

The Slaton Memorandum: A Governor Looks Back At His Decision to Commute the Death Sentence of Leo Frank

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Very near the end of his long life (he lived to see his 88th birthday), John Marshall Slaton (1866-1955) wrote a short, not quite 2400-word, memorandum explaining why some 40 years earlier he had commuted the death sentence of Leo M. Frank to life-in-prison. At the time of the commutation in June 1915, Slaton issued a statement explaining his reasons for the commutation; that statement dealt almost exclusively with the facts of the crime.¹ This memorandum, published here for the first time, further expands on what Slaton knew and thought at the time he commuted Frank's death sentence and contains information that he could not have made public at the time of the commutation.

Slaton² was born on Christmas Day 1866 and spent his earliest years on a farm in Meriwether County; in 1875 his family moved to Atlanta where his father assumed the position of superintendent of the public schools. Slaton graduated Boys' High School in 1880 with highest honors, the University of Georgia in 1886 also with highest honors, passed the Georgia bar in 1887 and opened his law practice in Atlanta. In 1898 he married Sally Francis Grant, a member of a prominent Atlanta family; the Slatons had no children.

Active in the affairs of the local Democratic party, Slaton was first elected to the Georgia General Assembly in 1896 and was reelected for the next five elections and served as speaker from 1905 to 1908. In 1908, he ran successfully for the Georgia state senate and was elected its president in 1909. In 1911 Slaton served as acting governor of Georgia when the then Governor Hoke Smith was elected to the United States Senate to fill the seat of a recently-deceased senator. The unexpired term of governor Hoke Smith was filled by Smith's political rival Joseph

1. The official publication of Slaton's statement can be found in *Supplement to Message of the Governor to the General Assembly of Georgia; June 23, 1915: Opinion in the Case of the State vs. Leo Frank* (Atlanta, 1915). Slaton's statement was widely re-published; see *Atlanta Constitution* (June 22, 1915), 4; *Atlanta Journal* (June 21, 1915), 1,3-4.

2. I have used the following sources in writing this brief biography of Slaton: James E. Dorsey, "John Marshall Slaton," *Dictionary of Georgia Biography* Kenneth Coleman and Charles Stephen Gurr, eds. 2 vols. (Athens, 1983), 2:891-3; James F. Cook, *The Governors of Georgia, 1745-1995* revised ed. (Macon, 1995), 199-202; Zell Miller, *Great Georgians* (Franklin Springs, Georgia, 1983), 169-72.

Mackey Brown (son of the Civil War and Reconstruction era governor Joseph Emerson Brown). But when the younger Brown chose not to seek a full term as governor, the field was wide open. In the ensuing election held in late 1912, Slaton easily defeated several opponents, garnering nearly three-fourths of the vote. Though considered a conservative at the time, Slaton promoted several progressive measures which were enacted into law during his administration: tax equalization, inheritance tax, several consumer protection acts, establishment of a home for wayward girls, and a voter-registration bill.

Early in 1914 United States Senator Augustus O. Bacon died, and Governor Slaton appointed William S. West to serve until a special election could be held. When West chose not to run for the remainder of the senatorial term, Slaton and two of Hoke Smith's political associates, Congressman Thomas Hardwick and Attorney-General Thomas Felder, along with two others competed for the office. In the ensuing bitterly-fought election, Slaton won a plurality of both the popular vote and the more important county-unit votes,³ but because there were no runoffs in the primaries at that time, the election was decided by the convention of the state Democratic party. At the tumultuous party convention, held in Macon in early September, Hardwick was nominated on the 14th ballot.⁴ Given the weakness of the Republican party in Georgia at that time, nomination by the Democratic party was tantamount to being elected. After being defeated, Slaton vowed that he would again run for the United States senate.

On April 26, 1913, only a few months after Slaton's inauguration as governor, the brutal murder of Mary Phagan occurred on the premises of the National Pencil Factory in downtown Atlanta.⁵ After several weeks of investigation Leo Frank, a Jew and the manager of the pencil factory, was indicted for the crime. In his trial for murder, which lasted almost a month and took place that summer, Frank was found guilty and sentenced to hang. Appeals to both the Georgia and United States

3. The election results were as follows, with the popular vote given first (and the county unit vote in parentheses): Slaton—61,857 (146); Thomas W. Hardwick—55,469 (124); Thomas S. Felder—30,820 (84); G. R. Hutchins—21,654 (18); John R. Cooper—9,675 (none). Walter G. Cooper, *The Story of Georgia* 4 vols. (New York, 1938), 3:440.

4. Lucian Lamar Knight, *A Standard History of Georgia and Georgians* 6 vols. (Chicago, 1917), 2:1155-7. For a first-hand account of this often riotous convention, see Allen Lumpkin Henson, *Confessions of a Criminal Lawyer* (New York, 1959), 49-58.

