

Jury Out Overnight With Scottsboro Case; Judge Warns of Bigotry and Racial Issue

By F. RAYMOND DANIELL.

Special to THE NEW YORK TIMES.

DECATUR, Ala., April 8.— Warned by Judge James E. Horton to banish bigotry and prejudice from their minds, the members of a Morgan County jury tonight held in their hands the power of life and death over Haywood Patterson, a Negro accused of a crime which has stirred fires long thought dead.

The jury was locked up for the night at 11:35 P. M., Central Time, after being out more than ten hours.

Judge Horton will convene court tomorrow to receive a verdict if one is reached.

The only break in the jurors' deliberations was a forty-five minutes' recess at 7 o'clock for supper. Late in the afternoon they had sent a messenger to Judge Horton with a question as to certain evidence.

Preparation was made in court to try the next of the eight other Negroes, charged with Patterson of attacking Victoria Price and Ruby Bates on a freight train two years ago. After their conviction at Scottsboro new trials were ordered

by the United States Supreme Court.

Samuel S. Leibowitz, New York lawyer who is chief of counsel; G. W. Chamlee, his associate from Chattanooga, and Joseph Brodsky, an attorney for the International Labor Defense, joined in asking Judge Horton to postpone the next trial until a week from Monday in order that they may prepare a motion for a change of venue to Birmingham.

The fiery appeal to sectionalism and race hatred made by Circuit Solicitor Wade Wright in his summation yesterday, Mr. Brodsky and Mr. Leibowitz asserted, had incited the mob spirit so greatly that their lives would be endangered if they were forced to conduct the cases here further.

"Since that speech was made in this court room attacking me, my race and the city from which I come," said Mr. Brodsky, addressing Judge Horton in open court,

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"three men have threatened my life."

Mr. Leibowitz sought to delay the next trial until the regular June term to "allow public feeling aroused by the learned solicitor to cool off."

He said he had been informed "by a source I cannot doubt," that fiery crosses were burned in Scottsboro and Huntsville last night, and that "only the presence of the militia stopped a lynching mob of 200 persons from invading Decatur last night."

Mr. Wright arose and in a voice considerably subdued informed the court that he had meant no harm and that he was only delivering his customary closing argument to a jury. He could not believe it had done any harm, he said, "because I've been prosecuting cases here a long time and the people hereabouts know how I speak."

Judge Horton set April 17 for the opening of the trial of Charles Weems, who will be the next Negro tried, after Weems, a tall, shuffling man, had been arraigned and pleaded "not guilty."

Venire Chosen for Weems Trial.

A venire of 100 names was chosen from the same jury roll which the defense attacked unsuccessfully before Patterson's trial.

The court ruled that the decision denying a motion to quash the indictments on the ground that Negroes were excluded unfairly would stand, but the defense probably will be allowed to move to quash the venire and submit proof of systematic exclusion.

Separate trials for each of the six other defendants besides Patterson and Weems, including one juvenile, were demanded by the defense and were granted by Judge Horton. Attorney General Thomas E. Knight Jr., who refused a suggestion that all be tried together, sought to pair Weems and Clarence Norris by demanding a severance for both.

In arguing for a postponement of the next trial, Mr. Brodsky said that the defense was faced with much difficulty to continue right away, explaining that it would take some time to prepare the case and adding:

"Yes, and it takes time to collect the funds with which to wage this fight."

With a week's delay agreed upon before the opening of the next trial, all the Negroes except Patterson were taken from the jail at dark and sent back to the Jefferson County Jail in Birmingham for safekeeping.

Although the case went to the jurors at 12:45 P. M., it was 1:20 before they had finished lunch and begun their deliberations in the little antechamber which has been used during the trial as the defense witness room.

As they undertook the weighty task, the court room, crowded with eager spectators at each session of the trial, was empty, except for lawyers and newspaper men. Outside on the tree-shaded lawns a few Negroes and white men sprawled in the sun.

The only attempt at exerting outside pressure as the trial drew to a close was by Communist organizations and sympathizers, who deluged Judge Horton with telegrams and letters, demanding the acquittal of the Negroes and charging that they were "framed."

