WHOLE FRANK CASE REVIEWED IN SLATON'S STATEMENT
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COULD NOT BELIEVE CONLEY'S EVIDENCE

Declares It Was So Conflicting It Was of No Value—Says His Action Is Justified by the Records, by New Evidence, and Judge Roan's Statement.

A statement explaining his action in commuting the sentence of Leo M. Frank was given to the newspapers by Governor John M. Slaton yesterday at noon. The statement was issued from his country home on Peachtree road, where he spent the entire day Monday.

Governor Slaton points out chiefly that he could not be brought to believe the conflicting stories of the negro Jim Conley. He states that he believes his action to be patriotic, judicial and in accord with the best interests of the state of Georgia, and that the thinking people of the state support him.

Executive Office, June 21, 1915.

In Re Leo M. Frank, Fulton Superior Court. Sentenced to be executed June 22, 1915.

Saturday, April 26, 1913, was Memorial day in Georgia and a general holiday. At that time Mary Phagan, a white girl, of about 14 years of age, was in the employ of the National Pencil company, located near the corner of Forsyth and Hunter streets, in the city of Atlanta. She came to the pencil factory a little after noon to obtain the money due her for her work on the preceding Monday, and Leo M. Frank, the defendant, paid her $1.20, the amount due her, and this was the last time she was seen alive.

Frank was tried for the offense and found guilty the succeeding August. Application is now made to me for clemency.

This case has been the subject of extensive comments through the newspapers of the United States and has occasioned the transmission of over 100,000 letters from various states requesting clemency. Many communications have been received from citizens of this state advocating or opposing interference with the sentence of the court.

I desire to say in this connection that the people of the state of Georgia desire the esteem and good will of the people of every state in the union. Every citizen wishes the approbation of his fellows, and a state or nation is not excepted. In the preamble to the Declaration of Independence Thomas Jefferson wrote that "When in the course of human events it becomes necesary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and of nature's God entitles them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation."

Georgia Attacked.

Many newspapers and multitudes of people have attacked the state of Georgia because of the conviction of Leo M. Frank, and have declared the conviction to have been through the domination of a mob and with no evidence to support the verdict. This opinion has been formed to a great extent by those who have not read the evidence and who are unacquainted with the judicial procedure in our state.

I have been unable to even open a large proportion of the letters sent me, because of their number and because I could not through them gain any assistance in determining my duty.

The murder committed was a most heinous one. A young girl was strangled to death by a cord tied around her throat and the offender deserves the punishment of death. The only question is as to the identity of the criminal.

The responsibility is upon the people of Georgia to protect the lives of her citizens and to maintain the dignity of her laws, and if the choice must be made between the approbation of citizens of other states and the enforcement of our laws against offenders, whether powerful or weak, we must choose the latter alternative.

Alleged Mob Spirit.

It is charged that the court and jury were terrorized by a mob and the jury were coerced into their verdict.

I expect to present the facts in this case with absolute fairness and to state conditions with regard only to the truth.

When Frank was indicted and the air was filled with rumors as to the murder and mutilation of the dead girl, there was intense feeling and to such extent that my predecessor, Governor Brown, stated in argument before me that he had the military ready to protect the defendant in the event any attack was made. No such attack was made, and from the evidence that he obtained none was contemplated.

Some weeks after this, defendant was put on trial. Georgia probably has the broadest provisions for change of venue in criminal cases that exist in any state. Our law permits the judge to change the venue on his own motion, in the event he thinks a fair trial cannot be given in any county. The defendant can move for a change of venue on the same ground, and, if it be refused, the refusal of the judge is subject to an immediate appeal to the supreme court, and, in fact, the entire genius of our law demands a fair trial, absolutely free from external influence.

Frank went to trial without asking a change of venue and submitted his case to a jury that was acceptable to him. He was ably represented by counsel of conspicuous ability and experience.

During the progress of the case, after evidence had been introduced laying the crime with many offensive details upon Frank, the feeling against him became intense. He was the general superintendent of the factory and Mary Phagan was a poor, working girl. He was a Cornell graduate and she dependent for her livelihood upon her labor. According to a witness, whose testimony will subsequently be related more completely, when this girl came to get her small pay, since she only worked one day in the week, because of lack of material, this general superintendent solicited her to yield to his importunities and on her refusal slew her.

The relation of these facts anywhere and in any community would excite unbounded condemnation.

If the audience in the courtroom manifested their deep resentment toward Frank, it was largely by this evidence of feeling beyond the power of a court to correct. It would be difficult anywhere for an appellate court, or even a trial court, to grant a new trial in a case which occupied thirty days, because the audience in the courtroom upon a few occasions indicated their sympathies. However, the deep feeling against Frank which developed in the progress of the evidence was in the atmosphere and regardless of the commission of those acts of which the court would take cognizance, the feeling of the public was strong.

Called for Sheriff.

Since Governor Brown has related secret history in his public argument before me, I may state that Friday night before the verdict was expected Saturday, I had the sheriff to call at the mansion and inquire whether he anticipated trouble. This was after many people had told me of possible danger and an editor of a leading newspaper indicated his anticipation of trouble. The sheriff stated he thought his deputies could avert any difficulty. Judge Roan telephoned me that he had arranged for the defendant to be absent when the verdict was rendered. Like Governor Brown, I entered into communication with the colonel of the Fifth regiment, who stated he would be ready if there were necessity.

I was leaving on Saturday, the day the verdict was expected, for Colorado Springs to attend the congress of governors, and did not wish to be absent if my presence was necessary. I have now the original order prepared by me at the time, in the event there were a necessity for it. I became convinced there would be slight chance for any use of force, and therefore filled my engagement in Colorado.

Judge Roan, in the exercise of precaution, requested that both counsel and defendant be absent when the verdict was rendered, in order to avoid any possible demonstration in the event of acquittal.

The jury found the defendant guilty, and with the exception of demonstration outside the courtroom, there was no disorder.

Hence, it will be seen that nothing was done which courts of any state could correct through legal machinery. A court must have something more than an atmosphere with which to deal, and especially when that atmosphere has been created through the processes of evidence in disclosing a horrible crime.

Our supreme court, after carefully considering the evidence as to demonstrations made by spectators, declared them without merit, and in this regard the orderly process of our tribunals is not subject to criticism.

