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The Scottsboro Case

Opinion of Judge James E. Horton

of the Alabama Circuit Court granting a motion for a new trial in the Scottsboro case on the ground that the conviction was against the weight of the evidence.

Reprinted by

THE SCOTTSBORO DEFENSE COMMITTEE

112 East 19th Street, Room 506,
New York City

Composed of representatives of

National Association for the Advancement of Colored People

Methodist Federation for Social Service

American Civil Liberties Union

League for Industrial Democracy

International Labor Defense

Church League for Industrial Democracy (Episcopal)

January, 1936 *Price 5c*

THE SCOTTSBORO DEFENSE COMMITTEE reprints this opinion of Judge James E. Horton of Alabama on the issues of the case because it is the most telling indictment of the prosecution we know.

We reprint it at a time when the Scottsboro boys are again on trial following two reversals by the U. S. Supreme Court of previous convictions and following the granting of a new trial in one case by Judge Horton.

In our judgment no one who reads Judge Horton's temperate and fair statement of the evidence can fail to conclude that the Scottsboro boys are wholly innocent of the charge of rape.

The undersigned defense committee, composed of the organizations which have been active in the defense, as well as others, solicits the support of all citizens interested to aid these boys get fair trials and ultimate vindication. Use the coupon on the back cover.

SCOTTSBORO DEFENSE COMMITTEE.

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Calendar of the Scottsboro Case

1931

March 24

Two white girls, Victoria Price and Ruby Bates from Huntsville, Ala., hobo their way to Chattanooga and stay there overnight.

March 25

They return on a freight train leaving Chattanooga for Alabama. On the train are a number of Negro and white boys who engage in a fight, the white boys being thrown off the train. Alleged rape of the two girls by the Negro boys follows. When the train pulls into Paint Rock, Ala., at 1:30 P. M. nine Negro boys, aged 13 to 20, are arrested and locked up at Scottsboro, the county seat. Victoria Price and Ruby Bates are examined by doctors that afternoon.

The attitude of the community becomes so threatening that the Governor calls out the militia late that night. Next day the Negro boys are taken to Gadsden, Ala. under military protection.

March 30

The grand jury is called into session at Scottsboro and next day indicts the nine boys for rape.

April 6 to 9

All the boys are tried at Scottsboro in groups or singly, and all are convicted except Roy Wright, in whose case the jury disagreed. All are sentenced to death. The boys were represented by a white attorney from Chattanooga, one Stephen Roddy, retained by a local ministers' association, and local lawyers appointed by the court.

April and May

Attorneys for the International Labor Defense and for the National Association for the Advancement of Colored People enter the case. George W. Chamlee of Chattanooga, former county Solicitor General, is retained by some of the defendants.

June 22

Motion for a new trial argued by Joseph R. Brodsky and denied.

1932

January 21

An appeal to the Alabama Supreme Court from all the convictions is argued by George W. Chamlee, Joseph R. Brodsky and Irving Schwab, retained by the International Labor Defense.

March 24

The State Supreme Court affirms the conviction of seven defendants but reverses the conviction of Eugene Williams on the ground that he was a minor and as such could not be tried in the Circuit Court until after a hearing in the juvenile court. The court denies a re-hearing on April 9.

May

Petition for leave to appeal filed in the U. S. Supreme Court and permission granted by the Supreme Court on May 31.

October 10

The appeal to the U. S. Supreme Court is argued by Walter H. Pollak, retained by the International Labor Defense.

November 7

The U. S. Supreme Court reverses the conviction of the seven defendants on the ground that appointment of counsel appearing for them in the original trial at Scottsboro was inadequate and granted. Trials are set for Morgan County near Jackson County in which the original trials were held.

1933

March 6

A petition for a change of venue from Scottsboro is filed and granted. Trials are set for Morgan County near Jackson County in which the original trials were held.

March 27

Haywood Patterson is placed on trial at Decatur, Morgan County, before Judge James E. Horton. The trial lasts until April 9, resulting in Patterson's conviction, the jury imposing the death penalty. Patterson is defended by Samuel S. Leibowitz and Joseph R. Brodsky of New York, and George W. Chamlee of Chattanooga, Tenn., all retained by the International Labor Defense.

Ruby Bates, one of the complaining witnesses, appears at this trial and reverses her previous testimony, denying that the boys committed rape on her or Victoria Price. Her story is challenged by Victoria Price who maintains her original testimony.

April 16

Joseph R. Brodsky files with Judge Horton a motion for a new trial for Haywood Patterson on the ground that the conviction was against the weight of the evidence.

June 1

Two of the boys under 16 years of age are ordered transferred by Judge Horton to the Juvenile Court.

June 22

Judge Horton grants the motion for a new trial of Haywood Patterson and sets aside the conviction with a lengthy opinion reviewing the case and concluding that the conviction was unjustified by the evidence. (On the basis of this opinion Judge Horton was defeated for reelection the following year.)

November 20

Haywood Patterson goes on trial for the third time, before Judge W. W. Callahan at Decatur. His trial lasts until Dec. 1 when he is convicted and again the jury imposes the death penalty. Clarence Norris is put on trial immediately and is similarly convicted after a week. Both boys are represented by Samuel S. Leibowitz and Joseph R. Brodsky of New York, and George W. Chamlee of Chattanooga, Tenn.

1934

February 24

Motions for a new trial denied by Judge Callahan.

May 25

Appeals in both cases are argued in the Alabama Supreme Court by Samuel S. Leibowitz and Osmond K. Fraenkel. The Court affirms the convictions on June 28. Motions for re-

hearing are denied by the court on October 4.

November

Petitions are filed in the U. S. Supreme Court for review of both convictions.

1935

January 7

The Supreme Court of the United States grants petitions for review, and the appeals are argued on February 15 to 18 before the Supreme Court by Samuel S. Leibowitz, retained by the American Scottsboro Committee, and Walter H. Pollak retained by the International Labor Defense, assisted by Osmond K. Fraenkel.

April 1

The Supreme Court reverses the convictions of both boys on the ground that Negroes were excluded from the panels of grand and petit jurors which indicted and tried the boys.

May 1

New warrants are sworn out by Victoria Price, the only complaining witness since the withdrawal of Ruby Bates from the prosecution.

November 13

The grand jury at Scottsboro returns new indictments for rape against all the boys including the two transferred to the Juvenile Court.

December

The Scottsboro Defense Committee is formed, composed of all agencies cooperating in the defense. The American Scottsboro Committee is dissolved.

1936

January 6 to 8

The defendants, other than the two juveniles, are arraigned and plead not guilty. Petitions for removal to the U. S. District Court are rejected by Judge Callahan and the first case is set for trial January 20. Attorneys Samuel S. Leibowitz of New York, C. L. Watts of Huntsville, Ala. and George W. Chamlee of Chattanooga, Tenn. are enlisted to conduct the defense.

Judge Horton's Decision in the Scottsboro Case

NOTE: Headings, bold face emphasis and some punctuation are inserted in Judge Horton's opinion following, to make it more clearly readable.

The defendant in this case has been tried and convicted for the crime of rape with the death penalty inflicted. He is one of nine charged with a similar crime at the same time.

The case is now submitted for hearing on a motion of a new trial. As human life is at stake, not only of this defendant, but of eight others, the Court does and should approach a consideration of this motion with a feeling of deep responsibility, and shall endeavor to give it that thought and study it deserves.

Social order is based on law, and its perpetuity on its fair and impartial administration. Deliberate injustice is more fatal to the one who imposes than to the one on whom it is imposed. The victim may die quickly and his suffering cease, but the teachings of Christianity and the uniform lessons of all history illustrate without exception that its perpetrators not only pay the penalty themselves, but their children through endless generations. To those who deserve punishment who have outraged society and its laws—on such, an impartial justice inflicts the penalties for the violated laws of society, even to the tabling of life itself; but to those who are guiltless the law withholds its heavy hand.

The Court will decide this motion upon the sole consideration of what is its duty under the law. The Court must be faithful in the exercise of the powers which it believes it possesses as it must be careful to abstain from the assumption of those not within its proper sphere. It has endeavored with diligence to enlighten itself with the wisdom declared in the cases adjudged by the most pure and enlightened judges who have ornamented the Courts of its own state, as well as the distinguished jurists of this country and its Mother England. It has been unstinted in the study of the facts presented in the case at bar.

The law wisely recognizes the passions, prejudices and sympathies that such cases as these naturally arouse, but

sternly requires of its ministers freedom from such actuating impulses.

The Court will now proceed to consider this case on the law and evidence only making such observations and conclusions as may appear necessary to explain and illustrate the same.

There are a number of grounds for the motion. The Court has decided that no good purpose may be subserved in considering a number of these; without deciding whether these grounds are well based or not, the Court sees no need of their being considered. These omitted grounds are such as probably would not re-occur in another trial, and if they did they would certainly be under a different form. **The vital ground of this motion, as the Court sees it, is whether or not the verdict of the jury is contrary to the evidence. Is there sufficient credible evidence upon which to base a verdict?**

(The judge then cites the authorities for granting a new trial and for considering the evidence in doing so. They are omitted here as of interest only to lawyers, but will be supplied on request.)

The Facts of the Alleged Crime

With the law so written, let us now turn to the facts of the case. The Court will of necessity consider in detail the evidence of the chief prosecutrix, Victoria Price, to determine if her evidence is reliable, or whether it is corroborated or contradicted by the other evidence in the case. In order to convict this defendant, Victoria Price must have sworn truly to the fact of her being raped. No matter how reliable the testimony of the defendant and his witnesses, unless the State can make out a case upon the whole evidence a conviction cannot stand.

The claim of the State is that this defendant raped Victoria Price; that is the charge. The circumstances under which the crime was claimed to have been committed appear as follows:

On March 25th, 1931, the prosecutrix, Victoria Price, and Ruby Bates, her companion, boarded a freight train at Chattanooga, Tennessee, for the purpose of going to Huntsville, Alabama. On the same train were seven white boys, and twelve negroes, who it appears participated or are charged with participating in the occurrences on such train. All were tramps or "hoboing" their way upon this same freight train.

About Stevenson, Alabama, a fight occurred between the negroes and the white boys and all the white boys, except one named Gilley, got off the train, or were thrown off the train, a short time after the train left Stevenson, Alabama. The distance from Stevenson to Paint Rock is thirty-eight miles. The train was travelling between twenty-five and thirty-five miles an hour. Some of the white boys who were thrown off the train returned to Stevenson, Alabama, and the operator telegraphed to Paint Rock, a place down the line, reporting the fight, causing a posse and a large crowd to form at Paint Rock, and they surrounded the train as it pulled into Paint Rock and took therefrom nine negroes, one of whom was this defendant, the two white girls, and their white companion, Gilley. The negroes were arrested and lodged in the Scottsboro jail as well as the two women and the seven white boys. The two women were forthwith carried to the office of a physician in Scottsboro, arriving there from one hour to one and one-half hours after they claimed a rape was committed upon them, and were examined by two skilled physicians, Drs. Bridges and Lynch. It was while the train was travelling between Stevenson and Paint Rock between shortly after noon and three o'clock that the alleged rape was committed.

There have been two trials of this case; one at Scottsboro and the other the recent trial at Decatur. The trial at Scottsboro was reversed by the Supreme Court of the United States, who declared the defendants did not have the assistance of counsel. The motion in this case is upon the result of the trial at Decatur. The evidence at the trial at Decatur was vastly more extensive and differed in many

important respects from the evidence at Scottsboro.

Much of the evidence at Scottsboro was introduced at the trial at Decatur, and the Court will consider the entire evidence submitted as it may appear necessary in considering this motion. The Court shall endeavor in quoting the evidence to quote it substantially, and sometimes literally as given, only stating its substance when requisite to make its meaning clear.

As stated, the State relies on the evidence of the prosecutrix, Victoria Price, as to the fact of the crime itself, necessarily claiming that her relation is true. The defense insists that her evidence is a fabrication—fabricated for the purpose of saving herself from a prosecution for vagrancy or some other charge.

The Court will therefore first set out the substantial facts testified to by Victoria Price and test it as the law requires as to its reliability or probability, and as to whether it is contradicted by the other evidence.

The Testimony of Victoria Price

She states that on March 25, 1931 she was on a freight train travelling through Jackson County from Stevenson to Paint Rock; that Ruby Bates was with her on the train; that she had boarded the train at Chattanooga, Tennessee; that when she first boarded the train she got on an oil-tank car. That at Stevenson, she and Ruby Bates walked down the train and got on a gondola car—a car without a top. That the car was filled with chert, lacking about one and one-half or two feet of being full; that the chert was sharp, broken rock with jagged ends.

That as the train proceeded from Stevenson seven white boys got in the car with them and that they all sat down in one end of the car, next to a box car; that in about five or ten minutes twelve colored boys jumped from the box car into the gondola, jumping over their heads. That the defendant was one of them. That the colored boys had

seven knives and two pistols; that they engaged in a fight with the white boys, ejecting all from the train except one, Orville Gilley; that this white boy stayed on the gondola, remained there and was still on the car when Paint Rock was reached, and saw the whole thing that thereafter occurred on this car.

