

The 1909 Donald Bain Murder Trial

The 1913 murder trial of Leo Frank was a national sensation that contributed to the tension swirling about the Jim Crow South at the time. Frank was a Northerner who employed young hardscrabble Southern girls, such as Mary Phagan, in the unchaperoned world of a booming urban Atlanta. He was from a wealthy New York family and money would be no obstacle in securing the best defense possible for the Cornell University graduate.¹

Representing Leo Frank was a legal dream team of eight lawyers, headed by Atlanta's two most prominent defense attorneys, Reuben Rose Arnold and Luther Zeigler Rosser.

The tall blond-headed "Rube" Arnold was a famous Atlanta defense lawyer and political operative with a well-earned reputation for gaining acquittals for his clients in celebrated murder trials. He received \$12,500 for his participation in Frank's defense.²

How had Reuben Arnold earned such a powerful reputation as a defense lawyer? In large part, his celebrity was established by the 1909 acquittal of Atlanta civic leader and Confederate veteran Donald McKenzie Bain. Brought before the Fulton County Superior Court in Atlanta, the 63-year-old Bain was on trial for the murder of his co-worker, Gus Williams, two months earlier. Through the first day of the proceedings, the State prosecution laid out a convincing case that Bain had shot the unarmed Williams in cold blood in their shared office in Room 312 of the Prudential Building, at the corner of Broad and Walton Streets. The two men were arguing over a trivial note card, but it served as the straw that broke the camel's back. The two fire insurance brokers greatly disliked each other, and their mutual antagonism had been growing for years.³

The Bain trial was on the front page of every Atlanta newspaper and of such

importance that Charles Dougherty Hill, who had been the Solicitor-General of Fulton County since 1884, personally led the prosecution. Considered a brilliant criminal prosecutor, Charlie Hill had built his reputation by winning celebrated murder trials. According to Atlanta historian Franklin Garrett, Hill's jury speeches, "were invariably masterpieces of forensic eloquence." Adding to his pres-

Williams had been shot three times by Bain's .32-caliber Iverson-Johnson pistol around 5 p.m., June 29, 1909. One of the bullets grazed Williams' head, but the bullet that entered near the third rib by the backbone proved to be the fatal shot. A fourth bullet struck the right wrist of Charles Beardsley, another agent for Fidelity & Casualty Company, who also had a desk in the room. Beardsley was



tige was the well-known fact that he was the second son of the late Benjamin Harvey Hill, one of Georgia's most renowned United States Senators.

The *Atlanta Journal* editorialized that Hill, "bore brilliantly the stamp of his father's genius. Indeed, in intellectual power and grace he was considered by many who knew both father and son to be the peer of the great Senator."⁴

On August 19, 1909, Charlie Hill was at the top of his game.

With the able help of attorney Albert H. Cox, he brought forth expert witnesses to testify against Donald Bain. Gus

therefore an unfortunate witness to the shooting.⁵

Dr. Willis Jones, who was present at the autopsy, testified that, in his opinion, Williams received one wound near his spinal column while sitting in his office chair, and two more as he fell, face forward, to the floor. This was critical information, for it was the position of the defense that Williams was charging towards Bain before the shots were fired. Beardsley, the only witness, was not any help, as he testified that he was between Williams and Bain, had received the first shot in his wrist, and only heard

Williams behind him crying out, “Oh, Mr. Bain,” and “Don’t, Mr. Bain.”

Dr. Jones carefully unwrapped a human skeleton and showed the 12 men on the jury exactly where the three bullets entered the body of Gus Williams. Dr. Jones testified, “Mr. Williams, in my opinion, had his back towards Bain at the time the first shot was fired, whirled around and received the other two wounds as he fell from his chair.” Other witnesses for the State followed. W.S. Archer was across the hall and raced into the room to find Beardsley and Bain fighting for control of the gun. Archer immediately turned over Williams’ body, which was only three feet from the victim’s desk. There was no weapon of any kind on or near the dead body. With that the prosecution rested.⁶

