

# New Attack on the Scottsboro Defense

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THE latest developments in the Scottsboro Case have again brought clearly to the surface the wide range of social issues contained within it. A new chapter is now being opened in a case which has not only proved to be a faithful record of the fundamental antagonisms which rend Southern society and a revelation of all the forces engaged in the oppression of the Negro people, but which is also the sounding board of each new advance against these forces. The present attack upon the Scottsboro defense, led by Samuel S. Leibowitz, can only be understood in the light of all that Scottsboro has come to signify.

Heywood Patterson and Clarence Norris have been sentenced to death by the lower courts of Alabama on a charge of rape—Patterson three times and Norris twice. Twice the Alabama Supreme Court has upheld this verdict and set dates of execution. The fate of seven other Negro boys, now incarcerated in Jefferson County jail, Ala., hinges upon the outcome of the cases of Norris and Patterson, who by the latest edict of the supreme judicial body of the state are to be executed on December 7, 1934. For the second time the Scottsboro Case has been presented before the Supreme Court of the United States for appeal.

The nine Negro youths, most of them in their teens and two of them below fourteen when they were routed off a freight train at Paint Rock, Ala., on March 25, 1931, and charged with raping two white girls who were found on the same train, have become the symbols of a profound social movement, which has gained new impetus and agitated ever broader masses of people with each new stage in the case. From that 9th day of April, 1931, when after 72 hours of formal consideration of "evidence" eight of the boys were condemned to death by the court at Scottsboro, Ala., a mass movement reaching world proportions and involving many social strata was able each time to halt the scheduled death march to the electric chair at Kilby Prison, Ala. On April 9, 1931, Heywood Patterson was among the eight condemned to die; on April 9 of the following year the Supreme Court of the United States consented to take the case under consideration, and a few months later ordered a new trial for Patterson. Again on April 9 (1933) a jury walked into the Decatur, Ala., courtroom, and with grins which attempted to hide their hilarious laughter of 30 minutes before, found Patterson guilty. But so effective was the exposure of the frame-up and so firmly was the innocence of the boys established at the Decatur trial (especially by Ruby Bates, one of the girls who was supposed to have been attacked, and by Lester Carter, one of the white companions of the girls on the fateful train

ride) that Judge Horton was forced to rule that the "evidence preponderates greatly in favor of the defendants" and order a new trial. At the next trial, also held in Decatur in November of the same year and presided over by Judge Callahan, both Patterson and Norris were again found guilty and sentenced to death, the decision which has just been upheld by the Alabama Supreme Court.

The legal record of the case is merely a scoreboard registering the latest results of the basic and underlying social struggle. It has long been evident to all who know anything about the facts of the case that the guilt or the innocence of the boys is not the issue at stake. The innocence of the Scottsboro boys has long since been firmly established. But no matter if their innocence were established a hundred times over in a hundred courtroom trials, the relentless verdict of Alabama justice, reared in decades of slavery and peonage, would be "guilty." For it is an unwritten law of the South, an excrescence of its semi-slavery, that every Negro accused of rape must meet death, that "rape" be branded deep into the consciousness of white and Negro masses alike as an eternal mark of the inferiority and the subjection of the Negro.

But this is not all. If the case had been permitted to go its own way, if no one had arisen to snatch it from the hands of the Uncle Toms, the Scottsboro boys today would be only a sad and dreadful memory, and another notch in the whip of Simon Legree. The quick response of the International Labor Defense and the Communist Party, the application of the two-fisted policy of expert legal defense and world-wide mass pressure, has not only saved the boys from death, but has exposed the conditions of which the Scottsboro frame-up is the product, has clearly sounded all the issues involved, has aroused masses, has created that towering edifice which is today known as The Scottsboro Case.