That one of the negroes picked her up by the legs and held her over the gondola, and said he was going to throw her off; that she was pulled back in the car and one of the negroes hit her on the side of the head with a pistol causing her head to bleed; that the negroes then pulled off the overalls she was wearing and tore her step-ins apart. That they then threw her down on the chert and with some of the negroes holding her legs and with a knife at her throat, six negroes raped her, one of whom was the defendant; that she lay there for almost an hour on that jagged rock, with the negroes lying on top of her, some of whom were pretty heavy; that the last one finished just five minutes before reaching Paint Rock and that her overalls had just been pulled on when the train stopped at Paint Rock with the posse surrounding it.

That she got up and climbed over the side of the gondola and as she alighted she became unconscious for a while, and that she didn't remember anything until she came to herself in a grocery store and she was then taken to Scottsboro, as the evidence shows, in an automobile and that in about an hour or an hour and one-half Dr. Bridges and Dr. Lynch made an examination of her person.

This witness further testified that she was wet on her private parts; that each negro wetted her more and more; that her private parts were bleeding; that the blood was on her clothes; that her coat had semen on it; that when Dr. Bridges and Dr. Lynch examined her they saw her coat and it was spattered over with semen; that her dresses had blood and semen on them; that she had them on when the doctors examined her; that the coat was cleaned and that

she washed the dresses in the jail before the trial. The evidence further shows without dispute that all nine negroes were taken in charge by the officers and carried to the Scottsboro jail.

The Judge's Comment on Victoria Price's Story

With seven boys present at the beginning of this trouble, with one seeing the entire affair, with some fifty or sixty persons meeting them at Paint Rock and taking the women, the white boy Gilley, and the nine negroes in charge, with two physicians examining the women within one to one and one half hours, according to the tendency of all the evidence, after the occurrence of the alleged rape, and with the acts charged committed in broad daylight, we should expect from all this cloud of witnesses or from the mute but telling physical condition of the women or their clothes some one fact in corroboration of this story.

Let us consider the rich field from which such corroboration may be gleaned.

1. Seven boys on the gondola at the beginning of the fight, and Orville Gilley, the white boy, who remained on the train, and who saw the whole performance.

2. The wound inflicted on the side of Victoria Price's head by the butt-end of a pistol from which the blood did flow.

3. The lacerated and bleeding back of the body, a part of which was stripped of clothing and lay on jagged sharp rock, which body two physicians carefully examined for injuries shortly after the occurrence.

4. Semen in the vagina and its drying and starchy appearance in the pubic hair and surrounding parts.

5. Two doctors who could testify that they saw her coat all spattered over with semen; who could testify to the blood and semen on her clothes, and to the bleeding vagina.

6. Two doctors who could testify to the wretched condition

of the women, their wild eyes, dilated pupils, fast breathing, and rapid pulse.

7. The semen which must have eventually appeared with increasing evidence on the pants of the rapists as each wallowed in its spreading ooze. The prosecutrix testified semen was being emitted by her rapists, and common sense tells us six discharges is a considerable quantity.

8. Live spermatozoa, the active principle of semen, would be expected in the vagina of the female from so recent discharges.

9. The washing before the first trial by Victoria Price of the very clothes which she claimed were stained with semen and blood.

The Court will not present the evidence which will show:

that none of the seven white boys, or Orville Gilley, who remained on the train were put on the stand, except Lester Carter;

that neither Dr. Bridges nor Dr. Lynch saw the wound inflicted on the head by the pistol, the lacerated or bleeding back which lay on jagged rocks;

that the semen they found in the vagina of Victoria Price was of small amount;

that the spermatozoa were non-motile, or dead;

that they saw no blood flowing from the vagina;

that they did not testify as to seeing the semen all spattered over the coat, or blood and semen on the clothes; any torn garments or clothes;

that these doctors testified that when brought to the office that day neither woman was hysterical or nervous about it at all, and that their respiration and pulse were normal;

and that the prosecutrix washed the clothes evidencing the blood and semen.

Taking up these points in order, what does the record show?

None of the seven white boys were put on the stand, except Lester Carter, and he contradicted her.

Next, was Victoria Price hit in the head with a pistol? For this we must turn to Dr. Bridges. It was agreed in open court that Dr. Lynch who in company with Dr. Bridges at Scottsboro examined the two girls, would testify in all substantial particulars as Dr. Bridges, and Dr. Lynch was excused with that understanding when Dr. Bridges completed his examination. In considering Dr. Bridges' testimony we observe he was a witness placed on the stand by the State. His intelligence, his fair testimony, his honesty, and his high professional attainments impressed the Court and certainly all that heard him. He was frank and unevasive in his answers. The Court's opinion is that he should be given full faith and credit. In further considering his testimony it was shown that he was examining these women with the most particular care to find evidence of a rape upon them, and that the women were accusing the negroes, and were being required to cooperate and exhibit whatever indicated they had been abused.

Returning to the pistol lick on the head. The doctor testifies: "I did not sew up any wound on this girl's head; I did not see any blood on her scalp. I don't remember my attention being called to any blood or blow on the scalp." And this was the blow that the woman claimed helped force her into submission.

Next, was she thrown and abused, as she states she was, upon the chert—the sharp, jagged rock?

Dr. Bridges states as to physical hurts;—we found some small scratches on the back part of the wrist; she had some blue places in the small of the back, low down in the soft part, three or four bruises about like the joint of your thumb, small as a pecan, and then on the shoulders a blue place about the same size—and we put them on the table, and an examination showed no lacerations.

The evidence of other witnesses as well as the prosecutrix will show that the women had travelled from Huntsville to Chattanooga and were on the way back. There is other

evidence tending to show they had spent the night in a hobo dive; that they were having intercourses with men shortly before that time. **These few blue spots and this scratch would be the natural consequence of such living; vastly greater physical signs would have been expected from the forcible intercourse of six men under such circumstances.**

Victoria Price testified that as the negroes had repeated intercourse with her she became wetter and wetter around her private parts; that they finished just as they entered Paint Rock, and that she was taken in an automobile immediately to the doctors' office. There Dr. Bridges and Dr. Lynch, as has been shown, examined her. They looked for semen around her private parts; they found on the inside of her thighs some dirty places. The dirty places were hardly dry, and were infiltrated with dust, about what one would get from riding trains. It was dark dirt or dust. While the doctor did not know what this drying fluid was, his opinion was that it was semen, but whatever it was, it was covered with heavy dust and dirt.

He next examines the vagina to see whether or not any semen was in the vagina. In order to do this he takes a cotton mop and with the aid of a speculum and headlight inserts the cotton mop into the woman's vagina and swabs around the cervix, which is the mouth of uterus or womb. He extracts from this vagina the substance adhering to the cotton after he has swabbed around the cervix, and places this substance under the microscope. He examines this substance to see if spermatozoa are to be found, and what is the condition of the spermatozoa. Upon the examination under the microscope he finds that there are spermatozoa in the vagina. This spermatozoa he ascertains to be non-motile. He says to the best of his judgment that non-motile means the spermatozoa were dead.

For any fluid escaping from the vagina to become infiltrated with coal dust and dirt, this dirt under the circumstances in this case must have gradually sifted upon the

drying fluid, and necessarily a considerable period of time would be required for such an infiltration. The fresh semen emitted by so many negroes would have had a tendency rather to wash off any dirty places around the vagina, and it must have remained there for a considerable period for it to become thus infiltrated with dust and coal dust. Around the cervix the spermatozoa live under the most favorable conditions. While the life of the spermatozoa may be variable, still it appears from the evidence that in such a place as this it would have taken at least several hours for the spermatozoa to have become non-motile or dead.

When we consider, as the facts hereafter detailed will show, that this woman had slept side by side with a man the night before in Chattanooga, and had intercourse at Huntsville with Tiller on the night before she went to Chattanooga; when we further take into consideration that the semen being emitted, if her testimony were true, was covering the area surrounding the private parts, the conclusion becomes clearer and clearer that this woman was not forced into intercourse with all of these negroes upon that train, but that her condition was clearly due to the intercourse that she had had on the nights previous to this time.

Was there any evidence of semen on the clothes of any of the negroes?

In the case of State vs. Cowing, 99 Minn. 123; 9Am. & En. Ann. cases, 566, the Court said the physicians who testified stated that the semen would have remained on the clothes and could have been found after the expiration of several days. And this is probably a well known fact. **Though these negroes were arrested just after the alleged acts, and though their clothes and pants were examined or looked over by the officers, not a witness testified as to seeing any semen or even any wet or damp spots on their clothes.**

What of the coat of the woman spattered with semen, and the blood and semen on the clothes and the bleeding vagina?

Dr. Bridges says he did not see any blood coming from her

vagina; that Mrs. Price had on step-ins, but did not state that they were torn or had blood or semen on them. Not a word from this doctor of the blood and semen on the dress; not a word of the semen all spattered over the coat. And this was a doctor so conscientious and thorough in his examination as to make the woman undress and to examine with care every part of her body; a doctor who in his search for semen went to the extent of swabbing out the vagina and of examining its contents under the microscope.

What of the physical appearance of these two women when the doctors saw them?

Dr. Bridges says that when these two women were brought to his office neither was hysterical, or nervous about it at all. He noticed nothing unusual about their respiration and their pulse was normal.

Such a normal physical condition is not the natural accompaniment or result of so horrible an experience, especially when the woman testified she fainted from the injuries she had received.

The fact that the women were unchaste might tend to mitigate the marked effect upon their sensibilities, but such hardness would also lessen the probability of either of them fainting. If the faint was feigned then her credibility must suffer from such feigned actions. And this witness' anger and protest when the doctors insisted on an examination of her person was not compatible with the depression of spirit likely to be caused by the treatment she said she had received.

Lastly, before leaving Dr. Bridges let us quote his summation of all that he observed:

"Q. In other words the best you can say about the whole case is that both of these women showed they had had intercourse?"

"A. Yes, sir."

Is there corroboration in this? We think not, especially as the evidence points strongly to Victoria Price having in-

tercourse with one Tiller on several occasions just before leaving Huntsville. That she slept in a hobo jungle in Chattanooga, side by side with a man. The dead spermatozoa and the dry dirty spots would be expected from those earlier acts.

Victoria Price testified that she washed her clothes, which were stained with semen and blood, before even the trial at Scottsboro.

The Supreme Court of Minnesota in the case of State vs. Cowing, 99 Minn. 123, 9 Am. & En. Ann. cases, 566, in setting aside a conviction of rape laid great stress and largely based its action upon such conduct of the prosecuting witness. This Court said:

"While not without some corroboration, the testimony of prosecutrix is aided most largely by that of her sister; but that corroboration is to be weighed in connection with the fact that she and her sister, by washing the skirt, which if her testimony were true, would probably have borne evidence of blood and semen, effectually destroyed the best possible evidence under the circumstances."

Court's Comment on Other Witnesses

Is there any other corroboration? There was a large crowd at Paint Rock when the freight arrived there. While they differed in many details as to the make-up of the train and the exact car from which the different persons were taken, all of which is apparently unimportant, all agreed upon the main fact—that the nine negroes, the two women, and the white boy were all taken from the train. This undisputed fact constitutes about the whole extent of their evidence except a statement by Ruby Bates that she had been raped, which experience the said Ruby Bates now repudiates.

This statement by Ruby Bates appears to have been made under the following circumstances. There were three witnesses who testified to having seen the women at Paint Rock.

One of the witnesses first saw them after they had gotten off the car and were both standing. Another witness did not see them for some time, he having first rounded up all the negroes. The third witness saw them as they were getting off the car. He states they first started to run toward the engine and as they approached a crowd of men they turned and ran back in the opposite direction, and met a part of the posse who stopped them. Mr. Hill, the station agent, then came up to the women and asked them if the negroes had bothered them. Thereupon Ruby Bates stated that they had been raped. The facts appearing that the women instead of seeking the protection of the white men they saw were at first frightened, and the question propounded was in itself suggestive of an answer. Mr. Hill also states that the negroes were in a coal car; that he saw the heads of the negroes over the top of the car and they were trying to climb over the sides, were pulling themselves up, trying to get off. This clearly indicates that the negroes were not in the car filled with chert, as the prosecutrix claims.

For any other corroboration in the evidence we now return to the freight train as it passes along the track just after leaving Stevenson. The witness, Lee Adams, at a point about one quarter of a mile from the train, sees a fight between a number of white and colored boys; this is an admitted fact in the case.

The evidence of Ory Dobbins was admitted in corroboration of Victoria Price. When his evidence is studied it is found it does not corroborate her, or if so very slightly. The good faith of this witness need not be the slightest questioned, only the lack of correspondence of his testimony with hers. He stated that he lived three miles from Stevenson near the railroad as it ran toward Scottsboro; that as he walked to his barn he saw a freight train; that as it passed his house he saw a white woman sitting on the side of a gondola and a negro put his arm around her waist and throw her back in the car; that he saw the car as it passed; that it was in

his line of vision for a few feet, pointing out a door in the court room as the distance. His reason for stating it was a woman is as follows:

Q. You know it was a woman don't you?
"A. She had on women's clothes.
"COURT: She had on women's clothes?
"Q. What kind of clothes, overalls?
"A. No, sir, dress."

The very basis of this statement that she was a woman because she had on a dress does not apply to the women in this case, who were dressed in overalls.

He said it was in a coal car and there were five or six people in the car. Victoria Price says when they took hold of her that it occurred in a car almost filled with chert, and there were fifteen people in the car. The witness Dobbins said the gondola was between two box cars, while the evidence shows the gondola in which the woman was, was the fifth of a string of eight gondolas.

