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Only the Accused Were Innocent

By David M. Oshinsky;

STORIES OF SCOTTSBORO By James Goodman. Illustrated. 465 pp. New York: Pantheon Books. \$27.50.

IT began with a fight between white and black hobos aboard a freight train bound for Memphis in the winter of 1931. Word of the brawl reached the sheriff in Jackson County, Ala., who deputized a posse to round up "every Negro" on the train. Dozens of heavily armed white men stopped the slow-moving freight at an isolated depot; a search of the boxcars and gondolas turned up nine black youths, ranging in age from 13 to 19. They were arrested for assault, chained together with a plow line and driven on the back of a rickety flatbed truck to the county jail at Scottsboro, a farming town of 3,500 in the lower Tennessee Valley.

Later that afternoon, a far more serious charge emerged. Two white women found running alongside the railroad tracks had accused all nine suspects of raping them on the train. As news of their story spread across the county, a huge crowd, chanting "Give 'em to us" and "Let those niggers out," threatened to storm the Scottsboro jail. A desperate phone call alerted the Governor of Alabama, who wisely sent in the National Guard.

The trials were held in a Scottsboro courthouse ringed by troops in full battle gear. The star witnesses -- Victoria Price and Ruby Bates -- recalled the heroic struggle they had waged aboard the train to ward off their attackers. "It took three of those Negroes to hold me," said Price, an unemployed cotton mill worker from Huntsville, Ala. "Six of them had intercourse with me." Their testimony was so shocking that women of all ages and men under 21 were barred from the courtroom.

The juries barely deliberated before convicting eight of the youths and sentencing them to death. (The case of 13-year-old Roy Wright ended in a mistrial when his jury could not decide between life imprisonment and the electric chair.) "The courtroom," said Haywood Patterson, the most outspoken of the defendants, "was one big smiling white face."

The press called them the Scottsboro Boys, and for many in America their plight became a symbol of the oppression faced by black Americans in a region where white supremacy was an uncontested fact of life. "Countless people were outraged by the trials and death sentences," writes James Goodman in "Stories of Scottsboro," a superb retelling of this vital but largely forgotten episode. "Countless others were outraged by the outrage. Appeals led to seven retrials and two landmark Supreme Court decisions. The defendants spent no less than 6, and as many as 19, years in jail."

Mr. Goodman, who teaches history at Harvard, owes a great debt to Dan T. Carter's absorbing account of the case, "Scottsboro: A Tragedy of the American South," published in 1969. Yet Mr. Goodman breaks fresh ground himself by ignoring the boundaries of narrative history and moving back and forth across time to provide multiple versions of each crucial event. The result is a complicated, often perplexing story in which the perceptions of Scottsboro's major characters -- blacks and whites, Northerners and Southerners, patricians and dirt farmers, defendants and accusers -- clash repeatedly in search of the truth.

One truth was apparent from the start. No group worked harder or longer to free the "boys" than the American Communist Party. Within days of the arrests, the Communists were providing both legal assistance and editorial support. To party leaders, the Scottsboro trial was a political bonanza, a perfect example of "ruling-class justice" in action. The young men, after all, were the barely literate sons of sharecroppers and servants. As blacks, they faced crippling race prejudice in a nation that preached equality for all; as jobless drifters, they mirrored the pain that capitalism's ultimate failure -- the Great Depression -- had inflicted on the masses.

Many distrusted the party's motives, fearing it wanted dead martyrs above all else. Actually, the opposite was true. As Mr. Goodman demonstrates, the Communists almost certainly saved the young men by insisting on their innocence at a time when other groups, including the N.A.A.C.P., were wary of defending any black accused of raping a white woman. Indeed, the youths and their families chose to be represented by the party's International Labor Defense because, as one of the mothers noted, "they are the only ones who put up a fight to save these boys and I am with them to the end."

The Communists picked an outsider, a mainstream defense attorney with no radical connections, to represent the youths at the new trials and appeals. His name was Samuel Leibowitz, and few could doubt his record or his skill. A tall, heavysset New Yorker, Leibowitz "had excelled at drama and debating" at Cornell, and "his vibrant voice and extraordinary sense of timing were as useful to him as his prodigious preparation, attention to detail and mastery of the law." In 15 years of practice, Leibowitz had defended 78 people accused of first-degree murder; 77 had been acquitted, and in the one other trial, the result was a hung jury. He decided to represent the Scottsboro Boys without fee after a black Communist lawyer convinced him of their innocence. What Leibowitz demanded in return was the freedom to defend these young men without political interference. The Communists agreed.