An effective challenge, an effective struggle against a social institution—and the frame-up of the Scottsboro boys is the expression of a social institution—cannot be given by any single individual or isolated group. Such a challenge and struggle can only be given by masses, by social classes. No amount of courtroom defense, no matter how expert, can in itself make any dent in the oppressive policies of the ruling class against the Negroes, of which the Scottsboro frame-up is a part. Only when the legal defense is itself an expression in terms of legal procedure of the protest, of the aims and aspirations which have been roused in millions of people, of a whole mass rejection of the rulings of the court, is legal defense in a social case effective.

The I.L.D. turned the tables from the very beginning upon the State of Alabama: the case was rescued from isolation; mass meet-

ings, parades, conferences, telegrams, cables, resolutions, placed the social system of the South on trial; the modern slave-masters were put on the defensive. The chief related social issues were raised: the issue of the right of Negroes to sit on juries was injected into the legal defense as symptomatic of a whole series of political and constitutional rights consistently denied the Negroes. The more the modern slave-master tried to defend himself in the person of Attorney-General Thomas Knight, Jr., the more he exposed his innate weaknesses.

But additional, and even more vital, issues were raised as the mass movement grew and expanded, setting new masses into motion. Whole strata of the Negro people were inspired by the daring, the vital striking at keenly-felt issues by the I.L.D. Alabama felt it in the most delicate part of its social structure, on the plantation, in the growth of the Share-croppers Union and the struggles of the black peasants under its leadership; the whole South felt the impact when it was confronted with Negroes no longer meek and submissive, but sullen and demanding human treatment. Among the Negro people there was a new note of rebellion, for them a new path of struggle opened. In the midst of the severe economic crisis, this was an exceedingly dangerous development for the status quo as a whole. When masses of a people as harshly oppressed as the Negroes in the United States are aroused and begin to move in the direction of mass action, it is time for the masters to put up their defenses.

This alone is enough to pack the Scottsboro case with social dynamite. But add to this the fact that the leadership of the Scottsboro movement was in the hands of the revolutionary section of the working class, represented by the I.L.D. and the Communist Party, rallying about itself whole blocs of the middle strata, then one can conceive of the consternation felt not only in Montgomery, Ala., but also in Washington. Through the leadership given the drive for the freedom of the boys by the Communist Party, which popularized its program for Negro liberation not only among the Negro, but also among the white masses, the prestige and influence of the Communists among the Negroes grew swiftly. There immediately ensued a clash between the two principal class forces at work among the Negro people, between the two chief programs which in the final analysis constitute the only alternatives: the bourgeoisie as represented by the leadership of the National Association for the Advancement of Colored People, and the proletariat as represented by the I.L.D. and the Communist Party. The N.A.A.C.P. did everything in its power to "oust the Reds," thinking that in this way it would rid the case of all the embarrassing

issues which had been raised, strip it of its whole social content, and thrust it back into the isolation of a polite court trial. Encouraged and aided by the state authorities, the representatives of the N.A.A.C.P. attempted to cajole and threaten the boys and their mothers into repudiating the I.L.D. and accepting an N.A.A.C.P.—Ministers' defense. It launched a broadside attack against the I.L.D. and the Communists, attempting to split the mass defense movement. The issue quickly boiled down to the kernels of respective programs: on the one hand, bourgeois nationalism representing an alliance with the white imperialist bourgeoisie and, on the other, working class internationalism representing a united struggle of the Negro and white masses against the bourgeoisie.

It was not merely a struggle between two methods of defense; it was a struggle between two opposing class forces for influence and leadership over the Negro masses as a whole. The N.A.A.C.P. was decisively defeated, precisely because the working class program had shown its effectiveness, had inspired and swelled the mass movement, had saved the boys from the electric chair, had shown (and this is most important of all) that the *white workers*, overcoming years of lethargy and alien influence, can and would join and invigorate the struggle for Negro rights.

The first defeat of the N.A.A.C.P. leadership only signified the defeat of one group of representatives of the bourgeoisie. That class force remains and new protagonists arise. The Scottsboro case is a living schoolbook which, with the turn of every page, reveals to the workers new lessons—and new enemies. The latest phase of the Scottsboro case, the treachery of Samuel S. Leibowitz, who was formerly associated with the I.L.D. defense lawyers, is a continuation of the earlier N.A.A.C.P. phase, on a higher plane and with a greater concentration of enemy forces.