The witness further stated that the car upon which he saw this occurrence was back toward the caboose. On the other hand the official make-up of the train shows the freight train consisted of forty cars; that the women were in the eleventh or twelfth car from the engine and there were twenty-eight or twenty-nine cars between this car and the caboose. In view of the fact that it was along in this vicinity that the fight was occurring between the negroes and the white boys, and as his reason for saying it was a woman was on account of the dress, and all agree these women had on overalls, this can at its best be only slight corroboration.

The Court's Comment on the State's Case

This is the State's evidence. It corroborates Victoria Price slightly, if at all, and her evidence is so contradictory to the evidence of the doctors who examined her that it has been impossible for the Court to reconcile their evidence with hers.

Next, was the evidence of Victoria Price reasonable or probable? Were the facts stated reasonable? This is one of the tests the law applies.

Rape is a crime usually committed in secrecy. A secluded place or a place where one ordinarily would not be observed is the natural selection for the scene of such a crime. The time and place and stage of this alleged act are such to make one wonder and question did such an act occur under such circumstances. The day is a sunshiny day the latter part in March; the time of day is shortly after the noon hour. The place is upon a gondola or car without a top. This gondola according to the evidence of Mr. Turner, the conductor, was filled to within six inches to twelve or fourteen inches of the top with chert, and according to Victoria Price up to one and one half feet or two feet of the top. The whole performance necessarily being in plain view of any one observing the train as it passed. Open gondolas on each side.

On top of this chert twelve negroes rape two white women; they undress them while they are standing up on this chert; the prosecuting witness is then thrown down and with one negro continuously kneeling over her with a knife at her throat, and one or more holding her legs, six negroes successively have intercourse with her on top of that chert; as one arises off of her person, another lies down upon her; those not engaged are standing or sitting around; this continues without intermission although that freight train travels for some forty miles through the heart of Jackson County; through Fackler, Hollywood, Scottsboro, Larkinsville, Lin Rock, and Woodville, slowing up at several of these places until it is halted at Paint Rock; Gilley, a white boy, pulled back on the train by the negroes, and sitting off, according to Victoria Price, in one end of the gondola, a witness to the whole scene; yet he stays on the train, and he does not attempt to get off of the car at any of the places where it slows up to call for help; he does not go back to the caboose to report to the conductor or to the engineer in the engine, although no compulsion is being exercised upon him, and

instead of there being any threat of danger to him from the negroes, they themselves have pulled him back on the train to prevent his being injured from jumping off the train after it had increased its speed; and in the end by a fortuitous circumstance just before the train pulls into Paint Rock, the rapists cease and just in the nick of time the overalls are drawn up and fastened and the women appear clothed as the posse sight them. **The natural inclination of the mind is to doubt and to seek further search.**

Her manner (Victoria Price, ed.) of testifying and demeanor on the stand militate against her. Her testimony was contradictory, often evasive, and time and again she refused to answer pertinent questions. The gravity of the offense and the importance of her testimony demanded candor and sincerity. In addition to this the proof tends strongly to show that she knowingly testified falsely in many material aspects of the case. All this requires the more careful scrutiny of her evidence.

The Court has heretofore devoted itself particularly to the State's evidence; this evidence fails to corroborate Victoria Price in those physical facts; the condition of the woman raped necessarily speaking more powerfully than any witness can speak who did not view the performance itself.

Comment on Credibility of Victoria Price

The Court will next consider her credibility, and in doing so, some of the evidence offered for the defendant will also come in for consideration. In considering any evidence for the defendant which would tend to show that Victoria Price swore falsely the Court will exclude the evidence of witnesses for defendant, who themselves appear unworthy of credit, unless the facts and circumstances so strongly corroborate that evidence that it appears true.

Lester Carter was a witness for the defendant; he was one of the white boys ejected from the train below Stevenson. Whether or not he is entitled to entire credit is certainly

a question of great doubt; but where the facts and circumstances corroborate him, and where the failure of the State to disprove his testimony with witnesses on hand to disprove it, the Court sees no reason to capriciously reject all he said.

Victoria Price denied she knew him until she arrived at Scottsboro. It became a question to be considered as to whether Lester Carter knew her at Huntsville and saw her committing adultery on several occasions with one Tiller just before leaving for Chattanooga, and returning on the freight the next day. The facts he testified to might easily account for the dead spermatozoa in her vagina. He says he met Victoria Price and Tiller while in jail at Huntsville; that all three were inmates of the jail at the same time; that Ruby Bates visited Tiller and Victoria Price while they were in jail, and he, Carter, met her at the jail; that after all had gotten out, and he had finished his sentence, he stayed in the home of Tiller and his wife, and he and Tiller would go out and be with these girls; that they all planned the Chattanooga trip together, and that just before the trip, or the night before, all four were engaged in adulterous intercourse.

Victoria Price stated on the stand that Tiller, the married man, was her boy friend and was in her home the night before she left for Chattanooga; that he had a right there, and he was corresponding with her. Tiller was in the State's witness-room then and identified by Lester Carter when he was brought out of the witness-room by the Court's order. Tiller, though there in court, was not put on the stand to deny what Carter said. There is no reason to doubt Carter was telling the truth then. Next Carter said that when he and Ruby Bates and Victoria Price arrived in Chattanooga about eight o'clock at night, all went to what is known as the "Hoboes Jungle," a place where tramps of all descriptions spent the night in the open. There are numerous witnesses who corroborate him in this statement; that they met the boy Gilley and all four slept side by side, he by the side of Ruby Bates, and Victoria Price by the side of Gilley.

Victoria Price said that she and Ruby Bates went to Chat-

tanooga seeking work; that they went alone and spent the night at Mrs. Callie Brochie's, a friend of hers formerly living in Huntsville, but who had moved to Chattanooga. Was this true? The Chattanooga directory was introduced in evidence; residents of Chattanooga, both white and colored, took the stand stating that no such woman as Callie Brochie lived in Chattanooga and had not ever lived there so far as they knew. Though Victoria Price first made this statement more than two years ago at Scottsboro, no witness was offered either from Chattanooga or Huntsville showing any such woman had ever lived in either such place.

Victoria Price said the negroes jumped off a box-car over their heads into the gondola, where she, Ruby Bates and the seven white boys were riding, with seven knives and two pistols and engaged in a fight with the white boys. The conductor of the train who had the official make-up of the train stated there were eight gondola cars together on the train; that the women were in one of the middle cars, and that there were three gondola cars between the car in which they were riding and the nearest box car. Lester Carter stated that he was one of the seven boys engaged in the fight with the negroes; that he did not see a single knife or pistol in the hands of the negroes. And although these seven white boys were kept in jail at Scottsboro until after the first trial no one testified to any knife or pistol wounds on any of them.

Further there was evidence of trouble between Victoria Price and the white boys in the jail at Scottsboro because one or more of them refused to go on the witness-stand and testify as she did concerning the rape; that Victoria Price indicated that by so doing they would all get off lighter.

The defendant and five of the other negroes charged with participating in this crime at the same time went on the stand and denied any participation in the rape; denied that they knew anything about it, and denied that they saw any white women on the train. Four of them did state that they took part in the fight with the white boys which occurred on the train. Two of them testified that they knew nothing

of the fight nor of the girls, and were on an entirely different part of the train. Each of these two testified as to physical infirmities. One testified he was so diseased he could hardly walk, and he was examined at Scottsboro according to the evidence and was found to be diseased. The other testified that one eye was entirely out and that he could only see sufficiently out of the other to walk unattended. The physical condition of this prisoner indicates apparently great defect of vision. He testified, and the testimony so shows, that he was in the same condition at Scottsboro and at the time of the rape. He further testified that he was on an oil-tank near the rear of the train, about the seventh car from the rear; that he stayed on this oil-tank all the time and that he was taken from off of this oil-tank. The evidence of one of the trainmen tends to show that one of the negroes was taken off of an oil-tank toward the rear of the train. **This near-blind negro was among those whom Victoria Price testified was in the fight and in the party which raped her and Ruby Bates. The facts strongly contradict any such statement.**

Conclusion

History, sacred and profane, and the common experience of mankind teach us that women of the character shown in this case are prone for selfish reasons to make false accusations both of rape and of insult upon the slightest provocation, or even without provocation for ulterior purposes. These women are shown, by the great weight of the evidence, on this very day before leaving Chattanooga, to have falsely accused two negroes of insulting them, and of almost precipitating a fight between one of the white boys they were in company with and these two negroes. This tendency on the part of the women shows that they are pre-disposed to make false accusations upon any occasion whereby their selfish ends may be gained.

The Court will not pursue the evidence any further.

As heretofore stated the law declares that a defendant

should not be convicted without corroboration where the testimony of the prosecutrix bears on its face indications of unreliability or improbability and particularly when it is contradicted by other evidence.

The testimony of the prosecutrix in this case is not only uncorroborated, but it also bears on its face indications of improbability and is contradicted by other evidence, and in addition thereto the evidence greatly preponderates in favor of the defendant. It therefore becomes the duty of the Court under the law to grant the motion made in this case.

It is therefore ordered and adjudged by the Court that the motion be granted; that the verdict of the jury in this case and the judgment of the Court sentencing this defendant to death be, and the same is hereby set aside and that a new trial be and the same is hereby ordered.

JAMES E. HORTON,
Circuit Judge.

This June 22nd, 1933.

(Tear off this back cover page and return to the address given.)

Rev. Allan Knight Chalmers, Chairman
Col. Wm. Jay Schieffelin, Treasurer

Scottsboro Defense Committee
Room 506, 112 East 19th St.
New York City

Date.....

1. Count on me as a supporter of the defense of the nine Scottsboro boys. I will contribute toward the defense funds $..... payable.....

2. Please send information as occasion arises as to how I can help in other ways in the defense.

3. Please do ..... send me further literature about the case, issued free to contributors (nominal prices to others).

4. I suggest as others likely to be interested:

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5. Remarks .....

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Signed .....

Address .....

City..... State.....

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BROADWAY TABERNACLE CHURCH
BROADWAY AND FIFTY-SIXTH STREET
NEW YORK

DR. ALLAN KNIGHT CHALMERS
MINISTER

REV. FRANK W. MUNTZELOV
ASSOCIATE PASTOR

MRS. CORNELIA G. WICKS
PARISH VISITOR

MISS MARION L. MORRIS
MINISTER'S SECRETARY

211 WEST 56TH STREET

December 8,
1936

His Excellency
The Governor of Alabama
Montgomery, Alabama

My dear Governor Graves:

There is grave danger that the record in the case of the Scottsboro boys will soon contain a further stain which will not be easy to wash out in the years ahead. It is caused by the manner in which they have been held in jail for the last nine months. Whatever the reasons for it, the fact remains that nine boys (eight of them still awaiting trial, and the other with his case still on appeal) are kept in close confinement with no opportunity for exercise so that they are suffering in a way they can no longer endure mentally or physically. Dr. Henry M. Edmonds, Chairman of the Alabama Committee, with whom I have just talked on the long distance phone, spoke in the gravest of tones about the marked effect upon one of the boys whom he had just seen.

For five and one half years they have been in jail, treated as if they were already sentenced, and the last nine months have been in what amounts to almost solitary confinement. The Sheriff presents as his reason for doing nothing about this that no other procedure is open to him than to keep them in this type of confinement. He says that when prisoners of their prominence are allowed to mix with other prisoners there is difficulty. He brings up instances from the past where they have had trouble with the boys. He feels that in any jail to which they were sent, the same treatment would have to be given them, altho it has not been considered necessary in the first five years.

We recognize, of course, that there are difficulties involved, but they will not excuse the fact, when the record is complete, that such treatment has probably driven several of them already into such mental decline and physical disintegration (sometimes called a prison psychosis) that they are virtually executed without fair trial, and that a continuation of this method of confinement may result in this practical execution happening to them all.

Intentionally or otherwise, the confinement to which the boys have been subjected for the last nine months, can have but one result: to break them down physically and mentally so that in desperation they may make a false confession. It is well known that such confinement is often as effective as a "third degree."

I am willing to give the authorities from yourself down credit for not intending this result to occur. The record shows clearly, however, that it is happening, and the record from now on will show whether anything was done to prevent this development from continuing after it was brought officially to your attention.

It is not reasonable for anyone to argue, as some do, that the boys are proven guilty. Technically this is not so. Practically, when one looks at the history of the case, it is morally indefensible to assert it. There have been two reversals by the Supreme Court and in the other trial a new trial was granted by Judge Horton in a carefully worked out opinion in which he grants the motion that the conviction be set aside as against the weight of the evidence, in the following words:

> "The testimony of the prosecutrix in this case is not only uncorroborated, but it also bears on its face indications of improbability and is contradicted by other evidence, and in addition thereto the evidence greatly preponderates in favor of the defendant. It therefore becomes the duty of the Court under the law to grant the motion made in this case.
>
> "It is therefore ordered and adjudged by the Court that the motion be granted; that the verdict of the jury in this case and the motion of the court sentencing this defendant to death be, and the same is hereby set aside and that a new trial be and the same is hereby ordered."