Leibowitz came on board several weeks after the Supreme Court of the United States had overturned the Scottsboro convictions by ruling, in *Powell v. Alabama*, that the defendants were effectively denied counsel in violation of the 14th Amendment's "due process" clause. At their second trial -- held in 1933 in Decatur, Ala., a Ku Klux Klan stronghold 50 miles west of Scottsboro -- Leibowitz quickly took charge. He moved for a dismissal on the ground that blacks had been systematically excluded from Alabama's jury rolls. To prove his point, Leibowitz questioned a series of black and white witnesses, none of whom could recall a single black ever having been called for jury duty. The difference, however, was that the whites could not understand why anyone would choose to have it otherwise. To their thinking, blacks simply lacked the character to judge other people's fates. Did that mean they were dishonest, Leibowitz asked a local newspaper editor. "Yes, sir," he replied. "They will nearly all steal."

Judge James Horton denied Leibowitz's motion and ordered the trial to begin. But Horton, a wealthy landowner with deep antebellum roots in Alabama, was clearly troubled by the case, Mr. Goodman

explains. For one thing, he did not believe that all nine of the defendants could possibly have taken part in the crime. They had been captured in groups of two and three aboard a very long train. One of the youths was nearly blind; another had been suffering from a case of venereal disease so painful that he had to walk with a cane. How could they have jumped from car to car to take part in a brawl -- or a rape?

Horton was even more troubled by the claims of the two women, Price and Bates. They said that a terrible struggle had ensued, yet their bodies were barely bruised. One of their examining physicians told Horton, in confidence, that the women had lied about the rape and "laughed at me" as they were being tested. "Judge, God knows I want to, but I can't," the doctor said when Horton urged him to testify. "If I testified for those boys I'd never be able to go back into Jackson County."

It probably wouldn't have mattered. Leibowitz produced one bombshell after another, to no avail. His first major witness, a white hobo who had boarded the freight train with Victoria Price, described her -- accurately, it turned out -- as a prostitute and an adulterer. And his next witness was none other than Ruby Bates, who had decided to tell the truth, she said, after months of soul-searching and prayer. There had been no rape on the train, Bates stammered. Victoria Price had made up the story because she feared that the posse would arrest her for transporting a minor -- Bates was then 17 -- across state lines for the purpose of prostitution.

The prosecutors were stunned. They lashed out at the witnesses as ugly liars, pawns of Jews and Communists, and traitors to the South. At the end of his summation, one prosecutor asked the jury to consider a single question: "Is justice in the case going to be bought and sold in Alabama with Jew money from New York?"

The jurors obliged. Their verdict, once again, was guilty, and the sentence was death. Believing that Ruby Bates had been corrupted by Northern infidels, Mr. Goodman says, they saw no alternative but to accept the word of her traveling companion, Victoria Price. The fact that Price had led a hardscrabble life -- that she had grown up poor, quit school early, worked as a mill girl, lived in hobo jungles and made some poor moral choices -- seemed only to soften the hearts of these 12 plain, stern, white Alabama men. Leibowitz, who had confidently predicted an acquittal, now exploded in rage. Asked by a reporter to explain the verdict, he portrayed white Southerners en masse as "lantern-jawed morons," adding, "If you ever saw those creatures, those bigots whose mouths are slits in their faces, whose eyes popped out at you like frogs, whose chins dripped tobacco juice, bewhiskered and filthy, you would not ask how they could do it."

THE verdict may not have surprised Judge Horton, but it surely embarrassed him. Horton, Mr. Goodman writes, well understood the deep sexual fears that Southern whites harbored toward blacks. He had seen his share of lynchings over allegations far less spectacular than those reported in the Scottsboro case. He knew that many white men considered blacks primitive beings who ravaged white women out of lust, revenge or sometimes both. He knew that many white women lived in constant fear of being sexually assaulted by blacks, though such offenses were extremely rare. And his years on the bench had taught him that whites routinely accused blacks of crimes in order to conceal evidence of their own misconduct.

As Mr. Goodman makes clear, however, the behavior of Leibowitz and other supporters of the Scottsboro Boys was not without serious moral flaws. In his summation, Leibowitz played shamelessly on the racial prejudices of the jury by describing his own client as a "poor, moronic colored boy." And his cross-

examination of Victoria Price raised the dangerous notion that prostitutes did not deserve the full protection of the law -- a notion widely accepted by Northern civil rights advocates at this time. Indeed, the black writer Langston Hughes ended his bitter essay on Scottsboro by asking, "And who ever heard of raping a prostitute?"