Donald Bain would need a great deal of help from his two defense lawyers, John E. McClelland and Reuben Arnold. The 40-year-old McClelland had been mayor of Stone Mountain for five years before moving to Atlanta and establishing a successful legal practice. The 41-year-old Reuben Arnold was completely in his element at the marble and brick county courthouse located at the corner of Hunter and Pryor streets. Since 1900, every felony trial in Atlanta had been conducted under the watchful eye of Judge Leonard S. Roan, and Arnold was frequently the defense lawyer employed in these cases. The son of a Confederate colonel, Arnold had gone to Boys High School in Atlanta and graduated from the University of Georgia. He had been the Fulton County campaign manager for Hoke Smith in the bitterly fought 1906 gubernatorial race. Hoke’s newspaper, the *Atlanta Journal*, was Arnold’s most lucrative client. Above all, Rube Arnold possessed a quick wit and folksy manner that appealed to the predilections and biases typical of any Atlanta jury made up of 12 white male citizens.⁷

The first part of Arnold’s strategy at the 1909 trial was to have Don Bain stand before the jury and give his impressive life story. Reading from a written statement, Bain began his tale from child-



Judge Leonard S. Roan

hood to the present. Though it was late in the afternoon of the first day of the proceedings, there was much to tell from this longtime Atlanta resident. “I was born in Ross-shire, Scotland, in 1847,” he began, “I was brought to Georgia by my parents when I was between 3 and 4 years old.” His father established a farm near Tallapoosa in Haralson County. As the Civil War began his mother died and his school in Bowden closed. Four months in a militia company led to measles and a discharge. In March 1862, he tried again, joining with his older brother a new company forming in Haralson County under Dr. Alex Murchison.⁸

His military story continued, “We were ordered to Camp McDonald at Big Shanty, on the State road, where the regiments were formed.” The Haralson Invincibles were one of ten companies formed into the 40th Georgia Infantry under Colonel Abda Johnson. Ordered to Knoxville, the regiment remained in camp for several months.

From there it went Tazewell, Tennessee, and on to Cumberland Gap.

“We were in Kirby Smith’s division,” Bain explained, “and marched into Kentucky by the army commanded by General Bragg.” The 40th Georgia would later surrender at Vicksburg.

After its men were exchanged, the regiment served in the Atlanta Campaign, and in the Battle of Atlanta on July 22, 1864.



Defense Attorney Reuben Rose Arnold

Bain finished the story of his war service by remarking that, “My brother was killed near the spot where General [William H.T.] Walker fell [in Atlanta on July 22, 1864].”

It was a lot of detail for a war fought some 50 years in the past, but the point had been clearly made: At a time when many soldiers of the Civil War had passed away, Don Bain was still very much alive, a true Confederate veteran of the Lost Cause.⁹

Bain returned home from the Civil War at the age of 18. His father was dead, so the young man sold the family estate for \$1,200. He remembered, “I went to Cave Springs, Ga. in the spring of 1866, where there were good schools and prepared myself for college.”

He entered the University of Georgia and was a student there until his money ran out after the spring semester of 1868. By the fall, he was in Atlanta selling for a wholesale grocery firm. In 1870, he took partners and started Morrison, Bain, and Company, a hardware store. The business proved quite successful, and Bain stuck with it until 1893, when he sold out and entered the insurance business.

“During the years I was in the mercantile business I contributed my mite to the upbuilding of Atlanta,” he declared. This was a key point, as Bain seemed to be a true Samaritan everywhere in the Gate City of the South.¹⁰

In his speech to the jury, Bain listed many of his civic accomplishments: 12 years as the director and then president of the Young Men's Library, director of the Piedmont Exposition, director of the Chamber of Commerce, trustee of the Confederate Soldier's Home, and numerous monetary contributions to various churches and hospitals. He had strong relationships with Atlanta's most important business and political leaders, including Hoke Smith, J.W. English, Evan Howell, and the late Henry Grady.

If there was any doubt in this, the jury need only look across at the defense table and see Dr. Joseph Jacobs sitting next to him.

In 1886, Coca-Cola had first been served at Jacob's Pharmacy, at the corner of Marietta & Peachtree Streets. Dr. Joe's store was an Atlanta landmark, and the pharmacist was a widely recognized icon to the good citizens of Atlanta. Bain's friendship with him extended at least as far back as 1896, when the two founded the Burns Club of Atlanta, a private literary society that honored Scotland's national poet, Robert Burns.¹¹

Not mentioned in Bain's account to the court was his active leadership in the Democrat Party. Life had seemed grand in the fall of 1884, when Bain, Henry Grady, and *Atlanta Constitution* publisher Evan P. Howell bounded up the granite stairs six at a time and into the state capitol. The trio bore an immense American flag as they strode into the office of Governor Henry McDaniel. They had big news: Grover Cleveland was now president, the first Democrat since James Buchanan. The Southerners were electric with excitement.