If it should be proven, as we who are defending the boys believe we can prove, that the boys are not guilty of the crime as alleged, and yet at the end it is a fact that the state has so acted toward these boys that they are virtually executed by a jail confinement humanly impossible to endure, the case will be a lasting reproach to all who are involved.

The sickness of the judge in the case has postponed the trial again. The case is dragging into six years. A reasonable request, backed by the support of a representative and responsible group of Alabama citizens comprising the Alabama Scottsboro Committee, including lawyers of high distinction, that a change of venue be granted for the next trials has so far been denied, altho there are procedures open to the authorities to grant this motion which, under the circumstances, is essential to a fair trial being held in the next appearance of the case.

We feel that we could properly be considered derelict in our duty if we did not bring this matter strongly before you. We shall allow a reasonable time for a positive reply. We are, however, prepared to carry the matter much further. There are channels on influence on responsible public opinion open to members of

the committee. These we shall use with all diligence. We have become conscious thru recent reports that we may already have delayed too long in making an emphatic public protest against a situation which, however anyone may try to justify itm is in practice inhumane.

I shall hope for a favorable reply to this letter which comes to you as the official action of the Scottsboro Defense Committee and with the knowledge and consent of the Alabama Committee.

Very sincerely

ALLAN KNIGHT CHALMERS

Chairman, Scottsboro Defense Committee

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BROADWAY TABERNACLE CHURCH
BROADWAY AND FIFTY-SIXTH STREET
NEW YORK

DR. ALLAN KNIGHT CHALMERS
MINISTER

REV. FRANK W. MUNTZELOT
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PARISH VISITOR

MISS MARION L. NORRIS
MINISTER'S SECRETARY

211 WEST 56TH STREET

Printed in part in
Allan Knight Chalmers,
They Shall Be Free,
pp. 95-98
(Doubleday, 1951)

February 24, 1937

Mr. Forney Johnston
First National Bank Building
Birmingham, Alabama

Dear Mr. Johnston:

I am writing this to you directly because I have consistently consulted you on the legal matters which have arisen in the Scottsboro Case. I am sending a copy of it to Dr. Edmonds that he may have it for his information, and of course you should feel free to consult him as you desire.

We are up against a very curious situation in the Scottsboro Case which may turn out for the ultimate good of all concerned, altho the actual arrangement of this particular deal is outside the hands of our committee.

As you know, our committee has consistently maintained that they would not be party to any deal which involved pleading the boys guilty to a crime involving sex. The first of January, however, a propostion was put to Mr. Leibowitz by the State, and I want to review for a moment the facts.

Attorney General Carmichael and Special Prosecutor Knight came up to New York the first week in January and spent several days in attempting to arrange with Mr. Leibowitz for the following settlement of the case:

I - Four of the boys, Roy Wright, Eugene Williams, Olin Montgomery, and Willie Robertson, to be liberated at once.

II -- Charles Weems, Andy Wright, Clarence Norris, to plead guilty to some form of simple assault not involving a sex crime, and to receive a sentence of not more than five years.

III - The appeal in the case of Haywood Patterson to be withdrawn with the understanding that the Governor would commute his sentence to a term not exceeding that proposed for the boys mentioned in Section II.

IV - The indictment for rape now pending against Ozie Powell is not to be tried. He will instead face charges on the assault indictment now pending.

Our counsel submitted to us that since the State was willing,

under this arrangement, to give up the major contention on the sex crime, we had no right to decide for the boys whether they should accept the proposal. The committee, after consultation, while reaffirming its belief in the innocence of the boys and its willingness to continue the defense if the boys decided not to accept the agreement, voted also that we would not offer any opposition to the acceptance of the above proposal.

Since this proposition has been made to Mr. Leibowitz, and the committee has agreed as stated above, the State has suddenly cut off communications with Mr. Leibowitz, making no reply to either telegraph or telephone attempts to establish contact. Meantime, the case is dragging on. Advice from our psychiatrist is that the physical and mental condition of the boys is becoming constantly more serious, and there is further danger that all of the good work that we have put in toward getting a better understanding and a possible solution of the case, may be thrown away thru the action of the State in refusing to open channels of communication. I am seriously concerned that the continuation of such tactics may cause grave difficulties.

Would it be possible for you, either by yourself or in cooperation with Dr. Edmonds, to discover from Attorney General Carmichael what it is that has caused his inaction, and what the present situation is?

If by good chance this letter reaches you in time for you to call me long distance (reversing the charges) on Thursday, it will be fine. I am leaving by a late train Thursday night to be out of town on Friday, and if you cannot reach me by phone on Thursday some communication (by air mail, preferably, or by telegraph or telephone) which would surely get to me by Monday, would be very much appreciated by me, and quite essential.

The action of Attorney General Carmichael in coming to New York was taken by our counsel and us as an act of good faith. His present action leaves such an opinion open to question. I do hope that before I meet my committee on Monday afternoon you will be able to get word to me, and I hope set the situation in good light.

With kind personal regards,

Sincerely

(SIGNED)
ALLAN KNIGHT CHALMERS

Printed in Allan Knight Chalmers, They Shall Be Free, pp. 112-114 (Doubleday, 1951).

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Memorandum of a Conference with Governor Graves, held on December 21, 1937, by Dr. Edmonds, Mr. Grover Hall, and Dr. Chalmers.

The letter from Messrs. Johnston, Chappell, Mills, and Dr. Edmonds was before hi, and had been read by the Governor.

Dr. Edmonds asked the Governor to listen to the statement of Dr. Chalmers on the present situation of the Scottsboro Case.

Dr. Chalmers began with the premise as stated in the joint letter before the Governor that the State of Alabama will be subject to criticism and adverse propaganda so long as these defendants remain in prison. He emphasized the incongruity of four of the accused being let out and four remaining in prison on the same charge and evidence.

He submitted that it was good public policy to use the powers of executive clemency to remove the case from further controversy and pointed to the well known fact of the Governor's courage and forthrightness in handling difficult situations of similar nature when they came into his jurisdiction.

He asked for definite action leading to the immediate release of the defendants, the details of procedure to be left to the Governor's judgment. This act would meet with nearly unanimous approval of the Press and the informed public opinion redounding to the credit of the Governor and the State of Alabama and was justified under the circumstances.

Mr. Grover Hall immediately voiced his wholehearted and unqualified personal support of the statement of Dr. Chalmers and promised his editorial backing in the Governor's capable action.

Dr. Edmonds assented personally and mentioned that Mr. Chappell and Mr. Mills concurred definitely.

The Governor stated that he felt the position of the State to be untenable, that either all were guilty or all should be freed, that half fish and half fowl was not reasonable.

He said that his own mind was therefore clear on the action he should take when the cases "fell into his lap."

He felt it was not possible for him to take any action so long as there was any pending appeal before the courts, but that when the cases had been decided in the Supreme Courts and legal action had ceased, it was his intention to act quickly and definitely.

Dr. Chalmers offered to withdraw the appeals if it would facilitate the Governor's immediate action.

The Governor stated that the cases would be heard in January, that only a few weeks remained to put them before him in regular order, that he would prefer to await action until the cases had passed through their routine.

He then leaned forward and stated, "I cannot make any promise which would look like a deal. I have already stated my feeling that the position of the State is untenable with half out and half in on the same charges abd evidence (he used again his expression of half fish and half fowl). My mind is clear on the action required to remedy this impossible position. When the cases come before me I intend to act promptly. I cannot be any clearer than that, can I"

The conference lasted nearly an hour. It was agreed by Dr. Edmonds, Mr. Hall, and Dr. Chalmers in an immediate consultation afterwards that their understanding was that the Governor intended to use the powers vested in his office for the immediate release of the accused as soon as the matter was out of the judiciary and in the hands of the executive.

This memorandum was prepared at once and attested that the record of the conference might be accurate and unquestioned.

GROVER C. HALL

HENRY M. EDMONDS

ALLAN KNIGHT CHALMERS

December 22, 1937

Robert - True copy
Allan Knight Chalmers

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COPY

LETTER FROM DR. ALLAN KNIGHT CHALMERS TO GOVERNOR BIBB GRAVES

Printed in Allan Knight Chalmers, They Shall Be Free, pp. 117-121, (Doubleday, 1951).

May 4, 1933

His Excellency The Governor
Honorable Bibb Graves
Montgomery, Alabama

My dear Governor:

As the time approaches for the appeals in the Scottsboro Cases to be heard before the Supreme Court of the state, I want to prepare as carefully as we can for appropriate action following this decision.

First, let me tell you how much good your treatment of Mr. Shapiro did in cementing a better understanding up here of the people down South. As both Dr. Edmonds and Mr. Grover Hall have told you, my understanding of your attitudes and my way of working with you revealed a desire to cooperate which was existant before but which had no way of expression. My committee has not always seen eye to eye with me on my conviction about the way that this matter could be solved satisfactorily to all, but the fineness of your attitude and the reception that Mr. Shapiro had at the prisons have helped more than I can tell you in the creation of a spirit of understanding.

I do not think that any of us are fooling ourselves on what the decision of the Supreme Court will be. I want now to be prepared for the action which you have given us to understand you plan to take when the decision is, as you have expressed it, "placed in your lap."

I think it is obvious to us all that prompt action is essential in order to do two things:

First, prompt action will get ahead of the flood of protests and petitions which will undoubtedly be stimulated in certain quarters. It is important for the impression to be created that you acted at once and with the cooperation of your official and unofficial advisors down in Alabama <u>before</u> there was any pressure put upon you from any outside sources.

The second thing is to my mind equally important: that it will give me and the more clear-thinking members of my committee a chance to establish the boys in as nearly normal environment as possible without bringing them into the en-

ploitation which was an unfortunate part of the release of the first four boys.

Let me interpolate here something that will interest you. I think no one who is sensible at all could have anticipated anything different from that which did happen with the hallyhoo accompanying the release of the other boys. Some exploitation was impossible to escape. Now, however, we apparently have that under good control.

One of the boys is being cared for by Bill Robinson, the tap dancer. He is entirely under his guardianship and there is no exploitation of him at all.

For another of the boys we are trying to arrange a musical education which he has some talent in that direction.

The third boy is with his family and is now out of the influence of the groups that previously exploited him.

The final boy of the four is taken care of as I will indicate by this quotation from a St. Louis paper, date of February 11:

> "Eugene Williams, age twenty, one of the Scottsboro boys, was enrolled at the Western Baptist Seminary recently. The Home Mission Board of the National Baptist Convention is financing his education."

In contrast to all that another clipping which came to my desk at the same time as this report on Williams, is the following, dated February 9, and clipped from one of the Baltimore Negro papers:

> "Ozzie Powell, one of the five imprisoned Scottsboro boys, has been transferred from Kilby Prison in Montgomery, Alabama, to the chain-gang at Atmore, Alabama, it was announced recently. Powell, partly paralized by being shot by an officer in 1936, is now in a serious physical condition."

The second account stands in obvious contrast.

We have a good chance of developing the first type of solution for all of the boys if we can carry thru your expressed intentions at the first reasonable opportunity; and we can stop that other type of propaganda which the second indicates.

I would like to get to your attention, therefore, cer-

tain obvious moves that should be made that I may make my own plans and cooperate fully with you in the expected solution. The matters which should be covered are:

I. I hope there will be some possibility of making a proper suggestion to the Supreme Court that their decision, whatever it is, be given just as soon as possible after May 19th. I do not believe that any of us would be doing anything unethical in making such a suggestion. I would be glad of your advice whether that could be attended to thru your channels of suggestion, or whether you would prefer that a man like Forney Johnston and his associates make the proper approach.

II. If there could be some possible indication of the probable time of decision, that would, of course, simplify our plans very much. Without anticipating their decision, the Chief Justice could indicate that a decision would probably be reached on or about a certain date.

III. The legal details and arrangements that would surround your decision and its announcement we should leave, of course, entirely to you and your official legal advisors. The only thing I would want to be sure to emphasize here would be that we should all be sure that the red tape which was necessary was properly prepared and in shape so that there would be no hitches in the way of action when you desired it. If, for example, you desire to have a request for a pardon before you in order to act, we should know about that beforehand so that all legal papers could be prepared. It would be my hope that, if this is a requirement, the request be made by the people of the Alabama Scottsboro Committee that the record may be clear on their facing of the issue. Naturally, I stand ready to cooperate there in any way that you desire.

On the other hand, it is quite possible that you would prefer to take action on your own initiative "for the good of the commonwealth," and, personally, I believe that there would be in that a very significant action on your part. It certainly would go a long way toward stopping certain types of criticism if, the moment it was placed in your jurisdiction, you acted promptly on your own initiative.

IV. The time of their release affects very much my

own schedule. I think that the men in Alabama would tell you that my own spirit and influence are very valuable for the working out of this matter with all the success that would be possible in it. This is, as you know, not my regular work. I have a big church program on my hands and need to plan my schedule with my obligation to it in mind. It happens that I am to be down South on two occasions very shortly, and around either of them, depending of course on the time of action of the Supreme Court, I could arrange my schedule to give the time necessary to have the boys released in my care.

The first is a commencement address that I am making at Elon College, North Carolina, and I could come down for this other important matter the days immediately preceding that engagement. This would mean that Sunday afternoon, the 29th, and all day Monday, the 30th, of May, I would be available.

