

NEGRO DEFENSE GETS TEST OF JUROR LIST

Judge in Scottsboro Case Grants Right to Inspect Roll for Racial Bar.

COURT CLASH ON MOVE

County Official and Prosecutor Resent Challenge as to Knowledge of 'Color Line.'

NEGROES TESTIFY IN ISSUE

Point Raised Over Jury System in South Brings Request for Briefs to Aid Virginia Trial.

By F. RAYMOND DANIELL.

Special to THE NEW YORK TIMES.

DECATUR, Ala., March 30.—Samuel Leibowitz, chief counsel for the Negroes whose conviction two years ago at Scottsboro for an attack on two white girls was reversed by the United States Supreme Court, won the right today to inspect the secret roll from which jurymen are chosen in Morgan County.

Circuit Judge James E. Horton, who is presiding over the Negroes' second trial for their lives, ordered the jury roll produced over the objection of Attorney General Thomas E. Knight Jr., while Arthur J. Tidwell, one of the county's three jury commissioners, was on the stand.

Mr. Leibowitz, who has lost one fight to quash the indictments against the Negroes on the ground that members of their race were excluded from the grand jury and is now waging another similar battle to quash the venire for the jury for Haywood Patterson's trial, immediately set about the task of proving that all of the 2,000-odd names inscribed upon the rolls are those of white men.

Mr. Tidwell was called by the defense after J. H. Green, clerk of the Circuit Court, and eleven Negroes, most of them boasting college educations, testified that for as long as they could remember there had been no Negroes on the juries of Morgan County.

List of Negro Witnesses Checked.

Three physicians, two preachers, a dentist, a bill poster, a motion-picture exhibitor, an undertaker, a high school principal and an operator of a billiard parlor were among

One Negro Gets Horseshoe; Eight Prefer Rabbit's Foot

Special to THE NEW YORK TIMES.

DECATUR, Ala., March 30.—G. W. Chamlee, Chattanooga attorney helping defend the prisoners in the Scottsboro case, presented Haywood Patterson, who is being tried first, with a horseshoe for luck at the opening of court today.

A rabbit's foot was presented earlier to each of Patterson's eight co-defendants in the county jail.

Mr. Chamlee explained that, in his conversations with the prisoners in jail yesterday, when the hearing was in recess, he had asked if there was anything they wanted especially. Eight of them said they would sleep easier at night if they had a rabbit's foot to stroke, but Patterson said he preferred to put his trust in a horseshoe.

Communist sympathizers who were in court during the day conducted themselves circumspectly and quietly, and there was no parading or displaying of placards.

The climax of the day's session came with the production of the jury roll, a huge loose-leaf tome bound in red leather. It was borne into the court by the towering Sheriff, Bud Davis, who stooped a little under its weight and bulk. Tuesday, when Mr. Leibowitz sought to obtain a similar volume from Jackson County, where the first trials were held, Judge Horton granted his request, but then denied the defense motion before the rolls were produced in court.

At the outset of his examination, Mr. Tidwell, who was appointed to the jury board by Governor Miller, testified that the list, from which Judge Horton had culled a venire of 100 names for the trial of Haywood Patterson, was made up last January and February and that it had not been tampered with or changed.

"I ask you to produce that list," said Mr. Leibowitz.

Jury Roll Offered in Evidence.

Mr. Tidwell sat stock still, darting puzzled looks first at Attorney General Knight and then at Judge Horton. Judge Horton said that the jury roll was in the custody of the Sheriff, and he directed that official to bring it into the court room. As soon as Mr. Tidwell had identified it, Mr. Leibowitz offered the document, which under the Alabama law is protected from public scrutiny, in evidence.

Mr. Knight objected on the ground that the jury roll was immaterial evidence, even though a study of it should disclose that there were no names of Negroes written on its pages. He argued that, since the commissioners held discretionary powers, "which no one can go behind," the absence of Negroes from the list could not show an arbitrary misuse of power. Judge Horton however held the

jury roll, and I'll do it if it takes till doomsday. Go ahead."

Scrutiny of Roll Begun.

A little later Mr. Tidwell conceded that some persons whose names appeared on the roll were known to him, and under the direction of Mr. Leibowitz, he began a page-to-page scrutiny of the book, telling the color of those whose names were familiar to him. While this was going on, the judge left the bench, the lawyers gathered about the jury commissioner and the stenographer joined the huddle.

When court recessed until 8:30 o'clock tomorrow morning Mr. Tidwell had failed to point to any Negroes on the roll, but there were many names which he alleged were unfamiliar to him. This evening the volume was being checked by defense attorneys in an effort to discover whether any of the Negroes, whom the defense holds to be qualified for jury duty, are included in the roll.

Tomorrow it is planned to call the other two jury commissioners to continue the process of elimination. When that is done, Mr. Leibowitz said, it is his intention to cause subpoenas to be issued for all those on the roll whose color remains in doubt, in order that there can be no doubt that no Negroes are included; then this court and those above it may decide whether their absence results from a recognized system of exclusion or mere coincidence.