Three years later, President Grover Cleveland would lean heavily on the arm of Don Bain, as the nation's Chief Executive went to the speaking stand at the Piedmont Exposition.

Here the President gave a speech to the largest crowd ever assembled in Atlanta, up to that point.

Two years later, in December 1889, Bain and Dr. F.H. Orme waited in their carriage at the Atlanta train station to

meet and take home a desperately ill Henry Grady, who was returning from a speaking engagement in Boston.

Despite their best efforts, the gifted newspaperman was dead from pneumonia at the age of 39.¹²

The second half of Donald Bain's remarks were devoted to telling his side of what happened in Room 312 of the Prudential Building on June 29, 1909.

Several fire insurance agents shared the room. Mr. E.G. Williams had moved his desk into the room in the summer of 1907. Broad-shouldered and powerfully built, a bachelor about 40 years old with a loud voice, Gus Williams seemed to dominate the room and those in it. Bain had a personal desk telephone that Williams demanded to use even though Bain was paying the bills. Williams' booming voice prevented anyone else from meeting with clients in the room. "Finally," said Bain, "I had the telephone taken out to avoid this interface in my office." He then recounted a time when Williams went after him with an eight-inch letter opener, and another episode when Williams closed the office door, slapped Bain in the face and shoved him to the floor. Only the intercession of other insurance agents had prevented further violence.¹³

On the day in question, Williams found that his calling card on his desk had been altered.

He accused Bain of the deed. The older man denied it, but the issue simmered all day. At 5 p.m., Bain returned to the room and prepared to leave for the day.

An angry Williams closed the door and began verbally abusing Bain. When Charles Beardsley came in, Bain hoped the tension would dissipate, but Williams



Atlanta's Prudential Building. The scene of the crime.

stood at his desk and glared at him. "I will remember his look as long as I live," recalled Bain.

When Williams reached for his long letter opener on his desk, more of a dirk really, Bain feared the worst: "I believed that he intended to kill me, and I immediately reached into the drawer of my desk, where I kept a pistol and got it out as quick as possible."

As Williams came towards him, Bain began to fire, only to find that Beardsley blocked his line of sight.

Bain described Williams as approaching in a low crouch, almost on all fours. "When he fell he had nearly reached my feet, and his head fell almost on the legs of my chair," explained the defendant.

"It is fully 12 or 13 feet from my desk and whether [sic] Williams' desk was, and he had almost reached me when I fired the last shot."¹⁴

Bain closed his statement to the jury by explaining that he was not a violent man and had not been in a fight since boyhood. He had a pistol in his desk only because he collected cash deposits for the Royal Arcanum Insurance Company. He concluded by stating that, "No man in the sound of my voice or on this journey puts higher value on human life than I do."

Bain's prepared statement finished an

exciting day of testimony that led to front page headlines in the Atlanta newspapers the following day.¹⁵

The second day of trial began with Charlie Hill asking Judge Roan for permission to introduce witnesses who would prove the good character of Gus Williams. The prosecutor claimed that Bain, in his statement to the Court, had challenged Williams' integrity as an honorable individual. Judge Roan, who was determined not to let the trial reach a third day, denied the motion.

The first witness of the day was W.H. Christian, who testified that Bain was a frequent critic of Williams during their business conversations. According to Christian, Bain once asked him if Williams was, "a natural born fool or just an ordinary damn fool."

Another physician, Dr. Fred Hodges, testified that he could not see how the wounds in Williams' body could have been received if Williams was facing Bain. Three law enforcement officers, including Police Chief Henry Jennings, then testified that, after the shooting, they found Bain intoxicated. In rebuttal, Bain returned to the stand and explained that, after the shooting, he had been taken to his boss's office and given a large drink of whiskey to calm his nerves. At this point both State and Defense rested.¹⁶

Judge Roan met with the attorneys and insisted that the case conclude that day, even if a night session was necessary. An agreement was reached for each lawyer to confine their closing remarks. J.E. McClelland would speak one hour for the defense, followed by 30 minutes each for Solicitor Hill and attorney William Schley Howard for the State.