The charge against the state of Georgia of racial prejudice is unfair. A conspicuous Jewish family in Georgia is descended from one of the original colonial families of the state. Jews have been presidents of our boards of education, principals of our schools, mayors of our cities and conspicuous in all our commercial enterprises.

The Facts in the Case

Many newspapers and non-residents have declared that Frank was convicted without any evidence to sustain the verdict. In large measure, those giving expression to this utterance have not read the evidence and are not acquainted with the facts. The same may be said regarding many of those who are demanding his execution.

In my judgment, no one has a right to an opinion who is not acquainted with the evidence in the case, and it must be conceded that the jury who saw the witnesses and beheld their demeanor upon the stand are in the best position as a general rule to reach the truth.

I cannot, within the short time given me to decide the case, enter into the details outlined in thousands of pages of testimony. I will present the more salient features, and have a right to ask that all persons who are interested in the determination of the matter, shall read calmly and dispassionately the facts.

The state proved that Leo M. Frank, the general superintendent of the factory, was in his office a little after 12 o'clock on the 26th day of April, 1913, and he admitted having paid Mary Phagan $1.20, being the wages due her for one day's work. She asked Frank whether the metal had come, in order to know when she could return for work. Frank admits this, and so far as is known he was the last one who saw her alive. At 3 o'clock the next morning (Sunday) Newt Lee, the night watchman, found in the basement the body of Mary Phagan, strangled to death by a cord of a kind kept generally in the metal room, which is on Frank's floor. She had a cloth tied around her head which was torn from her underskirt. Her drawers were either ripped or cut and some blood and urine were upon them. Her eye was very black, indicating a blow, and there was a cut 2½ inches in length about four inches above the ear and to the left thereof, which extended through the scalp to the skull. The county physician, who examined her on Sunday morning, declared there was no violence to the parts and the blood was characteristic of menstrual flow. There was no external signs of rape. The body was not mutilated, the wounds thereon being on the head and scratches on the elbow, and a wound about two inches below the knee.

The state showed that Mary Phagan had eaten her dinner of bread and cabbage at 11:30 o'clock and had caught the car to go to the pencil factory, which would enable her to arrive at the factory within the neighborhood of about 30 minutes. The element of exact time will be discussed later.

Dr. Harris' Testimony.

Dr. Harris, the secretary of the state board of health, and an expert in this line, examined the contents of Mary Phagan's stomach ten days after her burial and found from the state of the digestion of the cabbage and bread that she must have been killed within about 30 minutes after she had eaten the meal.

Newt Lee, the negro night watchman, testified that Frank had "told me to be back at the factory at 4 o'clock Saturday afternoon," and when he "came upstairs to report, Frank, rubbing his hands," met Newt Lee and told him to "go out and have a good time until 6 o'clock," although Lee said he would prefer to lie down and sleep. When Lee returned, Frank changed the slip in the time clock, manifesting nervousness and taking a longer time than usual.

When Frank walked out of the front door of the factory, he met a man named Gantt, whom he had discharged a short time before. Frank looked frightened, his explanation being that he anticipated harm. Gantt declared he wished to go upstairs and get two pairs of shoes, which permission Frank finally granted, stating that he thought they had been swept out.

About an hour after this occurrence Frank called up Lee over the telephone, a thing he had never done before, and asked him if everything was all right at the factory. Lee found the double inner doors locked, which he had never found that way before. Subsequently, when Lee was arrested and Frank was requested by the detectives to go in and talk to him, in order to find out what he knew, Lee says Frank dropped his head and stated, "If you keep that up we will both go to hell."

On Sunday morning at about 3 o'clock, after Newt Lee, the night watchman, had telephoned the police station of the discovery of the dead body and the officers had come to the factory, they endeavored to reach Frank by telephone, but could not get a response. They telephoned at 7:30 Sunday morning and told Frank that they wanted him to come down to the factory, and when they came for him he was very nervous and trembled. The body at that time had been taken to the undertaker's, and, according to the evidence of the officers who took Frank by the undertaker's establishment to identify the girl, he (Frank) showed a disinclination to look at the body, and did not go into the room where it lay, but turned away at the door.

Frank had made an engagement on Friday to go to the baseball game on Saturday afternoon with his brother-in-law, but broke the engagement, as he said in his statement, because of the financial statement he had to make up, while before the coroner's jury he said he broke the engagement because of threatening weather.

State's Contention.

The contention of the state, as will hereafter be disclosed, was that Frank remained at the factory Saturday afternoon to dispose of the body of Mary Phagan, and that that was the reason he gave Newt Lee his unusual leave of absence.

The cook's husband testified that on Saturday, the day of the murder, he visited his wife at the home of Mr. Selig, defendant's father-in-law, where Frank and his wife were living, and that Frank came in to dinner and ate nothing. The negro cook of the Seligs was placed upon the stand and denied that her husband was in the kitchen at all on that day. For purposes of impeachment, therefore, the state introduced an affidavit from this cook taken by the detectives, and as he claimed, under duress, which tended to substantiate the story of her husband and which affidavit declared that on Sunday morning after the murder, she heard Mrs. Frank tell her mother that Mr. Frank was drinking the night before and made her sleep on a rug and called for a pistol to shoot himself, because he (Frank) had murdered a girl. This affidavit was relevant for purposes of impeachment, although, of course, it had no legal probative value as to the facts contained therein. On the stand, the cook declared that she was coerced by her husband and detectives under threat of being locked up unless she gave it, and it was made at the station house. The state proved it was given in the presence of her lawyer and said that her denial of the truth of the affidavit was because her wages had been increased by the parent of Mrs. Frank. No details are given as to where the conversation occurred between Mrs. Frank and her mother, nor is there any explanation as to how she happened to hear the conversation. It will be easily seen that the effect of the affidavit upon the jury might be great.

It is hard to conceive that any man's power of fabrication of minute details could reach that which Conley showed, unless it be the truth.

The evidence introduced tended to show that on Sunday morning Frank took out of the time clock the slip which he had admitted at that time was punched for each half hour, and subsequently Frank claimed that some punches had been missed. The suggestion was that he had either manipulated the slip to place the burden on Lee, or was so excited as to be unable to read the slip correctly.