Unofficial estimates placed the number of names upon the roll as between 2,000 and 2,500 and it was a question of some concern to residents of this State, already in such financial straits that it is threatened with a shutdown of its schools, how far Judge Horton would allow the defense to go. It was hoped that some compromise could be effected to shorten the proceedings, but Mr. Leibowitz was determined to complete his record and Mr. Knight was unwilling to surrender.

Negroes Called As "Qualified."

The Negroes whose qualification for jury duty Mr. Leibowitz sought to prove in court were Dr. Frank S. Sykes, Dr. N. E. Cashin and Dr. N. M. Sykes, physicians; Hulett J. Banks, bill poster; the Rev. L. R. Womack, J. J. Sykes, motion picture exhibitor; W. G. Wilson, a lay preacher; J. D. Pickett, high school principal; Robert Bridgeforth, billiard hall proprietor; George H. Reynolds, undertaker, and Dr. Willis James Wood, dentist.

The testimony which these men gave differed only in minor details of personal experience. All had a wide acquaintance among the Negro population of the county and all were able and willing to name scores of other Negroes, who in their opinion were "esteemed in their community for their intelligence, good character and sound judgment." None of the men they named, the witnesses all said, could be disqualified because of their age, unsound mind or convictions for offenses involving moral turpitude.

Each of the witnesses declared he had never seen a Negro on a Morgan County jury. Objections from the State, upheld by Judge Horton, prevented each of the wit-

nesses from answering the following hypothetical question propounded by Mr. Leibowitz:

"If it should be proved conclusively that the names of none of the Negroes you have named appear on the jury roll of this county would you not be forced in honesty to believe that they were excluded solely because they were members of the African race?"

In cross-examination, Mr. Knight drew admissions from each that he had no first-hand knowledge regarding the inclusion or exclusion of his name for jury duty. Each admitted also that, if his name were excluded, he could not name the specific reason for which it was barred by the jury commissioners.

Status As Voter Insufficient.

Mr. Leibowitz in re-direct examination of his witnesses, two of them veterans of the World War, one a former student of Phillips Exeter Academy and Howard University and one a leader of the local Negro Civic League, established that none had ever been called upon to submit to examination on his qualifications. Several of the witnesses were voters who Mr. Leibowitz maintained, had won the right to suffrage only by demonstrating their ability to interpret the Federal Constitution, but Judge Horton would not let them display their knowledge on this subject, holding that the qualifications of voters and jurors were different.

Dr. N. M. Sykes, who attended the University of Illinois, was asked by the prosecutor:

"Did you ever serve on a jury while you were in Illinois?"

"I was called, but didn't serve," was the answer.

Before ordering Mr. Leibowitz to submit proof of his charge that Negroes are systematically and arbitrarily barred from jury service, Judge Horton denied a motion by the defense to try all the defendants jointly, as they were indicted.

The day's proceedings concerned only Patterson, whose case is the only one thus far set down for trial. He was the only one of the nine defendants, two of whom will be tried in Juvenile Court, who was brought to the court room from the nearby jail. He sat through the proceedings, taking no part in them and showing little interest.

Crash Kills Motorcycle Policeman

Special to THE NEW YORK TIMES.

YONKERS, N. Y., March 30.—Patrolman Michael Erdley, 28 years old, of 100 Amackassin Terrace, this city, attached to the Westchester County Park Police, was injured fatally today when his motorcycle was in collision on the Saw Mill River Parkway here with an automobile driven by Herbert Alexander of 105 Buena Vista Avenue, Yonkers. Erdley died soon after the crash in Yonkers Hospital. Alexander was released in \$1,000 bail on a technical charge of homicide.

Charge purchases made today will not be

From what might be described as an impromptu blue book of the Negro citizenry of Morgan County, prepared last night by the defense attorneys, the witnesses read into the record the names of about 180 colored acquaintances, whose qualifications, they averred, were as good as theirs.

When the procession of witnesses stopped at the direction of Judge Horton, who ruled that further testimony along this line would be merely cumulative, Mr. Leibowitz announced for the record that he had requested subpoenas for about 400 other Negroes whose qualifications for a place upon the jury roll he was prepared to prove.

The court allowed the names of all these uncalled witnesses to be entered upon the record with as much probative force as though they had testified.

Ever since the defense, supported by the International Labor Defense, an adjunct of the Communist party, raised the question of the right of Negroes under the Fourteenth Amendment to sit on juries in State courts officials have maintained that it was a challenge to the selective jury system of the entire South.

Today they found justification for that belief in a letter from John Galleher, Commonwealth's Attorney for Loudon County, Va., who wrote asking briefs on the matter in the Scottsboro case. He wanted the brief to aid him in preparing to meet the issue in the case of a Negro now awaiting extradition from Boston, Mass., to answer a charge of murdering two white women in their beds in Virginia.

