The Untimely Death of Bob White:

*Execution in the Courtroom*

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I. Background

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

When Mrs. Cochran approached the black men in her yard,⁶ she did not physically identify Bob White as the assailant, nor was she ever able to identify him directly.⁷ According to her testimony, there was no light burning in her home at the time the crime was committed.⁸ The only evidence that she submitted was that her attacker “was barefooted, that he had a very offensive breath, and was undoubtedly a negro.”⁹ Without any physical characteristics to guide the identification, Mrs. Cochran only listened to the black men’s voices. Each man was asked to recite the following statement: "I don't care what they do to me; I don't care what happens to

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¹ *White v. Texas*, 310 U.S. 530, 532 (1940).
² Id.
⁴ *White v. Texas*, 310 U.S. at 532.
⁵ Id.
⁷ Id.
⁸ Id.
⁹ Id. at 669 (emphasis added).
me." After 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 White’s testimony, each night armed Texas Rangers handcuffed him and took him from the jail to an unfamiliar area of the woods.13 The 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 He began to cry as he signed the confession, which 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. No charges had been filed, and he was forbidden to communicate with family or friends.17 One of the men who was released from the sheriff’s custody immediately traveled to Houston, Texas to notify White’s girlfriend and his mother of the incident.18 Soon thereafter, the matter was reported to the newspapers and it became a highly publicized case.19

10 Id. at 669.
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.
II. Trials of Bob White

First Trial: Polk County, 1937

On August 10, 1937, Bob White was indicted in Polk County for the charge of rape by a grand jury consisting entirely of white men. The attorney who was appointed by the court to represent him 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 White’s case and agreed to represent him. On the day of Bob White’s trial, the courthouse was surrounded by angry white citizens, who were ready to take the law into their own hands. Except for a few witnesses who were called upon to testify, black citizens of Livingston were not permitted to enter the courtroom. The witnesses who appeared for the defense were so struck with fear and so intimidated by the enraged mob that they barely provided any testimony during the trial. At the conclusion of trial, despite Attorney Rogers’ zealous defense, Bob White was convicted and sentenced to death by electrocution.

Bob White’s attorney requested the monetary and legal help of the NAACP because he had only raised $105.00 to cover the expenses of an appeal that required $1500.00 for court and legal fees. An appeal was filed with the Texas Court of Criminal Appeals on two grounds. The petitioner’s first claim was that White was deprived of a fair and impartial trial when the prosecuting attorney, W. C. McClain, in his argument to the jury had stated, “Look at this courtroom; it is crowded with Polk County people demanding the death penalty for Bob

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21 Id.
22 Id.
23 Id.
24 Id.
25 Id.
26 Id.
28 Id.
White.” The petition alleged that the prosecutor’s statement was prejudicial and had been used as a vehicle to intimidate and wrongly influence the jurors.

The grounds for the petitioner’s second claim arose on the first day of the trial. Attorney J. P. Rogers had given Bob White’s uncle, Ed Goree, affidavits to support a change of venue. However, Goree was informed that none of the black citizens would be able to enter the courthouse or the surrounding area, so he could not deliver the affidavits to support the motion for a change of venue.

Upon appeal, the Court of Criminal Appeals of Texas determined that the trial court did not approve or disapprove the motion until after the time for filing had expired, so that the presentation of the motion to the trial court by White’s attorney was timely and the trial court's failure to act promptly deprived Bob White of the right to obtain a bystander's bill. The opinion also stated that, although the trial court's procedural inaction alone was sufficient grounds to reverse Bob White’s conviction, the prosecutor’s statement to the jury violated his constitutional rights. Taken as a whole, the prosecutor's argument was prejudicial in its nature so White had not received a fair trial according to the laws of the land. The court held that such practices violated Bob White’s due process rights, and no such practices should send Bob White to his death. Therefore the appeals court reversed Bob White's conviction and remanded the case.

28 White, 135 Tex. Crim. at 211.
30 White, 135 Tex. Crim. at 212.
31 Id.
32 White, 135 Tex. Crim. at 214; April 6, 1938.
34 Id.
35 Id.
Second Trial: Montgomery County, 1939

Attorney Rogers filed a motion for a change of venue for Bob White’s second trial from Livingston, Polk County to Conroe, Montgomery County. Rogers hoped that he would have a better chance for a fair trial in Conroe because he believed that Conroe, located approximately fifty miles from Livingston, was a less prejudiced town.

At the onset of the second trial Rogers filed a motion to quash the indictment on grounds that: (1) Bob White was discriminated against because of his color; (2) no names of any person of African descent had been drawn for the jury pool, nor had any person of African descent actually served on the grand jury; and (3) Bob White’s constitutional rights under the United States Constitution had been infringed upon and denied to him. Specifically, Attorney Rogers asserted that the absence of African Americans in the grand jury deprived Bob White of his constitutional rights. The trial court overruled the motion to quash the indictment and stated that no evidence was offered to the court to support the any of the allegations. The second trial proceeded and the Montgomery County jurors convicted Bob White on the charge of rape and sentenced him to death.