The state introduced a witness, Monteen Stover, to prove that at the time when Mary Phagan and Frank were in the metal room she was in Frank's office and he was absent, although he had declared he had not left the office. The state showed that the hair of Mary Phagan had been washed by the undertaker with pine tar soap, which would change its color and thereby interfere with the ability of the doctor to tell the similarity between the hair on the lathe and Mary Phagan's hair.

The state further showed a cord of the character which strangled Mary Phagan was found in quantities on the metal room floor, and was found in less quantities and then cut up in the basement. As to this, Detective Starnes testified, "I saw a cord like that in the basement, but it was cut up in pieces. I saw a good many cords like that all over the factory."

Holloway testified: "These cords are all over the building and in the basement."

Darley testified to the same effect.

However, this contradicts the testimony that was presented to the jury for solution.

The state claimed to the jury that witnesses for the defendant, under the suggestion of counsel in open court, would change their testimony so that it might not operate against the defendant.

I have not enumerated all the suspicious circumstances urged by the state, but have mentioned what have appeared to me the most prominent ones. Where I have not mentioned the more prominent ones, an inspection of record fails to maintain the contention.

It is contended that a lawyer was engaged for Frank at the station house before he was arrested. This is replied to by the defense that a friend had engaged counsel without Frank's knowledge, and the lawyer advised Frank to make full statement to the detectives.

Conley's Evidence.

The most startling and spectacular evidence in the case was that given by a negro, Jim Conley, a man 27 years of age, and one who frequently had been in the chaingang. Conley had worked at the factory for about two years and was thoroughly acquainted with it. He had worked in the basement about two months and had run the elevator about a year and a half.

On May 1 he was arrested by the detectives.

Near the body in the basement had been found two notes, one written on brown paper, and the other on a leaf of a scratch pad. That written on white paper in a negro's handwriting showed the following: "He said he would love me, lay down play like the night witch, did it, but that long, tall black negro did boy hisself."

On the brown paper, which was the carbon sheet of an order blank headed "Atlanta, Ga., ———, 190," which becomes important, was written in a negro's handwriting the following:

"Mam that negro fire down here did this I went to make water and he push me down a hole a long tall negro black did (had) it. I write while play with me."

The detectives learned about the middle of May that Conley could write, although at first he denied it. He made one statement and three affidavits which are more fully referred to in stating the defendant's case. The affidavits were introduced by the defendant under notice to produce.

By these affidavits there was admitted the substance of the evidence that he delivered on the stand, which in brief was as follows:

Conley claimed that he was asked by Frank to come to the factory on Saturday and watch for him, as he previously had done, which he explained meant that Frank expected to meet some woman, and when Frank stamped his foot Conley was to lock the door leading into the factory, and when he whistled, he was to open it.

Conley occupied a dark place to the side of the elevator behind some boxes, where he would be invisible.

Conley mentioned several people, including male and female employees, who went up the steps to the second floor where Frank's office was located. He said that Mary Phagan went up the stairs and he heard in a few minutes footsteps going back to the metal room, which is from 150 to 200 feet from the office. He heard a scream and then he dozed off. In a few minutes Frank stamped and then Conley locked the door, and then Frank whistled, at which time Conley unlocked the door and went up the steps. Frank was shivering and trembling and told Conley, "I wanted to be with the little girl, and she refused me, and I struck her, and I guess I struck too hard and she fell and hit her head against something, and I do not know how bad she got hurt. Of course, you know I ain't built like other men."

Perversion Not Indicated.

Conley described Frank as having been in position which Conley thought indicated perversion, but the facts set out by Conley do not demand such conclusion.

Conley says that he found Mary Phagan lying in the metal room some 200 feet from the office, with a cloth tied about her neck and under the head as though to catch blood, although there was no blood at the place.

Frank told Conley to get a piece of cloth and put the body in it and Conley got a piece of striped bed tick and tied the body in it and brought it to a place a little way from the dressing room and dropped it, and then called on Frank for assistance in carrying it. Frank went to his office and got a key and unlocked the switchboard in order to operate the elevator, and he and Conley took the body in the elevator to the basement, where Conley rolled the body off the cloth. Frank returned to the first floor by the ladder, while Conley went by the elevator, and Frank on the first floor got into the elevator and went to the second floor, on which the office is located. They went back into Frank's private office and just at that time Frank said, "My God, here is Emma Clark and Corinthia Hall," and Frank then put Conley into the wardrobe. After they left, Frank let Conley out and asked Conley if he could write, to which Conley gave an affirmative reply. Frank then dictated the letters heretofore referred to. Frank took out of his desk a roll of greenbacks and told him, "Here is $200," but after a while requested the money back and got it.

One witness testified she saw some negro, whom she did not recognize, sitting at the side of the elevator in the gloom. On the extraordinary motion for new trial, a woman, who was unimpeached, made affidavit that on the 31st day of May, through newspaper report, she saw that Conley claimed he met Frank by agreement at the corner of Forsyth and Nelson streets on the 26th day of April 1913, and she became satisfied that she saw the two in close conversation at that place on that date, between 10 and 11 o'clock.

Frank's Character.

Frank put his character in issue and the state introduced ten witnesses attacking Frank's character, some of whom were factory employees, who testified that Frank's reputation for lasciviousness was bad, and some told that he had been seen making advances to Mary Phagan, whom Frank had professed to the detectives, either not to have known, or to have been slightly acquainted with. Other witnesses testified that Frank had improperly gone into the dressing room of the girls. Some witnesses who answered on direct examination that Frank's reputation for lasciviousness was bad, were not cross-examined as to details, and this was made the subject of comment before the jury.

The above states very briefly the gist of the state's case, omitting many incidents which the state claims would confirm Frank's guilt when taken on their entirety.

The defendant introduced approximately one hundred witnesses as to his good character. They included citizens of Atlanta, college mates at Cornell and professors of that college.

The defendant was born in Texas and his education was completed at the institution named.

The admission of Conley that he wrote the notes found at the body of the dead girl, together with the part he admitted he played in the transaction, combined with his history and his explanation as to both the writing of the notes and the removal of the body to the basement, make the entire case revolve about him. Did Conley speak the truth?

