yakima hospital, before the appellate court delivered its opinion.

Reporters covering the suit against NBC located two of the men who had served on the jury in the first Decatur trial. Both remained convinced that the defendants were guilty. Franklin Stewart, seventy and still working at the same hardware store that had employed him three decades earlier, dismissed Ruby Bates's recantation. "She was all dressed up," he remembered, "and she was just a country girl. The other side got to her." Arch Earwood, eighty-one, said his vote for guilt came because he was certain that Victoria Price was truthful since "she told her story just like a pig a-trotting."

As They Saw It: Patterson and Norris

Two of the nine Scottsboro defendants would in time produce books that depicted how they felt about this ugly miscarriage of justice. Haywood Patterson, in collaboration with Earl Conrad, devotes virtually all of *Scottsboro Boy* to describing in notably vivid detail the grim and brutalizing conditions that characterized the Alabama prisons in which he did his time. There were casual murders of inmate by inmate and inmate by officer, terrible and relentless beatings of prisoners by guards, and constant humiliations. Patterson tells of his existence in these terms:

> *You had to move through the prison like a cat waiting for other cats to jump on you. The cat might be a guard or a prisoner. You had to see through the back of your head. You had to move your eyes from left to right to see who would come at you. . . . One night I was on the fourth floor leaning off the banister looking down on the main floor. All of a sudden a guy eased up on me with a tenpenny nail sharpened in icepick style. He had driven the nail through the end of a broomstick and it made a devilish dirk.*

Patterson says he jumped out of harm's way just in time. "I knew who he was. He was crazy. He had no reason to jump on me and he needed none. The prison was his reason."

Patterson was in constant trouble for flouting the rules (though it never was clear which rules were meant to be observed and which were mere window dressing). He could be obsequious, skilled in playing the Uncle Tom role to perfection when he deemed it necessary, equally skilled at boldly defying the authorities when he regarded it as essential to his survival or tactically worthwhile.

Patterson had learned to read in prison. He notes that part of his fare was pulp magazines such as *True Detective* and *Inside Detective.* Then, almost as an aside, he uses the contents of these magazines for virtually the only discussion of his own case that he offers:

> *I listened to the prisoners and read the stories and saw that what worked against the Negro was circumstantial evidence. That one thing. This can point to a person's guilt when he is not guilty. The circumstances of a white person's word against a black's, that is evidence in the South. It is the reason why a great many Negroes are in jail. The law of the white folks in the South is, "Don't you dispute my word, nigger." If a white person says you did something, you did it.*

Then Patterson offers a commentary on the only method he knew that would have allowed a black person in the South at that time to combat this condition with any hope of success:

> *There's only one way a Negro can get out of it when this kind of evidence,* white testimony, *is brought in. That is to have rich white folks or labor organizations fronting for you. I saw that in my case. Nine of us were sentenced on the strength of one woman's say-so.* Nobody *backed her up.* Her word *was enough in an Alabama court.*

Then Patterson tells us why he believes this happened:

> *Color is more important than evidence down there. Color is evidence. Black color convicts you. A light Negro stands a better chance in court than a real black one like me. . . . And what is in back of that? They just want us to work for nothing. They do this perfect to us in prison.*

Clarence Norris did not get along well with Patterson at first, though he was close to the other defendants. "Haywood was the type of guy that always kept a lot of bullshit going. There is only so much you can do if you have your head in the mouth of a lion. He did a lot of things against himself."

Norris makes many of the same general points as Patterson in his autobiography, *The Last of the Scottsboro Boys.* Of Kilby Prison, where he was incarcerated, he writes: "I knew I was there because I was a 'nigger.' An animal to be locked up as in a zoo. Except that zoo animals are treated much better than the black men in Kilby Prison. I thought I was a goner and it was only a matter of time." Norris also combines plaintiveness with a sense of the cynical self-serving manner in which he and the other Scottsboro defendants were being used by politicians. "I wondered how much longer the state of Alabama would spend its money to prosecute nine innocent boys in order to send them to their deaths. I couldn't understand it then or now, the hatred." Then he looks for possible motives: "And most of the officials involved with the case tried to use it as a stepladder to success; reputations were won and lost. Organizations became larger and better known. Newspapers sold better, deputies became sheriffs, elected officials were reelected and went on to bigger and better positions. All they had to do was scream, 'Kill those Scottsboro niggers.'"