5. For the most complete and scholarly treatment of the murder of Mary Phagan, see Leonard Dinnerstein, *The Leo Frank Case* (Athens, 1987) to which should be added the same author's "The Fate of Leo Frank," *American Heritage* XLVII (October 1996): 98-109.

supreme courts were made but to no avail and the final date of Frank's execution was set for June 22, 1915. On June 21st Slaton commuted Frank's death sentence. The commutation was so unpopular that civil disturbances broke out culminating in a march by an angry mob on Governor Slaton's residence in Buckhead, which resulted in the arrest of some two dozen men. Immediately after the inauguration of Governor Slaton's successor on June 26, 1915, the Slatons left for an extended vacation; while they were still away from Atlanta, Frank was abducted from the state prison in Milledgeville and lynched by a mob near Marietta on the morning of August 17, 1915.⁶

After the commotion surrounding the lynching of Frank abated, the Slatons returned to Atlanta where John Slaton resumed his law practice, which continued until a week before his death in early 1955. In 1930 Slaton ran for the United States senate against the incumbent William J. Harris and was badly beaten, garnering only about a fourth of the vote in a two-man race.⁷ His fellow attorneys treated him more generously than did the Georgia voters by electing him president of the Georgia Bar Association in 1928.

Slaton wrote nothing and spoke rarely of the Frank case until very near the end of his life.⁸ The impetus to write this memorandum may well have been a conversation he had with his old friend and former secretary Samuel A. Boorstin on October 12, 1953 in Atlanta, for Boorstin's notes of this interview with Slaton duplicate much that is in

6. No one was ever prosecuted for the lynching of Frank, and the identity of the lynchers remained a closely-guarded secret, first by the lynchers themselves and then by their descendants. Only recently, after 85 years, has the identity of at least some of the lynchers been made public, and, as has long been rumored, they were among the political, business, and social leaders of Cobb County. Included among the dozen who have been identified are mayors of Marietta, state legislators (including a former speaker of the Georgia House of Representatives), a former sheriff of Cobb County, an ex-governor of the state of Georgia, members of the local judiciary, including the local Solicitor-General, the official charged with prosecuting the lynchers, as well as an assortment of local businessmen. All of this can be found on my website www.leofranklynchers.com.

7. The actual totals were as follows: William J. Harris—162,169 and 142 county unit votes and Slaton—46,095 and 2 county unit votes; *Georgia's Official Register* (1931), 636.

8. Recently a private letter (dated March 3, 1916) from Slaton to Mr. S. M. Wellborn, a cousin living in Columbus, Georgia, has been made public. In this letter Slaton discusses the reasons for his commutation, many of which appear in this document. The letter was published in the *Jewish Georgian*, September-October 2000, 25. Note that the "Judge Rowe" of the published letter is no doubt Judge Roan.

Slaton's statement.⁹ The actual date of the writing of this document would have necessarily occurred between February 11, 1954 (a date mentioned on the statement as being in the past) and January 11, 1955 (the date of Slaton's death). After his death this document became part of the Slaton papers that were deposited in the Georgia state archives and were opened to researchers in 1992.¹⁰

The actual document consists of seven typed, legal-sized pages, with a covering page of the sort used with legal documents on which is typed "The Frank Case" and on which is printed "John M. Slaton/1009 Atlanta Federal Saving Bldg./ Atlanta, Georgia." The document is essentially free of mistakes (including typos), as well as strikeovers and crossing-off's, which is to say that it is a surprisingly clean copy for a private document.

Except for the discussion of the notes found near the body of Mary Phagan, Slaton discussed information that either could not have been presented as evidence at the trial of Frank or came to light after the trial was over. Included here are presiding Judge Roan's reservations about Frank's guilt, as well as Roan's regrets on how the trial was conducted. In other instances the information that Slaton discussed was of a confidential nature; here would be included the suggestion of Colonel Brewster, law partner of prosecutor Hugh Dorsey, that Dorsey himself thought that Frank was innocent.

Slaton's statement clearly demonstrates how the guilt or innocence of Frank was transformed from what should have been a purely judicial matter into a political one. There can be no doubt, as Slaton makes clear, that the political careers of both Tom Watson, publisher of a newspaper that literally screamed for Frank's conviction and Hugh Dorsey the prosecuting attorney benefited politically from their vilification of Frank and from his wrongful conviction of the murder of Mary Phagan. In the case of the former, a political career that had been in abeyance for over two decades was revived and led to the United States Senate; in the case of the latter, an otherwise obscure prosecutor used his association with the Frank case to be elected governor for two terms. Even Newport

9. A copy of the memorandum that Boorstin wrote after his meeting with Slaton can be found in the American Jewish Archives. Boorstin, father of the historian and former Librarian of Congress, Daniel Boorstin, grew up and was educated in Georgia; however, he and his family moved to Tulsa, Oklahoma, in 1917 because the older Boorstin believed that the antisemitism aroused by the Frank case diminished the chances for advancement of a Jewish lawyer practicing in Georgia. For a penetrating, though lovely, portrait of the elder Boorstin by his son, see Daniel J. Boorstin, "Lawyer Sam Boorstin," *Wilson Quarterly* XIV (Winter, 1990), 118-23.