Before going into the varying and conflicting affidavits made by Conley, it is advisable to refer to some incidents which cannot be reconciled to Conley's story. Wherever a physical fact is stated by Conley, which is admitted, this can be accepted, but under both the rules of law and of common sense, his statements cannot be received, excepting where clearly corroborated. He admits not only his participation as an accessory, but also glibly confesses his own infamy.

Conley Contradicted.

One fact in the case, and that of most important force in arriving at the truth, contradicts Conley's testimony. It is disagreeable to refer to it, but delicacy must yield to necessity when human life is at stake.

The mystery in the case is the question as to how Mary Phagan's body got into the basement. It was found 136 feet away from the elevator, and the face gave evidence of being dragged through dirt and cinders. She had dirt in her eyes and mouth. Conley testified that he and Frank took the body down to the basement in the elevator on the afternoon of April 26, 1913, and leaves for inference that Frank removed the body 136 feet toward the end of the building, where the body was found at a spot near the back door, which led out toward the street in the rear. Conley swears he did not return to the basement, but went back up in the elevator, while Frank went back on the ladder, constituting the only two methods of ingress and egress to the basement, excepting through the back door. This was between 1 and 2 o'clock on the afternoon of April 26.

Conley testified that on the morning of April 26 he went down into the basement to relieve his bowels and utilized the elevator shaft for the purpose.

On the morning of April 27 at 3 o'clock, when the detectives came down into the basement by way of the ladder, they inspected the premises, including the shaft, and they found there human excrement in natural condition.

Subsequently, when they used the elevator, which everybody, including Conley, who had run the elevator for 1½ years, admits, only stops by hitting the ground in the basement, the elevator struck the excrement and mashed it, thus demonstrating that the elevator had not been used since Conley had been there. Solicitor General Dorsey, Mr. Howard and myself visited the pencil factory and went down this elevator, and we found it hit the bottom. I went again with my secretary, with the same result.

Frank is delicate in physique, while Conley is strong and powerful. Conley's place for watching, as described by himself, was in the gloom a few feet from the hatchway leading by way of ladder to the basement. Also he was in a few feet of the elevator shaft on the first floor. Conley's action in the elevator shaft was in accordance with his testimony that he made water twice against the door of the elevator shaft on the morning of the 26th, instead of doing so in the gloom of his corner behind the boxes where he kept watch.

Passed Near Conley.

Mary Phagan in coming downstairs was compelled to pass within a few feet of Conley, who was invisible to her, and in a few feet of the hatchway. Frank could not have carried her down the hatchway. Conley might have done so with difficulty. If the elevator shaft was not used by Conley and Frank in taking the body to the basement, then the explanation of Conley, who admittedly wrote the notes found by the body, cannot be accepted.

In addition, there was found in the elevator shaft at 3 o'clock Sunday morning the parasol, which was unhurt, and a ball of cord which had not been mashed.

Conley in his affidavits before the detectives testified he wrapped up the body in a crocus sack at the suggestion of Frank, but on the trial he testified he wrapped up the body in a piece of bedtick like the shirt of the solicitor general. The only reason for such change of testimony, unless it be the truth, was that a crocus sack, unless split open, would be too small for the purpose. If he split open the crocus sack with a knife, this would suggest the use of a knife in cutting the drawers of the girl.

So the question arises, whether there was any bedtick in the pencil factory, and no reason can be offered why bedtick should be in a pencil factory. It has no function there. Had such unusual cloth been in the factory, it certainly must have been known, but nobody has ever found it.

Conley says that after the deed was committed, which everybody admits could not have been before 13:05, Frank suddenly said, "Here comes Emma Clark and Corinthia Hall," and he put Conley in a wardrobe.

The uncontradicted evidence of these two witnesses, and they are unimpeached, was they reached the factory at 11:35 a. m. and left it at 11:45 a. m., and, therefore, this statement of Conley can hardly be accepted.

Conley says that when they got the body to the bottom of the elevator in the basement, Frank told him to leave the hat, slipper and piece of ribbon right there, but he "taken the things and pitched them over in front of the boiler," which was 67 feet away.

Conley says that Frank told him when he watched for him to lock the door when he (Frank) stamped, and to open the door when he whistled. In other words, Frank had made the approach to the girl and had killed her before he had signaled Conley to lock the door.

Conley says: "I was upstairs between the time I locked the door and the time I unlocked it. I unlocked the door before I went upstairs." This explanation is not clear, nor is it easy to comprehend the use of the signals which totally failed their purpose.

A Curious Fact.

It is curious, during the course of the story that while Frank explained to Conley about striking the girl when she refused him and Conley found the girl strangled with a cord, he did not ask Frank anything about the use of the cord, and that subject was not mentioned.

The wound on Mary Phagan was near the top of the head and reached the skull. Wounds of that character bleed freely. At the place Conley says he found blood there was no blood. Conley says there was a cloth tied around the head as though to catch the blood, but none was found there.

One Barrett says that on Monday morning he found six or seven strands of hair on the lathe with which he worked and which were not there on Friday. The implication is that it was Mary Phagan's hair and that she received a cut by having her head struck at this place. It is admitted hat no blood was found there. The lathe is about 3½ feet high and Mary Phagan is described as being chunky in build. A blow which would have forced her with sufficient violence against the smooth handle of the lathe to have produced the wound must have been a powerful one, since the difference between her height and that of the lathe could not have accounted for it. It was strange, therefore, that there was a total absence of blood, and that Frank, who was delicate, could have hit a blow of such violence.

Some of the witnesses for the state testified the hair was like that of Mary Phagan, although Dr. Harris compared Mary Phagan's hair with that on the lathe under a microscope and was under the impression that it was not Mary Phagan's hair. This will be the subject of further comment.

As to Blood Spots.

Barrett and others said they thought they saw blood near the dressing room, at which place Conley said he dragged the body.

Chief of Police Beavers said he did not know whether it was blood.

Detective Starnes said: "I do not know that the splotches I saw was blood."

Detective Black says: "Mr. Starnes, who was there with me, did not call my attention to any blood splotches."

Detective Scott says: "We went to the metal room, where I was shown some spots supposed to be blood spots."

A part of what they thought to be blood was chipped up in four or five chips and Dr. Claude Smith testified that on one of the chips he found, under a microscope, from three to five blood corpuscles; a half drop would have caused it.

Frank says that the part of the splotch that was left after the chips were taken up was examined by him with an electric flash lamp, and it was not blood.