Rape and the Long Shadow of Scottsboro

The Scottsboro cases exercised a profound influence on the way that criminal justice came to be administered in the United States forever after. It is one of

the ironies of political life that persons strongly identified with an ideological position can accomplish things contrary to that position, things that could not be done by those on the other side of the political fence. Richard Nixon, for instance, was able to resume American relationships with Communist China only because Nixon was so notoriously hostile to communism that nobody could sensibly regard his negotiations as a sellout to the forces of evil.

So too with the Scottsboro case. That a deeply conservative Supreme Court could twice overturn the Alabama trial verdicts, and dramatically extend federal constitutional protections to defendants in the state courts, testifies to the powerful impact that the cases exercised. Before we consider their significance for the administration of criminal justice we need to look briefly at issues concerning the crime of forcible rape, the charge that triggered the Scottsboro case.

For several centuries there was a deeply embedded premise in Anglo-American law that women were likely to claim falsely that they had been raped if they found themselves in a tight situation from which they thought such an allegation could extricate them. This position was most strongly enunciated by Sir Matthew Hale, a seventeenth-century English jurist, who wrote in his *Pleas of the Crown* about a man with a hernia that dropped his stomach to his knees, making sexual intercourse impossible. Nonetheless, this man, Hale wrote, was falsely accused of rape. Hale's conclusion on the issue was framed in words that would be later read to juries in California and many other states in every case of sexual assault: Rape, it ran, is "a charge which is easily made and once made, difficult to defend against, even if the person is innocent. Therefore, the law requires you to examine the testimony of the female person named in the information with caution."

Ironically, despite overwhelming evidence regarding the absurdity of the charges, Hale himself imposed a sentence of death on two women accused of witchcraft at the Bury St. Edmunds assize in 1662. Witchcraft, unlike rape, represented an accusation that truly is easily alleged and virtually impossible to defend against. How do you satisfactorily demonstrate that it is not your spirit that is flying about the rafters of the courtroom on a broomstick and tormenting your accusers?

Susan Brownmiller in her classic study of rape, *Against Our Will*, connects the powerful survival of this archaic juridical doctrine into contemporary times to Scottsboro, at least in regard to interracial rape. "If one case convinced the American public—and international opinion—that lying, scheming white women who cried rape were directly responsible for the terrible

penalties inflicted on black men, the name of that case was Scottsboro." The case, Brownmiller writes, remains "damning proof to liberals everywhere of Eve incarnate and that the concept of Original Sin was a no-good, promiscuous woman who rode a freight train through Alabama."

But Brownmiller offers her own spin on the case, noting that Victoria Price and Ruby Bates were *kept in jail* (the emphasis is hers) with possible vagrancy and prostitution charges hanging over them. Brownmiller believes that "[t]he singular opportunity afforded Price and Bates [to cry rape] should be appreciated by every woman." She implies that charging rape constitutes a weapon, the power of which is (or should be) appreciated by all women—and presumably is irresistible if conditions become sufficiently threatening for women. But this is not Brownmiller's only didactic theme. She wonders whether, if women had been allowed on the Scottsboro case juries, they might have seen through the facade of the rape allegation. Would they, Brownmiller asks rhetorically, have been better able to understand the import of dead, immobile sperm in Victoria Price's cervix? For Brownmiller, Victoria Price and Ruby Bates, like all women, were "movable pawns" of the male power structure. "They were corralled by a posse of white men who already believed a rape had taken place. Confused and fearful they fell into line." It was men who led the women to accuse other men, though she grants that the women did so "to save their own skins."

The actual situation, taking the Scottsboro case as a whole, would appear rather more complicated than Brownmiller makes it. The blacks were rounded up at Pine Rock on the basis of the accusations of the whites they had earlier fought with and bested. It is arguable whether either Price or Bates would have come under legal scrutiny; after all, riding the rails was also what the white males had been doing and they most certainly would not be legally detained. One could also argue that the rape charges, though perhaps fueled originally by self-protection, were continued out of self-interest and probably a certain pleasure from being in the limelight.

