

## Southern-style justice: the trials of Bob White

By Geoffrey Watson SC

In the 1920s-1930s race relations in the United States reached their nadir. The Ku Klux Klan had re-emerged – its membership peaked in the late 1920s. Nowhere was racism more prevalent than in and around the criminal justice system. It is almost as though there were two complementary justice systems – an official *judicial* system and what might (euphemistically) be called an *extra-judicial* system. Both were accepted to have their own place and role. I am not so sure there was much practical difference between them. It is true that the extra-judicial system produced lynchings and castrations; but the judicial system included biased police and prosecutors presenting false or incomplete evidence to prejudiced judges and jurors. Both systems led to the imposition of the death penalty on African-Americans in unusually high numbers. Neither alternative was attractive.

The stories of injustice are legion. Some are well-known – the most infamous being the story of the Scottsboro boys. But no episode better exposes the deep hypocrisy of Southern-style justice than this lesser-known story – the story of the different treatment of Bob White and ‘Dude’ Cochran

### The incident, arrest and indictment

Bob White was a 27 year old illiterate farmhand, working as a cotton picker on a plantation near Livingston in Polk County in Texas.

During the evening of 10 August 1937, a white woman, Ruby Cochran, was raped at her home in Livingston. Ruby’s husband was a wealthy and powerful farmer, W S ‘Dude’ Cochran.

The rape occurred in complete darkness, and Ruby could not identify her assailant beyond saying that she thought he was barefoot, had ‘very offensive breath’ and was ‘undoubtedly a negro’.

The next day Dude and two of his brothers went with a local lawman and rounded up 16 African-American men who worked on nearby plantations. Bob White was one of those men. It is not clear why these particular men were selected, and it may have been at random. There was certainly no proper authority to seize them like this – they were not under arrest, and there was no power to arrest them. The men were taken to a nearby property where they were paraded in front of Ruby, but she said she could not identify her assailant by sight. White, like the others, was then asked about his whereabouts at the time of the attack (so much for the right to remain silent). White explained that he was at his mother’s – 15 kilometres away, and that he had witnesses to support that.

Each man was then told to repeat a short sentence which Ruby said had been used by her attacker – the words were ‘I don’t care what they do to me; I don’t care what happens to me’. After Bob White spoke, Ruby said his voice ‘was the same’ as her assailant.

That was enough for Dude Cochran. He had his man. The men apart from White were released. White was taken to Polk County gaol where he was kept illegally – he was not under arrest and no charges were laid against him, no doubt because the evidence was insufficient. To charge White required something more, preferably a confession. So White was kept in isolation and, of course, denied access to a lawyer. According to White (and later accepted to be the fact) he was taken out of his cell each night for a week, taken into some local woods where he was handcuffed, whipped and savagely beaten. One night he was suspended from a tree in chains until he passed out. At dawn on the seventh day, he capitulated. After being kept awake all night, White marked a crude X onto a typed confession. White was crying as he did so. He was incapable of reading the text he was signing.

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A charge of rape was laid on the basis of White’s ‘confession’ – and rape was a capital offence. An all-white grand jury was hastily convened and returned a true bill of indictment.

### The first trial

White was arraigned to stand trial in Livingston. No local lawyer would defend him, and a courageous attorney from Houston, J P Rogers, volunteered. Rogers is something of a hero in all of this.

There was no prospect of White getting a fair hearing in Livingston – it proved difficult enough just to keep him alive for long enough so he could get to a trial. At one stage more than 100 deputies were on duty to protect White from a lynching (eventually the town’s long-serving sheriff was removed from his office because of his role in *protecting* White).

The trial was a travesty. The judge and the jury were all white local males. In fact, the only non-white allowed in the courtroom was the accused – all black persons were excluded from the courthouse and its surrounds. The gallery was packed with enraged locals – friends of Dude and Ruby. A noisy mob surrounded the outside of the courthouse.

J P Rogers did the best he could in difficult circumstances. Apart from the ‘confession’, the evidence against White was very weak, so Rogers challenged the confession. He got admissions that White had been taken at night and into the woods (although no admissions were made about the violence, it was accepted that White had been taken into the woods so that his interrogators could have a little ‘privacy’). Rogers also pointed out to the jury that fingerprints and a footprint taken from the crime scene did

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not match White. He called White's alibi witnesses – but they were obviously never going to be believed given their skin colour<sup>1</sup>.

The prosecutor did little to ease tensions. During his address he pointed the jurors toward the packed gallery – 'Look at this courtroom; it is crowded with Polk County people demanding the death penalty for Bob White'. No doubt that was true, but it is difficult to see how it would have been relevant to the jury's deliberations.

Unsurprisingly the jury convicted. White was immediately sentenced to death by electrocution.

White challenged his conviction and succeeded on two grounds: *White v State* 135 Tex Crim 210 (1938). One ground was an indirect effect of the decision to exclude black people from the courthouse: Rogers had attempted to move for a change of venue to get away from Livingston, and gave the papers to White's uncle to file – but he was black, and refused entry to the court precincts and the application could not be filed in time. The other ground was based on the prosecutor's inflammatory address to the jury – which was held to be 'undoubtedly prejudicial'.

So the Texas Court of Criminal Appeals set the conviction aside – but it did so quite reluctantly: the judges prefaced their order with these words – 'However much we may regret to reverse cases of this character ...'.

White was remanded for a new trial.