10. The document can be found in the Slaton Collection, loc.2093-09, box 35, Georgia Department of Archives and History.

Lanford, the chief of detectives, also capitalized on his work leading to Frank's conviction to advance his career; Slaton quotes Lanford as saying that "he didn't care anything about convicting a negro . . . but it would be a feather in his cap if he could convict a white man and a Jew."¹¹

One matter that Slaton did not address in this document was his association with Frank's attorney Luther Z. Rosser.¹² After Slaton had been elected governor in November 1912, the law firm of Slaton and Phillips was merged with that of Rosser and Brandon resulting in the firm of Rosser, Slaton, and Phillips. The merger of the two firms was decided two weeks before the murder of Mary Phagan, though the merger did not go into effect until July 1913. While governor Slaton was a member of the firm in name only, as he performed no work for the firm and received no compensation.¹³

No public notice was made of this arrangement until the issue was raised by Tom Watson¹⁴ in his newspaper *The Jeffersonian*, in the months leading up to the commutation. By that time Rosser was no longer part of Frank's defense, having bowed out after the appeal to the Georgia Supreme Court had failed in early 1914. Given all that is known about him, both by his contemporaries and by historians, it is highly doubtful that Slaton would allow his relationship with Rosser to color his judgment about commuting Frank's death sentence, though doubts remain in the minds of some to this day.¹⁵

11. Lanford and police detective John Black, in collaboration with Harry Scott of the Pinkerton National Detective Agency, worked to see that Frank would be found guilty, even though Pinkerton had been hired by Frank's employer the National Pencil Company. Stephen J. Goldfarb, "Framed: A newly discovered document casts a disturbing light on exactly how Frank's prosecutor won his case," *American Heritage* XLVII (October 1996), 108-13.

12. Luther Zeigler Rosser (1857-1923), born in Gordon county, attended Emory College at Oxford from which he graduated in 1878. He first studied with and then in 1880, after being admitted to the bar, practiced with L. S. Roan of Fairburn, who more than three decades later would preside over the trial of Leo Frank (see footnote 36). Sometime in the 1880s, Rosser moved to Atlanta and established a law practice that would earn him both wealth and prestige. The bulk of this practice was civil law; he defended Frank only because he represented the National Pencil Factory. John M. Slaton was one of his pallbearers. *Atlanta Journal*, March 13, 1923, 1, 5; *Atlanta Constitution*, March 14, 1923, 1, 6. In one of those all-too-common ironies, Rosser's son Luther Z. Rosser, Jr., married Sarah Dorsey, the sister of Hugh M. Dorsey the lead prosecutor in the Frank case; the wedding took place in November 1911, less than two years before the trial of Frank in the summer of 1913.

13. Dinnerstein, *Leo Frank Case*, 123-24.

14. See footnote 22.

15. An even more scurrilous claim was recently made by Tom Watson Brown, great-grandson of the Tom Watson; he was quoted as saying that the "Jews bribed the sitting governor [Slaton] to commute Frank's death sentence." Bill Hendrick, "'Lynching' reopens old scars for some Mariettans," *Atlanta Constitution* (August 21, 2000), C-2.

Most of what is in this document was subsequently made public over the years. What is important is that Slaton had before him, in addition to that which he outlined in his published statement on Frank's commutation, substantial evidence of Frank's innocence. That he commuted the death sentence of an innocent man cannot now be doubted, nor can the heavy political price he paid for his courageous act.¹⁶

The Frank Case

I have been asked by so many persons to write out [the] facts influencing me to act in the above case, which were not known to the general public, but which influenced me as Governor to grant a commutation of the sentence to death of Leo Frank. I did not go further than reduce the sentence from death to imprisonment for life. On [Confederate] Memorial Day, the 26th day of April 1913, a girl, Mary Phagan, was murdered at the pencil factory in Atlanta, Georgia.

Leo Frank, an official of the pencil factory located on South Broad Street¹⁷, Atlanta, Georgia, was arrested and charged with the murder. This charge was made some days after the committing of the crime.¹⁸

16. Although it does not diminish from the courage he exhibited in commuting Frank's death sentence, it should be noted that Slaton had close connections with the leadership of the Atlanta Jewish community; this is explored in Mark K. Bauman, "Factionalism and Ethnic Politics in Atlanta: The German Jews from the Civil War through the Progressive Era," *Georgia Historical Quarterly* LXXXII (Fall 1998), 533-58.

17. The National Pencil Factory was located at 39 Forsyth Street, SW (or South Forsyth Street) near its intersection with Hunter Street (now Martin Luther King, Jr., Drive). Sometime in the 1930s the building was torn down to make way for the garden store of Rich's department store and is now the site of the Sam Nunn federal office building. The National Pencil Company was sold in 1919 to Atlanta businessman Monie Ferst, who renamed the company Atlantic Pen. Later it became Scripto and was for a long time was the leading manufacturer of mechanical pens and pencils in the world. After a series of "complex changes" in the 1970s, Scripto was purchased by the Japanese company Tokai-Seiki and the subsidiary is now known as Scripto-Takai. Hartwell Hooper and Susan Hooper, "The Scripto Strike: Martin Luther King's 'Valley of Problems': Atlanta, 1964-1965," *Atlanta History* XLIV (Fall 1999), 5, 31.