I am also to be the keynote speaker on the opening night and subsequently the platform speaker the next day for the Alabama Young People's Assembly of the Methodist Church South, near Birmingham. The important engagement there comes on Thursday, the second of June, and if it is necessary I could cut the meeting of the morning of the third and be available on that day for action.

Also it is possible that any time the first of the next week (June 6th and following) I could be available if I knew about it beforehand. I shall be very grateful for any advance information you can give me on the probable time of your action so that I can plan accordingly.

I do think if we plan this out with reasonable care we shall be able to do something of very great significance in the saving, from a situation which has bothered us all, of any values that still remain in it. I am sending copies of this letter to Dr. Edmonds, the head of the committee, and to Mr. Grover Hall, both of whom are very fully in the confidence of us all, in order that they may be informed and stand ready to cooperate with you in any way that seems proper.

I think you will realize that in this letter there is no desire on my part to interfere in matters which are not properly my place. I write out of my great concern that we all act with such intelligence that we shall create a good feeling by the final action. I realize that the many demands of your office might very naturally keep this matter from

being brought to your attention in time.

Appreciating the spirit that you have shown in all this, and looking forward to a solution of great interest to the whole world, which your action will produce, I am

Very sincerely

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STATE OF ALABAMA

Executive Department

MONTGOMERY

Bibb Graves
Governor

Pitt Tyson Maner
Secretary to the Governor
J. G. Duncan, Jr.
Recording Secretary
Lawrence H. Lee
Legal Adviser

May 23, 1938

Dr. Allan Knight Chalmers,
211 West 56 Street,
New York City, New York.

My dear Doctor:

I hope you will pardon my delay in replying to your very fine letter in reference to the Scottsboro cases.

Until the appeal should have been submitted to the Court in my judgment it would have been quite a bit indelicate for me to take any part therein.

Under our law such cases are preferred cases and it is the mandatory duty of the Court to decide them as expeditiously as the circumstances permit. In view of this law no suggestion would be proper to ask them to obey that mandate.

I have tried to make it clear that in my opinion so long as these matters were in judicial hands the Executive should not interfere. I could not officially do so.

Our Statutes provide that before clemency is to be asked in such cases as these that fact must be advertised once a week for two consecutive weeks in the county in which the offense occurred and then submitted to the Board of Pardons of the State which makes its recommendation to the Governor.

With this law before you you can easily surmise that the decision will not be rendered before the first of July; that it will take eight days thereafter on advertisement and the Board of Pardons meets the second Tuesday of each month, so for your own guidance I am suggesting that it cannot reasonably be expected that any action could be taken, according to our laws, until sometime in July -- at the latest, early in August.

I want you to know that I appreciate the spirit in which you write and the kind things that you have said. I am especially pleased with the course being taken by you and yours with these unfortunates and your efforts to put them in better paths and to help them on their way.

Dr. Allan Knight Chalmers

P-2

So far as the statement about the "chain gang", I advised the publication that carried that statement that there was no "chain gang" in Alabama for any prison.

Again thanking you, I am

Yours sincerely,

(SIGNED)
BIBB GRAVES,
Governor.

BG:T
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Charge to the account of D (1) $

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CLASS OF SERVICE DESIRED			
DOMESTIC		CABLE	
TELEGRAM		FULL RATE	
DAY LETTER		DEFERRED	
NIGHT MESSAGE		NIGHT LETTER	
NIGHT LETTER		SHIP RADIOGRAM	

Patrons should check class of service desired; otherwise message will be transmitted as a full-rate communication.

WESTERN UNION

R. B. WHITE
PRESIDENT

NEWCOMB CARLTON
CHAIRMAN OF THE BOARD

J. C. WILLEVER
FIRST VICE-PRESIDENT

CHECK

ACCT'G INFMN.

TIME FILED

Send the following message, subject to the terms on back hereof, which are hereby agreed to

1938 Oct 17 PM 2 17

MONTGOMERY ALA 17 1255 P

Morris Shapiro

225 Broadway

SCOTTSBORO RECORDS HAVE NOT YET REACHED ME FROM THE PARDON BOARD. CRITICAL ILLNESS OF MY LEGAL ADVISER PLACES SO MANY BURDENS UPON ME I MUST DELAY ONE WEEK THE ENGAGEMENT I HAD FOR NEXT MONDAY. PLEASE ACKNOWLEDGE RECEIPT.

BIBB GRAVES GOVERNOR

PSF

WESTERN UNION MESSENGERS ARE AVAILABLE FOR THE DELIVERY OF NOTES AND PACKAGES.

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...ge to the account of _____ $ _____

CLASS OF SERVICE DESIRED			
DOMESTIC		CABLE	
TELEGRAM		FULL RATE	
DAY LETTER	X	DEFERRED	
NIGHT MESSAGE		NIGHT LETTER	
NIGHT LETTER		SHIP RADIOGRAM	

Patrons should check class of service desired; otherwise message will be transmitted as a full-rate communication.

WESTERN UNION

R. H. WHITE, PRESIDENT — NEWCOMB CARLTON, CHAIRMAN OF THE BOARD — J. C. WILLEVER, FIRST VICE-PRESIDENT

CHECK

ACCT'G INFMN.

TIME FILED

Send the following message, subject to the terms on back hereof, which are hereby agreed to

Montgomery, Alabama 1938 Sep 9 PM 8 53

Morris Shapiro
225 Broadway NYK

HERES EXTREME LOW-DOWN; POWELL WILL JOIN ALL OTHER STABLE MATES AS DESIRED. STOP. BUT RE ADVERTISEMENT OF YOUR NOTICE DEEMED ESSENTIAL TO MEET A TECHNICALITY, AFTER WHICH THE RIPENED FRUIT WILL FALL. I SPEAK AS ONE INSPIRED, AFTER THE MANNER OF YOUR FRIENDS OF THE OLD TESTAMENT. REGARDS.

GROVER C. HALL

WESTERN UNION MESSENGERS ARE AVAILABLE FOR THE DELIVERY OF NOTES AND PACKAGES

PSP: Graves, B.Lb

ALL MESSAGES TAKEN BY THIS COMPANY ARE SUBJECT TO THE FOLLOWING TERMS:

To guard against mistakes or delays, the sender of a message should order it repeated, that is, telegraphed back to the originating office for comparison. For this, one-half the unrepeated message rate is charged in addition. Unless otherwise indicated on its face, this is an unrepeated message and paid for as such, in consideration whereof it is agreed between the sender of the message and this company as follows:

1. The company shall not be liable for mistakes or delays in the transmission or delivery, or for non-delivery, of any message received for transmission at the repeated-message rate beyond the sum of five hundred dollars, nor for mistakes or delays in the transmission or delivery, or for non-delivery, of any message received for transmission at the repeated-message rate beyond the sum of five thousand dollars, *unless specially valued;* nor in any case for delays arising from unavoidable interruption in the working of its lines; nor for errors in cipher or obscure messages.

2. In any event the company shall not be liable for damages for mistakes or delays in the transmission or delivery, or for the non-delivery, of any message, whether caused by the negligence of its servants or otherwise, beyond the sum of five thousand dollars, at which amount each message is deemed to be valued, unless a greater value is stated in writing by the sender thereof at the time the message is tendered for transmission, and unless the repeated-message rate is paid or agreed to be paid, and an additional charge equal to one-tenth of one percent of the amount by which such valuation shall exceed five thousand dollars.

3. The company is hereby made the agent of the sender, without liability, to forward this message over the lines of any other company when necessary to reach its destination.

4. Domestic messages and incoming cable messages will be delivered free within one-half mile of the company's office in towns of 5,000 population or less, and within one mile of such office in other cities or towns. Beyond these limits the company does not undertake to make delivery, but will, without liability, at the sender's request, as his agent and at his expense, endeavor to contract for him for such delivery at a reasonable price.

5. No responsibility attaches to this company concerning messages until the same are accepted at one of its transmitting offices; and if a message is sent to such office by one of the company's messengers, he acts for that purpose as the agent of the sender.

6. The company will not be liable for damages or statutory penalties in any case where the claim is not presented in writing within sixty days after the message is filed with the company for transmission.

7. It is agreed that in any action by the company to recover the tolls for any message or messages the prompt and correct transmission and delivery thereof shall be presumed, subject to rebuttal by competent evidence.

8. Special terms governing the transmission of messages according to their classes, as enumerated below, shall apply to messages in each of such respective classes in addition to all the foregoing terms.

9. No employee of the company is authorized to vary the foregoing.

THE WESTERN UNION TELEGRAPH COMPANY
INCORPORATED
R. B. WHITE, PRESIDENT

CLASSES OF SERVICE

TELEGRAMS

A full-rate expedited service.

NIGHT MESSAGES

Accepted up to 2:00 A.M. at reduced rates to be sent during the night and delivered not earlier than the morning of the ensuing business day.

Night Messages may at the option of the Telegraph Company be mailed at destination to the addressees, and the Company shall be deemed to have discharged its obligation in such cases with respect to delivery by mailing such night messages at destination, postage prepaid.

DAY LETTERS

A deferred day service at rates lower than the standard telegram rates as follows: One and one-half times the standard night letter rate for the transmission of 50 words or less and one-fifth of the initial rates for each additional 10 words or less.

SPECIAL TERMS APPLYING TO DAY LETTERS:

In further consideration of the reduced rate for this special Day Letter service, the following special terms in addition to those enumerated above are hereby agreed to:

A. Day Letters may be forwarded by the Telegraph Company as a deferred service and the transmission and delivery of such Day Letters is, in all respects, subordinate to the priority of transmission and delivery of regular telegrams.

B. This Day Letter is received subject to the express understanding and agreement that the Company does not undertake that a Day Letter shall be delivered on the day of its date absolutely, and at all events; but that the Company's obligation in this respect is subject to the condition that there shall remain sufficient time for the transmission and delivery of such Day Letter on the day of its date during regular office hours, subject to the priority of the transmission of regular telegrams under the conditions named above.

NIGHT LETTERS

Accepted up to 2:00 A.M. for delivery on the morning of the ensuing business day, at rates still lower than standard night message rates, as follows: The standard telegram rate for 10 words shall be charged for the transmission of 50 words or less, and one-fifth of such standard telegram rate for 10 words shall be charged for each additional 10 words or less.

SPECIAL TERMS APPLYING TO NIGHT LETTERS:

In further consideration of the reduced rates for this special Night Letter service, the following special terms in addition to those enumerated above are hereby agreed to:

Night Letters may at the option of the Telegraph Company be mailed at destination to the addressees, and the Company shall be deemed to have discharged its obligation in such cases with respect to delivery by mailing such Night Letters at destination, postage prepaid.

FULL RATE CABLES

An expedited service throughout. Code language permitted.

DEFERRED HALF-RATE CABLES

Half-rate messages are subject to being deferred in favor of full rate messages for not exceeding 24 hours. Must be written in plain language.

CABLE NIGHT LETTERS

An overnight service for plain language communications, at one-third the full rate, or less. Minimum of 25 words charged for. Subject to delivery at the convenience of the Company within 24 hours.

SHIP RADIOGRAMS

A service to and from ships at sea, in all parts of the world. Plain language or code language may be used.

E

Printed in part in Allan Knight Chalmers, They Shall Be Free, pp. 128-133, (Doubleday, 1951).

BROADWAY TABERNACLE CHURCH
BROADWAY AND FIFTY-SIXTH STREET
NEW YORK

DR. ALLAN KNIGHT CHALMERS
MINISTER

REV. FRANK W. MUNTERLAY
ASSOCIATE PASTOR

MRS. CORNELIA G. WICKS
PARISH VISITOR

MISS MARION L. NORRIS
MINISTER'S SECRETARY

211 WEST 56TH STREET

Please read if possible "Trial" as marked ~ page 9-6

November 5
1938

TO :

Dr. Henry Edmonds
Mr. Forney Johnston
Mr. Grover Hall

Dear Friends:

I am sending this same letter to you all for obvious reasons. In it I shall make side remarks to different ones of you as if we were in conversation.

You are all aware, from the various communications we have had, particularly from Hall and myself to the rest of you, that after the date and hour was set for the release of Haywood Patterson, Clarence Norris, Charlie Weems, and Andy Wright, a series of events turned the Governor's mind for a time to what Grover described as an "adamant and passionate resolve not to parole the Scottsboro defendants." That feeling on the part of the Governor is not as fixed as it was originally, as evidenced by the fact that Grover felt originally that the chances of seeing the Governor were very slight, as the last paragraph of his letter to me, a copy of which he has sent to Johnston, evidences.

He also states in the last paragraph something that we all realize: "It is now or never." This is very obviously our final chance to work thru something that would solve the very great difficulty we all have felt in this case.

The plans now are that I shall leave New York by the night plane on Tuesday, November 8th, arriving in Montgomery early Wednesday morning. Grover and I are to see the Governor Wednesday afternoon at an hour which I do not know, but which has been arranged.

It was our judgment that the first approach to the Governor should be made by me with the supporting presence and help of only one other person.

This action allows us a second recourse in case I cannot convince the Governor in the first interview. My emergency appeal to him will be that he ought not to make a final adverse decision until after he has consulted with

Johnston, Edmonds, and Comer also, since he has so clearly indicated to all of them his intention to carry thru the release of the boys on parole to me.