Albert Cox and Reuben Arnold would each make their closing arguments in under an hour and a half.

Attorney McClelland opened for the defense, attacking the testimony of each of the State's witnesses and, according to the *Atlanta Constitution*, "created quite a stir in the court room, it being powerful and full of sensational charges."¹⁷

McClelland said that Solicitor Hill

DON BAIN FOUND NOT GUILTY AFFECTING SCENES IN COURT OF MURDER OF GUS WILLIAMS

Acquitted Man Wept for Joy
When Verdict Was
Announced.

OPEN AIR RECEPTION
OUTSIDE COURTHOUSE

Dr. Joe Jacobs First to Fold
Bain in His Arms--Friends
Crowded Round to Grasp
Bain's Hand--Bain Went to
Jacobs' Home for First Night
of Freedom.



DONALD M. BAIN,
Acquitted After Two-day Trial on
Charge of Murdering E. G. Wil-
liams.

"Atlanta, Ga., August 20, 11 p. m.—
Miss Donna Bain, No. 411 West One
Hundred and Fifteenth Street, New

HE. BAIN THANKS FRIENDS,
COUNSEL, COURT, AND JURY.
Donald M. Bain last night,

Whole Day Consumed in Tak-
ing Testimony and Hearing
the Argument

SELF-DEFENSE THEORY
URGED BY THE DEFENSE

State Introduced Testimony to
Show That Bain Was Intoxicated
at Time of Killing--Bain
Took Stand Again and Said
He Took Drink After Killing
Williams.

Don M. Bain is a free man. At 10:50
o'clock last night the jury, after being
out from 6:23 o'clock in the afternoon,
brought in a verdict of not guilty, put-

was an emotionally torn man. Don Bain had, in 1886, raised the funds and overseen the unveiling of a statue of Hill's father at the corner of the two Peachtree Streets. 50,000 had attended the dedication, including Confederate President Jefferson Davis. Bain, as Chairman of the Committee of Arrangements, had sat on the box, with Captain T.P. Brady, handling the reins of four white horses that pulled the flower-covered carriage in which President Davis sat, from the train station to the Hill Mansion.

In retort, Solicitor Hill said, "I have known Mr. Bain for the past 40 years. I have shared his sorrows, and would, at any time, have lightened his burdens." McClelland's criticisms that the State had an "attitude of prejudice" towards the defendant had clearly stung him.

"My friend McClelland claims that I would take advantage of this man, my boyhood friend.

"Why, there is no language strong enough for me to contradict this stupendous insinuation. It is monstrous."

Hill continued, in his strong and

effective manner, to summarize the evidence and highlight the testimony. He closed by explaining to the jury the law on murder in each degree and the difference between voluntary and involuntary manslaughter. The implication was that the State would be content with conviction on any charge.¹⁸

Colonel Albert H. Cox gave the closing argument for the State. A former classmate of Henry Grady at the University of Georgia, Class of 1868, the 59-year-old Cox was a hard-nosed and effective lawyer. A year earlier, he received credit for writing much of the Democrat Party platform for the 1908 convention in Denver. He contended that Bain was not in immediate danger that afternoon in June but had shot Williams out of revenge and with malice aforethought. The prosecuting attorney emphasized Bain's last words to Williams, "You slapped my face two months ago and no man or a part of a man would do that." If that was the reason for bringing the pistol to bear, Cox offered, then it was murder.¹⁹

By 4:40 that afternoon, Reuben Arnold's closing argument was all that remained. This defense lawyer's first point was to praise Don Bain's character. "If this man, who has lived 63 years without harming the hair of any man's head up to this time and spent four years of that time at the front carrying a musket, is not able to bring this good record in defense of himself," Arnold expounded, "then he has lived in vain." The two young doctors brought forth by the state, both "just out of college," were "going to make good doctors in time." This opinion brought laughter to the room and fueled doubt as to their actual value as expert witnesses.