18. It is not clear just when Frank became the prime suspect; however, he was indicted on May 24, 1913, exactly four weeks after the murder of Mary Phagan; Dinnerstein, *Leo Frank Case*, 20.

One Jim Conley,¹⁹ a negro employed at the factory, was arrested and charged with the crime.

Two pages of a letter were attached to the body of the dead girl. Conley was arrested and charged with the offense.

He first stated that he could not write and there was produced a signature at a pawn-shop. He then admitted he could write his name, but that was all.

A further reproduction of his handwriting was produced and he admitted that he did write the first page of the letter, but not the second page.²⁰

Upon being shown that the letter was continuous and the second page must have been written by the one who wrote the first page, he admitted that he wrote the second page, but said he wrote it at a different time from that at which he wrote the first page. Leo Frank was a Jewish gentleman who had graduated at a Northern College, Cornell at Ithaca, New York,²¹ and when the case came on for trial numerous class-mates of Frank testified as to his good character.

19. Jim Conley (c.1886-1962[?]) is now thought by most (though by no means all) of the students of the case to be the murderer of Mary Phagan. An employee of the pencil factory, Conley admitted to being at the factory on the day of the murder. During May 1913, Conley gave four contradictory statements to detectives and a fifth as a prosecution witness against Frank. On the stand Conley testified that he had helped Frank dispose of the body of Mary Phagan after Frank had murdered her outside his office on the second floor of the factory. For being an accessory after the fact in the murder of Mary Phagan, Conley received a year on the chain gang. Dinnerstein, *Leo Frank Case*, 114. In 1982 Alonzo Mann, who had been an office boy in the pencil factory at the time of the murder, came forward and in a video-taped deposition swore that on April 26, 1913, he saw Conley carrying the body of Mary Phagan on the first floor of the factory toward the steps that lead to the basement of the factory. This contradicted the testimony of Conley in all his statements, as well as that he gave as a witness against Frank, and, if believed, certainly makes Conley the murderer of Mary Phagan. The salient parts of Mann's deposition can be found in Mary Phagan [Kean], *The Murder of Little Mary Phagan* (Far Hills, NJ, 1987), 247-57.

20. The whole question of the notes left near the body of Mary Phagan is too complicated to go into here. Suffice it to say, Conley in each of his successive statements had to admit to more of his authorship of these incriminating notes, though he was able to convince the jury that Frank had dictated the content of the notes to him. For a discussion of how Conley came to change his story about the notes under the grilling (some would say coaching) of the detectives John Black, Harry Scott and Newport Lanford, see Goldfarb, "Framed," 112-3. See also Dinnerstein, *Leo Frank*, 20-2, 87-90, as well as Slaton's own understanding of the importance of the notes in his statement issued at the time he issued the commutation of Frank's death sentence, see footnote 1.

21. Frank received his bachelor of science degree in mechanical engineering from Cornell University in 1906; Dinnerstein, *Leo Frank Case*, 5.

There was immense excitement on account of the trial of the case. There was immense prejudice created as to racial differences and politics played a very large part in the formation of public opinion. Mr. Thomas E. Watson²² published a paper which had circulation over the entire State and was known as the "Jeffersonian." He strongly urged in his paper that Frank was guilty. Shortly before this at Augusta, Georgia, a man walked into a textile mill and shot down a woman and having shot her down fired three more bullets into her body. A revenge for her refusal to marry him. He was tried and sentenced to death. Watson was offered \$2,000.00 to have his sentence commuted to life imprisonment. Governor Hoke Smith declined to grant the commutation, and the Atlanta Journal supported him in his refusal.²³

Mr. Watson was elected United States Senator²⁴ largely upon my action in the Frank case. I am informed by those who are associated with him that he never mentioned my name, nor the Frank case.

The Atlanta Journal advocated the commutation of Frank and this caused Watson to turn his attacks on the Governor and on The Atlanta Journal, and he seized the Frank case as the means by which he would direct vengeance because of their preventing the commutation of the man who killed the woman at Augusta.

22. Thomas Edward Watson (1856-1922) led the populist revolt in Georgia in the 1890s. He was elected to Congress from the 10th congressional district in 1890 and then lost close (probably fraudulent) elections for the same seat in both 1892 and 1894. In 1896 Watson was the vice-presidential nominee of the Populist Party. He returned to politics to support Hoke Smith in 1906 in his successful race for governor and from that time until his death he was a power to be reckoned with in Georgia politics. He was elected to the United States Senate in 1920. Barton C. Shaw, "Thomas Edward Watson," *Dictionary of Georgia Biography*, 2:1040-3. Watson is the object of one of the classic works of Southern history/biography; C. Vann Woodward, *Tom Watson: Agrarian Rebel* originally published 1938 (Savannah, 1973).

