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## The Newest Scottsboro Boy

Posted By [Sherrilyn Ifill](#) On March 1, 2010 @ 4:52 pm In [Civil Rights](#), [Current Events](#), [Race](#), [Supreme Court](#) | [2 Comments](#)



<sup>[1]</sup>Hear the words “Scottsboro Boys” and what comes to mind is the picture of southern injustice. Nearly a dozen black teenagers taken off a train in Alabama in 1931 and accused of raping two white girls. The sheriff calling out the militia to protect the boys from a mob lynching. The defendants, illiterate young men whose families resided in other states, held under military guard. A summary trial held six days after arraignment. The boys tried without counsel. Each convicted and sentenced to death. The case successfully challenging their conviction, [Powell v. Alabama](#) <sup>[2]</sup>, is central to our modern conception of the requirements of due process for criminal defendants.

Fast forward 80 years and Jeffrey Skilling, former president and chief operating officer of



<sup>[3]</sup>collapsed energy giant Enron, is the newest Scottsboro boy. Skilling’s attorney argued on Monday before the U.S. Supreme Court that his client was tried and convicted in Houston in what amounted to a mob atmosphere. Skilling, was convicted of securities fraud, conspiracy and insider trader for actions he took to cover up the financial collapse of Enron, which resulted in losses estimated at tens of billions of dollars for Enron shareholders. Thousands of Enron employees lost their retirement funds. Skilling was sentenced to 24 years, which he is serving in a minimum security prison. He challenges his conviction on the grounds that the crime of “honest services fraud” is unconstitutionally vague, and on the grounds that he was tried and convicted amidst an atmosphere of “pervasive community bias.”

It's true that feelings about Skilling and Enron CEO Ken Lay ran high during those days – especially in Houston. It's also true that government surveys indicated that potential jurors in Houston were more likely than those residing outside Houston, to believe that Skilling and Lay were innocent. Skilling argued, nevertheless, that “overwhelming passions” gripped the pool of Texans from which the jury was selected, stoked by a “media frenzy.” His prosecution was, according to Skilling, [“as dramatic as any in U.S. criminal trial history.”](#) <sup>[4]</sup> (I'm not sure that the Scottsboro boys, Sacco and Vanzetti, Richard Hauptmann (kidnapper of the Lindbergh baby), the police officers who beat Rodney King, or O.J. Simpson, would agree with that assessment, but history will have to sort it out). At oral argument, several members of the Court – Justices Sotomayor and Breyer among them – reportedly expressed serious concerns about the trial court's voir dire of the jury. The Court may yet find that Skilling – who was represented by some of the finest attorneys in the country, and who reportedly spent more than \$30 million dollars on his defense – is entitled to a new trial in a different venue.

The decision of the Supreme Court to hear the Skilling case at all bears scrutiny. It's worth remembering that the Court only grants writs of certiorari in 1.1% of the thousands of petitions submitted each term. That Skilling's case was deemed worthy of review is disturbing when one looks at some of the criminal cases in which the Court has recently denied review. Like [Barbour v. Haley, in which forty indigent Alabama death-row inmates challenged the state's failure to afford a right to counsel for death row prisoners in postconviction review cases.](#) <sup>[5]</sup>

If a trial judge decides to appoint a counsel in postconviction review case in Alabama, there is \$1,000 cap on the compensation to which that lawyer is entitled. The *Barbour* case seemed to cry out for the Court's review. Yet the Court declined to review that case in 2008.

Or how about [Carruth v. Alabama.](#) <sup>[6]</sup> yet another case from Alabama, challenging the state court's determination that death row inmates have no right to counsel in cases they directly appeal to the Alabama Supreme Court? The U.S. Supreme Court denied review of that case in December.

It's impossible to know what compelled the Court to hear Skilling's case. It may be that some of the justices are troubled by the statute criminalizing “honest services fraud.” But it's this kind of disparity in the cases the Court chooses to hear that creates cynicism. If Skilling has a colorable claim that he was tried by a jury that could not be impartial, he's entitled to his day before the Court. But prisoners who are sentenced to death and have been denied the right to counsel in postconviction review and on appeal by the state of Alabama, should also be given a hearing by the Supreme Court.

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## 2 Comments To "The Newest Scottsboro Boy"

**#1 Comment** By [Patrick S. O'Donnell](#) On March 1, 2010 @ 6:04 pm

I couldn't agree more.

And now let's discuss the constitutional right to (effective) assistance of counsel generally, which is routinely ignored in this country, hence Stephen Bright's\* conclusion that “No constitutional right is celebrated so much in the abstract and observed so little in reality as the right to counsel.”

And thus the need for this: <sup>[7]</sup>

\*Bright is Director of the Southern Center for Human Rights: <sup>[8]</sup>

**#2 Comment** By [Renee Hutchins](#) On March 1, 2010 @ 8:37 pm

Well said. While the Court's decisions garner the lion's share of the media attention, it is the Court's case selection that is equally deserving of scrutiny. The cert denials you identify are significant, but sadly just the tip of a very large iceberg. It is difficult to imagine that Skilling's case is representative of even the tiniest fraction of the cases in that mass that are worthy of review. Thanks for shedding some much needed light on the issue.

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[1] Image: <http://www.concurringopinions.com/archives/2010/03/the-newest-scottsboro-boy.html/scotboys>

[2] *Powell v. Alabama*: <http://supreme.justia.com/us/287/45/case.html>

[3] Image: [http://www.concurringopinions.com/archives/2010/03/the-newest-scottsboro-boy.html/jeffrey\\_sk\\_m417228](http://www.concurringopinions.com/archives/2010/03/the-newest-scottsboro-boy.html/jeffrey_sk_m417228)

[4] "as dramatic as any in U.S. criminal trial history.":

[http://www.abanet.org/publiced/preview/briefs/pdfs/09-10/08-1394\\_Petitioner.pdf](http://www.abanet.org/publiced/preview/briefs/pdfs/09-10/08-1394_Petitioner.pdf)

[5] *Barbour v. Haley*, in which forty indigent Alabama death-row inmates challenged the state's failure to afford a right to counsel for death row prisoners in postconviction review cases.:

<http://www.eji.org/eji/deathpenalty/inadequatecounsel/barbourvhaley>

[6] *Carruth v. Alabama*.: <http://www.eji.org/eji/node/334>

[7] : [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=711225](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=711225)

[8] : <http://www.schr.org/>

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