Shortly after the Alabama Supreme Court announced its latest decision, and upon the

heels of reports in the press that two lawyers had been arrested and charged with attempting to bribe Victoria Price, the principal state witness, Leibowitz, without even notifying the I.L.D., announced through the press on October 4 that he had withdrawn from the case. This was followed by reports in the press that a pair of Negro ministers, acting for Leibowitz, had obtained new retainers from the two boys whose cases were now to go before the Supreme Court of the United States. On October 11, the New York press carried a statement by Leibowitz under the headlines, "Leibowitz Ousts Communists in Scottsboro Case" and "Reds Told to Drop Scottsboro Case." In this statement Leibowitz announced that Clarence Norris and Heywood Patterson had authorized him to take charge of the appeals to the Supreme Court, and he asked the I.L.D. to turn over all records in the case within two days. From accompanying news stories it was evident that Leibowitz had been conspiring with leading Negro ministers of Harlem for some time.

As long as the "Reds" did not meddle in the case, Leibowitz stated in his first announcement, he was content, but now that they were meddling he must ask the I.L.D. to step out and leave the case to him. The utter hypocrisy of this statement is self-evident: from the very beginning of his connections with the I.L.D. it was clear to Leibowitz that he was to follow the policies set down by that organization, that he was being retained by the I.L.D. because of his ability as a trial lawyer. He accepted with the full knowledge that the mass campaign of meetings and protest would not only continue, but grow in momentum. He seems to have forgotten entirely how during the course of the Decatur trial he rose and, with dramatic gesture, cried: "If it were not for the I.L.D., the boys would now be dead!" In his second statement to the press Leibowitz declared:

"The Communists have from the start of

the case exploited the defendants in order to raise funds for red activities and by stirring up trouble between black and white in the South have jeopardized the Negroes' lives."

This sentence might have been lifted from the editorials of the Pittsburgh Courier, semi-official organ of the N.A.A.C.P., or from the leaders. The I.L.D. has never denied that it expended funds raised for the Scottsboro Case in the printing of circulars and leaflets and for expenses involved in organizing the mass movement of defense. Leibowitz knew it from the beginning. "Stirring up trouble between whites and blacks" has been the cry of all those opposed to the I.L.D. It was in direct violation of I.L.D. policies and the whole philosophy of the mass defense movement that Leibowitz, with the chagrin of an irate lawyer who had lost his case and with utter inability to see the broader issues involved, labelled all white Southerners as "morons," when the first Decatur jury brought in its verdict of guilty—a statement which was promptly and emphatically repudiated by the I.L.D. and the Daily Worker.

Subsequent revelations by Benjamin Davis, Jr., the Atlanta Negro lawyer who had so heroically defended Angelo Herndon and who is at present editor of the Negro Liberator, organ of the League of Struggle for Negro Rights, revealed Leibowitz as even a more high-handed trickster than his N.A.A.C.P. predecessors. Davis visited the boys in jail and their mothers, and learned that John Terry, former gangster and Leibowitz's right-hand man, had been working hand in hand with Attorney-General Knight, prosecutor in the Scottsboro Case, in an effort to have the defendants renounce the I.L.D. Terry was given free access both to the state capitol and to the Kilby death cells, where Patterson and Norris are confined. The boys were brutally treated by the warden even in the presence of Davis. All possible pressure was brought to bear upon them, including a promise purporting to come from the Attorney-General and Governor Miller that if the "Reds" were ousted the boys would get life imprisonment and would then be pardoned after serving a few months. Davis charges that Attorney-General Knight and gangster Terry, who threatened Davis's life in front of the capitol at Montgomery, had cooked up the statement, presumably signed by the boys, demanding that Davis be not permitted to see them. The retainers signed by the boys for Leibowitz had been forced by all kinds of pressure and intimidation and they did not understand that signing such a retainer would mean excluding the I.L.D., as was shown in subsequent letters received both from the boys and the parents by the I.L.D. and its lawyers, Joseph Brodsky and Osmond K. Fraenkel. Mrs. Wright, mother of Roy and Andy, confirmed the above facts and told of a conference held in Chattanooga, where Terry and Revs. Lorenzo H. King of the St. Marks M. E. Church of Harlem and Richard Bolden of the First Emanuel Church, Brooklyn, urged two of the parents