All through the morning, as Mr. Leibowitz and Attorney General Knight concluded their long argu-

ments, messenger boys hustled in and out of the court room bearing telegrams for the judge and the Attorney General, many of them inspired by publication of Circuit Solicitor Wright's exhortation to the jurors to show that "Jew money from New York can't buy and sell justice in Alabama."

Judge Horton made reference to the telegrams in his charge to the jury, when he urged the twelve citizens of Morgan County to cast from their minds all prejudice, local pride and public opinion and decide the question of whether the man on trial for his life attacked Victoria Price.

Prosecutor Urges "Merits of Case."

In summing up the State's case, Attorney General Knight disclaimed sympathy with Mr. Wright's open appeal to racial prejudice and asked for a verdict of guilty with a death sentence on the evidence that has been laid before the jury in the six days since the trial opened.

"I do not want a verdict based on racial prejudice or a religious creed," he shouted. "I want a verdict on the merits of this case. On that evidence, gentlemen, there can be but one verdict, and that verdict is death—death in the electric chair for raping Victoria Price."

At another point in his argument Mr. Knight, referring to the almost forgotten Patterson as "that thing," told the jury:

"If you acquit this Negro, put a garland of roses around his neck, give him a supper and send him to New York City. There let Dr. Harry Fosdick dress him up in a high hat and morning coat, gray striped trousers and spats."

Ruby Bates testified, when she made an unexpected visit to the court room as a witness for the defense, that the new Spring hat and coat had been purchased for her by Dr. Fosdick, before whom Mr. Leibowitz declared she had "knelt down and confessed" that the whole case in which she figured two years ago as a complaining witness was "framed" by Victoria Price.

"She sold out for a gray coat and a gray hat," Mr. Knight declared of Ruby Bates, asserting that he did not believe the New York clergyman paid for the clothes the girl was wearing when she appeared in court after a mysterious absence of a month from her home in Huntsville.

In giving the case to the jury, Judge Horton told the twelve men not to be swayed by the natural sympathy for a woman who alleged she has been attacked and advised them that they might take into consideration the fact that both the Bates girl and the Price woman were "women of easy virtue," in considering their credibility.

Commenting first on Ruby Bates, who two years ago at Scottsboro swore that she had been attacked, but who testified in this trial that the whole story was a lie, Judge Horton said:

"She admitted on the witness stand in this trial that she had perjured herself in the other case. In considering the evidence, you may consider not only her lack of virtue as admitted by her here, but also that she contradicted her previous testimony as perjured."

"Regarding Victoria Price, there has been evidence here that she also was a woman of easy virtue. There has been evidence tending to show that she gave false testimony here about her movements and activities in Chattanooga. That evidence has not, except by her, been denied."

"If in your minds the conviction of this defendant depends on the testimony of Victoria Price and you are convinced she has not sworn truly about any material point, you could not convict this defendant."

As Judge Horton delivered his charge in a quiet, solemn voice, his face was grave and tired-looking. His task of presiding over the trial and the preceding week-long legal battle against the jury system of

Alabama, has not been an easy one. Some of his rulings have not been popular with the home folk.

The change of venue from Scottsboro in Jackson County to this Northern Alabama city, he said, was not at his request nor the wish of Decatur. An unpleasant duty, he said, had been thrust upon the community and he urged the jurors to "face it like men."

"Take the evidence," he said, "sift it out and find the truths and untruths and render your verdict. It will not be easy to keep your minds solely on the evidence. Much prejudice has crept into it. It has come not only from far away, but from here at home as well."

"I have done what I thought to be right as the judge of this court, no matter what the personal cost to me might be."

Judge Pleads Against Bigotry.

In his admonition for tolerant, impartial justice, Judge Horton said in part:

"There have been some statements in regard to whether or not this is any race matter, or whether or not some other person thinks this way or that, or whether or not public opinion is one way or the other."

"Gentlemen, that hasn't anything to do with it—what outside opinion or public opinion is, or whether or not the ideas of somebody else may be one way or the other. No, gentlemen, we are not to consider that at any time."

"I know the juries of this county. I have been with them—have been before them. They are sensible, reasonable, intelligent men. They do not go off on side issues, nor do they let petty prejudices enter into the trial of the case."