### The second trial

The second trial was removed from the Livingston hothouse, to be heard 80 kilometres away in a court in the town of Conroe in Montgomery County.

This change of venue has all the elements of the old frying pan/fire dilemma: Conroe is a town with a sickening history of lynchings, racial prejudice, and judicial corruption. But I suppose that whether it was Conroe or Livingston did not matter: this was never going to be a fair fight if the fight was going to be fought in Texas.

The trial proceeded and ended as expected. White was convicted a second time and received his second death sentence.

A second appeal to the Texas Court of Criminal Appeals failed: *White v State* 139 Tex Crim 660 (1939). With the assistance of the NAACP, White set off to the Supreme Court of the United States.

The case got into the Supreme Court in an unusual way. The key to White's argument was that his 'confession' had been improperly obtained. That is hard to establish on an application for certiorari to the US Supreme Court because normally only the decision of

the court below is examined, and then only examined for legal error. Bill Douglas was on the court at that time and he described how the chief justice, Charles Evans Hughes, read White's claim and 'smelt a rat'. Hughes called for all of the records in relation to the matter. When these became available they clearly established that the claims of police brutality were true.

The Supreme Court not only unanimously allowed White's appeal, it ruled that his confession had been coerced and could not be admitted into evidence because that would violate White's entitlement to due process ensured by the Fourteenth Amendment: *White v Texas* 310 US 530 (1940). The Supreme Court set aside the conviction and remitted the matter for another new trial.

Little did the members of the Supreme Court know it, but they had just imposed their own death sentence on Bob White.

### The third trial

Given that his 'confession' was no longer admissible against him, White's prospects of an acquittal were pretty good at his third trial. In a way he must have been looking forward to the third trial – by this time he had been in gaol for nearly four years.

White's biggest problem was that his prospects of success looked much too good to Dude Cochran.

The third trial opened in Conroe on 11 June 1941. It did not last for long. A jury was selected and around noon the judge called for a recess. The judge was still on the bench and the jury was just shuffling out as Dude Cochran slowly walked forward, drew a .38 pistol, and shot Bob White in the back of the head. White would have been dead before he hit the ground.

There were dozens of eyewitnesses, including the judge. At first there was stunned silence. Then the gallery erupted in cheers. Men came forward to shake Cochran's hand, while others slapped him on the back.

The next day a journalist at the *Conroe Courier* covered the story. He described how the town's response to this cold-blooded murder was one of 'general satisfaction'.

### The fourth trial – the trial of Dude Cochran

Once the formal congratulations were completed, Cochran was arrested and charged with murder. He was immediately released on \$500 bail.

Everything now happened at high speed. The local district-attorney, W C 'Cleo' McClain, appointed himself to conduct Cochran's trial. This was a tremendous stroke of 'luck' for Dude – Cleo and Dude were good friends.

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Cochran's trial started on 16 June 1943, only five days after he had murdered Bob White. I know this will sound odd, but I have looked at a number of sources and it is not actually clear whether the prosecution led any evidence against Cochran. The whole trial, including empanelling the jury, took less than three hours. We do know that District-Attorney McClain did address the jury, and he made some remarkable statements while he did so. McClain explained how the US Supreme Court had interfered with due process by ruling White's confession inadmissible:

When the case was reversed it looked like the end of the road as far as the law was concerned. The state proceeded to trial again last week, knowing it would not have the use or benefit of White's signed confession. The state's case was based on circumstances which, without the confession, would have been insufficient to sustain a conviction.

These matters, according to the prosecutor, necessitated and justified the action by Cochran – and even *forced* Cochran to act:

It was unfortunate that Mr Cochran was forced to do that which was done. It was his wish that the law handle the matter. In my opinion the guilty party got justice, but it was unfortunate that it had to be at Mr Cochran's hands.

McClain then told the jurors what he would do:

If I were going into that jury room, I wouldn't hesitate, I wouldn't stand back a minute in writing a verdict of not guilty.

And then he told them what they should do:

I ask you to return a verdict finding Mr Cochran not guilty.

In case you are confused, I will remind you that this is the prosecutor speaking, not the defence counsel. It is disgraceful when you think about it: here is a district-attorney, representing the State of Texas, using judicial proceedings as the means to approve and even encourage extra-judicial punishment. And it is so richly ironic – in this case the extra-judicial punishment was actually dispensed by Cochran in a courtroom, in the course of judicial proceedings.

The gallery warmly applauded McClain's address and the jury retired. Briefly. Newspaper accounts vary: one I read said the jury was out for two minutes before acquitting Cochran; another said

it took less than a minute.

I am afraid I need to leave you with a very dark image. When the acquittal came through the Texans went wild. After 15 minutes of a *hootin'* and a *hollerin'*, those good ol' boys hoisted Dude Cochran up onto their shoulders and carried him out of the court, and down into and around the Conroe town square. A banquet was organised. At precisely that same time Bob White's body was nearby, still lying in the Conroe City morgue – his wife and his mother were too scared to claim his body, because they knew if they identified themselves there could be deadly reprisals. Bob White's remains were eventually sent to a pauper's grave.

### Endnotes

1. Before going further, it is interesting to note that some important evidence was later found which suggests that White could not have been the assailant. White was suffering an active STD which, it would have been expected, would have been transmitted to his victim. Tests on Mrs Cochran were negative for the disease. This was not revealed to the defence or to the jury.<sup>2</sup>