

THE SCOTTSBORO BOYS TRIALS AND JUDGE HORTON'S *EX PARTE* MEETING: HISTORY'S VERDICT

MATTHEW C. HEISE*

The second rape trial for one of the Scottsboro Boys, Haywood Patterson, was noted for a secret and private ex parte meeting between a key prosecution witness and the presiding trial judge, James E. Horton, Jr. Although the two people at this meeting—Judge Horton and Dr. Marvin Lynch—agree that this secret meeting took place, they dispute what was said. Understanding what was said at this meeting, which took place in the courthouse bathroom, is crucial as it changed the course of the historic trial. Drawing on relevant primary and secondary source documents as well as a statistical analysis of the 810-page trial court transcript, the historic evidence, while not definitive, clearly supports Judge Horton's account of what was said.

I.VARIED LIVES AND BACKGROUNDS COLLIDE	209
II.HAYWOOD PATTERSON'S SECOND TRIAL	212
A. Secret Courthouse Bathroom Meeting	213
III.CONFLICTING ACCOUNTS OF THE SECRET MEETING	215
A. Trial Transcript.....	216
B. Judge Horton's Letter and Interview	217
C. Dr. Marvin Lynch's Letter	218
D. Incentives	218
IV.HISTORY'S VERDICT: LEGACIES OF THE SCOTTSBORO BOYS' TRIALS	220
V.CONCLUSION	222

Fiat justitia ruat caelum¹

In the 1930s, Alabama was home to one of the most notorious miscarriages of justice in American legal history. In a collection of trials commonly known as the Scottsboro Boys' trials, nine innocent African-American teenagers were falsely accused and convicted of raping two white women.² Although the Scottsboro Boys' hearings were a travesty,

* Independent Scholar, Ithaca, New York 14850. Thanks to Dan Carter and Josh Borthwick for helpful comments on an earlier version of this Article. Reference librarians and archivists at the Cornell Law School and Emory University provided invaluable research assistance locating critical primary documents.

¹ "Let justice be done though the heavens may fall."

² For leading scholarly accounts of the various Scottsboro Boys' trials see, e.g., DAN T. CARTER, *SCOTTSBORO: A TRAGEDY OF THE AMERICAN SOUTH* (rev. ed. 2007); JAMES GOODMAN, *STORIES OF SCOTTSBORO* (1994).

one judge, James E. Horton Jr., emerged as both a hero and with his reputation enhanced. Judge Horton distinguished himself by standing up to the prejudices of the time and overturning the guilty verdict of one of the defendants, Haywood Patterson. Despite extensive historical interest in Judge Horton and the Patterson trial, one pivotal moment remains largely unexplored. On the third day of the trial, Judge Horton and a key prosecution witness, Dr. Marvin Lynch, met secretly in the courthouse bathroom at Dr. Lynch's request. Although the meeting changed the course of Haywood Patterson's trial, what was said at the meeting remains hotly disputed. Judge Horton claims that Dr. Lynch told him that the rape allegations were lies. Lynch denies making such a statement. Drawing on original court documents as well as personal correspondence archived at Cornell and Emory Universities, this article examines the historical evidence about the meeting and concludes that Judge Horton's account of the secret bathroom meeting is more persuasive.

This article first briefly explores the lives of Haywood Patterson and Judge Horton leading up to Patterson's trial in Horton's courtroom. The article then considers the pivotal courthouse restroom meeting. To assess the conflicting accounts of the meeting, existing historical evidence is weighed, including the original trial transcript, personal correspondence between Judge Horton, Dr. Lynch and historian Dan Carter, as well as Carter's personal interview with Horton. Finally, Lynch's and Horton's motivations for accurately describing the meeting are examined. A statistical analysis of the trial transcript shows that after the meeting, Horton began to rule more favorably for the defense and to actively ask witnesses questions that assisted the defense's case. Letters and interviews from both Horton and Lynch also, on balance, support Horton's account of what was said in their meeting. Horton's account of the meeting remains consistent over time and explains far more of the context than Dr. Lynch's account. Finally, the incentives both men faced strongly suggest that Lynch's denials were self-serving. In sum, the weight of the historical evidence considered, while not conclusive, supports Horton's account of the meeting.

