

WILLIAM J. BURNS SCORES MAN WHO WORKED IN FRANK CASE

He Quotes Testimony of Superintendent Scott to Show Difficulties Under Which He Labored at Atlanta.

To the Editor of The New York Times:

ON my return to New York my attention has been called to a communication in your issue of Dec. 26, 1914, signed "H. Scott, Superintendent, Pinkerton Detective Agency," in which Mr. Scott claims that certain alleged statements made by me in THE TIMES regarding Scott's testimony in the Frank trial at Atlanta "are absolutely incorrect, as can be verified by the record of the trial."

In the article referred to by Mr. Scott, which appeared in THE SUNDAY TIMES of Dec. 20, 1914, I am quoted as saying:

"While Scott, the Pinkerton man, was on the stand, the questioning ran about like this:
"You say you always follow the police?"
"Yes."
"But if the police had theories and you had facts which contradicted them, would you still follow them?"
"Yes, we would follow."

This is the only quotation I pretended to give from Scott's testimony on the trial. The article doesn't pretend to quote Scott literally. Mr. Scott says this quotation is absolutely incorrect.

It should be remembered that Scott was employed on the Monday following the Phagan murder by Leo M. Frank, as the Superintendent of the National Pencil Company, to ferret out the murder.

Let me quote from the official stenographer's transcript of Scott's evidence on cross-examination, Page 492 of the record:

"Now, you have worked with the police entirely in this case, Mr. Scott?"
"Yes, Sir."
"That is what your detective agency does, it works with the police, that is, they don't run on theories different from the police, they work with them all the time?"
"On criminal cases we do, yes, Sir."
"You just get hand-in-glove with the police, and go on down the road with them?"
"That is right. They are our friends."
"And it don't make any difference who employs you, you do that all the same?"
"Yes, Sir."
"At any time, there is no such thing as employing you against the police?"
"Oh, no."
"If the police have one view and you have another, you quit work?"
"No."
"If you come in conflict with their work?"
"We never clash over views."
"No, you always agree."
On redirect examination by the Prosecutor, Mr. Scott was asked:
"Mr. Rosser asked you about following the police; I will ask you what you mean by following the police?"
"Following the police?"
"Yes, Mr. Rosser was asking you about driving down the road with the police or something like that."
"Well, we go right hand in hand with them and make every move they make while we are working with them, and they know everything we do, and we in turn make notes of what our partner does."
"If the facts go one way and the theory of the police another, which way do you go?"
"We have it out right there between us."
"Do you or not mean to state that you follow the police?"
"Mr. Rosser—I object to that on the ground that it is leading."
"State whether or not you followed the police blindly?"
"Oh, no; we didn't follow them blindly."
"Did you follow the police or the facts as you discovered them?"
"I don't just catch your point there, Mr. Dorsey."
"Did you follow the police or the facts as you turned the facts up?"
"Yes, Sir."
"Well, which?"
"Well, we report the facts of every move we make that day with the police."

"Is that what you mean by following the police?"
"I don't understand it."
"Well, explain to the jury what you mean by—fully and in detail—what you mean by following the police, or going down the road, as Mr. Rosser put it."
"That is, all through this entire investigation, I became the partner of City Detective Black, and every move I made and every move he made was known to both of us; Mr. Black in turn reported to the Police Department, and we furnished the Police Department with some of our reports, all of our reports." (And Mr. Scott further admitted that these reports were furnished to the police before they were furnished to his client.)

Mr. Scott, as the Assistant Pinkerton Superintendent at Atlanta, was in the employ of the National Pencil Company, and that employment was made by Mr. Frank as the agent of the company. Mr. Allan Pinkerton, in a communication to The Atlanta Constitution as late as March, 1914, referred to "our clients, the National Pencil Company." Mr. Scott's instructions were to find the murderer, no matter who he was. He was told this by Mr. Frank. He was told it by Mr. Haas, his attorney. He was told it by Mr. Rosser, also his attorney. But Mr. Scott, the day following his employment, fell in with the police in their infamous tactics against Frank. When he made up his mind that Frank was guilty, if he did make it up, he did not throw up his employment with Mr. Frank, but continued not only to work with the police, but to stretch his testimony infamously against Frank, as I shall show by his record.

But before I show Scott's testimony I would like space to quote from one statement on cross-examination on the witness stand of City Detective Black, whom Mr. Scott says he followed in this case, and who became his partner. On Page 435 of the official record of the Frank trial, Mr. Black says:
"Mr. Rosser, I don't like to admit that I can be crossed up and worried, but I have got to admit that you have got me worried until I don't know where I am at. I hate to be so confused, and I want to tell the truth. I certainly mean to tell the truth."

Now let us go back to Scott. The theory of the State was that Leo Frank had lured Mary Phagan from his office on the second floor back into the metal room on the same floor of the factory. Evidently the police were at a loss how to frame up proof of this. Mr. Scott, the man whom Mr. Frank employed, supplied the required link of evidence against Frank.