I am being extra careful in this letter to cover all points, and I just wanted to check here with my understanding that Grover plans to go with me to the Governor. I am sure that we all realize how important it is to have someone with me in that conference that we may have an accurate check on the discussion and possible decisions. I see no reason why Hall and myself cannot do the job, but I do not want to arrive in Montgomery and find no companion acceptable to the Governor is with me for that important interview.

I want you all to be informed on the line that I shall take in presenting the present situation to the Governor:

My first point will be a recognition of the fact that the boys are cocky, have caused trouble, some of them have developed homosexual characteristics during the prison experience, and that in general they are not in an ideal mood for release.

I shall then point out the fact that all these things we have been well aware of for a long time; that one of the most eminent psychiatrists in the country, who is a specialist on criminal psychoses, had a Negro psychiatrist in Alabama go, under his direction, and make a thoro psychiatric report on the prisoners. That report of over ninety pages has been checked and rechecked by experienced men in the field. I shall point out that therewas no indication of any homosexual characteristics in any of them before their incarceration. It is, of course, well known to everybody informed on prison life, that that personality maladjustment is almost inevitable in the very nature of prison life. Moreover, I shall point out that every informed prison official knows that most prisoners have knives, which is one of the reasons for periodic examination of cells and surprise searches of prisoners in all well directed prisons. I will point to the fact that I have had a great deal of experience with men in, and released from, prison. I have worked very closely in cooperation with Austin McCormick, Commissioner of Correction of the city of New York, and with men confined in Sing Sing.

I shall, furthermore, point out that the psychiatric report, which of course was an objective examination, and had no foreknowledge that four of the prisoners were to be released and that the others were still to be confined, shows without question that the four already released were, on the record, far less safe in the outside world than those now in. It was interesting to me, in going over the report this week to check my memory, that each

of the four released had pronounced prison psychoses, and three of them were marked as having bad neurotic conditions. In mental age, in intelligence quotient, in psychiatric adjustment, the record is clear that the four released would have been considered to have had the least chance of successful readjustment. Nevertheless, all four have been successfully taken care of since their release. There have been no anti-social difficulties. I think we can point with some satisfaction to an almost miraculous working out of an admittedly unhopeful situation.

I want to follow this treatment of his objection by meeting his second major point. He states quite clearly that if he had another six months to work the thing out, he felt it might be done, but the time is now too short, and preparations are not adequate. I would want to have him know the carefulness of our preparation in the event of the prisoners being released. This is, of course, confidential. We were planning to take them first by car to Atlanta. They were to be taken to the parish house of a church where respectable colored citizens of the community were to meet them. One of these is the head of the Atlanta School of Social Work who has experience with boys of this type, who would interview them on their present situation, and is prepared to offer opportunities for readjustment in industrial and trade schools. We expect to take them, at least by the next day, by train to Cincinnati. They will be under supervision for that entire trip. One of the prisoners will be left there with relatives prepared to take him, and will receive support from us preceding his placement in some job or trade school. The same day we expect to take the rest of them to Cleveland, where trained social workers are prepared to take two of them and supervise their readjustment. The other will be placed with an uncle in Cleveland, having the same supervision we plan for the one left in Cincinnati. The people that are to do this are not amateurs. We are far better prepared for these than we were for the other four.

I think the mere outline of this carefully worked out plan will be impressive on the Governor.

I then want to talk to his point that it would be a bad thing for society to let them out. I hope I can show that, in contrast to that, it will be an equally bad thing for society, on two grounds, to leave them in. First, an untoward incident, which is quite possible under the present setup, such as a stabbing, or the sickness and death of any one of them, would leave an irremediable stain upon the history of the case. There is an equally good chance of such an untoward incident if, with hope aroused, it is now denied. Moreover, it is wise to point out that we are aware of the chance we take. We have been warned by the Governor of his fears and feel it was taking the lesser

chance on the hurt to society in making the decision to release them.

My final point, and I think it is the one we must stress with all our power, is that we have now gone too far to back out. Unless we carry the experiement thru to the end, we, by which I mean those of us up here who have worked so satisfactorily with you down there, will all of us be in the position of this kind of a justified attack. It has already been said to me, and I know the line that will be taken by those whose previous hold of the case many of you down there so much deplored, that the respectable people were merely leading us up an alley. They will say that the Alabama people never did intend to do what they said. They will say: "You see, that's all you can expect from these respectable people. You cannot count on them in the end."

I shall point out the fact that I have played absolutely square with you down there in this whole matter. I have had nerve enough to require that my committee shall allow me to continue the hopeful negotiations started without revealing to them any detail at all about the steps in the procedure.

It was of course known, and the record will show it clearly, that Carmichael and Knight made a trip to New York, presumably at Alabama expense, to see if they could negotiate a settlement. It will also be clear on the record that Carmichael ran out on the agreement when he struck a snag. It will be evident to everybody that negotiations did proceed with considerable expectation of solution.

Up to the time that the Governor himself set the day and hour of the release, only one other man beside Shapiro and myself knew the facts. Up to that time they trusted us, when we said we believed we could work it thru.

Obviously, when the date and hour was set, then we had to get down to details with many individuals in order to insure the effective handling of the situation. It is now known to people in Atlanta, Cincinnati, Cleveland, and New York, that the day and hour was set, and many of the details of the procedure, such as the Governor's conference with Edmonds, Hall, and myself, and his volunteering to all of us, including Comer, of his intention to release the boys, is known to white and colored people of standing in different cities and with many other loyalties.

Even if we want it concealed, we could not now keep the fact from being known (with documents to support it), that the State of Alabama, thru its regular authorities, had gone that far, i.e., to set the actual date and hour of release.

Moreover, I think it is evident that if we do not succeed now, the Governor will be causing all these respectable people, for whom he has such sympathetic concern, a far greater hurt than any possible difficulty with the prisoners after their release. The public might almost expect some trouble. Those who are in the know consider it almost miraculous with the four already released. Our names will not be hurt if we fail to make good on a sincere attempt to rehabilitate them. If, however, the record shows, as it will, that we were fooled in our trust in a given word, and in the end could not produce that which we had every reason to promise, our honor will be much more under censure.

Frankly, I hate to contemplate the vials of wrath, the vitriolic bitterness, and the restoration to control over the defense by those who believe that it is only by denunciation and violence that justice can be obtained. It is, of course, known to you all, that a part of my great concern in this matter has been to demonstrate the effectiveness of the way of working thru conciliation in the solution of an apparently insoluble social situation.

The Governor can be in the position, you see, of saying, if anything should happen, "I warned them, but I believed in their good purposes, and, because they had succeeded so well with the others, felt they should be allowed to try with those who still remained in prison on the same charge on which the State had released the other four." I think his action can be justified on any reasonable grounds, and whether our result is successful or no, general approval would come of the worth whileness of the attempt.

I hope I have not gone into too great detail on this, but I felt it was important for you to know the way my mind was working. It is our joint suggestion (Grover's and mine) that Edmonds and Johnston, with the addition of Comer if he can be seen on this, should write to the Governor whatever you feel you want to, which would be in line with your sincere support of the contentions that I have outlined above. It would be my suggestion that you say nothing about my awareness of the situation, as far as the boys are concerned. I believe it would be better strategy for me to make that a surprise approach in the first attack on the Governor's position. I do hope you will stress particularly, each in your own way, the very great importance of not hurting society and us by drawing back now, when he has gone so far. I believe you could emphasize that you are quite conscious that it may not turn out right, but that the chances for it are good, and that that chance will not come again because, if the Governor fails now to carry thru his previously stated intention, I and the others who are of my spirit will immediately lose control of the whole situation up here, and

will not again have a chance to confer with you as we have in the past. Under those circumstances, I think you can urge him that it is certainly to the best interests of all concerned to take what is admittedly a chance in the action proposed.

In other words, you see if you will lay before the Governor, not later than Wednesday morning, and preferably by special delivery on Tuesday, your expression of confidence in me, and your urging upon him of this action, it will give Grover and myself a good atmosphere for our conference.

Here endeth my book. Do realize we are at the final moment. I am confident we can win. I am confident, also, of your loyal support. I shall do my very utmost to bring the good conclusion. I expect to win. Whether we win or no, however, I shall never forget the personal joy that I have had in my friendship and companionship on a job which I have felt for each one of you. I know you will have it on your hearts and minds in spite of the fact that you all are busy about many important things.

My best to you,

As ever

Allan Knight Chalmers

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Printed with last paragraph omitted in Allan Knight Chalmers, They Shall Be Free, pp. 164-165, (Doubleday, 1951).

THE MONTGOMERY ADVERTISER

Montgomery, Alabama

November 15, 1938.

Personal

Dear Dr. Chalmers:

This morning at 2 o'clock, after I had written a batch of letters I wondered if there was not yet another to be written, when it occurred to me that maybe it would do no harm to take one final shot at Governor Graves. I sat late and wrote a letter to him which I sent by special delivery. A copy of it is enclosed. As it turns out the letter had no effect, but I want you to know that I did my best.

Finally let me say that I think you did a swell job. You so maneuvered as to get a promise from Alabama to release the men into your custody. Surely no man can say that it is your fault if at last the Governor, for reasons satisfactory to himself, changed his mind and decided not to go through with the original arrangement.

I am hurrying to catch the night plane with this stuff. Let me hear from you. In all admiration,

Sincerely

(SIGNED)

GROVER C. HALL

PSF: Bibb Graves

PRIVATE & CONFIDENTIAL

December 7, 1938.

Dear Bibb:-

I am sorry indeed not to have seen you while I was at Warm Springs because I wanted to give you a purely personal, and not in any way official, suggestion.

You have been such a grand Governor and have done so much for the cause of liberalism in the State of Alabama that I want you to go out of office without any loss of the many friends you have made throughout the Nation.

There is, as you know, a real feeling in very wide circles that you said definitely and positively that you were going to commute the sentences of the remainder of the Scottsboro boys who are still in prison. Many, many warm friends of yours all over the United States relied on what they thought was a definite promise.

I do not want, nor am I able, in any way to go into the details of the case. It is possible that they have not a 100% good record while in jail. But, at the same time, many people are saying that the knife found on one of them was planted there.

Frankly, I think it would be a good thing if these boys could be taken at least a thousand miles away from the State of Alabama, and my private suggestion is that you could doubtless find sponsors for them who would care to take them out to the Rocky Mountain States or to the Coast, with a guarantee on their part that they would not turn up again in the State of Alabama!

It seems to me that this would be a very happy solution of the difficulty and would enable you to let them out of jail before your term of office expires.

As I said before, I am writing this only as a very old and warm friend of yours, and I hope you will take it in the spirit it is said.

Do come and see me soon in Washington and bring your wife with you. She is a grand person.

Always sincerely,

His Excellency
Bibb Graves,
Governor of Alabama,
Montgomery,
Alabama.

PSF: Bibb Graves

file Confidential

STATE OF ALABAMA
EXECUTIVE DEPARTMENT
MONTGOMERY

THE WHITE HOUSE
DEC 28 11 35 AM '38
RECEIVED

BIBB GRAVES
GOVERNOR

PITT TYSON HAREN
SECRETARY TO THE GOVERNOR
CARRIE K. ANDREWS
RECORDING SECRETARY
LAWRENCE H. LEE
LEGAL ADVISER

Dec. 27, 1938.

Hon. Franklin D. Roosevelt,
President of the United States,
The White House,
Washington, D. C.

My dear Mr. President:

I have delayed answering your confidential note on the matter of the Scottsboro case because I preferred to discuss it with you in person and believed that I would be able to get to Washington before the Holidays. The press of making quadrennial reports of every Department has so belabored me that I have been unable to see you as I had expected to do.

I did state definitely that I would commute such sentences as came to me after the Courts were through. This I did. In Alabama there is only one commutation known to the law, which is the reduction of a death penalty to life imprisonment. When some were under death sentence, others with varying terms, I stated that if it came to me that I would commute. This I did of my own initative in the one case (Morris) that finally reached the Governor's desk.

I never definitely stated that I would parole them all. Dr. Chalmers in his statement brings out the fact that I said that I would give all an opportunity to be heard before final action was taken. I set a date for such hearing and gave public notice thereof. None can assume that I would in advance say that I would turn them loose and then hold a public hearing as to whether or not they should be turned loose. I did have published in all the Press of Alabama that this public hearing would be held, fixing the date in the publication.

Hon. Franklin D. Roosevelt.

Page-2

I did tell some of the Scottsboro Committee that I would conclude all of these hearings by a named day and that if it were determined to free them that on that named day I would have them all assembled in Montgomery and turn them over to their sponsors.

There was never anything done or said that could directly or indirectly give any one reason to believe that it was determined what would be the final outcome prior to the denial. At times of my conferences with members of the Committee I had not read the evidence. I had not conferred with the prosecuting officers. I had not talked with the men themselves, and had not had the public hearing, all of which members were advised would be done before final decision.

After the hearing, which amounted to nothing, by the reading of the evidence, the talking to the Attorney General and his office force that conducted the prosecution and the Circuit Solicitor that assisted and talking to the men themselves, each privately and alone, I was forced to the conclusion that it was impossible for me to release them.

As to the "knife", I really would have you know that our prison authorities would neither do nor permit the doing of such a thing as "planting" this knife. Patterson himself talking to me alone, stated that he was keeping it for a fellow convict. He gave a name, but thorough investigation showed no such name in the penitentiary.