Arnold went through the testimony, maintaining the killing was a case of self-defense. He explained, "I don't blame Mr. Bain. I'd hate for my poor old Dad to get slapped. I would want him to bring a cannon to stop it." The decision to defend himself had to be made in a matter of seconds. Danger was coming at Bain quickly. Arnold noted, "He had no time to reason things out. It was as quick as sound, as fleet as a shadow, and as brief as any dream." Arnold and lawyer Hamilton Douglas showed by pantomime how Williams had moved on Bain in a low menacing fashion.²⁰

Rube Arnold then made an emotional appeal. "There he sits," pointing at Bain, "An old man, without a dollar, but he has more friends than lots of men with money, and they stick to him, too." Several eyes shifted to Dr. Joe Jacobs. There was more that Arnold had to leave unsaid.

Donald Bain had struggled in recent years, as his oldest son had died at the age of 12 in 1894, his oldest daughter at 20 in 1899. His savings had vanished, and his wife, Lucie, had left him in 1901 and taken their two remaining children to live in New York City.

"He is a man who bared his breast to defend the South," noted Arnold, "and who has contributed to her upbuilding since." Having spent the last two months in a sultry prison cell in the Fulton County jailhouse tower was, to Arnold, punishment enough. Rube Arnold ended

in a flourish, "Restore him to his friends and his freedom. He has suffered as much guiltless, as any man guilty!" It was 5:57 p.m.²¹

This remarkable case was now in the hands of the jury. The 12 men were a cross-sampling of middle-class Atlanta. George Murphy, the jury foreman, was an architect. Others were businessmen, one a painter, another a blacksmith, and a soft drink dealer.

A crowd of 100, mostly supporters of Don Bain, crowded the courtroom while the jury deliberated. The onlookers read and chatted as the hours went by. Finally, at 10:47 p.m., the sheriff announced that the jury had reached its verdict.

Before the members were led back into the courtroom, Judge Roan addressed the crowd, "I don't know what the verdict will be, whether it will meet your approval or not. However, don't make any demonstration. I shall fine the man who does." Once the jury was seated, it was so quiet in the room that Foreman Murphy's declaration of "Not Guilty" sounded like a shout. The silence remained, only now to be broken by the sobbing of Donald Bain.²²

Dr. Jacobs enfolded Bain in his arms from one side and John McClelland from the other.

The jury stepped forward and grasped his hand. Bain pressed his face close to jury foreman, George Murphy, a man he considered a life-long friend, and said, "God Bless you, George." The crowd was kept back as Bain was led down the steps at the Hunter Street entrance. Outside, the crowd was exuberant, and scores came up to Bain to shake his hand. The big touring car of Mr. Jacobs was brought around and loaded up. Bain was taken to the Constitution Building to send a telegram to his daughter, Donna, with the simple message, "Vindicated by jury; now free with friends. PAPA." Jacobs' car was soon surrounded by newspaper men, printers, and city policemen, all wanting to shake the hand of the newly freed man. The night closed at the home of Dr. Jacobs, where Bain could finally rest under a fan in the comfort of clean cotton sheets.²³



The 41-year-old Reuben Arnold was completely in his element at the marble and brick county courthouse located at the corner of Hunter and Pryor streets. Since 1900, every felony trial in Atlanta had been conducted under the watchful eye of Judge Leonard S. Roan, and Arnold was frequently the defense lawyer employed in these cases. The son of a Confederate colonel, Arnold had gone to Boys High School in Atlanta and graduated from the University of Georgia. He had been the Fulton County campaign manager for Hoke Smith in the bitterly fought 1906 gubernatorial race. Hoke's newspaper, the *Atlanta Journal*, was Arnold's most lucrative client. Above all, Rube Arnold possessed a quick wit and folksy manner that appealed to the predilections and biases typical of any Atlanta jury made up of 12 white male citizens.

After a one-week vacation, Donald Bain returned to work at Fidelity and Casualty Company. He moved his desk from Room 312 to Room 308 in the Prudential Building. Beyond that, life returned to normal. He continued as collector for the Royal Arcanum.