I. VARIED LIVES AND BACKGROUNDS COLLIDE

The key characters in Haywood Patterson's second trial came from very different backgrounds. Both Dr. Lynch and Judge Horton were affluent white southern gentlemen who were professionally trained. In stark contrast, Haywood Patterson was a poor, illiterate African-American teenager, whose life changed when he found himself in the wrong place at the wrong time. Patterson's tragic experience with the American judicial system illustrates how racism and prejudice can destroy a young man's

future and how unchecked passions and biases can undermine the legal system. If there is any silver lining associated with Haywood Patterson's ordeal, it is that his experience and the international attention created by the Scottsboro Boys' trials contributed to the eventual demise of segregation in the American South. In addition, the Scottsboro Boys' horrific experience with the American legal system endures as an example that all human institutions—including the legal system—are imperfect and remain vulnerable to passions, biases and prejudice.³

Haywood Patterson grew up in the United States during the 1920s while the country was in the grip of the Great Depression. Work, principally manual labor, rather than formal education, dominated Patterson's childhood.⁴ As the years passed, Patterson, like many others during the Depression years, took to the trains and hitchhiked throughout the south looking for work.

On March 25, 1931, Patterson was riding a freight train heading from Chattanooga, Tennessee to Alabama when a scuffle broke out between a group of black teens and four or five young white men. The fight resulted in the white youths being forcibly thrown off the slow moving train.⁵ The white youths phoned the Paint Rock, Alabama station and told the station master about the fight and the black teens' role in it. Based on this information, the Paint Rock station master quickly assembled as many men as he could find, and bearing arms, arrested the nine African-Americans, including Haywood Patterson, as soon as the train reached the Paint Rock station.⁶

Soon after the arrests, two women who were also on the train, Victoria Price and Ruby Bates, came forward and accused the nine African-American teens of rape. An armed lynch mob of white farmers formed almost instantly after hearing the rape allegations.⁷ The situation grew so tense and volatile that local policemen had to set up a protective detail to keep the nine African-American teens safe long enough to put them in jail.⁸

Haywood Patterson's trial began on April 6, 1931, only 12 days after his arrest.⁹ It took an Alabama jury fewer than four hours to convict Patterson of rape and sentence him to death by the electric chair.¹⁰ Within one week, eight of the nine Scottsboro Boys were convicted and received

³ See Stephan Landsman, *History's Stories*, 93 MICH. L. REV. 1739, 1766 (1995).

⁴ See HAYWOOD PATTERSON & EARL CONRAD, *SCOTTSBORO BOY* 26-30 (1950) (describing Patterson's childhood).

⁵ *Id.* at 4.

⁶ See GOODMAN, *supra* note 2, at 4.

⁷ See PATTERSON & CONRAD, *supra* note 4, at 7.

⁸ *Id.* at 8.

⁹ *Id.* at 10.

¹⁰ See Dan T. Carter, "Let Justice Be Done": Public Passion and Judicial Courage in Modern Alabama, 28 CUMB. L. REV. 553-54 (1997-98).

death sentences. Only one of the accused, Roy Wright, escaped the death penalty. Wright's trial ended in a mistrial when some of the jurors held out for the death penalty, even though the prosecution only asked for a life sentence.¹¹

After the initial trials, the International Labor Defense (ILD), the de facto legal arm of the Communist Party in the United States¹² intervened and motioned for a series of mistrials on the grounds that the nine defendants did not receive adequate representation.¹³ During their initial trials, the defendants' court appointed attorneys' incompetence was clear to all. One of the defense lawyers, a real-estate attorney who lacked any experience in criminal cases, let alone capital cases, was described as "so drunk he could scarcely walk straight."¹⁴ Another attorney was semi-retired and suffered from the early stages of dementia.¹⁵ After protracted litigation, the United States Supreme Court threw out the original verdicts, including Patterson's, and called for new trials.¹⁶

For the new trials the ILD took over the Scottsboro Boys' legal defense and immediately hired Samuel Leibowitz to serve as lead defense counsel. Leibowitz, a leading New York attorney, had an impressive track record of trial victories. Of Leibowitz's 78 prior trials, he earned 77 acquittals and one hung jury. On March 27, 1933, Haywood Patterson went to trial for a second time on the rape accusations with a new defense attorney. Judge James E. Horton Jr. presided over Patterson's second trial.

Born in 1878, James Edwin Horton Jr. grew up on a large plantation in Tennessee.¹⁷ Horton's father had served in the Civil War as aide-de-camp to General S. Donelson and later became a probate judge.¹⁸ He graduated from Cumberland University where he received a bachelor's degree in 1897 and a law degree in 1899.¹⁹ After clerking in his father's probate court for a few years, Horton entered private practice. In 1906 Horton unsuccessfully ran for a seat in the Alabama state legislature. Four years later Horton ran again and won. After serving one term in the Alabama house Horton won a seat in the Alabama state senate.²⁰

Despite his electoral successes, Horton was not especially politically

¹¹ *Id.* at 554.