Barrett, who worked on the metal floor and who, several witnesses declared, claimed a reward because he discovered the hair and blood, said the splotch was not there on Friday, and some witnesses sustained him.

There was testimony that there were frequent injuries at the factory and blood was not infrequent in the neighborhood of the ladies' dressing room. There was no blood in the elevator.

Dr. Smith, the city bacteriologist, said that the presence of blood corpuscles could be told for months after the blood had dried. All of this bore upon the question as to whether the murder took place in the metal room, which is on the same floor of Frank's office. Excepting near the metal room at the place mentioned, where the splotches varied, according to Chief Beavers' testimony, from the size of a quarter to the size of a palm leaf fan, there was no blood whatever. It is to be remarked that a white substance called haskoline, used about the factory, was found spread over the splotches.

Conley's Affidavits.

The defense procured under notice one statement and three affidavits, taken by the detectives from Conley and introduced them in evidence.

The first statement, dated May 18, 1913, gives a minute detail of his actions on the 26th day of April and specifies the saloons he visited and the whisky and beer he bought, and minutely itemized the denomination of the money he had and what he spent for beer, whisky and pan sausage. This comprehends the whole of affidavit No. 1.

On May 24, 1913, he made for the detectives an affidavit in which he says that on Friday before the Saturday on which the murder was committed Frank asked him if he could write. This would appear strange, because Frank well knew he could write, and had so known for months, but, according to Conley's affidavit, Frank dictated to him practically the contents of one of the notes found by the body of Mary Phagan. Frank, then, according to Conley's statement, took a brown scratch pad and wrote on that himself, and then gave him a box of cigarettes in which was some money, and Frank said to him that he had some wealthy relatives in Brooklyn, and "Why should I hang?"

This would have made Frank guilty of the contemplated murder on Friday which was consummated Saturday, and which was so unreasonable it could not be accepted.

On May 28, 1913, Conley made for the detectives another affidavit, which he denominates as "second and last statement." In that he states that on Saturday morning after leaving home he bought two beers for himself and then went to a saloon and won 90 cents with dice, where he bought two more beers and a half pint of whisky, some of which he drank, and he met Frank at the corner of Forsyth and Nelson streets and Frank asked him to wait until he returned.

Conley went over to the factory and mentioned various people whom he saw from his place of espionage going up the stairs to Mr. Frank's office. Then Frank whistled to him and he came upstairs and Frank was trembling, and he and Frank went into the private office, when Frank exclaimed that Miss Emma Clark and Corinthia Hall were coming and concealed Conley in the wardrobe. Conley said that he stayed in the wardrobe a pretty good while, for the whisky and beer had gotten him to sweating. Then Frank asked him if he could write and Frank made him write at his dictation three times, and Frank told him he was going to take the note and send it in a letter to his people and recommend Conley to them. Frank said, "Why should I hang?"

Money Given Conley.

Frank took a cigarette from a box and gave the box to Conley, and when Conley got across the street he found it had two paper dollars and two silver quarters in it, and Conley said, "Good luck has done struck me." At the beer saloon he bought one-half pint of whisky and then got a bucket and bought 15 cents worth of beer, 10 cents worth of stovewood and a nickel's worth of pan sausage and gave his old woman $3.50. He did not leave home until about 12 o'clock Sunday. On Tuesday morning Frank came upstairs and told him to be a good boy. On Wednesday Conley washed his shirt at the factory and hung it on the steam pipe to dry, occasioning a little rust to get on it. The detectives took the shirt, and, finding no blood on it, returned it.

On the 29th of May, 1913, Conley made another affidavit, in which he said that Frank told him that he had picked up a girl and let her fall, and Conley hollered to him that the girl was dead, and told him to go to the cotton bag and get a piece of cloth, and he got a big, wide piece of cloth and took her on his right shoulder, when she got too heavy for him, and she slipped off when he got to the dressing room. He called Frank to help, and Frank got a key to the elevator and the two carried the body downstairs and Frank told him to take the body back to the sawdust pile, and Conley says he picked the girl up and put her on his shoulder, while Frank went back up the ladder.

It will be observed that the testimony and the appearance of the girl indicated that she was dragged through the cinders and debris on the floor of the basement, yet Conley says he took her on his shoulder.

The affidavit further states that Conley took the cloth from round her and took her hat and slipper, which he had picked up upstairs, right where her body was lying, and brought them down and untied the cloth and brought them back and "throwed them on the trash pile" in front of the furnace. This was the time that Conley says Frank made the exclamation about Emma Clarke and Corinthia Hall.

An Important Feature.

An important feature in this affidavit is as follows:

Conley states in it that Mr. Frank said: "Here is $200, and Frank handed the money to him."

All of the affidavit down to this point is in typewriting, the original was exhibited to me. At the end of the affidavit in handwriting is written the following: "While I was looking at the money in my hands, Mr. Frank said, 'Let me have that and I will make it all right with you Monday, if I live and nothing happens,' and 'he took the money back and I asked him if that was the way he done, and he said he would give it back Monday.'"

It will be noticed that the first question which would arise would be, What became of the $200? This could not be accounted for.

Therefore, when that query presumably was propounded to Conley the only explanation was that Frank demanded it back.

The detectives had Conley for two or three hours on May 18, trying to obtain a confession, and he denied he had seen the girl on the day of the murder. The detectives questioned him closely for three hours on May 25, when he repeated this story. On May 27 they talked to him about five or six hours in Chief Lanford's office.

Testimony of Detective.

Detective Scott, who was introduced by the state, testified regarding Conley's statement and affidavits as follows:

"We tried to impress him with the fact that Frank would not have written those notes on Friday; that that was not a reasonable story; that it showed premeditation, and that would not do. We pointed out to him why the first statement would not fit. We told him we wanted another statement He declined to make another statement. He said he had told the truth.

"On May 28 Chief Lanford and I grilled him for five or six hours again, endeavoring to make clear several points which were far-fetched in his statement. We pointed out to him that his statement would not do and would not fit, and he then made the statement on May 28, after he had been told that this previous statement showed deliberation and could not be accepted. He told us nothing about Frank making an engagement to stamp and for him to lock the door, and told nothing about Monteen Stover. He did not tell us about seeing Mary Phagan. He said he did not see her. He did not say he saw Quinn. Conley was a rather dirty negro when I first saw him. He looked pretty good when he testified here.

