Execution in the Courtroom: The Untimely Death of Bob White

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I. Background

Bob White was a black plantation worker who lived in Houston, Texas with his girlfriend and later wife, Ruby Lee White. At his mother’s request, Bob White traveled to Livingston, Texas to help her pick cotton.¹ One night in August 1937, Ruby Cochran, a white woman, was raped in her home.² Mrs. Cochran was the wife of W. S. “Dude” Cochran, the biggest landowner in the Livingston area.³ On the day following the rape of Ruby Cochran, Bob White was called from the field where he was picking cotton and taken to the home of Ruby Cochran’s brother-in-law.⁴ Bob White was joined with fifteen to sixteen other black men from the Livingston area who were all detained by the Cochran brothers and the sheriff without warrants or the filing of charges.⁵

Thereafter, Ruby Cochran approached the black men in her yard.⁶ She did not, and was never able to, physically identify Bob White as the assailant.⁷ According to Ruby Cochran’s testimony, there was no light burning in her home at the time the crime was committed.⁸ The only evidence that she submitted was her attacker “was barefooted, that he had a very offensive breath, and was undoubtedly a negro.”⁹ Without any physical characteristics to guide Mrs. Cochran in her identification, she only listened to the black men’s voices. Each man was asked to recite the following: "I don't care what they do to me; I don't care what happens to me."¹⁰ After

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¹ White v. Texas, 310 U.S. 530, 532 (1940).
³ Id.
⁴ White v. Texas, 310 U.S. at 532.
⁵ Id.
⁷ Id.
⁸ Id.
⁹ Id. at 669 (emphasis added).
¹⁰ Id. at 669.
Bob White recited the short line, Mrs. Cochran said she was sure that it was his voice that threatened her in the dark.\(^{11}\)

Bob White was immediately taken to the Polk County court house and then to the Polk County jail where he was detained for six to seven days.\(^{12}\) According to Bob White’s testimony, each night armed Texas Rangers handcuffed him and took him from the jail in an unfamiliar area of the woods.\(^{13}\) The Texas Rangers proceeded to beat him, asked him about a confession and warned him not to speak to anyone about the trips to the woods.\(^{14}\) After a week of unmerciful beatings, the prosecutor asked Bob White whether he was ready to confess.\(^{15}\) Bob White began to cry as he signed the alleged confession that was completed by the county attorney, who was a very close friend of W. S. Cochran.\(^{16}\)

At the time the confession was signed, Bob White did not have a lawyer, there were no existing charges that were formally filed, and he was forbidden to communicate with family or friends.\(^{17}\) One of the men that were released from the custody of the sheriff immediately traveled to Houston, Texas to notify Bob White’s girlfriend and mother of the incident.\(^{18}\) Soon thereafter, the matter was reported to the newspapers and became a highly publicized case.\(^{19}\)

II. Trials of Bob White

A. First Trial: Polk County, 1937

\(^{11}\) Id.
\(^{12}\) *White v. Texas*, 310 U.S. at 532.
\(^{13}\) Id.
\(^{14}\) Id.
\(^{15}\) Id.
\(^{16}\) Id.
\(^{17}\) Id at 532-533.
\(^{19}\) Id.
On August 10, 1937, Bob White was indicted by a grand jury consisting of all white men in Polk County for the charge of rape.\textsuperscript{20} An attorney was appointed by the court to represent Bob White, but the attorney quickly withdrew because he did not want the case to affect any future business. J. P. Rogers, a defense attorney in Houston, Texas, became interested in Bob White’s case and agreed to represent him.\textsuperscript{21} On the day of Bob White’s trial, the courthouse was surrounded by angered white citizens that were ready to take the law into their own hands.\textsuperscript{22} The black citizens of Livingston were not permitted to enter the courtroom, except for a few witnesses that were called upon to testify.\textsuperscript{23} However, the witnesses were so struck with fear and intimidation from the enraged mob that they barely provided any testimony during the trial.\textsuperscript{24} At the conclusion of trial, despite Rogers’ zealous defense, Bob White was convicted and sentenced to death by electrocution.\textsuperscript{25}

Bob White’s attorney requested the monetary and legal help of the NAACP because he only raised $105.00 to cover the expenses of an appeal that required $1500.00 for court and legal fees.\textsuperscript{26} An appeal was filed with the Texas Court of Criminal Appeals on two grounds.\textsuperscript{27} First, Bob White was deprived of a fair and impartial trial because the prosecuting attorney, W. C. McClain, in his argument to the jury stated, “Look at this courtroom; it is crowded with Polk

\textsuperscript{20} Papers of the NAACP, Part 08: Discrimination in the Criminal Justice System, 1910-1955, Series A: Legal Department and Central Office Records, 1910-1939.
\textsuperscript{21} Id.
\textsuperscript{22} Id.
\textsuperscript{23} Id.
\textsuperscript{24} Id.
\textsuperscript{25} Papers of the NAACP, Part 08: Discrimination in the Criminal Justice System, 1910-1955, Series A: Legal Department and Central Office Records, 1910-1939.
\textsuperscript{26} Id.
County people demanding the death penalty for Bob White."28 The prosecutor's statement was deemed prejudicial and used as a vehicle to intimidate and wrongly influence the jurors.29