Frank stated to Scott, as he had stated to everybody else, and as he stated before the Coroner's inquest, that when Mary Phagan was leaving his office after getting her pay envelope she had turned and asked Frank if the metal for the pencil tips had arrived. The factory was short of this metal, and Mary Phagan could not go to work until the metal arrived. Frank had replied, "No."

When Frank sent for Scott he told among other things this part of his story, and told Scott in the presence of at least two other witnesses that he had told the girl "No." That meant that Frank was positive that the metal had not arrived, because, as he testified, he would be the first to know it; but the police wanted to prove that Frank was in doubt about the matter, and had gone back with Mary Phagan to the metal room to see if the metal had arrived.

Scott furnished to the police and to the attorneys for Frank his reports of this conversation at the time, in which he said that Frank has said "No." Scott so testified also at the Coroner's inquest. But on the trial Scott testified that this was a mistake, and he swore positively that Frank had said, "I don't know." This would leave the inference that Frank had gone back to the metal room with Mary Phagan to find out if the metal had come.

When confronted with the record of

his own reports and with his testimony before the Coroner's inquest, Scott said this was a grammatical error; that his "No" at the Coroner's inquest and in his reports meant "I don't know."

So that we may get the record straight, let me quote the exact language, on Page 497 of the official record. The cross-examination is by Mr. Rosser:

"Mr. Scott, you say now that Mr. Frank told you when the little girl asked him if the metal had come back, that Mr. Frank said 'I don't know'?"
"Yes, Sir."
"Now, isn't it true that in your report to me, you said that Mr. Frank said 'No' and in the report before the Coroner's jury didn't you say Mr. Frank said 'No'?"
"I don't think I did; I have said about that practically all the way through this case, that his remark was 'I don't know.'"
"Didn't you say 'No'?"
"I am very positive now that that is what he said."
"Your mind was fresher before the Coroner's jury, wasn't it?"
"I was very brief there, as I say."
"No, is a brief word, isn't it?"
"Pretty brief."
"Didn't you say 'No'?"
"That is what I said."
"Didn't you report to me that he said 'No'?"
"I suppose so, if you say so, I guess."

Let me read you what you said: When she got near the door she turned around and said: 'Has the metal come yet?' and Mr. Frank replied 'No.' Well, now, there is a good deal of difference between that language and the language 'I don't know,' isn't there?"
"Oh, yes."
"You said while framing your report that he said 'No'?"
"I positively swear that he said 'I don't know.'"
"How came you to swear before the Coroner's jury that he said 'No'?"
"I was brief there, and by inference, that is what I asked him, but if I said so, it was a grammatical error."
"When you said 'No' you meant 'I don't know'?"
"Yes, Sir, that was a grammatical error."
"What happened there was taken down and written out, wasn't it?"
"Yes, Sir."
"And you said 'No'?"
"I admit it."

Frank testified that he left the factory at 1 o'clock noon on Saturday, April 26, 1913. Scott swore on the trial that Frank told him he left at 1:10. This was either for the purpose of trying to fasten contradictions on Frank in his various statements or for the purpose of giving Conley's story a chance to be true.

Again quoting from Mr. Scott's testimony:

"You say now that Mr. Frank told you that he left the factory about 1:10?"
"Yes, Sir."
"You reported to me that he told you he left at 1, didn't you?"
"I made a very serious mistake. My notes there will show 1:10, look them up."
"Oh, well, I know, but how many mistakes are there in this report you made to me?"
"Why, very few, but of course that is an oversight. I never proofread it after I dictated to the stenographer, and I didn't know she had any discrepancies like that in there."
"Well, you made a mistake to the office and you made a mistake to me?"
"Apparently so, yes, Sir."
"You made the mistake; you have identified this as your report to me?"
"Yes, Sir."

Scott in his testimony swore to many other things against Frank, too numerous for detail here, which he had omitted in his reports and in his testimony before the Coroner's jury. Of course, this testimony of Scott's, with the constant reminder of the prosecutor during the trial, in the presence of the jury, that Scott was Frank's own detective, was most damaging against Frank. The prosecutor made Scott pose as Frank's friend, when, as a matter of fact, Scott injected into the

case the most damaging statements never referred to in his reports to the police or to Frank's lawyers, or in his testimony at the Coroner's inquest.

Scott and Black got Frank to go into Newt Lee's (the night watchman's) cell in the jail on the pretense that Frank, as Lee's employer, would have more influence in getting the truth from Lee than anybody else.