If Price was lying, and there seems to be no doubt that she was, the case may offer some contemporary concern about the limiting of cross-examination of women who bring rape charges. If a woman has been "unlawfully violated," Callahan observed, "she may appeal to the courts with an abiding faith that no accusing finger can be pointed to her erring past or hopeless future, as an excuse for denying to her full and adequate protection of the law." At Scottsboro, therefore, how Victoria Price had come by the small amount of nonmotile semen in her cervix was deemed irrelevant, and jury

members therefore could more readily conclude that it was the product of the alleged rape.

Judge Callahan at Decatur frustrated Leibowitz's incessant efforts to show that Victoria Price had sexual relations with her boyfriend in the hobo camp. The trial transcript shows several interactions such as this one:

> *Q to Price: Did you go to the hoboes' jungle with them [Bates's and Price's boyfriends]?*
>
> *Mr. Knight objected to the question. The court sustained the objection. Mr. Leibowitz said: Will you let me tell your Honor what I would like to prove by the witness by this question? The court refused: I adhere to my ruling. I can imagine what you want to prove. Mr. Leibowitz reserved an exception.*

In the realm of rape accusations, Scottsboro is something of an aberration, though much less so for an interracial rape with a white accuser. In the United States, men guilty of rape often go free because the details of a rape are known only to the participants, and the accusers are unable to convince the authorities or a judge or jury beyond a reasonable doubt of the accused's culpability. This happens despite the fact that rape charges are likely to be based on fact. But what are we to do with the likes of prosecuting witnesses such as Victoria Price? At what point do newer evidentiary rules, such as those that can restrict evidence of previous sexual conduct, push toward the kind of consequence that befell the Scottsboro defendants? Perhaps time has taken the edge off the fierce fear of interracial sexual relationships that marked southern etiquette and the false front of protecting "southern womanhood" that closed jurors' minds to overwhelming evidence of the accused's innocence. Rape ceased to be a capital offense in the United States in 1977 (*Coker v. Georgia* 433 U.S. 584) on the ground that the penalty was disproportionate to the offense. But its equitable prosecution—the law's ability to convict the guilty and acquit the innocent—continues to present some of the most difficult dilemmas in the administration of criminal justice.

Scottsboro and Constitutional Rights

The decision in *Powell* regarding adequate legal representation and that in *Norris* regarding the inclusion of blacks on juries had profound implications for the fair administration of criminal justice, primarily because they initiated close federal court scrutiny of state practices. These decisions, one commentator has pointed out, were a principal landmark in "a new liberty which gives

the nation a bill of rights against state action." Particularly noteworthy was the response at the time the *Norris* decision was handed down of Alabama Governor Bibb Graves, a strong segregationist. Graves sent a letter to each of the state's trial judges regarding the Supreme Court's ruling. He was notably tactful. "I do not assume or intimate that the contents of the jury boxes in any way fail to conform to all legal requirements," Graves noted, pussyfooting around the obvious truth that they did not do so. Nonetheless, Graves stood fast for justice: "Holdings of the United States Supreme Court," he wrote, "are the supreme law of the land. Whether we like the decisions or not, it is the patriotic duty of every citizen and the sworn duty of every public official to accept and uphold them in letter and spirit."

For its part, the Supreme Court took a monumental step toward increasing fairness in criminal proceedings. The vague words of the Fourteenth Amendment in the past had been used to protect property rights and to nullify New Deal legislation. Now a set of conservative justices applied the constitutional doctrine for the purpose for which it had been adopted, to protect black people from oppression. To do so, they had to intrude themselves into the practices of a sovereign state, a juridical penetration that would have great significance for upgrading the quality of criminal justice throughout the country.

At the same time, the Supreme Court highlighted starkly the appalling inadequacy of a major premise on which criminal justice operates: that if procedural regularities are observed scrupulously (or more or less scrupulously) justice will prevail. Provide an adequate attorney for the defendants and allow their peers to sit on the jury and a just verdict will be reached. In truth, though, as the Scottsboro case vividly demonstrated, these matters were, at least in this instance, quite beside the point. A rural Alabama jury was going to convict the Scottsboro defendants because it was beyond reason to reject the claim of a white woman, of whatever sexual notoriety, that she had been raped by black men.