In an astonishing reversal, Judge Horton set aside the convictions, citing the "unreliability" of the state's only major witness, Victoria Price. His words bristled with a contempt born of gentlemanly breeding as he charged that women of her "character" were prone to make "false accusations" of rape "for ulterior purposes." In a sense, Horton had done the unthinkable by chastising a white woman who had accused black men of sexually assaulting her. But Victoria Price was not a true representative of Southern womanhood, Horton believed, and that put her beyond the reach of his chivalrous protection.

As expected, the state of Alabama ordered an immediate retrial. Judge Horton was replaced by Judge William Callahan, an ignorant 70-year-old jurist who assumed, among other things, that black men could not keep themselves from raping white women and that white women would never willingly have sex with black men. The prosecutor summed up his case by warning that an acquittal would force the female population of Alabama to "buckle six-shooters around their middles" so as to protect "the sacred parts of their bodies" from oversexed blacks. And the jurors brought in the predictable verdict and sentence: guilty and death.

Once again, the Supreme Court intervened. In a ground-breaking 1935 decision, *Norris v. Alabama*, it reversed the convictions on the ground that blacks had been excluded from the juries that indicted the youths. By this time, the story of the Scottsboro Boys had become a national obsession. Tales of Southern racism ran side by side with articles about Hitler's racism in Germany, writes Mr. Goodman, "and for many Northerners one story became an aid to understanding the other."

As Northern protests mounted, Alabama's once-steady resolve began to waver. The clear majority of whites, Mr. Goodman says, still wanted the Scottsboro Boys to hang. Anything less, warned J. Thomas (Cotton Tom) Heflin, a former United States senator, would place "wicked thoughts in the minds of the lawless Negro men." Yet a number of influential whites now urged clemency for the youths as a way of protecting Alabama from further ridicule and abuse. "I don't care what they do," the editor of *The Montgomery Advertiser* fumed, "so long as they do it in another state, preferably Ohio or New York. I don't care if they eat one another without benefit of pepper sauce. I do not know whether they are guilty or innocent of the rape of two cut-rate prostitutes. I do not care."

In 1937, the state released four of the Scottsboro Boys -- the two youngest and the two most sickly -- as a gesture of good will. The other five were retried, found guilty and sentenced to long terms in prison. But as time passed and memories dimmed in Alabama, four of them were quietly paroled -- one in 1943, two in 1944, another in 1946. Haywood Patterson, described by state parole officials as "vicious" and "incorrigible," escaped from prison in 1948 and fled to Detroit. Arrested two years later by the F.B.I., Patterson was set free after Michigan rebuffed Alabama's halfhearted attempt to have him returned.

Freedom did not prove kind to the Scottsboro Boys, Mr. Goodman reports. The products of violent homes and prison beatings, they drifted north to places like New York and Cleveland without skills or clear direction. Most of them found trouble, and some went back to jail. Roy Wright, the youngest of the Scottsboro Boys, committed suicide after killing his wife. Patterson died in a Michigan prison after

murdering a man in a barroom brawl. "Everywhere I go," said one of the nine, "it seems like Scottsboro is thrown up in my face. . . . I don't believe I'll ever live it down."

Mr. Goodman tells us nothing about the later lives of Ruby Bates, Victoria Price and Samuel Leibowitz. The two women went their separate ways and were quickly forgotten. Leibowitz returned to New York, became a criminal court judge and made headlines with his stormy behavior and his harsh treatment of defendants. As a lawyer, he recalled, "my job . . . was to sell my client's cause to the jury." As a judge, he added, "I was tough with hardened criminals; toughness was all they understand." He died in 1978.

The injustice of Scottsboro has long since faded from view. The names of Roy Wright and Haywood Patterson and the others do not appear alongside the names of Rosa Parks, Emmett Till and Medgar Evers on the list of those who made a difference in the struggle for civil rights. Yet one cannot read Mr. Goodman's remarkable book without being moved by the courage and resilience of these simple young men. Clarence Norris was 18 when Victoria Price accused him of rape. Facing the death sentence at his third trial, he was asked if he had anything to say. "Yes, sir," Norris calmly told the judge. "They didn't find me guilty. They just thought they did. I am accused of a crime I never even thought about committing."

Photo: Samuel Leibowitz with his clients, the defendants in the Scottsboro rape case, in March 1933. (UPI/BETTMANN/FROM "STORIES OF SCOTTSBORO")