¹² Kenneth W. Mack, *Rethinking Civil Rights Lawyering and Politics in the Era Before Brown*, 115 YALE L.J. 256, 306 (2005) (finding links between the ILD and Communist party).

¹³ Landsman, *supra* note 3, at 1740.

¹⁴ Carter, *Alabama*, *supra* note 10, at 553.

¹⁵ *Id.*

¹⁶ *Powell v. Alabama*, 287 U.S. 45 (1932).

¹⁷ See Douglas O. Linder, *Without Fear or Favor: Judge James Edwin Horton and the Trial of the "Scottsboro Boys"*, 68 UMKC L. REV. 549, 549 (2000).

¹⁸ *Id.*

¹⁹ See GOODMAN, *supra* note 2, at 174.

²⁰ *Id.*

ambitious. After only one year in the state senate, he left the state legislature for the bench to finish an unexpired term in chancery court as a judge.²¹ In 1922, Horton was elected to Alabama's Eighth Circuit Court. Following his first six-year judicial term, Horton returned to the bench after an election in which he ran virtually unopposed.²² Horton presided over Haywood Patterson's retrial in early 1933 during his second term as a trial judge.

As a judge, Horton had a reputation for his fairness and eagerness to serve justice.²³ When he was assigned to the Patterson case, the prosecution and defense attorneys felt confident the defendant would receive a fair trial.²⁴ Horton discharged his judicial office without regard to politics and was often described as "liberal only in the sense of putting the rules of the game above the desire to win."²⁵ Horton showed a sense of fairness and a desire to have a proper trial from the beginning of Patterson's trial when, over the prosecutor's objection, Horton directed the county jury commissioner to release the jury roll to ensure that Patterson received a fairly selected jury.²⁶

II. HAYWOOD PATTERSON'S SECOND TRIAL

Despite his commitment to fairness, Judge Horton privately admitted that he began the Patterson trial assuming the defendant was guilty, like virtually everyone else in Alabama.²⁷ However, events during the trial, especially the exceptionally weak testimony of one of the accusers, Victoria Price, quickly raised doubts about Patterson's guilt. As a witness in Patterson's trial, Price contradicted herself frequently and provided testimony that was, in some instances, hard to believe. She often said "I can't tell you that" and "I can't remember" during her testimony.²⁸ Price's refusal to answer many questions and her lack of cooperation with the defense attorneys also worried Judge Horton.²⁹ Price's testimony about factual details, such as the arrangement of the train cars or where everyone was positioned on the train before and during the alleged rape, were often

²¹ *Id.*

²² Linder, *supra* note 17, at 578.

²³ *Id.* at 553.

²⁴ *Id.*

²⁵ See GOODMAN, *supra* note 2, at 174.

²⁶ See JAMES R. ACKER, SCOTTSBORO AND ITS LEGACY: THE CASES THAT CHALLENGED AMERICAN LEGAL AND SOCIAL JUSTICE 60 (2008).

²⁷ GOODMAN, *supra* note 2, at 175.

²⁸ Trial Transcript of Record, State of Alabama v. Haywood Patterson, Decatur, Alabama, March-April, 1933, Scottsboro Trials Collection, 1931-1937, Rare Books Room, Cornell Law School, Ithaca, New York, Volume 2, pp.16-131 [hereinafter "Trial Transcript"].

²⁹ GOODMAN, *supra* note 2, at 177.

full of contradictions and inconsistent with other witnesses' testimony.³⁰ Finally, some of Price's claims proved simply impossible. Price insisted, for example, that all nine teenage boys violently raped her even though one of those she accused, Willie Roberson, was crippled by gonorrhea to the point that he needed assistance walking.³¹

Unlike Victoria Price's questionable performance as a prosecution witness, other prosecution witnesses provided far stronger and more persuasive testimonies. One such witness, at least initially, was Dr. R. R. Bridges, one of the doctors that examined the two accusers. Under direct examination, Dr. Bridges appeared quite sure of his facts and created the strong impression that from a medical prospective the two women had been raped. Dr. Bridges emphasized that Victoria Price had "scratches on the back part of her wrist" and a number of small bruises "right about the tops of the hips, three or four bruises. . . and then on the shoulders, between the shoulders another place about the same size, a blue place."³² Dr. Bridges also testified that he observed strong medical evidence of sexual activity.³³