"On May 29 we talked with Conley almost all day. We pointed out things in his story that were improbable and told him he must do better than that. Anything in his story that looked to be out of place we told him would not do. We tried to get him to tell about the little meshbag. We tried pretty strong. He always denied ever having seen it. He denied knowing anything about the matter down in the basement in the elevator shaft He never said he went down there himself between the time he came to the factory and went to Montag's. He never said anything about Mr. Frank having hit her or having hit her too hard, or about tiptoes from the metal department. He said there was no thought of burning the body.

"On May 18 we undertook in Chief Lanford's office to convince him he could write, and we understood he said he could not write, and we knew he could. We convinced him that we knew he could write, and then he wrote."

In his evidence before the jury in the redirect examination Conley thought it necessary to account for the meshbag, and for the first time said that "Mary Phagan's meshbag was lying on Mr. Frank's desk and Mr. Frank put it in the safe." This is the first mention of the meshbag.

The first suggestion that was made of Frank being a pervert was in Conley's testimony. On the stand he declared Frank said "he was not built like other men."

There is no proof in the record of Frank being a pervert. The situation in which Conley places him, and upon Conley's testimony must that charge rest, does not prove the charge of perversion if Conley's testimony be true.

On argument before me I asked what motive Conley would have to make such a suggestion, and the only reason given was that someone may have made him the suggestion because Jews are circumcized.

Conley Amenable to Suggestion.

Conley in his evidence shows himself amenable to suggestion. He says, "If you tell a story, you know you have got to change it. A lie won't work, and you know you have got to tell the whole truth."

Conley in explaining why his affidavits varied said: "The reason why I told that story was, I do not want them to know that these other people passed by me, for they might accuse me. I do not want people to think that I was the one that done the murder."

Conley admits he wrote the notes found by the body of Mary Phagan. Did Frank dictate them? Conley swears he did. The state says that the use of the word "did" instead of "done" indicates a white man's dictation. Conley admits the spelling was his. The words are repeated and are simple, which characterizes Conley's letters. In Conley's testimony you will find frequently that he uses the word "did," and according to calculation submitted to me he used the word "did" over fifty times during the trial.

While Conley was in jail charged with being an accessory, there was also incarcerated in the jail, a woman named Annie Maude Carter, whom Conley had met at the courthouse. She did work in the jail and formed the acquaintance of Conley, who wrote to her many lengthy letters. These letters are the most obscene and lecherous I have ever read. In these letters, the word "did" is frequently employed. It will be observed that in Conley's testimony, he uses frequently the word "negro," and in the Annie Maude Carter notes he says, "I have a negro watching you."

The Carter Girl's Notes.

The Annie Maude Carter notes, which were powerful evidence in behalf of the defendant, and which tended strongly to show that Conley was the real author of the murder notes, were not before the jury.

The word "like" is used in the Mary Phagan notes, and one will find it frequently employed in Conley's testimony. The word "play," in the Mary Phagan notes, with an obscene significance, is similarly employed in the Annie Maude Carter notes. The same is true as to the words "lay" and "love."

In Conley's testimony, he uses the words "make water" just as they are used in the Mary Phagan notes.

In Conley's testimony he says the word "hisself" constantly.

It is urged by the lawyers for the defense that Conley's characteristic was to use double adjectives.

In the Mary Phagan notes, he said "long tall negro, black," "long slim, tall negro."

In his testimony Conley used expressions of this sort, "He was a tall, slim build heavy man," "A good long wide piece of cord in his hands."

Conley says that he wrote four notes, although only two were found. These notes have in them 128 words, and Conley swears he wrote them in 2½ minutes. Detective Scott swears he dictated eight words to Conley and it took him about six minutes to write them.

The statement is made by Frank, and that statement is consistent with the evidence in the record, that the information that Conley could write came from Frank when he was informed that Conley claimed he could not write. Frank says he did not disclose this before, because he was not aware Conley had been at the factory on the 26th day of April, and therefore the materiality of whether Conley could write any more than any other negro employee, had not been suggested to him, Frank says that he gave the information that Conley had signed receipts with certain jewelers, with whom Conley had dealings.

Where Were the Notes Written?

At the time of the trial it was not observed that the death note written on brown paper was on order blank, with the date line, "Atlanta, Ga., ———, 190." Subsequently the paper was put under a magnifying glass and in blue pencil it was found that one Becker's name was written there. He had been employed at the factory on the fourth floor. Investigation was made and Becker testified that he worked for the pencil factory from 1908 until 1912, and the order blank was No. 1018. During that entire time he signed orders for goods and supplies. The brown paper on which the death note was written, bears his signature, and at the time he left Atlanta in 1912, the entire supply of blanks containing the figures 190—, had been exhausted, and the blanks containing the figures 191—, had already been put in use. Becker makes affidavit that before leaving Atlanta, he personally packed up all of the duplicate orders which had been filled and performed their functions, and sent them down to the basement to be burned. Whether the order was carried out, he did not know.

In reply to this, the state introduced on the extraordinary motion the testimony of Philip Chambers, who swears that unused order blanks entitled "Atlanta, Ga., ———, 191—," were in the office next to Frank's office and that he had been in the basement of the factory and found no books or papers left down there for any length of time, but same were always burned up.

This evidence was never passed upon by the jury, and developed since the trial. It was strongly corroborative of the theory of the defense that the death notes were written, not in Frank's office, but in the basement, and especially in view of the evidence of Police Sergeant Dobbs, who visited the scene of the crime on Sunday morning, as follows:

"The scratch pad was also lying on the ground close to the body. The scratch pad was lying near the notes. They were all right close together. There was a pile of trash near the boiler where this hat was found, and paper and pencils were down there, too."

Police Officer Anderson testified:

"There are plenty of pencils and trash in the basement."

Darley testified: "I have seen all kinds of paper down in the basement. The paper that note is written on is a blank order pad. That kind of paper is likely to be found all over the building, for this reason, they write an order and sometimes fail to get a carbon under it, and at other times they change the order and it gets into the trash. That kind of pad is used all over the factory."

Over the boiler is a gas jet.

Mary Phagan's Hair.