The letter, received by John K. Thompson, Solicitor of Jackson County, was turned over to Mr. Knight, who indicated that he would comply with the request.

Communist "Observers" at Trial.

Meanwhile the peaceable atmosphere that has marked this proceeding against the Negroes, who are accused of criminally assaulting Ruby Bates and Victoria Price on a freight train, continues to exist not only in the court room but in the town as well. A noticeable increase in the number of Communist sympathizers and "observers," coupled with reports that agitators were trying to arrange "mass demonstrations" among the Negroes, however, led to concern in some quarters regarding its preservation.

Mr. Leibowitz, who is not a sympathizer with the Communists, however, has made it clear he will remain in the case only so long as demonstrators are held in check, and that, more than anything else, is counted upon here to prevent unfortunate developments. The Com-

follows: "You and your fellow-commissioners are required to place on that roll the names of all citizens who possess the qualifications prescribed by law—all citizens—isn't that true?"

Mr. Tidwell conceded that such was his understanding of the law.

"Now, isn't it a fact," demanded the New York defense attorney, "that all the names written in that book are names of white citizens?"

"I don't know," said Mr. Tidwell.

"Do you mean that for an honest answer?" shouted Mr. Leibowitz.

Tidwell Resents Question.

Mr. Tidwell swung around in his chair and seemed about to rise. Several onlookers in the first row of spectators leaned forward.

"Do you mean to say that I would swear falsely?" demanded the Jury Commissioner, color rising in his cheeks.

"I don't mean to say anything, I'm asking you a question," snapped the defense attorney with a rising voice.

The heated colloquy abated when Mr. Knight objected to the "badgering of this witness" and what he called an "attempt to grill him" on the operations of his mind. Judge Horton's calm voice quieted the brewing storm, and Mr. Leibowitz asked:

"Can you point to the name of any colored citizens on that page?"

The defense lawyer's finger was pointing to the first sheet in the book, and Mr. Tidwell bent forward to study it better.

"I don't know whether they are white, black or yellow," he insisted.

The witness then explained that many of the names were placed upon the rolls without any personal examination by him. There was no member of the commission, he declared, who could say from an inspection of the names which represented white citizens and which, if any, denoted Negroes.

Mr. Leibowitz interrupted his examination to ask that the Attorney General stipulate on the record that the rolls contained the names of only white men. This Mr. Knight refused to do, asserting that he regarded the whole line of inquiry as "immaterial, anyway."

Mr. Leibowitz explained that he made the request only in the interest of saving time in order that the trial of Patterson, which is being held up pending the outcome of the fight on the jury system, might proceed. Then he added:

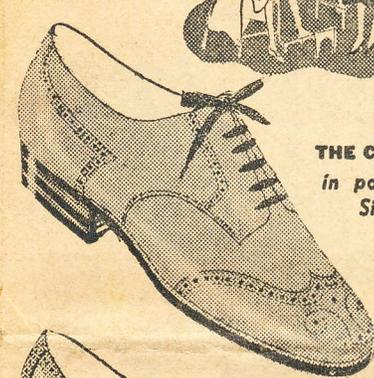
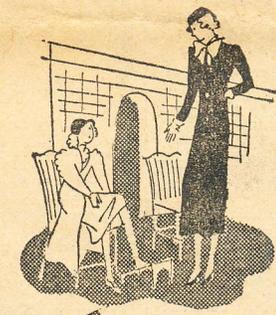
"If you are going to put me to my proof, all right. It is my purpose and intention to prove that no Negro's name appears upon that

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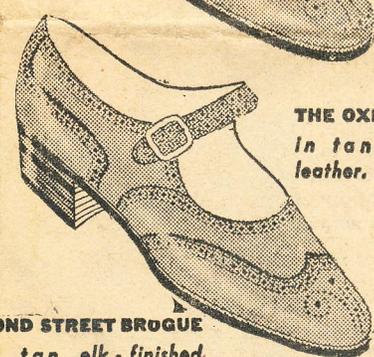
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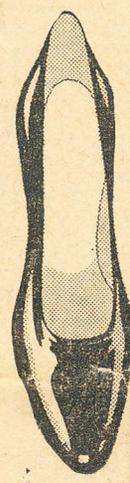
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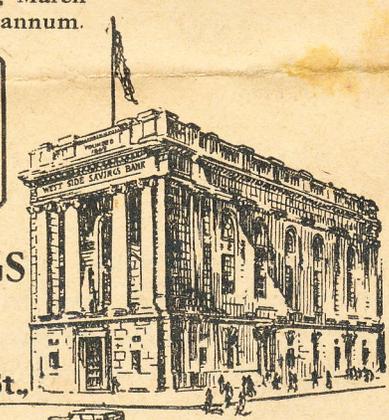
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