23. The man in question was Arthur Price Glover who was found guilty of murdering a woman mill worker in Augusta. Watson, who felt a personal loyalty to Glover for services rendered in the often-violent congressional elections of the 1890s, asked then Governor Hoke Smith to commute Glover's death sentence to life imprisonment going so far as to plead for Glover's life in an interview with Smith. When the commutation was not forthcoming, Watson turned against Smith, whom he supported for governor in 1906, and supported Joseph Mackey Brown in his successful campaign for governor in 1908. Dewey W. Grantham, Jr., *Hoke Smith and the Politics of the New South* (Baton Rouge, 1967), 185-7 and Woodward, *Tom Watson*, 334-6.

24. The election results were as follows, with the popular vote given first (and the county-unit vote in parentheses): Watson—111,728 (247); Hugh M. Dorsey, then finishing his second term as governor—72,885 (103); and incumbent Hoke Smith 61,729 (34). Grantham, *Hoke Smith and the Politics of the New South*, 356.

Mr. Watson sent Dr. Jaragan²⁵ to see me as Governor with the message that if I would let the Jew hang, he would elect me as United States Senator from Georgia, and make me master in National Politics in Georgia for “twenty years to come”. I believe he published in his paper that he made this statement and had sent Dr. Jarnigan as a messenger to carry this promise.

As to the committing of the crime itself, immense excitement was created in Atlanta and in Cobb County, from which Miss Mary Phagan came. The Court House was crowded and reporters from the Press took their seats at nearby windows so that they would have means of escape if the Jury found Frank not guilty.²⁶ After the conviction of Frank, the following events with which the Public was not informed were as follows:

Mr. John A. Boykin²⁷ wrote a letter in regard to the commutation and was elected Solicitor-General for many years succeeding the trial. He stated in the letter that the Attorney for Jim Conley said to him that he

25. William Calvin (or Carrollton) Jarnagin (1850-1926), born in Macon, Mississippi, trained in medicine at the University of Virginia and Bellevue Hospital Medical College in New York City, moved to Atlanta in 1882, where he practiced medicine until his death. *Memoirs of Georgia: containing Historical Accounts of the State's Civil, Military, Industrial and Professional Interests, and Personal Sketches of Many of its People* 2 vols. (Atlanta, 1895), 1:835-6 and Allen D. Candler and Clement A. Evans, eds., *Georgia: Comprising Sketches of the Counties, Towns, Events, Institutions, and Persons, Arranged in Cyclopedic Form* 3 vols. (Atlanta, 1906), 2:361-2.

26. So volatile was the situation by the end of the trial that presiding judge Leonard S. Roan asked that Frank and the attorneys representing him not be in the court when the verdict was read, as he feared for their lives in the case of either a hung jury or a verdict of not guilty. Dinnerstein, *Leo Frank Case*, 55.

27. John Abney Boykin (1877-1948), born in Edgefield, South Carolina, came to Atlanta in 1896 and started his law practice in 1908. He served as solicitor-general of the Atlanta judicial circuit from 1917 to 1941. Dudley Glass, ed., *Men of Atlanta* (Atlanta, 1924), no pagination. In the Slaton papers in the Georgia state archives there are two letters from Boykin to Slaton. In the first (dated May 26, 1915), Boykin wrote in part: “I write to beg you to commute to life imprisonment the sentence of Leo M. Frank. No other case has ever caused me as much distress as this one. I am, and always, have been, afraid, that a most horrible mistake was made in his conviction. I believe that too many honest doubts as to his guilt exist to permit his execution.” Boykin then goes on to say that Judge Roan “on more than one occasion expressed . . . doubts to me” about Frank’s guilt. In addition, Boykin was of the opinion that Roan was “intimidated by threatening letters which he received during the trial and pending the motion for a new trial.” The second letter (dated June 16, 1915, just days before Slaton issued the commutation) reads in toto: “Dear Governor: Will you kindly permit me to have a private talk with you before you make up your decision in the Frank Case. There are things that I know that you should know—they are professional secrets—but should I keep them when life depends upon your action in this matter? Sincerely yours, John A. Boykin.” Unless notes of this conversation come to light, it is unlikely that what was said will ever be known. These letters can be found in the Slaton Collection, loc. 2093-23, box 49, Georgia Department of Archives and History.

knew that Jim Conley committed the offense, but could not disclose it because he was his Attorney and he only hoped to save his [Frank's] life. The fight was made on Mr. Boykin as Solicitor-General by E. T. Williams, and Mr. Boykin carried every precinct in the County with the exception of one.

Mr. Will Smith²⁸ became so angry with the City of Atlanta at its attitude towards Frank that he moved to New York. He told Mr. Tuggle,²⁹ a policeman, who controlled the traffic at the corner of Broad and Marietta Streets, what he had induced Mr. Boykin to say to me.

The daughter of Mr. Will Smith wrote an article entitled "Why Frank Could Not Have Been Guilty",³⁰ which article was sent me by her father, and which I have.

One of the three Prison Board members, Mr. Patterson,³¹ wrote me that he knew as far as human knowledge could go, that Frank was innocent.