Mr. President, if you knew, as I do, the real facts in this most deplorable occurance in Alabama's recent history, I am absolutely sure in my own mind that you would act as I am acting. No other course would be fair to the men involved or just to society.

I am keeping sacredly confidential the fact that you have ever communicated with me upon this matter, however, I think that you should know that Mr. Torney Johnston of Birmingham and Mr. Grover Hall of this City in telephone conversation with me have indicated that they were aware of your interest.

Respectfully,

Bibb Graves

BIBB GRAVES,
Governor.

BG:T

From Scottsboro Defense Committee
112 E. 19th St.
New York, N. Y.

Gov. Bibb Graves

FOR RELEASE IN FRIDAY MORNING, DECEMBER 23, 1938

New York, Dec. 23--A letter asserting that Governor Bibb Graves of Alabama failed to keep his "given word of honor" to release four of the remaining defendants in the world famous Scottsboro case was made public today by Dr. Allan Knight Chalmers, chairman of the national Scottsboro Defense Committee.

The charge of breach of faith was contained in a letter addressed to Governor Graves December 19 by Dr. Chalmers in which was reviewed the year-long negotiations for the release of four of the five youths still in prison.

The letter revealed that Governor Graves had set the day and hour for the release as October 31 at 11 a.m., after having postponed it from October 24 at 10 a.m. The four youths who were to have been freed are Haywood Patterson, Charlie Weems, Andy Wright and Clarence Norris. Ozie Powell, the last defendant, is serving a sentence for attacking a sheriff and the governor felt action on his case should be deferred.

Governor Graves was reminded of a conference held in his office December 21, 1937, participated in by Dr. Henry D. Edmonds, Birmingham minister; Grover Hall, editor of the Montgomery, Ala., Advertiser; and Dr. Chalmers, who is minister of the Broadway Tabernacle church in New York.

All conferees heard the governor assert, according to the letter, that he felt the position of the State of Alabama to be "untenable" (since four defendants had been freed in July, 1937) and that either all were guilty or all should be freed.

The governor stated further, the record declares, that he could not act while any legal action was pending, but as soon as the courts had finished, he would act "quickly and definitely." The letter quotes Governor Graves directly as saying:

"My mind is clear on the action required to remedy this impossible position. When the cases come before me I intend to act promptly. I cannot be any clearer than that, can I?"

The letter charges also that Governor Graves suggested the persons who should appear at the hearing in July, 1938, before the Alabama Pardon Board on the application of the defendants for pardon, naming Forney Johnston, eminent Birmingham attorney, and Donald Comer,

- more -

son of a former Alabama governor and president of the Avondale Mills, Birmingham.

The pardon hearing was held, the letter said, "with the full knowledge of all interested persons that it was to clear the record for your action."

At the conclusion of the formal hearing Governor Graves requested Messrs. Johnston, Hall, Comer, Chalmers, and Shapiro, national secretary of the defense committee, to remain for a conference and at that time said definitely that he was going to parole the youths in the custody of the defense committee as soon as the pardon board had announced its decision. The Alabama citizens present congratulated the governor and all left convinced that the release was a matter of only a few weeks' time.

When Governor Graves finally set October 24 as the date of release, detailed plans were made for removing the youths from the state, the letter says, and arrangements were made with citizens in Atlanta, Cincinnati and Cleveland for the aid of the defendants.

On October 20, with plans complete, including train reservations, Governor Graves terminated the whole matter with a telegram calling off the October 31 date.

The letter charges Governor Graves with refusing to take action "to clear the name of Alabama from this unquestioned stain upon her honor" and declares:

"That you should now withdraw from your decision, under which you have knowingly allowed us to act for a period of a year, is such a betrayal of all honor and decency that it has shocked men of high standing who are acquainted with the facts."

December 19
1938

His Excellency
Honorable Bibb Graves
The Governor of Alabama
Montgomery, Alabama

My dear Governor Graves:

Your refusal to carry thru with your given word to release the remaining Scottsboro defendants on parole to the Defense Committee has caused great concern to all those who know about it, including men of high rank in our national life.

It is a matter of real regret that the time has apparently come when we must release these facts to the general public because we desired to avoid this additional reflection on the name of the State of Alabama. It is your failure to observe your word which requires the publication of these facts.

As Governor of Alabama you gave your word before reputable witnesses within your own state, (and there are documents to support this statement,) that you would release the remaining Scottsboro defendants on parole to the Defense Committee. Date and hour of this release were set by you.

Because your subsequent refusal to go thru with your given word has made a situation where extreme bitterness has arisen having social and political repercussions, it becomes necessary to give a simple time schedule of events which have led to a situation wherein a Governor so shockingly betrays an understanding which was backed by his own word.

In July of 1937, after five defendants had been adjudged guilty by jury and sentenced for terms from twenty to ninety-nine years, the State of Alabama reversed its procedure releasing four defendants thru nolle prosse action, altho all defendants were charged on exactly the same testimony, and for nearly seven years have been considered equally guilty by the State. Obviously this was a thoroly untenable position on which the State of Alabama could not stand, as you freely stated on several occasions.

In December 1937, after preliminary arrangements thru the Alabama Scottsboro Committee, an interview was held with you by Dr. Henry Edmonds, of Birmingham, Chairman of the Alabama Scottsboro Committee, Mr. Grover Hall, Editor of the Montgomery Advertiser, and myself as Chairman of the National Defense Committee.

At the end of that conference you freely stated your intention of releasing the boys as soon as the cases were out of the hands of the judiciary. Copy of a document signed by Messrs. Edmonds, Hall, and myself, dated December 22, 1937, substantiates this statement and is included in this letter as a part of it:

"Memorandum of a conference with Governor Graves, held on December 21, 1937, by Dr. Edmonds, Mr. Grover Hall, and Dr. Chalmers.

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"The letter from Messrs. Johnston, Chappell, Mills, and Dr. Edmonds was before him and had been read by the Governor.

"Dr. Edmonds asked the Governor to listen to the statement of Dr. Chalmers on the present situation of the Scottsboro Case.

"Dr. Chalmers began with the premise as stated in the joint letter before the Governor that the State of Alabama will be subject to criticism and adverse propaganda so long as these defendants remain in prison. He emphasized the incongruity of four of the accused being let out and four remaining in prison on the same charge and evidence.

"He submitted that it was good public policy to use the powers of executive clemency to remove the case from further controversy and pointed to the well known fact of the Governor's courage and forthrightness in handling difficult situations of similar nature when they came into his jurisdiction.

"He asked for definite action leading to the immediate release of the defendants, the details of procedure to be left to the Governor's judgment. This act would meet with nearly unanimous approval of the Press and informed public opinion redounding to the credit of the Governor and the State of Alabama and was justified under the circumstances.

"Mr. Grover Hall immediately voiced his whole-hearted and unqualified personal support of the statement of Dr. Chalmers and promised his editorial backing in the Governor's capable action.

"Dr. Edmonds assented personally and mentioned that Mr. Chappell and Mr. Mills concurred definitely.

"The Governor stated that he felt the position of the State to be untenable, that either all were guilty or all should be freed, that half fish and half fowl was not reasonable.

"He said that his own mind was therefore clear on the action he should take when the cases "fell in his lap."

"He felt it was not possible for him to take any action so long as there was any pending appeal before the courts, but that when the cases had been decided in the Supreme Courts and legal action had ceased, it was his intention to act quickly and definitely.

"Dr. Chalmers offered to withdraw the appeals if it would facilitate the Governor's immediate action.

"The Governor stated that the cases would be heard in January, that only a few weeks remained to put them before him in regular order, that he would prefer to await action until the cases had passed through their routine.

"He then leaned forward and stated, "I cannot make any promise which would look like a deal. I have already stated my feeling that the position of the State

is untenable with half out and half in on the same charges and evidence (he used again his expression of half fish and half fowl). My mind is clear on the action required to remedy this impossible position. When the cases come before me I intend to act promptly. I cannot be any clearer than that, can I?"

"The conference lasted nearly an hour. It was agreed by Dr. Edmonds, Mr. Hall, and Dr. Chalmers in an immediate consultation afterwards that their understanding was that the Governor intended to use the powers vested in his office for the immediate release of the accused as soon as the matter was out of the judiciary and in the hands of the executive.

"This memorandum was prepared at once and attested that the record of the conference might be accurate and unquestioned.

(Signed) GROVER C. HALL
HENRY M. EDMONDS
ALLEN KNIGHT CHALMERS

Dec. 22, 1937

In the late spring of 1938, you restated your intention to Mr. Shapiro, Secretary of the National Defense Committee, and at that time made definite suggestions on the men you wished to appear before the Pardon Board as soon as the State Supreme Court rejected the appeal of the last cases. Specifically you insisted that in addition to Mr. Forney Johnston, of Birminghan, and myself, who were necessary as advocates to present certain phases of the case, Mr. Donald Comer, President of Avondale Mills, Birmingham, also son of a former governor, should also appear to support publicly the contention that it was good public policy to release the prisoners.

In July, 1938, this hearing was held with the full knowledge of all interested persons that the pardon hearing was to clear the record for your action. All those taking part knew before the hearing that the Pardon Board's decision would probably be unfavorable, but that it was your intention to act as you had indicated as a matter of good public policy.

After the hearing was completed, you thanked the Pardon Board for their courtesy in meeting in your office, and immediately asked, before adjourning the hearing, that Mr. Forney Johnston, Mr. Donald Comer, Mr. Grover Hall, Mr. Morris Shapiro, Secretary of the Committee, and I remain in your office for a conference.

As soon as the others had gone out, you said that you had asked us to remain that you might tell us the way your mind was working on this matter. You told us that it was your intention to parole the boys in the custody of the Defense Committee as soon as the Pardon Board had submitted its decision and time enough had elapsed for you to hear any that objected to the release.

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Following a brief discussion and congratulations by the Alabama citizens on the courage and wisdom of your decision, the conference adjourned.

Affidavits supporting the above statement can be secured if desired from any one or all of the men present.

Every man expressed himself, afterwards, as being certain of your clear intention.

In preparing for the promised release, I wrote a letter to you outlining the steps to be taken in anticipation of your promised action. This letter, a copy of which you have, was answered by you making only minor suggestions on procedure and by direct implication further documented your given word.

Subsequently, in a conference with the secretary of the Committee on details, you again expressed your intention to release the Scottsboro defendants at a date that would be in the near future, promising to let the Committee know when the date and hour was set. Subsequently, you set the date of October 24th at ten o'clock. Later, because of illness of your legal advisor, you requested that the date be postponed to Monday, October 31st. Mr. Shapiro and I were asked to be in your office at ten, and the release of the prisoners was set for eleven o'clock.

A letter was prepared by me at your suggestion covering our understanding of the conditions under which the release to us was to be made. A copy of that is included here:

His Excellency
The Governor of Alabama
Montgomery, Alabama

My dear Governor Graves:

As you release to our care Haywood Patterson, Clarence Norris, Charles Weems, and Andrew Wright of the so-called Scottsboro Case, I want to tell you what we hope and plan to do with them.

We shall take them to places already prepared for them among relatives and friends. They will not be taken to NewYork or its vicinity. Rather we expect them to be placed in at least two, and preferably three, different cities where relatives or friends of each can help them.

We expect to act, in so far as we can, as unofficial guardians opening up for them, wherever possible, opportunities in schools or trades where they can be rehabilitated.

We understand that they are on a six months parole, during which time they are expected to make a monthly report to the Parole Board. We also shall make a monthly report and shall do all in our power to have them live up to the requirement of their parole. While we can not be, in the very nature of things, official parole officers, we shall in every way conduct ourselves in the spirit

- more -

of that office in its highest sense.

May I add, to this letter of confirmation of our understanding of our responsibility in connection with this act of yours, my appreciation of your courtesy in dealing with us in this issue. It is my opinion that your act will be recognized throughout the world as a right and courageous facing of a situation which has troubled many thoughtful people for many years.

With cordial good wishes,

Sincerely
(Signed) ALLAN KNIGHT CHALMERS

Negro citizens in Atlanta, Cincinnati, and Cleveland were taken into our confidence only after you had officially set the date. These Negro citizens worked out a detailed plan covering all contingencies for the safe release of the boys and the beginning of their rehabilitation in the outside world. Actual reservations of cars, train accommodations, and services of social workers, were definitely engaged for the particular times needed, and adequate funds for their care were provided.

On Saturday afternoon, October 29th, with everything arranged in detail for their release on Monday, a telegram was received from you asking for a postponement of your agreed action. In the interim former Senator Heflin had had an interview with you and subsequently gave a threatening interview to the papers.

Since that time you have given us no satisfactory explanation for changing your commitment to us of a year's standing.

We have acted with you all along in good faith. There has been no forcing of your decision by anything but the most friendly means. The initiative has been taken by reputable Alabama citizens of standing and influence. You have given us no ground for supposing that your word was not seriously given.

That you should now withdraw from your decision, under which you have knowingly allowed us to act for a period of a year, is such a betrayal of all honor and decency that it has shocked men of high standing who are acquainted with the facts.

If this letter, prepared that there might be a brief resume of the larger record for immediate release before Christmas, goes out to the public it will be because you have refused to take action to clear the name of Alabama from this unquestioned stain on her honor. Men may differ in their convictions about the truth or falsehood of a legal trial. There is no appeal before men of honor from a Governor going back on his given word.