For Stephen Landsman, the Scottsboro case was a pivotal event that propelled legal developments in the United States in a positive direction. "The tales a society tells about great trials can help identify the central conflicts of an era." Then he adds:

> *Critical cases often involve a clash between governing authority and those who would consciously challenge it. In such proceedings, those in control seem willing to ignore fair*

play in order to suppress a perceived threat. Yet often, at least in democracies, the opposition is powerful enough to challenge this behavior, and the rulers are uncertain enough of themselves to have second thoughts about their chosen course of action. Out of the ensuing clash of forces, a set of lessons, or a story, may emerge that leads to a reordering of the legal process or even of relations in a society as a whole.

However grandiose such an interpretation, it undoubtedly has a ring of truth in regard to the judicial tribulations and terrors that befell the nine black men arrested at Paint Rock in 1931 for a crime that they had not committed. They paid an unconscionably huge personal price for whatever changes their situation may have produced in the world about them. Nor by any means have the questions the Scottsboro case raised—most particularly the relationship in the United States between the ruling whites and the black minority—reached a settled and satisfactory state. Memories of the case dig deep, and it is not surprising that a recent essay on a murder trial two-thirds of a century later would be titled: "From Scottsboro to Simpson."

What Else Might Have Happened?

The story of Scottsboro presented here dovetails with interpretations found in every responsible report of that sensational case. But there remain a number of perplexing elements that challenge the acceptance of conventional wisdom about what happened—or, more accurately, what did not happen. Nobody can reasonably dispute that all nine of the Scottsboro defendants clearly were not guilty of the alleged rapes of Victoria Price and Ruby Bates. It is chilling too to appreciate that had Price and Bates confined their accusations to one person each, it is very likely that the individuals they named would have been tried summarily and executed, and the case would have become one of innumerable barely noticed instances of awful racial injustice.

At the same time, commentators on the Scottsboro trials have not pursued all the implications of information that suggests—though it certainly does not prove—that the gondola cars were not an uneventful site as the train moved toward Paint Rock. Nor does it seem unlikely that the prosecution and perhaps the defense were aware of a scenario different from what either offered in court, and that they appreciated that it was to neither's advantage to probe some issues more deeply.

The involvement of Orville Gilley (a.k.a. Carolina Slim) in the trials is one piece of the puzzle. Gilley, the white man drawn back into the car by the blacks for his own safety because the train had picked up considerable speed,

was the only eyewitness with no alleged involvement in the rapes. Price testified that she had been "lying on Gilley's lap" for about five or ten minutes before the train stopped at Paint Rock. We also know that the night before boarding the train Price had sexual relations with a man named Tiller and then spent the evening sleeping by Gilley's side in the hobo camp. Add to this Bates's testimony that before the white boys had been thrown off the train Price had said that if she knew that Gilley and another man were not likely to return to the chert car soon, she and Ruby "would go over there and make some money from these boys."

Gilley reportedly had denied before the grand jury Price's allegations of rape. He made a cameo appearance in one of the trials at Scottsboro, saying only that he saw five blacks in the gondola car, while he lay huddled in a corner. He did not testify about rape and was not cross-examined. Gilley was in California during the first Decatur trial, but played a prominent role in the second. On the stand, he maintained that he saw Price and Bates being raped, though his depiction of the scene differed in several important respects from Price's story. The defense was barred by the judge from questioning Gilley about any other sexual involvement that he or others might have had with Price or Bates. It also came out that Gilley and his mother had been receiving money from the prosecutor's office prior to the trial. Gilley did not appear in the subsequent Decatur trial; he was in prison for assaulting and robbing two women.

If truthful, would Gilley have said that Price and Bates had had consensual intercourse with the blacks, or perhaps, though very much less likely, that one or two of them, with Patterson and Norris the most reasonable choices, had taken the women by force? Had he himself had sex with the women, or had some of the white boys who had been thrown from the train? Testimony along these lines at a minimum would have led to the release of at least seven of the Scottsboro defendants. It also could have jeopardized the prosecution's case by exposing Price as promiscuous and a blatant liar in terms of her statement that five or six (the number varied) of the young black men had raped her. Gilley was a loose cannon, and the state's tactic might have been to keep him muzzled until he could be depended on to tell the "right" story.