Another feature which was not known at the trial and which was not presented to the jury, but came up by extraordinary motion, was regarding the hair alleged to have been found by Barrett on the lathe. The evidence on the trial of some of the witnesses was that the hair looked like that of Mary Phagan. It was not brought out at the trial that Dr. Harris had examined the hair under a microscope and by taking sections of it and comparing it with Mary Phagan's hair, thought that on the lathe was not Mary Phagan's hair, although he said he could not be certain of it.

This, however, would have been the highest and best evidence.

The evidence as to the probability of the blank on which the death note was written being in the basement, and the evidence as to the hair, would have tended to show that the murder was not committed on the floor on which Frank's office was located.

The Time Question.

The state contended that Mary Phagan came to the office of Leo M. Frank to get her pay at some time between 12:05 and 12:10, and that Frank had declared that he was in his office the whole time.

It is true that at the coroner's inquest, held Thursday after the murder (page 364), he said he might have gone back to the toilet, but did not remember it. However, in some of his testimony Frank said he had remained the whole time in his office. Monteen Stover swears that she came into Frank's office at 12:05 and remained until 12:10, and did not see Frank or anybody. She is unimpeached, and the only way to reconcile her evidence would be that she entered Frank's office, as she states, for the first time in her life, and did not go into the inner room, where Frank claimed to have been at work. If Frank were at work at his desk, he could not be seen from the outer room. Monteen Stover said she wore tennis shoes and her steps may not have attracted him.

However, the pertinency of Monteen Stover's testimony is that Mary Phagan had come to get her pay and Frank had gone with her back to the metal room and was in process of killing her while Monteen Stover was in his office, and this was at a time when he had declared he was in his office.

The evidence loses its pertinency if Mary Phagan had not arrived at the time Monteen Stover came. What is the evidence?

The evidence uncontradicted discloses that Mary Phagan ate her dinner at 11:30 o'clock, and the evidence of the street car men was that she caught the 11:50 car, which was due at the corner of Forsyth and Marietta streets at 12:07½. The distance from this place to the pencil factory is about one-fifth of a mile. It required from 4 to 6 minutes to walk to the factory, and especially would the time be enlarged, because of the crowds on the streets on Memorial day.

Testimony of Epps Boy.

While the street car men swear the car was on time, and while George Epps, a witness for the state, who rode with Mary Phagan, swears he left her about 12:07 at the corner of Forsyth and Marietta streets, there is some evidence to the effect that the car arrived according to custom, but might have arrived two or three minutes before schedule time. If so, the distance would have placed Mary Phagan at the pencil factory at some time between 12:05 and 12:10. Monteen Stover looked at the clock and says she entered at 12:05. A suggestion is made that the time clocks, which were punched by the employees, might have been fast. This proposition was met by W. W. Rogers, who accompanied the detectives to the scene of the murder on Sunday morning, and who testified (page 200), "I know that both clocks were running, and I noticed both of them had the exact time." Therefore, Monteen Stover must have arrived before Mary Phagan, and while Monteen Stover was in the room it hardly seems possible, under the evidence, that Mary Phagan was at that time being murdered.

Lemmie Quinn testifies that he reached Frank's office about 12:20 and saw Mr. Frank. At 12:30 Mrs. J. A. White called to see her husband at the factory, where he was working on the fourth floor, and left again before 1 o'clock.

At 12:50, according to Denham, Frank came up to the fourth floor and said that he wanted to get out. The evidence for the defense tends to show that the time taken for moving the body, according to Conley's description, was so long that it could not have fitted the specific times at which visitors saw Frank. It will be seen that when Mrs. White came up at 12:30 the doors below were unlocked.

Another feature of the evidence is that the back door in the basement was the former means of egress for Conley, when he desired to escape his creditors among the employees. On Sunday morning, April 27, the staple of this door had been drawn. Detective Starnes found on the door the marks of what he thought were bloody finger prints, and he chipped off two pieces from the door which looked like "bloody finger prints." The evidence does not disclose further investigation as to whether it was blood or not.

The motive of this murder may be either robbery, or robbery and assault, or assault.

There is no suggestion that the motive of Frank would be robbery. The meshbag was in Mary Phagan's hands and was described by Conley in his re-direct examination at the trial for the first time. The size of the meshbag I cannot tell, but since a bloody handkerchief of Mary Phagan's was found by her side, it was urged before me by counsel for the defense that ladies usually carried their handkerchiefs in their meshbags.

If the motive was assault, either by natural or perverted means, the physicians' evidence who made the examination does not disclose its accomplishment. Perversion by none of the suggested means could have occasioned the flood of blood. The doctors testified that excitement might have occasioned it under certain conditions. Under the evidence, which is not set forth in detail, there is every probability that the virtue of Mary Phagan was not lost on the 26th day of April. Her meshbag was lost, and there can be no doubt of this. The evidence shows that Conley was as depraved and lecherous a negro as ever lived in Georgia. He lay in watch and described the clothes and stockings of the women who went to the factory.

His story necessarily bears the construction that Frank had an engagement with Mary Phagan, which no evidence in the case would justify. If Frank had engaged Conley to watch for him, it could only have been for Mary Phangan, since he made no improper suggestion to any other female on that day, and it was undisputed that many did come up prior to 12 o'clock, and whom could Frank have been expecting except Mary Phagan, under Conley's story? This view cannot be entertained as an unjustifiable reflection on the young girl.

Why the negro wrote the notes is a matter open to conjecture. He had been drinking heavily that morning, and it is possible that he undertook to describe the other negro in the building so that it would avert suspicions.

It may be possible that his version is correct.

The testimony discloses that he was in the habit of allowing men to go into the basement for immoral purposes for a consideration, and when Mary Phagan passed by him close to the hatchway leading into the basement and in the gloom and darkness of the entrance he may have attacked her. What is the truth we may never know.

Jury's Verdict.

The jury which heard the evidence and saw the witnesses found the defendant, Leo M. Frank, guilty of murder. They are the ones, under our laws, who are chosen to weigh evidence and to determine its probative value. They may consider the demeanor of the witnesses upon the stand and in the exercise of common sense will arrive with wonderful accuracy at the truth of the contest.