Second, on the first day of the trial J. P. Rogers gave Bob White's uncle support affidavits for a change of venue.30 However, his uncle, Ed Goree, was notified that all of the black citizens would not be able to enter the courthouse or the surrounding area. The appellate court ultimately determined that Bob White's attorney timely presented the motion to the trial court for its approval; the trial court did not approve or disapprove the bill until after the time for filing had expired; and the trial court's failure to act promptly deprived Bob White of the right to obtain a bystander's bill.31

On April 6, 1938, the court noted in its opinion that although the trial court's action alone was sufficient grounds to reverse Bob White's conviction, the court still considered the prosecutor's statement to the jury.32 As a whole, the prosecutor's argument was prejudicial in its nature and Bob White had not been given a trial according to the laws of the land.33 The court held that such practices violated Bob White's due process, and no such practices should send Bob White to his death.34 The appellate court ultimately reversed Bob White's conviction and remanded the case.35

B. Second Trial: Montgomery County, 1939

Rogers filed a motion for a change of venue for Bob White's second trial from Livingston, Polk County to Conroe, Montgomery County.36 Conroe was a less prejudiced town

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28 White, 135 Tex. Crim. at 211.
30 White, 135 Tex. Crim. at 212.
31 Id.
32 White, 135 Tex. Crim. at 214.
34 Id.
35 Id.
located approximately 50 miles from Livingston. Rogers hoped that he would have a better chance to have a fair trial in Conroe.\textsuperscript{37} At the onset of the trial phase Rogers filed a motion to quash the indictment on grounds that (1) Bob White was discriminated against because of his color; (2) no person of African descent was drawn or served on the grand jury, and (3) that Bob White's constitutional rights under the United States Constitution had been infringed upon and denied to him.\textsuperscript{38} The district court overruled the motion and stated that no evidence was offered to the court to support the any of the allegations.\textsuperscript{39}

Specifically, Rogers asserted that the absence of blacks in the grand jury deprived Bob White of his constitutional rights.\textsuperscript{40} The court affirmed the trial court's decision and held that the jury commissioners who drew names from the tax rolls to serve on the grand jury did not intentionally leave off any persons of color and no discrimination existed.\textsuperscript{41} The same argument was made for the jury selection, where, again, no blacks were present. Again the court saw no discrimination.\textsuperscript{42} Lastly, Rogers asserted that the trial court erroneously instructed the jury regarding the beatings Bob White suffered by the Texas Rangers to produce his confession.\textsuperscript{43} However, the trial court concluded that the jury instructions were for the jurors to decide whether or not his confession was voluntary.\textsuperscript{44} The trial proceeded and the Montgomery County jurors once again convicted Bob White on the charge of rape and sentenced him to death.\textsuperscript{45}

Rogers appealed the judgment to the Texas Criminal Court of Appeal on grounds that White's motion to quash was erroneously overruled. On March 22, 1939, the Texas Criminal

\textsuperscript{38} \textit{White v. State}, 139 Tex. Crim. at 663.
\textsuperscript{39} \textit{Id}.
\textsuperscript{40} \textit{Id} at 665.
\textsuperscript{41} \textit{White v. State}, 139 Tex. Crim. at 665.
\textsuperscript{42} \textit{Id}.
\textsuperscript{43} \textit{Id}.
\textsuperscript{44} \textit{Id}.
\textsuperscript{45} \textit{Id} at 663.
Court of Appeal affirmed the trial court’s ruling and struck down each allegation raised by Rogers in the motion to quash as well.\textsuperscript{46} The court reasoned that the motion was presented to the court too late; thus, the motion should have been filed and disposed of prior to the filing the motion for a change of venue by White and the granting of the same in Polk County.\textsuperscript{47}

Texas Criminal Court of Appeals admitted in its opinion that even though the charge of rape was only based upon circumstantial evidence, the court should operate out of an “excess of caution” since Bob White was allegedly accorded every constitutional right that he was entitled to by law. Further, the court stated that the facts, which were only circumstantial, “unerringly point to the Appellant [Bob White].”\textsuperscript{48}

White subsequently filed a writ of certiorari on June 6, 1939, which was denied by the U.S. Supreme Court. The court refused to delay White’s execution, citing no grounds for appeal.\textsuperscript{49} Upon rehearing, March 25, 1940, the U.S. Supreme Court accepted White’s petition for writ of certiorari.\textsuperscript{50} The court’s decision to re-examine the defects of White’s procedural due process was based upon its recent decision just one month prior in \textit{Chambers v. Florida}.\textsuperscript{51}

In \textit{Chambers}, the defendants were convicted of murder and sentenced to death.\textsuperscript{52} The Defendants argued that the confessions were obtained by coercion and duress at the hands of local law enforcement officials and thus unconstitutional.\textsuperscript{53} Like White, the defendants were mistreated, physically threatened, and subjected to interrogations culminating in an all night examination without formal charges being brought and without the ability to communicate with