Col. P. H. Brewster,³² one of the leaders of the Bar of Georgia, wrote me entreating that I should grant a commutation, since he was acquainted with all the facts being a partner of Mr. Hugh M. Dorsey,³³

28. William M. Smith, Conley's lawyer, went public with his belief that his client was guilty, and that Frank was innocent, of the murder of Mary Phagan. Smith justified this breach of attorney ethics in that Conley had already been tried for the murder of Mary Phagan (and found guilty of being an accessory after the fact) and that he could not be retried. Dinnerstein, *Leo Frank Case*, 114-5.

29. James M. Tuggle is listed being a policeman and living at 21 Meldrum Street in the *Atlanta City Directory* (1916), 1573.

30. I am unable to trace the document or the author.

31. Thomas Edwin Patterson (1868-1927), admitted to the bar in 1892, practiced law in Griffin, where he was at different times prosecutor and judge before he was appointed to the Georgia State Prison Commission in 1911. He was the only one of the three prison commissioners to vote in favor of commuting Frank's death sentence. Knight, *Standard History of Georgia and Georgians*, 4:2218.

32. Patrick Henry Brewster (1846-1924), a native of Coweta County, served in the Confederate army from 1863 until the end of hostilities. He attended the University of Virginia and graduated in 1870 (or 1871) with a bachelor degree in laws and returned to Newnan, where he practiced law; c.1890, he removed to Atlanta where he became part of the law firm of Dorsey, Brewster & Howell. *Memoirs of Georgia*, 1:721-2; Candler and Evans, eds., *Georgia*, 1:223-5; Knight, *Standard History of Georgia and Georgians*, 5:2557-8.

33. Hugh Manson Dorsey (1871-1948) was born in Fayetteville; his family moved to Atlanta when he was still a child. Educated at the University of Georgia (B.A., 1893), and in law at the University of Virginia, he joined and soon became a partner in his father's firm of Dorsey, Brewster, Howell, and Heyman. In 1910 he was appointed solicitor-general of the Atlanta judicial circuit, which made him lead prosecutor in the Frank case. With the support of Tom Watson, who characterized him as "the fearless, incorruptible Solicitor General who won the great fight for **LAW AND ORDER**, and the **PROTECTION OF WOMANHOOD** in the Leo Frank Case," Dorsey was elected governor in 1916 and re-elected in 1918. In 1920 Watson beat Dorsey in the election for United States Senate (see footnote 24). Dorsey served as judge of the civil division of the Atlanta municipal court from 1926-35 and of the Fulton superior court from 1935 until shortly before his death in 1948. Cook, *Governors of Georgia*, 208-10.

Solicitor-General at the time, and from the facts as he learned them at the office, Frank was innocent and Col. Brewster upon being asked by me what I should do with his letter answered, "Publish it, it is the truth."³⁴ One other Board of the Prison Commissioners said that he would have nothing to do with the matter since that was the Governor's responsibility, and he did not propose to interfere to his own personal detriment.

Dr. Bates Block³⁵ asked me if I knew Dr. Wainwright of New York, a leading Cancer Specialist, under whose care Judge Roan³⁶ who tried the case was subject. I told him no, and Dr. Block said I noticed in talking to him that you would be interested in seeing Dr. Wainwright, which I did the next time I went to New York.

Dr. Wainwright said to me when I took lunch with him in New York, that Judge Roan said I did what he should have done and he was worried more about the Frank case than anything else.

34. Brewster did publish his letter to Slaton but only after Slaton had commuted Frank's sentence, though before Frank was lynched; the letter appeared in the *Southern Ruralist* on August 1, 1915. In his letter Brewster, who had practiced law for over 40 years, wrote that "No trial with which I have been acquainted in my professional life took place where the atmosphere surrounding it was so fearfully charged with these elements, and their influence was so strong as the trial of Leo M. Frank"; Brewster then continued: "The public mind was aflame with prejudice, passion, hatred, antagonism, vindictiveness, determined upon vengeance." Furthermore, Brewster felt that Frank's conviction was solely based on the testimony of Jim Conley and "when the character of Conley and the methods employed to secure his statements are considered, it does seem to me his testimony is of no value." On the methods of the prosecution and the testimony of Jim Conley, see footnote 11.

35. Edward Bates Block (1874-1932) was an Atlanta native, who received his college and medical education at the University of Virginia. After further study at Johns Hopkins and in Europe, Block returned to Atlanta and became a faculty member of the Atlanta College of Physicians and Surgeons, which later merged with what is now Emory University medical school. Personality File, "Block, Edward Bates." Atlanta History Center. Library/Archives.

36. Leonard Strickland Roan (1849-1915), born in Henry County, read law rather than attending law school, and was admitted to the bar in 1870. He practiced law in Fairburn and served as prosecutor for Campbell County until 1900 when he was appointed judge of the Stone Mountain circuit, which included Fulton County; it was in that capacity that Roan presided over the trial of Leo Frank. In October 1913, he was appointed by Governor Slaton to the Georgia Court of Appeals but was able to serve but a few months due to failing health. John D. Humphries, "Judges of the Superior Courts," *Atlanta Historical Bulletin* IV (April 1939), #17, 130-1.