"Deputy, what's this I hear about you taking the law into your own hands and not handing the prisoner over to the vigilantes?"

to sign away the I.L.D. on the strength of the Attorney-General's statement to Claude Patterson, father of one of the condemned youths, that if the I.L.D. were ousted, it would go easy for the boys.

Before it was known under what conditions Leibowitz had obtained the retainers, the I.L.D. had announced it would make available to him the documents necessary for carrying the case to the supreme court in order to avoid any delay in the matter. But when Leibowitz's duplicity was fully established and the confidence in the I.L.D. of the boys as well as of the mothers of Wright, Norris, Montgomery and Powell had been strongly and publicly reconfirmed, the I.L.D. challenged the right of Leibowitz to take charge of the appeals to the U. S. Supreme Court, and Walter H. Pollak, a leading constitutional lawyer who argued the first appeal, has again been retained.

But it is not only in the behind-the-scenes maneuvering of a trickster lawyer that the danger lies. Leibowitz himself is only a tool, for the time being the center around which all forces opposed to the Scottsboro movement are gathering. Already after the first Decatur trial, when there was a new and greater resurgence in the mass response to the lynch verdict, Attorney Leibowitz, working in conjunction with William N. Davis, editor of the Amsterdam News, and the ministers now cooperating with him, had attempted to set up an "independent defense committee" with the exclusion of the I.L.D. and Communist forces. These efforts were scotched by an immediate exposure and repudiated in the form of the mass march to Washington, led by the League of Struggle for Negro Rights and the I.L.D.

At the present time, with the help of William N. Davis, whose paper has become virtually the official organ of Leibowitz, and the same group of Negro "race leaders" who had previously cooperated with the N.A.A.C.P., an "American Scottsboro Committee" has been set up which claims twenty-one members, most of them leading Negro ministers. This committee has obtained the support of the Baptist Ministers Conference of Greater New York and Vicinity and of Newark and Vicinity and is proceeding to raise funds. Reporting the conference at which the committee was formed, the New York Age, one of the most reactionary Negro newspapers, emphasized that Leibowitz "showed disinclination for the use of propaganda or wild-fire publicity and made it clear to the group assembled that his interest in the lives of the boys is paramount *but not divorced from a sincere desire to preserve our American traditions of government and law.*" All the reactionary forces are rushing to Leibowitz's standard. The Pittsburgh Courier, already plentifully scarred as a result of its previous attacks upon the I.L.D. and now an organ of Roosevelt's New Deal for the Negroes as well as of the N.A.A.C.P., joined battle with its oft-repeated cry that the I.L.D. and the Communist Party "have ham-

pered the defense of the Negro youths by lugging in revolutionary claptrap and resorting to the most irresponsible and suicidal antics."

It is also evident that Leibowitz is making use of all his state and political connections in the drive against the mass defense movement. The New York County and Federal District Attorneys have been asked to investigate the funds of the I.L.D. and all "Communist affiliates." Slandorous charges of neglect of the cases are being spread against the I.L.D. and it is being rumored in the press that legal charges will be filed by the Leibowitz gang against the I.L.D. attorneys. "General" Chamlee of Chattanooga, who had formerly been associated with the I.L.D. defense staff in the case, has also found his place beside Leibowitz.

