

CRIES OF INJUSTICE

Innocents pay for crimes never committed

STORIES OF SCOTTSBORO
James Goodman *90
Pantheon Books, \$27.50

IN MAY 1987, Jesse Jacobs was tried for murder and sentenced to death in Montgomery County, Texas. Seven months later, the same prosecutor changed his mind and tried and convicted Jacobs's sister, Bobbi Hogan, for the same murder, contending that Jacobs had neither committed the crime nor intended that the victim, Hogan's romantic rival, die. Nonetheless, the State of Texas still plans to execute Jacobs, and both state and federal courts have refused to bar his death. Unless the Rehnquist Court intervenes—an unlikely event for a court that weighs "the need for finality in capital cases" more heavily than claims of "actual innocence" (*Herrera v Collins*, 1993)—Jacobs will die for a crime the state admits he did not commit. Few will notice, much less protest.

We were not always so bloodthirsty, so inured to cries of injustice. In northern Alabama in March 1931, some black male teenagers illegally riding a freight train fought with some white youths and threw them off the slow-moving cars. When the angry white boys complained to the nearest stationmaster, the train was halted at the hamlet of Paint Rock, near the small town of Scottsboro, Alabama. Nine African-Americans from thirteen to nineteen years old were rousted from the train, along with two young white women of easy virtue, Victoria Price and Ruby Bates. Apparently fearing arrest themselves for vagrancy or adultery, the women charged that each of the "Scottsboro Boys," as they came to be known, including one painfully afflicted with venereal disease and another nearly blind, had brutally raped them.

Although the National Guard prevented a lynching, all-white juries, after brief



Samuel Leibowitz with the Scottsboro defendants.

trials that were completed within three weeks of the arrests, convicted eight of the youths and sentenced them to death. (The case of Roy Wright ended in a mistrial because his jury couldn't decide between life imprisonment and the electric chair.) The nearly illiterate defendants had been represented by an incompetent, completely unprepared, and probably inebriated lawyer; the judge had been blatantly prejudiced; and the courthouse had been ringed by a mob howling for their convictions.

The Communist Party seized the issue, organizing national and international protests in a moderately successful effort to attract the support of African-Americans and white liberals for the party, as well as to free Haywood Patterson, Clarence Norris, and the other seven defendants. The party hired superb, nonideological attorneys, headed by New York defense attorney Samuel Leibowitz, to handle the appeals and subsequent retrials, and through the party's International Labor Defense

won two landmark U.S. Supreme Court decisions: in the 1932 *Patterson v Alabama* decision, the Supreme Court applied the Sixth Amendment's right to counsel provision to the states; and in the 1935 *Norris v Alabama* decision, the Supreme Court reversed the convictions on the ground that blacks had been excluded from the juries that indicted the youths.

Nonetheless, in trial after trial, prosecutors, using blatant appeals to racism, regional pride, and antisemitism (Leibowitz was Jewish), repeatedly convicted every defendant, despite the utter lack of physical evidence that the women had been raped, Bates's retraction of her charges, devastating attacks on Price's character and story, and the complete overturning of guilty verdicts as obviously contrary to the evidence by a particularly objective and conscientious local judge, James E. Horton,

in the boys' second trial. In the end, each of the Scottsboro defendants served from six to nineteen years for a "crime" that even many southern conservatives admitted never took place.

In his revised Princeton Ph.D. thesis, James Goodman ingeniously reworks these and other facts, familiar to historians from Dan Carter's masterly, but conventionally arranged, 1969 book, *Scottsboro: A Tragedy of the American South* (Louisiana State University Press). Goodman's fifty-four chapters shift kaleidoscopically between the points of view and patterns of speech of different actors, forming vignettes reminiscent of John Dos Passos's 1937 novel *U.S.A.*

Crucial events are described and re-described from different angles to show how prosecutors, many judges, and much of the southern public could possibly think the boys guilty, how Leibowitz and other Yankees could possibly believe they could win acquittal, and how

the unlettered defendants, usually cut off from news about efforts to free them, could possibly understand what was going on and could learn, as they did quite quickly, to manipulate their supporters. Sometimes it seems that Goodman wants us to believe that all the stories are equally valid, that there was no truth, but many partial truths, about Scottsboro.

But in fact, all Goodman has done is present in an unusual format answers to the classic historical question: Why did people act as they did? And of course, as he admits, Goodman leaves out the stories of many crucial actors, such as the archconservative Justice George Sutherland, who wrote the activist libertarian *Patterson* decision, and the quintessential politician-judge, Chief Justice Charles Evans Hughes, who penned *Norris* in the midst of the Court's struggle against the New Deal. Why are their stories so much less important than those of the ragtag defendants, whose sad and often sordid tales take up nearly a third of the chapters?

What is there, however, is a gripping, beautifully written book that is as difficult to put down as it is painful to read. As readers successively enter the minds and emotions of a large cast of memorable characters, an amazing number of whom left revealing records, they will be moved by a flood of emotions: pity, sorrow, scorn, admiration, and most of all, anger—anger at the inhumanity and injustice of it all.

Like Jesse Jacobs, the Scottsboro defendants were far from model citizens, and what lives they might have had were largely blighted by their prison experiences and their roles in the case. But the fundamental facts remain that they were not guilty of what they were charged with, and that the legal system, after tireless efforts by a great many people, eventually recognized this and let them go.

I wish there were some way to get Clarence Thomas and his fellow Supreme Court justices to read this dazzling and terrifying book before they vote to let Texas kill Jesse Jacobs. At least, I hope the readers of this magazine will do so before they vote unthinkingly for another strident proponent of the death penalty.

—**J. Morgan Kousser '65**

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[EDITOR'S NOTE: After this review was written and had gone to press, the U.S. Supreme Court, by a six-to-three vote, refused to hear Jesse Jacobs's appeal of his death sentence. The State of Texas executed him two days later.]