Under our law the only authority who can review the merits of the case and question the justice of a verdict which has any evidence to support it is the trial judge. The supreme court is limited by the constitution to the correction of errors of law. The supreme court found in the trial no error of law and determined as a matter of law, and correctly, in my judgment, that there was sufficient evidence to sustain the verdict.

But under our judicial system the trial judge is called upon to exercise his wise discretion, and he cannot permit a verdict to stand which he believes to be unjust. A suggestion in the order overruling a motion for a new trial that the judge was not satisfied with the verdict would demand a reversal by the supreme court.

In this connection Judge Roan declared orally from the bench that he was not certain of the defendant's guilt—that with all the thought he had put on this case he was not thoroughly convinced whether Frank was guilty or innocent—but that he did not have to be convinced; that the jury was convinced, and that there was no room to doubt that; that he felt it his duty to order that the motion for a new trial be overruled.

This statement was not embodied in the motion overruling new trial.

Under our statute, in cases of conviction of murder on circumstantial evidence, it is within the discretion of the trial judge to sentence the defendant to life imprisonment (code, section 63).

Circumstantial Evidence.

The conviction of Frank was on circumstantial evidence, as the solicitor general admits in his written argument.

Judge Roan, however, misconstrued his power, as evidenced by the following charge to the jury in the case of the state against Frank:

"If you believe beyond a reasonable doubt from the evidence in this case that this defendant is guilty of murder, then you would be authorized in that event to say, 'We, the jury, find the defendant guilty.' Should you go further, gentlemen, and say nothing else in your verdict, the court would have to sentence the defendant to the extreme penalty of murder, to wit: 'To be hanged by the neck until he is dead.'"

Surely if Judge Roan entertained the extreme doubt indicated by his statement and had remembered the power granted him by the code, he would have sentenced the defendant to life imprisonment.

In a letter written to counsel he says: "I shall ask the prison commission to recommend to the governor to commute Frank's sentence to life imprisonment. . . . It is possible that I showed undue deference to the jury in this case, when I allowed the verdict to stand. They said by their verdict that they had found the truth. I was in a state of uncertainty, and so expressed myself. . . . After many months of continued deliberation I am still uncertain of Frank's guilt. This state of uncertainty is largely due to the character of the Conley testimony, by which the verdict was largely reached.

"Therefore, I consider this a case in which the chief magistrate of the state should exert every effort in ascertaining the truth. The execution of any person whose guilt has not been satisfactorily proven is too horrible to contemplate. I do not believe that a person should meet with the extreme penalty of the law until the court, jury and governor shall have all been satisfied of that person's guilt. Hence, at the proper time I shall express and enlarge upon these views, directly to the prison commission and governor.

"However, if for any cause I am prevented from doing this, you are at liberty to use this letter at the hearing."

Verdict Not Attacked.

It will thus be observed that if commutation is granted the verdict of the jury is not attacked, but the penalty is imposed for murder, which is provided by the state, and which the judge, except for his misconception, would have imposed. Without attacking the jury or any of the courts, I would be carrying out the will of the judge himself in making the penalty that which he would have made it and which he desires it shall be made.

In the case of Hunter, a white man charged with assassinating two white women in the city of Savannah, who was found guilty and sentenced to be hanged, application was made to me for clemency. Hunter was charged, together with a negro, with having committed the offense, and after he was convicted the negro was acquitted. It was brought out by the statement of the negro that another negro who was half-witted committed the crime, but no credence was given to the story, and he was not indicted.

The judge and solicitor general refused to recommend clemency, but upon a review of the evidence, and because of the facts and at the instance of the leading citizens of Savannah, who were doubtful of the guilt of defendant, I commuted the sentence, in order that there should be no possibility of the execution of an innocent man. This action has met with the entire approbation of the people of Chatham county.

In the case of John Wright, of Fannin county, two men went to the mountain home of a citizen, called him out and shot him and were trampling on his body, when his wife, with a babe in her arms, came out to defend her husband. One of the men struck the babe with his gun and killed it. Wright was tried, found guilty and sentenced to death. Evidence was introduced as to his borrowing a gun. His threats his escape after the shooting occurred at the time he was an escape from the Fannin county jail under indictment for felony.

I refused to interfere unless the judge, or solicitor, would recommend interference, which they declined to do. Finally, when on the gallows, the solicitor general recommended a reprieve, which I granted, and finally on the recommendation of the judge and solicitor general, as expressed in my order, I reluctantly commuted the sentence to life imprisonment. The doubt was suggested as to the identity of the criminal, and as to the credibility of the testimony of prejudiced witnesses. The crime was as heinous as this one and more so.

In the Frank case three matters have developed since the trial which did not come before the jury, to-wit: The Carter notes, the testimony of Becker, indicating that the death notes were written in the basement, and the testimony of Dr. Harris, that he was under the impression that the hair on the ltahe was not that of Mary Phagan, and thus tending to show that the crime was not committed on the floor of Frank's office.

While made the subject of an extraordinary motion for a new trial, it is well known that it is almost a practical impossibility to have a verdict set aside by this procedure.

Matter of Conscience.

The evidence might not have changed the verdict, but it might have caused the jury to render a verdict with the recommendation to mercy.

In any event, the performance of my duty under the constitution is a matter of my conscience. The responsibility rests where the power is reposed. Judge Roan, with that awful sense of responsibility, which probably came over him as he thought of that Judge before Whom he would shortly appear, calls to me from another world to request that I do that which he should have done. I can endure misconstruction, abuse and condemnation, but I cannot stand the constant companionship of an accusing conscience, which would remind me in every thought that I, as governor of Georgia, failed to do what I thought to be right. There is a territory "beyond A REASONABLE DOUBT and absolute certainty," for which the law provides in allowing life imprisonment instead of execution. This case has been marked by doubt. The trial judge doubted. Two judges of the supreme court of Georgia doubted. Two judges of the supreme court of the United States doubted. One of the three prison commissioners doubted.

In my judgment, by granting a commutation in this case, I am sustaining the jury, the judge, and the appellate tribunals, and at the same time am discharging that duty which is placed on me by the constitution of the state.

Acting, therefore, in accordance with what I believe to be my duty under the circumstances of this case, it is

ORDERED, That the sentence in the case of Leo M. Frank is commuted from the death penalty to imprisonment for life.

This 21st day of June, 1915.

JOHN M. SLATON,
Governor.

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