However, Dr. Bridges' seemingly convincing direct testimony started to unravel under cross examination. While being questioned by Leibowitz, Dr. Bridges revealed other facts that cast doubt on whether a rape occurred. Bridges was forced to admit that the scratches and bruises he observed on Price were minor and that the absence of any meaningful physical injury was inconsistent with her own description of her violent attack and rape.³⁴ Dr. Bridges also admitted that the seminal fluid evidence he found was too old to have been related to the claimed rape by Patterson.³⁵

A. *Secret Courthouse Bathroom Meeting*

A second doctor, Marvin H. Lynch, also examined both women and was scheduled to testify after Dr. Bridges. Prior to taking the stand, however, Dr. Lynch spoke quietly with the lead prosecutor. After his discussion with Dr. Lynch, Thomas Knight, the lead prosecutor and Alabama's State Attorney General, informed Judge Horton that Dr. Lynch would not take the stand. The prosecutor claimed Dr. Lynch's medical testimony would simply repeat Dr. Bridges prior medical testimony.³⁶ Eager to keep the trial moving, Horton quickly consented to the

³⁰ *Id.* at 177-82.

³¹ CARTER, TRAGEDY, *supra* note 2, at 6.

³² Trial Transcript, *supra* note 28.

³³ *Id.* at 164.

³⁴ *Id.* at 179-82.

³⁵ *Id.* at 177.

³⁶ CARTER, TRAGEDY, *supra* note 2, at 214-15.

prosecutor's request to remove Dr. Lynch from the state's witness list.³⁷

Soon after Judge Horton allowed the prosecutor to remove Dr. Lynch from the prosecution witness list, a visibly distressed Lynch approached Judge Horton and asked to speak with him privately.³⁸ Horton recessed the trial court and agreed to meet with Lynch in the only available private area in the courthouse, the bathroom. With a court bailiff standing guard outside to ensure privacy, Horton and Lynch went into the men's restroom and quickly spoke before the trial resumed.³⁹

Judge Horton and Dr. Lynch strongly disagree about what was said during their meeting. Judge Horton says that Lynch told him he could not testify for the state even though his testimony would *not* repeat the prior testimony provided by Dr. Bridges. Indeed, Dr. Lynch said his medical view contradicted that of Dr. Bridges. According to Horton, Lynch described how he saw the two women come to the doctor's office relaxed, laughing, and showing no physical or emotional signs of a violent assault. Dr. Lynch also said that when he told Price and Bates that he felt that they were lying about the rape, the two women just laughed at him.⁴⁰ Judge Horton recalls saying, "My God Doctor, is this whole thing a horrible mistake?"⁴¹ and asking Lynch to testify and provide this information to the jury. According to Judge Horton, Lynch said he would refuse to testify.⁴² At this point Judge Horton likely lost any doubts about Patterson's innocence.

Dr. Lynch's recollection of what he told Judge Horton differs dramatically from Horton's account. Lynch denies ever saying he did not believe Price and Bates were raped, a denial he maintained to his grave. Lynch maintains there was no issue with what he might say on the stand, claiming only that he was not called to testify.⁴³ After careful consideration, Horton recalls deciding to let the trial go on without testimony from Dr. Lynch and hoping that the jury would find Patterson not guilty.⁴⁴

³⁷ *Id.*

³⁸ *Id.*

³⁹ Linder, *supra* note 17, at 563–64.

⁴⁰ GOODMAN, *supra* note 2, at 175.

⁴¹ Letter from Judge James E. Horton, Jr. to Dan T. Carter, September 21, 1967, in Dan T. Carter papers, Manuscript, Archives, and Rare Book Library, Emory University, Box 16, folder "Campbell material (V. Price v. NBC)" [hereinafter "Horton Letter"].

⁴² Interview (and transcription) by Dan T. Carter with Judge James E. Horton, Jr., at Macedon Plantation, Macedon, Alabama, April 9, 1966, in Dan T. Carter papers, Manuscript, Archives, and Rare Book Library, Emory University, Box 16, folder "Campbell material (V. Price v. NBC)" [hereinafter "Horton Interview"].

⁴³ Letter from Dr. Marvin H. Lynch to Dan T. Carter, October 16, 1967, in Dan T. Carter papers, Manuscript, Archives, and Rare Book Library, Emory University, Box 16, folder "Campbell material (V. Price v. NBC)" [hereinafter "Lynch Letter"].