The Leo Frank trial took place in the same Atlanta courtroom as had Bain's, with the same judge and key defense attorney. The juries were similar in com-

position, but the verdicts were quite different. While the evidence had an effect, passion and prejudice may have played roles. Don Bain had shot and killed an unarmed Gus Williams, but he had proudly worn Confederate gray and took part in the rebuilding of Atlanta. In contrast, Leo Frank was an outsider, a Northerner portrayed as a member of a decided minority who held himself above the Southern “crackers” he exploited for profit. And if he was an outsider, his victim was a young woman who was an insider—a part of the community.

Leo Frank lacked many of the intricacies that worked to benefit Don Bain. The legal system, meant to achieve justice, may not have had the strength to overcome those disparities to achieve it.

Don Bain’s murder trial did not linger in the memory of a resurgent Atlanta. In 1925, the old Rebel, at the age of 78, moved to the Georgia Confederate Soldier’s Home near Grant Park. Long-time friends came to visit him, and the retired agent was pleased to help them with their insurance policies. He died in 1931 and is buried in Westview Cemetery. The *Atlanta Constitution* announced his death on the front page but did not mention his 1909 murder acquittal.²⁴

Cliff Roberts is a retired Fulton County social studies teacher. He is the co-author of Atlanta’s Fighting 42nd Georgia: Joseph Johnston’s “Old Guard,” published by Mercer University Press in 2020.

Endnotes

1. Steve Oney, *And the Dead Shall Rise; The Murder of Mary Phagan and the Lynching of Leo Frank* (New York, 2003), p. 3.

2. Oney, *And the Dead Shall Rise*, p. 15; The Frank Case; Inside Story of Georgia’s Greatest Murder Mystery (Atlanta, 1913), p. 65.

3. “Bain Kills Williams in Insurance Office,” *Atlanta Constitution*, June 30, 1909.

4. Franklin M. Garrett, *Atlanta and Environs; A Chronicle of its People and*

Events (Athens, 1954) vol. 2, pp. 570-571.

5. *Ibid.*, Note 3.

6. “Don Bain Tells Story of Life,” *The Atlanta Constitution*, August 20, 1909

7. “Leonard S. Roan, 1913-1914,” Court of Appeals of the State of Georgia online,

<http://www.gaappeals.us/history/judge.php?id=05>. “Reuben R. Arnold, Attorney for Leo Frank, Dies at 92,” *Atlanta Constitution*, April 14, 1960. Oney, *And the Dead Shall Rise*, p. 176.

8. *Ibid.*, Note 6.

9. *Ibid.*

Lillian Henderson, *Roster of the Confederate Soldiers of Georgia, 1861-1865* (Hapeville, 1960) vol. 4, p. 417.

10. *Ibid.*, Note 6.

11. *Ibid.*

Garrett, Note 4 at pp. 122-123. “Atlanta Attorney Recalls First Meeting of Burns Club,” *Atlanta Constitution*, October 23, 1932

12. Lucian Lamar Knight, *A Standard History of Georgia and Georgians* (Chicago 1917) pp. 1407-1408; Garrett, Note 4, at pp. 150-151 and 201.

13. *Ibid.*, Note 6.

14. *Ibid.*

15. *Ibid.*

16. “Whole Day Consumed in Taking Testimony and Hearing the Argument,” *Atlanta Constitution*, August 21, 1909.

17. *Ibid.*

18. “Heroes of ’61 Meet Again on Old Battle Fields,” *Atlanta Constitution*, October 17, 1919. *Ibid.*, Note 16.

19. “Albert H. Cox Writes of Democratic Platform,” *Atlanta Constitution*, July 16, 1908. *Ibid.*, Note 16.

20. “Rube Arnold Plays Actor in Defending Don M. Bain,” *Atlanta Constitution*, August 21, 1909.

21. *Ibid.*

22. “Don Bain Found Not Guilty of Murder of Gus Williams,” *Atlanta Constitution*, August 21, 1909.

23. *Ibid.*

24. *Ibid.* Note 4, p. 194. “Donald Bain Dies at Soldiers’ Home,” *Atlanta Constitution*, August 10, 1931. “Reuben R. Arnold, Attorney for Leo Frank, Dies at 92,” *Atlanta Constitution*, April 14, 1960.

The 1913 Leo Frank trial, shown here, was held in the same courtroom and tried by the same judge as the 1909 Bain murder trial. In both cases, the defense team included prominent Atlanta attorney, Reuben Rose Arnold.