The sequence in which the defendants were tried and the order in which they were released also seem to tell a story. Norris and Weems were the first defendants in the trials at Scottsboro; at Decatur, Patterson was the only person tried before Judge Horton called an end to the proceedings. At later trials the focus was largely on Patterson and Norris, and sometimes Weems.

Undoubtedly, the prosecutor believed that his strongest case was against these men, particularly since virtually the only identification evidence Victoria Price offered was that her first assailant had been a big and strong man: a description that fits Patterson, Norris, and Weems far better than it would the other defendants. Patterson was never released; he had to escape from prison, and Norris was one of the last of the defendants to be paroled.

Why too did the state later offer the Scottsboro boys a plea bargain that would have them admit to the criminal offense of miscegenation in exchange for reduced sentences, most of which they had already served? Miscegenation, charged almost exclusively in black-white marriages or ongoing liaisons, invariably indicated a consensual relationship. Was the state willing to abandon its position about the white-woman purity of Price and Bates and align the penalty with a truer reading of what it knew to be the facts of the case?

The evidence regarding sperm in the vaginal tracts of the two accusing women is not altogether clear-cut. At the first trial, Dr. Bridges said that he had found "a very great amount" of sperm when he examined Victoria Price and Ruby Bates. At all later trials, he would maintain that he had difficulty locating any sperm, and most of what what he did find had lost its motility. Why did the doctor take such contradictory positions? Could he have balked after the first trial at the prospect of the nine defendants being executed on the basis of what he had said?

The testimony at the first trial by some Scottsboro defendants, including Patterson, that several of their number, but not they themselves, had raped Price and Bates certainly may have been the result of earlier threats by their interrogators. But they also could have known that something untoward had happened and been concerned only that the finger of guilt not be pointed at them.

Finally, there are the diverse stories of Ruby Bates. First, she joined Price in supporting her allegations of rape. Then, after a trip north, she recanted, providing the defense (and commentators on the trial) with powerful evidence that the whole story was fabricated, that nothing had gone on in that gondola car. But matters did not end there. Between the first and second trials, writing to a boyfriend whose attentions were wandering, Bates in January 1932 offered the following exculpatory statement about her sexual involvement with blacks. It read in part:

i want to make a statement too you Mary Sanders is goddam lie about those Negroes jassing me those police made me tell a lie that is my statement because i Want to clear

my self that is all to it if you Want too Believe ok. if not that is ok. . . . those Negroes did not touch me or those white Boys i hope you believe me the law dont.

A few sentences latesr came a rather different statement:

. . . it is the gods truth i hope you Will Believe me i was jazed But those white Boys jazed me i Wish those Negroes are not Burnt on account of me it is these white Boys fault that is my statement. . . .

Finally came a postscript: "P.S. this is one time that I might tell a lie. But it is the truth so god help me." Hauled off to the police station the following day, Bates was pressed to sign a paper saying that she was drunk and didn't know what she was doing when she had written this letter.

Many years later in her old age (she had changed her first name to Lucille and married a man named Schut), Bates offered another version of her story, saying that Price had been raped by the largest of the men, presumably Patterson, perhaps Norris or Weems. The report of this claim came by way of William Bradford Huie, a writer who in *Mud on the Stars* had movingly deplored in fiction the execution in the electric chair in Alabama of a young black man who had been convicted of the rape of a white woman who encouraged their relationship. (In *The Execution of Private Slovik,* Huie told the story of a wimpy Michigan boy, enlisted in the U.S. Army during the Second World War as an alternative to a jail term. Slovik was emotionally unfit for combat but, because nobody in the chain of command had the guts to halt it, he was executed by an army firing squad for cowardice in refusing to fight, the only person so dealt with by the U.S. Army since the Civil War.)

It was to Huie at his home in 1964 and at her home a dozen years later (as Huie told a *Birmingham News* reporter) that Ruby Bates said that she had been raped. She said she had changed her testimony because people up North had convinced her that it would cause her personal misery if it was believed that she had been raped by a black man. Huie had met Bates when she was hired as a practical nurse to look after his dying mother-in-law.

In 1976, Huie visited Bates in Tacoma and asked her point-blank whether she had been raped. She first said, "What do you think?" Then she added that she hadn't been raped because she was wearing overalls, while Price was wearing a dress—hardly an accurate statement. After that, when her husband had left the room, Bates turned to Huie and said: "You remember what I told you before." This last conversation, however, has to be considered in its con-

text: it took place while Bates was suing NBC for damages, and it was to her advantage to reassume the role of victim.