⁴⁴ Horton Letter, *supra* note 41.

What is indisputable from the public record is that Judge Horton's faith in the Alabama jury proved misplaced. Even though the evidence and testimony clearly pointed to Patterson's innocence, the jury found Patterson guilty of rape once again.⁴⁵ After months of reflection and reviewing the facts and trial transcripts, on June 22, 1933, Judge Horton re-convened the court in his home town, and in a startling move, threw out Patterson's guilty verdict.⁴⁶ Horton's opinion over-turning the jury verdict notes evidence that prosecution witnesses lied and overwhelming evidence in support of Patterson's innocence. "[The evidence] greatly preponderates in favor of the defendant," Horton wrote.⁴⁷ He also noted a lack of sufficient medical evidence, corroborating Price's and Bates' accusations.⁴⁸ Not surprisingly, Judge Horton's decision to throw out the jury verdict outraged the southern white community and hurt Horton professionally.⁴⁹ Judge Horton subsequently lost his re-election bid to stay on the bench and never served as a judge again.⁵⁰

III. CONFLICTING ACCOUNTS OF THE SECRET MEETING

Given the pivotal role the secret meeting played in the Patterson trial, an accurate account of what was said in the meeting is crucial. A review of the historical evidence contained in the trial court transcripts, as well as letters between Judge Horton, Dr. Lynch and Professor Carter suggest that Judge Horton's account of the secret bathroom meeting is more persuasive than Dr. Lynch's account. First, as a judge, Horton behaved quite differently before and after his meeting with Lynch, as evidenced by his trial rulings and the manner in which he questioned witnesses. Second, letters and interviews illustrate that Horton's description of the meeting is detailed, direct, and consistent over time. Judge Horton's account also makes contextual sense given how unusual it is for a judge and a witness to meet secretly and in private. Dr. Lynch's account of the meeting, by comparison, is vague, defensive and lacks any explanation for *why* he asked Horton to meet with him. Finally, in later years when the trial was rightly viewed as a terrible injustice, both men had ample reasons to describe their secret meeting in a way that made them look as though they behaved honorably. Lynch's account is predictably self-serving. Horton's description, in contrast, risks undermining his judicial reputation, and therefore comes across as more believable.

⁴⁵ Linder, *supra* note 17, at 571.

⁴⁶ *Id.* at 576.

⁴⁷ *Id.* at 575–76.

⁴⁸ *Id.* at 575.

⁴⁹ *Id.* at 576.

⁵⁰ GOODMAN, *supra* note 2, at 207.

A. Trial Transcript

A close analysis of the trial transcript provides support for Judge Horton's account of the conversation in the secret bathroom meeting. Horton's rulings and actions on the bench changed after his meeting with Dr. Lynch. After his meeting with Lynch, Horton became much more involved in the trial's substance, asking more leading questions that favored the defense. In addition, Horton's motion rulings began to favor the defense over the prosecution.

The 810-page trial court transcript, archived at Cornell University, contains a complete account of everything that took place in Patterson's trial while the court was formally in session. The 810 pages include a total of 256 motions and objections made by the prosecution and defense attorneys. All of the 256 motions and objections were coded for the moving party (prosecution or defense) and how Judge Horton ruled (sustained or overruled). Of the 256 motions and objections, 82 took place before Judge Horton and Dr. Lynch's secret meeting, and 174 took place after the meeting. A summary of the findings from the trial transcript is presented in Table 1.

As Table 1 shows, prior to the meeting between Horton and Dr. Lynch the prosecution was more successful than the defense before Judge Horton. Prosecution motions and objections succeeded 78% of the time. In contrast, defense motions and objections were far less likely to succeed (39%) before the meeting. After Judge Horton's secret meeting with Lynch, however, Horton's rulings became less favorable for the prosecution and more favorable for the defense. After the meeting, the prosecution's success dropped from 78% to 53%, representing a 25% decrease. At the same time, Judge Horton started ruling more favorably for the defense. After the bathroom meeting, successful defense motions and objections increased from 39% to 45%.

