

The South Speaks

By JOHN HENRY HAMMOND, Jr.

A GAIN fear has driven an Alabama jury to condemn to death one of the Scottsboro boys. It matters little how flimsy the evidence was against Haywood Patterson; a white woman had accused a Negro of raping her, and in this matter a white woman's word is law.

The Scottsboro case has slowly attained world-wide publicity owing to the efforts of the International Labor Defense, which fought the case successfully before the United States Supreme Court and won a new trial—in Alabama. The nine Negroes, accused of assaulting two white girl hobos on a freight train two years ago, were granted a change of venue from seething Scottsboro to the comparatively peaceful town of Decatur, seventy miles away. The defense made the best possible fight, but it was hopeless from the start. The boys could hardly have had an abler attorney than Samuel Leibowitz, with an almost perfect record of acquittals in criminal cases. Nor could they have been tried before a fairer man than Judge James E. Horton, who astounded skeptical Northerners by his tolerance and poise. But Southern prejudice was more than a match for a fair judge, lack of evidence against the Negroes, and a jury above the community's average in intelligence.

At the beginning of the trial Decatur was a quiet Alabama town, perhaps a little busier than the average. Its twenty thousand inhabitants used to find employment in several hosiery mills and a steel and iron foundry employing something like two thousand men. The mills are running full time, with slashed wages, but the foundry is practically shut down. The town does not belong to the old South; its houses are modern and nondescript, as are its public buildings. Its upper class is not of the "aristocracy."

There was little bitterness evident at first. The prevailing feeling was one of annoyance at the expense of the trial. The townsfolk were fully aware of the fact that the schools of Scottsboro and Jackson County had been shut down by the cost of the original trial and appeal. The defendants, of course, were guilty. The average Southerner firmly believes that Negroes desire above everything to have intercourse with white women. But there was little animosity shown the prisoners. They would be found guilty and duly executed. The penalty for rape in Alabama is anything from ten years to death. The Negro faces death.

By the most adroit of maneuverings the defense forced the court to produce the secret jury rolls of Morgan County, after failing to get so much as a peep into Scottsboro's records. To the surprise and dismay of Attorney-General Tom Knight, Judge Horton ruled that the defense had made a prima facie case that no Negroes were on the rolls; that it was up to the prosecution to prove that there were. Of course Negroes do not sit on Southern juries, nor do their names appear on panels. But the matter was never so thoroughly threshed out as in Decatur. Leibowitz collected a list of highly intelligent property-holding Negroes, most of them possessing college degrees. These men appeared in court to prove that they possessed every qualification for jury duty under the Alabama statutes. In doing so they

performed a most courageous act. Although the defense lost its motion for a mistrial on the ground that the jury panel contained no names of Negroes, it laid the base for an appeal to the federal courts.

To many the choice of Samuel Leibowitz seemed a grievous error for the defense. Here, they argued, was a Northerner, a Jew, with a long record for defending gangsters and getting them off; a man who would make the worst possible impression on a Southern community. But Leibowitz is a master showman. And the court is the principal place of diversion for the Southern citizen. There were often gasps of unwilling admiration for this outsider who could outsmart their own Tom Knight.

It was Leibowitz's first trip South. He was surprisingly ignorant of the relationship between black and white. So when he first brought forward John Sanford of Scottsboro as a worthy applicant for jury duty, he was shocked at the treatment his witness received at the hands of the Attorney-General. After protesting twice at the bullying Sanford was receiving, he rose in a rage and shouted: "Now listen, Mr. Attorney-General, I've warned you twice about your treatment of my witness. For the last time now, stand back, take your finger out of his eye, and *call him mister.*" Leibowitz had the courage to do what no Southerner could have done—challenge the South's whole jury system. Without this the case could never be appealed to the federal courts. And it is extremely doubtful if even the highest court in Alabama would set these prisoners free, no matter what the weight of evidence in their favor.

Although Leibowitz took care to lay all possible bases for appeal, he was confident of an acquittal. He had never tried a case in which a frame-up was more apparent, and as he said in his initial courtroom speech at Decatur, he had full confidence in the integrity and fairness of the South. His thoroughness was astonishing. He produced in court the conductor and fireman of the freight train on which the attack was supposed to have taken place, witnesses who never were called at the original trial. From the railroad he obtained the exact line-up of the cars on the train and had them reproduced in miniature. He found Lester Carter, one of the white boys who accompanied the two girls on the train and provided for the defense its star witness. By competent witnesses found in Chattanooga it was possible to trace the girls' movements the night before the fatal trip and puncture completely their sworn testimony.

In the conduct of this case the International Labor Defense was making an experiment. It concentrated on the legal side of defense rather than on mass pressure. As a result, there were no traces of Communist literature in Decatur, no demonstrations, and no telegrams with demands to the judge until the lives of the defendants appeared to be in actual danger. Contrary to popular belief communism had little if anything to do with the verdict of guilty.