Subsequently, Attorney Rogers filed an appeal with the Texas Criminal Court of Appeal on grounds that Bob White’s motion to quash was erroneously overruled. On March 22, 1939, the appellate court affirmed the trial court’s ruling and struck down each claim raised by Rogers in the motion to quash as well. The court reasoned that the motion was presented to the trial

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38 White v. State, 139 Tex. Crim. at 663.
39 Id. at 665.
40 Id.
41 Id. at 663.
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.43

As to Attorney Rogers claim of jury bias, the appellate court ruled 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.44 The same argument
was made for the jury selection, where, again, no African Americans were present. Again the
appellate court saw no discrimination.45

White’s appeal also raised a second issue concerning the trial court’s jury instructions
regarding the beatings Bob White suffered by the Texas Rangers to produce his confession.46
The judge had instructed the jurors that it was their responsibility to decide whether or not his
confession was voluntary.47 The appellate court stated that the trial court was required to operate
out of an “excess of caution” and that Bob White should be accorded every constitutional right
that he was entitled to by law. Nevertheless, the appellate court declined order a new trial, and
stated that the facts, although based on only circumstantial evidence, “unerringly point to the
Appellant [Bob White],”48

Following the issuance of the opinion by the Texas Criminal Court of Appeals, Bob
White’s attorney filed a writ of certiorari on June 6, 1939, which was initially denied by the U.S.
Supreme Court. The Court refused to delay White’s execution, citing no grounds for appeal.49
Upon rehearing, March 25, 1940, the U.S. Supreme Court accepted White’s petition for writ of

43 Id at 670.
45 Id.
46 Id.
47 Id.
48 Id.
certiorari.\textsuperscript{50} The court’s decision to re-examine the defects of White’s procedural due process was based upon its recent decision in \textit{Chambers v. Florida}, which was decided only one month prior to the ruling on Bob White’s appeal.\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 therefore were unconstitutional.\textsuperscript{53} Like Bob White, the defendants were mistreated, physically threatened, and subjected to interrogations culminating in an all night examination without formal charges being brought. Like White, the \textit{Chambers} defendants had no opportunity to communicate with an attorney or relatives.\textsuperscript{54} The Court found that the illegal practices used to obtain the confession violated the defendants’ due process rights under the Fourteenth Amendment, and ultimately reversed the death sentences of the \textit{Chambers} defendants.\textsuperscript{55} \textsuperscript{56}

With the 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, The U.S. Supreme Court 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 police officers in obtaining Bob White’s confession, the Supreme Court invoked the due process standards articulated in

\begin{footnotesize}
\begin{enumerate}
\item \textit{White v. Texas}, 309 U.S. 631 (1940).
\item \textit{Id.}
\item \textit{Chambers v. Florida}, 309 U.S. 227, 228 (1940).
\item \textit{Id.}
\item \textit{Chambers}, 309 U.S. at 228.
\item \textit{Id.}
\item \textit{Id.}
\item \textit{White v. Texas}, 309 U.S. at 631.
\item \textit{Id.}
\item \textit{White v. Texas}, 310 U.S. 530, 533 (1940).
\end{enumerate}
\end{footnotesize}
Chambers: “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.”

Third Trial: Montgomery County, 1941

Bob White’s third and final trial began on June 11, 1941, in Conroe, Texas. Ruby Cochran’s husband, W.S. “Dude” Cochran, walked towards him in the courtroom. As Cochran walked through the court benches towards Bob White, neither guards nor judicial staff was present to inquire as to his reasons for approaching the defendant. According to an eye witness, the judge had vacated the bench to go to lunch and the guards had left the courtroom to escort the ninth juror across the hall to the jury dormitory. W. S. Cochran then pointed the pistol directly at Bob White 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 died before his body fell off the chair. The crowd showed their satisfaction by shaking Cochran’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.”

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60 Id. The Supreme Court’s statement in the White decision is a direct quotation from their earlier ruling in the Chambers case, reinforcing the ruling that confessions coerced by law enforcement brutality are constitutionally prohibited. See Chambers, 309 U.S. 227, at 241.
62 Id.
64 Id.
65 Negro Bob White Killed in Courtroom Here Tuesday, Conroe Courier (Jun. 12, 1941).
III. The Trial of W. S. Cochran

One week later, W.S. “Dude” Cochran 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 Cochran, stated in his address to the jury that “in my opinion the guilty person got justice.” Further, Attorney McClain stated that he would never ask the jury to do anything that he would not do himself, referring to finding Cochran guilty. McClain received applause for his speech at trial. After deliberating for only two minutes, the jury filed in with a verdict of not guilty. W.S. Cochran was acquitted and walked away from the courtroom a free man. His entire trial lasted less than three hours.

IV. Aftermath

The NAACP press release provided the day after W.S. Cochran’s acquittal captured the opinion of the black community regarding the injustice, stating that, “Bob White has not been duly convicted of any crime and he has been executed. W.S. Cochran, who is without a doubt guilty of premeditated and cold-blooded murder in the first degree, walks the street a relatively free man. The NAACP urged Senator Tom Connally and Representative Martin Dies to further investigate the case. 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. 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.

67 Id.
68 Id.
69 Id.
70 Id.
72 Id.
73 Id.
of the murder. 74 Present records do not indicate that a further investigation resulted in any subsequent action affecting Cochran, the presiding judge, the prosecutor or any law enforcement officials.

74 Id.