TABLE 1: SUCCESSFUL MOTION RULINGS, PRE- AND POST-MEETING (PERCENTAGE)

	<i>Pre-meeting</i>	<i>Post-meeting</i>
Prosecution	78	53
Defense	39	45

Note: N=256

After the meeting, Horton's questioning became far more detailed and substantive. Questions became more likely to bear on whether or not a rape could be proved. He questioned Dr. J. H. Hamil, who testified later in the trial about Price and Bates' apparent calm demeanors and lack of

injury, by asking, “Would they [pulse and breathing rate] be normal under any circumstances?” and “[T]aking the case of a woman if she had been attacked and raped, say several men had raped her. . . what would her condition be an hour or two afterwards. . .?”⁵¹

B. Judge Horton’s Letter and Interview

In addition to the evidence from the trial transcript, Horton’s description of his secret meeting with Lynch is quite detailed, consistent over time and makes sense in the context of the trial. Judge Horton’s account of the meeting was initially recorded in a transcribed interview between Judge Horton and Professor Dan Carter on April 9, 1966.⁵² Judge Horton’s second description of his meeting with Dr. Lynch, contained in an exchange of letters between Horton and Professor Carter just over one year later, is consistent with his initial account.⁵³ In both instances, Horton was emphatically clear that Dr. Lynch expressed doubts about the alleged rapes.

During his interview with Professor Carter in 1966, Judge Horton recalled that the lead prosecutor, Attorney General Knight, asked him to excuse Dr. Lynch from testifying because Lynch would only repeat Dr. Bridges’ testimony.⁵⁴ Soon after Knight’s request was granted, a “very upset” Dr. Lynch approached Judge Horton and asked him for a private word.⁵⁵ As soon as they were alone in the men’s restroom Horton recalls Lynch saying:

I’ve got to tell you; I don’t believe that those negro boys raped those two white girls. . . When I saw those two girls I saw no evidence of rape and I told the girls they were lying.⁵⁶

Horton also recalled that this news understandably astonished and alarmed him. Horton recounted that he immediately requested that Dr. Lynch take the stand and give this evidence to the jury. Horton recalled Dr. Lynch refusing his request and saying, “Judge, God knows I want to, but I can’t. Feeling is just running too high. If I testified for those boys I’d never be able to go back to Jackson County. I’m well established now and I just don’t want to start over again.”⁵⁷

Judge Horton’s account in his interview is precisely what he described to Professor Carter more than one year later in a 1967 letter.⁵⁸ Not only are

⁵¹ *Id.* at 767.

⁵² Horton Interview, *supra* note 42.

⁵³ Horton Letter, *supra* note 41.

⁵⁴ Horton Interview, *supra* note 42.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Horton Letter, *supra* note 41.

Judge Horton's descriptions consistent over time, but they also provide plausible explanations for critical questions. Horton's account helps explain why Lynch took the unusual (even extraordinary) step of asking for a private meeting with the judge (something Lynch never denies), why Lynch did not testify and why Horton became convinced of Patterson's innocence strongly enough to subsequently overturn the jury's guilty verdict.

C. *Dr. Marvin Lynch's Letter*

In stark contrast to Judge Horton's accounts of his meeting with Dr. Lynch, Lynch's written account provides no explanation for the meeting that he requested. In his letter to Professor Carter, Dr. Lynch made it very clear that he did not agree with Horton's account of their meeting. Commenting on Judge Horton's account, Lynch wrote:

I wish to state that the statements made on the appendage to this letter [Horton's letter to Carter describing the meeting with Lynch] regarding the summary of the so called facts as relayed by Judge Horton. . .are absolutely unfounded. . .no such statements were ever made [by Dr. Lynch]. . .⁵⁹

Aside from challenging the accuracy of Horton's description, Dr. Lynch fails to provide his own account for the conversation. In addition, he fails to explain what prompted him to seek out Judge Horton for the private meeting. Given the legal context, requesting such a meeting with a judge in the middle of a trial is quite unusual and presumably would be done only for a very important reason. Finally, Dr. Lynch's letter has an aggressive and defensive tone. Indeed, Lynch takes the unusual step of requesting that nothing about the meeting as Horton recollects it should be included in Professor Carter's subsequent book about the Scottsboro Trials. "I trust that I make myself clear on the above statements; and I expect you to abide by them as per my request."⁶⁰ Dr. Lynch's concern about public disclosure is notable, especially as it comports with Horton's account of Lynch's concern about negative public reaction in connection with his potential involvement with Patterson's trial.

D. *Incentives*

Although the private letters and transcribed interviews provide a contested account of what Dr. Lynch stated in his meeting with Judge Horton, these primary documents must also be considered from the perspective of Dr. Lynch and Judge Horton's personal incentives.

⁵⁹ Lynch Letter, *supra* note 43.