\textsuperscript{46} \textit{White v. State}, 139 Tex. Crim. at 665.
\textsuperscript{47} \textit{Id} at 670.
\textsuperscript{48} \textit{Id}.
\textsuperscript{49} \textit{White v. Texas}, 308 U.S. 608 (1939).
\textsuperscript{50} \textit{White v. Texas}, 309 U.S. 631 (1940).
\textsuperscript{51} \textit{Id}.
\textsuperscript{52} \textit{Chambers v. Florida}, 309 U.S. 227, 228 (1940).
\textsuperscript{53} \textit{Id}.
an attorney or relatives.\textsuperscript{54} The U.S. Supreme Court found that illegal practices used to obtain the confession violated the defendants' due process requirement of the Fourteenth Amendment.\textsuperscript{55} The court ultimately reversed the death sentences of defendants.\textsuperscript{56}

With the U.S. Supreme Court's decision firmly in hand, White's attorneys filed a petition requesting that the constitutionality of his confession be reexamined in light of the decision in \textit{Chambers}.\textsuperscript{57} On March 25, 1940, overturned White's conviction and death sentence previously affirmed by the Texas Supreme Court and remanded the case for a new trial.\textsuperscript{58} Texas' petition for rehearing was denied.\textsuperscript{59} In light of the overwhelming evidence of physical brutality and illicit coercion by the Texas Rangers and local peace officer, the Supreme Court stated, "Due process of law, preserved for all by our Constitution, commands that no such practice as that disclosed by this record shall send any accused to his death."\textsuperscript{60}

C. Third Trial: Montgomery County, 1941

Bob White's third and final trial began on June 11 1941, in Conroe, Texas.\textsuperscript{61} Ruby Cochran's husband, W.S. "Dude" Cochran," walked towards him in the courtroom.\textsuperscript{62} As Cochran walked through the court benches towards Bob White, neither guards nor judicial staff was present to inquire as to his reasoning for approaching him.\textsuperscript{63} According to an eye witness, the guards left judge arose from lunch and the guards left the courtroom to escort the ninth juror

\textsuperscript{54} \textit{Chambers}, 309 U.S. at 228.
\textsuperscript{55} Id.
\textsuperscript{56} Id.
\textsuperscript{57} \textit{White v. Texas}, 309 U.S. at 631.
\textsuperscript{58} Id.
\textsuperscript{59} \textit{White v. Texas}, 310 U.S. 530, 533 (1940).
\textsuperscript{60} Id.
\textsuperscript{62} Id.
\textsuperscript{63} Papers of the NAACP, Part 08: Discrimination in the Criminal Justice System, 1910-1955, Series B: Legal Department and Central Office Records, 1940-1955.
across the hall to the jury dormitory. Cochrane then pointed the pistol directly to Bob White and in the back of his head. The bullet crashed into White’s brain from just behind his right ear. He slumped over sideways, spilling blood on the courtroom floor, and he was dead before his body fell from of the chair. The crowd showed satisfaction by shaking Cochrane’s hand after he fired the deadly shot. The Conroe Courier recorded: “General satisfaction over the killing of Bob White was apparent in the business district of Conroe which is practically all within one block of the courthouse.”

III. Trial of W. S. Cochrane

One week later, Dude Cochrane was charged with murder of Bob White and released on only $500 bail. The special prosecutor, W. C. McClain, known to be a friend of Dude Cochrane, stated in his address to the jury that “in my opinion the guilty person got justice.” Further, McClain stated that he would never ask the jury to do anything that he would not do himself, referring to finding Cochrane guilty. McClain’s received applause for his speech at trial. After deliberating for only two minutes, the jury filed in with a verdict of not guilty. Cochran was acquitted and walked away from the courtroom a free man. The entire trial lasted less than three hours.

IV. Aftermath

The NAACP press release provided the day after Cochrane’s acquittal captured the public opinion regarding the injustice, which stated, “Bob White has not been duly convicted of any crime and he has been executed. W.S. Cochrane, who is without a doubt guilty of premeditated
and cold-blooded murder in the first degree, walks the street a relatively free man.\textsuperscript{71} The NAACP urged Senator Tom Connally and Rep. Martin Dies to further investigate the case.\textsuperscript{72} The NAACP also requested that the Department of Justice initiate an investigation on the basis of civil rights violations covered in the United States Code.\textsuperscript{73} Lastly, the NAACP urged both state and federal law enforcement agencies to investigate the case to determine how Cochran was acquitted when there were several eye witnesses present at the time of the murder.\textsuperscript{74} Present records do not indicate that a further investigation resulted in any subsequent action upon Dude Cochran, the residing judge, prosecutor or law enforcement officials.

\textsuperscript{71} Papers of the NAACP, Part 08: Discrimination in the Criminal Justice System, 1910-1955, Series B: Legal Department and Central Office Records, 1940-1955.
\textsuperscript{72} Id.
\textsuperscript{73} Id.
\textsuperscript{74} Id.