Very sincerely yours,

Allan Knight Chalmers

Chairman, Scottsboro Defense
Committee

Printed in Allan Knight Chalmers, They Shall Be Free, pp. 141-142, (Doubleday, 1951).

SCOTTSBORO DEFENSE COMMITTEE
112 EAST 19th STREET
NEW YORK, N. Y.

American Civil Liberties Union
Roger N. Baldwin

Church League for Industrial Democracy (Episcopal)
Rev. William B. Spofford

International Labor Defense
Robert Minor

League for Industrial Democracy
Norman Thomas

Methodist Federation of Social Service
Bishop Francis J. McConnell

National Association for Advancement of Colored People
Walter White

Sponsoring Organizations:
National Urban League
National Committee for Defense of Political Prisoners

Sponsoring Committee:
Charles Bickford
Rev. W. Russell Bowie
Dr. S. Parkes Cadman
Dorothy Detzer
Prof. W. E. B. DuBois
Roscoe Dunjee
George Clifton Edwards
Rt. Rev. K. C. Finley
Harry Emerson Fosdick
Rt. Rev. Charles K. Gilbert
Elizabeth Gilman
Hubert C. Herring
T. Arnold Hill
Rev. John Haynes Holmes
Mrs. Bayard James
Prof. Robert Morse Lovett
Rev. J. Howard Melish
J. B. Mitchell
Charles Clayton Morrison
Carl Murphy
Rev. James Myers
Pres. Wm. A. Neilson
Bishop Robert L. Paddock
Morris Ryskind
Dr. Robert Searle
Donald Ogden Stewart
Helen Phelps Stokes
Mrs. Walter Weyl
Mary E. Woolley
Oswald Garrison Villard
Louise Young

Chairman
Rev. Allan Knight Chalmers
Vice-Chairman
Gene Hilton Russell
Durham, N. C.
Rt. Rev. William Scarlett
St. Louis, Mo.
James Weldon Johnson
Nashville, Tenn.
Treasurer
William Jay Schieffelin
Secretary
Morris Shapiro

My dear Governor Graves:

As you release to our care Haywood Patterson, Clarence Norris, Charles Weems, and Andrew Wright of the so-called Scottsboro case, I want to tell you what we hope and plan to do with them.

We shall take them to places already prepared for them among relatives and friends. They will not be taken to New York or its vicinity. Rather we expect them to be placed in at least two, and preferably three, different cities where relatives or friends of each can help them.

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We understand that they are on a six months parole, during which time they are expected to make a monthly report to the Parole Board. We also shall make a monthly report and shall do all in our power to have them live up to the requirement of their parole. While we can not be, in the very nature of things, official parole officers, we shall in every way conduct ourselves in the spirit of that office in its highest sense.

May I add, to this letter of confirmation of our understanding of our responsibility in connection with this act of yours, my appreciation of your courtesy in dealing with us in this issue. It is my opinion that your act will be recognized throughout the world as a right and courageous facing of a situation which has troubled many thoughtful people for many years.

With cordial good wishes,

Sincerely

Allan Knight Chalmers

Printed in Allan Knight Chalmers, They Shall Be Free, pp. 135-140, (Doubleday, 1951).

MEMORANDUM TO THE PRESIDENT ON THE SCOTTSBORO CASE

The Special Problem arising at this time,

comes from the fact that Governor Graves of Alabama gave his word before reputable witnesses, supported by documents, that he would release the remaining Scottsboro defendants on parole to the Defense Committee. Date and hour of this release was set by the Governor himself.

Subsequently, the Governor refused to go thru with his given word, making a situation where extreme bitterness can arise which will have social and political repercussions.

CHRONOLOGY

NOTE: This covers only the present phase of the case. A further history is submitted herewith in case it is desired for reference.

A

July 1937, after five defendants had been adjudged guilty by jury and sentenced for terms from twenty to ninety-nine years, the State of Alabama reversed its procedure releasing four defendants thru nolle prosse action, altho all defendants were charged on exactly the same testimony, and for nearly seven years have been considered equally guilty by the State.

B

December 1937, after preliminary arrangements thru the Alabama Scottsboro Committee, an interview was held with Governor Graves by Dr. Henry Edmonds, of Birmingham, Chairman of the Alabama Scottsboro Committee, Mr. Grover Hall, Editor of the Montgomery Advertiser, and Dr. Allan Knight Chalmers of Broadway Tabernacle Church, New York, Chairman of the National Defense Committee.

At the end of that conference the Governor freely stated his intention of releasing the boys as soon as the cases were out of the hands of the judiciary. Copy of a document signed by Messrs. Edmonds, Hall, and Chalmers, dated December 22d, 1937, substantiates this statement.

C

In the late spring of 1938, Governor Graves restated his intention to Mr. Shapiro, Secretary of the National Defense Committee, and at that time made definite suggestions on the men he wished to appear before the Pardon Board as soon as the State Supreme Court rejected the appeal of the last cases. Specifically, the Governor insisted that in addition to Mr. Forney Johnston, prominent lawyer who is the son of a former governor, of Birmingham, and Dr. Chalmers, who were necessary as advocates to present certain phases of the case, Mr. Donald Comer, President of Avondale Mills, Birmingham, also son of a former governor, should also appear to support publicly the contention that it was good public policy to release the prisoners.

D

In July 1938, this hearing was held with the full knowledge of all interested persons that the pardon hearing was merely to clear the record for the Governor's action. All knew before the hearing that the Pardon Board's decision would be unfavorable.

After the hearing was completed, Governor Graves, after thanking the Pardon Board for their courtesy in meeting in his office, immediately asked, before adjourning the hearing, that Mr. Forney Johnston, Mr. Donald Comer, Mr. Grover Hall, Mr. Morris Shapiro, and Dr. Allan Knight Chalmers remain in his office for a conference.

As soon as the others had gone out the Governor said, "I have asked you to remain that I may tell you the way my mind is working on this matter. It is my intention to parole the boys in the custody of Dr. Chalmers' Committee as soon as the Pardon Board has submitted its decision and time enough has elapsed for me to hear any that object to the release."

Following a brief discussion and congratulations by the Alabama citizens on the courage and wisdom of his decision, the conference adjourned.

Affidavits supporting this paragraph can be secured if desired from any one or all of the men present.

Every man expressed himself, afterwards, as being certain of the Governor's clear intention.

E

In preparing for the promised release, a letter was written by Dr. Chalmers to Governor Graves outlining the steps to be taken in anticipation of the Governor's promised action. This letter, copy of which is attached, was answered by Governor Graves on his own stationery and signed with his own hand, making only minor suggestions on procedure and by implication further documenting his given word.

F

Subsequently, in a conference with Mr. Shapiro on details, the Governor again expressed his intention to release the boys at a date that would be in the near future, promising to let the Committee know when the date and hour was set. The date of October 24th at ten o'clock was first set. Subsequently, because of illness of his legal advisor, the Governor requested that the date be postponed to Monday, October 31st. Dr. Chalmers and Mr. Shapiro were asked to be in his office at ten, and the release of the boys was set for eleven o'clock.

G

A letterwas prepared by Dr. Chalmers at the Governor's suggestion covering our understanding of the conditions under which the boys were to be released. (Copy attached.) Negro citizens in Atlanta, Cincinnati, and Cleveland were taken into our confidence only after the Governor had officially set the date. These Negro citizens worked out a detailed plan covering all contingencies for the safe release of the boys and the beginning of their rehabilitation in the outside world. Actual reservations of cars, train accomodations, and services of social workers, were actually engaged for the particular times needed, and adequate funds for the care of the boys were provided.

H

Saturday afternoon, October 29th, a telegram was received from Governor Graves asking for a postponement of action. Investigation by members of the Alabama Scottsboro Committee revealed the fact that former Senator Hefflin had had an interview with Governor Graves and subsequently had given a threatening interview to the papers.

The Governor on Friday and Saturday brought several of the boys down to his office and talked with them. Preceding his interview with them, a knife was laid on his desk which it was alleged was found on Haywood Patterson. Mr. Donald Comer made the statement before a group of the Committee in Birmingham that it was his opinion that there was at least a fifty fifty chance that the knife was planted. Whether it was or not, it naturally gave a certain color to the Governor's mind as he interviewed the boys. Telegrams and telephone calls, which the Governor described as peremptory and insulting, were received at the moment of the interviews from known Communist leaders in the State. All these things combined in influencing the Governor's attitude.

From that single brief interview with these subnormal Negro boys who had been nearly eight years in prison and who were naturally on edge over this interview, made the Governor conclude that the boys were definitely anti-social and that, if released, they would be dangerous to the community in which they were placed. His contention is not borne out by those who have known the prisoners in a great number of interviews, nor by the psychiatric report prepared by Dr. Branch of Tuskegee under the direction of Dr. A. A. Brill, eminent New York psychiatrist. That report shows that the four already released by the State had far less chance of successful readjustment to life than those still remaining in confinement. Yet it is a matter of record that all those released by the State have been successfully returned to normal life since their release. Please read exhibit E as answer to this attitude of the Governor.

I

It is on the advice and with the full support of Dr. Henry Edmonds, Mr. Forney Johnston, Mr. Donald Comer, Mr. James Chappell (Editor of the Birmingham News and Age Herald) of Birmingham, and Mr. Grover Hall of Montgomery, who have been acting as the executive committee of the Alabama Scottsboro Committee of forty-nine eminent citizens of the State, white and colored, that we urge you to talk with Governor Graves on your trip to Warm Springs at Thanksgiving time, trying to make him see the catastrophy it will be for all the people of our way of thinking and working if he does not carry thru an action which was unquestionably understood by these reputable citizens to be definite and final.

Mr. Johnston, whose standing as a lawyer is beyond question, advises both by telegraph and telephone that the way is legally open for Governor Graves to carry thru his suggested parole before the end of his term, December 31st.

CONCLUSION

It is obvious that if we do not want to have this case returned to the control of organizations and individuals who proceed by denunciation and violence to attain their ends, it is incumbent upon us not to lose out on this solution now. Mr. Johnston said at the end of the last conference of the executive committee of the Alabama Scottsboro Committee that this is "the most unique sociological experiment on the working out of a social problem that has come in my life time, and if we fail on it we will set back the possibilities of relationship between the North and the South on some of these issues for a generation."

If the President can see his way clear to carry out the suggestion already made of inviting Governor Graves to Warm Springs that he may talk over the matter with him face to face, and if he can strongly urge that this matter be carried thru for the public good, since it is being conducted under such favorable auspices and with such responsible people in charge, it is quite possible we shall have done a great service to the cause of good government and sound public policy.

I am appending to this record certain documents and data which may be helpful to you for reference.

Respectfully yours

Allan Knight Chalmers

Chairman Scottsboro Defense Committee

N. B. If time does not allow for reading all the records appended, the part in exhibit E marked in red is the most important.

APPENDED HEREWITH ARE THE FOLLOWING:

A

The Opinion of Judge James E. Horton of the Alabama Circuit Court, setting aside the verdict of guilty in the second trial as being contrary to the weight of the evidence. This document reviews and rejects the evidence on which the State has based its argument. It also shows the societies that compose the Committee and the officers thereof, and has in its front a four page calendar of the cases, down to, and including, the date of the responsibility of the present Committee in the defense.

B

(1) A letter to Governor Graves, December 8th, 1936, acquainting him with facts vital to the situation. It should be noted that the history of the Case will show that before the end of that month, at the Governor's insistence, which he has stated before witnesses, Attorney General Carmichael and Special Prosecutor Knight were sent to New York to see if a settlement could be negotiated with the committee.

Such a settlement was arranged and documents to support it can be supplied if it becomes pertinent. Subsequently, Attorney General Carmichael, finding he could not carry thru the agreement because of Judge Callahan's change of attitude, ran out on the trial at the last moment and skipped the State, making it impossible for prominent State officials and newspaper editors even to make contact with him during the subsequent trials. This in itself is a black mark on the record.

(2) A letter to Mr. Forney Johnston covering this item is also appended.

C

(1) Copy of the memorandum of the December 21st, 1937, conference in which Governor Graves expressed his intention to release the boys.

(2) Letter of May 4th, 1938, from Dr. Chalmers to Governor Graves, covering the procedure in carrying out the agreement.

(3) Letter from Governor Graves to Dr. Chalmers acknowledging the letter and making only minor suggestions of reasons for delay or differences of procedure.

Together these form a clear understanding of the Governor's expressed intention. When you add the testimony of such men as Dr. Edmonds and Messrs, Johnston, Comer, and Hall, the record is unquestionable. Copy of letter from Hall just received is exhibit (4).

D

(1) Telegrams from Governor Graves setting the dates of the appointment for the release. Also telegram from Grover Hall.

(2) Letter from Dr. Chalmers to Governor Graves covering the agreement on parole, which letter was prepared at the Governor's suggestion.

E

Letter from Dr. Chalmers to Dr. Edmonds, Mr. Johnston, and Mr. Hall, covering what Mr. Johnston calls my "brief" before the Governor in the conference in which he was urged to carry thru his action. All the material in this letter was presented to the Governor

by Dr. Chalmers in a conference, with Mr. Hall present, on November 10th.

F

The psychiatric report of ninety pages, mentioned in the memorandum, is not enclosed, but could be available if desired.