There appeared to be a veritable battery of prosecutors, but Attorney-General Tom Knight did all the work. Knight is only thirty-four, the son of the Alabama Supreme Court

Justice who wrote the court's decision affirming the verdict in the trials two years ago. He is a small, nervous man. Even in court he had little control of himself. His behavior was that of a small and enthusiastic child. But Tom Knight is exceptionally clever. He knows his courtroom gallery and all its prejudices. He successfully counteracted all of Leibowitz's many plays to the jury. He is a bad cross-examiner and seems not too sure of himself, but he is well versed in legal procedure. Out of court he is quite affable and charming, "one of the boys" to the newspaper fraternity. During the trial he became so excited that he seldom slept more than two hours a night. Out of court he insisted that he wanted to give the defendants a scrupulously fair trial. Of course, said he, the niggers were guilty, but if Leibowitz could convince him that there had been a miscarriage of justice, then he would publicly announce his conversion and have the indictments quashed. Inside the courthouse it was a different story. He browbeat Negro witnesses with all the thoroughness of a county solicitor. When Leibowitz announced that he would prove that Victoria Price had been arrested often for adultery and lewdness, Knight cried out: "I don't care how often you prove she was convicted as long as you can't prove she had anything to do with niggers."

Knight had a match, however, in the first defendant, Haywood Patterson. After grilling Patterson severely in an attempt to shake his story, the prosecutor finally asked in desperation: "Well, were you tried two years ago in Scottsboro?" "No suh," said Patterson calmly, "I was framed two years ago in Scottsboro."

Knight's chief assistants were Solicitor Bailey of Scottsboro and Wade Wright, a solicitor of Morgan County, who made the now-famous Jew-baiting summary to the jury. Bailey is quite without importance—hard-boiled and soft-spoken. But Wright is a huge individual, blustering and bullying, a perfect barometer of the less enlightened Decatur opinion. When he speaks his face becomes purple and he imparts his frenzy to the court hangers-on. Until Wright spoke, many of the newspapermen felt that there was an outside chance for acquittal, at least a hung jury. But Wright registered to perfection the repressed feelings and prejudices of the twelve good men. From then on the defense was helpless.

Without a doubt the most unexpected element in the trial was the attitude of Judge Horton. Much has been written about him. Most of it is true. Courteous, generous, and scrupulous according to his own lights, he made an admirable presiding officer. The defense could have had no fairer treatment from a Southerner. Judge Horton allowed the defense to introduce evidence showing that Victoria Price, the State's star witness, was a perjurer, prostitute, and consorter with Negroes—heinous crime in the South. (In the original trials no evidence concerning the moral character of either girl was admitted.) He allowed the defense to put Negroes on the stand to refute white witnesses, and himself asked questions of witnesses which proved beneficial to the case of the defendants. But this really honorable man made dubious rulings against the defense on many important points. After allowing the International Labor Defense to prove systematic exclusion of Negroes from jury duty, he denied the motion for a mistrial. He failed to stop Wade Wright's appeal to bigotry and fear, and refused a change of venue to a more cosmopolitan environment after it had become evi-

dent that hysteria had gripped the good people of Decatur.

Decatur was quiet when the trial began. But it was not long before latent prejudices flared up. During the first day of the actual trial a menacing band of fifty came into the courthouse from Scottsboro "out of curiosity." Leibowitz's method of questioning pure Southern womanhood had aroused their resentment, and they made no bones about it. Organized mobs began to form outside of Decatur. Farmers from surrounding towns held protest meetings. Hadn't an outsider dared to call a black man "mister" in court and demanded that the Attorney-General do the same? Wasn't the defense advocating racial equality, and wasn't there danger of these Northerners arousing the niggers?

The effect of the trial on the three thousand Negroes of Decatur was enlightening. At first there was no appreciable difference in behavior. But after the most respectable members of their community—doctors, Sunday-school teachers, school principals, ministers, and storekeepers—got up in court to show that they were the equals of whites, the working Negro acquired confidence. Faces which had been expressionless in the courtroom took on smiles, and a few whispered exclamations were to be heard when Leibowitz made a point. Decatur whites took notice of this. In no time at all the local hardware stores were completely sold out of guns and ammunition, and they were not selling to Negroes. No one entered "niggertown" without some kind of weapon. The black folk were also taking due precautions. At first it was hard for these colored people to believe that a fight was being waged for them. But when they saw the defense treat Negroes as equals in court they were convinced.

Alabama's Negroes are not the only ones aroused. Colored people throughout the land who have been determinedly apathetic to the appeals of the I. L. D. and the Communists are thoroughly enraged by the verdict. In Harlem, Baltimore, Richmond, Virginia, Washington, Chicago, and scores of other cities real protest meetings are being held. The churches are stepping up as never before; collections are being taken for the defense of the prisoners. Theaters and dance halls are staging benefits; newspapers are formulating plans for a protest march of 50,000 to Washington. The South has only to repeat the verdicts in the cases of the other boys to find the Negroes organizing into militant groups.

During the second day of the trial one of my neighbors in court began to talk to me. After learning that I was a correspondent from the North he introduced himself as a merchant who had been born and bred in Decatur. He asked me what I thought of the trial. I told him that Judge Horton seemed one of the fairest jurists I had ever encountered.

"This judge here is a fine man," he said, "but he's prejudiced. All of us Southerners is prejudiced. You know, I'm beginning to think that those niggers was framed. That girl Victoria made a bad impression. But that doctor [Dr. Bridges of Scottsboro, who testified that he had examined the girls less than two hours after the alleged attack, had found their pulse and temperature normal, and could detect no sign of hysteria] sure cinched the case for them niggers."

He turned around and asked his friends in the row behind what they thought. All seven of them were convinced that there was something wrong somewhere. Two of the more daring also ventured the opinion that it looked like a frame-up. But all this was before the prosecution made its final successful appeal to the passions and fears of the jury.

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