⁶⁰ *Id.*

Judge Horton's recollection of the conversation in his meeting with Lynch runs directly against Judge Horton's personal and professional interests. By acknowledging his private meeting with Dr. Lynch during the Patterson trial, Horton admits that he participated in an ethically questionable meeting with a witness during the trial and then let a man he strongly suspected was innocent continue to face a trial and possible death penalty. Judge Horton confronted a difficult choice once he heard what Dr. Lynch had to say during their pivotal meeting. Horton could reveal his meeting and enter Dr. Lynch's devastating testimony as evidence into the Patterson trial. Or, Judge Horton could honor Lynch's request for confidentiality and simply hope that the jury would see through the rape hoax and acquit Patterson.

Both options presented problems for Judge Horton. The meeting between Dr. Lynch and Judge Horton was ethically questionable. A private meeting between a judge and a potential witness during a trial without both attorneys present is a possible violation of judicial ethics in effect at the time Horton and Lynch met. Although not formally binding on Judge Horton in 1933, the influential American Bar Association's Canons of Judicial Ethics states that a judge "should not permit private interviews, arguments, or communications designed to influence his judicial action, where interests to be affected thereby are not represented before him, except in cases where provision is made by law for *ex parte* communication."⁶¹ Also, if Judge Horton honored Lynch's request for confidentiality, Horton risked denying the jury incredibly valuable evidence. In the end, Judge Horton allowed Lynch to avoid testifying and in doing so, allowed Patterson to remain at risk.

Horton's account of the secret meeting is more believable because it runs against his personal and professional interests. Unlike Judge Horton, Dr. Lynch's description of the meeting is entirely consistent with his personal and professional interests. At the time of Patterson's trial Lynch would have risked his professional career, social standing, and perhaps personal safety, if he had come forward and accused two white southern women of lying about the rape. However, at the time of Lynch's letter to Carter, just prior the publication of Professor Carter's Bancroft Prize winning book about the Scottsboro Boys' trials,⁶² attitudes about the trials had dramatically changed. Bates, one of the two accusers, had come forward and admitted her accusations were false. Bates' recantation reinforced the worldwide perception that the trials were unfair and that the Scottsboro Boys were falsely accused. In 1967, the time of the letters

⁶¹ See AMERICAN BAR ASSOCIATION, CANONS OF JUDICIAL ETHICS 23 (1st ed. 1924) (Canon 17 "*Ex parte* Communications").

⁶² See CARTER, TRAGEDY, *supra* note 2.

between Horton, Lynch, and Carter, it was in Lynch's interest to lie and say that he had never told the judge that Bates and Price falsely accused Patterson. To do otherwise would require Lynch to admit that he allowed his personal and professional concerns and his worry that "emotions were running too high in Scottsboro"⁶³ to take precedence over an innocent man's freedom and, potentially, his life. From this perspective, Lynch had ample incentive to lie about his conversation with Horton.

IV. HISTORY'S VERDICT: LEGACIES OF THE SCOTTSBORO BOYS' TRIALS

After Judge Horton reverse his guilty verdict, Haywood Patterson was re-tried for a third time. The new judge assigned to Patterson's case, Judge Callahan, lost no time sentencing Patterson to death on the bogus rape charges. Although Patterson's whole life had been difficult, his experience with the justice system was particularly harsh. Patterson was held mainly in two jails: Kilby, "the death chamber," which had been labeled unfit for human inhabitation a year or two before, and Atmore, which housed lunatic inmates and was staffed by many delusional and violent guards.⁶⁴ While in these prisons, Patterson was beaten, deprived of food and attacked. In addition to attacking inmates, prison guards also enticed other prisoners to beat Patterson.⁶⁵ Here, Patterson found solace in religion. Although illiterate when he entered prison, with the help of the Bible, a dictionary and hard work, Patterson taught himself to read and write.⁶⁶

Despite his efforts at self-improvement, Patterson was not a well-behaved inmate. Patterson attempted two escapes while incarcerated. After one, he remained free for five days; after the other, for three years. While a fugitive, Patterson co-wrote *Scottsboro Boy*, a book that depicted his life as one of the nine Scottsboro Boys.⁶⁷ After publishing the book, Patterson was caught by the FBI and returned to prison. Only a nationwide letter-writing campaign on his behalf spared Patterson from even more time in jail.

However, much had changed between 1931, when Patterson was first arrested and sentenced to death for a rape he did not commit, and 1950, when FBI agents tried to extradite Patterson from Michigan and return him to an Alabama prison. Public opinion continued to move in Patterson's favor, especially in the North. Ruby Bates' willingness to recant her false accusation against Patterson and the other defendants contributed to the shift in public opinion towards the Scottsboro Boys.⁶⁸ A nation-wide

⁶³ *Id.* at 215.