"You are not trying whether or not the defendant is white or

black—you are not trying that question; you are trying whether or not this defendant forcibly ravished a woman."

"You are not trying lawyers, you are not trying State lines; but you are here at home as jurors, a jury of your citizens under oath sitting in the jury box taking the evidence and considering it, leaving out any outside influences."

"Things may vex you. I might say that the court may have been vexed about a great many things. It may have been evident to you that a great many telegrams came in here to me since I have been here. But, gentlemen, they do not affect me whatever or the great principle which the court desires to see done, and the great thing the jury desires to see done, and that is to see justice done in this case."

Appeals to Best in South.

"Of course, gentlemen, we all love our land; that is a natural sentiment of all people. Not that we are narrow in it. Why, the man who lives in the mountains of Switzerland or on the coast of the Adriatic loves his land—the savage loves his land. It is a natural feeling and it is a fine thing for a man to do to love his native country."

"I might say that a great many of us, and I together with you, a great many of our forebears came here with the earliest settlers, and I happen to be descended from one who was the first that came down to this country. On both sides, as far back as I know, my people have always been a Southern people, and I have no desire to live anywhere else. I am getting old, and it is my home, my native land, and I want to see righteousness done and justice done, and we are going to uphold that name."

"A great many of our parents no

doubt were in the war between the States, that is the name that has been given to that war now. My father and my 61-year-old grandfather, every relative over fifteen, were in the Southern army. I am not saying that to be boasting or anything that way, but to show that I as well as you have no desire in any way to do anything that would not reflect credit on the South, and whatever I say, and whatever I do, remember, it is for justice and right and that they may prevail."

"We are a white race and a Negro race here together—we are here to live together—our interests are together. The world at this time and in many lands is showing intolerance and showing hate. It seems sometimes that love has almost deserted the human bosom. It seems that hate has taken its place. It is only for a time, gentlemen, because the great things in life, no matter what they are, it is God's great principles, matters of eternal right, that alone live. Wrong dies and truth forever lasts, and we should have faith in that."

Leibowitz's Summation Completed.

The court session opened a little after 8:30 A. M., with Mr. Leibowitz continuing in a husky voice the long summation he began yesterday afternoon.

Several times as he pointed to what he said were discrepancies in the State's case he stopped for a drink of water and at times he seemed to be near exhaustion. But he kept on until mid-morning, de-

spite frequent attempts of the court to speed him up.

The first trials at Scottsboro, he said, were "judicial lynchings, an insult to God Himself and a mockery of justice."

He denied that he or G. W. Chamlee, the Chattanooga lawyer associated with him in the case, were Communists or sympathizers of the International Labor Defense, a Communist affiliate, which appealed the first conviction.

He asked the jurors if they could reconcile the detention of Orville Gilley, one of the several white hoboes with whom the Negroes had a fight aboard the freight train, to witness the alleged crime, with common sense; he demanded to know why Gilley was not called as a witness at Scottsboro. If Ruby Bates had been subjected to the sort of treatment described by the State, he said, she "would be here howling for this Negro's blood, not pleading for his skin."

The New York lawyer closed his argument by reciting the Lord's prayer and a plea to the jurors to acquit or condemn his client to death, saying he wanted no compromise verdict.

Knight Has Rebuttal.

Mr. Knight went over the evidence, trying to mend the holes in the State's case which Mr. Leibowitz had sought to emphasize. Mr. Leibowitz had criticized him, he said, for not bringing a Negro into court to corroborate a white man whose testimony had been shaken in cross-examination.

"It was not necessary, to my way

of thinking," said Mr. Knight, whose father wrote the opinion of the majority of the Alabama Supreme Court, upholding the original convictions. A reference to his father in Mr. Knight's summation caused Mr. Leibowitz to ask the court to note upon the record that "the Attorney General now is criticizing the United States Supreme Court and by inference the Chief Justice of this State, who disagreed with the majority."

Resuming his address, Mr. Knight, after denying any critical intent, declared:

"I'm no murderer. I don't have to have people come down here and tell me the right thing to do. I'd nolle prosequere the indictments if I thought these Negroes were innocent. This is no framed prosecution. It is a framed defense."