Judge Roan had charged the Jury incorrectly. Judge Ben Hill,³⁷ who had to pass on extra-ordinary motions for new trials, told me the whole evidence against Leo Frank was circumstantial. The law is that where the evidence is circumstantial in a murder case, it is the prerogative of the Judge to put the penalty at life imprisonment, instead of death, but Judge Roan charged the Jury that he was compelled to impose the death penalty unless the Jury recommended mercy.

Mr. Frank Myers,³⁸ Deputy Clerk of the Court, told me that Judge Roan told him in the gentleman's restroom, that if Charlie Hill³⁹ was [sic] Solicitor-General, he would ask the Jury to find a verdict of not guilty. Mr. Tuggle who was a prison-keeper at the Station House told me if he had been left for a few days longer in charge of the prisoners he was convinced from the way Jim Conley talked, that Conley would have admitted committing the offense, but the Chief of Detectives⁴⁰ said that he didn't care anything about convicting a negro for the murder. That, of course, was the usual course of events, but it would be a feather in his cap if he could convict a white man and a Jew.

Not only that when the case went to the Supreme Court of Georgia, Chief Justice W. H. Fish,⁴¹ and Judge Marcus W. Beck,⁴² Associate Chief Justice, both dissented and said Frank did not have a fair trial and wrote powerful dissents. Not only did the case go to the Supreme Court of the

37. Benjamin Harvey Hill (1849-1922), born in LaGrange, attended the University of Georgia for both an undergraduate degree, as well as a law degree and practiced law in Atlanta with his father and later with his brother Charles (see footnote 39). He held numerous positions of both prosecutor and judge, including the Georgia court of appeals from 1906-13 and 1920-22. *Ibid.*, 127-8.

38. Frank M. Myers is listed as being clerk of the superior court of Fulton county and living at 117 Juniper in the *Atlanta City Directory* (1916), 1270.

39. Charles Dougherty Hill (1852-1910), born in Troup county, graduated from the University of Georgia law school in 1871, was admitted to the bar in Twiggs county, where he managed the family farm until the death of his father in 1882. He then joined his brother Benjamin (see footnote 37) in Atlanta where he succeeded him as Solicitor-General in 1885, a position he held until his death in 1910. *Memoirs of Georgia*, 1:813-4; Candler and Evans, eds., *Georgia*, 2:267-8. If he had lived another three years, Hill would have been responsible for the prosecution of the murderer of Mary Phagan. Judge Roan's opinion that if Hill had lived that Frank would not have been convicted is echoed, if obliquely, by Franklin Garrett in his *Atlanta and Environs: A Chronicle of Its People and Events* 2 vols. (New York: Lewis Historical Publishing, 1954), 2:571.

40. See footnote 11.

41. William Hansell Fish (1848-1927) served on the Georgia supreme court from 1897 to 1922, first as an associate justice (1897-1905) and then as chief justice (1905-1922).

42. Marcus Wayland Beck (1860-1943) was associate justice of the Georgia supreme court from 1905 to 1937.

United States, but Charles E. Hughes⁴³ who afterwards became Chief Justice, and Judge Oliver Wendel[l] Holmes⁴⁴ dissented and would have discharged Frank on habeas corpus petition.⁴⁵ A few years later when five negroes from Arkansas were sentenced to be hanged, the Supreme Court of the United States sustained the Writ of Certiorari and freed the negroes,⁴⁶ Justice McReynolds⁴⁷ declared in his dissenting opinion in the case of Moore against Dempsey, 261 U.S.-Page 93, as follows:

In Frank vs. Mangum 237 U.S.-309, 325, 326, 327, 329, 335, after great consideration a majority of this Court approved the doctrine which should be applied here. The doctrine is right and wholesome. I cannot agree now to put it aside and substitute the views expressed by the majority of the Court in that cause.

Justice McReynolds entered into an extensive quotation of the Frank case with Justice Sutherland⁴⁸ on the reversal by the Supreme Court of the Frank case.

The case of the negroes was one in which it was held by the Supreme Court of the United States that it was the trial by mob law.

If the Supreme Court of the United States had been constituted at the time it decided the Frank case as it was when it decided the five cases from Arkansas, the decision in the Frank case would have been reversed. All that I did was to lessen the penalty from death to life imprisonment for life. It would have been given a cooling down in which the proper authorities would have investigated the matter, and would have decided whether Frank was really guilty or not.

We have in Georgia a case more like the Frank case in which Governor W. Y. Atkinson⁴⁹ issued an unconditional pardon under these circumstances. A negro was charged with the rape of a white woman at the corner of Trinity Avenue and Central Avenue. When the case was tried, he was convicted. The case then went to the Supreme Court [of Georgia] and the Supreme Court said in the decision of Judge Lumpkin,

43. Charles Evans Hughes (1862-1948) was associate justice (1910-16) and chief justice (1930-41) of the United States Supreme Court. In 1916 Hughes was the Republican presidential nominee against Woodrow Wilson.