What can we make of these teasing clues? We suspect that something sexual probably happened in the gondola car before it reached Paint Rock. We suspect that both Price and Bates had consensual sexual intercourse, perhaps with one or two of the blacks, perhaps with the white boys and Gilley alone or as well. Whether they did so, if they did, for money or for play we do not know. We also accept as reasonable the judgment regarding our speculations by Dan Carter, the leading historian of the Scottsboro case. What we suggest, Carter notes in a letter, is "not impossible," and, though "we can assert until hell freezes over, none of us will ever know with absolute certainty what happened."

For Further Reading

The most comprehensive report on the Scottsboro case is Dan T. Carter, *Scottsboro: A Tragedy of the American South* (Baton Rouge: Louisiana State University Press, 1969; rev. ed., 1979). The revised edition adds (pp. 416–422) a detailed report of Victoria Price's suit against NBC. Carter meticulously combed archives and employs with telling effect excerpts from many of the letters that the Scottsboro boys wrote to those seeking to free them. The book is based on his 1967 Ph.D. dissertation at the University of North Carolina, "The Scottsboro Case, 1931–1950," which contains additional details.

It is worth noting a letter that Carter wrote to Clarence Norris years later, when Norris sought vindication from Alabama:

> *There is today an organization called the "Flat Earth Society." Its thousands of members believe that the earth is flat and no amount of proof or persuasion can convince them otherwise. Well, I spent the better part of two years researching and writing an account of that [Scottsboro] case. I read over 10,000 pages of trial transcripts; I went over hundreds of newspaper accounts and first-hand reports. I read through the correspondence of every major organization involved in the case. Finally, I reviewed the medical testimony with several experts in the field. And I tell you flatly that I would join the Flat Earth Society before I would accept the notion that Victoria Price and Ruby Bates were raped on March 25, 1931.*

More recently, in *Stories of Scottsboro* (New York: Pantheon Books, 1994), Harvard historian James E. Goodman brings together in collage style different perspectives on the ingredients of the Scottsboro case. Goodman focuses not

only on details of the case itself and how persons interpreted them, but also on the broader implications of the Scottsboro trials for race relations in the North and in the South.

The Alabama viewpoint, with a scalding diatribe against Communist interference with their local affairs, appears in Files Crenshaw, Jr., and Kenneth A. Miller, *Scottsboro: The Firebrand of Communism* (Montgomery, Ala: Brown Printing Co., 1936). The book contains long verbatim transcripts of the various trials that, though somewhat partially selected, provide a strong sense of the courtroom proceedings.

An excellent short report on the Scottsboro case for younger readers is James Haskins, *The Scottsboro Boys* (New York: Henry Holt, 1994). The history of the town of Scottsboro is set out in W. Jerry Gist, *The Story of Scottsboro, Alabama* (Nashville, Tenn.: Rich Printing Co., 1968), which includes a very one-sided (the state of Alabama's side) account of the trial, pp. 185–243. Decatur's history can be found in William H. Jenkins and John Knox, *The Story of Decatur, Alabama* (Decatur: Decatur Printing Co., 1970). Though largely reprinting excerpts from the trial transcripts, Gillian White Goodrich's master's thesis in history, "James Edwin Horton, Jr.: Scottsboro Judge" (University of Alabama, 1974), offers some useful biographical information about its subject.

Allan K. Chalmers tells of his untiring efforts to free the Scottsboro defendants when he was head of the Scottsboro Defense Committee in *They Shall Be Free* (Garden City, N.Y.: Doubleday, 1951). Two of the Scottsboro defendants later collaborated on books that provide valuable details of their experiences and attitudes: Haywood Patterson and Earl Conrad, *Scottsboro Boy* (Garden City, N.Y.: Doubleday, 1950); and Clarence Norris and Sybil D. Washington, *The Last of the Scottsboro Boys* (New York: G. P. Putnam's Sons, 1979). The Norris-Washington book incorporates several reproductions of trial transcripts and court decisions. More recently, Kwando Mbiassi has published the results of a series of interviews he conducted with Norris in *The Man from Scottsboro: Clarence Norris and the Infamous Rape Trial in His Own Words* (Jefferson, N.C.: MacFarland, 1997).

