The 75th anniversary of the seminal United States Supreme Court opinion in *Powell v. Alabama*, 287 U.S. 45 (1932), in which the high court outlined the premises of the right to counsel in the context of the infamous “Scottsboro Boys Trials,” was commemorated March 13 with a panel discussion conducted by the New Orleans Chapter of the Federal Bar Association, in co-sponsorship with the Greater New Orleans Louis A. Martinet Legal Society, Inc. and the A.P. Tureaud Chapter of the American Inns of Court.

The event was conducted in the courtroom of Judge Ivan L.R. Lemelle, United States District Court for the Eastern District of Louisiana. A reception followed in the courtroom of Chief Judge Helen “Ginger” Berrigan, United States District Court for the Eastern District of Louisiana.

The panel was comprised of law professors and lawyers whose practices or scholarly works concentrate on areas of law impacted by *Powell*. Their presentations were followed by questions and observations of a panel of judges — Judge Lemelle; Louisiana Supreme Court Justice Bernette J. Johnson; and Orleans Parish Criminal District Court Judge Laurie A. White.

Professor J. Steven Beckett of the University of Illinois College of Law began the program with an overview of the factual background and history behind the “Scottsboro Boys Trials.” Beckett emphasized that *Powell* was truly the “Trial of the 20th Century.” Beckett said, “Not only was there a gross injustice done, but the importance of having counsel for the accused, the importance of fair community representation on grand and petit juries, and also the importance of all parts of our society being invested in due process of law achieved constitutional significance in ways never dreamed of before *Powell*. Just the fact that blacks and whites joined together in protest at the U.S. Supreme Court was an unbelievable historical event for its time and a precursor to the modern civil rights movement.”

In addition, Beckett’s presentation demonstrated the detail needed for effective lawyering in a major criminal case. “The investigation, presentation of physical and forensic evidence, the location and preparation of witnesses, and all the trial components that Sam Liebowitz brought to the second round of *Powell* trials must be remembered,” Beckett said. “I truly think the trial skills part of ‘why lawyers matter’ is overlooked when we regard the historical *Powell v. Alabama*,” he said.

Stephen Higginson, associate professor
of law at Loyola University College of Law, New Orleans, then discussed the advocacy leading up to the Powell v. Alabama decision. He highlighted Alabama Chief Justice Anderson’s dissenting opinion as well as the certiorari papers in Powell. He then proceeded to discuss subsequent attorney use of Powell leading up to the momentous decisions in Gideon1 and Duncan.2

The progeny of Powell, in both the state and federal system, was addressed by Majeeda Snead, criminal defense attorney and clinical professor of law at Loyola University College of Law, New Orleans. “While Powell expressed the fundamental fairness of the right to counsel, it stopped short of requiring it in every case. It looked at the ‘special circumstances’ of that case to say it was required. After Powell was decided, the federal courts looked at the issue of the right to counsel in felony cases and ruled in Johnson v. Zerbst, 304 U.S. 458 (1938), that the Sixth Amendment right to counsel was required in federal court when a defendant was charged with a felony,” Snead explained. She went on to note that “this right was not extended to state felony cases. . . . It wasn’t until Gideon v. Wainwright that the court ruled that states shall provide counsel to persons charged with a felony and unable to afford counsel in accordance with the Sixth Amendment guarantee made applicable to states via the 14th Amendment.”

The discussion then shifted to current issues in indigent defense with Virginia L. Schlueter, the Eastern District of Louisiana federal public defender and president of the New Orleans Chapter of the Federal Bar Association, leading the discussions. Schlueter was particularly persuasive in promoting the Criminal Justice Act (CJA) panel attorneys and suggesting that lawyers in the audience sign up for the program. Schlueter had very positive things to say about federal criminal indigent defense in New Orleans although cautious that the program is not perfect.

The state indigent defense system was discussed in contrast to the federal system by Stephen I. Singer, chief of trials for the New Orleans Public Defender’s Office. Singer placed a reality check on the day’s discussions by noting that because of overwhelming workloads, grossly inadequate funding, and a state criminal justice system ranked with problems, an indigent defendant in Orleans Parish in 2008 is not much better off than the Scottsboro Boys were 75 years ago. Giving credit for some improvement since Hurricane Katrina struck nearly three years ago, Singer pointed out that his overworked staff attorneys have some 15,000 cases assigned to them each year. They just don’t have the time or resources to deliver the kind of representation to indigents that Powell and its progeny seem to promise,” he said.

In the end, the panel left its audience of lawyers, judges, law students and law professors with a challenge to be creative in their ideas, generous with their time and effort, and immediate with action that can relieve the indigent system from its woes and elevate it to a standard that a community can be proud of and a standard that the Sixth Amendment is now understood to require.

FOOTNOTES

1. According to Douglas O. Linder, “No crime in American history — let alone a crime that never occurred — produced as many trials, convictions, reversals, and retrials as did an alleged gang rape of two white girls by nine black teenagers on the Southern Railroad freight run from Chattanooga to Memphis on March 25, 1931.” See www.law.umkc.edu/faculty/projects/FTrials/scottsboro/scottsboro.html. The original trials of the nine boys began only 12 days after their arrest. Stephen Roddy, an unpaid and unprepared real estate attorney who showed up drunk on the first day of trial, and Milo Moody, who was a forgetful 70-year-old local attorney who had not tried a case in decades, were appointed to represent all nine boys. Guilty verdicts were announced in the first trial while the second trial was underway and the roars of approval from the crowds outside could be heard by the jury of the second trial. When the four trials were over, eight of the nine boys had been convicted and sentenced to death. There was a mistrial in one case involving a 12-year-old defendant because 11 of the jurors held out for death despite the request of the prosecution for only a life sentence in view of his age. On appeal, retrials were ordered in all cases. In one of the retrials, that of Hayward Patterson, one of the alleged rape victims, Ruby Bates, recanted her story of rape. Nevertheless, the jury returned a verdict of guilty and sentenced Patterson to death. The Scottsboro Boys’ struggle for justice dragged on for decades. It “made celebrities out of anonymities, launched and ended careers, wasted lives, produced heroes, opened southern juries to blacks, exacerbated sectional strife, and divided America’s political left.” Id.


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