44. Oliver Wendell Holmes (1841-1932) was associate justice of the United States Supreme Court from 1902-1932.

45. Frank v. Mangum 237 U.S. 309 (1915).

46. Moore v. Dempsey 261 U.S. 86 (1923).

47. James Clark McReynolds (1862-1946) served as associate justice of the United States Supreme Court from 1914 to 1941.

48. George Sutherland (1862-1942) served as associate justice of the United States Supreme Court from 1922 to 1938. He and Justice McReynolds were two of the "Four Horsemen" who opposed the New Deal legislation during the 1930s.

49. William Yates Atkinson (1854-1899) was governor of Georgia from 1894 to 1898.

97th Ga., pp. 180, “After referring to the discrepancies in the evidence that they were almost tempted to grant a new trial on the ground of lack of evidence, but since two juries had found the negro guilty, he would send him to his doom.” Upon this decision being called to the attention of Governor W. Y. Atkinson, Governor Atkinson immediately upon seeing the opinion of the Supreme Court granted an unconditional pardon.

The Bar of the State [of Georgia] became interested in this case and action of the Governor. The Georgia Bar Association thereupon elected me President of the State Bar Association, and the Supreme Court appointed me on November 11, 1925 Chairman of the Georgia Board of Law Examiners, which position I occupied until February 11, 1954, being 28 years [in office] when I resigned.

Judge H. M. Dorsey, who was Solicitor-General [in the Frank case], was afterwards appointed Judge. I tried many cases before him and he proved an honest and capable Judge, and I supported him.

The foregoing states generally the questions that came before me as Governor on the matter of clemency. I have stated generally the facts and they forced me to take the action I did. The Defendant being a negro, as was the case with Governor W. Y. Atkinson, or had he been a Chinaman, or a member of any other race whatever, I should have done the same thing.

Dreyfus⁵⁰ was called on the drilling grounds in France and the medals and other testimonials of honor were torn from his uniform and he was sent to Devil’s Island where he remained five years.

At the end of that time it was discovered that he was convicted on the testimony of Count Esterhazy,⁵¹ who admitted he committed perjury. Thereupon, Dreyfus was granted an unconditional pardon and was brought back on the drilling grounds and all his honors restored to him. It was solely a matter of justice. I write the above and a statement of the facts as they came to me and I was compelled to do the same thing and had the only alternative been with me to grant an unconditional, or an absolute pardon, I should have granted an absolute pardon. The effect of this action upon my future career was a matter of no consequence. Had I done otherwise, I should have been haunted the remainder of my life,

50. Alfred Dreyfus (1859-1935) was a Jewish officer in the French army who was falsely charged with passing military secrets to the Germans. He was convicted and sent to Devils Island in French Guiana but was finally exonerated but only after many years and after the case had deeply divided French society.

51. Marie Charles Ferdinand Walsin Esterhazy (1847-1923), though acquitted of selling French military secrets to Germany, is now thought to be the source of the evidence that convicted Dreyfus. After fleeing France, Esterhazy confessed his guilt of espionage.

which would have been very short, with the conviction that I committed a murder. The above facts had they been known to the people of Georgia would have led them to a different opinion. Numerous other facts relating to what has been written came to my attention, but it is unnecessary to narrate them. I was aware that a large proportion of the people of the State were against my decision, but I had the firm belief that when they knew what the facts were they would approve [of] what I did.

The last I heard of Jim Conley, there were several burglaries committed in West End, in the City of Atlanta, and the Police advised the owner of the store to shoot whomsoever should break into his store. The owner of the store followed the advice and he did shoot Jim Conley who was prosecuted for burglary in the Fulton Superior Court of Fulton County. He was convicted before Judge Humphrey⁵² and when asked what he had to say, he simply laughed, and he was sent up for twenty years for the offense of burglary. After he had served fifteen years he was released by the Board of Pardon Commission, because of his good conduct. This was the last I heard from him, but I understand he has since died.⁵³

I have stated in the foregoing the main facts dealing with the Frank case. I did what my sense of justice and my conscience demanded that I do. The effect of my action upon my political future was not a matter to which I paid any attention, and I did my duty under the facts as presented to me, and that was all that was required of me. I practiced law in Atlanta with a clear conscience, and I would not have changed my action. The case was finished as to me, when I signed the order granting the commutation.

52. This is probably John David Humphries (1873-1942), who served as a judge of the superior court in the Atlanta circuit from 1919 until his death. *Atlanta Constitution*, October 23, 1942, 1.

53. The date of Conley's death remains a matter of conjecture. Whereas Slaton has him dead at the time he wrote this document, sometime in 1954/1955, another source dates Conley's death in 1962; Robert Seitz Frey and Nancy Thompson-Frey, *The Silent and the Damned: The Murder of Mary Phagan and the Lynching of Leo Frank* (Lanham, MD, 1988), 132. No Georgia death certificate can be located for Conley for the latter date and the Freys fail to cite their source.