This is the old battle between the two opposing class forces, in much sharper form. The action of the Negro ministers and certain Negro newspapers in supporting the Leibowitz gang has already met with sharp rebuff from many quarters. The mass movement is too deeply entrenched to be so easily displaced. These events have led to even greater upsurge in the mass movement, to the holding of parades, mass meetings and a large and enthusiastic Scottsboro Defense Conference in Harlem. A number of Negro newspapers have taken their stand unequivocally with the I.L.D., and even those which have supported Leibowitz have been forced, after the first flush of excitement, to be wary and even to print sharp letters and articles of protest against their position. The masses have learned much during the three and one-half year battle against the N.A.A.C.P. and other bourgeois and reformist elements. The issue which is paramount was expressed clearly by William N. Jones, of the Baltimore Afro-American: "It would be one of the greatest tragedies in the struggle for Negro rights in this country to divert or destroy the tremendous influence set up by the I.L.D. around the Scottsboro Case." The question of the Scottsboro Case is no more nor less than the question of the struggle for Negro rights, of the whole Negro liberation movement. Around it hinges the further development and growth of that movement.

But while the Negro ministers are being counted upon to hold the fort among the Negro masses, wider maneuvers and developments are taking place. As we have already seen, the State of Alabama is a silent but powerful ally of the Leibowitz crew. But the Federal Government itself is directly involved because of the world-wide proportions the case has assumed, its growing social and political importance, and the "embarrassment" occasioned by the fact that a Democratic Party government, a good part of whose strength lies in the South, is bombarded with continual protest from all parts of the country. Furthermore, the concerted drive against the I.L.D. can only be conceived as a part of the general drive which is now taking place against the "Reds" as a whole, against all Left and revolutionary or-

ganizations. There is accordingly a movement on foot to take the case not only from the "Reds," but place it entirely under utterly "respectable," "American" auspices, high up under the wing of the Democratic Party. The Washington correspondent of the Afro-American reports that there are those in Washington who are "quietly looking around for a good liberal Southern Democrat with an Anglo-Saxon name to take over the defense" and indicates that such a find might be no other than John W. Davis, former Democratic presidential nominee.

These latest developments are accompanied by an unprecedented campaign in the South, not only against the Left organizations, but against the Negroes generally. Expecting a break-down of the Scottsboro mass defense movement as a result of Leibowitz's trickery and a weakening of the power of resistance among the Negro masses generally, the Bourbon South has taken on new confidence. In the course of the one week following the opening of the new attack on the Scottsboro defense there occurred:

The bombing of the home of John M. Davis, a white miner of Birmingham and Communist candidate for governor of Alabama; lynch threats against Rance Smith, Negro worker in the Tennessee Coal & Iron Co., opposing Thomas Knight, Jr., as Communist candidate for Lieutenant-Governor; Negro lynched in Darien, Ga.; mob terrorizes Negro population of Sikeston, Mo., attempting to run 300 Negroes out of town and attacking jail where three Negroes were held as suspects in death of a white man; in Dawson, Ga., a Negro woman is flogged by a mob to within an inch of her life, and another Negro is ordered out of town because he "dresses too well"; the students of a Negro public school in Birmingham flee from their desks on rumors, spread by the authorities, of a "Red bomb plot," etc., etc.

The Scottsboro Case has its roots deep in the conditions which produce these outrages, and any attack against the defense calls them forth in more gruesome form. The slogan of "ousting the Reds" can mean nothing else than crushing the mass movement, than launching an intensified fascist terror. For the Scottsboro Case itself is "Red," bursting with issues which can only call forth mass resentment and ever renewed waves of the mass movement. At this critical time, in the face of the concerted attack, any wavering on the part of the Scottsboro mass defense would only provide additional openings for the enemy. In those who feel the profound social issues involved in this case, the trickery of a Leibowitz should evoke the greatest anger and produce the keenest desire to weld the mass movement further. There must now be such an avalanche of protest, such a resurgence of the mass movement that there will be no doubt in anyone's mind as to where the real defense of the Scottsboro boys lies. Only in again defeating the agents of opposing class forces can there be any assurance of saving the Scottsboro boys.