⁶⁴ PATTERSON & CONRAD, *supra* note 4, at 180–89.

⁶⁵ *Id.* at 198–99.

⁶⁶ *Id.* at 31.

⁶⁷ See CARTER, TRAGEDY, *supra* note 2, at 414.

⁶⁸ *Id.* at 415.

letter-writing campaign urged public officials to spare Patterson his life as well as any more time in jail. Reflecting prevailing public sentiment, Michigan governor, G. Mennen Williams, refused to sign Patterson's extradition papers. Governor Williams' refusal prevented FBI agents from bringing Patterson—technically a fugitive—back to an Alabama prison.⁶⁹ In the face of mounting public resistance, Alabama officials announced that they would cease all efforts to return Patterson to prison.⁷⁰ Thus, Patterson's second escape from an Alabama prison functionally became permanent.

Long after the fiasco surrounding the Scottsboro Boys' trials passed from public attention, Patterson continued to find himself caught up in the criminal justice system. In 1950, Patterson found himself in legal trouble again after killing a man during a bar fight. Patterson went to court on three occasions for this offense. The first trial ended in a hung jury, the second in a mistrial and the third resulted in more prison time for manslaughter. Haywood Patterson died of cancer within a year of being sentenced. He was only 39-years-old.

Not much is known about Dr. Lynch after the Scottsboro trials. In the end, Dr. Lynch did not have the strength to publicly tell what he knew and put his job and standing at risk. He did, however, show some courage in approaching Judge Horton during the Patterson trial and meeting with him privately. Without Lynch speaking privately to Judge Horton, Horton may not have overturned the jury verdict. Without Horton overturning the jury's guilty verdict, Patterson may have been executed for a rape he never committed.

Soon after overturning the guilty verdict against Patterson, Horton was relieved from duty on the remaining Scottsboro Boys' cases. Not long after that, in 1934, Judge Horton faced the electorate once again in his trial judge reelection bid. Even though he ran unopposed in 1928, fallout from the Patterson case included two opponents for Horton's re-election effort. Throughout his reelection campaign Horton was widely referred to as "that Scottsboro judge."⁷¹ A friend of Judge Horton's reported that while traveling through much of Morgan County, Alabama, he could not find anyone willing to admit support for the "Scottsboro Judge."⁷² Judge Horton fought valiantly and campaigned vigorously to retain his judgeship, but ultimately lost in a run-off.⁷³ After his ouster by the electorate, Horton left politics and his life as a judge permanently. Horton re-entered private law

⁶⁹ *Id.* at 413.

⁷⁰ *Id.*

⁷¹ *Id.* at 273.

⁷² *Id.*

⁷³ *Id.*

practice and retired many years later to his family plantation.⁷⁴

V. CONCLUSION

Only Judge Horton and Dr. Lynch know what was said in that crucial courthouse restroom meeting and neither man is alive today. However, the historical evidence strongly supports Horton's account that Lynch told him that Bates and Price had falsely accused Patterson of rape. The trial transcripts show that after the meeting, Horton began to rule more favorably for the defense and actively ask witnesses questions that assisted the defense's case. Letters and interviews from both Horton and Lynch also support Horton's account of their meeting. Finally, the incentives both men faced strongly suggest that Lynch's denials were self-serving.

Consistent with the weight of the historical record, history's verdict has been kind to Judge Horton's legacy. He has become a symbol of all for which the American justice system stands. Even when the cost included political and social suicide, Horton overturned the jury's guilty verdict in the Patterson trial because he felt it was the right decision regardless of the personal cost. In 1966, during an interview about his 1934 decision to overturn Haywood Patterson's rape conviction, Judge Horton referred to the Latin phrase "Let justice be done though the heavens may fall."⁷⁵ Fallout from the Scottsboro Boys' trials tragedy included the heavens falling onto Judge Horton and inflicting significant personal and professional cost. His noble actions serve as a reminder of how an individual's adherence to principle, respect for the sanctity of truth and reverence for justice can overcome inflamed popular passions and local prejudices. Judge Horton's selfless and just actions truly honor the Latin phrase *Fiat justitia ruat caelum*.⁷⁶

⁷⁴ See Linder, *supra* note 17, at 582.

⁷⁵ See CARTER, TRAGEDY, *supra* note 2, at 273.

⁷⁶ "Let justice be done though the heavens may fall."