Shorter essays on the case include a well-written early article, "The Freight-Car Case," by Edmund Wilson in the *New Republic*, August 26, 1931, pp. 38–43; and Arthur Garfield Hays's *Trial by Prejudice* (New York: Da Capo Press, 1970), pp. 25–150. Hays was an associate counsel with Clarence Darrow during their ill-fated negotiations with the ILD for control of the case. Another report is Dee Garrison, ed., *Rebel Pen: The Writings of Mary Heaton Vorse* (New

York: Monthly Review Press, 1985), pp. 148–152. Vorse was present at the first Decatur trial. Legal implications of the case are briefly addressed in Robert F. Martin, "The Scottsboro Cases," in John W. Johnson, ed., *Historic United States Court Cases, 1690–1990: An Encyclopedia* (New York: Garland, 1992), pp. 382–388. The quarrel between the ILD and the NAACP is reviewed in detail in several articles by Hugh T. Murray, Jr., including "Aspects of the Scottsboro Campaign," *Science and Society,* 35 (1971):177–192, and "The NAACP versus the Communist Party: The Scottsboro Rape Case, 1931–1932," in Bernard Sternsher, ed., *The Negro in Depression and War: Prelude to Revolution, 1930–1945* (Chicago: Quadrangle, 1976), pp. 267–281. Murray also discusses literary and artistic offspring of the case in "Changing America and the Changing Image of Scottsboro," *Phylon,* 38 (1977):82–92.

There are three biographies of Leibowitz that put the Scottsboro case into the context of his career as a lawyer and a trial and appellate court judge in New York: Leibowitz's son, Robert, wrote *The Defender: The Life and Career of Samuel S. Leibowitz, 1893–1933* (Englewood Cliffs, N.J., 1981), in which pp. 185–249 deal with the Scottsboro case, largely by reprinting verbatim sections of the transcript of the first trial in Decatur. The other books are Quentin Reynolds, *Courtroom: The Story of Samuel S. Leibowitz* (New York: Farrar, Straus, 1950), especially pp. 248–314 on Scottsboro; and Fred D. Pasley, *Not Guilty!: The Story of Samuel Leibowitz* (New York: G. P. Putnam's Sons, 1933), with pp. 226–278 devoted to the Scottsboro case.

The appellate court decisions provide useful information: for the trial in Scottsboro see *Patterson v. State,* 224 Ala. 531, 141 So. 195 (1932); *Powell v. State,* 224 Ala. 540, 141 So. 201 (1932); and *Weems et al. v. State,* 224 Ala. 524, 141 So. 215 (1932). The Supreme Court decision appears as *Powell v. Alabama,* 287 U.S. 45 (1932). The decisions on appeals from the first Decatur trial can be found in *Norris v. State,* 229 Ala. 226, 156 So. 556 (1934); *Patterson v. State,* 229 Ala. 270, 156 So. 567 (1934); *Norris v. Alabama,* 294 U.S. 587 (1935); and *Patterson v. Alabama,* 294 U.S. 600 (1935). The second Decatur trial is considered in *Patterson v. State,* 234 Ala. 342, 175 So. 371 (1937). Certiorari was denied by the U.S. Supreme Court, 302 U.S. 733 (1937).

The decision on Victoria Price's claim against NBC is reported in *Street v. National Broadcasting Company,* 645 F2d 1227 (E.D. Tenn. 1981), which also includes a complete transcript of Judge Horton's ruling mandating a retrial after the first Decatur trial. Raymond W. Fraley, Jr., and Don Wyatt were the two Fayetteville, Tennessee, lawyers who talked with us about Price and the case they handled for her. Fraley very kindly supplied his file on the case for our use.

Particularly good interpretations of the Supreme Court decision in *Powell v. Alabama* are provided in Francis Heller, *The Sixth Amendment to the Constitution of the United States* (Lawrence: University of Kansas Press, 1951), pp. 121–127; and Hadley Arkes, *The Return of George Sutherland: Restoring Jurisprudence of National Rights* (Princeton, N.J.: Princeton University Press, 1994), pp. 262–273.