Regarding that conversation, Scott swore at the Coroner's inquest that all he knew was that Lee and Frank were together privately in the room, and Scott and Black had no way of knowing what was said between them except what Lee told them afterward. He said that Frank had told them merely that he could not get anything out of the negro. On the trial Scott swore that after Lee and Frank had been in the cell about ten minutes Black and himself had entered the room, and that Lee hadn't completed his conversation with Frank, and that Black and Scott sat down and heard Lee say: "Mr. Frank, it's awful hard for me to remain handcuffed to this chair; it is awful hard. It is awful hard, Mr. Frank."

Now listen to what Scott adds to this, after he had sworn at the Coroner's inquest that he wasn't present at this interview at all, and had no means of knowing what was said:
"And Mr. Frank hung his head the entire time the negro was talking to him, and finally, in about thirty seconds, he said, 'Well, they have got me, too.'"

This "hanging of the head" on the part of Frank and the "rubbing of the hands" and the "stroking of the hair" was never omitted by the prosecutor anywhere while examining any of these flexible witnesses. The evidence itself was so flimsy that the record is mostly made up of "hanging heads" and "piercing eyes" and "trembling hands" and so forth.

Let me quote the prosecutor's direct examination of Scott, referring to Frank:

"How did he talk?"
"Well, as I say, he hesitated somewhat."
"How did he swallow?"
"Very deep swallows."
"How did he breathe?"
"Very heavily."
"Illustrate to the jury how he breathed."
"Well, he just took a long sigh like that, [illustrating:] more of a sigh than a breath."

Again, Scott says, speaking of the time when Frank was taken into custody finally after having been taken to the police station twice before:

While he was in the automobile coming down he had absolutely nothing to say, and he was very pale.

The automobile was crowded with detectives. Perhaps Scott thought it was a laughable matter for an innocent man to be hounded by a lot of so-called sleuths, watching Frank's every movement to determine if they could not detect some indication of guilt. They took him to the Morgue; they brought Conley to Frank's cell, and Frank very wisely refused to see Conley unless in the presence of his own counsel, not knowing what these detectives might swear to.

Scott testified on direct examination that at the time of Frank's interview with Lee in the jail, "Mr. Frank was very squirmy in his chair, crossing one leg after the other, and he didn't know how to put his hands; he was moving them up and down on his face, and he hung his head a great deal of the time while the negro was talking to him; that is, in my presence."

Remember that Scott testified at the Coroner's inquest that he wasn't

present at this conversation at all. On cross-examination he was asked about his testimony before the Coroner:

"You talked for ten pages, and you didn't tell them anything of those things; when you told about the conversation between Lee and Frank you didn't say a word about his being nervous at that time, did you?"
"I didn't talk about him being nervous, no."
"You didn't say anything like that to me, did you?"
"I said he hung his head while Mr. Black was talking to him."
"Wait a moment, and let's see if you did. I want a moment to look over this and see if you can find it. Did you tell the Coroner anything about his crossing his legs and putting his hands up?"
"No."
"You didn't tell that down there?"
"No, Sir, I know I didn't tell that."
"You never told that until you told it to Mr. Dorsey about three or four weeks ago?"
"As Mr. Dorsey asked me the question, yes."
"You gave ten pages of detail, didn't you, and never mentioned that?"
"It was a brief detail; that is the way I will characterize it."
"You took ten pages to give your brief detail?"
"Yes, Sir, and as the questions were put to me by the Coroner."
"You are a competent detective, Mr. Scott?"
"I hope so."
"You are in the habit of noticing closely people's appearance?"
"Yes."
"And you had these facts before the Coroner and never said a word to him about them?"
"No, Sir, I never went into details down there."
"You never said anything, either in detail or generally, that indicated his nervousness?"
"No, Sir."
"You never mentioned the hanging of his head nor anything like that, and his acts and other things?"
"No, Sir, I didn't say anything of them."

And this is the man that Leo Frank, in an honest endeavor to fathom the murder that occurred in his factory, had employed to ferret it out. Is it any wonder that the Atlanta police officials were instrumental in driving my agency out of their city? They did not want the truth in the Frank case. I will undertake to say that if the truth about the Atlanta police is ever uncovered, it will make amazing reading. According to an Atlanta newspaper, Mayor Woodward of Atlanta said on Oct. 16 last: "It would take a Becker case to unearth all the rottenness in the Atlanta Police Department."

These things will give the public some idea of the handicap I labored under in my investigation of the Phagan murder. The police of Atlanta did not stop at driving my agency out of their city. The head of that department made a vicious attack on me at the meeting of the Chiefs of Police Association at Grand Rapids, Mich., later.

He and his friends succeeded in getting a committee of that association to withdraw the list of honorary members of the association "in order to revise it," stating that a number of members were dead; and when this resolution was passed, a new list was made up, and it was later discovered in the revised list my name was left off. Then, assiduously, through the press, the impression was sought to be created broadcast that the Chiefs of Police Association had taken official action dropping my name from the roll of honorary membership for cause. The ramifications of this Frank case are almost inconceivable.

W. J. BURNS.